



European Court of Auditors

Open call for tenders No AO 73

“Methodological support during implementation of an EMAS-type environmental management system (EMS)”

**ANNEX 1
DRAFT CONTRACT**

EUROPEAN COURT OF AUDITORS

GENERAL SECRETARIAT

DIRECTORATE OF FINANCE AND SUPPORT

The Director

SERVICE CONTRACT

“Methodological support during implementation of an EMAS-type environmental management system (EMS)”

Contract number: DFS 73

The European Court of Auditors (hereinafter referred to as "the Court"), represented for the purposes of the signature of this Contract by Mr. Zacharias KOLIAS, Director of Finance and Support

of the one part,

and

[*official name in full*]

[*official legal form*]

[*statutory registration number*]

[*official address in full*]

[*VAT registration number*]

(hereinafter referred to as "the Contractor"), represented for the purposes of the signature of this Contract by [*forename, surname and function,*]

[The parties identified above and hereinafter collectively referred to as ‘the Contractor’ shall be jointly and severally liable vis-à-vis the Court for the performance of this Contract.]¹

of the other part,

¹ This clause is to be used if the Contractor is a consortium of economic operators.

HAVE AGREED

the following Annexes:

Annex I – Invitation to Tender of [*insert date*] with its annexes

Annex II – Contractor's Tender (of [*insert date*])

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

- The terms set out in the Special Conditions shall take precedence over those in the other parts of the Contract.
- The terms set out in the General Conditions shall take precedence over those in the other Annexes.
- The terms set out in the Tender Specifications (Annex I) shall take precedence over those in the Tender (Annex II).

Subject to the above, the several instruments forming part of the Contract are to be taken as mutually explanatory. Ambiguities or discrepancies within or between such parts shall be explained or rectified by a written instruction issued by the Court, subject to the rights of the Contractor under Article I.7 should he dispute any such instruction.

I – SPECIAL CONDITIONS

ARTICLE I.1 - SUBJECT

- I.1.1.** The subject of the Contract is the provision of high-quality methodological support and related consultancy services during the various stages of implementing an environmental management system based on the EMAS European standard for the European Court of Auditors with the objective of obtaining EMAS certification within a fixed term, as described in the Tender Specifications annexed to the Contract (Annex I).
- I.1.2.** The Contractor shall execute the tasks assigned to him in accordance with all the terms and conditions of the Contract.

ARTICLE I.2 - DURATION

- I.2.1.** The Contract shall enter into force on the date on which it is signed by the last party.
- I.2.2.** Under no circumstances may implementation commence before the date on which the Contract enters into force.
- I.2.3.** The Contract shall be concluded for a period needed for the execution of the requested tasks.

ARTICLE I.3 – CONTRACT PRICE

- I.3.1.** The prices for the services to be paid by the Court under the Contract shall be as listed in the Financial offer (Annex II).

This price also covers any fees payable to the Contractor in relation to the vesting of rights in the European Union and where applicable the transfer of rights to the European Union and any use of the results by the Court.

- I.3.2** Prices shall be expressed in EURs.
- I.3.3** The prices shall be fixed and not subject to revision for the first year of performance of the Contract.

At the beginning of the second and every following year of the Contract, the amount(s) may be revised upwards or downwards, if such revision is requested by one of the parties in writing no later than three months before the anniversary of the date on which it was signed. The other party shall acknowledge receipt within 15 days of reception of the request. The new prices shall be communicated in writing as soon as the final index is available.

This revision shall be determined by the change in the harmonised consumer price index MUICP (euro zone) published for the first time by the Publications Office of the European Union in the Eurostat monthly 'Data in Focus' publication at <http://www.ec.europa.eu/eurostat/>].

Revision shall be calculated in accordance with the following formula:

$$Ar = Ao \frac{Ir}{Io}$$

where

Ar = revised total amount;

Ao = total amount in the original tender;

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

Ir = index for the month corresponding to the date of receipt of the letter requesting a revision of prices.

ARTICLE I.4 – PAYMENT ARRANGEMENTS AND PURCHASE ORDERS

I.4.1 Pre-financing

Not applicable.

I.4.2 Interim payment for direct tasks

On a quarterly basis, the Contractor may submit a request for interim payment.

The request shall be admissible if accompanied by:

- Quarterly progress report accompanied by an acceptance sheet;
- the relevant invoice(s), indicating the reference number of the Contract to which they refer and period of service provision to which they refer.

The Court shall have 60 (sixty) days from receipt to approve or reject the report and to pay an interim payment. The contractor shall have 10 (ten) days in which to submit additional information or corrections or a new report or documents if required by the Court.

The interim payment shall not exceed 60% of the value of the project phase to which it refers.

I.4.3. Payment of the balance for direct tasks

The Contractor shall submit a request for payment of the balance.

The request shall be accompanied by:

- the final progress report or any other document in accordance with the tender specifications accompanied by an acceptance sheet;
- the relevant invoice(s), indicating the reference number of the Contract to which they refer and period of service provision to which they refer.

The Court shall have 60 (sixty) days from receipt to approve or reject the report and to pay the balance. The contractor shall have 10 (ten) days in which to submit additional information or corrections or a new report or documents if required by the Court.

I.4.3 Payment of the balance for additional tasks

The Contractor shall submit a request for payment of the balance for additional tasks.

