



**European Commission  
DG Environment**

**Service Contract**



**No 090202/2025/4500092808/SER/ENV.C2**

**“ICES - Request for scientific advisory services”**



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL  
ENVIRONMENT  
Directorate C - Zero Pollution, Water Resilience & Green Urban Transition  
**The Director**

## **SERVICE CONTRACT**

NUMBER — **090202/2025/4500092808/SER/ENV.C2**

1. The European Union ('the Union'), represented by the *European Commission, Directorate-General Environment* ('the contracting authority'),

represented for the purposes of the signature of this contract by the authorised representative indicated in the respective field under "SIGNATURES" below,

of the one part and

**2. International Council for the Exploration of the Sea (ICES)**

Official legal form: Public Law Body

ICES Secretariat,

H.C. Andersens Boulevard 44-46,

1553 Copenhagen V,

Denmark

('the contractor')

represented for the purposes of signing this contract by the authorised representative indicated in the respective field under "SIGNATURES" below,

on the other part,

**HAVE AGREED as follows:**

## **MAIN CONDITIONS**

### **1. Subject matter**

The title of this contract is: **"ICES - Request for scientific advisory services"**

The terms and conditions applying to this contract are laid down hereafter and in the special and general conditions and their annexes. They shall be deemed to form and be read and construed as an integral part of this contract in the order described in the special conditions.

## 2. Contract value

The maximum amount covering all purchases under this contract is **EUR 600.000** [six hundred thousand euro].

## 3. Entry into force and duration

This contract enters into force on the date on which the last party signs it.

The maximum duration of this contract is **48 months** from the date this contract enters into force.

## 4. Bank account

Payments shall be made in accordance with the special conditions into the following bank account:

*Name of bank:* Nykredit

*Exact denomination of account holder:* International Council for the Exploration of the Sea (ICES)

*Bank account number:* **DK3054700001326337**

## Signatures :

For the contractor,  
Alan HAYNIE  
ICES General Secretary

Signature:

*Alan Haynie*  
*21/04/2025*  
*Read and Approved*  
Done:  
*In Copenhagen,*  
*Denmark*

For the contracting authority,  
Veronica MANFREDI  
Director C

Signature:

Qualified electronic signature by:  
VERONICA MANFREDI  
Date: 2025-04-14 18:35:47 +02:00

Done:

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## **I. SPECIAL CONDITIONS**

### **I.1. ORDER OF PRECEDENCE**

The following documents shall be deemed to form and be read and construed as part of this contract:

- Main conditions,
- Special conditions (including its Appendices:
  - Appendix 1 - Security provisions (Security Requirements for Commission's Contractors (including Ethics Reminder for Service Providers employed by a contractor of the Commission),
- General conditions for contracts and,
- the following Annexes:

**Annex I –** Tender specifications (call for tenders reference No **EC-ENV/2024/NP/0054** of **18/12/2024**)

**Annex II –** Contractor's tender of **29/01/2025**.

**Annex III –** Declaration on the list of pre-existing rights and statements (if applicable)

**Annex IV -** E-invoicing ICA Agreement

If there is any conflict between the provisions of the main conditions, special conditions, general conditions and Annexes I and II of this contract, the following order of precedence shall apply:

- a. Main conditions;
- b. Special conditions including the appendices;
- c. General conditions;
- d. Tender specifications (Annex I);
- e. Contractor's tender (Annex II).

### **I.2. SCOPE OF THE CONTRACT**

The subject matter of the contract is indicated in Article 1 of the Main conditions.

The scope of the contract is provision of services by the contractor to the contracting authority in accordance with the terms and requirements set out in Annex I.

By submitting a tender, the contractor waives its own terms and conditions. All documents of this nature issued by the contractor (end-user agreements, general terms and conditions, etc.) are held inapplicable, unless explicitly mentioned in the special conditions of the contract. In all circumstances, in the event of contradiction between this contract and documents issued by the contractor, this contract prevails, regardless of any provision to the contrary in the contractor's documents.

### **I.3. ENTRY INTO FORCE AND DURATION**

- I.3.1** The entry into force and the maximum duration of the contract are indicated in Article 3 of the Main conditions.

The period of *performance of the contract* may be extended only with the express written agreement of the parties before the expiration of such period.

- I.3.2** The *performance of the contract* cannot start before its entry into force.
- I.3.3** The suspension of the *performance of the contract* due to *force majeure* as provided for in Article II.17 will automatically extend the duration of the contract by the duration of the suspension.
- I.3.4** If, after the end of the contract, one party continues to perform its obligations without opposition from the other party, such performance is not and cannot be construed as a renewal of the contract.

### **I.4. PRICES**

#### **I.4.1. Amount of the contract and prices**

The maximum amount covering all services performed under this contract and excluding price revision, is indicated in Article 2 of the Main conditions.

The prices of the services are listed in Annex II.

#### **I.4.2. Price revision index**

Price revision is not applicable to this contract.

#### **I.4.3. Reimbursement of expenses**

Reimbursement of expenses is not applicable to this contract.

#### **I.4.4. Change of circumstances**

Without prejudice to Article 175 of the *Financial Regulation*, the contract is not subject to modification or termination in case of a change of circumstances rendering *performance of the contract* excessively more onerous for one of the parties. Each party assumes the risk of such change of circumstances and its financial consequences for themselves.

### **I.5. PAYMENT ARRANGEMENTS**

#### **I.5.1. Bank account conditions**

Payments under the contract shall be made to the contractor's (or leader's in the case of joint tender) bank account specified in Article 4 of the Main conditions in accordance with Article II.21, which is complemented by this article and the related provisions of the contract.



The bank account is denominated in euro.

### **I.5.2. Pre-financing**

Two weeks after the signature of the contract by the last party and its receipt by the contracting authority and following the inception meeting, the contractor may claim a pre-financing payment of 40 % (**240.000 EUR**) of the price referred to in Article 2 of the Main conditions. When the use of electronic exchange system under Article I.6.1 is not activated, the contractor (or leader in the case of a joint tender) must send an invoice for the pre-financing payment via ePrior.

The contracting authority must pay the pre-financing within 30 days of receiving the invoice.

### **I.5.3. Interim payment**

1. The contractor may claim an interim payment equal to 30 % (**180.000 EUR**) of the maximum amount, based on deliverables released, covering all services referred to in Article I.4.1 in accordance with Article II.21.6. The contractor must send an invoice for the interim payment via ePrior, 24 months after the signature of the contract, as provided for in the tender specifications, accompanied by the following:

- a list of all *pre-existing rights* to the *results* or parts of the *results* or a declaration stating that there are no such *pre-existing rights*, as provided for in Article II.13.4;
- an interim report in accordance with Annex I

2. The contracting authority must approve the submitted documents or deliverables and pay within 60 days from receipt of the invoice.

3. The contracting authority may suspend the time limit for payment specified in point (2.) in accordance with Article II.21.7. Once the suspension is lifted, the contracting authority shall give its approval and pay within the remainder of the time limit indicated in point (2.) unless it rejects partially or fully the submitted documents or deliverables.

### **I.5.4. Payment of the balance**

1. The contractor may claim the payment of the balance ,based on deliverables released, in accordance with Article II.21.6.

The contractor must send an invoice for payment of the balance due under the contract via e-Prior, as provided for in the tender specifications and accompanied by the following:

- a list of all *pre-existing rights* to the *results* or parts of the *results* or a declaration stating that there are no such *pre-existing rights*, as provided for in Article II.13.4
- a final report in accordance with Annex I

2. The contracting authority must approve the submitted documents or deliverables and pay within 60 days from receipt of the invoice.

3. The contracting authority may suspend the time limit for payment specified in point (2.) in accordance with Article II.21.7. Once the suspension is lifted, the contracting authority shall give its approval and pay within the remainder of the time limit indicated in point (2.) unless it rejects partially or fully the submitted documents or deliverables.

#### **I.5.5. Performance guarantee**

Performance guarantee is not applicable to this contract.

#### **I.5.6. Retention money guarantee**

Retention money guarantee is not applicable to this contract.

#### **I.5.7. VAT and invoices**

1. The contractor must send the invoice(s) for the pre-financing, the interim payments and/or the payment of the balance via the electronic exchange system or, if the use of electronic exchange system has not been activated under Article I.6.1, via ePrior.

2. If the transaction is taxable for VAT purposes as a local purchase in Belgium, use of this contract constitutes a request for VAT exemption No 450, Article 42, paragraph 3.3 of the VAT code (circular 2/1978), provided the invoice includes the statement: 'Exonération de la TVA, Article 42, paragraphe 3.3 du code de la TVA (circulaire 2/1978)'.

3. If the transaction is taxable for VAT purposes as a local purchase in Luxembourg, the contractor must include the following statement in the invoices: "Commande destinée à l'usage officiel de l'Union européenne. Exonération de la TVA Article 43 § 1 k 2ème tiret de la loi modifiée du 12.02.79.

4. If the transaction is taxable for VAT purposes as a local purchase in a Member State of the European Union (other than Belgium or Luxembourg) where the fiscal legislation allows direct VAT exemption, the invoice must include a statement referencing the relevant national legislation.

5. If the transaction is taxable for VAT purposes as an intra-community purchase, the invoice must include the following sentence: "VAT exemption / European Union / Article 151 of Council Directive 2006/112/EC".

6. If the transaction is taxable for VAT purposes as an intra-community purchase in a Member State of the European Union, in which the fiscal legislation does not allow direct VAT exemption, at the request of the contracting authority, the contractor shall make available to it all the supporting documents which the contracting authority might need in order to apply to the tax authorities for the reimbursement of any duties and taxes paid in the course of the performance of the contract.

## **I.6. COMMUNICATION DETAILS**

### **I.6.1. Communication via electronic exchange system**

After the entry into force of this contract, at any time during its course the contracting authority may formally notify in writing the contractor that certain communications will be made by electronic means through the EU Funding & Tenders Portal (the Portal), in accordance with the Portal Terms and Conditions and using the forms and templates provided there. The Portal can be accessed via the following URL: <https://ec.europa.eu/info/funding-tenders/opportunities/portal/>.

The notification shall indicate whether all or only certain communications under the contract will take place through the Portal. The notification shall have full legal effect from the date specified therein, which shall allow a reasonable period of time for the contractor to complete all necessary steps to have access to the Portal. The activation of the use of the Portal shall be at no additional cost for the contracting authority.

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

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

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

During the course of the contract, the contracting authority reserve(s) the right to further extend the coverage of the communications made through the Portal (if its use has been already activated) or to activate the use of other electronic exchange systems, at no additional cost for the contracting authority.

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

### **I.6.2. Mail or email communication**

For the purpose of this contract, mail or email communications must be sent to the following addresses:

Contracting authority, for technical issues:

European Commission

Directorate-General Environment

Directorate ENV.C – Zero Pollution

Unit ENV.C2 - Marine Environment And Clean Water Services

B-1049 Brussels

Belgium

Email: [ENV-MARINE-ENVIRONMENT@ec.europa.eu](mailto:ENV-MARINE-ENVIRONMENT@ec.europa.eu),

For administrative issues

European Commission

Directorate-General Environment

Directorate A – General Affairs, Knowledge and Resources

Unit ENV.A4 – Finance, Audit &amp; Budget

B-1049 Brussels

Email: [sarah.delmeulle@ec.europa.eu](mailto:sarah.delmeulle@ec.europa.eu)Contractor (or leader in the case of a joint tender):

Lotte Worsøe Clausen,

Head of Advice,

ICES Secretariat,

H.C. Andersens Boulevard 44-46,

1553 Copenhagen V,

Denmark

Email: [lotte.worsoe.clausen@ices.dk](mailto:lotte.worsoe.clausen@ices.dk)**I.7. PROCESSING OF PERSONAL DATA****I.7.1. Processing of personal data by the contracting authority**

For the purpose of Article II.9.1,

- (a) for personal data processed in the context of the management of the contract, the data controller is the European Commission and can be contacted at [ENV-DATA-PROTECTION-COORDINATOR@ec.europa.eu](mailto:ENV-DATA-PROTECTION-COORDINATOR@ec.europa.eu);
- (b) the data protection notice is available at [https://ec.europa.eu/info/data-protection-public-procurement-procedures\\_en](https://ec.europa.eu/info/data-protection-public-procurement-procedures_en).

**I.7.2. Processing of personal data by the contractor**

For the purpose of Article II.9.2,

- (a) the subject matter and purpose of the processing of personal data by the contractor vary along the requests for advice submitted by the Contracting Authority and may include information and data collected in the preparation of or during meetings, and in the preparation of or during the elaboration of advice.;
- (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. access to data may be given on a need to know basis only to authorised persons established in a country which has been recognised by the European Commission as providing adequate protection to personal data;
  - 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) 2018/1725<sup>1</sup>.

## **I.8. EXPLOITATION OF THE RESULTS OF THE CONTRACT**

### **I.8.1. Detailed list of modes of exploitation of the results**

In accordance with Article II.13.1 whereby the Union acquires ownership of the *results* as defined in this contract, including the tender specifications, these *results* may be used for any of the following modes of exploitation:

- (a) use for its own purposes:
  - making available to the staff of the contracting authority;
  - making available to the persons and entities working for the contracting authority or cooperating with it, including contractors, subcontractors whether legal or natural persons;
  - making it available to the other Union institutions, agencies and bodies, Member States' institutions;
  - installing, uploading, processing;
  - arranging, compiling, combining, retrieving;
  - copying, reproducing in whole or in part and in unlimited number of copies.
- (b) distribution to the public in hard copies, in electronic or digital format, on the internet including social networks as a downloadable or non-downloadable file;
- (c) communication through press information services;
- (d) inclusion in widely accessible databases or indexes, such as via 'open access' or 'open data' portals, or similar repositories, whether freely accessible or accessible only upon subscription;
- (e) modifications by the contracting authority or by a third party in the name of the contracting authority, including:
  - shortening;
  - summarising;
  - preparation in audio form, preparation as a presentation, animation, pictograms story, slide-show, public presentation;
  - extracting a part or dividing into parts;
  - incorporating, including by cropping and cutting, the *results* or parts thereof in other works, such as on websites and webpages;
  - translating, inserting subtitles, dubbing in different language versions;

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

- English, French, German;

(f) other adaptations which the parties may later agree; in such case, the following rules apply: the contracting authority must consult the contractor. If necessary, the contractor must in turn seek the agreement of any *creator* or other right holder and must reply to the contracting authority within one month by providing its agreement, including any suggestions of modifications, free of charge. The contractor may refuse the intended modification only if a *creator* can demonstrate that the intended modification may harm his/her honour or reputation, thereby violating his/her moral rights.

The list above is in addition to whatever rights already accrue to the Union on the basis of existing exceptions in the applicable legislation, such as the copyright exception to ensure the proper performance or reporting of administrative proceedings, in cases where such exceptions apply.

### **I.8.2. Licence or transfer of pre-existing rights**

All *pre-existing rights* incorporated in the *results*, if any, are licensed to the Union as set out in Article II.13.2.

By derogation to Article II.13.2, the Union acquires fully and irrevocably all *pre-existing rights* incorporated in the *results*, if any.

### **I.8.3. Provision of list of pre-existing rights and documentary evidence**

The contractor must provide the contracting authority with a list of *pre-existing rights* as set out in Article II.13.4 together with the invoice for payment of the balance at the latest.

## **I.9. TERMINATION FOR CONVENIENCE BY EITHER PARTY**

Either party may terminate the *contract* for convenience by sending *formal notification* to the other party with *three months* written notice.

If the *contract* is terminated for convenience:

- (a) neither party is entitled to compensation;
- (b) the contractor is entitled to payment only for the services provided before termination takes effect.

The second, third and fourth paragraphs of Article II.18.4 apply.

## **I.10. APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

**I.10.1** The contract is governed by Union law, complemented, where necessary, by the law of Belgium. The application of the United Nations Convention on Contracts for the International Sales of Goods (CISG) is excluded.

**I.10.2** The courts of Brussels shall have exclusive jurisdiction over any dispute regarding the validity, interpretation, performance or termination of the *contract*.

## **I.11. SECURITY**

- I.11.1** When performing tasks for the contracting authority in execution of the contract, the contractor and its personnel shall comply with the contracting authority's applicable security requirements described in the Appendix 1 "Security Requirements for Commission's Contractors (including Ethics Reminder for Service Providers employed by a contractor of the Commission)".

## APPENDIX 1

### **I. SECURITY REQUIREMENTS FOR COMMISSION'S CONTRACTORS**

For the purpose of Appendix 1 on Security Requirements, the following definitions apply:

**‘Security incident’:** any event having or threatening to have an adverse effect on the security of network and information systems, including but not limited to a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to data, including but not limited to personal data, transmitted, stored or otherwise processed;

**‘Service provider’:** an individual member of the personnel of the contractor providing a service to the contracting authority under the contract.

#### **I.1. SECURITY MANAGEMENT**

##### **I.1.1. Compliance with the applicable security requirements**

When performing tasks for the contracting authority in execution of the contract, the contractor and its personnel (service providers) shall comply with the contracting authority's applicable security requirements.

For the Commission and the Executive Agencies, the applicable security requirements include [Commission Decision \(EU, Euratom\) 2015/443](#) of 13 March 2015 on Security in the Commission, as well as all its subsequent versions and the other documents available under the following link: [https://ec.europa.eu/info/files/security-standards-information-systems\\_en](https://ec.europa.eu/info/files/security-standards-information-systems_en)

In the cybersecurity domain, the contractor and its personnel (service providers) shall comply with Regulation (EU, Euratom) 2023/2841 of the European Parliament and of the council of 13 December 2023 laying down measures for a high common level of cybersecurity at the institutions, bodies, offices and agencies of the Union.

The contractor is responsible for establishing and maintaining an appropriate risk management process for ensuring the confidentiality, integrity and availability of assets. This process should encompass the implementation of suitable technical and organizational security measures before commencing any tasks in execution of the contract. The contractor shall appropriately maintain such measures for the duration of the contract and shall update the measures at regular intervals based on the state of the art, the evolving risks and changes in the Commission's security requirements.

When determining the appropriate technical and organisational security measures, the contractor shall notably take into account:

- the state of the art;
- the nature, scope, context and purposes of processing, including but not limited to collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of information and/or data; and



- the risks, including but not limited to those deriving from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to information and/or data transmitted, stored or otherwise processed.

The contractor shall take all appropriate steps for each supplied product or service to ensure that the data and/or information, the information systems and the media upon which they are stored are safely preserved. The supplied products and services shall not contain any vulnerability which could compromise their availability, integrity or confidentiality or that of the contracting authority's evolving multi-manufacturer information technology environment, architecture and physical premises. In the event that any critical vulnerability able to compromise the security of the supplied products or services is identified, the contractor shall immediately inform the contracting authority and proceed with the remediation of said vulnerability at its own cost.

The contractor shall ensure that all security precautions for each supplied product or service are clearly set out in the relevant documentation supplied to the contracting authority.

In some cases, when required for security reasons, the contracting authority may ask the contractor to provide "security cleared personnel". This will be considered as a specific requirement for a specific project, without influencing the other conditions.

If requested by the contracting authority, the contractor shall ensure that any person involved in the provision of the services under this contract attends the security briefings or training given by the contracting authority, and/or signs the relevant security statement.

In case the contractor's service providers (personnel) are granted access rights to the contracting authority's premises and/or are granted access to communication and information systems of the contracting authority or data sets processed therein, the contractor should ensure that each service provider performing tasks for the contracting authority in execution of the contract signs the declaration in Annex I (Ethics Reminder for Service Providers Working for the Contractor – to be included by the contractor in the contract concluded with its service provider) and then confirms to the contracting authority before the start of the performance of the services that it has been signed.

Upon request, the contractor must provide evidence to the contracting authority that the obligations of this paragraph have been passed on to its subcontractors and personnel and that the required declarations have been signed.

The contractor undertakes to impose the security management, information security management, security incident management and security assessment obligations provided in Articles I.1, I.2, I.3 and I.4 of this document, as applicable, upon its personnel in the relevant contracts signed with them.

