

FWC conditions of December 2024

FRAMEWORK SERVICE CONTRACT

NUMBER: 2025/OP/0006/...

The European Union ('the Union'), represented by the **European Union Agency for Criminal Justice Cooperation** ('the lead contracting authority'), and the **European Union Agency for Law Enforcement Cooperation**,

(collectively, 'the contracting authority'),

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

of the one part and

Option 1: The tender was submitted by a single tenderer or by a group of economic operators with a separate legal personality:

[Contractor's full official name]

Contractor's official legal form

Contractor's statutory registration number or ID or passport number

Contractor's full official address

VAT registration number

('the contractor')]

Option 2: The tender was submitted by a group of economic operators without a separate legal personality:

[Name of group], group of economic operators who submitted a joint tender ('the group') composed of the following members who are jointly and severally liable vis-a-vis the contracting authority for the implementation of this framework contract:

Contractor's official legal form

Contractor's statutory registration number or ID or passport number

Contractor's full official address

VAT registration number

appointed as leader of the group by the members of the group that submitted the joint tender,

[repeat the above data as many times as there are contractors in case of joint tender and continue numbering]

(collectively "the contractor"),]

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

on the other part,

HAVE AGREED as follows:

MAIN CONDITIONS

1. Subject matter and appointment of the contractor

The title of this framework contract (FWC) is: "Landline telephony, Dark Fiber, IP TV services and UIFN and freephone services."

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

The contracting authority appoints the contractor for a single FWC.

The FWC does not confer on the contractor any exclusive right to provide the services subject of this FWC.

2. Contract value

The maximum amount covering all purchases under this FWC is **[insert amount] [(insert amount in words)]** EUR.

3. Entry into force and duration

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

The maximum possible duration of this FWC is 84 months from the date this FWC enters into force.

Signatures

For the contractor

Name of signatory

For the contracting authority

Name of signatory

Date:

Date:

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I. Special Conditions

I.1. Order of precedence

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

- Main conditions,
- Special conditions,
- General conditions for framework contracts,
- the following annexes:

Annex I – Technical specifications (call for tenders reference No [complete] of [insert date]), including clarifications, answers to questions and corrigenda issued by the contracting authority during the submission phase

Annex II – Contractor's tender ([for Lot No....], reference No [complete] of [insert date]), [including clarifications provided by the tenderer, during the tender evaluation phase, at the Contracting authority's request].

Annex III – [Model for order forms] [and] [model for specific contracts]

Annex IV – Instructions, Terms and Conditions for Companies Performing Services at Eurojust Premises

Annex V – Declaration concerning DISCRETION and CONFIDENTIALITY from CONTRACTORS for Europol

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

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

If there is any conflict between the provisions of the specific contracts signed during the FWC implementation and their annexes, the following order of precedence shall apply:

- a. Signed specific contracts;
- b. Requests for specific contracts (if applicable);
- c. Contractor's specific tender/documents submitted for a specific contract (if applicable).

In case of a conflict, the provisions set out in the FWC and its annexes I and II take precedence over those in the specific contracts and their annexes.

I.2. Scope of the FWC

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

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

This FWC sets out:

1. the procedure by which the contracting authority may order services from the contractor;
2. the provisions that apply to any specific contract which the contracting authority and the contractor may conclude under this FWC; and
3. the obligations of the parties during and after the duration of this FWC.

Any reference to specific contract(s) in this FWC applies also to order form(s).

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

I.3. Entry into force and duration of the FWC

I.3.1. The FWC is concluded for an initial period of 4 years from the date indicated in Article 3 of the Main conditions. The entry into force and the maximum duration of the FWC (which includes renewals) are indicated in Article 3 of the Main conditions.

I.3.2. The implementation of the FWC cannot start before its entry into force.

I.3.3. The parties must sign any specific contract before the FWC expires or is terminated. The FWC continues to apply to such specific contracts after its expiry or termination. The services relating to such specific contracts must be performed no later than six months after the expiry or termination of the FWC. At the end of this period, all remaining specific contracts are automatically terminated.

I.3.4. The suspension of the implementation of the FWC or a specific contract due to force majeure as provided for in Article II.17 will remain without effect on the duration of the FWC and of the specific contract.

I.3.5. If, after the end of the FWC, one party continues to perform its obligations without opposition from the other party, such performance is not and cannot be construed as a renewal of the FWC.

I.3.6. Renewal of the FWC

The FWC is renewed automatically **three** times for **twelve** months each, unless one of the parties receives formal notification to the contrary at least three months before the end of the ongoing duration. Renewal does not change or postpone any existing obligations. Article I.3.5 applies to the performance of obligations after the last automatic renewal.

For the avoidance of doubt, a renewal of the FWC in the sense of this Article I.3.6 does not imply the conclusion of a new FWC but only the extension of the initial duration of the FWC.

I.4. Implementation of the FWC

I.4.1. The period for the provision of the services starts to run from the date indicated in the specific contract.

I.4.2. All specific contracts and the provision of the services shall conform to the provisions set out in the FWC, including its annexes.

I.4.3. Implementation of single FWC

When the use of electronic exchange system under Article I.7.1 is activated, the FWC shall be implemented as follows:

- (a) The contracting authority orders services by sending the contractor a request for specific contract. The request for specific contract must determine the time limit for the contractor to state its intention to reply or not (which may not be less than [complete] days of receipt of the request for specific contract) and the reply time limit (which may not be less than [complete] days of receipt of the request for specific contract).
- (b) Within the time limit indicated in the request for specific contract, the contractor must state its intention to reply to the request for specific contract or not. The intention not to reply must be motivated appropriately.
- (c) The contractor's reply to the request for specific contract must be submitted within the time limit indicated in the request for specific contract
- (d) The contracting authority has the right to proceed with the opening and the assessment of the contractor's reply, immediately after its receipt, without having to wait for the expiration of the submission period specified in the request for specific contract.
- (e) The reply is binding on the contractor at least for the validity period mentioned in the request for specific contract, which should not be less than [complete] days.
- (f) The specific contract has to be signed by the contractor within the time-limit indicated by the contracting authority in the invitation to sign the specific contract.
- (g) If the contractor repeatedly fails to reply to the requests for specific contract fails to sign the resulting specific contracts within the set time limit, the contractor may be considered in breach of its obligations under this FWC as set out in Article II.18.1 (c).

When the use of electronic exchange system under Article I.7.1 is not activated the FWC shall be implemented as follows:

contracting authorities for which the use of electronic exchange system is not activated will send the request for specific contract by email.

Within 24 working hours the contract must state its intention to reply to the request for specific contract or not and reply to request for specific contract within 5 working days, unless shorter deadlines are stated in the request for specific contract (e.g. in urgent cases).

The contracting authority orders services by sending the contractor a specific contract by email or in paper format.

Within 3 working days, the contractor must either:

- (a) send the specific contract back to the contracting authority duly signed and dated in paper format or qualified electronic signature; or
- (b) send an explanation of why it cannot accept the order.

If the contractor repeatedly refuses to reply to request for specific contract or sign the specific contracts or repeatedly fails to send them back on time, the contractor may be considered in breach of its obligations under this FWC as set out in Article II.18.1 (c).

I.5. Prices

I.5.1. Maximum amount of the FWC and maximum prices

The maximum amount covering all services performed under this FWC, including all renewals is indicated in Article 2 of the Main conditions. However, this does not bind the contracting authority to order services for the maximum amount.

