



EUROPEAN  
COURT  
OF AUDITORS

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

## **ARTICLE 1. DEFINITIONS 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. In the absence of derogating contractual provisions, the General Conditions shall apply automatically to all contracts dealing with the purchase by the Court of Auditors of services, products and works signed between the Court of Auditors and the contractor. The General Conditions shall be an integral part of the contract.

1.3. In the event of conflicting interpretations, the Special Conditions of the contract shall take precedence over the General Conditions and the General Conditions shall take precedence over the contractor's tender. If the tender specifications and the contractor's tender are annexed to the contract, the tender specifications shall take precedence over the tender and the contract shall take precedence over both. The terms set out in the framework contract shall take precedence over those in specific contracts. All the documents shall be an integral part of the contract and, subject to the above, they shall be taken as mutually explanatory.

1.4. The applicable General Conditions shall be those in force at the time of performance of the contractual obligations and shall be binding on the parties as soon as they are officially published on the website of the Court of Auditors (<http://www.eca.europa.eu/en/Pages/General-conditions.aspx>).

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

1.6. The term "breach of obligations" means a failure by the contractor to fulfil one or more of its contractual obligations.

1.7. The term "contract" refers to direct contracts, framework contracts, specific contracts and purchase orders.

1.8. The term "creator" means any natural person who contributed to the production of the result and includes staff of the Court of Auditors, of the contractor or of a third party.

1.9. The term "formal notification" means a form of written communication between the parties, by mail or email, which provides the sender with compelling evidence that the message was delivered to the specified recipient.

1.10. The term "fraud" means any act or omission committed in order to make an unlawful gain for the perpetrator or another person by causing a loss to the European Union's financial interests, and relating to: (i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or assets from the European Union budget, (ii) the non-disclosure of information in violation of a specific obligation, with the same effect; or (iii) the misapplication of such funds or assets for purposes other than those for which they were originally granted, which damages the European Union's financial interests.

1.11. The term "grave professional misconduct" means a breach of applicable laws or regulations or ethical standards of the profession to which the contractor or a related person belongs, including any conduct leading to sexual or other exploitation or abuse, or any wrongful conduct by the contractor or a related person which has an impact on its professional credibility, where such conduct denotes wrongful intent or gross negligence.

1.12. The term "irregularity" means an infringement within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95, meaning any infringement of a provision of European Union law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the Union budget.

1.13. The term "pre-existing rights" means any industrial and intellectual property rights, including background technology, which existed before the Court of Auditors or the contractor ordered them for the purpose of performing the contract. Those rights include rights of ownership and use by the contractor, the creator, the Court of Auditors and any third parties.

1.14. The term "related person" means any natural or legal person who is a member of the administrative, management or supervisory body of the contractor, or who has powers of representation, decision or control with regard to the contractor.

1.15. The term "results" means any intended outcome of performing the contract, whatever its form or nature. A result may be further defined in the contract as a deliverable. In addition to newly created materials produced specifically for the contracting authority by the contractor or at its request, results may include pre-existing materials.

## **ARTICLE 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. All periods specified in the contract are calculated in calendar days, unless otherwise specified.

2.3. The contractor shall comply with the requirements listed in the tender specifications.

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

2.5. 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 under European Union law, national law and collective arrangements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU, and from the data protection obligations resulting from Regulation (EU) 2016/679<sup>1</sup> and Regulation (EU) 2018/1725<sup>2</sup>.

2.6. 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.

2.7. The contractor shall take the necessary steps to ensure that its performance of the contract does not lead to withdrawal of the SuperDrecksKëscht fir Betriber<sup>®</sup> or the EMAS label awarded to the Court of Auditors.

2.8. The contractor's staff shall strictly comply with the Court of Auditors' rules on discipline, security and health, and shall conduct themselves ethically. The Court of Auditors promotes values such as integrity in all fields of its activity and considers that those values must guide the behaviour of its staff towards all other persons, including contractors and their staff. The contractor and its staff are expected, throughout the contract, to conduct themselves in a manner that meets the highest standards of integrity and ethics in their relations with the Court of Auditors and its staff. In this regard, the contractor undertakes in particular not to offer any product or service to a member of the Court of Auditors' staff during or after performance of the contract. The contractor further undertakes to provide the Secretary-General of the Court of Auditors with any information it becomes aware of which may constitute a financial irregularity linked to the contract, the contract award procedure or a following procurement procedure<sup>3</sup>.

2.9. The Court of Auditors has put in place a policy to preserve good working conditions and fight against moral and sexual harassment. The Court of Auditors **will** not tolerate any act of harassment by or towards a member of the contractor's **staff** involved in performing the contract.

2.10. Without prejudice to Article 4, any reference in the contract to the contractor's staff shall exclusively mean individuals involved in performance of the contract. The contractor shall ensure

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<sup>1</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), Official journal of the European Union (OJ) L 119 of 4 May 2016, page 1 (<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1547484505787&uri=CELEX:32016R0679>).

<sup>2</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295 of 21 November 2018, page 39 (<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1547484765039&uri=CELEX:32018R1725>).

<sup>3</sup> The Court of Auditors' "whistleblowing" rules can be consulted at <http://www.eca.europa.eu/en/Pages/Transparency-public-scrutiny.aspx>.

that all persons performing the contract possess the necessary professional qualifications and experience required for the execution of the tasks assigned to them.

2.11. The contractor may not represent the Court of Auditors 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.

2.12. The contractor shall have sole responsibility for the staff carrying out 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.

2.13. 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 staff 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 staff shall 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.

