



**EUROPEAN COMMISSION**  
**DIRECTORATE-GENERAL INFORMATICS**

Directorate A – Strategy & Resources  
ICT Procurement & Contracts

## **FRAMEWORK CONTRACT**

NUMBER – DI/07790

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## 1 PARTIES

The parties to this Agreement are, on the one hand:

**SAP Belgium NV/SA,**

Olympiadenlaan 2,  
B-1140 BRUSSELS  
BELGIUM

Statutory registration number: 0441.797.980

VAT registration number: [REDACTED]

represented for the purposes of signing this Agreement by [REDACTED] and [REDACTED]

As the “Contractor”, “Supplier” or “SAP”

And on the other hand,

**The European Union**, represented by the European Commission (“Commission”) as the lead contracting authority; and the following European Union institutions, agencies or other bodies (the “EUIs”):

No.	NAME OF THE INSTITUTION, AGENCY OR BODY	ABBREVIATION	LOCATION
1	Agency for the Cooperation of Energy Regulators	ACER	Ljubljana (SL)
2	Office of the Body of European Regulators for Electronic Communications	BEREC	Riga (LV)
3	Bio-based Industries Joint Undertaking	BBi JU	Brussels (BE)
4	Translation Centre for the Bodies of the European Union	CDT	Luxembourg (LU)
5	European Centre for the Development of Vocational Training	CEDEFOP	Thessaloniki (GR)
6	European Union Agency for Law Enforcement Training	CEPOL	Budapest (HU)
7	Consumers, Health and Food Executive Agency	CHAFEA	Luxembourg (LU)
8	Cleansky Joint Undertaking	CLEANSKY JU	Brussels (BE)
9	General Secretariat of the Council of the EU and the European Council	COUNCIL	Brussels (BE)
10	European Court of Justice	CURIA	Luxembourg (LU)
11	Education, Audiovisual and Culture Executive Agency	EACEA	Brussels (BE)
12	European Aviation Safety Agency	EASA	Cologne (DE)

No.	NAME OF THE INSTITUTION, AGENCY OR BODY	ABBREVIATION	LOCATION
13	European Asylum Support Office	EASO	Valletta (MT)
14	European Court of Auditors	ECA	Luxembourg (LU)
15	European Central Bank	ECB	Frankfurt a. M. (DE)
16	European Centre for Disease Prevention and Control	ECDC	Stockholm (SE)
17	European Chemicals Agency	ECHA	Helsinki (FI)
18	Electronic Components and Systems for European Leadership Joint Undertaking	ECSEL JU	Brussels (BE)
19	European Defence Agency	EDA	Brussels (BE)
20	European Environmental Agency	EEA	Copenhagen (DK)
21	European External Action Service	EEAS	Brussels (BE)
22	European Economic and Social Committee and the Committee of Regions	EESC + COR	Brussels (BE)
23	European Food Safety Agency	EFSA	Parma (IT)
24	European Investment Bank	EIB	Luxembourg (LU)
25	European Institute for Gender Equality	EIGE	Vilnius (LT)
26	European Insurance and Occupation Pensions Authority	EIOPA	Frankfurt a. M. (DE)
27	European Medicines Agency	EMA	Amsterdam (NL)
28	European Monitoring Centre for Drugs and Drug Addiction	EMCDDA	Lisbon (PT)
29	European Maritime Safety Agency	EMSA	Lisbon (PT)
30	European Union Agency for Network and Information Security	ENISA	Heraklion (GR)
31	European Parliament	EP	Luxembourg (LU) Brussels (BE) Strasbourg (FR)
32	European Research Council Executive Agency	ERCEA	Brussels (BE)
33	European Securities and Markets Authority	ESMA	Paris (FR)
34	European Training Foundation	ETF	Turin (IT)
35	European University Institute	EUI	Florence (IT)
36	European Union Intellectual Property Office	EUIPO	Alicante (ES)
37	European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice	EU-LISA	Tallinn (EE)
38	European Agency for Safety & Health at Work	EU-OSHA	Bilbao (ES)

No.	NAME OF THE INSTITUTION, AGENCY OR BODY	ABBREVIATION	LOCATION
39	European Foundation for the Improvement of Living and Working Conditions	EUROFOUND	Dublin (IE)
40	European Police Office	EUROPOL	Den Haag (NL)
41	General Secretariat of the European Schools	EURSC	Brussels (BE)
42	Fuel Cells and Hydrogen Joint Undertaking	FCH JU	Brussels (BE)
43	Fundamental Rights Agency	FRA	Vienna (AT)
44	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union	FRONTEX	Warsaw (PL)
45	Innovative Medicines Initiative Joint Undertaking	IMI JU	Brussels (BE)
46	Innovation and Networks Executive Agency	INEA	Brussels (BE)
47	European Ombudsman	OMBUDSMAN	Strasbourg (FR)
48	Research Executive Agency	REA	Brussels (BE)
49	Shift 2 Rail Joint Undertaking	S2R JU	Brussels (BE)
50	Single Resolution Board	SRB	Brussels (BE)

represented for the purposes of signing this agreement by Mr Thomas GAGEIK, Director of DIGIT.B – Digital Business Solutions, Directorate-General for Informatics ("DIGIT").

As the "Contracting Authority", "Customer" or "Licensee", as further specified in Article 0  
Together referred to as the "Parties".

## 2 PREAMBLE

The present FWC and its Annexes ("Agreement") are the result of Negotiated Procedure with reference DIGIT/A3/PN/2019/036 (ex EC/NP/2018/07) as initiated on 17/06/2018 by the European Commission.

The subject matter of the Agreement is to set the conditions under which the Customer may order licences on a variety of Software, as well as Maintenance/Support as set out in the Annexes.

The Agreement does not confer on the Supplier any exclusive right to supply the products and to provide the services referred to in the above paragraph. The Customer takes no commitment to purchase any software products or maintenance/support.

### 3 DEFINITIONS

For the purpose of this Agreement, the following definitions apply:

Term	Definition
Maintenance/Support	means SAP's then-current SAP support offering made available to Licensee, as described in Annex I and as stated in the applicable Order Form and made a part hereof.
Software	Means (i) The Supplier software products covered by the FWC, as described in Annex I as well as any modification thereof delivered under the Maintenance/Support, all as developed by or for SAP, SAP SE and/or any of their affiliated companies and delivered to Customer hereunder; (ii) any new releases, updates or versions thereof made available through unrestricted shipment pursuant to SAP Support or warranty obligation and (iii) any complete or partial copies of any of the foregoing.
Third Party Software"	means (i) any and all software products and content licensed to Licensee under this Agreement as specified in Order Forms hereto, all as developed by companies other than SAP, SAP SE and/or any of their affiliated companies and delivered to Licensee hereunder; (ii) any new releases, updates or versions thereof made available through SAP Support or warranty obligations and (iii) any complete or partial copies of any of the foregoing
EUI	European Union Institution, Agency or Body.
Order Form	Order document signed between the Customer and the Supplier, by which the Customer orders Software or Maintenance/Support pursuant to the present Agreement.
Use	To activate the processing capabilities of the Software, load, execute, access, employ the Software, or display information resulting from such capabilities.
Use Terms	means the Software Use Rights document as defined in Annex 1
Documentation	Supplier's then-current technical and/or functional documentation which is delivered or made available to Customer with the Software under this Agreement.
SAP Materials	Means any software, programs, tools, systems, data or other materials made available by SAP to Licensee prior to or in the course of the performance under this Agreement including, but not limited to, the Software and Documentation, as well as any information, materials or feedback, excluding any personal data therein, related to the Software, Documentation or implementation of this FWC, deliberately provided by Licensee to SAP in the intent of transferring ownership to SAP.
Confidential Information	means, with respect to Licensee: Licensee's marketing and business plans and/or financial information, and with respect to SAP : (a) the Software and Documentation and other SAP Materials, including without limitation the following information regarding the Software: (i) computer software (object and source codes), programming techniques and programming concepts, methods of processing, system designs embodied in the Software; (ii) benchmark results, manuals, program listings, data structures, flow charts, logic diagrams, functional specifications, file formats; and (iii) discoveries, inventions, concepts, designs, flow charts, documentation, product specifications, application program interface specifications, techniques and processes relating to the Software; (b) the research and development or



Term	Definition
	investigations of SAP; and (c) product offerings, content partners, product pricing, product availability, technical drawings, algorithms, processes, ideas, techniques, formulas, data, schematics, trade secrets, know-how, improvements, marketing plans, forecasts and strategies. In addition, Confidential Information of either SAP or Licensee (the party disclosing such information being the "Disclosing Party") includes information which the Disclosing Party protects against unrestricted disclosure to others that (i) the Disclosing Party or its representatives identifies as confidential at the time of disclosure; or (ii) should reasonably be understood to be confidential given the nature of the information and the circumstances surrounding its disclosure; including, without limitation, information from, about or concerning any third party that is disclosed under this Agreement.
Export Laws	means all applicable import, export control and sanctions laws (acts, regulations, Presidential Executive Orders, governmental ordinances or any other legislative measures), including but without limitation, the laws of the United States, the EU and Germany; specifically the Export Administration Regulations, International Trade in Arms Regulation, and economic sanctions programs implemented by the Office of Foreign Assets Control, the Regulation (EC) No. 428/2009 (EC Dual-use-Regulation), the regulations on restrictive measures (sanctions) implemented by the EU, the Foreign Trade and Payments Act ( <i>Außenwirtschaftsgesetz</i> ) and the Foreign Trade and Payments Ordinance ( <i>Außenwirtschaftsverordnung</i> ).
Designated Unit	means information technology devices (e.g. hard disks or central processing units) identified by Licensee pursuant to this Agreement
Territory	Means Territory as stated in the Software Order Form or worldwide, subject to applicable export control laws as may be updated from time to time by the applicable jurisdiction and subject to Article 29 Trade Compliance.

Furthermore, any references to the Customer in this Agreement shall be understood, as required by the context, as referring to one of the following concepts:

- a) all the EUIs covered by the Agreement, in relation to their collective rights and obligations with the Supplier, as one of the parties to the Agreement, and as the contracting authorities;
- b) any one of the participating EUIs acting in its own capacity, in particular for matters related to the conclusion, execution or termination of Order Forms between itself and the Supplier;
- c) the Commission acting in its capacity as lead contracting authority and agent for the other participating EUIs or in its capacity as a contracting authority.

