



## **SERVICE CONTRACT**

NUMBER – *[complete]*

1. The European Monitoring Centre for Drugs and Drug Addiction (hereinafter referred to as "the EMCDDA"), which is represented for the purposes of the signature of this contract by Dante Storti, Head of Unit 'Management of human resources and administrative services',

on the one part, and

2. *[Full official name]*

*[Official legal form]*

*[Statutory registration number or ID or passport number]*

*[Full official address]*

*[VAT registration number]*

*[appointed as the leader of the group by the members of the group that submitted the joint tender]*

*[For joint tenders, repeat these data as many times as there are contractors and continue numbering]*

(*[collectively]* 'the contractor'), represented for the purposes of the signature of this contract by *[forename, surname, function of legal representative and name of company in the case of a joint tender]*,

on the other part,



HAVE AGREED

to the **special conditions**, the **general conditions for service contracts** and the following annexes:

**Annex I –** Tender specifications (reference No [complete] of [insert date])

**Annex II –** Contractor's tender (reference No [complete] of [insert date])

[Insert other annexes]

which form an integral part of this contract ('the contract').

This contract sets out the obligations of the parties during and after the duration of this contract.

All documents issued by the contractor (end-user agreements, general terms and conditions, etc.) except its tender are held inapplicable, unless explicitly mentioned in the special conditions of this contract. In all circumstances, in the event of contradiction between this contract and documents issued by the contractor, this contract prevails, regardless of any provision to the contrary in the contractor's documents.



## TABLE OF CONTENT

**NB: After filling in options, update this table by right-clicking — ‘update field’ — ‘Update entire table’**

SERVICE CONTRACT .....	1
TABLE OF CONTENT .....	3
I. SPECIAL CONDITIONS .....	5
I.1. Order of priority of provisions .....	5
I.2. Subject matter .....	5
I.3. Entry into force and duration .....	5
I.4. Price .....	6
I.4.1. Maximum price of the contract .....	6
I.4.2. Price revision index .....	6
I.4.3. Reimbursement of expenses .....	6
I.5. Payment arrangements .....	7
I.5.1. [Pre-financing] .....	7
I.5.2. Interim payment .....	7
I.5.3. Payment of the balance .....	8
I.6. Guarantees .....	9
I.6.1. Performance guarantee .....	9
I.6.2. Retention money guarantee .....	9
I.7. Bank account .....	9
I.8. Communication details .....	10
I.9. Processing of personal data .....	10
I.9.1. Processing of personal data by the contracting authority .....	10
I.9.2. Processing of personal data by the contractor .....	10
I.10. Exploitation of the results of the contract .....	11
I.10.1. Detailed list of modes of exploitation of the results .....	11
I.10.2. Licence or transfer of pre-existing rights .....	12
I.10.3. Provision of list of pre-existing rights and documentary evidence .....	13
I.11. Applicable law and settlement of disputes .....	13
I.12. [Service provided on the premises of the EMCDDA] .....	13
I.13. [Other special conditions] .....	13
II. GENERAL CONDITIONS FOR THE SERVICE CONTRACT .....	14
II.1. Definitions .....	14
II.2. Roles and responsibilities in the event of a joint tender .....	16
II.3. Severability .....	16
II.4. Performance of the contract .....	16
II.5. Communication between the parties .....	17
II.5.1 Form and means of communication .....	17
II.5.2 Date of communications by mail and email .....	17
II.5.3 Submission of e-documents via e-PRIOR .....	18
II.5.4 Validity and date of e-documents .....	18
II.5.5 Authorised persons in e-PRIOR .....	19



II.6. Liability .....	19
II.7. Conflict of interest and professional conflicting interests .....	20
II.8. Confidentiality .....	20
II.9. Processing of personal data .....	21
II.9.1. Processing of personal data by the contracting authority .....	21
II.9.2. Processing of personal data by the contractor .....	21
II.10. Subcontracting .....	23
II.11. Amendments .....	23
II.12. Assignment .....	23
II.13. Intellectual property rights .....	23
II.13.1. Ownership of the rights in the results .....	23
II.13.2. Licensing rights on pre-existing materials .....	23
II.13.3. Exclusive rights .....	24
II.13.4. Identification of pre-existing rights .....	25
II.13.5. Evidence of granting of pre-existing rights .....	25
II.13.6. Quotation of works in the result .....	26
II.13.7. Moral rights of creators .....	26
II.13.8. Image rights and sound recordings .....	26
II.13.9. Copyright notice for pre-existing rights .....	26
II.13.10. Visibility of Union funding and disclaimer .....	27
II.14. Force majeure .....	27
II.15. Liquidated damages .....	27
II.15.1. Delay in delivery .....	27
II.15.2. Procedure .....	27
II.15.3. Nature of liquidated damages .....	28
II.15.4. Claims and liability .....	28
II.16. Reduction in price .....	28
II.16.1. Quality standards .....	28
II.16.2. Procedure .....	28
II.16.3. Claims and liability .....	28
II.17. Suspension of the performance of the contract .....	29
II.17.1. Suspension by the contractor .....	29
II.17.2. Suspension by the EMCDDA .....	29
II.18. Termination of the contract .....	29
II.18.1. Grounds for termination by the EMCDDA .....	29
II.18.2. Grounds for termination by the contractor .....	30
II.18.3. Procedure for termination .....	30
II.18.4. Effects of termination .....	31
II.19. Invoices, value added tax and e-invoicing .....	31
II.19.1. Invoices and value added tax .....	31
II.19.2. E-invoicing .....	31
II.20. Price revision .....	32
II.21. Payments and guarantees .....	32
II.21.1. Date of payment .....	32
II.21.2. Currency .....	32



II.21.3. Conversion .....	32
II.21.4. Costs of transfer .....	33
II.21.5. Pre-financing, performance and money retention guarantees .....	33
II.21.6. Interim payments and payment of the balance .....	33
II.21.7. Suspension of the time allowed for payment .....	34
II.21.8. Interest on late payment .....	34
II.22. Reimbursements .....	34
II.23. Recovery .....	35
II.23.2. Recovery procedure .....	35
II.23.3. Interest on late payment .....	35
II.23.4. Recovery rules in the case of joint tender .....	36
II.24. Checks and audits .....	36

## **I. SPECIAL CONDITIONS**

### **I.1. ORDER OF PRIORITY OF PROVISIONS**

If there is any conflict between different provisions in this contract, the following rules must be applied:

- (a) The provisions set out in the special conditions take precedence over those in the other parts of the contract.
- (b) The provisions set out in the general conditions take precedence over those in the other annexes.
- (c) The provisions set out in the tender specifications (Annex I) take precedence over those in the tender (Annex II).

### **I.2. SUBJECT MATTER**

The subject matter of the contract is *[short description of subject]*.

### **I.3. ENTRY INTO FORCE AND DURATION**

- I.3.1** The contract enters into force *[on the date on which the last party signs it]*<sup>1</sup> *[on [insert date] if both parties have already signed it]*.
- I.3.2** The performance of the contract cannot start before its entry into force.
- I.3.3** The duration of the performance of the contract must not exceed *[complete]* months. Performance of the contract starts from *[the date of entry into force of the contract]* *[insert date]*.

The period of performance of the contract may be extended only with the express written agreement of the parties before the expiration of such period.

*[Option: execution in phases]*

---

<sup>1</sup> As a rule the EMCDDA signs last. In this case, the contractor should be duly informed of the date on which the contract enters into force (date of signature by the EMCDDA).



**I.3.4** [The *performance of the contract* is divided into [complete] phases of [complete] months each. The contractor is authorised to continue the *performance of the contract* in the [second/third/...] phase [only with written consent of the EMCDDA following an analysis of a progress report at the end of the preceding phase] [on the condition that the necessary funding is available from the Union's budget]. The EMCDDA must *notify* the contractor in writing about its consent [two] months before the start of the next phase.]

[Option: *renewal of the contract*]

**I.3.5** The contract is renewed [complete] times for [complete] months each, unless one of the parties receives *formal notification* to the contrary at least four months before the end of the ongoing duration. Renewal does not change or postpone any existing obligations.

#### **I.4. PRICE**

##### **I.4.1. Maximum price of the contract**

The maximum price covering all purchases under this contract [including [all renewals] [and] [reimbursement of expenses]] is EUR [amount in figures and in words].

##### **I.4.2. Price revision index**

[Price revision is not applicable to this contract.]

[Price revision is determined by the formula set out in Article II.20 and using the trend in the harmonised indices of consumer prices (HICP) [complete]<sup>2</sup> published for the first time in Eurostat's monthly 'Data in Focus' publication available on the website: <http://www.ec.europa.eu/eurostat/>]

##### **I.4.3. Reimbursement of expenses<sup>3</sup>**

[Reimbursement of expenses is not applicable to this contract.]

[The EMCDDA must reimburse the following in accordance with Article II.22:

- (a) travel, subsistence, accommodation and shipment expenses; and
- (b) any other expenses provided for in the tender specifications.

---

<sup>2</sup> Specify the consumer price index or any other index adapted to the purchase, e.g.:

- 'Monetary union index of consumer prices' (MUICP): (euro area) for contracts expressed in euro (as a general rule);
- 'European index of consumer prices' (EICP): for contracts performed in the European Union outside the euro area;
- consumer price index of the state in whose currency the contract price is expressed:

a) index of the state where the contractor is mainly based; or

b) index of the state where the service will be mainly carried out.

- Any other index corresponding to the main cost of the contract (e.g. index linked to salaries for interim services, oil prices for transport-related contracts, etc.).

<sup>3</sup> In most cases, this option is not applicable as it is recommended to use a global price covering all parts of the services.



The total value of expenses may not exceed:

- (a) [EUR [amount in figures and in words] throughout the duration of the contract including renewals;]
- (b) [EUR [amount in figures and in words] for [insert maximum price per trip or per type of cost].]

The daily subsistence allowance referred to in Article II.22.4(d) and the accommodation flat-rate ceiling referred to in Article II.22.4(e) are [EUR [complete]] [as listed in Annex [complete]] [as listed below]<sup>4</sup>.]

## **I.5. PAYMENT ARRANGEMENTS<sup>5</sup>**

### **I.5.1. [Pre-financing<sup>6</sup>**

[Pre-financing is not applicable to this contract.]

[Following signature of the contract by the last party and its receipt by the EMCDDA, the contractor (or leader in the case of a joint tender) may claim a pre-financing payment of [complete] % of the total amount payable under the contract. The contractor (or leader in the case of a joint tender) must send the EMCDDA an invoice [in paper format] [via e-PRIOR] for the pre-financing payment.

[The contractor must also provide a financial guarantee equal to [complete] % of the total price of the contract.]<sup>7</sup>

The EMCDDA must pay the pre-financing within 30 days of receiving the invoice [provided it has received the guarantee].

[Each year, for contracts over EUR 5 million, the contractor (or leader in the case of a joint tender) must inform the EMCDDA by [31 December] [30 November] about the cumulative expenditure incurred under this contract. This information is required for the EMCDDA's accounting purposes.]<sup>8</sup>

### **I.5.2. Interim payment**

[Interim payment is not applicable to this contract.]

[1. The contractor (or leader in the case of a joint tender) may claim an interim payment equal to [complete] % of the total price referred to in the contract in accordance with Article II.21.6.

---

<sup>4</sup> The daily subsistence allowance and accommodation ceilings must be copied directly into the text of the article or in a specific annex. They may be taken from DG HR's missions guide. ([http://myintracomm.ec.europa.eu/hr\\_admin/en/missions/Pages/index.aspx](http://myintracomm.ec.europa.eu/hr_admin/en/missions/Pages/index.aspx) - internal link, not on Internet).

<sup>5</sup> The insertion of pre-financing and interim payment articles is optional but the contract must always include provision for payment of the balance.

<sup>6</sup> In procurement contracts, pre-financing should be proposed in exceptional circumstances only. If applicable it should not exceed 30% of the total amount of the contract

<sup>7</sup> Requesting a pre-financing guarantee is not allowed for contracts of less than EUR 60 000. In cases where pre-financing is allowed, use of a guarantee should be duly justified through a documented risk assessment.

<sup>8</sup> To be added only in the case of contracts of more than EUR 5 000 000 for which pre-financing is paid and for which the reporting periods for interim payments or payments of the balance exceed 18 months.



The contractor must send an invoice [in paper format] [via *e-PRIOR*] for the interim payment as provided for in the tender specifications, accompanied by the following:

- (a) [a list of all *pre-existing rights* to the *results* or parts of the *results* or a declaration stating that there are no such *pre-existing rights*, as provided for in Article II.13.4]<sup>9</sup>;
- (b) [insert relevant progress report or deliverable result or reference to tender specifications or contract;]
- (c) [statements of reimbursable expenses in accordance with Article II.22].

2. The EMCDDA must approve any submitted documents or deliverables and pay within [30] [60] [90]<sup>10</sup> days from receipt of the invoice.

3. If the EMCDDA has observations to make, it must send them to the contractor (or leader in the case of a joint tender) and suspend the time limit for payment in accordance with Article II.21.7. The contractor (or leader in case of a joint tender) has [complete] days to submit additional information or corrections or a new version of the documents if the EMCDDA requires it.

4. The EMCDDA must give its approval and pay within the remainder of the time-limit indicated in point (2) unless it rejects partially or fully the submitted documents or deliverables.]

### **I.5.3. Payment of the balance**

1. The contractor (or leader in the case of a joint tender) may claim the payment of the balance in accordance with Article II.21.6.

The contractor (or leader in the case of a joint tender) must send an invoice [in paper format] [via *e-PRIOR*] for payment of the balance due under the contract, as provided for in the tender specifications and accompanied by the following:

- (a) [a list of all *pre-existing rights* to the *results* or parts of the *results* or a declaration stating that there are no such *pre-existing rights*, as provided for in Article II.13.4]<sup>11</sup>;
- (b) [insert relevant final progress report or deliverable or reference to tender specifications or contract;]
- (c) [statements of reimbursable expenses in accordance with Article II.22].

2. The EMCDDA must approve the submitted documents or deliverables and pay within [30] [60] [90]<sup>12</sup> days from receipt of the invoice.

3. If the EMCDDA has observations to make, it must send them to the contractor (or leader in the case of a joint tender) and suspend the time limit for payment in accordance with Article II.21.7.

The contractor (or leader in the case of a joint tender) has [complete] days to submit additional information or corrections or a new version of the documents if the EMCDDA requires it.

4. The EMCDDA must give its approval and pay within the remainder of the time-limit indicated in point (2.) unless it rejects partially or fully the submitted documents or deliverables.]

---

<sup>9</sup> This clause must only be deleted for purchase of non-intellectual services such as cleaning or guarding services.

<sup>10</sup> Maximum 90 days for complex contracts and 60 or 30 days for other contracts.

<sup>11</sup> This clause must only be deleted for purchase of non-intellectual services such as cleaning or guarding services.

<sup>12</sup> Maximum 90 days for complex contracts and 60 or 30 days for other contracts.





\*\*\*

*[Option: for contractors for which VAT is due in Belgium]*

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

*[Option: for contractors for which VAT is due in Luxembourg]*

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

## **I.6. GUARANTEES**

[Guarantees are not applicable to this contract.]

### **I.6.1. Performance guarantee**

[Performance guarantee is not applicable to this contract.]

[A performance guarantee constituted by a bank guarantee in accordance with the conditions laid down in Article II.21.5 is requested for the amount of EUR *[amount in figures and in words]*.]

### **I.6.2. Retention money guarantee**

[Retention money guarantee is not applicable to this contract.]

[A retention money guarantee is requested for an amount of EUR *[amount in figures and in words]* and constituted by a corresponding deduction on each payment. At the request of the contractor, and subject to approval by the EMCDDA, the deduction on payment may be replaced by a bank guarantee in accordance with the conditions laid down in Article II.21.5.]

## **I.7. BANK ACCOUNT**

Payments must be made to the contractor's (or leader's in the case of a joint tender) bank account denominated in [euro] *[insert local currency where the receiving country does not allow transactions in EUR]*, identified as follows:

Name of bank:

Full address of branch:

Exact denomination of account holder:

Full account number including bank codes:



[IBAN<sup>13</sup> code:]

## **I.8. COMMUNICATION DETAILS**

For the purpose of this contract, communications must be sent to the following addresses:

EMCDDA:

[Full name]

[Unit *[complete]*]

[Postcode and city]

E-mail: *[insert functional mailbox]*

Contractor (or leader in the case of a joint tender):

[Full name]

[Function]

[Company name]

[Full official address]

E-mail: *[complete]*

## **I.9. PROCESSING OF PERSONAL DATA**

### **I.9.1. Processing of personal data by the contracting authority**

For the purpose of Article II.9.1,

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

### **I.9.2. Processing of personal data by the contractor**

[This clause is not applicable to this contract.]<sup>14</sup>

[For the purpose of Article II.9.2,

- (a) the subject matter and purpose of the processing of personal data by the contractor are *[provide a short and concise description of the subject matter and purpose]*;

---

<sup>13</sup> BIC or SWIFT code for countries with no IBAN code.

<sup>14</sup> This clause must only be deleted for contracts where personal data is not intended to be processed by the contractor, e.g.: logistics, most evaluation services, studies and translation services.



(b) The localisation of and access to the personal data processed by the contractor shall comply with the following<sup>15</sup>:

- i. the personal data shall only be processed within the territory of [the European Union and the European Economic Area][...] and will not leave that territory;
- ii. the data shall only be held in data centres located with the territory of [the European Union and the European Economic Area][...];
- iii. [no access shall be given to such data outside of [the European Union and the European Economic Area][...]] [access to data may be given on a need to know basis only to authorised persons established in a country which has been recognised by the European Commission as providing adequate protection to personal data];
- iv. the contractor may not change the location of data processing without the prior written authorisation of the contracting authority;
- v. any transfer of personal data under the contract to third countries or international organisations shall fully comply with the requirements laid down in Chapter V of Regulation (EU) 2018/1725<sup>16</sup>.]

#### **I.10. EXPLOITATION OF THE RESULTS OF THE CONTRACT<sup>17</sup>**

[This clause is not applicable to this contract.]<sup>18</sup>

##### **I.10.1. Detailed list of modes of exploitation of the results<sup>19</sup>**

In accordance with Article II.13.1 whereby the Union acquires ownership of the *results* as defined in this contract, including the tender specifications, these *results* may be used for any of the following modes of exploitation:

[(a) use for its own purposes:

- making available to the staff of the EMCDDA;
- making available to the persons and entities working for the EMCDDA or cooperating with it, including contractors, subcontractors whether legal or natural persons, Union institutions, agencies and bodies, Member States' institutions;
- installing, uploading, processing;
- arranging, compiling, combining, retrieving;
- copying, reproducing in whole or in part and in unlimited number of copies.]

---

<sup>15</sup> This clause must be adapted with care on the basis of a risk assessment related to the processing of personal data for the relevant contract.

<sup>16</sup> Regulation (EU) 2018/1725 of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295/39, 21.11.2018, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1725&from=EN>

<sup>17</sup> This article must be adapted with care. All information is in the Explanatory note on IPR on: <http://myintracomm.ec.testa.eu/budgweb/EN/imp/procurement/Documents/ipr-note-en.pdf>

<sup>18</sup> This clause must only be deleted for purchase of non-intellectual services such as cleaning or guarding services.

<sup>19</sup> This list is as exhaustive as possible for any type of service. Please delete all items irrelevant to the subject of your contract.



[(b) distribution to the public in hard copies, in electronic or digital format, on the internet including social networks as a downloadable or non-downloadable file;]

[(c) communication through press information services;]

[(d) inclusion in widely accessible databases or indexes, such as via 'open access' or 'open data' portals, or similar repositories, whether freely accessible or accessible only upon subscription;]

[(e) modifications by the EMCDDA or by a third party in the name of the EMCDDA, including:

- shortening;
- summarising;
- modifying the content, the dimensions;
- making technical changes to the content (necessary correction of technical errors), adding new parts or functionalities, changing functionalities, providing third parties with additional information concerning the result (e.g. source code) with a view to making modifications;
- addition of new elements, paragraphs, titles, leads, bolds, legend, table of content, summary, graphics, subtitles, sound;
- addition of metadata, for text and data-mining purposes; addition of right-management information; addition of technological protection measures;
- preparation in audio form, preparation as a presentation, animation, pictograms story, slide-show, public presentation;
- extracting a part or dividing into parts;
- translating, inserting subtitles, dubbing in different language versions:

English, French, German;

all official languages of EU;

languages used within EU;

languages of candidate countries;

[list or name other languages].]

[(f) rights to authorise, license, or sub-license in case of licensed *pre-existing rights*, the modes of exploitation set out in any of the points (a) to (e) to third parties.]

[(g) other adaptations which the parties may later agree; in such case, the following rules apply: the EMCDDA must consult the contractor. If necessary, the contractor must in turn seek the agreement of any *creator* or other right holder and must reply to the EMCDDA within one month by providing its agreement, including any suggestions of modifications, free of charge. The contractor may refuse the intended modification only if a *creator* can demonstrate that the intended modification may harm his/her honour or reputation, thereby violating his/her moral rights.]

### **I.10.2. Licence or transfer of pre-existing rights**

[All *pre-existing rights* incorporated in the *results*, if any, are licensed to the Union as set out in Article II.13.2.]

[By derogation to Article II.13.2, the Union acquires fully and irrevocably all *pre-existing rights* incorporated in the *results*, if any [except for the following rights [*insert exceptions*]].]



### I.10.3. Provision of list of pre-existing rights and documentary evidence

The contractor must provide the EMCDDA with a list of *pre-existing rights* as set out in Article II.13.4 together with the invoice for payment of the balance at the latest.

[In addition, the contractor must provide the EMCDDA with relevant and exhaustive evidence of the acquisition of all the necessary *pre-existing rights* together with a presentation of relevant *result*. To this effect, the contractor must provide [a statement in accordance with Annex [insert reference]] [the relevant evidence listed in Article II.13.5 as appropriate or, failing that, third parties' statements in accordance with Annex [insert reference]].<sup>20</sup>

### I.11. APPLICABLE LAW AND SETTLEMENT OF DISPUTES

I.11.1. The contract is governed by Union law, complemented, where necessary, by the law of Portugal.

I.11.2. The courts of Lisbon have exclusive jurisdiction over any dispute regarding the interpretation, application or validity of the contract.

### I.12. [SERVICE PROVIDED ON THE PREMISES OF THE EMCDDA]<sup>21</sup>

If necessary for *performance of the contract*, the EMCDDA may give the *personnel* of the contractor access to its premises by means of an access card. The access card remains the property of the EMCDDA and must be returned to it upon request, upon expiry or in cases where the application conditions are no longer met.

If the access card is not returned on the day it expires, the EMCDDA may claim liquidated damages of 100 EUR for each day of delay up to a maximum of EUR 1000. This represents a reasonable estimate of fair compensation for the damage incurred.]

### I.13. [OTHER SPECIAL CONDITIONS]<sup>22</sup>

*[Other special conditions or derogations to the general conditions may be considered. Article II.15 (liquidated damages) must be adapted to each specific purchase and each deliverable, depending on the potential delays and potential damage and provided that clear deadlines are indicated in the tender specifications.]*

*Article II.16 on reduction in price may only be used if clear quality standards per deliverable have been defined in the tender specifications and the price reduction is easier to apply if a breakdown of price per deliverable has been requested.]*

---

<sup>20</sup> The Annexes are to be taken from the IPR explanatory note <http://myintracomm.ec.testa.eu/budgweb/EN/imp/procurement/Documents/ipr-note-en.pdf> or in Word version under 'optional statements from contractor regarding IPR': [http://myintracomm.ec.testa.eu/budgweb/EN/imp/procurement/Pages/imp-080-030-010\\_contracts.aspx#1](http://myintracomm.ec.testa.eu/budgweb/EN/imp/procurement/Pages/imp-080-030-010_contracts.aspx#1)

<sup>21</sup> Clause to be deleted unless the service is provided by personnel within the premises of the EMCDDA (i.e. intra-muros); For the Commission in Belgium, a supplementary clause on security screening is compulsory and be found here: <https://myintracomm.ec.testa.eu/budgweb/EN/imp/procurement/Documents/clause-intra-muros-en.docx>

<sup>22</sup> Unit D2, which is responsible for contracts in DG BUDGET, may be consulted in advance for any change to the model contract.



## SIGNATURES

For the contractor,

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

For the EMCDDA,

[*forename/surname/position*]

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

In duplicate in English.

## II. GENERAL CONDITIONS FOR THE SERVICE CONTRACT

### II.1. DEFINITIONS

For the purpose of this contract, the following definitions (indicated in *italics* in the text) apply:

**‘Back office’**: the internal system(s) used by the parties to process electronic invoices;

**‘Confidential information or document’**: any information or document received by either party from the other or accessed by either party in the context of the *performance of the contract*, that any of the parties has identified in writing as confidential. It may not include information that is publicly available;

**‘Conflict of interest’**: a situation where the impartial and objective *performance of the contract* by the contractor is compromised for reasons involving family, emotional life, political or national affinity, economic interest, or any other shared interest with the EMCDDA or any third party related to the subject matter of the contract;

**‘Creator’**: means any natural person who contributes to the production of the *result*;

**‘EDI message’** (electronic data interchange): a message created and exchanged through the electronic transfer, from computer to computer, of commercial and administrative data using an agreed standard;

**‘e-PRIOR’**: the service-oriented communication platform that provides a series of web services and allows the exchange of standardised electronic messages and documents between the parties. This is done either through web services, with a machine-to-machine connection between the parties’ *back office* systems (*EDI messages*), or through a web application (the *supplier portal*). The Platform may be used to exchange electronic documents (e-documents) such as electronic requests for services, electronic specific contracts, and electronic acceptance of services or electronic invoices between the parties. Technical specifications (i.e. the *interface control document*), details on access and user manuals are available at the following website:

[http://ec.europa.eu/dgs/informatics/supplier\\_portal/documentation/documentation\\_en.htm](http://ec.europa.eu/dgs/informatics/supplier_portal/documentation/documentation_en.htm)

**‘Force majeure’**: any unforeseeable, exceptional situation or event beyond the control of the parties that prevents either of them from fulfilling any of their obligations under the contract. The situation or event must not be attributable to error or negligence on the part of the parties or on the part of the subcontractors and must prove to be inevitable despite their exercising due diligence. Defaults of service, defects in equipment or material or delays in making them available, labour disputes, strikes



and financial difficulties may not be invoked as *force majeure*, unless they stem directly from a relevant case of *force majeure*;

**‘Formal notification’** (or ‘formally notify’): form of communication between the parties made in writing by mail or email, which provides the sender with compelling evidence that the message was delivered to the specified recipient;

**‘Fraud’**: any intentional act or omission affecting the Union’s financial interests relating to the use or presentation of false, incorrect or incomplete statements or documents or to non-disclosure of information in violation of a specific obligation;

**‘Interface control document’**: the guideline document which lays down the technical specifications, message standards, security standards, checks of syntax and semantics, etc. to facilitate machine-to-machine connection. This document is updated on a regular basis;

**‘Irregularity’**: any infringement of a provision of Union law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the Union’s budget.

**‘Notification’** (or ‘notify’): form of communication between the parties made in writing including by electronic means;

**‘Performance of the contract’**: the execution of tasks and delivery of the purchased services by the contractor to the EMCDDA;

**‘Personnel’**: persons employed directly or indirectly or contracted by the contractor to perform the contract;

**‘Pre-existing material’**: any material, document, technology or know-how which exists prior to the contractor using it for the production of a *result* in the *performance of the contract*;

**‘Pre-existing right’**: any industrial and intellectual property right on *pre-existing material*; it may consist in a right of ownership, a licence right and/or right of use belonging to the contractor, the *creator*, the EMCDDA as well as to any other third parties;

**‘Professional conflicting interest’**: a situation in which the contractor’s previous or ongoing professional activities affect its capacity to perform the contract to an appropriate quality standard.

**‘Related person’**: any person who has the power to represent the contractor or to take decisions on its behalf;

**‘Result’**: any intended outcome of *the performance of the contract*, whatever its form or nature, which is delivered and finally or partially approved by the EMCDDA. A *result* may be further defined in this contract as a deliverable. A *result* may, in addition to materials produced by the contractor or at its request, also include *pre-existing materials*;

**‘Substantial error’**: any infringement of a contract provision resulting from an act or omission, which causes or might cause a loss to the Union’s budget.

**‘Supplier portal’**: the *e-PRIOR* portal, which allows the contractor to exchange electronic business documents, such as invoices, through a graphical user interface; its main features can be found in the supplier portal overview document available on:

[http://ec.europa.eu/dgs/informatics/supplier\\_portal/doc/um\\_supplier\\_portal\\_overview.pdf](http://ec.europa.eu/dgs/informatics/supplier_portal/doc/um_supplier_portal_overview.pdf)





## II.2. ROLES AND RESPONSIBILITIES IN THE EVENT OF A JOINT TENDER

In the event of a joint tender submitted by a group of economic operators and where the group does not have legal personality or legal capacity, one member of the group is appointed as leader of the group.

## II.3. SEVERABILITY

Each provision of this contract is severable and distinct from the others. If a provision is or becomes illegal, invalid or unenforceable to any extent, it must be severed from the remainder of the contract. This does not affect the legality, validity or enforceability of any other provisions of the contract, which continue in full force and effect. The illegal, invalid or unenforceable provision must be replaced by a legal, valid and enforceable substitute provision which corresponds as closely as possible with the actual intent of the parties under the illegal, invalid or unenforceable provision. The replacement of such a provision must be made in accordance with Article II.11. The contract must be interpreted as if it had contained the substitute provision as from its entry into force.

## II.4. PERFORMANCE OF THE CONTRACT

- II.4.1 The contractor must provide services of high quality standards, in accordance with the state of the art in the industry and the provisions of this contract, in particular the tender specifications and the terms of its tender.
- II.4.2 The contractor must comply with the minimum requirements provided for in the tender specifications. This includes compliance with applicable obligations under environmental, social and labour law established by Union law, national law and collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU<sup>23</sup> and compliance with data protection obligations resulting from Regulation (EU) 2016/679<sup>24</sup> and Regulation (EU) 2018/1725<sup>25</sup>.
- II.4.3 The contractor must obtain any permit or licence required in the State where the services are to be provided.
- II.4.4 All periods specified in the contract are calculated in calendar days, unless otherwise specified.
- II.4.5 The contractor must not present itself as a representative of the EMCDDA and must inform third parties that it is not part of the European public service.
- II.4.6 The contractor is responsible for the *personnel* who carry out the services and exercises its authority over its *personnel* without interference by the EMCDDA. The contractor must inform its *personnel* that:

---

<sup>23</sup> OJ L 94 of 28.03.2014, p. 65

<sup>24</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, OJ L 119, 4.5.2016, p. 1, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2016.119.01.0001.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.119.01.0001.01.ENG)

<sup>25</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295/39 21.11.2018, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1725&from=EN>





- (a) they may not accept any direct instructions from the EMCDDA; and
- (b) their participation in providing the services does not result in any employment or contractual relationship with the EMCDDA.

**II.4.7** The contractor must ensure that the *personnel* performing the contract and any future replacement *personnel* possess the professional qualifications and experience required to provide the services, as the case may be on the basis of the selection criteria set out in the tender specifications.

**II.4.8** At the EMCDDA's reasoned request, the contractor must replace any member of *personnel* who:

- (a) does not have the expertise required to provide the services; or
- (b) has caused disruption at the premises of the EMCDDA.

The contractor bears the cost of replacing its *personnel* and is responsible for any delay in providing the services resulting from the replacement of *personnel*.

**II.4.9** The contractor must record and report to the EMCDDA any problem that affects its ability to provide the services. The report must describe the problem, state when it started and what action the contractor is taking to resolve it.

## **II.5. COMMUNICATION BETWEEN THE PARTIES**

### **II.5.1 Form and means of communication**

Any communication of information, notices or documents under the contract must:

- (a) be made in writing in paper or electronic format in the language of the contract;
- (b) bear the contract number;
- (c) be made using the relevant communication details set out in Article I.8; and
- (d) be sent by mail, email or, for the documents specified in the special conditions, via *e-PRIOR*.

If a party requests written confirmation of an e-mail within a reasonable time, the other party must provide an original signed paper version of the communication as soon as possible.

The parties agree that any communication made by email has full legal effect and is admissible as evidence in judicial proceedings.

### **II.5.2 Date of communications by mail and email**

Any communication is deemed to have been made when the receiving party receives it, unless this contract refers to the date when the communication was sent.

E-mail is deemed to have been received by the receiving party on the day of dispatch of that e-mail, provided that it is sent to the e-mail address indicated in Article I.8. The sending party must be able to prove the date of dispatch. In the event that the sending party receives a non-delivery report, it must make every effort to ensure that the other party actually receives the communication by email or mail. In such a case, the sending party is not held in breach of its obligation to send such communication within a specified deadline.

Mail sent to the EMCDDA is deemed to have been received by the EMCDDA on the date on which the department responsible referred to in Article I.8 registers it.



*Formal notifications* are considered to have been received by the receiving party on the date of receipt indicated in the proof received by the sending party that the message was delivered to the specified recipient.

### II.5.3 Submission of e-documents via e-PRIOR

If provided for in the special conditions, the exchange of electronic documents (e-documents) such as invoices between the parties is automated through the use of the *e-PRIOR* platform. This platform provides two possibilities for such exchanges: either through web services (machine-to-machine connection) or through a web application (the *supplier portal*).

The EMCDDA takes the necessary measures to implement and maintain electronic systems that enable the *supplier portal* to be used effectively.

In the case of machine-to-machine connection, a direct connection is established between the parties' *back offices*. In this case, the parties take the measures necessary on their side to implement and maintain electronic systems that enable the machine-to-machine connection to be used effectively. The electronic systems are specified in the *interface control document*. The contractor (or leader in the case of a joint tender) must take the necessary technical measures to set up a machine-to-machine connection and at its own cost.

If communication via the *supplier portal* or via the web services (machine-to-machine connection) is hindered by factors beyond the control of one party, it must *notify* the other immediately and the parties must take the necessary measures to restore this communication.

If it is impossible to restore the communication within two working days, one party must *notify* the other that alternative means of communication specified in Article II.5.1 will be used until the *supplier portal* or the machine-to-machine connection is restored.

When a change in the *interface control document* requires adaptations, the contractor (or leader in the case of a joint tender) has up to six months from receipt of the *notification* to implement this change. This period can be shortened by mutual agreement of the parties. This period does not apply to urgent measures required by the security policy of the EMCDDA to ensure integrity, confidentiality and non-repudiation of information and the availability of *e-PRIOR*, which must be applied immediately.

### II.5.4 Validity and date of e-documents

The parties agree that any e-document, including related attachments exchanged via *e-PRIOR*:

- (a) is considered as equivalent to a paper document;
- (b) is deemed to be the original of the document;
- (c) is legally binding on the parties once an *e-PRIOR* authorised person has performed the 'sign' action in *e-PRIOR* and has full legal effect; and
- (d) constitutes evidence of the information contained in it and is admissible as evidence in judicial proceedings.

The parties expressly waive any rights to contest the validity of such a document solely on the grounds that communications between the parties occurred through *e-PRIOR* or that the document has been signed through *e-PRIOR*. If a direct connection is established between the parties' *back offices* to allow electronic transfer of documents, the parties agree that an e-document, sent as mentioned in the *interface control document*, qualifies as an *EDI message*.

If the e-document is dispatched through the *supplier portal*, it is deemed to have been legally issued or sent when the contractor (or leader in the case of a joint tender) is able to successfully submit the e-



document without any error messages. The generated PDF and XML document for the e-document are considered as a proof of receipt by the EMCDDA.

In the event that an e-document is dispatched using a direct connection established between the parties' *back offices*, the e-document is deemed to have been legally issued or sent when its status is 'received' as defined in the *interface control document*.

When using the *supplier portal*, the contractor (or leader in the case of a joint tender) can download the PDF or XML message for each e-document for one year after submission. After this period, copies of the e-documents are no longer available for automatic download from the *supplier portal*.

### II.5.5 Authorised persons in e-PRIOR

The contractor submits a request for each person who needs to be assigned the role of 'user' in e-PRIOR. These persons are identified by means of the European Communication Authentication Service (ECAS) and authorised to access and perform actions in e-PRIOR within the permissions of the user roles that the EMCDDA has assigned to them.

User roles enabling these e-PRIOR authorised persons to sign legally binding documents such as specific tenders or specific contracts are granted only upon submission of supporting documents proving that the authorised person is empowered to act as a legal representative of the contractor.

## II.6. LIABILITY

- II.6.1 The EMCDDA is not liable for any damage or loss caused by the contractor, including any damage or loss to third parties during or as a consequence of *performance of the contract*.
- II.6.2 If required by the relevant applicable legislation, the contractor must take out an insurance policy against risks and damage or loss relating to the *performance of the contract*. It must also take out supplementary insurance as reasonably required by standard practice in the industry. Upon request, the contractor must provide evidence of insurance coverage to the EMCDDA.
- II.6.3 The contractor is liable for any loss or damage caused to the EMCDDA during or as a consequence of *performance of the contract*, including in the event of subcontracting, but only up to an amount not exceeding three times the total amount of the contract. However, if the damage or loss is caused by the gross negligence or wilful misconduct of the contractor or of its *personnel* or subcontractors, the contractor is liable for the whole amount of the damage or loss.
- II.6.4 If a third party brings any action against the EMCDDA in connection with the *performance of the contract*, including any action for alleged breach of intellectual property rights, the contractor must assist the EMCDDA in the legal proceedings, including by intervening in support of the EMCDDA upon request.  
If the EMCDDA's liability towards the third party is established and that such liability is caused by the contractor during or as a consequence of the *performance of the contract*, Article II.6.3 applies.
- II.6.5 If the contractor is composed of two or more economic operators (i.e. who submitted a joint tender), they are all jointly and severally liable to the EMCDDA for the *performance of the contract*.



- II.6.6** The EMCDDA is not liable for any loss or damage caused to the contractor during or as a consequence of *performance of the contract*, unless the loss or damage was caused by wilful misconduct or gross negligence of the EMCDDA.

## **II.7. CONFLICT OF INTEREST AND PROFESSIONAL CONFLICTING INTERESTS**

- II.7.1** The contractor must take all the necessary measures to prevent any situation of *conflict of interest* or *professional conflicting interest*.
- II.7.2** The contractor must *notify* the EMCDDA in writing as soon as possible of any situation that could constitute a *conflict of interest* or a *professional conflicting interest* during the *performance of the contract*. The contractor must immediately take action to rectify the situation.

The EMCDDA may do any of the following:

- (a) verify that the contractor's action is appropriate;
- (b) require the contractor to take further action within a specified deadline;

- II.7.3** The contractor must pass on all the relevant obligations in writing to:

- (a) its *personnel*;
- (b) any natural person with the power to represent it or take decisions on its behalf;
- (c) third parties involved in the *performance of the contract*, including subcontractors.

The contractor must also ensure that the persons referred to above are not placed in a situation which could give rise to conflicts of interest.

## **II.8. CONFIDENTIALITY**

- II.8.1** The EMCDDA and the contractor must treat with confidentiality any information or documents, in any format, disclosed in writing or orally relating to the *performance of the contract* and identified in writing as confidential.

- II.8.2** Each party must:

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

- II.8.3** The confidentiality obligations set out in this Article are binding on the EMCDDA and the contractor during the *performance of the contract* and for as long as the information or documents remain confidential unless:

- (a) the disclosing party agrees to release the receiving party from the confidentiality obligation earlier;
- (b) the *confidential information or documents* become public through other means than a breach of the confidentiality obligation;



(c) the applicable law requires the disclosure of the *confidential information or documents*.

**II.8.4** 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 contract*, a commitment that they will comply with this Article. At the request of the EMCDDA, the contractor must provide a document providing evidence of this commitment.

## **II.9. PROCESSING OF PERSONAL DATA**

### **II.9.1. Processing of personal data by the contracting authority**

Any personal data included in or relating to the contract, including its implementation, shall be processed in accordance with Regulation (EU) 2018/1725. Such data shall be processed solely for the purposes of the implementation, management and monitoring of the contract by the data controller.

The contractor or any other person whose personal data is processed by the data controller in relation to this contract has specific rights as a data subject under Chapter III (Articles 14-25) of Regulation (EU) 2018/1725, in particular the right to access, rectify or erase their personal data and the right to restrict or, where applicable, the right to object to processing or the right to data portability.

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

Details concerning the processing of personal data are available in the data protection notice referred to in Article I.9.

### **II.9.2. Processing of personal data by the contractor**

The processing of personal data by the contractor shall meet the requirements of Regulation (EU) 2018/1725 and be processed solely for the purposes set out by the controller.

The contractor shall assist the controller for the fulfilment of the controller's obligation to respond to requests for exercising rights of person whose personal data is processed in relation to this contract as laid down in Chapter III (Articles 14-25) of Regulation (EU) 2018/1725. The contractor shall inform without delay the controller about such requests.

The contractor may act only on documented written instructions and under the supervision of the controller, in particular with regard to the purposes of the processing, the categories of data that may be processed, the recipients of the data and the means by which the data subject may exercise its rights.

The contractor shall grant personnel access to the data to the extent strictly necessary for the implementation, management and monitoring of the contract. The contractor must ensure that personnel authorised to process personal data has committed itself to confidentiality or is under appropriate statutory obligation of confidentiality in accordance with the provisions of Article II.8.

The contractor shall adopt appropriate technical and organisational security measures, giving due regard to the risks inherent in the processing and to the nature, scope, context and purposes of processing, in order to ensure, in particular, as appropriate:

- (a) the pseudonymisation and encryption of personal data;
- (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- (c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;



- (d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing;
- (e) measures to protect personal data from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed.

The contractor shall notify relevant personal data breaches to the controller without undue delay and at the latest within 48 hours after the contractor becomes aware of the breach. In such cases, the contractor shall provide the controller with at least the following information:

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

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

The contractor shall assist the controller for the fulfilment of its obligations pursuant to Article 33 to 41 under Regulation (EU) 2018/1725 to:

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

The contractor shall maintain a record of all data processing operations carried on behalf of the controller, transfers of personal data, security breaches, responses to requests for exercising rights of people whose personal data is processed and requests for access to personal data by third parties.

The contracting authority is subject to Protocol 7 of the Treaty on the Functioning of the European Union on the privileges and immunities of the European Union, particularly as regards the inviolability of archives (including the physical location of data and services as set out in Article I.9.2) and data security, which includes personal data held on behalf of the contracting authority in the premises of the contractor or subcontractor.

The contractor shall notify the contracting authority without delay of any legally binding request for disclosure of the personal data processed on behalf of the contracting authority made by any national public authority, including an authority from a third country. The contractor may not give such access without the prior written authorisation of the contracting authority.

The duration of processing of personal data by the contractor will not exceed the period referred to in Article II.24.2. Upon expiry of this period, the contractor shall, at the choice of the controller, return, without any undue delay in a commonly agreed format, all personal data processed on behalf of the controller and the copies thereof or shall effectively delete all personal data unless Union or national law requires a longer storage of personal data.

For the purpose of Article II.10, if part or all of the processing of personal data is subcontracted to a third party, the contractor shall pass on the obligations referred to in Articles I.9.2 and II.9.2 in writing to those parties, including subcontractors. At the request of the contracting authority, the contractor shall provide a document providing evidence of this commitment.



## **II.10. SUBCONTRACTING**

- II.10.1** The contractor must not subcontract and have the contract performed by third parties beyond the third parties already mentioned in its tender without prior written authorisation from the EMCDDA.
- II.10.2** Even if the EMCDDA authorises subcontracting, the contractor remains bound by its contractual obligations and is solely responsible for the *performance of this contract*.
- II.10.3** The contractor must ensure that the subcontract does not affect the rights of the EMCDDA under this contract, particularly those under Articles II.8, II.13 and II.24.
- II.10.4** The EMCDDA may request the contractor to replace a subcontractor found to be in a situation provided for in points (d) and (e) of Article II.18.1.

## **II.11. AMENDMENTS**

- II.11.1** Any amendment to the contract must be made in writing before all contractual obligations have been fulfilled.
- II.11.2** Any amendment must not make changes to the contract that might alter the initial conditions of the procurement procedure or result in unequal treatment of tenderers.

## **II.12. ASSIGNMENT**

- II.12.1** The contractor must not assign the rights and obligations arising from the contract, including claims for payments or factoring, without prior written authorisation from the EMCDDA. In such cases, the contractor must provide the EMCDDA with the identity of the intended assignee.
- II.12.2** Any right or obligation assigned by the contractor without authorisation is not enforceable against the EMCDDA.

## **II.13. INTELLECTUAL PROPERTY RIGHTS**

### **II.13.1. Ownership of the rights in the results**

The Union acquires irrevocably worldwide ownership of the *results* and of all intellectual property rights under the contract. The intellectual property rights so acquired include any rights, such as copyright and other intellectual or industrial property rights, to any of the *results* and to all technological solutions and information created or produced by the contractor or by its subcontractor in *performance of the contract*. The EMCDDA may exploit and use the acquired rights as stipulated in this contract. The Union acquires all the rights from the moment the EMCDDA approves the *results* delivered by the contractor. Such delivery and approval are deemed to constitute an effective assignment of rights from the contractor to the Union.

The payment of the price includes any fees payable to the contractor about the acquisition of ownership of rights by the Union including for all forms of exploitation and of use of the *results*.

### **II.13.2. Licensing rights on pre-existing materials**

Unless provided otherwise in the special conditions, the Union does not acquire ownership of *pre-existing rights* under this contract.





The contractor licenses the *pre-existing rights* on a royalty-free, non-exclusive and irrevocable basis to the Union, which may use the *pre-existing materials* for all the modes of exploitation set out in this contract. All *pre-existing rights* are licensed to the Union from the moment the *results* are delivered and approved by the EMCDDA.

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

The payment of the price as set out in the contract is deemed to also include any fees payable to the contractor in relation to the licensing of *pre-existing rights* to the Union, including for all forms of exploitation and of use of the *results*.

Where *performance of the contract* requires that the contractor uses *pre-existing materials* belonging to the EMCDDA, the EMCDDA may request that the contractor signs an adequate licence agreement. Such use by the contractor will not entail any transfer of rights to the contractor and is limited to the needs of this contract.

### **II.13.3. Exclusive rights**

The Union acquires the following exclusive rights:

- (a) reproduction: the right to authorise or prohibit direct or indirect, temporary or permanent reproduction of the *results* by any means (mechanical, digital or other) and in any form, in whole or in part;
- (b) communication to the public: the exclusive right to authorise or prohibit any display, performance or communication to the public, by wire or wireless means, including the making available to the public of the *results* in such a way that members of the public may access them from a place and at a time individually chosen by them; this right also includes the communication and broadcasting by cable or by satellite;
- (c) distribution: the exclusive right to authorise or prohibit any form of distribution of *results* or copies of the *results* to the public, by sale or otherwise;
- (d) rental: the exclusive right to authorise or prohibit rental or lending of the *results* or of copies of the *results*;
- (e) adaptation: the exclusive right to authorise or prohibit any modification of the *results*;
- (f) translation: the exclusive right to authorise or prohibit any translation, adaptation, arrangement, creation of derivative works based on the *results*, and any other alteration of the *results*, subject to the respect of moral rights of authors, where applicable;
- (g) where the *results* are or include a database: the exclusive right to authorise or prohibit the extraction of all or a substantial part of the contents of the database to another medium by any means or in any form; and the exclusive right to authorise or prohibit the re-utilization of all or a substantial part of the contents of the database by the distribution of copies, by renting, by on-line or other forms of transmission;
- (h) where the *results* are or include a patentable subject-matter: the right to register them as a patent and to further exploit such patent to the fullest extent;
- (i) where the *results* are or include logos or subject-matter which could be registered as a trademark: the right to register such logo or subject-matter as a trademark and to further exploit and use it;
- (j) where the *results* are or include know-how: the right to use such know-how as is necessary to make use of the *results* to the full extent provided for by this contract, and the right to make it available to contractors or subcontractors acting on behalf of the EMCDDA, subject to their signing of adequate confidentiality undertakings where necessary;
- (k) where the *results* are documents:
  - (i) the right to authorise the reuse of the documents in conformity with the Commission Decision of 12 December 2011 on the reuse of Commission documents (2011/833/EU),





- to the extent it is applicable and the documents fall within its scope and are not excluded by any of its provisions; for the sake of this provision, 'reuse' and 'document' have the meaning given to it by this Decision;
- (ii) the right to store and archive the *results* in line with the document management rules applicable to the EMCDDA, including digitisation or converting the format for preservation or new use purposes;
- (l) where the *results* are or incorporate software, including source code, object code and, where relevant, documentation, preparatory materials and manuals, in addition to the other rights mentioned in this Article:
- (i) end-user rights, for all uses by the Union or by subcontractors which result from this FWC and from the intention of the parties;
  - (ii) the rights to decompile or disassemble the software;
- (m) to the extent that the contractor may invoke moral rights, the right for the EMCDDA, except where otherwise provided in this contract, to publish the *results* with or without mentioning the *creator(s)*' name(s), and the right to decide when and whether the *results* may be disclosed and published.

The contractor warrants that the exclusive rights and the modes of exploitation may be exercised by the Union on all parts of the *results*, be they created by the contractor or consisting of *pre-existing materials*.

Where *pre-existing materials* are inserted in the *results*, the EMCDDA may accept reasonable restrictions impacting on the above list, provided that the said materials are easily identifiable and separable from the rest, that they do not correspond to substantial elements of the *results*, and that, should the need arise, satisfactory replacement solutions exist, at no additional costs to the EMCDDA. In such case, the contractor will have to clearly inform the EMCDDA before making such choice and the EMCDDA has the right to refuse it.

#### **II.13.4. Identification of pre-existing rights**

When delivering the *results*, the contractor must warrant that, for any use that the EMCDDA may envisage within the limits set in this contract, the *results* and the *pre-existing material* incorporated in the *results* are free of claims from *creators* or from any third parties and all the necessary *pre-existing rights* have been obtained or licensed.

To that effect, the contractor must establish a list of all *pre-existing rights* to the *results* of this contract or parts thereof, including identification of the rights' owners. If there are no *pre-existing rights* to the *results*, the contractor must provide a declaration to that effect. The contractor must provide this list or declaration to the EMCDDA together with the invoice for payment of the balance at the latest.

#### **II.13.5. Evidence of granting of pre-existing rights**

Upon request by the EMCDDA, the contractor must provide evidence that it has the ownership or the right to use all the listed *pre-existing rights*, except for the rights owned or licensed by the Union. The EMCDDA may request this evidence even after the end of this contract.

This evidence may refer, for example, to rights to: parts of other documents, images, graphs, fonts, tables, data, software, technical inventions, know-how, IT development tools, routines, subroutines or other programs ('background technology'), concepts, designs, installations or pieces of art, data, source or background materials or any other parts of external origin.



This evidence must include, as appropriate:

- (a) the name and version number of a software product;
- (b) the full identification of the work and its author, developer, *creator*, translator, data entry person, graphic designer, publisher, editor, photographer, producer;
- (c) a copy of the licence to use the product or of the agreement granting the relevant rights to the contractor or a reference to this licence;
- (d) a copy of the agreement or extract from the employment contract granting the relevant rights to the contractor where parts of the *results* were created by its *personnel*;
- (e) the text of the disclaimer notice if any.

Provision of evidence does not release the contractor from its responsibilities if it is found that it does not hold the necessary rights, regardless of when and by whom this fact is revealed.

The contractor also warrants that it possesses the relevant rights or powers to execute the transfer and that it has paid or has verified payment of all due fees including fees due to collecting societies, related to the final *results*.

#### **II.13.6. Quotation of works in the result**

In the *result*, the contractor must clearly point out all quotations of existing works. The complete reference should include as appropriate, the following: name of the author, title of the work, date and place of publication, date of creation, address of publication on the internet, number, volume and other information that allows the origin to be easily identified.

#### **II.13.7. Moral rights of creators**

By delivering the *results*, the contractor warrants that the *creators* will not object to the following on the basis of their moral rights under copyright:

- (a) that their names be mentioned or not mentioned when the *results* are presented to the public;
- (b) that the *results* be divulged or not after they have been delivered in their final version to the EMCDDA;
- (c) that the *results* be adapted, provided that this is done in a manner which is not prejudicial to the *creator's* honour or reputation.

If moral rights on parts of the *results* protected by copyright may exist, the contractor must obtain the consent of *creators* regarding the granting or waiver of the relevant moral rights in accordance with the applicable legal provisions and be ready to provide documentary evidence upon request.

#### **II.13.8. Image rights and sound recordings**

If natural persons appear in a *result* or their voice or any other private element is recorded in a recognisable manner, the contractor must obtain a statement by these persons (or, in the case of minors, by the persons exercising parental authority) giving their permission for the described use of their image, voice or private element and, on request, submit a copy of the permission to the EMCDDA. The contractor must take the necessary measures to obtain such consent in accordance with the applicable legal provisions.

#### **II.13.9. Copyright notice for pre-existing rights**

When the contractor retains *pre-existing rights* on parts of the *results*, reference must be inserted to that effect when the *result* is used as set out in Article I.10.1, with the following disclaimer: '© — year — European Union. All rights reserved. Certain parts are licensed under conditions to the EU', or with



any other equivalent disclaimer as the EMCDDA may consider best appropriate, or as the parties may agree on a case-by-case basis. This does not apply where inserting such reference would be impossible, notably for practical reasons.

#### **II.13.10. Visibility of Union funding and disclaimer**

When making use of the *results*, the contractor must declare that they have been produced under a contract with the Union and that the opinions expressed are those of the contractor only and do not represent the EMCDDA's official position. The EMCDDA may waive this obligation in writing or provide the text of the disclaimer.

#### **II.14. FORCE MAJEURE**

**II.14.1** If a party is affected by *force majeure*, it must immediately *notify* the other party, stating the nature of the circumstances, their likely duration and foreseeable effects.

**II.14.2** A party is not liable for any delay or failure to perform its obligations under the contract if that delay or failure is a *result* of *force majeure*. If the contractor is unable to fulfil its contractual obligations owing to *force majeure*, it has the right to remuneration only for the services actually provided.

**II.14.3** The parties must take all necessary measures to limit any damage due to *force majeure*.

#### **II.15. LIQUIDATED DAMAGES**

##### **II.15.1. Delay in delivery**

If the contractor fails to perform its contractual obligations within the applicable time limits set in out this contract, the EMCDDA 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 deliverable or *result* or, failing that, the amount specified in Article I.4.1;

*d* is the duration specified for delivery of the relevant purchase or deliverable or *result* or, failing that, the duration of *performance of the contract* specified in Article I.3.3 expressed in days.

Liquidated damages may be imposed together with a reduction in price under the conditions laid down in Article II.16.

##### **II.15.2. Procedure**

The EMCDDA 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 EMCDDA, 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.15.3. 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 services within the applicable time limits set out in this contract.

#### **II.15.4. Claims and liability**

Any claim for liquidated damages does not affect the contractor's actual or potential liability or the EMCDDA's rights under Article II.18.

### **II.16. REDUCTION IN PRICE**

#### **II.16.1. Quality standards**

If the contractor fails to provide the service in accordance with the contract ('unperformed obligations') or if it fails to provide the service in accordance with the expected quality levels specified in the tender specifications ('low quality delivery'), the EMCDDA may reduce or recover payments proportionally to the seriousness of the unperformed obligations or low quality delivery. This includes in particular cases where the EMCDDA cannot approve a *result*, report or deliverable as defined in Article I.5 after the contractor has submitted the required additional information, correction or new version.

A reduction in price may be imposed together with liquidated damages under the conditions of Article II.15.

#### **II.16.2. Procedure**

The EMCDDA must *formally notify* the contractor of its intention to reduce payment 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 EMCDDA, taking into account the relevant observations, must *notify* the contractor:

- (a) of the withdrawal of its intention to reduce payment; or
- (b) of its final decision to reduce payment and the corresponding amount.

#### **II.16.3. Claims and liability**

Any reduction in price does not affect the contractor's actual or potential liability or the EMCDDA's rights under Article II.18.



## **II.17. SUSPENSION OF THE PERFORMANCE OF THE CONTRACT**

### **II.17.1. Suspension by the contractor**

If the contractor is affected by *force majeure*, it may suspend the *performance of the contract*. The contractor must immediately *notify* the EMCDDA of the suspension. The *notification* must include a description of the *force majeure* and state when the contractor expects to resume the *performance of the contract*.

The contractor must *notify* the EMCDDA as soon as it is able to resume *performance of the contract*, unless the EMCDDA has already terminated the contract.

### **II.17.2. Suspension by the EMCDDA**

The EMCDDA may suspend the *performance of the contract* or any part of it:

- (a) if the procedure for awarding the contract or the *performance of the contract* proves to have been subject to *substantial errors, irregularities or fraud*;
- (b) in order to verify whether the presumed *substantial errors, irregularities or fraud* actually occurred.

The EMCDDA must *formally notify* the contractor of the suspension. Suspension takes effect on the date of *formal notification*, or at a later date if the *formal notification* so provides.

The EMCDDA must *notify* the contractor as soon as possible whether:

- (a) it is lifting the suspension; or
- (b) it intends to terminate the contract under Article II.18.1(f) or (j).

The contractor is not entitled to compensation for suspension of any part of the contract.

## **II.18. TERMINATION OF THE CONTRACT**

### **II.18.1. Grounds for termination by the EMCDDA**

The EMCDDA may terminate the contract in the following circumstances:

- (a) if provision of the services under the contract has not actually started within 15 days of the scheduled date and the EMCDDA considers the new date proposed, if any, unacceptable, taking into account Article II.11.2;
- (b) if the contractor is unable, through its own fault, to obtain any permit or licence required for *performance of the contract*;
- (c) if the contractor does not perform the contract in accordance with the tender specifications or is in breach of another substantial contractual obligation.
- (d) if the contractor or any person that assumes unlimited liability for the debts of the contractor is in one of the situations provided for in points (a) and (b) of Article 106(1) of the Financial Regulation<sup>26</sup>;
- (e) if the contractor or any *related person* is subject to any of the situations provided for in points (c) to (f) of Article 106(1) or to Article 106(2) of the Financial Regulation.

---

<sup>26</sup> Regulation (EU, EURATOM) No 966/2012 on the financial rules applicable to the general budget of the Union, as amended <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32012R0966>



- (f) if the procedure for awarding the contract or the *performance of the contract* prove to have been subject to *substantial errors, irregularities or fraud*;
- (g) if the contractor does not comply with applicable obligations under environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU;
- (h) if the contractor is in a situation that could constitute a *conflict of interest* or a *professional conflicting interest* as referred to in Article II.7;
- (i) if a change to the contractor's legal, financial, technical, organisational or ownership situation is likely to substantially affect the *performance of the contract* or substantially modify the conditions under which the contract was initially awarded;
- (j) in the event of *force majeure*, where either resuming implementation is impossible or the necessary ensuing amendments to the contract would mean that the tender specifications are no longer fulfilled or result in unequal treatment of tenderers or contractors;
- (k) if the contractor is in breach of the data protection obligations resulting from Article II.9.2;
- (l) if the contractor does not comply with the applicable data protection obligations resulting from Regulation (EU) 2016/679.

#### **II.18.2. Grounds for termination by the contractor**

The contractor may terminate the contract if:

- (a) it has evidence that the EMCDDA has committed *substantial errors, irregularities or fraud* in the procedure for awarding the contract or the *performance of the contract*;
- (b) the EMCDDA fails to comply with its obligations, in particular the obligation to provide the information needed for the contractor to perform the contract as provided for in the tender specifications.

#### **II.18.3. Procedure for termination**

A party must *formally notify* the other party of its intention to terminate the contract and the grounds for termination.

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

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

In the cases referred to in points (a) to (d) and (g) to (i) of Article II.18.1 and in Article II.18.2, the date on which the termination takes effect must be specified in the *formal notification*.

In the cases referred to in points (e), (f) and (j) of Article II.18.1, the termination takes effect on the day following the date on which the contractor receives *notification* of termination.

In addition, at the request of the EMCDDA and regardless of the grounds for termination, the contractor must provide all necessary assistance, including information, documents and files, to allow the EMCDDA to complete, continue or transfer the services to a new contractor or internally, without interruption or adverse effect on the quality or continuity of the services. The parties may agree to draw up a transition plan detailing the contractor's assistance unless such plan is already detailed in other contractual documents or in the tender specifications. The contractor must provide such



assistance at no additional cost, except if it can demonstrate that it requires substantial additional resources or means, in which case it must provide an estimate of the costs involved and the parties will negotiate an arrangement in good faith.

#### **II.18.4. Effects of termination**

The contractor is liable for damage incurred by the EMCDDA as a result of the termination of the contract including the cost of appointing another contractor to provide or complete the services, unless the damage was caused by the situation specified in Article II.18.1 (j) or in Article II.18.2. The EMCDDA may claim compensation for such damage.

The contractor is not entitled to compensation for any loss resulting from the termination of the contract, including loss of anticipated profits, unless the loss was caused by the situation specified in Article II.18.2.

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

Within 60 days of the date of termination, the contractor must submit any report, deliverable or *result* and any invoice required for services that were provided before the date of termination.

In the case of joint tenders, the EMCDDA may terminate the contract with each member of the group separately on the basis of points (d), (e) or (g) of Article II.18.1, under the conditions set out in Article II.11.2.

#### **II.19. INVOICES, VALUE ADDED TAX AND E-INVOICING**

##### **II.19.1. Invoices and value added tax**

Invoices must contain the contractor's (or leader's in the case of a joint tender) identification data, the amount, the currency and the date, as well as the contract reference.

Invoices must indicate the place of taxation of the contractor (or leader in the case of a joint tender) for value added tax (VAT) purposes and must specify separately amounts not including VAT and amounts including VAT.

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

The contractor (or leader in the case of a joint tender) must complete the necessary formalities with the relevant authorities to ensure that the supplies and services required for *performance of the contract* are exempt from taxes and duties, including VAT.

##### **II.19.2. E-invoicing**

If provided for in the special conditions, the contractor (or leader in the case of a joint tender) submits invoices in electronic format if the conditions regarding electronic signature specified by Directive 2006/112/EC on VAT are fulfilled, i.e. using a qualified electronic signature or through electronic data interchange.

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





## **II.20. PRICE REVISION**

If a price revision index is provided in Article I.4.2, this Article applies to it.

Prices are fixed and not subject to revision during the first year of the contract.

At the beginning of the second and every following year of the contract, each price may be revised upwards or downwards at the request of one of the parties.

A party may request a price revision in writing no later than three months before the anniversary date of entry into force of the contract. The other party must acknowledge the request within 14 days of receipt.

At the anniversary date, the EMCDDA must communicate the final index for the month in which the request was received, or failing that, the last provisional index available for that month. The contractor establishes the new price on this basis and communicates it as soon as possible to the EMCDDA for verification.

The price revision is calculated using the following formula:

$$Pr = Po \times \left( \frac{Ir}{Io} \right)$$

where: Pr = revised price;

Po = price in the tender;

Io = index for the month in which the contract enters into force;

Ir = index for the month in which the request to revise prices is received.

## **II.21. PAYMENTS AND GUARANTEES**

### **II.21.1. Date of payment**

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

### **II.21.2. Currency**

Payments are made in euros or in the currency provided for in Article I.7.

### **II.21.3. Conversion**

The EMCDDA makes any conversion between the euro and another currency at the daily euro exchange rate published in the Official Journal of the European Union, or failing that, at the monthly accounting exchange rate, as established by the European Commission and published on the website indicated below, applicable on the day when it issues the payment order.

The contractor makes any conversion between the euro and another currency at the monthly accounting exchange rate, established by the Commission and published on the website indicated below, applicable on the date of the invoice.

[http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/infoeuro/infoeuro\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/infoeuro/infoeuro_en.cfm)





#### **II.21.4. Costs of transfer**

The costs of the transfer are borne as follows:

- (a) the EMCDDA bears the costs of dispatch charged by its bank;
- (b) the contractor bears the costs of receipt charged by its bank;
- (c) the party causing repetition of the transfer bears the costs for repeated transfer.

