EUROPEAN COMMISSION
DIRECTORATE-GENERAL INFORMATICS

Directorate R – Change Management & Resources
DIGIT R3 - ICT Procurement & Contracts

DYNAMIC PURCHASING SYSTEM
FOR
CLOUD SERVICES

REFERENCE
DIGIT/A3/PR/2018/035
CLOUD II DPS 1

ANNEX VIII

CLOUD TERMS AND CONDITIONS

EUROPEAN COMMISSION
DIRECTORATE-GENERAL INFORMATICS

Directorate A - Strategy & Resources
DIGIT A3 - ICT Procurement & Contracts

DYNAMIC PURCHASING SYSTEM
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1 COMMON PROVISIONS

1.1 Definitions

1.1.1 For the purpose of the Contract, the following definitions apply:

"Acceptance Document": Document signed by the Contracting Authority, evidencing conformity of the delivered Products or Deliverables. The Acceptance Document can take the form of a certificate of conformity, a task acceptance form or any other document that, in accordance with the terms of the Contract, is used to evidence conformity of the Products and/or the Deliverables.

"Adaptive Maintenance": All operations as detailed in the Contract undertaken to modify a Product in order to ensure its continued functioning, in normal operating condition, in a changed or changing environment without changing its functionalities.

"Cloud Services": Services which enable ubiquitous, scalable, convenient, on-demand network access to a shared elastic pool of configurable physical or virtual resources (such as networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or Contractor interaction.

"Contract": All contractual documents (for example, contract and annexes), including these Cloud Terms and Conditions, relating to the relationship between the Contracting Authority and the Contractor formed therein.

Any reference to the Contract should be understood as a reference to any of the remaining contractual documents constituting the Contract, which may include, without being limited to, contract, service level agreement, and tender specifications.

"Contracting Authority's Staff": Staff of the Contracting Authority, whether governed by Regulation No 31 (EEC), 11 (EAEC), which sets out the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, or otherwise employed or hired by the Contracting Authority.

"Corrective Maintenance": All operations undertaken to detect, isolate and rectify any default, defect, deficiency, malfunctioning or nonconformity in order to restore a failed Product to normal operating condition, or to replace it.

"Deliverable": Result defined in the Contract which must be produced by the Contractor in accordance with the terms of the Contract in the context of the provision of the Services.

"Delivery Date": Date agreed between the Parties on which a Product, Deliverable or Service is to be delivered or provided to the Contracting Authority.

"Delivery Lead Time": Period, starting at the date of receipt of the signed Contract by the Contractor, before the end of which a Product, Deliverable or Service must be delivered or provided to the Contracting Authority.

"Delivery Note": Note in writing which contains the particulars of the delivered Products (including Contract reference(s) and date(s), ordering entity and address, Delivery Lead Time, Delivery Date, actual delivery date, and particulars of delivered Products and their quantities) or Deliverables (including Contract reference(s) and date(s), ordering entity and address, Delivery Date, actual delivery date, and particulars of the delivered Deliverables), to be provided by the Contractor or its carrier along with the delivered Products or Deliverables. The Delivery Note can take the form of a consignment note or any other document that, in accordance with the terms of the Contract, is used to evidence the delivery of the Products and/or Deliverables.

"Documentation": Instructions and manuals relating to the Product(s) and/or Service(s), whether intended for support/technical staff or for end-users, and whether provided in printed or in electronic form.

"Evolutive Maintenance": All operations as detailed in the Contract undertaken to enhance the functionalities of a Product, including but not limited to adding additional functionalities or replacing existing functionalities with other functionalities, in order to increase the Product's performance even in the absence of faults, deficiency, malfunctioning or nonconformity.

"Hardware": Any tangible asset resulting from a manufacturing process and consisting of computer, media, electronic communications or other electronic equipment, whether or not it embeds Software, as well as all accessories related to such equipment.

"Infrastructure as a Service" or "IaaS": Cloud Service that provides the capability to the Contracting Authority to provision processing, storage, networks, and other fundamental computing resources where the Contracting Authority (i) is able to deploy and run arbitrary software, which can include operating systems and applications; and (ii) does not manage or control the underlying cloud infrastructure but has control over operating systems, storage, and deployed applications, and possibly limited control of select networking components (such as host firewalls).

"Initial Vendor": Person who exploits a Product or a Service, which is to be provided under the Contract, under its trademark or sign, or under the trademark or sign of one of its related companies.

"Internal Use": Use, including via on-line remote access from outside the premises of the Contracting Authority, by Contracting Authority's Staff or by other persons acting in fulfilment of a direct or indirect contractual obligation towards the Contracting Authority, be it as a contractor, a subcontractor or personnel of such (sub)contractor, within the context of the fulfilment of their mission for the Contracting Authority.

"Key Performance Indicators": Measurable targets serving as a reference to determine the level of performance of the Services to be provided by the Contractor, as determined in the Contract.

"Licensed Software Product": Software of which intellectual property rights are held by the Contractor or a third party, whether customised or not to meet the Contracting Authority's specific requirements and licensed to the Contracting Authority under the Contract.

"Maintenance": Corrective Maintenance, Preventive Maintenance, Adaptive Maintenance and Evolutive Maintenance, either alone or in combination with each other.

"New Release": Revision of an existing version of Software, usually amending the reference to the Software's version from for example version 0.1 to version 0.2.

"New Version": New version of Software, usually amending the reference to the Software's version from for example version 0.1 to version 1.1.

"Normal Working Days": Monday to Friday inclusive, except for public holidays for the institutions of the European Union held in the place of delivery of the Products or provision of the Services, as published in the Official Journal of the European Union.

"Normal Working Hours": 7 a.m. to 8 p.m. on Normal Working Days.

"Notification" or "Notify": Any form of communication between the Parties made in writing, including by electronic means.

"Notification of Default": Notification by the Contracting Authority to the Contractor of a default in a delivered Product or Deliverable, preventing its conformity with the Contract.

"Personnel": Persons employed directly or indirectly or contracted by the Contractor to implement the Contract.

"Platform as a Service" or "PaaS": Cloud Service that provides the capability to the Contracting Authority to deploy, manage and run onto the cloud infrastructure applications created or acquired by the Contracting Authority using one or more programming languages, libraries, services, execution environments and tools supported by the Contractor. The Contracting Authority does not manage or control the underlying cloud infrastructure including the network, servers, operating systems, or storage, but has control over the deployed applications and possible configuration settings for the application-hosting environment.

"Preventive Maintenance": All operations as detailed in the Contract undertaken to prevent faults, deficiencies, malfunctioning or nonconformities from occurring, or to prevent them from developing into major defects, and to maintain the Product in normal operating condition. Preventive Maintenance includes but is not limited to systematic inspection, tests, measurements, adjustments, correction, parts replacement, and cleaning.

"Product": Product as described in the Contract, consisting of one or more tangible or intangible asset(s) resulting from a manufacturing or development process.

Products include Hardware Products and Licensed Software Products or parts thereof.

Hardware Products and Licensed Software Products are considered as supplies when the latter term is used in the Contract.

"Security Incident": Any event having or threatening to have an adverse effect on the security of network and information systems, including but not limited to a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to data, including but not limited to personal data, transmitted, stored or otherwise processed.

"Service Levels": the level of performance of the Services to be provided by the Contractor

"Services": Services as described in the Contract, involving the application of business and technical expertise to enable the Contracting Authority in the creation, management and optimisation of or access to information and business processes.

By default, Services include all Deliverables that are not Products.

"Software": Any intangible asset resulting from a development process and consisting of a computer program or a part thereof.

"Software as a Service" or "SaaS": Cloud Service that provides the capability to the Contracting Authority to use applications provided by the Contractor running on a cloud infrastructure. The applications are accessible from various devices of the Contracting Authority through either an interface, such as a web browser or a program interface. The Contracting Authority does not manage or control the underlying cloud infrastructure including the network, servers, operating systems, storage, or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.

"Support Services": All standalone or ancillary support, assistance, planning, maintenance, training, consulting, managing, auditing and/or integration Services related to information technology, as further described in the Contract.

"EU Protected Material": Software or other protected material for which the intellectual property rights are the property of the Contracting Authority, or which have been licensed to the Contracting Authority by third parties. EU Protected Material also includes data for which the Contracting Authority or another EU institution, body or agency determines the purposes and means of the processing.

1.1.2 For the purpose of these Cloud Terms and Conditions, capitalised terms which are not defined in Article 1.1 shall have the meaning as defined in the other contractual documents which are part of the Contract.

1.1.3 For the purpose of these Cloud Terms and Conditions, the term "**Contracting Authority**" shall be understood as the legal person(s) constituting the contracting authority, as defined in the other parts of the Contract, or of which such contracting authority is part.

1.2 Compliance and Design

1.2.1 The Contractor shall comply with applicable laws, including but not limited to laws in relation to privacy and data protection, (data) security, environmental protection and sustainability, and incident detection and handling, as amended from time to time and interpreted by competent authorities.