#### 4 PURPOSE OF THIS AGREEMENT

During the Term, as defined in Article 7, and subject to the terms of this Agreement, the Customer and the Supplier agree to determine terms and conditions under which the Customer may purchase:

- Software licenses as specified in Annex I;
- Maintenance/Support as specified in Annex I;
- Cloud-based services as specified in Annex I are included in the scope,

## 5 SOFTWARE LICENSE

Order Forms on the basis of this Agreement shall grant to the Customer a non-exclusive, non-transferable, perpetual (except for subscription based licenses) license to Use the Software, Documentation, and other SAP Materials at specified site(s) where Customer is established within the Territory to run Licensee's internal business operations (including customer back-up and passive disaster recovery) and to provide internal training and testing for such internal business operations, unless terminated in accordance with the terms of this Agreement. Licensee may make Modifications and/or Add-ons to the Software in furtherance of its permitted Use under this Agreement, and shall be permitted to use Modifications and Add-ons with the Software in accordance with this Article 5 and Article 12.1. Licensee shall not: (i) use the SAP Materials to provide services to third parties (e.g., business process outsourcing, service bureau applications or third party training) other than to Affiliates (subject to Section 2.2); (ii) lease, loan, resell, sublicense or otherwise distribute the SAP Materials, other than distribution to Affiliates; (iii) distribute or publish keycode(s); (iv) make any Use of or perform any acts with respect to the SAP Materials other than as expressly permitted in accordance with the terms of this Agreement; (v) use Software components other than those specifically identified in the Software Order Form, even if it is also technically possible for Licensee to access other Software components. Licensee may permit Business Partners to Use the Software only through screen access,



solely in conjunction with Licensee's Use, and may not Use the Software to run any of Business Partners' business operations.

Licensee agrees to install the Software only on devices in Licensee's direct possession. With advance written notice to SAP, the information technology devices may also be located in the facilities of an Affiliate and be in the Affiliate's direct possession. Licensee must be appropriately licensed as stated in the Use Terms for any individuals that Use the Software, including employees or agents of Affiliates and Business Partners. Use may occur by way of an interface delivered with or as a part of the Software, a Licensee or third-party interface, or another intermediary system. If Licensee receives licensed Software that replaces previously licensed Software, its rights under this Agreement with regard to the previously licensed Software end when it deploys the replacement Software for Use on productive systems following a reasonable testing period. At the date the rights to the previously licensed Software end, Licensee shall comply with Section 22.5 of this Agreement with respect to such previously licensed Software.

The terms and conditions of this Agreement relative to "Software" apply to Third Party Software except (i) Licensee shall not make Modifications and/or Add-ons to Third Party Software or otherwise modify Third Party Software unless expressly authorized by SAP; and (ii) except with respect to third party pass-through terms for Third Party Software stated in the Use Terms.

For the avoidance of doubt, a license grant to the Customer entitles the Customer as such; a purchased license may be deployed anywhere in Customer's entire administrative structure (Directorates-General, Services, Executive Agencies, Departments, Units etc.<sup>1</sup>) regardless of which part of this structure had issued the corresponding order form provided License management is centralized within one entity of the administrative structure and maintenance renewal is consolidated on one single Order Form. Future purchases of Software Licenses shall be centralized via the aforementioned entity.

## **6 NOT APPLICABLE**

## **7 DURATION**

This Agreement will be effective as of signature of both Parties and for a period (the "Term") as follows:

- for the acquisition of software licenses: five (5) years
- for the acquisition and provision of maintenance, off-site support and cloud-based services: seven (7) years.

Commercial terms and conditions agreed in the Annexes may have shorter durations than the Term.

After the end of the Term,

- (1) this Agreement shall remain applicable to the Order Forms which were signed during the Term, until the last Order Form expires. No Order Form can be delivered or performed beyond fifteen (15) months after the Term. No Order Form under this Agreement may be signed or renewed, whether expressly or tacitly, after the Term;
- (2) any provision of this Agreement that expressly or by implication is intended to continue in force after the Term shall remain in full force and effect, including the confidentiality and indemnification obligations.
- (3) Any ongoing subscriptions for cloud-based services that have been signed and activated during the term of the FWC may be performed for its duration, up to a period of five years after expiry of the Term.

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<sup>1</sup> For the Commission's administrative structure, see [https://ec.europa.eu/info/departments\\_en](https://ec.europa.eu/info/departments_en).

No Order Form under this Agreement may be signed or renewed, whether expressly or tacitly, after the Term.

## 8 COMMUNICATION

All notices to be given under this Agreement shall be made via the following contact details:

Supplier contact details:

[REDACTED]  
Avenue des Olympiades 2,  
1140 Bruxelles  
Belgium  
M - [REDACTED] | F [REDACTED]

sapsoftware.eu@sap.com for acquisition of Software Licenses

sap\_shared\_delivery\_contracting\_belux\_netherlands@sap.com for renewal of software maintenance and support

Customer contact details:

European Commission  
Directorate-General for Informatics  
Directorate A  
Unit A3  
Office MO15 07/P001  
Rue Montoyer 15  
1049 Brussels  
Belgium  
[DIGIT-CONTRACTS-INFO-CENTRE@ec.europa.eu](mailto:DIGIT-CONTRACTS-INFO-CENTRE@ec.europa.eu)  
[REDACTED]

Specific contact details per product family may be included in the respective Annexes.

## 9 PRICES

### 9.1. Maximum amount of the FWC

The maximum awarded amount covering all purchases under this FWC will be published in the relevant contract award notice. However, this does not bind the contracting authority to purchase for the maximum amount.

### 9.2. Pricing schedule

The price list applicable to all participating EUIs as per Article 1, is annexed in Annex I (Contractor's final offer). The price lists, or parts thereof, may be adapted by the Contractor subject to the conditions laid down in Annex VII (SLA).

## 10 PAYMENT ARRANGEMENTS

### 10.1. General

In the event of its budget not being adopted, the EUI may, after giving prior notice, pay invoices by monthly instalments. In such cases, it shall notify the Supplier once it is in a position to resume normal payment arrangements.

## **10.2. Invoicing**

Payment requests may not be made if payments for previous Order Forms by the same Contracting Authority have not been executed as a result of default or negligence on the part of the Supplier.

Invoices must contain the Supplier's identification data, the amount, the currency and the date, as well as the FWC reference and reference to the Order Form.

The invoices are to be sent to the address stated in the Order Form. The payment period shall not be start if any invoice is sent to a different address. An invoice should be submitted no later than six (6) months after complete delivery to the EUI. In accordance with Article 2626, the Supplier will be liable to Liquidated Damages in case of invoices submitted out of time.

### **10.2.1. Specifics for Software, cloud subscriptions and Maintenance/Support**

One-off licence fees shall be invoiced after complete delivery to the EUI. For new software purchases, delivery is complete when Supplier sends the download letter. For additional purchases of the same software, Supplier will not send a download letter, only a confirmation that additional licenses may be used.

Subscription fees (for licenses, cloud-based services, support, maintenance, etc.) may be legally committed per subscription period and in advance for the whole subscription period. Delivery is deemed to be complete with confirmation of the order, Supplier does not issue separate download letters or similar. Annual instalments will be made for subscription periods covering more than 12 months. Those subscriptions will be invoiced and paid annually. Invoices cannot cover periods exceeding 12 months, or exceed the duration stipulated in Article 7.

### **10.2.2. VAT**

Invoices must specify separately amounts not including VAT and amounts including VAT.

The European Commission is exempt from all taxes and duties, including VAT, in accordance with Articles 3 and 4 of the Protocol on the privileges and immunities of the European Union.

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

Each party shall comply with all respectively applicable tax laws and regulations. SAP will base the VAT treatment on the information provided. The "exemption" status is granted based on the Protocol if certain conditions are met. If anything changes to the status of the agency/institutions SAP would need to be notified of this as soon as the change occurs (from non-taxable to taxable person) and in this case the relevant VAT ID number needs to be communicated. Supplier is aware of particularities for e-deliveries applicable in the different delivery locations.<sup>2</sup>

In Belgium, use of this contract constitutes a request for VAT exemption No. 450, Article 42, paragraph 3.3 of the VAT code (circular 2/1978), provided the invoice includes the statement: 'Exonération de la TVA, Article 42, paragraphe 3.3 du code de la TVA (circulaire 2/1978)'.

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

In other countries, use of this contract constitutes a request for VAT exemption, pursuant to articles 3 and 4 of the Protocol on the privileges and immunities of the European Union. The Supplier must receive and keep in his records the form entitled "VAT and Excise Duty Exemption Certificate", duly completed and signed by the EUI. The invoice(s) must include the following statement: "VAT Exemption/International Body/Article 151 of Council Directive 2006/112/EC."

#### 10.2.3. e-Invoicing

In accordance with the provisions of Annex VIII, the parties undertake to implement electronic invoicing by means of the ePrior module "e-Invoicing" as soon as possible. Until then, invoices will be issued in paper format. After the implementation of e-Invoicing, Supplier submits invoices in electronic format if the conditions regarding electronic signature specified by Directive 2006/112/EC on VAT are fulfilled, i.e. using a qualified electronic signature or through electronic data interchange.

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

### 10.3. Payment

#### 10.3.1. Payment conditions

Invoices can only be accepted for payment if they are correctly submitted, i.e. only if the requirements of this Article<sup>10</sup> are fulfilled.

The EUI must approve any submitted Documentation or Software and pay within 30 days from receipt of the correctly submitted invoice.

If the EUI has observations to make, it must send them to the Supplier and suspend the time limit for payment in accordance with Article 10.3.3. The EUI will determine the number of days granted to the Supplier to submit additional information or corrections, as applicable.

The EUI must give its approval and pay within the remainder of the time-limit indicated in the second paragraph, unless it rejects partially or fully the submitted Documentation or Software.

#### 10.3.2. Payment modalities

Payments are deemed to be effected on the date when they are debited to the EUI's account and are made in euros.

The costs of the transfer are borne as follows:

- the EUI bears the costs of dispatch charged by its bank;
- the Supplier bears the costs of receipt charged by its bank;
- the party causing repetition of the transfer bears the costs for repeated transfer.

### 10.3.3. Payment suspension

The EUI may suspend the payment periods any time by notifying the Supplier that its invoice cannot be processed. The reasons the EUI may cite for not being able to process an invoice are:

- (a) because it does not comply with the FWC;
- (b) because the Supplier has not produced the appropriate supplies/deliverables or documents; and/or
- (c) because the EUI has observations on the Software or Documentation submitted with the invoice.

The EUI must notify the Supplier as soon as possible of any such suspension, giving the reasons for it.

Suspension takes effect on the date the EUI sends the notification. The remaining payment period resumes from the date on which the requested information or revised documents are received or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension period exceeds two (2) months, the Supplier may request the EUI to justify the continued suspension.