The contractor shall document all measures and mechanisms implemented to comply and demonstrate compliance with the applicable security requirements and shall make such information available to the contracting authority upon the latter's first request.

Any costs for complying with the applicable security requirements (e.g. security background checks, screening fee, security clearance, information security management, security incident management etc.) will be entirely at the expense of the contractor and not of the contracting authority.

### **I.1.2. Protecting EU classified information**

No access to EU classified information will be granted in the context of the services provided under the present contract.

### **I.1.3. Specific security rules for the contractor's<sup>2</sup> personnel**

For the Commission and for the Executive Agencies (collectively referred to in this Article as the Commission), Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security of the Commission (Commission Decision 2015/443), its subsequent versions, its implementing rules (as adapted from time to time) and the corresponding security standards, guidelines and notices shall apply. Pursuant to Articles 3 (6), 7 (5) and 8 of Commission Decision 2015/443 of 13.3.2015, background checks can be carried out on personnel in order to prevent and control risks to the security of Commission staff, assets and information. To that effect, the Commission has concluded a Memorandum of Understanding with Belgian authorities. Pursuant to the Belgian Act of 11.12.1998 on classification and security clearances, security certificates and security advice (Belgian Official Gazette of 7.5.1999, p. 15.752), as further amended, access rights for personnel to the premises or IT assets (equipment and networks) of the Commission will be conditional on a positive security advice to be delivered by the Belgian authorities. For non-EU nationality personnel, the Commission performs a specific screening process before access is granted in addition to the security screening performed by the Belgian authorities.

On the basis of an individual consent the competent Belgian Authority will provide a security advice for the external personnel working for a Commission service based in Belgium and/or working for a company legally based in Belgium, who is granted access rights to the Commission premises in Belgium and/or IT assets for a short- or long-term period. The Commission will have discretionary power to decide on granting access rights based on the advice received.

The only exemptions from the security screening conducted by the Belgian authorities are if the personnel is security cleared or employed by a company legally based outside Belgium or working for a Commission service based outside Belgium. For external personnel residing in other EU countries using Commission IT assets and/or connecting to the Commission's internal network via the remote access service for Commission staff, the Belgian National Security Authority will perform a screening using their available international data sources.

The screening process is managed in the Commission's physical access control system, which shall store the personnel's valid ID information. Once all necessary personal information<sup>3</sup> has been provided, a pre-filled consent form<sup>4</sup> can be generated. The generated form must be

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<sup>2</sup> The notion of contractors used in this clause has the same meaning as the notion of external contractors used in the screening Memorandum of Understanding.

<sup>3</sup> The mandatory personal information provided: full official name and forenames; function or occupation; nationality; national (Belgian or foreign) registry number; passport or ID number, place of birth; date of birth; official complete address (including house or flat number and postal code); name of company, number of company and company's email.

<sup>4</sup> The automated Consent Form requires full official name and forenames; function or occupation; nationality; national Belgian registry number; passport or ID number, place of birth; date of birth; official complete address (including house or flat number and postal code); company and number of company

checked and signed by the relevant personnel in order to initiate the screening process to allow the Belgian authorities to give a security advice.

Failure or refusal to complete and sign the Consent Form will result in the refusal of access rights to Commission buildings and IT assets for the concerned personnel.

The screening fee<sup>5</sup> is to be paid by the contractor of the natural person for whom a security screening is requested.

The Commission acknowledges that in exceptional cases it may not be possible for the contractor to provide personnel having received a positive security advice at short notice. Nevertheless, the contractor undertakes to provide at all times only personnel having received a positive security advice for the following Commission buildings: Berlaymont, Breydel, Charlemagne, Centre Albert Borschette, Luxembourg 46, Montoyer 59 and Madou. This list can be subject to modification upon request from the Commission Department of Security. In this case, the Commission will duly notify the contractor of such modification. The Commission may terminate the contract if the contractor is unable to provide at all times only personnel having received a positive security advice for the listed Commission buildings.

If access rights for personnel are granted by means of a Commission access card, this card remains the property of the Commission. It must be returned within 10 calendar days to the Service Card Office or to the guards at the reception of any Commission building upon request, expiry or where the access conditions are no longer met and in particular where the personnel no longer benefit from a positive security advice.

If the Commission access card is not returned, the Contracting Authority may claim liquidated damages of 100 EUR from the contractor for each day of delay up to a maximum of EUR 1.000. This represents a reasonable estimate of fair compensation for the damage incurred.

If the Commission decides to extend the scope of application of the procedure as provided for above, it shall notify the contractor of the practical modalities for its implementation. This notification shall have full legal effect from the date indicated in the notification.

If the contractor's personnel is working in Commission buildings, the contractor is required, at the Commission's request, to replace immediately and without compensation any person considered unsuitable by the contracting authority.]]

#### **I.1.4. Security of communication and information systems of the contracting authority**

No access for contractor's personnel to communication and information systems of the contracting authority or data sets processed therein will be granted in the context of the services provided under the present contract.

#### **I.1.5. Security of outsourcing of communication and information systems (CIS) of the contracting authority**

The contractor will not perform tasks for the contracting authority that include storing and processing contracting authority's information on a CIS that is provided on the basis of a

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<sup>5</sup> Currently 50€ in Belgium

contract with a third party contractor, under which the CIS is housed on premises different from the ones of the contracting authority.

## **I.2. INFORMATION SECURITY MANAGEMENT**

When performing tasks for the contracting authority, the contractor shall handle any information related to those tasks by applying accordingly the rules provided in the contract on localisation of and access to personal data. For specific categories of information this article provides for more restrictive rules that will be applicable for the contractor in addition to the rules of the contract.

For the Commission and the Executive Agencies, in accordance with Commission's Principles for outsourcing of communication and information systems (Standard C(2020) 4190), Commission Use and Sensitive Non-classified Information must be hosted only in EU Member States.

For any information related to the implementation of the contract that is stored in the contractor's information systems the contractor shall guarantee that:

- Information is available and usable when required (availability);
- Information is only accessed by or disclosed to individuals who have the right to know (confidentiality);
- Information is complete, accurate, and protected against unauthorized modification (integrity);
- Business transactions, as well as information exchanges, can be trusted (authenticity and non-repudiation).

If the contractor handles non-public information of the contracting authority in their IT systems they must follow a risk-based approach in order to ensure the protection of the information at the appropriate level.

The contractor must not disclose or grant access to any information or equipment provided by the contracting authority or delivered to the contracting authority in the implementation of the contract (such as operating procedures, system designs, configurations, etc.), actively or passively, intentionally or negligently, to any third parties.

In case of receipt of a legally binding request for disclosure of the data processed on behalf of the contracting authority, the contractor shall treat non-personal data in the same way as they shall treat personal data under the provisions applicable to personal data in this contract.

The contractor and its personnel shall be aware of the applicable contracting authority's security rules relating to their activities, the level of confidentiality of the information that they handle, and any relevant handling instructions (notably in the case of the Commission and the executive agencies for sensitive non-classified (SNC) information, Instructions for sensitive European Commission documents apply – available at <https://europa.eu/db43PX>).

### **I.3. SECURITY INCIDENT MANAGEMENT**

The contractor shall implement the necessary organisational and technical measures and mechanisms to prevent, detect, and handle any security incident in an appropriate manner. The contractor shall regularly re-assess and update the implemented measures and mechanisms in light of the state of the art and the risks, which may evolve over time in light of the evolution in the technologies relevant for the implementation of the contract.

In the event a security incident occurs or has occurred in implementation of this contract, the contractor shall, irrespective of the level of risk, notify the contracting authority thereof without undue delay and not later than 48 hours after becoming aware of the security incident, except in the event the contractor is made aware by the contracting authority.

In the context of any notification made in compliance with this article or upon the contracting authority's first request, the contractor shall provide the contracting authority with at least the following information:

- Nature of the security incident including where possible, the categories and approximate number of data records concerned and, where applicable, the categories and approximate number of data subjects concerned;
- Exact date or period of the security incident as well as date and time of detection;
- Explanation on how the security incident was detected, its root cause and its likely and/or actual consequences; and
- Measures taken or proposed to be taken to address the security incident, including, where appropriate, measures to mitigate its possible adverse effects.

The contractor shall use its best efforts to assist the contracting authority with the notification of the security incident to the competent authority(ies) and/or the data subject(s) where applicable. In particular, the contractor shall co-ordinate with, and assist the contracting authority with sharing information about security incidents, vulnerabilities and cyber threats with CERT-EU, whenever the contracting authority opts to do so.

In the event of a security incident, the contractor shall take all measures necessary and appropriate to limit the negative impact of the security incident as much as possible (including but not limited to the provision of forensic assistance to the contracting authority), to mitigate damages and to establish appropriate monitoring mechanisms for the future.

### **I.4. SECURITY ASSESSMENT**

The contractor shall fully collaborate in assessing and/or auditing its compliancy to the applicable IT security frameworks and regulations, where applicable.

This collaboration will cover, among others:

- performing and maintaining detailed internal IT security risk management;
- the participation in IT risk assessments performed by the contracting authority and related to the services provided by the contractor, including yearly revision;
- the participation in IT audits and/or security inspections imposed by the relevant internal services of the contracting authority (internal audit services, security directorate, etc.);

- the participation in Regulation (EU) 2016/679 compliance audits performed by the European Data Protection Supervisor (EDPS) and, based on the results of those assessments and audits, the implementation of identified security measures in case of non-compliance with EU regulations and/or IT security standards;
- when inducing changes in the infrastructure or in the service, the timely sharing of information about these changes and their impact on security, availability and data protection.

To fulfil this obligation, the contractor will identify internally an IT security manager, who will become the point of contact with the contracting authority with regard to the coverage of those activities and the fulfilment of the related obligations.

It is to be noted that this IT security manager is to be understood as a role, and not as an assignment to a single person. This implies respective back-up provisions, knowledge transfer and other organisational provision within the people assigned to this role.

Upon request from the contracting authority, within 14 days the contractor shall provide the contracting authority with the identity of the IT security manager.

The IT security manager is entitled to designate delegations to follow-up on specific projects and tasks; nevertheless the IT security manager will remain responsible for the execution of all his tasks (including those that have been delegated). The contracting authority will be informed of each such delegation, as soon as it occurs.

This IT security manager will participate in the different meetings organised by the contracting authority on these topics and will provide the necessary documents in relation with the domains covered. When requested, the IT security manager will also attend the service review meetings or other ad hoc meetings during which these aspects will be addressed.

The contractor commits to collaborate with the contracting authority's security teams in all questions regarding security governance, management and reporting, including their requests as concerns selection and hardening of equipment and security scans.

## **ANNEX I**

### **ETHICS REMINDER FOR SERVICE PROVIDERS EMPLOYED BY A CONTRACTOR OF THE COMMISSION**

**YOU ARE REMINDED THAT, AS A SERVICE PROVIDER EMPLOYED BY A COMPANY CONTRACTED BY THE EUROPEAN COMMISSION YOU MUST RESPECT THE ETHICAL PRINCIPLES AND OBLIGATIONS SET OUT BELOW.**

#### **I. Confidentiality of information and data protection**

You must exercise the greatest discretion with regard to facts and information, whatever their source, that may come to your knowledge during the course of your provision of service to the Commission.

Without prejudice to the general obligation of professional secrecy, you must not disclose outside your assigned Unit, in any way and by any means directly or through others, any information acquired in the course of your service provision. This restriction covers all notes, analyses, opinions, compilations, studies, interpretations, summaries, extracts, data or other documents or records in original or in copy containing, regarding, reflecting or otherwise deriving from any confidential, sensitive or secret information that you prepared or you became aware of in the exercise of your functions in the context of your work as a service provider that is not yet public or accessible to the public without any restriction (e.g. published on the internet, Europa or any other media, accessible for consultation).

In case you receive a device or IT account from the Commission for work purposes, you should be the sole user of that device/IT account. You should protect it at any time and notify immediately to the LSO any breach of security of a device or IT account.

In this context, you must also refrain from exploiting insights of a confidential nature in policy, strategy or internal processes that you may have acquired during your provision of service and that have not yet been made public or are not commonly available in the public domain.

You accept, without reservation, that you continue to be bound by these confidentiality obligations also after your period of service provision to the Commission.

#### **II. Contacts with other parties and publications**

During your service provision, you shall not have any professional connections with third parties which might be incompatible with providing a service in the Commission (e.g. must not work for lobbyists, legal attachés, other firms or entities involved in EU-related matters in your field of work etc.).

You shall not have contact with the Press on matters relating to your work as a service provider in the Commission unless your employer and the Commission have agreed it beforehand.

You must not, alone or with others, publish or cause to be published any matter dealing with the work of the European Commission without the written permission of your employer and the Commission. Such permission is subject to the conditions in force for all Commission staff.

Be aware that all rights, for any articles or other work done as part of your service provision to

## 2. Contract value

The maximum amount covering all purchases under this contract is **EUR 600.000** [six hundred thousand euro].

## 3. Entry into force and duration

This contract enters into force on the date on which the last party signs it.

The maximum duration of this contract is **48 months** from the date this contract enters into force.

## 4. Bank account

Payments shall be made in accordance with the special conditions into the following bank account:

*Name of bank:* Nykredit

*Exact denomination of account holder:* International Council for the Exploration of the Sea (ICES)

*Bank account number:* **DK3054700001326337**

## Signatures :

For the contractor,  
Alan HAYNIE  
ICES General Secretary

Signature:

*Alan Haynie*  
*21/04/2025*  
*Read and Approved*  
Done:  
*In Copenhagen,*  
*Denmark*

For the contracting authority,  
Veronica MANFREDI  
Director C

Signature:

Qualified electronic signature by:  
VERONICA MANFREDI  
Date: 2025-04-14 18:35:47 +02:00

Done:



## **II. GENERAL CONDITIONS FOR THE SERVICE CONTRACT**

### **II.1. DEFINITIONS**

For the purpose of this contract, the following definitions (indicated in *italics* in the text) apply:

**‘Back office’**: the internal system(s) used by the parties to process electronic invoices;

**‘Breach of obligations’**: failure by a party to fulfil one or more of its contractual obligations;

**‘Confidential information or document’**: any information or document received by either party from the other or accessed by either party in the context of the *performance of the contract*. It may not include information that is publicly available;

**‘Conflict of interest’**: a situation where the impartial and objective *performance of the contract* by the contractor is compromised or negatively affected for reasons involving family, emotional life, political or national affinity, economic interest, any other direct or indirect personal interest of the contractor, its *related persons or personnel* or any third party related to the subject matter of the contract;

**‘Creator’**: means any natural person who contributes to the production of the *result*;

**‘EDI message’** (electronic data interchange): a message created and exchanged through the electronic transfer, from computer to computer, of commercial and administrative data using an agreed standard;

**‘Electronic exchange system’**: is an electronic exchange system meeting the requirements of Article 151 of the Financial Regulation<sup>6</sup>;

**‘EUI’**: European Union institution;

**‘Force majeure’**: any unforeseeable and unavoidable situation or event beyond the control of the parties that prevents either of them from fulfilling any of their obligations under the contract. The situation or event must not be attributable to the negligence of the debtor. Breaches or negligence of subcontractors, defaults of service, defects in equipment or material or delays in making them available, labour disputes, strikes and financial difficulties may not be invoked as *force majeure*, unless they stem directly from a relevant case of *force majeure*;

**‘Formal notification’** (or ‘formally notify’): form of communication between the parties made in writing by mail or email, which provides the sender with compelling evidence that the message was delivered to the specified recipient;

**‘Fraud’**: an act or omission committed in order to make an unlawful gain for the perpetrator or another by causing a loss to the Union's financial interests, and relating to: i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect

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<sup>6</sup> Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (recast) (OJ L, 2024/2509, 26.09.2024, ELI: <http://data.europa.eu/eli/reg/2024/2509/oj>)

the misappropriation or wrongful retention of funds or assets from the Union budget, ii) the non-disclosure of information in violation of a specific obligation, with the same effect or iii) the misapplication of such funds or assets for purposes other than those for which they were originally granted, which damages the Union's financial interests;

**‘Grave professional misconduct’:** a violation of applicable laws or regulations or ethical standards of the profession to which a contractor or a *related person* belongs, including any conduct leading to sexual or other exploitation or abuse, or any wrongful conduct of the contractor or a *related person* which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence;

**‘Interoperability network’:** independent third party platforms enforcing the European standards and Directives on cross-border interoperability in a certain domain;

**‘Irregularity’:** any infringement of a provision of Union law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the Union’s budget or a budget managed by the Union;

**‘Notification’** (or ‘notify’): form of communication between the parties made in writing including by electronic means;

**‘Performance of the contract’:** the execution of tasks and provision of the ordered services by the contractor to the contracting authority;

**‘Personnel’:** persons employed directly or indirectly or contracted by the contractor or its subcontractors to perform the contract;

**‘Portal’:** EU Funding & Tenders Portal; electronic exchange system managed by the European Commission and used by itself and other EU institutions, bodies, offices or agencies for the management of their funding, prizes and procurement;

**‘Pre-existing material’:** any material, document, technology or know-how which exists prior to the contractor using it for the production of a *result* in the *performance of the contract*;

**‘Pre-existing right’:** any industrial and intellectual property right on *pre-existing material*; it may consist in a right of ownership, a licence right and/or a right of use belonging to the contractor, the *creator*, the contracting authority as well as to any other third parties;

**‘Professional conflicting interest’:** a situation in which the contractor’s previous or ongoing professional activities affect or risk affecting its capacity to perform the *contract* in an independent, impartial and objective manner;

**‘Purchases’:** the services ordered under this contract; **‘Related person’:** any natural or legal person who is a member of the administrative, management or supervisory body of the contractor, or who has powers of representation, decision or control with regard to the contractor;

**‘Result’:** any intended outcome of the *performance of the contract*, whatever its form or nature. A *result* may be further defined in this contract as a deliverable. A *result* may, in addition to newly created materials produced specifically for the contracting authority by the contractor or at its request, also include *pre-existing materials*;

## II.2. ROLES AND RESPONSIBILITIES IN THE EVENT OF A JOINT TENDER

In the event of a joint tender submitted by a group of economic operators and where the group does not have legal personality or legal capacity, one member of the group is appointed as leader of the group.

## II.3. SEVERABILITY

Each provision of this contract is severable and distinct from the others, unless it is essential to the agreement of the parties, if a provision is or becomes illegal, invalid or unenforceable to any extent, it must be severed from the remainder of the contract. This does not affect the legality, validity or enforceability of any other provisions of the contract, which continue in full force and effect. The illegal, invalid or unenforceable provision must be replaced by a legal, valid and enforceable substitute provision which corresponds as closely as possible with the actual intent of the parties under the illegal, invalid or unenforceable provision. The replacement of such a provision must be made in accordance with Article II.11. The contract must be interpreted as if it had contained the substitute provision as from its entry into force.

## II.4. PROVISION OF SERVICES

**II.4.1** The contractor must provide services of high quality standards, in accordance with the state of the art in the industry and the provisions of this contract, in particular the tender specifications and the terms of its tender. Timely delivery of the services is essential for the contracting authority. Where the Union has the right to make modifications to the *results*, they must be delivered in a format and with the necessary information which effectively allow such modifications to be made in a convenient manner.

**II.4.2** The contractor must comply with the minimum requirements provided for in the tender specifications. This includes compliance with applicable obligations under environmental, social and labour law established by Union law, national law and collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU<sup>7</sup>, compliance with data protection obligations resulting from Regulation (EU) 2016/679<sup>8</sup> and Regulation (EU) 2018/1725<sup>9</sup>.

