

## Annex II to the Invitation to Tender

### Draft Framework Contract for the supply of geospatial products for the Copernicus Service in Support to EU External Action

The European Union Satellite Centre (hereinafter referred as 'SatCen' or 'Contracting Authority'), whose registered address is at Base Aérea de Torrejón de Ardoz, Avenida de Cádiz, Ed. 457, 28850 Torrejón de Ardoz (Madrid) Spain, with VAT registration number N0063121H, which is represented for the purpose of the signature of this contract by its Director, Pascal Legai, of the one part,

and

[full official name]

[statutory registration number]

[full official address ]

[VAT registration number]

(hereinafter referred as "the Contractor"), represented for the purposes of the signature of this framework contract by [forename, surname and function or position], of the other part,

The SatCen and the Contractor, hereinafter collectively referred to as "the Parties" or individually as "a Party",

#### HAVE AGREED ON

the **Special Conditions**, the **General Conditions** and the following Annexes:

**Annex I:** Tender Specifications (Invitation to Tender Ref. SATCEN-OP-03/18 - Framework Contract for the supply of geospatial products for the Copernicus Service in Support to EU External Action).

**Annex II:** Contractor's Tender – [reference and date] and [responses provided to requests for clarifications].

which form an integral part of this Framework Contract (the "FWC").

In the event of any conflict herein,

- The terms set out in the special conditions shall take precedence over those in the other parts of the FWC.
- The terms set out in the FWC shall take precedence over those in the Order Forms and Service Requests.
- The terms set out in the Order Forms and Service Requests shall take precedence over those in the other annexes.
- The terms set out in the tender specifications (Annex I) shall take precedence over those in the Contractor's tender (Annex II).

For the avoidance of doubt, the Contractor acknowledges and agrees that the terms of the FWC shall apply to the exclusion of the Contractor's standard terms and conditions and or any conditions which might be implied by trade custom, practice or other course of dealing.

Subject to the above, the several instruments forming part of the FWC are to be taken as mutually explanatory. Ambiguities or discrepancies within or between such parts shall be explained or rectified by a written instruction issued by the Contracting Authority, subject to the rights of the Contractor under Article I.13 should it dispute any such instruction.

## I – Special Conditions

### Article I.1 – Subject Matter

- I.1.1. The subject of this FWC is the on-demand provision of services and supply of geospatial products for the Copernicus Service in Support to EU External Action, according to the Tender Specifications enclosed as Annex I.
- I.1.2. The required services to be provided under this FWC consist of setting up and maintaining, during the whole duration of the FWC, a service available twelve hours a day (from 8:00 to 20:00 CET), seven days a week, for receiving SatCen's Orders, activating production, coordinating with the Contracting Authority, managing the administrative and technical aspects of the FWC and delivering the results to SatCen.
- I.1.3. The geospatial Products to be produced and supplied under the FWC are products resulting from the analysis of satellite imagery and collateral data, including, *inter alia*, layers, maps and databases under different formats, as per the products description established in the Tender Specifications (Annex I). The production of the ordered products will take place during standard working hours.

### Article I.2 – Type of Contract

- I.2.1. Signature of the FWC imposes no obligation on the Contracting Authority to place Service Requests or Orders for products and does not give the Contractor any exclusive rights to provide the services and supply the products covered by the FWC. In any case, SatCen reserves the right, at any time during the FWC, to cease placing Orders and Service Requests without the Contractor thereby having the right to any compensation.
- I.2.2. Only the countersignature by the Contracting Authority of Order Forms and Service Requests, based on the templates provided as Appendixes C and D to the Tender Specifications, is binding on the SatCen and authorises the implementation of production and the provision of the services and the supply of products under the FWC (the "Implementation").
- I.2.3. All Order Forms and Service Requests giving rise to the Implementation of the FWC shall conform to the terms set out herein.

### Article I.3 – Commencement and Duration of the FWC

- I.3.1. The FWC shall become effective on the date on which it is signed by the contracting Party signing last.
- I.3.2. Under no circumstances may Implementation take place before the date on which the FWC and the Order Form or Service Requests issued hereunder have become effective.

- I.3.3.** This FWC shall be in effect until 31 December 2019, as of its effective date. This contractual period and all other periods specified in the FWC are calculated in calendar days unless otherwise indicated.
- 1.3.4.** Subject to budget availability and a positive evaluation of the services, the FWC may be automatically renewed up to two (2) additional periods of twelve (12) months each (two calendar years, up to 31 December 2021).
- I.3.5.** Any Order Form and Service Request must become effective before this FWC expires by effluxion of time or is terminated. The FWC shall not apply to Order Forms or Service Requests after their expiry or termination.

#### Article I.4 - Prices

- I.4.1.** The maximum amount of the FWC is EUR 10,000,000.00 (ten million euro). However, this amount must in no way be construed as a commitment of the Contracting Authority to purchase for the maximum amount.
- I.4.2.** The unit prices for the services and geospatial products, as per the Contractor's tender (Annex II), are as follows:
- [complete]*
- I.4.3.** It is agreed that the prices offered in the Contractor's tender (Annex II) are all-inclusive and cover all expenditure that may be incurred by the Contractor in providing the services and supplying the products under this FWC, including, without limitations, the following items:
- All expenses (including overheads) incurred by the Contractor in the Implementation of the FWC.
  - Any fees in relation to the acquisition by the SatCen of the ownership and rights of use over the results of the FWC.
  - Any deliverables under the FWC.
  - Travel, subsistence, accommodations or any other related expenses.
- I.4.4.** The prices quoted in the Contractor's Tender (Annex II) can only be maintained or lowered during the term of the FWC and its possible renewal.
- I.4.5.** Prices quoted in the Order Forms and Service Requests shall be expressed in Euro and shall not contain VAT or any other taxes and/or duties, in accordance with Article II.17.4, having regard to the privileges and immunities of the SatCen, as described in Article I.12.
- I.4.6.** The prices quoted in the tender apply for the whole duration of the Contract, including its possible renewals.

## **Article I.5. – Ordering procedure**

Under this FWC the Contracting Authority will send to the Contractor two types of requests: Orders (for products) and Service Requests (for services covering the tasks of the fixed part of the FWC, as defined in the Tender Specifications).

### **I.5.1. Service Requests**

- Service Requests are issued to cover all the tasks of the fixed part of the FWC, as described in the Tender Specifications, during the period of time defined in the Service Request Form. Service Requests will be placed by the Contracting Authority during normal office hours throughout the duration of the FWC.
- Service Requests will be sent by the Contracting Authority via e-mail. From the time the Service Request is sent, the Contractor must acknowledge receipt within one (1) working day from reception, and sign and return the Service Request, either on paper or electronically, within two (2) working days from reception.
- No response or no acknowledgement of receipt of the Service Request shall have the automatic effect of considering the Service Request tacitly accepted by the Contractor.
- The Contractor does not have the right to reject any Service Request issued under the FWC. If further clarifications are needed, the Contractor may contact the Contracting Authority through the communication channels to be defined and agreed during the Set-Up phase.