Where the payment periods have been suspended following rejection of a document referred to in the first paragraph of this Article and the new document produced is also rejected, the contracting authority reserves the right to terminate the Order Form in accordance with Article 22.1(c)

### 10.3.4. Interest on late payment

On expiry of the payment periods specified above, the Supplier is entitled to interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in euros (the reference rate) plus eight points. The reference rate is the rate in force, as published in the C series of the Official Journal of the European Union, on the first day of the month in which the payment period ends.

Suspension of the payment period as provided for in Article 10.3.3 is not considered as giving rise to late payment.

Interest on late payment covers the period running from the day following the due date for payment up to and including the date of payment as defined in Article 10.3.

However, when the calculated interest is EUR 200 or less, it must be paid to the Supplier only if it requests it within two months of receiving late payment.

## 11 BANK ACCOUNT

Payments must be made to the Supplier's single bank account denominated in euro, identified as follows:



## 12 INTELLECTUAL PROPERTY RIGHTS (« IPR »)

### 12.1. Ownership of IPR on the Software

Reservation of Rights:

The SAP Materials, and all Intellectual Property Rights embodied therein, shall be the sole and exclusive property of SAP, SAP SE (the parent company of SAP) or its or their licensors, subject to any rights expressly granted to Licensee in Article 5, under Annex 1 and under this Article 12.1 herein, Licensee is not permitted to modify or otherwise make derivative works of the Software or other SAP Materials.

#### Protection of Rights:

Licensee shall not copy, translate, disassemble, decompile, nor reverse engineer the Software or other SAP Materials. Licensee shall not create or attempt to create the source code from the object code of the Software or other SAP Materials. Licensee is permitted to back up data in accordance with good information technology practice and for this purpose to create the necessary backup copies of the Software. Backup copies on transportable discs or other data media must be marked as backup copies and bear the same copyright and authorship notice as the original discs or other data media, unless technically infeasible. Licensee must not change or remove SAP's copyright and authorship notices.

#### Modifications/Add-ons:

Licensee shall comply with SAP's registration procedure prior to making Modifications or Add-ons. All Modifications and all rights associated therewith shall be the exclusive property of SAP, SAP SE or its or their licensors. All Add-ons developed by SAP (either independently or jointly with Licensee) and all rights associated therewith shall be the exclusive property of SAP, SAP SE or its or their licensors. Licensee agrees to execute those documents reasonably necessary to secure SAP's rights in the foregoing Modifications and Add-ons. All Add-ons developed by or on behalf of Licensee without SAP's participation ("Licensee Add-on"), and all rights associated therewith, shall be the exclusive property of Licensee subject to SAP's rights in and to the Software and SAP Materials; provided, Licensee shall not commercialize, market, distribute, license, sublicense, transfer, assign or otherwise alienate any such Licensee Add-ons. SAP retains the right to independently develop its own Modifications or Add-ons to the Software, and Licensee agrees not to take any action that would limit SAP's sale, assignment, licensing or use of its own Software or Modifications or Add-ons thereto.

Any Modification developed by or on behalf of Licensee without SAP's participation or Licensee Add-on must not (and subject to other limitations set forth herein): enable the bypassing or circumventing any of the restrictions set forth in this Agreement and/or provide Licensee with access to the Software to which Licensee is not directly licensed; nor unreasonably impair, degrade or reduce the performance or security of the Software; nor render or provide any information concerning SAP software license terms, Software, or any other information related to SAP Materials.

Licensee covenants, on behalf of itself and its successors and assigns, not to assert against SAP or its affiliated companies, or their resellers, distributors, suppliers, commercial partners and customers, any rights in any (i) Licensee Add-ons or Modifications, or (ii) other functionality of the SAP Software accessed by such Licensee Add-ons or Modifications.

#### 12.2. Ownership of the Customer's data

For the purposes of on-premise software and maintenance/support, the following paragraph applies:

Notwithstanding the provisions on ownership of SAP Materials laid down in Article 12.1, the Supplier acknowledges that all data provided by the Customer to the Supplier or generated through the use by the Customer of the Software shall remain the ownership of the Customer. The Supplier shall acquire no right in such data other than the right to use such data for the purpose of and in compliance with this Agreement – with the understanding that personal data is excluded.

For the purpose of cloud-based services, the above provisions may be deviated from by separate agreement.

#### 12.3. Indemnification

The Supplier will defend any claims against the Customer alleging that Software that Licensee's Use of the Software, in accordance with the terms and conditions of this Agreement infringes the intellectual property rights of a third party and SAP will pay damages finally awarded against Licensee (or the amount of any settlement SAP enters into) with respect to such claims. The Customer shall promptly inform the Supplier of any claim.

This obligation of Supplier shall not apply if the alleged infringement or misappropriation results from (i) Use of the Software in conjunction with any other software or apparatus other than a Designated Unit, if SAP has instructed Customer expressly and clearly in written form or via the Documentation to not use that software or apparatus in conjunction with Software; (ii) failure to promptly use an update provided by Supplier if such infringement or misappropriation could have been avoided by use of the update; or (iii) any Use not permitted by this Agreement. This obligation of Supplier also shall not apply if Customer fails to timely notify Supplier in writing of any such claim; however Licensee's failure to provide or delay in providing such notice shall not relieve Supplier of its obligations under this Section except to the extent Supplier is prejudiced by Licensee's failure to provide or delay in providing such notice. Supplier is permitted to control fully the defense and any settlement of any such claim as long as such settlement shall not include a financial obligation on or admission of liability by Licensee. In the event Customer declines Supplier's proffered defense, or otherwise fails to give full control of the defense to Supplier's designated counsel, then Customer waives Supplier's obligations under this Section. Licensee shall reasonably cooperate in the defense of such claim and may appear, at its own expense, through counsel reasonably acceptable to Supplier. Supplier expressly reserves the right to cease such defense of any claim(s) in the event the Software is no longer alleged to infringe or misappropriate, or is held not to infringe or misappropriate, the third party's rights. Supplier may settle or mitigate damages from any claim or potential claim by substituting alternative substantially equivalent non-infringing programs and supporting documentation for the Software. Customer shall not undertake any action in response to any infringement or misappropriation, or alleged infringement or misappropriation of the Software that is prejudicial to Supplier's rights.

In the event that any preliminary injunction, temporary restraining order or final injunction shall be obtained in the Territory with respect to Licensee's Use of the Software, SAP shall, at its sole option, either:

- (a) obtain the right for continued use of the infringing Software; or
- (b) modify the infringing Software to avoid such infringement while obtaining at least equivalent functionality; or
- (c) substitute for the Software alternative equivalent software and supporting documentation; or
- (d) provide a refund to Licensee of paid license fees for that part of the Software under claim of infringement, (unless such part is a major integral function of the Software, in which case a full refund of paid license fees would be reimbursable, provided that Licensee relinquishes all rights in such refunded Software). All such refunds shall be depreciated on a five (5) year straight line basis.

The provisions of this Section 12.3. state the sole, exclusive and entire liability of Supplier to Customer and is Customer's sole remedy with respect to infringement or misappropriation of third party intellectual property rights.

## 13 COMPLIANCE

### 13.1. Supplier's compliance

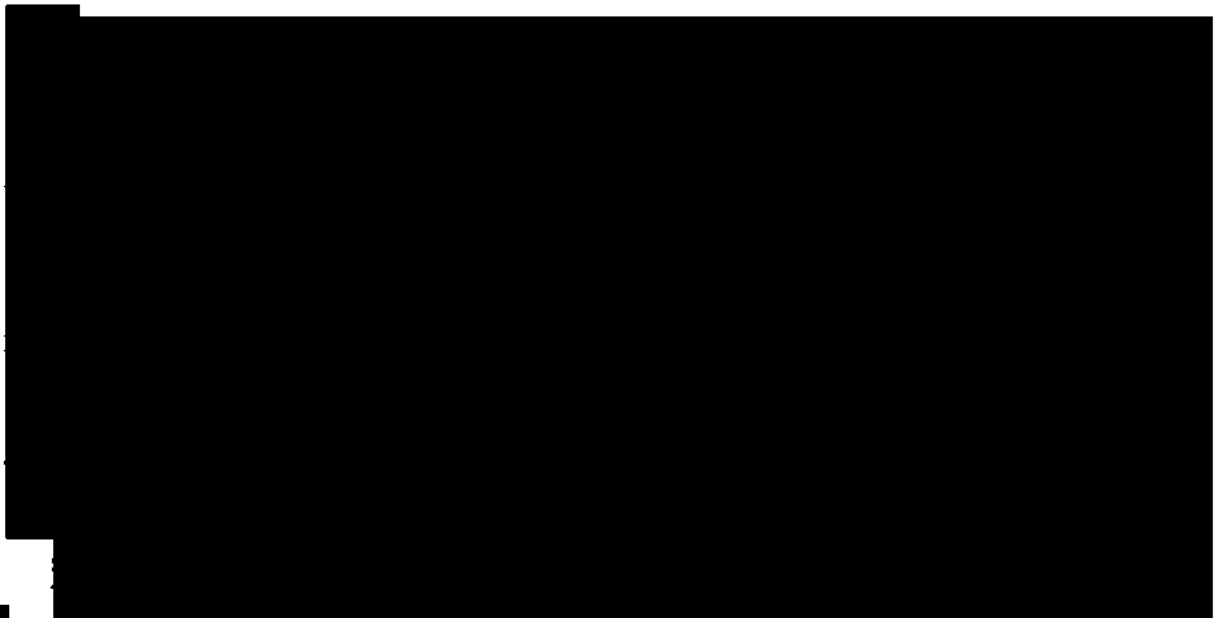
- 1) Customer and the European Anti-Fraud Office (OLAF) may check or require an audit on the implementation of the Agreement. This may be carried out either by OLAF's own staff or by any outside body authorised to do so on its behalf. Such checks and audits may be initiated at any moment during the provision of the supplies/services and up to five years starting from the




payment of the balance of the last Order Form issued under this Agreement. The audit procedure is initiated on the date of receipt of the relevant letter sent by the Customer. Audits are carried out on a confidential basis.

