



ANNEX III

SERVICE CONTRACT - DRAFT

CONTRACT NUMBER – ACER/OP/ADMIN/16/2012 – LOT X

Agency for the Cooperation of Energy Regulators (hereinafter referred to as "the Agency"), represented for the purposes of the signature of this contract by Mr Alberto POTOTSCHNIG, director,

of the one part,

and

[*official name in full*]

[*official legal form*]¹

[*statutory registration number*]²

[*official address in full*]

[*VAT registration number*]

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

[The parties identified above and hereinafter collectively referred to as 'the Contractor' shall be jointly and severally liable vis-à-vis the Agency for the performance of this contract.]

of the other part,

HAVE AGREED

the **Special Conditions** and the following Annexes³:

Annex I General Conditions for service contracts

Annex II – Tender Specifications (Invitation to Tender No ACER/OP/ADMIN/16/2012 of 14.08.2012)

Annex III – Contractor's Tender (No [*complete*] of [*insert date*])

Annex IV – Service Level Agreement

[*Other Annexes*]

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

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

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

¹ Delete if contractor is a natural person or a body governed by public law.

² Delete if contractor is a body governed by public law. For natural persons, indicate the number of their identity card or, failing that, of their passport or equivalent.

³ Voluminous annexes may be replaced by a reference to publicly available documents.

I – SPECIAL CONDITIONS

ARTICLE I.1 - SUBJECT

- I.1.1.** The subject of the Contract is ([the provision of Internet connectivity, fixed and mobile telephony services for the Agency; for Lot 1 - fixed telephony and Internet connectivity services; for Lot 2 - mobile telephony and data services]).
- I.1.2.** The Contractor shall execute the tasks assigned to him in accordance with the Tender Specifications annexed to the Contract (Annex II).

ARTICLE I.2 - DURATION

- I.2.1.** The Contract shall enter into force on 01.01.2013 if it has already been signed by both contracting parties.
- I.2.2.** Under no circumstances may implementation commence before the date on which the Contract enters into force.
- I.2.3.** The duration of the execution of the tasks shall not exceed twenty-four [24] months. This period and all other periods specified in the Contract are calculated in calendar days. Execution of the tasks shall start from 01.01.2013. The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses.

I.2.4. Contract renewal

The Contract may be renewed up to two [2] times, each time for a period of execution of tasks of twelve [12] months, only before payment of the balance and with the express written agreement of the parties, indicating the date on which execution of the tasks shall start. Renewal does not imply any modification or deferment of existing obligations.

- I.2.5** A mid-term review of price and technological evolution shall be carried out nine (9) months prior to the expiry of the initial duration of the Contract. After the mid-term review, if the conditions initially laid down are no longer geared to the price or technological evolution, the Agency may not use the Contract and shall take appropriate measures to terminate the Contract by serving written notification to the Contractor, without being required to pay compensation. Article II.14.4 shall apply.

ARTICLE I.3 – CONTRACT PRICE

- I.3.1.** The [maximum]⁴ total amount to be paid by the Agency under the Contract shall be EUR [*amount in figures and in words*] covering all tasks executed.

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

- I.3.2** Prices shall be expressed in EUR.

4 To be used in case of unit-price based contract.

I.3.3. Within the maximum total amount specified in Article I.3.1, other expenses provided for by the Tender Specifications shall be reimbursed according to the prices included in Annex II. This includes also:

- ...

I.3.3 Price revision

The total amount referred to in the above paragraph shall be fixed and not subject to revision for the first year of performance of the Contract.

At the beginning of the second and every following year of the Contract, the amount(s) may be revised upwards or downwards, if such revision is requested by one of the contracting parties by registered letter no later than three months before the anniversary of the date on which it was signed.

This revision shall be determined by the trend in the harmonised indices of consumer prices (HICP) Slovenia⁵ published for the first time by [the Publications Office of the European Union in the Eurostat monthly 'Data in Focus' publication at <http://www.ec.europa.eu/eurostat/>].

Revision shall be calculated in accordance with the following formula:

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

where

Ar = revised total amount;

Ao = total amount in the original tender;

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

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

ARTICLE I.4 – PAYMENTS

I.4.1 Monthly payments

The Contractor shall submit an admissible invoice indicating the reference number of the Contract for a monthly payment.

Payment shall be made within [thirty] days of the receipt of the invoice.

I.4.2 Payment of the balance

Within sixty days of completion of the tasks referred to in Annex II, the Contractor shall submit an admissible invoice indicating the reference number of the Contract for payment of the balance.

Payment shall be made within thirty days of the receipt of the invoice.

5 Specify the consumer price index, e.g.:

- “MUICP”: (euro area) for contracts expressed in euro (as a general rule);
- “EICP”: for contracts performed in the European Union (outside the euro area);
- consumer price index of the State in whose currency the contract price is expressed:
 - a) index of the State where the contractor is mainly based; or
 - b) index of the State where the service will be mainly carried out.

[For Contractors established in Belgium, the provisions of the Contract constitute a request for VAT exemption No 450, provided the Contractor includes the following statement in his invoice(s): "Exonération de la TVA, article 42, paragraphe 3.3 du code de la TVA (circulaire 2/1978)" or an equivalent statement in the Dutch or German language.]

ARTICLE I.5 – BANK ACCOUNT

Payments shall be made to the Contractor's bank account denominated in euro⁶, identified as follows:

Name of bank:
Address of branch in full:
Exact designation of account holder:
Full account number including codes:
[IBAN⁷ code:]

ARTICLE I.6 – GENERAL ADMINISTRATIVE PROVISIONS

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

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

Communications shall be sent to the following addresses⁸:

Agency:
Agency for the Cooperation of Energy Regulators
Trg republike 3, 1000 Ljubljana, Slovenia
Tel.: ..., Fax: ...

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

ARTICLE I.7– APPLICABLE LAW AND SETTLEMENT OF DISPUTES

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

I.7.2 Any dispute between the parties resulting from the interpretation or application of the Contract which cannot be settled amicably shall be brought before the courts of Ljubljana.

ARTICLE I.8 – DATA PROTECTION

⁶ Or local currency where the receiving country does not allow transactions in EUR.

⁷ BIC or SWIFT code for countries with no IBAN code.

⁸ Fax number and e-mail accounts may be added. If an e-mail account is given, incoming e-mails should be redirected if the account holder is absent and a clause should be added specifying what is considered to be the reference date of the electronic communication (date of sending, receiving or opening).

Any personal data included in the Contract shall be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Such data shall be processed solely for the purposes of the performance, management and monitoring of the Contract by Administration department acting as data controller without prejudice to possible transmission to the bodies charged with monitoring or inspection task in application of the European Union law.

ARTICLE I.9 - USE OF THE RESULTS

I.9.1 Modes of exploitation

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

- (i) distribution:
 - publishing in paper copies
 - publishing in electronic form as downloadable/non-downloadable file
 - making available on internet
 - broadcasting
 - public presentation or display
 - communication through a press information services,
 - inclusion in widely accessible databases or indexes
 - in any form and by any method existing at this date and in the future
 - giving access on individual requests without right to reproduce or exploit, as provided for by Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents
- ii) storage:
 - in paper format
 - in electronic format
 - in original format (sculpture, maquette etc.)
- ii) archiving in line with the applicable document management rules
- iv) modifications made by the Agency or by a third party:
 - shortening
 - making a summary
 - modification of the content
 - technical changes to the content:
 - necessary correction of technical errors
 - adding new parts or functionalities
 - changing functionalities
 - providing third parties with additional information concerning the result (e.g. source code)
 - addition of new elements, paragraphs titles, leads, bolds, legend, table of content, summary, graphics, subtitles, sound, etc.,
 - preparation in audio form, preparation as a presentation, animation, pictograms story, slide-show, public presentation etc.
 - extracting a part or dividing into parts
 - use of a concept or preparation of a derivate work
 - digitisation or converting the format for storage or usage purposes
 - translate, subtitle, dub

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

This list may be further specified in the Specific Contract.

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

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

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

All pre-existing rights to delivered results shall vest in the European Union and thereby under the terms of the Contract be effectively transferred to the European Union, as provided for in Article I.9.1.

The Contractor shall present relevant and exhaustive proofs of acquiring all necessary rights together with presentation of relevant result.

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

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

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

and not pre-existing rights and the scope and the way, direct or indirect, of the partial vesting and thereby the effective transfer of rights to the European Union.

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

ARTICLE I.10 – TERMINATION BY EITHER CONTRACTING PARTY

Either contracting party may, of its own volition and without being required to pay compensation, terminate the Contract by serving *six months* formal prior notice. Should the Agency terminate the Contract, the Contractor shall only be entitled to payment corresponding to part-performance of the Contract before the termination date. Article II.14.4 applies accordingly.

ARTICLE I.11 – CONTRACT CONCLUDED DURING STANDSTILL PERIOD

In case this Contract was signed by both the Agency and the Contractor before the expiry of 14 calendar days from the day after simultaneous dispatch of information about the award decisions and decisions to reject, this Contract shall be null and void.

This article is not applicable for contracts not covered by Directive 2004/18/EC and in cases indicated in Article 158a(2) of the rules for the implementation of the Financial Regulation (Regulation No 2342/2002).

SIGNATURES

For the Contractor,

[*Company name*/forename/surname/function]

For the Agency,

[forename/surname/function]

signature[s]: _____

signature: _____

Done at [...], [date]

Done at Ljubljana, [date]

In [duplicate] in English.

ANNEX I

II – GENERAL CONDITIONS FOR SERVICE CONTRACTS

ARTICLE II.1 – PERFORMANCE OF THE CONTRACT

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

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

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

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

ARTICLE II.2 – LIABILITY

- II.2.1.** The Agency shall not be liable for damage sustained by the Contractor in performance of the Contract except in the event of wilful misconduct or gross negligence on the part of the Agency.
- II.2.2.** The Contractor shall be liable for any loss or damage sustained by the Agency in performance of the Contract, including in the event of subcontracting under Article II.6 but only up to three times the total amount of the Contract. Nevertheless, if the damage or loss is caused by the gross negligence or wilful misconduct of the Contractor or by its employees, the Contractor shall remain liable without any limitation as to the amount of the damage or loss.
- II.2.3.** The Contractor shall provide compensation in the event of any action, claim or proceeding brought against the Agency by a third party as a result of damage caused by the Contractor in performance of the Contract.
- II.2.4.** In the event of any action brought by a third party against the Agency in connection with performance of the Contract, the Contractor shall assist the Agency. Expenditure incurred by the Contractor to this end may be borne by the Agency.
- II.2.5.** The Contractor shall take out insurance against risks and damage relating to performance of the Contract if required by the relevant applicable legislation. He shall take out supplementary insurance as reasonably required by standard practice in the industry. A copy of all the relevant insurance contracts shall be sent to the Agency should it so request.

ARTICLE II.3 - CONFLICT OF INTERESTS

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

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

- II.3.2.** The Contractor shall abstain from any contact likely to compromise his independence.
- II.3.3.** The Contractor declares:
- that he has not made and will not make any offer of any type whatsoever from which an unjustified advantage can be derived under the Contract,

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

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

ARTICLE II.4 – CONFIDENTIALITY

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

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

ARTICLE II.5 – DATA PROTECTION

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

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

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

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

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

- a) prevent any unauthorised person from having access to computer systems processing personal data, and especially:
 - a. unauthorised reading, copying, alteration or removal of storage media;
 - b. unauthorised data input as well as any unauthorised disclosure, alteration or erasure of stored personal data;
 - c. unauthorised use of data-processing systems by means of data transmission facilities;
- b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
- c) record which personal data have been communicated, when and to whom;

- d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting institution or body;
- e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
- f) design its organisational structure in such a way that it meets data protection requirements.

ARTICLE II.6 – SUBCONTRACTING

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

ARTICLE II.7 – AMENDMENTS

Any amendment to the Contract shall be the subject of a written agreement concluded by the contracting parties before fulfilment of all their contractual obligations. An oral agreement shall not be binding on the contracting parties.

ARTICLE II.8 – ASSIGNMENT

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

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

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

- II.9.4.** The use of information obtained by the Contractor in the course of the Contract for purposes other than its performance shall be forbidden, unless the Agency has specifically given prior written authorisation to the contrary.

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

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

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

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

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

- II.10.2** The ownership of all the results or rights thereon as listed in the tender specification and the tender attached to the contract, including copyright and other intellectual or industrial property rights, and all technological solutions and information embodied therein, obtained in performance of the Contract, shall be irrevocably and fully vested to the European Union, which may use them as described in the Contract. All the rights shall be vested on the European Union from the moment the results were delivered and accepted by the Agency.

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

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

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

- II.10.3** Any intermediary sub-result, raw data, intermediary analysis made available to the Agency by the Contractor cannot be used by the European Union without written consent of the Contractor, unless the tender specification explicitly provides for it to be treated as self-contained result.
- II.10.4** The Contractor retains all right, title and interest in pre-existing rights not fully vested into the European Union in line with Article I.9.2, and hereby grants the European Union for the requested period a licence to use the pre-existing rights to the extent necessary to use the delivered results.
- II.10.5** The Contractor shall ensure that delivered results are free of rights or claims from third parties including in relation to pre-existing rights, for any use envisaged by the Agency. This does not concern the moral rights of natural persons and rights referred to in Article II.10.4.

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

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

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

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

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

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

II.10.10. By delivering the results the Contractor warrants that the above transfer of rights does not violate any law or infringe any rights of others and that he possesses the relevant rights or powers to execute the transfer. He also warrants that he has paid or has verified payment of all fees including fees to collecting societies, related to the final results.

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

ARTICLE II.11 – FORCE MAJEURE

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

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

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

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

ARTICLE II.12 – LIQUIDATED DAMAGES

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

V is the amount specified in Article I.3.1;

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

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

ARTICLE II.13 – SUSPENSION OF THE CONTRACT

Without prejudice to the Agency's right to terminate the Contract, where the Contract is subject to substantial error, irregularity or fraud the Agency may suspend execution of the Contract or any part thereof. Suspension shall take effect on the day the Contractor receives notification by registered letter with acknowledgment of receipt or equivalent, or at a later date where the notification so provides. The Agency shall as soon as possible give notice to the Contractor to resume the service suspended or inform that it is proceeding with contract termination. The Contractor shall not be entitled to claim compensation on account of suspension of the Contract or of part thereof.

ARTICLE II.14 – TERMINATION BY THE AGENCY

II.14.1. The Agency may terminate the Contract in the following circumstances:

- (a) where the Contractor is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) where the Contractor has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;
- (c) where the Agency has evidence or seriously suspects the Contractor or any related entity or person, of professional misconduct;
- (d) where the Agency has evidence or seriously suspects the Contractor or any related entity or person, of fraud, corruption, involvement in a criminal

organisation or any other illegal activity detrimental to the European Union's financial interests;

- (e) where the Agency has evidence or seriously suspects the Contractor or any related entity or person, of substantial errors, irregularities or fraud in the award procedure or the performance of the Contract;
- (f) where the Contractor is in breach of his obligations under Article II.3;
- (g) where the Contractor was guilty of misrepresentation in supplying the information required by the Agency as a condition of participation in the Contract procedure or failed to supply this information;
- (h) where a change in the Contractor's legal, financial, technical or organisational situation could, in the Agency's opinion, have a significant effect on the performance of the Contract;
- (i) where execution of the tasks has not actually commenced within three months of the date foreseen, and the new date proposed, if any, is considered unacceptable by the Agency;
- (j) where the Contractor is unable, through his own fault, to obtain any permit or licence required for performance of the Contract;
- (k) where the Contractor, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period following receipt of the formal notice, remains in serious breach of his contractual obligations.

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

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

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

II.14.4. Consequences of termination

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

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

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

ARTICLE II.14a – SUBSTANTIAL ERRORS, IRREGULARITIES AND FRAUD ATTRIBUTABLE TO THE CONTRACTOR

Where, after the award of the Contract, the award procedure or the performance of the Contract prove to have been subject to substantial errors, irregularities or fraud, and where

such errors, irregularities or fraud are attributable to the Contractor, the Agency may refuse to make payments, may recover amounts already paid or may terminate all the contracts concluded with the Contractor, in proportion to the seriousness of the errors, irregularities or fraud.

ARTICLE II.15 – INVOICING AND PAYMENTS

II.15.1. Pre-financing guarantee:

Where required by Article I.4.1 or if the pre-financing is over €150 000, the Contractor shall provide a financial guarantee in the form of a bank guarantee or equivalent supplied by a bank or an authorised financial institution (guarantor) equal to the amount indicated in the same article to cover pre-financing under the Contract. Such guarantee may be replaced by a joint and several guarantee by a third party.

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

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

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

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

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

At the end of each of the periods indicated in Annex II the Contractor shall submit to the Agency an invoice accompanied by the documents provided for in the Special Conditions.

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

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

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

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

II.15.3. Payment currency and costs:

Payments are executed in the currency of the contract.

Costs of the transfer are borne in the following way:

- costs of dispatch charged by the bank of the Agency are borne by the Agency,

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

ARTICLE II.16 – GENERAL PROVISIONS CONCERNING PAYMENTS

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

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

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

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

ARTICLE II. 17 – TAXATION

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

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

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

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

ARTICLE II.18 - REIMBURSEMENTS

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

- II.18.2.** Travel and subsistence expenses shall be reimbursed, where appropriate, on the basis of the shortest itinerary.
- II.18.3.** Travel expenses shall be reimbursed as follows:
- a) travel by air shall be reimbursed up to the maximum cost of an economy class ticket at the time of the reservation;
 - b) travel by boat or rail shall be reimbursed up to the maximum cost of a first class ticket;
 - c) travel by car shall be reimbursed at the rate of one first class rail ticket for the same journey and on the same day;
 - d) travel outside European Union territory shall be reimbursed under the general conditions stated above provided the Agency has given its prior written agreement.
- II.18.4.** Subsistence expenses shall be reimbursed on the basis of a daily allowance as follows:
- a) for journeys of less than 200 km (return trip) no subsistence allowance shall be payable;
 - b) daily subsistence allowance shall be payable only on receipt of a supporting document proving that the person concerned was present at the place of destination;
 - c) daily subsistence allowance shall take the form of a flat-rate payment to cover all subsistence expenses, including accommodation, meals, local transport, insurance and sundries;
 - d) daily subsistence allowance, where applicable, shall be reimbursed at the rate specified in Article I.3.
- II.18.5.** The cost of shipment of equipment or unaccompanied luggage shall be reimbursed provided the Agency has given prior written authorisation.
- II.18.6.** Conversion between the euro and another currency shall be made using the daily euro exchange rate published in the C series of the *Official Journal of the European Union* of the day on which the expense was made.

ARTICLE II.19 – RECOVERY

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

ARTICLE II.20 – CHECKS AND AUDITS

- II.20.1.** Pursuant to Article 142 of the Financial Regulation applicable to the general budget of the European Communities, the Court of Auditors shall be empowered to audit the documents held by the natural or legal persons receiving payments from the budget of the European Union from signature of the Contract up to five years after payment of the balance.
- II.20.2.** The Agency or an outside body of its choice shall have the same rights as the Court of Auditors for the purpose of checks and audits limited to compliance with contractual obligations from signature of the Contract up to five years after payment of the balance.
- II.20.3.** In addition, the European Anti Fraud Office may carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 and Parliament and Council Regulation (EC) No 1073/1999 from signature of the Contract up to five years after payment of the balance.