1.2.2 The Contractor shall comply with fundamental ethical rules and principles recognised at EU and international level.

1.2.3 The Contractor shall perform its obligations under the Contract in such a way as to enable the Contracting Authority to comply with the laws applicable to it, including but not limited to Regulation 2018/1725[1], as amended from time to time and interpreted by competent authorities.

1.2.4 The Contractor shall ensure that the Products or Services are designed, developed and provided in compliance with applicable laws. In case of improvements or updates necessary to accommodate the application of any new applicable laws, the Contractor shall ensure that the Products or Services are improved or updated, at no extra cost to the Contracting Authority. The Contractor shall document in an internal file all measures taken to comply and demonstrate compliance with this Article 1.2 and shall make such file available to the Contracting Authority upon the latter's first request, notably for the purpose of checks and audits.

1.2.5 The Contracting Authority and the Contractor shall promptly Notify each other of any existing or new legislation applicable to the Contractor preventing it from fulfilling the instructions received from the Contracting Authority and the obligations provided under the Contract as soon as either Party becomes aware of the legislation, even before its entry into force. In such event the Contracting Authority shall be entitled to amend its instructions, or suspend, or terminate the Contract.

1.2.6 The Contractor shall protect and indemnify the Contracting Authority against all third party claims or actions alleging a breach of any third party rights and/or infringement of any applicable law, resulting from the provision by the Contractor and/or use by the Contracting Authority of the Products and Services under the Contract.

1.2.7 The Contracting Authority reserves the right to conduct its own defence or to negotiate its own settlement, at its own discretion. In such case, the Contractor shall be liable for all reasonable legal expenses, including lawyers and experts fees. Upon first demand of the Contracting Authority, the Contractor shall, at its own and sole expense, voluntarily intervene in any pending litigation resulting from the provision by the Contractor and/or use by the Contracting Authority of the Products and Services under the Contract.

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[1] Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC.

1.2.8 The Contractor shall be liable for any claim or payment arising out of any judgment, ruling or settlement relating to third party claims or actions alleging a breach of any third party rights and/or infringement of any applicable law, resulting from the provision by the Contractor and/or use by the Contracting Authority of the Products and Services under the Contract, except for the payment of a settlement made by the Contracting Authority without the Contractor's written consent. Such consent shall not be unreasonably withheld, conditioned or delayed.

1.2.9 The Contractor shall hold the Contracting Authority harmless from and against any damages suffered by the Contracting Authority caused by a breach of this Article 1.2.

1.3 Service Levels, Quality and Standards

1.3.1 *Service Levels*

1.3.1.1 The Service Levels as well as the methods of measuring the performance against such Service Levels are defined in the Contract, usually by reference to Key Performance Indicators.

1.3.1.2 The Contractor shall provide all Services in accordance with the Service Levels and in any event with a level of accuracy, quality, completeness, responsiveness and efficiency that at least meets or exceeds the Service Levels.

1.3.1.3 The Contractor shall provide to the Contracting Authority reports on the Contractor's compliance with the Service Levels on a periodic basis as agreed between the Parties in the Contract.

1.3.1.4 Where relevant and to the extent defined in the Contract, if the Contractor fails to fulfil its obligations under the Contract, including the Service Levels, the Contractor shall make available to the Contracting Authority an equivalent replacement solution. The cost of such equivalent solution shall be borne by the Contractor, unless the latter can demonstrate that the failure is attributable to the Contracting Authority. The Contract shall determine the consequences in the event that the Contractor does not or cannot provide an equivalent solution or continues to fail to meet the Service Levels. Such consequences may include, but are not limited to, the implementation of an improvement plan, credits towards Products or Services, termination of the Contract, or the application of liquidated damages.

1.3.2 *Quality management and assurance*

1.3.2.1 The Contractor shall provide the Products and/or Services and perform the Contract in accordance with the state of the art, technical norms, standards and procedures based on best professional practice.

1.3.2.2 Any Product and/or Service provided under the Contract shall be demonstrated by the Contractor, at its expense, to conform to the technical specifications sent to the Contractor as part of the invitation to tender or specific request pursuant to which the Contract has been entered into.

1.4 Cooperation

1.4.1 The Contracting Authority and the Contractor shall cooperate and exchange all data and information necessary and useful for the Contractor to provide the Products and Services under the Contract.

1.4.2 Throughout the term of the Contract, the Parties shall maintain the required level of information and make it available to the other Party for the purpose of providing the Products and Services. The updating of information shall not give rise to any payment.

1.4.3 The Contractor shall assist and advise the Contracting Authority on the use of the Products and Services provided under the Contract.

1.4.4 The Contracting Authority and the Contractor shall Notify each other of any factor likely to impair or delay the proper execution of the Contract.

1.5 Integration and Compatibility

1.5.1 The Contractor shall ensure and guarantee that the Products and Services are developed and provided and that the Contract is performed in full knowledge and consideration of the Contracting Authority's evolving multi-manufacturer information technology environment, architecture and physical premises.

1.5.2 The Contractor shall be responsible for Product integration as regards its inclusion in the Contract, its operation in the Contracting Authority's environment and the prompt and appropriate introduction of New Versions.

1.5.3 The Contractor must perform its obligations under the Contract in such a way as to ensure that the Contracting Authority may add or connect to its information technology environment compatible products or services of any origin

1.5.4 Where it has been agreed between the Parties that interfaces need to be implemented, the Contractor shall not modify such interfaces without the Contracting Authority's written agreement, which shall not be unreasonably withheld.

1.5.5 Even if a Product or Service is approved by the Contracting Authority, any incompatibility with previous Products or Services that becomes apparent in the course of its use shall be resolved by the Contractor as swiftly as possible and at no cost to the Contracting Authority.

1.6 Product Use and Life

1.6.1 *Product Use*

1.6.1.1 From the date of delivery, the Contracting Authority may make unrestricted use of the Products under normal operating conditions. If the Products are rented, leased or licensed, the right of use applies for the duration specified in the Contract.

1.6.1.2 The Contracting Authority may use any Products provided under the Contract for services it is carrying out for other EU institutions, agencies or bodies.

1.6.2 *Product Life*

1.6.2.1 As soon as the Contractor becomes aware that one or more Products are or will be declared end-of-life, and will therefore no longer be manufactured, provided or supported, it shall Notify the Contracting Authority of this fact. Unless otherwise agreed in the Contract, in such Notification, the Contractor shall propose a replacement of the Products that are or will be declared end-of-life, subject to the conditions laid down in Article 1.7.3.

1.6.2.2 The Contractor commits that both the originally provided Products and the replacement Products shall remain available for a reasonable period of time before being declared end-of-life, in accordance with the market standards for the relevant category of products or services. The Contract may define the exact duration of the period of minimum availability.

1.7 Change and replacement management

1.7.1 Either Party may, at any time during the duration of the Contract, Notify the other Party of a request to change Products and/or Services originally provided under the Contract, or of a request to replace them with products or services of similar nature. The Contractor shall Notify the Contracting Authority of such request at least 12 months before a change or replacement..

1.7.2 Following a change or replacement request in accordance with Article 1.7.1, the Contractor shall make a change or replacement proposal, which shall at the minimum mention the specification of the proposed changed or replacement products or services, and the price of the changed or replacement products or services.

1.7.3 Any change or replacement in accordance with Article 1.6.2 or this Article 1.7 is subject to the following conditions:

- the changed or replacement products or services can function in the same operational environment as the originally provided Products or Services, with no loss of performance or IT security requirements degradation for the Contracting Authority;

- the changed or replacement products or services shall comply with the technical specifications and the minimum requirements defined in the Contract;

- the change or replacement must not, directly or indirectly, cause a reduction of the functionalities or characteristics of the originally provided Products or Services;

- the change or replacement must not entail any additional cost to the Contracting Authority;

- the price of the changed or replacement products or services shall not be higher than the price of the originally provided Products or Services;

- unless the originally provided Products are declared end-of-life and will therefore no longer be manufactured, provided or supported, the Contractor shall specifically demonstrate that the change or replacement will be beneficial to the Contracting Authority.

1.7.4 In the event the request to change or replace Products and/or Services is made by the Contracting Authority and that the Contractor is unable or unwilling to make a change or replacement proposal, the Contractor shall provide without undue delay a justification for the Contracting Authority to assess.

1.7.5 The Contracting Authority shall, at its own discretion, approve or refuse any change or replacement proposal or justification provided in accordance with Article 1.7.4. The Contracting Authority shall Notify the Contractor of its decision.

1.7.6 Upon request of the Contracting Authority, the Contractor shall provide the Contracting Authority with all necessary information, including but not limited to demonstration Hardware devices, Software trials, price justification, demonstrations, and documentation, required by it to take a decision about whether or not to approve the change or replacement proposal.

1.7.7 In the event the Contractor has Notified a change or replacement in accordance with Article 1.6.2 or Article 1.7.1, the Contractor shall be liable for any expenses made to manage the change or replacement.

