

Ref. Frontex/NP/15/2020

Business analysis and IT-project support for IRMA 2.0

Annex I Tender Specification

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I. GENERAL INFORMATION

I.1 General Information on Frontex

The European Border and Coast Guard Agency - Frontex (hereinafter referred to as “Frontex” or “Contracting Authority”) was established by the Council Regulation (EC) 2016/1624 with a view to improve the integrated management of the external borders of the Member States of the European Union.

Further information about Frontex can be found on the Agency’s web site www.frontex.europa.eu

I.2 Procurement procedures

For its fast growing organisation and performance, Frontex is in constant need of goods and services. Tendering is the structured way to consult the market for the purchase of these goods and services.

The purpose of competitive tendering for awarding contracts is two-fold:

- To ensure the transparency of operations;
- To obtain the desired quality of services and supplies at the best possible price.

The procurement procedure is governed by the following legal provisions: Title VII of Regulation (EU, Euratom) 2018/1046 on the financial rules applicable to the general budget of the Union (Financial Regulation), repealing Regulation (EU, Euratom) No 966/2012 and Annex I to the same regulation.

I.3 Eligibility

Participation in this call for tenders is open on equal terms to all natural and legal persons coming within the scope of the Treaties, as well as to international organisations.

It is also open to all natural and legal persons established in 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, including the following:

- Under the Stabilisation and Association Agreements (SAA) economic operators established in FYROM, Albania, Montenegro, Serbia, Bosnia and Herzegovina and Kosovo have been granted access to procurement procedures of the Union institutions, agencies and bodies regardless of the value of the purchase.
- Under the EEA Agreement, economic operators established in Iceland, Norway and Liechtenstein have full access to procurement procedures of the Union institutions, agencies and bodies regardless of the value of the purchase.

The rules on access to procurement do not apply to subcontractors. Economic operators are free to choose their subcontractors from any country. Thus, in principle all economic operators can act as subcontractors of other economic operators who have themselves access to the EU procurement procedures. Subcontracting may not be used with the intent to circumvent the rules on access to procurement.

For tenderers established in the United Kingdom:

Please be aware that following the entry into force of the EU-UK Withdrawal Agreement* on 1 February 2020 and in particular Articles 127(6), 137 and 138, the references to natural or legal persons residing or established in a Member State of the European Union are to be understood as including natural or legal persons residing or established in the United Kingdom. **UK residents and entities are therefore eligible to participate under this call.**

* Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (https://ec.europa.eu/commission/publications/agreement-withdrawal-united-kingdom-great-britain-and-northern-ireland-european-union-and-european-atomic-energy-community_pl).

Participation is open to all natural and legal persons as defined above, under the condition that:

- a) They are not in any of the situations excluding them from participation and that they have no conflict of interest in connection with this contract;
- b) They have all the necessary knowledge and experience as well as technical and human resources to implement the contract; and
- c) They possess adequate economic and financial capacity to perform the required services.

I.4 Penalties

Without prejudice to the application of liquidated damages laid down in the contract, Tenderers and Contractors who have been guilty of making false declarations concerning situations referred to in point III.3 shall be subject to the administrative and financial penalties set out in Article 135 and 138 of the above mentioned Regulation No 2018/1046.

I.5 Joint Tenders

No special legal form is required but, in the event a group of Contractors submits an acceptable offer, it shall be necessary to provide an undertaking that each company shall be jointly and severally responsible for the due performance of the contract. In the case of a consortium bid, the Contractor shall be required to act on behalf of the consortium.

Statements saying, for instance, that:

- a) “...one of the partners of the joint tender shall be responsible for part of the contract and another one for the rest...”, or
- b) “...more than one contract shall be signed if the joint tender is successful...”

are thus incompatible with the principle of joint and several liability.

Frontex shall disregard any such statement contained in a joint tender, and further reserves the right to reject such tenders without further evaluation on the grounds that they do not comply with the tender specifications.

I.6 Sub-contracting

Sub-contracting is allowed, provided that the subcontractor(s) and his scope of work shall be clearly indicated in the tender. Nevertheless, the responsibility for the full execution of the contract rests with the Contractor, as Frontex has no direct legal commitment with the subcontractor(s).

Accordingly:

- a) Frontex shall treat all contractual matters (e.g. payment) exclusively with the main Contractor, whether or not the tasks are performed by a subcontractor;
- b) Under no circumstances the main Contractor can avoid liability towards Frontex on the grounds that the subcontractor is at fault.

If subcontracting is envisaged in the tender it shall include a complete documentation that:

- a) defines clearly the roles, activities and responsibilities of subcontractor(s);
- b) specifies the volume / proportion of the tender being subcontracted for each subcontractor; and
- c) contains a letter of intent by each subcontractor stating its intention to collaborate in case the contract is awarded.

All members of the consortium and subcontractors shall meet the eligibility and exclusion criteria given in points I.3 and III.3.

I.7 Cost of preparing tenders

The invitation to participate in a tender procedure does not constitute any commitment on behalf of Frontex for award of the contract to a company. Frontex shall not reimburse any costs incurred by Tenderers in preparing and submitting offers.

I.8 Misrepresentation and corruptive practices

The contract shall not be awarded to Tenderers who, during the procurement procedure:

- a) are subject to a conflict of interest;
- b) are guilty of misrepresentation in supplying the information required by Frontex as a condition of participation in the contract award procedure or fail to supply this information;
- c) attempt to obtain confidential information, enter into unlawful agreements with competitors or influence the evaluation committee or Frontex during the process of examining, clarifying, evaluating and comparing tenders.

All the above-mentioned circumstances shall lead to the rejection of this offer and may result in administrative penalties.

I.9 Confidentiality and public access to documents

In the general implementation of its activities and for the processing of tendering procedures in particular, Frontex observes the following EU regulations:

- a) Regulation (EC) 2018/1725 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. Details concerning the processing of personal data are available in the privacy statement at: https://ec.europa.eu/info/data-protection-public-procurement-procedures_en;
- b) Regulation (EC) No. 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

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, agencies and bodies, 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 have access to procurement, who are not found to be in an exclusion situation referred to in Article 136(1) of the Financial Regulation, who are not rejected under Article 141 of the Financial Regulation, 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 the price of the offer and/or contract value. 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 offer, technical or trade secrets.
- For the specific case of framework contract in cascade, the second ranked in the cascade may ask for comparative advantages of the tender ranked first, but not about the tender ranked third and so forth if there are more than three contractors in the cascade. For specific contracts awarded following reopening of competition, the unsuccessful contractors can ask for the name of the winning contractor but not for the characteristics and relative advantages of the winning tender and the price paid, since the receipt of such information by parties to the same framework contract each time competition is reopened might prejudice fair competition between them.
- 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, 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.

For the purpose of tender preparation and potentially for the execution and/or performance of the contract, the Contractor is required to sign the Declaration of Confidentiality (see Annex VII).

All Contractor's staff engaged in the implementation of the Contract as the result of this procedure, will be required to sign the Declaration of Confidentiality (Appendix 5 of Annex II Terms of Reference) before the commencement of work.

II. SPECIFIC INFORMATION

II.1. Scope and contractual information

II.1.1 Scope of Contract

The subject of the contract is the provision of business analysis services and IT-project support to the Integrated Return Management Application 2.0 (IRMA 2.0) on Time and Means basis. Detailed description of requirements is presented in the Annex II Terms of Reference document, hereinafter referred to as "ToR".

II.1.2 Type of contract and venue

The envisaged contract is a "Time and Means" Service Contract. Frontex intends to conclude a Contract with the selected Tenderer on the basis of the draft Service Contract included in the Annex III to the Invitation to Tender. The provisions of the draft Contract are subject to minor modifications prior to the signature.

As a default, the works contracted under this Contract shall be performed by the Contractor "Intra muros" at Frontex Headquarters (Plac Europejski 6, Warsaw, Poland). The exceptional cases are indicated in chapter 5.2 of the ToR (Annex II).

II.1.3 Duration of the contract

The Contract shall enter into force on the day of its signature by the last contracting party.

This Contract duration is 110 man-days and is expected to have an initial duration of 6 months for the performance of all tasks, starting from the date of entry contract into force (Stage A).

The Contract can be extended, if needed, for additional 70 man-days corresponding to additional 4 months on the same conditions, under the sole discretion of Frontex (Stage B). In this case, the entire duration of the Contract including the optional renewal shall not exceed 12 calendar months from the entry of the Contract into force.

The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses.

II.1.4 Volume of the contract

The maximum value (excluding VAT) estimated for the whole duration of the contract is 139,000 EUR.

II.2. Form and content of the tender

The tender shall be clear and concise, with continuous page numbering, and assembled so as to constitute a coherent whole.

The tender shall include all the information and documents required by Frontex for the appraisal of tenders on the basis of the exclusion, selection and award criteria, and in accordance with these specifications and Terms of Reference, in the absence of which, Frontex may decide to exclude the tender from the awarding procedure for the contract.