The maximum prices of the services are as listed in Annex II.

I.5.2. Price revision index

Price revision for landline telephony and UIFN and freephone services is determined by the formula set out in Article II.20 and using the trend in the Index “Harmonised Indices of Consumer Prices”, using the classification “Wired telephone services” (Code CP08301), published on Eurostat’s official website using the latest base year (currently index 2015=100).

Price revision for IP TV service and dark fiber lease is determined by the formula set out in Article II.20 and using the trend in the harmonised indices of consumer prices (HICP all items) for Euro area (19 countries) published on Eurostat’s official website using the latest base year (currently index 2015=100).

I.5.3. Reimbursement of expenses

Reimbursement of expenses is not applicable to this FWC.

I.5.4. Change of circumstances

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

I.5.5. Prices for additional services

Prices for services which are not defined in the contract, but which nevertheless fall within the scope of the contract, may be negotiated and agreed on a case-by-case basis. The contracting authority may require such prices to be included in the contract via an amendment to the FWC.

I.6. Payment arrangements

I.6.1. Bank account conditions

Payments under the FWC shall be made to the contractor's (or leader's in the case of joint tender) bank account indicated in the Contractor's invoice provided that a valid Financial Identification Form for this account has been received by the contracting authority in accordance with Article II.21, which is complemented by this article and the related provisions of the specific contracts.]

The bank account is denominated in euro.

I.6.2. Pre-financing

Pre-financing is not applicable to this FWC.]

I.6.3. Interim payment[s]

Interim payment is not applicable to this FWC.

I.6.4. 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 due under a specific contract, as provided for in the technical specifications or in specific contract and accompanied by the following:

- if applicable, 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;
- when payment is linked to acceptance of supporting documents and/or deliverables, the relevant documents indicated in the specific contract;
- [Annex [insert number] indicating the group members' shares for VAT purpose (if applicable)]

For subscription services that are ordered on an annual basis or exceeding 3 months, the contractor may send an invoice on a monthly or quarterly basis for services already rendered under the specific contract, and accompanied by the evidence.

2. The contracting authority must approve the 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.6.5. Performance guarantee

Performance guarantee is not applicable to this FWC.

I.6.6. Retention money guarantee

Retention money guarantee is not applicable to this FWC.

I.6.7. Monthly instalments

In the event that the contracting authority's budget not being adopted, the contracting authority may, after giving prior notice, pay invoices by monthly instalments. In such cases, the contracting authority shall notify the Contractor once it is in a position to resume normal payment arrangements.

I.7. Communication details

I.7.1. Communication via electronic exchange system

After the entry into force of this FWC, at any time during its course the contracting authority may formally notify in writing the contractor that certain communications will be made by electronic means through the EU Funding & Tenders Portal (the Portal), in accordance with the Portal Terms and Conditions and using the forms and templates provided there. The Portal can be accessed via the following URL: <https://ec.europa.eu/info/funding-tenders/opportunities/portal/> The notification shall indicate whether all or only certain communications under the FWC will take place through the Portal. The notification shall have full legal effect from the date specified therein, which shall allow a reasonable period of time for the contractor to complete all necessary steps to have access to the Portal. The activation of the use of the Portal shall be at no additional cost for the contracting authority.

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

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

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

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

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

I.7.2. Mail or email communication

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

Contracting authority:

Eurojust

Attn: [Department], [Unit], [Sector],

P.O. Box 16183

2500 BD, The Hague

The Netherlands

E-mail: [functional mailbox]

Contractor (or leader in the case of a joint tender):

[Full name]

[Function]

[Company name]

[Full official address]

Email: [complete]

Tel: complete

By derogation from this Article, different contact details for the contracting authority or the contractor may be provided in specific contracts.

I.7.3. Invoicing

Until the use of the Portal is activated, invoices for Eurojust shall be sent in pdf format to BudgetMailbox@eurojust.europa.eu and for Europol to [.....]

I.8. Processing of personal data

I.8.1. Processing of personal data by the contracting authority

For the purpose of Article II.9.1,

- (a) for personal data processed in the context of the management of the framework contract, the data controller for Eurojust is the Administrative Director of Eurojust and can be contacted at procurement@eurojust.europa.eu and for Europol is The Head of C1-ICT and can be contacted at email mentioned in the data protection notice.
- (b) for personal data processed in the context of the management of the specific contract, the data controller will be specified in the specific contract;
- (c) the data protection notice is available at <https://www.eurojust.europa.eu/about-us/data-protection/data-protection-eurojust> for Eurojust and for Europol at <https://www.europol.europa.eu/publications-documents/privacy-statement-for-europol-procurement>.

I.8.2. 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] is strictly restricted with implementation of this FWC;

(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 Economic Area and will not leave that territory;
- ii. the data shall only be held in data centres located within the territory of the European Economic Area;
- iii. no access shall be given to personal data outside of the European Economic Area;
- iv. the contractor may not change the location of data processing without the prior written authorisation of the contracting authority;
- v. personal data may only be transferred to third states which have been recognised by the European Commission as providing adequate protection to personal data pursuant to Regulation (EU) 2016/679 or Directive (EU) 2016/680, on the basis of appropriate safeguards or derogations for specific situations.

Any transfer of personal data under the FWC to third states or international organisations shall fully comply with all the requirements laid down in Chapter V of Regulation (EU) 2018/1725 and is subject to other provisions of this Regulation. The application of legal bases for transfers available under Chapter V of the Regulation (EU) 2018/1725¹ shall not undermine the level of protection of personal data guaranteed pursuant to Article 46 and Recital 63.

I.9. Exploitation of the results of the FWC

This clause is not applicable to this FWC.

I.10. Termination for convenience by either party

Either party may terminate the FWC and/or specific contracts for convenience by sending formal notification to the other party with **nine** months written notice.

If the FWC or a specific contract is terminated for convenience:

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

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

I.11. Applicable law and settlement of disputes

I.11.1. The FWC is governed by Union law, complemented, where necessary, by the law of Kingdom of the Netherlands. The application of the United Nations Convention on Contracts for the International Sales of Goods (CISG) is excluded.

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

I.11.2. The courts of The Hague, Kingdom of the Netherlands shall have exclusive jurisdiction over any dispute regarding the validity, interpretation, performance or termination of the FWC or a specific contract.

I.12. Interinstitutional FWC

I.12.1. This FWC is interinstitutional. The lead contracting authority acts on its own behalf and on behalf of the bodies listed in the title of the FWC as the contracting authorities, which provided the lead contracting authority with a power of attorney before FWC signature. The lead contracting authority signs the FWC and any amendments as well as any notification pertaining to the FWC on behalf of itself and of all other contracting authorities.

I.12.2. Each contracting authority is responsible for the particular specific contracts it awards.

I.12.3. If the contractor has a complaint about the validity, interpretation, performance or termination of a specific contract, the contractor remains bound by and cannot refuse to perform its obligations under the FWC and other specific contracts.]

I.13. Specific security rules for the contractor's personnel

I.13.1. When performing tasks for the contracting authority in execution of the contract, the contractor and its personnel shall comply with the contracting authority's applicable security requirements described in the Annex I and Annex IV.

I.14. Other special conditions

I.14.1. Liquidated damages

Complementary to the contracting authority's right to impose liquidated damages as stipulated in Article II.15 of the General Conditions, the provisions related to Key Performance Indicators from Appendix of Annex I shall be applied in the first place.

