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SSP170006

**m** **FRAMEWORK CONTRAC**T No.xxxxxx

with

Serenum AS

Robust RAFS and On-Board Clock
Ensemble (RRAFS/ONCLE)
Framework



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**FRAMEWORK CONTRACT**

Between:



of the one part.

of the other part.

the following has been agreed:

and:

**Serenum a.s.**

(hereinafter called “the Contractor” or “Serenum”),

whose Registered Office is at:

Beranových 130 Letňany 19900 Prgaue 9 Czech Republic

represented by: Mr Zbyněk Šedivý, its Member of the Board,



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**DEFINITIONS**

(Annex IV to the GCC “DEFINITIONS” has been replaced by the following: provisions below):

-“Acceptance”- means the written certification that Deliverable(s) meet the

requirements of the Contract.

-“Advance Payment”- means a payment foreseen in the Contract intended to provide the Contractor with liquidity to allow the initiation of the contractual works.

* “Affiliates/ Affiliated” shall mean any legal entity which is directly or indirectly controlling, controlled by or under common control of the Contractor provided that (i) such entity shall be considered an Affiliate only for the time during which such control exists and (ii) for the purpose of this definition “control” shall be constituted in case any of the following applies to either the legal entity or the Contractor in relation to each other: (a) holding, whether directly or indirectly, a majority of the voting rights, (b) holding, whether directly or indirectly, more than 50% (fifty per cent) of the share capital, (c) having the right to appoint or remove a majority of the members of the board of directors or other management body, (d) having, by agreement, the right to exercise a majority of the voting rights.
* “Assets”-all tangible and intangible items created, developed or acquired in the frame of the execution of the present the contract including deliverables, excluding consumable items.

-“Background Intellectual Property Rights” or “Background IPR”- all

Intellectual Property Rights owned by the Contractor and its Subcontractor(s), obtained prior to the execution of the present Contract or Intellectual Property Rights owned by the Contractor and its Subcontractor(s), and developed outside the frame of this Contract, which are to be used by the Contractor and its Subcontractor(s) for or during the execution of the present Contract, including rights relating to source codes and documentation.

-“Baseline Schedule” means the set of activities and their sequences that meet the project objectives for timely completion of the project, as agreed by the contractual parties at contract signature and further amended by any subsequent agreed change. It is the reference for schedule reporting and performance measurement.

-“CFI”=’’Customer Furnished Item”- means any item provided by the Agency to the Contractor to enable the performance of the contractual work.

-“Contract or Framework Contract”- means the present Framework Contract including its Appendices and Annexes as well as any subsequent amendment(s) concluded via a CCN, Amendment Proposal or Rider, which constitute integral and substantial part thereof.

-“Contractor”- means the natural or legal person who has entered into this Framework Contract.

“Contractor Parties” - Subcontractors at any tier and Affiliates to the Contractor and companies to which the Contractor is Affiliated.

-“Contractor’s Premises”- means the premises under the Contractor’s control.



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-“Contract Price”- means the price specified in the Contract, including the price of any amendments via a CCN or Rider.

-“Current Working Schedule” means the schedule reporting the actual status of completed and planned activities and of the planned activity sequence. The current working schedule is identical in its structure, level of detail and content, to the baseline schedule.

-“Custodian”- the entity physically holding and using assets, property of the and taking care of them.

-“Day”- means calendar day.

-“Defect”- means any failure to meet the requirements of the Contract and shall be deemed to include any errors or failures in design, material or workmanship.

-“Deliverable(s)”- mean(s) all items, goods, products, Documentation to be delivered by the Contractor to the and/or EU as specified in the Contract.

-“Delivery”- means the physical delivery of the Deliverable at the agreed destination.

-“Disclosure”- means the distribution or supply of information or Documentation to a third party without prior authorisation from the proprietor of the information/Documentation.

-“Documentation” means all media on which information or data of any description is recorded including all paper documents, and electronic communications whether in electronic or hard copy form. Additionally, “Documentation “shall be interpreted to include data files, CAD files, EXCEL® files and similar electronic files, which shall not be considered as “Source Code” as per the definition provided hereunder.

-“Force majeure” is defined as any unforeseeable exceptional situation or event beyond the Parties’ control, which prevents either of them from fulfilling any of their obligations under the present contract, which was not attributable to error or negligence on their part or on the part of any third parties and which proves to be inevitable in spite of exercising all due diligence. Any default of a service, defect in equipment or material or delays in making them available, unless they stem directly from a relevant case of force majeure, as well as labour disputes, strikes or financial difficulties cannot be invoked as force majeure.

-“Foreground Intellectual Property Rights” or “Foreground IPR” all

Intellectual Property Rights, stemming from the execution of the present contract by the Contractor and its Subcontractor(s), including but not limited to all rights relating to work results, written analysis, documentation, reports, organisation and project plans, drafts, drawings, schedules, calculations, as well as any software, source code and object code, data bases and data base works, and interfaces. The definition comprises all phases and stages of development and includes also rights relating to modifications of and add-ons to the subject matter of Foreground IPR, as well as modifications of andadd-ons to the subject matter of Background IPR made by the Contractor and its Subcontractor(s) in the frame of this Contract.

-“GALILEO Programme” means the programme including the definition phase, the development and validation phase, the deployment phase, the exploitation phase and the full operation of the Galileo Global Navigation System.

-“GALILEO Global Navigation System”: is defined as the system of satellite and ground segments, comprising of hardware and software, designed and operated to provide the Open Sendee, the Public Regulated Service, the Safety of Life Service, the Commercial Service and the Search and Rescue service as defined in the Galileo Mission Requirement Document (MRD).

-“GCC” or “General Conditions”- means the General Clauses and Conditions for

-“The Horizon 2020 Programme-Framework Programme for Research and Innovation 2014-2020” (“H2020 Programme” or “H202o”)-programme established with the Regulation (EU) No 1291/2013 of the European Parliament and of the Council of the European Union of 11 December 2013 and repealing Decision No 1982/2006 EC, published in the Official Journal of the European Union (L347/104 20 December 2013) (hereafter referred to as the “Horizon 2020” Regulation),fully applicable as from 1 January 2016.



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-“Intangible asset”- an asset lacking a physical substance (e.g. goodwill, patent, software).

-“Intellectual Property Rights” or “IPR” shall have the broadest meaning foreseen under law and, in particular, in accordance with Article 2 of the 1967 WIPO Convention, include the rights related to: literary, artistic and scientific works,

* performances of performing artists, phonograms, and broadcasts,
* inventions in all fields of human endeavour,
* scientific discoveries,
* industrial designs,
* trademarks, sendee marks, and commercial names and designations,
* protection against unfair competition,

and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields”. For the sake of clarity, the definition of IPR includes but is not limited to rights related to all work results, written analysis, documentation, reports, organisation and project plans, drafts, drawings, schedules, calculations, as well as any software, in both source code and object code, data bases and data base works and interfaces.

* “Month”- means a time period to be calculated as per sub-clause 14.4.

-“Object Code” means algorithms expressed in machine readable form, usually automatically compiled from Source Code, and used to command a computer.



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-“Open Source Software” means Source Code and Object Code owned by a third party made available worldwide under the terms and conditions of an open source software licence in accordance with the principles of the open source software initiative [<http://www.opensource.org/>].

- "Operator" means a company or public body, including contractors, subcontractors and consultants entrusted by the European Commission or by the European GNSS Agency with the operation and maintenance of the Galileo Global Navigation System and/or the provisions of Galileo services.

-“Original Baseline Schedule” means the Baseline Schedule agreed at Contract signature.

-“Parties”- means the parties signing the Contract.

-“Progress Payment”- means a payment that is made against successful achievement, certified in writing by the Agency’s representatives, of a milestone defined in the milestone payment plan.

-“Related Entity(ies)” of a Party means a Party’s contractors or their Subcontractors and, in the case of the Commission, also any EU Institutions, specialised or

other bodies entrusted with specific tasks within the legal framework of the EU.

-“Source Code” means the code for a computer programme expressed in human intelligible form which can be compiled automatically into Object Code by machine or software; it includes any related documentation.

-“Subcontractor”- means an economic operator who is under contract to a Contractor ofthe^Bd to provide supplies or services in support of a contract placed by the -“Tangible asset”- an asset having a physical substance.

-“Third Party”- means a natural or legal person not having signed the Contract.

* “Third Party IPR“ or “IPR owned by a Third Party” are Intellectual Property Rights /IPR, as defined above, which are neither owned by the Agency nor the European Union nor the Contractor or its Subcontractor(s), which are to be used by the Contractor and/or its Subcontractor(s) for/and or during the execution of the present Contract.

-“Working Day”- means a Day which is not a Saturday, Sunday or an official, public holiday.

* “Work Order” - means any specific contract including its Appendices and Annexes, if any, placed under the Framework Contract (also referred to as Work Order Contract in the present document).

-“In Writing”- means by signed letter or fax.

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ACRONYMS

ATP

APR

BDR

BIPR

CFI

CCN

CCR

CO

CISL

CPA

DDL

DIL

DR

EC

ECP

ECSS

EGEP

EM

EQM

EU

ESA

FAR

FFP

FM

FOC

FP

FR

FWC

GCC

G2G

GNSS

GSA

H2020

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|  |  |
| --- | --- |
| ITU | International Telecommunication Union |
| KP | Key Point |
| KO | Kick-Off |
| MAC | Milestone Achievement Confirmation |
| MPP | Milestone Payments Plan |
| MS | Milestone |
| MTR | Midterm Review |
| N/A | Not Applicable |
| OLAF | European Anti-Fraud Office |
| PDR | Preliminary Design Review |
| PRS | Public Regulated Service |
| PSI | Programme Security Instruction |
| R&D | Research and Development |
| SOW | Statement of Work |
| SAL | Security Aspects Letter |
| SAT-KP | Satellite Key Point |
| SCoT | Special Conditions of Tender |
| STO | Security Trade-Off |
| SoC | Statement of Compliance |
| SW | Software |
| TBC | To be Conformed |
| TBD | To be Defined |
| TO | Technical Officer |
| TN | Technical Note |
| TR | Technology Report |
| TRL | Technology Readiness Level |
| TRR | Test Readiness Review |
| VAT | Value Added Tax |
| WBS | Work Breakdown Structure |
| WO | Work Order |
| WP | Work Package |

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ARTICLE 1. SUBJECT OF THE CONTRACT - APPLICABLE DOCUMENTS

1. Subject of the Framework Contract

The Contractor undertakes to perform activities in the field of Robust RAFS and On-Board Clock Ensemble (RRAFS/ONCLE), hereafter referred to as “work” as defined in the Statement of Work , attached hereto as Appendix 1 and to deliver the associated hardware, software and documentation.

The Contractor also undertakes to make an oral presentation of the results.

The work shall be implemented and committed through a system of Work Orders to be placed in accordance with the terms of this Contract.

Each Work Order shall detail, at the appropriate hierarchical level, the specific work to be performed as defined in an Agency’s dedicated Work Order Statement of Work (WO SoW) and its appendices.

The Contractor is aware and understands that no obligation shall arise on the ^enter into any Work Order by simple virtue of signature of this Contract and that the|^^H may decide not to implement the Contract and pursue its scope under another procurement and contractual set-up, without the Contractor having right to any compensation.

The award of Work Orders under this Contract shall be subject to a Restricted Competitive Tender Procedure, specified in Article 11.

1. Applicable Documents/Annexes

The work shall be performed in accordance with the following applicable documents, listed in order of precedence in case of conflict and Appendices/Annexes as integral part of the contract;

1. The Articles of the present Contract;
2. The General Clauses and Conditions for HI Contracts (herein referred to as “| GCC”), reference ^H/REG/002, rev.2 not attached hereto but known to both Parties and available on http://^^^^^^| - “reference documentation” - “administrative documents”, as amended by the present Framework Contract;
3. Any Work Order and its Appendixes, if any, once signed;
4. Annex 1, hereto: the Framework Statement of Work (FW SoW) ref. |

|, issue 1 revision 2 dated 14 April 2016, on the same level;

1. Annex 2, hereto: Draft Work Order;
2. Annex 3, hereto: H2020 Management Requirements reference ^HD/Nav-P-

|, issue/ revision 1.0, dated 18 March 2016;

1. Minutes of the Negotiation Meeting(s) ref. ONCLE-SNM-MOM-0001 , held by a teleconference on 05 October 2016, not attached hereto but known to both Parties;
2. Annex 4, hereto: Contract Change Notice Template;
3. Annex 5, hereto: Template for Escrow Agreement;
4. The Contractor’s Proposal reference S/16/0154/O sumbitted under the cover letter dated 30 May 2016, as amended or clarified by the Contractor’s e-mails dated 04

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October 2016 (08:51 CEST) and 30 Janurary 2017 (09:48 CET), all not attached hereto, but known to both Parties.

All documents listed above shall apply in their latest agreed issue.

Reference herein to a document shall be deemed to constitute a reference to such document including its specific applicable documents and its Appendices/Annexes.

The contractual baseline is the currently agreed issue of this Contract and its Appendices/Annexes. The present issue and revision(s) of the contractual baseline shall be kept up to date as required by means of the agreed change procedures defined in Article 5, Clause 13 hereinafter.

The Contractor shall not deviate from these requirements until formally authorized to do so in writing by the

1. Additional Contractor’s obligations:
2. GENERAL
3. Any insurance which may be taken by the Contractor to cover his liabilities hereunder

shall include a provision of non-recourse against the or its agents, and the

European Union and its Agencies, with the exception of negligence or willful act. The Contractor shall indemnify the and the European Union and hold the |

and the European Union harmless against all consequences derived from his failure to include such a provision.

1. The Contractor undertakes to treat any information supplied directly or indirectly by

the in the strictest confidence as provided for under Article 7.5 here-under.