The tender for this Contract shall be submitted according to the rules set out in the Letter of Invitation to tender.

II.2.1 Documents to be included in the offer

The Tenderer's proposal shall contain the following information and documents:

1. Technical Proposal
2. Financial Proposal
3. Supporting documents

The detailed list of all documents/information required for this Procurement Procedure are listed below.

1. Technical proposal

Technical Proposal shall be prepared in accordance with Annex II Terms of Reference document. The Technical Proposal shall be consistent with Terms of Reference and provide all information needed to apply the award criteria. It must contain at least the following elements:

- a) Description of the Tenderer's project approach in relation to the Tasks under the Contract. The proposed method shall take into account information provided in ToR, offer the most practical, effective, easy to control and measure approach and cover at least the following aspects:
 - i) Work breakdown structure and deliverables - decomposition of the total scope of work related to provisioning business analysis services and IT-project support to the IRMA 2.0 solution.
 - ii) Frame schedule - the schedule shall be aligned with proposed work breakdown structure and present the relative timeline for all activities, their synchronization.
 - iii) Stakeholders and communication - initial stakeholder analysis with communication plan.
 - iv) Quality assurance - description of comprehensive and effective of the proactive and reactive quality assurance measures for the Tasks under the Contract.
- b) Description of similar projects completed by the Tenderer, including dates of the projects and brief description of the tasks undertaken.
- c) Description of risks and mitigations for the Tasks under the Contract - assessment of important risks specific for the Tasks under the Contract and the recommended mitigation actions in a form and scope recommended by the Tenderer.
- d) CV of the of at least one eligible Consultant, preferable two, including the following:
 - v) The CV shall be prepared using the form attached in Appendix 2 to the ToR (Annex II);
 - vi) The CV shall address all the requirements and requested documents mentioned in chapter 6 of the ToR (Annex II) and shall be supplemented with:
 - Copy of diploma proving the candidate's highest relevant educational degree as declared in the CV;
 - Copies of professional certificates required or copies of equivalent certificates accompanied with justification of equivalency which is a subject of Frontex unilateral acceptance;
 - Detailed description of the past experience to demonstrate the compliance with required profile;
 - Copies of any other certificates or documents relevant to the CV.
- e) Filled in and signed by the candidate "Statement of Intent" form that is attached in Appendix 3 to the ToR (Annex II),
- f) Filled in and signed by the candidate "Statement of Compliancy to the Profile" form that is attached in Appendix 4 to the ToR (Annex II).

2. Financial proposal

Financial Proposal shall be prepared using the form in Annex VI Financial Proposal to the Letter of Invitation to tender.

The financial proposal shall contain all necessary information, **shall be consistent with the Technical Proposal** and shall contain at least the following elements:

- a) Unit price of business analysis and IT-project support services - i.e. price of one man-day of Tenderer's Consultant work.
- b) The total price per each Stage and overall total for all Stages.

In preparing the Financial Proposal, the Tenderer should take into account that Frontex is, in general, exempt from all taxes and dues, including VAT, pursuant to the Protocol on the Privileges and Immunities of the European Union, annexed to the Treaty on the Functioning of the European Union¹. Therefore, VAT will not be taken into account in evaluation of tenders.

The Tenderer, if established outside of Poland, shall take the necessary steps in order to obtain, from the competent national authorities, exemption from VAT in respect of the purchase to be provided under the Contract concluded with Frontex. Frontex may assist the Tenderer by issuing "VAT and excise Duty Exemption Certificate - 1510 form" used for this purpose by the European Union.

Prices shall be quoted in Euro net amount (excluding VAT) and be all inclusive, i.e. include all costs related to the execution of the Contract. If the Tenderer is subject to VAT (which is the case in Poland) and is required to pay that tax, the offer should clearly show the price excluding VAT. Nevertheless, the VAT amount shall not be taken into consideration in the financial evaluation.

3. Supporting documentation

The supporting documentation is an important part of the offer and shall be complete to guarantee that the technical proposal shall be evaluated. The supporting documentation shall contain the following elements:

1. Tenderer's Declaration of Honour (Annex V to the Invitation to Tender),
2. Tender Submission Form - duly filled and signed by the authorised representative of the Tenderer (Annex IV to the Invitation to Tender),
3. Documents confirming fulfilment of legal, economic and financial, and technical and professional capacities as requested in points III.4.1, III.4.2 and III.4.3.
4. Before the signature of the contract the winning Tenderer shall be also required to submit the duly completed and signed Financial Identifications bank account forms for the prospective registration of the company in the EC Accounting System. The forms are available under: http://ec.europa.eu/budget/contracts_grants/info_contracts/financial_id/financial-id_en.cfm
5. Declaration of Confidentiality (see Annex VII).

III. EVALUATION OF OFFERS

Following opening, the admissible offers will be evaluated by duly designated Evaluation Committee, possessing the technical and administrative capacities necessary to give an informed opinion on the offers.

III.1 Offer opening session

No public opening session shall be held for this procedure; however Frontex will check whether the offer received is compliant with the following formal requirement:

- a) Submitted within the deadline.
- b) Confidentiality of the offer guaranteed until the opening.

¹ OJ C 83, 30.03.2010, p.266 - 272).

III.2 Offer evaluation session

Offers complying with the formal requirements checked during the offer Opening Session shall be considered eligible and shall be evaluated in three stages:

- a) Exclusion criteria
- b) Selection criteria
- c) Award criteria

The Evaluation Committee's deliberations are held in closed sessions and its decisions are collective. The members of the Evaluation Committee are bound to secrecy.

III.3 Exclusion criteria

In line with the Regulation (EU, Euratom) 2018/1046 (with all amendments) on the financial rules applicable to the general budget of the Union, Tenderers shall be excluded from participation in a procurement procedure if they are in any of the situations as described therein.

In order to fulfil the eligibility criteria, the Tenderer or in case of consortium all member of consortium (and also all subcontractors, if applicable) shall provide within their bids the European Single Procurement Document (ESPD) or, as long as the ESPD is not available, a declaration on their honour, duly signed and dated stating that they are not in one of the situations referred above (see Annex V - the Tenderer's Declaration of Honour).

The Tenderer which will be selected for the award of the Contract shall provide in due time, preceding the signature of the Contract, the evidence confirming fulfilment of the Exclusion Criteria, as requested by the contracting authority.

III.4 Selection criteria

Each offer shall be verified against the criteria specified below. Incomplete Tenders shall be rejected. However, Frontex may request that missing formal documents are submitted by e-mail or fax. Normally these are to be submitted within 48 hours following the request.

III.4.1 Legal capacity

Requirement

The Tenderer shall provide evidence that is authorised to perform the Contract under the national law by provision of the evidence that the Tenderer is already established as a recognised legal entity and is registered in a relevant professional or trade register, or a sworn declaration or certificate, membership of a specific organisation, express authorisation or entry in the VAT register.

Evidence required

The tenderer shall provide a duly filled in and signed Legal Entity form (see the link below) accompanied by the documents requested therein.

http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal-entities_en.cfm

III.4.2 Economic and financial capacity

Requirement

The Tenderer shall provide evidence of its economic and financial capacity to guarantee continuous and satisfactory performance throughout the envisaged lifetime of the Contract.

Evidence required

The Tenderer shall provide Frontex with the declaration (free-format) of the company's total yearly turnover from the past three years for which accounts have been closed (information shall be provided separately for each year) . The total yearly turnover shall be minimum equivalent of 100 000 EUR (separately for each year).

If the currency of the tenderer's accountancy is other than Euro, the equivalent will be calculated on the basis of the exchange rates applicable for the month of tender submission published by the European Commission at: http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm

The obligation of a tenderer to submit the documentary evidence referred to in this point is waived for a particular year if such evidence has already been submitted to Frontex for that year for the purposes of another procurement procedure and still complies with requirements of this point. The tenderer is in such cases obliged to indicate the reference number of that procurement procedure.

Frontex reserves the right to request any additional documentary evidence it deems necessary or useful in order to verify a tenderer's economic and financial standing.

III.4.3 Technical and professional capacity

Requirement

The Tenderer shall prove its technical and professional capacity to perform the contract. The following selection criteria will be applied by Frontex to identify eligible offers:

A. Company experience

The Tenderer must have successfully completed in the most recent four years at least two projects which included delivery of business analysis services. Each of these projects shall have the following minimal characteristics:

- The business analysis and IT-project support included at least one of the following aspects:
- Agile project methodology;
- The value of business analysis and IT-project support services was at least 100 000 EUR.