### **I.5.2. Orders**

- Orders for the provision of Products may be placed by the Contracting Authority twelve (12) hours a day (8:00 to 20:00 CET), seven (7) days a week during the duration of the Contract.
- Orders will be sent by the Contracting Authority via e-mail, under the Order Form attached hereto as Appendix C – Order Form. Reception of Orders will be verified by the Contracting Authority by a courtesy phone call to the Contractor's Technical Point of Contact.
- From the time an Order is sent, the Contractor must acknowledge receipt via e-mail within the next four (4) hours, unless otherwise specified in the Order. The Contractor shall then immediately proceed with the activation of the Services in compliance with the Order sent by the Contracting Authority.

- No response to the Order sent, non-acknowledgement of receipt or non-immediate activation of the Service by the Contractor within the next four (4) hours shall have the automatic effect of considering the Order tacitly accepted by the Contractor.
- Orders shall be signed by the Contractor and returned to the Contracting Authority, either on paper or electronically, within two (2) working days from reception.
- The Contractor does not have the right to reject any Order issued under this Contract. If further clarifications are needed to initiate an activation, the Contractor may contact the Contracting Authority through the communication channels to be defined and agreed during the set-up phase mentioned in this Tender Specifications (Section 2.4).

## **Article I.6 Delivery and Acceptance**

### **I.6.1. Service Requests**

- Provision of services covering the tasks of the fixed part of the FWC, as defined in the Tender Specifications, shall be maintained at the highest levels of performance, reactivity, proactivity and professionalism, ensuring the proper availability, communication, managerial and coordination aspects of the service during the period defined in the Service Request Form. Upon finalization of the period requested in the Service Request Form, the Contractor must send a brief report (maximum 2 pages) summarizing the activity performed within five (5) working days from the end of the requested period.
- SatCen's acceptance for the delivery of the services will be communicated via e-mail.
- Activities relating to the maintenance of the service must be included as well in the appropriate Progress Report.

### **I.6.2. Orders**

- The Products and related materials will be delivered to the Contracting Authority via FTP and/or on-line GIS platform (the access to which will be provided by SatCen) within the time frames that the Order specifies for each product.
- In addition, for each delivery, the Contractor shall provide: (i) a list of deliverables resulting from the Services rendered; and (ii) a report on the specific activities performed (Technical Report).
- SatCen's acceptance for the delivered Products will be communicated via e-mail to the Contractor.

## I.7. Place of performance

- I.7.1. The services and the production will be mainly performed at the Contractor's premises. Notwithstanding this, at the request of the SatCen, the Contractor may perform a number of tasks at the SatCen's premises, including, without limitations, attending the Kick-Off meeting and progress review meetings.
- I.7.2. The Contractor shall be available to organise meetings at its own premises, if requested by SatCen.

## Article I.8 - Invoicing and payments

- I.8.1. Two types of payments will be made: the payments for services rendered under the Fixed Part of the FWC (performed in response to a Service Request) and the payments for products delivered under the Variable Part (performed in response to an Order).
- For the Fixed Part of the FWC, the Contractor shall submit an invoice in Euro equal to the total price of the relevant Service Request (Appendix D) as per the Economic Offer submitted by the Tenderer. The invoices must be submitted after acceptance by the SatCen of the brief report summarizing the activity performed. In addition, all the Progress Reports associated to the period must have been delivered by the Contractor to the Contracting Authority in due time.
  - For the Variable Part of the FWC, the Contractor shall submit an invoice in Euro equal to the total price of the relevant Order (Appendix C) as per the Economic Offer submitted by the Tenderer. Contractor's request for payment shall include the invoice and be accompanied by the relevant Order and Technical Report. Payments shall be made only after the Contracting Authority has accepted all the deliverables and the Technical Report associated to an Order.
- I.8.2. Subject to verification and acceptance of the invoice by the Contracting Authority, payments (both for the products and the services) shall be made no later than **thirty (30) days** from the acceptance of the invoice.
- I.8.3. Invoices must contain the Contractor's identification information, the amount in Euro and the date, as well as the reference number of the Contract, Order Form or Service Request. Invoices shall not contain VAT or other taxes.
- I.8.4. The invoices shall be sent by email to [Finance.Invoices@satcen.europa.eu](mailto:Finance.Invoices@satcen.europa.eu) or by post to the following address:

European Union Satellite Centre  
Attn: Finance unit  
Apdo de correos 511

28850, Torrejon de Ardoz  
Madrid, Spain

### Article I.9. - Bank Account

Payments shall be made in Euros directly to the Contractor's bank account or, if applicable, the consortium leader bank account, identified as follows:

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

The bank account number indicated in the FWC must be indicated on all invoices. Changes to the Contractor's bank account require prior notification to the Contracting Authority.

### Article I.10 – Data Controller and Points of Contact

**I.10.1.** The Data Controller shall be the Head of the Copernicus Unit of the Contracting Authority.

**I.10.2.** All notices and communications shall be sent to the following Parties' addresses and contact persons:

**The Contracting Authority:**

European Union Satellite Centre  
Avenida de Cádiz, Ed. 457  
Base Aérea de Torrejón  
E-28850 Torrejon de Ardoz  
Madrid, Spain

Point of contact for legal and administrative matters:

E-mail: [procurement.sea@satcen.europa.eu](mailto:procurement.sea@satcen.europa.eu)

Telephone: + 34 91 678 60 00

Point of contact for technical, production and invoicing matters:

E-mail: *[complete]*

Telephone: *[complete]*

**Contractor or Consortium Leader:**

*Mr/Mrs/Ms [complete]*

*[Title]*

*[Company name]*

*[Official address in full]*

*[e-mail and phone number]*

*[PROVIDE TWO POINTS OF CONTACT]*

#### **Article I.11. – Change of Team Members**

- I.11.1.** The SatCen expects the FWC to be executed by the same team members identified in the tender.
- I.11.2.** Whenever a replacement is necessary, the Contractor must ensure the continuity of the services and the timely submission of deliverables.
- I.11.3.** In case the Contractor proposes new team members (replacement or additional personnel) that were not initially included in the Tender, the Contractor must send a formal request to SatCen with the names and CVs of the proposed new team members for SatCen's approval. It should be noted that the aforementioned information must be accurate and subject to audits.
- I.11.4.** The SatCen will have the right to object to any changes of members of the team from those initially proposed. In case the original team is no longer available, the SatCen will have the right to cancel the Order Form or Service Request.
- I.11.5.** Any replacement of team members will not oblige the SatCen to pay any remuneration, fees or costs additional to those laid down in the initial contract. The Contractor must bear any additional costs arising from or incidental to such replacement.