1. PARTICULAR PROVISIONS

In the discharge of his obligations under this Contract, without prejudice to the relevant clauses of the GCC, the Contractor shall additionally:

1. afford and ensure to the Agency and to the EU representatives through the full

visibility and timely information with regard to the performance of the Contractor tasks, the management of its Subcontractors and the performance of their tasks; this shall include access to all documentation associated with the execution of the project

1. demonstrate to the that the requirements are met and the manner in

which they are met. The Contractor shall not conclude waivers or deviations without first obtaining the approval of the in writing in a contract change as per Article 6,

Clause 13 (Changes), signed by duly authorised representative of the Parties

1. hold meetings and reviews as specified in the Applicable Documents/Annexes and

accept that the may participate in all formal progress meetings and reviews, at

all levels of contracting, and shall be timely invited to any formal meetings and reviews; representative(s) of the European Commission may also participate in all Reviews.

1.4. COORDINATION ACTIVITIES

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| either directly or through the European Union will be responsible for the co­ordination

The

of any and all related activities with the following parties:

* EU representatives or any institutional entity involved at programmatic level in the H2020 Programme;
* Horizon 2020 Programme Committees and sub-groups, experts groups or task forces;
* User groups;
* Entities referred to herein and any other party connected with the activities not specified herein;

In the discharge of its obligations under this Contract and any resulting Work Order(s), the Contractor shall not make, unless expressly authorised to do so by the Representatives of the as identified under in Article 6, Clause 5, direct contact with the entities

here above.

The Contractor hereby acknowledges and agrees that in the setting of the above coordination activities, the Agency may transmit any information provided to the | in the setting of this Contract also to the European Union and to any of its Related Entities.

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1. The Contract shall run, unless otherwise agreed by the parties or terminated according to the provisions contained from Clause 30 to Clause 33 “Termination” until:
2. an initial period of 36 (thirty six) months since the day of its signature, or
3. finalisation of all the activities identified in the agreed Framework Contract and its Work Orders, successful delivery of all Deliverable Items and proper close-out of any outstanding administrative, financial and contractual issue (s) on any level of contracting (with the exception of any obligation surviving contract close-out as identified in the Contract),

whichever comes first, it being understood that after 36 (thirty six) months the proper close-out of any outstanding administrative, financial and contractual issue (s) on any level of contracting would still be pending, the Contract will be automatically extended to cover such close-out activities, maximum until 31st December 2023 at the latest.

1. Should the wish to acquire further support/work, after the initial 36 (thirty six)

months, the duration of this Contract shall be extended until 31st December 2023 at the latest.

1. Should the duration of this Contract not be extended after the initial 36 (thirty she) months of support, the ^^^Jshall not be obliged to pay any of the compensations foreseen in Clause 31 of the^HGCC.
2. For the sake of clarity the obligations of confidentiality and intellectual property right under Article 7 - Intellectual Property Rights shall survive termination or expiration of this Contract.

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1. General
2. The Contractor shall, during the performance of the Contract, deliver all Deliverable

Items and Documents specified in the Work Orders. When activities require technical inputs from any third party, in particular from other H2020 Contractors, the Contractor shall coordinate via the Technical Officer specified in Article 6,

Clause 5, Sub-Clause 5.1 a) of this Contract.

1. The Contractor undertakes to keep Deliverable Items, including items under

production, at all times in a separate inventory as per Annex 3 to this Contract.

The Contractor will be requested to keep an up-to-date list of the items during their development and submit a relevant report to the on a yearly basis, as further

described in Annex 3 to this Contract.

1. Documents
2. Documentation and reports shall be delivered in the required number of paper copies

and in an electronic file specified in the Work Order and sent to the Technical

Officer mentioned in Article 6, Clause 5, Sub-Clause 5.1 a) of the Contract.

1. The draft versions of the final documents specified in the Work Orders shall be

submitted for approval, in electronic format, to the Technical Officer specified

in Article 6, Clause 5, Sub-Clause 5.1 a) of this Contract, not later than the date specified in the relevant Work Order.

1. The finalised versions thereof shall be issued as per Work Plan to be defined at Work Order level, as follows:

in 1 (one) paper copy to the

Clause 5, Sub-Clause 5.1 a) of this Contract; and

Technical Officer specified in Article 6,

1 (one) electronic copy on the GNSS Evolution dedicated FTP as described in Annex 3.

Any separate report marked as “Proprietary Information” in accordance with the provisions of Article 7, shall be sent to the Contracts Officer at the address

3-2.4

specified in Article 6, Clause 5, Sub-Clause 5.1 b) of this Contract.

3.2.5 At the same time as delivery of the final documents, the Technical Data Package specified in the Work Orders, containing all approved Technical Notes, shall be delivered:

in two (2) paper copies (one (1) unbound and one (1) bound) and one (1) copy on CD-ROM to the Technical Officer specified in Article 6, Clause 5, Sub-

Clause 5.1 a) of this Contract; and

in 1 (one) electronic copy on the GNSS Evolution dedicated FTP as described in Annex 3.

3.2.6 The Technical Synthesis Report (TSR), specified in the Work Orders, shall be delivered

in three (3) paper copies, of which one (1) shall be sent to the Technical Officer, one (1) to the Contracts Officer and one (1) marked for the attention of the Head of the Technology Transfer Programme at the address specified in Article 6,

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Clause 5, Sub-Clause 5.1 a) hereafter, not later than the date specified in the resulting Work Order; and

in 1 (one) electronic copy on the GNSS Evolution dedicated FTP as described in Annex 3.

* 1. Software

The Software source and object code relevant to the software, mathematical models, data files, design files and computer programmes, specified in the Work Orders shall be delivered to the Technical Officer specified in Article 6, Clause 5, Sub-

Clause 5.1 a) of this Contract, not later than the delivery dates specified in such Work Orders. The delivered Software shall also include any and all Third Party IPR and all BIPR, in compliance with the provisions contained in Article 7 of this Contract.

* 1. Hardware

The hardware specified in the Work Orders shall be delivered to the Technical

Officer specified in Article 6, Clause 5, Sub-Clause 5.1 a) of this Contract, not later than the delivery dates specified in such Work Orders.

* 1. Contract Closure Documentation

The Contract Closure Documentation shall be delivered in one (1) set of documentation each, to the authorised representatives specified in Article 6, Clause 5, Sub-

Clause 5.1 a) of the Contract, not later than the time of submitting the invoice(s) for the Final Settlement (see also Article 4.3.13).

1. Price

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1. The price under the Contract is indicated in each Work Order and shall be a Firm Fixed Price (FFP) as defined in Section 2.1 of Annex II to the GCC.
2. Not Allowable Cost Items
3. The price of each Work Order shall not include any taxes and duties applicable in any EU Member States and the H2020 associated countries. Any taxes or custom charges that cannot be reimbursed from the Contractor’s Tax authority shall be included in the Firm-Fixed Price of each resulting Work Order.
4. The price of each Work Order is deemed to include all applicable fees for licences to be purchased and delivered in the frame of a resulting Work Order(s) and, indicating the

1/EU as the end user, without limiting in any case the HH^EU rights to grant sub-licences and make use of the third party licence as advices in Article 7 hereunder. For the sake of clarity, the price of each Work Order is further deemed to include any and all licence fees for third party products required for the completion of the resulting Work Order(s).

1. The price is Delivered Duty Paid (DDP) for all deliverables, exclusive of import duties and VAT in accordance with the INCOTERMS 2010, to the addressee(s) specified in Article 6, Clause 5, Sub-Clause 5.1 a) of the Contract. Reference to INCOTERMS in this provision is exclusively for the purpose of price definition.
2. Payment

4.3.1 The Milestone Payment Plan and other financial conditions shall be specified in each Work Order to the present Contract.

1. Implementation of payment conditions:

The Contractor shall ensure that all APR, invoices and confirmations and MAC(s) are submitted for payment exclusively through them^^l^^Hsystem. The Contractor undertakes to adhere strictly to the instructions containedinHH (including those for billing taxes and duties, where applicable) when submitting APR, invoices and confirmations through the system.

In the case where Subcontractors are foreseen in the Work Order, the shall

credit the account of the Contractor to the Contractor’s benefit and to the benefit of the Contractor’s Subcontractor(s).

The Contractor shall be responsible for approving or rejecting, within ten (10) calendar days of receipt, the relevant Subcontractor!» (s’) invoices and related supporting documents (e.g. MACs, Cost Reports).

The Contractor shall also be responsible for paying the accounts of its Subcontractor» for this Contract in accordance with the applicable law and normal commercial practices.

Subcontractor», caused by the Contractor’s failure to pay the Subcontractor». The

The Contractor shall indemnify the

against any claims arising from such

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Contractor shall supply to the Subcontractor(s).

upon request, evidence of payments made to its

The reserves the right to visit the Contractor’s and/or Subcontractor(’s)(s’)

premises and ascertain the progress of the work being performed under the Contract, prior to making the progress payment concerned.

The Contractor shall, upon request at any time by the ^l^^submit the payment conditions / provisions of individual subcontracts to the|^B for approval (if requested before the subcontract is placed) or verification.

1. If applicable, invoices shall separately show all due taxes or duties.
2. In the event that the achievement of a Milestone is delayed but the milestone is partially

met at the Milestone planning date foreseen, the may as an exception, effect a

payment against an approved MAC of the partially achieved milestone, not exceeding the value of the work performed at the date of payment.

1. a) The Contractor shall ensure that all invoices and MACs are submitted for payment exclusively through the system and that all supporting

documentation demonstrating Milestone achievement is attached in If the

Contractor has no access to the system at the time of signature of

this Contract or of any Work Orders at the latest, an immediate request for an esa- p user account shall be made by the Contractor to the Helpdesk (mailto: idhelp@^^^®, specifying a contact name, the company name, and the | Contract number.

1. (i) Should the Contractor find the technically inoperative

at the moment of submission of the invoices, the Contractor may submit invoices in paper format in five (5) copies to the Financial Operations Department of the responsible establishment^HH^H Finance, Central Invoice Registration Office, together with justifying documentation as required by this Contract.

(ii) In cases where the system is inoperative at the moment of

submission of the MAC, the Contractor may submit the MAC in paper format in three (3) copies to the Technical Officer mentioned in Article 6,

Clause 5, Sub-Clause 5.1 a) of this Contract. A template MAC form can be obtained upon request to idhelp@^^^|.

1. The Contractor undertakes to submit, complete invoices and MACs, and to strictly adhere to the instructions (including those for billing taxes and duties, where applicable) contained in
2. In the case of invoices submitted by the Contractor which are free of VAT, reference shall be made to the serial number indicated on the VAT Exemption Form which the Agency provided to the Contractor when forwarding two (2) originals of this Contract for signature. On invoices submitted via esa-p, the number shall be put in the respective field ‘VAT Exemption Number’.
3. Payments shall be made within thirty (30) calendar days of receipt at |

Finance, Central Invoice Registration Office of the documents listed and fulfilment of the requirements as specified in Articles 4.3.11-4.3.14 below. Only u£on\_fulfilment of the latter requirements shall the invoice be regarded as due by the

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1. Payments shall be made by the in EURO to the account specified by the

Contractor. Such account information shall clearly indicate the IBAN (International Bank Account Number) and BIC/SWIFT (Bank Identification Code). The Parties agree that payments shall be considered as effected by the HIH on time if the | orders of payment reach the Agency’s bank within the payment period stipulated in Article 4.3.7 above.

1. Any special charges related to the execution of payments will be borne by the Contractor.

4-3-9

Any questions concerning the operation of shall be addressed to the

Helpdesk (mailto: idhefp@|^^H).

Any questions concerning the latest status of due invoices can be addressed to the | Payment Officer (mailto:

1. With a view to optimise time to payment and to facilitate, when needed, the resolution of issues arising in the payment process of Subcontractors the has established

a centralised email address.

Should any Subcontractor encounter serious difficulties in the process leading to:

1. payment of invoices due which is to be paid by its direct customer (not through

|), i.e. related to a milestone already achieved,

1. contractual coverage of activities already kicked-off, they may contact the BU at: |

This communication channel does not replace the normal communication lines within the consortium, and the overall responsibility of the Prime Contractor to ensure proper and timely contractualisation and payments throughout their consortium remains. Any entity contacting the through the above email shall document the steps already

taken towards its direct customer in order to resolve the issue and shall document that the Prime has been informed of the issue.

In doing so, such Subcontractor shall provide the Standard Contact Form available at:|

properly filled in or provide the same information in the email.

The Prime Contractor shall flow down the above information to all Subcontractors within its consortium.

In case of absence of justification for late payments to the Subcontractors, the reserves any right commensurate to the situation against the Contractor.

1. Advance Payment:

The advance payment constitutes a debt of the Contractor to the until it has

been set-off against subsequent milestones. The advance payment shall nominally be set-off against the 1st progress payment and the remaining amount, if any, against the next following milestone(s).

Advance Payment Request has to be submitted after signature of the Work Order(s)by both Parties.

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For Phasing: Advance Payment Request: to be submitted after receipt of the written Authorisation to Proceed with a Phase.

1. Progress Payment

Progress Payments shall be evidenced by the following supporting documents:

Milestone Achievement Confirmation (MAC) with supporting documentation as necessary, submitted by the Contractor;

Invoice(s);

Actual achievement of the milestones as defined in the Payment Plan attached to the Work Orders.

1. Final Settlement

Final Payment shall be evidenced by the following supporting documents:

MAC, submitted by the Contractor;

Invoice(s);

Receipt and/or acceptance, by the Agency, of all deliverable items, of the work to be rendered and other obligations to be fulfilled, in accordance with the terms of this Contract and related Work Order;

The Framework Contract Closure Documentation using the template provided in Annex 3.

For Phasing:

In case of non-authorisation by Hi at the end of a Phase to proceed with the subsequent Phase, the last payment milestone of the last authorised Phase shall be deemed to constitute the Final Settlement of the Contract and all conditions associated to the Final Settlement shall be fulfilled for payment of such milestone.