- 2) The Supplier must keep all original documents stored on any appropriate medium, including digitised originals if authorised under national law, for a period of five years starting from the payment of the balance of the last Order Form issued under this Agreement.
- 3) The Supplier must grant the Customer's staff and outside personnel authorised by the Customer the appropriate right of access to sites and premises where the Agreement is implemented and to all the information, including information in electronic format, needed to conduct such checks and audits. The Supplier must ensure that the information is readily available at the moment of the check or audit and, if so requested, that information is handed over in an appropriate format.
- 4) On the basis of the findings made during the audit, a provisional report is drawn up. The Customer or its authorised representative must send it to the Supplier, who has 30 days following the date of receipt to submit observations. The Supplier must receive the final report within 60 days following the expiry of the deadline to submit observations. On the basis of the final audit findings, the Customer may recover all or part of the payments made and may take any other measures which it considers necessary.
- 5) In accordance with Council Regulation (Euratom, EC) No. 2185/96 of 11 November 1996 concerning on-the-spot checks and inspection carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities and Regulation (EU, Euratom) No. 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office, the European Anti-Fraud Office may carry out investigations, including on the spot checks and inspections, to establish whether there has been fraud, corruption or any other illegal activity under the contract affecting the financial interests of the Union. Findings arising from an investigation may lead to criminal prosecution under national law. The investigations may be carried out at any moment during the performance of the Agreement and up to five years starting from the payment of the balance of the last Order Form issued under this Agreement.
- 6) The Court of Auditors and the European Public Prosecutor's Office established by Council Regulation (EU) 2017/1939 ('the EPPO') and, for the processing of personal data, the European Data Protection Supervisor have the same rights as the Customer, particularly right of access, for the purpose of checks, audits and investigations.

### 13.2. Customer's compliance





## **14 PROCESSING OF PERSONAL DATA**

### **14.1. PROCESSING OF PERSONAL DATA BY THE CUSTOMER**

For the purpose of this Article 14.1:

- a) the data controller for the personal data contained in this FwC or required for its management is the Directorate-General for Informatics of the European Commission;
- b) the data controller for the personal data contained in a specific contract or required for its management is the respective signatory [Union institution or body, identified in the introductory part of this FwC, or its] directorate-general or any other organisational entity which determines the purposes and means of the processing of the personal data;

the data protection notice is available at [https://ec.europa.eu/info/data-protection-public-procurement-procedures\\_en](https://ec.europa.eu/info/data-protection-public-procurement-procedures_en).

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

The Supplier or any other person whose personal data is processed by the data controller in relation to this Agreement 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 and the right to restrict or, where applicable, the right to object to processing or the right to data portability.

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

#### **14.2. PROCESSING OF PERSONAL DATA BY THE SUPPLIER**

For the purpose of this Article, the following provisions apply to the processing of personal data by the Supplier related to the acquisition of on-premise software and maintenance/support. For the avoidance of doubt, processing of personal data by the Supplier related to the provision of cloud-based services is excluded from the scope of this Article and the Support DPA and will be subject to a separate data processing agreement in accordance with Article 4 subsection 2.

- (a) the subject matter and purpose of the processing of personal data by the Supplier are defined in the Data Processing Agreement ("the Support DPA") in Appendix 20 to Annex I;
- (b) The localisation of and access to the personal data processed by the Supplier shall comply with the following:
  - i. the personal data shall only be processed within the territory of the European Union and the European Economic Area and will not leave that territory;
  - ii. the data shall only be held in data centres located with the territory of the European Union and the European Economic Area;
  - iii. no access shall be given to such data outside of the European Union and the European Economic Area;
  - iv. the Supplier may not change the location of data processing without the prior written authorisation of the Customer;
  - v. any transfer of personal data under the Agreement to third countries or international organisations shall fully comply with the requirements laid down in Chapter V of Regulation (EU) 2018/1725.

Terms and conditions applicable to the Supplier's processing activity on behalf of the Customer are detailed in the Support DPA (Appendix 20 to Annex I). In case of inconsistency between this Article and the Support DPA, the terms of this Article prevail.

The processing of personal data by the contractor shall meet the requirements of Regulation (EU) No 2018/1725 and be processed solely for the purposes set out by the controller.

The Supplier shall assist the controller for the fulfilment of the controller's obligation to respond to requests for exercising rights of person whose personal data is processed in relation to this Agreement as laid down in Chapter III (Articles 14-25) of Regulation (EU) No 2018/1725. The Supplier shall inform without undue delay the controller about such requests.

The Supplier may act only on documented written instructions, in particular with regard to the purposes of the processing, the categories of data that may be processed, the recipients of the data and the means by which the data subject may exercise its rights as further defined in Section 3 of the Support DPA.

The Supplier shall grant personnel access to the data to the extent strictly necessary for the implementation, management and monitoring of the Agreement. The Supplier must ensure that

personnel authorised to process personal data has committed itself to confidentiality or is under appropriate statutory obligation of confidentiality in accordance with the provisions of Article 21.

Taking into account the state of the art, the costs of implementation and in order to provide a level of security appropriate to the risk, the Supplier shall adopt appropriate technical and organisational security measures, giving due regard to the risks inherent in the processing and to the nature, scope, context and purposes of processing, in order to ensure, in particular, as appropriate:

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

The Supplier shall notify relevant personal data breaches to the controller notification without undue delay and, where feasible, within 48h. the Supplier becomes aware of the breach. In such cases, the Supplier shall provide the controller with at least the following information:

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

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

The Supplier shall assist the controller on a reasonable effort basis for the fulfilment of its obligations pursuant to Article 33 to 41 under Regulation (EU) 2018/1725 to:

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

The Supplier shall maintain a record of all data processing operations carried on behalf of the controller, transfers of personal data, security breaches, responses to requests for exercising rights of people whose personal data is processed and requests for access to personal data by third parties as set out in Section 8 of the Support DPA.

The Customer is subject to Protocol 7 of the Treaty on the Functioning of the European Union on the privileges and immunities of the European Union, particularly as regards the inviolability of archives (including the physical location of data and services as set out in this Article 14.2) and data security, which includes personal data held on behalf of the Customer in the premises of the Supplier or subcontractor.

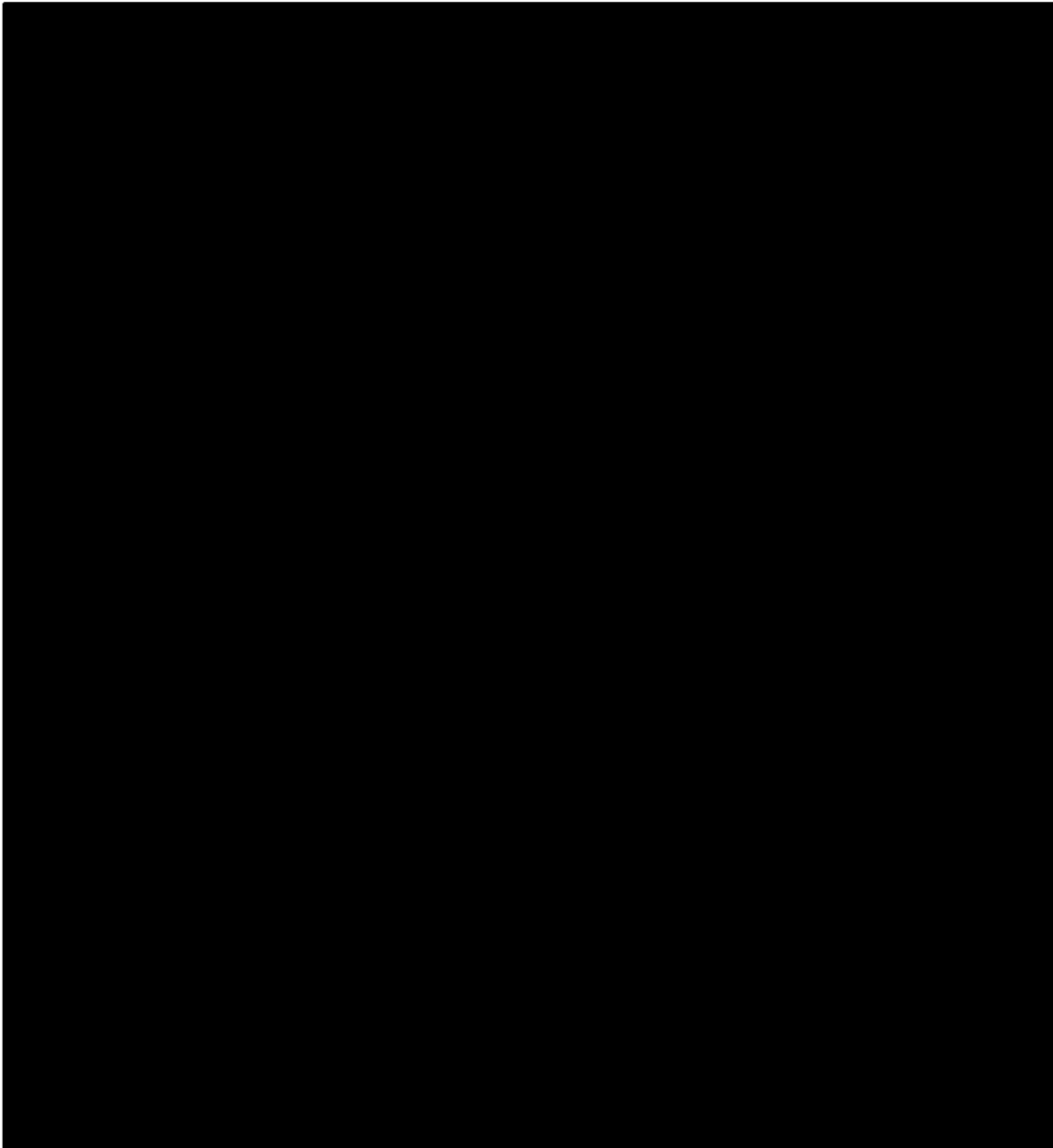
The Supplier shall notify the Customer immediately without undue delay and where feasible, not later than 72 hours after having become aware of any legally binding request for disclosure of the personal data processed on behalf of the Customer made by any national public authority, including an authority

from a third country. The Supplier may not give such access without the prior written authorisation of the Customer. Customer shall have the sole and exclusive right to determine how to proceed with respect to any such third party request or action and to control any proceedings related thereto.

