



UPC Terms and Conditions

FA-IT-003-0125

Websites for UPC and PMAC

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1. GENERAL INFORMATION

Parties:

- i) The **Unified Patent Court**, a composite court responsible for ruling in particular on the infringement and validity of patents resulting from an international treaty, ratified by seventeen Member States of the European Union, for which the Unified Patent Jurisdiction Agreement (“**UPCA**”) has entered into force, incorporated under the laws of the Grand Duchy of Luxembourg, having its registered office at 1, Rue du Fort Thüngen, L-1499 Luxembourg and duly represented by M. Klaus Grabinsky, President of the Court of Appeal. Request for Proposal (hereafter the “**UPC**”),

And,

- i) the entity or entities as referred to in the UPC Request for Proposal, (i.e., any natural or legal person or public entity or group of such persons and/or entities, including any temporary association of undertakings, the supply of products or the provision of services on the market) (hereafter the “**Economic Operator**”),

Hereinafter also jointly referred to as the “**Parties**” or individually as the “**Party**”.

2. DEFINITIONS

It is specified that the capitalized terms defined in the Contract have the same meaning whether the terms are used in the singular or plural.

“**Act of Corruption**”: means any act of soliciting, authorising, offering, promising or giving a financial or other advantage (including any payment, loan, gift or transfer of anything of value) in order to induce a private individual or public official to perform his duties dishonestly or in breach of his professional, legal or contractual obligations and/or to obtain or retain business for UPC improperly or dishonestly.

“**Business Days**”: means Monday to Friday, excluding public holidays, in accordance with the applicable rules and the Luxembourg time zone.

“**Business Hours**”: means, from Monday to Friday, from 8:00 a.m. to 6:00 p.m., except any public holiday in Luxembourg.

“Change Request”: means a written request (in the case of the UPC) or a recommendation (in the case of the Economic Operator) for a change/variation which is submitted by one Party to the other pursuant to a specific procedure as described in the Contract.

“Confidential information”: means any information of an artistic, technical, industrial of an and/or financial nature, not made available to the public made available to the public, communicated by either of the Parties in the course of discussions the Solution, whether in writing or orally (subject to written confirmation within five (5) days of disclosure), electronically or in any other form, such as plans, drawings, specifications drawings, specifications, processes, know-how, trade secrets, designs, methods, computer applications studies, whether or not protected by intellectual property rights.

“Contract”: means the Documents relating to public procurement under which the Economic Operator undertakes to provide Services to the Contracting Authority if applicable, the General Terms and Conditions and its appendices, the Specific Terms and Conditions appendix and the UPC Request for Proposal and its appendices, as well as any amendments thereto.

“Contract Notice”: means the main document of the public procurement procedure describing the prerequisites necessary to formulate a request to participate.

“Controlled Persons”: means any person over whom the Economic Operator has control, including in particular its directors, employees and servants.

“Force Majeure”: means an event which prevents a Party from performing one of its contractual obligations, provided that the event is beyond its control, could not reasonably have been foreseen when the Contract was entered into and the effects of which cannot be avoided by taking appropriate measures. It is specified that, without this list being exhaustive, strikes, popular movements, pandemics, administrative decisions, wars, severe weather or natural disasters, etc. may not constitute an event of force majeure.

“GDPR”: means the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016.

“Malicious Programmes”: means harmful computer code such as, but not limited to, viruses, logic bombs, worms, Trojan horses or any other code or instruction that infects or affects any

program, software, data, file, database, computer or other material or element, damaging, impairing, compromising the integrity or confidentiality of, disrupting in whole or in part the operation of, diverting or permitting the diversion of, in whole or in part, an information system from its intended use.

“Patch”: means any changes necessary to the resolution of any issue that could lead to malfunction of the component (software or hardware) and improve the level of the component security.

“Product(s)”: means any specific, tangible and expected deliverables and/or result, which may take the form of a physical product, software, or Service, related to the Solution, which may include, where applicable, any creation resulting from the Services performed by the Economic Operator, and in particular the design and execution of preparatory work, documentation, texts, models, prototypes, studies, graphics, execution and printing files, etc.

“Rules of Art”: means the current scientific data available to the professional at the time, place and economic environment in which the Contract is performed.

“Services”: means all the performances and services carried out in connection with the Solution.

“Service Level Agreement” or “SLA”: means the level of services which the Economic Operator agrees to perform in favour of the UPC in relation to a Solution, and which are defined in the Contract.

“SLA failure”: means failure by the Service Provider to meet the agreed upon Service Levels.

“Solution”: means all Services and/or Products relating to the design, implementation, execution and monitoring of the operations requested by UPC and described in the Contract. For the avoidance of doubt, it is specified that the notion of Solution covers Services and/or Products executed instantaneously as well as those executed successively or in instalments.

“Specific Terms and Conditions”: means all specific contracts and their appendices which form an integral part thereof, as well as any future amendments, relating to a UPC Solution and specifying the Terms and Conditions.

“UPC Request for Proposal”: means all technical documents and specifications and annexes (including Contract Notice and CSC) forming an integral part thereof, as well as any future amendments, relating to a UPC Solution and specifying the Specific Terms and Conditions.

“Update”: means the software-related patches, which contain no new or additional functionality and are subject to the terms, limitations and restrictions contained in the software licenses respectively concerned.

“Upgrade”: means the process of replacing a product with a newer version of the same product or Solution, including software.

“Terms and Conditions”: means this document and its appendices, which form an integral part of it, as well as any future amendments.

3. LEGAL AND REGULATORY PROVISIONS

The following provisions apply to the Contract:

- The Agreement n°2013/C 175/01 on a Unified Patent Court;
- The Statute of the Unified Patent Court annexed to the Agreement;
- The Decision of the Presidium of the Unified Patent Court of 10 February 2023 on the Guidelines for the protection of personal data in the Unified Patent Court;
- The Financial Regulation of the Unified Patent Court;
- The Protocol on Privileges and Immunities of the Unified Patent Court;
- The Directive 2014/24/UE of the European Parliament and of the Council of 26 February 2014 on public procurement;
- The Directive 2014/55/EU of the European Parliament and of the Council of 16 April 2014 on electronic invoicing in public procurement;
- The 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;
- The Regulation (EU) 2018/1807 of the European Parliament and of the Council of 14 November 2018 on a framework for the free flow of non-personal data in the European Union;
- The Luxembourgish Civil Code provisions.

4. CONTRACTUAL DOCUMENTS

The Contract which constitutes the agreement between the Parties shall be interpreted as follows:

- 1- The Procurement Documents (including the Contract Notice and the CSC) relating to public procurement, if applicable;
- 2- The UPC Request for Proposal and related appendices and amendments, if applicable;
- 3- The UPC Specific Terms and Conditions and related appendices and amendments, if applicable;
- 4- This document and related appendices and amendments.

The Contract cancels and replaces all oral or written agreements that may have been concluded previously between the Parties in relation to the above-defined object and may only be modified by a new contract or an amendment concluded in writing and signed by the Parties.

It is understood that contractual documents are mutually explanatory. However, in the event of any contradiction or discrepancy between the terms of the contractual documents, the documents shall take precedence over each other in the order in which they are listed.

Under no circumstances and in no way may the annexes limit the obligations and responsibilities of the Economic Operator in any respect whatsoever. UPC may invoke the automatic nullity of any clause that contravenes these principles.

5. PURPOSE OF THE TERMS AND CONDITIONS

The purpose of the Terms and Conditions is to define the conditions under which the Economic Operator undertakes to perform the Solution on behalf of UPC.

The Terms and Conditions establish principles and general provisions that take into account the operational and structural infrastructure of UPC, as European court specialising in patent registration and litigation.

In this respect, the Economic Operator declares that:

- it has acquired significant competence, experience and know-how in its fields which make it suitable to respond to any requests from the UPC;
- it has the human, technical and financial resources required to successfully complete the Solution;
- it has acquired significant knowledge on the UPC's needs and statutes;
- it has sufficient operational measures in terms of protection of personal data, intellectual property, confidentiality and protection of secrecy and undertakes in no manner to appropriate in any way whatsoever information belonging to UPC, for its own account or for purposes unrelated to the performance of the Contract.

6. FINANCIAL TERMS

6.1 Price and conditions of payment

The UPC, in view of its status, is subject to the principles set out in Directive n°2014/24/EU on financial matters, as well as to the UPC financial regulation principles of the Unified Patent Court, publicly available.

The Economic Operator is hereby informed that the financial terms concerning the price, as well as the timetable and terms of payment of the price, are specified in the UPC Request for Proposal. In order to comply with the UPC's own rules, the UPC Request for Proposal also stipulate that the UPC and the Economic Operator draw up an invoicing plan adapted to the nature of the Solution. It should be noted that all payments and progress of the Solution, as well as the receipt of Products, must be recorded by the Economic Operator in official reports.

UPC informs the Economic Operator in the UPC Request for Proposal of the possible application of VAT for services and products rendered in the execution of the Solution. The amounts of the various value-added taxes are to be indicated separately on each invoice.

Invoices should be sent at the following address: Finance_UPC@unifiedpatentcourt.org.

All invoices must clearly indicate the Solution reference (commitment number, information to be communicated at the start of work) and must include the acceptance report signed by the Contracting Authority and the client.

UPC is entitled to refuse payment of an invoice issued by the Economic Operator in a manner contrary to this article.

6.2 Invoicing method

Unless otherwise stipulated in the Contract, invoices must be sent electronically, in accordance with legal and regulatory rules, together with the precise reference of the Contract.

Where requested by UPC in the Request for Proposal, invoicing must be accompanied by information concerning the Solution as well as accompanied by all relevant documents decided by the Parties, such as, for example, as the case may be, the acceptance report signed by UPC or supporting documents relating to the time spent.

As such, the Economic Operator must comply with European standards on electronic invoicing as specified in the Directive of 16 April 2014, n°2014/55/EU and, where applicable, with Luxembourg standards.

It is specified that any derogation or clarification concerning the above will be given to the Economic Operator in the UPC Request for Proposal. In this case, the Economic Operator will be given UPC's address to which to send its invoices, as well as their content.

6.3 Price modification during the performance of the Contract requested by the Economic Operator (“Imprévision”)

The Economic Operator may not request any price modification during the performance of the Contract, whatever the cause.