#### **Article I.12 – Privileges and Immunities of the SatCen**

- I.12.1.** The Contracting Authority is, as a rule, exempt from all taxes and duties, including VAT, pursuant to Article 13 of Council Decision 2014/401/CFSP, of 26 June 2014, on the European Union Satellite Centre, which are set out in Protocol (No 7) on the privileges and immunities of the European Union, attached to the Treaty on the Functioning of the European Union. Additionally, the Protocol grants the SatCen immunity from jurisdiction and execution.
- I.12.2.** Pursuant to the above, nothing in this FWC may be interpreted as a waiver of any privileges or immunities accorded to the SatCen by its constituent documents or international law.
- I.12.3.** The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the supplies required under the Contract are exempt from taxes and duties, including VAT.

## **Article I.13 - Applicable Law and Settlement of Disputes**

- I.13.1.** The FWC shall be governed and construed in accordance with the common laws (*Derecho común*) of Spain.
- I.13.2.** Any dispute between the parties resulting from the interpretation or application of the FWC which cannot be settled amicably, shall be finally settled by compulsory arbitration in accordance with the arbitration rules of the International Chamber of Commerce (ICC), with the following specifications:
- The place of the arbitration will be Madrid, Spain; and the language of the arbitration proceedings will be English.
  - The arbitration tribunal will consist of three (3) arbitrators chosen in accordance with the rules of the ICC. The arbitrators will be empowered to, at either Party's request, grant injunctive relief.
  - The arbitral award will be the exclusive remedy of the Parties for all claims, counterclaims, issues, or accountings presented or pled to the arbitrators.
  - The right of appeal by either Party to Spanish courts or any other national courts on a question of law arising in the course of any arbitral proceedings or out of an award made in any arbitral proceedings is hereby agreed to be excluded.
  - Any additional costs, fees, or expenses incurred in enforcing the arbitral award will be charged against the Party that resists its enforcement.
  - The arbitrator will have the discretionary authority to award reasonable attorney's fees.
  - Except as may be required by law, neither a Party nor the arbitrator shall disclose the existence, content, or results of any arbitration or dispute hereunder without the prior written consent of both Parties.

## **Article I.14 - Termination by either Party**

- I.14.1.** Either Party may at its own discretion and without being required to pay compensation, terminate the FWC by giving a three (3)-month prior notice in writing to the other Party.
- I.14.2.** Should the Contractor terminate the FWC, the Contractor shall only be entitled to any outstanding payment corresponding services provided already verified and validated and invoices previously accepted by the Contracting Authority.
- I.14.3.** Should the Contracting Authority terminate the FWC, the Contractor shall only be entitled to payments corresponding to the services provided and products delivered under valid Order Forms and Service Requests and accepted by the Contracting Authority before the date termination is notified to become effective ("Termination Date"). On receipt of such notice from the Contracting Authority the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce its commitments in relation to the Contracting Authority. It shall draw up any

documents required by the FWC and its Annexes for the services provided up to the Termination Date, within a period not exceeding sixty days from the Termination Date.

**I.14.4.** In the event of termination, the Contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work, pursuant to the first paragraph of Article II.15.3.

## **Article I.15 - Ownership and exploitation of results and pre-existing rights**

### **I.15.1. - Definitions**

In this FWC the following definitions apply:

- (1) 'Results' means any intended outcome of the performance of the FWC which is delivered and finally accepted by the Contracting Authority.
- (2) 'Creator' means any natural person who contributed to the production of the result and includes personnel of the Contracting Authority or a third party.
- (3) 'Pre-existing rights' means any industrial and intellectual property rights, including background technology, which exist prior to the Contracting Authority or the Contractor ordering them for the purpose of the FWC performance and include rights of ownership and use by the Contractor, the creator, the Contracting Authority and any other third parties.

### **I.15.2. – Ownership of the Results of the FWC**

The ownership of the Results created within the context of the implementation of this FWC or an Order Form or Service Request shall be fully, directly and irrevocably acquired by the European Union, including copyrights and other intellectual or industrial property rights, and all technological solutions and information contained therein.

The European Union is granted, at no additional cost, a non-exclusive, irrevocable, worldwide license to use, distribute, modify and sub-license, without limitations in time, all the results, including copyright and other intellectual or industrial property rights, and all technological solutions and information contained therein.

The Contractor waives any ownership and intellectual property rights over the results of this FWC, including the rights to use and disseminate the results. If applicable, the Contractor shall ensure such a waiver from its subcontractors.

### **I.15.3. - Pre-existing rights**

The European Union shall not acquire ownership of the pre-existing rights, although this shall not be construed as a limitation to its rights of ownership and exploitation of results, as specified in Article I.15.2.

All pre-existing rights shall be licensed to European Union on a royalty-free, non-exclusive and irrevocable basis. All the pre-existing rights shall be licensed to European Union from the moment the results are delivered and accepted by the Contracting Authority.

The licensing of pre-existing rights to European Union under this FWC covers all territories worldwide and is valid for the whole duration of intellectual property rights protection.

When the Contractor retains pre-existing rights on parts of the results, reference shall be inserted to that effect with the following disclaimer: “© - 2017 – European Union. All rights reserved”. Certain parts are licensed under conditions to the European Union.

The Contractor shall provide the Contracting Authority with a list of pre-existing rights and third parties' rights including its personnel and creators.

The Contractor shall establish to that effect a list of all pre-existing rights and rights of creators and third parties on the results of this FWC or parts thereof. This list shall be provided no later than the date of delivery of results.

#### **Article I.16 - Penalties for underperformance**

Without prejudice to SatCen's right to liquidated damages under Article II.12 and to Contract termination under Article II.15, Contractor's underperformance is subject to the penalties detailed below.

No acknowledgment of receipt of the Order Form within 4 hours from the time the Order is sent:

- 5% penalty on the Order Form price will be applied for each hour beyond the acceptable time.

Failure to return to the Contracting Authority the signed Order / Service Request within two working days:

- 5% penalty on the Order Form / Service Request Form price for each day beyond the acceptable time.

Late delivery as per the deadline set out in the Order Form:

- Penalty applied is equivalent to the proportion between the delay and the available time for production.

Deviation from the Quality Requirements:

- Percentage of the Order Form price equivalent to the proportion of Product (or parts thereof) not accepted by SatCen during validation. The list of the defective items will be provided to the Contractor.

Partial delivery:

- Percentage of the Order Form price equivalent to the missing proportion in the delivered Product. The list of the missing items will be provided to the Contractor.