**II.4.3** The contractor must obtain any permit or licence required in the State where the services are to be provided.

**II.4.4** All periods specified in the contract are calculated in calendar days, unless otherwise specified.

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<sup>7</sup> OJ L 94 of 28.03.2014, p. 65

<sup>8</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, OJ L 119, 4.5.2016, p. 1, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2016.119.01.0001.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.119.01.0001.01.ENG)

<sup>9</sup> Regulation (EU) 2018/1725 of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295/39, 21.11.2018, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1725&from=EN>

- II.4.5** The contractor must not present itself as a representative of the contracting authority and must inform third parties that it is not part of the European public service.
- II.4.6** The contractor is responsible for the *personnel* who carry out the services and exercises its authority over its *personnel* without interference by the contracting authority. The contractor must inform its *personnel* that:
- (a) they may not accept any direct instructions from the contracting authority; and
  - (b) their participation in providing the services does not result in any employment or contractual relationship with the contracting authority.
- II.4.7** The contractor must ensure that the *personnel* performing the contract and any future replacement *personnel* possess the professional qualifications and experience required to provide the services, as the case may be on the basis of the selection criteria set out in the tender specifications.
- II.4.8** At the contracting authority's reasoned request, the contractor must replace any member of *personnel* who:
- (a) does not have the expertise required to provide the services; or
  - (b) has caused disruption at the premises of the contracting authority.
- The contractor bears the cost of replacing its *personnel* and is responsible for any delay in providing the services resulting from the replacement of *personnel*. Before deciding to replace a member of *personnel*, the contractor should first give him the opportunity to present observations.
- II.4.9** The contractor must record and report to the contracting authority any problem that affects its ability to provide the services. The report must describe the problem, state when it started and what action the contractor is taking to resolve it.
- II.4.10** The contractor must immediately inform the contracting authority of any changes in the exclusion situations as declared, according to Article 139(1) of the *Financial Regulation*.
- II.4.11** If the contractor fails to provide the services in accordance with high quality standards, the state of the art in the industry and the provisions of the *contract* (in particular the tender specifications and the terms of its tender), the contracting authority may, even if such failure constitutes a breach that could trigger Article II.18.1, decide to have these obligations performed by a third party, at the contractor's expense. The contracting authority shall *formally notify* the contractor of its decision to have the contractor substituted and the grounds for this substitution.

Any such substitution does not affect the contractor's liability and is without prejudice to the contracting authority's other rights and remedies, including but not limited to its right to claim damages under Article II.18 that the substitution would not cover.

## **II.5. COMMUNICATION BETWEEN THE PARTIES**

### **II.5.1. Form and means of communication**

Any *notifications*, communication of information or exchange of documents under the contract must be made in writing, in the language of the contract and must clearly identify the contract number, if applicable.

Communication between the parties can take place:

- by electronic means, via electronic exchange system, in accordance with the provisions of Article II.5.2.;
- by electronic means, via email, in accordance with the provisions of Article II.5.3.;
- on paper, via mail - by courier service with proof of delivery or by registered post with proof of delivery, in accordance with the provisions of Article II.5.4.

The specific rules when *formal notifications* are considered to have been received are provided in Sections II.5.2.2, II.5.3.2 and II.5.4.2 below.

Communication details to be used for all communication between the parties are indicated in Article I.6.

### **II.5.2. Communication via electronic exchange system (EES)**

The contracting authority may use an EES for all exchanges with the contractor during the *implementation of the contract*.

If communication via the EES is hindered by factors beyond the control of one party, including technical problems, the party who first discovers the hinderance must *notify* the other party immediately and the parties must take the necessary measures to restore this communication via the EES. Upon such *notification*, the parties shall use alternative means of communication until communication via electronic exchange system is restored. The provisions applicable to alternative means of communication are described in Articles II.5.3 and II.5.4 below.

If the EES is temporarily unavailable, the sending party cannot be considered in *breach of its obligation* to send a communication within a specified deadline. In any event, for reasons linked to business continuity, the contracting authority reserves the right to use alternative means of communication at any moment.

#### **II.5.2.1 Date of communication via electronic exchange system for other than formal notifications**

*Notifications* through the EES are generally considered to have been made when they are sent by the sending party (i.e. on the date and time they are sent through the EES) as indicated by the time logs.

#### **II.5.2.2 Date of communication via electronic exchange system for formal notifications**

The receiving date for *formal notifications* made through the EES will be the date and time the communication is accessed, as indicated by the time logs. *Formal notifications* that have not been accessed within 10 days after sending, will be considered to have been accessed.

### **II.5.3. Communication via email**

When communicating via e-mail, the parties shall send their messages to the email addresses indicated in Article I.6.

#### **II.5.3.1 Date of communications via email for other than formal notifications**

Without prejudice to Article II.19.1. below and Point 31.3 of Annex I to the FR, *notifications* via email are considered to have been made and the email is deemed to have been received by the receiving party on the date of dispatch of that e-mail, if it is sent to the email address indicated in Article I.6 and does not have characteristics that could reasonably prevent its proper delivery (such as sending extremely voluminous e-mails that can be blocked for their size or emails containing elements that the majority of the spam filters would block). The sending party must be able to prove the date of dispatch. If the sending party sends the email to the email address indicated in Article I.6 and receives a non-delivery report, it must make every reasonable effort to ensure that the other party receives the communication.

#### **II.5.3.2 Date of communications via email for formal notifications**

*Formal notifications* by email are considered to have been received on the date of dispatch of a return email expressly or impliedly acknowledging receipt. In case no such email is received by the party who sent the *formal notification* within 10 days, the *formal notification* should be re-sent via courier service with proof of delivery or registered post (see Article II.5.4.2 below).

### **II.5.4. Communication via mail**

As a rule, mail is used by way of exception for *formal notifications* and as alternative means of communication when the other means are not available.

When communicating via mail, the parties should send their letters to the postal addresses indicated in Article I.6.

#### **II.5.4.1. Date of communications via mail for other than formal notifications**

Without prejudice to Article 116 of the *Financial Regulation*, *notifications* via mail are considered to have been made at the date of receipt by the receiving party.

A receiving party cannot make use of its own refusal to be informed of the communication in order to render it ineffective.

Invoices sent to the contracting authority via mail are deemed to be received on the date when they are registered by the authorised department of the authorizing officer responsible.

#### **II.5.4.2. Date of communications via mail for formal notifications**

*Formal notifications* by courier service with proof of delivery are considered to have been received on the date indicated in the proof of delivery. *Formal notifications* by registered post with proof of delivery are considered to have been received either on the delivery date registered by the postal service or the deadline for collection at the post office.

## **II.6. LIABILITY**

**II.6.1** The contractor shall perform the contract at its own risk. The contractor warrants and holds the contracting authority harmless against any action or claim brought by a third

party for any damage or loss suffered in relation to the *performance of the contract* (including the related costs such as lawyer fees).

**II.6.2** If required by the relevant applicable legislation, the contractor must take out an insurance policy against risks and damage or loss relating to the *performance of the contract*. It must also take out supplementary insurance as reasonably required by standard practice in the industry. Upon request, the contractor must provide evidence of insurance coverage to the contracting authority.

**II.6.3** Except in case of *force majeure*, the contractor is liable for any loss or damage caused to the contracting authority during or as a consequence of *performance of the contract*, resulting from a breach attributable to the contractor, including in the event of subcontracting, but only up to an amount not exceeding three times the total amount of the *contract*. However, if the damage or loss is caused by the gross negligence or wilful misconduct of the contractor, a *related person*, its *personnel* or its subcontractors, or if an injury has been caused to the life or the physical integrity of a person, as well as in the case of an action brought against the contracting authority by a third party for breach of its intellectual property rights, the contractor is liable for the whole amount of the damage or loss.

**II.6.4** If a third party brings any action against the contracting authority in connection with the *performance of the contract*, including any action for alleged breach of intellectual property rights, the contractor must assist the contracting authority in the legal proceedings, including by intervening in support of the contracting authority upon request.

If the contracting authority's liability towards the third party is established and that such liability is caused by the contractor during or as a consequence of the *performance of the contract*, Article II.6.1 applies. In that case, the limitations of liability foreseen in Article II.6.3 do not apply.

**II.6.5** If the contractor is composed of two or more economic operators (i.e. who submitted a joint tender), they are all jointly and severally liable to the contracting authority for the *performance of the contract*.

**II.6.6** The contracting authority is not liable for any loss or damage caused to the contractor during or as a consequence of *performance of the contract*, unless the loss or damage was caused by wilful misconduct or gross negligence of the contracting authority.

## **II.7. CONFLICT OF INTEREST AND PROFESSIONAL CONFLICTING INTERESTS**

**II.7.1** The contractor must take all the necessary measures to prevent any situation of *conflict of interest* or *professional conflicting interest*.

**II.7.2** The contractor must *notify* the contracting authority in writing as soon as possible of any situation that could constitute a *conflict of interest* or a *professional conflicting interest* during the *performance of the contract*. The contractor must immediately take action to rectify the situation.

The contracting authority may do any of the following:

(a) verify that the contractor's action is appropriate;

- (b) require the contractor to take further action within a specified deadline to rectify the situation;

**II.7.3** The contractor must pass on all the relevant obligations in writing to:

- (a) its *personnel*;
- (b) any *related person*;
- (c) third parties involved in the *performance of the contract*, including subcontractors.

The contractor must also ensure that the persons referred to above are not placed in a situation which could give rise to conflicts of interest.

## **II.8. CONFIDENTIALITY**

**II.8.1.** The contracting authority and the contractor must treat with confidentiality any information or documents, in any format, disclosed in writing or orally, relating to the *performance of the contract*.

**II.8.2.** Each party must:

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

**II.8.3** The confidentiality obligations set out in this Article are binding on the contracting authority and the contractor during the *performance of the contract* and for as long as the information or documents remain confidential unless:

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

**II.8.4** The contractor must obtain from any *related person* and its *personnel*, as well as from third parties involved in the *performance of the contract*, a written commitment that they will comply with this Article. At the request of the contracting authority, the contractor must provide a document providing evidence of this commitment.

**II.8.5** The contracting authority is entitled to make available (any part of) the *confidential information or documents* to its staff and the staff of other Union institutions, agencies and bodies, as well to other persons and entities working for the contracting authority



or cooperating with it. This includes other contractors or subcontractors and their *personnel*, who need to know the same for the performance of a contract who know they must treat it confidentially and who are bound by confidentiality obligations that are no less restrictive than the contracting authority's confidentiality obligations set out in this section.

**II.8.6** The receiving party will, on request from the other party, return all copies and records of the *confidential information or documents* of the other party and will not retain any copies or records of the *confidential information or documents* of the other party.

**II.8.7** The contractor must not grant access to any equipment provided by or delivered to the contracting authority during the implementation of the contract to any third parties, unless priorly authorised by the contracting authority in writing.

## **II.9. PROCESSING OF PERSONAL DATA**

### **II.9.1 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) 2018/1725<sup>10</sup>. Such data shall be processed solely for the purposes of the *implementation*, management and monitoring of the contract by the data controller.

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

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

Details concerning the processing of personal data are available in the data protection notice referred to in Article I.7.

### **II.9.2 Processing of personal data by the contractor**

The processing of personal data by the contractor shall meet the requirements of Regulation (EU) 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

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<sup>10</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council 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, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32018R1725>

to this contract as laid down in Chapter III (Articles 14-25) of Regulation (EU) 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.7.2) 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.7.2 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.

## **II.10. SUBCONTRACTING**

- II.10.1** The contractor must not subcontract and have the contract performed by third parties beyond the third parties already mentioned in its tender without prior written authorisation from the contracting authority.
- II.10.2** Even if the contracting authority authorises subcontracting, the contractor remains bound by its contractual obligations and remains entirely responsible for the *performance of this contract* vis-à-vis the contracting authority.
- II.10.3** The contractor must ensure that the subcontract does not affect the rights of the contracting authority under this contract, particularly those under Articles II.8, II.13 and II.24.
- II.10.4** The contracting authority may request the contractor to replace a subcontractor found to be in a situation provided for in points (d) and (e) of Article II.18.1. The contractor bears the costs of such replacement.

## **II.11. AMENDMENTS**

- II.11.1** Any amendment to the *contract* must be made in writing before all contractual obligations have been fulfilled. Any acceptance or payment by the contracting authority of an invoice referring to the general terms and conditions of the contractor does not constitute a valid amendment to *contract* and does not make these general terms and conditions applicable to the *contract*.
- II.11.2** Any amendment must not make changes to the *contract* that might alter the initial conditions of the procurement procedure or result in unequal treatment of tenderers.

## **II.12. ASSIGNMENT OF THE CONTRACT TO A THIRD-PARTY**

- II.12.1** The contractor must not assign any of the rights and obligations arising from the *contract*.
- II.12.2** By way of exception to the preceding clause, in duly justified exceptional circumstances, rights and / or obligations arising from the *contract* may be assigned with the prior written authorisation of the contracting authority. This authorisation shall be granted or not at the discretion of the contracting authority and upon request by the contractor. The contractor's request shall detail the exceptional circumstances on which it is based and provide the identity of the intended assignee. The contracting authority may request additional information.
- II.12.3** Any right or obligation assigned by the contractor without the authorisation mentioned in the preceding clause is not enforceable against the contracting authority. Accordingly, the assignor will remain jointly and severally bound with the assignee vis-à-vis the contracting authority.

## **II.13. INTELLECTUAL PROPERTY RIGHTS**

### **II.13.1. Ownership of the rights in the results**

The Union acquires irrevocably worldwide ownership of the *results* and of all intellectual property rights on the newly created materials produced specifically for the Union under the contract and incorporated in the *results*, without prejudice however to the rules applying to *pre-existing rights* on *pre-existing materials*, as per Article II.13.2.

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 *in performance of the contract*. The contracting authority may exploit and use the acquired rights as stipulated in this contract. The Union acquires all the rights as 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 the Union including for all modes of exploitation and of use of the *results*.

### II.13.2. Licensing rights on pre-existing materials

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

The contractor licenses the *pre-existing rights* on a royalty-free, non-exclusive and irrevocable basis to the Union, 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 the contracting authority to persons and entities working for it or cooperating with it, including contractors and subcontractors, whether legal or natural persons, but only for the purpose of their mission for the Union;

(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 the Union from the moment the *results* are delivered and approved 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 duration of intellectual property rights protection.

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

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

### II.13.3. Exclusive rights

The Union acquires the following exclusive rights:

- (a) reproduction: the right to authorise or prohibit direct or indirect, temporary or permanent reproduction of the *results* by any means (mechanical, digital or other) and in any form, in whole or in part;
- (b) communication to the public: the exclusive right to authorise or prohibit any display, performance or communication to the public, by wire or wireless means, including the making available to the public of the *results* in such a way that members of the public may access them from a place and at a time individually chosen by them; this also includes the communication on Internet and broadcasting by cable or by satellite;
- (c) distribution: the exclusive right to authorise or prohibit any form of distribution of *results* or copies of the *results* to the public, by sale or otherwise;

- (d) rental: the exclusive right to authorise or prohibit rental or lending of the *results* or of copies of the *results*;
- (e) adaptation: the exclusive right to authorise or prohibit any modification of the *results*;
- (f) translation: the exclusive right to authorise or prohibit any translation, adaptation, arrangement, creation of derivative works based on the *results*, and any other alteration of the *results*, subject to the respect of moral rights of authors, where applicable;
- (g) where the *results* are or include a database: the exclusive right to authorise or prohibit the extraction of all or a substantial part of the contents of the database to another medium by any means or in any form; and the exclusive right to authorise or prohibit the re-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;
- (h) where the *results* are or include a patentable subject-matter: the right to register them as a patent and to further exploit such patent to the fullest extent;
- (i) where the *results* are or include logos or subject-matter which could be registered as a trademark: the right to register such logo or subject-matter as a trademark and to further exploit and use it;
- (j) where the *results* are or include know-how: the right to use such know-how as is necessary to make use of the *results* to the full extent provided for by this contract, and the right to make it available to contractors or subcontractors acting on behalf of the contracting authority, subject to their signing of adequate confidentiality undertakings where necessary;
- (k) where the *results* are documents:
  1. 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;
  2. the right to store and archive the *results* in line with the document management rules applicable to the contracting authority, including digitisation or converting the format for preservation or new use purposes;
- (l) where the *results* are or incorporate software, including source code, object code and, where relevant, documentation, preparatory materials and manuals, in addition to the other rights mentioned in this Article:
  1. end-user rights, for all uses by the Union or by subcontractors which result from this contract and from the intention of the parties;
  2. the rights to receive both the source code and the object code;
- (m) 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 the Union, the right to sub-license does not apply, except in the two cases foreseen by Article II.13.2.;
- (n) to the extent that the contractor may invoke moral rights, the right for the contracting authority, except where otherwise provided in this contract, to publish the *results* with or without mentioning the *creator(s)*' name(s), and the right to decide when and whether the *results* may be disclosed and published.

The contractor warrants that the exclusive rights and the modes of exploitation may be exercised by the Union on all parts of the *results*, be it via a transfer of ownership of the rights, on those

parts which were specifically created by the contractor, or via a licence of the *pre-existing rights*, on those parts consisting of *pre-existing materials*.

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

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

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

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

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

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

This provision also applies to image rights and sound recordings.

This evidence may refer, for example, to rights to: parts of other documents, images, graphs, sounds, music, tables, data, software, technical inventions, know-how, IT development tools, routines, subroutines or other programs ('background technology'), concepts, designs, installations or pieces of art, data, source or background materials or any other parts of external origin.

This evidence must include, as appropriate:

- (a) the name and version number of a software product;
- (b) the full identification of the work and its author, developer, *creator*, translator, data entry person, graphic designer, publisher, editor, photographer, producer;
- (c) a copy of the licence to use the product or of the agreement granting the relevant rights to the contractor or a reference to this licence;
- (d) a copy of the agreement or extract from the employment contract granting the relevant rights to the contractor where parts of the *results* were created by its *personnel*;
- (e) the text of the disclaimer notice if any.

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

The contractor also warrants that it possesses the relevant rights or powers to 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.13.6. 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.

#### **II.13.7. 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 the contracting authority;
- (c) that the *results* be adapted, provided that this is done in a manner which is not prejudicial to the *creator's* honour or reputation.

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

#### **II.13.8. Image rights and sound recordings**

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

#### **II.13.9. Copyright notice for pre-existing rights**

When the contractor retains *pre-existing rights* on parts of the *results*, reference must be inserted to that effect when the *result* is used as set out in Article I.8.1, with the following disclaimer: ‘© — year — European Union. All rights reserved. Certain parts are licensed under conditions to the EU’, or with any other equivalent disclaimer as the contracting authority may consider best appropriate, or as the parties may agree on a case-by-case basis. This does not apply where inserting such reference would be impossible, notably for practical reasons.

#### **II.13.10. Visibility of Union funding and disclaimer**

When making use of the *results*, the contractor must declare that they have been produced under 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 or provide the text of the disclaimer.



## II.14. FORCE MAJEURE

- II.14.1** If a party is affected by *force majeure*, it must immediately *notify* the other party, stating the nature of the circumstances, their likely duration and foreseeable effects.
- II.14.2** A party is not liable for any delay or failure to perform its obligations under the *contract* if that delay or failure is a result of *force majeure*. If the contractor is unable to fulfil its contractual obligations owing to *force majeure*, it has the right to remuneration only for the services actually provided.
- II.14.3** The parties must take all necessary measures to limit any damage due to *force majeure*.
- II.14.4** *Force majeure* either suspends the *performance of the contract* as provided for in Article II.17 or leads to the termination of the contract as provided for in Article II.18. The effects of the suspension of the contract due to *Force Majeure* on the duration is laid down in Article I.3.3.

## II.15. LIQUIDATED DAMAGES FOR DELAY IN DELIVERY

### II.15.1. Delay in delivery

Without prior notice of default to the contractor or prior judicial intervention being required, if the contractor fails to perform its contractual obligations within the applicable time limits set out in this *contract*, the contracting authority may claim liquidated damages for each day of delay using the following formula:

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

where:

*V* is the price of the relevant order of services or deliverable or *result*;

*d* is the duration specified for delivery of the relevant services or deliverable or *result* or, failing that, the duration of *performance of the contract* specified in Article 3 of the Main Conditions expressed in days.