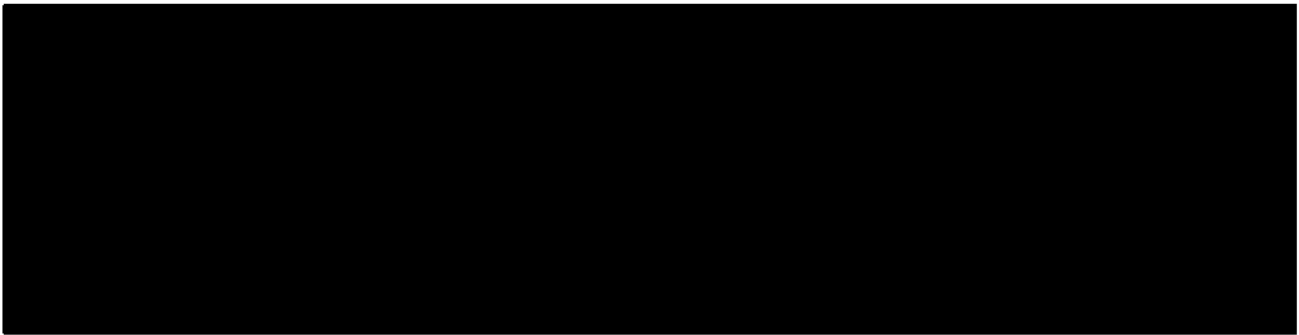
In its sole discretion, Customer may require Supplier to initiate or respond to such legal proceedings, in coordination with Customer, and Customer shall be responsible for all fees and costs, including reasonable attorney's fees, incident to such proceedings

For the purpose of Article 19, if part or all of the processing of personal data is subcontracted to a third party, the Supplier shall pass on the obligations referred to in Article 14.2 in writing to those parties, including subcontractors. For the avoidance of doubt, 'obligations' mean controls and other measures, not the exact wording of this agreement

## **15 WARRANTY**



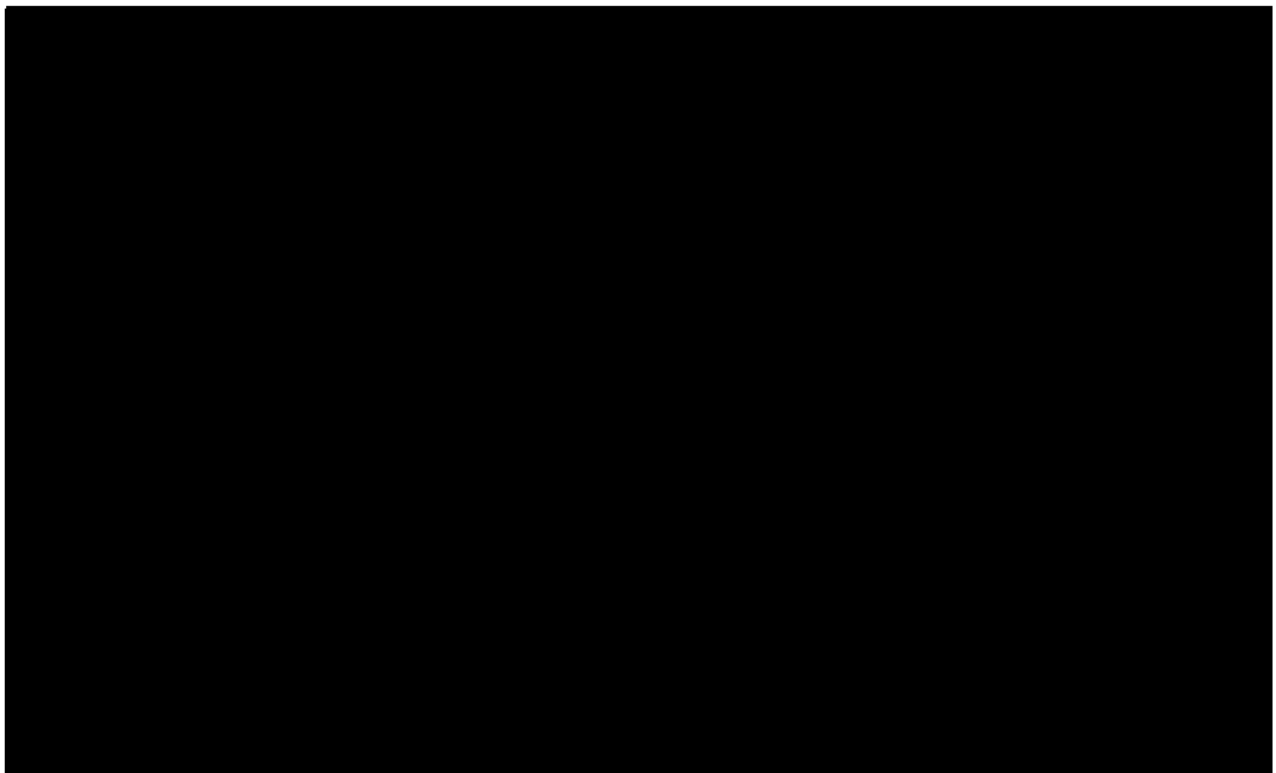
## **16 LIABILITY**



### **16.1. LIABILITY OF THE CONTRACTING AUTHORITY**



### **16.2. LIABILITY OF THE CONTRACTOR**



## **17 SPECIFIC PROVISIONS FOR SOFTWARE AS A SERVICE ("SAAS")**

During the Subscription Term, Customer can access its Customer Data at any time. Customer may export and retrieve its Customer Data in a standard format. Export and retrieval may be subject to technical limitations stated in the Documentation.

Before the Subscription Term expires, Customer may use SAP's self-service export tools (as available) to perform a final export of Customer Data from the Cloud Service.

Following the end of the Agreement, SAP will delete or overwrite the Customer Data remaining on servers hosting the Cloud Service unless applicable law requires retention. Retained data is subject to the confidentiality provisions of the Agreement.



In the event of third party legal proceedings relating to the Customer Data, SAP will cooperate with Customer and comply with applicable law (both at Customer's expense) with respect to handling of the Customer Data.

The Supplier may suspend the provision of the ELA Software in case of existence of a serious risk for the security of the service. In this case, the Supplier may suspend the provision of the ELA Software only if it notifies the Customer of the interruption and makes all commercially reasonable efforts to restore the service as soon as possible.

## **18 ASSIGNMENT**

The Supplier shall notify the Customer at least thirty (30) days in advance of any intended transfer or assignment of its rights and obligations arising from the Agreement. In such cases, the Supplier must provide the Customer with the identity of the intended assignee and obtain the Customer's consent prior to such assignment. The Customer shall not unreasonably withhold or delay such consent. Any right or obligation assigned by the Supplier without notification to the Customer and its consent will not be enforceable against the Customer. The Supplier shall defend and/or settle any claims against the Customer in this regard. The Customer reserves the right to terminate the present Agreement and to claim reimbursement from the Supplier.

For an assignment by the Customer, the requirements of the first paragraph apply accordingly.

## **19 SUBCONTRACTING**

Subcontracting is the situation where the Supplier, in order to carry out the Agreement, enters into legal commitments with other entities for performing part of this Agreement. No prior authorisation from the Customer is necessary. The Customer has no direct legal commitment with the subcontractor(s). In case of subcontracting, the Supplier remains bound by its contractual obligations and is solely responsible for the implementation of this Agreement.

The Supplier ensures that the obligations and administrative requirements (including but not limited to confidentiality and security) under this Agreement are understood and respected by its subcontractors. In addition, the Supplier must ensure the subcontractors comply with all obligations and administrative requirements linked to performing their tasks that derive from the legislation in force of the country(/ies) in which they will provide their services. These obligations may include, amongst others, any obligation to be registered for VAT purposes and/or in an enterprise register or database (e.g. *Banque-Carrefour des Entreprises* in Belgium). At the request of the Customer, the Supplier must submit any relevant information, including evidence for the compliance with these obligations.

This clause is without prejudice to authorisations for subcontracting which are required under the applicable law or other parts of this agreement.

## **20 SECURITY**

### **20.1. Commission decisions**

The Supplier undertakes to comply with the obligations laid down in the Commission Decision (EU, Euratom) 2017/46 of 10 January 2017 on the security of communication and information systems in the European Commission, its subsequent versions, its implementing rules (as adapted from time to time) and the corresponding security standards and guidelines, as well as the Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on the security in the Commission, and the Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information, its implementing rules and the corresponding security notices.

These documents (as adapted from time to time) are available for consultation at the following address:  
[https://ec.europa.eu/info/files/security-standards-information-systems\\_en](https://ec.europa.eu/info/files/security-standards-information-systems_en).



Should the Supplier, during the implementation of the Agreement, need remote access to any communication and information system of the Commission or data sets processed therein, he shall be requested to comply with security rules referred to in Article 6(5) of the Commission Decision (EU, Euratom) 2017/46 of 10 January 2017.

This entails prior authorisation which shall be granted on the basis of a formal request for network access service "Remote Access for Companies" and approval process which takes in average 4-6 weeks. The outcome of the approval, i.e. the security convention, shall be valid for a specified duration linked to the contract and shall be obtained before the connection is activated. The formal request is initiated by the concerned DG or service of the Commission and based on the risk assessment with the focus on nature and sensitivity of the tasks to be performed remotely and the security needs of each accessed communication and information system.

During the authorisation process the Supplier is asked to describe relevant organisational, physical, logical and network security measures in order to provide reasonable assurance that the risks are adequately and systematically covered at a level equivalent to the Commission Decision (EU, Euratom) 2017/46 of 10 January 2017, its implementing rules and corresponding security standards. The authorisation process may impose additional security requirements as a prerequisite for approval, in order to protect the Commission's communication and information system and networks from the risks of unauthorised access or other security breaches.

Any financial burden for any security vetting procedure and security background check will be at charge of the Supplier and not the Customer.

## **21 CONFIDENTIALITY**

Each Party must:

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

The confidentiality obligations are binding upon the Parties during the implementation of the Agreement and for as long as the information or documents remain confidential unless:

- a) the disclosing Party agrees to release the receiving Party from the confidentiality obligation earlier;
- b) the Confidential Information or documents become public through other means than a breach of the confidentiality obligation;
- c) the applicable law requires the disclosure of the Confidential Information or documents. In this context, the contractor acknowledges that the Contracting Authority is bound by Article 35 of the Financial Regulation to publish information on its expenditure, including the name of recipients as well as the nature and purpose of the measure financed from the budget; it further acknowledges that the Contracting Authority is bound by Regulation(EC) No 1049/2001 to grant public access to documents, subject to the conditions defined therein; Contractor confirms that publishing of information in these cases does not constitute breach of confidentiality only to the extent and as far as the applicable law requires the disclosure of that specific information to those specific recipients.

The contractor declares that every employee and third-party contractor is bound by confidentiality obligations at least equal to the ones laid down in this Article 21 under his/her employment contract / contract. Furthermore, the contractor enforces regular mandatory training for its employees regarding

**Business Conduct and Compliance.** Moreover, the contractor takes full liability/responsibility for its employees. Each Party undertakes to treat in absolute confidentiality and not make use of or disclose to third parties any information or documents linked to this Agreement.

Any press releases or public statements relating to the present Agreement shall be presented to the Commission for review prior to such release.