II. General conditions for the framework contract for services

II.1. DEFINITIONS

For the purpose of this FWC and the specific contracts signed to implement it, the following definitions (indicated in *italics* in the text) apply:

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

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

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

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

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

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

‘Electronic exchange system’: is an electronic exchange system meeting the requirements of Article 151 of the Financial Regulation²;

‘EUI’: European Union institution;

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

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

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

² 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>

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;

‘Implementation of the FWC’: the provision of services envisaged in the FWC through the signature and performance of specific contracts;

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

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

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

‘Order form’: a simplified form of specific contract by which the contracting authority orders services under this FWC;

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

‘Personnel’: persons employed directly or indirectly or contracted by the contractor or its subcontractors to implement the FWC;

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

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

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

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

‘Purchases’: the services ordered under this FWC;

‘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;

‘Reply to a request for specific contract’: written commitment, submitted by the contractor in response to a received request for specific contract under a single FWC or a multiple FWC in cascade, on the basis of which the contracting authority may award a specific contract;

‘Request for specific contract’: document(s) from the contracting authority requesting that the contractors in a multiple FWC with re-opening of competition provide specific tenders. In a single FWC, it means document(s) from the contracting authority ordering services from the contractor. In a FWC in cascade, it means document(s) from the contracting authority ordering services from the contractor to which the request is sent.

‘Result’: any intended outcome of the implementation of the FWC, whatever its form or nature. A result may be further defined in this FWC 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;

‘Specific contract’: a contract implementing the FWC and specifying details of a service to be provided.

II.2. Roles and responsibilities in the event of a joint tender

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

II.3. Severability

Each provision of this FWC is severable and distinct from the others, unless it is essential to the agreement of the parties. If a provision is or becomes illegal, invalid or unenforceable to any extent, it must be severed from the remainder of the FWC. This does not affect the legality, validity or enforceability of any other provisions of the FWC, 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 FWC must be interpreted as if it had contained the substitute provision as from its entry into force.

II.4. Provision of services

II.4.1. Signature of the FWC does not oblige the contracting authority to enter into a specific contract.

II.4.2. 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 FWC, in particular the technical specifications and the terms of its tender. Timely delivery of the services is essential for the contracting authority. Where the contracting authority 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.4.3. The contractor must comply with the minimum requirements provided for in the technical 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, compliance

³ OJ L 94 of 28.03.2014, p. 65

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

II.4.4. The contractor must obtain any permit or licence required in the State where the services are to be provided.

II.4.5. All periods specified in the FWC are calculated in calendar days, unless otherwise specified.

II.4.6. 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.4.7. 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.4.8. The contractor must ensure that the personnel implementing the FWC 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 technical specifications.

II.4.9. At the contracting authority's reasoned request, the contractor must replace any member of personnel who:

- (a) does not have the expertise required to provide the services; or
- (b) has caused disruption at the premises of the contracting authority.

The contractor bears the cost of replacing its personnel and is responsible for any delay in providing the services resulting from the replacement of personnel. Before deciding to replace a member of personnel, the contractor should first give him the opportunity to present observations.

II.4.10. 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.4.11. The contractor must immediately inform the contracting authority of any changes in the exclusion situations as declared, according to Article 139 (1) of the Financial Regulation.

II.4.12. If the contractor fails to provide the services in accordance with high quality standards, the state of the art in the industry and the provisions of the FWC and/or a specific contract (in particular the technical specifications and the terms of its tender), the contracting authority may, even if such failure constitutes a breach that could trigger Article II.18.1, decide to have these obligations performed

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 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>

by a third party, at the contractor's expense. The contracting authority shall formally notify the contractor of its decision to have the contractor substituted and the grounds for this substitution.

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

II.5. Communication between the parties

II.5.1. Form and means of communication

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

Communication between the parties can take place:

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

In the cases where this FWC mandates the use of formal notifications, those formal communications are considered to have been made with their receipt by the receiving party. The specific rules when formal notifications are considered to have been received are provided in Sections II.5.2.2, II.5.3.2 and II.5.4.2 below.

Communication details to be used for all communication between the parties are indicated in Article I.7.

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

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

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

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

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

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

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

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

II.5.3. Communication via email

When communicating via e-mail, the parties shall send their messages to the email addresses indicated in Article I.7.

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

Without prejudice to Article II.19 below and Point 31.3 of Annex I to the FR, notifications via email are considered to have been made and the email is deemed to have been received by the receiving party on the date of dispatch of that e-mail, if it is sent to the email address indicated in Article I.7 and does not have characteristics that could reasonably prevent its proper delivery (such as sending extremely voluminous e-mails that can be blocked for their size or emails containing elements that the majority of the spam filters would block). The sending party must be able to prove the date of dispatch. If the sending party sends the email to the email address indicated in Article I.7 and receives a non-delivery report, it must make every reasonable effort to ensure that the other party receives the communication.

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

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

II.5.4. Communication via mail

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

When communicating via mail, the parties should send their letters to the postal addresses indicated in Article I.7.

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

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

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

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

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

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

II.6. Liability

II.6.1. The contractor shall perform the contract at its own risk. The contractor warrants and holds the contracting authority harmless against any action or claim brought by a third party for any damage or loss suffered in relation to the *implementation of the FWC* (including the related costs such as lawyer fees).

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

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

II.6.4. If a third party brings any action against the contracting authority in connection with the implementation of the FWC, 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 implementation of the FWC, Article II.6.1 applies. In that case, the limitations of liability foreseen in Article II.6.3 do not apply.

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

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

II.7. Conflict of interest and professional conflicting interests

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

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

The contracting authority may do any of the following:

- (a) verify that the contractor's action is appropriate;
- (b) require the contractor to take further action within a specified deadline to rectify the situation;

(c) decide not to award any specific contract to the contractor until the situation has been rectified.

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

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

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

II.8. Confidentiality

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

II.8.2. Each party must:

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

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

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

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

II.8.5. The contracting authority is entitled to make available (any part of) the confidential information or documents to its staff and the staff of other Union institutions, agencies and bodies, as well to other persons and entities working for the contracting authority or cooperating with it. This includes other contractors or subcontractors and their personnel, who need to know the same for the performance of a contract who know they must treat it confidentially and who are bound by confidentiality obligations that are no less restrictive than the contracting authority's confidentiality obligations set out in this section.

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

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

II.9. Processing of personal data

II.9.1. Processing of personal data by the contracting authority

Any personal data included in or relating to the FWC, including its implementation, shall be processed in accordance with Regulation (EU) 2018/1725⁶. Such data shall be processed solely for the purposes of the implementation, management and monitoring of the FWC by the data controller.

The contractor or any other person whose personal data is processed by the data controller in relation to this FWC 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 FWC 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.8.

II.9.2. Processing of personal data by the contractor

The processing of personal data by the contractor shall meet the requirements of Regulation (EU) 2018/1725 and be processed solely for the purposes set out by the controller.

The contractor shall assist the controller for the fulfilment of the controller's obligation to respond to requests for exercising rights of person whose personal data is processed in relation to this FWC 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 FWC. 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.

⁶ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32018R1725>

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 technical 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.8.2) 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.8.2 and II.9.2 in writing to those parties, including subcontractors. At the request of the contracting authority, the contractor shall provide a document providing evidence of this commitment.