Failure to deliver:

- The penalty for a total lack of delivery is of 100% of the price of the Order Form.

**Article 1.17. - Other special conditions**

- I.17.1.** Without prejudice to the checks and audits mentioned in Article II.19, the Contracting Authority reserves the right to access the Contractor's premises, with a prior notice of at least 24-hour, in order to check the progress of production, the organisation of the works, review the results being produced by the Contractor before delivery and, in general, obtain any information regarding compliance with the FWC, Order Forms and Service Requests. The Contractor shall not pass on to the Contracting Authority any expenses incurred as a result of or in connection with these visits.
- I.17.2.** Without prejudice to the right to terminate the FWC or any Order Forms or Service Requests in accordance with Article II.15, to the penalties for underperformance under Article I.16 and to the liquidated damages in accordance to Article II.12, the Contracting Authority reserves the right not to pay the full value of the Order Form or Service Request to the Contractor, in case of late delivery, poor quality, non-compliance with the terms of the Order Form or Service Request or if a substantial discrepancy occurs.
- I.17.3.** If an amendment of the delivered products is needed and requested by the Contracting Authority, the Contracting Authority can suspend the payment of the relevant Order Form or Service Request, according to the General Conditions of this Contract, until the delivery of the amended products takes place. Any additional costs required for the amendment of the products need the prior approval of the Contracting Authority in order to be invoiced.
- I.17.4.** The Contracting Authority reserves the right to amend at any time and for any reason a signed Order Form or Service Request by notifying the changes to the Contractor. In such a case, any additional costs that might occur for the completion of the amended task to be performed will need the prior approval of the Contracting Authority in order to be invoiced.

**SIGNATURES**

For the Contractor,  
[Company  
name/forename/surname/function]

For the Contracting Authority,  
Pascal Legai, Director

signature[s]: \_\_\_\_\_  
Done at [place], [date]

signature: \_\_\_\_\_  
Done at [place], [date]

In duplicate in English.

## II – General Conditions

### Article II.1 - Performance of the FWC

- II.1.1.** The Contractor shall provide the services and produce and deliver the products to a professional standard which might reasonably be expected of it and in any event with reasonable skill and care. The Contractor shall have sole responsibility for complying with any legal obligations incumbent on it, notably but not limited to those resulting from employment, tax and social legislation.

*[If applicable, every Member of the Awarded Consortium shall be equally responsible and jointly and severally liable in case of failure by any other member of the consortium for the completion of any of the tasks or obligations under the FWC or under any Order Form or Service Request.]*

- II.1.2.** The Contractor shall have sole responsibility for taking the necessary steps to obtain any permit or licence required for the production and provide the services supply the products under the laws and regulations in force at the place where the services are to be produced or supplied.
- II.1.3.** Any reference made to any employee, director or member of staff of the Contractor ("Contractor's Staff") in the FWC shall relate exclusively to individuals involved in the provision of the services and supply of the products.
- II.1.4.** The Contractor shall endeavour, throughout the life of the FWC, that all the staff members involved in the provision of the services meet the same level of qualifications, experience and authorisations as those indicated in the Contractor's Tender (Annex II).
- II.1.5.** The Contractor shall neither hold itself out as representing the Contracting Authority nor behave in any way that would give such an impression. The Contractor shall inform third parties that it does not belong to the European public service.
- II.1.6.** The Contractor shall have sole responsibility for the Contractor's Staff who perform the tasks and duties under the FWC assigned to them.

The Contracting Authority may not under any circumstances be considered to be the employer of the Contractor's Staff and the said staff shall undertake if requested by the Contracting Authority and as far as they are able not to invoke in respect of the Contracting Authority any right arising from the contractual relationship between the Contracting Authority and the Contractor.

- II.1.7.** Notwithstanding the above, the Contractor shall indemnify and hold the Contracting Authority harmless against all and any claims, loss, cost or expenses suffered as a consequence of any claim arising from any employee or other member of the Contractor's staff or any claim, assessment or other levy made by any competent taxation or other governmental Contracting Authority in connection with the provision of the services by the Contractor to the Contracting Authority and/or the termination thereof (howsoever caused).

- II.1.8.** Contractor's personnel providing services at the SatCen's premises shall comply at all times with the SatCen's and the Torrejón de Ardoz Air Base' security rules and procedures for visitors.
- II.1.9.** In the event of disruption arising out of the action of a Contractor's staff member working on the Contracting Authority's premises, breach of security rules and procedures or if a Contractor staff member's expertise fails to correspond to the profile required in Annex I to the FWC, the Contractor shall replace this member without delay. The Contracting Authority shall have the right to make a reasoned request for replacement of any such member of the Contractor's Staff. Replacement staff should have the necessary qualifications and be capable of performing the FWC under the same standards of quality and efficiency. The Contractor shall be responsible for any delay in providing the services or supplying the products resulting from the replacement of the Contractor's Staff.
- II.1.9.** Should any unforeseen event, action or omission directly or indirectly hamper the provision of the services, either partially or totally, the Contractor shall immediately and on its own initiative record it and report it to the Contracting Authority. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with its obligations under the FWC. In such event the Contractor shall give priority to solving the problem rather than determining liability.
- II.1.10.** The products delivered under this FWC must be guaranteed against all defects and non-conformities with the Tender Specifications (Annex I) for two (2) years from the date of delivery.

## **Article II.2 - Means of Communication**

- II.2.1.** Any communication relating to the FWC or to its performance shall be made in writing and shall bear the FWC number, and if applicable the Order Form or Service Request number, without prejudice to the right of the Parties to hold communications via phone or videoconference. Any communication is deemed to have been made when it is received by the receiving Party unless otherwise provided for in this FWC.
- II.2.2.** Electronic communication shall be deemed to have been received by the Parties on the day of dispatch of that communication provided it is sent to the addressees listed in Article I.10 (or such other address or e-mail address that the relevant Party may notify to the other). If the sending Party receives a message of non-delivery or failure to deliver, the sending Party shall without delay:
- Notify the receiving Party of the incidence;
  - implement the quickest possible remedy; and
  - communicate such remedy to the receiving Party.

If case of absence of the receiving Party, a notification of absence must be provided to the sending party, indicating the name and contact details of a valid substitute.

Electronic communication shall be confirmed by an original signed paper version of that communication if requested by any of the Parties provided that this request is submitted without unjustified delay. The sender shall send the original signed paper version without unjustified delay.

- II.2.3.** Mail sent using the postal services is deemed to have been received by the Contracting Authority on the date on which it is registered by the department responsible referred to in Article I.10.