1.8 Data Protection

1.8.1 In addition to the obligations related to data protection in the Contract, including but not limited to the details of the personal data processing activities included in the Contract, the Contractor, acting as data processor or subprocessor, shall:

- ✓ not process personal data in any way or any form (including in pseudonymised form and when they have been transformed in the form of anonymous or anonymised data) on its own behalf or on behalf of third parties;
- ✓ not have or exercise any control over the purpose(s) of the processing of personal data or the essential elements of the means of the processing;
- ✓ not independently take decisions regarding the use, the storage or the communication of personal data processed under the Contract, unless and to the extent determined in a data processing agreement or instructed by the Controller;
- ✓ not perform or allow to be performed any processing (including but not limited to copying, printing, forwarding, enriching, modifying, etc.) of or with the personal data processed unless and to the extent necessary for the performance of the Contract, or as agreed in writing between the Parties;
- ✓ deal promptly and properly with all inquiries from the Controller or the Contracting Authority as the case may be relating to the processing of the personal data by the Contractor;
- ✓ ensure that mechanisms are in place for secure logging of processing activities performed on personal data;
- ✓ assist the Controller or the Contracting Authority as the case may be in any cooperation with the competent data protection authority(ies), including the European Data Protection Supervisor, in the performance of the tasks of the foregoing;
- ✓ inform without delay the Controller of any request relating to the exercise of data subjects rights received directly from a data subject, and not reply to such request unless otherwise instructed by the Controller;
- ✓ provide the Controller or the Contracting Authority as the case may be with the necessary information, tools, and assistance to manage any request made by data subjects exercising their rights,
- ✓ inform the Controller without delay of any incident where the confidentiality, integrity or availability of personal data have been compromised or could reasonably be compromised, and provide it with assistance for compliance.

1.8.2 The Contractor and its subprocessors shall not give access to or disclose any personal data processed on behalf of the Contracting Authority or the Controller, actively or passively, intentionally or unintentionally, to any authorities, or legal or natural persons (collectively referred to as third parties) except on instructions from the Controller, unless required to do so by Union or Member State law, as long as the latter is compliant with the

requirements of Regulation (EU) 2016/679 and Regulation (EU) 2018/1725.

1.8.3 In case the Contractor or any subprocessor receives a request for disclosure of personal data from a third party, they shall deny the request and redirect the requesting third party to seek access to this data directly from the Controller, in which case the Contractor may provide the Controller's or the Contracting Authority's basic contact information to the third party. In such a case, no other disclosures of personal data by the Contractor and its subprocessors shall take place without being authorised by the affected Controller.

1.8.4 The Contractor shall Notify the Controller of any legally binding request for disclosure made by any law enforcement authority, including from non-EU countries, promptly and without undue delay. If the Contractor and its subprocessors are prohibited from notifying the Controller, the Contractor and its subprocessors will use their best efforts to obtain the right to waive this prohibition in order to communicate as much information as they can and as soon as possible, and be able to demonstrate that they did so.

1.8.5 To the greatest extent permitted under applicable law, the Contractor shall appeal any legally binding request to disclose the personal data by exhausting all available legal remedies. At the Controller's request, the Contractor and its subprocessors shall provide evidence of such efforts.

1.8.6 The Controller may request information from the Contractor once a year on whether any disclosures of personal data have taken place and if so, what action was taken in response.

1.8.7 In addition to the obligations related to data protection in the Contract, in the event that the Contractor relies on a subprocessor, the Contractor shall:

- ensure that it has previously informed the Controller of its plans to rely on a subprocessor;
- ensure that it has performed a due diligence in order to ensure that the subprocessor provides sufficient assurance to act on its behalf and to implement the necessary technical and organisational data protection measures;
- ensure that it has given comprehensive information on the prospective subprocessor, including on its capacity of providing sufficient assurance and its future role in the provision of Products and/or Services;
- ensure that it has obtained prior specific or general written authorisation from the Controller; and
- ensure, monitor and control that the subprocessor provides at least the same level of protection for the personal data and the fundamental rights and freedoms of data subjects as the Contractor under the Contract.

1.8.8 If the Contractor subcontracts part(s) or all of the processing of personal data to a third party, it warrants that each third party, including subcontractors, is contractually subject to at least the same obligations as those the Contractor is subject to toward the Contracting Authority and other parties as the case may be under this Contract. At the first request of the Contracting Authority, the Contractor shall provide the document(s) providing evidence of this warranty.

1.8.9 The Contractor may not transfer any personal data to a country outside the European Economic Area, unless the Controller has given its prior written authorisation to such transfer and the transfer takes place in compliance with the conditions of under Chapter V of Regulation 2016/679 and Chapter V of Regulation 2018/1725.

1.8.10 In case of termination of the contractual relationship between the Parties, or in the event that the Contractor is not entitled anymore to process personal data on behalf of the Controller, the Contractor shall, at the choice of the Controller:

- ✓ provide the ability to retrieve all personal data in a structured and widely-used format, to the Controller or to any EU institution or third party selected by the Controller, within a period agreed upon between the Parties; or
- ✓ delete effectively all personal data, and all copies and extracts thereof.

1.8.11 The Contractor shall ensure that the personal data is kept safe and secure until it has been returned or deleted.

1.8.12 In the event of deletion or return of personal data as requested by the Controller under this Contract, the Contractor shall deliver a statement certifying that:

- ✓ all personal data and all copies and extracts thereof have been fully and permanently deleted or returned from any hardware or storage media (including but not limited to USB stick, server, and backup copies);
- ✓ any files or data resulting from the personal data originally communicated by the Controller or the Contracting Authority have also been fully and permanently deleted or returned from any hardware or storage media;
- ✓ any paper copy of the personal data and any document that contains the personal data has been deleted or returned; and
- ✓ any subcontractors have been requested to undertake the same measures and have certified in writing that the personal data has been deleted or returned.

1.8.13 The Contractor must allow, contribute to and duly cooperate with audits by the Controller or the Contracting Authority of its data processing activities, in accordance with the applicable data protection legislation, including but not limited to Regulation 2018/1725, as amended from time to time. Contribution from the Contractor must be in principle free of charge, unless agreed specifically in the Contract. The audit may be carried out by a third

party selected by the Controller or the Contracting Authority, in possession of the required professional qualifications and bound by a duty of confidentiality. Contribution from the Contractor and its subcontractors is also requested for audits launched by the Controller, the Contracting Authority, or the European Data Protection Supervisor, of the measures taken by the Contractor and its subprocessors to comply with their obligations upon termination of the personal data processing activities.

1.8.14 The Contractor acknowledges that the European Data Protection Supervisor has the right to conduct a visit, an audit or an inspection of the Contractor, and of any subcontractor, under the same conditions applicable to an audit of the Controller or the Contracting Authority itself under the applicable data protection legislation, including but not limited to Regulation 2018/1725, as amended from time to time.

1.8.15 In the event that the Contractor acts as a reseller for an Initial Vendor which will process personal data as data processor or subprocessor, the Contractor shall ensure that the Initial Vendor concludes a data processing agreement as required by Article 29 of Regulation 2018/1725 directly with the Controller or the Contracting Authority as the case may be, and that all personal data protection requirements set out in the Contract are imposed upon the Initial Vendor. In any event, the Contractor shall indemnify the Controller or the Contracting Authority for any damage and claims that may arise from the non-compliance by the Initial Vendor with such data processing agreement and/or the personal data protection requirements set out in the Contract.

1.8.16 Any deviation from or infringement of data protection obligations, including but not limited to the provisions of this Article 1.8, may be a ground for the Contracting Authority to terminate the Contract with immediate effect, without prejudice to possible damages.

1.9 Security and Security Incident Management

1.9.1 *Security*

1.9.1.1 When performing tasks for the Contracting Authority in execution of the Contract, the Contractor and its Personnel shall comply with the Contracting Authority's applicable security framework, as may be further defined in the Contract. Where applicable, this may include but is not limited to the following documents, as amended and replaced from time to time[2]:

- ✓ 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 notices;
- ✓ Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information, as well as all its subsequent versions; and
- ✓ Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission, as well as all its subsequent versions.

1.9.1.2 In addition, the Contractor shall ensure that an appropriate risk management process for ensuring that the confidentiality, integrity and availability of assets is in place and that all necessary and appropriate technical and organisational security measures have been implemented before commencing its tasks in execution of the Contract, as defined in the Mini-Competition. The Contractor shall appropriately maintain such measures for the duration of the Contract and shall update the measures at regular intervals based on the state of the art and the evolving risks.

1.9.1.3 When determining the appropriate technical and organisational security measures, the Contractor shall notably take into account:

- ✓ the state of the art;
- ✓ the nature, scope, context and purposes of processing, including but not limited to collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of information and/or data; and
- ✓ the risks, including but not limited to those deriving from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to information and/or data transmitted, stored or otherwise processed.

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[2] These documents are available for consultation at the following address: https://ec.europa.eu/info/files/security-standards-information-systems_en.