Liquidated damages for delay in delivery may be imposed together with a reduction in price under the conditions laid down in Article II.16 or a substitution of the contractor under the conditions laid down in Article II.4.11.

Any claim for liquidated damages does not affect (a) the contractor's liability for damages that liquidated damages would not cover, (b) the contracting authority's rights under Article II.18, nor (c) the contracting authority's rights under Article II.4.11 or (d) any other right or remedy that the contracting authority may have under the *contract*.

### II.15.2. Procedure

The contracting authority must *formally notify* the contractor of its intention to apply liquidated damages for delay in delivery and the corresponding calculated amount.

The contractor has 30 days following the date of receipt to submit observations. After having received any observations submitted or, failing that, following the expiry of the time limit for submitting observations, the contracting authority must *notify* the contractor:

- (a) of the withdrawal of its intention to apply liquidated damages; or
- (b) of its final decision to apply liquidated damages and the corresponding amount.

### **II.15.3. Nature of liquidated damages**

The parties expressly acknowledge and agree that any amount payable under this Article is not a penalty and, in view of all the circumstances including the legitimate interest of the contracting authority for a timely delivery to fulfil its mission of public services, represents a reasonable estimate of fair compensation for the damage that may be incurred by the contracting authority due to failure to provide the services within the applicable time limits set out in this *contract*.

## **II.16. REDUCTION IN PRICE**

### **II.16.1. Quality standards**

Without prior notice of default to the contractor or prior judicial intervention being required, if the contractor fails to provide the service in accordance with high quality standards, the state of the art in the industry and the provisions of the *contract* (in particular the tender specifications and the terms of its tender)), the contracting authority may, even if this failure constitutes a breach that could trigger Article II.18.1, reduce the price in direct proportion to the difference, upon the time of the signature of the contract, between the value of the unperformed obligations or low quality delivery and the value of the agreed services. This includes, in particular, cases where the contracting authority cannot approve a *result*, report or deliverable, as defined in Article I.5, after the contractor has submitted the required additional information, correction or new version.

A reduction in price may be imposed together with liquidated damages for delay in delivery under the conditions of Article II.15.

Any reduction in price does not affect the contractor's liability or the contracting authority's rights under Article II.18 for damages that the reduction in price would not cover or any other right or remedy that the contracting authority may have under the *contract*.

### **II.16.2. Procedure**

The contracting authority must *formally notify* the contractor of its intention to reduce the price and the corresponding calculated amount.

The contractor has 30 days following the date of receipt to submit observations. After having received any observations submitted or, failing that, following the expiry of the time limit for submitting observations, the contracting authority must *notify* the contractor:

- (a) of the withdrawal of its intention to reduce the price; or
- (b) of its final decision to reduce the price and the corresponding amount.

## **II.17. SUSPENSION OF THE PERFORMANCE OF THE CONTRACT**

### **II.17.1. Suspension by the contractor**

If the *performance of the contract* is affected by *force majeure*, the contractor may suspend the *performance of that contract*.

The contractor must immediately *formally notify* the contracting authority of the suspension. The *notification* must include a description of the *force majeure* and state when the contractor expects to resume the provision of services.

The contractor must *notify* the contracting authority as soon as it is able to resume *performance of the contract*, unless the contracting authority has already terminated the *contract*.

The contracting authority is not entitled to compensation for suspension of any part of the *contract*, in the event of *force majeure*.

### **II.17.2. Suspension by the contracting authority**

The contracting authority may suspend the *performance of the contract* or any part of it; including but not limited to payments:

- (a) in case of *force majeure* affecting the *performance of the contract*;
- (b) in order to verify whether the presumed *irregularities, fraud or breach of obligations* have actually occurred;
- (c) if the procedure for awarding the contract or the *performance of the contract* proves to have been subject to *irregularities, fraud or breach of obligations*;

The contracting authority must *formally notify* the contractor of the suspension and the reasons for it. Suspension takes effect on the date of *formal notification*, or at a later date if the *formal notification* so provides.

The contracting authority must *notify* the contractor as soon as the verification is completed whether:

- (a) it is lifting the suspension; or
- (b) it intends to terminate the *contract* under Article II.18.1(f) or (j).

The contractor is not entitled to compensation for suspension of any part of the *contract*.

The contracting authority may in addition suspend the time allowed for payments in accordance with Article II.21.7.

## **II.18. TERMINATION OF THE CONTRACT**

### **II.18.1. Grounds for termination by the contracting authority**

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

- (a) if provision of the services under the contract has not actually started within 15 days of the scheduled date and the contracting authority considers that the new date proposed, if any, is unacceptable, taking into account Article II.11.2;

- (b) if the contractor is unable to obtain any permit or licence required for *performance of the contract*;
- (c) if the contractor fails to perform the contract in accordance with the tender specifications or is materially in breach of another contractual obligation;
- (d) if the contractor or any person that assumes unlimited liability for the debts of the contractor is in one of the situations provided for in points (a) and (b) of Article 138(1) of the *Financial Regulation*;
- (e) if the contractor or any *related person* is in one of the situations provided for in points (c) to (i) of Article 138(1) or to Article 138 (2) or Article 138 (3) of the *Financial Regulation*;
- (f) if the procedure for awarding the contract or the *performance of the contract* prove to have been subject to *errors, irregularities, fraud or breach of obligations*;
- (g) if the contractor does not comply with applicable obligations under environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU;
- (h) if the contractor is in a situation that could constitute a *conflict of interest* or a *professional conflicting interest* as referred to in Article II.7 and does not rectify the situation;
- (i) if a change to the contractor's legal, financial, technical, organisational or ownership situation is likely to substantially affect the *performance of the contract* or substantially modify the conditions under which the contract was initially awarded, or a change regarding the exclusion situations listed in Art 138 of the *Financial Regulation* that calls into question the decision to award the contract or the contractor becomes subject to restrictive measures hindering the performance of the contract ;
- (j) in the event of *force majeure*, where either resuming implementation is impossible or the necessary ensuing amendments to the *contract* would mean that the tender specifications are no longer fulfilled or result in unequal treatment of tenderers or contractors;
- (k) if the contractor is in breach of the data protection obligations resulting from Article II.9.2;
- (l) if the contractor does not comply with the applicable data protection obligations resulting from Regulation (EU) 2016/679<sup>11</sup>;
- (m) if it is manifest that, at a later date and before such breach becomes effective, the contractor will materially fail to perform the contract in accordance with the tender specifications or will be materially in breach of another contractual obligation, unless the contractor provides the contracting authority with sufficient assurances of its future performance;
- (n) where the contractor or any related entity or person has violated any provisions on security and confidentiality included in Articles I.11 and II.8.

### **II.18.2. Grounds for termination by the contractor**

The contractor may terminate the *contract* if the contracting authority materially fails to comply with its obligations, in particular the obligation to provide the information needed for the contractor to perform the *contract* as provided for in the tender specifications.

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<sup>11</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016 <http://data.europa.eu/eli/reg/2016/679/2016-05-04>

The contractor may also terminate the *contract* in the event of *force majeure*, where resuming *performance* is impossible.

### **II.18.3. Procedure for termination**

A party must *formally notify* the other party of its intention to terminate the *contract* and the grounds for termination.

The other party has 15 days following the date of receipt to submit observations, including the measures it has taken or will take to continue fulfilling its contractual obligations or, in the case of Article II.18.1(m), the assurances it gives to fulfil its contractual obligations in the future.

After having received any observations submitted or, failing that, following the expiry of the time limit for submitting observations, the party intending to terminate must *formally notify* the other party either of the withdrawal of its intention to terminate or of its final decision to terminate.

In the cases referred to in points (a) to (d), (g) to (i), (k) to (n) of Article II.18.1 and in Article II.18.2, the date on which the termination takes effect must be specified in the *formal notification*.

In the cases referred to in points (e), (f) and (j) of Article II.18.1, the termination takes effect on the day following the date on which the contractor receives *notification* of termination.

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

### **II.18.4. Effects of termination**

The contractor is liable for damage incurred by the contracting authority as a result of the termination of the *contract*, including the additional cost of appointing and contracting another contractor to provide or complete the services, except if the damage is a result of a termination in accordance with Article II.18.1(j) or Article II.18.2. The contracting authority may claim compensation for such damage.

The contractor is not entitled to compensation for any loss resulting from the termination of the *contract*, including loss of anticipated profits, unless the loss was caused by the situation specified in the first subparagraph of Article II.18.2.

The contractor must take all appropriate measures to minimise costs, prevent damage and cancel or reduce its commitments.

Within 60 days of the date of termination, the contractor must submit any report, deliverable or *result* and any invoice required for services that were provided before the date of termination.

In the case of joint tenders, the contracting authority may terminate the *contract* with each member of the group separately on the basis of points (d), (e), (g), (k) (l) and (m) of Article II.18.1, under the conditions set out in Article II.11.2.

## **II.19. INVOICES, VALUE ADDED TAX AND E-INVOICING**

### **II.19.1. Invoices and value added tax**

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

Invoices must indicate the place of taxation of the contractor for value added tax (VAT) purposes and must specify separately the taxable amount per rate or exemption, the VAT rate applied and the VAT amount payable.

The contracting authority is exempt from all taxes and duties, including VAT, in accordance with Articles 3 and 4 of the Protocol 7 of the Treaty on the Functioning of the European Union on the privileges and immunities of the European Union and Article 151, §1 of the Directive 2006/112/CE.

The contractor must 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.

In case of joint tenders from a group of economic operators without separate legal personality, in order to allow the members of the group to complete the formalities with the relevant authorities to ensure the tax exemption, the contracting authority shall issue a VAT exemption certificate for each respective group member of the joint tender, if the transaction is taxable for VAT purposes as an intra-community purchase. Each certificate shall cover only the member's part of the service provided and shall include a description of it and its value.

The contracting authority shall attach to each contract an annex if part of the transaction is taxable for VAT purposes as a local purchase in Belgium. The leader shall include in the annex a description of the service supplied by each member of the group, specify its value and sign it. If the repartition of the tasks is not known at the moment of the contract signature, the group leader shall fill in the annex with the relevant information as soon as the repartition of the tasks is known and submit it to the Commission at the latest together with the invoices issued by each member of the group. The leader shall also send one copy of the annex to each member whose part of the service supplied is taxable for VAT purposes as a local purchase in Belgium.

Each member of the group shall issue an invoice to the Commission on its share/part of the service, as outlined in the above mentioned annex(es).

The Commission shall pay the amounts corresponding to these invoices to the leader on its bank account.

Payments to the leader will discharge the Commission from its payment obligation vis à vis the other members of the group.

For the group members (including leaders), if the transaction is taxable for VAT purpose as a local purchase in another Member State, local exemption rules apply.

For invoices sent to the contracting authority via email, the reception date must be considered as the date on which the request for payment is registered after reception in the functional mailbox of the contracting authority. The functional mailbox in which the payments requests are to be sent, should be provided in the *contract*.

### **II.19.2. E-invoicing**

If the use of electronic exchange system has been activated under Article I.6.1, the contractor submits invoices in electronic format in compliance with Directive 2006/112/EC on VAT, through the *Portal*, in accordance with the *Portal* Terms and Conditions and using the forms and templates provided there, or through means of supported *interoperability networks* compliant with the Directive 2014/55/EU on electronic invoicing in public procurement.

For avoidance of doubt, the e-invoices must be issued in conformity with the repartition of tasks as per the annex mentioned in Article II.19.1 and the payment conditions described in the same article fully apply.

## **II.20. PRICE REVISION**

If a price revision index is provided in Article I.4.2, this Article applies to it.

In that case, prices are fixed and not subject to revision during the first year of the contract. At the beginning of the second and every following year of the contract, each price may be revised upwards or downwards at the request of one of the parties.

A party may request a price revision in writing no later than three months before the anniversary date of entry into force of the contract. The other party must acknowledge the request within 14 days of receipt.

At the anniversary date, the contracting authority must communicate the final index for the month in which the request was received, or failing that, the last provisional index available for that month. The contractor establishes the new price on this basis and communicates it as soon as possible to the contracting authority for verification. The price revision is calculated using the following formula:

$$Pr = 0,8 \times Po \times \left( \frac{Ir}{Io} \right) + 0,2 \times Po$$

where: Pr = revised price;

Po = price in the tender;

Io = index for the month in which the contract enters into force;

Ir = index for the month in which the request to revise prices is received.

## **II.21. PAYMENTS AND GUARANTEES**

### **II.21.1. Date of payment**

The date of payment is deemed to be the date on which the contracting authority's account is debited.

## **II.21.2. Currency**

Payments are made in euros, unless another currency is provided for in Article I.5.1.

## **II.21.3. Conversion**

The contracting authority makes any conversion between the euro and another currency at the daily euro exchange rate published in the Official Journal of the European Union, or failing that, at the monthly accounting exchange rate, as established by the European Commission and published on the website indicated below, applicable on the day when it issues the payment order.

The contractor makes any conversion between the euro and another currency at the monthly accounting exchange rate, established by the Commission and published on the website indicated below, applicable on the date of the invoice.

[Exchange rate \(InforEuro\) | European Commission \(europa.eu\)](https://commission.europa.eu/funding-tenders/procedures-guidelines-tenders/information-contractors-and-beneficiaries/exchange-rate-infoeuro_en)<sup>12</sup>

## **II.21.4. Costs of transfer**

The costs of the transfer are borne as follows:

- (a) the contracting authority bears the costs of dispatch charged by its bank;
- (b) the contractor bears the costs of receipt charged by its bank;
- (c) the party causing repetition of the transfer bears the costs for repeated transfer.

## **II.21.5. Pre-financing, performance and money retention guarantees**

If, as provided for in Article I.5, a financial guarantee is required for the payment of pre-financing, as performance guarantee or as retention money guarantee, it must fulfil the following conditions:

- (a) the financial guarantee is provided by a bank or a financial institution approved by the contracting authority or, at the request of the contractor and with the agreement of the contracting authority, by a third party; and
- (b) the guarantee shall have the effect of making the bank or financial institution or the third party provide irrevocable collateral security, or stand as first-call guarantor of the contractor's obligations without requiring that the contracting authority has recourse against the principal debtor (the contractor).

The contractor bears the cost of providing such guarantee.

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

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<sup>12</sup> [https://commission.europa.eu/funding-tenders/procedures-guidelines-tenders/information-contractors-and-beneficiaries/exchange-rate-infoeuro\\_en](https://commission.europa.eu/funding-tenders/procedures-guidelines-tenders/information-contractors-and-beneficiaries/exchange-rate-infoeuro_en)



Performance guarantees cover compliance with contractual obligations until the contracting authority has given its final approval for the service. The performance guarantee must not exceed 10 % of the total price of the *contract*. The contracting authority must release the guarantee fully after final approval of the service, as provided for in the *contract*.

Retention money guarantees cover full delivery of the service in accordance with the *contract* including during the contract liability period and until the final approval of the service by the contracting authority. The retention money guarantee must not exceed 10 % of the total price of the *contract*. The contracting authority must release the guarantee after the expiry of the contract liability period as provided for in the *contract*.

The contracting authority must not request a retention money guarantee where it has requested a performance guarantee.

#### **II.21.6. Interim payments and payment of the balance**

The contractor must send an invoice for interim payment, as provided for in Article I.5 or in the tender specifications.

The contractor must send an invoice for payment of the balance within 60 days of the end of the period of provision of the services, as provided for in Article I.5 or in the tender specifications.

Payment of the invoice and approval of documents does not imply recognition of the regularity, authenticity, completeness and correctness of the declarations and information they contain.

Payment of the balance may take the form of recovery as provided for in Article II.21.

#### **II.21.7. Suspension of the time allowed for payment**

The contracting authority may suspend the payment periods specified in Article I.5 at any time by *notifying* the contractor (or leader in the case of a joint tender) that its invoice cannot be processed. The reasons the contracting authority may cite for not being able to process an invoice are:

- (a) because it does not comply with the contract;
- (b) because the contractor has not produced the appropriate documents or deliverables; or
- (c) because the contracting authority has observations on the documents or deliverables submitted with the invoice;
- (d) because it is manifest that, at a later date and before such breach becomes effective, the contractor will materially fail to perform the *contract* in accordance with the tender specifications or will be in material breach of another contractual obligation, unless the contractor provides the contracting authority with sufficient assurances of its future performance.

The contracting authority must *notify* the contractor (or leader in the case of joint tender) as soon as possible of any such suspension, giving the reasons for it. In cases b) and c) referred above, the contracting authority shall *notify* the contractor (or leader in case of a joint tender) the time limits to submit additional information or corrections or a new version of the documents or deliverables if the contracting authority requires it.

Suspension takes effect on the date the contracting authority sends the *notification*. The remaining payment period resumes from the date on which the requested information, sufficient assurances 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 (or leader in the case of a joint tender) 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 of this Article and the new document produced is also rejected, the contracting authority reserves the right to terminate the *contract* in accordance with Article II.18.1(c).

#### **II.21.8. Interest on late payment**

On expiry of the payment periods specified in Article I.5, the contractor (or leader in the case of a joint tender) 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 is the rate in force, as published in the C series of the *Official Journal of the European Union*, on the first day of the month in which the payment period ends.

Suspension of the payment period as provided for in Article II.21.7 is not considered as giving rise to late payment.

Interest on late payment covers the period running from the day following the due date for payment up to and including the date of payment as defined in Article II.21.1.

However, when the calculated interest is EUR 200 or less, it must be paid to the contractor (or leader in the case of a joint tender) only if it requests it within two months of receiving late payment.

### **II.22. REIMBURSEMENTS**

**II.22.1** If provided for in the special conditions or in the tender specifications, the contracting authority must reimburse expenses directly connected with the provision of the services either when the contractor provides it with supporting documents or on the basis of flat rates.

**II.22.2** The contracting authority reimburses travel and subsistence expenses on the basis of the shortest itinerary and the minimum number of nights necessary for overnight stay at the destination.

**II.22.3** The contracting authority reimburses travel expenses as follows:

- (a) travel by air: up to the maximum cost of an economy class ticket at the time of the reservation;
- (b) travel by boat or rail: up to the maximum cost of a first class ticket;
- (c) travel by car: at the rate of one first class rail ticket for the same journey and on the same day;.

In addition, the contracting authority reimburses travel outside Union territory if it has given its prior written approval for the expenses.

**II.22.4** The contracting authority reimburses subsistence expenses on the basis of a daily subsistence allowance as follows:

- (a) for journeys of less than 200 km for a return trip, no subsistence allowance is payable;
- (b) the daily subsistence allowance is payable only on receipt of supporting documents proving that the person concerned was present at the destination;
- (c) the daily subsistence allowance takes the form of a flat-rate payment to cover all subsistence expenses, including meals, local transport including transport to and from the airport or station, insurance and sundries;
- (d) the daily subsistence allowance is reimbursed at the flat rates specified in Article I.4.3;
- (e) accommodation is reimbursed on receipt of supporting documents proving the necessary overnight stay at the destination, up to the flat-rate ceilings specified in Article I.4.3.

**II.22.5** The contracting authority reimburses the cost of shipment of equipment or unaccompanied luggage if it has given its prior written approval for the expense.

## **II.23. RECOVERY**

**II.23.1** If an amount is to be recovered under the terms of the contract, the contractor must repay the contracting authority the amount in question.

### **II.23.2 Recovery procedure**

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

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

If the contractor does not pay by the due date, the contracting authority may, after informing the contractor in writing, recover the amounts due:

- (a) by offsetting them against any amounts owed to the contractor by the Union or by the European Atomic Energy Community or by an executive agency when it implements the Union budget;
- (b) by calling in a financial guarantee if the contractor has submitted one to the contracting authority;
- (c) by taking legal action.

### **II.23.3 Interest on late payment**

If the contractor does not honour the obligation to pay the amount due by the date set by the contracting authority in the debit note, the amount due bears interest at the rate indicated in Article II.21.8. Interest on late payments will cover the period starting on the day after the due date for payment and ending on the date when the contracting authority receives the full amount owed.