B. Personnel capacity

The Tenderer should possess the relevant necessary human resources for the implementation of the project. The following criteria must be met:

- The Candidates must be fully compliant with mandatory requirements set in chapter 6 of the ToR (Annex II)

Evidence required

The following documents or/and information shall be presented as evidence of compliance with the technical and professional capacity criteria listed above:

- A.1 short presentation of the Tenderer's portfolio/background details, displaying the relevant professional experience from the last four years with sums and dates (number of years in operation, related company experience and projects, number of consultants employed and/or contracted);
- A.2 a list of projects performed by the Tenderer of the similar services, with a minimum of two projects of similar characterisation (i.e. which included delivery of business analysis services) completed within the last four years of the net value of minimum equivalent of 100 000 EUR each. A list with names and short descriptions of projects as well as sums, dates, recipients and contact details should be provided. Selected projects from the list should be accompanied by reference letters from clients confirming the satisfactory completion of the projects;
- B. by submission of a CVs of at least one compliant Consultant. **Frontex requires that the Consultants (Business Analyst) offered for performance of this Contract are fully compliant with mandatory requirements set in chapter 6 of the ToR (Annex II) which will be verified based on the submitted CV and required supplementing documentation.** The compliance check will be performed in accordance with the criteria and the related scoring mechanism described in Appendix 1 Personnel Evaluation Grid (Phase 1: Eligibility check, Appendix 1 of Annex II TOR).

Shortages in fulfilment of the mandatory requirements will result in rejection of a candidate. Only successful candidates will be invited to the next phase of the evaluation. No points will be assigned during this step.

III.4.4 Compliance

The tenderer must be compliant with applicable obligations in the fields of environmental, social and labour law.

Frontex may reject Tenderers at selection criteria compliance stage in case of presence of professional conflict of interest that may negatively affect the performance of the contract.

Only the offers that clearly demonstrate that they meet the Selection Criteria shall pass to the next stage of the evaluation.

The obligation of a Tenderer to submit the documentary evidence referred to in this point is waived for particular year if such evidence has already been submitted to Frontex for that year for the purposes of another procurement procedure and still complies with requirements of this point. The Tenderer is however obliged to indicate the reference number of that procurement procedure.

The proposal shall be evaluated for its compliance with the technical specifications and in particular with the minimum requirements presented in the ToR (Annex II). The compliance of presented Consultant(s) shall be verified against the Personnel Evaluation Grid presented in Appendix 1 of ToR (Annex II). The criteria presented in the table will be used during the technical evaluation.

III.5 Award criteria

Once the Tenderer has demonstrated the capacity to perform the contract on the grounds of the selection criteria, and its technical offer has been evaluated as compliant with technical requirements, the offer will be assessed on the basis of the award criteria.

The award criteria serve to identify the most economically advantageous tender. The quality of each offer will be evaluated in accordance with the award criteria and the associated weighting. No award criteria and sub-criteria others than those detailed below will be used to evaluate the offer.

The contract shall be awarded to the Tenderer offering the best value for money, where the technical quality score shall account for 70% and the price shall constitute another 30% of the final score.

III.5.1 Technical evaluation

Once the Tenderer has demonstrated the capacity to perform the contract on the grounds of the selection criteria, and its technical offer has been evaluated as compliant with technical requirements, the offer will be assessed on the basis of the award criteria.

The evaluation of Technical Proposal will be done in accordance with the below criteria:

1. Qualifications, skills, expertise, suitability and professional competences of the proposed Consultant(s) for the delivery of the services affecting the quality and effectiveness of the performance of the contract, based on compliance with the requirements of the personnel:
 - 1.1. The Candidate(s) successfully evaluated in selection evaluation step must successfully passed the suitability check (Phase 2: Suitability check, Appendix 1 of Annex II TOR). The Candidate(s) will be invited for an interview and a written/practical technical test in order to evaluate Candidate(s) skills as well as his/her suitability for the tasks described in the Terms of Reference document. The interview will take place in Frontex premises. The Candidate(s) will be offered with 2 alternative dates for the interview and one of them must be accepted.
 - 1.2. The suitability check will be performed in accordance with the criteria and the related scoring mechanism described in Appendix 1 Personnel Evaluation Grid.
 - 1.3. In order to be considered eligible, the Candidate(s) must collect during the Phase 2: Suitability check:

(1) at minimum 60% of the maximum of 20 points during technical test (ref. Appendix 1 of Annex II TOR Personnel Evaluation Grid)

(2) at minimum 60% of the maximum of 80 total points for the Personnel Evaluation Grid (ref. Appendix 1 of Annex II TOR Personnel Evaluation Grid).

Candidates not reaching this threshold will be rejected.

2. Suitability of the proposed project approach in relation to the Tasks under the Contract, including quality assurance and continuous service improvement.

3. Adequacy of risks identified by the Tenderer in relation to the Tasks under the Contract and quality of the proposed counter-measures

Technical evaluation will be score in accordance with the below table. The minimum TOTAL SCORING for a proposal shall be greater than 60 points out of the total number of 100 points that can be granted, otherwise the offer is disqualified as unacceptable.

Technical Evaluation Grid				
Criterion		Minimum score	Maximum score	Scoring
1	Qualifications, skills, expertise, suitability and professional competences of the proposed Consultant(s) for the delivery of the services, based on compliance with the requirements of the personnel. The score will be calculated based on Personnel Evaluation Grid (using the pattern for Technical score indicate in this chapter multiplied by 70 points).	0	70	
2	Suitability of the proposed project approach in relation to the Tasks under the Contract, including quality assurance and continuous service improvement. The highest score will be granted to the project approach which should cover main aspects like: scope, schedule, quality, adequacy of tools and methods used, stakeholder and communication, well-integrated, well-reasoned, and appropriate to the aims of the project, quality assurance and continuous service improvement.	0	20	
3	Adequacy of risks identified by the Tenderer in relation to the Tasks under the Contract and quality of the proposed counter-measures. Highest score will be granted to the offer presenting the highest understanding of the: <ul style="list-style-type: none"> risk mitigation approach including proposed replacement of personnel, planned and unplanned leave or underperformance clear and appropriate management of requests for changes and conflicting requirements quality of the proposed counter-measures including flexibility, adaptability, relevance and clarity of the solution offered 	0	10	
Total			100	
TOTAL SCORING				
Is TOTAL SCORING greater than the minimum threshold of 60 points (Y/N)?				

The total scoring of the evaluated proposal shall be calculated as the sum of points earned in the column Scoring of Technical Evaluation Grid, per criteria described in rows 1 - 3.

The Technical score shall be calculated on the basis of the sum of the points received in relation to the components of the technical proposal as above and then technical scores shall be calculated for each tender based on the following formula:

$$\text{Technical score} = \frac{\text{Total technical score of the evaluated tender}}{\text{The highest technical score earned in the tender}}$$

III.5.2 Financial Evaluation

The Financial evaluation will be conducted on the basis of the Financial Proposals. The points will be awarded to the tenders eligible to participate in the financial evaluation on the basis of the following formula (based on the total net price offered indicated in Annex VI - Financial offer):

$$\text{Financial score} = \frac{\text{Lowest total Reference Price of an eligible offer}}{\text{Total Reference Price of the evaluated proposal}}$$

III.5.3 Final Evaluation

The contract will be awarded to the tenderer offering most economically advantageous offer. The most economically advantageous offers are established by weighting technical quality against price on 70/30 basis. It will be established by the application of the following formula:

$$\text{Final score} = (70 \times \text{Technical score}) + (30 \times \text{Financial score})$$

The Contract as a result of the competition will be awarded to the Tenderer who submitted proposal with the highest Final Score.

III.5.4 No obligation to award

Completing the procedure of the call for tenders in no way imposes on the Frontex an obligation to award the contract. Frontex shall not be liable for any compensation with respect to tenderers whose offers have not been accepted, nor shall Frontex be liable when deciding not to award the contract.

III.5.5 Notification of outcome

Each Tenderer will be informed in writing about the outcome of the call for tender. If Tenderers are notified that a tender has not been successful, Tenderers may request additional information by mail. This information can be given in a follow-up letter providing further details in writing, such as the name of Tenderers to whom the contracts are awarded and a summary of the characteristics and relative advantages of the successful tenders in comparison to the unsuccessful offer of the Tenderer requesting such further information.

III.6 Assessment of joint tenders and tenders involving sub-contracting

Joint tenders shall be assessed as follows:

- a) The exclusion criteria and the selection criteria for economic and financial capacity shall be assessed in relation to each company individually².
- b) The selection criteria for technical and professional capacity shall be assessed in relation to the combined capacities of all members of the consortium, as a whole.
- c) The award criteria shall be assessed in relation to the tender, irrespective of whether it has been submitted by a single legal or natural person or by a tendering group.

Joint offers in the stage following the award:

² For the criteria that are deemed to be achieved above a certain level, e.g. overall turnover or turnover with the respect to the specific procurement, a consolidated assessment of all members of consortium together shall be made.