2.14. 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. The contractor shall give priority to solving the problem rather than determining liability.

2.15. The contractor shall inform the Court of Auditors without delay of any change in the exclusion situations declared in accordance with Article 137(1) of the Financial Regulation<sup>4</sup>.

2.16. The contract shall enter into force on the date on which it is signed by the last contracting party.

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<sup>4</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, OJ L 193 of 30 July 2018, page 1, ("the Financial Regulation").

2.17. Execution of the tasks may under no circumstances begin before the date on which the contract, specific contract or purchase order enters into force.

2.18. In the case of a framework contract, signature of the contract does not imply any purchase obligation on the part of the Court of Auditors. Only the application of the said contract by means of a specific contract (also called a "purchase order") shall be binding on the Court of Auditors.

2.19. When the Court of Auditors sends a purchase order to the contractor, it should be returned by the contractor, duly signed and dated, within 5 (five) business days of the date on which it was sent by the Court of Auditors.

2.20. The period allowed for 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 form, provided that it has been signed by the Court of Auditors.

2.21. The contractor shall sign and return all purchase orders before the corresponding framework contract expires. After its expiry, the framework contract shall remain in force with regard to these purchase orders. They shall be executed at the latest within 60 business days of the date of expiry of the framework contract.

2.22. Where the parties agree on more detailed arrangements for the execution of tasks, these may be annexed to the contract, in particular in the form of tender specifications.

### **ARTICLE 3. LIABILITY**

3.1. The contractor shall be liable for any loss or damage caused to the Court of Auditors in performance of the contract, including in the event of subcontracting under Article 17, but only to an amount not exceeding three times the total value of the contract. However, if the damage or loss is caused by the gross negligence or wilful misconduct of the contractor or of a member of its staff or subcontractors, or in the event of an action brought against the Court of Auditors by a third party for breach of its intellectual property rights linked to the contract, the contractor shall be liable for the whole amount of the damage or loss.

3.2. If the contractor is composed of two or more economic operators (i.e. who submitted a joint tender), they shall all be jointly and severally liable to the Court of Auditors for the performance of the contract, unless otherwise specified in the technical specifications or the Special Conditions.

3.3. The Court of Auditors shall not be liable for any loss or damage caused by the contractor, including any damage or loss to third parties during or as a consequence of performance of the contract.

3.4. 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.

3.5. 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.

3.6. 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, including by intervening in support of the Court upon request.

3.7. 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.

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

4.1. The contractor shall take all necessary measures to prevent any situation of conflict of interest or professional conflicting interest. A conflict of interest could arise in particular where the impartial and objective performance of the contract is compromised for reasons involving family, emotional life, political or national affinity, economic interest, or any other direct or indirect personal interest. A professional conflicting interest could arise when the contractor's previous or ongoing professional activities affect its capacity to perform the contract to an appropriate standard.

4.2. The contractor shall notify the Court of Auditors in writing as soon as possible of any situation that could constitute a conflict of interest or a professional conflicting interest during performance of the contract. The contractor shall immediately take action to rectify the situation. The Court of Auditors shall reserve 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.

4.3. 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 4.2, the contractor shall replace, immediately and without compensation from the Court of Auditors, any member of its staff exposed to such a situation.

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

4.5. 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.

4.6. 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.

## ARTICLE 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 tender specifications or the Special Conditions of the contract.

5.2. The prices shall cover all tasks and include all expenses and costs incurred by the contractor for execution of the tasks, including mailing and delivery costs.

5.3. Where provided by the Special Conditions or by the tender specifications, the Court of Auditors shall reimburse 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 appropriate, on the basis of the shortest itinerary and the minimum number of nights necessary 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. Travel outside the European Union shall be reimbursed if the Court of Auditors 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) the daily subsistence allowance shall be payable only on receipt of supporting documents proving that the person concerned was present at the destination;
- (c) the 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) the daily subsistence allowance shall be calculated at the flat rate of EUR 100 per day;
- (e) accommodation shall be reimbursed on receipt of supporting documents proving the necessary overnight stay at the destination, up to a maximum of EUR 150.

5.8. The cost of shipping equipment or unaccompanied luggage shall be reimbursed if the Court of Auditors has given prior written consent.



## ARTICLE 6. INVOICING AND PAYMENTS

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

6.2. Each invoice shall contain the following information:

- reference to the contract number (specific contract or purchase order, etc.);
- a description of the products, services or work provided or completed, which must conform fully to the contract;
- prices;
- the contractor's bank details, including its IBAN and BIC codes and VAT number.

6.3. All invoices shall be addressed to the Court of Auditors at the address given in the contract. They shall be accompanied by supporting documentation proving that the tasks invoiced have been received. Partial invoicing shall not be accepted unless it is specifically provided for by the contract. Tasks completed prior to receipt of a purchase order 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 the Financial Regulation.

6.5. The contractor shall take the appropriate measures to be compliant with the e-invoicing system and e-ordering system already in place, or that the Court of Auditors might decide to put in place during the contract, without additional charges for the Court of Auditors. The contractor undertakes to use these systems if the Court of Auditors so requests.

6.6. No payment shall be made until the contractor has met all the obligations incumbent on it under the terms of the contract on the date on which an invoice is submitted. The contractor shall give the Court of Auditors access to all the supporting documentation necessary to check the invoices.

6.7. Invoices 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 30-day payment period by informing the contractor, at any point during the period, that the payment 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, giving reasons, by registered letter with acknowledgment of receipt or equivalent. If any necessary documents or deliverables are missing or the Court has comments to make on them, the notification letter shall include a time limit for submitting additional information or corrections or a new version of the documents or deliverables. Suspension shall take effect from the date on which the letter is sent. 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 authorising officer to decide whether it should be continued.