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

### **II.23.4 Recovery rules in the case of joint tender**

If the contract is signed by a group (joint tender), the members of the group are jointly and severally liable under the conditions set out in Article II.6 (liability). The contracting authority shall send the debit note first to the leader of the group.

If the leader does not pay by the due date the whole amount, and if the amount due cannot be offset or can only be offset partially in accordance with Article II.23.2 (a), the contracting authority may claim the amount still due from any other member or members of the group by respectively *notifying* them with a debit note in conformity with the provisions laid down in Article II.23.2.

## **II.24. CHECKS AND AUDITS**

**II.24.1** The contracting authority may check or require an audit on the *performance of the contract*. This may be carried out by any outside body authorised to do so on its behalf.

Such checks and audits may be initiated at any moment during the *performance of the contract* and up to five years starting from the payment of the balance

The audit procedure is initiated on the date of receipt of the relevant letter sent by the contracting authority. Audits are carried out on a confidential basis.

**II.24.2** The contractor must keep all original documents stored on any appropriate medium, including digitised originals if authorised under national law, for a period of five years starting from the payment of the balance.

**II.24.3** The contractor must grant 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 to conduct such checks and audits. The contractor must ensure that the information is readily available at the moment of the check or audit and, if so requested, that information is handed over in an appropriate format.

**II.24.4** On the basis of the findings made during the audit, a provisional report is drawn up. The contracting authority or its authorised representative must send it to the contractor, which has 30 days following the date of receipt to submit observations. The contractor must receive the final report within 60 days following the expiry of the deadline to submit observations.

On the basis of the final audit findings, the contracting authority may recover all or part of the payments made in accordance with Article II.23 and may take any other measures which it considers necessary.

**II.24.5** In accordance with 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 (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office, the European Anti-Fraud Office may carry out investigations, including on the spot checks and inspections, to establish whether there has been *fraud*, corruption, *irregularities* or any other illegal activity under the contract affecting the financial interests of the Union. Findings arising from an investigation may lead to criminal prosecution under national law.

The investigations may be carried out at any moment during the provision of the services and up to five years starting from the payment of the balance.

**II.24.6** The Court of Auditors and the European Public Prosecutor's Office established by Council Regulation (EU) 2017/1939<sup>13</sup> ('the EPPO') and, for the processing of personal data, the European Data Protection Supervisor have the same rights as the contracting authority, particularly right of access, for the purpose of checks, audits and investigations.

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<sup>13</sup> Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office

## **ANNEX I**

### **Tender Specifications**



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL  
ENVIRONMENT  
Directorate C – Zero Pollution  
ENV.C.2 – Marine Environment & Clean Water Services

## **European Commission**

### **Call for tenders EC-ENV/2024/NP/0054**

### **ICES - REQUEST FOR SCIENTIFIC ADVISORY SERVICES**

**Negotiated procedure without prior publication of a  
contract notice**

## **TENDER SPECIFICATIONS**

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## **1. SCOPE AND DESCRIPTION OF THE PROCUREMENT**

### **1.1. Contracting authority: who is the buyer?**

This call for tenders is launched and managed by the European Commission, Directorate General for Environment, referred to as the contracting authority for the purposes of this call for tenders.

### **1.2. Subject: what is this call for tenders about?**

The subject of this call for tenders is “**ICES - Request for scientific advisory services**” covering implementation of the Marine Strategy Framework Directive (2008/56/EC) and Commission Decision (EU) 2017/848<sup>2</sup>, the Habitats Directive (92/43/EEC), the Birds Directive (2009/147/EC) and the Nature Restoration Regulation ((EU) 2024/1991), as well as relevant marine EU policies such as the Biodiversity Strategy and the Marine Action Plan.

### **1.3. Lots: is this call for tenders divided into lots?**

This call for tenders is not divided into lots.

### **1.4. Description: what do we want to buy through this call for tenders?**

The purchases that are the subject of this call for tenders, including any minimum requirements, are described in detail below.

Variants (alternatives to the model solution described in the tender specifications) are not allowed. The contracting authority will disregard any variants described in a tender.

## **Background and objectives**

### **Background**

The Marine Strategy Framework Directive (2008/56/EC, MSFD) provides a framework legislation for Union action in the field of marine environmental policy and aims to achieve good environmental status in the EU's marine waters by 2020.

Commission Decision (EU) 2017/848 contains criteria and methodological standards for determining good environmental status for the 11 descriptors of good environmental status laid down in Annex I of the MSFD.

Additional scientific and technical progress is still required to support the further development of criteria, including threshold values, methodological standards, specifications and standardised methods for monitoring and assessing the criteria. Their use should be based on the best available science.

The Habitats Directive (92/43/EEC) and the Birds Directive (2009/147/EC) form the cornerstone of Europe's nature conservation policy and establish the EU-wide Natura 2000 ecological network of protected areas.

The Nature Restoration Regulation (EU) 2024/1991 aims to restore ecosystems, habitats, and species (including marine ones) to enable the long-term and sustained recovery of biodiverse and resilient nature and contribute to achieving the EU's climate mitigation and climate adaptation objectives. To meet these objectives, the Regulation sets binding targets to be met in a phased approach by 2030, 2040 and 2050.

Owing to their similar broad objectives (protecting and restoring nature, including the marine environment), it is noted that the objectives of the Nature Restoration Regulation, the Marine Strategy Framework Directive, and the Habitats and Birds Directives mutually support each other.

## **Objectives**

The contracting authority seeks scientific advisory services and information on conservation, protection, sustainable use and restoration of the marine environment, as well as on fisheries and marine data from ICES.

The International Council for the Exploration of the Sea (ICES) is an intergovernmental marine science organisation that develops science and advice to support the sustainable use of the ocean. It is the oldest scientific organisation in Europe (established in 1902) created to support its member countries and support coordinated oceanic and coastal monitoring and research. It also advises international commissions and governments on marine policy and management issues. ICES is a network of more than 5,000 scientists from over 700 marine institutes in 20 member countries, including certain EU Member States and beyond (e.g. Iceland, UK, Norway, USA, Canada). As many as 3000 scientists participate in ICES activities annually, across 160 working groups. ICES' vision is to be a world-leading marine science organisation, meeting societal needs for impartial evidence on the state and sustainable use of our seas and oceans, and its mission is to advance and share scientific understanding of marine ecosystems and the services they provide and to use this knowledge to generate state-of-the-art advice for meeting conservation, management, and sustainability goals.

## **Detailed characteristics of the purchase**

The contracting authority needs to obtain specific advisory services based on the best available science during the whole contract implementation, and in response to specific request and as well recurrent requests for advice. These advisory services should support the implementation of policies adopted by the European Union Member States with respect to the management of activities that affect, and are affected by, the marine biological resources and ecosystems. The advice delivered will take into account the relevant policies.

Advisory services cover the implementation of the Marine Strategy Framework Directive (and, where relevant, its linkages with the Water Framework Directive), the Habitats Directive, the Birds Directive, the Nature Restoration Regulation, and, where appropriate, EU policies such as the Zero Pollution Action Plan, the Biodiversity Strategy for 2030 and its Action plan: Protecting and restoring marine ecosystems for sustainable and resilient fisheries ('Marine Action Plan').

The tasks ICES should deliver under the contract may comprise, but are not limited to, the following items:

- Scientific and technical developments in support of the Marine Strategy Framework Directive (implementation and review), such as by supporting the development of marine monitoring and assessment programmes and the identification of research needs, providing methodological advice on the determination and assessment of good environmental status and targets, and on possible management measures to achieve the MSFD objectives;
- Further scientific advice on the biodiversity-related descriptors (Marine Strategy Framework Directive descriptors 1, 4, and 6), including contributions to the development of criteria elements, threshold values and methodological standards and assessing consequences of setting alternate thresholds (with associated uncertainty);
- Further scientific advice on Marine Strategy Framework Directive descriptor 3 on populations of commercially exploited fish and shellfish, including contributions to the development of threshold values and methodological standards and assessing consequences of setting alternate thresholds (with associated uncertainty);
- Bi-annual recurrent advice on the distribution of mobile bottom-contacting gear (MBCG) fishing pressure and impact in relation to Marine Strategy Framework Directive descriptor 6, and ongoing development of advice on spatial trade-offs between MBCG fishing and seafloor integrity in relation to Marine Strategy Framework Directive descriptor 6;
- Support cross-regional coherence in the development of guidance on reporting, quality control and assessment of impulsive noise events, and continuous noise monitoring to support descriptor 11 of Marine Strategy Framework Directive on underwater noise and possibly support further developments;
- Scientific and technical developments in support of the implementation of the Habitats and Birds Directives, including for example scientific advice on methodological standards and measures necessary to comply with species protection provisions such as those related to bycatch (also noting relevance for MSFD Descriptor 1), as well as advice on appropriate management measures including Natura 2000 sites and other relevant protected areas and measures proposed by Member States. This work would also inform other policies, such as the MSP Directive;
- Identification of available data and further data needs. Advice on data collection or research needs to better support the implementation of the Common Fisheries Policy (to assess the impact of fisheries on the marine ecosystems), the Marine Strategy Framework Directive and the Habitats and Birds Directives;
- Scientific advice, advice on data collection or research needs to better support the implementation of the Nature Restoration Regulation, including contributions to the development of methodological standards, monitoring and assessment programmes for the nature restoration plans;
- Scientific advice in support to the implementation of the Biodiversity Strategy and its Marine Action Plan, as well as on the Zero Pollution Action Plan;
- Training of relevant DG ENV staff and relevant experts, including Member States' experts, for instance on i) ecosystem-based management, ii) on the impact of and possible mitigations measures to the deployment of offshore wind farms in the EU waters, iii) and on other subjects of interest to the implementation of EU marine legislation and policy, including training on the preparation of assessments for various

MSFD descriptors, including MSFD descriptor on seabed integrity, and Birds and Habitats Directives' obligations relating to bycatch;

- Scientific advice on the consequences of climate change for implementation of the Nature Restoration Regulation, Marine Strategy Framework Directive and other relevant Directives or Regulations.

### **Input by the Contracting Authority**

For all tasks, the Contracting Authority will provide the relevant documentation required for the contractor to be able to carry out its tasks. This includes documentation circulated within the context of the Common Implementation Strategy for the MSFD, the Habitats and Birds Directives, the Nature Restoration Regulation and other relevant marine EU policies.

The template to request scientific advisory services request will be used (see Annex 7)

The Contracting Authority will provide any relevant information and meeting documents as well as access to the relevant databases as necessary to the contractor. The needs will be discussed on a regular basis (during coordination meetings or by phone and e-mail exchanges) and for each advisory request. The Contracting Authority will give his formal approval of the offer for each advisory request by exchange of email.

### **Deliverables**

Two weeks after signature of the contract an **inception meeting**, preferably by telephone conference, will be organised with the contracting authority to decide on the modus operandi of the contract. After the meeting the contractor may request 40% pre-financing.

Each advisory output delivered<sup>1</sup> will be published on ICES website and considered as the final report for each request.

The intermediate outputs, which should include all agreed advisory requests provided so far, will be subject of **interim report** in English transmitted in an electronic version at 24 months after signature of the contract (linked to interim payment of maximum 30% based on deliverables released).

The final output and deliverable is due within 48 months of contract signature and will include **a final report** in English transmitted in an electronic version covering all documentable deliverables provided throughout the duration of the contract (linked to final payment of remaining balance based on deliverables released).

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<sup>1</sup> Published products are referred to by ICES as 'advice', 'special request advice', 'special request', or 'technical service', see examples there: <https://www.ices.dk/advice/Pages/Latest-Advice.aspx>

There will be at least an inception meeting, three further progress meetings and a final meeting organised (corresponding to each year of the contract). These meetings will be arranged as teleconferences and set up by the contractor.

All deliverables shall be drafted in English. Moreover, quality checking will have to be carried out in order to ensure high technical and legal quality.

The contractor shall perform the contract to the highest professional standards and is expected to maintain the technical sufficiency level demonstrated in the bidding process during the whole execution of the contract. It is also expected to ensure that the staffing levels adequately respond to the needs of the contract throughout its duration, to ensure that all the deliverables are provided on time.

### **1.5. Place of performance: where will the contract be performed?**

The services will be performed at the following locations:

- the contractor's premises (or any other places indicated in the tender).

### **1.6. Nature of the contract: how will the contract be implemented?**

The procedure will result in the conclusion of a direct contract.

In direct contracts all the terms governing the provision of the services, supplies or works are defined at the outset. Once signed, they can be implemented directly without any further contract procedures.

Tenderers need to take full account of the full set of procurement documents, including the provisions of the draft contract as the latter will define and govern the contractual relationship to be established between the contracting authority and the successful tenderer. Special attention is to be paid to the provisions specifying the rights and obligations of the contractor, in particular those on payments, performance of the contract, confidentiality, and checks and audits.

👉 Please be aware that if a tenderer to whom the contract is awarded (any of the group members in case of a joint tender) has established debt(s) owed to the Union, the European Atomic Energy Community or an executive agency when the latter implements the Union budget, such debt(s) may be offset, in line with Articles 101(1) and 102 of [Regulation \(EU, Euratom\) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union \(Financial Regulation\)](#)<sup>2</sup> and the conditions set out in the draft contract, against any payment due under the contract. The contracting authority will verify the existence of overdue debts of the successful tenderer (any of the group members in case of a joint tender), and, if any such debt is found, will inform the tenderer (the group leader in case of a joint tender who will then

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<sup>2</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193 of 30.07.2018, p.1).

have the obligation to inform all other group members before signing the contract) that the debt(s) may be offset against any payment under the contract.

**1.7. Volume and value of the contract: how much do we plan to buy?**

The maximum budget allocated to this contract is fixed at **EUR 600 000 (six hundred thousand euro)**, including the fees, travel and all other costs and excluding VAT. Travel and subsistence expenses should be reimbursed based on internal ICES rules (see Annex 7).

**1.8. Duration of the contract: how long do we plan to use the contract?**

The contract resulting from this call for tenders will be concluded for at most **48 months**.

**1.9. Electronic exchange system: can exchanges under the contract be automated?**

For all exchanges with the contractor during the implementation of the contract resulting from this call for tenders as well as for future possible subsequent proceedings, including, but not limited to, for the purposes of EDES ([European Union's Early Detection and Exclusion System](#)), the contracting authority may use an electronic exchange system meeting the requirements of Article 148 of the Financial Regulation. At the request of the contracting authority, the use of such a system shall become mandatory for the contractor at no additional cost for the contracting authority. Details on specifications, access, terms and conditions of use will be provided in advance.

## **2. GENERAL INFORMATION ON TENDERING**

### **2.1. Legal basis: what are the rules?**

This call for tenders is governed by the provisions of the Financial Regulation.

The contracting authority has chosen to award the contract resulting from this call for tenders through a negotiated procedure without prior publication of a contract notice pursuant to Article 164(1) (d) of the Financial Regulation and point 11.1 (b) (ii) and (iii) of Annex I to the Financial Regulation.

### **2.2. Entities subject to restrictive measures and rules on access to procurement: who may submit a tender?**

Tenderers must ensure that no involved entities (see Section 2.4) nor any subcontractors, including those which do not need to be identified in the tender (see Section 2.4.2), are subject to [EU restrictive measures](#) adopted under Article 29 of the Treaty on the European Union (TEU) or Article 215 of the Treaty on the Functioning of the EU (TFEU)<sup>3</sup>, consisting of a prohibition to make available or transfer funds or economic resources or to provide financing or financial assistance to them directly or indirectly, or of an asset freeze. The prohibition applies throughout the whole performance of the contract.

Only candidates that have been directly invited by means of an invitation to tender from the contracting authority may participate in this call for tenders. Any tender received from a legal or natural person not invited to tender, including in a joint tender with an invited candidate, will be rejected.

Tenderers must be established in a EU Member State or a third country which has a special agreement with the European Union in the field of public procurement on the conditions laid down in that agreement.

The rules on access to procurement do not apply to entities on whose capacity tenderers rely to fulfil the selection criteria nor to subcontractors. Subcontracting may not be used with the intent or effect to circumvent the rules on access to procurement.

### **2.3. Registration in the Participant Register: why register?**

Any economic operator willing to participate in this call for tenders must be registered in the [Participant Register](#) - an online register of organisations and natural persons (participants) participating in calls for tenders or proposals of the European Commission and other EU institutions/bodies.

On registering each participant obtains a Participant Identification Code (PIC, 9-digit number), which acts as its unique identifier in the Participant Register. A participant needs to register only once – the information provided can be further updated or re-used by the participant in other calls for tenders or calls for proposals of the European Commission and other EU institutions/bodies.

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<sup>3</sup> Please note that the EU Official Journal contains the official list and, in case of conflict, its content prevails over that of the [EU Sanctions Map](#).



**⚡ Each participant needs to ensure that its SME status in the Participant Register is registered and kept up to date.**

At any moment during the procurement procedure, the Research Executive Agency Validation Services (hereafter *the EU Validation Services*) may contact the participant and ask for supporting documents on legal existence and status. The requests will be made through the register's messaging system to the e-mail address of the participant's contact person indicated in the register. It is the responsibility of the participant to provide a valid e-mail address and to check it regularly. The documents that may be requested by *the EU Validation Services* are listed in the [EU Grants and Tenders Rules on Legal Entity Validation, LEAR appointment and Financial Capacity assessment](#).

**⚡ Please note that a request for supporting documents by the *EU Validation Services* in no way implies that the tenderer has been successful.**

#### **2.4. Ways to submit a tender: how can economic operators organise themselves to submit a tender?**

Economic operators can submit a tender either as a sole economic operator (sole tenderer) or as a group of economic operators (joint tender)<sup>4</sup>. In either case subcontracting is permitted.

**⚡ A group of economic operators may submit a joint tender only if the contracting authority has invited them as a group.**

Tenders must be drawn and submitted in complete independence and autonomously from the other tenders. A declaration in this regard by each tenderer (in case of a joint tender, by each of its members) shall be requested.

A natural or legal person cannot participate at the same time and within the same procedure either as member of two or more groups of economic operators or as a sole tenderer and member of another group of economic operators. In such case, all tenders in which that person has participated, either as sole tenderer or as member of a group of economic operators, will be rejected.

Economic operators linked by a relationship of control or of association (e.g. belonging to the same economic/corporate group) are allowed to submit different and separate tenders, provided that each tenderer is able to demonstrate that its tender was drawn independently and autonomously.

A natural or legal person may act as subcontractor for several tenderers as long as the tenders are drawn and submitted in complete independence and autonomously from each other. However, cross subcontracting among tenderers is forbidden, more precisely an entity “A” may participate as tenderer (either as sole tenderer or as member of a group of economic operators) and as subcontractor to another tenderer “B” within the same procurement procedure. However, in this case it is forbidden that tenderer “B” (or any of its participating members in case of a group of economic operators) is at the same time subcontractor for tenderer “A” (or for the group of economic operators in which “A” participates) within the same procurement procedure. In this case, both tenders A and B shall be rejected.

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<sup>4</sup> Each economic operator participating in the joint tender is referred to as “group member”.

In order to fulfil the selection criteria set out in Section 3.2 the tenderer can rely on the capacities of subcontractors (see Section 2.4.2) or other entities that are not subcontractors (see Section 2.4.3).

An “**involved entity**” is any economic operator involved in the tender. This includes the following four categories of economic operators:

- sole tenderer,
- group members (including group leader),
- identified subcontractors (see Section 2.4.2), and
- other entities (that are not subcontractors) on whose capacity the tenderer relies to fulfil the selection criteria.

The role of each entity involved in a tender must be clearly specified in the eSubmission application: i) sole tenderer, ii) group leader (in case of a joint tender), iii) group member (in case of a joint tender), or iv) subcontractor<sup>5</sup>.

For an entity on whose capacities the tenderer relies to fulfil the selection criteria (that is not a subcontractor), this role is defined in the commitment letter (*Annex 5.2*)

#### **2.4.1. Joint tenders**

A joint tender is a situation where a tender is submitted by a group (with or without legal form) of economic operators regardless of the link they have between them in the group. The group as a whole is considered a tenderer<sup>6</sup>.

