SHIELD PCP

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Tender Document 2 (TD2): Framework Agreement

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TENDER DOCUMENT 2 (TD2): FRAMEWORK AGREEMENT

DISCLAIMER: Contractors are aware that the Framework Agreement (and subsequent contracts, if applicable) will be signed in French version – an English version, which can be enforceable before the appropriate French jurisdiction will be also be provided. With the submission of their tenders, Tenderers accept this fact.

PREAMBLE

This is a framework agreement ("Framework Agreement") between the following parties:

On the one part, the "Lead Procurer" (contracting authority), **Ministère de l'Intérieur (France),**

acting in the name and on behalf of the other members of the Public Buyers Group (together with the Lead Procurer: "SHIELD PCP Public Buyers Group"):

1. Ministerstvo Vnutra Slovenskej Republiky (Slovakia)
2. Ministerio del Interior (Spain)
3. Société Nationale des Chemins de Fer (France)

On the other part, the "Contractor", [insert details of the Contractor],

[OPTION for joint tenders: acting in the name and on behalf of the other members of group of tenderers:

1. [insert the details of the members of the group of tenderers]

The members of the group of tenderers are hereafter collectively referred to as "Contractor" and will be jointly and severally liable vis-à-vis the lead procurer for the performance of this Framework Agreement and the Phase Contracts.]

The Lead Procurer, the Public Buyers Group and the Contractor(s) shall be referred to together as "Parties", unless otherwise specified.

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By signing this Framework Agreement, the Parties agree to implement the Pre-Commercial Procurement (PCP) in accordance with its provisions and all the obligations it sets out.

Now, therefore, between the Parties, as above represented, it is agreed as follows:

TERMS AND CONDITIONS

Article 1 – Subject of the agreement

1.1. This Framework Agreement defines the general terms and conditions for the implementation of the PCP procurement of R&D services set out in Article 4 and for the Phase Specific Contracts that will be awarded for each of the three PCP phases.

1.2. The Contractor irrevocably undertakes towards the Lead Procurer to carry out the activities referred to in the Call for Tenders (TD1), the Technical Form (TD8) and the Financial Form (TD9) submitted by the Contractor and to comply with all obligations incumbent thereupon under this Framework Agreement (TD2) and any awarded Phase Specific Contracts (TD3, TD4, TD5) in a professional manner, meeting best industry practice, subject to the order of precedence defined in Article 26 of this Framework Agreement, and acknowledging that the scope of activities, functional requirements and technical specifications have been defined and validated through the preparatory activities of the SHIELD PCP, including open market consultation and stakeholder engagement.

1.3. The Contractor confirms to be aware of and to agree with the fact that the Lead Procurer may enter into similar agreements relating to the same project with other Contractors for Phase 1, Phase 2 and/or Phase 3.

Article 2 – Conditions for the execution of activities

2.1. The Contractor undertakes to fulfil the obligations under this Framework Agreement with its own means, by organizing and managing at its own risk.

2.2. The Contractor shall inform the Lead Procurer in compliance with and, in any case, within five (5) days upon the Lead Procurer's first request of the progress of the project. Without prejudice to other provisions hereunder, especially in Article 5 *Duties of the Parties*, the Contractor shall notify the Lead Procurer of any proposed deviation from the agreed scope of work or if significant developments occur as R&D work progresses within five (5) days from the moment that the Contractor becomes aware of the necessity or usefulness of such deviation.

2.3. The Contractor shall ensure the communication between the Parties of this Framework Agreement and any other third party as may be required and duly notified to the Contractor by the Lead Procurer. Moreover, if needed, the Contractor shall provide advice to the Lead Procurer as required on the project.

2.4. The Contractor shall implement the contract in compliance with all of the following obligations in line with the requirements and compliance criteria defined in the Call for Tenders (TD1):

a) The "compliance with the definition of R&D services".

b) The "place of performance obligation".

c) The "place of establishment and control"[1].

In case of breach of any of the above contractual obligations, the Lead Procurer is entitled, in accordance with Article 8 of this Framework Agreement, to require that the Contractor transfers the ownership of the results to the Lead Procurer.

2.5. During the execution of the Framework Agreement and without any interference in the Contractor's internal processes, the Lead Procurer and the Public Buyers Group (PBG) reserve the right to monitor periodically the progress of contractual performance.

[1] The requirement that the country of control of the entity must be located in the EEA applies to all participants. I.e., the lead Contractor, all the members of the Consortium and subContractors (if applicable in the latter cases). The requirement that the country of establishment of the entity must be located in the EEA applies to the lead Contractor, all the members of the Consortium (if applicable), but not to potential subContractors.

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2.6. The Contractor undertakes not to subcontract essential parts of the R&D activities, nor the management of the PCP activities (these tasks will have to be performed by the Contractor or at least by full-subsidiary companies owned by the Contractor), unless deemed necessary by both Parties and agreed upon in writing between the Parties. The Lead Procurer shall terminate this Framework Agreement forthwith in case of failure by the Contractor to comply with the provisions under this Article.

2.7. In providing the services required under this Framework Agreement and the Phase Specific Contract(s), the Contractor shall ensure full compliance with the requirements on R&D services as defined in the most recent version of the Frascati Manual and, where applicable, its latest annexes[2].

2.8. Subject to the confidentiality obligations set forth in Article 9 of this Framework Agreement, the Contractor grants to the Lead Procurer (acting, as the case may be, through agents authorized for that purpose) and to any statutory or regulatory auditors of the Lead Procurer, a right to access (and, if necessary, to copy) the relevant financial records during normal business hours.

2.9. Upon signature of this Framework Agreement, the Contractor shall appoint a representative for this Framework Agreement, which will be the contact person with the Lead Procurer. The Contractor's representative will then have the ability, unless otherwise decided, to represent the Contractor for all purposes.

2.10. At the execution date of this Framework Agreement, the Contractor will have to communicate the name, phone number and e-mail address of the representative.

Article 3 – Duration

3.1 The project is divided into the following phases:

[2] OECD (2015), Frascati Manual 2015: Guidelines for Collecting and Reporting Data on Research and Experimental Development, The Measurement of Scientific, Technological and Innovation Activities, OECD Publishing, Paris, https://doi.org/10.1787/9789264239012-en).

- Phase 1 : Solution design.
- Phase 2: Prototype development and integration.
- Phase 3: Validation in a real operational environment.

The Parties acknowledge that the PCP is implemented through a competitive phased approach, where multiple Contractors may be awarded a contract for Phase 1 and progressively reduced in subsequent phases based on performance evaluation.

3.2 Each phase will have a duration in accordance with the planning provided in the Call for Tenders (TD1) and as agreed in each Phase Specific Contract.

3.3 This Framework Agreement becomes effective upon signing by both Parties and shall remain in effect (unless terminated in accordance with Article 23) until the completion date of the last PCP phase for which the Contractor has been awarded and has signed a corresponding Phase Specific Contract.. However, confidentiality-related obligations shall remain applicable for a period of four (4) years after the end of this Framework Agreement in accordance with Article 9.

3.4. The period of execution of the tasks may be extended only with the express written agreement of the Parties before the expiration of the period for execution of the tasks, in compliance with the provisions of Article 25.

Article 4 – R&D services to be provided

4.1 The Contractor shall provide the R&D services (tasks, deliverables and milestones) to develop innovative solutions to tackle the challenge set out in the tender documents and the Phase Specific Contracts, in compliance with the rules of the state aid framework for R&D&I in its latest version[3].

Article 5 – Duties of the parties

5.1 The Contractor is entering into this Framework Agreement based on the information about the project made available by the Lead Procurer during the

[3] Framework for state aid for research and development and innovation: https://ec.europa.eu/competition/state_aid/modernisation/rdi_framework_en.pdf

tender procedure, which is assumed to be materially accurate and complete to the best of the Lead's Procurer knowledge at that time.

5.2 The Contractor undertakes to perform all the activities subject to this Framework Agreement in accordance with its provisions, the applicable regulations and the terms and conditions contained in the tender documents and related annexes. The Contractor undertakes to allocate sufficient resources to each phase of the PCP that the Contractor is awarded, to comply with its obligations thereof. The Contractor also undertakes to ensure that each member of his staff engaged on the project observes the terms and conditions of this Framework Agreement and any amendment entered between the Parties hereto. The Contractor's staff will be informed of any changes in the scope of the Framework Agreement or the PCP project. The Contractor further acknowledges that performance of the activities will be assessed against the evaluation criteria, deliverables and expected outcomes defined in the Call for Tenders (TD1) and the applicable Phase Specific Contract.

5.3 The Contractor undertakes to :

a) Co-operate with the Lead Procurer in all matters relating to the project.

b) Obtain and maintain at all times during the collaboration all necessary licenses and consents required for the performance of this Framework Agreement.

c) Subject to the prior written approval of the Lead Procurer, appoint or, at the written request of the Lead Procurer, holding reasonable grounds for the request, replace without delay:

   - The Contractor representative; and/or
   - The key staff, who shall be suitably skilled, experienced and qualified to carry out the project.

d) Ensure the availability of the Contractor's representative and key staff for the purposes of the project. The Contractor undertakes to ensure that all required key staff will be available to deliver the required services at agreed levels of quality and in a timely manner. Notwithstanding the provisions of Article 23, the Lead Procurer may terminate this Framework Agreement with a Contractor if any of the Contractor's key staff are not available for the entire period needed to fulfil their duties in the project, subject to a prior discussion with the Contractor to attempt to identify and agree on a mutually acceptable replacement and where the lack of availability of one or more of the key staff causes a material risk to the fulfilment of the delivery objective of the project.

e) Promptly inform the Lead Procurer of the absence of the Contractor's representative and/or key staff. If required by the Lead Procurer, the Contractor shall provide a suitably qualified replacement.

f) Not making any changes to the Contractor´s representative, subcontractors or the key staff without the prior written approval of the Lead Procurer. Such approval not to be unreasonably withheld or delayed.

g) Ensure that the Contractor's team uses reasonable skill and care during the project.

h) Be responsible for the accuracy and completeness of all drawings, documentation and information supplied to the Lead Procurer in connection with delivery of this Framework Agreement. The Contractor shall:

  - Observe, comply and ensure that the Contractor's team observes and complies with all rules, regulations and technical requirements and any other reasonable requirements and safety regulations as well as those that may subsequently be enacted or issued by the Lead Procurer. For the avoidance of any doubt, the Contractor undertakes that any increased costs, resulting from the need to observe the rules and regulations referred to in the previous paragraph, even if entered into force after the signing of this Framework Agreement, will remain the exclusive responsibility of the Contractor, unless it would be unreasonable for Contractor to, in which case the Parties will consult with each other in all fairness how to deal with any of these increased costs. Therefore, the same Contractor cannot claim any payments against the Lead Procurer, the members of the PBG and/or any other third parties, to the extent of its jurisdiction, and will assume all the risks related to any subsequent amendments to the law in force, which may impose additional charges subsequent to those provided at the time of the submission of tenders. The Contractor expressly agrees to indemnify and hold harmless the Lead Procurer, the members of the PBG and/or any third party, for all the consequences arising from any breach by the Contractor of the rules and technical requirements, safety, and other related regulations.

- Acknowledge and adjust to any modification with respect to the specifications made by the Lead Procurer.
- Notify the Lead Procurer as soon as it becomes aware of any issues which arise in relation to the project.
- Acknowledge and accept that continuation to subsequent PCP phases is conditional upon successful evaluation and does not constitute any entitlement or expectation of award.

5.4 The Lead Procurer shall:

a) Co-operate with the Contractor in all matters relating to the project. The main contact point will be [email], to which all relevant legal, administrative, and technical representatives will have access to.

b) Provide access to the Lead Procurer's (and, if needed, the members of the PBG) premises and sensitive data if it is in accordance with data protection officials, office accommodation and other facilities as may reasonably be requested by the Contractor and in line with the rules and regulations agreed in writing in advance with the Contractor for the purposes of the project.

c) Provide such information as the Contractor may reasonably request, and the Contractor considers reasonably necessary, in order to carry out the project, in a timely manner, and ensure that it is accurate in all material respects.