1.9.1.4 Additional security requirements to be taken into account by the Contractor for each individual project shall be described in the Contract.

1.9.1.5 If during the performance of the tasks which are the subject of the Contract, the Contractor needs remote access to any communication and information system of the Contracting Authority or to information and/or data processed therein, the Parties shall conclude a specific agreement for remote intervention as an annex to the Contract and the Contractor shall ensure compliance with the Contracting Authority's internal rules on practical and technical security for remote intervention.

1.9.1.6 The Contractor shall take all appropriate steps for each Product and Service to ensure that the data and/or information and the media upon which they are stored are safely preserved. The Products and Services supplied shall not contain any vulnerability which could compromise their availability, integrity or confidentiality or that of the Contracting Authority's evolving multi-manufacturer information technology environment, architecture and physical premises. Any cost arising as a consequence of such vulnerability, including but not limited to costs resulting from a loss of data, shall be borne by the Contractor.

1.9.1.7 The Contractor shall assist with the management of the security risks by the Contracting Authority and the controller, including risks to the rights and freedoms of individuals when the controller processes their personal data using the contracted services.

1.9.1.8 The Contractor shall ensure that all security precautions for each Product or Service are clearly set out in the relevant Documentation supplied to the Contracting Authority.

1.9.2 *Security Incident management*

1.9.2.1 The Contractor shall implement the necessary organisational and technical measures and mechanisms to prevent, detect, and handle any Security Incident in an appropriate manner. The Contractor shall regularly re-assess and update the implemented measures and mechanisms in light of the state of the art and the risks, which may evolve over time in light of the evolution in the technologies relevant for the Contract.

1.9.2.2 In the event a Security Incident occurs or has occurred, the Contractor shall, irrespective of the level of risk, Notify the Contracting Authority thereof without undue delay and not later than 48 hours after becoming aware of the Incident, except in the event the Contractor is made aware by the Contracting Authority.

1.9.2.3 In the context of any Notification made in compliance with this Article 1.9 or upon the Contracting Authority's first request, the Contractor shall provide the Contracting Authority with at least the following information:

- ✓ Nature of the Security Incident including where possible, the categories and approximate number of data records concerned and, where applicable, the categories and approximate number of data subjects concerned;

- ✓ Exact date or period of the Security Incident as well as date and time of detection;
- ✓ Explanation on how the Security Incident was detected, its root cause and its likely and/or actual consequences; and
- ✓ Measures taken or proposed to be taken to address the Security Incident, including, where appropriate, measures to mitigate its possible adverse effects.

Further details on the content and format of the Notification may be defined in the Contract.

1.9.2.4 The Contractor shall use its best efforts to assist the Contracting Authority with the notification of the Security Incident to the competent authority(ies) and/or the data subject(s) where applicable.

1.9.2.5 In the event of a Security Incident attributable to the Contractor, the Contractor shall take all measures necessary and appropriate to limit the negative impact of the Security Incident as much as possible (including but not limited to the provision of forensic assistance to the Contracting Authority) and to mitigate damages. The Contractor shall take upon itself payment of all damages and fines flowing from the Security Incident.

1.9.3 The Contractor shall document all measures and mechanisms implemented to comply and demonstrate compliance with this Article 1.9 and shall make such information available to the Contracting Authority upon the latter's first request.

1.9.4 Any financial burden for complying with this Article 1.9 shall be at the charge of the Contractor.

1.9.5 The Contractor undertakes to impose the security and Security Incident management obligations of this Article 1.9 upon any of its subcontractors and their personnel who perform tasks for the Contracting Authority in execution of the Contract.

1.9.6 Non-compliance by the Contractor with the obligations laid down in this Article 1.9 shall be deemed to constitute a breach of substantial contractual obligation by the Contractor and the Contracting Authority shall be entitled to terminate the Contract and/or apply liquidated damages of an amount calculated in accordance with the terms of the Contract.

1.10 Audit by the Contractor

1.10.1 The Contractor acknowledges that the Contracting Authority is subject to, or should be interpreted as being subject to, certain privileges and immunities pursuant to Article 343 of the Treaty on the Functioning of the European Union and to Protocol No 7 to this Treaty[3]. In the context of the Contract, the Contractor particularly acknowledges and accepts inviolability of the Contracting Authority's premises and buildings, including but not limited to its assets, as well as the inviolability of its archives, including the physical location and the location in the cloud of its data and services.

1.10.2 In view of the EU's supranational nature and its accompanying privileges and immunities, the Contractor shall not exert any right of inspection over the Contracting Authority's use of the Products or Services. In the event that the Contractor is not and does not include the right holder of the licence rights, the Contractor undertakes that said right holder will abide by this Article 1.10 as if the right holder was itself mutatis mutandis party to the Contract entered into between the Contractor and the Contracting Authority. The Contracting Authority may request proof of such agreement. In the absence of such proof, the Contractor shall be liable for any compensation requested by the right holder.

[3] Given that the ESM is an international organisation under public international law, the ESM is accorded privileges and immunities in the sense of articles 1.10.1 and 1.10.2, in particular with regards to the inviolability of archives, on the basis of the Treaty establishing the European Stability Mechanism.

1.11 Intellectual property and related rights

1.11.1 *Use, assignment, licensing and sublicensing of licensed rights*

1.11.1.1 The Contracting Authority shall be entitled to use the intellectual property rights under licence pursuant to the Contract for its Internal Use. Licences relating to a limited number of (named) users or devices may be freely reassigned without any limitation to other (named) users or similar devices within the Contracting Authority.

1.11.1.2 The Contracting Authority shall be entitled to assign, license or sublicense all or part of the intellectual property rights under licence pursuant to the Contract to any other EU institution, agency or body, which shall in such event be entitled to use these rights under the same conditions as the Contracting Authority.

1.11.1.3 In the event that the Contractor is not and does not include the right holder of the intellectual property rights under licence, the Contractor undertakes that said right holder will abide by this Article 1.11.1 as if the right holder was itself *mutatis mutandis* a party to the Contract entered into between the Contractor and the Contracting Authority.

1.11.2 *Third Party Claims relating to the use of Products, Services, Documentation or other protected material delivered under the Contract*

1.11.2.1 Each Party shall Notify the other Party of the existence or threat of any third party claim or action alleging an infringement of its intellectual property rights and/or a non-authorised access to and/or processing of data by the Contracting Authority's use of any Product, Service, Documentation or other protected material delivered under the Contract.

1.11.2.2 In the event of such a dispute or threat of dispute, the Contractor shall promptly provide the Contracting Authority with all assistance requested to mitigate losses, settle the dispute or threat of dispute, enable, facilitate and/or accelerate the clearance of the disputed third party rights. Upon first request of the Contracting Authority, the Contractor shall, at its own and sole expense, voluntarily intervene in any pending litigation relating to the third party right.

1.11.2.3 The Contractor shall proactively Notify the Contracting Authority of any relevant element relating to the dispute or threat of dispute. Upon first request of the Contracting Authority, the Contractor shall, at its own and sole expense, provide the Contracting Authority with all useful and/or reasonable information and assistance in connection with the dispute or threat of dispute.

1.11.2.4 The Contractor shall hold the Contracting Authority harmless from and against any damages suffered by such litigation or threat of litigation and the Contractor shall be liable for any claim or payment arising out of any judgment, ruling or settlement relating to the third party claim or action relating to third party rights, except for the payment of a settlement made by the Contracting Authority without the Contractor's written consent. Such consent may not be withheld without reasonable grounds. In case of

refusal to give such consent, the Contractor shall be bound to submit an alternative reasonable and feasible solution which duly mitigates the losses incurred by the Contracting Authority.

1.11.2.5 If the infringement of a third party right is declared in a judgment, arbitration sentence or party settlement, or if such an event is likely to happen, the Contractor undertakes, at its own and sole cost, to either:

- modify the concerned Products, Services or Documentation in a way that would end the infringement to any third party rights;

- replace the concerned Products, Services or Documentation them with substantially equivalent non-infringing Products, Services or Documentation; or

- obtain any rights from the third party right holders required to allow the Contracting Authority to continue using the concerned Products, Services or Documentation as described in the Contract.

1.11.2.6 If the Contractor fails to remedy the infringement of the third party rights in application of Article 1.11.2.5, the Contracting Authority shall be entitled to take all necessary measures to remedy the infringement at the Contractor's expense.

1.11.2.7 Provided it is not possible to remedy the infringement, the Contracting Authority shall be entitled to terminate the Contract. Without prejudice of Article 1.11.2.5 and without prejudice to the right of the Contracting Authority to claim additional damages, the Contractor shall reimburse to the Contracting Authority the purchase, rental, leasing or licence price of any infringing Product and/or Documentation. The Contracting Authority may, at its own discretion decide to pursue the Contract limited to the use of the non-infringing parts of the Product, Service or Documentation. In the latter case, the Parties will determine in good faith the amount of the reimbursement to the Contracting Authority and/or an adapted price for the further deliveries, rental, leasing or licence of the Product, Service or Documentation.