6.11. Where a payment period was suspended following rejection of a document and the new document produced is also rejected, the Court of Auditors reserves the right to terminate the contract in accordance with Article 18.

6.12. 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 from the calendar day following expiry of the time limit for payment up to and including the day of payment. Suspension of payment by the Court of Auditors may not be deemed to constitute late payment.

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

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

6.15. The contract shall be denominated in euros and payments shall be executed in euros or in the local currency as provided for in the contract. The conversion rate used shall be the daily euro exchange rate published in the Official Journal of the European Union on the day on which the Court of Auditors issues the payment order.

6.16. The financial transfer costs shall be borne in the following way:

- (a) costs of sending, charged by the bank of the Court of Auditors, shall be borne by the Court of Auditors,
- (b) costs of receipt, charged by the contractor's bank, shall be borne by the contractor,
- (c) costs for a repeat transfer attributable to one of the parties shall be borne by the party at fault.

## **ARTICLE 7. FINANCIAL GUARANTEES**

7.1. If a financial guarantee is required<sup>5</sup> for the payment of pre-financing, or as a performance guarantee or retention money guarantee, it shall fulfil the following conditions:

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<sup>5</sup> No guarantee will be required for contracts with a value of less than EUR 60 000.

- (a) the guarantee shall be provided by a bank or a financial institution approved by the Court of Auditors or, at the request of the contractor and with the agreement of the Court of Auditors, by a third party;
- (b) the guarantor shall provide the guarantee in the form of irrevocable collateral security, or shall stand as first-call guarantor of the contractor's obligations without requiring the Court of Auditors to have recourse against the principal debtor (the contractor).

7.2. The contractor shall bear the cost of providing such guarantee.

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

7.4. Performance guarantees shall cover compliance with substantial contractual obligations until the Court of Auditors has given its final approval for the supply, service or works. The Court of Auditors shall release the guarantee fully after final approval of the supply, service or works, as provided for in the contract.

7.5. Retention money guarantees shall cover the full delivery of supplies, services or works in accordance with the contract, including during the contract liability period, and until their final approval by the Court of Auditors. The Court of Auditors shall release the guarantee after the expiry of the contract liability period, as provided for in the contract.

## **ARTICLE 8. RECOVERY**

8.1. 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.

8.2. The Court of Auditors shall formally notify the contractor of its intention to seek recovery, specifying the amount due and the reasons for recovery and inviting the contractor to make any observations within fifteen days of receipt. If the Court of Auditors decides to pursue the recovery procedure, it shall confirm recovery by sending a debit note to the contractor and specifying the deadline for payment. The contractor shall pay in accordance with the provisions of the debit note.

8.3. 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 6.12. The interest shall be payable from the calendar day following the due date until the calendar day on which the debt is repaid in full. Any partial payments shall first be entered against charges and interest on late payment and then against the principal amount.

8.4. 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.

8.5. If the contract is signed by a group of economic operators (joint tender), the group shall be jointly and severally liable under the conditions set out in Article 3.2, unless otherwise specified in

the technical specifications or Special Conditions. The Court of Auditors shall first claim the full amount from the lead operator. If the lead operator does not pay the full amount by the due date and the amount cannot be offset, or can only be offset partially, the Court of Auditors may claim the amount still due from any other member of the group.

## ARTICLE 9. GUARANTEE

9.1. The contractor shall guarantee, for a period specified in the contract, that the tasks conform to the specifications set out in the contract.

9.2. If the Court of Auditors considers that the tasks do not conform to the contract, it shall inform the contractor accordingly. Unless otherwise specified in the contract, the contractor shall remedy the tasks which do not conform to the contract within fifteen days of the date on which the Court of Auditors thus informed the contractor. A new guarantee period, as indicated in the contract, shall then apply with effect from the date of this correction.

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

9.4. The Court of Auditors shall reserve the right to impose damages and interest in accordance with Article 10 for a period starting on the day on which the Court of Auditors notifies the contractor of the non-conformity and ending on the day on which the tasks are corrected.

## ARTICLE 10. DAMAGES

10.1. The Court of Auditors may impose damages should the contractor fail to complete its contractual obligations or not meet the required contractual standards.

10.2. Should the contractor fail to complete 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 Court of Auditors'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, purchase order or specific contract*

*d = the duration, expressed in calendar days, as set out in the contract, purchase order or specific contract for execution of the tasks*

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

10.4. The Court of Auditors will formally notify the contractor of its intention to apply liquidated damages and the corresponding calculated amount. Within fifteen days of notification of the decision to impose damages, the contractor may submit arguments against that decision by registered letter with acknowledgement of receipt or equivalent. If the contractor fails to respond, or if the Court of Auditors does not withdraw its decision in writing within fifteen days of the receipt of such arguments, the decision shall be the subject of a recovery procedure by the Court of Auditors. 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 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.

10.5. If the contractor fails to perform its obligations under the contract or fails to meet the required contractual standards set out in the specifications, the Court of Auditors may reduce or recover payments in accordance with Article 8 and in proportion to the scale of the failure, without prejudice to the Court of Auditors' right to terminate the contract in accordance with Article 18. A reduction in price or recovery of payments may be combined with liquidated damages.