5.5 Additionally, during Phase 3, the PBG and the Contractors shall comply with the following obligations:

a) The PBG is responsible for engaging relevant public and third-party operational actors (e.g., police, emergency services, transport operators, and regulatory authorities) for pilot implementation.

b) The PBG is responsible for securing all necessary authorisations from relevant authorities to conduct pilots at specified sites.

c) The PBG shall coordinate and ensure the participation of relevant agencies and define their roles and responsibilities for the duration of the pilots.

d) The PBG must ensure that the Contractors have proper access to pilot sites for the execution of tests and operational activities.

e) The PBG is responsible for arranging any necessary volunteers or public-sector personnel to support the pilots.

f) The PBG shall prepare and organise the testing environment, including site preparation and infrastructure adjustments.

g) The Contractors are responsible for covering all costs related to the technical aspects of the pilot, including testing, technical operation, support, result analysis, and troubleshooting.

h) The Contractors are required to provide technical and operational support to ensure proper execution of the pilots, including troubleshooting.

i) The Contractors will conduct result collection, analysis, and provide comprehensive reporting on pilot performance, issues, and improvements.

5.6 The Contractor acknowledges and unconditionally accepts that the Lead Procurer and the PBG are and remain unconditionally entitled to analyze the results of the PCP phases and to re-use, integrate and to publish the advice (or parts thereof), in whatever form or manner the Lead Procurer and the PBG deem necessary.

5.7 The Contractor will allow the European Commission (EC), the European Court of Auditors (ECA), and the European Anti-fraud Office (OLAF) to exercise their auditing rights. This obligation applies to all its subcontractors.

5.8 Due to the short duration of the PCP, no changes in the members of a consortium and/or subcontractors will be allowed unless in case of exceptional reasons that could not be foreseen or if a new Contractor replaces the one to which the contracting authority had initially awarded the contract as a consequence of an universal or partial succession into the position of the initial Contractor, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established.

If that is the case, the new member of the consortium and/or subcontractor must meet all exclusion and selection criteria, and comply with the minimal technical requirements. The new member of the consortium and/or subcontractor will have to sign the ESPD (TD10) and any other required statements. The replacement cannot entail a substantial modification of the contract conditions.

Article 6 – Warranties and representations

6.1 The Contractor warrants and represents to have full legal capacity and authority to grant and maintain all necessary usage licenses, permits and consents with the related rights related to the PCP project and continues to have this full legal capacity, authority, usage licenses, permits and consents during the duration of this Framework Agreement.

6.2 The Contractor warrants that all information provided under this Framework Agreement, including – but not limited to – project reports, deliverables, and communications, will be correct, accurate, and up to date.

Article 7 – Pricing, payment and accounting

7.1 The Lead Procurer will be responsible for the payments on behalf of the PBG.

7.2 The total amount to be paid by the Lead Procurer to the Contractor shall not exceed the relevant amounts detailed in the Call for Tenders (TD1).

7.3 The price for the R&D services to be implemented for each PCP phase will be set out in the Phase Specific Contracts (TD3, TD4, TD5).

7.4 Prices indicated and submitted by the Contractor in the Financial Form (TD9) during the tender shall be considered a binding maximum for the duration of this Framework Agreement and include all the costs and expenses. If the Lead Procurer decides to shift remaining budget to Phase 2 and/or Phase 3, the binding maximum may be adjusted for the call-offs for Phase 2 and/or Phase 3, allowing the formulation of tenders accordingly.

7.5 Payments for the Contractor's services for each phase will be made according to the following provisions:

a) Phase 1 payments are structured as follows:

- An advance payment of thirty percent (30%) of the total contract value shall be made upon signature of the specific contract, subject to the submission of a request for payment by the Contractor.
- The remaining seventy percent (70%) shall be paid upon satisfactory completion of the phase, following acceptance of all required deliverables and submission of an admissible invoice.

b) Phase 2 and Phase 3 payments are structured as follows:

- An advance payment of fifty percent (50%) of the total contract value shall be made upon signature of the specific contract, subject to the submission of a request for payment by the Contractor.
- The remaining fifty percent (50%) shall be paid upon satisfactory completion of the phase, following acceptance of all required deliverables and submission of an admissible invoice.

c) General payment provisions applicable to all phases:

- Advance payments shall constitute pre-financing and shall not be considered as final payments. They shall remain subject to clearance against the Contractor's proper performance of the contract.
- In the event of non-performance, partial performance, or termination of the contract for any reason, the Lead Procurer reserves the right to recover all or part of any advance payment. The Contractor shall reimburse any amounts unduly paid within thirty (30) days of the first request.
- Payments of the balance shall be made only after formal acceptance of the relevant deliverables and submission of an admissible invoice, in accordance with the invoicing provisions set out below.

7.6 Payments will be made by the Lead Procurer following the award of the Phase Contract and according to the payment schedule as defined in the Call for Tenders (TD1).

7.7 Payments for the Contractor's services for each phase will be subject to the satisfactory/successful completion of the deliverables for that phase.

7.8 Payments will be made by the Lead Procurer following the submission of the relevant invoices. The Contractor will send the invoice upon satisfactory completion of the phase. Invoices are to be submitted in Euros. The Contractor shall state the price with and without VAT. Any other taxes, levies, tariffs and duties (including sales, service, use, lease, personal property, consumption, excise, withholding, or property) associated with the Contractor's performance of this Framework Agreement or which may be levied on the price shall be the Contractor's responsibility. The advance payments must be paid upon presentation of a deposit invoice.

7.9 Invoices are deemed acceptable if they comply with the following requirements:

- The name, address and contact details of the Contractor/consortium, clearly indicating the date and invoice number,
- The billing address on the invoice:

EUR5004SHIELO project, in care of Civipol

65, rue d'Anjou, 75008, Paris – France

- A financial identification form completed by the authorized representative of the consortium claiming payment
- The purchase order number will be communicated after the signature of the contract. This purchase order number must always be indicated on the invoices.
- A price breakdown showing the price for R&D services and the price for supplies of products (to demonstrate compliance with the definition of R&D in the compliance criteria).
- A price breakdown showing the location or country in which the different categories of activities were performed (e.g. x hours of senior researchers in country L at y euro/hour, x hours of junior developers in country M at y euro/hour) (in order to demonstrate compliance with the requirement relating to the place of performance in of the compliance criteria).
- Upon receipt, invoices shall be subject to formal and substantive verification by the Lead Procurer. Should an invoice fail to comply with the above requirements, or if any required information or supporting documentation is missing or incomplete, the invoice shall be deemed inadmissible. The Lead Procurer shall notify the Contractor of the identified deficiencies without undue delay.

In such cases, the submission of a non-compliant invoice shall result in the suspension of the payment period. The payment period shall commence only upon receipt of a revised invoice that fully complies with all applicable requirements.

The Contractor shall promptly submit a corrected invoice addressing all identified deficiencies. No payment shall be due until a compliant invoice has been received and accepted by the Lead Procurer.

Payments shall be made within thirty (30) days from the date of receipt of an admissible invoice.

The invoice should be addressed to factures-civipol@ayami.fr . The distribution list for the invoice may be amended and clarified upon signature of the Framework Agreement.

In case of late payment by the lead Procurer, beyond the thirty (30) day period, the contractor shall be entitled to late payment interest and, where applicable regulations governing late payments in public contracts (in particular, for contracts subject to French Law, decree n°2013-269 of 29th of march 2013 transposing Directive 2011/7/EU on combating late payments in commercial transactions).

7.10 The Lead Procurer will liquidate the mentioned invoices in the dedicated current account detailed by the Contractor. The Lead Procurer may suspend the payment at any time if, in the view of the Lead Procurer or the Procurement Evaluation Committee, acting reasonably, satisfactory progress on the project has not been maintained, or reports have not been submitted as required.

7.11 All activities necessary to a full and regular compliance with the contractual terms and conditions shall be the sole responsibility of the Contractor and are included in the consideration specified in the Financial Form (TD9), even if they are not specified in this Framework Agreement.

7.12 Prices shall be based on the maximum binding unit prices for all foreseeable items which have been stated in the economic offer and are binding (as a maximum) for the duration of the whole Framework Agreement. If unit prices are added to Phase 2 or Phase 3 offers, they shall become binding for the remaining phases.

7.13 The Contractor accepts, upon request from the Lead Procurer, to provide the Lead Procurer with complete, relevant and clear information as well as documentary evidence about the allocation of amounts paid by the Lead

Procurer. The Contractor shall maintain proper financial records relating to the project during the whole project and for a period of five (5) years after the end of the project. Such records shall ensure full traceability between costs incurred, activities performed, and deliverables submitted under each PCP phase.

7.14 Payments to third parties employed or hired by the Contractor, if any, shall remain the sole responsibility of the Contractor, who shall ensure that such payments are made promptly and hold the Lead Procurer (and the PBG) harmless against any claim by such third parties. Notwithstanding the foregoing, in accordance with Article L.2521-2 of the French Code de la commande publique, subcontractors that have been duly accepted by the lead procurer and whose payment terms have been approved may be entitled to direct payment by the Lead Procurer (and the PBG), under the conditions set out in the applicable regulations. The lead Procurer reserves the right, in accordance with applicable provisions, to set off any sum due to Contractor against owed by the Contractor.

7.15 Where the Contractor enters into an agreement with a supplier or a Contractor for the purpose of performing the Framework Agreement, it shall include a clause requiring the payment of undisputed sums by the Contractor to the subcontractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice.

7.16 Wherever, under the Framework Agreement, any sum of money is recoverable from or payable by the Contractor (including any sum that the Contractor is liable to pay to the Lead Procurer in respect of any breach of the contract), the Lead Procurer may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Framework Agreement or under any other agreement with the Lead Procurer.

7.17 If at any time an overpayment has been made to the Contractor for any reason whatsoever, the amount of such overpayment shall be considered when assessing any further payments or shall be recovered from the Contractor at the Lead Procurer’s discretion.

7.18 The Contractor shall make any payments due to the Lead Procurer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Contractor has a final and enforceable court order requiring an amount equal to such deduction to be paid by the Lead Procurer to the Contractor.

Article 8 – Rights and obligations regarding foreground, background and sideground information and the related rights (including intellectual and industrial property rights)

IPR definitions

8.1. The following definitions apply to this Framework Agreement:

a) "Results" means any tangible or intangible output that is generated in the PCP, whatever its form or nature, whether or not it can be protected. This includes any material, document, technology, solution, data, knowledge or information as well as any rights attached to it, including IPR (rights on Results or IPR attached to the Results).

b) "Background" or "Pre-existing" means any material, document, technology, solution, data, know-how or information (Background information) — whatever its form or nature (tangible or intangible), regardless of whether or not it can be protected, including any attached rights such as IPR ("Background IPR") — that (1) is held prior to the signing of the Framework Agreement or a Specific Contract, (2) identified by the parties involved in the PCP as background and (3) needed to implement the PCP or exploit the results of the PCP.

c) "Background or pre-existing rights" means any rights, including industrial and intellectual property rights on Background/Pre-existing information. They may consist in a right of ownership, a license of right and/or right of use belonging to the Contractor, the creator, the contracting authority, the PBG or any other third parties, including subcontractors.

d) “Sideground” means any material, document, technology, solution, data, know-how or information (Sideground information) — whatever its form or nature (tangible or intangible), regardless of whether or not it can be protected, including any attached rights such as IPR (“Sideground IPR”) — that is generated during the timespan of the PCP but not related under the PCP.

e) “Sideground rights” means any rights, including industrial and intellectual property rights on sideground material. They may consist of a right of ownership, a license of right and/or right of use belonging to the Contractor, the creator, the contracting authority, the PBG or any other third parties, including subcontractors.

f) “Fair, Reasonable, and Non-Discriminatory (FRAND) conditions” means appropriate conditions, including financial terms or royalty-free conditions, taking into account the specific circumstances of the request for access (for example, the actual or potential value of the Results, Background to which access is requested and/or the scope, duration or other characteristics of the exploitation envisaged).

g) “Generated in the PCP” means the implementation of activities described in the PCP Framework Agreement or Phase Specific Contracts.

h) “Not generated in the PCP” means not generated in the implementation of activities described in the PCP Framework Agreement or Phase Specific Contracts.

Pre-existing information and pre-existing rights (background and sideground)

8.2. All pre-existing rights remain the property of the Party introducing them (the Lead Procurer, the members of the PBG, the Contractor or any Third Party that owns it) and nothing contained in this Framework Agreement or any license contract pertaining or pursuant to the project shall affect the ownership rights of either Party in its pre-existing IPR.