1. The Contractor, furthermore, undertakes to provide further supporting documentation if required e.g. the electronic invoices and MACs in support of the claims.
2. Payment of agreed Change Notices: will be made in accordance with the payment plans established and approved for each Change Notice. Such payment plans shall be submitted with the Change Notice and shall be synchronised, as far as possible, with the payment plans defined in each Work Order and avoiding modifying payments on milestones already accrued (i.e. previously achieved milestones).
3. Penalty :

Penalties, if any, are identified in the relevant Work Order. In accordance with the

provisions of Article 6, Clause 17 below, should the |

I decide to apply a penalty,

the Contractor shall submit an invoice in

of the amount corresponding to the

milestone concerned reduced by the Penalty Amount in accordance with the calculation conditions of H GCC. The Contractor shall also enter a Confirmation in I documenting the achievement of the milestone and the Penalised Amount incurred.

1. Incentive:

Incentives, if any, are specified in the relevant Work Order. Upon achievement by the Contractor of the incentive milestone delivery date(s) specified in Article 6, Clause 17

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below, the will notify the Contractor and the latter shall submit an invoice in

| with a Confirmation documenting the achievement of the Incentive Milestone and the corresponding Incentive Amount.

In cases where the milestone is not achieved or partially achieved the may, at

its discretion, withhold payments in part or in full until such time that the milestone has been achieved. Such withholding of payment shall not give rise to any claim from the Contractor and/or Subcontractor concerning financial losses due to such withholding.

In the event that the achievement of a milestone is delayed but the milestone is partially met, the may as an exception, effect a payment against an approved

confirmation of the partially achieved milestone, not exceeding the value of the work performed at the date of payment.

1. Recovery

If total payments made exceed the amount actually due under the Contract or if recovery is justified in accordance with the terms of the Contract, the Contractor shall reimburse the appropriate amount in EUR on receipt of the debit note, in the manner and within the time limits set by |

| 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 | that is certain, of a fixed amount and due.

may additionally take any necessary legal actions for that purpose.

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ARTICLE 5.**MANAGEMENT AND CONTROL OF INVENTORY ITEMS/FIXED ASSETS UNDER THE CONTRACT**

The Management and Control of Inventory Items/Fixed Assets under the present Contract and resulting Work Orders shall be implemented in accordance to the provisions specified in Annex 3 hereto.

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ARTICLE 6. **COMPLEMENTS AND AMENDMENTS TO THE GCC**

Part I of the General Clauses and Conditions for Contracts, ref. rev. 2 (GCC)

apply to this Contract with the following complements and amendments. For the avoidance of doubt, the specific conditions in this Contract shall prevail over the GCC:

PARTI:

CONDITIONS APPLICABLE TO ¡H CONTRACTS

CLAUSE 2: APPROVAL AND ENTRY INTO FORCE

Forthepurpose of this Contract the authorised representative of the Director General is | Director of the Galileo Programme and Navigation-related activities.

CLAUSE 5: THE PARTIES’ REPRESENTATIVES

Sub-Clause 5.1: Thr JH I 1 1111 1 ntativcs The representatives are:

1. BIHH f°r technical matters or a person duly authorised by him (“Technical Officer”).

All correspondence for technical matters will be addressed as follows:



1. for contractual and administrative matters or a person duly

authorised by her (“Contracts Officer”).

All correspondence for contractual and administrative matters (with exception of invoices as mentioned in Article 4.3) will be addressed as follows:



Sub-Clause 5.2: The Contractor’s Representatives

The Contractor’s representatives are:

technical matters or a person duly authorised by him (“Technical Officer”). All correspondence for technical matters will be addressed as follows:

|  |  |  |
| --- | --- | --- |
|  | To: | With copy to: |
| Name |  |  |
| Telephone No. | ■ |  |
| Fax No. |  |  |
| e-mail address | ■■■ |  |
| Mail Address | Serenum a.s. Beranovych 130 Letnany 19900 Prgaue 9 Czech Republic |  |

b)

for contractual and administrative matters or a person duly authorised by him (“Contracts Officer”).

All correspondence for contractual and administrative matters will be addressed as follows:

|  |  |  |
| --- | --- | --- |
|  | To: | With copy to: |
| Name |  |  |
| Telephone No. |  |  |
| Fax No. |  |  |
| e-mail address |  |  |
| Mail Address | Serenum a.s. Beranovych 130 Letnany 19900 Prgaue 9 Czech Republic |  |

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CLAUSE 6: PUBLICITY RELATING TO CONTRACTS

The provisions of Clause 6 are replaced by the following:

6.1. Any communication or publication made by the Contractor (or any of its Contractor Parties and/or consultants with whom the Contractor enters into contracts) related to the implementation of the tasks entrusted under this Contract, including at conferences and seminars and in any information or promotional materials (such as brochures, leaflets, posters, presentations, etc.), shall be marked as follows “Funded by the EU. has received funds in its quality as funding body under the European Union’s Horizon 2020 research and innovation programme” and accompanied by the EU emblem (the flag) as indicated in Chapter III of the guidelines on visual identity provided under the link below:

[http://ec.europa.eu/dgs/communication/services/visual identitv/pdf/use-emblem en.p](http://ec.europa.eu/dgs/communication/services/visual_identitv/pdf/use-emblem_en.p)df

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In addition, all publications related to the work carried out under the this Contract, in whatever form and whatever medium, including internet, shall carry a disclaimer with the following wording or wording to the same effect “The view expressed herein can in no way be taken to reflect the official opinion of th^uropeanUnionand/or the Neither

the European Union nor the shall be responsible for any use that may

be made of the information it contains”.

The obligation to display the EU emblem does not confer to the Contractor (or any of its Contractor’s Parties and/or consultants with whom the Contractor enters into contracts) a right of exclusive use for the implementation of the tasks entrusted under this Contract. The Contractor (or any of its Contractor’s Parties and/or consultants with whom the Contractor enters into contracts) shall not appropriate the EU emblem or any similar trademark or logo, either by registration or by any other means.

1. Without prejudice to the provisions of Article 7 on IPR and protection of Proprietary Information, any distribution or publication of information and/or of any publicity material including but not limited to press releases, brochures, videos, official notices, reports and publications, relating to the Contract by the Contractor, in whatever form and whatever medium including the world wide web and/or Facebook/Twitter or any similar service, shall require prior written authorisation from the in relation to the content (which authorisation shall

not be unreasonably withheld).

CLAUSE 8: GENERAL CONDITIONS OF EXECUTION

The provisions contained in clause 8.3 are complemented as follows:

Due to the nature of this Contract and any resulting Work Order, based on a delegation agreement concluded between the European Union (EU) and the Bi^l > fully funded by the EU, the Contractor agrees to the following:

The right of checks and audits provided for under the ^B GCC shall be amplified as follows:

The right of on-the-spot checks and audits provided for under the ^B GCC, for the B shall be extended to the competent bodies of the European Union, the European Commission, the European Court of Auditors and inter alia the European anti-fraud Office (OLAF) or any representative authorized by them. In particular, the Commission, the European Court of Auditors and OLAF shall be authorized to carry out on-the-spot checks and inspections in accordance with the provisions of Council Regulation (EC, EURATOM) No. 2185/96 and Parliament and Council Regulation (EC) No 1073/1999, on conditions of strict confidentiality with regard to third parties, without prejudice to public law obligations to which they are subject.

This right includes access to all relevant information in accordance with the provisions of Council Regulation (EC, EURATOM) No. 2185/96 and Parliament and Council Regulation (EC) No 1073/1999, on conditions of strict confidentiality with regard to third parties, without prejudice to public law obligations to which they are subject.

Such right to carry out checks and audits on the implementation of the entrusted tasks may inter alia regard their effectiveness, efficiency and economy, including their technical and financial management, as well as the reliability of reporting, the safeguarding of information, the prevention, detection and correction of fraud and irregularities, and the legality and regularity of the underlying transactions.



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OLAF may carry out investigations, including on-the-spot checks and inspections, in accordance with the procedures laid down by Union law for the protection of the financial interests of the Union against fraud and other irregularities.

These obligations oftheContractor remain valid until at least 31 December 2023 or until such date that the may request an extension due to on-going audits, appeals,

litigation or pursuit of claims concerning activities under this Contract and any resulting Work Order and until their closure.

It is recalled that the Contractor will be excluded from participation in programmes funded by the EU and from any other procurement or grant procedure financed by the EU, if the Contractor is found guilty of fraud, corruption, involvement in a criminal organization, money laundering or any other illegal activity detrimental to the financial interests of the EU.

In the event the Contractor has made false declarations to the detriment of the financial interest of the EU, ■ may, with immediate effect, request reimbursements of payments made on the basis of these false declarations and terminate the Contract with immediate effect at the conditions foreseen under Clause 32 of the GCC. The Contractor agrees and accepts that the EU may, in this event or in any other event of irregularity or fraud, take any further necessary action (including prosecution) to recover such unduly paid funds.

Where the award of the Contract 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, may refuse to make payments, may recover amounts already paid, may terminate all the contracts concluded with the Contractor or may impose the payment of an administrative fine, in proportion to the seriousness of the errors.

CLAUSE 9: KEY PERSONNEL

The Contractor’s key personnel is listed in the relevant Work Order(s).

The provision contained in Clause 9.3 is substituted by the following:

The relevant Work Order(s) shall ensure that the nomination of key personnel for the execution of the Contract and its relevant Work Order(s) does not lead to any restriction to the rights of the ■■ and /or the European Union and/or their respective Member States and/or States participating in the H2020 programme, due to export control legislation.

CLAUSE 10: SUBCONTRACTS

The following clause is included for completeness reasons. They might not be relevant/applicable at the beginning of this Contract, if no Subcontractors are identified at Framework Level, but shall be applicable in case of future extensions, changes and/or relevant Work Orders:

Part of the work is to be subcontracted to the Subcontractors, if any, listed in the Contractor’s Proposal and/or Work Order Proposal.

Subclause 10.1 is complemented as follows:

The prior written consent of the shall be required for any contract entered into by the

Contractor with any economic operator(s) proposed to replace any of those listed in the relevant Work Order for any of the activities to be performed under this Contract.



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shall be notified regarding all changes by the Subcontractors even if the Contractor considenahat such changes have no impact on this Contract, any resulting Work Order and/or the requirements.

Sub-clause 10.2 is not applicable.

Sub-clause 10.3 is applicable.

Sub-clause 10.4 is complemented as follows:

In cases where the provisionsare not flown down by the Contractor, the latter shall indemnify and hold harmless the and the EU, the EU employees, the EU Related Entities or

employees of the EU Related Entities from any claims, damages, losses and expenses (including legal fees and expenses) raised by the Contractor’s employees or employees of its Related Entities involvedin the execution of the Contract, for any bodily injury, sickness or disease against the and the EU, the EU employees, the EU Related Entities or employees of the

EU Related Entities except in case of gross negligence or wilful misconduct of the or of

such entities (EU etc.).

A new Subclause 10.5 is implemented as follows:

10.5.1. In accordance with the H2020 Delegation Agreement and for reasons related to the protection of the essential interest of the European Union and/or its Member States, the participation to Subcontrator is limited to economic operators established in European Union Member States (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom), Switzerland and Norway.

1. Economic operators referred to above are considered established in an EU Member State, Norway or Switzerland, when all of the following conditions are met:
2. they are formed in accordance with the law of an EU Member State, Norway or Switzerland, and have their central administration/registered office/principal place of business in an EU Member State, Norway or Switzerland, (if legal persons) or they are nationals of one of the EU Member States and
3. their decision making centres (defined by reference to the criteria set out in Article 22(1) of Directive 2013/34/EU, also including the ultimate controlling person) comply with the conditions under a) above; and
4. their facilities (for goods manufacturing and/or supplying of services) which a Contractor would use for the execution of the contract are located in an EU member State, Norway or Switzerland.
5. In exceptional circumstances related to the nature, cost or availability of the specific goods and/or services, may, on the basis of motivated and justified waiver requests submitted in writing by economic operators, authorise participation of Subcontractors which fail to fulfill one or more of the conditions under 10.5.2; provided that they demonstrate the implementation of sufficient measures in order to guarantee the protection of the essential interest of the security of the European Union, its Member States and its public security.

CLAUSE 11: CUSTOMER FURNISHED ITEMS (CFI)



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The stipulation of CFI, if any, will be agreed in each specific Work Order.

CLAUSE 12: ITEMS MADE AVAILABLE BY

The stipulation of items made available by the if any are requested by the Framework

Contractor, will be agreed in each specific Work Order.

CLAUSE 13: CHANGES

Clause 13 is complemented as follows:

All changes to the present Contract shall be formalised by means of a Contract Change Notice template (Annex 4). All changes to any resulting Work Order shall be formalised by means of a Work Order Amendment Proposal, the template of which is provided as Appendix to each Work Order.

Any amendment(s) to this Contract and/or any resulting Work Order shall fulfil the following conditions:

1. it shall not extend the scope of the contract considerably to encompass supplies, services or works not initially covered;
2. it shall not disturb the economic balance of the contract, in favour of the contractor in a manner which was not provided for in the terms of the contract;
3. it shall not introduce conditions which, if they had appeared initially in the contract documents, would have allowed for the admission of tenderers other than those initially admitted or would have allowed for the acceptance of a tender other than the one initially accepted.

The Contractor shall formally justify on the Contract Change Notice text whether any of the above conditions are fulfilled and confirm if the change is or not material.

CLAUSE 15: HANDLING, PACKING AND TRANSPORT, TRANSFER OF OWNERSHIP AND RISK

Clause 15.1 is complemented as follows (Responsibility for Handling, Packing and Transport, Storage, Inventory Obligations):

The Contractor shall ensure the appropriate packing to protect the equipment from the environment conditions experienced during future transit (or storage). The Contractor shall comply with such shipping instructions as the may give him.