If the Tenderer submits a joint offer but has not yet set up an entity with a legal form, and if he is awarded the contract, the contracting authority may require the Tenderer to give a formal status to his collaboration before the contract is signed, if this change is necessary for proper performance of the contract. This can take the form of an entity with or without legal personality but offering sufficient protection of Frontex contractual interests (depending on the Member State concerned, this may be, for example, a consortium or a temporary association).

The contract shall be signed by all members of the group, or by one of the members, which has been duly authorised by the other members of the group (a power of attorney or sufficient authorisation has to be provided and shall be attached to the contract as an annex), when the Tenderers have not formed a legal entity.

Tenders involving subcontracting shall be assessed as follows:

- a) The exclusion criteria and the selection criteria for economic and financial capacity shall be assessed in relation to each company individually².
- b) The selection criteria for technical and professional capacity shall be assessed in relation to the combined capacities of the Tenderer and the subcontractor, as a whole, to the extent that the subcontractor puts its resources at the disposal of the Tenderer for the performance of the contract.
- c) The award criteria shall be assessed in relation to the tender. Subcontracting as such cannot be an award criterion.

² For the criteria that are deemed to be achieved above a certain level, e.g. overall turnover or turnover with the respect to the specific procurement, a consolidated assessment of a Tenderer plus subcontractor together shall be made, to the extent that the subcontractor puts its resources at the disposal of the Tenderer for the performance of the contract.

Ref. Frontex/NP/15/2020

**Business analysis and IT-project support
services for IRMA 2.0**

Annex II
Terms of Reference

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1. Appendices

Appendix 1 - Personnel Evaluation Grid

[illegible]

Appendix 2 - CV template

The CV shall be prepared in accordance with Appendix 1 - Personnel Evaluation Grid above.

Name:			
Date of birth:		Date IT career started:	
Type of contract:	<i>Check the appropriate:</i> <input type="checkbox"/> Permanent <input type="checkbox"/> Non-permanent		Number of months working for the Tenderer:months
Highest relevant educational degree:			
Languages: (indicate CEFR level)			
Summary (use this area to briefly indicate the major facts which Frontex should know about this individual, indicate the candidate expertise and qualities in correspondence to the requirements):			
PROFFESIONAL CERTIFICATION (the candidate professional certification shall correspond to the requirements defined in Appendix 1 under area Primary expertise)			
Name and level of the certificate:	Certifying Authority and dates of certification:	Comments (justification for equivalency):	
PROJECT EXPERIENCE (the candidate project experience shall correspond to the requirements defined in Appendix 1 under area Primary expertise and Experience and Advantageous expertise)			
Project identification:			
Customer sector:			
Contractor:			
Dates of the project:			
Budget:			
General project description:			
Candidate Roles & Responsibilities in the project and duration of his engagements:			
ICT technologies used by the <u>candidate</u> during the project relevant to the service scope:			

Appendix 3 - Statement of Intent Form

Open Tender procedure: Frontex/NP/15/2020/SB

Contract for Provision of Business analysis and IT-project support services
for IRMA 2.0

Statement of Intent

To _____ (*Name of tendering company*)

I, _____ (*Name and Surname*)
the undersigned, do hereby grant authority to the Tendering Company
_____ (*Company name*) to submit
my Curriculum Vitae for the purposes of submitting the tender for the call
for tenders, Frontex/NP/15/2020.

I also confirm that in the event that the above mentioned Tendering
Company is successful in securing this contract, I shall make my services
available to this company for the contract with Frontex.

Should any elements concerning my availability change during the
tendering process, I will immediately report this to the Tendering Company.

Date: _____

Signature: _____

Appendix 4 - Statement of Compliancy Form

Open Tender procedure: Frontex/NP/15/2020/SB

Contract for Provision of Business analysis and IT-project support services for
IRMA 2.0

-

Statement of Compliancy to the Profile

I, _____ (Name and Surname)
the undersigned, do hereby certify that I'm fully aware of the requirements
for the personnel profile of _____
that I'm assigned to by the Tendering Company _____
_____ for the performance of the contract
concluding from the call for tenders Frontex/NP/15/2020. I also confirm that I
fully fulfil these requirements.

Date: _____

Signature: _____

The Tendering Company _____ hereby
confirms that the person listed above fully meets the requirements of the
profile stated above.

Date: _____

Name: _____

Signature: _____

Appendix 5 - Declaration of Confidentiality Form

Tender procedure: Frontex/NP/15/2020/SB

Contract for the provision of Business analysis and IT-project support services for
IRMA 2.0

-

Declaration of confidentiality Contractor's Personnel

I, _____ (Name and Surname)

in my function of _____ (full Function name),

representing _____ (full Company name),

hereby declare that I will treat the information and/or documents that are made available to me or generated in the context of the execution of the above mentioned contract with the strictest secrecy. No such information and/or documents will be divulged to any third parties.

I am aware that tasks carried out in view of the execution and/or performance of this contract also are governed by this principle of secrecy.

I am also aware of the fact that the principle of secrecy pointed out in the first paragraph will continue to apply after the completion of the above mentioned contract.

All information and documents received will be used solely for the execution and/or performance of this contract.

Name of the person: _____

Signature: _____

Place, date: _____

Appendix 6 - Attendance Sheet Form

Warsaw, _____

Year	
Month	
Specific Contract	
Frontex Project Name	
Name of Contractor	
Name of Consultant	
Frontex Project Manager	

phone:
for approval

	Signature of Consultant	1 st Entry Time	1 st Exit Time	2 nd Entry Time	2 nd Exit Time
1					
2					
3					
4					
5					
6					
7					
8					
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10					
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29					
30					
31					

Appendix 7 - Model of Task / Deliverable Acceptance Form

Model of Task / Deliverable Acceptance Form

CONTRACT No

Original document - duly signed - to be attached to the invoice

TASK / DELIVERABLE DESCRIPTION

Please give reference to the Terms of Reference and short description of the task or deliverable.

Please describe observations and reservations if any.

In case of Task/Deliverable rejection please detail reasons.

TASK / DELIVERABLE is ACCEPTED / REJECTED

To be filled in by Frontex:

Official responsible for acceptance (in block capitals):	
Date and signature	
Official responsible for final validation (in block capitals):	
Date and signature	

Appendix 8 Report on Tasks Performed Form

Report on tasks													
Contract no./201..													
Reporting period		Version		Adrese									
Originator													
Filename													
Follow-up to/submitted for													
Task no.	Task name	Planned start date	Planned finish date	Actual start date	Actual or estimated finish date	Deviation from planned finish date (days)	Estimated time (hours)	Time invested (hours)	Complete	Reference to the output	Deliverables	Comments	
From the contract	Contract								How much of the task is % completed	insert links to SharePoint or other repositories where you have documents to prove your work results	Insert all the deliverables you have produced for the tasks. If you worked jointly with the other members of the team please estimate how much % is your contribution to the deliverable (include the task of the other team member also)	Approved work/deliverables, or any other comments	
Report prepared by				Date		Signature				Report accepted	Date	Signature	

Service Contract

No Frontex/NP/15/2020

*Service contract for Business analysis and IT-project support services for IRMA
2.0*

European Border and Coast Guard Agency, Plac Europejski 6, 00-844 Warsaw, Poland, NIP (VAT registration number): 1132575531 (hereinafter referred to as "Frontex" or "the Contracting authority"), represented for the purposes of the signature of this service contract by [*forename, surname, function, department*],

on the one part, and

[*full official name*]
[*official legal form*]
[*statutory registration number*]
[*full official address*]
[*VAT registration number*]

(hereinafter referred to as 'the Contractor'), represented for the purposes of the signature of this contract by:

.....
(forename, surname) (function of legal representative)

[The parties identified above and hereinafter collectively referred to as the 'the Contractor' shall be jointly and severally liable vis-à-vis the contracting authority for the performance of this Contract.]

on the other part,

HAVE AGREED

to the Special Conditions, General Conditions for service contract and General Terms and Conditions for Information Technologies Contracts (GTCITC) and the following annexes:

Annex I - Terms of Reference (Invitation to tender ref.no Frontex/NP/.../2019)

Annex II - Contractor's Tender ref.no Frontex/NP/.../2019 of [*insert date*]

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

This Contract sets out the obligations of the parties during and after the duration of this Contract.

All documents issued by the Contractor (end-user agreements, general terms and conditions, etc.) except its tender are held inapplicable, unless explicitly mentioned in the special conditions of this 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.

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I. SPECIAL CONDITIONS

ARTICLE I.1 ORDER OF PRIORITY OF PROVISIONS

If there is any conflict between different provisions in this Contract, the following rules must be applied:

- (a) The provisions set out in the special conditions take precedence over those in the other parts of the Contract.
- (b) The provisions set out in the general conditions take precedence over those in **GTCITC**
- (c) The provisions set out in the general conditions take precedence over those in Annexes.
- (d) The provisions set out in the Terms of Reference (Annex I) take precedence over those in the Contractor's tender (Annex II).