8.3. The Parties must grant each other an indefinite royalty-free, non-exclusive, irrevocable and non-sublicensable license to use their Background information to the extent necessary for the performance of the tasks assigned to them in the PCP.

The Contractor grants to the members of the PBG, to entities that are under the direct or indirect control of members of the PBG, or under the same direct or indirect control as members of the PBG, or directly or indirectly controlling members of the PBG and also to (sub)Contractors that practice the results for the PBG's own non-commercial use, a free license to use its Background to the extent needed to use the results for the PBG's own non-commercial purposes, beyond the execution of the Framework Agreement and Specific Contracts.

These licenses are in addition to rights provided by law, such as the unwaivable rights of, and exceptions for the benefit of lawful users of software or databases, as foreseen by applicable law.

The Contractor must ensure that Background information/rights that is subject to control or other restrictions by a country (or entity from a country) which is not one of the eligible countries set out in section 3.1 of TD1 Call for Tenders and that impact the exploitation of the results (i.e. would make the exploitation of the Results subject to control or restrictions) must not be used and must be explicitly excluded from the list of Pre-existing rights agreed between the Contractor and the contracting authority that will be used for the PCP, unless otherwise agreed with the Lead Procurer.

8.4. In order to be able to distinguish clearly between pre-existing information and foreground information and to establish which pre-existing information is held by whom, the parties must establish an agreed list of all their pre-existing information that may be used for the performance of this Framework Agreement and Phase Specific Contracts, including identification of the rights owners.

The list of pre-existing information shall identify the tasks, deliverables, or other aspects related to the performance of the Framework Agreement and Phase Specific Contracts that may be affected by pre-existing information. Such list will include, but is not limited to, a list of the software necessary for the performance of the Framework Agreement and Phase Specific Contracts (including but not limited to software necessary for the operation of the prototypes and products or services that will be developed during the Framework Agreement or Phase Specific Contract), specifying which software is closed source software.

In particular, the Contractor must provide in its tender for the PCP tender (TD8 Technical Form) a list of the relevant (for the Project) pre-existing information and preexisting IPRs it holds and/or has access to (e.g. via its subcontractors). The Contractor must also provide an updated version of it to the PBG (via the Lead Procurer) as part of the tender for each Phase Contract to have the updated list approved by the PBG at the latest thirty (30) days after the start of each Phase Specific Contract. If there are no preexisting materials or pre-existing IPR, the Contractor must provide a declaration to that effect.

8.5. The Contractor shall inform the PBG in writing about any evolutions in any of its preexisting information and pre-existing IPRs that affect the performance of this Framework Agreement. This includes any changes to the Background IPRs and the generation of new Sideground IPRs within thirty (30) days from the change or generation and at the latest by the end of the corresponding phase and with each tender for the next phase.

8.6. The Contractor acknowledges and agrees that:

a) Data and/or data sets (or any parts thereof) provided for by the PBG are being qualified as pre-existing rights of the PBG; and

b) The data and/or data sets (or any parts thereof) provided by the PBG shall be used for the sole purpose of executing the Project, including trials and/or pilots set up to test the validity of the Results. Any other use is forbidden.

8.7. Upon request by the Lead Procurer (on behalf of the members of the Public Buyers Group), the Contractor must provide evidence in writing that it has the ownership or the right to use all the listed pre-existing information and IPR. The Public Buyers

Group (via the Lead Procurer) may request this evidence even after the end of this Framework Agreement. This evidence must include, as appropriate:

a) The name and version number of a software product.

b) The full identification of the original work and authors with their affiliation and all following modifications addressing developer, creator, translator, data entry person.

c) A copy of the license to use the Background IPR or of the agreement granting the relevant rights to the Contractor or a reference to this license.

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.

Foreground IPRs

8.8. Subject to the conditions set out in this Framework Agreement, the Contractor retains the ownership of all the rights on the results that it generates. This includes the rights on newly created material generated by the Contractor and Background/Sideground information provided/generated by the Contractor that may be included in the results or that is essential for the functioning of the use of the Results.

Protection of the Results

8.9. The Contractor is responsible for the management of its IPR, including protection, and bears the costs associated with them, including the protection, examination, grant, maintenance, defense and litigation of the rights on the results. The Lead Procurer has the right to monitor the management of the IPRs.

This implies that the Contractor shall take all appropriate and necessary measures to ensure the proper management of the IPR generated by the SHIELD PCP project. This includes:

a) Measures to ensure full compliance with the open co-creation goal and open-source software licenses, where applicable. This includes early identification of components subject to open-source obligations and compliance with the Contractor's practices with the relevant license terms.

b) The obligation of the Contractor to clearly describe, detail, distinguish, manage and update the parts of the Results that are being qualified as Foreground and Sideground IPR.

c) If the Contractor decides to protect its results, it shall ensure that an application for protection is filed to the relevant authority (national, European Patent Office (for patents) or European Union Intellectual Property Office (for trademarks and designs) within one (1) year after notifying the Lead Procurer in writing, and in any case prior to any publication on them. Where possible, the applications for protection shall include the following statement: "These results were achieved with EU support. The European Union has certain rights in these results".

d) The Parties shall reasonably cooperate in the management of IPRs and in preparing responses to any communication or action issued by any competent office or authority. However, such actions shall in all cases remain the responsibility of the Contractor.

8.10. The Contractor is required to deposit copies of the Results (e.g. source codes of software and all related documentation, design specifications of prototypes, documentation about the foreground IP, etc..) to guarantee the PBG continued access to the Results:

a) Under an ESCROW agreement with a reputable escrow agent. If requested by the Lead Procurer, a tri-party agreement shall be signed between the escrow agent, the Contractor and the Lead Procurer (on behalf of the members of the

PBG), duly protecting the interests of the PBG in case of bankruptcy or liquidation of the Contractor and ensuring that in such cases the PBG shall obtain a copy of the results.

b) By providing the PBG (via the Lead Procurer) with a copy of designs, drawings, reports and specifications.

8.11. The rights and obligations in relation to protection of Results are explained below:

a) The Contractor shall ensure that its Results are identified, recorded, and carefully distinguished from outputs of other activities which are not covered by the SHIELD PCP project. The Contractor shall ensure that prior to any dissemination of the Results, the protection of any protectable Results is duly considered and in case filed at the relevant Member State or European Patent Office. In such a case, the Contractor shall ensure that all applications for the protection of Results are diligently executed and prosecuted having regard to all relevant circumstances.

b) The Contractor must inform the PBG (via the Lead Procurer) in writing of the Results that can be exploited, regardless of whether they can be protected or not, within thirty (30) days from when they are generated. The notification shall include information about the contents of the Results, the confirmation by the Contractor of its decision to protect said Results, the type of protection that will be pursued and, for registered IPR such as patents and design rights, the planned timing and geographical scope of such protection/ jurisdictions for which the Contractor will seek to obtain protection.

c) The Contractor shall respond in writing at any time to requests information from the contracting authority and the PBG about the handling of the rights on the Results.

d) In case of any decision not to continue an application for protection, not to pay maintenance fees, or not to defend in a re-examination or opposition proceeding, the Contractor shall notify the Lead Procurer in writing not less than sixty (60) before the deadline for responding to the procedure for protection, maintenance or litigation.

e) If the Contractor becomes aware of any product or activity of any third party that involves or may involve infringement or other violation of the rights on the Results, the Contractor shall immediately notify the Lead Procurer in writing about the infringement or violation.

f) The Contractor must ensure that the Results are not subject to control or other restrictions by a country (or entity from a country) which is not from EU Member States or HE associated countries— unless otherwise agreed with the contracting authority.

8.12. The Lead Procurer and members of the PBG shall be entitled to monitor the management of all rights on the Results held by the Contractor. The Contractor shall submit periodical reports in writing, when requested by PBG, no more frequently than annually on the exploitation of the Results, including the rights on the Results, by the Contractor, its licensees or assignees.

8.13. The members of the PBG (via the Lead Procurer) may, in duly justified and proportionate circumstances and in accordance with the procedure set out below, require transfer of the ownership of Results generated under the PCP procurement to them, if the Contractor:

a) Does not (or no longer) comply with one of the following obligations (as defined in the Call for Tenders – TD1) :

   i. "Compliance with definition of R&D services"

   ii. "Place of performance obligation"

   iii. "Place of establishment and control"

b) Decides not to protect the Results that it generated or does not seek timely or sufficient protection to enable the PBG to use the Results as provided for in the Framework Agreement or a Phase Specific Contract. In this case, the Lead

Procurer retains the unconditional and irrevocable right (but is not mandated) to seek itself protection of these Results and to obtain ownership of the rights on these Results. In the event that the Lead Procurer decides to exercise this right, it will inform the Contractor in writing his decision to exercise this right.

c) Fails to commercially exploit the results within the four (4) years' time, and the circumstances of the case show that it has not used its best efforts to do so. This applies to Results of Contractors participating in Phase 3.

d) Uses the Results to the detriment of the public interest.

e) It is subject to a merger or acquisition, and the impact analysis concludes that the merger or acquisition negatively impacts the access to or the commercial exploitation of the results, in particular the EU security interests and EU strategic autonomy objectives.

8.14. The Lead Procurer will notify the Contractor in writing of the intention to require the transfer of ownership of the Results to the PBG.

8.15. Before exercising their rights, the Lead Procurer will first contact the Contractor to verify any measures that the Contractor has taken to achieve successful commercial exploitation of the Results, to safeguard EU strategic autonomy and security interests and rules, to prevent use of the Results to the detriment of the public interest and to comply with its contractual obligations.

8.16. Following the transfer of ownership of the Results to the members of the PBG, the members of the PBG may grant licenses to third parties to ensure further protection, usage, and exploitation of the results.

8.17. The Contractor shall ensure that the commercial exploitation of the Results by the members of the PBG will not infringe any of its other obligations under this Framework Agreement or a Phase Specific Contract, such as its obligations regarding security, confidentiality and the protection of intellectual property or its obligations under data protection legislation.

Access rights to the Results for the Lead Procurer and the PBG

8.18. The Contractor must ensure that it complies with its obligations under the Framework Agreement and Phase Specific Contracts if it uses subcontractors; that it must obtain all necessary rights (transfer, licenses or other) from the subcontractors, as if they were generated by itself; and that it should refrain from using subcontractors if obtaining those rights is impossible.

8.19. The Contractor grants the members of the PBG, including their affiliated entities (entities that are under the direct or indirect control of members of the PBG, or under the same direct or indirect control as members of the PBG, or directly or indirectly controlling members of the PBG) and to Contractors and subcontractors of the PBG a royalty-free, non-exclusive, worldwide, irrevocable, non-sub-licensable (except as explicitly authorized under this Framework Agreement) license to use non-commercially the Results (and the SHIELD PCP documentation) up until TRL 7 or 8 (or up to the point it was developed by Contractors) for their own purposes, during and after the execution of the Framework Agreement and Phase Specific Contracts.

This means that during the execution of the three PCP phases, the PBG will have the right to use the project's Results, the relevant Background Information and the Results related to the design specifications developed by the Contractor non-commercially for free for the performance of the tasks assigned to them in the PCP. Non-commercial use includes, but is not limited to, testing, validation, piloting, internal operational use, training, and preparation of future procurements, provided that such use does not involve commercialization of the Results.

After the end of PCP phase 3, the PBG and any Third Party will be entitled to use and exploit the designed specifications in accordance with the open-source software of Licenses and Creative Common Licenses, where applicable, to be agreed upon.

8.20. The Contractor retains the right to commercial exploit the Results for any purposes of using the Results beyond the scope of the current PCP.

8.21. In case of commercial exploitation of products, services or processes arising or developed from the Results by the Contractor (or by entities affiliated to it or succeeding it in the ownership or development of the results), the Contractor shall ensure that the members of the PBG (or any contracting authority appointed by the PBG to implement a procurement in their name and/or on their behalf) are offered the commercial products or services at the best price offered by the Contractor (or the entities affiliated or succeeding it) in similar situations to any other third party (in particular without charging for licenses or other rights which the PBG already have under other provisions of this Framework Agreement or a Phase Specific Contract).

Access rights to the Results for the EU

8.22. The EU has the right to use non-sensitive information relating to the PCP and materials and documents received from the contracting authority and the PBG for policy, information, communication, dissemination and publicity purposes – during the EU grant or afterwards. This concerns notably summaries for publication, as well as any other material, such as pictures or audio-visual material, and other deliverables submitted by the contracting authority and the PBG to the EU, in paper or electronic form.

8.23. The right for the EU to use these materials, documents and information is granted in the form of a royalty-free, non-exclusive and irrevocable license, which includes the following rights:

f) Use for its own purposes (in particular, making them available to persons working for the EU granting authority or any other EU service (including institutions, bodies, offices, agencies, etc.) or EU Member State institution or body; copying or reproducing them in whole or in part, in unlimited numbers; and communication through press information services).

g) Distribution to the public (in particular, publication as hard copies and in electronic or digital format, publication on the internet, as a downloadable or non-downloadable file, broadcasting by any channel, public display or presentation, communicating through press information services, or inclusion in widely accessible databases or indexes).

h) Editing or redrafting (including shortening, summarizing, inserting other elements (e.g. meta-data, legends, other graphic, visual, audio or text elements), extracting parts (e.g. audio or video files), dividing into parts, use in a compilation).

i) Translation.

j) Storage in paper, electronic, or other forms.

k) Archiving, in line with applicable document management rules.

l) The right to authorize third parties to act on its behalf or sub-license to third parties in the modes of use set out in points (b), (c), (d) and (f), if needed for the information, communication and publicity activity of the granting authority.

m) Processing, analyzing, aggregating the materials, documents and information received, and producing derivative works.

The rights of use are granted for the whole duration of the industrial or intellectual property rights concerned.

8.24. If materials or documents are subject to moral rights or third-party rights (including IPR or rights of natural persons on their image and voice), the Contractor must ensure that they comply with their obligations under this Framework Agreement and Phase Specific Contracts – in particular, by obtaining the necessary licenses and authorizations from the rights holders concerned.

8.25. Where applicable, the EU granting authority will insert the following information: "© – [year] – [name of the copyright owner]. All rights reserved. Licensed to the EU under conditions."

Access rights to the Results for third parties

8.26. If requested by the Lead Procurer or the members of the PBG, the Contractor shall, within thirty (30) days, grant to the third parties specified in the request a non-exclusive and non-sub-licensable license to use and to commercially or non-commercially exploit the Results and any Background which may be necessary for the use or exploitation of the results, under FRAND conditions.

8.27. If the Contractor fails or refuses to grant the requested licenses, the Lead Procurer and the members of the PBG retain the right to grant themselves a non-exclusive and non-sub-licensable license to the third parties to use and to commercially or non-commercially exploit the Results (or to appoint an independent third party to do so).

Non-exclusive licensing of the Results

8.28. The Contractor may, on its own initiative without prior authorization from the Lead Procurer, give non-exclusive licenses to third parties to exploit the Results that he owns to the extent that:

a) Such licenses do not affect the rights – including the access rights – of the Lead Procurer, the PBG or the EU related to the Results;

b) Such licenses do not affect the obligations — including the security and ethical obligations — of the Lead Procurer, and the PBG related to the Results; and

c) Such licenses are not granted to entities which are subject to EU restrictive measures under Article 29 of the Treaty on the European Union (TEU) and Article 215 of the Treaty on the Functioning of the EU (TFEU) (sanctions).

Otherwise, the Contractor needs to ask for permission from the Lead Procurer, who (on behalf of the PBG) will authorize such license.

8.29. The Contractor must ensure in the licensing agreement that all its obligations under the Framework Agreement and Phase Specific Contracts are passed on to the third party and that the third party has the obligation to pass on these obligations in any potential subsequent licensing.

Exclusive licensing and transfer of ownership of the Results

8.30. Due to EU strategic autonomy and security reasons, exclusive licensing and transfers of ownership of the Results are restricted as follows:

a) The Contractor may not transfer ownership of its Results or give exclusive licenses if the Results become subject to controls or other restrictions by a country (or entity from a country) which is not an EU Member State or country associated to Horizon Europe.

b) The Contractor may not transfer or give exclusive licenses to entities that are subject to EU for restrictive measures under Article 29 of the Treaty on the European Union (TEU) and Article 215 of the Treaty on the Functioning of the EU (TFEU) (sanctions).

c) The Contractor may not transfer or give exclusive licenses if this would affect the rights – including the access rights – of the Lead Procurer, the PBG or the EU related to the Results.

d) The Contractor may not transfer or give exclusive licenses if this would affect the obligations – including the security and ethical obligations – of the Lead Procurer and the PBG related to the Results.

e) The Contractor may not transfer ownership or the Results or give exclusive licenses, if this would conflict with the right of first refusal for the PBG to buy the Results.

f) The Contractor must ensure that its obligations under the Framework Agreement are passed on to the new owner and licensee and that this new owner/licensee has the obligation to pass them on in any subsequent transfer/licensing.

g) Contractors that intend exclusive licensing or transfers of ownership of the Results to an entity from a country (or controlled by a country) that is not an EU Member State or country associated by Horizon Europe, must request prior authorization from the Lead Procurer.

8.31. The intention of such exclusively licensing or transfer must first be notified to the Lead Procurer in writing at least three (3) months in advance and:

a) Identify the specific Results concerned.

b) Describe in detail the intended new owner and the planned or potential exploitation of the Results.

c) Include a reasoned assessment of the likely impact of the intended transfer or exclusive License on the access rights to the Results and on the Background that is essential for accessing the Results as foreseen by the Framework Agreement for the members of the PBG and for Third Parties, as well as on the commercialization exploitation of the Results, including the EU security interests and EU strategic autonomy objectives.

8.32. The Lead Procurer may request the Contractor for additional information to verify the potential impact upon which the Contractor must promptly provide the requested information. Before granting the authorization, the Lead Procurer will verify the potential impact of the intended transfer or exclusive licensing. The Lead Procurer may condition its authorization to measures ensuring that the transfer or exclusive licensing will not have unintended or undesirable consequences. Before the Lead Procurer gives its written authorization, the transfer may not take place, and any transfer or exclusive licensing agreement concluded before or without written authorization will be null and void.

8.33. Before granting the authorisation, the EU granting authority will verify the potential impact of the intended transfer or exclusive licensing. The EU granting authority may object to the transfer or exclusive licensing or may condition its authorisation to measures ensuring that the transfer or exclusive licensing will not have unintended or undesirable consequences. Before the EU granting authority gives its written authorisation, the transfer may not take place and any transfer or exclusive licensing agreement concluded before or without written authorisation will be null and void.

Additional obligations/limitations for the exploitation of the Results due to public interests

Security or strategic autonomy

8.34. The Contractor shall ensure to safeguard EU strategic autonomy in the commercial exploitation of the results. For this purpose, the Contractor shall ensure that a significant amount of the commercial exploitation of the results takes place in the EU Member States and/or countries associated with Horizon Europe. In particular, the Contractor must produce minimum seventy percent (70%) of the products, services or processes that incorporate results or that are produced through the use of results in EU Member States or HE associated countries.

8.35. The Contractor must ensure that, in the commercial exploitation of Results, any cooperation with entities established in other countries, or controlled by such countries or entities from such countries, does not affect the EU security or strategic autonomy interests and avoids potential negative effects over security of supply of inputs critical to the functioning of the PBG's infrastructure.

8.36. The Contractors must promote the dissemination of their results, in particular through publications and contribution to standardization. The Contractors and the Lead Procurer will establish and agree at the start of the Framework Agreement a list of planned publications about the results and appropriate standards to contribute to and will keep this list updated throughout the Framework Agreement and for each Phase Specific Contract. The Contractors must – up to two (2) years after the end of the Framework Contract and Phase Specific Contracts – inform the Lead Procurer in writing, who will inform in its turn the granting authority that is co-financing the PCP, if the results could reasonably be expected to contribute to European or international standards.

Any publication related to the Results shall require the prior approval of the parties. In all cases, written authorization must be requested and shall be responded within a maximum period of thirty (30) days. In the absence of a response to such request within that period, the authorization shall be deemed granted.

Neither party shall have the right to publish or allow the publication of any data that include Background information or confidential information accessed during the performance of the activities under this contract, unless prior written authorization has been obtained from the relevant party.

Prior to the publication of any Results, those that may be eligible for intellectual and/or industrial property protection shall be identified in accordance with article 8.9.b), and appropriate steps shall be taken to secure their registration and protection where feasible.

8.37. In case of a public emergency, the Contractor must, if requested by the Lead Procurer on behalf of the PBG or the EU, commit to rapidly and broadly exploit the products and/or services resulting from the PCP at FRAND conditions to address the public emergency. This provision applies up to two (2) years after the end of the PCP.

8.38. These obligations also apply to the Contractor´s subcontractors, affiliated entities and other third parties it cooperates with in the commercialization of the results, as well as to any entities succeeding them in their ownership or development of the results.

Obligations of the Contractor

8.39. The Contractor is responsible for ensuring that all third parties that it collaborates with during and after the Framework Agreement and the Phase Specific Contracts respect all intellectual and industrial property-related obligations towards the contracting authority and the PBG and must pass on its obligations to those entities.

8.40. The Contractor must ensure that the rights of the contracting authority and the PBG under the Framework Agreement and the Phase Specific Contracts are upheld under all circumstances, including in case of merger, split, takeover or other corporate restructuring.

Article 9 – Confidentiality

9.1 The Parties shall keep confidential about any data, documents or other material (in any form) that is identified as confidential at the time it is disclosed. This applies during the implementation of the Framework Agreement and Phase Specific Contracts and up to four (4) years after their end. Confidential information includes any information, in whatever form or medium, that is disclosed in the context of this Framework Agreement and is designated as confidential or which, by its nature or circumstances of disclosure, should reasonably be understood to be confidential, including, in particular, information classified as sensitive or security-restricted under Article 16 of this Framework Agreement.

9.2 If information has been identified as confidential only orally, it shall be considered to be confidential only if this is confirmed in writing within fifteen (15) days of the oral disclosure.

9.3 Unless otherwise agreed between the Parties, they may use confidential information only to implement the Framework Agreement and Specific Contracts.

9.4 The Parties may disclose confidential information to their staff or to third parties involved in the PCP implementation only if:

a) They need to be aware of this information to implement the PCP activities under the Framework Agreement and Phase Specific Contracts; and

b) They are bound by an obligation of confidentiality.

9.5 The Lead Procurer and the members of the PBG may disclose confidential information to the EU granting authority if required under their Horizon Europe grant agreement.

9.6 The confidentiality obligations cease to apply if:

a) The disclosing party agrees to release the other party from the obligation;

b) The information becomes generally and publicly available, without breaching any confidentiality obligation; or

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c) The disclosure of the information is required by the EU or national law.

This does not change the fact that security obligations still apply. Stricter confidentiality obligations apply for information that is EU-classified or subject to a security recommendation.

9.7 The Contractor is fully responsible and liable for the effective performance, by his employees, consultants and collaborators, of the confidentiality obligations herein and undertakes to impose this confidentiality obligation on all those persons who, as a result of their position, become acquainted – directly or indirectly – with any confidential information. Moreover, the Contractor must ensure that the security clearances of employees who interact in the execution are in accordance with the requirements of this contract.

9.8 The Lead Procurer undertakes to keep secret and strictly confidential trade secrets – such as business plans, R&D maps or trajectories, customer lists, etc. – received from the Contractor and ensures that all members of the PBG will be bound by the same confidentiality obligations towards the Contractor.

Article 10 – Staff appointment provisions

10.1 All staff providing services in connection with this Framework Agreement shall be bound by the same terms and conditions of service which are normally applicable to the Contractor's staff.

10.2 The Lead Procurer has a commitment to equal opportunities which the Contractor must adhere to. The Contractor must not discriminate on the grounds of gender, race, disability, sexuality, age, religion or otherwise or otherwise allow any applicable employment law to be breached.

Article 11 – Promotion, publicity and communication

All communication activities shall comply with the applicable confidentiality and security restrictions (if applicable).

Dissemination obligations

11.1 The Contractor shall undertake communication activities to create publicity about its participation in the PCP, and to promote the objectives and the results of the R&D services carried out under the PCP (in particular, to other potential customers with the objective to achieve commercial exploitation of the Results; see Article 12 on commercial exploitation of the Results).

11.2 When undertaking these activities, the Contractor shall ensure that they do not infringe any of its other obligations under this Framework Agreement or a Phase Contract, such as its obligations regarding protection of intellectual property, confidentiality, security restrictions or its obligations under data protection legislation.

Obligation of prior notification to the Lead Procurer

11.3 During the implementation of the Framework Agreement and Phase Specific Contracts and for a period of three (3) years after the end of the Framework Agreement and Phase Specific Contracts, the Contractor shall inform the Lead Procurer thirty (30) days in advance of any (written or oral) publication or any other type of communication (in any media or form) relating to the services or Results. Information on communication activities expected to have a major media impact shall be provided sufficiently in advance to allow the Lead Procurer to inform the EU.

11.4. The Contractor must, in particular, submit a draft copy of any publications:

a) For written publications: At the same time as the submission to the editor for publication or at least one (1) month before the date intended for publication, whichever is earlier.

b) For oral communications or other types of disclosure: Twenty (20) days before the forecasted date of submission to the organizer of a scientific meeting or of said other type of disclosure.

11.5 If requested by the Lead Procurer, the Contractor shall remove any confidential or security sensitive information before the disclosure.

11.6 Both Parties agree that they will balance any of their requests to remove confidentiality, security or intellectual property-sensitive aspects from a publication proposed by the other Party against the other Party's objective to maintain sufficient information related to the performance of the Framework Agreement and Phase Contracts or the results that is necessary for the appropriate presentation or understanding of the publication. Such requests shall not be unreasonably withheld or delayed and shall be proportionate to the legitimate interests of the Parties.

Recognition of EU funding

11.7 All communication activities about the PCP and/or its Results (including in electronic form and via social media), as well as infrastructure, equipment and major Results financed by the PCP, shall display the EU emblem and include the following text:

a) For communication activities: "This [publication][communication] is part of the SHIELD PCP project that has received funding from the European Union's Horizon Europe Research and Innovation Programme".

b) For infrastructure, equipment and major results: "This [infrastructure][equipment][insert type of result] is part of the SHIELD PCP project that has received funding from the European Union's Horizon Europe Research and Innovation Programme".

11.8 If the Results are incorporated in a standard, the Contractor must – unless the Lead Procurer requests or agrees otherwise in writing or unless it is impossible – ask the standardization body to include the following statement in (information related to) the standard: "Funded by the European Union".

11.9 If the results are protected through registered IPRs, the Contractor must – wherever possible under the applicable rules – include in its applications for protection the following statement: "These results were achieved with EU support and may be subject to the obligations established in the relevant Grant Agreement".

11.10 When displayed together with another logo, the EU emblem shall have appropriate prominence. The Contractor may use the EU emblem without first obtaining approval from the EU. This does not, however, give the Contractor the right to exclusive use. Moreover, the Contractor may not be appropriate to the EU emblem, or any similar trademark or logo, either by registration or by any other means.

11.11 All communication activities shall indicate that the opinions expressed reflect only the author's views and do not represent the Lead Procurer's or the EU's official position. The Lead Procurer, in agreement with the EU granting authority, may waive this obligation in writing or provide the text of the disclaimer.

Communication/publication rights for the Lead Procurer and the Public Buyers Group

11.12 The Lead Procurer and members of the PBG may use, for the purposes of communication and publicity, all information relating to the PCP, documents (notably summaries) and deliverables, and any other material (such as pictures or audio-visual material) from the Contractor (including in electronic form).

11.13 The Lead Procurer and members of the PBG may, in particular, publish the name of the Contractor and its project abstracts, the summaries of the main results from the R&D and the lessons learnt during the PCP (e.g. relating to the feasibility of the different approaches to meeting the procurers' requirements that were explored, and the lessons learnt for potential future use of the solutions proposed). This does not change the confidentiality obligations under Article 9.

Moreover, before publishing any information, the Lead Procurer shall consult with the Contractor, to avoid any potential harm to the Contractor's legitimate business interests (e.g. regarding aspects of the solutions that could be protected by intellectual property rights) or distortion of competition.

Communication/publication rights for the EU

11.14 The EU may use, for the purposes of communication and publicity, information relating to the PCP, documents (notably summaries) and deliverables, and any other material (such as pictures or audiovisual material) from the Contractor (including in electronic form).

11.15 If the EU's use of these materials, documents or information would risk compromising legitimate interests, the Contractor may, however, ask the Lead Procurer to request the EU granting authority not to use it.

11.16 The right to use the Contractor's materials, documents and information includes:

c) Use for its own purposes (in particular, making them available to persons working for the EU granting authority or any other EU service (including institutions, bodies, offices, agencies, etc.) or EU Member State institution or body; copying or reproducing them in whole or in part, in unlimited numbers; and communication through press information services).

d) Distribution to the public (in particular, publication as hard copies and in electronic or digital format, publication on the internet, as a downloadable or non-downloadable file, broadcasting by any channel, public display or presentation, communicating through press information services, or inclusion in widely accessible databases or indexes).

e) Editing or redrafting (including shortening, summarizing, inserting other elements (e.g. meta-data, legends, other graphic, visual, audio or text elements), extracting parts (e.g. audio or video files), dividing into parts, use in a compilation).

f) Translation.

g) Storage in paper, electronic, or other forms.

h) Archiving, in line with applicable document management rules.

i) The right to authorize third parties to act on its behalf or sub-license to third parties in the modes of use set out in points (b), (c), (d) and (f), if needed for the information, communication and publicity activity of the granting authority.

j) Processing, analyzing, aggregating the materials, documents and information received, and producing derivative works.

11.17 If the right of use is subject to rights of a third party (including the Contractor's staff), the Contractor shall ensure that it obtains the necessary approval from the third parties concerned.

Article 12 – Commercial exploitation of the Results

12.1. The Contractor shall take prompt action to ensure that the Results of the PCP are exploited commercially (directly or indirectly through another entity, through transfer or licensing) to clients other than the PBG.

12.2. In particular, the Contractor must use its best (objective and reasonable) efforts to exploit its results up to two (2) years after the end of the Framework Agreement and Phase Specific Contracts, including where they are capable of commercial exploitation, to exploit them commercially (i.e. marketing a commercial application of the results, directly or indirectly, through a subcontractor or licensee).

12.3. The PBG undertakes to support and collaborate with the Contractors in the exploitation of the results with reasonable efforts.

12.4. The Contractor is and remains entitled for two (2) years after the end of the Framework Agreement to request on a case-by-case basis a non-exclusive and not-transferrable license for definite time to use PBG Pre-existing re-and Foreground information, insofar duly justified by the Contractor for the commercial exploitation of the Results of the PCP, under FRAND terms and conditions to be agreed upon. The Contractor acknowledges and accepts that the PBG remains unconditionally entitled to conclude similar agreements with other third parties.

12.5. The Contractor shall ensure that the commercial exploitation of the Results will not infringe any of its other obligations under this Framework Agreement, such as its obligations regarding security, confidentiality and the protection of IPR or its obligations under the data protection legislation. Such exploitation shall be carried out in a manner that does not adversely affect the access rights of the PBG or the EU, nor the obligations related to EU for strategic autonomy and security.

12.6. The Lead Procurer (on behalf of the PBG) has the right to monitor the exploitation of the Results by the Contractor during and after the Framework Agreement. The Contractor shall provide reports, when requested by the Lead Procurer, no more frequently than annually, detailing the status of result of exploitation, including information on licenses granted, revenues generated, and any challenges encountered. The Contractor shall respond at any time to request specific information from the Lead Procurer about the exploitation of the Results or to provide clarifications regarding the annual report(s).

12.7. If the Contractor fails to commercially exploit the Results within this period and the circumstances of the case show that it has not used its best efforts to do so (or uses the Results to the detriment of the public interest, including EU strategic autonomy or security interests), the Lead Procurer (on behalf of the PBG) has the right to require that ownership of the Results be transferred to him and the members of the PBG at no cost so that the PBG can ensure that the results are commercially exploited. Failure to commercially exploit the Results means not marketing a commercial application of the results (directly or indirectly, through a subcontractor or licensee). Before exercising the right to require the transfer of the ownership of the Results, the Lead Procurer will first contact the Contractor to verify any measures that the Contractor has taken to achieve successful commercial exploitation of the Results, to safeguard EU strategic autonomy and security interests and rules, to prevent use of the Results to the detriment of the public interest and to comply with its contractual obligations.

12.8. In this case, the Contractor shall be requested to give prototypes and first products resulting from the R&D, design, prototype and first product/service specifications, simulations, data models, drawings and source code, among other documentation/items to the PBG at no cost. Equally, the PBG will own, including - but not limited to - any patents, trademarks, trade names, domain names, design rights, rights in databases, know-how, in each case whether registered or unregistered and including applications for the grant of any such rights, and all rights having equivalent or similar effect anywhere in the world. The PBG may transfer these rights to third parties to ensure further product development and market deployment.

12.9. To safeguard the cross-border delivery of services against potential physical and cyber threats and to protect the exchange of security sensitive information, the Contractor shall ensure the safeguard of EU security interests in the commercial exploitation of the Results. For this reason, if the Contractor wishes to commercialize its solution outside the EU, it will have to comply with the Regulation (EU) 2021/821 of 20 May 2021 setting up an EU regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (if applicable). The Contractor shall also ensure compliance with any applicable national export control regulations.

12.10. The Contractor must ensure that, in the commercial exploitation of the Results, any cooperation with entities established in other countries, or controlled by such countries or entities from such countries, does not affect the EU security or strategic autonomy interests. The Contractor must ensure that these obligations also apply to its subcontractors, affiliated entities and other third parties it cooperates with in the commercialization of the results, as well as to any entities succeeding them in their ownership or development of the Results.

Article 13 – Conflicts of interest

13.1. The Contractor shall take all measures necessary to prevent a situation arising where the impartial and objective implementation of the Framework Agreement or a Phase Specific Contract is compromised for reasons involving economic interests, political or national affinity, family, personal life or any other shared interest.

The Contractor shall also take all measures necessary to prevent a situation in which its (previous or ongoing) professional activities affect the impartial and objective implementation of the Framework Agreement or a Phase Specific Contract.

13.2. The Contractor shall notify the Lead Procurer immediately – and no later than five (5) days – of any situation constituting or likely to lead to a conflict of interest (including changes of ownership) and shall immediately take all steps necessary to rectify this situation.

13.3. The Lead Procurer may instruct the Contractor to take specific measures to remedy the situation.

Article 14 – Cession of contractual position

14.1. In principle, no changes on consortia or in subcontractors will be allowed unless exceptional reasons that could not be foreseen apply or a new Contractor replaces the one to which the Lead Procurer had initially awarded the contract as a consequence of an universal or partial succession into the position of the initial Contractor, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established, as indicated in Call for Tenders (TD1) and Article 5.7 of this Framework Agreement.

If that is the case, the new member of the consortium and/or subcontractor has to meet all exclusion, compliance, and selection criteria. The new member of the consortium and/or subcontractor will have to sign the ESPD (TD10) and any other required statements. The replacement cannot entail a substantial modification of the contract conditions and should be approved in written by the Lead Procurer.

14.2. Contractors that are in a procedure to consider a possible merger with or a takeover by an entity from a country (or controlled by a country) that is not an EU

Member State or country associated by Horizon Europe, must notify the Lead Procurer at least three (3) months in advance of the decision to implement the possible merger or takeover and:

a) Describe in detail the identity, ownership and control structure of the potential new merged entity or the potential new owner(s).

b) Include a reasoned assessment of the likely impact of the possible merger/takeover on the access to the results and to the background and sideground that is essential for accessing the results for the members of the PBG and for third parties and the commercialization exploitation of the results, including the EU security interests and EU strategic autonomy.

14.3. The Lead Procurer (on behalf of the members of the PBG) may request additional information to verify the potential impact upon which the Contractor must promptly provide the requested information. In case the impact analysis concludes that the merger or takeover negatively impacts the access to or the commercial exploitation of the results, including the EU security interests and EU strategic autonomy objectives, the Lead Procurer is entitled to require that the Contractor (both the Contractor before or after the merger or takeover) transfers the ownership of the Results to the members of the PBG.

14.4. The Contractor may, on its own initiative without prior authorization from the Lead Procurer, give non-exclusive licenses to third parties to exploit the results that it owns, to the extent that such licenses do not affect the rights of the members of the Public Buyers Group related to such results. The Contractor must thus ensure in the licensing agreement that all its obligations under the Framework Agreement are passed on to the third party and that the third party has the obligation to pass on these obligations in any potential subsequent licensing.

14.5. Due to EU strategic autonomy and security reasons, exclusive licensing and transfers of ownership of the results are restricted as follows:

a) The Contractor may not transfer ownership of its results or give exclusive licenses if the results would become subject to controls or other restrictions by a country (or entity from a country) which is not an EU Member State or country associated with Horizon Europe.

b) The Contractor must ensure that its obligations under the Framework Agreement are passed on to the new owner and licensee and that this new owner/licensee has the obligation to pass them on in any subsequent transfer/licensing.

c) Contractors that intend exclusive licensing or transfers of ownership of the results to an entity from a country (or controlled by a country) that is not an EU Member State or country associated with Horizon Europe, must request prior authorization from the Lead Procurer.

14.6. The intention of such exclusively licensing or transfer must first be notified to the Lead Procurer at least three (3) months in advance. The notification should:

a) Identify the specific results concerned.

b) Describe in detail the intended new owner and the planned or potential exploitation of the results.

c) Include a reasoned assessment of the likely impact of the intended transfer or exclusive license on the access rights to the results and on the background and sideground that is essential for accessing the results as foreseen by the Framework Agreement for the members of the PBG and for third parties, as well as on the commercialization exploitation of the results, including the EU security interests and EU strategic autonomy objectives.

14.7. The Lead Procurer (on behalf of the members of the PBG) may request additional information to verify the potential impact upon which the Contractor must promptly provide the requested information. Before granting the authorization, the Lead Procurer will verify the potential impact of the intended transfer or exclusive licensing. The Lead Procurer may condition its authorization to measures ensuring that the transfer or exclusive licensing will not have unintended or undesirable consequences. Before the Lead Procurer gives its written authorization, the transfer may not take place, and any transfer or exclusive licensing agreement concluded before or without written authorization will be null and void.

Article 15 – Ethics and research integrity

15.1 The Contractor shall carry out the tasks assigned to it in the Framework Agreement and Phase Specific Contracts in compliance with:

a) Ethical principles (including the highest standards of research integrity).

b) Applicable international, EU and national Law.

15.2 The Contractor must commit to and ensure the respect of basic EU values (such as respect for human dignity, freedom, democracy, equality, the rule of law and human rights, including the rights of minorities). The Contractor must pay particular attention to the principle of proportionality, the right to privacy, the right to the protection of personal data, the right to the physical and mental integrity of persons, the right to non-discrimination, the need to ensure protection of the environment and high levels of human health protection.

15.3 In case the development, deployment and/or use of the PCP solution involves Artificial Intelligence (AI), the Contractor must ensure that it is trustworthy, i.e. lawful, ethical, and technically robust. The AI system must preserve and protect the following six general ethical principles based on fundamental rights as enshrined in the Charter of Fundamental Rights of the European Union (EU Charter), and in relevant international human rights law[4]:

c) Respect for human agency: Human beings must be respected to make their own decisions and carry out their own actions. Respect for human

[4] For more information, *see* *Horizon Europe guidance on ethics by design and ethics of use approaches for AI*.

agency encapsulates three more specific principles, which define fundamental human rights: autonomy, dignity and freedom.

d) Privacy and data governance: People have the right to privacy and data protection, and these should be respected at all times.

e) Fairness: People should be given equal rights and opportunities and should not be advantaged or disadvantaged undeservedly.

f) Individual, social and environmental well-being: Artificial Intelligence systems should contribute to, and not harm, individual, social and environmental wellbeing.

g) Transparency: The purpose, inputs and operations of Artificial Intelligence programs should be knowable and understandable to its stakeholders.

h) Accountability and oversight: Humans should be able to understand, supervise and control the design and operation of Artificial Intelligence-based systems, and the actors involved in their development or operation should take responsibility for the way that these applications function and for the resulting consequences.

15.4 The Contractor may not :

a) Carry out activities in a Member State for an activity which is forbidden in that Member State.

b) Carry out activities in a country inside or outside the EU, if they are prohibited in all EU Member States.

15.5 The Contractor may not carry out activities which:

a) Aim at human cloning for reproductive purposes.

b) Intend to modify the genetic heritage of human beings in a way which could make such changes heritable (with the exception of research relating to cancer treatment of the gonads).

c) Intend to create human embryos solely for the purpose of research or for the purpose of stem cell procurement, including by means of somatic cell nuclear transfer.

d) Lead to the destruction of human embryos (for example, for obtaining stem cells).

15.6 The Contractor may not carry out activities that do not focus exclusively on civil applications in the context of SHIELD PCP.

15.7 The Contractor shall respect the fundamental principle of research integrity as set out in the European Code of Conduct for Research Integrity[5]. This implies compliance with the following essential principles:

a) Reliability in ensuring the quality of research reflected in the design, the methodology, the analysis, and the use of resources.

b) Honesty in developing, undertaking, reviewing, reporting, and communicating research in a transparent, fair, and unbiased way.

c) Respect for colleagues, research participants, society, ecosystems, cultural heritage, and the environment.

d) Accountability for the research from idea to publication, for its management and organization, for training, supervision and mentoring, and for its wider impacts.

Furthermore, the Contractor must ensure that persons carrying out research tasks follow the good research practices and refrain from the research integrity violations described in the abovementioned Code.

15.8 Before starting any activity that raises an ethical issue, the Contractor shall submit to the Lead Procurer a copy of:

a) Any ethics committee of opinion required under national law.

[5] European Code of Conduct for Research Integrity of ALLEA (All European Academies).

b) Any notification or authorization for activities raising ethical issues required under national law.

Article 16 – Security-related obligations

16.1. The following Results may be disclosed or disseminated only if the Contractor has first obtained written approval from the Lead Procurer:

- Any Results or parts thereof that contain sensitive or security-relevant information, including but not limited to system architectures, technical specifications, operational procedures, vulnerabilities, security controls, test results, or any information the disclosure of which could compromise public security, critical infrastructure, or the proper functioning of the PBG.

16.2. All information that may be used to threaten or harm any member of the PBG or the proper management of their activities, as well as to cause acts of vandalism or terrorism may only be disclosed or disseminated if the Contractor has first obtained written approval from the Lead Procurer and all the members of the PBG. The Contractor shall implement appropriate information classification and handling procedures to ensure that sensitive and security-relevant information is identified, protected and shared only on a need-to-know basis.

16.3. The Contractor shall carry out a compliance self-check to guarantee the level of security at the start of the PCP procedure and will have to maintain this level of security throughout the whole project. To ensure these levels of security, the Contractor will provide and present a safety indicator scorecard formalizing the results of these self-checks on a quarterly basis.

16.4. The Contractor will allow the members of the Public Buyers Group to perform security checks, such as "vulnerability scans" or "penetration tests."

16.5. In the event of a breach of security following an audit or inspection, the Contractor will present a remediation plan no later than fifteen (15) days after delivery of the report indicating the deviation or the breach of security.

16.6. The Contractors will remedy such deviations or failures by implementing the remediation plan within a time period mutually agreed upon by both parties. Additionally, the Contractors shall assist the members of the Public Buyers group to:

a) Investigate and analyse the cause or origin of the incident, and how it occurred.

b) Evaluate the extent of any damage.

c) Recommend security measures/methods.

Article 17 – Processing of personal data

17.1. The Contractor shall process personal data in compliance with the applicable EU and national law on data protection, in particular Regulation 2016/679[6] (including as relates to authorisations and notification requirements).

17.2. The Contractor must ensure that personal data is:

a) Processed lawfully, fairly and in a transparent manner in relation to the data subjects.

b) Collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes.

c) Adequate, relevant, and limited to what is necessary in relation to the purposes for which they are processed.

d) Accurate and, where necessary, kept up to date.

e) Kept in a form which permits identification of data subjects no longer than is necessary for the purposes for which the data is processed.

f) Processed in a manner that ensures appropriate security of the data.

[6] 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 ('GDPR') (OJ L 119, 4.5.2016, p. 1).

17.3. The localization of and access to the personal data processed by the Contractor shall comply with the following provisions:

a) The personal data shall only be processed within the territory of the European Union and the Horizon Europe associated countries7 and will not leave that territory.

b) The data shall only be held in data centers located with the territory of the European Union and the Horizon Europe associated countries.

c) The Contractor may not change the location of data processing without the prior written authorization of the Lead Procurer.

d) Any transfer of personal data under the Framework Agreement or a Specific Contract to third countries or international organizations shall fully comply with the requirements laid down in Chapter V of Regulation (EU) 2016/679.

17.4. The Contractor shall implement the technical and organizational means to ensure the security of the SHIELD PCP data, the information of the PBG and the information used during the implementation of the contract, as well as to ensure that the data is not accessible or visible by other customers of the Contractor, and to the Contractor's employees who do not have a need-to-know. The Contractor will also put in place mechanisms to reduce the impact of equipment theft.

17.5. The Contractor may grant its staff access to data only in so far as is strictly necessary for implementing, managing and monitoring the Framework Agreement and Phase Specific Contracts.

17.6. The Contractor must inform the staff whose personal data is collected and processed by the Lead Procurer and/or the EU. For this purpose, the Contractor must provide them with the privacy statements of the Lead Procurer and/or the

[7] List of Horizon Europe participating countries.

EU before transmitting their data. If explicit prior consent from the data subjects is needed, the Contractor must obtain such consent.

Article 18 – Obligation to provide information and keep records

18.1. The Contractor must, at any time during the implementation of the Framework Agreement and Phase Specific Contracts or afterwards, provide any information requested by the Lead Procurer and the members of the PBG in relation to the Framework Agreement or Phase Specific Contracts, in a timely manner.

18.2. The Contractor must keep, for a period of up to five (5) years after the end of the Framework Agreement and Phase Specific Contracts, records and other supporting documentation relating to their implementation.

This obligation includes records and other supporting documentation on scientific and technical implementation (in line with the accepted standards in the field) and on the price charged and the costs incurred by the Contractor.

18.3. The Contractor must keep the original documents. Digital and digitalized documents are considered original if they are authorized under national law.

18.4. Should there be ongoing checks, reviews, audits, investigations, litigation or other pursuits of claims (including claims by a third party against the procurers), the Contractor must keep all records and other supporting documentation until the end of these procedures.

Article 19 – EU checks, reviews, audits and investigations

19.1. Should the EU (including the European Court of Auditors, the European Public Prosecutor's Office (EPPO) or the European Anti-Fraud Office (OLAF)) decide to carry out a check, review, audit or investigation, the Contractor must make available all information, records and other supporting documents relating to the implementation of the Framework Agreement and Phase Specific Contracts.

19.2. Should there be an on-the-spot visit, the Contractor must allow access to its premises and must ensure that the information requested is readily available.

Article 20 – EU impact evaluation

20.1. Should the EU carry out an impact evaluation (of its grant to the procurers), the Contractor must make available for all information, records and other supporting documents relating to the implementation of the Framework Agreement and Phase Specific Contracts.

Article 21 – Monitoring and reporting

21.1. During each PCP phase, the implementation by the Contractor of the R&D services will be monitored periodically and reviewed against the expected outcomes (deliverables and output or Results) for that phase. To this end, the Contractor will be assigned a main contact person (their supervisor) from the Technical Monitoring Committee (TMC) appointed by the Lead Procurer. There will be regular monitoring meetings between the Contractor and the TMC.

21.2. For the purpose of such monitoring activities, the Lead Procurer is entitled to carry out physical visits to the Contractor's premises at any time during the implementation of the PCP. The meetings will take place after formal communication. The Contractor could be asked to discuss the Results achieved in the preceding period and present their updated work plan.

21.3. The Lead Procurer (on behalf of the PBG) may request to witness (or request that a designated party witnesses) any tests or measurements to be performed by the Contractor or his subcontractor(s). The Contractor shall give the Lead Procurer a prior notice - with sufficient time and, in any case, no less than ten (10) days - in writing of the date(s) and place(s) of such tests and measurements. Failure to notify with sufficient time will allow the Lead Procurer to demand that such tests and measurements be repeated at the expense of the Contractor, who shall be liable for any delay resulting thereof.

21.4. The Procurement Evaluation Committee (PEC) will provide regular feedback in writing to Contractors after meetings or visits.