II.10. Subcontracting

II.10.1. The contractor must not subcontract and have the FWC implemented by third parties beyond the third parties already mentioned in its tender without prior written authorisation from the contracting authority.

II.10.2. Even if the contracting authority authorises subcontracting, the contractor remains bound by its contractual obligations and remains entirely responsible for the implementation of the FWC vis-à-vis the contracting authority.

II.10.3. The contractor must ensure that the subcontract does not affect the rights of the contracting authority under this FWC, particularly those under Articles II.8, II.13 and II.24.

II.10.4. The contracting authority may request the contractor to replace a subcontractor found to be in a situation provided for in points (d) and (e) of Article II.18.1. The contractor bears the costs of such replacement.

II.11. Amendments

II.11.1. Any amendment to the FWC or a specific contract must be made in writing before all contractual obligations have been fulfilled. A specific contract does not constitute an amendment to the FWC. Any acceptance or payment by the contracting authority of an invoice referring to the general terms and conditions of the contractor does not constitute a valid amendment to the FWC or to a specific contract and does not make these general terms and conditions applicable to the FWC or a specific contract.

II.11.2. Any amendment must not make changes to the FWC or a specific contract that might alter the initial conditions of the procurement procedure or result in unequal treatment of tenderers or contractors.

II.12. Assignment of the contract to a third-party

II.12.1. The contractor must not assign any of the rights and obligations arising from the FWC or a specific contract.

II.12.2. By way of exception to the preceding clause, in duly justified exceptional circumstances, rights and / or obligations arising from the FWC and/or a specific contract may be assigned with the prior written authorisation of the contracting authority. This authorisation shall be granted or not at the discretion of the contracting authority and upon request by the contractor. The contractor's request shall detail the exceptional circumstances on which it is based and provide the identity of the intended assignee. The contracting authority may request additional information.

II.12.3. Any right or obligation assigned by the contractor without the authorisation mentioned in the preceding clause is not enforceable against the contracting authority. Accordingly, the assignor will remain jointly and severally bound with the assignee vis-à-vis the contracting authority.

II.13. Intellectual property rights

II.13.1. Ownership of the rights in the results

The contracting authority acquires irrevocably worldwide ownership of the results and of all intellectual property rights on the newly created materials produced specifically for the contracting authority under the FWC 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 implementation of the FWC. The contracting authority may exploit and use the acquired rights as stipulated in this FWC. 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 FWC.

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 FWC or in specific contracts. 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 for the Union or cooperating with it or the Union, including contractors and subcontractors, whether legal or natural persons, but only for the purpose of their mission for the contracting authority or 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 contracting authority from the moment the results are delivered and approved by the contracting authority.

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

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

Where implementation of the FWC 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 FWC.

II.13.3. Exclusive rights

The contracting authority 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;

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- (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 FWC, and the right to make it available to contractors or subcontractors acting on behalf of the contracting authority, subject to their signing of adequate confidentiality undertakings where necessary;
- (k) where the results are documents:
1. the right to authorise the reuse of the documents in conformity with the Commission Decision of 12 December 2011 on the reuse of Commission documents (2011/833/EU), to the extent it is applicable and the documents fall within its scope and are not excluded by any of its provisions; for the sake of this provision, "reuse" and "document" have the meaning given to them by this Decision;
 2. the right to store and archive the *results* in line with the document management rules applicable to the contracting authority, including digitisation or converting the format for preservation or new use purposes;
- (l) where the results are or incorporate software, including source code, object code and, where relevant, documentation, preparatory materials and manuals, in addition to the other rights mentioned in this Article:
1. end-user rights, for all uses by the contracting authority or by subcontractors which result from this FWC and from the intention of the parties;
 2. the rights to receive both the source code and the object code;
- (m) the right to license to third parties any of the exclusive rights or of the modes of exploitation set out in this FWC; however, for pre-existing materials which are only licensed to the contracting authority, 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 FWC, 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 contracting authority, 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 FWC, 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 FWC 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 already owned or licensed by the contracting authority or the Union. The contracting authority may request this evidence even after the end of this FWC.

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.9.1, with the following disclaimer: '© — year — European Union Agency for Criminal Justice Cooperation. All rights reserved. Certain parts are licensed under conditions to the European Union Agency for Criminal Justice Cooperation, or with any other equivalent disclaimer as the contracting authority may consider best appropriate, or as the parties may agree on a case-by-case basis. This does not apply where inserting such reference would be impossible, notably for practical reasons.

II.13.10. Visibility of Union funding and disclaimer

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

II.14. Force majeure

II.14.1. If a party is affected by force majeure, it must immediately notify the other party, stating the nature of the circumstances, their likely duration and foreseeable effects.

II.14.2. A party is not liable for any delay or failure to perform its obligations under the FWC or a specific contract if that delay or failure is a result of force majeure. If the contractor is unable to fulfil its contractual obligations owing to force majeure, it has the right to remuneration only for the services actually provided.

II.14.3. The parties must take all necessary measures to limit any damage due to force majeure.

II.14.4. Force majeure either suspends the implementation of the FWC as provided for in Article II.17 or leads to the termination of the FWC as provided for in Article II.18. The effects of the suspension of the FWC due to Force Majeure on the duration are laid down in Article I.3.4.

II.15. Liquidated damages for delay in delivery

II.15.1. Delay in delivery

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

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

where:

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

d is the duration specified in the relevant specific contract for delivery of the relevant services or deliverable or result or, failing that, the period between the date specified in Article I.4.1 and the date of delivery or performance specified in the relevant specific contract, expressed in days.

Liquidated damages for delay in delivery may be imposed together with a reduction in price under the conditions laid down in Article II.16 or a substitution of the contractor under the conditions laid down in Article II.4.12.

Any claim for liquidated damages does not affect (a) the contractor's liability for damages that liquidated damages would not cover, (b) the contracting authority's rights under Article II.18, nor (c) the contracting authority's rights under Article II.4.12 or (d) any other right or remedy that the contracting authority may have under the FWC or a specific contract.

II.15.2. Procedure

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

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

(a) of the withdrawal of its intention to apply liquidated damages; or

(b) of its final decision to apply liquidated damages and the corresponding amount.

II.15.3. Nature of liquidated damages

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

II.16. Reduction in price

II.16.1. Quality standards

Without prior notice of default to the contractor or prior judicial intervention being required, if the contractor fails to provide the service in accordance with high quality standards, the state of the art in the industry and the provisions of the FWC and/or a specific contract (in particular the tender specifications and the terms of its tender), the contracting authority may, even if this failure constitutes a breach that could trigger Article II.18.1, reduce the price in direct proportion to the difference, upon the time of the signature of the FWC, between the value of the unperformed obligations or low quality delivery and the value of the agreed services. This includes, in particular, cases where the contracting authority cannot approve a result, report or deliverable, as defined in Article I.6, after the contractor has submitted the required additional information, correction or new version.

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

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

II.16.2. Procedure

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

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

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

II.17. Suspension of the implementation of the FWC

II.17.1. Suspension by the contractor

If the performance of a specific contract is affected by force majeure, the contractor may suspend the provision of the services under that specific contract.

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

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

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

II.17.2. Suspension by the contracting authority

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

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

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

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

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

The contractor is not entitled to compensation for suspension of any part of the FWC or a specific contract.