### **Article II.3 - Liability/Indemnity**

- II.3.1.** The Contractor shall be solely responsible for complying with any legal obligations incumbent on it.
- II.3.2.** The Contracting Authority shall not be held liable for any damages, claim, loss, cost or expense sustained by the Contractor in performance of the FWC, including any damage caused by the Contractor to third parties during or as a consequence of the performance of the FWC, except in the event of wilful misconduct or gross negligence on the part of the Contracting Authority.
- II.3.3.** The Contractor shall be held liable for any loss or damage sustained by the Contracting Authority in performance of the Contract, including in the event of subcontracting, and for any claim by a third party, but only to an amount not exceeding three times the total amount of the Contract. Nevertheless, if the damage or loss is caused by the gross negligence or wilful misconduct of the Contractor or its personnel or subcontractors, the Contractor shall have unlimited liability for the amount of the damage or loss.
- II.3.4.** The Contractor shall indemnify and hold the SatCen harmless for all damages and costs incurred due to any claim. The Contractor shall provide compensation in the event of any action, claim or proceeding brought against the Contracting Authority by a third party as a result of damage caused by the Contractor during the performance of the Contract. In the event of any action brought by a third party against the Contracting authority in connection with the performance of the Contract including any alleged breach of intellectual property rights, the Contractor shall assist the Contracting Authority. Such expenditure incurred by the Contractor may be borne by the Contracting Authority.
- II.3.5.** In the event of any action brought by a third party against the Contracting Authority in connection with the performance of the FWC which does not fall within Articles II.3.2 and II.3.3 above, the Contractor shall assist the Contracting Authority. Expenditure incurred by the Contractor to this end may be borne by the Contracting Authority at its sole discretion.
- II.3.6** *[Should the Contractor consist of a consortium, all the economic operators forming the consortium shall be jointly and severally liable to the Contracting Authority for complying with their duties and responsibilities under the FWC.]*

- II.3.7.** The Contractor shall take out and maintain for the duration of the FWC a liability insurance against risks and damages that may arise out of or in connection with the performance of the FWC, if required by the relevant applicable legislation. The Contractor shall take out supplementary insurance as reasonably required in accordance with standard practice in its industry. A copy of all the relevant insurance contracts shall be sent to the Contracting Authority should it so request.

#### **Article II.4 - Conflicts of Interest**

- II.4.1.** The Contractor shall take all necessary measures to prevent any situation that could compromise the impartial and objective performance of the FWC. Such conflicts of interest could arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest.

Any situation constituting or likely to constitute a conflict of interest during performance of the FWC must be notified to the Contracting Authority in writing without delay. In the event of any such conflict, the Contractor shall immediately take all necessary steps to resolve it.

The Contracting Authority reserves the right to verify that such measures are reasonable and may require additional measures to be taken, if necessary, within a time limit which it shall set.

The Contractor shall ensure that the Contractor's Staff are not placed in a situation which could give rise to conflicts of interest. Without prejudice to Article II.1 the Contractor shall replace, immediately and without compensation from the Contracting Authority, any member of the Contractor's Staff exposed to such a situation.

- II.4.2.** The Contractor shall abstain from entering into any contract likely to compromise its independence.

- II.4.3.** The Contractor declares:

- that it has not made and will not make any offer or agreement with any third party of any type whatsoever from which an advantage can be derived under the FWC,
- 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 third party whatsoever, where such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, inasmuch as it is an incentive or reward relating to performance of the FWC.

- II.4.4.** The Contractor shall pass on all the relevant obligations in writing to the Contractor's Staff as well as to third parties involved in performance of the FWC. A copy of the instructions given and the undertakings made in this respect shall be sent to the Contracting Authority should it so request.

## Article II.5 - Data Protection

- II.5.1.** Any personal data included in the FWC, or provided to the Contracting Authority during the implementation of the FWC, shall be processed pursuant to Regulation (EC) 45/2001 of the European Parliament and of the Council, of 18 December 2000, on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Such data shall be processed by the Contracting Authority solely for the purposes of the performance, management and monitoring of the FWC without prejudice to its possible transmission to the bodies charged with monitoring or inspection tasks in application of Union law.
- II.5.2.** The Contractor shall have the right to access its personal data and the right to rectify any such data. The Contractor should address any queries concerning the processing of its personal data to the Contracting Authority. The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.
- II.5.3.** Both Parties shall not perform their obligations under the FWC in such a way as to cause either Party to breach any of its obligations under the Data Protection Legislation.
- II.5.4.** The Contractor shall ensure that it and its subcontractors comply at all times with the Data Protection Legislation. The Contractor shall immediately notify the Contracting Authority in the event that it becomes aware of any breach of the Data Protection Legislation by it or any of its subcontractors in connection with the FWC.
- II.5.5.** The Contractor undertakes to adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned in order to:
- (a) prevent any unauthorised person from gaining access to computer systems processing personal data, and especially:
    - (i) unauthorised reading, copying, alteration or removal of storage media;
    - (ii) unauthorised data input, as well as any unauthorised disclosure, alteration or erasure of stored personal data;
  - (b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
  - (c) record which personal data have been communicated, when and to whom;
  - (d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the Contracting Authority;
  - (e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
  - (f) design its organisational structure in such a way that it meets data protection requirements.

## **Article II.6 - Subcontracting**

- II.6.1.** The Contractor may not select subcontractors other than those mentioned in the Tender enclosed as Annex I, unless it obtains the prior written authorisation of the Contracting Authority.
- II.6.2.** Subcontracting is permitted as long as it does not cover the core activities identified as such in the Tender Specifications.
- II.6.3.** Additional levels of subcontracting (i.e. subcontracting of subcontractors) is not permitted during the performance of the FWC.
- II.6.4.** The Contractor shall remain bound by its obligations to the Contracting Authority under the FWC and shall guarantee the provision of the services and be solely liable for the proper performance of the FWC as if it were performing the subcontracted activities itself. Under no circumstance may the Contractor transfer to the subcontractor, in whole or in part, its responsibility towards the Contracting Authority under the FWC or any Order Form or Service Request.
- II.6.5.** The Contractor shall make sure that any subcontract it may enter into does not affect rights and guarantees of the Contracting Authority by virtue of this FWC.

## **Article II.7 - Whole agreement and amendments**

- II.7.1.** This FWC, together with its annexes and any Order Form or Service Request issued hereunder constitutes the whole agreement between the Parties relating to its subject matter.
- II.7.2.** No variations or amendments to the FWC shall be effective unless previously agreed in writing between the Parties, notwithstanding the right of the Contracting Authority to request amendments to products delivered and to the signed Order Forms and Service Requests, as provided in Articles I.16.3 and I.16.4. An oral agreement shall not be binding on the Parties.