10.6. The Court of Auditors shall formally notify the contractor of its intention to reduce payment and the corresponding calculated amount. The contractor shall have fifteen days following the date of receipt to submit observations. If the contractor submits observations, the Court of Auditors, taking into account such observations, shall then formally notify the contractor either that it withdraws its intention to reduce payment or of its final decision to reduce payment and the corresponding amount.

## **ARTICLE 11. OWNERSHIP OF THE RESULTS – INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS**

### **11.1. Ownership of the results**

11.1.1. The European Union shall acquire irrevocable ownership of the results and of all intellectual property rights applicable to newly created materials produced specifically for the Court of Auditors under the contract and incorporated in the results, without prejudice however to the rules applying to pre-existing rights on pre-existing materials, as per Article 11.2. The intellectual property rights so acquired shall include any rights, such as copyright and other intellectual or industrial property rights, on any of the results and in all technological solutions and information created or produced by the contractor or by its subcontractor in performance of the contract. The Court of Auditors may exploit and use the acquired rights as stipulated in this contract. The European Union shall acquire all these rights from the moment the contractor has created the results.

11.1.2. The price set out in the contract shall be deemed to include any fees payable to the contractor for the acquisition of rights by the European Union, including all modes of exploitation and use of the results.

11.1.3. The acquisition of rights by the European Union under this contract shall cover all territories worldwide.

11.1.4. This acquisition of rights shall be in addition to any rights that already accrue to the Union on the basis of existing exceptions in the applicable legislation, such as the copyright exception to ensure the proper performance or reporting of administrative proceedings, where such exceptions apply.

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

11.2.1. Unless provided otherwise in the Special Conditions, the European Union shall not acquire ownership of pre-existing rights.

11.2.2. The contractor shall license pre-existing rights to the European Union on a royalty-free, non-exclusive and irrevocable basis. The Court of Auditors may use pre-existing materials for all modes of exploitation set out in this contract. All pre-existing rights shall be licensed to the European Union from the moment the results are delivered and accepted by the Court of Auditors.

11.2.3. Unless otherwise agreed, the licence shall be non-transferable and cannot be sub-licensed, except that the Court of Auditors may sub-license pre-existing rights to any natural or legal persons working for it or cooperating with it, including contractors and subcontractors, , but only for the purpose of this contract or cooperation. If the result is a document meant to be published, such as a report or a study, the presence of pre-existing materials in the result may not prevent publication or translation of the document, it being understood however that the pre-existing materials may not be published or translated separately from the result.

11.2.4. The licensing of pre-existing rights to the European Union under this contract shall cover all territories worldwide and shall be valid for the entire duration of intellectual property rights protection. The price set out in the contract shall be deemed also to include any fees payable to the contractor for the licensing of pre-existing rights to the European Union, including all modes of exploitation and use of the results.

11.2.5. Where performance of the contract requires the contractor to use pre-existing materials belonging to the Court of Auditors, the latter may ask the contractor to sign an appropriate licensing agreement. Such use by the contractor shall not entail any transfer of rights to the contractor and shall be limited to the needs of the contract.

### **11.3. Exclusive rights**

The European Union shall acquire the following exclusive rights:

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

- incorporating, including by cropping and cutting, the results or parts thereof in other works, such as on websites and webpages;
- (c) distribution: the exclusive right to authorise or prohibit any form of distribution of the results or copies of the results to the public, by sale or otherwise;
  - (d) rental: the exclusive right to authorise or prohibit rental or lending of the results or of copies of the results;
  - (e) adaptation: the exclusive right to authorise or prohibit any modification of the results;
  - (f) translation: the exclusive right to authorise or prohibit any translation, adaptation, arrangement or creation of derivative works based on the results, and any other alteration of the results, subject to the respect of moral rights of authors, where applicable;
  - (g) where the results are or include a database: the exclusive right to authorise or prohibit the extraction of all or a substantial part of the contents of the database to another medium by any means or in any form; and the exclusive right to authorise or prohibit the re-utilisation of all or a substantial part of the contents of the database by the distribution of copies, by renting, or by online or other forms of transmission;
  - (h) where the results are or include a patentable subject-matter: the right to register them as a patent and to further exploit such patent to the fullest extent;
  - (i) where the results are or include logos or subject-matter which could be registered as a trademark: the right to register such logo or subject-matter as a trademark and to further exploit and use it;
  - (j) where the results are or include know-how: the right to use such know-how as is necessary to make use of the results to the full extent provided for by this contract, and the right to make it available to contractors or subcontractors acting on behalf of the Court of Auditors, subject to their signing of appropriate confidentiality undertakings where necessary;
  - (k) where the results are documents: the right to store and archive the results in line with the document management rules applicable to the Court of Auditors, including by digitisation or converting the format for preservation or new use;
  - (l) where the results are or incorporate software, including source code, object code and, where relevant, documentation, preparatory materials and manuals, in addition to the other exclusive rights mentioned in this article 11.3:
    - (i) end-user rights, for all uses by the European Union or by subcontractors which result from this contract and from the intention of the parties;
    - (ii) the right to receive both the source code and the object code;
  - (m) the right to license to third parties any of the exclusive rights or modes of exploitation set out in this contract; however, for pre-existing materials which have only been licensed to the European Union, the right to sub-license does not apply, except in the case foreseen in Article 11.2.3;
  - (n) to the extent that the contractor may invoke moral rights, the right for the Court of Auditors, except where otherwise provided in this contract, to publish the results with or

without mentioning the creators' names, and the right to decide when and whether the results may be disclosed and published.