The request shall be accompanied by:

- deliverables covered by the Purchase Order accompanied by an acceptance sheet;

- the relevant invoice(s), indicating the reference number of the Contract and Purchase Order to which they refer;

The Court shall have 60 (sixty) days from receipt to approve or reject the deliverables and to pay the balance. The contractor shall have 10 (ten) days in which to submit additional information or corrections or a new report or documents if required by the Court.

I.4.4 Purchase orders for additional tasks

Within 5 (five) working days of a Purchase Order for additional tasks being sent by the Court to the Contractor, the Court shall receive it back, duly signed and dated.

The period allowed for the execution of the tasks shall start to run on the date the Contractor signs the Purchase Order, unless a different date is indicated on the Purchase Order.

ARTICLE I.5 – BANK ACCOUNT

Payments shall be made to the Contractor's bank account denominated in EUROS, identified as follows:

Name of bank:
Address of branch in full:
Exact designation of account holder:
Full account number including IBAN codes:
BIC or SWIFT code :

ARTICLE I.6 – GENERAL ADMINISTRATIVE PROVISIONS

Any communication relating to the Contract or to its implementation shall be made in writing in paper or electronic form and shall bear the Contract number and, if appropriate the number of the purchase order. Ordinary mail shall be deemed to have been received by the Court on the date on which it is registered by the responsible department indicated below.

Electronic communication must be confirmed by paper communication when requested by any of the parties. The parties agree that paper communication can be replaced by electronic communication with electronic signature.

Communications shall be sent to the following addresses:

European Court of Auditors:

European Court of Auditors
Directorate of Finance and Support
For the attention of xxx
12, Rue Alcide de Gasperi
L-1615 Luxembourg
e-mail: xxx

Contractor:

Mr/Mrs/Ms [complete]
[Function]
[Company name]
[Official address in full]

ARTICLE I.7– APPLICABLE LAW AND SETTLEMENT OF DISPUTES

I.7.1. The Contract shall be governed by European Union law, complemented, where necessary, by the national substantive law of Luxembourg.

The Contracting parties agree to proceed to the amendments of the relevant provisions of the Contract or the Tender Specifications if they are mandatory following the entry into force of new laws and regulations, *inter alia* new financial regulation applicable to the annual budget of the European Union and its rules of application.

I.7.2. Any dispute between the Court of Auditors and the Contractor resulting from the interpretation or application of the Contract which cannot be settled amicably shall, unless otherwise stipulated in the Contract, be brought before the General Court of the European Union, pursuant to Articles 256 and 272 of the Treaty on the Functioning of the European Union.

ARTICLE I.8 – DATA PROTECTION

Any personal data included in the Contract shall be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the European Union institutions and bodies and on the free movement of such data. Such data shall be processed solely for the purposes of the performance, management and monitoring of the Contract by the Directorate of Finance and Support acting as data controller without prejudice to possible transmission to the bodies charged with monitoring or inspection task in application of European Union law (European Court of Auditors, the Financial Irregularities Panel or the European Anti-Fraud office).

ARTICLE I.9 - USE OF THE RESULTS

I.9.1 Modes of exploitation

All IT and statistics studies/analysis/elaborations/thesis/materials/reports, dramatic, musical, architectural, cinematographic or other artistic work, performance, scientific work, broadcasts, designs, drawings, website layout or content, computations, documented data, database format and data, methods of creation, operational procedures, industrial design, discoveries produced within this Contract and for which the rights vest in the European Union and thereby the European Union has acquired the ownership in accordance with Article II.10 may be used in the following way:

- i) distribution:
 - publishing in paper copies
 - publishing in electronic form as downloadable/non-downloadable files
 - making available on internet
 - broadcasting
 - public presentation or display
 - communication through a press information service,
 - inclusion in widely accessible databases or indexes
 - in any form and by any method existing at this date and in the future
 - giving access on individual requests without right to reproduce or exploit, as provided for by Decision No 12/2005 (1) of the Court of Auditors of the European Communities of 10 March 2005 regarding public access to Court documents, as amended
- ii) storage:
 - in paper format
 - in electronic format
 - in original format (sculpture, maquette, etc.)
- iii) archiving in line with the applicable records and document management rules
- iv) modifications made by the Court or by a third party on behalf and for the account of the Court:
 - shortening
 - making a summary
 - modification of the content
 - technical changes to the content:
 - necessary correction of technical errors
 - adding new parts or functionalities
 - changing functionalities
 - providing third parties with additional information concerning the result (e.g. source code)
 - addition of new elements, paragraphs titles, leads, bolds, legend, table of content, summary, graphics, subtitles, sound, etc.,
 - preparation in audio form, preparation as a presentation, animation, pictograms story, slide-show, public presentation, etc.
 - extracting a part or dividing into parts
 - use of a concept or preparation of a derivate work
 - digitisation or converting the format for storage or usage purposes
 - translate, subtitle, dub
- v) language versions:
 - working languages of EU

- official languages of EU
 - languages used within EU
 - languages of candidate countries
- vi) use for own purposes:
- making available to the staff of the Court
 - making available to the persons and entities working for the Court or cooperating with it, including: Contractors, subContractors whether legal or natural persons, EU-institutions, agencies and bodies, Member States institutions
 - installing, uploading, processing
 - arranging, compiling, combining, retrieving
 - making a copy, reproducing
- vii) allow use of results by third parties:
- for commercial or non-commercial purposes,
 - against payment, without payment or against fulfilment of other conditions
 - assignment in full or in part
 - giving a licence
 - for a particular period or unlimited in time.

Where the Court becomes aware that scope of modifications exceeds the scope envisaged in the Contract, the creator shall be consulted. The creator will be obliged to provide his response within 2 (two) weeks. He shall provide his agreement, including any suggestions for modifications, free of charge. The creator may refuse the intended modification only when it may harm his honour or reputation or distort the integrity of the work.

I.9.2 Pre-existing rights, intermediaries, creators' rights

Where industrial and intellectual property rights, including rights of ownership and use of the Contractor and third parties, exist prior to the Contract being entered into, ("pre-existing rights") the Contractor shall establish a list which shall specify all pre-existing rights and disclose it to the Court at the latest when delivering a final result.

The Contractor shall present relevant and exhaustive proofs of acquiring all necessary rights together with the presentation of relevant results. The latter should be fulfilled by presentation of all subContractors of the Contractor intermediating in the transfer of rights and creators' statements and the following information and documents:

- Name and version number of the software product
- Title of the work, date of publishing, date of creation, place of publication, address of publication on internet, number, volume and other information allowing to easily identify origin
- Full identity of the author, developer, creator, translator, data entry person, graphic designer, publisher, editor, photographer
- Copy of the licence to use the product or reference to it
- Agreement transferring the right to the product to the Contractor
- Text of the disclaimer notice.

In case parts of the results were created by employees of the Contractor, documentary evidence shall be provided as to how the creators' or authors' rights were transferred to the Contractor, i.e. a copy of the relevant agreement or extract from the employment Contract should be provided.

I.9.3 Partial vesting of rights (pre-existing or not pre-existing)

In case the partial vesting of particular rights to the results was envisaged in the tender specification and the offer, the Contractor shall list precisely at the moment of delivery of the final report at the latest all materials, information, IT tools, methodology and any other results or parts of the result to which third persons have rights, even if originally owned by the Contractor, or for which the right is not to be unconditionally given to the European Union. For every listed item the Contractor shall describe precisely the scope of pre-existing rights and not pre-existing rights and the scope and the way, direct or indirect, of the partial vesting and thereby the effective transfer of rights to the European Union.

The information obligation refers also to the intention of using any listed item referred to in the first paragraph for which the rights are already entirely or partially owned by the European Union. This obligation is in addition to the duty to disclose pre-existing rights referred in Article I.9.2.

I.9.4 Persons depicted in photographs or films

In case natural, recognisable person(s) are depicted in a photograph or film the Contractor shall submit a statement of these depicted persons giving their permissions for the described use of their images. The above does not refer to photographs taken or films shot in public places where random members of the public are identifiable only hypothetically and to public persons acting in their public activities.

ARTICLE I.10 – TERMINATION BY EITHER CONTRACTING PARTY

Either Contracting party may, of its own volition and without being required to pay compensation, terminate the Contract by serving 6 (six) months formal prior notice that could only be effective after the final completion of each stage of the planning for implementing EMAS. Should the Court terminate the Contract, the Contractor shall only be entitled to payment corresponding to part-performance of the Contract before the termination date. Article II.14.4 applies accordingly.

ARTICLE I.11 – CONTRACT CONCLUDED DURING STANDSTILL PERIOD

In case this Contract was signed by both the Court and the Contractor before the expiry of the standstill period, this Contract shall be null and void.

ARTICLE I.12 – PENALTIES

I.12.1 Should the Contractor fail to provide the deliverables within the time limits set out in the Tender specifications (Annex I) or by the relevant Purchase Order, the Court reserves the right to apply penalties corresponding to 100 EUR per calendar day of delay. These penalties shall apply from the deadline for a delivery until the real delivery date.

I.12.2 In the case of non-acceptance of services delivered in a lower quality than the quality set out in the tender specifications, EMAS Regulation or EMAS Guide the services shall be deemed as not delivered within the set deadlines. Penalties

corresponding to 100 EUR per calendar day of delay might be calculated by the Court until the date of a new delivery of the deliverables.

If, after three attempts at acceptance or any further rejection of the same deliverable, the deliverable still fails to meet the quality requirements of the Contract, the Court has the right to consider it as a serious breach of the contract and terminate the contract in accordance with Article II.14.1 I).

I.12.3 The penalties shall be directly deducted from the amount of the task to which the deficient deliverables refer.

II – GENERAL CONDITIONS FOR SERVICE CONTRACTS

ARTICLE II.1 – PERFORMANCE OF THE CONTRACT

- II.1.1.** The Contractor shall perform the Contract to the highest professional standards. The Contractor shall have sole responsibility for complying with any legal obligations incumbent on him, notably those resulting from employment, tax and social legislation.
- II.1.2.** The Contractor shall have sole responsibility for taking the necessary steps to obtain any permit or licence required for performance of the Contract under the laws and regulations in force at the place where the tasks assigned to him are to be executed.
- II.1.3.** Without prejudice to Article II.3 any reference made to the Contractor's staff in the Contract shall relate exclusively to individuals involved in the performance of the Contract.
- II.1.4.** The Contractor must ensure that any staff performing the Contract has the professional qualifications and experience required for the execution of the tasks assigned to him.
- II.1.5.** The Contractor shall neither represent the Court nor behave in any way that would give such an impression. The Contractor shall inform third parties that he does not belong to the European public service.
- II.1.6.** The Contractor shall have sole responsibility for the staff who executes the tasks assigned to him.

The Contractor shall make provision for the following employment or service relationships with his staff:

- staff executing the tasks assigned to the Contractor may not be given orders directly by the Court;
 - the Court may not under any circumstances be considered to be the staff's employer and said staff shall undertake not to invoke in respect of the Court any right arising from the Contractual relationship between the Court and the Contractor.
- II.1.7.** In the event of disruption resulting from the action of a member of the Contractor's staff working on the Court's premises or in the event of the expertise of a member of the Contractor's staff failing to correspond to the profile required by the Contract, the Contractor shall replace him without delay. The Court shall have the right to request the replacement of any such member of staff, stating its reasons for so doing. Replacement staff must have the necessary qualifications and be capable of performing the Contract under the same Contractual conditions. The Contractor shall be responsible for any delay in the execution of the tasks assigned to him resulting from the replacement of staff.
- II.1.8.** Should any unforeseen event, action or omission directly or indirectly hamper execution of the tasks, either partially or totally, the Contractor shall immediately and at his own initiative record it and report it to the Court. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with his obligations under the Contract. In such an event, the Contractor shall give priority to solving the problem rather than determining liability.

II.1.9. Should the Contractor fail to perform his obligations under the Contract, the Court may - without prejudice to its right to terminate the Contract - reduce or recover payments in proportion to the scale of the failure. In addition, the Court may claim compensation or impose liquidated damages provided for in Article II.12.

ARTICLE II.2 – LIABILITY

II.2.1. The Court shall not be liable for damage sustained by the Contractor in performance of the Contract except in the event of wilful misconduct or gross negligence on the part of the Contractor.

II.2.2. The Contractor shall be liable for any loss or damage sustained by the Court in performance of the Contract, including in the event of subContracting under Article II.6 but only up to 3 (three) times the total amount of the Contract. Nevertheless, if the damage or loss is caused by the gross negligence or wilful misconduct of the Contractor or by its employees, the Contractor shall remain liable without any limitation as to the amount of the damage or loss.

II.2.3. The Contractor shall provide compensation in the event of any action, claim or proceeding brought against the Court by a third party as a result of damage caused by the Contractor in performance of the Contract.

II.2.4. In the event of any action brought by a third party against the Contractor in connection with performance of the Contract, the Contractor shall assist the Court. Expenditure incurred by the Contractor to this end may be borne by the Court.

II.2.5. The Contractor shall take out insurance against risks and damage relating to performance of the Contract if required by the relevant applicable legislation. He shall take out supplementary insurance as reasonably required by standard practice in the industry. A copy of all the relevant insurance Contracts shall be sent to the Court should it so request.

ARTICLE II.3 - CONFLICT OF INTERESTS

II.3.1. The Contractor shall take all necessary measures to prevent any situation that could compromise the impartial and objective performance of the Contract. Such conflict of interests could arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest. Any conflict of interests which could arise during performance of the Contract must be notified to the Court in writing without delay. In the event of such conflict, the Contractor shall immediately take all necessary steps to resolve it.

The Court reserves the right to verify that such measures are adequate and may require additional measures to be taken, if necessary, within a time limit which it shall set. The Contractor shall ensure that his staff, board and directors are not placed in a situation which could give rise to conflict of interests. Without prejudice to Article II.1 the Contractor shall replace, immediately and without compensation from the Court, any member of his staff exposed to such a situation.

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

II.3.3. The Contractor declares:

- that he has not made and will not make any offer of any type whatsoever from which an unjustified advantage can be derived under the Contract,
- that he has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, where such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, inasmuch as it is an incentive or reward relating to performance of the Contract.

II.3.4. The Contractor shall pass on all the relevant obligations in writing to his staff, board, and directors as well as to third parties involved in performance of the Contract.

ARTICLE II.4 – CONFIDENTIALITY

II.4.1. The Contractor undertakes to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to performance of the Contract. The Contractor shall continue to be bound by this undertaking after completion of the tasks.

II.4.2. The Contractor shall obtain from each member of his staff, board and directors an undertaking that they will respect the confidentiality of any information which is linked, directly or indirectly, to execution of the tasks and that they will not divulge to third parties or use for their own benefit or that of any third party any document or information not available publicly, even after completion of the tasks.

ARTICLE II.5 – DATA PROTECTION

II.5.1 The Contractor shall have the right of access to his/her personal data and the right to rectify any such data. Should the Contractor have any queries concerning the processing of his/her personal data, s/he shall address them to the entity acting as data controller provided for in Article I.8.

II.5.2 The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.

II.5.3 Where the Contract requires the processing of personal data by the Contractor, the Contractor may act only under the supervision of the data controller, in particular with regard to the purposes of the processing, the categories of data which may be processed, the recipients of the data, and the means by which the data subject may exercise his/her rights.

II.5.4 The Contractor shall limit access to the data to the staff strictly necessary for the performance, management and monitoring of the Contract.

II.5.5 The Contractor undertakes to adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned in order to:

- a) prevent any unauthorised person from having access to computer systems processing personal data, and especially:
 - aa) unauthorised reading, copying, alteration or removal of storage media;

- ab) unauthorised data input as well as any unauthorised disclosure, alteration or erasure of stored personal data;
- ac) unauthorised use of data-processing systems by means of data transmission facilities;
- b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
- c) record which personal data have been communicated, when and to whom;
- d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the Contracting institution or body;
- e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
- f) design its organisational structure in such a way that it meets data protection requirements.

ARTICLE II.6 – SUBCONTRACTING

- II.6.1.** The Contractor shall not subcontract without prior written authorisation from the Court nor cause the Contract to be performed in fact by third parties.
- II.6.2.** Even where the Court authorises the Contractor to subcontract to third parties, he shall none the less remain bound by his obligations to the Court under the Contract and shall bear exclusive liability for proper performance of the Contract.
- II.6.3.** The Contractor shall make sure that the subcontract does not affect rights and guarantees to which the Court is entitled by virtue of the Contract, notably Article II.20.

ARTICLE II.7 – AMENDMENTS

- II.7.1.** Any amendment to the contract shall be the subject of a written agreement concluded by the contracting parties. An oral agreement shall not be binding on the contracting parties.
- II.7.2.** The amendment may not have the purpose or the effect of making changes to the contract which might call into question the decision awarding the contract or result in unequal treatment of tenderers.
- II.7.3** In the context of this contract, the Court of Auditors may ask the contractor to supplement its tender in writing for new services or works consisting in the repetition of similar services or works entrusted to the economic operator awarded this contract, provided that these services or works conform to a basic project and that this project was the subject of an initial contract awarded under the open or restricted procedure. This procedure may be used only during the execution of the original contract and at the latest during the three years following its signing.

Any supplements thus added may not have the effect of substantially amending the initial tender.

ARTICLE II.8 – ASSIGNMENT

- II.8.1.** The Contractor shall not assign the rights and obligations arising from the Contract, in whole or in part, without prior written authorisation from the Court.
- II.8.2.** In the absence of such authorisation, or in the event of failure to observe the terms thereof, assignment by the Contractor shall not be enforceable against and shall have no effect on the Court.

ARTICLE II.9 - USE, DISTRIBUTION AND PUBLICATION OF INFORMATION ABOUT THE CONTRACT

- II.9.1.** The Contractor shall authorise the Court to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, any data contained in the Contract, in particular the identity of the Contractor, the subject matter, the duration and the amount paid. Where personal data is concerned, Articles I.8 and II.5 shall apply.
- II.9.2.** Unless otherwise provided by the Special Conditions, the Court shall not be required to distribute or publish documents or information supplied in performance of the Contract. If it decides not to distribute or publish the documents or information supplied, the Contractor may not have them distributed or published elsewhere without prior written authorisation from the Court.
- II.9.3.** Any distribution or publication of information relating to the Contract or use of outcome of the implementation of the Contract and provided as such by the Contractor shall require prior written authorisation from the Court and, if so requested, shall mention that it was produced within a Contract with the Court. It shall state that the opinions expressed are those of the Contractor only and do not represent the Court's official position.
- II.9.4.** The use of information obtained by the Contractor in the course of the Contract for purposes other than its performance shall be forbidden, unless the Court has specifically given prior written authorisation to the contrary.

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

- II.10.1** A result shall be any outcome of the implementation of the Contract and provided as such by the Contractor.

A creator shall be any person who contributed to production of the result.

Pre-existing intellectual property rights, sometimes referred to as background technology, are any industrial and intellectual property rights which exist prior to the Contract being entered into and include rights of ownership and use of the Contractor, the Court and any third parties ("pre-existing rights").

It shall be a material term of the Contract and of the essence of the Contract that Contractors shall be under a duty to provide a list of pre-existing rights at the date of delivery of the final result at the latest.

- II.10.2** The ownership of all the results or rights thereon as listed in the tender specification and the tender attached to the Contract, including copyright and other intellectual or industrial property rights, and all technological solutions and information embodied therein, obtained in performance of the Contract, shall be

irrevocably and fully vested to the European Union, which may use them as described in the Contract. All the rights shall be vested on the European Union from the moment the results were delivered and accepted by the Court.

For the avoidance of doubt and where applicable, any such vesting of rights is also deemed to constitute an effective transfer of the rights from the Contractor to the European Union.

The payment of the fee under Article I.3 is deemed to include all forms of use by the European Union of the results as set out in Article I.9.

The above vesting of rights in the European Union under this Contract covers all territories worldwide and is valid for the whole duration of intellectual property rights protection.

II.10.3 Any intermediary sub-result, raw data, intermediary analysis made available to the Court by the Contractor cannot be used by the European Union without written consent of the Contractor, unless the tender specification explicitly provides for it to be treated as a self-contained result.

II.10.4 The Contractor retains all right, title and interest in pre-existing rights not fully vested into the European Union in line with Article I.9.2, and hereby grants the European Union for the requested period a licence to use the pre-existing rights to the extent necessary to use the delivered results.

II.10.5 The Contractor shall ensure that delivered results are free of rights or claims from third parties including in relation to pre-existing rights, for any use envisaged by the Court. This does not concern the moral rights of natural persons and rights referred to in Article II.10.4.

II.10.6 The Contractor shall clearly point out all quotations of existing textual works made by the Contractor. The complete reference should include as appropriate: name of the author, title of the work, date of publishing, date of creation, place of publication, address of publication on internet, number, volume and other information allowing to easily identify the origin.

II.10.7 The Contractor shall clearly indicate all parts to which there are pre-existing rights and all parts of the result originating from external sources: parts of other documents, images, graphs, tables, data, software, technical inventions, know-how, etc. (delivered in paper, electronic or other form).

For non-textual results or results provided in electronic form only, the description, instruction or information document shall list all parts coming from external sources: IT development tools, routines, subroutines and/or other programs ("background technology"), concepts, designs, installations or pieces of art, data, source or background materials or any other parts of external origin.

II.10.8 If the Court so requires, the Contractor shall provide proof of ownership or rights to use all necessary rights to the materials referred to in Article II.10.7.

II.10.9. By delivering the results the Contractor confirms that the creators undertake not to oppose their names being recalled when the results are presented to the public and confirms that the results can be divulged.

The Contractor shall possess all relevant agreements of the creator and provide proof by way of documentary evidence.

II.10.10. By delivering the results the Contractor warrants that the above transfer of rights does not violate any law or infringe any rights of others and that he possesses the relevant rights or powers to execute the transfer. He also warrants that he has paid

or has verified payment of all fees including fees to collecting societies, related to the final results.

II.10.11. The Contractor shall indemnify and hold the European Union harmless for all damages and costs incurred due to any claim brought by any third party including creators and intermediaries for any alleged breach of any intellectual, industrial or other property right based on the European Union's use of the works and in relation to which the Contractor has granted the European Union user rights.

ARTICLE II.11 – FORCE MAJEURE

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

II.11.2. Without prejudice to Article II.1.8, if either Contracting party is faced with force majeure, it shall notify the other party without delay by registered letter with acknowledgment of receipt or equivalent, stating the nature, likely duration and foreseeable effects.

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

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

ARTICLE II.12 – LIQUIDATED DAMAGES

Should the Contractor fail to perform his obligations under the Contract within the time limits set by the Contract, then, without prejudice to the Contractor's actual or potential liability incurred in relation to the Contract or to the Court's right to terminate the Contract, the Court may decide to impose liquidated damages per calendar day of delay according to the following formula: $0.3 \times (V/d)$

V is the amount specified in Article I.3.1;

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

The Contractor may submit arguments against this decision within 30 (thirty) days of notification by registered letter with acknowledgement of receipt or equivalent. In the absence of reaction on his part or of written withdrawal by the Court within 30 (thirty) days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable. These liquidated damages shall not be imposed where there is provision for specific penalties for late completion. The Court and the Contractor expressly acknowledge and agree that any sums payable under this Article are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the losses that may be reasonably anticipated from such failure to perform obligations.

ARTICLE II.13 - MATERIAL ERRORS, IRREGULARITIES AND FRAUD

- II.13.1** If, after the Contract has been awarded, the procurement procedure or performance of the Contract is found to be subject to material errors, irregularities or fraud, the Court of Auditors may suspend its execution or, if applicable, terminate it.
- II.13.2.** If these errors, irregularities or fraud are attributable to the Contractor, the Court of Auditors may, furthermore, refuse to make payment, recover the sums already paid or terminate all Contracts concluded with the Contractor in question, in proportion to the seriousness of the errors, irregularities or fraud, without prejudice to any administrative and financial penalties imposed by the Court of Auditors in accordance with Article 109 of the Financial Regulation.
- II.13.3.** The purpose of any suspension of the Contract shall be to verify whether presumed material errors or irregularities or fraud have actually occurred. If they are not confirmed, performance of the Contract shall resume as soon as possible.
- II.13.4.** A material error or irregularity shall be any infringement of a provision of a Contract or regulation resulting from an act or an omission which causes or might cause a loss to the European Union budget.
- II.13.5.** Suspension shall take effect on the day the Contractor receives notification by registered letter with acknowledgment of receipt or equivalent, or at a later date where the notification so provides. The Court shall as soon as possible give notice to the Contractor to resume the service suspended or inform that it is proceeding with Contract termination. The Contractor shall not be entitled to claim compensation on account of suspension of the Contract or of part thereof.

ARTICLE II.14 – TERMINATION BY THE COURT

- II.14.1.** The Court may terminate the Contract in the following circumstances:
- (a) where the Contractor is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
 - (b) where the Contractor has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;
 - (c) where the Contractor or persons with powers of representation, decision-making or control over it have been convicted by a competent authority of a Member State of an offence concerning their professional conduct by a judgment which has the force of res judicata;
 - (d) if the Contractor or any persons with powers of representation, decision-making or control over it have been found guilty of professional misconduct proven by any means;
 - (e) where the Contractor or persons with powers of representation, decision-making or control over it are the subject of a judgment which has the force of res judicata

- for fraud, corruption, involvement in a criminal organisation, money□laundering or any other illegal activity detrimental to the financial interests of the European Union;
- f) if the Court of Auditors has evidence that the Contractor or persons with powers of representation, decision□making or control over it have committed substantial errors, irregularities or fraud in the award procedure or the performance of the Contract;
 - g) where the Contractor is in breach of its obligations under Article II.3;
 - h) if the Contractor has been guilty of misrepresentation in supplying the information required by the Court of Auditors for its participation in the Contract procedure or has not supplied this information;
 - i) where a change in the Contractor’s legal, financial, technical, organisational or control situation could have a significant effect on the performance of the Contract or call into question the decision to award the Contract;
 - j) where performance of the tasks has not actually commenced within the delivery or performance period provided for by the Contract, specific Contract or purchase order, and the new date proposed, if any, is considered unacceptable by the Court of Auditors;
 - k) if the Contractor is unable, through its own fault, to obtain any permit or licence required for performance of the Contract or if it causes the SuperDrecksKëscht fir Betriber® label to be withdrawn from the Court of Auditors;
 - l) where the Contractor, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period following receipt of the formal notice, remains in breach of its substantive Contractual obligations.
 - (m) where the quality of the services provided by the Contractor give rise to recurrent and substantial penalties in accordance with Article I.12 without improvement of the quality level over a period of 3 (three) months.

II.14.2. In case of force majeure, notified in accordance with Article II.11, either Contracting party may terminate the Contract, where performance thereof cannot be ensured for a period corresponding to at least one fifth of the period laid down in Article I.2.3.

II.14.3. Prior to termination under point c), d), e), h), k), l) or m) the Contractor shall be given the opportunity to submit his observations.

Termination shall take effect on the date on which a registered letter with acknowledgment of receipt terminating the Contract is received by the Contractor, or on any other date indicated in the letter of termination.

II.14.4. Consequences of termination

In the event of the Court terminating the Contract in accordance with this Article and without prejudice to any other measures provided for in the Contract, the Contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required by the Special Conditions for the tasks executed up to the date on which termination takes effect, within a period not exceeding 60 (sixty) days from that date.

The Court may claim compensation for any damage suffered and recover any sums paid to the Contractor under the Contract.

On termination, the Court may engage any other Contractor to execute or complete the services. The Court shall be entitled to claim from the Contractor all extra costs incurred in doing so, without prejudice to any other rights or guarantees it has under the Contract.

ARTICLE II.15 – INVOICING AND PAYMENTS

II.15.1. Pre-financing guarantee:

Where required by Article I.4., the Contractor shall provide a financial guarantee in the form of a bank guarantee or equivalent supplied by a bank or an authorised financial institution (guarantor) equal to the amount indicated in the same article to cover pre-financing under the Contract. Such guarantee may be replaced by a joint and several guarantee by a third party.

The guarantor shall pay to the Court at its request an amount corresponding to payments made by it to the Contractor which have not yet been covered by equivalent service rendered on his part.

The guarantor shall stand as first-call guarantor and shall not require the Court to have recourse against the principal debtor (the Contractor).

The guarantee shall specify that it enters into force at the latest on the date on which the Contractor receives the pre-financing. The guarantee shall be retained until the pre-financing has been cleared against interim payments or payment of the balance to the Contractor. It shall be released the following month or, in the absence of such clearing, 4 (four) months after the issuance of a corresponding debit note. The cost of providing such guarantee shall be borne by the Contractor.

II.15.2. Interim payments and payment of the balance:

Payments shall be executed only if the Contractor has fulfilled all his Contractual obligations by the date on which the invoice is submitted.

At the end of each month and at the end of the period for the execution of the services, the Contractor shall submit to the Court an invoice accompanied by the documents provided for in the Special Conditions.

If providing a progress report is a condition for payment, upon receipt, the Court shall have the period of time indicated in the Special Conditions in which:

- to approve it, with or without comments or reservations, or suspend such period and request additional information; or
- to reject it and request a new progress report.

Approval of the progress report shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information it contains.

Where the Court requests a new progress report because the one previously submitted has been rejected, this shall be submitted within the period of time indicated in the Special Conditions. The new progress report shall, likewise, be subject to the above provisions.

II.15.3. Payment currency and costs:

Payments are executed in the currency of the Contract.

Costs of the transfer are borne in the following way:

- costs of dispatch charged by the bank of the Court are borne by the Court,
- cost of receipt charged by the bank of the Contractor are borne by the Contractor,
- all costs of repeated transfer caused by one of the parties are borne by the party who caused repetition of the transfer.

II.15.4 E-invoicing and E-ordering

The Contractor shall take the appropriate measures to be compliant with the e-invoicing system and e-ordering system that the Court would decide to put in place during the duration of the Contract, without additional charges for the Court.

The Contractor undertakes to use the system(s) upon the request of the Court.

ARTICLE II.16 – GENERAL PROVISIONS CONCERNING PAYMENTS

II.16.1. Payments shall be deemed to have been made on the date on which the Court's account is debited.

II.16.2. The payment periods referred to in Article I.4 may be suspended by the Court at any time if it informs the Contractor that his invoice is not admissible, either because the amount is not due or because the necessary supporting documents have not been properly produced. The Court may proceed with further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the invoice is admissible.

The Court shall notify the Contractor accordingly and set out the reasons for the suspension by registered letter with acknowledgment of receipt or equivalent. Suspension shall take effect from the date of dispatch of the letter. The remainder of the period referred to in Article I.4 shall begin to run again once the suspension has been lifted.

II.16.3. In the event of late payment the Contractor shall be entitled to interest, provided the calculated interest exceeds EUR 200. In case interest does not exceed EUR 200, the Contractor may claim interest within 2 (two) months of receiving the payment. Interest shall be calculated at the rate applied by the European Central Bank to its most recent main refinancing operations (“*the reference rate*”) plus 8 (eight) percentage points (“*the margin*”). The reference rate in force on the first day of the month in which the payment is due shall apply. Such interest rate is published in the C series of the Official Journal of the European Union. Interest shall be payable for the period elapsing from the calendar day following expiry of the time limit for payment up to the day of payment. Suspension of payment by the Court may not be deemed to constitute late payment.

ARTICLE II. 17 – TAXATION

II.17.1. The Contractor shall have sole responsibility for compliance with the tax laws which apply to him. Failure to comply shall make the relevant invoices invalid.

II.17.2. The Contractor recognises that the Court is, as a rule, exempt from all taxes and duties, including value added tax (VAT), pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union.

II.17.3. The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the goods and services required for performance of the Contract are exempt from taxes and duties, including VAT.

II.17.4. Invoices presented by the Contractor shall indicate his place of taxation for VAT purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

Where VAT is due in Belgium, the provisions of the Contract constitute a request for VAT exemption No 450, Article 42, paragraph 3.3 of the VAT code (circular 2/1978), provided the Contractor includes the following statement in the invoice(s): “Exonération de la TVA, Article 42, paragraphe 3.3 du code de la TVA (circulaire 2/1978)” or an equivalent statement in the Dutch or German language.

Where VAT is due in Luxembourg, the Contractor shall include the following statement in the invoices: "Commande destinée à l'usage officiel de l'Union européenne. Exonération de la TVA Article 43 § 1 k 2ième tiret de la loi modifiée du 12.02.79." In case of intra-Community purchases, the statement to be included in the invoices is: "For the official use of the European Union. VAT Exemption / European Union/ Article 151 of Council Directive 2006/112/EC."

ARTICLE II.18 - REIMBURSEMENTS

II.18.1. Where provided by the Special Conditions or by Annex I, the Court shall reimburse the expenses which are directly connected with execution of the tasks on production of original supporting documents, including receipts and used tickets.

II.18.2. Travel and subsistence expenses shall be reimbursed, where appropriate, on the basis of the shortest itinerary.

II.18.3. Travel expenses shall be reimbursed as follows:

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

II.18.4. Subsistence expenses shall be reimbursed on the basis of a daily allowance as follows:

- a) for journeys of less than 200 km (return trip) no subsistence allowance shall be payable;
- b) daily subsistence allowance shall be payable only on receipt of a supporting document proving that the person concerned was present at the place of destination;
- c) daily subsistence allowance shall take the form of a flat-rate payment to cover all subsistence expenses, including accommodation, meals, local transport, insurance and sundries;
- d) daily subsistence allowance, where applicable, shall be reimbursed at the rate of 100 euros for a day spent outside the Grand-Duchy of Luxembourg and 150 euros for an hotel night spent outside the Grand-Duchy of Luxembourg.

- II.18.5.** The cost of shipment of equipment or unaccompanied luggage shall be reimbursed provided the Court has given prior written authorisation.
- II.18.6.** Conversion between the EURO and another currency shall be made using the daily EURO exchange rate published in the C series of the *Official Journal of the European Union* of the day on which the expense was made.

ARTICLE II.19 – RECOVERY

- II.19.1.** If total payments made exceed the amount actually due or if recovery is justified in accordance with the terms of the Contract, the Contractor shall reimburse the appropriate amount in EURO on receipt of the debit note, in the manner and within the time limits set by the Court.
- II.19.2.** In the event of failure to pay by the deadline specified in the debit note, the sum due shall bear interest at the rate indicated in Article II.16.3. Interest shall be payable from the calendar day following the due date up to the calendar day on which the debt is repaid in full.
- II.19.3.** The Court may, after informing the Contractor, recover amounts established as certain, of a fixed amount and due by offsetting, in cases where the Contractor also has a claim on the European Union or the European Atomic Energy Community that is certain, of a fixed amount and due. The Court may also claim against the guarantee, where provided for.

ARTICLE II.20 – CHECKS AND AUDITS

- II.20.1** The Contracting authority and the European Anti-Fraud Office may check or have an audit on the performance of the Contract. It may be carried out either directly by its own staff or by any other outside body authorised to do so on its behalf.

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

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

- II.20.2** The Contractor shall keep all original documents stored on any appropriate medium, including digitised originals when they are authorised by national law and under the conditions laid down therein, for a period of five years which starts running from the date of payment of the balance.
- II.20.3** The Contractor shall allow the Contracting authority's staff and outside personnel authorised by the Contracting authority the appropriate right of access to sites and premises where the Contract is performed and to all the information, including information in electronic format, needed in order to conduct such checks and audits. The Contractor shall ensure that the information is readily available at the moment of the check or audit and, if so requested, that information be handed over in an appropriate form.
- II.20.4** On the basis of the findings made during the audit, a provisional report shall be drawn up. It shall be sent to the Contractor, which shall have 30 days following

the date of receipt to submit observations. The final report shall be sent to the Contractor within 60 days following the expiry of that deadline.

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

II.20.5 By virtue of Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspection carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities and Regulation (EC) No 1073/1999 of the European Parliament and the Council of 25 May 1999 concerning investigation conducted by the European Anti-Fraud Office (OLAF), the OLAF may also carry out on-the-spot checks and inspections in accordance with the procedures laid down by Union law for the protection of the financial interests of the Union against fraud and other irregularities. Where appropriate, the findings may lead to recovery by the Contracting authority.

SIGNATURES

For the Contractor,
[Company name/forename/surname/function]

For the European Court of Auditors,
[forename/surname/function]

signature[s]: _____

signature[s]: _____

Done at [], [date]

Done at [], [date]

Done in duplicate in English