The following provision is added as Sub-Clause 15.3.6 of the GCC:

Should in the execution of this Contract a need arise to provide HB/EU/Related Entities with information which is subject to export control laws and regulations, the Contractor shall secure that such information is only passed on to the EU/ Related Entities in accordance with

the provisions of such export control laws and regulations.

The Contractor undertakes to inform H immediately about any issues related to export control authorisations/licences, which may have an adverse impact on his capacity to perform his obligation under this contract.

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The Contractor shall be responsible for the maintenance, operation, handling, storage and transport of all hardware, software and documentation including Customer furnished items, as well as items made available by the |H^H> covered by this Contract and resulting Work Order(s), until delivery of all other deliverable items as per Article 3 of this Contract and the corresponding provisionsof any resulting Work Order and subsequent return of all items in accordance with the instruction referred to in Articles 3 and 5 of this Contract and the

corresponding provisions of any resulting Work Order.

The Contractor shall ensure efficient inventory management of any and all deliverable items either procured, or developed, during development and until the end of their life-cycle and/or this Contract closure as described in corresponding SoW Section or Annex of the Statement of Work to this Contract and each resulting Work Order and/or Annex 3 and any resulting Work Order.

The shall have direct access to the Contractor and any responsible Subcontractors for

the inventory management, with respect to their tasks for inventory management until transfer of ownership, as described in the provisions of this Contract and any resulting Work Order(s) and of the GCC, to the

An Inventory, labelling and marking shall be provided by the Contractor for each deliverable item as per the Statement of Work to this Contract and each resulting Work Order and/or Annex 3.

Clause 15.4 (Transfer of ownership and risk) is modified as follows:

Transfer of ownership to the or the European Union as per the Work Order SoW and/or

Deliverable Items Lists attached to the Work Order(s) shall take place upon their acceptance by the in accordance with the provisions of Clause 16, below. Transfer of risk of these items

shall, however, not occur until their delivery to the or EU or any destination stipulated

in the instruction referred to in Article 3 of this Contract and the relevant provisions

of any resulting Work Order upon completion of the Contract and/or any resulting Work Order as foreseen in Article 5 above.

Transfer of ownership and risk related to Customer Furnished Items and Items made Available are regulated under clauses 11 and 12 respectively.

CLAUSE 16: ACCEPTANCE AND REJECTION

The following shall be added to the provision contained in Clause 16.2 and 16.3:

16.2. Approval of Deliverable Documentation

Deliverable documentation shall be submitted to the for approval or review as required

in Work Order SoW and/or Annex 3. The will then ascertain whether the document is

in conformance with the requirements of this Contract and any resulting Work Order. Documentation requiring the approval of the shall be reviewed within 20 (twenty)

working days or in accordance with the relevant Review Procedure as defined in the Statement of Work of this Contract and of each resulting Work Order and/or Annex 3.

In the event that the considers that a submitted document does not fulfil the contractual

requirements, the Contractor shall, at the justified request of the bring the document

up to the appropriate standard at his own expense.

1. Acceptance of Hardware and Software

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Acceptance or rejection of the items to be delivered under this Contract and each resulting Work Orde^hall be determined on the basis of the Contractor demonstrating to the satisfaction of the H| that the items have been constructed and/or issued in accordance with the appropriate specifications and have satisfactorily concluded testing in accordance with the test plans and procedures approved by the in related Appendices to this Contract and each

resulting Work Order.

In the event that the considers that submitted hardware or software item(s) do not fulfil

the requirements as detailed in each Work Order, the Contractor shall, at the justified request of the bring the relevant hardware of software item(s) up to the appropriate standard

at his own expense.

Software deliverables shall be accompanied by the requirements contained in Article 7 concerning compliance with the IPR provisions of this Contract.

CLAUSE 17: PENALTÏES/INCENTIVES

The stipulation of penalties and/or incentives, if any, will be agreed in each specific Work Order.

CLAUSE 18: DAMAGE TO STAFF AND GOODS

Clause 18 is further complemented by the following:

Waiver of Liability vis-à-vis the European Union (EU)

1. Waiver

With regard to all activities undertaken pursuant to this Contract and any resulting Work Order (arising from or relating to it), the Contractor waives the right to make any claim against the EU, the EU Related Entities (i.e. Contractors or Subcontractors, or their Contractors or Subcontractor, any European Union Institution, specialized Agencies, or other bodies entrusted with specific tasks within the legal framework of the EU) or employees of the EU Related Entities with respect to any injury to, or death of the Contractor’s own employees or employees of its Contractor’s Parties, or for damage to, or loss of its own property or that of itsContractor Parties , whether such injury, death, damage or loss arises through negligence or otherwise, except in the case of gross negligence or wilful misconduct.

1. Flow-Down of the Waiver in the contractual Chain

The Contractor shall extend the provisions as described above on each and every of its respective Subcontractors, suppliers, consultants and agents at all levels of contracting involved in the execution of this Contract and any resulting Work Order. In cases where the waiver provisions are not duly flown down by the Contractor, the latter shall indemnify and hold harmless the and the EU, the EU employees, the EU Related

Entities or employees of the EU Related Entities from any claims, damages, losses and expenses (including legal fees and expenses) raised by the Contractor’s employees or employees of its Contractor Parties involved in the execution of this Contract and any resulting Work order, for any bodily injury, sickness or disease against the and

the EU, the EU employees, the EU Related Entities or employees oftheEU Related Entities except in case of gross negligence or wilful misconduct of the or °f such

entities (EU etc.).

1. Exclusion

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This waiver of liability shall not be applicable to:

* Claims between a Party and its own Related Entity;
* Claims made by a natural person, his/her estate, survivors or subrogees for injury, other impairment of health, or death of such natural person;
* Intellectual Property claims.

CLAUSE 21: SCOPE OF WARRANTY

The following provision is added to Clause 21.1:

If the Contractor is not the manufacturer, the Contractor shall obtain the same warranty as specified herein from the manufacturer, or extend at the Contractor’s own expenses this warranty by appropriate maintenance agreements so as to cover the warranty period identified in clause 22 here below. At Acceptance as per Clause 16 here-above, the complete warranty shall be assigned to theHIHand/or the EU, as advised by the The Contractor shall assist

and co-operate withtheHHH and/or the EU in making claims under such warranty. The warranties will not be affected by removal or relocation of the Deliverable(s).

CLAUSE 22: WARRANTY PERIOD

The following provisions are added:

The warranty period shall start as defined in the Work Order. If the warranty period is different from Clause 22.1 of the GCC, it will be specified in the related Work Order.

Warranties shall survive inspection, acceptance and payment and shall benefit to the | and/or EU through the Prime Contractor, its agents, successors in interest, assigns and clients, if any.

CLAUSE 23: PROCEDURE APPLIED IN THE EVENT OF DEFECTS OR FAILURES

The following provisions are added to Clause 23.1:

1. On receipt of notification of the defect, the Contractor shall indicate whether he wishes to repair or replace the item.
2. shall determine a reasonable time limit for such repair or replacement, in the

understanding that after expiration of such period, and after serving due notice to the Contractor, the either itself or by ways of a replacement contract, shall be entitled to

correct the defect at the Contractor’s expenses and to assert any other rights accruing in relation to the failure.

CLAUSE 25: INFRINGEMENTS OF THE LAW

The wording of clause 25 is modified so as to include also the European Union and the Related Entities as follows:

The Agency and the European Union, including its Related Entities, shall not be responsible if the Contractor infringes the laws or status of its country or of any other country whatsoever.

CLAUSE 26: INFRINGEMENTS OF THIRD-PARTY RIGHTS

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Clause 26 is not applicable and is substituted by the provision contained in Art. 7.5 hereafter. CLAUSE 27: PRICING

Sub-Clause 27.3 shall not apply, unless in case of termination as per Clause 30 of the GCC or except in case the Agency has received a request for recovery from the European Union.

CLAUSE 29: AGENCY’S EXEMPTIONS

The title and the content of this provision shall be understood so as to include the European Union in the exemption identified. For the rest, the text of the provision shall remain unchanged.

CLAUSE 31: TERMINATION WITHOUT FAULT OF THE CONTRACTOR

The following provisions are added to Clause 31:

1. Advances or progress payments are not final payments and shall be deducted from the sums due to the Contractor in case of termination.

The shall in no circumstances be liable to pay any sum which, when added to the

other sums paid, due or becoming due to the Contractor under the Contract, exceeds the total price for the work set forth in the Contract.

1. In case of termination, the ownership of all materials, parts and unfinished work paid

for by the under the provisions of this Contract and any resulting Work Order(s)

shall be vested in or transferred to the European Union as soon as they have been paid for.

1. Except in the case of subcontracts of small value or of short duration, the Contractor shall reserve the right to cancel any subcontract, placed by him for the purposes of the this Contract and any resulting Work Order, in conditions which, should its contract be cancelled under the provisions of this Sub-Clause 31.6, shall permit him to comply with the requirements of this Sub-Clause.

CLAUSE 32: TERMINATION WITH FAULT OF THE CONTRACTOR

1. b) is modified as follows:

reference to the provisions of Clauses 38/52 of the GCC is replaced by reference to the provisions of Article 7 of the present Contract.

The following provisions are added to Clause 32:

32.5 The may also decide to terminate this Contract if:

1. the Contractor has undergone changes in its legal, financial, technical, organisational situation or in its systems, rules or procedures which are likely to substantially affect the implementation of the entrusted tasks;
2. the Contractor, its Subcontractor(s) or any related person(s) has been found guilty of professional misconduct proven by any means;



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1. the has evidence that the Contractor, its Subcontractor(s) or any related persons(s)

has committed fraud, corruption or is involved in a criminal organisation, money laundering or any other illegal activity detrimental to the European Union's financial interests;

1. if the has evidence that the Contractor, its Subcontractor(s) or any related person(s)

has committed substantial errors, irregularities or fraud in the implementation of the entrusted tasks, including in the event of submission of false information during the assessment by the

1. if the has evidence that the Contractor has committed systemic or recurrent errors,

irregularities, fraud or breach of obligations under other projects funded by the European Union;

1. where the Contractor is in material breach of the European GNSS Programme Security Instructions;
2. where the Contractor has used for the performance of this Contract or any resulting Work Order an Open Source Software Licence which requires him to apply the terms and conditions of such licence on his own development. If any of the deliverables is licenced under such conditions, such deliverables shall not be considered in compliance with this Contract and any resulting Work Order even where the ||[^^| has already given its prior written approval or has accepted such deliverable.

For the purpose of the present Sub-Clause 32.5, any related person shall mean any natural person that has the power to represent the Contractor, its Subcontractors or to take decisions on its behalf.

In the cases referred to in paragraphs a) of this Sub-Clause 32.5, the formal termination notice shall specify the date on which the termination takes effect.

In the cases referred to in paragraphs b), c), d), e) , f) and g) of this Sub-Clause 32.5, the termination shall take effect on the day following the date on which the formal notification was received by the Contractor

CLAUSE 33: TERMINATION IN SPECIAL CASES

Clause 33 is applicable with the following modifications:

The following clauses are added to 33.1 for the purpose of the present Contract:

1. C) if, due to a change of circumstances, the Contractor or its Contractor Parties do not comply any more with the Participating Conditions as defined in Clause 10.5 and if the Contractor has not promptly taken the necessary actions in order to remedy such non- compliance.
2. d) if the Contractor alone or with its Subcontractor does not meet the evaluation criteria as identified in the SCT of the Framework Contract and/or any related Work Order.

Clause 33.3 is modified as follows:

In cases of termination under clauses 33.1. the Contractor shall transfer any rights acquired for the performance of the activity under the Contract and use his best efforts to ensure access for the ■■■ to Third Party rights as required for continuation of the activity/programme.

Clause 33.4 is not applicable.

Clause 33.5 is modified as follows:

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In case of terminationdue to Force Majeure events, the Contractor shall retain the amounts already paid by the ^^^^vith the exception of the pre-financing which shall be refunded partially or in total tothe^^H following settlement based on cost incurred evidenced by the Contractor:

1. for the supply of equipment or material: The contractual value of items delivered under the Contract before receipt of notification of termination.
2. for services: a fair and reasonable price in respect of such work as has been carried out prior to the receipt of notification of termination.

CLAUSE 33B : SUSPENSION

The following Clause 33b provision is added for the purpose of this Contract and any resulting Work Order:

33b.1. The may suspend the performance of this Contract and any resulting Work Order

or any part thereof:

1. if the performance of this Contract and any resulting Work Order(s) proves to have been subject to substantial errors, irregularities or fraud;
2. in order to verify whether presumed substantial errors, irregularities, fraud or any cause for termination have actually occurred.

33b.2. Before suspension, the shall formally notify the Contractor of its intention to

suspend, specifying the reasons thereof and in the cases referred to in points (i) of the first paragraph, the necessary conditions for resuming the implementation. The Contractor shall be invited to submit observations within 30 calendar days from receipt of this notification.

If, after examination of the observations submitted by the Contractor, the | decides to stop the suspension procedure, it shall formally notify the Contractor thereof.

If no observations have been submitted, the may proceed with the suspension by

formally notifying the Contractor thereof, specifying the reasons for the suspension and, in the cases referred to in point (i) of the first paragraph, the definitive conditions for resuming the implementation or, in the case referred to in point (ii) of the first paragraph, the indicative date of completion of the necessary checks.

If despite the observations submitted by the Contractor the decides to pursue the

procedure, the procedure set out in FINANCIAL CORRECTIONS shall first apply.

The suspension shall take effect on the day of the receipt of the notification by the Contractor or on a later date, where the notification so provides.

In order to resume the implementation, the Contractor shall endeavour to meet the notified conditions as soon as possible and shall inform the ||^^|of any progress made in this respect.