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

II.18. Termination of the FWC

II.18.1. Grounds for termination by the contracting authority

The contracting authority may terminate the FWC or any on-going specific contract in the following circumstances:

- (a) if provision of the services under an on-going specific contract has not actually started within 15 days of the scheduled date and the contracting authority considers that the new date proposed, if any, is unacceptable, taking into account Article II.11.2;
- (b) if the contractor is unable to obtain any permit or licence required for implementation of the FWC;

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- (c) if the contractor fails to implement the FWC or to perform the specific contract in accordance with the technical specifications or request for specific contract or is materially in breach of another contractual obligation or repeatedly refuses to sign specific contracts. Termination of three or more specific contracts in these circumstances also constitutes grounds for termination of the FWC;
- (d) if the contractor or any person that assumes unlimited liability for the debts of the contractor is in one of the situations provided for in points (a) and (b) of Article 138(1) of the Financial Regulation;
- (e) if the contractor or any related person is in one of the situations provided for in points (c) to (i) of Article 138(1) or in Article 138 (2) or in Article 138 (3) of the Financial Regulation;
- (f) if the procedure for awarding the FWC or the implementation of the FWC prove to have been subject to errors, irregularities, fraud or breach of obligations;
- (g) if the contractor does not comply with applicable obligations under environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU;
- (h) if the contractor is in a situation that could constitute a conflict of interest or a professional conflicting interest as referred to in Article II.7 and does not rectify the situation;
- (i) if a change to the contractor's legal, financial, technical, organisational or ownership situation is likely to substantially affect the implementation of the FWC or substantially modify the conditions under which the FWC was initially awarded or a change regarding the exclusion situations listed in Article 138 of the Financial Regulation that calls into question the decision to award the contract or the contractor becomes subject to restrictive measures hindering the implementation of the FWC;
- (j) in the event of force majeure, where either resuming implementation is impossible or the necessary ensuing amendments to the FWC or a specific contract would mean that the technical specifications are no longer fulfilled or result in unequal treatment of tenderers or contractors;
- (k) if the needs of the contracting authority change and it no longer requires new services under the FWC; in such cases ongoing specific contracts remain unaffected;
- (l) if the termination of the FWC with one or more of the contractors means that the multiple FWC with reopening of competition no longer has the minimum required level of competition;
- (m) if the contractor is in breach of the data protection obligations resulting from Article II.9.2;
- (n) if the contractor does not comply with the applicable data protection obligations resulting from Regulation (EU) 2016/679⁷;
- (o) if it is manifest that, at a later date and before such breach becomes effective, the contract or will materially fail to implement the FWC or to perform the specific contract in accordance with the technical specifications or request for specific contract or will be materially in breach of another contractual obligation or will repeatedly refuse to sign specific contracts, unless the contractor provides the contracting authority with sufficient assurances of its future performance.

⁷ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, <http://data.europa.eu/eli/reg/2016/679/2016-05-04>

(p) where the contractor or any related entity or person has violated any provisions on security and confidentiality included in Articles I.13 and II.8 of the FWC or specific contracts signed to implement it

II.18.2. Grounds for termination by the contractor

The contractor may terminate the FWC or any on-going specific contract if the contracting authority materially fails to comply with its obligations, in particular the obligation to provide the information needed for the contractor to implement the FWC or to perform a specific contract as provided for in the technical specifications.

The contractor may also terminate the FWC or any on-going specific contract in the event of force majeure, where resuming implementation is impossible.

II.18.3. Procedure for termination

A party must formally notify the other party of its intention to terminate the FWC or a specific contract and the grounds for termination.

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

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

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

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

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

II.18.4. Effects of termination

The contractor is liable for damage incurred by the contracting authority as a result of the termination of the FWC or a specific 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), (k) or (l) 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 FWC or a specific contract, including loss of anticipated profits, unless the loss was caused by the situation specified in the first subparagraph of Article II.18.2.

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

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

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

II.19. Invoices, value added tax and e-invoicing

II.19.1. Invoices and value added tax

The contractor must comply with the applicable tax legislation.

Invoices must contain the contractor's identification data (name, address, VAT identification number), invoice number/reference, the amount, the currency and the invoice date as well as delivery date, the bank account number as well as the FWC reference and reference to the specific contract.

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

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

The contractor must complete the necessary formalities with the relevant authorities to ensure that the supplies and services required for implementation of the FWC are exempt from taxes and duties, including VAT.

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

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

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

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

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

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

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

II.19.2. E-invoicing

If the use of electronic exchange system has been activated under Article I.7.1, the contractor submits invoices in electronic format in compliance with Directive 2006/112/EC on VAT, through the Portal, in accordance with the Portal Terms and Conditions and using the forms and templates provided there, or through means of supported interoperability networks compliant with the Directive 2014/55/EU on electronic invoicing in public procurement.

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

II.20. Price revision

If a price revision index is provided in Article I.5.2, this Article applies to it.

In that case prices are fixed and not subject to revision during the first year of the FWC.

At the beginning of the second and every following year of the FWC, 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 31st October of each year.

The other party must acknowledge the request within 14 days of receipt.

The request must be accompanied by a complete set of new contract prices calculated according to the following formula:

$$I_r$$

$$Pr = Po \times \left(\frac{I_r}{I_o} \right)$$

$$I_o$$

where: Pr = revised price;

Po = price in the tender;

Io = index for the month corresponding to the final date for submission of tenders;

Ir = final index (not provisional) for the month corresponding to July of the year in which the request is made.

The revised prices shall enter into force on 1st January of the year following the request, provided approval of these prices by both parties in writing.

The contracting authority orders services on the basis of the prices in force at the date on which the specific contract enters into force.

Without prejudice to the previous paragraph, for specific contracts in phases or subject to renewal, the contracting authority orders services on the basis of the prices in force on the date indicated as start date of the next phase, or on the date of renewal.

All correspondence related to price revision can be made by email to the following address: procurement@eurojust.europa.eu.

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.6.1.

II.21.3. Conversion

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

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

[Exchange rate \(InforEuro\) | European Commission \(europa.eu\)](https://commission.europa.eu/funding-tenders/procedures-guidelines-tenders/information-contractors-and-beneficiaries/exchange-rate-inforeuro_en)⁸

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.

⁸ https://commission.europa.eu/funding-tenders/procedures-guidelines-tenders/information-contractors-and-beneficiaries/exchange-rate-inforeuro_en

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 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 specific contract. The contracting authority must release the guarantee fully after final approval of the service, as provided for in the specific contract.

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

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

II.21.6. Interim payments and payment of the balance

The contractor must send an invoice for interim payment, as provided for in Article I.6 or in the technical specifications or in the specific contract.

The contractor must send an invoice for payment of the balance within 60 days of the end of the period of provision of the services, as provided for in Article I.6, in the technical specifications or in the specific contract.

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

Payment of the balance may take the form of recovery as provided for in Article II.23.

II.21.7. Suspension of the time allowed for payment

The contracting authority may suspend the payment periods specified in Article I.6 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 FWC;
- (b) because the contractor has not produced the appropriate documents or deliverables; or
- (c) because the contracting authority has observations on the documents or deliverables submitted with the invoice;
- (d) because it is manifest that, at a later date and before such breach becomes effective, the contractor will materially fail to implement the FWC or to perform the specific contract in accordance with the technical specifications or request for specific contract or will be in material breach of another contractual obligation or will repeatedly refuse to sign specific contracts, unless the contractor provides the contracting authority with sufficient assurances of its future performance.