End of phase reporting

21.5. The Contractor shall submit to the Lead Procurer an End of Phase (1, 2, 3) report at the end of each relevant phase, on the completion date.

21.6. The Contractor shall draft the End of Phase (1, 2, 3) report using TD6 and shall consider any and all recommendations provided by the Lead Procurer and the members of the PBG. The End of Phase (1, 2, 3) report shall include the data, methods, results and final conclusions together with information management and any other information relating to the project phase it concerns up to the completion date thereof. The ownership of necessary reports of all phases will be transferred to the Lead Procurer.

21.7. The evaluation of each End of Phase (1, 2, 3) report shall be carried out at the Lead Procurer premises or at any other place indicated thereby by the PEC.

21.8. The evaluation of the End of Phase (1, 2, 3) report will be made within the timeline as provided in the Call for Tenders (TD1).

21.9. The evaluation will assess whether the Contractor has achieved the objectives mentioned in the Technical Form (TD8) and the Financial Form (TD9), in accordance with the Call for Tenders (TD1) and the objectives of each PCP phase.

21.10. The evaluation will be documented in a specific report, indicating the date and the results of the same and will be signed by all the members of the PEC.

Succession of Phase 1, Phase 2 and Phase 3 of the project

21.11. By signing this Framework Agreement, the Lead Procurer and the Contractor accept the general conditions set by the Framework Agreement and the Specific Contract for Phase 1.

21.12. In case the Contractor gets awarded Specific Contracts for Phase 2 and Phase 3, these have to be signed by Lead Procurer and the Contractor. The Contractor has the obligation of performing the services within the scope of the respective phases of the project.

Assessment of Phase 1 and award of Phase 2

21.13. On the completion date of Phase 1, the Contractor shall submit to the Lead Procurer at the End of Phase 1 report (TD6) together with the deliverables belonging to Phase 1, which shall be reviewed and assessed by the TMC.

21.14. The outcome of the evaluation shall result in the decision of the PEC regarding the unsatisfactory, satisfactory, or successful completion of Phase 1 (as defined in the Call for Tenders – TD1). This decision will be made according to the timeline of the Call for Tenders. In case a longer evaluation process is needed, the Contractor will be duly informed of the new timeline for the evaluation outcome.

21.15. The following rules shall apply:

a) In case the Contractor has not satisfactorily completed Phase 1:

   i. The Contractor shall reimburse the received pre-payment to the Lead Procurer.

   ii. The Contractor will not receive further payment for the work carried out in Phase 1.

   iii. The Contractor will not be invited to submit a tender for Phase 2.

   iv. This Framework Agreement and Phase 1 Specific Contract shall terminate.

b) In case the Contractor has satisfactorily, but not successfully completed Phase 1:

   i. The Contractor shall not reimburse the received pre-payment to the Lead Procurer.

ii. The Contractor will be entitled to the payment for the work carried out in Phase 1.

iii. The Contractor will not be invited to submit a tender for Phase 2.

iv. This Framework Agreement and Phase 1 Specific Contract shall terminate.

c) In case the Contractor has successfully completed Phase 1:

i. The Contractor shall not reimburse the received pre-payment to the Lead Procurer.

ii. The Contractor will be entitled to the payment for the work carried out in Phase 1.

iii. The Contractor will be invited to submit a tender for Phase 2.

21.16. The Contractor that has successfully completed Phase 1 will be invited to submit a tender for Phase 2. The Lead Procurer will communicate the award decision after the deadline for submitting the tenders. This will take place according to the planning provided in the Call for Tenders (TD1). Any changes in the timeline above will be duly communicated to the Contractors.

21.17. If the Contractor is selected for Phase 2, this Framework Agreement shall continue in force for the duration of the following phases. The Contractor shall thereupon sign a Specific Contract for that phase. Alternatively, if the Contractor is not selected for Phase 2, this Framework Agreement shall, without prejudice to any surviving clauses, cease to have any effect upon the date announced by the Lead Procurer for final award of Phase 2.

Assessment of Phase 2 and award of Phase 3

21.18. On the completion date of Phase 2, the Contractor shall submit to the Lead Procurer at the End of Phase 2 report (TD6) together with the deliverables belonging to Phase 2, which shall be reviewed and assessed by the TMC. This assessment shall be carried out according to the planning provided in the Call for Tenders (TD1).

21.19. The outcome of the evaluation shall result in the decision of the PEC regarding the unsatisfactory, satisfactory, or successful completion of Phase 2 (as defined in the Call for Tenders – TD1). This decision will be made according to the planning provided in the Call for Tenders. In case of a longer evaluation process, the Contractor will be duly informed of the new timeline for the evaluation outcome.

21.20. The following rules shall apply:

a) In case the Contractor has not satisfactorily completed Phase 2:

   i. The Contractor shall reimburse the received pre-payment to the Lead Procurer.

   ii. The Contractor will not receive further payment for the work carried out in Phase 2.

   iii. The Contractor will not be invited to tender a tender for Phase 3.

   iv. This Framework Agreement and Phase 2 Specific Contract shall terminate.

b) In case the Contractor has satisfactorily, but not successfully completed Phase 2:

   i. The Contractor shall not reimburse the received pre-payment to the Lead Procurer.

   ii. The Contractor will be entitled to the payment for the work carried out in Phase 2.

   iii. The Contractor will not be invited to submit a tender for Phase 3.

   iv. This Framework Agreement and Phase 2 Specific Contract shall terminate.

c) In case the Contractor has successfully completed Phase 2:

   i. The Contractor shall not reimburse the received pre-payment to the Lead Procurer.

ii. The Contractor will be entitled to the payment for the work carried out in Phase 2.

iii. The Contractor will be invited to submit a tender for Phase 3.

21.21. The Contractor that has successfully completed Phase 2 will be invited to submit a tender for Phase 3. The Lead Procurer will communicate the award decision after the deadline for submitting the tenders. This will take place according to the planning provided in the Call for Tenders (TD1). Any changes in the timeline above will be duly communicated to the Contractors.

21.22. If the Contractor is selected for Phase 3, this Framework Agreement shall continue in force for the duration of the following phases. The Contractor shall thereupon sign a Specific Contract for that phase. Alternatively, if the Contractor is not selected for Phase 3, this Framework Agreement shall, without prejudice to any surviving clauses, cease to have any effect upon the date announced by the Lead Procurer for final award of Phase 3.

Assessment of Phase 3

21.23. On the completion date of Phase 3, the Contractor shall submit to the Lead Procurer at the End of Phase 3 report (TD6) together with the deliverables belonging to Phase 3, which shall be reviewed and assessed by the TMC. This assessment shall be carried out according to the planning provided in the Call for Tenders (TD1).

21.24. The outcome of the evaluation shall result in the decision of the PEC regarding the unsatisfactory, satisfactory, or successful completion of Phase 3 (as defined in the Call for Tenders – TD1). This decision will be made according to the planning provided in the Call for Tenders (TD1). In case of a longer evaluation process, the Contractor will be duly informed of the new timeline for the evaluation outcome.

21.25. The following rules shall apply:

a) In case the Contractor has not satisfactorily completed Phase 3:

i. The Contractor shall reimburse the received pre-payment to the Lead Procurer.

ii. The Contractor will not receive further payment for the work carried out in Phase 3.

iii. This Framework Agreement and Phase 3 Specific Contract shall terminate.

b) In case the Contractor has satisfactorily, but not successfully completed Phase 3:

i. The Contractor shall not reimburse the received pre-payment to the Lead Procurer.

ii. The Contractor will be entitled to the payment for the work carried out in Phase 3.

c) In case the Contractor has successfully completed Phase 3:

i. The Contractor shall not reimburse the received pre-payment to the Lead Procurer.

ii. The Contractor will be entitled to the payment for the work carried out in Phase 3.

21.26. Successful completion of Phase 1 is a prerequisite to receive an invitation for Phase 2. Successful completion of Phase 2 is a prerequisite to receive an invitation for Phase 3.21.27. Any award for Phase 2 and Phase 3 will be communicated in writing by the Lead Procurer to the Contractor.

21.28. Any reference in this Framework Agreement to the project refers also to any of the phases awarded to the Contractor.

21.29. The use of deliverables submitted by the PBG shall be subject to the provisions on access rights and IPR set out in Article 8, including in cases where reimbursement obligations apply.

21.30. The Lead Procurer (on behalf of the PBG) reserves the right not to award contracts for phases for which it has not received any suitable or acceptable offer in relation to the project, as well as to stop, cancel, revoke, re-issue the PCP or not to award any phase contract for objective reasons. The Lead Procurer assumes no obligation whatsoever to compensate or indemnify the Contractors for any expense or loss that may occur in the preparation of their tenders.

Article 22 – Breach of contract

22.1. The following provisions constitute a non-exhaustive list of clauses that lead to breach of contract.

22.2. The Contractor shall ensure timely submission of deliverables. If the Contractor fails to deliver the Results or other deliverables as described in the Call for Tenders (TD1) – including, but not limited to, the End of Phase (1, 2, 3) reports – and to comply with this Framework Agreement and the Phase Specific Contracts, the Lead Procurer shall give the Contractor the opportunity to remedy it within an appropriate period (no longer than ten (10) days), unless the delay is not attributable to the Contractor. If the Lead Procurer is still not satisfied after that period, it may (at its discretion):

a) Withhold payments until satisfactory delivery.

b) Cancel payments.

c) Have all sums previously paid by the Lead Procurer to the Contractor for and under the phase which is then running (not being previous phases), refunded by the Contractor.

d) Hold the Contractor accountable for additional costs, which the members of the PBG reasonably incurred.

e) Refuse to accept any subsequent performance of the project which the Contractor attempts to make.

f) Exclude the Contractor from any subsequent phases on the basis that the Contractor has not successfully completed the present phase.

g) Terminate the Framework Agreement, in whole or in part, and/or any phase of contract without liability to the Contractor.

22.3. Acceptance by the Lead Procurer of any deliverable or Result shall not limit the Contractor's liability, if those deliverables or Results are later discovered to be non-compliant with the requirements of the Framework Agreement, nor for any loss or damage which may arise as a result.

Liability

22.4. The Contractor undertakes to fulfil all the obligations arising out of this Framework Agreement, with the best possible diligence required by the nature of the services.

22.5. The Contractor assumes liability for any and all damages caused – not covered by its professional insurance/liability policy – to anyone who is caused, in relation to the performance of the contractual services, relieving the Lead Procurer (and the members of the PBG of any liability.

22.6. The Contractor shall be responsible and liable for any damage caused by it, or its employees, agents and/or subcontractors, directly to the members of the Public Buyers Group or any third parties (including cost of restoration, penalties, loss of profits, costs and expenses, also legal expenses) which the Lead Procurer is required to compensate, because of the Contractor's delay or failure to comply with its obligations. The liability of the Contractor under this Framework Agreement (TD2) is limited to a period of two (2) years after the termination of the Framework Agreement or the termination of the performance of the services whichever is later, except in cases of wilful misconduct or gross negligence.

22.7. The Contractor shall also be responsible and liable for any damages or injuries suffered by his/her property or by people who cooperate with him/her or are employed by him/her and agree to indemnify the members of the PBG even in court.

22.8. The Contractor hereby agrees to provide, within ten (10) days as of the signing of this Framework Agreement, evidence of the conclusion of a professional insurance/liability policy concluded with a primary insurance company and undertakes to keep such policy insurance in force for the entire duration of this Framework Agreement and the Phase Specific Contracts (TD 3, 4 and 5) to cover all direct or indirect material damage to persons or property. For the avoidance of any doubt, the limit for each event, corresponding at least to what the law provides for in the field of liability and insurance, cannot be considered, under any circumstances, as a limit to compensation for damage.

22.9. To further clarify, the Contractor shall indemnify and hold harmless the Lead Procurer and the members of the PBG, their employees, officers, directors and agents fully against any and all liabilities, claims, actions, suits or proceedings whatsoever in respect of:

a) Any damage to property, including any infringement of Third Parties' IPRs.

b) Any injury to persons, including injury resulting in death.

c) Resulting from or during, or in connection with the performance of the Services, except in so far as such damages or injury shall be due to any act or negligence of the Lead Procurer or any member of the PBG.