Nevertheless, the Economic Operator accepts that, in view of its status, UPC may find itself confronted with unforeseeable circumstances which it could not have foreseen at the time of concluding the Contract, particularly when the performance of the Contract extends over a longer period.

These unforeseeable circumstances are those in which UPC, although having exercised due diligence in preparing the initial Solution, could not have foreseen, given the means at its disposal, the nature and characteristics of the particular Solution, good industry practice and the need to match the resources devoted to preparing the Contract with its foreseeable value, UPC enjoys a certain margin for manoeuvre.

In this respect, the Parties will set out the modalities for the exercise of UPC's leeway in the Contract.

6.4 Price variation

Without prejudice to the foregoing clause, the price may be subject to variation if this is permitted in the Request for Proposal, under the strict circumstances set out therein.

6.5 UPC Request for Proposal cover

The Economic Operator may include in its offer a budget calculated according to the rules expressed by the UPC, for any changes to the UPC Request for Proposal and/or any additional tasks that the UPC may require (hereinafter the "Change Request"). Where the Solution's financing method permits, the amount of the total Contract value of this budget must be communicated in advance by the Economic Operator and accepted by UPC. Where the amount of the total contract value cannot be determined in advance, the Economic Operator shall provide all relevant pricing information, and an estimate of the time required to complete the Solution.

The Change Request of the UPC must firstly be evaluated by the Economic Operator in terms of time necessary to perform such request as well as in terms of budget.

The evaluation must be approved by the UPC before the start of the works relating to the Change Request. Unused budget will not be paid.

6.6 Application of penalties

The UPC may request in the UPC Request for Proposal, penalties and/or periodic penalty payments to be imposed on the Economic Operator in the event that the latter does not comply or has not complied with the conditions or deadlines set out in the Contract.

It is expressly agreed between the Parties that the penalties and periodic penalty payments are not dischargeable and will be notified by formal notice indicating the obligations not complied with and the sanctions envisaged.

The Parties agree that all penalties and periodic penalty payments notified to the Economic Operator and not contested shall become due and payable from the date of the formal notice

and may be recovered by offsetting against the amount of the sums owed by UPC under the Contract.

In the event that no sum is due by the UPC, the penalties and periodic penalty payments must be paid by the Economic Operator within a maximum period of thirty (30) calendar days following receipt of the formal notice by the Economic Operator.

The exact amount of the late payment penalties or periodic penalty payments, as well as the maximum amount thereof, is specified by the UPC in the UPC Request for Proposal. If the cap on penalties and/or periodic penalty payments is reached due to the fault of the Economic Operator, UPC may terminate the Contract without notice by registered letter with acknowledgement of receipt, without prejudice to any damages that may be awarded.

In addition, UPC may claim from the Economic Operator the costs incurred by the implementation of any solution made necessary in order to comply with the objectives defined in the Contract.

7. DURATION OF THE CONTRACT

The UPC may set within the UPC Request for Proposal a fixed duration of the Contract corresponding to the duration of the Solution.

The UPC can request that the Contract be tacitly renewable.

8. TERMINATION

Notwithstanding any termination conditions to be agreed between the Parties in UPC Request for Proposal, UPC has the right to terminate the Contract before the expiry of the term and/or before the end of the Solution, without notice or compensation for at least one of the following reasons:

- The Contract has been subject to a substantial modification, which would have required a new procurement procedure pursuant to the Directive n°2014/24/UE;
- The Economic Operator should have been excluded for the procurement procedure pursuant to the Directive n°2014/24/UE;
- The Economic Operator has breached one or several provisions of the Contract.

UPC may also terminate the Contract in the event that UPC no longer wishes to continue the Solution for political, environmental, strategic or financial reasons, or due to changes in the IT system.

In the event of termination, for whatever reason, the Economic Operator must return to UPC the Solution and data as they were on the effective date of termination and UPC must pay the Economic Operator the consideration for the services actually provided by the Economic Operator up to the effective date of termination.

UPC may terminate all or part of the Contract by registered letter with acknowledgement of receipt, without prejudice to any damages to which it may be entitled.

In the event of a serious and repeated breach by UPC of one of its obligations under the Contract, the Economic Operator may give UPC formal notice to cease such breach within a maximum period of thirty (30) calendar days, by registered letter with acknowledgement of receipt.

If at the end of this period of thirty (30) calendar days, the breach has not been or has not been able to be brought to an end, the Economic Operator may, by registered letter with acknowledgement of receipt, terminate all or part of the Contract in connection with the breach.

In all cases of termination, reversibility services will be implemented, in accordance with the “Reversibility” article.

9. NON-PERFORMANCE

If the Economic Operator fails to perform one or many obligations laid down in the Contract, the UPC has the right to suspend payments until the Economic Operator regularizes the situation.

10. GOVERNANCE

10.1 UPC’s power of commitment and representation

In managing its Solution, the Economic Operator must comply with the internal rules of the UPC relating to its power of representation, namely the UPC financial regulation.

The Economic Operator, in the course of the Solution, ensures that it deals exclusively with the abovementioned members of the UPC holding a delegation of authority pursuant to the Financial Regulation.

10.2 Change of control of the Economic Operator

The Contract between the UPC and the Economic Operator is concluded *intuitu personae* and cannot be transferred to a third party.

If during the course of the Solution the Economic Operator is subject to a merger/acquisition by an external entity, the Contract cannot be transferred to the new entity resulting from the merger/acquisition. The Contract may be terminated by UPC on the effective date of the merger/acquisition.

If during the course of the Solution the Economic Operator is part of an internal restructuring measure within its own corporate group, the Economic Operator must inform UPC of any change of control (in particular within the meaning of articles 1711-1 to 1711-3 of the amended law of August 10, 1915 concerning commercial companies) by registered letter with acknowledgement of receipt sent within one (1) month of such change of control.

Upon receipt of this letter by UPC, the latter will have a period of one (1) month to send a registered letter with acknowledgement of receipt to the Economic Operator informing it of its intention to terminate the Contract and the effective date of the termination.

As the Contract has been entered into *intuitu personae*, and in the event that Economic Operator fails to fulfil its obligation to provide information in accordance with the present article, and in the event of a proven change of control, UPC may terminate the Contract as of right and without notice, by sending a registered letter with acknowledgement of receipt to the Economic Operator.

10.3 Groups of Economic Operators (collective offer)

The UPC Request for Proposal sets out the conditions and procedures under which the Economic Operator may make collective offers.

Where authorised by the UPC, the Economic Operator can conclude a contract with the UPC as a member of a group of Economic Operators. A collective offer will only be considered if the Economic Operator undertakes jointly and severally or even *in solidum*, with the other member(s) of the group of Economic Operators to comply with the obligations of the Contract.

This joint and several undertaking must be dated and signed, and must designate a representative from among the group and specify the proportion assumed by each in the execution of the Solution, or the proportional contribution of each in the whole of the Solution or in its different elements.

The UPC may require the group of Economic Operators to assume a specific legal form once it has been awarded with a Contract, to the extent that such a change is necessary for the satisfactory performance of the Contract.

The UPC has the right to request from the group of Economic Operators specific information within the UPC Request for Proposal on how it is to meet, distinctly from its member, and requirements as to economic and financial standing or technical and professional ability referred in the Directive n°2014/24/UE.

10.4 Subcontracting by the Economic Operator

On the basis of the details in the UPC Request for Proposal and provided that the Economic Operator has met the requirements of the Directive n°2014/24/UE to use subcontractors, and that such use has received the written approval of the UPC, the Economic Operator may use subcontractors to perform the Contract.

Subcontractors and the tasks entrusted to them must be clearly identified. To this end, the Economic Operator must provide a subcontracting form in which he indicates the names and addresses of the subcontractors, the tasks he intends to subcontract to each of them, and all the required documents.

During the course of the Solution, any change of subcontractor identified in the bid or additional subcontracting will be subject to the prior written approval of the Contracting Authority.

In such case, the Economic Operator is solely liable for any wrongdoings and or/damages caused by its subcontractors.

11.LIABILITY

To the fullest extent permitted by applicable law, UPC shall only be liable for intentional misconduct, fraud, or gross negligence. As a result, UPC shall not be liable for any direct, indirect, incidental, special or consequential damages, loss of opportunity, profits, revenue or savings (actual or anticipated), economic loss, loss of data or similar.

The Economic Operator is responsible for its employees, providers and subcontractors and for any damage caused by its employees, providers and subcontractors. In this respect, the Economic Operator undertakes, in particular, to:

- manage its employees in accordance with the provisions of the Contract, and ensure their technical and qualitative follow-up of the Solution;
- ensure the continuity of service in accordance with the provisions of the Contract;
- guarantees that the work will be carried out according to the Rules of Art and with all the care reasonably possible given the state of the art;
- guarantees the quality of the Solution;
- complies with the internal regulations of the UPC, publicly available.

The Economic Operator is liable for any direct, indirect, incidental, special or consequential damage caused to UPC by itself, its employees, providers or its subcontractors. In this respect, the Economic Operator will compensate UPC for the consequences and costs of reconstituting data, whether personal or not, confidential or not, covered by intellectual property or not, resulting from a fault on the part of the Economic Operator.

It should be noted that, without prejudice to the Contract, the Economic Operator, will not be liable under this clause for any damage resulting exclusively from a third-party with no contractual relationship with the Economic Operator.

Neither Party shall be liable for any damage caused by the other Party as a result of Force Majeure as described in Article "Force Majeure".

12.GUARANTEES

12.1 UPC's power of commitment and representation

The Services and/or Products performed by the Economic Operator are guaranteed, for the principal, as well as their accessories, free of charge by the Economic Operator. Without prejudice to legal guarantees, the duration of the guarantee period is specified in the UPC Request for Proposal.

In any event, the Economic Operator shall remain liable to UPC for any applicable legal guarantee, including the warranty against latent defects insofar as applicable.

When the Economic Operator carries out Services in connection with the UPC's system or environment, the Economic Operator must guarantee to the UPC:

- the correction of all non-conformities in the parameters and specific developments identified by UPC;
- the provision of application patches developed by the publisher of the Solution and/or software concerned for the entire duration of the Contract.

The guarantee covers the correction of any anomaly or reservation within a maximum period specified in the UPC Request for Proposal.