## **22 TERMINATION OF THE FWC**

### **22.1. GROUNDS FOR TERMINATION BY THE CONTRACTING AUTHORITY**

The contracting authority may terminate the FWC and/or any ongoing specific contract in the following circumstances:

- a) if provision of the supplies under an ongoing Order Form has not actually started within 15 days of the scheduled date and the contracting authority considers that the new date proposed, if any, is unacceptable;
- b) if the contractor is unable, through its own fault, to obtain any permit or licence required for implementation of the FWC;
- c) 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 serious breach of his contractual obligations
- d) if the contractor is subject to any of the situations provided for in points (c) to (f) of Article 136(1) or to Article 136(2) of the Financial Regulation;
- e) if the procedure for awarding the FWC or the implementation of the FWC prove to have been subject to irregularities, fraud or breach of obligations;
- f) if the contractor has made any offer of any type whatsoever from which an unlawful advantage can be derived under the FWC or if the contractor has granted, sought, attempted or 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 the FWC;
- g) if a change to the contractor's legal, financial, technical, organisational or ownership situation will substantially affect the implementation of the FWC;
- h) in the event of force majeure, where either resuming implementation is impossible or the necessary ensuing amendments to the FWC or a specific contract would mean that the tender specifications are no longer fulfilled or result in unequal treatment of tenderers or contractors;
- i) if the contractor is in breach of the data protection obligations resulting from Article 14.2 or any agreement implementing that Article (Support DPA, any Cloud DPA or other DPAs);
- j) if the contractor does not comply with the applicable data protection obligations resulting from Regulation (EU) 2016/679 to the extent they relate to the performance of this Agreement
- k) where the contracting authority has evidence that the contractor has violated any provisions on security and confidentiality included in the FWC and its annexes.

### **22.2. GROUNDS FOR TERMINATION BY THE CONTRACTOR**

The contractor may terminate the FWC and/or any ongoing specific contract if the contracting authority fails to comply with its obligations, in particular the obligation to provide the information needed for the contractor to implement the FWC or to perform a specific contract as provided for in the tender specifications.

### **22.3. PROCEDURE FOR TERMINATION**

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

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

If the other party submits observations, the party intending to terminate must formally notify it either of the withdrawal of its intention to terminate or of its final decision to terminate.

In the cases referred to in points (a) to (d), (g) to (i) and (k) to (p) of Article 22.1 and in Article 22.2, the date on which the termination takes effect must be specified in the formal notification.

In the cases referred to in points (e), (f) and (j) of Article 22.1, the termination takes effect on the day following the date on which the contractor receives notification of termination.

### **22.4. EFFECTS OF TERMINATION**

The contractor is liable for damage incurred by the contracting authority as a result of the termination of the FWC or a specific contract under the conditions laid down in Article 16. The contracting authority may claim compensation for such damage.

The contractor is not entitled to compensation for any loss resulting from the termination of the FWC or specific contract, including loss of anticipated profits, unless the loss was caused by the situation specified in Article 22.2 and under the conditions laid down in Article 16.

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

Within 60 days of the date of termination, the contractor must submit any report and any invoice required for supplies/service that were provided before the date of termination.

### **22.5. TERMINATION OF FWC**

Unless indicated otherwise in the termination notice, termination of the FWC does not affect any license grants valid at the moment of termination.

Upon any termination of a license, Licensee shall immediately cease Use of all SAP Materials and Confidential Information. Within thirty (30) days after any termination, Licensee shall irretrievably destroy or upon SAP's request deliver to SAP all copies of the SAP Materials and Confidential Information in every form, except to the extent it is legally required to keep it for a longer period in which case such return or destruction shall occur at the end of such period. Licensee must certify to SAP in writing that it has satisfied its obligations under this Section 22.5 Licensee agrees to certify in writing to SAP that it and each of its Affiliates have performed the foregoing. Any right or obligation of the parties in this Agreement which, by its express terms or nature and context is intended to survive termination or expiration of this Agreement, will survive such termination. In the event of any termination hereunder, Licensee shall not be entitled to any refund of any payments made by Licensee. Termination shall not relieve Licensee from its obligation to pay fees that remain unpaid.

## **23 INSTITUTIONAL ASPECT**

### **23.1. General**

This FWC is inter-institutional. The Commission acts on its own behalf and on behalf of the bodies listed in the title of the FWC as the contracting authorities, which provided the lead contracting authority with a power of attorney before FWC signature. The Commission signs the FWC and any amendments on behalf of itself and of all other contracting authorities. Each contracting authority is responsible for the particular Order Forms it awards/signs. Each contracting authority may terminate the Agreement with effect for itself, only the lead contracting authority may terminate the Agreement on behalf of other or all contracting authorities.

Newly created institutions, agencies, or bodies may join the FWC at any time by way of an amendment. Such amendment shall take the form of a written notification from the Commission to the Supplier. This written notification shall have full legal effect from the day following the day on which the notification was sent or on the day indicated therein.

### **23.2. Legal personality of the Union**

The European Union has legal personality under Article 47 of the consolidated version of the Treaty on the European Union (OJ C 326, 26.10.2012), including all its bodies, institutions, services and departments. Within the European Union, several people, bodies, institutions, services and departments will be authorized to initiate the order process.

### **23.3. Centralization**

The Supplier accepts that the European Commission may receive authorisation to order and purchase Software and Maintenance/Support centrally and for the benefit of other EUIs.

## **24 SEVERABILITY**

Each provision of this FWC 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 FWC. This does not affect the legality, validity or enforceability of any other provisions of the FWC, which continue in full force and effect. The illegal, invalid or unenforceable provision must be replaced by a legal, valid and enforceable substitute provision which corresponds as closely as possible with the actual intent of the parties under the illegal, invalid or unenforceable provision. The replacement of such a provision must be made by means of an amendment to this FWC. The FWC must be interpreted as if it had contained the substitute provision as from its entry into force.

## **25 FORCE MAJEURE**

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

A Party is not liable for any delay or failure to perform its obligations under the FWC if that delay or failure is a result of force majeure. If the Supplier is unable to fulfil its contractual obligations due to force majeure, it has the right to remuneration only for the goods actually delivered and any service provided. The Parties must take all necessary measures to limit any damage due to force majeure.

## **26 LIQUIDATED DAMAGES**

### **26.1. Liquidated damages for failure of the Supplier to perform obligations within the applicable time limits**

## **26.2. Procedure**

The EUI must formally notify the Supplier of its intention to apply liquidated damages and the corresponding calculated amount.

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

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

- a) of the withdrawal of its intention to apply liquidated damages; or
- b) of its final decision to apply liquidated damages and the corresponding amount.

## **26.3. Nature of liquidated damages**

The parties expressly acknowledge and agree that any amount payable under this Article is not a penalty and represents a reasonable estimate of fair compensation for the damage incurred due to failure to provide the supplies within the applicable time limits or with regard to the required quality and security levels set out in this FWC (including the ones set out in the Service Level Agreement and in the tender specifications).

## **26.4. Claims and liability**

Any claim for liquidated damages does not affect the Supplier's actual or potential liability or the EUI's rights under Article 16.2. Already paid liquidated damages will be deducted from the overall figures set for the Contractor' limitation of liability as foreseen in Article 16.2.

## **27 APPLICABLE LAW**

The Agreement is governed by Union law, complemented by the law of Belgium. The courts of Brussels have exclusive jurisdiction over any dispute regarding the interpretation, application or validity of the Agreement.

This includes compliance with applicable obligations under environmental, social and labour law established by Union law, national law and collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU, compliance with data protection obligations resulting from Regulation (EU) 2016/679 and Regulation (EU) 2018/1725 to the extent they relate to the performance of this Agreement.

## **28 ORDER OF PRECEDENCE**

This Agreement consists of the FWC terms included in the present document and its Annexes.

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

1. Single Metric License Order;
2. Service Level Agreement (Annex VII);

3. e-Request, e-Ordering, e-Fulfilment and e-Invoicing Interchange Agreement (Annex VIII);
4. Software list (Annex I);
5. Framework Contract;
6. Support DPA / other DPA
7. tender specifications (Annex III);
8. Contractor's offer (Annex I);
9. Order forms other than Single Metric License Orders signed during the FWC execution;

## **29 TRADE COMPLIANCE**

The Software, Cloud Service, Cloud Materials, and Documentation and SAP Materials are subject to the Export Laws as defined in Article 0 of this Agreement. SAP takes note that Customer creates and maintains Delegations as well as Bodies under the Common Security and Defence Policy in a large variety of non-EU countries, which enjoy diplomatic status.

Both Parties will, in the performance of this Agreement, comply with the applicable Export Laws. Where an export authorization by the competent authorities is required for any export, re-export, release or transfer of the Software, Cloud Service, Cloud Materials, and Documentation, the respective exporting Party will apply for such license. SAP, SAP SE and any Affiliated Company do not assume any responsibility or liability for failure to obtain appropriate authorizations.

## **30 ENTIRE AGREEMENT**

This FWC and its Annexes represent the entire understanding of the Parties with respect to its subject matter and supersedes (i) any previous communication or agreements that may exist and (ii) any additional terms that Supplier may provide after signature of this Agreement. Modifications to the Agreement will be made only through a written amendment, signed by both Parties, with the exception of adding new EUIs, as per Article 23. New Annexes to cover new software or maintenance/support may be added to this Agreement in mutual agreement.

## **31 LIST OF ANNEXES**

Annex I – Contractor's final offer (original stored at DIGIT's premises)

Annex II – not applicable

Annex III – not applicable

Annex IV – not applicable

Annex V – Order Form Template

Annex VI – not applicable

Annex VII – Service Level Agreement

Annex VIII – ePrior Interchange Agreement

Annex IX – EMAS policy

**SIGNATURES**

For the Supplier,

[Redacted]

Signature: [Redacted]

[Redacted]

Signature: [Redacted]

Done at Brussels, on 4/11 2019

For the Customer,

Mr Thomas GAGEIK, Director

[Redacted]

Signature

**14 NOV. 2019**

Done at Brussels, on \_\_\_\_\_ 2019

In duplicate in English.





# **European Commission**

## **Negotiated Procedure**

### **DIGIT/A3/PN/2019/036 SAP Licenses**

#### **Service Level Agreement (SLA)**

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## **1. INTRODUCTION**

This document sets out the Service Level Agreement (SLA) applicable for the implementation of the FWC resulting from Negotiated Procedure EC/NP/18/07 SAP Licenses (the FWC). It details the responsibilities of the Contractor towards the European Commission as Lead Contracting Authority ("Commission") as well as all other Contracting Authorities (together "the EUIs") during implementation of the FWC, as well as the processes to be followed therein.

Failure to meet the requirements indicated below may trigger Liquidated Damages as stipulated in this SLA, in accordance with the provisions set out in the FWC.

## **2. INTERFACES, ROLES AND RESPONSIBILITIES**

The Contractor will assign staff to manage the FWC. An overview of the different contact points of the Contractor, and of the Commission will be drawn up upon contract implementation (e.g. details on dedicated mailboxes for ordering, contact person for operational questions, contact person for legal questions, etc.).