ARTICLE I.2 SUBJECT MATTER

- I.2.1** The subject matter of the Contract is provision of services in the area of business analysis and IT-project support for envisioned interfaces and applications on Time & Means basis, as described in the Terms of Reference (Annex I), hereinafter referred to as "ToR".
- I.2.2** The Contractor shall execute the tasks assigned by providing services in accordance with the Terms of Reference annexed to the Contract (Annex I).
- I.2.3** The Contract does not confer on the Contractor any exclusive right to provide the services.

ARTICLE I.3 ENTRY INTO FORCE AND DURATION OF THE CONTRACT

Service Contract

- I.3.1** This contract is a "Time and Means" Service Contract and shall enter into force on the date on which it is signed by the last contracting party.
- I.3.2** The performance of the contract cannot start before its entry into force.
- I.3.3** The Contract execution shall be effectively initiated within two weeks after entering the Contract into force, on the date indicated by Frontex Contract Manager.
- I.3.4** The Contract is concluded for 110 man-days and for a period of 6 months, starting from the entry of the Contract into force.
- I.3.5** This contract execution shall end upon the consumption of the contracted man/days but the contract tasks/deliverables shall be completed not later than within 6 months.
- I.3.6** The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses.

Service Contract Renewal

- I.3.7** The Contract can be extended, if needed, for additional 70 man-days corresponding to additional 4 months and on the same conditions, under the sole discretion of Frontex. In this case, the entire duration of the Contract including the optional renewal shall not exceed 180 man-days and 10 calendar months from the entry of the Contract into force.

ARTICLE I.4 PRICES

I.4.1 Price of the Contract and maximum amount

The maximum amount to be paid by Frontex under the Contract is EUR [*amount in figures and in word*] covering all tasks executed under the Contract. However, this does not bind the contracting authority to purchase for the maximum amount.

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

ARTICLE I.5 PAYMENT ARRANGEMENTS

Payments under the Contract will be made in accordance with Article II.21. Payments shall be executed only if the Contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted.

I.5.1 Pre-financing

Pre-financing is not applicable to this contract.

I.5.3 Interim payments

1. The contractor (or leader in the case of a joint tender) may claim an interim payments after the end of a calendar month in accordance with Article II.21.6.

The contractor (or leader in the case of a joint tender) must send an invoice in accordance with Article 1.5.4 for the interim payment as provided for in the terms of reference, accompanied by the following:

- (a) 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;
- (b) insert relevant progress report or deliverable result or reference to tender specifications or contract.

2. The contracting authority must approve any submitted documents or deliverables and pay within 30 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.5.3 Payment of the balance

1. The Contractor may claim the payment of the balance in accordance with Article II.21.6.

The Contractor must send an invoice for payment of the balance accompanied by final written acceptance of all deliverables confirmed by Appendix 6 Model of Task / Deliverable Acceptance Form of Annex I issued and signed by the Frontex (to be attached to the final invoice) and accompanied by the following:

- (a) 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;
- (b) insert relevant final progress report or deliverable or reference to tender specifications or contract.

2. The contracting authority must approve the submitted documents or deliverables and pay within 30 days from receipt of the invoice.

3. If the contracting authority has observations to make, it must send them to the Contractor (or leader in the case of a joint tender) and suspend the time limit for payment in accordance with Article II.21.7.

The Contractor (or leader in the case of a joint tender) has 15 calendar days to submit additional information or corrections or a new version of the final progress report or other documents if the contracting authority requires it.

4. The contracting authority must give its approval and pay within the remainder of the time-limit indicated above, unless it rejects partially or fully the submitted documents or deliverables.

I.5.4 Invoice arrangements

Invoices and the documents accompanying them are to be scanned and sent in pdf format (attached to an email) and addressed to invoices@frontex.europa.eu with the subject indicating the reference number of the Contract and the interim period.

ARTICLE I.6 GUARANTEES

I.6.1 Performance guarantee

Performance guarantee is not applicable to this Contract.

I.6.2 Retention money guarantee

Retention money guarantee is not applicable to this Contract.

ARTICLE I.7 BANK ACCOUNT

Payments must be made to the Contractor's (or leader's in case of a joint tender) bank account denominated in EUR, identified as follows:

Name of bank:
Full address of branch:
Exact denomination of account holder:
Full account number including bank codes:
[IBAN¹ code:]

Amendment of the bank account by the Contractor requires proper notification to Frontex signed by the person authorised to conclude the Contract and sent in line with art. I.8.

ARTICLE I.8 COMMUNICATION DETAILS

For the purpose of this Contract, communications must be sent to the following addresses:

Contracting authority:
[Full name]
[Function]
Frontex
Plac Europejski 6, 00-844 Warsaw, Poland
Tel:
Email:

Contractor (or leader in case of a joint tender):
[Full name]
[Function]
[Company name]
[Full official address]
Tel:
Mob:
Email:

ARTICLE I.9 PROCESSING OF PERSONAL DATA

I.9.1 Processing of personal data by the contracting authority

For the purpose of Article II.9.1,

¹ BIC or SWIFT code for countries with no IBAN code.

- (a) the data controller is *[insert position of the data controller and name of the organisational entity]*;
- (b) the data protection notice is available at https://ec.europa.eu/info/data-protection-public-procurement-procedures_en.

I.9.2 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 are *[provide a short and concise description of the subject matter and purpose]*;
- (b) The localisation of and access to the personal data processed by the contractor shall comply with the following:
 - i. the personal data shall only be processed within the territory of [the European Union and the European Economic Area][...] and will not leave that territory;
 - ii. the data shall only be held in data centres located with the territory of [the European Union and the European Economic Area][...];
 - iii. [no access shall be given to such data outside of [the European Union and the European Economic Area][...]] [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) 2018/1725².

ARTICLE I.10 EXPLOITATION OF THE RESULTS OF THE CONTRACT

I.10.1 Detailed list of modes of exploitation of the results

In accordance with Article II.13.1 whereby Frontex 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, 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;

² 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>

- summarising;
- modifying the content, the dimensions;
- making technical changes to the content (necessary correction of technical errors), adding new parts or functionalities, changing functionalities, providing third parties with additional information concerning the *result* (e.g. source code) with a view to making modifications;
- addition of new elements, paragraphs, titles, leads, bolds, legend, table of content, summary, graphics, subtitles, sound;
- addition of metadata, for text and data-mining purposes; addition of right-management information; addition of technological protection measures;
- preparation in audio form, preparation as a presentation, animation, pictograms story, slide-show, public presentation;
- extracting a part or dividing into parts;
- translating, inserting subtitles, dubbing in different language versions:
 - English, French, German;
 - all official languages of EU;
 - languages used within EU;
 - languages of candidate countries.

(f) rights to authorise, license, or sub-license in case of licensed *pre-existing rights*, the modes of exploitation set out in any of the points (a) to (e) to third parties.

(g) 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 modes of exploitation may be defined in more details in the Order Forms.

I.10.2 Licence or transfer of pre-existing rights

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

I.10.3 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.

ARTICLE I.11 TERMINATION BY EITHER PARTY

Either party may terminate the Contract by sending *formal notification* to the other party with three month written notice.

If the Contract is terminated:

- (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.

ARTICLE I.12 APPLICABLE LAW AND SETTLEMENT OF DISPUTES

I.12.1 The Contract is governed by Union law, complemented, where necessary, by the law of Poland.

I.12.2 The courts of Poland relevant for Frontex seat have exclusive jurisdiction over any dispute between the parties resulting from the interpretation, application or validity of the Contract which cannot be settled amicably.

ARTICLE I.13 SERVICES PROVIDED ON THE PREMISES OF THE CONTRACTING AUTHORITY

If necessary for performance of the Contract, the contracting authority may give the personnel of the Contractor access to its premises by means of an access card. The access card remains the property of Frontex and must be returned upon request, upon expiry or in cases where the application conditions are no longer met.

If the access card is not returned on the day it expires, the contracting authority may claim liquidated damages of 100 EUR for each day of delay up to a maximum of EUR 1000. This represents a reasonable estimate of fair compensation for the damage incurred.

SIGNATURES

For the Contractor,

For Frontex,

.....,
(forename, surname) (function of legal representative)

....., the Authorising Officer
(forename, surname) (function of legal representative)

signature: _____

signature: _____

Done at, date:

Done at Warsaw, date:

In duplicate in English.

II. GENERAL CONDITIONS FOR THE CONTRACT FOR SERVICES

ARTICLE 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 the contractor 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*, that any of the parties has identified in writing as confidential. 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 for reasons involving family, emotional life, political or national affinity, economic interest, any other direct or indirect personal interest, or any other shared interest with the contracting authority 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;

‘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, electronic specific contracts, and electronic acceptance of services or electronic invoices between the parties.

‘Force majeure’: any unforeseeable, exceptional 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 error or negligence on the part of the parties or on the part of the subcontractors and must prove to be inevitable despite their exercising due diligence. 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 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.