## **Article II.8 - Assignment**

- II.8.1.** The Contractor shall not assign its rights and obligations under the FWC or Order Form or Service Request, in whole or in part, without the prior written consent of the Contracting Authority.
- II.8.2.** In the absence of the authorisation referred to in II.8.1 above, or in the event of failure to observe the terms thereof, any assignment of contractual rights and obligations made by the Contractor shall be null and void and shall have no effect.

**Article II.9 - Contractor's guarantees regarding results and pre-existing rights**

- II.9.1.** When delivering the results, the Contractor shall warrant that they are free of rights or claims from creators and third parties, including pre-existing rights, for any use envisaged by the Contracting Authority. This does not concern the moral rights of natural persons.
- II.9.2.** By delivering the results the Contractor warrants that the creators undertake not to oppose that their names be recalled when the results are presented to the public and confirms that the results can be divulged. Names of authors shall be recalled on request in the manner communicated by the Contractor to the Contracting Authority.
- II.9.3.** The Contractor shall obtain the consent of creators regarding the granting of the relevant rights and be ready to provide documentary evidence upon request.

**Article II.10 - Proprietary Information**

- II.10.1.** In this Article, "Proprietary Information" shall include any information intentionally or unintentionally provided directly or indirectly by either the Contracting Authority or the Contractor to the other in oral or documentary form or by way of electronically accessible media or other tangible form or by demonstrations and whether created or arising in connection with the services or existing before, on or after the date of the FWC and marked or designated as proprietary information.
- II.10.2.** In this Article, "Proprietary Information" shall mean:
- (a) in respect of Information provided in documentary or by way of a presentation or in other tangible form, Information which at the time of provision is marked or otherwise designated to show expressly or is created or arises as a consequence of the provision of the services or by necessary implication that it is imparted in confidence;
  - (b) in respect of Information that is imparted orally, any information that the Contracting Authority informed at the time of disclosure was imparted in confidence;
  - (c) in respect of Confidential Information imparted orally, any note or record of the disclosure;
  - (d) any copy of any of the foregoing; and
  - (e) the fact that services are being provided hereunder.
- II.10.3.** The SatCen and the Contractor must:
- (a) not use Proprietary Information for any purpose other than fulfilling its obligations under the FWC without prior written agreement of the other party;

- (b) ensure the protection of such Proprietary Information with the same level of protection it uses to protect its own confidential information or documents, and in any case with due diligence;
- (c) not disclose directly or indirectly Proprietary Information to third parties without the prior written agreement of the other party.

**II.10.4.** The confidentiality obligations set out in this Article are binding on the SatCen and on the Contractor during the performance of the FWC and a period of five years after Contract termination, unless:

- (a) the disclosing party agrees to release the receiving party from the confidentiality obligation earlier;
- (b) the Proprietary Information becomes public through other means than in breach of the confidentiality obligation, through disclosure by the party bound by that obligation;
- (c) the disclosure of the Proprietary Information is required by law.

**II.10.5** The Contractor must obtain from any natural person with the power to represent it or take decisions on its behalf, as well as from third parties involved in the performance of the FWC, including subcontractors, a commitment that they will comply with the confidentiality obligation set out in this Article. A document providing evidence of this commitment must be provided to the SatCen, should it so request.

## **Article II.11 - Force Majeure**

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

**II.11.2.** Without prejudice to the provisions of Article II.1.9, if either party is faced with force majeure, it shall notify the other party without delay by registered letter with acknowledgment of receipt or equivalent, stating the nature, likely duration and foreseeable effects.

**II.11.3.** Neither Party shall be held in breach of its contractual obligations if it has been prevented from performing them by force majeure. Where the Contractor is unable

to perform its contractual obligations owing to force majeure, it shall have the right to remuneration only for services actually rendered.

- II.11.4.** The Parties shall take all necessary measures to reduce damage to a minimum including the right of the Contracting Authority to terminate and retain new suppliers.

## **Article II.12 - Liquidated damages**

### **II.12.1 Delay in delivery**

Without prejudice to the penalties for underperformance set out in Article I.15, if the Contractor fails to perform its contractual obligations within the applicable time limits set in an Order Form or Service Request and such failure causes a breach of SatCen's obligation as regards third parties, the SatCen may claim liquidated damages for each day of delay using the following formula:

$$0.3 \times (V/d)$$

where:

$V$  is the price of the relevant purchase or supply;

$d$  is the duration specified for delivery in the relevant purchase request form, expressed in days.

Liquidated damages may be imposed together with a reduction in price under the conditions laid down in Article II.12.

### **II.12.2 Procedure**

The Contracting Authority must formally notify the Contractor of its intention to apply liquidated damages and the corresponding calculated amount.

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

If the Contractor submits observations, the Contracting Authority, taking into account the relevant observations, must notify the Contractor:

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

### **II.12.3 Nature of liquidated damages**

The parties expressly acknowledge and agree that any amount payable under this Article is not a penalty and represents a reasonable estimate of fair compensation for the damage incurred due to failure to provide the supplies within the applicable time limits set out in this Contract.

#### **II.12.4 Claims and liability**

Any claim for liquidated damages does not affect the Contractor's actual or potential liability or the Contracting Authority's rights under Article II.15.

### **Article II.13 - Suspension of the performance of the FWC**

#### **II.13.1. Suspension by the Contractor**

The Contractor may suspend the performance of the FWC, Order Form, Service Request or any part thereof if a case of force majeure makes such performance impossible or excessively difficult. The Contractor shall inform the Contracting Authority about the suspension without delay, giving all the necessary reasons and details and the envisaged date for resuming the performance of the FWC, the Order Form or Service Request.

Once the circumstances allow resuming performance, the Contractor shall inform the Contracting Authority immediately, unless the Contracting Authority has already terminated the FWC, Order Form or Service Request.

#### **II.13.2. Suspension by the Contracting Authority**

The Contracting Authority may suspend the performance of the FWC, Order Form, Service Request or any part thereof:

- (a) if the FWC, Order Form or Service Request award procedure or the performance of the FWC prove to have been subject to substantial errors, irregularities or fraud;
- (b) in order to verify whether presumed substantial errors, irregularities or fraud have actually occurred.

Suspension shall take effect on the day the Contractor receives formal notification, or at a later date where the notification so provides. The Contracting Authority shall as soon as possible give notice to the Contractor to resume the production or delivery that has been suspended or inform the Contractor that it is proceeding with termination of the FWC, an Order Form or Service Request. The Contractor shall not be entitled to claim compensation on account of suspension of the FWC, Order Form, Service Request or of part thereof.

### **Article II.14 - Cancellation of Order Forms and Service Requests**

Where Production has not actually commenced within 7 days from the date foreseen for the commencement of execution and the new date proposed, if any, is considered unacceptable by the Contracting Authority, the latter may cancel such Order Form and/or the FWC with no prior notice. Cancellation shall take effect from the day after the day on which the Contractor receives a registered letter with acknowledgement of receipt or equivalent.