The contractor warrants that the European Union may exercise these exclusive rights and modes of exploitation in respect of all parts of the results, be it by transferring ownership of the rights on those parts, which were specifically created by the contractor, or by licensing the pre-existing rights on those parts consisting of pre-existing materials.

Where pre-existing materials are included in the results, the Court of Auditors may accept reasonable restrictions on the above list, provided that said materials are easily identifiable and separable from the rest, that they do not form a substantial part of the results and that, should the need arise, satisfactory replacement solutions exist at no additional cost to the Court of Auditors. In such case, the contractor shall clearly inform the Court of Auditors before making such choice and the Court of Auditors shall have the right to refuse it.

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

- 11.4.1. When delivering the results, the contractor shall warrant that, for any use that the Court of Auditors may envisage within the limits set in this contract, the newly created parts and the pre-existing material incorporated in the results are free of claims from creators or from any third parties, and that all the necessary pre-existing rights have been obtained or licensed.
- 11.4.2. To that effect, the contractor shall establish a list of all pre-existing rights and rights of creators and third parties on the results of this contract or parts thereof, including an identification of the rights' owners. If there are no pre-existing rights to the results, the contractor shall provide a declaration to that effect. The contractor shall provide this list no later than the date of delivery of the final results.
- 11.4.3. In the results the contractor shall clearly identify all quotations from existing textual works. Complete references should include, as appropriate: name of the author, title of the work, date and place of publication, date of creation, address of publication on the internet, number, volume, and any other information which allows the origin to be easily identified.
- 11.4.4. If the Court of Auditors so requests, the contractor shall provide evidence of ownership of or the right to use all the listed pre-existing rights and rights of third parties except for the rights owned or licensed by the European Union. This provision also applies to image rights and sound recordings.
- 11.4.5. This evidence may refer, inter alia, to rights to: parts of other documents, images, voice recordings, music, graphs, fonts, 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 and any other parts of external origin.
- 11.4.6. 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 that licence or agreement;
- (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.

11.4.7. 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.

11.4.8. 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 fees relating to the final results, including fees due to collecting societies.

### **11.5. Creators**

11.5.1. By delivering the results the contractor shall guarantee that the creators undertake not to object, on the basis of their moral rights under copyright:

- (a) That their names be mentioned or not mentioned when the results are presented to the public;
- (b) That the results be divulged or not after they have been delivered in their final version to the Court of Auditors;
- (c) That the results be adapted, provided that this is done in a manner which is not prejudicial to the creator's honour or reputation.

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

### **11.6. 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 Court of Auditors, submit a statement by those persons (or by the persons exercising parental authority in the case of minors) authorising their image or voice to be used as described. The contractor shall take the necessary measures to obtain such consent in accordance with the applicable legal provisions.

### **11.7. 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 Union. All rights reserved. Some parts are licensed to the European Union under certain conditions” or any other equivalent disclaimer that the Court of Auditors may consider appropriate, or as the parties

may agree on a case-by-case basis. This shall not apply when it is impossible to insert such reference, notably for practical reasons.

#### **11.8. Visibility of Court of Auditors funding and disclaimer**

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

### **ARTICLE 12. PATENTS, REGISTERED DESIGNS ("GEBRAUCHSMUSTER"), TRADEMARKS AND BRAND NAMES, INDUSTRIAL DESIGNS AND MODELS**

12.1. If 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 use leads to litigation, the contractor shall indemnify the Court of Auditors against any action for infringement which may be brought against it.

12.2. The Court of Auditors and the contractor shall exchange any information indicating that an industrial property right could impede performance of the contract.

12.3. 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 jointly and shall exchange all information and evidence which they may possess or obtain.

12.4. 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 from repairing it or having it repaired by whomsoever it sees 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.

### **ARTICLE 13. CONFIDENTIALITY, USE, CIRCULATION AND PUBLICATION OF INFORMATION**

13.1. 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 the contract.

13.2. The contractor shall require any agents, employees, partners, subcontractors and assignees to maintain confidentiality.

13.3. 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. All information so published or distributed shall specify that the opinions expressed are those of the contractor alone and do not represent the Court of Auditors' official position.

13.4. 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.

13.5. 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 the prior written authorisation of the Court of Auditors.

13.6. The Court of Auditors shall treat with confidentiality any information or documents identified in writing by the contractor as confidential.

13.7. The Court of Auditors shall:

- (a) ensure the protection of such confidential information or documents with the same level of protection as its own confidential information;
- (b) abstain from disclosing, directly or indirectly, to any unauthorised persons any facts, information, knowledge, documents or other matters which have been communicated as confidential, without the prior written agreement of the contractor.

13.8. The confidentiality obligations in Articles 13.6 and 13.7 shall be binding on the Court of Auditors throughout the performance of the contract and for as long as the information or documents remain confidential, unless:

- (a) the contractor agrees to release the Court of Auditors from the confidentiality obligation at an earlier date;
- (b) the confidential information or documents become public through other means than a breach of the confidentiality obligation;
- (c) the applicable law requires disclosure of the confidential information or documents.

## **ARTICLE 14. PUBLICITY**

14.1. The contractor, subcontractor, as well as their staff, shall not advertise by any means (including social media) the fact that they are a contractor or subcontractor of the Court of Auditors. In accordance with this provision, articles drafted in the form of publicity material to be published, whether intended for a specialist magazine or for the daily press shall not be authorised.

14.2. 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, shall be submitted to the Court of Auditors for its prior written authorisation.

14.3. 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.

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

## **ARTICLE 15. TAXATION**

15.1. The contractor shall have sole responsibility for compliance with the applicable tax legislation. Failure to comply shall make the relevant invoices invalid.