‘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;

‘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.

‘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 delivery of the purchased services by the contractor to the contracting authority;

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

‘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 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 its capacity to perform the contract to an appropriate quality standard.

‘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*;

‘Supplier portal’: the *e-PRIOR* portal, which allows the contractor to exchange electronic business documents, such as invoices, through a graphical user interface.

ARTICLE 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.

ARTICLE II.3 SEVERABILITY

Each provision of this contract is severable and distinct from the others. If a provision is or becomes illegal, invalid or unenforceable to any extent, it must be severed from the remainder 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.

ARTICLE II.4 PERFORMANCE OF THE CONTRACT

- 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. 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/EU³ and compliance with data protection obligations resulting from Regulation (EU) 2016/679⁴ and Regulation (EU) 2018/1725⁵.

- 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.
- 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*.

- 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 137 (1) of Regulation (EU) 2018/1046.

ARTICLE II.5 COMMUNICATION BETWEEN THE PARTIES

II.5.1 Form and means of communication

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

- (a) be made in writing in paper or electronic format in the language of the contract;
- (b) bear the contract number;
- (c) be made using the relevant communication details set out in Article I.8; and

³ OJ L 94 of 28.03.2014, p. 65

⁴ 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

⁵ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such 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>

(d) be sent by mail, email or, for the documents specified in the special conditions, via *e-PRIOR*.

If a party requests written confirmation of an e-mail within a reasonable time, the other party must provide an original signed paper version of the communication as soon as possible.

The parties agree that any communication made by email has full legal effect and is admissible as evidence in judicial proceedings.

II.5.2 Date of communications by mail and email

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

E-mail is deemed to have been received by the receiving party on the day of dispatch of that e-mail, provided that it is sent to the e-mail address indicated in Article I.8. The sending party must be able to prove the date of dispatch. In the event that the sending party receives a non-delivery report, it must make every effort to ensure that the other party actually receives the communication by email or mail. In such a case, the sending party is not held in breach of its obligation to send such communication within a specified deadline.

Mail sent to the contracting authority is deemed to have been received by the contracting authority on the date on which the department responsible referred to in Article I.8 registers it.

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

II.5.3 Submission of e-documents via e-PRIOR

If provided for in the special conditions, the exchange of electronic documents (e-documents) such as invoices between the parties is automated through the use of the *e-PRIOR* platform. This platform provides two possibilities for such exchanges: either through web services (machine-to-machine connection) or through a web application (the *supplier portal*).

The contracting authority takes the necessary measures to implement and maintain electronic systems that enable the *supplier portal* to be used effectively.

In the case of machine-to-machine connection, a direct connection is established between the parties' *back offices*. In this case, the parties take the measures necessary on their side to implement and maintain electronic systems that enable the machine-to-machine connection to be used effectively. The electronic systems are specified in the *interface control document*. The contractor (or leader in the case of a joint tender) must take the necessary technical measures to set up a machine-to-machine connection and at its own cost.

If communication via the *supplier portal* or via the web services (machine-to-machine connection) is hindered by factors beyond the control of one party, it must *notify* the other immediately and the parties must take the necessary measures to restore this communication.

If it is impossible to restore the communication within two working days, one party must *notify* the other that alternative means of communication specified in Article II.5.1 will be used until the *supplier portal* or the machine-to-machine connection is restored.

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

II.5.4 Validity and date of e-documents

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

- a) is considered as equivalent to a paper document;
- b) is deemed to be the original of the document;

- c) is legally binding on the parties once an *e-PRIOR* authorised person has performed the ‘sign’ action in *e-PRIOR* and has full legal effect; and
- d) constitutes evidence of the information contained in it and is admissible as evidence in judicial proceedings.

The parties expressly waive any rights to contest the validity of such a document solely on the grounds that communications between the parties occurred through *e-PRIOR* or that the document has been signed through *e-PRIOR*. If a direct connection is established between the parties’ *back offices* to allow electronic transfer of documents, the parties agree that an e-document, sent as mentioned in the *interface control document*, qualifies as an *EDI message*.

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

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

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

II.5.5 Authorised persons in e-PRIOR

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

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

ARTICLE II.6 LIABILITY

- II.6.1 The contracting authority is not liable for any damage or loss caused by the contractor, including any damage or loss to third parties during or as a consequence of *performance of the contract*.
- 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 The contractor is liable for any loss or damage caused to the contracting authority during or as a consequence of *performance of the contract*, 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 or of its *personnel* or subcontractors, 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.6.3 applies.
- 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.

ARTICLE 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;
- II.7.3** The contractor must pass on all the relevant obligations in writing to:
- (a) its *personnel*;
 - (b) any natural person with the power to represent it or take decisions on its behalf;
 - (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.

ARTICLE 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* and identified in writing as confidential.
- 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* 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 natural person with the power to represent it or take decisions on its behalf, as well as from third parties involved in the *performance of the contract*, a commitment that they will comply with this Article. At the request of the contracting authority, the contractor must provide a document providing evidence of this commitment.

ARTICLE 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. Such data shall be processed solely for the purposes of the implementation, management and monitoring of the contract by the data controller.

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

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

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

II.9.2 Processing of personal data by the contractor

The processing of personal data by the contractor shall meet the requirements of 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) and be processed solely for the purposes set out by the controller.

The contractor shall assist the controller for the fulfilment of the controller's obligation to respond to requests for exercising rights of person whose personal data is processed in relation to this contract as laid down in Chapter III (Articles 14-25) of Regulation (EU) 2018/1725. The contractor shall inform without delay the controller about such requests.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II.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 is solely responsible for the *performance of this contract*.
- 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.

ARTICLE II.11 AMENDMENTS

II.11.1 Any amendment to the contract must be made in writing before all contractual obligations have been fulfilled.

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.

ARTICLE II.12 ASSIGNMENT

II.12.1 The contractor must not assign the rights and obligations arising from the contract, including claims for payments or factoring, without prior written authorisation from the contracting authority. In such cases, the contractor must provide the contracting authority with the identity of the intended assignee.

II.12.2 Any right or obligation assigned by the contractor without authorisation is not enforceable against the contracting authority.

ARTICLE 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:
 - (i) the right to authorise the reuse of the documents in conformity with the Commission Decision of 12 December 2011 on the reuse of Commission documents (2011/833/EU), to the extent it is applicable and the documents fall within its scope and are not excluded by any of its provisions; for the sake of this provision, "reuse" and "document" have the meaning given to them by this Decision;
 - (ii) the right to store and archive the *results* in line with the document management rules applicable to 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:
 - (i) end-user rights, for all uses by the Union or by subcontractors which result from this contract and from the intention of the parties;
 - (ii) the rights to receive both the source code and the 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.10.1, 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.

ARTICLE 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*.

ARTICLE II.15 LIQUIDATED DAMAGES

II.15.1 Delay in delivery

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 purchase or deliverable or *result* or, failing that, the price specified in Article I.4.1;

d is the duration specified for delivery of the relevant purchase or deliverable or *result* or, failing that, the duration of *performance of the contract* specified in Article I.3.3 expressed in days.

Liquidated damages may be imposed together with a reduction in price under the conditions laid down in Article II.16.

II.15.2 Procedure

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

The contractor has 30 days following the date of receipt to submit observations. Failing that, the decision becomes enforceable the day after the time limit for submitting observations has elapsed.

If the contractor submits observations, the contracting authority, taking into account the relevant observations, 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 represents a reasonable estimate of fair compensation for the damage incurred due to failure to provide the services within the applicable time limits set out in this contract.

II.15.4 Claims and liability

Any claim for liquidated damages does not affect the contractor's actual or potential liability or the contracting authority's rights under Article II.18.

ARTICLE II.16 REDUCTION IN PRICE

II.16.1 Quality standards

If the contractor fails to provide the service in accordance with the contract ('unperformed obligations') or if it fails to provide the service in accordance with the expected quality levels specified in the tender specifications ('low quality delivery'), the contracting authority may reduce or recover payments proportionally to the seriousness of the unperformed obligations or low quality delivery. 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 under the conditions of Article II.15.

II.16.2 Procedure

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

The contractor has 30 days following the date of receipt to submit observations. Failing that, the decision becomes enforceable the day after the time limit for submitting observations has elapsed.

If the contractor submits observations, the contracting authority, taking into account the relevant observations, must *notify* the contractor:

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

II.16.3 Claims and liability

Any reduction in price does not affect the contractor's actual or potential liability or the contracting authority's rights under Article II.18.

ARTICLE II.17 SUSPENSION OF THE PERFORMANCE OF THE CONTRACT

II.17.1 Suspension by the contractor

If the contractor is affected by *force majeure*, it may suspend the *performance of the contract*. The contractor must immediately *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 *performance of the contract*.

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.