Unless the Contract is terminated under Article 33, the shall as soon as it

considers that the conditions for resuming the implementation have been met or the necessary checks, including on-the-spot checks, have been carried out, formally notify the Contractor thereof.

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When deciding the suspension of tasks' implementation, the shall take account

of the nature and gravity of the breach of the Contractor's obligation under this Contract and any resulting Work Order as well as the impact on the implementation of the exploitation phase of the H2020 programme and on the Contractor's capacity to implement the entrusted tasks within the limits of the agreed remuneration.

33b.3. Any expenditure resulting from new commitments made by the Contractor in relation to suspended tasks during the period of suspension shall not be reimbursed unless otherwise agreed by the for exceptional reasons.

CLAUSE 34: APPLICABLE LAW

The substantive law referred to in Clause 34 of the GCC is the law of Belgium.

CLAUSE 35: DISPUTE RESOLUTION

The arbitration proceedings referred to in Clause 35 of the GCC shall take place in Brussels,

Belgium.

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ARTICLE **7**. **INTELLECTUAL PROPERTY RIGHTS**

In the performance of the Contract the following provisions relevant to information, data and

intellectual property rights shall apply to the Contractor and shall be flown down to its

Subcontractors and, as relevant, to Third Parties.

For the purpose of this Contract and any resulting Work Order:

Part II of the GCC is replaced by the following:

The following provisions relevant to information, data and intellectual property rights shall

apply for the whole duration of the respective IPR protection.

1. General
2. Contractor Employees/Service Providers:

The Contractor shall ensure that all work to be performed under the Contract is carried out by persons who have a written agreement with the Contractor and that such an agreement includes provisions that ensure that all results information, data and Documentation obtained for the purpose of the Contract will only be circulated under terms which comply with the provisions of this Contract.

1. Subcontract Clauses:

Each subcontract shall provide the Subcontractor with the same rights and obligations in relation to work performed under the subcontract that the Contractor has agreed to in relation to work performed under this Contract and in particular shall ensure that only the Subcontractor has the rights and in line with Art. 6 Clause 10 of this Contract.

1. Evaluation of Technology:
2. During the Framework Contract and any resulting Work Order implementation, the

Contractor shall use its reasonable endeavours to assist the and/or the European

Union in assessing and evaluating results arising from work performed under this Contract or any resulting Work Order with a view to use or re-use in new programmes both public and commercial and to promote space research and technology and space applications and if feasible in other industry sectors.

1. Following completion of this Contract and any resulting Work Order, the Contractor

shall, within the limits of its capacity and resources, use its reasonable endeavours to continue assisting the and/or the European Union. Such assistance shall be

limited to those technical contributions that are necessary for the use and exploitation of the results arising from work performed under this Contract and any resulting Work Order.

1. Foreground IPR
2. Notwithstanding the provisions contained in Clause 22 and without prejudice to the specific procedure regarding patents foreseen in Article 7.3.8 below, all Foreground IPR shall be vested in the European Union and wherever possible, clearly identified as Intellectual Property Rights from the moment of their generation.



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Where immediate acquisition of ownership by the EU is not legally possible, the Contractor shall permanently assign to the European Union full ownership of all Foreground IPR, at the moment of its successful acceptance (as per Clause 16).

The rights permanently assigned to the European Union shall include, but not be limited to, the exclusive and perpetual usage, distribution and exploitation rights, not restricted in respect of territory, time and purpose, including in particular but not exclusively the following rights:

1. The right to install, operate and execute, reverse-engineer, decompile, (re-) compile, translate, decode, edit, amend, adapt or otherwise modify the subject matter of the Foreground IPR by the European Union or any licensee of the European Union for any purposes the European Union or the licensee sees fit.
2. The right to incorporate, embed or merge the subject matter of the Foreground IPR into any other product.
3. The right to permanently or temporarily reproduce or copy, store, publish, load, run, display, make publicly available or distribute in tangible or intangible form, on any hardware (virtual or physical) or other medium, offline or online (via private or public networks, by any means, including active-service-providing, software-as-a-service, cloud computing or any other form of remote service), in part or in whole, the subject matter of the Foreground IPR in original format or in any reverse-engineered, decompiled, re-compiled, translated, decoded, edited, amended, adapted or otherwise modified form.
4. The right to use the subject matter of the Foreground IPR in the frame of virtual or physical systems, databases, data networks, online services, terrestrial and space related activities, including the right to make available the subject matter of the Foreground IPR to end-users of databases, data networks, online services, terrestrial and space related activities, offline or online, by means of hardware or software tools or via download.
5. The right to use or make available for use of third parties the subject matter of the Foreground IPR offline or online, on computers or other virtual or physical hardware devices.
6. The right to use the subject matter of the Foreground IPR as described above not only

for purposes of the European Union and the or any other licensee, but also for

rendering services to third parties including rental agreements.

1. The right to prepare derivative works of the subject matter of Foreground IPR.
2. The right to distribute, rent, offer and market the subject matter of the Foreground IPR, including any derivative works of the Foreground IPR, in any form directly or indirectly to the public, including the right for online-distribution.
3. The right to grant wire-connected or wireless public access to the subject matter of the Foreground IPR for any purpose, including commercial or free service bureau services for third parties.
4. The European Union may permanently or temporarily transfer all or single rights granted to the European Union in whole or in part to a Third Party in its sole discretion.
5. The European Union may in its sole discretion distribute the subject matter of the Foreground IPR under any open source licence the European Union deems fit and this



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shall include also the right for the European Union to grant such rights to another organisation which will distribute the software under an open source license.

1. The European Union may, against payment or free of charge, permanently or temporarily, grant exclusive or non-exclusive licenses or sublicenses for all or single rights granted to the European Union in whole or in part to a Third Party in its sole discretion, either directly by the European Union or indirectly by a distributor.
2. Notwithstanding that the Contractor has granted to the European Union exclusive rights, the European Union shall not be obliged to exercise the rights granted and the European Union shall be entitled to decide in its sole discretion to exercise all or parts of the rights granted hereunder.
3. The European Union may make use of the Foreground IPR in any known manner and for any known type of use, as well as all yet unknown types of use. For the avoidance of doubt, no additional royalty fee shall be paid by the European Union for such use.
4. The intended purpose of the permanent assignment of full ownership of all Foreground IPR to the European Union is to enable the European Union to act as the full and only owner of the Foreground IPR without any limitation. Therefore, subject to the condition that under the law applying to the Contract a permanent assignment of some or all the IPR is lawfully not possible, the Contractor agrees to and herewith shall grant to the European Union an irrevocable and worldwide exclusive license for the Foreground IPR, including the grant of the exclusive and perpetual usage, distribution and exploitation rights, not restricted in respect of territory, time or purpose and including all the rights as listed in this Article. For the avoidance of doubt, no royalty fee shall be paid by the European Union for such license grant, in addition to what is already included in the agreed price in each Work Order.

In case the Contractor modifies, enhances or makes another alteration to an existing IPR of the or the European Union, the Foreground IPR is any incremental work of

such pre-existing product constituting modifications, corrections, additions, extensions or improvements to the pre-existing product or any translation of the pre-existing product as a result of Contractor’s services. Incremental work, for this purpose, means everything gained or added to the pre-existing product.

Such Agency/EU IPR shall be identified separately in this Contract and/or any resulting Work Order(s) and the provisions contained in this Article 7.3 concerning Foreground IPR shall be fully applicable thereto.

Likewise, in case the Contractor shall modify, enhance or make another alteration to an existing IPR developed under a contract with the European Union or with the GSA, and the Contractor has identified such pre-existing product to be used for the activities under this Contract and/or any resulting Work Order(s) as Background IPR, the Foreground IPR is any incremental work of such pre-existing product constituting modifications, corrections, additions, extensions or improvements to the pre-existing product or any translation of the pre-existing product as a result of Contractor’s activities. Such IPR shall be identified in the Background IPR list as originating from an B/EU Contract for which the Contractor retains the IPRs. The provisions contained in this Article 7 concerning BIPR shall be fully applicable thereto.

1. Patentable inventions

Patentable inventions shall be notified by the Contractor to the without delay as

soon as the Contractor becomes aware that such invention has been made. Such



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notification shall contain at least a description of the invention, an initial assessment of patentability by the Contractor and the contractor’s technical assessment of the programmatic value of the invention. The Contractor shall take measures to ensure that the invention is not disclosed.

The Commission shall make a decision whether it wishes to make a patent application and if so, will proceed with filing an application. The Contractor shall provide required technical support as foreseen in Article 7.3.11.

If the Commission decides not to proceed with the application, the Contractor shall be entitled to file for a patent protection in his own name, after having notified the Commission in writing (with proof of receipt) and having granted the Commission a reasonable period of no less than 2 months to take a position. In such cases, the Commission shall enjoy royalty-free access rights to the results for its own use and the right to grant, or require the Contractor to grant, non-exclusive licences to third parties to exploit the results under fair and reasonable conditions.

1. Waiver of Moral Rights

Wherever legally possible, the Contractor shall secure by agreements with those of his employees, who have worked on the subject matter of the Foreground IPR, that those employees have waived their right to be named as an author and have waived all their other moral rights in regard to the subject matter of the Foreground IPR, e.g. the right of an author to have access to its work.

If a waiver of a moral right of an author is legally not possible, the Contractor shall in any case and wherever legally possible secure by written agreements with his employees that they waive their rights to execute such moral right for the maximum period of time legally possible.

The same shall apply for all free-lancers and employees of Subcontractors of the Contractor and the Contractor is obliged to secure such waivers in written agreements with its free lancers and Subcontractors.

1. Transfer of Ownership

The Contractor shall transfer all ownership in material objects embodying the subject matter of the Foreground IPR (CD ROM etc.) to the European Union free from any encumbrances at the time such material objects come into existence.

1. Protection of Foreground IPR and Support to the European Commission

The Contractor shall keep secret and confidential the subject matter of the Foreground IPR in order to ensure that:

1. only and exclusively the European GNSS Agency ("GSA")

and the European Commission, as legal representative of the European Union, are aware and know such intellectual property and

1. novelty requirements in accordance with the applicable intellectual property legislation as well as any other conditions required by the legislation, are secured and met.

The Contractor where the copyright, invention or any other IPR originated, shall not take any action which jeopardises or affects the ability of the European Union to legally protect the subject matter of the Foreground IPR.



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In particular, the Contractor shall notify the Foreground I PR and specify any rights that may be subject to notification, registration or similar requirements for IPR protection or additional IPR protection, such as patents and trademarks, to the and the

European Union in order to enable the European Union to take adequate measures to protect such Foreground IPR in the name and on behalf of the European Union.

The Contractor shall take any and all measures, including, as the case may be, specific agreements with its employees, Contractor Parties and other collaborators in order to ensure that the above mentioned provisions are at all times duly fulfilled and that there are not Third Parties’ Rights that could hamper, limit, restrict or in any way render more difficult the full use and exploitation of the Foreground IPR and its subject matter by |, GSA and the European Commission.

The Contractor shall upon the Commission's request provide technical support to the Commission and to experts appointed by it, for matters related to the protection and filing of the Foreground IPR.

1. Licence in Foreground IPR for performance of this Contract and any resulting Work Order:

The on behalf of the European Union hereby grants to the Contractor a non­

exclusive, non-transferable, free of charge licence of use of the subject matter of the Foreground IPR, with the right to grant sub-licences to Subcontractors and affiliates, for the purpose of performing its obligations under this Contract and the resulting Work Order(s) and for other activities financed under the EU GNSS research programmes, provided always that the sublicences also reflect all obligations, such as but not exclusively confidentiality obligations, deriving from this Contract.

The licence only refers to the use of the subject matter of the Foreground IPR and does not refer to or cover anything subject to Third Party IPR that may be contained in or combined with such subject matter in any form. The Contractor bears the sole responsibility for ensuring that all Third Party IPR is licensed properly. Article 7.3.11 applies accordingly. In particular the Contractor guarantees that he is compliant with all licence conditions of the respective providers and owners of Third Party IPR. In case of any claim based on an alleged infringement of such Third Party IPR, the Contractor is obliged to indemnify the European Union, the GSA and the Agency on the basis of Article

7.3.12.

The licence attributes to the Contractor all rights which are necessary to fulfil the above mentioned purpose.

The price of Work Order(s), resulting from this Contract, to which the parties shall agree on, covers all fees for the granting of IPR licences and also includes the licence grant for the use of Foreground IPR according to this Article.

1. Additional Licence Options
2. If the Contractor wishes to obtain a licence to use the subject matter of Foreground IPR for purposes other than the performance of this Contract or other activities financed under the EU GNSS research programmes, he shall submit this request directly to the European Commission providing supporting information which describes the intended use.

Such licence shall neither be transferable nor can it be sublicensed unless agreed in writing by the European Union.

1. Intellectual property owned by the and necessary for the Contractor for the

execution of this Contract and any resulting Work Order(s) shall be licensed to the Contractor on the basis of a free of charge, non-exclusive, revocable and temporary basis. The Contractor may use such intellectual property only for the purpose of performance of this Contract and resulting Work Order(s).

1. In case the European Commission, representing the European Union decides to grant an additional licence, as described above in a) , the European Commission and the Contractor shall conclude a separate licence agreement, determining the conditions of use including use rights, purposes and term of the licence.
2. Disclosure or use of information generated by the Contractor under this Contract and any resulting Work Order:

Documentation, or software, generated by the Contractor under this Contract and any resulting Work Order shall be immediately marked "EU Proprietary information. Unauthorised distribution, dissemination or disclosure not allowed". The Contractor shall take all necessary steps to ensure that any specification, plan, drawing, pattern, sample or information (including contractual terms and conditions) as well as anything subject to IPR, embodied or not embodied in a tangible form shall not be disclosed in any way to any person other than a person employed or engaged by the Contractor, whether under subcontract or otherwise, for the performance of this Contract and any resulting Work Order. Any disclosure to any person permitted shall be made in confidence and shall extend only so far as may be necessary for the purposes of this Contract and/or resulting Work Order(s) and provided that such disclosure is strictly needed for the performance of this Contract and/or resulting Work Order(s).

1. Subcontractor arrangements

The Contractor shall ensure in its contractual arrangements with his agents, assigns, freelancers and Subcontractors that the Foreground IPR under the respective subcontract shall be vested in the European Union in accordance with the provisions of this Article 7. To that effect, the Contractor shall submit to the prior to the start

of work of any agents, assigns, freelancers and any other Contractor Parties the part of the respective subcontract pertaining to this particular point. Submission of such subcontracts to the does not relieve the Contractor of its obligations to comply

with the provisions of Article 7.

1. Background IPR
2. Notification

 on the basis of evidence provided by the Contractor, recognises as

The



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Background Intellectual Property the information identified in Appendix 3 of the Work Order to be provided by the Contractor

1. The Contractor shall include the Background Intellectual Property exclusively in the deliverables identified in the Work Order and shall mark them conspicuously as “Background Intellectual Property - Propriety Information”. All other deliverables shall not contain any Proprietary Background Information and shall not be marked as “Proprietary Information”.
2. The Contractor undertakes that all Intellectual Property Rights employed during the execution of this Contract and resulting Work Order(s) and not identified as Background

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IPR or Third Parties IPR are treated as arising from work performed under this Contract and resulting Work Order(s).

Any and all Background Intellectual Property Rights agreed and recognised by the Agency are specified under the corresponding Appendix 3 of the resulting Work Order.

If the Contractor, after the signature of the Work Order, invokes the existence of any additional Background Intellectual Property to be used for the purposes of the relevant Work order, the Contractor shall provide conclusive evidence to the °f the

existence of this Background Intellectual Property and shall justify the reasons for which the existence of this Background Intellectual Property was not invoked before the Work Order signature.

If conclusive evidence and appropriate justification are provided by the Contractor, the Parties shall formalise a Work Order Amendment Proposal.

Conversely, if such evidence and justification are not provided, all information delivered shall be deemed as having been generated in the frame of the Contract.

In case the Contractor or any of its Subcontractors intends to use or re-use already existing software for which he or any of its relevant Contractor Parties owns the Intellectual Property Rights, all of the following additional information shall be provided as part of the approval request:

1. Whether or not the respective software has been developed under an |^| or EU

(including EC and if so:

1. Contract numbers under which the software has been developed and/or altered,
2. The rights granted by the Contractor/Subcontractor to any Third Party as part of other contractual agreements.

Notwithstanding the above, in the case of use of Third Party IPR additional to the Background IPR identified, the information identified here-after shall also be provided in addition to the information above.

1. Ownership

The owning party shall retain the applicable Background IPR and no representation or act by a party during performance of this Contract and any resulting Work Order shall indicate or be construed as providing any other right, title or interest in such Background IPR other than in accordance with this Contract and any resulting Work Order.

Upon request, the Contractor or Subcontractors shall offer the European Union, directly or through the the possibility to acquire the rights to the relevant software as

Foreground IPR including all exclusive rights as described in Article 7.3. above. In case of software developed or altered under an GSA or EU contract, this shall apply to those rights which have not already been granted to H, GSA or to the EU under such former contract.

1. Use and licensing in general

The Contractor, upon signature of this Contract and/or any resulting Work Order within the price of Work Order(s) resulting from this Contract, hereby grants to the European Union, the GSA and the a non-exclusive, perpetual, irrevocable, royalty free

licence, not limited as to time, territory and space , including the rights to transfer and to grant sub-licences, with immediate effect and for the duration of this Contract or of



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the respective IPR protection (whichever is longer) and for the purposes of using the subject matter of the Background IPR in all manners which are necessary for the use of the Foreground IPR, including in particular, but not limited to, use rights as follows:

1. The right to store, reproduce, publish, display, make publicly available, or distribute in tangible or intangible form, on any hardware (virtual or physical) or other medium, offline or online (via private or public networks, by any means, including active-service­providing, software-as-a-service, cloud computing or any other form of remote service) the subject matter of the Background IPR to the extent that this is necessary for the operation, maintenance, service provision and future evolution of any other use within the EU GNSS research programmes;
2. The right to use the subject matter of the Background IPR in the frame of virtual or physical systems, databases, data networks, online services, terrestrial and space related activities, including the right to make available the subject matter of the Background IPR to end-users of databases, data networks, online services, terrestrial and space related activities, offline or online, by means of hardware or software tools or via download;
3. The right to use or make available for use of third parties the subject matter of the Background IPR offline or online, on computers or other virtual or physical hardware devices;
4. The right to use the subject matter of the Background IPR as described above not only

for purposes of the European Union and the but also for rendering services to

third parties including rental agreements;

1. The right to modify the subject matter of the Background IPR in any manner that is necessary for the operation, maintenance, service provision and future evolutions of any other use within the EU GNSS research programmes including re-engineering or re­programming of the programme code (e.g. mere customizing or parameterization);
2. The right to develop add-ons (= further developments) to any work or programme subject to Background IPR.

For clarity, the text of the present provision constitutes the licence on BIPR referred to in this Contract.

1. Use and licensing of Source Code protected by Background IPR

In order for the GSA or the European Union to make use of the Source Code protected by Background IPR for the purposes as described in Article 7.4.3 above, the Contractor shall make that Source Code including the object code and documentation available.

Such Source Code including the object code and documentation shall be made available directly, when the source code is part of a software element that is part of the Deliverable Items List (DIL).

In case of all other Source Code parts or software elements not included in Deliverables listed in the DIL, the Source Code shall be made available through an escrow agent to be mutually selected by the Parties and contracted under the terms of the model escrow agreement attached as an Annex to this Contract and/or resulting Work Order(s).

This escrow agreement shall provide that the Source Code shall be immediately released, in the following cases:

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1. Contractor ceases to carry on business or ceases to provide maintenance services ;
2. Contractor becomes bankrupt, insolvent or the subject of receivership.

For the purposes of this provision “availability of Source Code” shall include all the rights which are necessary for the GSA or the European Union or in order to be able to exercise the rights of the IPR regime applicable to this Contract and resulting Work Order(s).

1. Modifications in software protected by Background IPR

The Contractor shall inform the of any important modification or improvement

of software protected by Background IPR and its documentation after completion of this Contract and/or any resulting Work Order, and offer to the the possibility to

negotiate the availability of such modification or improvement at fair and reasonable conditions. This obligation shall cease five years after final acceptance of the Contract Works or Works under the resulting Work Order.

1. Restrictive dissemination

Where information, documentation and software that relates to Background IPR is marked ’’Proprietary Information” (or similar statement) or for software (including Source Code) agreed as Background IPR, the Contractor shall limit the circulation thereof to Contractor Parties, consultants (subject to confidentiality agreement) and employees that require that documentation or software for use, modification or maintenance of any product or application in the System stemming from the EU GNSS research programme(s). This obligation shall not apply to documentation or software:

1. which at the time of circulation has already entered the public domain or which after circulation enters the public domain other than through a breach of this Contract and/or any resulting Work Order;
2. which at the time of circulation is already known by the and is not

hindered by any obligation not to circulate;

1. which is later acquired by the Agency from another source which is not hindered by any obligation to circulate.

The Contractor shall mark as “Proprietary information”, or similar, only those documents agreed in advance with the HHl (cf Article 7.4.1 “Notification”).

7.5 Information supplied by the Agency to the Contractor

Unless otherwise identified, all documentation and other information of whatever kind and nature supplied or disclosed directly or indirectly by the under this Contract

and any resulting Work Order, including also but not limited to software in source code and object code, interfaces, specifications of software or of interfaces, algorithms, ideas and principles which underlie any element of software, including those which underlie interfaces, and other related know-how, as well as all documentation and other information produced by the Contractor or the under this Contract and any

resulting Work Order are deemed to be “Proprietary Information”, even if not marked as such, and the following provisions shall apply.

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When Documentation, or software is supplied by the to the Contractor, the

Contractor shall at all times take all necessary steps to ensure that any specification, plan, drawing, pattern^ample or information (including contractual terms and conditions) supplied by directly or on behalf of the European Union in connection therewith shall not be disclosed to any person other than a person employed or engaged by the Contractor, whether under subcontract or otherwise, for the performance of this Contract and resulting Work Order(s). Any disclosure to any person permitted shall be made in confidence and shall extend only so far as may be necessary for the purposes of this Contract and resulting Work Order(s).

The Contractor shall take any and all measures, including, as the case may be, specific agreements with its employees, collaborators, subcontractors and affiliates Companies in order to ensure the fulfilment of the above mentioned obligations.

Upon the expiration of, or any earlier termination of this Contract, the Contractor shall promptly return all copies of the Proprietary Information, in whatever form or media, to the Agency or confirm formally in writing destruction thereof.

IPR owned by a third party

The Contractor guarantees that the Work resulting from this Contract and any resulting Work Order(s), the transfer of ownership and the licences granted under this Contract and any resulting Work Order(s) will not infringe any Intellectual Property Right of any Third Party.

In case of an infringement of any Third Party Intellectual Property Right Article 7.7 shall apply.

If the Contractor, in order to perform its obligations under this Contract and resulting Work Order(s) needs to have access to intellectual property owned by a third party, it shall ensure that the owner of such intellectual property grants a free of charge, irrevocable, perpetual, worldwide licence to the GSA and the European Union, with the right to grant sub-licences, to enable the development, its use, operation, exploitation and provision of EU GNSS services for the entire duration of the IPR protection period.

Where Commercial Off-the Shelf (COTS) products are concerned and the standard licence terms of the third party vendor apply, such licence shall grant to GSA and the European Union the right and licence to use such COTS products for the purpose of this Contract, excluding any rights of sub-licence. Should the European

Commission or GSA require to sublicence the Third Party IPR, the Contractor shall take such actions as are reasonably required to procure the right to sublicence from the concerned Third Party.

When the Contractor procures software, where the intellectual property rights are owned by a third party, and this software is an element of software deemed for use by an Operator, the Contractor shall, in order to facilitate maintenance and safeguard against obsolescence, secure the Source Code under escrow agreement for the case that the third party abandons the development and maintenance of the procured software.

When the Contractor procures software which is subject to Third Party IPR or in any way linked to or connected with software subject to Third Party IPR, and the software subject to Third Party IPR is made available under an Open Source Software (OSS) Licence, the Contractor shall ensure that the OSS Licence does not require him or the European



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Union to apply the terms and conditions of such licence on his own developments or any developments within the frame of this Contract and any resulting Work Order. If the OSS Licence requires so, the Contractor may not procure or otherwise use the software under the OSS licence for any contractual purpose.

The Contractor guaranteesthatallitemSjinaiw format (both in a tangible or intangible form), delivered to the the GSA and/or the European Union

and/or stemming from this Contract and any resulting Work Order by any other means, include all necessary licences for the use and purposes as described in this Contract and resulting Work Order(s), and in particular, without limitation, Article 7.3 and Article 7.4 .3. The Contractor guarantees, that with any partial, intermediate or final delivery of all items, in any format, delivered to the the GSA and/or the

European Union and/or stemming from the this Contract and resulting Work Order(s) by any other means, no additional costs arise either for the or

the European Union from the delivery of items or any other use of Third Party IPR within the frame of this Contract and resulting Work Order(s).

Without prejudice to the foregoing paragraph, the Contractor shall present to the | prior to its use any Third Party IPR with proof of sufficient licence, together with the following information:

1. Exact name and, if applicable, version of the Third Party IPR.
2. Exact intended use of the Third Party IPR in particular, by stating whether it is needed in order to build the application to be delivered and/or in order to run the application to be delivered.
3. Exact source of supply, e.g. in case of delivery the supplier’s company name and address, in case of download also the exact internet address and date, from where and when the download was made.
4. Full and complete copy of the licence agreement, under which the Third Party IPR is licensed.
5. Statement as to whether any dispute relating to the license agreement will be subject to arbitration procedures or to normal court procedures.
6. Confirmation to the that the use of the Third Party IPR for the

performance of the Work Order work is compliant to the terms and conditions of the Third Party IPR license.

1. Confirmation that the License terms of the used Third Party IPR are compatible with other involved Third Party IPR licenses
2. Confirmation that the License conditions are compliant with ^H/EC purpose of further licencing to Third Party the delivered IPR.

be. Confirmation that the applicable license conditions are compliant with this Contract and the Work Order terms and conditions.

x. If the Tenderer is allowed to do so, the Tenderer shall provide and license to the

I, based on a separate licence agreement with the a complete copy

on a physical media of the original Third Party IPR.



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Notwithstanding the above, with regard to software protected by Foreground IPR or Background IPR, the Contractor undertakes to perform a due diligence search in order to determine if there are existing Third Party IPR which could be infringed by any use of such software by B, GSA and/or the European Union. Before any partial, intermediate or final delivery, the Contractor shall have the responsibility to remedy design elements that infringe existing Third Party IPR.

At the moment of any partial, intermediate or final delivery, including all installations for operational purposes in the frame of this Contract and resulting Work Order(s), of any object containing IPR and also prior to the Acceptance, the Contractor shall verify and confirm in writing that the subject matter of both the Foreground IPR and the Background IPR does not infringe any Third Party IPR and that the licence (under which a Third Party Product shall be licensed under this Contract) complies with this Contract and any resulting Work Order. In the case of failure of such written declaration, the Agency reserves the right to consider the delivery unsuccessful, in which case the | and European Union will not make any declaration of Acceptance with regard to the respective delivered item.

Neither the failure tocomply with this duty of verification and/or confirmation nor any acceptance by the of the Deliverable Item relieves the Contractor from his

obligations and responsibilities for breach of Third Party IPRs under this Contract and resulting Work Order(s).