12.2 Eviction guarantee

The Economic Operator declares that it is the legitimate holder of all rights, in particular intellectual property rights, or that it has acquired all rights, in particular intellectual property rights, necessary for the performance of the Contract. In this respect, the Economic Operator expressly guarantees UPC full and complete enjoyment of the rights assigned under the terms of the Contract against any disturbance, claim, eviction or complaint whatsoever.

Consequently, the Economic Operator guarantees UPC against all claims relating to the Services and/or Products, emanating from any third party invoking the infringement of any right whatsoever, and in particular against any action for infringement and/or unfair and/or parasitic competition brought by any third party and shall bear all related costs and damages.

If, as a result of such action, UPC is prevented from using all or part of the Solutions, it may request, in order of priority, from the Economic Operator, at the latter's expense and risk:

- to obtain the right for UPC to continue to use them in accordance with the provisions of the "Intellectual Property" article above,
- Failing this, to modify or replace them while maintaining the same level of functionality, performance and relevance,
- failing this, to pay UPC all sums paid by the latter under the terms of the Contract.

This section shall survive the termination or expiration of the Agreement for any reason whatsoever.

13.FORCE MAJEURE

Neither Party may be held liable for a breach of any of its obligations under the Contract caused by a Force Majeure event. The Party invoking a Force Majeure event must immediately notify the other Party, giving details of the Force Majeure event preventing it from performing its contractual obligations and doing its best to limit the consequences.

The Party invoking a Force Majeure event undertakes to resume performance of the Contract as soon as possible after the Force Majeure event has ceased. In the event that an event of Force Majeure continues for more than fifteen (15) days, the Parties agree to enter into discussions in order to take this into account.

If they are unable to agree on the consequences to be given to this situation within a maximum period of fifteen (15) days, the Contract may then be terminated immediately, without compensation on either side, by the Party owing the obligation, by simple written notification sent to the other Party, without prejudice to the application of the stipulations of the "Reversibility" article.

14.PENALTY CLAUSE

The Economic Operator is hereby informed and accepts that in the event of a breach of its contractual obligations, the Economic Operator will be indebted to UPC for a fixed indemnity equivalent to 30% of the total value of the Contract. It should be noted that this flat-rate compensation may be applied in the event of multiple breaches, in time or in cause.

15.SERVICE CONTINUITY PLAN

UPC informs the Economic Operator that, as a jurisdiction, its activities cannot be suspended. In this regard the Economic Operator undertakes to maintain continuously the Service provided to the UPC under the Contract and makes sure to avoid the interruption of its services for any reason whatsoever.

The UPC has the right to request from the Economic Operator the submission of a service continuity plan, to be enclosed with the Contract, which will specify the concrete measures to be implemented by the Economic Operator to guarantee the continuity of its Services.

16.SERVICE LEVEL AGREEMENT AND QUALITY INDICATORS

If applicable, the Economic Operator agrees to perform the Contract in accordance with the Service Levels and the Quality indicators described in the Contract.

The Economic Operator shall be responsible for failure to meet Service Levels and/or Quality Indicators. In this respect if a Service Levels and/or Quality Indicators is not reached for a reason attributable to the Economic Operator, the Economic Operator shall report to UPC how it will improve and mitigate this situation (hereinafter the “Remediation Plan”).

In case of failure to provide such Remediation Plan within one month after the Service Levels and/or Quality Indicators failure or in case of failure to implement such remediation plan within three (3) months after the issuance of the Remediation Plan, UPC shall be able to claim penalties for the Service Levels and/or Quality Indicators which have failed to be met.

The penalties that would be specified in the Request for Proposal, if penalties apply, may be cumulative for a same Incident.

17.CONFIDENTIALITY

Except where the UPC must comply with a legal or statutory obligation, each of the Parties undertakes, with regard to the content of the provisions of the Contract, as well as the Confidential Information of the other Party of which it may become aware in the context of the negotiation and performance of the Contract, where this Confidential Information is of a sensitive nature, particularly from a financial, ethical, economic, technical or commercial point of view, or where it is declared as such by the other Party or because of its personal nature, to:

- keep them strictly confidential and refrain from communicating them to anyone, except for the purposes strictly necessary for the proper performance of the Contract,
- refrain from exploiting them, directly or indirectly, or allowing them to be exploited by a third party under their control, for any purpose other than the proper performance of the Contract.

In particular, each of the Parties undertakes to keep strictly confidential all information gathered as a result of its presence on the premises of the other Party and to observe the utmost discretion with regard to the techniques, means and processes of the other Party of which it may have become aware as a result of the performance of the Contract.

The following do not constitute Confidential Information under the terms of the Contract:

- information which is public knowledge on the date of its disclosure or which becomes public knowledge at a later date without either Party being at the origin of its disclosure,
- information which has been acquired in good faith by either Party from a third party not bound by such an undertaking of confidentiality;
- information known to the Parties prior to the conclusion of the Contract;
- information required by law or by an administrative or judicial court, it being understood that in this case the Party concerned by this procedure must notify the other Party in advance of this legal request for disclosure as soon as possible.

The burden of proving the aforementioned elements lies with the Party receiving the confidential information.

The obligations set out in this article shall apply to information received from the time UPC issues its expression of requirements.

The Parties shall be bound by this obligation for as long as the data concerned has not become public, unless the Party concerned gives its specific prior written agreement to the confidentiality being lifted.

Each of the Parties undertakes to ensure that the obligations relating to confidentiality detailed in this article apply to its personnel and any subcontractors and will assume full responsibility in the event of failure by its personnel and any subcontractors.

It is specified that the Economic Operator, unless stipulated in the Request for Proposal and with the express prior agreement of UPC, may not make any communication or advertising directly or indirectly related to the Solution and/or the Contract. If authorisation for advertising has been obtained by the Economic Operator before the UPC has given a valid opinion on the content or form of the advertising, or if the UPC claims any prejudice whatsoever resulting therefrom, the Economic Operator undertakes to modify the advertising or to delete it, regardless of the UPC's prior agreement.

18. INTELLECTUAL PROPERTY

Each of the Parties declares that it holds all the intellectual property rights necessary for the performance of the Contract or for the provision to subcontractors of the elements or tools necessary for the performance of the Contract.

18.1 Transfer of protected intellectual property rights

The Economic Operator transfers all rights necessary for the peaceful use by the UPC of the Products for the entire duration of the Contract. The Economic Operator automatically transfers on an exclusive basis to UPC, as and when the Contract is completed, all the intellectual property rights (and in particular all the rights of reproduction, representation, adaptation and more generally of exploitation) relating to the Solution, for the whole world and for the entire duration of the protection of the Solution as this duration is provided for by the applicable legislation.

In accordance with UPC standards, it is specified that intellectual property rights include ownership of the product and source codes, and all related economic and moral rights, in particular and without limitation, the right - on all media and by all processes - to reproduce, represent, use, translate, adapt, arrange, transform, distribute, modify, test, copy, evolve, correct, develop, decompile, integrate, license, distribute and exploit the application, including its evolutions, updates and adaptations - including future ones - as well as the corresponding source codes, or to have one or more of these operations carried out on its behalf. UPC becomes the owner of the property rights referred to above as the product is developed.

The rights thus assigned to UPC include in particular:

- for reproduction rights: the right to fix, digitise, reproduce and publish the Solution, in whole or in part, without limitation as to number, by any means and on any media - including paper media (such as brochures, advertising leaflets, books, newspapers,

magazines, internal or external documents), magnetic, optical, digital, computer, telematic, electronic media, film, video cassettes, digital optical discs (such as CD-ROM, CD-I, DVD-ROM) or any other media known or unknown to date, present or future;

- for adaptation rights: the right to adapt, translate, arrange, digitise, retouch, cut, develop, modify and/or delete the designs, in whole or in part, assemble them with or integrate them into any other service or intellectual creation, in any form and by any means, and in particular, on paper media (such as, in particular, brochures, advertising leaflets, books, newspapers, magazines, internal or external documents), magnetic, optical, digital, computer, telematic or electronic media, films, video cassettes, digital optical discs (such as CD-ROM, CD-I, DVD-ROM), or any other current or future known or unknown medium; the translation right includes the right to translate and have translated, into any written or spoken language, whether or not accessible to the general public, and into any type of computer language, these Solutions;

- for the rights of representation: the right to represent, privately or publicly, distribute or broadcast all or part of the designs, free of charge or against payment, to any public, by any means or process, present or future, and in particular by any means of telecommunication, by cable and satellite, by hertzian, optical or wired means, by means of networks (and in particular internet, extranet and intranet type networks), all computer, electronic communication and audiovisual processes (in particular digital and/or interactive television, cable broadcasting), known or unknown to date.

The assignment relates to the Solution accepted by the UPC and also to all the documents that support them, the models accepted as well as the sketches, Solutions, illustrations, typons, masters and all the elements of the Solution will become the property of the UPC.

The rights assigned may be exercised over all or part of the Solution, over any works derived from all or part of the Solution, as well as over any works incorporating all or part of them.

The UPC may exploit and/or cause to be exploited the Solution, in whole or in part, all works derived therefrom and all works in which they are incorporated in whole or in part, as owner, in the broadest manner and for the most diverse purposes, in all formats, forms, presentations, by all modes, means, processes and on all media and machines, whether these formats, forms, presentations, modes, means, processes, media or machines are current or future, known or unknown to date, foreseeable or not to date.

The Economic Operator shall be personally responsible, at its own expense and risk, for all prior art searches made necessary in the performance of this Contract in order to guarantee UPC peaceful enjoyment of the rights assigned on the Products or the Solution, and shall ensure, at UPC's first request, the corresponding filings that may be necessary or useful with the competent body, in its own name or that of UPC depending on the agreement of the Parties.

At the first request of UPC, the Economic Operator undertakes to transfer the ownership of the industrial property titles filed to the exclusive benefit of UPC and to carry out all the corresponding formalities.

The Economic Operator also guarantees that it has not granted and will not grant to any third party any rights over the Solution.

Should the Economic Operator be required to involve third parties in carrying out the Solution, without prejudice to its obligations under sub-contracting, it undertakes to obtain from such third parties the transfer of the rights necessary for compliance with this article.