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

Suspension takes effect on the date the contracting authority sends the notification. The remaining payment period resumes from the date on which the requested information, sufficient assurances or revised documents are received or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension period exceeds two months, the contractor (or leader in the case of a joint tender) may request the contracting authority to justify the continued suspension.

Where the payment periods have been suspended following rejection of a document referred to in the first paragraph of this Article and the new document produced is also rejected, the contracting authority reserves the right to terminate the specific 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.6, the contractor (or leader in the case of a joint tender) is entitled to interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in euros (the reference rate) plus eight points. The reference rate is the rate in force, as published in the C series of the Official Journal of the European Union, on the first day of the month in which the payment period ends.

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

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

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

II.22. Reimbursements

II.22.1. If provided for in the special conditions or in the technical 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.5.3;
- (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.5.3.

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

II.23. Recovery

II.23.1. If an amount is to be recovered under the terms of the FWC, 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 contracting authority;
- (b) by calling in a financial guarantee if the contractor has submitted one to the contracting authority;
- (c) by taking legal action.

II.23.3. Interest on late payment

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

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

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

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

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

II.24. Checks and audits

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

Such checks and audits may be initiated at any moment during the provision of the services and up to five years starting from the payment of the balance of the last specific contract issued under this FWC.

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 of the last specific contract issued under this FWC.

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 FWC is implemented and to all the information, including information in electronic format, needed to conduct

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

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

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

II.24.5. In accordance with Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspection carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities and Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office, the European Anti-Fraud Office may carry out investigations, including on the spot checks and inspections, to establish whether there has been fraud, corruption, irregularities or any other illegal activity under the contract affecting the financial interests of the Union. Findings arising from an investigation may lead to criminal prosecution under national law.

The investigations may be carried out at any moment during the provision of the services and up to five years starting from the payment of the balance of the last specific contract issued under this FWC.

II.24.6. The Court of Auditors and the European Public Prosecutor's Office established by Council Regulation (EU) 2017/1939⁹ ('the EPPO') and, for the processing of personal data, the European Data Protection Supervisor have the same rights as the contracting authority, particularly right of access, for the purpose of checks, audits and investigations.

⁹ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office

ANNEX I

TECHNICAL SPECIFICATIONS

Annex II

Contractor's tender

ANNEX III

- Model for specific contracts
- Model for order forms

SPECIFIC CONTRACT**No [complete]****implementing framework contract****No [complete]**

1. The European Union ('the Union'), represented by the **European Union Agency for Criminal Justice Cooperation** ('the contracting authority') represented for the purposes of the signature of this Specific Contract by the authorised representative indicated in the respective field under "Signatures" below and

2. [Contractor's full official name]

Legal form: [Contractor's official legal form]

Registration number: [Contractor's statutory registration number or ID or passport number]

Official address: [Contractor's full official address]

VAT registration number:

[OPTION for joint tenders: appointed as leader of the group by the members of the group that submitted the joint tender]

[repeat these data as many times as there are contractors in case of joint tender and continue numbering]

[[OPTION for joint tenders: collectively] "the contractor"),

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

HAVE AGREED**Article 1. Subject matter**

1.1 This specific contract implements framework contract (FWC) No [FWC number], signed by the parties on [FWC last signature date].

The title of this specific contract is: "[insert title of the contract]".

The specific contract is established following the contracting authority's request for specific contracts [request number] of [request date] and the contractor's [specific tender] [documents] submitted on [date].

1.2 In accordance with the provisions set out in the FWC and in this specific contract and their annexes, which form an integral part of it, the contractor must provide the services specified in Annex I [with a maximum volume of ... [working days]].

[The volume of the initial period is ... [working days]].¹⁰

[The volume for the renewal by written consent of the parties is ... [working days]].¹¹

¹⁰ Option to be used in any case of renewal (automatic/ by written consent of the parties).

¹¹ Option to be used to indicate the volume of each renewal by written consent of the parties.

Article 2. Entry into force, duration and place of performance

2.1 This Specific Contract enters into force on the date on which the last party signs it.

2.2 The provision of the services starts [on the date the specific contract enters into force] [on the later between the following two dates: the date it is signed by the last contracting party and DD-MM-YY] [on the date notified by the Contracting Authority with at least 7 days notice and in any case no sooner than the date of entry into force and no later than 3 months after the signature of the specific contract].

2.3 The [maximum] period of provision of the services[, including all] [phases,] [renewals,] [must not exceed] [number] [days/months/years] [must end on or before DD-MM-YY]. This period may be extended only with the express written agreement of the parties before the expiration of such period, in accordance with the provisions of the FWC.

2.4. The tasks shall be performed as specified in the [Request for specific contract] [Contractor's specific tender] (including the place of performance).

[OPTION IF EXECUTION IN PHASES]

This option can be selected only if the option of renewal is not selected, i.e. the two options are mutually exclusive

2.5 [The performance of the specific contract is divided into phases. The duration of the first phase is [number] [days/months/years].

The start of each new phase is subject to fulfilment of conditions (such as the successful completion of the preceding phase, availability of the necessary funding from the contracting authority's budget etc.) in accordance with the terms of the Request for specific contract. The contractor is authorised to continue the performance of the specific contract in the next phase only with written consent of the contracting authority provided [number] [days/months] before the start of the next phase. The written consent of the contracting authority will indicate the start date, the duration and the maximum amount covering all purchases of the next phase.]

[OPTION IF RENEWALS]

This option can be selected only if the option of execution in phases is not selected, i.e. the two options are mutually exclusive.

2.5 The *specific contract* is concluded for an initial period which [must not exceed] [number] [days/months] [must end on or before DD-MM-YY] and then renewed

[automatically [number] times for [number] [days/months] each, unless one of the parties receives formal notification to the contrary at least [number] [days/months] before the end of the ongoing duration].

[by written consent of the parties .¹²]

¹² Option to be used only in case of asymmetric execution (tasks, value and duration different for the initial period and subsequent renewals) that would be incompatible with automatic renewal and execution in phases. The possibility to proceed to the renewal of the contract must be clearly indicated in the Request for specific contract specifying both the total and initial volume and period (e.g. specific contract for maximum 4 years and total amount of 1M; initial period 8 months and initial amount 200k).

[The period of renewal according to the above mentioned notification **[must not exceed]** **[number]** **[days/months]** **[must end on or before DD-MM-YY.]**]

Renewal does not change or postpone any existing obligations.]

Article 3. Price and VAT provisions

Price

OPTION IF NO RENEWALS AND NO PHASES

3.1 The **[maximum]** amount covering all purchases under this specific contract, **[including reimbursement/payment of expenses as specified in the Request for specific contract]**, is EUR **[amount in figures and in words].]**

OPTION IF EXECUTION IN PHASES

3.1 The **[maximum]** amount covering all purchases under this specific contract throughout all the phases, **[including reimbursement/payment of expenses as specified in the Request for specific contract]**, is EUR **[amount in figures and in words].]**

The **[maximum]** amount covering all purchases during the first phase, **[including reimbursement/payment of expenses as specified in the Request for specific contract]**, is EUR **[amount in figures and in words].]**

OPTION IF AUTOMATIC RENEWALS

3.1 The **[maximum]** amount covering all purchases for the initial period under Article 2.5, **[including reimbursement/payment of expenses as specified in the Request for specific contract]**, is EUR **[amount in figures and in words].]**

The **[maximum]** amount covering all purchases under each of the renewals, **[including reimbursement/payment of expenses as specified in the Request for specific contract]**, is EUR **[amount in figures and in words].]**

The maximum amount covering all purchases under this specific contract, **[including reimbursement/payment of expenses as specified in the Request for specific contract]**, and including all the renewals is EUR **[amount in figures and in words].]**

OPTION IF WRITTEN CONSENT RENEWALS

3.1 The **[maximum]** amount covering all purchases for the initial period under Article 2.5, **[including reimbursement/payment of expenses as specified in the Request for specific contract]**, is EUR **[amount in figures and in words].]**

[The [maximum] amount covering all purchases for the renewal period under Article 2.5, [including reimbursement/payment of expenses as specified in the Request for specific contract], is EUR [amount in figures and in words].]