The Contracting Authority may cancel an Order Form or Service Request at any time during execution thereof on the grounds and under the conditions set out in Article II.14 with respect to the part still outstanding. The Contractor shall accept, as the aggregate liability of the Contracting Authority, payment of the price of the services supplied by it as at the effective date of cancellation.

## **Article II. 15 - Termination of the FWC**

### **II.15.1. Grounds for termination**

The Contracting Authority may terminate the FWC, an Order Form or a Service Request in the following circumstances:

- (a) if a change to the Contractor's legal, financial, technical or organisational or ownership situation is likely to substantially affect the performance of the FWC, Order Form or Service Request or calls into question the decision to award the FWC;
- (b) if production under an awarded Order Form has not actually commenced within 7 days from the date of dispatch of the countersigned Order Form;
- (c) if the Contractor does not perform the FWC, an Order Form or Service Request as established in the Tender Specifications, fails to fulfil another substantial contractual obligation or repeatedly refuses to submit offers in response to Order Forms or Service Requests issued by SatCen; not responding to three or more Order Forms or Service Requests also constitutes ground for termination of the FWC;
- (d) in the event of force majeure notified in accordance with Article II.11 or if the performance of the FWC, Order Form or Service Request has been suspended by the Contractor as a result of force majeure, notified in accordance with Article II.13, where either resuming performance is impossible or the modifications to the FWC, Order Form or Service Request might call into question the decision awarding the FWC, the Order Form or the Service Request;
- (e) if the Contractor is declared bankrupt, is being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (f) if the Contractor or any natural person with the power to represent it or take decisions on its behalf has been found guilty of professional misconduct proven by any means;
- (g) if the Contractor is not in compliance with its obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which it is established or with those of the country of the applicable law of this FWC or those of the country where the FWC is to be performed;
- (h) if the Contracting Authority has evidence that the Contractor or any natural persons with the power to represent it or take decisions on its behalf have committed fraud, corruption, or are involved in a criminal organisation, money laundering or any other illegal activity detrimental to SatCen or the European Union's financial interests;
- (i) if the Contracting Authority has evidence that the Contractor or any natural persons with the power to represent it or take decisions on its behalf have committed

substantial errors, irregularities or fraud in the award procedure or the performance of the FWC, including in the event of submission of false information;

(j) if the Contractor is unable, through its own fault, to obtain any permit or licence required for performance of the FWC, Order Form or Service Request; and

(k) if the needs of the Contracting Authority change and it no longer requires new services or products under the performance of the FWC.

### **II.15.2. Procedure for termination**

When the Contracting Authority intends to terminate the FWC, Order Form or Service Request it shall formally notify the Contractor of its intention specifying the grounds thereof. The Contracting Authority shall invite the Contractor to make any observations within 14 days.

If the Contracting Authority does not confirm acceptance of these observations by giving written approval within 14 days of receipt, the termination procedure shall proceed. In any case of termination the Contracting Authority shall formally notify the Contractor about its decision to terminate the FWC, Order Form or Service Request. In the cases referred to in points (a), (b), (c), (e), (g), (j), (k) and (l) of Article II.15.1 the formal notification shall specify the date on which the termination takes effect. In the cases referred to in points (d), (f), (h), and (i) of Article II.15.1 the termination shall take effect on the day following the date on which notification of termination is received by the Contractor.

### **II.15.3 Effects of termination**

In the event of termination, the Contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work. On receipt of the notification of termination, the Contractor shall take all the appropriate measures to minimise costs, prevent damages, and cancel or reduce its commitments. The Contractor shall have 30 days from the date of termination to draw up the documents required by the special conditions or Order Forms for the tasks already executed on the date of termination and produce an invoice if necessary. The Contracting Authority may recover any amounts paid under the FWC.

The Contracting Authority may claim compensation for any damage suffered in the event of termination.

On termination the Contracting Authority may engage any other Contractor to execute or complete production or Product delivery. The Contracting Authority shall be entitled to claim from the Contractor all extra costs incurred in this regard, without prejudice to any other rights or guarantees it may have under the FWC.

## **Article II.16 - Substantial Errors, Irregularities and Fraud attributable to the Contractor**

Where, after the award of the FWC, the award procedure or the performance of the FWC prove to have been subject to substantial errors, irregularities or fraud, and where such errors, irregularities or fraud are attributable to the Contractor, the Contracting Authority may suspend the FWC, refuse to make payments, may recover amounts already paid or may

terminate all contracts concluded with the Contractor, in proportion to the seriousness of the errors, irregularities or fraud.

## **Article II.17 - General Provisions concerning Payments**

### **II.17.1. Date of payment**

Payments shall be deemed to be effected on the date when they are debited to the Contracting Authority's account.

### **II.17.2. Currency**

Payments shall be executed in euros or in the local currency. Conversion between the euro and another currency shall be made according to the daily euro exchange rate published in the Official Journal of the European Union or, failing that, at the monthly accounting exchange rate established by the European SatCen and published on its website, applicable on the day on which the payment order is issued by the Contracting Authority.

### **II.17.3 Costs of transfer**

The costs of the transfer shall be borne in the following way:

- (a) costs of dispatch charged by the bank of the Contracting Authority shall be borne by the Contracting Authority,
- (b) cost of receipt charged by the bank of the Contractor shall be borne by the Contractor,
- (c) costs for repeated transfer caused by one of the parties shall be borne by the party causing repetition of the transfer.

### **II.17.4 Invoices and Value Added Tax**

Invoices shall contain the Contractor's identification, the amount, the currency and the date, as well as the Contract reference.

Invoices shall indicate the place of taxation of the Contractor for value added tax (VAT) purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

The Contracting Authority is, as a rule, exempt from all taxes and duties, including VAT, pursuant to Article 13 of Council Decision 2014/401/CFSP, of 26 June 2014, on the European Union Satellite Centre, which are set out in Protocol (No 7) on the privileges and immunities of the European Union, attached to the Treaty on the Functioning of the European Union.

The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the supplies required under the Contract are exempt from taxes and duties, including VAT.

### **II.17.5 Suspension of the time allowed for payment**

The Contracting Authority may suspend the payment periods specified in Article I.8 at any time by notifying the Contractor that its invoice cannot be processed, either because it does not comply with the provisions of the Contract, or because the supplies or the appropriate documents have not been produced.

The Contracting Authority shall inform the Contractor in writing as soon as possible of any such suspension, giving the reasons for it.

Suspension shall take effect on the date the notification is sent by the Contracting Authority. The remaining payment period shall start to run again from the date on which the requested information or revised documents are received or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension period exceeds two months, the Contractor may request the Contracting Authority to justify the continued suspension.