In this respect, the Economic Operator guarantees in particular that the Solutions will not contain any reproduction or borrowing of any kind whatsoever from another work of any nature whatsoever, likely to prohibit or restrict the use thereof or to incur the liability of UPC vis-à-vis third parties. The Economic Operator undertakes to inform the UPC in advance and in writing of the limits of the authorisations and/or transfers of rights obtained by it.

Unless otherwise stipulated in UPC Request for Proposal it is expressly accepted by UPC that the use by the Economic Operator of pre-existing technologies and works for the performance of Solution under this Contract does not entail any transfer of rights to the UPC and is limited to the requirements of this Contract. The Economic Operator grants the Contracting Authority a non-exclusive license on the pre-existing rights, which may use the pre-existing technologies and works according to all the modes of exploitation provided for in the Contract. The granting to the UPC of licenses on pre-existing rights under the Contract is valid for the whole world and for the duration of the exploitation of the services to which these pre-existing Solutions are integrated or associated, for the sole needs of the Contracting Authority and of the exploitation of the services.

All pre-existing rights are subject to licenses granted to the UPC from the time of overall interim delivery.

This clause applies to relations with the Economic Operator and, where applicable, the selected subcontractor, unless expressly stated otherwise.

Payment of the price specified in the Contract is deemed also to include any remuneration due to the Economic Operator for licensing pre-existing rights to the UPC.

18.2 Third party rights – Copyright – Related rights – Personality rights

Throughout the term of the Contract, the Economic Operator shall be responsible for:

- Obtain from authors, composers, directors, photographers, illustrators, designers and inventors, whether or not they are employed, the assignment in the name and on behalf of UPC of all exclusive rights of exploitation, reproduction, representation, adaptation or translation of the accepted proposals, precisely defined in time, space or by media, in accordance with the needs defined by UPC, as well as the exploitation rights relating to the protection of trademarks, designs, models or patents, in Luxembourg and abroad for a duration and/or quantity in accordance with the needs of UPC.
- Obtain from natural persons authorisation in the name and on behalf of UPC to use their image or one of the elements of their personality, or, as the case may be, the assignment of rights of use under personality law or rights related to copyright for film or photographic shots, drawings or sound recordings of the image or one of the elements of the personality (models, performers, etc.) defined precisely in time, the use of the image or one of the elements of the personality (models, performers, etc.) precisely defined in time, space and by media, in accordance with the needs expressed by UPC.

If, for a Solution, the Economic Operator has not obtained the transfer of all or part of the rights in accordance with the provisions of the present article, the Economic Operator undertakes to specify in advance the extent and limits of the intellectual and industrial property rights or those relating to personality, obtained by it, and must obtain the express prior agreement of the UPC on a limitation of transfer before the Solution is undertaken.

In all cases, the Economic Operator must specify to the UPC - in particular in the production estimates - the conditions (price in particular) under which these rights could be assigned, so that the UPC can take them into account before approving the proposal.

The Economic Operator shall communicate to UPC, as and when they are signed, a copy of the contracts or any other document relating to the transfer of the above-mentioned rights (in particular, contracts with models, directors, commissioned work contracts).

If, on termination or expiry of this Contract for any reason whatsoever, the UPC wishes to use the rights described above, beyond what has been negotiated for their benefit, the Economic Operator must provide it with all useful information to this end, in writing, and in particular indicate the conditions under which additional rights may be obtained.

In the event that the Economic Operator wishes to use so-called as “free of rights” images, graphic designs or software, it is the responsibility of the Economic Operator to ensure that this is the case. However, at the request of the UPC, images, graphic designs or software acquired, known as “free of rights” or “managed rights”, may be purchased directly by the UPC, which then assumes responsibility for them.

18.3 Right to use trademarks and distinctive signs

Each Party is and remains the sole owner of the intellectual or industrial property rights relating to the brands and logos it uses for the needs of its activity. The Economic Operator acknowledges that the trade names, trademarks, service marks, copyrights, domain names and telephone lines and other material or intellectual property rights held by UPC remain its exclusive property and the Economic Operator may not claim them during the term of the Contract or after its termination or expiry.

The Economic Operator undertakes to comply with all instructions given to it by UPC relating to the use of its respective brands, names, logos and distinctive signs (the “Brands”). The Economic Operator undertakes to reproduce the Brands in accordance with the size, colour and location standards defined by UPC for each type of medium. The Economic Operator must obtain the prior written consent of UPC before reproducing and representing the Marks on the media, prior to any distribution.

The Economic Operator undertakes not to damage the reputation of the UPC or the image of the “Unified Patent Court” brand or any other brand used in the provision of services. The Economic Operator undertakes to inform the UPC of any act of counterfeiting, unfair competition or any other infringement of intellectual property rights of which it may be aware and to provide the UPC with all diligence and evidence that may be reasonably available to it. The Economic Operator undertakes to cease all use of the Brands at the first request of UPC, and in any event upon termination or expiry of the Contract for any reason whatsoever. This section shall survive the termination or expiration of the Contract for any reason whatsoever.

This “Intellectual Property” section shall survive termination or expiration of the Contract for any reason whatsoever.

19. DATA PROTECTION

19.1 General information

As part of the performance of the Contract, the UPC and the Economic Operator may collect and process personal data.

In the context of the processing of personal data at the UPC, the principles and rules relating to the processing of personal data that are set out in GDPR must be complied with, as well as other relevant provisions of European Union law concerning the protection of personal data.

UPC and the Economic Operator agree that the following clauses impose general principles of compliance with GDPR, which shall be completed on the basis of the operational reality of the processing and data concerned by the Contract, by a specific agreement attached to the Contract.

In the event of conflicts, the Contract and the GDPR, the GDPR shall prevail.

The terms “controller”, “data subject”, “personal data”, “personal data breach”, “processing”, “processor” and “supervisory authority” have the meaning given to them in Article 4 of the GDPR.

19.2 Obligations of the Parties as data controllers

In the context of their relationship, the Parties respectively process personal data in their capacity as data controllers for the following purposes:

- Management of their relationship within the framework of the Solution;
- Management of orders, invoicing and accounting;
- Management of complaints and possible disputes;
- Control and analysis of contractual and legal compliance;
- Activity management.

In this respect, the UPC protects the rights of individuals to privacy with regard to the processing of personal data and informs that its commitments are available on its website at the following address: <https://www.unified-patent-court.org/en/court/legal-documents/200>.

UPC shall keep copies of all contracts concluded under the applicable legal conditions, at least for the duration of the Contract. Access to these documents or to particular items of information may be refused to the extent and under the conditions provided for by the applicable Union legislation or national regulations on access to documents and data protection.

Any processing of the Economic Operator will be carried out in accordance with the documentation provided by the latter and annexed to the Contract.

19.3 Obligations of the Economic Operator as processor

In the description of the Contract, the UPC informs the Economic Operator of the object and duration of the processing, the nature and purpose of the processing, the type of personal data and the categories of data subjects, as well as the obligations and rights of the controller.

Where processing of personal data is to be carried out on behalf of UPC, the Economic Operator, in its capacity as processor, undertakes to present sufficient guarantees as to the implementation of appropriate technical and organisational measures so that the processing meets the requirements of the GDPR and guarantees the protection of the rights and freedoms of the data subjects.

In addition to the measures detailed by the Economic Operator, as described in the appendix annexed to the Contract, the Economic Operator undertakes to:

- process personal data solely for the sole purpose(s) of the proper execution of the Solution;
- to process personal data in accordance with the UPC's documented instructions, which appear in particular in the Contract, including with regard to transfers of personal data to a third country or to an international organisation, unless it is obliged to do so under the law of the Union law or the law of the Member State to which the service provider is subject. If the Economic Operator considers that an instruction constitutes a breach of the GDPR or any other provision of Union law or Member State law relating to data protection, it must inform UPC immediately. In addition, if the Economic Operator is required to transfer data to a third country or to an international organisation under Union law or the law of the Member State to which it is subject, it must inform the UPC of this obligation prior to processing, unless the law concerned prohibits such information on grounds of public interest;
- guarantee the confidentiality of the personal data processed;
- ensure that persons authorised to process personal data under the Contract:
 - i. undertake to respect confidentiality or are subject to an appropriate obligation of confidentiality,
 - ii. receive the necessary training in the protection of personal data,
- take into account, with regard to its tools, products, applications or services, the principles of data protection by design and data protection by default.

19.4 Use of sub-processors

The Economic Operator undertakes not to recruit another sub-processor without the prior written authorisation, specific or general, of the UPC. In the case of general written authorisation, the Economic Operator shall inform the UPC of any planned change concerning the addition or replacement of sub-processor, or any significant change in the nature or scope of an existing sub-processing, with a minimum of one (1) month's notice giving the UPC the opportunity to raise objections which may go as far as a suspensive opinion against these changes. In order to minimise the risks to the quality of the processing of personal data, the Economic Operator agrees that the UPC may require a transition period of no more than ten (10) working days in the event of a change of sub-processor, during which time a transfer of skills would take place if necessary, the costs of which would be borne by the sub-processor.

In the event of sub-processing, the sub-processor will be required to comply with the obligations of the Contract on behalf of and in accordance with the instructions of UPC. It will

be the responsibility of the Economic Operator to ensure that the sub-processor presents the same sufficient guarantees regarding the implementation of appropriate technical and organisational measures so that the processing meets the requirements of the GDPR or any other provision of Union law or the law of the Member States relating to data protection. If the sub-processor fails to meet its data protection obligations, the Economic Operator shall remain fully liable to UPC for the sub-processor's performance of its obligations.

The Economic Operator undertakes to inform the UPC of the location of personal data processing sites of any kind (hosting, backup, maintenance, administration, helpdesk, etc.).

A list containing the identification of the places of processing planned on the date of conclusion of the Contract and of the operations entrusted to any sub-processors is annexed to the Contract. This list must be updated in the event of a change of sub-processors or in the event of a transfer, duly authorised in writing by UPC, of personal data outside the European Economic Area.

19.5 Application of European regulations on data transfers outside the European Economic Area

The Economic Operator shall ensure that no personal data of the UPC is transferred outside the European Economic Area by it, its own subcontractors or persons acting under its authority or on its behalf. The UPC reserves the right to carry out any verification it deems useful to ascertain compliance with this obligation. If, in derogation of the present article, data should be transferred for the performance of the contract outside the European Economic Area or to a country not recognised by the national authorities as having an adequate level of protection, this transfer may only take place with the prior written consent of UPC.