Infringements of Third Party IPR

The Contractor shall indemnify ^B> the GSA and the European Union from and against all claims, proceedings, damages, costs and expenses arising from the alleged infringement of Third Party IPR in the frame of this Contract and any resulting Work Order, except in the case where such alleged infringement stems from the use of IPR provided by ^B GSA or the European Union under this Contract and any resulting Work Order as Customer Undertakings.

The above includes the Contractor’s obligation to indemnify and hold harmless at first instance the the GSA and the European Union against all claims

and/or legal proceedings made in or out of Court including all legal costs for court attorneys and or arbitration.

This applies from the moment of the first notification of any alleged infringement.

Without prejudice to the above, the Agency and the Contractor shall notify each other without undue delay of any identified risk of Third Party IPR infringement or of any dispute arising over ownership or use of Intellectual Property Rights that arises from the performance of this Contract and any resulting Work Order or which is required for completion of this Contract and/or resulting Work Order(s) or which relates to any product, use, application or result of this Contract and/or any resulting Work Order(s).

The Contractor shall ensure that all required information is provided to the and

that any measure is immediately taken in order to mitigate and remedy the above risk and/or infringement without any additional cost for Bft the GSA and the European Union”.



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ARTICLE 8. **ACCESS TO WORK IN PROGRESS AND TO DATA**

1. The may assess the technical performance under this Contract and any resulting

Work Order, and for this purpose all work under this Contract and any resulting Work

Order, and data and documentation generated hereunder by the Contractor and its

Subcontractors, including all design and test data, are subject to continuous examination, evaluation and inspection by the HHi during the period of this Contract and/or resulting Work Order(s). The Contractor shall, for the purpose of this Article, arrange access for the representatives of the ||^^| and the EC to those premises where work on or in connection with the subject of this Contract and any resulting Work Order is being, has been or is intended to be performed.

Above responsibilities may be executed by representatives from the HHA as will be notified by the BIHto the Contractor.

1. The may call for the suspension of any work it may judge unsatisfactory as failing

to comply either with the terms of this Contract and any resulting Work Order(s) or with the normal customs of the trade. The exercise of this right shall in no way and in no circumstances affect the rights, or lessen the Contractor's responsibilities

regarding the due fulfilment of its obligations.

1. Except in case of extreme urgency, the shall inform the Contractor in good time

of any intended visit to a Subcontractor and shall invite a representative or representatives of the Contractor to be present.

1. The Contractor shall not permit work under this Contract and/or any resulting Work Order to be performed in association with or in proximity to work subject to national security or similar restrictions such that access to the area in question by the | representatives could be prevented for reasons of security restrictions.

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The Contractor shall take all the necessary measures to prevent any situation of conflict of interest. Such situation arises where the impartial and objective performance of this Contract or any resulting Work Order(s) is compromised for reasons involving economic interest, political or national affinity, family or emotional ties, or any other shared interest.

Any situation constituting or likely to lead to a conflict of interest during the performance of this Contract or any resulting Work Order(s) shall be notified to the in writing without delay.

The Contractor shall immediately take all the necessary steps to rectify the situation. The | reserves the right to verify that the steps taken are appropriate and may require that additional steps be taken within a specified deadline.

The Contractor declares that it has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, when such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, in so far as it serves as an incentive or reward relating to the performance of this Contract or any resulting Work Order.

The Contractor shall pass on all the relevant obligations in writing to its personnel and to any natural person with the power to represent it or take decisions on its behalf and ensure that it is not placed in a situation which could give rise to conflicts of interest. The Contractor shall also pass on all the relevant obligations in writing to third parties involved in the performance of this Contract and any resulting Work Order(s) including Subcontractors.

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Any personal data included in or relating to the present Contract, including its execution and execution of the resulting Work Orders, shall be processed in accordance with the principle of proportionality, on the protection of individuals with regard to the processing of personal data pursuant to Regulation(EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000, by and by the European Union institutions and bodies and on the free movements of such data.

The Contractor shall process personal data in compliance with applicable Union and national laws on data protection (including authorisations or notification requirements).

The Contractor may grant their personnel access only to data that is strictly necessary for implementing, managing and monitoring this Contract and resulting Work Orders.

The Contractor shall inform the personnel whose personal data are collected and processed by I and by the Commission of that fact.

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1. 1 Work Orders 11.1.1. This Contract is implemented through one or several Work Orders, that the ||^B may at any time request for the implementation of the activities falling within the scope of this Contract. Each Work Order incorporates the terms and conditions specified in this Contract. Once signed, each Work Order shall constitute integral and substantial part of this Contract.

11.1.2 As determined by the Work Order(s) covering activities identified in the Contract

shall be awarded in accordance with the award criteria and the procedure described here under.

The Work Order(s) shall be concluded on the basis of the conditions established in the Contract.Where the implementation of an Additional Work Order requires Changes to the Contract conditions, such Changes shall be implemented in accordance with ARTICLE 6 -Clause 13-

11.1.3

The Agency will fix a time limit which is sufficiently long to allow tenders for each Work order to be submitted, taking into account factors such as the complexity of the subject matter of the Work Order and the time needed to submit tenders.

1. The Work Order Proposal will be evaluated by the Hi- The may invite also

representatives from the European Commission to the evaluation.

Any Work Order Proposal(s) is/are subject to discussions between the Parties and may be updated / modified by the Contractor as a result of such discussions.

1. The BIB reserves the right to terminate the process for concluding the Work Order at any time before their signature, without any indemnification right accruing on the Contractor.
2. The Agency reserves the right to participate to the consultation process, to verify that open access and fair competition have been respected amongst the bidders that would be interested throughout the industrial supply chain.
3. Each Work Order shall be identified with progressive numbers.

The Work Order will be formalised through a Work Order Contract, which shall enter into force upon signature by both Parties.

1. The Contractor shall not be allowed to start with the implementation of a Work Order before the signature by both parties.

11.2 SUBMISSION OF PROPOSALS AT WORK ORDER LEVEL 11.2.1 The Work Order request issued by the Agency will contain:

* Detailed task description (if applicable)
* Specific requirements
* WO SoW
* Specific tender conditions
* Specific contractual conditions relevant to the envisaged Work Order

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TheContractor shall submit its proposal within the timeframe indicated in the | Restricted Invitation to Tender. The proposal shall include:

11.2.2

11.2.3

* Technical Proposal (see Annex X)
* Management Proposal (see Annex Y)
* Financial Proposal
* Specific (i.e. not already present in the Contractor's proposal at Framework Contract level) management aspects
* Schedule/planning
* Total price/cost estimate
* Compliance matrix

The evaluation criteria for the award of the Work Order(s) will be published at the time of publication of the Tender for the award of the Work Order(s).

Done in two [2] originals, one for each Party to this Framework Contract,

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In: Prague

In:

22/8/2017 On:

9/8/17 On:

For the European Space Agency (ESA)

For Serenum a.s.





Z. Šedivý

Member of the Board

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STATEMENT OF WORK

ANNEX 1:

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DRAFT WORK ORDER

**ANNEX 2:**



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WORK ORDER No X
[TITLE]

Impleme**nting the Framework Con**tract Ref.

Between

The

(hereinafter called whose Registered Office is located at:

represented by its Director General,

through its establishment



on the one part.

and

(hereinafter called “ ” or “the Contractor”)

whose Registered Office is located at: represented by

Mr , its

on the other part.

Singularly referred to as “the Party” and together also referred to as “the Parties”.



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The Parties have agreed the following:

Article 1 SUBJECT OF THE WORK ORDER NO X

1. This Work Order No. X implements the Framework Contract No /17/NL/XX

for the , signed by the and the Contractor on /2017.

The scope of this Work Order No. X consists of and shall run for a period of XX

months according to the applicable documents referred to in Article 1.3 nereunder.

[OPTION: For Contracts with Phasing]

1. The work shall be performed in xxx Phases (hereafter “Phase” or “Phases”) as defined in Appendix 2 hereto.

| reserves the right not to proceed further with the work at the end of any Phase. A decision by the not to continue further with the work at the end of a Phase does

not lead to the application of Clause 31 of the GCC.

1. a) The decision whether to proceed further or not shall be taken after completion of the preceding Phase and after acceptance, by the of the deliverables due, under

such preceding Phase.

b) [OPTION: In addition, the decision to proceed or not, shall be subject to acceptance by the of the Contractor’s Proposal(s) relevant to the conversion of the

Ceiling Price into a Firm Fixed Price for Phase(s) xx [and yy].

1. The Contractor shall start Phase(s) xx [and yy] only upon receipt of written notification from the Agency’s representatives nominated in Article 5, Clause 5, Sub-Clause 5.1, of the relevant authorisation to proceed with each specific Phase. Such notification shall be given within (..) weeks of the completion of the preceding Phase [OPTION: and after acceptance by the H of (a) Price Conversion Proposal(s) mentioned in Article 1.1.2 above)].

[END of Option Contracts with Phasing]

1.2 Appendices /Applicable Documents

The Work Order shall be performed in accordance with the Framework Contract

No and with the following documents, which constitute an integral part of this

Work Order and are listed in order of precedence in case of conflict:

1. The Articles of the present Work Order
2. The Articles of the Framework Contract No.

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Appendix 1 hereto: Payment Plan and Advance Payment(s) and other Financial Conditions;

c)

d)

e)

f)

g)

h)

i)

Appendix 2 hereto: The WO Statement of Work, reference , issue

 , revision , dated ; ]

Minutes of the negotiation meeting held on , reference , not

attached hereto but known to both Parties; modifying section(s) [insert references] of the Statement of Work;

Appendix 3 hereto: The Contractor’s List of Background I PR

Appendix 4 hereto: WO Amendment Proposal Template

Appendix 5 hereto: VAT and Excise Duty Exemption Certificate Template

The Contractor’s Proposal reference dated , not attached

hereto but known to both Parties.

All documents listed above shall apply in their latest agreed issue.

Reference herein to a document shall be deemed to constitute a reference to such document including its specific applicable documents and its Appendices/Annexes.

The Contractor shall provide to the throughout the duration of this WO 1 the

deliverable items and related sendees as described and according to the requirements specified under Annex 3 of the Framework Contract and Appendix 2.

Article 2 PRICE & PAYMENT

2.1 Price

The total firm fixed price (“FFP”) of the Contract for the baseline activities as described in the contractual baseline amounts to

Euro

(in letters )

broken down as follows:

[OPTION] Phase 1: Eur (in letters ), FFP

Phase 2: Eur (in letters ), FFP [END OF OPTION]

broken down per Contractor and Subcontrator (s) as specified in Appendix 1 and as follows:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| CompanyName | EntityCode(atcontractsignature) | TypeP/Prime;SI/SubcoIndirect | Country(ISOCode) | Total Amount in Euro per Phase 1 | Total Amount in Euro per Phase 2 |
|  |  |  |  |  |  |
|  |  |  |  |  |  |

2.2 Milestone Payment Plan (MPP)

The Payment Plan and other financial conditions applicable to this Work Order are specified in Appendix 1 hereto.

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The price and payment terms and conditions shall be those foreseen in Article 4 of the Framework Contract.

Articles COMPLEMENTS AND AMENDMENTS TO ARTICLE 6 OF THE FRAMEWORK CONTRACT

CLAUSE 9: Key Personnel

The Contractor’s key personnel is listed in

[OPTION 1:] the Contractor’s proposal referred to in Article 1.2 above.

[OPTION 2:] the Minutes of the negotiation meeting referred to in Article 1.2 above.

The provision contained in Clause 9.3 shall be read as including the European Union and/or their respective Member States and/or States participating in the H2020 programme.

CLAUSE 11: CUSTOMER FURNISHED ITEMS (CFI)

[OPTION 1]: It is not foreseen that the will provide any items in accordance with

Clause 11 of the GCC to the Contractor.

[OPTION 2]: The undertakes to provide CFI(s) to the Contractor in accordance with

Appendix 2. For the purpose of Clause 11 of the GCC the value of the item(s) is/are:

|  |  |
| --- | --- |
| Item | Insurance Value |
|  |  |
|  |  |

The Contractor is liable and bears the risk for the item(s) until [INSERT POINT IN TIME],

After the execution of the Contract the CFI(s) will be

The Contractor shall include the item(s) in the Inventory/Fixed Asset Record in accordance with the provisions of Article 4 above.

CLAUSE 12: ITEMS MADE AVAILABLE BY THE AGENCY [OPTION 1]: It is not foreseen that the I I will make any items available to the Contractor in accordance with Clause 12 of the GCC.

|  |
| --- |
| OPTION 2I: The will make available to the Contractor the items listed below: |
| Item | Replacement Value |
|  |  |
|  |  |

The Contractor is liable and bears the risk for the item(s) until [INSERT POINT IN TIME].

The Contractor shall include the item(s) in the Inventory/Fixed Asset Record in accordance with the provisions of Article 4 above.

[SUB-OPTION i]s After the execution of the Contract the item(s) made available to the Contractor under Clause 12 of the GCC will be returned to the ■■ in a [modified state/ in the same state] it/they was/were made available to the Contractor. [END Sub-Option

1]

[SUB-OPTION 2]: After the execution of the Contract the item(s) made available to the Contractor under Clause 12 of the GCC will be [END Sub-Option 2]

In case of loss of - or damage to the item(s) the Contractor will

CLAUSE 17: PENALTIES/INCENTIVES [OPTION **1**]

Penalties for late deliveiy shall not apply, and similarly they will not apply in the subcontract(s) that may be placed by the Contractor.

[OPTION 2]

1. Penalties, as provided for in the GCC apply to the delivery of [INSERT THE ELEMENT] on [INSERT THE DATE], The penalised value is the total price of the Contract.

Penalties shall be calculated in accordance with the scale laid down in paragraph [1.1 “Flight items or critical schedule items” OR 1.2 “Technology or R&D items” OR 2.1 “Cost plus fixed fee contract” OR 2.2 “Cost plus incentive fee contract”] of Annex III to the GCC.

OR

1. Penalties, as provided for in the GCC, apply to the following deliverable items, and shall

3e calculated based on the penalised value as follows:

|  |  |  |
| --- | --- | --- |
| Deliverables | Date | Penalised Value |
| Delivery of |  | [indicate an amount OR a % of the corresponding Phase price] |
| Delivery of |  | [indicate an amount OR a % of the corresponding Phase price] |

Penalties shall be calculated in accordance with the scale laid down in paragraph [1.1 “Flight items or critical schedule items” OR 1.2 “Technology or R&D items” OR 2.1 “Cost plus fixed fee contract” OR 2.2 “Cost plus incentive fee contract”] of Annex III to the GCC.

[OPTION 3]

Penalties shall not apply. Clause 17.3 is complemented as follows:

SCHEDULE INCENTIVE:

The following incentive, connected to the timely and successful deliveries/completion of significant and critical milestones, with the aim to further safeguard the agreed project schedule, are granted by the to the Contractor, under the conditions as laid down in

paragraphs 1-3 herein:

1. The Contractor shall be entitled to earn an amount of 5% of the total contract price for the successful completion of the Final Review, not later than 15 days before

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payment milestone [To+XX], which at the moment of signature of the Contract has been identified as....;

1. It is hereby agreed that the incentive amount described above in paragraph 1 shall be granted, upon compliance to all provisions set above in the said paragraph and upon confirmation by the^^^l of the completion of the milestone identified in Paragraph 1.
2. Additionally:
3. The incentive amount described above shall be considered as a firm amount, outside the contract price identified in Article 4.1.
4. The Contractor will receive the incentive amount as described above, subject to compliance to all the provisions set above in paragraphs 1 and 2.
5. The incentive amounts shall be lost in its entirety, if the respective incentive milestone is not successfully achieved within the date specified above in paragraph 1.
6. The above incentive is granted only and strictly to the Contractor, subject to compliance to all the provisions set above in paragraphs 1 and 2 as applicable.
7. No other incentives are foreseen.

[Option CLAUSE 22: if different than GCC]

The warranty shall run for a period of starting from .... as defined in the Statement of

Work.

Article 4 SPECIAL CONDITIONS

ALL TERMS AND CONDITIONS OF THE FRAMEWORK CONTRACT REMAIN UNCHANGED AND IN FORCE.

Done in [NUMBER] originals, one for each Party to thisWork Order,

In:

On:

In:

On:

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ANNEX 4: CONTRACT CHANGE NOTICE

For submission of a change as per Clause 13 of the GCC as amended by the provisions of

the present Contract, the Contractor shall submit his proposal in the format of a CCN using the cover page included below. The form shall be filled in with the following information as a minimum:

The Contractor’s name and the Framework Contract number

The title of the area affected by the change (Work Package reference, new work, etc.)

The name of the initiator of the change (Contractor or

The description of the change (including Work Package Descriptions, WBS, etc.)

The reason for the change

Effect on other Framework Contract provisions

A CCN Form, as per the format below, signed by the Contractor’s representatives

The Contractor shall, on request of the provide additional documentary evidence. At

the request of either Party, the proposed change may be discussed at a Change Review Board, consisting of both the Contracts Officer and the Technical Officer of each Party.

|  |  |  |  |
| --- | --- | --- | --- |
| Company Full Name | Contract No: XX | Doc No: | XX |
|  |  | Issue: | XX |
|  | CONTRACT CHANGE NOTICE | Revision: | XX |
|  |  | Date: | XX |
|  | Contractor CCN No: XX | Page: | 1 of XX |

Project:

WP References:

CCN Title:

Initiator Of Change (Company Full Name and level)

CR ref.:

Effect On Contract Provisions: *(Financial Contractual Text, Schedule, Technical Compliance, System Design/Integration, Segment Interface, Operability/Supportability, other)*

Description of Change

Reason for Change & Validity:

Compliance with General Principles for Contract Amendments:

The present amendment fulfills the following conditions:

1. it does not extend the scope of the contract considerably to encompass supplies, services or works not initially covered;
2. it does not disturb the economic balance of the contract, in favour of the contractor in a manner which was not provided for in the terms of the contract; a) it does not introduce conditions which, if it had appeared initially in the contract documents, would have allowed for the admission of tenderers other than those initially admitted or would have allowed for the acceptance of a tender other than the one initially accepted.

Justification:

|  |  |
| --- | --- |
| YES | □ |
| NO | □ |
| YES | □ |
| NO | □ |
| YES | □ |
| NO | □ |

Change Classification (A/B):

Start of Work:

End of Work:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Approved | Rejected | Function | Name | Date | Signature |
|  |  | Project Manager |  |  |  |
| Contracts |  |  |  |
| | Approvals |
| Approved | Rejected | Project Control |  |  |  |
|  |  | Contracts Officer |  |  |  |
| Contract Tech. Officer |  |  |  |

Price/Price Type/Currency:

Prime Contractor

|  |  |  |  |
| --- | --- | --- | --- |
|  | Implemented by the upon CCNsignature | Retained byupon CCN signature forfuture exercise | Discarded |
| Baseline | □ | □ | □ |
| Option 1Option valid until... | □ | □ | □ |
| Option...Option valid until... | □ | □ | □ |

Note: A complete CCN shall consist of the above cover sheet (with continuation sheets if necessary) + Appendix 1, financial & contractual appendix + Appendix 2, Technical appendix in the form of an

ECP.

All CCNs financial appendices shall be structured as follows:

Appendix 1: CCN <Title>, <ESA ref number> Financial appendix

Summary section:

This CCN amounts to a total of <> Euro.

The amount is broken down as follows:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Country | Company full name | suppliercode | Amount(EURO) | Description of the activities | Price Type |
|  |  |  |  |  |  |

MPP section

<this section shall include all the MPP information for the amount committed or decommitted as per summary section table>

*<MPP shall be submitted in the following format>*

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| «Project ID> | Milestone Payment Plan |  |  | MS amounts |  |  |
| SupplierCode | MPPcode | MSNr | Year | MilestoneDescription | PreviousAmount(\*)Euro | CCNamountEuro | NewAmount(\*)Euro in % | NewcumulativeAmountEuroin % | Dates(dd/mm/yy) |
|  |  |  |  |  |  |  |  |  |  |  |  |

(\*) to be filled in only if the CCN modifies an existing MPP. PSS section <this section shall include all the PSSA2, A8 and Ais.i forms for the amounts committed or de-committed as per summary section table>

*For information only* - include the breakdown of the amounts to be allocated to the *subcontractors or suppliers:*

|  |
| --- |
| CCN amount breakdown table: |
| Company full name | ■1suppliercode | ContractLevel\* | Amount(EURO) | PriceType | Country | CCN subcontractor number |
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |
| Total Amount |  |  |

Appendix 2: CCN <Title>, ref number > Technical appendix

|  |  |  |  |
| --- | --- | --- | --- |
| Company Name | Contract No: XX Engineering Change Proposal | Doc No:Issue:Revision:Date:Page: | ECP No 1 of |
| Project/Area: WP References: |
| Change Origin: | ESACR/CCNNo: |  |

ECP Title:

ECP Text:

Reason for Change:

Areas Impacted: (eg unit compliance, system compliance, cost\*, schedule)

*if cost impact applies then appendix 1 is mandatoru* Documents Impacted:

List of Annexes:

Constraints and Recommendations:

***Segment ime Contractor Submit Approval***

*Approved Rejected* Function Name Date *Signature*

*Technical Officer*

Annex 5 to

Framework Contract No

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ANNEX 5: TEMPLATE FOR ESCROW AGREEMENT

**ESCROW AGREEMENT**

(subject to negotiations with the Licensee and the Escrow Agent)

NAME, LEGAL FORM, ADRESS of SEAT and REGISTER and REGISTRATION #, which is

represented for the purposes of the signature of this Escrow Agreement by

(“Licensor”)

and

NAME, LEGAL FORM, ADRESS of SEAT and REGISTER and REGISTRATION #, which is

represented for the purposes of the signature of this Escrow Agreement by

(“Licensee”)

and

 a company established under the laws of , with legal seat in

 , n , represented by (“Escrow Agent”)

Together referred to as “the Parties”

WHEREAS

Licensor has entered with Licensee into the Galileo Service Operator contract dated

 (the “Contract”) which provides the Licensee with an access right to IPR as defined

in the Contract, including access to source code pursuant to its clause .

Licensor intends to protect the confidentiality of the said source code;

Licensee may require accessing the source code in the circumstances provided under the Contract;

Escrow Agent is an independent third party who has the right and proper qualities to receive the source code in escrow, in order to let the Licensee access the source code when Licensee is allowed to pursuant to the Contract;

Licensor and Licensee wish to entrust the Escrow Agent to hold the source code in escrow,

the Parties agree as follows:

L **Object of the Escrow Agreement**

1. Object of this Agreement is the deposit of the source code in escrow by the Escrow Agent, in order to fulfil the obligations of the Contract.
2. To this purpose, according to terms and conditions provided by this Escrow Agreement,
3. Licensor and Licensee appoint the Escrow Agent to hold the source code in escrow.
4. Licensor undertakes to consign to the Escrow Agent in deposit one copy of the source code and to provide with its periodic updates.
5. Escrow Agent' undertakes to receive the source code in escrow and to keep and conserve it for the whole duration of the Contract.
6. Licensee undertakes to pay the Consideration indicated in article 2 below.
7. **Escrow Fee**
8. For the escrow, Licensor/Licensee shall pay to Escrow Agent the following escrow fee:

[TBD]

\*

»

1. **Access to the Source code**
2. In case Licensee requires access to the source code in the circumstances set forth in the Contract, the Licensee shall send a written notice by registered letter with return receipt to the Escrow Agent and to the Licensor, requiring access to the source code and indicating the reasons which legitimate such access.
3. The letter shall be sent by Licensee at least 10 (ten) Days before the access takes place.

Framework Contract No.

1. In case no opposition to the Licensee’s access request is sent to Escrow Agent within the above indicated term, Escrow Agent shall allow the access to the source code held in escrow to Licensee.
2. In case Licensor believes that the source code access is not motivated and intends to

oppose to it, it shall send written notice by registered letter with return receipt to the Escrow Agent and the Licensee within 10 (ten) Days the Licensee release request has been received by the Licensor. In such a case the Escrow Agent shall not release the source code and the dispute between the Licensor and the Licensee around the access to the source code shall be settled according to clause (Dispute Resolution) of the Contract.

1. **Release of Source Code bv Escrow Agent**
2. The Licensee has the right to receive by the Escrow Agent the source code held in deposit by him as long as one of any of the following events occurs:
3. Licensor ceases to carry on business;
4. Licensor becomes bankrupt, insolvent or winding-up procedure;
5. Licensor commits a material breach of its obligations under the Contract to provide access to the source code subject to the License.
6. In case one of the circumstances indicated above occurs, the Licensee shall send a written notice by registered letter with return receipt to the Escrow Agent and to the Licensor, requiring the release of source code and indicating the reasons which legitimate such release by the Escrow Agent.
7. The letter shall be sent by Licensee at least 30 (thirty) Days before the release shall occur.
8. In case no opposition to the Licensee’s release request is sent to Escrow Agent within the above indicated term, Escrow Agent shall release and deliver the source code held in escrow to Licensee.
9. In case Licensor believes that the source code release is not motivated and intends to oppose to the release, it shall send written notice by registered letter with return receipt to the Escrow Agent and the Licensee within 15 (fifteen) Days the Licensee release request has been received by the Licensor. In such a case the Escrow Agent shall not release the source code and the dispute between the Licensor and the Licensee around the access to the source code shall be settled according to the Contract.
10. **New Source code versions**

In case new versions, improvements or amendments of the source code are developed by the Licensor within the term of the Contract, Licensor shall deposit such releases with the Escrow Agent, at the latest within 15 (fifteen) Days such new versions are released. Such source code deposited shall be considered as part of the source code deposited in escrow under this Agreement.

1. **Commencement and Duration of the Agreement**

The present agreement shall enter into force on the date of signing by all Parties and shall expire upon expiry of the Contract.

1. **Termination**
2. The Agreement may be terminated by mutual consent of Licensor and Licensee, to be communicated in writing to the Escrow Agent by registered letter with return receipt at least 30 (thirty) Days in advance.
3. The Agreement shall be terminated in case the Contract is terminated for any reason. In such a case, the most diligent party shall give written notice in writing by registered letter with return receipt to the other Parties.
4. The Agreement may also be terminated by the Escrow Agent by written registered letter with return receipt to be sent to both Licensor and Licensee in case the payment of the escrow fee under article 2 is delayed for more than 60 (sixty) Days.

Anno ct No.

1. After termination of the Agreement the Escrow Agent shall destroy the source code or upon request return the source code to the Licensor.

Framework Contract No.

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1. Escrow Agent Undertakings. Representations and Warranties
2. Escrow Agent undertakes to keep the source code in safe and secret storage, taking all the necessary measures in order to protect confidentiality and unauthorized access by third parties, according to the terms of this Agreement. Escrow Agent shall keep the source code sealed and in the original package as it has been delivered by the Licensor and it shall not open, use, disclose, or let any other third party access to the source code.
3. Escrow Agent represents and warrants that:
4. it is an independent third party in respect to the Licensor and Licensee and is not an affiliated, associated or related entity to the other Parties;
5. it has the right and capacity, as well the proper qualities, to enter into this Agreement and fully perform all of its obligations and provide the services hereunder.

Date and Place of signature

Mr./Mrs.

in the name and on behalf of (“Licensor”)

Date and Place of signature

Mr./Mrs.

in the name and on behalf of (“Licensee”)

Date and Place of signature

Mr./Mrs.

in the name and on behalf of (“Escrow Agent”)