Where the payment periods have been suspended following rejection of a document referred to in the first paragraph and the new document produced is also rejected, the Contracting Authority reserves the right to terminate the Contract in accordance with Article II.15.1(c).

#### **II.17.6 Interest on late payment**

On expiry of the payment period specified in Article I.8, and without prejudice to Article II.17.5, the Contractor is entitled to interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in Euros (the reference rate) plus eight points. The reference rate shall be the rate in force on the first day of the month in which the payment period ends, as published in the C series of the *Official Journal of the European Union*.

The suspension of the payment period in accordance with Article II.17.5 may not be considered as a late payment.

Interest on late payment shall cover the period running from the day following the due date for payment up to and including the date of actual payment.

However, when the calculated interest is lower than or equal to EUR 200, it shall be paid to the Contractor only upon request submitted within two months of receiving late payment.

#### **Article II.18 - Recovery**

**II.18.1.** If an amount is to be recovered under the terms of the Contract, the Contractor shall repay the Contracting Authority the amount in question according to the terms and by the date specified in the debit note.

**II.18.2** If the obligation to pay the amount due is not honoured by the date set by the Contracting Authority in the debit note, the amount due shall bear interest at the rate indicated in Article II.17.6. Interest on late payments shall cover the period from the day following the due date for payment up to and including the date when the Contracting Authority receives the full amount owed.

Any partial payment shall first be entered against charges and interest on late payment and then against the principal amount.

- II.18.3** If payment has not been made by the due date, the Contracting Authority may, after informing the Contractor in writing, recover the amounts due by offsetting them against any amounts owed to the Contractor.

## **Article II.19 - Access, Inspection and Audits**

- II.19.1.** The Contracting Authority and the European Anti-Fraud Office may check or carry out an audit on the performance of the FWC or to ensure that the underlying transactions are compliant with EU law provisions and that the actions financed with Copernicus funds are effectively carried out and implemented correctly.

Such audits and checks may be carried out by the Contracting Authority or the European Anti-Fraud Office either directly by its own staff or by any other outside body authorised to do so on its behalf. Such checks and audits may be initiated during the performance of the FWC and during a period of five years which starts from the date of expiry of the Contract. The audit procedure shall be deemed to be initiated on the date of receipt of the relevant letter sent by the Contracting Authority. Audits shall be carried out on a confidential basis.

- II.19.2** The Contractor and its sub-contractors shall keep all original documents stored on any appropriate support or format, including digitised originals when they are authorised by national law and under the conditions laid down therein, for a period of five years which starts from the date of expiry of the Contract.
- II.19.3** All products and original documents relating to the FWC and/or the provision of services must be either destroyed or returned to the Contracting Authority after five years from the date of expiry of the Contract.
- II.19.4** In accordance with the Contracting Authority's Financial Regulation, the SatCen College of Auditors shall be entitled upon reasonable notice to access, inspect and audit the records held by the Contractor in connection with the performance of the FWC up to five years after the last payment is made to the Contractor by the Contracting Authority. The Contracting Authority or an outside body of its choice shall have the same rights as the SatCen College of Auditors for the purpose of access, inspection and audit of the records.
- II.19.5** On the basis of the findings made during the audit, a provisional report shall be drawn up. It shall be sent to the Contractor, which shall have thirty (30) days following the date of receipt to submit observations. The final report shall be sent to the Contractor within sixty (60) days following the expiry of that deadline. On the basis of the final audit findings, the Contracting Authority may recover all or part of the payments made and may take any other measures which it considers necessary.
- II.19.6** By virtue of Council Regulation (Euratom, EC) no 2185/96 of 11 November 1996 concerning on-the-spot checks and inspection carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities and regulation (EC) no 1073/1999 of the European Parliament and the Council of 25 May 1999 concerning investigation conducted by the European

Anti-Fraud Office (OLAF), the OLAF may also carry out 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. Where appropriate, the findings may lead to recovery by the Contracting Authority.

- II.19.7** The Court of Auditors shall have the same rights as the Contracting Authority, notably right of access, for the purpose of checks and audits.

## **Article II.20 - Use, distribution and publication of information about the FWC**

- II.20.1.** The Contractor shall authorise the SatCen to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever support or format, any data contained in or relating to the Contract, in particular the identity of the Contractor, the subject matter, the duration, and the amount paid. Where personal data is concerned, Article II.5 shall apply.
- II.20.2.** Unless otherwise provided, the SatCen shall not be required to distribute or publish documents or information supplied in performance of the FWC. If it decides not to distribute or publish the documents or information supplied, the Contractor may not have them distributed or published elsewhere without prior written authorisation from the SatCen.
- II.20.3.** Any distribution or publication of information relating to the FWC and the implementation thereof shall require prior written authorisation from the SatCen and, if so requested, shall mention that it was produced within a Contract with the SatCen and financed by the EU Copernicus Programme. It shall state that the opinions expressed are those of the Contractor only and do not represent the SatCen's official position.
- II.20.4.** The use of information obtained by the Contractor in the course of the FWC for purposes other than its performance shall be forbidden, unless the SatCen has specifically given prior written authorisation to the contrary.

## **Article II.21 - Waiver**

No forbearance or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any terms of the FWC will be deemed to be a waiver of any other right or of any later breach. In particular without limitation to the generality of the foregoing, any prior acceptance or approval communicated by the Contracting Authority to the Contractor in respect of the services, or any omission on the part of the Contractor to communicate such prior acceptance or approval shall not relieve the Contractor of its obligations to provide the services in accordance with the provisions of the FWC.

## Article II.22 - Relationship of the Parties

Nothing in this FWC is intended to create a partnership or legal relationship of any kind that would impose liability on one party for the act or failure to act of the other party, or to authorise either party to act as agent for the other party. Neither party shall make representations, act in the name of, on behalf of or otherwise bind the other party.

## Article II.23 - Severance

If any provision of this FWC is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed without effect to the remainder of the provisions. If a provision of this FWC that is fundamental to the accomplishment of the purpose of this agreement is held to any extent to be invalid, the Contracting Authority and the Contractor shall immediately commence good faith negotiations to remedy such invalidity. Neither party shall unreasonably withhold or delay their agreement to any such matters.

## Signatures

For the Contractor,  
*[Company name/forename/surname/title]*

For the Contracting Authority,  
Pascal Legai, Director

Signature(s): .....

Signature: .....

Done at *[place]*, *[date]*

Done at *[place]*, *[date]*

In duplicate in English.



**ANNEX I**  
**TENDER SPECIFICATIONS**



**ANNEX II**  
**CONTRACTOR'S TENDER**