The maximum amount covering all purchases under this specific contract, **[including reimbursement/payment of expenses as specified in the Request for specific contract]**, and including all the renewals is EUR **[amount in figures and in words].]**

REIMBURSEMENTS

OPTION IF NO REIMBURSEMENT OF EXPENSES

3.2 Reimbursement / payment of expenses is not applicable to this specific contract.

OPTION IF REIMBURSEMENT OF EXPENSES IS APPLICABLE

3.2 Within the maximum amount of this specific contract[, covering] [all phases,] [the initial period and all renewals,] the total value of expenses may not exceed EUR [amount in figures] [and in words]. The expenses must be reimbursed / paid in accordance with the FWC.]

VAT PROVISIONS

OPTION WHEN CONTRACTOR IS DUTCH LEGAL ENTITY

3.3. If the transaction is taxable for VAT purposes as a local purchase in The Netherlands, in addition to information specified in Art. II.19.1, the invoices for specific contracts, with total value below 35 000 EUR shall include VAT and shall fall under the tax refund method. Invoices for specific contracts with a total value above 35 000 EUR must specify 0% VAT in case the contracting authority provides the contractor with the tax exemption certificate.]

OPTION WHEN CONTRACTOR IS OTHER THAN DUTCH LEGAL ENTITY

3.3. If the transaction is taxable for VAT purposes as an intra-community purchase, the invoice must include the following sentence: "VAT exemption / European Union / Article 151 of Council Directive 2006/112/EC". The contracting authority will provide the contractor with the tax exemption certificate.

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

Article 4. Invoices and payments

4.1 Payment arrangements provisions are set out in the framework contract / request for specific contracts.

OPTION If pre-financing applicable

A first pre-financing payment of EUR [amount in figures and in words]] shall be made, subject to the provisions of the Framework contract

OPTION If pre-financing guarantee is applicable: and to the receipt, by the contracting authority, of a financial guarantee covering the full amount of the pre-financing payment, in accordance with the provisions of the Framework contract.

4.2 The contractor should send the invoice(s) for the interim payment(s) and/or the payment of the balance [via email at the following email address] [via the electronic exchange system].

Article 5. Communication details

OPTION if the specific contract is managed in the electronic exchange system:

5.1 Any communication related to the implementation of this specific contract shall be made through the electronic exchange system, accessed via the following URL:

<https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/home>

For the purpose of this specific contract, paper or email communications (if exceptionally allowed) must be sent to the following addresses:

Contracting authority:

Eurojust

Attn: [Department], [Unit], [Sector],

P.O. Box 16183

2500 BD, The Hague

The Netherlands

E-mail: [functional mailbox]

Contractor (or leader in the case of a joint tender):

[Full name]

[Function]

[Company name]

[Full official address]

E-mail: [complete]]

Tel: [Complete]

OPTION if the specific contract is managed outside of the electronic exchange system:

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

Contracting authority:

Eurojust

Attn: [Department], [Unit], [Sector][Office][Programm][Network],

P.O. Box 16183

2500 BD, The Hague

The Netherlands

E-mail: [functional mailbox]

Contractor (or leader in the case of a joint tender):

[Full name]

[Function]

[Company name]

[Full official address]

E-mail: [complete]

Tel: [Complete]

Article 6. Prefinancing guarantee

[OPTION If pre-financing guarantee applicable]

6.1 This contract is subject to a pre-financing guarantee. The contractor (or leader in the case of a joint tender) must provide a prefinancing guarantee in the form of a financial guarantee for EUR [amount in figures and in words] in accordance with the conditions laid down in Article II.21.5 which lays down also the conditions for the release of the pre-financing guarantee by the contracting authority.]

[OPTION If pre-financing guarantee is not applicable]

6.1 Pre-financing guarantee is not applicable to this specific contract.]

Article 7. Performance guarantee

OPTION If performance guarantee applicable

Requesting a performance guarantee is not allowed for contracts of less than EUR 60 000

7.1 This contract is subject to a performance guarantee of [complete] % of the price of the specific contract [excluding expenses]. The contractor (or leader in the case of a joint tender) must provide a performance guarantee in the form of a financial guarantee for EUR [amount in figures and in words] in accordance with the conditions laid down in Article II.21.5. The guarantee must be released [complete] days after the final approval of the services.]

OPTION If performance guarantee is not applicable

7.2 Performance guarantee is not applicable to this specific contract.

Article 8. Retention money guarantee

OPTION If Retention money guarantee applicable

Requesting a retention money guarantee is not allowed for contracts of less than EUR 60 000

8.1 This contract is subject to a retention money guarantee of [complete] % of the price of the specific contract [excluding expenses].

The guarantee is constituted by deduction of this amount on payments. It will be withheld for up to [complete] days after the final approval of the service. At the request of the contractor, and subject to approval by the contracting authority, the deduction on payment may be replaced by a bank guarantee in accordance with the conditions laid down in Article II.21.5.

OPTION If Retention money guarantee is not applicable

8.2 Retention money guarantee is not applicable to this specific contract.

Article 9. Processing of personal data

9.1 For personal data contained in this specific contract or required for its management, the data controller is the Head of [specify the name of Unit or Department] and can be contacted using the communication details mentioned under Article 5 above.

Article 10. Language of the contract

10.1 The language of the specific contract, as well as the working and reporting language and the language for all written communications with the contracting authority and/or the project manager under this specific contract shall be in English.

Annexes

Annex I: Request for specific contract

Annex II: [Contractor's specific tender] [Contractor's documents submitted] of [insert date]

[Annex III: [Template for] annex indicating the group members' shares for VAT purpose (if applicable)]

[Annex IV: Declaration on the list of pre-existing rights and statements (if applicable)]

Signatures

For the contractor

Name of signatory

For the contracting authority

Name of signatory

Date:

Date:

ANNEX III**Group members' shares in total contract value for VAT purposes**

[Direct Contract [insert reference of the direct contract]]

[Specific Contract No. [insert reference of the specific contract]/Order Form No. [insert reference of the order form] implementing FWC No. [insert reference of the FWC]]

Contractor (Member of the group)	Description of the supplies/services provided by the member
----------------------------------	---

Total value of the supplies/services provided by the member

The members of the group are jointly and severally liable to the contracting authority under the conditions set out in the relevant provisions of the [Framework] contract.

Signature of the Leader of the Group

[Name of Leader]

Done on [date]

[illegible]

ANNEX IV

Instructions, Terms and Conditions for Companies Performing Services at Eurojust Premises

Article 1. General conditions

1.1. These instructions comprise part of the contractual agreement between the contracting authority, on the one hand, and the contractor on the other hand.