II.17.2 Suspension by the contracting authority

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

- (a) 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*;
- (b) in order to verify whether the presumed *irregularities, fraud or breach of obligations* have actually occurred.

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.

ARTICLE 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, unacceptable, taking into account Article II.11.2;
- (b) if the contractor is unable, through its own fault, to obtain any permit or licence required for *performance of the contract*;
- (c) if the contractor does not perform the contract in accordance with the tender specifications or is in breach of another substantial contractual obligation.
- (d) if the contractor or any person that assumes unlimited liability for the debts of the contractor is in one of the situations provided for in points (a) and (b) of Article 136(1) of the Financial Regulation⁶;
- (e) if the contractor or any *related person* is in one of the situations provided for in points (c) to (h) of Article 136(1) or to Article 136(2) of the Financial Regulation.
- (f) if the procedure for awarding the contract or the *performance of the contract* prove to have been subject to *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;
- (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 136 of Regulation (EU) 2018/1046 that calls into question the decision to award the contract;
- (j) in the event of *force majeure*, where either resuming implementation is impossible or the necessary ensuing amendments to the contract would mean that the tender specifications 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.

II.18.2 Grounds for termination by the contractor

The contractor may terminate the contract if the contracting authority 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.

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 30 days following the date of receipt to submit observations, including the measures it has taken or will take to continue fulfilling its contractual obligations. Failing that, the decision to terminate becomes enforceable the day after the time limit for submitting observations has elapsed.

If the other party submits observations, the party intending to terminate must *formally notify* it 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) and (l) 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.

⁶ 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 30.7.2018, p.1 <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1544791836334&uri=CELEX:32018R1046>

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 contracting authority may claim compensation for such damage. 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 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) and (l) of Article II.18.1, under the conditions set out in Article II.11.2.

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

II.19.1 Invoices and value added tax

Invoices must contain the contractor's (or leader's in the case of a joint tender) 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 (or leader in the case of a joint tender) for value added tax (VAT) purposes and must specify separately amounts not including VAT and amounts including VAT.

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.

The contractor (or leader in the case of a joint tender) 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.

II.19.2 E-invoicing

If provided for in the special conditions, the contractor (or leader in the case of a joint tender) submits invoices in electronic format if the conditions regarding electronic signature specified by Directive 2006/112/EC on VAT are fulfilled, i.e. using a qualified electronic signature or through electronic data interchange.

Reception of invoices by standard format (pdf) or email is not accepted.

ARTICLE II.20 PRICE REVISION

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

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:

$$Pr = Po \times \left(\frac{Ir}{Io} \right)$$

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.

ARTICLE 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.7.

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.

http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm

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.6, 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.

Performance guarantees cover compliance with substantial 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 its final approval 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 (or leader in the case of a joint tender) must send an invoice for interim payment, as provided for in Article I.5 or in the tender specifications.

The contractor (or leader in the case of a joint tender) 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.

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.

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 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.

ARTICLE 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 prior written approval for the expense.

ARTICLE 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 group is 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), then the contracting authority may claim the amount still due to 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.

ARTICLE II.24 CHECKS AND AUDITS

II.24.1 The contracting authority and the European Anti-Fraud Office may check or require an audit on the *performance of the contract*. This may be carried out either by OLAF's own staff or 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, who 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 that 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 measure 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 the Council of 11 September 2013 concerning investigation 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 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) 2017/1939⁷ ('the EPPO') have the same rights as the contracting authority, particularly right of access, for the purpose of checks, audits and investigations.

⁷ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office



00-844 Warsaw, Poland

3. TENDERER'S DECLARATION(S)

(To be completed and signed by the Tenderer)

In response to your letter of invitation to tender for the above contract, we, the undersigned, hereby declare that:

- 3.1. We have examined and accept in full the content of the dossier for invitation to tender referred above. We hereby accept its provisions in their entirety, without reservation or restriction.
- 3.2. All partners submitting the joint tender confirm the joint and several liabilities towards Frontex for the performance of the contract *(if applicable)*.
- 3.3. We are not in any of the situations excluding us from participating in procedure, as confirmed by attached signed **Annex V - Declaration of Honour**. It applies also to all and each partner of a group submitting joint tender *(if applicable)*.
- 3.4. This offer is valid for a period of **3 months** from the final date for submission of tenders.
- 3.5. Both the technical and financial proposals of the offer are signed by the Tenderer or his duly authorized representative.
- 3.6. The offer is submitted in accordance with the double envelope system as detailed in the cover letter 'Invitation to tender'.
- 3.7. We note that the Frontex is not bound to proceed with this invitation to tender and that it reserves the right to cancel the whole procedure. It will incur no liability towards us should it do so.

Name and first name: [.....]

Signature: [.....]

Place and date: [.....]

Stamp of the firm/company: *(in case of a joint offer the form has to be signed by all the members of the group/consortium)*

This offer includes the following documents and annexes:

(list all the documents included in the offer)

Invitation to tender No Frontex/NP/15/2020

DECLARATION ON HONOUR ON EXCLUSION CRITERIA AND SELECTION CRITERIA

The undersigned [*insert name of the signatory of this form*], representing:

<i>(only for natural persons)</i> himself or herself ID or passport number: ('the person')	<i>(only for legal persons)</i> the following legal person: Full official name: Official legal form: Statutory registration number: Full official address: VAT registration number: ('the person')
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The person is not required to submit the declaration on exclusion criteria if the same declaration has already been submitted for the purposes of another award procedure of the same contracting authority¹, provided the situation has not changed, and that the time that has elapsed since the issuing date of the declaration does not exceed one year.

In this case, the signatory declares that the person has already provided the same declaration on exclusion criteria for a previous procedure and confirms that there has been no change in its situation:

Date of the declaration	Full reference to previous procedure

I - SITUATION OF EXCLUSION CONCERNING THE PERSON

(1) declares that the above-mentioned person is in one of the following situations:	YES	NO
(a) it is bankrupt, subject to insolvency or winding-up procedures, its assets are being administered by a liquidator or by a court, it is in an arrangement with creditors, its business activities are suspended or it is in any analogous situation arising from a similar procedure provided for under EU or national laws or regulations;	<input type="checkbox"/>	<input type="checkbox"/>
(b) it has been established by a final judgement or a final administrative decision that the person is in breach of its obligations relating to the payment of taxes or social security contributions in accordance with the applicable law;	<input type="checkbox"/>	<input type="checkbox"/>
(c) it has been established by a final judgement or a final administrative decision that the person is guilty of grave professional misconduct by having violated applicable laws or regulations or ethical standards of the profession to which the person belongs, or by having engaged in any wrongful conduct which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence, including, in particular, any of the following:		
(i) fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of selection	<input type="checkbox"/>	<input type="checkbox"/>

¹ The same EU institution, agency, body or office.

criteria or in the performance of a contract or an agreement;		
(ii) entering into agreement with other persons with the aim of distorting competition;	<input type="checkbox"/>	<input type="checkbox"/>
(iii) violating intellectual property rights;	<input type="checkbox"/>	<input type="checkbox"/>
(iv) attempting to influence the decision-making process of the contracting authority during the award procedure;	<input type="checkbox"/>	<input type="checkbox"/>
(v) attempting to obtain confidential information that may confer upon it undue advantages in the award procedure;	<input type="checkbox"/>	<input type="checkbox"/>
(d) it has been established by a final judgement that the person is guilty of the following:		
(i) fraud, within the meaning of Article 3 of Directive (EU) 2017/1371 and Article 1 of the Convention on the protection of the European Communities' financial interests, drawn up by the Council Act of 26 July 1995;	<input type="checkbox"/>	<input type="checkbox"/>
(ii) corruption, as defined in Article 4(2) of Directive (EU) 2017/1371 and Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, drawn up by the Council Act of 26 May 1997, and conduct referred to in Article 2(1) of Council Framework Decision 2003/568/JHA, as well as corruption as defined in the applicable law;	<input type="checkbox"/>	<input type="checkbox"/>
(iii) conduct related to a criminal organisation, as referred to in Article 2 of Council Framework Decision 2008/841/JHA;	<input type="checkbox"/>	<input type="checkbox"/>
(iv) money laundering or terrorist financing, within the meaning of Article 1(3), (4) and (5) of Directive (EU) 2015/849 of the European Parliament and of the Council;	<input type="checkbox"/>	<input type="checkbox"/>
(v) terrorist-related offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA, respectively, or inciting, aiding, abetting or attempting to commit such offences, as referred to in Article 4 of that Decision;	<input type="checkbox"/>	<input type="checkbox"/>
(vi) child labour or other offences concerning trafficking in human beings as referred to in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council;	<input type="checkbox"/>	<input type="checkbox"/>
(e) it has shown significant deficiencies in complying with the main obligations in the performance of a contract or an agreement financed by the Union's budget, which has led to its early termination or to the application of liquidated damages or other contractual penalties, or which has been discovered following checks, audits or investigations by a contracting authority, the European Anti-Fraud Office (OLAF) or the Court of Auditors;	<input type="checkbox"/>	<input type="checkbox"/>
(f) it has been established by a final judgment or final administrative decision that the person has committed an irregularity within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95;	<input type="checkbox"/>	<input type="checkbox"/>
(g) it has been established by a final judgment or final administrative decision that the person has created an entity under a different jurisdiction with the intent to circumvent fiscal, social or any other legal obligations in the jurisdiction of its registered office, central administration or principal place of business.	<input type="checkbox"/>	<input type="checkbox"/>
(h) (<i>only for legal persons</i>) it has been established by a final judgment or final administrative decision that the person has been created with the intent provided for in point (g).	<input type="checkbox"/>	<input type="checkbox"/>
(i) for the situations referred to in points (c) to (h) above the person is subject to: <ul style="list-style-type: none"> i. facts established in the context of audits or investigations carried out by the European Public Prosecutor's Office after its establishment, the Court of Auditors, the European Anti-Fraud Office (OLAF) or the internal auditor, or any other check, audit or control performed under the responsibility of an 	<input type="checkbox"/>	<input type="checkbox"/>