This can take the form of a communication matrix. The matrix can be updated by both parties (EUIs and Contractor) as needed, without requiring an amendment to the FWC.

## **3. CONTRACT GOVERNANCE MEETINGS**

On either party's request, the Commission and the Contractor will hold meetings at the Commission's premises (in Brussels or Luxembourg) to discuss the status of contract implementation, contractual aspects or issues related to contract management, potential amendments etc.

The party requesting the meeting will propose an agenda, objectives and, if applicable, supporting documents clearly and sufficiently in advance, allowing the other party to prepare properly. The contractor will aim to deliver (draft) meeting minutes within 7 working days following the meeting.

## **4. STANDARD CONTRACT MANAGEMENT SERVICES**

The following standard contract management services define the day-to-day management of the FWC. The Contractor will perform these services free of charge.

### **4.1. General ordering process**

Annex V to the Framework Contract provides a template Order Form ("OF"), which should always be used for ordering purposes<sup>1</sup>. Being a working document and template, this OF may be modified in appearance and content by EUIs to fit their individual requirements, as long as the modified form remains functionally equivalent. Clear identification of the following aspects is mandatory:

- reference to the applicable FWC and its conditions, using DIGIT's reference number (DI/07790)
- identification of the ordering service:
  - technical contact details
  - purchasing contact details

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<sup>1</sup> Exchanges will in principle be carried out electronically, but some EUIs may require originals be sent in paper version.

- financial contact details
- exact product reference, unit price and quantity per product, total price
- information regarding VAT
- date and signature

Ordering services of the Contracting Authority undertake to not impose OF formats that do not comply with the above. In case an EUI uses its own OF format that does not fulfil all listed criteria, usage of the template in Annex V is mandatory. In this case, the EUI's format may be attached to the OF.

Processes will be automated and centralized to the extent possible (see also Section 6 of this SLA). In the context of the EMAS (Eco-Management and Audit Scheme) registration of the Commission, the following items shall be provided by electronic means whenever possible:

- Electronic delivery of orders (ESD)
- Activation codes and procedures
- Confirmation letters
- Proof of deliveries

The Commission, represented by its Directorate-General for Informatics ("DIGIT") may organise central ordering and purchasing on behalf of other EUIs, in which case it will inform the Contractor accordingly.

The indicators below (e.g. delivery deadline) can only be modified on a case-to-case basis, with the ordering EUI's prior written agreement (e.g. e-mail exchange). If a new indicator/deadline is agreed upon, Liquidated Damages only apply to the extent that this agreement is violated (e.g. if the parties agree that the actual delivery date will exceed the Delivery Lead Time, no Liquidated Damages will be due unless this agreed delivery date was not achieved).

#### *4.1.1. Preparation of offers for Software Products or maintenance/support*

In order to initialise the ordering process, the EUI sends a request for an offer to the Contractor.

An offer binds the Contractor towards the EUI in accordance with the terms of the FWC, but does not commit the EUI to accept and acquire the products or services offered.

##### *4.1.1.1. Request to prepare an offer for Software Products and related maintenance/support*

The EUI electronically requests an offer from the Contractor (II), submitting all information that the Contractor needs to complete the OF-template. This may include the following information (non-exhaustive list):

- Full product name + SKU/product reference
- OS: operating system on which the requested Software Product is to run (if applicable)
- Language version of the software (if applicable)
- Number of licenses
- Type of license: subscription or perpetual
- Maintenance required (yes/no), maintenance type + period
- Support options (if applicable)

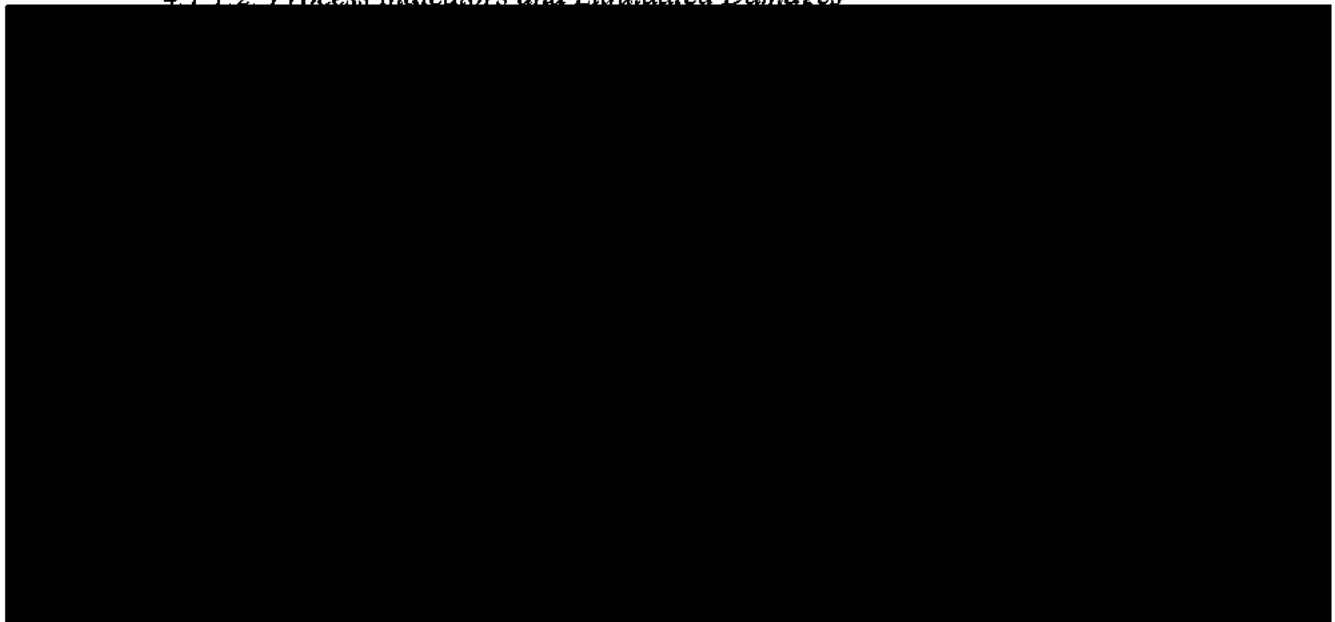
- Purchasing, Financial and Technical Officials in charge, in case of on premise software products
- Order confirmation recipient and system provisioning recipient coordinates (incl. email address) in case of cloud subscriptions
- Delivery address in case of on premise software
- Invoicing address
- Contact, address and phone number of the person to which the quotation/order form should be sent for signature

This may be done by pre-filling the fields in the OF/template by the EUI, or in any other appropriate way. Based on the data provided by the EUI, the Contractor drafts a preliminary offer, using the OF-template, and sends it by e-mail to the EUI for review. Should the request of the EUI not have contained all necessary information, then the Contractor will request the missing information. The Contractor's draft offer will contain a reference number that is unique among all OF of all EUIs: "[Framework Contract number]-OF-[Sequence number]".

Once the Contractor possesses all necessary information and the draft offer has been declared complete by the EUI (11), the Contractor prepares and sends a final offer to the EUI within ten (10) Normal Working Days (12); in case of paper workflow, two (2) originals of the OF will be signed and sent to the EUI.

The Contractor's offer will specify its validity, which will be at least until the end of the month in which the offer has been submitted. The offer must indicate the version of the applicable price list and Use Rights document. Incomplete or incorrect offers will be regarded as delayed.

#### *4.1.1.2. Process indicators and Liquidated Damages*



#### *4.1.2. Ordering Software Products, maintenance and off-site support*

Once the EUI has received the final offer signed by the Contractor, the EUI either a) validates the OF and the authorising officer of the EUI countersigns it within ten (10) Normal Working Days or b) rejects it within the same deadline. If this deadline cannot be met, the EUI will inform the Contractor of the reasons and indicate by which time acceptance or rejection could be expected. The EUI does not need to justify a rejection of the offer.

In case of signature, one copy of the countersigned OF is sent back to the Contractor (electronically or in paper format).

#### *4.1.3. Delivery of Software Products, maintenance and off-site support*

The delivery process begins once the OF is fully signed and ends with the complete and order-compliant delivery of the ordered products. Software products are delivered electronically. Delivery of software products has been finished when the software has been made available to the EUI for download, installation and usage at the indicated delivery date latest, marked by a confirmation message sent by Contractor. In case of specific information being needed to download, install, activate or use the software, for instance license keys or similar, delivery is not completed until this information has been made available in durable form (e.g. e-mail). Contractor will send this information as well as the confirmation message to the technical correspondent and the administrative correspondent (in copy).

Maintenance and support are delivered by activating these services for the EUI for the ordered period. Contractor will send a corresponding confirmation message to the technical correspondent and the administrative correspondent/ordering (in copy).

Partial delivery of an OF is allowed, albeit only per position as defined in the OF unless stipulated otherwise in the OF.

In the event of a change in the delivery date or if a problem occurs during the preparation or implementation of an order, the Contractor must immediately provide the EUI with a description of the problem, state when the problem started, state what action it is taking to resolve the problem and communicate the scheduled delivery date.

Any deviation from this provision will be subject to prior approval of the Commission.

##### *4.1.3.1. Process Flow*

Contractor shall deliver the ordered products, as well as the associated documentation, as defined in the OF within the Delivery Lead Time.

- EUI sends the signed OF (i.e. signed by both the EUI and the Contractor) and signed downloadletter (if applicable) to the Contractor (I1).
- The date of receipt of the signed OF and signed downloadletter (if applicable) by the Contractor starts the Delivery Lead Time and thus defines the contractual delivery deadline (i.e. eight (8) Normal Working Days after I1).
- The actual delivery takes place by making the software available for download and, if applicable, usage (see 4.1.3 above) (I2). The ordering unit is in copy of all e-deliveries.
- If delivery is conform with the OF, the receipt of the software is recorded by the EUI internally, otherwise EUI will claim conform delivery; no consignment note is issued towards the Contractor.
- Once delivery has been carried out, the invoice can be accepted and payment processed. In case of incorrect delivery, the EUI shall have the right to suspend the associated invoice.

**This delivery process flow does not apply to cloud-based services and maintenance subscriptions. Those services are provisioned on the Subscription Start Date as indicated in the OF.**

##### *4.1.3.2. Process indicators and Liquidated Damages*





#### *4.1.3.3. Conformity of the delivery*

Conformity of the delivered products implies that these must:

- Correspond to the description given in the Tendering Specifications and its annexes, and possess the characteristics and functions required by the EUI;
- Satisfy the conditions of quantity, quality and price laid down in the relevant SLA and in the relevant OF;
- Be fit for any specific purpose required of them by the EUI and made known to the Contractor at the time of conclusion of the Contract and accepted by the Contractor;
- Be fit for the purposes for which goods of the same type are normally used.