All group members assume joint and several liability towards the contracting authority for the performance of the contract as a whole.

Group members must appoint from among themselves a group leader (the group leader) as a single point of contact authorised to act on their behalf in connection with the submission of the tender and all relevant questions, clarification requests, notifications, etc., that may be received during the evaluation, award and until the contract signature. All group members (including the group leader) must sign an Agreement/Power of attorney drawn up in the model attached in *Annex 3*.

The joint tender must clearly indicate the role and tasks of each group member, including those of the group leader who will act as the contracting authority's contact point for the contract's administrative or financial aspects and operational management. The group leader will have full authority to bind the group and each of its members during contract execution.

If the joint tender is successful, the contracting authority shall sign the contract with the group leader, authorised by the other members to sign the contract also on their behalf via the Agreement/Power of attorney drawn up in the model attached in *Annex 3*.

Changes in the composition of the group during the procurement procedure (after the deadline for submission of tenders and before contract signature) shall lead to rejection of the tender, with the exception of the following case:

- case of a merger or takeover of a group member (universal succession), provided that the following cumulative conditions are fulfilled:

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<sup>5</sup> Only identified subcontractors (see Section 2.4.2) must be specified in the eSubmission application.

<sup>6</sup> References to *tenderer* or *tenderers* in this document shall be understood as covering both sole tenderers and groups of economic operators submitting a joint tender.

- the new entity is not subject to restrictive measures, has access to procurement (see Section 2.2) and is not in an exclusion situation (see Section 3.1),
- all the tasks assigned to the former entity are taken over by the new entity member of the group,
- the group meets the selection criteria (see Section 3.2),
- the change must not make the tender non-compliant with the procurement documents,
- the new entity undertakes to replace the former entity for the implementation of the contract, in case of an award.

#### **2.4.2. Subcontracting**

Subcontracting is the situation where the contractor enters into legal commitments with other economic operators, which will perform part of the contract on its behalf. The contractor retains full liability towards the contracting authority for performance of the contract as a whole.

The following shall not be considered subcontracting:

- a) Use of workers posted to the contractor by another company owned by the same group and established in a Member State (“intra-group posting” as defined by Article 1, 3, (b) of [Directive 96/71/EC concerning the posting of workers in the framework of the provision of services](#)).
- b) Use of workers hired out to the contractor by a temporary employment undertaking or placement agency established in a Member State (“hiring out of workers” as defined by Article 1, 3, (c) of [Directive 96/71/EC concerning the posting of workers in the framework of the provision of services](#)).
- c) Use of workers temporarily transferred to the contractor from an undertaking established outside the territory of a Member State and that belongs to the same group (“intra-corporate transfer” as defined by Article 3, (b) of [Directive 2014/66/EU on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer](#)) .
- d) Use of staff without employment contract (“self-employed persons working for the contractor”), without the tasks of the self-employed persons being particular well-defined parts of the contract.
- e) Use of suppliers and/or transporters by the contractor, in order to perform the contract at the place of performance, unless the economic activities of the suppliers and/or the transporting services are within the subject of this call for tenders (see Section 1.4).
- f) Performance of part of the contract by members of an EEIG (European Economic Interest Grouping), when the EEIG is itself a contractor or a group member.

The persons mentioned in points a), b), c) and d) above will be considered as “personnel” of the contractor as defined in the contract.

All contractual tasks may be subcontracted unless the procurement documents expressly reserve the execution of certain critical tasks to the sole tenderer itself, or in case of a joint tender, to a group member.

By filling in the form available in *Annex 4* (List of identified subcontractors), tenderers are required to give an indication of the proportion of the contract that they intend to subcontract, as well as to identify and describe briefly the envisaged contractual roles/tasks of subcontractors meeting any of these conditions (hereafter referred to as *identified subcontractors*):

- subcontractors on whose capacities the tenderer relies upon to fulfil the selection criteria as described under Section 3.2;
- subcontractors whose intended individual share of the contract, known at the time of submission, is above 20 %.

Any such subcontractor must provide the tenderer with a commitment letter drawn up in the model attached in *Annex 5.1* and signed by its authorised representative.

☞ The above rules apply also where the economic operators, which will perform part of the contract on behalf of a successful tenderer, belong to the same economic/corporate group as the sole tenderer or a member of the group submitting the joint tender.

Changes concerning subcontractors identified in the tender (withdrawal/replacement of a subcontractor, additional subcontracting) during the procurement procedure (after the deadline for submission of tenders and before contract signature) require the prior written approval of the contracting authority subject to the following verifications:

- any new subcontractor is not subject to restrictive measures, has access to procurement if the rules on access to procurement apply also to subcontractors (see Section 2.2) and is not in an exclusion situation (see Section 3.1),
- the tenderer still fulfils the selection criteria and the new subcontractor fulfils the selection criteria applicable to it individually, if any;
- the change does not make the tender non-compliant with the tender specifications.

Subcontracting to subcontractors identified in a tender that was accepted by the contracting authority and resulted in a signed contract, is considered authorised.

#### **2.4.3. Entities (not subcontractors) on whose capacities the tenderer relies to fulfil the selection criteria**

In order to fulfil the selection criteria a tenderer may also rely on the capacities of other entities (that are not subcontractors), regardless of the legal nature of the links it has with them. It must in that case prove that it will have at its disposal the resources necessary for the performance of the contract by producing a commitment letter in the model attached in *Annex 5.2*, signed by the authorised representative of such an entity, and the supporting evidence that those other entities have the respective resources<sup>7</sup>.

☞ The above rules apply also where the economic operators on whose capacities the tenderer relies to fulfil the selection criteria (that are not subcontractors) belong to the same economic/corporate group as the sole tenderer or a member of the group submitting the joint tender.

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<sup>7</sup> This does not apply to subcontractors on whose capacity the tenderer relies to fulfil the selection criteria – for these the documentation required for subcontractors must be provided.

#### **2.4.4. Rules common to subcontractors and entities (not subcontractors) on whose capacities the tenderer relies to fulfil the selection criteria**

If a successful tenderer intends to rely on another entity to meet the minimum levels of economic and financial capacity, the contracting authority may require the entity to sign the contract or, alternatively, to provide a joint and several first-call financial guarantee for the performance of the contract.

With regard to technical and professional selection criteria, a tenderer may only rely on the capacities of other entities where the latter will perform the works or services for which these capacities are required, i.e. the latter will either assume the role of subcontractors or will fall within the exceptions listed in Section 2.4.2 and will then assume the role of entities (not subcontractors) on whose capacities the tenderer relies to fulfil the selection criteria.

☞ Relying on the capacities of other entities is only necessary when the capacity of the tenderer is not sufficient to fulfil the required minimum levels of capacity. Abstract commitments that other entities will put resources at the disposal of the tenderer will be disregarded.

### 3. EVALUATION AND AWARD

The evaluation of the tenders that comply with the submission conditions will consist of the following elements:

- Check if the tenderer is not subject to restrictive measures and has access to procurement (see Section 2.2);
- Verification of administrative compliance (if the tender is drawn up in one of the official EU languages and the required documents signed by duly authorised representative(s) of the tenderer);
- Verification of non-exclusion of tenderers on the basis of the exclusion criteria;
- Selection of tenderers on the basis of selection criteria;
- Verification of compliance with the minimum requirements specified in the procurement documents;
- Evaluation of tenders on the basis of the award criteria.

The contracting authority will evaluate the abovementioned elements in the order that it considers to be the most appropriate. Only tenderer for whom the verification of all elements did not reveal grounds for rejection can be awarded the contract resulting from this call for tenders.

The evaluation will be based on the information and evidence contained in the tenders and, if applicable, on additional information and evidence provided at the request of the contracting authority during the procedure. If any of the declarations or information provided proves to be false, the contracting authority may impose administrative sanctions (exclusion or financial penalties) on the entity providing the false declarations/information.

For the purposes of the evaluation related to exclusion and selection criteria the contracting authority may also refer to publicly available information, in particular evidence that it can access on a national database free of charge.

The contracting authority may negotiate with tenderers the tenders they have submitted, in order to adapt them to the procurement documents and in order to find the most economically advantageous tender. The minimum requirements and the criteria defined in the procurement documents are not subject to negotiation. During negotiations equal treatment of all tenderers will be ensured.

The negotiation consists of providing feedback to each tenderer on the evaluation of its initial tender, indicating elements not compliant with the minimum requirements and other aspects which should or could be improved. The tenderer may also improve aspects not addressed in the feedback when submitting a revised tender.

The contracting authority reserves the right not to negotiate and to award the contract on the basis of the tenders initially received. Should in this case, the evaluation of one or more elements demonstrate that there are grounds for rejection, the tender will be rejected and will not be subjected to further full evaluation.

### 3.1. Exclusion criteria

The objective of the exclusion criteria is to assess whether the tenderer is in any of the exclusion situations listed in Article 136(1) of the Financial Regulation.

Tenderers found to be in an exclusion situation will be rejected.

As evidence of non-exclusion, each tenderer<sup>8</sup> needs to submit with its tender a Declaration on Honour<sup>9</sup> in the model available in *Annex 2*.<sup>10</sup> The declaration must be signed by an authorised representative of the entity providing the declaration. Where the declaration has been signed by hand, the original does not need to be submitted to the contracting authority, but the latter reserves the right to request it from the tenderer at any time during the record-keeping period specified in Section 4.3.

The verification of non-exclusion of tenderers will be done on the basis of the submitted declarations and consultation of the [European Union's Early Detection and Exclusion System](#).

### 3.2. Selection criteria

The objective of the selection criteria is to assess whether the tenderer has the legal, regulatory, economic, financial, technical and professional capacity to perform the contract.

The selection criteria for this call for tenders, including the minimum levels of capacity, the basis for assessment and the evidence required, are specified in the following subsections.

Tenders submitted by tenderers not meeting the minimum levels of capacity will be rejected.

When submitting its tender each tenderer shall declare on honour that it fulfils the selection criteria for this call for tenders. The model Declaration on Honour available in *Annex 2* shall be used.

The initial assessment of whether a tenderer fulfils the selection criteria will be done on the basis of the submitted declaration(s).

The subsections below specify which selection criteria evidence must be provided with the tender or may be requested later, at any time during the procurement procedure, within a deadline given by the contracting authority<sup>11</sup>.

The evidence must be provided in accordance with the applicable basis for assessment of each criterion: in case of a consolidated assessment – only by the involved entities who contribute to

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<sup>8</sup> See Annex 1 which of the involved entities participating in a tender need to provide the Declaration on Honour.

<sup>9</sup> The European Single Procurement Document (ESPD) may not be used yet in European Commission's calls for tenders.

<sup>10</sup> Unless the same declaration has already been submitted for the purposes of another award procedure of the European Commission, the situation has not changed, and the time elapsed since the issuing date of the declaration does not exceed one year.

<sup>11</sup> The obligation to provide the supporting evidence will be waived in the following situations:

- if the same documents have already been provided in a previous award procedure of the European Commission and are still up-to-date;
- if such evidence can be accessed by the contracting authority on a national database free of charge, in which case the economic operator shall provide the contracting authority with the internet address of the database and, if needed, the necessary identification data to retrieve the document.

the fulfilment of the criterion, and in case of individual assessment – by each entity to whom the criterion applies individually.

In case not all selection criteria evidence is requested with the tender, all tenderers are **invited to prepare in advance the documentary evidence**, since they may be requested to provide such evidence within a short deadline. In any event, the tenderer proposed by the evaluation committee for the award of the contract will be requested to provide such evidence.

☞ If the tenderer does not provide valid documentary evidence within the deadlines set by the contracting authority, the contracting authority reserves the right to reject the tender. In any event, in case a tenderer proposed for the award of the contract fails to comply with the above evidence requirement, its tender will be rejected, unless there is a ground for a waiver. Please note that a request for evidence in no way implies that the tenderer has been successful.

### 3.3. Legal and regulatory capacity

Tenderers can be natural or legal persons. Tenderers are not obliged to take a specific legal form in order to submit their tenders.

Where tenderers submit a tender through an entity, which lacks legal personality (e.g. a branch), the compliance with the exclusion criteria, selection criteria, the rules on access to procurement as well as the absence of restrictive measures shall be assessed at the level of the tenderers.

Tenderers must prove that they have legal capacity to perform the contract and the regulatory capacity to pursue the professional activity necessary to carry out the work subject to this call for tenders.

The legal and regulatory capacity shall be proven by the evidence listed below:

- Proof of enrolment in a relevant trade or professional register;
- Proof of authorisation that the tenderer is authorised to perform the contract in its country of establishment.

In addition, involved entities (see Section 2.4) and all subcontractors, including those which do not need to be identified in the tender (see Section 2.4.2), must not be subject to [EU restrictive measures](#) adopted under Article 29 of the Treaty on the European Union (TEU) or Article 215 of the Treaty on the Functioning of the EU (TFEU)<sup>12</sup> that constitute a legal impediment to perform the contract. This requirement will be assessed by reference to the EU restrictive measures in force. Therefore, the tenderer is not required to submit any evidence of not being subject to EU restrictive measures.

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<sup>12</sup> Please note that the EU Official Journal contains the official list and, in case of conflict, its content prevails over that of the [EU Sanctions Map](#).



### 3.4. Economic and financial capacity

Tenderers must comply with the following selection criteria in order to prove that they have the necessary economic and financial capacity to perform the contract.

Criterion F1	
<b>Minimum level of capacity</b>	Average yearly turnover of the last two financial years above EUR 1.200.000
<b>Basis for assessment</b>	This criterion applies to the tenderer as a whole, i.e. a consolidated assessment of the combined capacities of all involved entities will be carried out.
<b>Evidence</b>	Copy of the profit and loss accounts for the last two years for which accounts have been closed from each concerned involved entity, or, failing that, appropriate statements from banks. The most recent year must have been closed within the last 18 months.

☝ All of the above-specified evidence of economic and financial capacity must be provided with the tender.

### 3.5. Technical and professional capacity

☝ With regard to technical and professional selection criteria, a tenderer may only rely on the capacities of other entities where the latter will perform the works or services for which these capacities are required. The entity on whose capacity the tenderer relies will either assume the role of a subcontractor or fall within the exceptions listed in Section 2.4.2.

Tenderers must comply with the following selection criteria in order to prove that they have the necessary technical and professional capacity to perform the contract:

Criterion T1 – Technical capacity	
The tenderer must prove experience in providing peer-reviewed advisory services based on the best available scientific advice, with the aim to advise management authorities on the implementation of the Marine Strategy Framework Directive (2008/56/EC) and Commission Decision (EU) 2017/848, the Habitats Directive (92/43/EEC), and the Birds Directive (2009/147/EC).	
<b>Minimum level of capacity</b>	At least three similar (in scope and complexity) projects completed in the last three years preceding the deadline for submission of tenders, with a minimum value for each of them €50.000.
<b>Basis for assessment</b>	This criterion applies to the tenderer as a whole, i.e. the consolidated assessment of combined capacities of all involved entities will be carried out.
<b>Evidence</b>	A list of projects meeting the minimum level of capacity. The list shall include details of their start and end date, total project amount and scope, role and amount invoiced. In case of projects still ongoing, only the portion completed during the reference period will be taken into consideration.

Criterion T2 – Professional capacity	
The team delivering the service should include, as a minimum, the following profiles:	
<b>Minimum level of capacity</b>	<p>Project manager: At least 5 years' experience in project management, including overseeing project delivery, quality control of delivered service.</p> <p>Expert in the field: At least 5 years of professional experience. Relevant higher education degree or equivalent professional experience and at least 4 years' professional experience in the field.</p>
<b>Evidence</b>	CV or past relevant experience.

☞ All of the above-specified evidence of technical and professional capacity must be provided with the tender.

☞ Involved entities (see Section 2.4) must not be subject to professional conflicting interests which may negatively affect the contract performance. Where the contracting authority has established such conflicting interests, it may conclude that the tenderer or an involved entity does not possess the required professional capacity to perform the contract to an appropriate quality standard.

The presence of conflicting interests shall be examined during the evaluation phase based on the statements made through the Declarations on Honour and, where applicable, the commitment letters (*Annex 5.1 and Annex 5.2*).

Further details and obligations concerning professional conflicting interests are set out in the draft contract.

### **3.6. Compliance with the conditions for participation and minimum requirements specified in the procurement documents**

By submitting a tender, a tenderer commits to perform the contract in full compliance with the terms and conditions of the procurement documents for this call for tenders. Particular attention is drawn to the minimum requirements specified in Section 1.4 of these specifications and to the fact that tenders must comply with applicable data protection, environmental, social and labour law obligations established by Union law, national legislation, collective agreements or the international environmental, social and labour conventions listed in Annex X to Directive 2014/24/EU.

The minimum requirements shall be observed throughout the entire duration of the contract. Compliance with these requirements is mandatory and cannot be subject to any assumptions, limitations, conditions, or reservations on the part of a tenderer.

Tenderers must declare when submitting their tenders in eSubmission whether their tenders comply with the minimum requirements specified in the procurement documents.

☞ **Tenders that are not compliant with the applicable minimum requirements shall be rejected.**

### **3.7. Award criteria**

The objective of the award criteria is to evaluate the tenders with a view to choosing the most economically advantageous tender (lowest price).

Tenders will be evaluated on the basis of the following award criteria and their weighting:

1. Price -100%

The price considered for evaluation will be the total price of the tender, covering all the requirements set out in the tender specifications.

## 4. FORM AND CONTENT OF THE TENDER

### 4.1. Form of the tender: how to submit the tender?

Tenders are to be submitted via the eSubmission application according to the instructions laid down in the Invitation letter and the eSubmission Quick Guide available at the link below:

**Submission of initial tenders:**

[https://wikis.ec.europa.eu/display/FTPPortal/Negotiated+procedures+Round\\_1\\_EN](https://wikis.ec.europa.eu/display/FTPPortal/Negotiated+procedures+Round_1_EN)

**Submission of revised tenders (on request of the contracting authority):**

[https://wikis.ec.europa.eu/display/FTPPortal/Negotiated+procedures+Round\\_2\\_EN](https://wikis.ec.europa.eu/display/FTPPortal/Negotiated+procedures+Round_2_EN)

☞ Make sure you prepare and submit your tender in eSubmission early enough to ensure it is received within the deadline indicated on TED eTendering.

### 4.2. Content of the tender: what documents to submit with the tender?

The documents to be submitted with the tender in eSubmission are listed in *Annex 1*.

The following requirements apply to the technical and financial tender to be uploaded in eSubmission:

- *Technical tender.*

Tenderers are not requested to submit a technical tender if the award method is lowest price.

- *Financial tender.*

The total amount of the tender as indicated in cell must be encoded in the field “Total amount” under the section “Tender data” in eSubmission.

It is the responsibility of each tenderer to ensure that the total amount of the tender inserted in the eSubmission field “Total amount” corresponds to the amount indicated in the uploaded financial tender. In case of discrepancies, only the amount indicated in the financial tender will be taken into account.

The financial tender shall be:

- expressed in euros. Tenderers from countries outside the euro zone have to quote their prices in euro. The price quoted may not be revised in line with exchange rate movements. It is for the tenderer to bear the risks or the benefits deriving from any variation.
- quoted free of all duties, taxes and other charges, i.e. also free of VAT.

☞ The European Union Institutions are exempt from such charges in the EU under Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union of 8 April 1965 annexed to the Treaty on the Functioning of the European Union. Exemption is granted to the Commission by the governments of the Member States, either through refunds upon presentation of documentary evidence or by direct exemption.

In case of doubt about the applicable VAT system, it is the tenderer's responsibility to contact its national authorities to clarify the way in which the European Union is exempt from VAT.

#### **4.3. Signature policy: how can documents be signed?**

Where a document needs to be signed, the signature must be either hand-written or, preferably, a qualified electronic signature (QES) as defined in [Regulation \(EU\) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market \(the eIDAS Regulation\)](#).