#### **II.21.5. Pre-financing, performance and money retention guarantees**

If, as provided for in Articles I.5 or I.6, a financial guarantee is required for the payment of pre-financing, as performance guarantee or as retention money guarantee, it must fulfil the following conditions:

- (a) the financial guarantee is provided by a bank or a financial institution approved by the EMCDDA or, at the request of the contractor and with the agreement of the EMCDDA, by a third party;
- (b) the guarantor stands as first-call guarantor and does not require the EMCDDA to have recourse against the principal debtor (the contractor).

The contractor bears the cost of providing such guarantee.

Pre-financing guarantees must remain in force until the pre-financing is cleared against interim payments or payment of the balance. Where the payment of the balance takes the form of a debit note, the pre-financing guarantee must remain in force for three months after the debit note is sent to the contractor. The EMCDDA must release the guarantee within the following month.

Performance guarantees cover compliance with substantial contractual obligations until the EMCDDA has given its final approval for the service. The performance guarantee must not exceed 10 % of the total price of the contract. The EMCDDA must release the guarantee fully after final approval of the service, as provided for in the contract.

Retention money guarantees cover full delivery of the service in accordance with the contract including during the contract liability period and until its final approval by the EMCDDA. The retention money guarantee must not exceed 10 % of the total price of the contract. The EMCDDA must release the guarantee after the expiry of the contract liability period as provided for in the contract.

The EMCDDA must not request a retention money guarantee where it has requested a performance guarantee.

#### **II.21.6. Interim payments and payment of the balance**

The contractor (or leader in the case of a joint tender) must send an invoice for interim payment, as provided for in Article I.5 or in the tender specifications.

The contractor (or leader in the case of a joint tender) must send an invoice for payment of the balance within 60 days of the end of the period of provision of the services, as provided for in Article I.5 or in the tender specifications.

Payment of the invoice and approval of documents does not imply recognition of the regularity, authenticity, completeness and correctness of the declarations and information they contain.

Payment of the balance may take the form of recovery.



### **II.21.7. Suspension of the time allowed for payment**

The EMCDDA may suspend the payment periods specified in Article I.5 at any time by *notifying* the contractor (or leader in the case of a joint tender) that its invoice cannot be processed. The reasons the EMCDDA may cite for not being able to process an invoice are:

- (a) because it does not comply with the contract;
- (b) because the contractor has not produced the appropriate documents or deliverables; or
- (c) because the EMCDDA has observations on the documents or deliverables submitted with the invoice.

The EMCDDA must *notify* the contractor (or leader in the case of joint tender) as soon as possible of any such suspension, giving the reasons for it.

Suspension takes effect on the date the EMCDDA sends the *notification*. The remaining payment period resumes from the date on which the requested information or revised documents are received or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension period exceeds two months, the contractor (or leader in the case of a joint tender) may request the EMCDDA to justify the continued suspension.

Where the payment periods have been suspended following rejection of a document referred to in the first paragraph of this Article and the new document produced is also rejected, the EMCDDA reserves the right to terminate the contract in accordance with Article II.18.1(c).

### **II.21.8. Interest on late payment**

On expiry of the payment periods specified in Article I.5, the contractor (or leader in the case of a joint tender) is entitled to interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in euros (the reference rate) plus eight points. The reference rate is the rate in force, as published in the C series of the *Official Journal of the European Union*, on the first day of the month in which the payment period ends.

Suspension of the payment period as provided for in Article II.21.7 is not considered as giving rise to late payment.

Interest on late payment covers the period running from the day following the due date for payment up to and including the date of payment as defined in Article II.21.1.

However, when the calculated interest is EUR 200 or less, it must be paid to the contractor (or leader in the case of a joint tender) only if it requests it within two months of receiving late payment.

## **II.22. REIMBURSEMENTS**

**II.22.1** If provided for in the special conditions or in the tender specifications, the EMCDDA must reimburse expenses directly connected with the provision of the services either when the contractor provides it with supporting documents or on the basis of flat rates.

**II.22.2** The EMCDDA reimburses travel and subsistence expenses on the basis of the shortest itinerary and the minimum number of nights necessary for overnight stay at the destination.

**II.22.3** The EMCDDA reimburses travel expenses as follows:

- (a) travel by air: up to the maximum cost of an economy class ticket at the time of the reservation;



- (b) travel by boat or rail: up to the maximum cost of a first class ticket;
- (c) travel by car: at the rate of one first class rail ticket for the same journey and on the same day;

In addition, the EMCDDA reimburses travel outside Union territory if it has given its prior written approval for the expenses.

**II.22.4** The EMCDDA reimburses subsistence expenses on the basis of a daily subsistence allowance as follows:

- (a) for journeys of less than 200 km for a return trip, no subsistence allowance is payable;
- (b) the daily subsistence allowance is payable only on receipt of supporting documents proving that the person concerned was present at the destination;
- (c) the daily subsistence allowance takes the form of a flat-rate payment to cover all subsistence expenses, including meals, local transport including transport to and from the airport or station, insurance and sundries;
- (d) the daily subsistence allowance is reimbursed at the flat rates specified in Article I.4.3;
- (e) accommodation is reimbursed on receipt of supporting documents proving the necessary overnight stay at the destination, up to the flat-rate ceilings specified in Article I.4.3.

**II.22.5** The EMCDDA reimburses the cost of shipment of equipment or unaccompanied luggage if it has given prior written approval for the expense.

## **II.23. RECOVERY**

**II.23.1** If an amount is to be recovered under the terms of the contract, the contractor must repay the EMCDDA the amount in question.

### **II.23.2. Recovery procedure**

Before recovery, the EMCDDA must *formally notify* the contractor of its intention to recover the amount it claims, specifying the amount due and the reasons for recovery and inviting the contractor to make any observations within 30 days of receipt.

If no observations have been submitted or if, despite the observations submitted, the EMCDDA decides to pursue the recovery procedure, it must confirm recovery by *formally notifying* a debit note to the contractor, specifying the date of payment. The contractor must pay in accordance with the provisions specified in the debit note.

If the contractor does not pay by the due date, the EMCDDA may, after informing the contractor in writing, recover the amounts due:

- (a) by offsetting them against any amounts owed to the contractor by the Union or by the European Atomic Energy Community;
- (b) by calling in a financial guarantee if the contractor has submitted one to the EMCDDA;
- (c) by taking legal action.

### **II.23.3. Interest on late payment**

If the contractor does not honour the obligation to pay the amount due by the date set by the EMCDDA in the debit note, the amount due bears interest at the rate indicated in Article II.21.8. Interest on late payments will cover the period starting on the day after the due date for payment and ending on the date when the EMCDDA receives the full amount owed.



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

#### **II.23.4. Recovery rules in the case of joint tender**

If the contract is signed by a group (joint tender), the group is jointly and severally liable under the conditions set out in Article II.6 (liability). The EMCDDA first claims the full amount to the leader of the group.

If the leader does not pay by the due date and if the amount cannot be offset in accordance with Article II.23.2 (a), the EMCDDA may claim the full amount to any other member of the group by *notifying* the debit note already sent to the leader under Article II.23.2.

#### **II.24. CHECKS AND AUDITS**

**II.24.1** The EMCDDA and the European Anti-Fraud Office may check or require an audit on the *performance of the contract*. This may be carried out either by OLAF's own staff or by any outside body authorised to do so on its behalf.

Such checks and audits may be initiated at any moment during the *performance of the contract* and up to five years starting from the payment of the balance.

The audit procedure is initiated on the date of receipt of the relevant letter sent by the EMCDDA. Audits are carried out on a confidential basis.

**II.24.2** The contractor must keep all original documents stored on any appropriate medium, including digitised originals if authorised under national law, for a period of five years starting from the payment of the balance.

**II.24.3** The contractor must grant the EMCDDA's staff and outside *personnel* authorised by the EMCDDA the appropriate right of access to sites and premises where the contract is performed and to all the information, including information in electronic format, needed to conduct such checks and audits. The contractor must ensure that the information is readily available at the moment of the check or audit and, if so requested, that information is handed over in an appropriate format.

**II.24.4** On the basis of the findings made during the audit, a provisional report is drawn up. The EMCDDA or its authorised representative must send it to the contractor, who has 30 days following the date of receipt to submit observations. The contractor must receive the final report within 60 days following the expiry of that deadline to submit observations.

On the basis of the final audit findings, the EMCDDA may recover all or part of the payments made in accordance with Article II.23 and may take any other measure which it considers necessary.

**II.24.5** In accordance with Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspection carried out by the Commission in order to protect the European Communities' financial interests against *fraud* and other *irregularities* and Regulation (EU, Euratom) No 883/2013 of the European Parliament and the Council of 11 September 2013 concerning investigation conducted by the European Anti-Fraud Office, the European Anti-Fraud Office may carry out investigations, including on-the-spot checks and inspections, to establish whether there has been *fraud*, corruption or any other illegal activity under the contract affecting the financial interests of the Union. Findings arising from an investigation may lead to criminal prosecution under national law.



The investigations may be carried out at any moment during the provision of the services and up to five years starting from the payment of the balance.

**II.24.6** The Court of Auditors and the European Public Prosecutor's Office established by Council Regulation (EU) 2017/1939<sup>27</sup> ('the EPPO') have the same rights as the EMCDDA, particularly right of access, for the purpose of checks, audits and investigations.

---

<sup>27</sup> Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office