1.11.2.8 The Contractor will not be responsible under the present guarantee for any third party claiming an infringement of its intellectual property rights based on:

- the Contracting Authority's use of any Product or Service in combination with Hardware or Software not delivered by the Contractor, if such combined use is the only cause of the claimed infringement, and provided that the Contractor did not expressly or implicitly agree with such combined use, or

- the Contracting Authority's use of any Product or Documentation in a form other than the one delivered by the Contractor, if such change in form is the only cause of the claimed infringement, and provided that the Contractor did not expressly or implicitly agree with such use in the other form.

1.11.3 *Use of EU Protected Material*

1.11.3.1 The Contracting Authority may authorise the Contractor to use identified EU Protected Material which the Contractor is likely to use in the execution of its obligations under the Contract.

1.11.3.2 The Contractor shall use the EU Protected Material only to the extent strictly necessary for the execution of the Contract.

1.11.3.3 The Contractor shall not copy any EU Protected Material without prior written authorisation from the Contracting Authority.

1.11.4 *Third Party Claims relating to the use of EU Protected Material*

1.11.4.1 Each Party shall Notify the other Party without undue delay of the existence or threat of any third party claim or action alleging a breach of any third party rights, including intellectual property rights, resulting from the use by the Contractor of EU Protected Material, whether or not in contravention with Article 1.11.3.

1.11.4.2 In the event of such a dispute or threat of dispute, the Contractor shall proactively Notify the Contracting Authority of any relevant element relating to the dispute or threat. Upon first request of the Contracting Authority, the Contractor shall, at its own and sole expense, provide Contracting Authority with all useful and/or reasonable information and assistance in connection with the dispute or threat of dispute.

1.11.4.3 The Contractor shall protect and indemnify the Contracting Authority against all third party claims or actions alleging a breach of any third party rights, including intellectual property rights, resulting from the use by the Contractor of EU Protected Material in contravention with Article 1.11.3. Upon first demand of the Contracting Authority, the Contractor shall, at its own and sole expense, voluntarily intervene in any pending litigation resulting from the use by the Contractor of EU Protected Material in contravention with articles 1.11.3.

1.11.4.4 The Contractor shall be liable for any claim or payment arising out of any judgment, ruling or settlement relating to the third party claim or action alleging a breach of any third party rights resulting from the use by the Contractor of EU Protected Material in contravention with Article 1.11.3, except for the payment of a settlement made by the Contracting Authority without the Contractor's written consent (not unreasonably withheld).

1.11.4.5 The Contractor shall hold the Contracting Authority harmless from and against any damages suffered by the Contracting Authority caused by a breach of this Article 1.11.4.

1.12 Documentation

1.12.1.1 The Contractor shall provide the Contracting Authority with the relevant Documentation required for the appropriate and proper operation of the Products and Services, as well as with any update to such Documentation as soon as it becomes available to other customers.

1.12.1.2 The Documentation and the updates thereto shall be made available to the Contracting Authority in a reproducible and machine-readable electronic format commonly used by the Contracting Authority.

1.12.1.3 The Documentation and the updates thereto shall be available at least in English and, if provided in the Contract, in other language(s).

1.12.1.4 The Contracting Authority shall be entitled to reproduce the Contractor's Documentation in full or in part, in electronic form or on paper, for any Internal Use. The Contracting Authority shall reproduce all references to intellectual property rights appearing on the originals.

1.12.1.5 The Contracting Authority shall be entitled to modify the Documentation or to translate it to any official language of the European Union in which such Documentation is not made available by the Contractor. The Contractor warrants that the creators of the Documentation will not object to such modification or translation of the Documentation on the basis of their moral rights under copyright. The modified or translated Documentation may only be used by the Contracting Authority for Internal Use.

1.13 Identifiers

1.13.1 The Contracting Authority may decide to assign an identifier to a unit of a Product. The identifier is an alphanumeric code of 15 characters.

1.13.2 The Contracting Authority shall inform the Contractor of the identifier(s) in such manner as shall have been agreed by both Parties. If relevant, the Contractor's original identifier mentioned in its delivery documents is associated with the Contracting Authority's identifier.

1.13.3 If the Contracting Authority has assigned an identifier to a unit of a Product, only the Contracting Authority's identifier shall be used in all instances when referred to the unit in question in the communication between the Parties.

1.13.4 The format of the identifier or the identifier relating to a unit of a Product may be changed by the Contracting Authority at any time. In that case, the Contractor will be Notified of such change.

1.14 Confidentiality

1.14.1 Notwithstanding any other provision of the Contract, any and all data, information and documents shared by the Contracting Authority with the Contractor, or otherwise as submitted by the Contracting Authority to the Contractor, or onto the Contractor's systems in the context of the Contract, including but not limited to EU Protected Material, shall be deemed confidential unless and until an explicit indication to the contrary is made in writing by the Contracting Authority.

1.14.2 Data, information and documents shared by the Contractor with the Contracting Authority, shall be deemed confidential if an explicit indication is made in writing by the Contractor on the specific data, information or document and an explanation is provided on the reason why it may not be disclosed.

1.14.3 Each Party must:

- ✓ not use confidential data, information or documents for any purpose other than to perform its obligations under the Contract without the prior written agreement of the other Party;
- ✓ 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;
- ✓ not disclose directly or indirectly, confidential data, information or documents to third parties without the prior written agreement of the other Party.

1.14.4 The Contractor undertakes the obligation to maintain confidentiality on behalf of itself and its Personnel.

1.14.5 The confidentiality obligations set out in this Section are directly applicable to the Parties without the need for separate non-disclosure agreements.

1.14.6 The confidentiality obligations set out in this Section are binding upon the Contracting Authority and the Contractor for as long as the information or documents remain confidential unless:

- ✓ the disclosing party agrees in writing to release the receiving party from the confidentiality obligation earlier;
- ✓ the confidential data, information or documents become public through other means than a breach of the confidentiality obligation;
- ✓ the applicable law requires the disclosure of the confidential data, information or documents.

1.14.7 The Contractor understands and acknowledges that the Contracting Authority is subject to transparency rules, including but not limited to those laid down in the Treaty on the Functioning of the European Union, which may require it to provide access to data, information or documents concerning or originating from the Contractor, notwithstanding that such data, information or documents may have been identified by the Contractor in writing as confidential.

1.14.8 In derogation of Article 1.14.3, the Contractor understands and acknowledges that the Contracting Authority is entitled to make available (any part of) the confidential data, information or documents to the Contracting Authority's Staff and the staff of other EU Institutions, as well as to other persons and entities working for the Contracting Authority or cooperating with it, including contractors or subcontractors and their personnel provided that they have a reasonable need to know said confidential data, information or documents and are bound by obligations of confidentiality which are no less restrictive than the confidentiality obligations imposed on the Contracting Authority by the Contract.

1.14.9 In the event of unauthorised disclosure of confidential data, information or documents by either Party, the other Party shall address it a warning by means of a Notification, requesting the first Party to confirm that it will no longer disclose said data, information or documents, and that measures to contain damages are in place. If no satisfactory response is obtained within the requested time limit, the other Party is entitled to terminate the Contract. The Parties recognise that damages may not constitute sufficient compensation for the other Party, who may require reparation by injunction or other relief judged appropriate or necessary by the appropriate court of law. This is without prejudice to obligations stemming from Regulation 2018/1725 as regards personal data breaches. It is also without prejudice to obligations stemming from other Union law.

1.14.10 In the event that the Contract is terminated or in the event that the Contracting Authority requests it, the Contractor shall return all confidential data, information or documents to the Contracting Authority within a reasonable period as agreed between the Parties.

1.14.11 In the event of return of confidential data, information or documents as requested by the Contracting Authority under the Contract, the Contractor shall deliver to the Contracting Authority a statement certifying that:

- ✓ all confidential data, information or documents including all copies and extracts thereof have been fully and permanently deleted and/or returned from any hardware or storage media (including but not limited to USB stick, server, and backup copies);
- ✓ any files or data resulting from the confidential data, information or documents originally communicated by the Contracting Authority have also been fully and permanently deleted and/or returned from any hardware or storage media;
- ✓ any paper copy of the confidential data, information or documents and any document that contains the confidential data or information has been deleted and/or returned; and
- ✓ any subcontractors that have received access to and/or copies of the confidential data, information or documents in accordance with this Contract, have been requested to undertake the same measures and have certified in writing that the confidential data, information or documents have been deleted and/or returned.

1.15 Third party Initial Vendor or right holder

1.15.1 If the Contractor is not the Initial Vendor, the Contractor shall, prior to the provision of any Product or Service, conclude the necessary back-to-back agreements with the Initial Vendor to ensure that the Contractor can fully abide by its obligations under the Contract.

1.15.2 If the fulfilment of obligations by the Contractor under the Contract requires the agreement of or the performance of actions by the Initial Vendor, the Contractor undertakes that the Initial Vendor will give the required agreement or perform the required actions.

1.15.3 If the Contractor is not and does not include the right holder of intellectual property rights attached to a Hardware Product, Licensed Software Product or Documentation, the Contractor shall either:

- ✓ acquire from the right holder a valid licence or sublicence which allows the Contractor to sublicense to the Contracting Authority, at the latest upon delivery of such Product or Documentation, all rights as specified in the Contract; or
- ✓ undertake that the right holder shall grant to the Contracting Authority, in a separate licence agreement concluded at the latest upon delivery of such Product or Documentation, all rights as specified in the Contract, as if the right holder was itself mutatis mutandis a party to the Contract entered into between the Contractor and the Contracting Authority.

1.15.4 The Contractor shall inform the Contracting Authority of applicable licence terms imposed by a third party right holder of intellectual property rights attached to a Hardware Product, Licensed Software Product or Documentation before a corresponding purchase, rental, leasing or licence is effectuated. Unless agreed in writing by the Contracting Authority, these licence terms shall not derogate from the Contract.

1.15.5 The Contractor shall hold the Contracting Authority harmless from and against any damages suffered by the Contracting Authority caused by a breach of this Article 1.15.

1.16 **Invoicing**

1.16.1 The manner in which invoices are sent, received and paid shall be agreed upon in the Contract.

1.16.2 If the use of an electronic invoicing system has been agreed between the Parties in relation with the Contract and there is a conflict between the terms of use of the electronic invoicing system and this Article 1.16, the terms of use of the electronic invoicing system shall have precedence on this Article 1.16.

1.16.3 Invoices for the delivery of Products or the provision of Services are to be sent to the address or in the manner stated in the Contract. The payment period shall not be binding on the Contracting Authority if any invoice is sent to a different address or manner.

1.16.4 One-off payments (for the acquisition of Products, the provision of Services consisting in a single performance, etc.) shall be invoiced when the relevant Delivery Note, or, where applicable, the Acceptance Document has been Notified to the Contractor. If neither a Delivery Note nor an Acceptance Document is to be issued under a Contract, the one-off payments shall be invoiced when the Products or Services have been fully delivered or provided by the Contractor and accepted by the Contracting Authority.

1.16.5 Payments for rental and leasing of Products or for continuous Services (Maintenance, Cloud Services, etc.) shall be invoiced at the end of the calendar quarter unless otherwise agreed in the Contract. The first invoice shall cover the period from the date of Notification to the Contractor of the Delivery Note, or, where applicable, the Acceptance Document of the Products or from the start date of the Services indicated in the Contract to the last day of the current calendar quarter. When the total value of a Contract relates to an amount of less than €25,000, payment for rental and leasing of Products or for continuous Services shall be invoiced when the Products or Services have been fully delivered or provided by the Contractor and accepted by the Contracting Authority.

1.16.6 In exceptional cases, on request by the Contractor, and subject to a prior approval by the Contracting Authority, payments referred to in Article 1.16.5 may be invoiced per calendar year and in advance for the whole period, irrespective of the amount involved. If the amount to be paid is variable, only the certain amount shall be invoiced in advance and the variable part shall be invoiced at the end of the calendar year.

1.16.7 Subscription fees (for licences, Support Services, Maintenance, etc.) may be invoiced per subscription period, and in advance for the whole subscription period, provided that they are accompanied by the Delivery Note. Annual instalments will be made for subscription periods covering more than twelve (12) months. Those subscriptions will be invoiced and paid annually. Invoices cannot cover periods exceeding twelve (12) months, or exceed the duration of the Contract. If the amount of the subscription fee is variable, only the certain amount shall be invoiced in

advance and the variable part shall be invoiced at the end of the period covered by the advanced payment.

2 LICENSED SOFTWARE PRODUCTS

2.1 Delivery

2.1.1 *Delivery Date*

2.1.1.1 The Licensed Software Products shall be delivered on the Delivery Date and before the end of the Delivery Lead Time.

2.1.1.2 Unless otherwise agreed in the Contract, the Delivery Lead Time for the provision of Licensed Software Products shall be seven (7) Normal Working Days.

2.1.1.3 Unless otherwise agreed in the Contract, the Contractor shall Notify the Contracting Authority of a proposed Delivery Date at least two (2) Normal Working Days before such proposed Delivery Date. The proposed Delivery Date for physical deliveries must be a Normal Working Day. The Parties may at all times agree in writing to modify the above notification period for a specific delivery.

2.1.1.4 Unless the Contracting Authority Notifies the Contractor of its refusal of the proposed Delivery Date no later than one (1) Normal Working Days after the Notification referred to in Article 2.1.1.3, the proposed Delivery Date shall be deemed accepted by the Contracting Authority. The Contracting Authority shall not refuse the proposed Delivery Date without reasonable grounds. In case of refusal of the proposed Delivery Date, the Contractor shall Notify the Contracting Authority of a new proposed Delivery Date in accordance with Article 2.1.1.3.

2.1.1.5 Any liquidated damages provided for in the Contract for failure of the Contractor to deliver the Licensed Software Product within the applicable time limits are without prejudice to the right for the Contracting Authority to claim additional damages under applicable law. If the Contracting Authority has incurred costs in relation to a third party by reason of a failure to deliver the Licensed Software Products on the Delivery Date or before the end of the Delivery Lead Time, the Contractor shall reimburse these costs immediately upon production of supporting document.

2.1.1.6 If the Licensed Software Products are not delivered no later than ten (10) Normal Working Days after the expiration of the Delivery Lead Time, the Contracting Authority shall be entitled to immediately terminate the Contract.

2.1.2 *Delivery Terms*

2.1.2.1 The manner in which a Licensed Software Product shall be delivered shall be agreed upon in the Contract.

2.1.2.2 When it is agreed that the Licensed Software Product shall be downloaded by the Contracting Authority, the Contractor shall Notify the Contracting Authority, on the Delivery Date, of the accurate and complete instructions, including access codes, enabling the Contracting Authority to download the

Licensed Software Product. The Licensed Software Product shall be available for download on the indicated download area as from the Delivery Date and for at least sixty (60) Normal Working Days.

2.1.2.3 A Delivery Note shall be Notified to the Contracting Authority together with the downloading instructions. The Contracting Authority shall Notify the Contractor of its acknowledgment of receipt of the Delivery Note within two (2) Normal Working Days. Acknowledgement of receipt of the Delivery Note by the Contracting Authority is simply an acknowledgment of the fact that the delivery took place and in no way implies conformity of the Licensed Software Product with the Contract.

2.1.2.4 When it is agreed that the Licensed Software Product shall be delivered on a tangible medium, the Licensed Software Product shall be delivered on (a) machine-readable medium(s) (disk or other) as determined in the Contract, reproducing the Licensed Software Product.

2.1.2.5 The machine-readable medium(s) containing the Licensed Software Product shall be delivered at the exact place or places and under the conditions determined in the Contract. Unless otherwise agreed in the Contract, the machine-readable medium(s) containing the Licensed Software Product shall be delivered under the conditions of Incoterms 2010 Delivery Duty Paid. Unless otherwise agreed in the Contract, the delivery may be made at any time during Normal Working Hours on the Delivery Date.

2.1.2.6 Unless expressly requested or agreed by the Contracting Authority, partial delivery of the machine-readable medium(s) containing the Licensed Software Product ordered in a Contract is not allowed.

2.1.2.7 Each delivery of (a) machine-readable medium(s) of a Licensed Software Product shall be accompanied by a Delivery Note in duplicate, duly dated and signed by the Contractor or its carrier. One copy of the Delivery Note must be countersigned by the Contracting Authority upon delivery and returned to the Contractor or its carrier. Signature of the Delivery Note by the Contracting Authority is simply an acknowledgment of the fact that that the delivery took place and in no way implies conformity of the Licensed Software Product with the Contract.

2.2 Acceptance

2.2.1 The acceptance period for Licensed Software Products shall run up to thirty (30) Normal Working Days from the date of signature or Notification of the acknowledgement of receipt of the Delivery Note by the Contracting Authority.

2.2.2 During the acceptance period, the Contracting Authority shall Notify the Contractor of any defaults in the Licensed Software Product preventing its conformity with the Contract. As from the date of such Notification of Default, the acceptance period shall be interrupted. A new acceptance period of thirty (30) Normal Working Days shall commence on the date on which the Contractor Notifies the Contracting Authority that the default has been remedied.

2.2.3 At the latest upon the expiration of the acceptance period, acceptance of a Licensed Software Product shall be recorded in an Acceptance Document, which shall indicate at least the detailed nature of the accepted Licensed Software Product and the reference number of the Contract(s) concerned.

2.2.4 If no Acceptance Document has been issued at the end of the acceptance period and if no Notification of Default is pending, the Contracting Authority is considered as having accepted the Licensed Software Product.

2.2.5 If, due to a default of the Licensed Software Product, acceptance cannot be completed after two attempts of acceptance or within a maximum time limit of thirty (30) Normal Working Days from the signature or acknowledgment of receipt of the Delivery Note by the Contracting Authority, and where a different time limit has not been specified in the Contract, the Contracting Authority shall be entitled to terminate the Contract after Notifying the Contractor with thirty (30) Normal Working Days' notice to meet its obligations. This provision is without prejudice to the Contracting Authority's other rights as provided for in the Contract.

2.3 Guarantee and Maintenance

2.3.1 *Guarantee*

2.3.1.1 The Contractor warrants that the Licensed Software Product will be free from any viruses, backdoors or other malicious code at the time of receipt by the Contracting Authority. Such warranty shall apply anew to any update or upgrade delivered to the Contracting Authority.

2.3.1.2 The Contractor warrants that the Licensed Software Product does not and shall not include or contain any clock, timer, counter, or other limiting or disabling code, design or routine which causes or may cause the Licensed Software Products to be erased, inoperable or otherwise incapable of being used in the full manner for which it was designed and licensed pursuant to the Contract. This includes, without limitation: (a) after being used or copied a certain number of times, or after the lapse of a certain period of time, or after the occurrence or lapse of any triggering factor or event; or (b) because the Licensed Software Product has been installed on or moved to Hardware different to that on which the Licensed Software Product was originally installed.

2.3.1.3 The Contractor warrants that the Licensed Software Product will materially conform to its specifications and will be free of defects at the time of delivery and for a guarantee period of one (1) year.

2.3.1.4 In case of malfunction during the guarantee period, the Contractor shall ensure that the malfunction is remedied without undue delay. When the Contractor receives a guarantee claim for any Licensed Software Product, the Contractor shall either repair or have repaired the relevant defect, or replace the Licensed Software Product. Failure to remedy a default for a period longer than twenty (20) Normal Working Days shall entitle the Contracting Authority to a full refund of the price of the Licensed Software Product including the fees for Maintenance or Support Services relating to the Licensed Software Product, as well as the indemnification of all related

costs and damages. The Contractor shall pay for the shipment of repaired or replaced Licensed Software Products to the Contracting Authority.

2.3.1.5 The Contractor does not warrant that the Licensed Software Product will operate in combination with Hardware and/or Software other than those described in the Contract or in the Licensed Software Product Documentation. However, if the Contractor expressly or implicitly agreed with the operation of the Licensed Software Product in combination with specific Hardware and/or Software, the Contractor shall be responsible during the guarantee period if the Licensed Software Product does not perform in conformity with its specifications in combination with such Hardware and/or Software.

2.3.1.6 The Contractor warrants that it shall give a notice of at least three (3) calendar months before the implementation of any change to the unique identifier or SKU of a Licensed Software Product.

2.3.1.7 The guarantee provided for in this Article 2.3.1 replaces any other guarantee of the Licensed Software Product provided for in any other set of general conditions that would be part of the Contract.

2.3.2 *Maintenance*

2.3.2.1 The fees for the Maintenance of Licensed Software Products are either expressed as a percentage of the licence fees or are calculated at a fixed price.

2.3.2.2 Subscriptions to Maintenance of Licensed Software Products shall only be renewed if the Contracting Authority expressly consents with such renewal. The express consent of the Contracting Authority is required for each renewal of a Maintenance subscription (no automatic or tacit renewal).

2.3.2.3 On the part of the Contracting Authority, without prejudice to the Contract, Maintenance of a Licensed Software Product shall involve:

- ✓ preparing and sending to the Contractor all documents and additional available information which the Contractor might reasonably request in order to detect and correct errors in the Licensed Software Product;
- ✓ testing and accepting, when it is reasonable to do so, New Versions or New Releases of the Licensed Software Product, as proposed by the Contractor. One (1) year after the date of such an acceptance, the Contractor is no longer required to provide Maintenance for previous versions or releases of the of Licensed Software Product and any dependent products;
- ✓ installing any preventive corrections provided by the Contractor as long as it is agreed that such corrections are necessary.

2.3.2.4 On the part of the Contractor, without prejudice to the Contract, Preventive Maintenance of a Licensed Software Product shall involve:

- ✓ identifying potential security weak spots of the Licensed Software Product, amongst others based on the evolution of the Software environment;

- ✓ fixing potential security weak spots of the Licensed Software Product that are identified.

2.3.2.5 On the part of the Contractor, without prejudice to the Contract, Corrective Maintenance of a Licensed Software Product shall involve:

- ✓ diagnosing errors or faults encountered by the Contractor or the Contracting Authority in the content of the Licensed Software Product and making any corrections required in order to have the Licensed Software Product perform in conformity with its specifications and the rules of art; the Contractor shall make corrections only if the error can be reproduced or if the Contracting Authority provides the Contractor with sufficient information from which the error can be diagnosed;

- ✓ make all the corrections (including patches) to the Licensed Software Product to ensure that such Licensed Software Product and any system it interacts with operate as specified in the Documentation within thirty (30) Normal working days of receipt of a Notification from the Contracting Authority providing details of a problem;

- ✓ rewriting the Licensed Software Product where necessary in order to correct all known problems or faults diagnosed by the Contractor;

- ✓ providing telephone support for the Contracting Authority in order to advise it on the use of Licensed Software Product;

- ✓ providing remote "hotline" support to resolve urgent problems and failures relating to the Licensed Software Product.

2.3.2.6 On the part of the Contractor, without prejudice to the Contract, Adaptive Maintenance of a Licensed Software Product shall involve:

- ✓ adapting the Licensed Software Product to developments in the Software environment;

- ✓ providing the Contracting Authority with successive versions and releases of the Licensed Software Product and the relevant Documentation;

- ✓ installing New Releases and New Versions of the Licensed Software Product free of charge on existing Hardware at the Contracting Authority's request;

- ✓ where necessary, adapting products that were using the previous version of the Licensed Software Product, free of charge.

2.3.2.7 On the part of the Contractor, without prejudice to the Contract, Evolutive Maintenance of a Licensed Software Product shall involve:

- ✓ improving performance of the Licensed Software Product;
- ✓ implementing new or changed user requirements in the Licensed Software Product.

2.3.2.8 If the Contractor is not the Initial Vendor of the Licensed Software Product, the Contractor undertakes that the Initial Vendor will, where agreed in the Contract or where required to ensure that the Maintenance is in conformity with the state of art, provide the Maintenance Services described in the Contract on behalf of the Contractor.

2.4 Software trial

2.4.1 Upon request of the Contracting Authority, the Contractor shall grant to the Contracting Authority a trial period for Software under the conditions as set out in this Article 2.4.

2.4.2 The Contracting Authority shall be entitled to request a trial period during which New Versions of Licensed Software Products or other Software in the catalogue of the Contractor, or of an Initial Vendor for which the Contractor acts as a reseller, shall be available to the Contracting Authority in order to assess whether such (New Version of the) Software is adapted to the needs and the environment of the Contracting Authority. This includes, but is not limited to, testing substitute Licensed Software Products proposed by the Contractor under Article 1.7 on Change and replacement management. The Contracting Authority's request shall be motivated and shall describe the precise purpose of the request, the duration of the trial period, the intended use of the Software and the maximum number of users.

2.4.3 The Contractor may refuse to grant the trial period for Software if the Contracting Authority's request is patently unreasonable or if the purpose of such request is not legitimate under Article 2.4.2.

2.4.4 The Contractor shall make the requested Software available to the Contracting Authority and grant it a licence to use the Software under the conditions set in the in the Contracting Authority's request. The licence shall be granted free of charge and for the period included in the Contracting Authority's request. It shall cover all intellectual property rights attached to the requested Software. In the event that the Contractor is not and does not include the right holder of intellectual property rights attached to the requested Software, the Contractor shall either:

- ✓ acquire from the right holder a valid licence or sublicence allowing the Contractor to sublicense to the Contracting Authority all rights as stipulated in this Article 2.4.4; or
- ✓ commit that the right holder shall grant to the Contracting Authority, in a separate licence agreement concluded no later than at the time that the requested Software is made available to the

Contracting Authority, all rights as stipulated in this Article 3.4.4, as if the right holder was itself *mutatis mutandis* a party to the Contract entered into between the Contractor and the Contracting Authority.

2.4.5 The Contracting Authority shall be entitled to use the Software only for Internal Use, irrespective whether such use is productive or not.

2.4.6 Upon termination of the trial period, the Contractor shall promptly uninstall and destroy all copies of the requested Software.

2.4.7 The grant of a trial period for Software to the Contracting Authority shall in no way result in an obligation for the Contracting Authority to purchase (a licence on) the tested Software.

2.5 Intellectual Property Rights

2.5.1 The Contractor shall grant and the Contracting Authority shall accept, as from the delivery of the Licensed Software Product, a non-exclusive licence to use the Licensed Software, for all modes of exploitation inherent to the normal use of the Software and to any other use as specified in the Contract, under the conditions as specified in the Contract. The licence shall cover all intellectual property rights attached to the Licensed Software Product. Unless otherwise agreed in the Contract, the licence shall be granted worldwide, for the entire duration of protection, including if need be the right to sublicense the rights to any third party. The payment of the price for the Licensed Software Product shall include all fees payable to the Contractor for the acquisition by the Contracting Authority of the licensed rights for all modes of exploitation inherent to the normal use of the Software and to any other use as specified in the Contract.

2.5.2 Temporary licences relating to Licensed Software Products shall only be renewed if the Contracting Authority expressly consents in writing to such renewal. The express consent of the Contracting Authority is required for each renewal of the temporary licence (no automatic or tacit renewal).

2.5.3 The Contracting Authority shall be entitled to reproduce the Licensed Software Product to the extent necessary to make normal use of the Software or any other use of the Software as specified in the Contract, as well as for the purposes of back-ups and archiving.

2.5.4 The Contracting Authority shall take all measures necessary in relation to its end user personnel and persons having access to the Licensed Software Product and its Documentation, to ensure that the confidentiality of the Software is observed.

2.5.5 The Contracting Authority shall not pledge, assign, sub-license, transfer or lend, for payment or otherwise, the Licensed Software Product except in the manner set out under the Contract.

2.6 Entitlement reporting

2.6.1 The Contractor shall keep records of licence transactions with the Contracting Authority and shall, upon request, provide reports of such transactions in order to allow the Contracting Authority to prove its entitlements to a Licensed Software Product. Such records and reports shall at least contain the following information:

- ✓ the unique identifier or SKU of the Licensed Software Product;
- ✓ the licence metric unit and the number of licensed units;
- ✓ the recipient of the licence in full name with address; and
- ✓ if applicable, the licence period.

2.6.2 If the Contractor is not and does not include the holder of the rights attached to the Licensed Software Product, it shall record relevant information required to identify any entitlements towards the rights holders.

2.6.3 The Contractor undertakes to transmit the corresponding licensing information electronically without undue delay to any software and licence asset management system used by the Contracting Authority and which is in accordance with standard commercial practice.

3 CLOUD SERVICES

3.1 Provision and Service Levels

3.1.1 The Contractor shall make available on the Delivery Date (or before the end of the Delivery Lead Time, if more appropriate) the Cloud Services to the Contracting Authority and the Contracting Authority shall have the right to use them, in accordance with the terms and conditions of the Contract.

3.1.2 The Contractor may not suspend the provision of the Cloud Services for any reason other than the existence of a serious risk for the security of the Cloud Service. In such event, the Contractor may only suspend the provision of the Cloud Services following a Notification to the Contracting Authority of the interruption. The Contractor shall use all commercially reasonable efforts to restore the Cloud Service as soon as possible.

3.1.3 The Service Levels as agreed upon in the Contract shall include, but are not limited to, availability (uptime), customer support response time, and publication of relevant technical metrics (computing/storage/network metrics etc.).

3.1.4 The Contractor shall provide or make available to the Contracting Authority standardised reports, including at least performance and availability metrics of the Cloud Services.

3.1.5 In the event the Contractor provides a Cloud Service for the exclusive use by the Contracting Authority (e.g. private cloud, managed services), the Contractor shall (i) provide or make available, on a regular basis, to the Contracting Authority a report including the applicable Service Levels, Service Level objectives accomplished, and Service Level objectives not-accomplished; and (ii) establish a disaster recovery plan and define the corresponding recovery time in the Contract if applicable.

3.2 Ownership and Intellectual Property

3.2.1 Unless otherwise agreed in the Contract, the Contracting Authority shall retain intellectual property and/or ownership rights to all information, data, inputs, and outputs, related to the use of the Cloud Services.

3.2.2 The Contractor shall retain intellectual property and/or ownership rights to the cloud infrastructure underlying the Cloud Services provided by the Contractor.

3.2.3 The Contractor warrants for any use of the Cloud Services that the Contracting Authority may envisage for the purposes and within the limits as set out in the Contract, that (i) any material provided by the Contractor in the context of the Cloud Services, including but not limited to third party software or applications, is free of claims from right holders or in general from any other third parties; (ii) the necessary rights and authorisations to provide such material to the Contracting Authority have been obtained by

the Contractor; and (iii) all the necessary intellectual property rights have been cleared.

3.3 Consequences of termination

3.3.1 In case of termination of the Cloud Services and upon request of either Party, the Parties shall agree on a portability plan, which may include terms on data or information retrieval or transfer methods and formats, and deletion protocols.

3.3.2 In any event, the Parties acknowledge and agree that in case of termination of the Cloud Services, the Contractor shall not delete the data or information of the Contracting Authority until the data or information has been retrieved or transferred, at the choice of the Contracting Authority, as follows:

- ✓ in case the Contracting Authority requests retrieval of the data or information, it shall be entitled to retrieve the data or information in a structured and widely-used format capable of ensuring portability of the data or information, within a period agreed upon between the Parties; or

- ✓ in case the Contracting Authority requests transfer of the data or information, the Contractor shall transfer the data or information in a structured and widely-used format capable of ensuring portability of the data or information, as agreed with the Contracting Authority at the time of the request, to the Contracting Authority or to any third party selected by the Contracting Authority within a period as agreed between the Parties.

3.3.3 Once the Contractor has confirmed with the Contracting Authority that data or information has been retrieved or transferred successfully, and after informing the Contracting Authority, the Contractor shall ensure definitive destruction of copies of, and erasure of, all data and information of the Contracting Authority and shall certify the same to the Contracting Authority.

3.3.4 In any event, the Contracting Authority has the right to request deletion of the data or information irrespective of any request for retrieval or transfer of the data or information.

3.3.5 Upon termination of the Cloud Services, the Contracting Authority will cease using the cloud infrastructure underlying the Cloud Services.

3.4 Data portability

3.4.1 The Contractor shall ensure and must be able to demonstrate the ability to port the data or information of the Contracting Authority from its infrastructure within a period agreed upon between the Parties in a structured and widely-used format as agreed with the Contracting Authority. The Contractor must ensure that the Contracting Authority is fully provided with the Cloud Services and access to the data or information during this period.

3.4.2 If data portability is required, the Contractor agrees to cooperate with other suppliers of the Contracting Authority to ensure that the data can be ported onto the Services of other suppliers. It agrees to attend meetings called by the Contracting Authority for that purpose.

3.5 Cooperation and information

3.5.1 The Contractor shall not disclose any data or information issued by the Contracting Authority and processed through the Cloud Services, actively or passively, intentionally or unintentionally, to any authorities, legal or natural persons. The Contractor shall Notify the Contracting Authority of any legally binding request for disclosure made by any law enforcement authority, including from non-EU countries, promptly and without undue delay. The Contractor shall not give access or disclose the data or information unless authorised by the Contracting Authority. To the largest extent permitted under applicable law, the Contractor shall appeal any legally binding request to disclose the data.

3.5.2 The Contractor shall inform the Contracting Authority, within a reasonable period of time, about (i) future changes concerning the Cloud Services such as the implementation of additional functions; (ii) future changes in the infrastructure and procedures with a potential impact on the Cloud Services; and (iii) the results of relevant security audits, under guarantee of confidentiality.

3.6 Location

3.6.1 The Contractor warrants that the Cloud Services are fully hosted in the territory of the European Economic Area, unless otherwise agreed in the Contract.

3.6.2 The Contractor undertakes that it shall not move data, whether at rest or in transit, from the Contracting Authority outside the European Economic Area, unless otherwise agreed in the Contract or unless the Contracting Authority has given its prior written authorisation.

3.6.3 The Contractor warrants that the Cloud Services are designed and shall be maintained in such a way that the Contracting Authority is clearly aware of the location(s) where the Cloud Services are physically hosted, and of the laws applicable thereto. The degree of precision with which the location is established may be further defined in the Contract.

3.6.4 The Contractor shall provide the Contracting Authority with comprehensive information on the physical location of the physical assets (e.g. servers, storage, devices, etc.) used by the Contractor and its subcontractors for the provided Cloud Services (including for backup, business continuity purposes and transit) as well as locations from where remote operations are performed.

3.6.5 The Contracting Authority shall be in control of determining the physical location of its data at rest. Any change of location shall be subject to the prior express written consent of the Contracting Authority, except if the new location was already permitted in the Contract.

4 SUPPORT SERVICES

4.1 Stability and performance of Support Services

4.1.1 Throughout the term of the Contract, the Contractor shall ensure that stable Support Services are maintained as required for the proper implementation of the Contract and to ensure service continuity for the Contracting Authority.

4.1.2 The Contractor shall not take any action that may adversely affect the functioning or performance of, or effect a decrease in the resource efficiency of the Support Services, without the approval of the Contracting Authority.

4.1.3 The timetable for the performance of the Support Services shall be set out in the Contract. If such a timetable cannot be prepared for more complex projects or projects of longer duration, the Parties shall first agree a provisional timetable. The final timetable shall be agreed at a date stated in the Contract.