15.2. The contractor recognises that the Court of Auditors is, as a rule, exempt from all taxes and duties, including value added tax (VAT), pursuant to Articles 3 and 4 of Protocol 7 to the Treaty on the Functioning of the European Union on the Privileges and Immunities of the European Union and to the relevant legislation in the Member States.

15.3. The contractor shall therefore 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.

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

## **ARTICLE 16. FORCE MAJEURE**

16.1. 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.

16.2. Without prejudice to the provisions of Article 2.14, if either contracting party is faced with force majeure, it shall formally notify the other party without delay, stating the nature, likely duration and foreseeable effects.

16.3. Either of the contracting parties may suspend performance of the contract, purchase order or specific contract or 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 performance of the contract, purchase order or specific contract.

16.4. Once the circumstances allow performance to be resumed, the party that requested the suspension shall immediately inform the other party, unless the Court of Auditors has already terminated the contract, purchase order or specific contract.

16.5. 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.

16.6. The contracting parties shall take the necessary measures to keep damage to a minimum.

## **ARTICLE 17. SUBCONTRACTING AND ASSIGNMENT**

17.1. Without the prior written authorisation of the Court of Auditors, the contractor may not 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 apart from those already mentioned in the contractor's tender.

17.2. In the absence of the authorisation referred to in Article 17.1, or in the event of failure to observe the terms thereof, assignment by the contractor shall not be enforceable and shall have no effect on the Court of Auditors.

17.3. 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 performance of the obligations under the contract.

17.4. The contractor shall ensure that no subcontract affects the rights of the Court of Auditors under this contract.

17.5. The Court of Auditors may ask the contractor to replace a subcontractor found to be in a situation mentioned in Article 18.

17.6. 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.

## **ARTICLE 18. TERMINATION**

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

- (a) if the contractor, the entity to which it belongs or any person that assumes unlimited liability for the contractor's debts is bankrupt, subject to insolvency or winding-up procedures, in a situation where its assets are being administered by a liquidator or by a court, it is in an arrangement with creditors or its business activities are suspended, or in

any analogous situation arising from a similar procedure provided for under European Union or national laws;

- (b) where it has been established by a final judgment or a final administrative decision that the contractor, the entity to which it belongs or any person that assumes unlimited liability for the contractor's debts is in breach of its obligations relating to the payment of taxes or social security contributions in accordance with the applicable law;
- (c) where it has been established by a final judgement or a final administrative decision, or on the basis of a preliminary classification carried out with the modalities laid down in Article 143 of the Financial Regulation, that the contractor or any related person is guilty of grave professional misconduct by having violated applicable laws or regulations or ethical standards of the profession to which it belongs, or by having engaged in any wrongful conduct which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence, including, in particular, any of the following:
  - (i) fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of selection criteria or in the performance of a contract;
  - (ii) entering into agreement with other persons or entities with the aim of distorting competition;
  - (iii) violating intellectual property rights;
  - (iv) attempting to influence the decision-making of the Court of Auditors during the award procedure;
  - (v) attempting to obtain confidential information that may confer upon it undue advantages in the award procedure;
- (d) where it has been established by a final judgement or on the basis of a preliminary classification carried out with the modalities laid down in Article 143 of the Financial Regulation that the contractor or any related person is guilty of fraud, corruption, participation in a criminal organisation, money laundering, terrorist offences or offences linked to terrorist activities, child labour or other forms of trafficking in human beings;
- (e) if the contractor or any related person, on the basis of a preliminary classification carried out with the modalities laid down in Article 143 of the Financial Regulation, has shown significant deficiencies in complying with main obligations in the implementation of a legal commitment financed by the EU budget, which has led to the early termination of that commitment or to the application of liquidated damages or other contractual penalties, or if such significant deficiencies have been discovered following checks, audits or investigations by an authorising officer, OLAF or the Court of Auditors;
- (f) where it has been established by a final judgment or on the basis of a preliminary classification carried out with the modalities laid down in Article 143 of the Financial Regulation that the contractor or any related person has committed an irregularity within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95;
- (g) where it has been established by a final judgment or on the basis of a preliminary classification carried out with the modalities laid down in Article 143 of the Financial Regulation that the contractor or any related person has created an entity in a different

- jurisdiction with the intent to circumvent fiscal, social or any other legal obligations in the jurisdiction of its registered office, central administration or principal place of business;
- (h) where it has been established by a final judgment or on the basis of a preliminary classification carried out with the modalities laid down in Article 143 of the Financial Regulation that the contractor's entity has been created with the intent referred to in point g;
  - (i) if the Court of Auditors has evidence that the contractor or persons with powers of representation, decision-making or control over it have committed irregularities, fraud or breach of obligations in the award procedure or performance of the contract;
  - (j) if the contractor is in breach of its obligations under Article 4;
  - (k) if the contractor is in breach of the data protection obligations resulting from Article 22;
  - (l) if the contractor does not comply with the applicable data protection obligations resulting from Regulation (EU) 2016/679;
  - (m) where a change in the contractor's legal, financial, technical, organisational or control situation could have a significant effect on performance of the contract or call into question the decision to award the contract; or if a change regarding the exclusion situations listed in Article 136 of the Financial Regulation calls into question the decision to award the contract;
  - (n) if performance of the tasks of the contract has not actually started 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;
  - (o) 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® or EMAS label to be withdrawn from the Court of Auditors;
  - (p) if 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 contractual obligations;
  - (q) if the contractor does not comply with applicable obligations under environmental, social and labour law established by European Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU.

18.2. In the event of force majeure, notified in accordance with Article 16, 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, the specific contract or the purchase order, 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.

18.3. The Court of Auditors shall formally notify the contractor of its intention to terminate the contract and the grounds for termination. The contractor has fifteen days following the date of receipt to submit observations. Failing that, the decision to terminate becomes enforceable the day



after the time limit for submitting observations has elapsed. If the contractor submits observations, the Court of Auditors shall formally notify the termination.

18.4. 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.

18.5. At the request of the Court of Auditors and regardless of the grounds for termination, the contractor shall provide all necessary assistance, including information, documents and files, to allow the Court of Auditors to transfer the tasks laid down in the contract to a new contractor or to an internal service. The parties may agree to draw up a transition plan detailing the contractor's assistance. The contractor shall provide such assistance at no additional cost, except if it can demonstrate that it requires substantial additional resources or means, in which case it shall provide an estimate of the costs involved and the parties will negotiate an arrangement in good faith.

18.6. Consequences of termination:

18.6.1. In the event of the Court of Auditors terminating the contract in accordance with Article 18.2 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.

18.6.2. Without prejudice to any administrative and financial penalties imposed by the Court of Auditors in accordance with Article 135 and 138 of the Financial Regulation, the Court of Auditors may claim compensation for any damage suffered and recover any sums paid to the contractor under the contract.

18.6.3. 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.

## **ARTICLE 19. IRREGULARITIES, FRAUD AND BREACH OF OBLIGATIONS**

19.1. If, after the contract has been awarded, the procurement procedure or performance of the contract is found to be affected by irregularities, fraud or breach of obligations, the Court of Auditors shall suspend execution or, if applicable, terminate the contract and notify the contractor of the suspension and the reasons for it. Suspension shall take effect on the date of formal notification, or at a later date if the formal notification so provides.

19.2. If the 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 irregularities or

fraud, and without prejudice to any administrative and financial penalties which it may impose in accordance with Articles 135 and 138 of the Financial Regulation.

19.3. The purpose of suspending the contract shall be to verify whether the presumed irregularities, fraud or breach of obligations have actually occurred. If they are not confirmed, performance of the contract shall resume as soon as possible. The Court of Auditors shall notify the contractor as soon as possible after completing its verifications whether: (i) it is lifting the suspension; or (ii) it intends to terminate the contract as provided in Article 18. The contractor shall not be entitled to compensation for suspension of any part of the contract.

19.4. Without prejudice to the Court of Auditors' right to terminate the contract and to the application of liquidated damages, contractual penalties, recovery or price reduction, the Court of Auditors may impose exclusion and financial penalties within the meaning of Articles 135 and 138 of the Financial Regulation in the situations referred to in Article 18(1)(c), (d), (e) and (f) of these General Conditions.

## **ARTICLE 20. CHECKS AND AUDITS**

20.1. The Court of Auditors, as contracting authority, and the European Anti-Fraud Office may check or audit performance of the contract, either directly by their own staff or by authorising an outside body to do so on their behalf.

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

20.3. The audit procedure shall be deemed to be initiated on the date of receipt of a notification letter sent by the Court of Auditors. Audits shall be carried out on a confidential basis.

20.4. The contractor shall store all original documents 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.

20.5. The contractor shall grant to the Court of Auditors' staff and outside personnel authorised by it the appropriate access to sites and premises where the contract is being performed and to all the information they require, including information in electronic format, for their 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 it is handed over in an appropriate form. Regarding the processing of personal data, the European Data Protection Supervisor shall have the same rights as the contracting authority, particularly the right of access, for the purpose of checks, audits and investigations.

20.6. Pursuant to 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 (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013, as amended, 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 European Union law for the protection of the financial interests of the European Union against fraud and other irregularities. Where appropriate, the findings may lead to recovery by the Court of Auditors.

## **ARTICLE 21. AMENDMENTS**

21.1. Any amendments to the contract shall be the subject of a written agreement between the contracting parties. Oral agreements shall not be binding on the contracting parties.

21.2. Amendments may not have the purpose or the effect of making changes to the contract which might call into question the award decision or result in unequal treatment of tenderers.

21.3. In the context of a framework contract, the Court of Auditors may ask the contractor to supplement its tender in writing. Any supplements thus added may not have the effect of substantially amending the initial tender.

## **ARTICLE 22. PROCESSING OF PERSONAL DATA**

### **22.1. Processing of personal data by the Court of Auditors**

22.1.1. Any personal data included in or pertaining to the contract, including data relating to its execution, shall be processed in accordance with Regulation (EU) No 2018/1725. Such data shall be processed solely for the purposes of implementation, management and monitoring of the contract by the data controller.

22.1.2. The contractor and any other person whose personal data is processed by the data controller in relation to this contract has specific rights as a data subject under Chapter III (Articles 14-25) of Regulation (EU) No 2018/1725, in particular the right to access, rectify or erase their personal data, the right to restrict or, where applicable, object to processing and the right to data portability.

22.1.3. Should the contractor or any other person whose personal data is processed in relation to this contract have any queries concerning that processing, they should contact the data controller. They may also contact the Court of Auditors' Data Protection Officer ([ECA-data-protection@eca.europa.eu](mailto:ECA-data-protection@eca.europa.eu)). They have the right to lodge a complaint at any time to the European Data Protection Supervisor ([edps@edps.europa.eu](mailto:edps@edps.europa.eu)).

22.1.4. The data controller is the Court of Auditors, and in particular the authorising officer signing the contract.

22.1.5. Further details concerning the processing of personal data are available at <https://www.eca.europa.eu/en/Pages/PersonalDataProtection.aspx> (under "Related Links").

## 22.2. Processing of personal data by the contractor

- 22.2.1. When processing personal data, the contractor shall act in accordance with Regulation (EU) No 2018/1725. The data shall be processed solely for the purposes set out by the data controller.
- 22.2.2. The subject matter and purpose of the contractor's processing of personal data shall be execution of the contract, and in particular, the supply of products, services or works as set out in Article I.1 of the Special Conditions or, in the case of purchase orders, in the "Description of goods or services".
- 22.2.3. The localisation of and access to the personal data processed by the contractor shall comply with the following:
- (a) the personal data shall only be processed within the territory of the European Economic Area, except where otherwise provided in the Special Conditions;
  - (b) the data shall only be held in data centres located within the territory of the European Economic Area, except where otherwise provided in the Special Conditions;
  - (c) no access shall be granted to such data outside the European Economic Area, except where otherwise provided in the Special Conditions. In such exceptional cases, access may be granted, on a need-to-know basis, only to authorised persons established in a country which has been recognised by the European Commission as providing adequate protection to personal data;
  - (d) the contractor may not change the location of data processing without the prior written authorisation of the Court of Auditors;
  - (e) any transfer of personal data under the contract to third countries or international organisations shall comply fully with the requirements laid down in Chapter V of Regulation (EU) 2018/1725.
- 22.2.4. The contractor shall assist the controller for the fulfilment of the controller's obligation to respond to requests for exercising rights of persons whose personal data is being processed in relation to this contract as laid down in Chapter III (Articles 14-25) of Regulation (EU) No 2018/1725. The contractor shall inform the controller about such requests without delay.
- 22.2.5. The contractor may act only if given documented written instructions and under the supervision of the controller, in particular with regard to the purposes of the processing, the categories of data that may be processed, the recipients of the data and the means by which the data subject may exercise their rights.
- 22.2.6. The contractor shall grant its staff access to the data to the extent strictly necessary for implementation, management and monitoring of the contract. The contractor must ensure that any staff authorised to process personal data have undertaken to respect confidentiality or are bound by an appropriate statutory obligation of confidentiality in accordance with the provisions of Article 13.
- 22.2.7. The contractor shall adopt appropriate technical and organisational security measures, having due regard to the risks inherent in data processing and to the nature, scope, context and purposes of the processing, in order to ensure, in particular, as appropriate:

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

22.2.8. The contractor shall report relevant breaches of personal data to the controller without undue delay, and at all events no more than 48 hours after it became aware of the breach. In such cases, the contractor shall provide the controller with at least the following information:

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

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

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

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

22.2.11. The contractor shall maintain a record of all data processing operations carried out on behalf of the controller, as well as transfers of personal data, security breaches, responses to requests for exercising rights of persons whose personal data is being processed, and third-party requests for access to personal data.

22.2.12. The contracting authority is subject to Protocol 7 to the Treaty on the Functioning of the European Union on the Privileges and Immunities of the European Union, particularly as regards the inviolability of archives (including the physical location of data and services) and data security, which includes personal data held for the contracting authority at the premises of the contractor or a subcontractor.

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

22.2.14. The duration of the contractor's processing of personal data may not exceed the period referred to in Article 20.2. Upon expiry of this period, the contractor shall, at the choice of the controller, either return, without undue delay and in a commonly agreed format, all personal data processed on behalf of the controller and copies thereof, or, unless European Union or national law requires a longer storage period, irreversibly delete all such personal data.

### **22.3. Sub-contracting the processing of personal data**

For the purpose of Article 17, if part or all of the processing of personal data is subcontracted to a third party, the contractor shall pass on to that party, in writing, the obligations referred to in Article 22.2 and in the Special Conditions. At the request of the Court of Auditors, the contractor shall provide a document giving evidence of this commitment.

## **ARTICLE 23. APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

23.1. Save as otherwise expressly provided, the contract shall be governed by the law of the European Union, including the Financial Regulation, supplemented, if necessary, by Luxembourgish law.

23.2. Any dispute, which cannot be settled amicably between the Court of Auditors and the contractor, regarding the interpretation or application of the contract 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.

## **ARTICLE 24. MEANS OF COMMUNICATION**

24.1. All correspondence relating to the contract or its performance shall be in writing and shall bear the contract number. Such correspondence shall be deemed to have been made once it has been duly received, unless otherwise provided for in this contract.

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

24.3. Electronic communications shall be confirmed by means of an original signed paper version, provided one of the parties so requests without undue delay. The original signed paper version shall also be sent without undue delay. The parties agree that any communication by e-mail shall have full legal effect and shall be admissible as evidence in judicial proceedings.

24.4. Mail sent using the postal services shall be deemed to have been received by the Court of Auditors on the date on which it is registered by the responsible department referred to in the contract.

24.5. All formal notifications shall be made by registered mail with acknowledgement of receipt or equivalent, or by equivalent electronic means.

## **ARTICLE 25. FINAL PROVISION**

Each provision of this contract is severable and distinct from the others. If a provision is or becomes illegal, invalid or unenforceable to any extent, it must be severed from the remainder of the contract. This shall not affect the legality, validity or enforceability of any other provisions of the contract, which continue in full force and effect. The contracting parties shall endeavour to replace the provision concerned by a legal, valid and enforceable substitute provision, which reflects the parties' original intent as closely as possible. The contract must be interpreted as if it had contained the substitute provision from its entry into force.

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