Tenderers are strongly encouraged to sign with a QES<sup>13</sup> all documents requiring a signature and only exceptionally to sign such documents by hand as hand-written signatures lead to an additional administrative burden for both the tenderer and the contracting authority. The originals of any hand-signed documents (other than the contract) do not need to be submitted to the contracting authority but the tenderer must keep them for a period of five years starting from the notification of the outcome of the procedure or, where the tenderer has been awarded a contract resulting from this call for tenders and the contract has been signed, the payment of the balance.

All documents must be signed by the signatories (when they are individuals) or by their duly authorised representatives.

For the following documents, when signed by representatives, tenderers must provide evidence for the delegation of the authorisation to sign:

- The Declaration on Honour of the tenderer (in case of a joint tender – the Declarations on Honour of all group members);
- (in the case of a joint tender) the Agreement/Power(s) of attorney drawn up using the model attached in *Annex 3*.

The delegation of the authorisation to sign on behalf of the signatories (including, in the case of proxy(-ies), the chain of authorisations) must be evidenced by appropriate written evidence (copy of the notice of appointment of the persons authorised to represent the legal entity in signing contracts (together or alone), or a copy of the publication of such appointment if the legislation which applies to signatory requires such publication or a power of attorney). A document that the contracting authority can access on a national database free of charge does not need to be submitted if the contracting authority is provided with the exact internet link and, if applicable, the necessary identification data to retrieve the document.

#### **4.4. Confidentiality of tenders: what information and under what conditions can be disclosed?**

Once the contracting authority has opened a tender, it becomes its property and shall be treated confidentially, subject to the following:


- For the purposes of evaluating the tender and, if applicable, implementing the contract, performing audits, benchmarking, etc., the contracting authority is entitled to make available (any part of) the tender to its staff and the staff of other Union institutions,

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<sup>13</sup> See [here](#) how to apply a QES on a document exchanged with a European institution, body or agency.

bodies and agencies, as well to other persons and entities working for the contracting authority or cooperating with it, including contractors or subcontractors and their staff, provided that they are bound by an obligation of confidentiality.

- After the signature of the award decision, tenderers whose tenders were received in accordance with the submission modalities, who are not subject to restrictive measures, have access to procurement, who are not found to be in an exclusion situation referred to in Article 136(1) of the FR, who are not rejected under Article 141 of the FR, whose tenders are not found to be incompliant with the procurement documents, and who make a request in writing, will be notified of the name of the tenderer to whom the contract is awarded, the characteristics and relative advantages of the successful tender and its total financial tender amount. The contracting authority may decide to withhold certain information that it assesses as being confidential, in particular where its release would prejudice the legitimate commercial interests of economic operators or might distort fair competition between them. Such information may include, without being limited to, confidential aspects of tenders such as unit prices included in the financial tender, technical or trade secrets<sup>14</sup>.
- The contracting authority may disclose the submitted tender in the context of a request for public access to documents, or in other cases where the applicable law requires its disclosure. Unless there is an overriding public interest in disclosure<sup>15</sup>, the contracting authority may refuse to provide full access to the submitted tender, redacting the parts (if any) that contain confidential information, the disclosure of which would undermine the protection of commercial interests of the tenderer, including intellectual property.

 The contracting authority will disregard general statements that the whole tender or substantial parts of it contain confidential information. Tenderers need to mark clearly the information they consider confidential and explain why it may not be disclosed. The contracting authority reserves the right to make its own assessment of the confidential nature of any information contained in the tender.

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<sup>14</sup> For the definition of trade secrets please see Article 2 (1) of [Directive \(EU\) 2016/943 on the protection of undisclosed know-how and business information \(trade secrets\) against their unlawful acquisition, use and disclosure](#).

<sup>15</sup> See Article 4 (2) of the [Regulation \(EC\) No 1049/2001 regarding public access to European Parliament, Council and Commission documents](#).

**APPENDIX: LIST OF REFERENCES**

<i>Award criteria</i>	See Section 3.4
<i>Contracting authority</i>	See Section 1.1
<i>Entities on whose capacities the tenderer relies to fulfil the selection criteria</i>	See Section 2.4.3
<i>EU Validation services</i>	See Section 2.3 <a href="#">EU Grants and Tenders Rules on Legal Entity Validation, LEAR appointment and Financial Capacity assessment</a>
<i>Exclusion criteria</i>	See Section 3.1
<i>Financial Regulation</i>	<a href="#">Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union</a>
<i>Framework contract</i>	See Section 1.6
<i>Framework contract ceiling</i>	See Section 1.6
<i>Group leader</i>	See Section 2.4.1
<i>Group member</i>	See Section 2.4.1
<i>Identified subcontractors</i>	See Section 2.4.2
<i>Involved entities</i>	See Section 2.4
<i>Joint tender</i>	See Section 2.4.1
<i>Participating entities</i>	See Section 1.1
<i>Participant Register</i>	See Section 2.3 <a href="https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/how-to-participate/participant-register">https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/how-to-participate/participant-register</a>
<i>Selection criteria</i>	See Section 3.2
<i>Sole tenderer</i>	See Section 2.4
<i>Subcontracting/subcontractor</i>	See Section 2.4.2
<i>Treaties</i>	The EU Treaties: <a href="https://europa.eu/european-union/law/treaties_en">https://europa.eu/european-union/law/treaties_en</a>

# ANNEXES



**Annex 1. List of documents to be submitted with the tender or during the procedure**

Description		Sole tenderer		Joint tender		Identified Subcontractor	Entity on whose capacity is being relied (that is not subcontractor)	When and where to submit the document?	Instructions for uploading in eSubmission (if applicable)	
		Group leader	Group member						How to name the file?	Where to upload?
<div>1. Identification and information about the tenderer.</div> <div>eSubmission view</div> <div><div><div>Ways to submit</div><div>Parties</div><div>Tender data</div><div>Submission report</div><div>Submit</div></div></div>										
Declaration on Honour on Exclusion and Selection Criteria (see Section 3.1)  model in Annex 2		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		With the tender in eSubmission		'Declaration Honour'  With the concerned entity under 'Parties' → 'Identification of the participant' → 'Attachments' → 'Declaration on Honour'.  For entities that are not subcontractors and on whose capacity the tenderer relies to fulfil the selection criteria, the document must be uploaded in the section

									of the sole tenderer or group leader: → 'Identification of the participant' → 'Attachments' → 'Other documents'.
Evidence that the person signing the documents is an authorised representative of the entity <sup>16</sup> (see Section 4.3)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		With the tender in eSubmission	'Authorisation to sign documents'	With the concerned entity under 'Parties' → 'Identification of the participant' → 'Attachments' → 'Other documents'.		
Agreement/Power of attorney (see Section 2.4.1) <i>model in Annex 3</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		With the tender in eSubmission	'Agreement_ Power of attorney'	In the group leader's section under 'Parties' → 'Identification of the participant' → 'Attachments' → 'Other documents'.		
List of identified subcontractors (see Section 2.4.2) <i>model in Annex 4</i>	<input type="checkbox"/>	<input type="checkbox"/>			With the tender in eSubmission	'List of identified subcontractors'	In the sole tenderer's or the group leader's section under 'Parties' → 'Identification of the participant' → 'Attachments' → 'Other documents'.		

<sup>16</sup> A document that the contracting authority can access on a national database free of charge does not need to be submitted if the contracting authority is provided with the exact internet link and, if applicable, the necessary identification data to retrieve the document.

Commitment letter (see Section 2.4.2 and 2.4.3)					<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> (model in Annex 5.1)	<input checked="" type="checkbox"/> (model in Annex 5.2)	With the tender in eSubmission	'Commitment letter'	With the concerned entity under 'Parties' → 'Identification of the participant' → 'Attachments' → 'Other documents'.
Administrative Information Form (see Annex 8)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>						With the tender in e-Submission	'Administrative Information Form'	With the concerned entity under 'Parties' → 'Identification of the participant' → 'Attachments' → 'Other documents'.
Evidence of legal existence and status (see Section 2.3)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>					In the Participant Register	n.a.	n.a.
Evidence of legal capacity (see Section 3.2.1)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>					With the tender in eSubmission	No specific requirements how to name the file(s).	With the concerned entity under 'Parties' → 'Identification of the participant' → 'Attachments' → 'Legal and regulatory capacity'.
Evidence of economic and financial capacity F1 (see Section 3.2.2)	The documents must be provided only by the involved entities							With the tender in eSubmission	'Balance sheet', entity_year	With the group leader or the sole tenderer under 'Parties' → 'Identification of the participant' → 'Attachments' → 'Econ

	<b>which contribute to reaching the minimum capacity level for criterion F1</b>		'Profit_Loss_Account_entity_year'	omic and financial capacity'.
<b>Evidence of technical and professional capacity T1 (see Section 3.2.3)</b>	<b>The documents must be provided only by the involved entities who contribute to reaching the minimum capacity level for criterion T1</b>	With the tender in eSubmission	'Project_reference_No.1"  'Project_reference_No.2" ....	With the group leader or the sole tenderer under 'Parties'  → 'Identification of the participant' → 'Attachments' → 'Technical and professional capacity'.

## **Annex 2. Declaration on Honour on exclusion and selection criteria**

To be downloaded in Word format:

[https://environment.ec.europa.eu/funding/calls-tenders\\_en](https://environment.ec.europa.eu/funding/calls-tenders_en)

### Annex 3. Agreement/Power of attorney

Call for tenders EC-ENV/2024/NP/0054 -

ICES - Request for scientific advisory services

#### AGREEMENT/POWER OF ATTORNEY

The undersigned:

***[- Signatory 1 (Name, Function, Legal entity name, Registered address, VAT Number)]***

***- Signatory 2 (Name, Function, Legal entity name, Registered address, VAT Number)***

***- ...***

***- Signatory N (Name, Function, Legal entity name, Registered address, VAT Number)]***

having the legal capacity required to act on behalf of the entities they represent,

HEREBY AGREE TO THE FOLLOWING:

- 1) To submit a joint tender (the tender) as members of a group of tenderers (the group), constituted by ***[Insert names of Legal entity 1, Legal entity 2, ... Legal entity N – the name of the group leader must be included here!]*** (the group members), and led by ***[Insert name of Legal entity 1]*** (the group leader), in accordance with the conditions of the procurement documents and the terms of the tender to which this Agreement/Power of attorney is attached.
- 2) If the contracting authority awards a contract resulting from this call for tenders (the contract) to the group on the basis of the tender to which this Agreement/Power of attorney is attached, all group members (including the group leader) shall be considered parties to the contract in accordance with the following conditions:
  - (a) All group members (including the group leader) shall be jointly and severally liable towards the contracting authority for the performance of the contract.
  - (b) All group members (including the group leader) shall comply with the terms and conditions of the contract and ensure the proper delivery of their respective share of the services and/or supplies subject to the contract.
- 3) Payments by the contracting authority related to the services and/or supplies subject to the contract shall be made through the bank account of the group leader indicated in the contract.
- 4) The group members grant to the group leader all the necessary powers to act on their behalf in the submission of the tender and the conclusion of the contract, including:
  - (a) The group leader shall submit the tender on its own behalf and on behalf of the other group members and indicate in the "Contact Person" section in eSubmission the name and e-mail address of an individual as a single point of contact authorised to communicate officially with the contracting authority in connection with the submitted

tender on behalf of all group members, including in connection with all relevant questions, clarification requests, notifications, etc., that may be received during the evaluation, award and until the contract signature.

- (b) The group leader shall sign any contractual documents — including the contract, [specific contracts] and amendments thereto — and shall warrant the submission of any invoices related to the performance of the contract on behalf of all group members.
- (c) The group leader shall act as a single contact point with the contracting authority in the delivery of the services and/or supplies subject to the contract. It shall coordinate the delivery of the services and/or supplies by the group to the contracting authority, and shall see to a proper administration of the contract.

This Agreement/Power of attorney may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same document.

Any modification to the present Agreement/Power of attorney shall be subject to the contracting authority's express approval. This Agreement/Power of attorney shall expire when all the contractual obligations of the group have ceased to exist. The parties cannot terminate it before that date without the contracting authority's consent.

**Name**  
**Function**  
**Name of the legal entity**

**Name**  
**Function**  
**Name of the legal entity**

**signature[s]:** \_\_\_\_\_  
**Done at** ....., **on** .....

**signature[s]:** \_\_\_\_\_  
**Done at** ....., **on** .....

**Name**  
**Function**  
**Name of the legal entity**

**Name**  
**Function**  
**Name of the legal entity**

**signature[s]:** \_\_\_\_\_  
**Done at** ....., **on** .....

**signature[s]:** \_\_\_\_\_  
**Done at** ....., **on** .....

#### Annex 4. List of identified subcontractors and proportion of subcontracting

Identification details	Roles/tasks during contract execution	Proportion of subcontracting (% of contract volume)
<i>[Full official name of the identified subcontractor, registered address, statutory registration number, VAT registration number]</i>		
<i>[Full official name of the identified subcontractor, registered address, statutory registration number, VAT registration number]</i>		
<i>[REPEAT AS MANY TIMES AS THE NUMBER OF IDENTIFIED SUBCONTRACTORS]</i>		
<b>Other subcontractors that do not need to be identified under Section 2.4.2<sup>17</sup></b>		
<b>TOTAL % of subcontracting</b>		0,00%

<sup>17</sup> For this category of subcontractors, please provide in a general manner their intended roles/tasks during contract execution, as well as the aggregated % of contract volume for all non-identified subcontractors.



## Annex 5.1. Commitment letter by an identified subcontractor

[Letterhead, if any]

EUROPEAN COMMISSION

Call for tenders Ref. **EC-ENV/2024/NP/0054**

Attn:

*[Insert date]*

### Commitment letter by identified subcontractor

I, the undersigned,

Name:

Function:

Legal entity:

Registered address:

VAT Number:

having the legal capacity required to act on behalf of *[insert name of the entity]*, hereby confirm that the latter agrees to participate as subcontractor in the tender of *[insert name of the tenderer]* for the call for tenders **EC-ENV/2024/NP/0054 – ICES - Request for scientific advisory services**

In the event that the tender of the aforementioned tenderer is successful, *[insert name of the subcontractor]* commits itself to make available the resources necessary for performance of the contract as a subcontractor and to carry out the services that will be subcontracted to it in compliance with the terms of the contract. It further declares that it is not subject to conflicting interests, which may negatively affect the contract performance, and that it accepts the terms of the procurement documents for the above call for tenders, in particular the contractual provisions related to checks and audits.

Done at:

Name:

Position:

Signature:

**Annex 5.2. Commitment letter by an entity on whose capacities is being relied**

[Letterhead, if any]

EUROPEAN COMMISSION

Call for tenders Ref. **EC-ENV/2024/NP/0054**

Attn:

*[Insert date]*

**Commitment letter by an entity on whose capacity is being relied**

I, the undersigned,

Name:

Function:

Legal entity:

Registered address:

VAT Number:

having the legal capacity required to act on behalf of *[insert name of the entity]*, hereby confirm that the latter authorises the *[insert name of the tenderer]* to rely on its [financial and economic capacity] [technical and professional capacity] in order to meet the minimum levels required for the call for tenders **EC-ENV/2024/NP/0054 – ICES - Request for scientific advisory services**

In the event that the tender of the aforementioned tenderer is successful, *[insert name of the entity]* commits itself to make available the resources necessary for performance of the contract. It further declares that it is not subject to conflicting interests which may negatively affect the contract performance, and that it accepts the terms of the procurement documents for the above call for tenders, in particular the contractual provisions related to checks and audits.

Done at:

Name:

Position:

Signature:

## Annex 6. Template for request of advisory services

### ICES Request Form

Request from	
Committee making the request	
Contact within organisation	
Content contact person	
Request announced	
Request received	
Outcome of request required by client	
Request code (client)	
Request code (ICES)	
Details of request	
Intended use of the request output	
Planning ICES	
Request (budget) accepted	
ICES contact person	
WG(s) involved	
Preparation timing	
Review group	
Advice drafting group	
ACOM WebEx	
Release date	

## **Annex 7. ICES rules regarding travel and subsistence allowances**

1. Travel: Persons travelling at the expense of the Council will be paid the cost of first-class rail or boat tickets and economy-class air fares, plus, where necessary, reasonable insurance cover. For overnight travel by train or boat, charges for sleeper and cabin respectively will also be paid. Whenever practical, the least expensive and most environmentally friendly form of travel should be used. Unless otherwise authorized by the General Secretary, the costs of travel by private automobile will not be paid. In case travel by automobile is authorised, payment will be only to the amount of the cheapest public transport fare.

2. Local transport: The cost of transportation between the airport (or other point of arrival or departure) and the hotel are included in the *per diem*. In particular cases additional expenses can be reimbursed, provided the necessity and nature of the expenses are satisfactorily explained and documented.

3. Overnight travel: *per diem* is paid for each 24-hour period of absence from the home base in accordance with the United Nations (WHO) rates:

<http://apps.who.int/bfi/tsy/PerDiem.aspx>

In calculating the total amount to be paid, the day on which the period of travel commences will be counted in full and the day of return discounted. Travel expenses on overnight travel are covered by one half *per diem*. Under special circumstances, when the cost of the only suitable hotel accommodation available is more than 50% of the *per diem* rate, the General Secretary may authorize the payment of the hotel charge plus half the *per diem* rate.

4. One day travel: For a journey not involving an overnight stay, but exceeding ten hours duration, half of the *per diem* will be paid. This applies also for an overnight journey by air, train, or boat. For an absence from home base of less than ten hours, 15 per cent of a half *per diem* will be paid.

5. Meals: In cases where ICES provides meals or receptions, the cost will be deducted from the *per diem* paid. In case ICES provides hotel including breakfast, half *per diem* will be paid and 10% of the *per diem* will be deducted for breakfast.

6. Authorisation: Unless specifically authorized by the General Secretary before travel is undertaken, no person will be paid for a journey longer than from his or her normal home base (residence or office).

7. These rules apply for ICES staff as well as for externals travelling on ICES service and cost.

## **Annex 8. Administrative Information Form**

*(To be filled in by the sole tenderer or the group leader in the case of joint bids)*

### **Organisation or individual:**

**NAME:** .....

**ADDRESS:** .....

### **PERSON AUTHORISED TO SIGN CONTRACT:**

**Name and position:** .....

### **PERSON FOR ROUTINE CONTACT:**

**Name and position:**

.....

**ADDRESS:** .....

**Telephone and E-mail:**

.....

### **BANK DETAILS FOR CONTRACT:**

**(N.B. these must correspond to those encoded in the PIC register for this tender – see point 2.3)**

**Name of bank:** .....

**Account holder:** .....

**Bank account number:** .....

## **ANNEX II**

### **Contractor's tender**

## **Request for scientific advisory services**

Technical work contributing to implementation of the Marine Strategy Framework Directive (2008/56/EC) and Commission Decision (EU) 2017/848<sup>2</sup>, the Habitats Directive (92/43/EEC), the Birds Directive (2009/147/EC) and the Nature Restoration Regulation ((EU) 2024/1991), as well as relevant marine EU policies such as the Biodiversity Strategy and the Marine Action Plan

### **1) Context**

The Marine Strategy Framework Directive (2008/56/EC, MSFD) provides a framework legislation for Union action in the field of marine environmental policy and aims to achieve good environmental status in the EU's marine waters by 2020.

Commission Decision (EU) 2017/848 contains criteria and methodological standards for determining good environmental status for the 11 descriptors of good environmental status laid down in Annex I of the MSFD.

Additional scientific and technical progress is still required to support the further development of criteria, including threshold values, methodological standards, specifications and standardised methods for monitoring and assessing the criteria. Their use should be based on the best available science.

The Habitats Directive (92/43/EEC) and the Birds Directive (2009/147/EC) form the cornerstone of Europe's nature conservation policy and establish the EU-wide Natura 2000 ecological network of protected areas.

The Nature Restoration Regulation (EU) 2024/1991 aims to restore ecosystems, habitats, and species (including marine ones) to enable the long-term and sustained recovery of biodiverse and resilient nature and contribute to achieving the EU's climate mitigation and climate adaptation objectives. To meet these objectives, the Regulation sets binding targets to be met in a phased approach by 2030, 2040 and 2050.

Owing to their similar broad objectives (protecting and restoring nature, including the marine environment), it is noted that the objectives of the Nature Restoration Regulation, the Marine Strategy Framework Directive, and the Habitats and Birds Directives mutually support each other.

The Commission seeks scientific advisory services from ICES and information on conservation, protection, sustainable use and restoration of the marine environment, as well as on fisheries and marine data.

The International Council for the Exploration of the Sea (ICES) is an intergovernmental marine science organisation that develops science and advice to support the sustainable use of the ocean. It is the oldest scientific organisation in Europe (established in 1902) created to support its member countries and support coordinated oceanic and coastal monitoring and research. It also advises international commissions and governments on marine policy and management issues. ICES is a network of more

than 5,000 scientists from over 700 marine institutes in 20 member countries, including certain EU Member States and beyond (e.g. Iceland, UK, Norway, USA, Canada). As many as 3000 scientists participate in ICES activities annually, across 160 working groups. ICES vision is to be a world-leading marine science organization, meeting societal needs for impartial evidence on the state and sustainable use of our seas and oceans, and mission is to advance and share scientific understanding of marine ecosystems and the services they provide and to use this knowledge to generate state-of-the-art advice for meeting conservation, management, and sustainability goals.

## **2) Request for scientific advisory services**

The Commission seeks to obtain from ICES advisory services based on the best available science. These advisory services should support the implementation of policies adopted by the European Union and its Member States with respect to the management of activities that affect, and are affected by, the marine biological resources and ecosystems. The advice delivered will take into account the relevant policies (see e.g. Annex 1 in [ICES, 2023](#)).

Advisory services are sought in respect of the implementation of the Marine Strategy Framework Directive (and, where relevant, its linkages with the Water Framework Directive), the Habitats Directive, the Birds Directive, the Nature Restoration Regulation, and, where appropriate, EU policies such as the Zero Pollution Action Plan, the Biodiversity Strategy for 2030 and its Action plan: Protecting and restoring marine ecosystems for sustainable and resilient fisheries ('Marine Action Plan'). The tasks ICES should deliver under the contract may comprise, but are not limited to, the following items:

- Scientific and technical developments in support of the Marine Strategy Framework Directive (implementation and review), such as by supporting the development of marine monitoring and assessment programmes and the identification of research needs, providing methodological advice on the determination and assessment of good environmental status and targets, and on possible management measures to achieve the MSFD objectives;

Further scientific advice on the biodiversity-related descriptors (Marine Strategy Framework Directive descriptors 1, 4, and 6), including contributions to the development of criteria elements, threshold values and methodological standards and assessing consequences of setting alternate thresholds (with associated uncertainty);

- Further scientific advice on Marine Strategy Framework Directive descriptor 3 on populations of commercially exploited fish and shellfish, including contributions to the development of threshold values and methodological standards and assessing consequences of setting alternate thresholds (with associated uncertainty);
- Recurrent advice on the distribution of mobile bottom-contacting gear (MBCG) fishing pressure and impact in relation to Marine Strategy Framework Directive descriptor 6, and ongoing development of advice on spatial trade-offs between MBCG fishing and seafloor integrity in relation to Marine Strategy Framework Directive descriptor 6.
- Support cross-regional coherence in the development of guidance on reporting, quality control and assessment of impulsive noise events, and continuous noise monitoring to support descriptor 11 of Marine Strategy Framework Directive on underwater noise and possibly support further developments of;



- Scientific and technical developments in support of the implementation of the Habitats and Birds Directives, including for example scientific advice on methodological standards and measures necessary to comply with species protection provisions such as those related to bycatch (noting also relevance for MSFD Descriptor 1), as well as advice on appropriate management measures including Natura 2000 sites and other relevant protected areas and measures proposed by Member States. This work would also inform other policies, such as the MSP Directive;
- Identification of available data and further data needs. Advice on data collection or research needs to better support the implementation of the Common Fisheries Policy (to assess the impact of fisheries on the marine ecosystems), the Marine Strategy Framework Directive and the Habitats and Birds Directives;
- Scientific advice, advice on data collection or research needs to better support the implementation of the Nature Restoration Regulation, including contributions to the development of methodological standards, monitoring and assessment programmes for the nature restoration plans;
- Scientific advice in support to the implementation of the Biodiversity Strategy and its Marine Action Plan, as well as on the Zero Pollution Action Plan;
- Training of relevant DG ENV staff, for instance on ecosystem-based management, on the impact of and possible mitigations measures to the deployment of offshore wind farms in the EU waters, and on other subjects of interest to the implementation of EU marine legislation and policy.
- Scientific advice on the consequences of climate change for implementation of the Nature Restoration Regulation, Marine Strategy Framework Directive and other Directives

### Financial Tender template

	Estimated/final cost
	Total (EUR)
<b>Direct costs</b>	
<b>1. Personnel costs</b>	
1.2. Administrative and support personnel	
1.6. Honoraria Advisory Deliverables	
<i>Sub-total for Personnel costs</i>	
<b>2. Travel and Meetings</b>	
2.3. Travel	
2.4. Meeting facilities	
<i>Sub-total for Travel and Meetings</i>	
<b>3. Other related costs</b>	
3.1. IT for Expert groups and Process Infrastructure	
3.2. Audit fees	
3.3. Exchange loss AA invoice	
<i>Sub-total for Other related costs</i>	
<b>Total costs</b>	<b>600,000</b>
<b>Interim 30% payment:</b>	<b>Y/N</b>

### ANNEX III

## Templates for declarations concerning the transfer of all necessary intellectual property rights

### Declaration on the list of pre-existing rights

I, Alan Haynie, ICES General Secretary representing International Council for the Exploration of the Sea (ICES) ('the contractor'), party to the contract No. 090202/2025/4500092808/SER/ENV.C2 – “ICES - Request for scientific advisory services” – [[option 1](#): warrant that the results are free of rights or claims from creators or from any third parties for any use the contracting authority may envisage and declare that the results do not contain any pre-existing rights to the results or parts of the results or to pre-existing materials as defined in the above-mentioned contract.] [[option 2](#): warrant that the results and the pre-existing material incorporated in the results are free of rights or claims from creators or from any third parties for any use the contracting authority may envisage and declare that the results contain the following pre-existing rights:]

Please fill in the table – one line per pre-existing right

Result concerned	Pre-existing material concerned	Rights to pre-existing material	Identification of rights' holder

## **ANNEX IV**

# **E-REQUEST, E-ORDERING, E-FULFILMENT AND E-INVOICING INTERCHANGE AGREEMENT**

**(Web Services & Supplier Portal)**

## 1. Introduction

1.1 The present agreement represents an annex to Service Contract No. Contract number: 090202/2025/4500092808/SER/ENV.C2 ('the contract'), allowing the use of the following post-award procurement and contracts modules:

- *e-Request* (quotation request for services or goods, supplier formal offers)
- *e-Ordering* (orders based on framework contracts and others)
- *e-Fulfilment* (dispatch and receiving advices)
- ***e-Invoicing (standard invoices, debit and credit notes)***
- and any other module that are being developed or will be developed in the future such as e-Contracts, e-Signature, e-Catalogue

1.2. The present agreement shall be activated following a notification via e-mail from the *contracting authority* to the contractor (the contact persons indicated in the contract) of the start of use of one or several modules. This written notification, which will specify whether it concerns only services or goods or both, shall have full legal effect from the date specified therein.

1.3. Unless otherwise established, the present agreement is only applicable for the communications between the contractor and the participating **Directorates-General, Institutions, Agencies and Bodies (EUIs)** mentioned, for each module and type of purchase (service or goods) at the following e-PRIOR website: <https://webgate.ec.europa.eu/fpfis/wikis/x/8pBsAQ>. The list is regularly updated.

Other Directorates-General of the European Commission or other EUIs may join this agreement at any time by way of notification via e-mail from the *contracting authority* to the contractor. This written notification shall have full legal effect from the date specified therein.

1.4. All documentation related to the present agreement is available on the web at the following link: <https://webgate.ec.europa.eu/fpfis/wikis/x/8pBsAQ>

## 2. Definitions

Parties agree to apply the following definitions:

**‘Authorised persons’:** persons with access to the system (e-PRIOR), meeting the requirements laid down in Article 121 (8), (9) and (10) of the Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the Rules of Application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union, and which must be identified by the system via established means (authenticated user in ECAS – European Commission Authentication System).

**‘Back office’:** the internal system(s) used by the parties to process electronic documents such as orders and invoices.

**‘Contracting authority’:** the contracting party ordering the goods or services from the *contractor* and exchanging the relevant electronic documents (listed below in the definition of e-PRIOR) involved in that process.

**‘Dispatch advice’:** electronic document that the *contractor* sends to the *contracting authority* when it dispatches the goods or delivers the services based on fixed price or quoted time and means. The document must include the *order* reference and, in case of dispatch of goods, the delivery information. Once it has been validated, the *contracting authority* issues a *receiving advice*.

**‘Electronic Data Interchange (EDI)’:** the electronic transfer, from computer to computer, of commercial and administrative data using an agreed standard to structure an EDI message.

**‘EDI message’:** an electronic document structured by using an agreed standard, prepared in a computer readable format and capable of being automatically and unambiguously processed.

**‘Electronic system’:** the set of electronic means used by the parties in order to send or receive electronic messages (*own system* and system not controlled by the parties).

**e-PRIOR’:** the service-oriented communication platform that provides a series of web services and allows the exchange of standardised electronic messages and documents between the parties. This is done either through web services, with a machine-to-machine connection between the parties’ *back office* systems (*EDI messages*), or through a web application (the *supplier portal*). The Platform may be used to exchange electronic documents (e-documents) such as electronic *requests for services/supplies* (*request for quotation*, final offer, etc.) electronic specific contracts and order forms, electronic transmission of timesheets, deliverables and its acceptance (*service receipt*, *dispatch advices* and *receipt advices*) or electronic invoices between the parties. Technical specifications (i.e. the *interface control document*), details on access and user manuals are available at the following website: <https://webgate.ec.europa.eu/fpfis/wikis/spaces/viewspace.action?key=ePRIOR>

**‘e-Request’** is the module in *e-PRIOR* which aims to automate the exchange of *request for quotation* and offers between the *contracting authorities* and their *suppliers*. By covering the steps of the request management process as defined in the relevant contracts, *e-Request* establishes the basis under which *orders* will be concluded in *e-Ordering* with those *suppliers* who are providing services or goods related to the procurement procedures supported by the system.

**‘e-Ordering’** is the module in *e-PRIOR* enabling the electronic exchange and signature of specific contracts or order forms for services or supplies in the context of framework contracts or direct contracts. This may not be applicable to certain categories of specific contracts (such as on-call services, services provided during extended working hours, etc.) which are not currently covered by *e-Ordering* and all these cases paper based procedures apply for the signature of the specific contracts. The *contracting authority* may include at a later stage those specific contracts in the scope of *e-Ordering* by means of written notification (e-mail or registered letter) to the contractor. This written notification shall have full legal effect from the date mentioned in the notification.

**‘e-Fulfilment’** is the module in *e-PRIOR* enabling the electronic acceptance of services or goods through the exchange of *dispatch advices* (delivery note), *service receipts* and *receiving advices* (evidence of goods receipt or *service receipt* approval).

**‘e-Invoicing’** is the module in *e-PRIOR* enabling *suppliers* to view all credit notes and cost claims and related supporting documents, sent to and received from the *contracting authority*. For *suppliers* authorised to do so, the *e-Invoicing* module also allows the creation of invoices, credit and debit notes, and their sending to *contracting authorities*.

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

**‘Invoice’:** electronic document issued by the *contractor* listing goods supplied and services rendered and the amount due for payment by the *contracting authority*.

**‘Own system’:** the information processing system (computer or network) that is predominantly controlled by the parties. Telecommunication connections leased from a network operator, for instance, do not fall within this scope.

**‘Order’:** electronic document equivalent to the specific contract, order form, direct contract or purchase order, by which the contracting authority requests by electronic means the provision of services or goods under the conditions and at the prices previously quoted by the contractor. The order, which is composed of a contract body and data appendix, must be signed electronically by the contractor and returned to the *contracting authority* for signature.

**‘Receiving advice’ or ‘Receipt Advice’:** electronic document issued by the *contracting authority* attesting the conformity of the goods or services received according to the terms of the contract, facilitating record accuracy and invoicing procedures.

**‘Request for quotation’:** electronic document by which the *contracting authority* invites the contractor to specify the quote details & the prices for a potential order.

**‘Service receipt’:** data reflecting the provision of "intramuros" services that is recorded by the contractor in the premises and on information systems of the *contracting authority* in the context of time and means service contracts. It enables the transmission of timesheets or any other supporting documentation that should be sent to the *contracting authority* for validation. Once it has been validated, the *contracting authority* issues a *receiving advice*.

**‘Standards’:** a set of codes, lists and guidelines accepted by the parties for the electronic interchange of *EDI messages*.

**‘Supplier or contractor’:** a legal or natural person providing goods or services to the contracting authority and exchanging the relevant electronic documents (listed in the definition of e-PRIOR) with the *contracting authority*.

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

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

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

### 3. Subject

3.1. The contracting parties (‘the parties’) undertake to take the necessary measures to mutually use electronic means for communication in the areas indicated in section 1. The electronic documents will be exchanged using the *e-PRIOR* platform, using the *web services* or the *supplier portal* system. Access to the *e-PRIOR* platform may also go through an access point of an interoperable network such as the Open PEPPOL network.

3.2. The *contractor* will agree with the *contracting authority* on which of the above-mentioned means will be used. The *contractor* shall communicate his choice not later than 10 working days after the activation referred to in Section 1.2 of the present agreement.

### 4. Implementation and maintenance of the electronic systems

4.1. When using *web services*, the parties undertake to take the necessary measures to implement and maintain electronic systems that enable the effective use of electronic means to exchange electronic documents. The *electronic systems* are specified in the *interface control document*. The *contractor* must take the necessary technical measures to set it up at its own cost. The parties undertake the necessary measures to implement and maintain safety measures and procedures in order to adequately prevent messaging incurring any delays, messages being corrupted as to content or form, or messages being lost. Similarly, the parties shall strive to

prevent third parties from obtaining unauthorised access to messages. The safety measures and procedures are defined in the *interface control document*.

If the use of safety measures and procedures leads to the rejection or detection of one or more errors in an *EDI message*, the receiver shall inform the sender thereof as soon as possible, but at the latest within 2 (two) working days.

When a change in the *interface control document* requires adaptations, the *contractor* has up to six (6) months from receipt of the notification to implement this change. This period can be shortened upon mutual agreement of the parties. This period does not apply to urgent measures required by the security policy of the *contracting authority* aimed at ensuring integrity, confidentiality and non-repudiation of information and availability of *e-PRIOR*, which must be applied immediately.

4.2 When using the ***supplier portal*** the *contracting authority* takes the necessary measures to implement and maintain electronic systems that enable the effective use of the *supplier portal*.

4.3. If electronic communication is hindered by factors beyond the control of the parties, these undertake to notify each other immediately and to make the necessary measures to restore this communication. If it is impossible to restore the electronic communication within a reasonable period of time, the *contracting authority* may notify the *contractor* that alternative means of communication may be used, until the electronic communication is restored.

4.4. In any event, for reasons linked to business continuity, the *contracting authority* reserves the right to use alternative means of communication at any moment.

## **5. Authorised persons in e-prior**

5.1. The *contractor's* legal representative shall designate one or more *authorised person(s)* for each module, as defined in Article 2 of the present agreement. These persons are authorised to access to the system and, depending on the assigned roles, may sign or transmit documents through it.

5.2. The *contracting authority* shall grant access to the system to the *authorised person(s)* designated by the *contractor*. For this purpose, the latter must provide the *contracting authority* with a list of the *authorised person(s)* indicating their assigned roles for each module. The list must be drawn up using the access rights forms available on the Documentation Webpage indicated in Article I.3 of the present agreement.

The *contracting authority* may delegate the right to grant access to the system to the *contractor's* legal representative, who may subsequently sub-delegate it to *authorised persons*.

5.3. User roles enabling these *e-PRIOR authorised person(s)* to sign legally binding documents are granted only upon submission of supporting documents proving that the authorised person is empowered to act as a legal representative of the *contractor* from the date into force of the present agreement.

For the *e-Ordering* module, the contractor commits to appoint a single *authorised person* as a signatory.

5.4. The *contractor's* legal representative commits to take all necessary steps to notify the *contracting authority* in due time of any event affecting the list of *authorised person(s)*.

## **6. Validity and date of issuance of electronic documents**

6.1. Any electronic document and related attachments exchanged via *e-PRIOR* (or any other authorised platform) qualify as *EDI message*.



6.2. The parties agree that any document exchanged through such a system:

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

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

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

- a) the *order* message has been successfully received by the *contractor* (contract body and data appendix sent by the *contracting authority* to the *contractor*);
- b) a positive and related order confirmation message has been successfully sent from the *contractor* to the *contracting authority* (equivalent to the *contractor*'s signature); and
- c) a final message endorsing the order has been sent by the *contracting authority* to the *contractor* and successfully received by him (equivalent to the *contracting authority*'s signature).

6.4. A *dispatch advice*, *invoice* or debit/credit note shall be deemed to have been legally issued or sent:

- a) In case of using *web services*, when its status is set to "received" as defined in the interface control document.
- b) In case of using the *supplier portal*, when the contractor is able to successfully submit the e-document without any error messages. The XML document related to the e-document is considered as a proof of receipt by the *contracting authority*.

6.5. A *request for quotation* or a *receipt advice* is deemed to have been legally sent by the *contracting authority* when the message has been successfully received by the *contractor*.

## 7. Admissibility

To the extent permitted by the applicable law, the parties hereby agree that in the event of dispute, the electronic documents (including, in the case of using the *web services*, the records of the *EDI messages* maintained in accordance with the terms and conditions of this agreement) shall be admissible before the courts and shall constitute evidence of the facts contained therein unless evidence to the contrary is adduced.

## 8. Storage of electronic documents

8.1 When using *web services* all *EDI messages* exchanged by the parties shall be stored by each party, unaltered and securely, in accordance with the time limits and specifications prescribed by the applicable legislative requirements. The parties agree that *EDI messages* that have been stored may be reproduced on any type of data carrier whatsoever and may be made legible by means of said reproduction.

8.2 When using **the *supplier portal***, the contractor shall download the PDF or XML message for each e-document within one year of submission, and store them securely. After this period, copies of the e-documents are no longer available for automatic download from the *supplier portal*.

## 9. Entry into force

This agreement shall enter into force on the date of signature of the *contract* by the last party and shall become applicable for each module from the date indicated in section 1.2 of this agreement.

## **10. Amendments**

10.1. Any amendment to the agreement must be made in writing and agreed by both parties.

10.2. Amendments will be part of the present agreement from the time of their signature by the last party.

## **11. TERMINATION OF THE AGREEMENT**

11.1. This agreement expires on the last day of performance of the contract. For framework contracts, this corresponds to the last day of performance of the latest possible specific contract related to it. For direct contracts, this corresponds to the last day of performance of the relevant tasks or deliverables.

11.2. The *contracting authority* may terminate the present agreement subject to a notice period of at least one (1) month. Notice shall be given by means of a registered letter and shall mention the date on which the agreement is terminated. The notice shall specify the reasons for termination.

11.3. The *contractor* may request the *contracting authority* to terminate this agreement by written communication, in which it shall indicate the reasons leading to this request. The *contracting authority* will assess the situation and, if considered appropriate, it may terminate the present agreement.

11.4. Termination of the agreement shall exclusively concern transactions performed after the date of termination. Its termination shall not release the parties from the obligations that result from the present agreement.

## **12. SEVERABILITY**

The parties intend that if one or more provisions of the present agreement are held to be illegal, invalid or unenforceable to any extent, the other provisions shall remain in force.