#### **4.2. Special instructions for ordering cloud-based services**

In case a request for quotation involves cloud-based services, the relevant provisions of Article 4, subsection 2, of the FWC need to be respected.

Before requesting a quotation, the ordering service must assess the risks regarding security and the protection of personal data, as well as make sure that the planned deployment of cloud-based services is in line with applicable rules on outsourcing. To that end, the attached draft questionnaire<sup>2</sup> (see section 7) may be used where appropriate in order to query the Contractor for security-related information to be used in the assessment. This document is to be understood as a template that needs adaptation by the ordering EUI to the relevant aspects of each use case.

By examining carefully the replies to the questionnaire, the EUI concerned should be in a position to decide whether to go ahead or not with the cloud offering (i.e. taking the associated risks or not, in terms of assurances linked to data protection and information security).

Should this assessment conclude that cloud-based services may be deployed, the EUI must draw up a specific agreement laying down detailed provisions on:

- the subject matter and duration of the processing, the nature and purpose of the processing, the type of personal data and categories of data subjects and the obligations and rights of the

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<sup>2</sup> Attention: This questionnaire is a draft. It needs to be adapted to the individual situation. DIGIT does not manage or update this document and is not responsible for its use.

controller as well as all other elements required under Article 29 (3) Regulation (EU) 2018/1725 as well as Article 14.2 *Processing of personal data by the Supplier* of the FWC (Data Processing Agreement defining the obligations between the EUI as controller and Contractor as processor);

- technical and organisational safeguards necessary to ensure appropriate security standards and protection of personal data;
- Economically advantageous commercial terms.

This agreement may be based upon the structure suggested in section 8 of Annex I to the FWC(SAP's final offer), using standard contract elements, which need to be modified to meet the requirements of the EUI in each individual use case, depending on the identified risks.

If the deployment is deemed technically and commercially acceptable, then the process for ordering can be launched as described in Section 4.1. of this SLA (*General Ordering Process*).

**When ordering cloud-based services, the ordering EUI informs DIGIT by sending an e-mail to [DIGIT-CONTRACTS-INFO-CENTRE@ec.europa.eu](mailto:DIGIT-CONTRACTS-INFO-CENTRE@ec.europa.eu), stating the exact product and a short description of the planned usage of the service.**

### 4.3. Reports on FWC implementation

The Contractor will report to the Commission and the EUIs on the status of FWC implementation. Report services for the Commission will include data from the Commission as well as all other participating EUIs (global report) and will respect the imposed nomenclature to ensure alignment on the names of EUIs and Directorates-General (DGs). Commission data will be split per DG.

When other EUIs request the above reports, it will only include data on that particular EUI.

The reports are due at each FWC anniversary (except for ad hoc reports, Section 4.3.3) and will be sent by email in spreadsheet format, consisting of the following subsections:

#### 4.3.1. Contract execution report

The Contractor will provide the Commission with an overview of the level of consumption of the FWC throughout the entire Commission and all participating EUIs, based on the following model:

- Total expenditure (in €) since the entry into force of the contract (cumulative) and total number of OF processed, split per EUI;
- A split per software products.

#### 4.3.2. Software inventory report

The Contractor will provide each EUI with a detailed software inventory report of all Software Products that it has purchased under the FWC.

The inventory report must be supplied in such a format that it can be easily processed by staff (preferably in spreadsheet format).

The report shall contain granular filters, allowing the Commission to limit the inventory view obtained as deemed appropriate: filter by ISV, by product, by period, by ordering DG/entity, etc.

The report is cumulative, covering all orders since contract signature, and will contain at least the following items, as applicable:

- OF number (i.e. OF-xxx)
- Product or service description
- Product identifier (i.e. SKU)
- Ordered quantities (and units in which quantities are expressed)
- Price (€)
- Coverage period (i.e. start & end date of the service, maintenance period or subscription)
- Signature date
- Contractual delivery date
- Actual delivery date
- Ordering entity (e.g. name of ordering EUI) and DG (if applicable)
- Comments (where applicable)

**The software inventory report becomes obsolete in respect to an EUI, as soon as the Contractor provides the SAM report according to section 4.4 to that EUI.**

#### *4.3.3. Customised ad hoc reports*

Customised ad-hoc reports may be requested by the DIGIT or other EUIs. These queries may be linked to a specific product, period, DG, or any other combination of selection criteria. In addition, various levels of data aggregation (summary reports) may be requested, depending upon the EUI's business intelligence needs. Those reports may only be requested once per month, with a total of two per contract year.

### **4.4. Feeding into a SAM tool operated by EUI**

Software Asset Management (SAM) is a critical element of managing a large software portfolio in the EUI and for staying on top of the many challenges linked to license compliance.

Different EUIs may use different SAM tools of their own, and moreover the tools may change over time. Some of the tools which are currently being used are Snow, Flexera, ISIPARC and OpenLM.

Typically, in order to operate correctly and use its full capabilities, a SAM platform must have connectors in place to several other EUI systems, such as those used for endpoint configuration management and software inventory purposes, financial workflow systems, IT service management systems and so forth. Therefore, each EUI may request information on their purchases. SAP will produce a report in one single pre-defined format, which each EUI will make suitable to the import into their own tool.

Contractor will export order and licensing information on any purchase in one single pre-defined format with each acquisition, and make these data feeds available to the EUI by email.

In case of delay of this report, the rights of Contractor to verify Customer's compliance according to Article 13.2 of the Agreement will be suspended until two weeks after the eventual delivery of the report.

### **4.5. Management of dynamic documents**

#### *4.5.1. Dynamic price lists - price review exercise*

In any other case, Contractor may change applicable price lists after FWC-signature under the following conditions.

#### *4.5.1.1. Conditions for the price review exercise*



#### *4.5.1.2. Repository and version management*

The Contractor is responsible to apply a plausible version labelling to the different price lists, allowing the clear identification of the versions as well as their respective period of validity. The Contractor provides a repository, which contains the currently valid version of the price list as well as all historical version tracing back to the initial version. The repository must be available by online access to concerned staff of the participating EUIs, i.e. contract manager, product managers, IT-managers, financial managers, auditors and similar. The repository must be reasonably protected against unauthorised access.

In order to guarantee that the applicable on-premise price list for each OF can easily be identified, the Contractor will indicate the correct version in each OF (by “valid from” date or similar identifiers).

### *4.5.2. Dynamic Use Rights*

#### *4.5.2.1. Conditions for the review exercise*

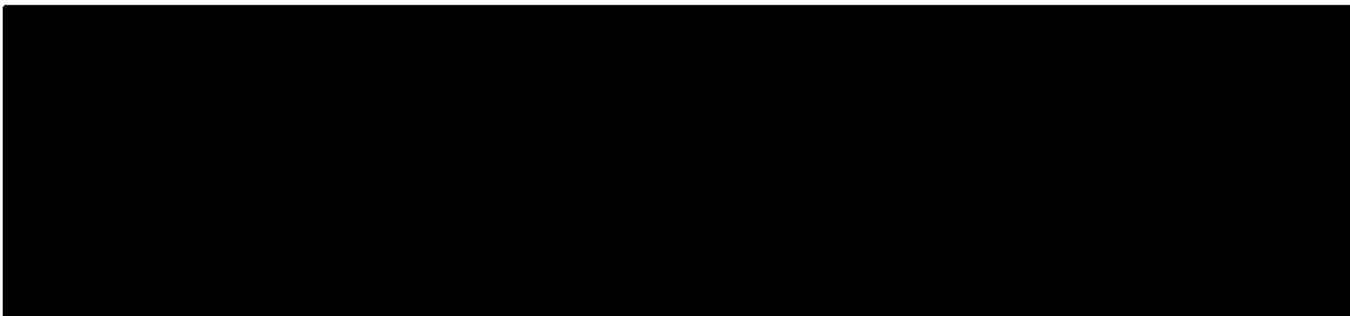
Contractor may adapt the Software Use Rights document (“the SUR”) that is included in Annex I to the FWC. Any changes to the SUR will only affect Software that has not already been ordered, i.e. for which no OF exists that has been signed by both parties. For new purchases, the SUR applicable at the date of the purchase will apply. For purchases of software that had already been ordered before (“more of the same”, see section 4.5.1), the SUR of initial purchase will apply.

#### *4.5.2.2. Repository and version management*

The Contractor is responsible to apply a plausible version labelling to the different Use Rights documents, allowing the clear identification of the versions as well as their respective period of validity. The Contractor provides a repository, which contains the currently valid version of the Use Rights document as well as all historical version tracing back to the initial version. The repository must be available by online access to concerned staff of the participating EUIs, i.e. contract manager, product managers, IT-managers, financial managers, auditors and similar. The repository must be reasonably protected against unauthorised access.

In order to guarantee that the applicable Use Rights document for each OF can easily be identified, the Contractor will indicate the correct version number on each OF.

## **5. SML REVIEW PROCESS**



## **6. USAGE OF ELECTRONIC MEANS**

### **6.1. Electronic signatures**

Contractor will start using Qualified Electronic Signatures (“QES”)<sup>3</sup> in the first quarter of 2020 in order to enable electronic exchanges.

QES will be deployed in DIGIT as a pilot for the Commission still in 2019. Schedules of similar deployment in other DGs of the Commission are not yet clear.

Implementation of QES in EUIs is not centrally managed. EUIs that do not use QES yet will decide individually whether they will adopt QES and, if so, when.

The parties agree to make use of QES to the maximum extent possible, taking into account that for any document that requires mutual signature, the type of signature must be identical for both parties (no cross-usage of handwritten and electronic signature).

The parties agree to undertake, to their best and reasonable efforts, extend the usage of QES as much as possible, onboarding separate DGs or EUIs as soon as they become ready to sign by QES.

### **6.2. Continued improvement efforts**

Complementary to Section 6.1 of this SLA, the parties agree that the introduction of electronic workflows and tools increases the efficiency of contract implementation, such as ordering, delivery, invoicing, software asset management, reporting and the exchange of signed documents. Accordingly, the parties agree to jointly undertake to introduce such tools where possible, especially modules of the “ePrior” suite.

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<sup>3</sup> As defined in Article 3 (12) REGULATION (EU) No 910/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (“eIDAS Regulation”).

Given that available systems change and develop over time, the parties agree to review those systems continuously and to improve them or their mode of usage, where possible.

The parties will confer on a regular basis, starting as soon as possible after entry into force of the FWC, in order to review jointly the performance of electronic means, need for their improvement as well as possible opportunities to introduce additional means.

## **7. ATTACHMENTS**

1. SaaS questionnaire