authorising officer of an EU institution, of a European office or of an EU agency or body;		
ii. non-final administrative decisions which may include disciplinary measures taken by the competent supervisory body responsible for the verification of the application of standards of professional ethics;		
iii. facts referred to in decisions of entities or persons being entrusted with EU budget implementation tasks;		
iv. information transmitted by Member States implementing Union funds;		
v. decisions of the Commission relating to the infringement of Union competition law or of a national competent authority relating to the infringement of Union or national competition law; or		
vi. decisions of exclusion by an authorising officer of an EU institution, of a European office or of an EU agency or body.		

II - SITUATIONS OF EXCLUSION CONCERNING NATURAL OR LEGAL PERSONS WITH POWER OF REPRESENTATION, DECISION-MAKING OR CONTROL OVER THE LEGAL PERSON AND BENEFICIAL OWNERS

Not applicable to natural persons, Member States and local authorities

(2) The signatory declares that a natural or legal person who is a member of the administrative, management or supervisory body of the above-mentioned legal person, or who has powers of representation, decision or control with regard to the above-mentioned legal person (this covers e.g. company directors, members of management or supervisory bodies, and cases where one natural or legal person holds a majority of shares), or a beneficial owner of the person (as referred to in point 6 of article 3 of Directive (EU) No 2015/849) is in one of the following situations:	YES	NO	N/A
Situation (c) above (grave professional misconduct)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (d) above (fraud, corruption or other criminal offence)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (e) above (significant deficiencies in performance of a contract)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (f) above (irregularity)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (g) above (creation of an entity with the intent to circumvent legal obligations)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (h) above (person created with the intent to circumvent legal obligations)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

III - SITUATIONS OF EXCLUSION CONCERNING NATURAL OR LEGAL PERSONS ASSUMING UNLIMITED LIABILITY FOR THE DEBTS OF THE LEGAL PERSON

(3) declares that a natural or legal person that assumes unlimited liability for the debts of the above-mentioned legal person is in one of the following situations:	YES	NO	N/A
Situation (a) above (bankruptcy)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (b) above (breach in payment of taxes or social security contributions)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

IV - GROUNDS FOR REJECTION FROM THIS PROCEDURE

(4) declares that the above-mentioned person:	YES	NO
Was previously involved in the preparation of the procurement documents used in this award procedure, where this entailed a breach of the principle of equality of treatment including distortion of competition that cannot be remedied otherwise.	<input type="checkbox"/>	<input type="checkbox"/>

V - REMEDIAL MEASURES

If the person declares one of the situations of exclusion listed above, it must indicate measures it has taken to remedy the exclusion situation, thus demonstrating its reliability. This may include e.g. technical, organisational and personnel measures to prevent further occurrence, compensation of damage or payment of fines or of any taxes or social security contributions. The relevant documentary evidence which illustrates the remedial measures taken must be provided in annex to this declaration. This does not apply for situations referred in point (d) of this declaration.

VI - EVIDENCE UPON REQUEST

Upon request and within the time limit set by the contracting authority the person must provide information on natural or legal persons that are members of the administrative, management or supervisory body or that have powers of representation, decision or control, including legal and natural persons within the ownership and control structure and beneficial owners.

It must also provide the following evidence concerning the person itself and the natural or legal persons on whose capacity the person intends to rely, or a subcontractor and concerning the natural or legal persons which assume unlimited liability for the debts of the person:

For situations described in (a), (c), (d), (f), (g) and (h), production of a recent extract from the judicial record is required or, failing that, an equivalent document recently issued by a judicial or administrative authority in the country of establishment of the person showing that those requirements are satisfied.

For the situation described in point (b), production of recent certificates issued by the competent authorities of the State concerned are required. These documents must provide evidence covering all taxes and social security contributions for which the person is liable, including for example, VAT, income tax (natural persons only), company tax (legal persons only) and social security contributions. Where any document described above is not issued in the country concerned, it may be replaced by a sworn statement made before a judicial authority or notary or, failing that, a solemn statement made before an administrative authority or a qualified professional body in its country of establishment.

The person is not required to submit the evidence if it has already been submitted for another award procedure of the same contracting authority². The documents must have been issued no more than one year before the date of their request by the contracting authority and must still be valid at that date.

The signatory declares that the person has already provided the documentary evidence for a previous procedure and confirms that there has been no change in its situation:

Document	Full reference to previous procedure
<i>Insert as many lines as necessary.</i>	

VII - SELECTION CRITERIA

² The same institution or agency.

(1) declares that the above-mentioned person complies with the selection criteria applicable to it individually as provided in the tender specifications:	YES	NO	N/A
(a) It has the legal and regulatory capacity to pursue the professional activity needed for performing the contract as required in section III.4.1 of the tender specifications;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) It fulfills the applicable economic and financial criteria indicated in section III.4.2 of the tender specifications;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c) It fulfills the applicable technical and professional criteria indicated in section III.4.3 of the tender specifications.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

(2) if the above-mentioned person is the sole tenderer or the leader in case of joint tender , declares that:	YES	NO	N/A
(d) the tenderer, including all members of the group in case of joint tender and including subcontractors if applicable, complies with all the selection criteria for which a consolidated assessment will be made as provided in the tender specifications.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

VIII - EVIDENCE FOR SELECTION

The signatory declares that the above-mentioned person is able to provide the necessary supporting documents listed in the relevant sections of the tender specifications and which are not available electronically upon request and without delay.

The person is not required to submit the evidence if it has already been submitted for another procurement procedure of the same contracting authority³. The documents must have been issued no more than one year before the date of their request by the contracting authority and must still be valid at that date.

The signatory declares that the person has already provided the documentary evidence for a previous procedure and confirms that there has been no change in its situation:

Document	Full reference to previous procedure
<i>Insert as many lines as necessary.</i>	

The above-mentioned person may be subject to rejection from this procedure and to administrative sanctions (exclusion or financial penalty) if any of the declarations or information provided as a condition for participating in this procedure prove to be false.

Full name

Date

Signature

³ The same institution of agency.

ANNEX VI FINANCIAL OFFER

Tender procedure no Frontex/NP/15/2020
Provision of Business Analysis Services and IT-project support services in support of IRMA 2.0 project

ANNEX VI

FINANCIAL OFFER of

Name:
(Legal representative - Name/Surname/Function)

Prices shall be all inclusive and include all costs related including transportation, packing, insurance etc.

Prices shall be indicated in Euro in net (excluding VAT).

Prices shall be valid throughout the duration of the contract and for all quantities purchased.

Variant	Net price in EUR per man-day	Number of estimated man-days	Total net price in EUR
1: Consultants working at Frontex premises Stage A			
2: Consultants working at Frontex premises Stage B			
VAT rate:		GRAND TOTAL	€0.00

Signature and stamp of the Tenderer

Date and place



ANNEX VII DECLARATION OF CONFIDENTIALITY

Tender procedure: Frontex/NP/15/2020/SB

Contract for the provision of business analysis and IT-project support services in the context of the IRMA 2.0-project

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Contractor's Declaration of confidentiality

I, _____ (Name and Surname)

in my function of _____ (full Function name),

representing _____ (full Company name),

hereby declare that I will treat the information and/or documents that are received from Frontex in the context of preparation of the offer and potential execution and/or performance of the above mentioned contract with the strictest secrecy. No information and/or documents will be divulged to third parties.

I am aware that tasks carried out in view of preparation of the offer and potentially execution and/or performance of this contract also are governed by this principle of secrecy.

I am also aware of the fact that the principle of secrecy pointed out in the first paragraph will continue to apply after the completion of the above mentioned contract.

All information and documents received will be used solely for the preparation of the offer and potentially for the execution and/or performance of this contract.

Name of the person: _____

Signature: _____

Place, date: _____