1.2. Before performing services, the contractor shall ensure that:

a) it sends to the contracting authority, prior engagement and start of any assignment, written notification of the details of the contractor's staff assigned to the performance of the FWC. This notification shall include their name, and be accompanied by a photocopy of their valid photographic identity document (i.e. passport or national ID) and a statement of good conduct (in original) not older than three months;

b) it urgently informs the contracting authority if any of the contractor's staff will no longer be assigned to the performance of the FWC;

c) it informs all its staff being deployed at the contracting authorities premises of the contents of these instructions and has each one of them sign an individual copy of this Annex.

1.3. Staff of the contractor shall not be permitted to receive/invite visitors at the premises of the contracting authority. Nor shall the contractor inspect the performance of tasks carried out by their staff without advance approval from the contracting authority and unless accompanied by a representative from the contracting authority.

1.4. A breach of these instructions may lead to the immediate termination of the FWC with no resulting entitlement to compensation on the part of the contractor.

1.5. The contracting authority reserves the right to immediately terminate the activities in which the contractor's staff is engaged at the contracting authority's premises.

1.6. The contractor shall ensure that any subcontractors follow the requirements set out in this Annex. Requirements specified for the contractor's staff in this Annex shall be directly applicable for any subcontractor's staff.

Article 2. Security requirements

2.1. All of the contractor's staff involved in performing the FWC shall follow the instructions and guidelines of the contracting authority's Security.

2.2. Until such time that the contractor's staff has received Eurojust contractor badge, they will be subject to physical security screening.

2.3. Eurojust reserves the right to security screen and/or retain any item brought by the contractor's staff for the performance of their assignment at the contracting authority's premises. Any retained item will be returned upon leaving the premises.

2.4. Non-compliance with this Annex may result in denial of access to contracting authority's premises.

Article 3. Safety measures

- 3.1. The contractor must comply with relevant Dutch safety regulations and when requested, shall provide all relevant documents.
- 3.2. If deemed necessary by the contracting authority, the contractor's staff must attend safety briefing organised by the contracting authority.
- 3.3. Eurojust reserves the right to introduce additional safety measures for the contractor at any point during the execution of the FWC.

Article 4. Confidentiality measures

- 4.1. The contractor's staff involved in organizing or performing the services rendered under this FWC, shall be barred from divulging to third parties any information acquired during the course of their tasks.
- 4.2. Information about services rendered and the working location shall not be collected, recorded or distributed by the contractor's staff without prior authorisation of the contracting authority.
- 4.3. Audio and video recording are strictly forbidden within the contracting authority's premises, without its prior approval. Non-compliance may result in the contractor's staff being expelled from the contracting authority's premises.
- 4.4. The contractor shall be liable for all damage suffered by the contracting authority due to a breach of the confidentiality requirements or the disappearance/loss of documents issued to it as referred to above. The contractor shall be responsible to ensure proper fulfilment of the confidentiality requirements by its staff.

Article 5. Access Control

- 5.1. Access to the building and premises of the contracting authority shall be granted only to persons who are involved in performing the services of the FWC, who were reported in accordance with Article 1.3 of these instructions and whose identity has been confirmed by means of an official valid photographic identity document (i.e. passport or national ID). Failure to present such identification may result in the denial of access to the contracting authority's premises. Photocopies will not be accepted.
- 5.2. The contractor's staff visiting the Eurojust premises (i.e. not being provided with a contractor badge) will submit to Eurojust Security their identity document and receive visitor badge. The identity document will be retained until the visitor badge is returned. The visitor badge must be worn visibly at all times. The loss of the visitor badge must be reported immediately to Eurojust Security.
- 5.3. The arrival and departure times of all of the contractor's staff involved in organizing or performing the services rendered will be registered.

Article 6. Dangerous Substances

- 6.1. The use of dangerous substances, explosive gases, or substances toxic to humans and animals that are needed for the performance of the services rendered shall be permitted only after the contracting authority has received written notification of such action and only if it is compliant with relevant legal regulations.
- 6.2. The contracting authority reserves the right to issue further instructions in such cases.

6.3. Removal of non-usable and/or contaminated materials, such as oil, cooling substances, filters, packaging etc., shall take place according to environmental friendly and legally compliant methods. These materials shall be disposed of or destroyed at dump sites in a legally compliant manner or by waste processing companies approved by the Dutch Government. The contracting parties shall submit a disposal certificate on request of the Facility Management Sector of contracting authority.

6.4. Open fires and welding activities are strictly forbidden unless approved by the contracting authority, carried out in accordance with the contracting authority's fire and safety regulations and unless the contracting authority has taken special safety measures (such as provided fire extinguishing materials).

Article 7. Unforeseen Circumstances

7.1. Should unforeseen circumstances arise, depending on their nature, appropriate decisions will be taken by the relevant staff of the contracting authority. The contractor's staff is obliged to follow such decisions and any instructions communicated to them in such circumstances.

ANNEX V

Declaration concerning DISCRETION and CONFIDENTIALITY from CONTRACTORS¹³

Prior to the commencement of my tasks at the European Union Agency for Law Enforcement Cooperation (Europol),

I, the undersigned,

Name :

Date of birth :

Nationality:

Employer's name:

hereby declare that:

1. I understand that Europol is active in the field of law-enforcement and I confirm I was informed about my obligation of discretion and confidentiality.
2. I understand that I should not disclose any facts and/or information that come to my knowledge in the performance of my tasks at Europol to any unauthorised person or to the public, including on Social Media. I shall refrain from any action and any expression of opinion which might be harmful to Europol or harm its activities. Any information related directly or indirectly to Europol and/or its tasks or stakeholders (whether in writing, oral or in any other form) made available to me - for any purpose, by accident, intentional or otherwise - must be treated by me with discretion and confidentiality. Any disclosure of such information to a third party – including other employees of my employer not specifically assigned to perform tasks at Europol - shall require the prior written consent of Europol. This obligation does not prevent me from informing my employer in accordance with my employment contract or to facts or information that are expressly marked or clearly recognisable as being public information.
3. I am aware that I may only take information from Europol's Premises or transmit it to third parties after having obtained Europol's explicit prior written consent.
4. I understand that I am not allowed to disclose the fact that I am assigned to perform tasks at Europol on Social Media, unless prior written consent from Europol has been obtained.
5. I understand that I am not allowed to use smart devices to store, process or transmit information provided to me by Europol in the performance of my tasks unless specifically authorised and using means authorised by Europol. Such equipment may also not be used in a way which cause harm to Europol infrastructure or has security implications. I understand that I may be obliged to hand in such smart devices to Europol Security for safekeeping at the beginning of the working day (to be recovered when leaving the Europol's Premises).
6. I confirm that I received a copy of the leaflet on Europol's security rules for contractors. I understand that I am bound to follow these rules as well as any other instructions from Europol Security issued in the interests of protecting the persons at Europol as well as its premises and information.
7. According to the responsibilities and access assigned to me, I may be obliged to participate in security awareness activities as instructed by Europol Security. An e-learning module on physical security will be required to be taken by every contractor working in the Europol building for total contract duration of 20 or more days. An e-learning module on confidentiality and information security will be required to be taken by every contractor provided with an account on one of Europol's networks working in the Europol building for total contract duration of 20 or more days.

¹³ The template can be adapted and used also for Eurojust

8. My obligation of discretion and confidentiality is unlimited in time and continues to apply even after the termination of my tasks at Europol and my professional activities for my (current) employer.