19.6 Cooperation of the Economic Operator in the context of an impact analysis

As soon as an impact analysis relating to the processing of personal data likely to give rise to a high risk for the rights and freedoms of the persons concerned is necessary with regard to the processing envisaged, the Economic Operator undertakes to assist the UPC in carrying out this study.

19.7 Data subjects' right to information

It is the responsibility of the UPC to provide the information referred to in Articles 13 and 14 of the RGPD to the data subjects concerned by the processing operations at the time the data is collected.

In this respect, the Economic Operator undertakes to comply diligently in writing with the UPC's requests for information, within five (5) working days of the request, in order to (i) enable them to respond to requests to exercise their rights submitted by the data subjects or (ii) to carry out impact analyses or (iii) to respond to requests submitted by the data protection authorities or the UPC's data protection officers (Data Protection Officer).

Where data subjects make requests to the Economic Operator to exercise their rights, the Economic Operator must send these requests immediately upon receipt by e-mail to the address provided in advance by UPC for this purpose (the said e-mail must be completed by the Economic Operator in the subject line with "exercise of rights" and marked with an "important" flag).

19.8 Notification of personal data breaches

The Economic Operator shall notify UPC of any personal data breach without undue delay of becoming aware of it and by email to the address provided in advance by the UPC for this purpose. This notification shall be accompanied by any documentation provided for by the GDPR in order to enable the UPC, if necessary, to notify this breach to the competent supervisory authority.

In the event that Economic Operator's data breach notification does not able UPC to meet its own 72-hour deadline for notifying the competent authority, and that UPC suffer the consequences of failing to meet this deadline, the Economic Operator undertakes to guarantee all direct damage suffered by UPC.

19.9 Security measures

The Economic Operator undertakes to implement the security measures described in the "Security" article, as well as:

- the means for guaranteeing the confidentiality (pseudonymisation, encryption of personal data, etc.), integrity, availability and constant resilience of the processing systems and services;
- the means for restoring the availability of and access to personal data within an appropriate timeframe in the event of a physical or technical incident;
- a procedure for regularly testing, analysing and evaluating the effectiveness of technical and organisational measures to ensure the security of processing, and providing proof thereof at the first request of UPC or the data protection authority;
- to make the UPC's personal data accessible and consultable only to the Economic Operator's staff who are duly authorised and empowered by virtue of their functions and capacity, and only to the extent necessary for the performance of their duties.
- the Economic Operator must help the UPC to comply with the obligations relating to the security of personal data (Articles 32 to 36 of the GDPR), taking into account the nature of the processing and the information available to the Economic Operator.

19.10 Erasure or return of personal data

At the end of the processing of personal data, the Economic Operator undertakes to return the personal data to the UPC (or to return the personal data to the service provider designated by the UPC) and then to anonymise or destroy all personal data.

The Economic Operator is nevertheless authorised to keep in archive form a copy of the personal data necessary for the fulfilment of its legal, accounting or regulatory obligations. Once destroyed, the Economic Operator must justify the destruction in writing.

19.11 Data Protection Officer

For the UPC, all communications relating to data protection should be addressed to the address provided in advance by UPC for this purpose in the UPC Request for Proposal or any other document in this effect.

19.12 Register of categories of processing activities

The Economic Operator declares that it keeps a written register of all categories of processing activities carried out on behalf of the UPC, including :

- the name and contact details of the controller on whose behalf it is acting, of any processors and, where applicable, of the data protection officer;
- the categories of processing carried out on behalf of UPC;

- where applicable, transfers of personal data to a third country or to an international organisation, including the identification of that third country or international organisation and, in the case of such transfers, the documents attesting to the existence of appropriate safeguards;
- a general description of the technical and organisational security measures.

19.13 Documentation and audit

The Economic Operator shall make available to UPC the documentation necessary to demonstrate compliance with all its obligations and to enable audits, including inspections, to be carried out by UPC under the conditions set out in the “Audits and Control” article.

20. SECURITY

20.1 Security and professional secrecy guidelines

As jurisdiction, the UPC is subject to professional secrecy. Consequently, the Economic Operator recognises that the information transmitted by the UPC within the framework of the Contract must be considered as covered by professional secrecy and consequently undertakes to keep it strictly confidential and to refrain from transmitting it to third parties without the express authorisation of the UPC.

In this respect, the Economic Operator accepts that in order to protect the professional secrecy, the secrecy of deliberations, Confidential Information, trade secrets, personal data or other confidential information of a party to the proceedings or of a third party, or in order to prevent misappropriation of evidence, the Economic Operator is required to ensure that in all circumstances, appropriate security measures are implemented. The Economic Operator shall bear all costs incurred. The individuals entrusted with the mission must respect professional secrecy and sign the confidentiality agreements provided at the start of the Solution.

In general, the Economic Operator is required to put in place the technical and organizational measures necessary for the security of UPC’s data and information system, in accordance with the Rules of Art, in order to ensure:

- maintain a sufficient level of expertise in information systems security to perform services in accordance with the Contract (qualifications, authorizations, certifications), and be able to justify this on first request. It must also demonstrate sufficient mastery of the required technologies and know-how;

- the availability, integrity and confidentiality of UPC's information system, insofar as the service is likely to have an impact on it;
- protection of UPC information against accidental, illicit or unauthorized disclosure, modification, destruction, loss, alteration, access or processing;
- traceability of operations and processing carried out for the UPC and likely to have an impact on the security of the UPC's information.

The Economic Operator undertakes to justify the implementation of these measures throughout the duration of the Contract, without delay, at the request of the UPC.

The security policies, procedures and measures implemented by the Economic Operator, where applicable on the instructions of the UPC, must in any event be documented and approved by the UPC and remain compliant with the Rules of Art applicable in this field.

The Economic Operator guarantees compliance with all provisions relating to the control of risks associated with information systems included in the Contract by its personnel and by any subcontractors and partners. To this end, the Economic Operator undertakes to impose on its Economic Operator(s), partners or subcontractor(s) all necessary obligations, at least equivalent to those set out in the present article.

20.2 Use of the UPC information system

The Economic Operator undertakes to use the resources and means of connection to UPC's information system, made available to it by the latter, solely for the purposes of carrying out the Solution and in strict compliance with UPC's internal information system security policies and rules.

In this respect, the Operator shall refrain from using, communicating, distributing or transmitting in any way whatsoever confidential, secret, technical or operational information of UPC, as defined in the "Confidentiality" and "Data Protection" articles of the Contract, outside UPC's information system without UPC's authorisation, regardless of the cause, reason or purpose.

When the personnel of the Economic Operator is likely to have access to the information system of the UPC, with the express and prior authorisation of the latter, whether as a result of its intervention on the premises of the UPC or via remote access, the Economic Operator

guarantees strict compliance by its staff with the UPC's internal information system security policies and rules.

Where use of the UPC's information system requires the use of a strong authentication means, the Economic Operator shall comply with the procedures laid down by the UPC for the issue of such means.

The Economic Operator shall take all necessary precautions to prevent the introduction of any Malicious Programme into the UPC's information system and shall adopt appropriate measures if it becomes aware of the existence of such a Malicious Programme. To this end, the Economic Operator shall carry out all appropriate tests and undertakes to check the IT elements prior to their delivery to the UPC.

In the event of the introduction of such a Malicious Program, the Economic Operator and the UPC agree to collaborate in order to determine its origin by mutual agreement and to eradicate its consequences. In the event that the introduction of the Malicious Program is attributable solely to the UPC, the latter shall bear the costs of diagnosis and restoration. If the introduction of the Malicious Program is attributable to the Economic Operator, the latter shall bear the costs of diagnosis and repair. In the event of disagreement between the Parties, a steering committee shall be convened.

20.3 Access to the premises

The Economic Operator undertakes to take all necessary steps to ensure that its personnel, when on UPC premises, comply with the provisions applicable to external companies present on the said premises and in particular those relating to health and safety.

For its part, UPC undertakes to inform the Economic Operator of these provisions.

The UPC and the Economic Operator shall comply with the legal and regulatory provisions laying down the specific health and safety requirements applicable to work carried out by an external company on the UPC's premises.

In the event that, within the framework of the Contract, the Economic Operator's personnel use UPC's information system, the Economic Operator undertakes to take the necessary steps

to ensure that its personnel comply specifically on this occasion with the internal rules relating to the protection of information.

For reasons of security inherent to the UPC, in the event that an intervention on the UPC's premises is necessary, the Economic Operator's personnel may, if UPC so requests, be issued with a professional identification badge showing the name of the Economic Operator, the identity of the personnel and their photograph. This badge must be worn visibly inside the UPC's premises at all times during the staff's presence there.

For the same reasons, the Economic Operator shall provide a list of the names of personnel likely to work on the same site. The UPC must be able to check the credentials of the Economic Operator's personnel at any time, in accordance with the information to be attached in the Contract.

The UPC must be notified in advance of any new employee. In this respect, any person arriving on a site without having been previously announced will be refused access to the site.

The badges and other access cards to the premises supplied by UPC to the Economic Operator must be returned to UPC at the end of the Contract.

The Economic Operator undertakes to declare work accidents, declared by its personnel, occurring on the UPC premises.

The Economic Operator undertakes to comply with the provisions of the Labour Code, in particular as regards working hours for its employees working on a UPC site and not having a specific status.

20.4 Data and information hosting

Where necessary for the execution of the Solution, the Economic Operator may be responsible for hosting the data and the solution. In this case, the infrastructure and data must be located in a member country of the European Union or the European Economic Area.

Without prejudice to the foregoing, hosting may be considered within the UPC infrastructure.

Data transfer or remote access from the target platform to a third party is not authorised without prior written authorisation from UPC.

20.5 Obligation to notify events relating to information security

The Economic Operator undertakes to report any event relating to information security to the UPC as soon as possible (examples of events to be reported are; violation of an applicable law or regulation, detection of malicious code, disclosure of UPC information, any violation of personal data).

The Economic Operator must:

- immediately inform the UPC, by any means, of any security incident that has occurred on its information system (including access by unauthorised third parties, loss of data, damage to the integrity of data, the introduction of Malicious Programmes and/or non-compliant use of the information systems used within the framework of the Service), as soon as such an incident is likely to affect the UPC's information which is hosted there;
- to ensure that the obligations are respected by the personnel in charge of the Service and to ensure that they are regularly made aware of them;
- to inform the UPC of any organisational or technical changes which may have negative consequences on the security of the UPC's data, the UPC reserving the right to terminate the Contract under the conditions defined in the "Termination" article;
- to set up a regular control, to be defined with the UPC, in order to reduce the risks of theft or undue access to the UPC's information by a third party or by any party acting on behalf of the Economic Operator; the results must be communicated in writing at least every three (3) months to the person responsible for the UPC's service.

The Economic Operator undertakes to assist the UPC free of charge in the implementation of any action to remedy or deal with a security incident, including notification to the competent authorities and to the persons concerned by the incident.

The Economic Operator must specify without delay the backup and remediation procedures used in the management of these incidents, as well as their impact on the protection of the information system and the security of the UPC's information.

Any information or notification from the Economic Operator will be sent in writing to the contact designated by the UPC. In this respect, the Economic Operator shall appoint a person

responsible for security and risk aspects, the UPC's single point of entry for these aspects, as referred to in the Contract.

The Economic Operator is required to communicate to the UPC, on request, the results of any code audit that it has carried out, or had carried out by a third party, on any product or software licensed by the Economic Operator, when it is put into production and at the time of any major change.

20.6 Return / Deletion of the information

Subject to the obligations set out in the article "Personal data" and "Reversibility", in the event of termination of the contractual relationship or at the end of the assignment, the Economic Operator undertakes to return all of the UPC's data and documents, including any copies and reproductions of data, and to securely delete all data originating from or belonging to the Contracting Authority or the client from any data processing or storage system, and not to retain any document or information, whatever its nature or format, created or received in the course of its performance.

The Economic Operator undertakes to return or destroy, according to the UPC's instructions, all data/information/documents and their reproduction, at the UPC's request, within a maximum period of thirty (30) days from receipt of the request.

This section "Confidentiality" shall survive the expiry or termination of the Contract for any reason whatsoever.

20.7 Reversibility

Reversibility occurs when the contractual relationship ceases, whatever the reason for such cessation. As the Economic Operator has control over the Services provided to the UPC, the Economic Operator undertakes to ensure reversibility in order to enable the UPC or the service provider chosen by the UPC to resume operation of the UPC data, as well as any elements of the UPC that may be provided to the Economic Operator, within the framework of the Solution without interruption and under the best possible conditions.

In this respect, the Economic Operator will perform the services described in the Reversibility Plan or any other document relating thereto in the Contract, and in any event, the Economic Operator undertakes to return to the UPC within a maximum period described in the UPC

Request for Proposal, all UPC data in a format complying with market standards and in such a way as to guarantee their integrity, as well as any programs, hardware or other software made available to the Economic Operator by UPC within the framework of the Contract.

At the UPC's request, the Economic Operator may provide assistance in reloading the UPC's data on the system chosen by the UPC, subject to a prior quotation accepted and signed by the latter.

The Economic Operator will ensure that the UPC can continue to use the data, without interruption, either directly or with the assistance of another Economic Operator. In the event that assistance is required, the Economic Operator shall bear the costs of any transition period, up to a maximum period described in the UPC Request for Proposal.

It should be noted that in the event of outsourcing of services or solutions as part of the Solution, the Economic Operator guarantees UPC the application of the Contract to its co-contractors, and reserves the right to demand a complementary reversibility plan from the Economic Operator.

21.SOCIAL AND ENVIRONMENTAL RESPONSIBILITY

The UPC is subject to environmental, social and labour law obligations that apply at the place where the work is carried out or the services are provided, and that derive from laws, regulations, decrees and decisions in force at national and Union level, as well as from collective agreements, provided that these rules and their application comply with Union law.

Similarly, the obligations arising from international agreements ratified by all the Member States should apply during the performance of the contract. However, this should in no way prevent the application of more favourable working conditions for workers.

The relevant measures should be applied in compliance with the fundamental principles of Union law, in particular with a view to ensuring equal treatment.

The following requirements are not exhaustive and the UPC reserves the right, via the Request for Proposal, to request any other information that may allow it to conduct an assessment of the Economic Operator in terms of social and environmental responsibility, depending on the nature of the Solution.

21.1 Certification

In order to comply with its legal and regulatory obligations, the UPC may request certificates to prove the commitments made by the Economic Operator.

Where the UPC requests the production of certificates drawn up by independent bodies, attesting that the Economic Operator complies with certain quality assurance standards, including accessibility for disabled persons, they shall refer to quality assurance systems based on the relevant series of European standards and certified by accredited bodies. They will recognise equivalent certificates from bodies established in other Member States. They will also accept other evidence of equivalent quality assurance measures where the Economic Operator concerned was unable to obtain such certificates within the set time limits for reasons not attributable to it, provided that the said Economic Operator establishes that the quality assurance measures proposed comply with the required quality assurance standards.

Where the UPC requests the production of certificates drawn up by independent bodies, attesting that the Economic Operator complies with certain environmental management systems or standards, they refer to environmental management standards based on European or international standards in the field drawn up by accredited bodies. They shall recognise equivalent certificates from bodies established in other Member States.

Where an Economic Operator clearly did not have access to such certificates or the possibility of obtaining them within the set deadlines for reasons for which it is not responsible, the UPC will also accept other evidence of environmental management measures, provided that the Economic Operator establishes that these measures are equivalent to those required under the applicable environmental management system or standard.

21.2 Fight against undeclared work and obligations relating to cross-border secondment

The Economic Operator hereby undertakes to comply with Luxembourg regulations relating to the fight against undeclared work or any other similar regulations applicable when services are provided in another territory.

Furthermore, if the service provider is established in a foreign country and, for the performance of a service, sends its employees to the national territory, it also undertakes to comply with all the regulatory obligations provided for in this respect.

21.3 Fight against corruption

The Economic Operator represents and warrants to UPC at all times during the term of the Contract:

- that it is aware of all legislation applicable to this Contract with regard to the fight against corruption, and that it has implemented rules and procedures enabling it to comply with said legislation and to adapt to any future changes thereto;
- that neither the Economic Operator nor any of the Controlled Persons has committed or will commit, directly or indirectly, any Act of Corruption for the benefit of a private person or a public official;
- that it has put in place appropriate policies, systems, procedures and controls to prevent the commission of an Act of Corruption, by itself, its agents or other intermediaries and Controlled Persons, and to ensure that any evidence or suspicion of the commission of an Act of Corruption will be fully investigated, dealt with with appropriate diligence and reported to the UPC. Evidence of the existence of such rules, systems, procedures and controls shall be made available to the UPC upon request;
- that neither the Economic Operator nor any of its agents, intermediaries or Controlled Persons is prohibited (or treated as prohibited) by any governmental or international body from bidding for, contacting or working with that body because of any actual or suspected Act of Corruption.

22. ECONOMIC OPERATOR'S DECLARATIONS AND PERFORMANCE OF THE CONTRACT

22.1 Conditions included in the Economic Operator's offers

As part of any contractual relationship with UPC, the Economic Operator declares that it accepts these Terms and Conditions. When the Parties consider it necessary, the Service Provider may be requested to include the operational and technical elements required for the Services, Deliverables and/or Creations as part of the Contract, as an appendix to the Contract.

However, it is expressly stipulated that the Economic Operator's general terms and conditions of sale/service (or any other similar document published or usually used by the Economic Operator) are not applicable to all or part of the Contract.

Any provisions specified in the Economic Operator's offer, or any amendment to the Contract, submitted by the Economic Operator, shall be considered null and void.

22.2 Declaration of the Economic Operator

The Economic Operator to comply with its obligation of honourability for the realisation of the Solution and declares in this respect:

- to have not been convicted by a final judgment for any of the reasons listed in Article 57 (1) of The Directive n°2014/24/UE ;
- to comply with its obligations relating to the payment of taxes or social security contributions listed in Article 57 (2) of the Directive n°2014/24/UE on the date of submission of the offer.

The Economic Operator must also be in good standing with its obligations relating to the payment of social security contributions, taxes and withholding tax on salaries and wages, at a date no earlier than 3 months from the date of signature of the contract, and no later than the date of signature.

For the purpose of verifying compliance with the above obligations, UPC reserves the right to request the Economic Operator to submit official certificates to be obtained from tax and social security authorities in the Economic Operator's country of residence.

The UPC's right to request official certificates may be exercised throughout the entire duration of the Contract awarded to the Economic Operator.

22.3 Insurance

The Economic Operator declares that it has taken out insurance applicable in the Grand Duchy of Luxembourg covering the consequences of its professional civil liability and operating civil liability or any other insurance related to its activity, with a solvent insurance company.

The Economic Operator undertakes to maintain this insurance throughout the term of the Contract and to inform UPC of any changes thereto.

The Economic Operator must provide UPC with proof that it has taken out this insurance at the UPC's request.

22.4 Professionals, technical, and financial capacities

The Economic Operator must possess technical, financial and professional capacities as required through the criteria of the selection laid down in Article 58 of the Directive 2014/24/UE of the European Parliament and of the Council of 26 February 2014 on public procurement.

22.5 Conflict of interest

Throughout the term of the Contract, the Economic Operator declares and guarantees that it will not maintain any personal or professional relationships that would contravene its professional duties or place it in a situation of conflict of interest with regard to UPC.

It being understood that the Parties understand a situation of conflict of interest to mean any situation in which the Economic Operator, its employees, servants, agents or any person placed under its direction or linked to it directly or indirectly, are subject, in the context of their activities, to multiple interests that are contrary to or different from that of UPC (such as: personal interests, employer's interests, interests of one or more third party clients, etc.) and the pursuit of which could be detrimental to its interests.

The Economic Operator undertakes to notify UPC without delay of any conflict of interest in connection with the Contract. It is understood that if UPC considers, at its sole discretion, that the declared conflict of interest is incompatible with the continuation of the Contract, UPC may terminate the Contract as of right, without notice or compensation.

22.6 Place of work

If the Services requires that the Economic Operator perform the Contract on UPC's premises, and unless otherwise stated, UPC's premises are deemed to be located in L-1499 Luxembourg, Nouvel Hémicycle, 1, rue du Fort Thüngen.

Wherever possible, the Economic Operator undertakes to execute the characteristic performance of the Contract within the premises of the UPC.

In case the Economic Operator is required to perform the Contract at another location, as determined by UPC, the Economic Operator undertakes to apply the same rules applicable to UPC's premises.

When the Economic Operator executes the Contract on its premises or any other premises at its disposal, it undertakes to ensure that follow-up and work meetings are held on the UPC site or on the site indicated by UPC, within five (5) days of the request.

All working tools required for the Contract, except where otherwise stipulated, are the responsibility of the Economic Operator.

Remote access requiring strong authentication may be set up under certain conditions and subject to being requested to the Economic Operator's personnel assigned to the Solution.

22.7 Inviolability of UPC's premises, archives, and documents

The Economic Operator acknowledges that, in accordance with the UPC's protocol on privileges and immunities of the UPC, the UPC benefits in the Grand Duchy of Luxembourg such privileges and immunities as are necessary for the exercise of its official activities.

The Economic Operator is hereby informed that the UPC's protocol on privileges and immunities of the UPC can be accessed at the following address: <https://www.unified-patent-court.org/en/court/legal-documents>.

The Economic Operator also acknowledges that, pursuant to the UPC's protocol on privileges and immunities:

- UPC enjoys immunity from legal process in respect of search, requisition, confiscation, seizure or expropriation of, or any other form of interference with, the property, assets and funds of the UPC, wherever located, without the authorisation of the UPC;
- the premises of the UPC as well as its archives, paper and documents in whatever form belonging to it, and held by the UPC are inviolable at all times and wherever they may be located.

To the extent necessary to carry out its official activities, the assets, property and funds of the UPC are exempt from all restrictions, regulations, controls and moratoria of any kind.

The Economic Operator undertakes to carry out the Solution in a manner to respect the above mentioned UPC's immunity and inviolability of its premises, archive and documents.

UPC has the right to hold the Economic Operator liable for any violation of the provisions laid down in this article by him, his employees or subcontractors, where applicable.

22.8 Working hours

The Economic Operator exercises, at its sole discretion, the power to impose working hours on its employees and, where relevant, on its subcontractors.

Nevertheless, the Economic Operator undertakes to comply with and ensure compliance with UPC's own working hours on Business Days for the performance of the Contract, without any relationship of subordination being established between UPC and Economic Operator's employees or subcontractors.

22.9 Advisory obligation

As part of its general obligation to advise, the Economic Operator shall in particular:

- Inform, advise and warn UPC as to the nature, conditions of execution and any useful precautions concerning the Services, the Deliverables and/or Creations, and more particularly as regards safety and security;
- Inform, advise and alert UPC as to the coherence of the objectives and choices set and made during the term of the Contract;
- Inform UPC of technological advances and changes in the Rules of Art in relation to the Services, Deliverables and/or Creation, which may occur during the term of the Contract;
- Advise UPC in the event of additional or new requests.

22.10 Loyalty obligation

The Parties agree, throughout the term of the Contract, to perform their respective obligations faithfully and to seek in good faith all possible solutions likely to achieve a rapid and balanced

resolution of any problems or difficulties that may arise during the performance of the Contract.

The Economic Operator undertakes to notify UPC of any problem arising during the performance of the Contract on the day it occurs.

The Economic Operator guarantees compliance with these provisions by its personnel and any subcontractors. The Economic Operator shall not be relieved of its obligations with regard to the performance of the Contract by reason of the use of subcontractors, and shall in any event remain liable for the proper performance of its obligations under the terms and conditions defined in the Contract.

22.11 Performance obligation

The Economic Operator shall be responsible for the execution of the Contract and shall in particular ensure that the Services and/or Creation comply with professional standards or with the specific constraints of the means of communication used. The Economic Operator is bound by:

- Compliance with the Service Levels and/or Quality Indicators, as defined in relevant appendix, if applicable;
- Compliance with the schedule adopted, if applicable;
- Compliance with the conformity of the Services, Deliverables and/or Creation as defined in the Contract.

The Economic Operator undertakes to perform the Contract in accordance with the Rules of Art of its profession, and in particular to contribute its know-how, experience and expertise, as well as any required equipment and software. The Economic Operator is solely responsible for the means and methods it implements within the scope of the Contract.

The Economic Operator is required to comply strictly with all applicable laws and regulations, as well as all codes of ethics applicable to the Contract (and any amendments thereto). In this respect, the Economic Operator undertakes not to submit to UPC any proposal that would be contrary to these texts.

The Parties agree that any intervention by UPC in the proper performance of the Economic Operator's obligations shall not be construed as an active role by UPC in the performance of the Economic Operator's obligations.

23. UPC'S DECLARATIONS AND MONITORING OF THE CONTRACT

As part of the implementation of the Services, Deliverables and even any Creations, i.e. the Solution, UPC reserves the right to impose a specific monitoring and/or acceptance control procedure on the Economic Operator, which accepts it in accordance with the principles set out below and in accordance with the procedures to be defined, where applicable, in the Request for Proposal.

23.1 Composition of the Economic Operator's team

In any event and regardless of the subject of the Contract, the Economic Operator, must appoint a dedicated contact person or a team which will be responsible for carrying out the Contract.

At the express request of UPC, formalised by the Request for Proposal, a Solution team must be composed of members proposed by the Economic Operator before the beginning of the Solution and approved by UPC. In this context, the Economic Operator must also appoint a Solution manager to supervise the Solution team. The Economic Operator Solution manager is the main contact for UPC.

The Solution must be carried out by qualified Solution team members:

- at the level of the tasks to be carried out during the different phase;
- in terms of methods, standards, and tools to be used;
- in terms of IT, office automation and telecommunication resources to be used;

and respecting the instructions, explicit and implicit needs of the UPC, according to the schedule adopted.

The Economic Operator's Solution manager and the Solution team must have relevant work experience and skills in the field covered by the Contract, and Economic Operator has to provide the UPC, if asked, with justification on that matter. The Solution manager is responsible for leading the work on the Economic Operator's side, and reports to the Solution steering committee (comprising himself, the UPC and/or any designated person) every month or at the

frequency determined in the Solution management plan, or whenever an exceptional situation is encountered.

In the event of a change of the Solution manager and/or in the composition of the Solution team during the course of the Solution, the Economic Operator may assign other collaborators to the Solution team, while guaranteeing that the proposed skills will be maintained before work begins.

Any change to the of the Solution manager and/or in the composition of the Solution team will only be definitive if UPC agrees in writing.

The Economic Operator must, where applicable, provide proof of the competence of its personnel and immediately replace Solution manager and/ or the Solution team members whose dismissal is requested by UPC due to incapacity, insubordination or misconduct.

The Contract may be terminated or modified at the request of UPC if, after work has started, the Solution manager and/or the composition of the team is changed by the Economic Operator without the prior written agreement of UPC.

UPC has the right to refuse new candidates for the Solution, presented by the Economic Operator, on the grounds of a lack of relevant experience in the field covered by the Contract.

23.2 Project Management Plan

The Economic Operator undertakes to comply with all legal and regulatory requirements applicable to the Contract. In the event of non-observance of these laws, regulations or prescriptions by its personnel, it will bear all the consequences.

The Economic Operator shall carry out the Solution in accordance with the Rules of Art and in compliance with the generally accepted norms and standards for the implementation of the subject of the Contract.

Where the Parties have agreed to the establishment of a Project management plan detailed in the Request for Proposal (hereinafter “Project Management Plan”) the Economic Operator shall also carry out the Solution diligently and in accordance with the Project Management

Plan and test concept defined prior to the start of the Solution and, where appropriate, adapted during the Solution.

As part of the Project Management Plan, the designated Project Management Team reports to the Solution steering committee (composed according to the needs expressed by the UPC) on the progress of the various phases of the Solution and describes future actions, problems and risks.

The Solution steering committee will meet regularly, in accordance with the procedures provided by the UPC and in principle, unless expressly indicated otherwise, on the UPC's premises. The purpose of the Solution steering committee meetings will be to:

- Verify the proper application of the provisions of the Contract and review the quality of the detailed advance of the Services and/or Solution;
- Monitor Solution developments and plan reception phases;
- If applicable, monitor the quality indicators defined in relevant appendix;
- Identify and deal with any operational problems;
- Deal with outstanding issues such as requests made (upgrades, validation to be provided, etc.).

Outside of the steering committees, the Project Management Team has to report, usually weekly, to UPC the state of progress of the different phases of the Solution, as well as the future actions to be taken, the detailed description of the status of the Solution, and the forthcoming delivery dates and problems and risks that may arise.

For this purpose, the Project Management Team has to submit written reports to the UPC allowing it to check the progress of the Solution, accept or deny the direction and decisions taken in the Solution, and to redirect the Solution if necessary.

The Project Management Team will draw up minutes of progress meetings and distribute them to all concerned within a maximum of one week.

Each working meeting will also be documented.

23.3 Project Management Plan and progress reports

If the UPC expressly so requests in the Request for Proposal, the Economic Operator undertakes to set up a Project Management Plan, to be approved by UPC, which must include the various delivery dates and a precise description of the Solution within the framework of the Contract.

During the execution of the Contract, the Economic Operator must regularly submit to UPC a progress report to UPC, in accordance with the Solution. These reports must be approved by UPC within the Solution steering committee.

UPC may call on an external service provider to help it carry out acceptance tests for the various deliveries on the basis of the test case document provided by the Economic Operator. The Economic Operator must carry out its own tests before each delivery.

The Economic Operator will provide all necessary support for the acceptance tests carried out by UPC.

23.4 Reception formalities

Acceptance is the contractual operation during which UPC pronounces acceptance or rejection of any Products. The reception report must provide a precise description of the Products delivered, and must clearly indicate whether the Products were received provisionally or definitively.

Where applicable, the Project Management Team indicates the delivery of one or more Products by preparing an acceptance report in which he specifies what has been delivered. All deliveries made during the course of the Solution must be recorded in a reception report dated and signed by the Economic Operator.

UPC holds the right to refuse any reception of Products not complying with these formalities or which are not in accordance with the Contract. UPC and the Economic Operator ensure that they retain all relevant information in order to be able to restart the Solution at its beginning in the event of inconclusive results.

In this respect, any anomaly detected during acceptance must be recorded. The description of the anomaly must be supplemented by all the elements likely to facilitate the search for the causes of the problem and its correction.

Functional, technical, performance or other anomalies may be:

- minor anomalies: which do not correspond to a blocking anomaly or a major anomaly, and which, in this respect which do not affect acceptance, but which must be corrected later;

- major functional: or technical anomalies which corresponds to an anomaly causing limitations or restrictions in the use of the product or service, or in the systems or environment of the UPC, without these limitations or restrictions being sufficient for the anomaly to be qualified as blocking, and which in this respect that must be corrected before acceptance can be declared;

- blocking anomaly: which corresponds to a anomaly making it impossible to use all or part of the functionalities of the product or service and having the effect of rendering an essential function of the product or causing limitations or restrictions in the testing of the product or service, or even rendering an essential function of the product or service non-testable, and which, in this respect as such, must make acceptance impossible and must be the subject of immediate correction and the implementation of corrective measures and impact checks before it is corrected.

In certain circumstances, the Products may be subject to provisional acceptance when reservations regarding the Products are stated in the reception report. However, in the event of provisional acceptance, the UPC retains the right to refuse the Solution if the Economic Operator has not corrected the anomaly.

In the event of final acceptance, a report must be completed by the UPC. It indicates whether acceptance is with or without reservations. The list of reservations includes any minor anomalies that need to be corrected at a later date.

UPC signs the acceptance report, thereby marking acceptance. Specific acceptance reports are prepared for each type of recipe.

23.5 Final reception

Final acceptance of the entire Solution, i.e., the principal and all its accessories, will take place no later than one year (corresponding to an observation period) after the last compliant acceptance, as provided for in the Project Management Plan, provided that all defects and faults that have subsequently become apparent have been eliminated.

The guarantee period does not begin to run until final acceptance of the entire Solution.

24.AUDITS AND CONTROL

24.1 Audit procedures and scope

After giving the Economic Operator at least one month's written notice, UPC may audit the processes and security measures (technical and organizational) put in place to prevent any fraudulent access to or use of UPC data, and to prevent any loss, alteration or destruction of such data. It should be noted that UPC data is to be understood in the broadest sense, in that it may include personal data under the responsibility of UPC, data from other administrations or services that are stored with UPC, source code, contractual data in particular. In this respect, the UPC could appoint an independent auditor who must sign a non-disclosure agreement.

The Economic Operator undertakes to continuously monitor its level of risk management and compliance with applicable security policies and rules within the scope of the Services, including with its own subcontractors.

The Economic Operator expressly authorizes UPC to carry out an audit of the Services, including with its own subcontractors, in order to verify in particular the conditions under which the services are provided by the Economic Operator and, in general, that the obligations incumbent upon the Economic Operator under the Contract are complied with and more particularly, but not exclusively, as regards the security of information systems, data protection, confidentiality and intellectual property.

The audit must be carried out within the strict limits of the present article, and may not cover the Economic Operator's financial, accounting or commercial data.

In particular, the audit will ensure:

- that the Services are performed in compliance with Contract;
- that the Service Levels are respected in accordance with the Contract;
- that the schedule adopted is applied in accordance with the Contract;
- that the integrity and confidentiality of the UPC's Data are protected in accordance with the provisions of the Contract and in particular the Articles "Security", "Personal Data" and "Confidentiality";
- that the physical site of the Economic Operator or its subcontractor where the UPC Data is hosted is secure.
- that the general security obligations set out in the Article "Security" are complied with.

The Economic Operator undertakes to cooperate in good faith with the auditor and to facilitate its audit by providing it with all necessary information and responding to all of its requests relating to this audit.

The Economic Operator accepts that UPC or the auditor appointed by it, has access, including on site, to the installations and infrastructures assigned to the performance of the Contract as well as to the information necessary for its mission, in particular to the results of previous audits carried out on the Economic Operator or its subcontractors, and relating to the services covered by the present contract.

The Economic Operator expressly accepts that audit missions intended to verify the level of security of the UPC information system managed by the Economic Operator may be carried out by a regulatory authority or, where applicable, by a third party designated by the State, under the conditions defined by law.

The Economic Operator also agrees to answer any questions asked by the auditor and/or regulatory authority, and to allow access, under the Economic Operator's control, to all tools and means necessary for the audit procedure.

The UPC undertakes to bear the costs incurred by it in connection with the audit procedure. Audits carried out on the premises will make it possible to assess the level of security of the resources (hardware, infrastructure, applications, etc.) used by the Economic Operator and/or by third parties appointed by it for this purpose, to provide the Services, and in particular :

- with regard to security organization, to identify any vulnerabilities linked to the various system operating processes and to security management;

- with regard to the configuration of information system components, to verify the technical configurations of the components used by the system through which UPC data transits.
- with regard to the security of hosting sites, to verify that the necessary measures for securing the hosting site have been implemented in accordance with UPC requirements.

The audit will be carried out during the Economic Operator's working hours.

24.2 Technical security audits (scans, automated vulnerability tests, penetration tests, infrastructure audits, etc.)

One or more security audits may be carried out by UPC on the basis of recommendations made by its security experts.

The Economic Operator is then obliged to correct any problems identified and traced in trouble tickets, and then to apply the recommendations collected via one or more security audits which the UPC will either carry out itself, or commission a third party to do so. The Economic Operator will provide all necessary support for these audits.

Safety requirements are detailed in the relevant documentation designated by the UPC and must be taken into account in the Solution schedule.

The Economic Operator authorizes UPC, or any other Economic Operator chosen by UPC, to carry out technical security audits on its systems and with all third parties likely to be interested or affected, such as in particular companies hosting all or part of the Economic Operator's system.

UPC may carry out intrusion tests, or have them carried out by a third party of its choice. These tests will consist of a battery of automated or manual tests, carried out externally, on the Economic Operator's information system or that of any subcontractor contributing to the provision of the Services, in order to detect the presence of any vulnerabilities enabling a user to intrude into the information system tested.

In this respect, the Economic Operator certifies that it holds the necessary and sufficient rights and authorizations to carry out said technical audits on the information system and with all third parties likely to be interested or affected.

The Economic Operator will be notified in advance of such technical audits.

It is understood that the purpose of these technical audits is not for UPC to access the data of the Economic Operator's other customers, but to verify the security of the system and infrastructure set up by the latter as part of the Service entrusted to it.

When the UPC requests technical security audits, the Parties shall sign a prior agreement for the performance of such audits, in accordance with the terms defined in the appendix relating to the agreement for the performance of a technical security audit.

24.3 Processing non-compliance

A copy of the audit report drawn up by the auditor will be given to each party and will be examined jointly by UPC and the Economic Operator, who undertake to meet for this purpose and to implement corrective actions to the problems raised.

In the event that the audit report or the performance of technical audits should reveal a breach by the Economic Operator of its contractual obligations, a monitoring Committee made up of representatives of the UPC and the Economic Operator will meet at the initiative of the UPC.

The purpose of this Monitoring Committee will be to consider together the means intended to deal with the breach and the conditions under which the Economic Operator will have to implement the corrective measures deemed necessary by the Monitoring Committee within the deadlines set by the said Monitoring Committee in order to remedy the said breach.

Should the Economic Operator fail to remedy the breach in due time, UPC reserves the right to terminate the contract without notice, without prejudice to any damages to which it may be entitled.

24.4 Inspection rights

In order to facilitate both the transfer of knowledge to the UPC and quality control, UPC is entitled to inspect all Products, methods and practices used by the Economic Operator during the production of the Solution.

In this respect, during the Solution, the Economic Operator grants the UPC a right of inspection to enable it to monitor the quality and progress of the work.

25.EXCLUSIVITY

In order to facilitate both the transfer of knowledge to the UPC and quality control, UPC is entitled to inspect all Products, methods and practices used by the Economic Operator during the production of the Solution.

In this respect, during the Solution, the Economic Operator grants the UPC a right of inspection to enable it to monitor the quality and progress of the work.

26.GENERAL PROVISIONS

26.1 Terms and Conditions modifications

The present Terms and Conditions may be modified and updated from time to time, to better reflect:

- changes to the law;
- new regulatory requirements;
- improvements or enhancements.

If during the course of the Solution the Terms and Conditions are modified, the Economic Operator will be notified of such change, and may only resume the execution of the Solution upon the acceptance of the updated version of the Terms and Conditions.

26.2 Governing law and jurisdiction

These Terms and Conditions shall be governed by Luxembourg law and construed in accordance with the legal and regulatory provisions laid down in Article “Legal and regulatory provisions”.

The courts of Luxembourg-city shall have exclusive jurisdiction to hear and decide any suit, action or proceedings, and to settle any dispute which may arise out of or in connection with these Terms and Conditions and, for these purposes, each party irrevocably submits to the courts of Luxembourg-city. Each party irrevocably waives any objection which it might at any time have to the courts of Luxembourg-city being nominated as the forum to hear and decide any such suit, action or proceedings or to settle any such disputes and agrees not to claim that the courts of Luxembourg-city are not a convenient or appropriate forum.

26.3 Agreement to Terms and Conditions

The Economic Operator hereby acknowledges and confirms having received and read with particular care and understood these Terms and Conditions. The Economic Operator hereby agrees and accepts to be bound by these Terms and Conditions.

When the Economic Operator has taken part in a negotiated procedure, whatever the form, it acknowledges having had the opportunity to discuss the stipulations of the Terms and Conditions, which are therefore to be considered as a negotiated agreement.

26.4 Negligence

The fact that one of the Parties does not invoke a breach by the other Party of any of its obligations shall not be construed as a waiver of the obligation in question or as an amendment to the Contract, and shall not prevent the non-defaulting Party from invoking it in the future.

26.5 Notification

Notifications shall be made by registered letter with acknowledgement of receipt. Unless otherwise stipulated in the Contract, any notification will take effect from the date of its first presentation. Notices to the UPC shall be sent to the address provided in advance by the UPC for this purpose.

27.SIGNATURES

UNIFIED PATENT COURT

[NAME OF COMPANY /PERSON]

The President of the Court of Appeal,
Klaus Grabinski

[SIGNING AUTHORITY]
[NAME OF THE SIGNATORY]

Signature:

Signature:
