



**European Court of Auditors**

**Open call for tenders No AO 276**

**“Provision of external audit services to  
the European Court of Auditors”**

**ANNEX 1  
DRAFT CONTRACT**



EUROPEAN COURT OF AUDITORS

Eduardo RUIZ GARCÍA  
*Secretary-General*

## SERVICE CONTRACT

### “Provision of external audit services to the European Court of Auditors”

**Contract number: SG 276**

The European Court of Auditors (hereinafter referred to as "the Court"), represented for the purposes of the signature of this Contract by Mr. Eduardo RUIZ GARCÍA, Secretary-General,

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.]<sup>1</sup>

of the other part,

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<sup>1</sup> 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.

## **I – SPECIAL CONDITIONS**

### **ARTICLE I.1 - SUBJECT**

- I.1.1.** The subject of the Contract is the provision of external audit services to the European Court of Auditors, 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 initial duration of the provision of services shall be 4 (four) years. This period and all other periods specified in the Contract are calculated in calendar days, months and years.
- I.2.4.** The Contract shall be renewed automatically up to 3 (three) times, each time for a period of execution of tasks of 12 (twelve) months, unless written notification to the contrary is sent by one of the contracting parties and received by the other 9 (nine) months before the expiration of the previous period. Renewal does not imply any modification or deferment of existing obligations.

### **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**

### **I.4.1 Pre-financing**

Not applicable.

### **I.4.1 Interim payment**

The Contractor shall submit on a yearly basis an invoice for an interim payment of an amount equal to annual price.

The invoice for interim payment shall be accompanied by:

- final version of the reports for the period to which the request for interim payment refers (if not yet provided);
- 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 reports 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.

### **I.4.2 Payment of the balance**

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

The request shall be accompanied by:

- final version of the last report accomplishing the audit mission;
- 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.

## **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. 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  
Secretariat General  
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 – 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 9 (nine) months formal prior notice. 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.17.5 of the General conditions applies accordingly.

#### **ARTICLE I.8 – 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.9 – PENALTIES**

**I.9.1** Notwithstanding Article 9 of General Conditions, should the Contractor fail to provide the deliverables (draft reports, final reports and presentation) within the time limits set out in the Tender specifications, the Court may apply penalties corresponding to 100,- EUR per calendar day of delay.

**I.9.2** In the case of non-acceptance of deliverables (draft reports, final reports and presentation) delivered in a lower quality than the quality set out in the Tender specifications, the deliverables 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 17 of the General Conditions

**I.9.3** The penalties shall be directly deducted from the amount of the task to which the deficient deliverables refer.



## **II - GENERAL CONDITIONS FOR SUPPLY, SERVICE AND WORKS CONTRACTS OF THE EUROPEAN COURT OF AUDITORS**

### **1. DEFINITION AND SCOPE OF THE GENERAL CONDITIONS**

1.1. The General Conditions shall govern the contractual relationship between the European Court of Auditors (hereinafter "the Court of Auditors") and its suppliers, service providers and work contractors.

1.2. The contractor shall waive the right to assert its own general conditions for services, sales or works against the Court of Auditors.

### **2. PERFORMANCE OF THE CONTRACT**

2.1. The contractor shall undertake to provide the products and services and/or carry out the works described in the contract (hereinafter "the tasks") at the price and within the time limits stipulated therein.

2.2. The contract shall not confer on the contractor any exclusive right to perform the tasks described therein.

2.3. The contractor shall perform the contract to the highest professional standards. It shall have sole responsibility for complying with any legal obligations incumbent on it, and in particular those resulting from employment, tax, social and environmental legislation.

2.4. 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 it are to be executed.

2.5. The contractor must take the necessary steps to ensure that its performance of the contract does not lead to withdrawal of the SuperDrecksKëscht fir Betriber® label awarded to the Court of Auditors.

2.6. Without prejudice to Article 4 any reference made to the contractor's staff in the contract shall relate exclusively to individuals involved in the performance of the contract. The contractor must ensure that all persons performing the contract possess the



professional qualifications and experience required for the execution of the tasks assigned to them.

2.7. The contractor may not represent the Court or behave in a manner likely to give this impression. The contractor shall inform third parties that it does not belong to the European civil service.

2.8. The contractor shall have sole responsibility for the staff who execute the tasks assigned to the contractor. The contractor shall make provision for the following employment or service relationships with its staff:

- the staff performing the tasks entrusted to the contractor may not receive direct orders from the Court of Auditors;
- the Court of Auditors cannot in any circumstances be considered the employer of the said staff and the latter shall undertake not to invoke in respect of the Court of Auditors any rights arising from the contractual relationship between the Court of Auditors and the contractor.

2.9. In the event of disruption resulting from the action of a member of the contractor's staff working on the Court of Auditors' premises or if the experience and/or expertise of a member of the contractor's personnel does not correspond to the profile required by the contract, the contractor shall replace him or her without delay. The Court of Auditors shall have the right to request the replacement of any such member of staff, stating its reasons for so doing. The replacement personnel 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 it resulting from the replacement of staff in accordance with this Article.

2.10. The contractor shall agree to provide the Court of Auditors with the information requested by it for the purposes of managing the contract. Should any unforeseen event, action or omission directly or indirectly hamper execution of the tasks, either partially or totally, the contractor shall immediately and on its own initiative record it and report it to the Court of Auditors. The report shall include a description of the problem, state the date on which it started and the remedial action taken by the contractor to ensure full compliance with its obligations under the contract. In such a case the contractor shall give priority to solving the problem rather than determining liability.

2.11. Should the contractor fail to perform its obligations under the contract in accordance with the provisions laid down therein, the Court of Auditors may – without prejudice to its right to terminate the contract – reduce or recover payments in proportion to the scale of the failure. The Court of Auditors may also impose administrative and/or financial penalties by applying Article 109 of the Financial Regulation<sup>2</sup> or, as provided for in Article 9, damages.

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<sup>2</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298 of 26.10.2012).

### **3. LIABILITY**

3.1. The Court of Auditors 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 Court of Auditors.

3.2. The contractor shall be liable for any loss or damage caused by it to the Court in performance of the contract, including in the event of subcontracting under Article 16. The Court of Auditors shall not be liable for any act or default on the part of the contractor in performance of the contract.

3.3. The contractor shall provide compensation in the event of any action, claim or proceeding brought against the Court of Auditors by a third party as a result of damage caused by the contractor during performance of the contract.

3.4. In the event of any action brought by a third party against the Court of Auditors in connection with performance of the contract, the contractor shall assist the Court of Auditors. Expenditure incurred to this end by the contractor may be borne by the Court of Auditors.

3.5. The contractor shall take out insurance against risks and damage relating to performance of the contract if required by the applicable legislation. It 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 of Auditors, should it so request.

### **4. CONFLICTS OF INTEREST**

4.1. The contractor shall take all necessary measures to prevent any situation that could compromise the impartial and objective performance of the contract. Such conflicts of interest 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 arises during performance of the contract must be notified to the Court of Auditors in writing without delay. In the event of such conflict, the contractor shall immediately take all necessary measures to end it.

4.2. In the event of such conflict, the Court of Auditors reserves the right to verify that such measures are adequate and may require that additional measures be taken, if necessary, within a time limit which it shall set. The contractor shall ensure that its staff and administrative and management bodies are not placed in a situation which could give rise to a conflict of interest. Without prejudice to Article 4.1, the contractor shall replace, immediately and without compensation from the Court of Auditors, any member of its personnel exposed to such a situation.

4.3. The contractor shall refrain from any contact likely to compromise its independence.

4.4. The contractor shall declare that:

- it has not made and will not make any offer of any type whatsoever from which an advantage could be derived under the contract;

- it 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.

4.5. The contractor shall pass on all the relevant obligations in writing to its staff and administrative and management bodies as well as to third parties involved in performance of the contract. A copy of the instructions given and undertakings made in this respect shall be sent to the Court of Auditors, should it so request.

## **5. PRICE AND REIMBURSEMENT OF COSTS**

5.1. Prices shall be fixed and not subject to revision with regard to the prices shown in the contract, unless otherwise stipulated in the Specifications or the Special Conditions of the contract.

5.2. The prices cover all tasks executed and include all expenses and costs incurred by the contractor for the execution of the tasks.

5.3. Where provided by the special conditions or by the tender specifications, the Court of Auditors shall reimburse the expenses which are directly connected with execution of the tasks on production of original supporting documents, including receipts and used tickets, or failing that, on production of copies or scanned originals, or on the basis of flat rates.

5.4. Travel and subsistence expenses shall be reimbursed, where provided by the special conditions or by the tender specifications, on the basis of the shortest itinerary and the minimum number of nights necessary for overnight stay at the destination.

5.5. 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;

5.6. In addition, travel outside Union territory shall be reimbursed provided the contracting authority has given its prior written consent.

5.7. Subsistence expenses shall be reimbursed 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 shall be payable;

(b) daily subsistence allowance shall be payable only on receipt of supporting documents proving that the person concerned was present at the destination;

(c) daily subsistence allowance shall take the form of a flat-rate payment to cover all subsistence expenses, including meals, local transport which includes transport to and from the airport or station, insurance and sundries;

(d) daily subsistence allowance shall be reimbursed at the flat rate of 100 EUR per day;

e) accommodation shall be reimbursed on receipt of supporting documents proving the necessary overnight stay at the destination, up to 150 EUR.

5.8. The cost of shipment of equipment or unaccompanied luggage shall be reimbursed provided the contracting authority has given prior written authorisation.

## **6. INVOICING AND PAYMENTS**

6.1. Within sixty days of completion of the tasks referred to in the contract, the contractor shall submit the invoice to the Court of Auditors.

6.2. Each invoice must contain the following information:

- reference to the contract number;
- a description of the products, services or work provided or completed, fully compliant with the contract;
- the prices;
- the contractor's bank details, including its IBAN and BIC codes and VAT number;

6.3. The invoice must be addressed to the Court of Auditors, at the address given in the contract. All invoices must be accompanied by supporting documentation proving that the tasks invoiced have been received. Partial invoicing will not be accepted unless it is specifically provided for by the contract. Tasks completed prior to receipt of the contract cannot be invoiced.

6.4. Without prejudice to its right to interest for late payment, the contractor shall accept any financial constraints caused by the provisional twelfths system in the event that the European Union general budget has not been adopted at the beginning of the financial year, in accordance with Article 16 of Regulation (EU, Euratom) No 966/2012.

6.5. The Contractor shall take the appropriate measures to be compliant with the e-invoicing system and e-ordering system that the Court of Auditors would decide to put in place during the duration of the contract, without additional charges for the Court of Auditors. The contractor undertakes to use the system(s) upon the request of the Court of Auditors.

6.6. Payments shall be made only when the contractor has met all the obligations incumbent on it under the terms of the contract on the date on which the invoice is

submitted. The contractor will give the Court of Auditors access to all the supporting documentation necessary to check the invoices.

6.7. The invoice shall be paid within thirty calendar days of the date on which the Court of Auditors registers a payment request, unless otherwise provided for in the contract. Payments shall be deemed to have been made on the date on which the Court of Auditors' account is debited.

6.8. The Court of Auditors may suspend this payment period by informing the contractor, at any point during the thirty-day period from the date of first registration of the payment request, that this request is not admissible, either because the amount is not due or because the necessary supporting documents have not been properly produced, or because it considers that the payment request needs to be verified further.

6.9. The Court of Auditors shall notify the contractor of the suspension and the reasons therefor 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 payment period shall begin to run again once the suspension has been lifted.

6.10. Where the suspension period exceeds two months, the contractor may ask the relevant authority to take a decision on continued suspension.

6.11. In the event of late payment, the contractor shall be entitled to interest, provided the calculated interest exceeds EUR 200. Should the interest not exceed EUR 200, the contractor may claim late payment interest within two months of receiving the late 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 eight percentage points ("the margin"). The reference rate applicable shall be that in force on the first day of the month in which the payment is due. This 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 inclusive. Suspension of payment by the Court of Auditors may not be deemed to constitute late payment.

6.12. The Court of Auditors, after notifying the contractor and by means of offsetting, shall have the right to deduct automatically from payments to the contractor amounts which the contractor owes it for whatever reason.

6.13. Payments shall be made by bank transfer into the bank account shown on the contractor's tender in the form of the IBAN and BIC codes.

6.14. The contract shall be denominated in euros and the payments shall be executed in euros or in the local currency as provided for in the contract. Conversion between the euro and another currency shall be made according to the daily euro exchange rate published in the Official Journal of the European Union, applicable on the day on which the payment order is issued by the Court of Auditors.

6.15. The costs of the transfer shall be borne in the following way:

- a) costs of dispatch charged by the bank of the Court of Auditors shall be borne by the Court of Auditors,
- b) cost of receipt charged by the bank of the contractor shall be borne by the contractor,

- c) costs for repeated transfer caused by one of the parties shall be borne by the party causing repetition of the transfer.

## **7. RECOVERY**

7.1. If total payments made exceed the amount actually due under the contract or if recovery is justified in accordance with the terms of the contract, the contractor shall reimburse the appropriate amount in euros on receipt of the debit note, in the manner and within the time limits set by the Court of Auditors.

7.2. In the event of failure to pay by the deadline specified in the request for reimbursement, the sum due shall bear interest at the rate indicated in Article 6.11. The interest shall be payable as of the calendar day following the due date until the calendar day on which the debt is repaid in full. Any partial payment shall first be entered against charges and interest on late payment and then against the principal amount.

7.3. If payment has not been made by the due date, the Court of Auditors may, after informing the contractor in writing, recover the amounts due by offsetting or by any means offered by the law, including, where appropriate, by enforcement of any guarantee lodged in advance.

## **8. GUARANTEE**

8.1. The contractor shall guarantee, for a period specified in the contract, that the tasks comply with the specifications set out in the contract.

8.2. If the Court of Auditors considers that the tasks do not comply with the contract, it shall inform the contractor of this non-compliance. Unless otherwise specified in the contract, the contractor shall remedy the tasks which do not comply with the contract within fifteen days of the date on which the Court of Auditors informed the contractor of the non-compliance, unless otherwise stipulated in the Specifications, the SLA or the Special Conditions of the contract. In this case, a new guarantee period, as indicated in the contract, shall apply with effect from the date of this correction.

8.3. The contractor shall bear all the costs resulting from the application of this article and shall reimburse the Court of Auditors for all costs incurred. The contractor shall at its own expense correct the tasks which do not comply with the contract, as decided by the Court of Auditors. If the correction of the tasks is not carried out satisfactorily, the Court of Auditors may reject the services and/or products provided or the works carried out.

8.4. The Court of Auditors shall reserve the right to apply damages and interest in accordance with Article 9 for the period starting on the day on which the Court of Auditors notifies the contractor of the non-conformity of the tasks and ending on the day on which the tasks are corrected.

## **9. DAMAGES**

9.1. The Court of Auditors may impose damages should the contractor fail to complete its contractual obligations, or not meet the required quality level, as set out in the contract.

9.2. Should the contractor fail to perform its contractual obligations within the time limits set by the contract, then, without prejudice to the contractor's actual or potential liability or to the contracting authority's right to terminate the contract and/or the specific contract, the Court of Auditors may impose damages for every calendar day of delay according to the following formula:

$0.3 \times (V/d)$
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*V = the value of the contract*

*d = the duration, expressed in calendar days, as set out in the relevant contract for the execution of the tasks.*

9.3. The daily rate for damages may be modified in the contract where the subject of the contract so justifies.

9.4. The contractor may, within fifteen days of notification of the damages payment decision, submit arguments against this decision by registered letter with acknowledgement of receipt or equivalent. In the absence of a response on the contractor's part or of written withdrawal by the Court of Auditors within fifteen days of the receipt of such arguments, the decision imposing the damages shall be the subject of a recovery procedure by the Court of Auditors. These damages shall not be imposed where there is provision in the contract for specific penalties for late completion. The Court of Auditors and the contractor shall expressly acknowledge and agree that any sums payable under this Article shall be in the nature of damages and not penalties, and shall represent a reasonable estimate of fair compensation for the losses that may be reasonably anticipated from such failure to perform obligations.

## **10. OWNERSHIP OF THE RESULTS – INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS**

### **10.1. Definitions**

In this contract the following definitions shall apply:

- i) "results" means any intended outcome of the performance of the contract which is delivered and finally accepted by the Court of Auditors;
- ii) "creator" means any natural person who contributed to the production of the result and includes personnel of the Court of Auditors or a third party;
- iii) "pre-existing rights" means any industrial and intellectual property rights, including background technology, which exist prior to the Court of Auditors or the contractor ordering them for the purpose of the performance of the contract and include rights of ownership and use by the contractor, the creator, the Court of Auditors and any third parties.

### **10.2. Ownership of the results**

10.2.1. The ownership of the results shall be fully and irrevocably acquired by the Court of Auditors under this contract, including any rights in any of the results listed in this

contract. Those rights in the results may include copyright and other intellectual or industrial property rights, as well as all technological solutions and information contained within these technological solutions, produced in performance of the contract. The Court of Auditors may exploit them as stipulated in this contract. All the rights shall be acquired by the Court of Auditors from the moment the results are delivered by the contractor and accepted by the contracting authority. Such delivery and acceptance shall be deemed to constitute an effective assignment of rights from the contractor to the Court of Auditors.

10.2.2. The payment of the price as set out in the contract shall be deemed to include any fees payable to the contractor in relation to the acquisition of rights by the Court of Auditors, including all forms of use of the results.

10.2.3. The acquisition of rights by the Court of Auditors under this contract shall cover all territories worldwide.

10.2.4. Any intermediate sub-result, raw data or intermediate analysis made available by the contractor cannot be used by the contracting authority without the written consent of the contractor, unless the contract explicitly provides for it to be treated as a self-contained result.

### **10.3. Licensing of pre-existing rights**

10.3.1. The Court of Auditors shall not acquire ownership of the pre-existing rights.

10.3.2. The contractor shall license the pre-existing rights on a royalty-free, non-exclusive and irrevocable basis to the Court of Auditors. The Court of Auditors may use them for its own purposes, for distribution to the public or for any modification including by third parties in the name of the Court of Auditors. All the pre-existing rights shall be licensed to the Court of Auditors from the moment the results were delivered and accepted by the Court of Auditors.

10.3.3. The licensing of pre-existing rights to the Court of Auditors under this contract shall cover all territories worldwide and shall be valid for the whole duration of intellectual property rights protection.

### **10.4. Manner of use**

10.4.1. The Court of Auditors shall acquire ownership of each of the results produced as an outcome of this contract which may be used for any of the following purposes:

- a) giving access upon individual requests without the right to reproduce or exploit, as provided for by the rules drawn up by the Court of Auditors with regard to public access to documents in accordance with Article 15(3) of the Treaty on the Functioning of the European Union;
- b) storage of the original and copies made in accordance with this contract;
- c) archiving in line with the document management rules applicable to the contracting authority.

### **10.5. Identification and evidence of granting of pre-existing rights and rights of third parties**



10.5.1. When delivering the results, the contractor shall guarantee that they are free of rights or claims from creators and third parties including in relation to pre-existing rights, for any use envisaged by the contracting authority. This shall not concern the moral rights of natural persons.

10.5.2. The contractor shall establish to that effect a list of all pre-existing rights and rights of creators and third parties on the results of this contract or parts thereof. This list shall be provided no later than the date of delivery of the final results.

10.5.3. In the results the contractor shall clearly point out all quotations of existing textual works. The complete reference should include as appropriate: name of the author, title of the work, date and place of publication, date of creation, address of publication on internet, number, volume and other information which allows the origin to be easily identified.

10.5.4. Upon request by the Court of Auditors, the contractor shall provide evidence of ownership of or rights to use all the listed pre-existing rights and rights of third parties except for the rights owned by the Court of Auditors.

10.5.5. This evidence may refer, inter alia, to rights to: parts of other documents, images, graphs, tables, data, software, technical inventions, know-how, etc. (delivered in paper, electronic or other form), IT development tools, routines, subroutines and/or other programs ("background technology"), concepts, designs, installations or works of art, data, source or background materials or any other parts of external origin.

10.5.6. The evidence shall 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 and 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.

10.5.7. Provision of evidence shall 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 was revealed.

10.5.8. The contractor shall also guarantee 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.

## **10.6. Creators**

10.6.1. By delivering the results the contractor shall guarantee that the creators undertake not to object to their names being divulged when the results are presented to the public

and shall confirm that the results can be divulged. Names of authors shall be divulged on request in the manner communicated by the contractor to the contracting authority.

10.6.2. The contractor shall obtain the consent of creators regarding the granting of the relevant rights and be ready to provide documentary evidence upon request.

### **10.7. Persons appearing in photographs or films**

If natural, recognisable persons appear in a result or if their voices are recorded, the contractor shall, at the request of the contracting authority, submit a statement by these persons (or by the persons exercising parental authority in the case of minors) authorising the described use of their image or voice. This shall not apply to persons whose permission is not required by virtue of the law of the country where the photographs were taken, films shot or audio records made.

### **10.8. Contractor's copyright for pre-existing rights**

When the contractor retains pre-existing rights on parts of the results, reference shall be inserted to that effect when the result is used, with the following disclaimer: © - year – European Court of Auditors. All rights reserved. Some parts are licensed to the European Court of Auditors under certain conditions.

### **10.9. Visibility of Court of Auditors' funding and disclaimer**

When making use of the results, the contractor shall declare that they have been produced within a contract with the Court of Auditors and that the opinions expressed are those of the contractor only and do not represent the Court of Auditors' official position. The Court of Auditors may waive this obligation in writing.

## **11. PATENTS, REGISTERED DESIGNS ("GEBRAUCHSMUSTER"), TRADEMARKS AND BRAND NAMES, INDUSTRIAL DESIGNS AND MODELS**

11.1. If the performance of the contract involves the use of patents, registered designs ("Gebrauchsmuster"), trademarks or brand names, or industrial designs or models belonging to third parties and this leads to litigation, the contractor shall indemnify the Court of Auditors against any action for infringement which may be brought against it.

11.2. The Court of Auditors and the contractor shall communicate to each other any information indicating that an industrial property right could impede performance of the contract.

11.3. At the first indication of any action by a third party, in particular the lodging of a claim, even after performance of the contract, the party implicated shall notify the other party without delay, whereupon both parties shall act conjointly and shall exchange all information and evidence which they may possess or obtain.

11.4. The fact that the products or work or any part thereof are covered by an industrial property right owned by the contractor or in respect of which it possesses a licence shall not prevent the Court of Auditors repairing them or having them repaired by whomsoever it thinks fit, save where the contractor itself possesses an industrial property right in respect of the repair process and, after having been consulted first, offers to effect the repairs within a reasonable time limit and at a reasonable price.

## **12. CONFIDENTIALITY, USE, CIRCULATION AND PUBLICATION OF INFORMATION**

12.1. Save where prior authorisation in writing has been obtained from the Court of Auditors, the contractor shall be required not to disclose to any unauthorised person any facts, information, knowledge, documents or other matters which the Court of Auditors may have communicated to it as confidential. The contractor shall continue to be bound by this undertaking after completion of the tasks. This obligation shall continue to apply in respect of each such item of information until it has been lawfully disclosed.

12.2. The contractor shall require any staff, employees, partners, subcontractors and assignees it may have to maintain confidentiality.

12.3. The contractor shall authorise the Court of Auditors to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, any data contained in or relating to the contract, in particular the identity of the contractor, the subject matter and duration of the contract and the amount paid.

12.4. Unless otherwise stipulated, the Court of Auditors shall not be required to distribute or publish documents or information supplied in performance of the contract. If it decides not to publish the documents or information supplied, the contractor may not have them distributed or published elsewhere without prior written authorisation from the Court of Auditors.

12.5. The contractor shall undertake, in respect of itself and its staff, not to make use of, for purposes other than performance of the contract, and not to disclose or publish to third parties any facts, information, knowledge, documents or other matters communicated to it or brought to its attention in connection with performance of the contract, or any results arising from its services without the prior written authorisation of the Court of Auditors. These obligations shall continue to apply following performance of this contract.

12.6. Any distribution or publication by the contractor of information relating to the contract shall require the Court of Auditors' prior authorisation in writing. For the purposes of that authorisation the Court of Auditors may require the contractor to state the amount paid by the European Union, or may make the authorisation subject to other conditions. The information published or distributed shall in any case specify that the opinions expressed are those of the contractor only and do not represent the Court of Auditors' official position.

## **13. PUBLICITY**

13.1. The contractor shall not be authorised to advertise the fact that it is a contractor of the Court of Auditors. In accordance with this provision, authorisation shall not be given for articles drafted in the form of publicity material to be published, whether intended for a specialist magazine or for the daily press.

13.2. All other articles, publications or illustrations which are not specifically publicity-orientated but where the contractor is mentioned in connection with the activity that is the object of this contract, must be submitted to the Court of Auditors for its prior written authorisation.

13.3. The contractor shall not under any circumstances use photographs of the exterior or interior of the Court of Auditors' buildings, the logo or official stamp of the Court or any other versions of these, in the context of its activity or otherwise, without the Court of Auditors' prior written authorisation. This authorisation may be subject to specific conditions and limited to a fixed period.

13.4. It shall be prohibited to display notices or publicity material on the Court of Auditors' premises unless the Court has specifically given prior written authorisation to the contrary.

## 14. TAXATION

14.1. The contractor shall have sole responsibility for compliance with the tax laws which apply to it. Failure to comply shall make the relevant invoices invalid.

14.2. The contractor shall recognise that the Court of Auditors 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 and the relevant legislation in the Member States.

14.3. 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.

14.4. Invoices presented by the contractor shall indicate its place of taxation for VAT purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

## 15. FORCE MAJEURE

15.1. *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, plant or materials or delays in making them available, labour disputes, strikes or financial problems may not be invoked as force majeure unless they themselves stem directly from an established case of force majeure.

15.2. Without prejudice to the provisions of Article 2.10, 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.

15.3. Either of the contracting parties may suspend the performance of the contractor any part thereof if a case of force majeure makes such performance impossible or excessively difficult. It shall inform the other party about the suspension without delay, giving all the necessary reasons and details and the envisaged date for resuming the performance of the contract.

15.4. Once the circumstances allow performance to be resumed, the party which requested the suspension shall immediately inform the contracting authority, unless the Court of Auditors has already terminated the contract..

15.5. 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 fulfil its contractual obligations owing to force majeure, it shall have the right to remuneration only for the tasks actually executed.

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

## **16. SUBCONTRACTING AND ASSIGNMENT**

16.1. The contractor may not, without the prior written authorisation of the Court of Auditors, assign the rights and obligations arising out of the contract in whole or in part, nor subcontract any part of it, nor cause it to be performed in fact by third parties.

16.2. In the absence of the authorisation referred to in paragraph 16.1 above, 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 of Auditors.

16.3. Even where the Court of Auditors authorises the contractor to subcontract all or part of the supplies, services or works to third parties, the contractor shall nonetheless remain solely responsible towards the Court of Auditors for the performance of the obligations under the contract.

16.4. Save where the Court of Auditors expressly authorises an exception, the contractor shall be required to include in any contracts signed with third parties, for all or part of the contract, provisions enabling the Court of Auditors to enjoy the same rights and guarantees in relation to third parties as in relation to the contractor itself.

## **17. TERMINATION**

17.1. The Court of Auditors may terminate the contract in the following circumstances:

- a) if the contractor is being wound up, is having its 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) if the contractor has not fulfilled its 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 it 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.4;
- 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 15 (fifteen) days of the date foreseen, and the new date proposed, if any, is considered unacceptable by the Court;
- 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.

17.2. In the event of force majeure, notified in accordance with Article 15, either contracting party may terminate the contract, where performance thereof cannot be ensured for a period corresponding to at least one fifth of the period laid down in the contract, where resuming performance is impossible or a modification to the contract might call into question the decision awarding the contract or result in unequal treatment of tenderers.

17.3. Prior to any termination, the contractor shall be given the opportunity to submit its observations.

17.4. Termination shall take effect on the date of receipt of the registered letter with acknowledgement of receipt terminating the contract, or on any other date referred to in the letter of termination.

17.5. Consequences of termination:

- a) In the event of the Court of Auditors terminating the contract in accordance with this article and without prejudice to the other provisions of the contract, the contractor shall waive any claim for consequential damages, including loss of anticipated profits following non-completion of 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 its commitments. It shall draw up the documents required for the tasks executed up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

- b) Without prejudice to any administrative and financial penalties imposed by the Court of Auditors in accordance with Article 109 of the Financial Regulation<sup>3</sup>, the Court of Auditors may claim compensation for any damage suffered and recover any sums paid to the contractor under the contract.
- c) Following termination, the Court of Auditors may commission any other contractor to complete the tasks. Without prejudice to any other rights or guarantees stipulated in the contract in the Court of Auditors' favour, it shall be entitled to claim from the contractor reimbursement of any additional costs occasioned by the completion of those tasks.

## **18. MATERIAL ERRORS, IRREGULARITIES AND FRAUD**

18.1. 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.

18.2. 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<sup>4</sup>.

18.3. 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.

18.4. 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.

## **19. CHECKS AND AUDITS**

19.1. The Court of Auditors and the European Anti-Fraud Office may check or audit the performance of the contract. It may be carried out either directly by their own staff or by any other outside body authorised to do so on their behalf.

19.2. Such checks and audits may be initiated during the performance of the contract and for a period of five years from the date of payment of the balance.

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<sup>3</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298 of 26.10.2012).

<sup>4</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298 of 26.10.2012).

19.3. 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.

19.4. The contractor shall keep all original documents stored on any appropriate medium, including digitised originals where authorised by national law and under the conditions laid down therein, for a period of five years starting from the date of payment of the balance.

19.5. The contractor shall allow the Court of Auditors' staff and outside personnel authorised by it 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 time of the check or audit and, if so requested, that information be handed over in an appropriate form.

19.6. By virtue of Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities and Regulation (UE, EURATOM) n° 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, 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 Court of Auditors.

## **20. AMENDMENTS**

20.1. 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.

20.2. 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.

20.3. In the context of this contract, the Court of Auditors may ask the contractor to provide additional similar service in the three years following the signature of the contract or to supplement its tender in writing. Any supplements thus added may not have the effect of substantially amending the initial tender.

## **21. DATA PROTECTION**

21.1. Any personal data included in or pertaining to the contract, including those relating to its performance, 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 EU 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 Court of Auditors, without prejudice to the possible transmission of such



data to the bodies charged with monitoring or inspection tasks in application of European Union law.

21.2. The contractor shall have the right to access its personal data and the right to rectify any such data. Should the contractor have any queries concerning the processing of its data, it shall address them to the Court of Auditors. The contractor shall have right of recourse at any time to the European Data Protection Supervisor.

21.3. Where this 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 or her rights.

21.4. These data shall be processed confidentially in accordance with the requirements of Regulation (EC) No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by Community institutions and bodies and on the free movement of such data. The contractor shall limit access to the data to the personnel strictly necessary for the performance, management and monitoring of the contract.

21.5. The Contractor shall undertake 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 gaining access to computer systems processing personal data, and especially:
  - prevent unauthorised reading, copying, alteration or removal of storage media;
  - prevent unauthorised entering of data in the storage medium, as well as any unauthorised disclosure, alteration or erasure of stored personal data;
  - prevent 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.

## **22. APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

22.1. Save as otherwise expressly provided, the contract shall be governed by the law of the European Union, including the Financial Regulation and its implementing rules<sup>5</sup>, supplemented, if necessary, by Luxembourg law.

22.2. 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 Article 272 of the Treaty on the Functioning of the European Union.

### 23. MEANS OF COMMUNICATION

23.1. Any communication relating to the contract or to its performance shall be made in writing and shall bear the contract number. Any communication shall be deemed to have been made once it is received by the receiving party, unless otherwise provided for in this contract.

23.2. Electronic communication shall be deemed to have been received by the parties on the day of dispatch of that communication provided it is sent to the addressees listed in the contract. Without prejudice to the preceding, if the sending party receives a message of non-delivery to or of absence of the addressee, it shall make every effort to ensure the actual receipt of such communication by the other party.

23.3. Electronic communication shall be confirmed by an original signed paper version of that communication if requested by any of the parties provided that this request is submitted without undue delay. The sender shall send the original signed paper version without undue delay.

23.4. Mail sent using the postal services shall be deemed to have been received by the contracting authority on the date on which it is registered by the department responsible referred to in the contract.

23.5. Any formal notification shall be made by registered mail with acknowledgement of receipt or equivalent, or by equivalent electronic means.

### 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

<sup>5</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298 of 26.10.2012) and Commission Delegated Regulation No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union.(OJ L 362 of 31.12.2012).