22.10. The Contractor shall promptly notify the Lead Procurer in writing of any such liabilities, claims, actions, suits or proceedings, and in particular of any action brought against the Contractor for infringement or alleged infringement of intellectual property rights which might affect the project, within thirty (30) days after receipt of notice of any complaint, claim or injury opening an indemnification right.

22.11. In no event shall the Lead Procurer (and the members of the PBG) be liable to the Contractor for punitive damages, indirect or consequential loss or damage suffered by the Contractor.

22.12. The EU cannot be held liable for any damage caused to the Contractor or caused by the Contractor in connection with the implementation of the Framework Agreement or a Phase Specific Contract.

Damages

22.13. The Contractor must compensate the contracting authority and members of the PBG if they are held liable by the EU for damage sustained because of the implementation of the Framework Agreement or a Phase Contract (or because it was not implemented properly).

Article 23 – Causes and consequences of termination

23.1 The Lead Procurer (on behalf of the PBG) may terminate this Framework Agreement without liability for any damage, loss or expenses arising as a result of or in connection with such termination (except otherwise provided in specific clauses hereunder) in the following cases:

a) Any approvals or licenses required under this Framework Agreement or to enable the services to be carried out lawfully are not given unconditionally within one (1) month of the commencement of the project; or lapse, terminate or otherwise cease to have effect during the term of this Framework Agreement and the Contractor does not seek to have the necessary permits within two (2) weeks.

b) An appeal under the bankruptcy law or any other law applicable to insolvency proceedings has been filed against the Contractor, proposing the dissolution, liquidation, amicable composition, the debt restructuring or a settlement with creditors, or if a liquidator, a trustee, a guardian or a person having similar functions, which come into possession of the goods or is responsible for managing the business the Contractor is appointed.

c) Any of the members of the governing body or the managing director or the general manager or the technical manager of the Contractor are subject to a judgment which has the force of res judicata for crimes against the public administration, public policy, public faith or public property.

d) The Contractor has informed the Lead Procurer that they are not willing or not able for whatever reason to continue the project.

e) The Contractor is in breach of an obligation under this Framework Agreement if:

   i. The breach can be remedied, and the Contractor has failed to remedy the breach within thirty (30) days of written notice being sent to the Contractor specifying the breach and requiring its remedy; or

   ii. The breach cannot be remedied (but does not constitute a serious or repeated breach or grave professional misconduct by the Contractor).

f) The Contractor, or any sub-Contractor whose resources he has relied during the PCP, becomes subject to any exclusion criteria listed in the Call for Tenders (TD1).

g) Failure by the Contractor to comply with the contractual obligations (including those related to the Phase Specific Contracts (TD3, TD4 and TD5) in accordance with the law in force and the conditions, procedures, terms and requirements contained in this Framework Agreement, its annexes and in the phase contracts, including, but not limited to:

   iii. Breach of any of its confidentiality obligations.

   iv. A situation of conflict of interest according to Article 13 arises during the implementation of the contract, including subcontractors.

v. Breach of any of its data protection obligations.

vi. Failure to submit a deliverable or to meet any expected outcome/result within ten (10) days of the date by which it was meant to be achieved, or repeatedly fails over a period of three (3) consecutive months to submit a deliverable or to meet any expected outcome/result by the date(s) on which they were meant to be achieved.

h) The services are not in compliance with the requirements on R&D services as defined in the most recent version of the Frascati Manual and, where applicable, its latest annexes[8] or in case of non-compliancy with any other requirement mentioned in the Call for Tenders (TD1) and declared in the signed declaration that is part of the tender.

i) The necessary must and safety requirements are not complied with. Lack of the necessary must and safety requirements may also lead to partial termination of the Framework Agreement and the Phase Specific Contract.

j) Any provision of this Framework Agreement (other than as previously specified in the preceding provisions of this Article) expressly entitles the Lead Procurer to terminate the Framework Agreement.

23.2 In the event of serious or repeated breach of the Framework Agreement or grave professional misconduct by the Contractor, leading the Lead Procurer to conclude that the Contractor is unsuitable to comply with its obligations hereunder, the Lead Procurer reserves the right to terminate this Framework Agreement at the Contractor's expense, subject only to a notice of termination by certified e-mail or registered letter with acknowledgement of receipt, without prejudice to the right to claim further damages.

[8] OECD (2015), Frascati Manual 2015: Guidelines for Collecting and Reporting Data on Research and Experimental Development, The Measurement of Scientific, Technological and Innovation Activities, OECD Publishing, Paris, https://doi.org/10.1787/9789264239012-en

23.3 In the event of termination of the Framework Agreement for serious or repeated breach or grave professional misconduct by the Contractor, the Lead Procurer shall be entitled to apply a penalty in the amount of maximum ten percent (10%) of the price for the PCP set out in the phase contract concerning the ongoing phase, and/or claim for compensation of damages.

23.4 Termination of this Framework Agreement by the Lead Procurer shall (at the option of the Lead Procurer) take place with immediate effect as from the date of service of the notice of that termination or from the expiry of a period specified in that notice. If this occurs, the Lead Procurer shall not be obliged to make any further financial payment to the Contractor.

23.5 The Lead Procurer (on behalf of the PBG) is and remains unconditionally entitled to terminate this Framework Agreement and any Phase Specific Contract hereunder without cause, by giving a three (3) month notice in writing. The Lead Procurer shall in that case only be obliged to pay the Contractor for the reasonable costs for the remaining obligations of the Contractor for that phase that can objectively not be undone.

23.6 The Lead Procurer may, by giving due notice in writing, terminate this Framework Agreement without liability for any damage, loss or expenses arising as a result of or in connection with such termination if there is a change of control in the Contractor which the Lead Procurer can reasonably demonstrate is prejudicial. The Lead Procurer shall only be permitted to exercise its rights pursuant to this clause for six (6) months after any such change of control and shall not be permitted to exercise such rights where the Lead Procurer has agreed in advance in writing to the particular change of control and such change of control takes place as proposed. The Contractor shall notify the Lead Procurer within two (2) weeks of any change of control taking place, unless the new controlling entity originates from a country (or is controlled by a country) that is not EEA and HE associated. The Lead Procurer shall not unreasonably withhold its approval and provide Contractor with a decision within two (2) weeks after receiving such a notification.

23.7 The assignments and/or licenses granted under the Framework Agreement by the Contractor to the Lead Procurer, any member of the PBG or any other third party shall continue notwithstanding any expiry or termination of this agreement.

23.8 Termination or expiry of the Framework Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Framework Agreement before termination or expiry.

23.9 Within thirty (30) days of the date of termination or expiry of the Framework Agreement, the Contractor shall return or destroy at the request of the Lead Procurer any personal data received from or on behalf of the Lead Procurer and/or the members of the PBG, or confidential information belonging to the Lead Procurer and/or the members of the PBG, either in its current format or in a format nominated by the Lead Procurer.

23.10 Unless expressly stated to the contrary, the service of a notice to terminate the Framework Agreement shall operate as a notice to terminate any Specific Contract in force.

Article 24 – Force majeure

24.1 In accordance with this Framework Agreement, neither Party may be held responsible by the other Party for circumstances beyond the Party's control and which the Party, on signing the Framework Agreement or the Phase Specific Contract, could not have taken into consideration or avoided or overcome. Circumstances that a diligent Contractor could have prevented by taking the customary and reasonable precautions are not considered force majeure, including those relating to internal strikes and illness, and/or any default of a service, defect in equipment or material or delays, unless they stem directly from a relevant case of force majeure.

24.2 Force majeure may only be asserted for the number of working days that the force majeure situation persists.

24.3 Insofar as a deadline for the Contractor is deferred because of force majeure, the payments relating to this deadline will be deferred correspondingly.

24.4 Any situation constituting force majeure must be formally notified to the other party without delay, stating the nature, likely duration and foreseeable effects. Force majeure may only be cited if the affected Party has given written notification thereof to the other Party no later than ten (10) working days after the commencement of the force majeure.

24.5 The Parties must immediately take all the necessary steps to limit any damage due to force majeure and do their best to resume implementation of the action as soon as possible. The party prevented by force majeure from fulfilling its obligations under the Framework Agreement cannot be considered in breach of them.

24.6 The Party not affected by force majeure is entitled to cancel orders if the agreed delivery time is exceeded by thirty (30) working days because of force majeure.

24.7 The Parties may terminate this Framework Agreement in writing without notice if the impediment or delay because of the force majeure situation lasts (or will last) longer than six (6) months.

Article 25 – Amendments

25.1 If at any time any provision of this Framework Agreement needs to be amended, the Contractor shall immediately inform the Lead Procurer in writing requesting an amendment, giving full details of the justification for the request and giving proposals for the amendment to this Framework Agreement at no additional cost to the Lead Procurer. Upon receipt of such a request, the Lead Procurer may:

a) Agree to modify the Framework Agreement provided such variation is non-discriminatory and does not lead to a substantial change of the Framework Agreement, the scope of services or the scope of the results as allowed following the case law of the Court of Justice of the European Union;

b) Amend the project in a manner which the Contractor agrees can be carried out within the duration of the project and the price allocated to the relevant phases; or

c) Refuse the request and require the continuation of the project in accordance with the Framework Agreement.

d) Give notice of termination in accordance with Article 23.

25.2 Any amendment to this Framework Agreement shall be made after agreement between the Parties.

25.3 Any amendment to this Framework Agreement shall be set out in writing, in an addendum to it and signed by both Parties.

25.4 No amendment shall have the purpose or the effect of making material changes to the Framework Agreement and Phase Specific Contracts (TD3, TD4 and TD5), which might call into question the decision to award the contract or result in unequal treatment to technology providers. If it is not possible to continue with the project in accordance with the Framework Agreement, the Framework Agreement and Phase Specific Contracts shall be terminated.

25.5 The Lead Procurer may request an amendment to the agreement at any time, provided such amendment does not amount to a material change to this Framework Agreement, and if parties agree that the change is not unreasonable.

Article 26 – Interpretation

26.1 The Framework Agreement constitutes the entire agreement between the Parties relating to its subject matter. Each Party acknowledges that it has not entered into this Framework Agreement based on any warranty, representation, statement, agreement or undertaking except those expressly set out in this

Framework Agreement. Each Party waives any claim for breach of this Framework Agreement, or any right to rescind this Framework Agreement in respect of, any representation, which is not an express provision of this Framework Agreement. However, this Article does not exclude any liability which either party may have to the other (or any right which either party may have to rescind this Framework Agreement) in respect of any fraudulent misrepresentation or fraudulent concealment prior to the execution of this Framework Agreement.

26.2 In case of discrepancy between the Framework Agreement, the PCP Call for Tenders (TD1) and other documents, the documents shall prevail in the following descending order:

a) Phase Specific Contract.

b) Framework Agreement.

c) Call for Tenders.

d) Other Tender Documents.

26.3 The terms and conditions set out in the Call for Tenders (TD1) have precedence over the Contractor’s tender.

26.4 A reference to any act, law, statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the act, law, statute, enactment, order, regulation or instrument as subsequently amended or re-enacted (regardless of whether expressly so stipulated).

26.5 The headings in this Framework Agreement are for ease of reference only and shall not affect its interpretation or construction.

Article 27 – Applicable law and dispute settlement

27.1 The applicable law is the French law.

27.2 Considering that PCP is exempted from the EU Public Procurement Directives and subsequently from the national transposition laws, the French public procurement law will be applied on a subsidiary basis.

27.3 Any disputes between the Parties, arising with reference to the interpretation, performance, validity, effectiveness and termination of this Framework Agreement and the Phase Contracts, shall be first topic of amicable settlement by the Parties. If that is not possible:

a) Claims concerning contract modifications arising during contract execution shall be lodged before the administrative courts of Paris (France) within a period of fifteen (15) days after the award decision.

b) Other execution aspects and termination of the contract(s) shall be lodged before the administrative courts of Paris (France).

Article 28 — Entry into force

28.1 This Framework Agreement shall enter into force on the date it is signed by the parties hereto.

Funded by the European Union

SIGNATURES

The Lead Procurer (FMI) signs for the PBG and — in case of joint tenders — the lead Contractor for the group of Contractors (consortium).

Signed by the duly authorized signatory of the Lead Procurer:

Date:

Signature:

Full Name:

Position held:

Signed by the duly authorized signatory of the Contractor:

Date:

Signature:

Full Name:

Position held: