



signed 7/12/12

**FRAMEWORK CONTRACT**

**FOR THE PROVISION OF A NEW PLATFORM FOR THE  
EUROPOL ANALYSIS SYSTEM**

**between**

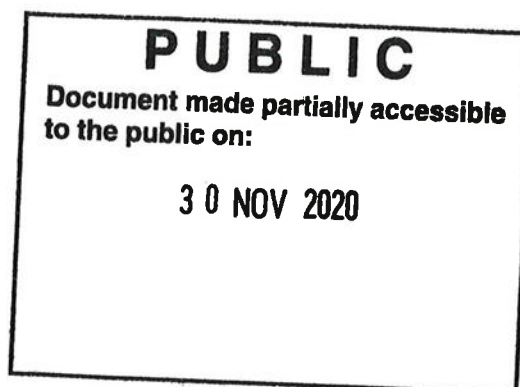
**Capgemini Nederland BV**

**and**

**Europol**

**Tender Reference: D/C2/1132/2**

**OJ EU Reference: 2012/S 25-039707**



The European Police Office (hereinafter referred to as "Europol"), located currently at Eisenhowerlaan 73, 2517 KK The Hague, The Netherlands represented for the purpose of the signature of this Contract by [REDACTED]

of the one part,

and

**Capgemini Nederland B.V.** Private Limited Liability Company, KVK registration number 30067608 with its registered address Papendorpseweg 100, 3528 BJ Utrecht, (P.O. Box 2575, 3500 GN Utrecht), The Netherlands [VAT registration number NL0012.25.741.B01] (hereinafter referred to as "the Contractor"), represented for the purpose of the signature of this Contract by [REDACTED]

of the other part,

#### **HAVE AGREED**

The Special Conditions and the General Conditions below and the following Annexes:

Annex I - Tender Specifications [1<sup>st</sup> and 2<sup>nd</sup> stage of the restricted tender procedure];

Annex II - Contractor's Tender dated 17 September 2012, including all annexes, the proposed SLA and Implementation Plan and the consolidated text of clarifications ("the clarifications");

Annex III- Model Purchase Order, Specific Contract [Fixed price; Time and Means and Quoted Time and Means] and Model Declaration of Confidentiality;

Annex IV - Completed Legal Entity File and Bank Account Form [not applicable, as the Contractor is already registered in the EC ABAC system];

Annex V - Minimum [baseline] security requirements for Europol's suppliers which form an integral part of this framework contract (hereinafter referred to as the "Contract")

The terms set out in the Special Conditions shall take precedence over those in the other parts of the Contract.

The terms set out in the General Conditions shall take precedence over those in the Annexes.

The terms set out in the Contract shall take precedence over the Specific Contracts and Purchase Orders.

The terms set out in the Tender Specifications shall take precedence over those in the Contractor's Tender.

Subject to the above, the several instruments shall be an integral part of the Contract and shall be taken as mutually explanatory. Ambiguities or discrepancies within or between such parts shall be explained or rectified by a written instruction issued by Europol, subject to the rights of the Contractor under Article II-22, should it dispute any such instruction.

## **I- Special Conditions**

### *Article I-1*

#### *Special definitions*

The following terms will be used with a capital letter in the Contract and as applicable in any Specific Contract concluded under this Contract placed under this Contract. These terms are understood to mean:

***Solution:*** the Europol analysis system "EAS" platform, representing a totality of integrated and operational software products and customised and configured parts serving a complete set of functions, provided by the Contractor to Europol and which is conform to the mandatory requirements specified at Annex I and desirable requirements as offered in the Contractor's Tender at Annex II;

***Maintenance:*** maintenance of the *Solution*, which includes without any limitation maintenance of the *Software* and any customised parts of the *Solution* provided by the Contractor in accordance with the requirements at Annex I and as detailed in the Contractor's Tender at Annex II. It comprises all operations needed to maintain the *Solution* in continuous operational condition (or to restore a defective *Solution* or one of its components to continuous operational condition) in accordance with the requirements at Annex I. This includes in any case new Software releases, updates, patches, fixes for all software products provided to Europol under this Contract;

***Software:*** either software at the core of the *Solution* provided by the Contractor to Europol in accordance with the requirements at Annex I and the Contractor's Tender at Annex II or software not listed in the Contractor's Tender at Annex II intended to add or change the *Solution's* functionalities or the number of *Solution's* users that may be acquired by Europol throughout the

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validity of this Contract, the perpetual licenses for which are granted by the Contractor to Europol. For avoidance of doubt, *Software* is "goods";

*Services:* the ICT specialist services, to be provided by the Contractor in accordance with the requirements at Annex I and as described in its Tender at Annex II, including data migration services from the existing Europol EAS platform to the *Solution* and training services (such as but not limited to end-user training courses and "train-the-trainer" training courses);

*Purchase Orders:* a written order, the model of which is provided in Annex III and used for purchase of *Software* and/or *Maintenance*, signed by both Parties or deemed to be signed in accordance with Article I-7 (2);

*Time and means (TM) Specific*

*Contract:* a written agreement between Europol and the Contractor for the provision of *Services* concluded under the conditions of this Contract, where Europol will pay a daily sum as specified in the Contract for a given number of days of *Services* to be executed by the Contractor's Personnel, according to Europol's specified requirements listed in a request for offers (RFO);

*Fixed price Specific Contract:* a written agreement between Europol and the Contractor for the provision of *Services* concluded under the conditions of this Contract, where Europol will pay an overall amount which may be divided in several payments, if agreed by Europol according to the nature of the relevant *Services* and as specified in the *Fixed price Specific Contract* itself in accordance with the prices as specified in the Contract for work as specified in the request for offers (RFO) including the deliverables, acceptance criteria for such deliverables and the time limits for producing them;

*Quoted Time and Means (QTM) Specific Contract:*

a written agreement between Europol and the Contractor for the provision of *Services* concluded under the conditions of this Contract, where Europol will pay the amounts due for work ordered for a total number of days and further divided into various sub-tasks to be performed

by the Contractor's Personnel as indicated in the request for offers (RFO);

TM Specific Contracts, Fixed price Specific Contracts and QTM Specific Contracts may be referred to using the generic term "*Specific Contracts*";

*Acceptance:*

a written notice from Europol to the Contractor which – depending on the particular context – shall confirm that:

- the *Services* (or if relevant, the sub-tasks and/or deliverables) as ordered by means of (a) *Specific Contract(s)* have been performed satisfactorily in accordance with Europol's requirements; or
- the *Solution* has satisfactorily passed the testing criteria and may be deployed on the Europol ICT production environment (also referred to as "operational *Acceptance*").

Where a distinction between the two is intended, it shall be explicit by use of one of the two above explanation;

*Timesheet:*

a written document on the template as provided by Europol confirming attendance and the number of *Working Days* performed by a member of Contractor's Personnel [i.e. consultant];

*Enhanced Timesheet:*

*Timesheet*, with the additional requirement that an explanation of the work produced must be added next to the recorded hours with sufficient detail to permit Europol to undertake verification of off-site work;

*Place of Origin:*

for the purpose of Article I-6 ("Reimbursement of expenses") the city in which the Contractor's registered office is located or, with Europol's express written permission, can be interpreted as meaning the city in which the member of *Contractor's Personnel* is habitually resident;

*Documentation:*

information and operating instructions in human readable form that describes the *Software*, *Services* and service levels, technical specifications, user manuals, process definitions and procedures, flowcharts and all such other documentation that is required to be supplied by the Contractor to Europol under this Contract or the satisfactory performance of the Contract

either pre-existing at the moment of the signature of the Contract or that has been or shall be generated by the Contractor for the purpose of satisfactorily performing this Contract;

*SLA:* the Service Level Agreement, provided by the Contractor as part of its Tender and attached at Annex II. The *SLA* is based on Europol's requirements at Annex I;

*Exit Management:* the obligations and rights of the parties as detailed in this Contract and in the *Exit Plan* attached at Annex II [or provided in accordance with the provisions of Article I-17 below], in connection to managing a smooth transition from the provision of the *Services* and *Maintenance* by the Contractor to the provision of replacement services and replacement maintenance by Europol or any subsequent replacement third party contractor, as further detailed at Article I-17;

*Service Credits:* the financial incentive scheme in respect of the failure by the Contractor to meet one or more service levels as specified in the *SLA*.

*The terms "out of the box", "configuration" and "customisation" shall be used in accordance with their definition provided by Europol at Annex I (Tender Specifications").*

#### *Article I-2*

##### *Subject*

1. The subject of this Contract is the provision by the Contractor to Europol of the Europol analysis system platform (the *Solution*) and all associated *Services* as well as *Maintenance* of the *Solution* and *Documentation* in connection to the *Solution* in accordance with Europol's requirements at Annex I and as offered by the Contractor in its Tender at Annex II.

For avoidance of doubt, this Contract covers all goods and services to be provided by the Contractor in any and all of Europol's ICT environments (development, test, installation, staging, production/ "live" and training) and – if requested by Europol in accordance with its needs -all goods and services at a disaster recovery site in Europe (stand-by, replica production environment), as indicated in the Tender Specifications at Annex I.

2. The *Solution* may be provided in several phases and – solely in accordance with Europol's assessment and internal needs – may be further broken down into sub-phases. Europol's proposed breakdown of phases is specified at

Annex G of the Tender Specifications. The term "release" – as used by the Contractor in its Tender - may be further used as equivalent of "phase" during the implementation of the Contract.

Phase 1 of this project will in any case include the provision of *Software* and *Services* for the implementation of the core EAS platform within Europol's ICT production environment, including integration with various other Europol IT applications and solutions the list of which was provided together with the proposed phases at Annex G of the Tender Specifications.

The Contractor's technical and financial offers as well as the offered *Implementation Plan* follow Europol's proposed phases. The parties may further agree to adjust the order and time-line for the integration of various items into the core EAS platform [either to an earlier or to later Phase]. The *Implementation Plan* shall be revised and updated consequently and in accordance with Article I-11 below.

All *Services* for the customisation of the *Solution* must be in conformity with the Europol IT standards as specified at Annex I (Annex J of the Tender Specifications).

3. Signature of the Contract imposes no obligation on Europol to purchase goods and services under the Contract. Only implementation of the Contract through *Purchase Orders* and/or *Specific Contracts* is binding on Europol. All *Purchase Orders* and *Specific Contracts* shall conform to the terms set therein. For avoidance of doubt, notwithstanding signature of the *Acceptance* either for the *Solution* or *Acceptance* for any *Services* performed in accordance with a *Specific Contract*, Europol may decide not to place orders for any subsequent phase, sub-phase or subsequent *Services* and shall not incur any liability with respect to the Contractor as a result thereof.
4. For the avoidance of doubt, the Contractor agrees that notwithstanding the references to sub-contracting, the Contractor is responsible for ensuring that its sub-contractors perform satisfactorily under the Contract. The Contractor may sub-contract elements of the Contract as detailed to **Palantir Technologies Inc.** for which express permission is hereby granted for the purpose of Article II-16 of the Contract. The sub-contracted parts of the Contract are as described in the Contractor's Tender at Annex II.

The parties hereby agree that Europol's first contact point shall be the Contractor's project manager named at Article I-9 below. Notwithstanding this, Europol shall be entitled to contact directly the sub-contractor as follows:

- after obtaining the Contractor's approval;
- in case where the Contractor does not react to a Europol query within 5 Working Days. Europol will inform the Contractor prior to actually contacting the sub-contractor directly; or
- to discuss matters in the ordinary course, including without limitation, with respect to implementation, development or support.

In order to avoid delays in the implementation of the *Solution*, Europol, the Contractor and its sub-contractor will organise tri-partite meetings.

5. Following commencement of the Contract, the Contractor shall perform its obligations in accordance with all the terms and conditions of this Contract, the requirements set out at Annex I ("Tender Specifications") and as described at Annex II ("Contractor's Tender"). The Contract does not confer on the Contractor an exclusive right to provide the goods and services described at paragraph 1 above and/or Annex I ("Tender Specifications") to Europol.

#### *Article I-3*

##### *Duration*

1. The Contract shall enter into force on the Contract Date.
2. Under no circumstances may implementation of the Contract commence before the date on which the Contract enters into force. Provision of goods and/or services may under no circumstances begin before the date on which the relevant *Purchase Order* or *Specific Contract* enters into force.
3. The Contract is concluded for a period of two (2) years with effect from the Contract Date. This contractual period and all other periods specified in the Contract are calculated in calendar days unless otherwise indicated.
4. The Contract may be renewed up to three (3) times, each time for a period of two (2) years, only before the expiry of the then running term of the Contract and with the express agreement of the parties, evidenced by means of a written addendum to the Contract. Renewal does not imply any modification or deferral of the existing obligations.
5. The *Purchase Orders* and *Specific Contracts* shall be returned signed before the Contract expires. Once the validity of this Contract or any renewals has elapsed:
  - a. no new *Purchase Order* or *Specific Contract* shall be concluded;
  - b. the provisions of this Contract shall continue to apply to those *Purchase Orders* and *Specific Contract(s)* still in force until the date of their expiry, but no *Purchase Order* may extend beyond twelve (12) months and no *Specific Contract* may extend beyond six (6) months.
6. The duration of the execution of particular *Services* shall not exceed the duration specified in the relevant *Specific Contract*. The period of execution may be extended only with the express written agreement as evidenced by a written addendum to the *Specific Contract* concluded between the parties before such period elapses.

#### *Article I- 4*

##### *Contract Price*

1. The total maximum value of this Contract shall not exceed the maximum amount stipulated at point 2.2 of the Tender Specifications at Annex I. The maximum value of the Contract is calculated for the total period of validity,

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Europol's initials:  
Contractor's initials:



including any renewal (s) and for the provision of any and all goods and services that may be purchased by Europol under this Contract, without prejudice to Europol's discretion to order only based on Europol's needs. No guaranteed minimum value under this Contract is offered by Europol.

2. All prices shall be expressed in Euro and free of all duties and taxes, including VAT. Such prices shall not be computed by reference to other currencies.
3. All Contractor's prices under this Contract are listed in the Contractor's Tender at Annex II. In line with the Tender Specifications, the Contractor's financial offer covers 3 (three) pricing scenarios based on the Europol expected data volumes, which in turn influence the number of *Software* licenses, as well as the licensing and *Maintenance* costs. Each pricing scenario is further divided in 3 (three) phases in line with Europol's proposed phases for the implementation of the project (Annex G of the Tender Specifications).

The prices and license fees and discounts for all *Software* and *Services* are as listed in the Contractor's financial offer (pages F2 to F22 of the Contractor's Tender) and as clarified and explained by the Contractor during the clarification stage of the tender procedure (contained at part 3 of Annex II).

For ease of Contract management, within Annex II (point 3) all Contractors' clarifications touching upon financial aspects are marked (\*).

4. The offered discounts shall be fixed throughout the duration of this Contract, including any renewal period as foreseen at Article I-3 above. This unless the Contractor is in position to offer better discounts, in which case the new levels of discounts and the categories of goods and services to which they apply will be specified in a written addendum to the Contract.

The one-off license fees for *Software* shall be as stipulated in the Contractor's Tender at Annex II. [REDACTED]

[REDACTED] on which the *Software* will be installed. As specified at q. 79 and q. 80 of the clarifications at Annex II, the Contractor's goods for the non-production environments and the stand-by environment at the data recovery site are provided by the Contractor free of charge.

The *Software* is licensed based [REDACTED] The pricing scenarios detailed in the Contractor's Tender cover the provision of [REDACTED]

[REDACTED] If Europol wishes to graduate incrementally from one pricing scenario to another, the Contractor shall only charge the difference in price for *Software* and *Maintenance* between the selected scenarios (as specified at q. 57 of the clarifications at Annex II).

The price for the *Maintenance* and its proportion to the licensing costs varies in each pricing scenario in order to take account of the discounted licensing costs for the *Software* offered to Europol.

The *Services* are priced identically in all the pricing scenarios.

The parties further agree that the extra work effort for the development of several functionalities in order to bring them in full compliance with Europol's requirements – as identified during the tender procedure and clarified by the Contractor either during or after the demonstration phase - are at the Contractor's risk and the associated costs shall not be borne by Europol.

5. As described in more detail at Article I-13 below and within the maximum financial limits of the Contract stipulated above at paragraph (1) of this Article, Europol may purchase *Software* not expressly listed in the Contractor's Tender at Annex II in order to increase the number of users or to increase functionalities of the *Solution*. The Contractor shall offer such *Software* at the prevailing market price at the time of the request and apply the same discount percentage specified at paragraph (3) above to such *Software*. Should Europol decide to accept the Contractor's offer with regard to non-listed *Software*, the parties agreement shall be recorded in a written addendum to the Contract.
6. The prices, rates and charges set out in the Contractor's Tender at Annex II are fixed for the initial duration of the Contract. A revision of the prices, rates and charges shall be possible *only* in accordance with the conditions and formula below for all goods and services.

The Contractor's prices set out at Annex II may be subject to revision by means of an annual indexation in accordance with the formula set below and only if the Contract is renewed in accordance with Article I-3 ("Duration") above. The revision of the prices must be requested by the Contractor in writing at least three (3) months prior to the expiry of the then running term of the Contract. The revised prices shall be applicable from the Contract date of such addendum.

The revision of the price(s) shall recorded in the written addendum to the Contract and shall be determined by the trend in the harmonised consumer price index EU-27 published for the first time by the Office for Official Publications of the European Union in the Eurostat monthly bulletin at <http://www.ec.europa.eu/eurostat/> [Prices (HICP) - Harmonised Indices of Consumer Prices; DATA: Database, HICP -Monthly Data (2005=100) - Monthly data (index)]

$$Pr = Po \frac{Ir}{Io}$$

Where:

Pr= reviewed total price/amount;

Po= total price/amount stipulated at paragraph (3) above;

Io= index for the month on which the Contractor's Tender (2<sup>nd</sup> ITT phase) was submitted;

Ir=index for the month in which the letter requesting a price/amount review was received.

Specific Contracts and Purchase Orders shall be placed on the basis of the prices in force at the time that Europol sends to the Contractor the relevant Specific Contract or Purchase Order.

In case that the consumer price index as specified above is no longer available for any reason, the parties hereby agree that the revision of the fees shall be determined by a similar consumer price index based on economic indicators for the EU.

7. Except as specified at Article I-6 below, the Contractor is not entitled to other allowances and reimbursements and/or may not charge Europol any other costs with respect of travel, accommodation and subsistence.

#### Article I-5

##### Payment periods

1. Payments under the Contract shall be made in accordance with Article II-7 ("Invoices and payments"). Payments shall be executed only if the Contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted. Request for payment may not be made if payments for previous *Purchase Orders* or *Specific Contracts* have not been executed as result of default or negligence on the part of the Contractor.
2. Payment under Purchase Order(s): after the satisfactory delivery of *Software* and/or *Maintenance*, Europol will pay the amount(s) due after submission of an admissible request for payment.

Requests for payment of one-off license fees for *Software* may be submitted only after delivery of ordered *Software* to Europol (either on a electronic media or by sending a link to the download location and providing the license access keys), evidenced by means of a written confirmation by Europol to the Contract (for the purpose of Article II-4, this shall be the "Consignment Note").

*Maintenance* shall commence only after expiry of the warranty period stipulated at Article I-18 and may be invoiced by the Contractor in advance for 12 months, if requested expressly by the Contractor and agreed upon by Europol. A request for payment for *Maintenance* may be submitted by the Contractor only after Europol receives written (e.g. by email) confirmation of Europol's *Maintenance* entitlements. Such written confirmation must specify the *Software* products and any *Solution* customised parts to which the *Maintenance* refers and the period of the *Maintenance* [i.e. start and end date].

3. Payment under Time and Means Specific Contract(s): provided that the Contractor submitted an admissible request for payment, in return for satisfactory provision of the *Services* and/or required, Europol will pay the amounts due retroactively [per each calendar month] on the basis of days actually worked as evidenced by the *Timesheets* signed by both parties.

4. Payment under Quoted Time and Means Specific Contract(s): provided that the Contractor submitted an admissible request for payment, in return for satisfactory provision of the *Services*, Europol will pay the price stipulated in the particular *Specific Contract* after the *Acceptance* by Europol of each sub-task as set out in the *Specific Contract*.
5. Payment under Fixed Price Specific Contract(s): in return for satisfactory provision of the *Services* and/or deliverables as agreed upon in the relevant *Specific Contract* itself and provided that the Contractor submitted an admissible request for payment, Europol will pay the price stipulated in the particular *Specific Contract* after the *Acceptance* of the deliverables [or part thereof as agreed] by Europol. A copy of the *Acceptance* must be submitted together with the request for payment.
6. A *Specific Contract* may stipulate additional conditions with regard to the payment - such as but not limited payment in instalments - taking into account the specifics of the *Services* to be performed or deliverables to be delivered to Europol by the Contractor.
7. Requests for payment by the Contractor shall be admissible only if accompanied by:
  - a) The relevant invoices, stating the reference number of the Contract and the Purchase Order or *Specific Contract* to which they refer. Where applicable, the invoice shall list the *Software* and the *Maintenance* period for which payment is sought;
  - b) Where applicable, the completed Timesheets for each consultant performing *Services* at Europol. Each Timesheet must be signed by Contractor and approved by Europol;
  - c) Where applicable, a copy of *Acceptance* (operational or for *Services*) [or sub-task or deliverable] signed by Europol;
  - d) Where applicable, any other document as stipulated in the relevant *Specific Contract*;
  - e) Where applicable according to Article I-6 ("Reimbursements of expenses"), any related supporting evidence requested by Europol for payment of daily allowance.

Europol shall have twenty (20) days from receipt of the request for payment to approve or reject the documents specified at letters b, c, d and e above, and the Contractor shall have twenty (20) days in which to submit additional information or a new request for payment.

Within thirty (30) days of the date of receipt of the admissible request for payment, payment corresponding to the relevant invoices shall be made.

8. Performance guarantee: Not applicable.
9. If the Contractor fails to comply with a service level requirement which results in a financial consequence under the SLA, the Contractor is responsible for identifying this failure and showing the deduction on the next invoice submitted such that the overall amount claimed in payment from Europol is reduced. If no invoice is due or foreseen within the next 4 month period, or if

the penalty is higher than the Contractor's invoice, the financial consequences of the SLA shall be invoiced by Europol. The Contractor shall issue in due time the credit notes required to materialise any of the above.

10. Invoices must state:

- the price in EURO and the total price excluding VAT;
- that the amount invoiced is exempt from VAT under the Articles 3 and 4 of the Protocol on Privileges and Immunities of the European Union<sup>1</sup>;
- the VAT amount in EURO separately;
- the IBAN code and the BIC code as identified at Article I-8 ("Bank Account")<sup>2</sup>.

*Article I- 6*

*Reimbursement of expenses*

1. The price stipulated at Article I-4 above ("Contract price") is all -inclusive. The Contractor shall not be entitled to reimbursement of other costs and expenses such as travel and accommodation expenses incurred in the performance of this Contract.
2. Exceptionally, in relation *Services* performed at the disaster recovery site in Europe as specified at Annex I, Europol will arrange for the consultant(s) travel and accommodation and pay directly the relevant third-parties [i.e. airline and hotel]. For the period of performance of the *Services* at the disaster recovery site, in addition to the prices specified at Annex II the Contractor's Personnel shall be entitled to a fixed daily allowance, which is equal to the daily allowance of Europol's staff travelling to and working on the same location as also indicated at Annex I.
3. In no case may travel time of the consultant to and from Europol's Premises - or if relevant, the data recovery site - be considered working (billable) time. Europol shall not be charged for such time.
4. For avoidance of doubt, the Contractor is not entitled to reimbursements under this Article if the *Services* are performed at the Contractor's location.
5. Each Specific Contract shall identify whether any costs under this Article are payable by Europol and shall indicate the maximum price to be paid by Europol in this regard to ensure that appropriate budgetary arrangements can be made in advance.

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<sup>1</sup> For contractors established in the Netherlands, invoices will include VAT which is paid by Europol and later reimbursed by the state. For Contractors established in other EU countries, the exemption is direct and invoices are submitted without VAT;

<sup>2</sup> In case of change, prior information and a new Financial Identification Form must be duly addressed to Europol before dispatch of the invoice;

## Article I-7

### Implementation of the Contract

1. The Contract will be implemented by means of Purchase Order(s) and Specific Contract(s), the templates for which are attached at Annex III. The costs payable in respect of each Purchase Order or Specific Contract cannot exceed the prices set forth at Article I-4 above [i.e. the Contractor's Tender, Annex II to the Contract].

2. For Purchase Order (s):

Purchase Orders shall be made on templates as attached at Annex III and must be returned by the Contractor duly signed and dated within 10 (ten) days of them being sent by Europol.

If Europol is second to sign a Purchase Order, it will notify the Contractor within 2 (two) days thereafter with regard to the date of signature of such Purchase Order. The date on which Europol signs the Purchase Order shall be the "Purchase Order date".

If the Contractor is second to sign the Purchase Order and the signed Purchase Order is not returned within the period of 10 (ten) days referenced above, the "Purchase Order date" is deemed to be the first day following the expiry of such period.

Irrespective of the order of signature of Purchase Orders, it is expressly acknowledged by both parties and confirmed that by signing this Contract, the Contractor has agreed to waive all other terms of business and/or performance of services and/or delivery of goods.

3. For Specific Contract (s):

If the need for *Services* arise and Europol wishes to use this Contract, Europol shall send a request form by fax or email to the Contractor specifying the details and particular requirements related to the *Services* to be performed. The request shall at least specify the requirements with reference to the Tender Specifications. Europol will specify the task, the profile of the Contractor's Personnel, total estimated duration of assignment, estimated number of Working Days and the budget available. The Contractor must respond within 10 (ten) days after the request is sent by Europol.

4. For the *Fixed Price Specific Contracts*, Europol must specify the deliverables to be produced by the Contractor during the assignment and deadline for producing such deliverables.

For any of Europol's requests, the Contractor's offer must specify the following elements:-

- the Contractor's proposed Personnel, together with CV (CVs) attached;
- proposed Contractor and Europol resource allocation for the execution of the tasks, in accordance with Europol's requirements;
- proposed time schedule for implementation of the tasks, in accordance with Europol's requirements;
- total and breakdown of the costs.

The Contractor's Tender must contain for each Consultant's profile minimum 50% of the Contractor's Personnel as proposed in the Contractor's Tender at Annex II for implementation of this Contract. These individuals must be available for the execution of the tasks from the start date as identified in Europol's request form sent to the Contractor and for the whole period required to complete the tasks.

The period before the Contractor submits the offer in response to Europol's request may be used to clarify Europol's specific project and/or tasks requirements as stated in the request form.

If Europol accepts the Contractor's offer, Europol will inform the Contractor accordingly and will prepare the Specific Contract, based on the templates at Annex III.

5. The parties agree that for ease of administration whenever Europol wishes to order *Software* and/or *Maintenance* and *Services* at the same time, Europol may do so by means of a single Specific Contract covering goods and services [i.e. without the need of a separate Purchase Order].
6. The Contractor shall at all times allocate sufficient resources to provide the goods and services in accordance with the terms of this Contract.
7. The Contractor shall obtain and maintain throughout the duration of this Contract all the consents, licences and permissions it may require and which are necessary to enable the performance of the Contract.
8. The Contractor shall provide to Europol co-operation, information, advice and assistance to the best of its knowledge in connection with the *Solution* to enable Europol to create and maintain technical and organisational processes related to the implementation of the *Solution*.
9. Europol may undertake a quality performance benchmarking and/or request the Contractor or a *benchmarker* to undertake a performance benchmarking of the levels of the *Services* provided under this Contract by comparison with similar *Services* provided by at least three (3) other companies of similar size on the market (referred to as "Comparison Group").

If the quality performance benchmarking reveals that the level of the *Services* (or part of the *Services*, as applicable) does not reach the Comparison's Group service levels, the Contractor shall immediately prepare an improvement plan, which will specify all actions necessary to rectify the discrepancies in the levels of services and a timeline for the implementation of the corrective actions. The improvement plan must be approved by Europol in writing in advance of any implementation action.

The implementation of the improvement plan may not in any circumstances exceed three (3) months and shall be performed by the Contractor at no cost to Europol. Implementation of the improvement plan shall be monitored by Europol. If the Contractor fails to fully implement the improvement plan as approved by Europol, Europol shall be entitled to claim damages.

The parties agree that the payment for the quality benchmarking shall be as follows:

- Europol will pay the totality of the amount, if the results of the benchmarking exercise are favourable only to the Contractor;
- The Contractor will pay the totality of the amount, if the benchmarking exercise reveals that the services provided by the Contractor are below the Comparison's Group service levels.

*Article I- 8*

*Bank account*

1. Payment of invoices is conditional upon the Contractor being listed in the European Commission's contractor database following submission of an duly filled in and signed Legal Entity Form and Financial Identification Form as specified at Annex I ("Tender Specifications").
2. Payments shall be made in EURO to the Contractor's bank account stated in such Financial Identification Form.
3. The Contractor is responsible for notification to Europol of any changes in the particulars covered by the Legal Entity Form and/or the Financial Identification Form by submitting new duly filled in and signed forms upon the occurrence of any such change.

*Article I- 9*

*General administrative provisions*

Any communication relating to the Contract or to its implementation shall be made in writing and shall bear the reference number of the Contract and if applicable, the reference number of the Purchase Order or Specific Contract. Ordinary mail shall be deemed to have been received by Europol on the date on which it is registered by the responsible Europol Unit indicated below. Communications shall be sent to the following addresses:

Europol:

Project Manager: [REDACTED]

[REDACTED]

[REDACTED]

**Alternates:** [REDACTED]

[REDACTED]

[REDACTED]

AND/OR

[REDACTED]

[REDACTED]

[REDACTED]



Contractor:

Project manager: [REDACTED]

[REDACTED]

[REDACTED]

Sub-contractor:

[REDACTED]

Palantir Technologies

[REDACTED]

[REDACTED]

*Article I-10*

*Termination by either party*

1. Either party may, of its own volition and without being required to pay compensation, terminate the Contract by serving 12 (twelve) months formal prior notice. The prior notice of termination must be sent by registered mail with acknowledgement of receipt. Should Europol terminate the Contract, the Contractor shall only be entitled to payment corresponding to the goods and services ordered and executed before the termination date.
2. If, after serving the termination notice, Europol places a Purchase Order and/or concludes a Specific Contract, this shall be enforceable against Europol provided that termination of the Contract is acknowledged in the Purchase Order and/or Specific Contract. For avoidance of doubt, the survival clause at Article I-3 (5) above is not applicable in case of termination.
3. On receipt of the letter terminating the Contract (if notice is sent by Europol, receipt shall be deemed to occur two (2) Working Days following the letter being sent), the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. The Contractor shall draw up the documents required for payment as specified at Article I-5 ("Payments and invoicing") for the goods and services rendered up to the date on which termination takes effect, within a period not exceeding 45 days from that date.
4. In the event of termination, the Contractor shall apply the exit management procedure stipulated at Article I-17 and hand-over immediately and without charge the source code for the customised parts of the *Solution* and all *Documentation* related to the *Solution*. If requested by Europol and with respect to customisations based on proprietary software or open source software [when allowed under the applicable licensing conditions], the Contractor shall purge any copy of custom developed parts of the *Solution* from its equipments.

Article I-11

*Implementation Plan*

1. The parties acknowledge that the Contractor's proposed *Implementation Plan* covering Europol's requirements set out in the Tender Specifications is attached as part of the Contractor's Tender at Annex II of this Contract. Such *Implementation Plan* provides a general outline of the project implementation and Contract performance and may be reviewed in order to match it with Europol's timeline and objectives for the implementation of the *Solution*. The parties may revise the attached *Implementation Plan* and progress towards its successful implementation at regular meetings held between the Parties' project management teams. The parties must agree on a revised *Implementation Plan* in writing. In such case, the Contractor's progress and quality of performance shall be monitored against the latest revised *Implementation Plan*.
2. The Contractor shall perform its obligations as to achieve each milestone [or a relevant target] by the relevant date as set out in the *Implementation Plan* in its latest version and to follow the proposed timeline for each of the project phases.
3. The *Implementation Plan* may be further detailed at the time the particular *Services* are ordered via Specific Contracts. Any *Implementation Plan* attached to a Specific Contract shall specify at least the following elements:
  - a. Description of the activities to be performed by the implementation team;
  - b. The planned implementation calendar and resources schedule;
  - c. The proposed dedication for each activity, calculated in Working Days;
  - d. The required involvement of Europol personnel;
  - e. The specific deliverables and *Acceptance* criteria as agreed between the parties.

As specified at Article I-7 above, the Contract shall be implemented solely by means of Purchase Order(s) and/or Specific Contract(s). Whereas the *Implementation Plan* serves the purpose outlined at paragraph (1) above, it is not an independent Contract implementation document (as also specified at q.60-64 of the clarifications). The parties agree that revisions or changes to the *Implementation Plan* entailing financial consequences must be recorded in written addendums to the relevant Purchase Order or Specific Contract and signed by authorised representatives of both parties. *Services* performed prior to the signature of an addendum may not be invoiced to Europol and are at the Contractor's risk. As clarified by the Contractor at q. 64 of the clarifications at Annex II, the quick scan of changes within the Contractor's change request procedure outlined in the *Implementation Plan* is free of charge.

*Article I-12*

*Service Level Agreement (SLA)*

1. The parties acknowledge that the Contractor's proposed *Service Level Agreement (SLA)* covering Europol's requirements set out in the Tender Specifications (Annex I) is attached as part of Annex II of this Contract. The SLA sets out the minimum levels for provision of *Services* and *Maintenance*, the delivery procedures and the applicable service credits for failure to meet the specified levels.
2. By way of derogation from Article II-20 ("Liquidated damages"), the service credits foreseen in the SLA for non compliance with the service levels with respect to the *Services* and *Maintenance* will prevail over the liquidated damages in Article II-20. For matters not covered by the SLA the provisions of Article II-20 remain applicable.
3. The SLA shall be subject to regular reviews in order to follow the implementation of the *Solution* and the general project evolution, as well as Europol's actual requirements with regard to the service levels at a given time. A first review of the SLA shall take place within 3 (three) months after signature of the Contract; thereafter regular reviews shall take place every 6 (six) months. With the exception of purely technical changes at working level, any other agreed changes to the original SLA must be recorded in writing by means of an addendum to the Contract.
4. The Contractor hereby agrees that in addition to the service levels performance measurements provided for in the SLA, the quality of the *Services* and *Maintenance* shall be measured by Europol based on the criteria outlined hereafter:
  - Knowledge and skills;
  - Timely completion of work;
  - Quality and speed of work undertaken; and
  - Customer (Europol) satisfaction.

The criteria outlined above for assessing the quality of the on-site support must be assessed in an intervention report drawn up by the Contractor and approved by Europol after completion of the on-site support intervention. Every quarter, the Contractor's contract manager shall generate and provide to Europol an overview of the performance metrics and/or indicators for *Services* and *Maintenance* applicable to Europol. The performance report in the agreed by both parties format will be sent by e-mail to the specified Europol contact address.

5. The Contractor undertakes to comply with all the standards and service levels indicated in the SLA. Non-compliance with the SLA provisions shall be deemed unsatisfactory performance under the Contract.

Article I-13

*Specific provisions with regard to Software and its delivery*

1. Europol may acquire (i) *Software* listed in the Contractor's Tender at Annex II or (ii) *Software* not listed at such Annex II in order to add and/or change functionalities of the *Solution* or to increase the number of *Solution's* users, within the maximum limits of this Contract.

Prior to acquisition of any *Software* not listed at Annex II, Europol shall request a separate written quotation [offer] from the Contractor. If Europol accepts the Contractor's quotation [offer], Europol will inform the Contractor accordingly and will prepare the Purchase Order based on the template at Annex III.

2. In accordance with the Contractor's Tender at Annex II the *Software* shall be provided as specified at point 1 ("Licenses Model", page F2) of the Financial Offer at Annex II. In particular the Contractor shall provide perpetual licenses based [REDACTED] not requiring physical license dongles and allowing for unlimited users.

For avoidance of doubt, the Contractor shall be solely responsible for provision of the *Solution* in its entirety. The Contractor shall make its own arrangements for obtaining third-party *Software* (either proprietary or open source) part of the *Solution*. Europol does not have and does not accept a contractual link to any of such third-parties vendors or producers of *Software*.

3. The parties acknowledge that delivery of *Software* will happen mostly by electronic means. Any physical deliveries of media containing the *Software* [material support] will be subject to scanning and inspection at Europol's Premises.
4. The delivery date of the *Software* shall be as indicated in the relevant Purchase Order. If no specific delivery date is indicated, such delivery date shall be set at 2 (two) Working Days from the relevant Purchase Order date.
5. A record of delivery shall be produced by means of a consignment note, but without indicating *Acceptance* for *Software* or for the *Solution* (as further detailed in Article II-4). In the event *Software* is downloaded, Europol will issue the consignment note based on the communication (email) of the Contractor with the downloading instructions and access keys.
6. The Contractor shall ensure that in performing its obligations under this Contract, all *Software* provided by the Contractor to Europol will be the latest available version(s) of that *Software* and that such *Software* shall perform in all material respects in accordance with its specifications detailed in the Contractor's Tender at Annex II.
7. The Contractor shall ensure that the *Software* is marketed and is supported and maintained from the Contract Date of the Contract during the entire lifetime of the Contract, including any renewal. The Contractor must immediately inform Europol - if applicable, as soon as it becomes itself informed - with regard to any planned withdrawal, re-engineering or other *Software* transformation that affects the *Solution* and provide all possible

assistance to Europol with respect to any required changes to the *Solution*, including in obtaining the replacement *Software*.

8. The Contractor must notify Europol three (3) months in advance – or if applicable, as soon as it becomes itself informed - of the release of an upgrade to the *Software* or any new proposed *Software* replacing the *Software* already installed at Europol. If such upgrade or new *Software* is implemented within Europol, the Contractor will cooperate with Europol to ensure it minimises any disruption to the Europol ICT environment or Europol's regular activities.
9. Insofar as Article II-4 identifies "replacement" as an appropriate remedy under the Contract it is understood that "correction" shall be deemed an appropriate remedy in relation to *Software*.
10. Notwithstanding any provision or text stipulated within the Contractor's Tender at Annex II, the Contractor (or its sub-contractor) shall not have a right of inspection and/or audit of Europol's use of *Software*. The prohibition shall be applicable to all on-site inspections either on Europol's Premises or at the data recovery site. Following a written request from the Contractor, Europol will provide written explanation of the use of *Software* licenses and its compliance with licensing restrictions.

#### *Article I-14*

##### *Specific provisions with regard to testing*

1. In recognition of the time required to assess the conformity of the *Solution*, the period of 15 days referred to at Article II-4(3)(b) ("Supply of goods") shall not apply.
2. The period during which Europol will perform the testing, the testing procedure and success criteria will be agreed between the parties in the *Implementation Plan* covering the relevant phase (or sub-phase) or in the relevant Specific Contract.
3. Before submitting any deliverables for testing, the Contractor shall subject the relevant deliverables to its own internal quality control measures.
4. The testing procedure for a particular deliverable will be complete – and if relevant the *Acceptance* for such deliverable will be issued – when the deliverable satisfies all the test success criteria in respect of that test without any issue. If the deliverable (or any part thereof) does not satisfy the test success criteria, the Contractor shall rectify the cause of failure at no costs for Europol and shall resubmit the deliverable to the testing procedure within the timeframe as agreed in writing with Europol.

Article I-15

*Specific provisions regarding training and training cancellation policy*

1. The Contractor shall be responsible to provide training, including "train the trainer" courses as part of *Services* in accordance with Europol particular requirements expressed in a request for offers. The Contractor shall be responsible for any – off-the shelf or customised - preparatory work and learning materials to be provided to Europol.
2. In the event of cancellation of a training or part of training by the Contractor due to the unavailability of a Contractor's Personnel or to another impediment of the Contractor, a financial penalty will be applied as follows:
  - o 100 %] of the cost of the corresponding training as ordered in the Specific Contract if the cancellation is notified to Europol less than five (5) days before the starting date of the training;
  - o 50 % of the cost of the corresponding training as ordered in the Specific Contract if the cancellation is notified to Europol between five (5) and fifteen (15) days before the starting date of the training;
  - o If the cancellation is notified to Europol more than fifteen (15) days before the corresponding training as ordered in the Specific Contract, no penalty will be applied.
3. In the event of a cancellation of training or part of training by Europol as ordered in the Specific Contract, the Contractor shall be entitled to receive the following amounts as cancellation fees:

Less than 24 hours	100% from the amount provided in a Specific Contract with respect to the training or part of the training cancelled
Between 24 hours and 3 days	50% from the amount provided in a Specific Contract with respect to the training or part of the training cancelled
More than 3 days	No cancellation fees are due.

4. No other amounts shall be paid to the Contractor for cancellation of training by Europol.
5. Neither party shall be considered to be in default or in breach of this Article and its obligations under this Contract if the cancellation of training is due to Force Majeure as defined in Article II-15 which arises after the Contract Date of a Specific Contract.

## Article I-16

### *Specific provisions related to knowledge transfer*

The Contractor acknowledges Europol's particular interest in knowledge transfer within this project, as also described at Annex I and agrees to provide to Europol its full support in this respect in good faith throughout the validity of the Contract.

With regard to the knowledge transfer, the Contractor shall follow the obligations as detailed in the offered Exit Plan (part of the Tender) and as clarified and described at q. 44 at Annex II. Parts of the *Exit Plan* shall constitute the knowledge transfer plan and shall be applicable throughout the project implementation. In accordance with such clarification, the Contractor shall appoint a responsible "knowledge manager" within its own team and shall organise knowledge transfer meetings with relevant Europol staff on weekly basis.

Notwithstanding such plan, the Contractor's obligations with respect to knowledge transfer shall include as a minimum the following:

- i. Keeping a detailed written record of all actions and operations performed during the design, testing, staging and implementation of the *Solution*, as well as any other subsequent (sub-) phase(s) which is to be provided to Europol as part of *Documentation*;
- ii. Producing documents for analysis, design, implementation and delivery products as customary for IT projects that follow Agile software development methods and standards (such as Scrum) or proposed equivalent which must be provided to Europol as part of *Documentation*;
- iii. Organising the transfer of knowledge by means of "mentoring" ["paired work"] in which case Europol staff works side by side with Contractor's Personnel and replicates each step as performed.

Within Specific Contracts, the parties may agree on other, more detailed ways, processes and deadlines for the transfer of knowledge from Europol to the Contract in connection to the *Solution*.

## Article I-17

### *Exit management at the end of the Contract*

1. At the expiry or termination otherwise of this Contract, the Contractor shall comply with the exit management obligations [or hand-over procedure] as set out in the *Exit Plan* provided as part of the offer attached at Annex II. Such procedure shall allow any potential future service provider in charge of providing the goods and services as covered by this Contract to collect information related to the Contract. This includes information and documents provided by Europol to the Contractor and any other information and documents necessary for the correct and timely provision of the goods and services under this Contract. The Contractor commits itself to provide all such information and documents either directly to a future service provider as

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indicated by Europol or return it to Europol, as requested by Europol, whilst continuing to provide the goods and services under this Contract until the end of the Contract. The performance of the hand over procedure shall be considered as part of this Contract and shall be provided by the Contractor to Europol at the costs specified in the Contractor's Tender at Annex II (Financial offer, page F 10) in the Contractor's Tender at Annex II.

2. The proposed *Exit Plan* shall be considered as the baseline for the implementation of the Exit management procedure. The *Exit Plan* may be revised at Europol's request, in order to reflect Europol's actual and current needs for the exit management procedure. The Contractor is obliged to consider all Europol's requests for changes and to negotiate in good faith any proposed revision of the *Exit Plan*.
3. This clause on exit management shall be applicable immediately and without any further notification in the following cases:
  - In case of insolvency, Europol shall have the right to invoke this clause at any time before the winding up of the Contractor or any other consequence of the occurrence of those events, including the appointment of a liquidator, receiver, manager or administrator;
  - In the event of termination of this Contract for any reason;
  - 3 (three) months prior to the expiry date of this Contract, when no renewal of the Contract is possible or when either Europol or the Contractor indicated in writing that it will not renew the Contract.
4. The Contractor shall hand-over immediately and without charge the source code for the customised parts of the *Solution* and all *Documentation* related to the *Solution* (for avoidance of doubt, this includes *Documentation* for configurations), either existing prior to the Contract Date [such as but not limited to *Software* operating instructions] or generated and/or compiled by the Contractor in the performance of the Contract.

If requested by Europol, the Contractor shall purge any copy of custom developed parts of the *Solution* from its equipments and shall take all the steps necessary to mitigate losses, costs and liabilities, including to:

- Terminate all relevant contracts or parts of contracts with sub-contractors in connection with the provision of goods and services to Europol;
- Reduce labour costs by redeployment of Contractor's Personnel to the extent possible under the circumstances.

#### *Article I-18*

##### *Warranty and guarantee of proper operation of the Solution*

1. The Contractor warrants that it shall deliver a *Solution* which fulfils all mandatory requirements stipulated at Annex I and fulfilling the desirable requirements set out in its Tender at Annex II.
2. The parties agree that for design defects attributable to the Contractor, the warranty shall be valid and enforceable against the Contractor for five (5)

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Europol's initials:  
Contractor's initials:



years after the end of the Contract or for five (5) years after the last order placed by Europol for the goods and services covered by the Contract, whichever period ends later.

3. Except for design defects as mentioned above, the warranty period is 1 year after Europol's *Acceptance* of the *Solution* for the deployment into the [REDACTED] environment. During the warranty period, the Contractor shall immediately make any corrections and provide *Maintenance* of the *Solution* at its own expense. Within this period *Maintenance* shall be delivered at the levels specified in the Service Level Agreement at Annex II.
4. Within 2 (two) days of the date on which the Contractor first discovers that a defect [i.e. a condition or characteristic of the *Solution*, either reproducible or non-reproducible, that does not conform with the warranty stipulated at paragraph (1) above] exists or may exist in the provided *Solution*, the Contractor shall notify Europol Project Manager of such possible defect in writing, unless Europol Project Manager has first notified the Contractor of the same defect. The same obligation of notification of defects shall rest upon Europol. The parties' obligations with respect to the warranty are clarified at q. 63 of the clarifications at Annex II.
5. All Europol's rights and remedies under this Article are in addition to any other rights and remedies of Europol under this Contract and shall apply notwithstanding operational *Acceptance* provided by Europol.
6. At all time the Contractor must prioritise elimination of a defect over determining responsibility for such defect and it shall do so notwithstanding any dispute with respect to the existence of the defect or responsibility for a defect of the provided *Solution*.

#### *Article I-19*

#### *Maintenance*

1. Contractual *Maintenance* shall commence on the next calendar day after expiry of the warranty period of the *Solution* as stipulated at Article I-18 above. *Maintenance* shall be purchased for 12 months in advance by means of a Purchase Order.
2. *Maintenance* of the *Solution* covers maintenance of *Software* and of all customised parts of the *Solution* provided by the Contractor in accordance with Annex I and Annex II.

It includes in any case the following operations (i) diagnosing defects or errors encountered by Europol or the Contract in the content of the *Solution* and making the necessary corrections; (ii) providing Europol with successive *Software* versions and releases, and the relevant *Documentation*; (iii) effecting all corrections including patches within the shortest deadline [or in accordance with the timeline in the SLA], needed to ensure that the *Solution* operates in accordance with Europol's requirements at Annex I; and (iv) 24 x 7 support and helpdesk as required by Europol at Annex I and as specified in the SLA.

3. Preventive maintenance operations on-site may be scheduled periodically by mutual written agreement of the parties and/or in accordance with the provisions of the SLA. Corrective maintenance on-site such as debugging or repair shall be carried out upon Europol's written demand.
4. The Contractor must formally close each *Maintenance* operation and provide Europol with a written report containing a detailed analysis of the problem(s) encountered and their resolution.
5. The Contractor agrees that all communication with Europol with regard to *Maintenance* and performance of *Maintenance* at the levels stipulated in the SLA at Annex II shall be possible via generic email accounts [i.e. without the name or personal details of the Europol sender being revealed such as europol\_1; europol\_2 etc].

#### *Article I-20*

##### *Contractor's Personnel*

This Article shall complement Article II-3 (General Conditions "Contractor's Personnel"). For purpose of interpretation, the two Articles must be read together.

1. The Contractor is solely responsible for the progress and performance of its Personnel during the course of a Specific Contract.
2. Contractor's Personnel involved in the implementation of Specific Contracts shall under no circumstances be considered or treated as Europol staff i.e. individuals having the status of Europol staff and subject to the Staff Regulations of Officials and/or Conditions of Employment of Other Servants of the European Communities applicable to Europol, or Seconded National experts (national or international civil servants who are working temporarily for Europol under the rules applicable to such experts). There shall be no subordinate link between Europol and the Contractor's Personnel. Europol may under no circumstances be considered to be the Contractor's Personnel employer and the said Personnel shall undertake not to invoke in respect of Europol any right arising from the working relationship between Europol and the Contractor. If applicable, Contractor's Personnel shall inform third parties that it is not an employee of Europol and does not belong to the European public service.
3. The Contractor must ensure that all of the consultants performing *Services* under a particular Specific Contract are aware at least of the following details:-
  - The terms and conditions of the Specific Contract to be implemented;
  - The specific security requirements imposed by Europol with regard to the particular *Services* (either performed on-site at Europol's Premises or off-site as requested by Europol);

The consultants for a particular Specific Contract must be available for the performance of *Services* for the entire duration of such Specific Contract. Before concluding a Specific Contract, Europol reserves the right to request a statement of availability of the proposed Contractor's Personnel.

4. The parties agree that the normal core working hours during which the consultant(s) must be on-site are from 09:00 to 12:00 and 14:00 to 17:00. For avoidance of doubt, core working hours do not equal a Working Day. Late arrival and/or absence of consultant(s) must be announced by the Contractor to Europol immediately. Different core working hours and/or overtime [i.e. work in the evening after 17:00 or in week-ends or Working Days of more than 8 hours of work] can be agreed under Specific Contracts by express written agreement of the parties.
5. If *Services* are performed off-site other than under a *Fixed Price Specific Contract* then it will be a contractual requirement to submit *Enhanced Timesheets*, on template as provided by Europol, for approval by Europol to ensure adequate verification of off-site activities. *Enhanced Timesheets* must be submitted to, verified and approved by Europol on a weekly or monthly basis, as stipulated in the Specific Contract. The Contractor shall ensure that the description of the work entered into the *Enhanced Timesheet* is sufficiently detailed for verification purposes and shall provide further clarification upon request. Disputes shall be escalated for resolution.
6. In case of *Time and Means Specific Contracts*, the working hours performed by each consultant providing *Services* must be registered in a Timesheet, templates for which shall be provided by Europol.

Timesheets shall be completed either by Europol's Personnel supervising the work of the consultant separately for each consultant or by the consultant(s) self under Europol's Personnel supervision.

Timesheets must be verified and approved by Europol on monthly basis. At the end of the calendar month and for the purpose of submitting a request for payment to Europol in accordance with Article I-5 above, the consultant must forward the relevant monthly Timesheet for verification to the Contractor and for approval to Europol. Europol shall verify for consistency the Timesheets of each Consultant and will confirm the total number of Working Days performed. In case of inconsistency in the number of Working Days performed by the consultant as registered in the consultant's Timesheet and as registered by Europol, the information as registered by Europol shall prevail.

7. In case of replacement of a consultant performing *Services* under a Specific Contract, the Contractor is entirely responsible for maintaining continuity of the *Services* as specified in the relevant Specific Contract.

Where, for whatever reason a consultant is (i) unable to execute or to continue its tasks in accordance with the relevant Specific Contract or (ii) has breached the Europol security and confidentiality requirements and/or policy or (iii) Europol considers the consultant as inefficient or unable to perform its tasks as assigned under the Specific Contract, the Contractor must react immediately and replace such consultant at no whatsoever additional cost.

In case of replacement, the Contractor shall propose within a reasonable time limit set by Europol on case by case basis, as many replacement Personnel as possible who meet Europol's requirements stated in the request for offers and in the relevant Specific Contract at an equivalent or higher qualification level as the replaced consultant who shall complete the tasks specified in the Specific Contract.

It is the Contractor's responsibility to ensure that the replacement process has no negative impact on the performance of the *Services* specified in the Specific Contract and that knowledge and information are transferred from one member of the Contractor's Personnel to the other without any interruption of the *Services* and that a high level of quality is maintained at all times. The Contractor recognises that Europol's preferred option in case of replacement of Personnel is the implementation of "mentoring" ["paired" approach] i.e. an adjustment period of at least five (5) Working Days during which the original and replacement Personnel is working side by side for purpose of training and transfer of relevant information. The Contractor shall be obliged to propose such approach as first option at no costs for Europol.

Replacement may not result in any additional costs for Europol.

8. If replacement of a consultant is not possible for whatever reason or if Europol is not satisfied with the proposed replacement candidates, the Contractor may propose additional remedial actions which must be agreed expressly with Europol. Remedial action shall not result in additional costs for Europol.
9. If at any time during the provision of the *Services*, any of the Contractor's Personnel is required to travel, the Contractor shall be responsible for ensuring that it has and maintains at no costs to Europol adequate personal accident, medical and personal effects travel insurance for such purposes.

#### *Article I-21*

##### *Intellectual property rights*

This Article shall replace Article II-10 (General Conditions "Ownership of results - Intellectual and Industrial Rights"). References to Article II-10 shall be taken to mean reference to this Article I-21.

1. Europol acknowledges that in the course of performing this Contract, proprietary and/or open source software may be provided to Europol as part of the *Solution*. The Contractor is responsible for obtaining any necessary permissions and underlying licenses in relation to the supply of all such software, part of the *Solution* and its use by Europol.
2. In relation to any software provided to Europol as part of the *Solution*, the Contractor shall indemnify Europol for any third parties' claims in the matter of (possible) infringement of intellectual (property) rights of third parties and comparable claims relating to knowledge, including but not limited to illegal competition.

In relation to any open source software provided to Europol as part of the *Solution*, the Contractor must provide the same assurances as for the proprietary software. For such purpose the Contractor may conclude separate open source assurance agreements for the benefit of Europol.

Regardless of the proprietary or open source nature of the software, the indemnification shall cover the following:

- (i) defence and all legal costs against third-party action, as included in a final judgment against Europol;
- (ii) as applicable in accordance with the circumstances of the case:
  - obtainment of continued rights to use the software as stipulated in Contractor's Tender at Annex II at Contractor's own expense; and/or
  - modification or adjustment of the software so that it is non-infringing, while maintaining at least the mandatorily required functionalities as specified at Annex I, at Contractor's own expense;
  - replacement of the portion of the infringing software with non-infringing code with similar functionalities [similarity being determined by agreement of the parties], at Contractor's own expense;
- (iii) payment of damages to the third-party up to an amount of three (3) times the maximum value of the Contract;
- (iv) the indemnification must be valid and enforceable against the Contractor until **at least** the end of the Contract, including any renewal.

Each party undertakes to inform the other party of the existence or threat of any third party action or claim alleging an infringement of Intellectual property rights.

3. Without prejudice to what is defined above in this Article, Europol is entitled, should third parties hold Europol liable in the matter of violation of IP rights, to dissolve this Contract in writing, extrajudicially, in whole or in part, and with or without retrospective effect; further rights of Europol are not prejudiced. Europol shall make no use of its entitlement to dissolve this contract without prior consultation with the Contractor.
4. In relation to the off-the-shelf proprietary software (COTS software) and open source software provided as part of the *Solution* under this Contract, Europol acknowledges that the ownership of the intellectual property rights to such software shall not transfer to Europol. Rather, Europol is granted a perpetual, non-exclusive non-transferable worldwide license to use the software.
5. All intellectual property rights related to the implementation of the *Solution* other than those referred to at the paragraphs above are governed as follows:-
  - a. Data content of the *Solution* and all reports and/ or any other information and/or data generated by the *Solution* is and shall remain Europol property;

- b. Any pre-existing Europol intellectual property such as but not limited to Europol produced workflows, graphics/logos, know-how stays with Europol;
- c. Europol shall have by default ownership of all *Documentation* related to *Solution's* configurations;

Europol shall have by default ownership of all custom developed parts of the *Solution* and any IP associated with such customization, including *Documentation*. Europol may use, publish, assign or transfer them as it sees fit, without geographical or other limitation. The source code for any customisations together with release notes and any other *Documentation* and numbered versions of software must be provided to Europol upon delivery of *Services* under this Contract. This is a requirement for payment to be authorised under a Specific Contract involving customisation or IP generation. For avoidance of doubt, as owner of *Solution's* customisations, Europol is entitled to provide the source code for any such customisations and relevant *Documentation* to future suppliers of *Services* related to the *Solution*.

The parties hereby acknowledge and agree that Europol's first and always preferred option is to keep the source code to any customisation to the *Solution* proprietary and confidential. The Contractor shall use best efforts in order to ensure that the preferred option is complied with.

Without prejudice to the obligation above, Europol acknowledges that there may be 2 situations in which the above may not be applicable:

(i) the *Solution* contains open-source software under the Apache 2.0. license, therefore Europol acknowledges that it may be required to disclose and distribute the source code to customisations (if considered "derivative work" under the terms of the applicable open source license) back to the open source community. The Contractor must inform Europol immediately with regard to such obligation related to a particular customisation. The particular obligations of each party with regard to disclosure and distribution of the relevant source code to the customisation shall be decided in good faith and common agreement in light of the circumstances of the case.

In accordance with the Contractor's Tender and q. 59 of the clarifications at Annex II, [REDACTED] software is the sole open-source software component of the *Solution*. Following the terms of the license, derivative work (such as modifications or improvements) to [REDACTED] will be subject to the same Apache 2.0. licensing conditions;

(ii) in relation to proprietary software part of the *Solution*, Europol may provide license for or assign its IPR to specific custom developed parts or functionalities of the *Solution* to the Contractor for the purpose of integrating it and maintaining it into future and subsequent versions of the COTS *Software* for the purpose of increasing the *Solution* maintainability. The discretion to license or assign the IPR belongs solely to Europol and in no case is the Contractor entitled to claim such license or assignment. Europol shall anyway maintain as a minimum a

perpetual, nonexclusive, worldwide, royalty-free license to use any such Europol specific custom developed parts or functionalities of the *Solution*. If agreed by the parties, Europol may be entitled to additional discounts on *Maintenance*. For avoidance of doubt, Europol shall always be entitled to internally keep and provide the source code of the assigned customisations to future suppliers, providing Europol with services in connection to the *Solution* as evolved and for the purpose of servicing the *Solution*;

- d. The IPR to training courses and training materials custom developed for Europol under this Contract, including "train the trainer" courses and materials shall belong to Europol. The Contractor may further commercially exploit such courses and material only with Europol's prior written agreement.
- 6. Subject to paragraph (4) (d) above, any general training material as well as written information, drawings and diagrams prepared and/or provided by the Contractor to Europol during the implementation of this Contract and the copyright therein remain the property of the Contractor. Europol is granted a perpetual, non-exclusive, non-transferable worldwide, royalty-free license to use the training material and/or the provided information for non-commercial purposes.
- 7. The Contractor agrees to co-operate with other suppliers to make the *Solution* work with software from other providers if needed. It agrees to attend meetings called for that purpose by Europol at no costs for Europol.

*Article I-22*

*Security and confidentiality*

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*Article I-23*

*Liability*

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*Article I-24*

*Data Protection*

This Article shall replace Article II-13 (General Conditions 'Data Protection'). References to Article II-13 shall be understood as references to this Article I-24.

1. For the purpose of this Contract, "personal data" shall mean any information relating to an identified or identifiable natural person; where "identifiable person" means a person that can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his/her physical, physiological, mental, economic, cultural or social identity. In processing any personal data included in and/or relating to the Contract, including its execution, Europol shall take account of the principles of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981, of Recommendation No R (87) 15 of the Committee of Ministers of the Council of Europe of 17 September 1987 and observe the principles of the Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.
2. Personal data shall be processed by the parties solely for the purpose of performance and management of the Contract, without prejudice to Europol's

right of possible transmission of data to internal audit services, to the European Court of auditors, the Financial Irregularities Panel and to the European Anti-Fraud Office (OLAF) for the purposes of safeguarding the financial interests of the Union.

3. The Contractor's members of Personnel may, upon request, obtain communication of their own personal data and rectification of any inaccurate or incomplete personal data. Should a member of Personnel have any queries concerning the processing of its personal data, he/she shall address them to Europol's Data Protection Officer as referred to the following contact point: DPO@europol.europa.eu. With regard to the processing of the personal data, the Contractor's members of Personnel have the right to recourse at any time to Europol's Data Protection Officer.
4. The Contractor may not use and/or store personal data derived from Europol [i.e. act as a data processor] except insofar it is necessary for the performance of this Contract and in accordance with the requirements stated at Annex I. Personal Data relating to Europol staff obtained in the performance of this Contract shall be solely processed by the Contractor in accordance with the relevant national legislation implementing the Directive 95/46/EC. If requested by Europol, the Contractor shall inform Europol if it has its files registered with the relevant national data protection register of files and if requested by Europol, shall provide evidence of such registration [e.g. number of registration] for Europol's verification. If requested by Europol in writing, the Contractor shall provide additional information and/or evidence with regard to processing of Europol staff personal data at the required standards.
5. In relation to any personal data which the Contractor requires to store and use for the implementation of this Contract, the Contractor agrees to ensure appropriate technical and organisational measures for the security of the processing of against accidental or unlawful destruction, accidental loss, alteration, unauthorized disclosure or access, in particular when such processing of data involves the transmission of data over a network and against other unlawful forms of processing. If requested by Europol in writing, the Contractor shall provide within the shortest possible delays additional information with regard to the Contractor's internal technical and organizational measures for the security of processing of data.
6. The parties hereby expressly agree that the Contractor shall not provide such personal data to sub-contractors or other third-parties for whatever purpose without Europol's prior express written consent.

When Europol provided its consent for provision of personal data as referred to at the preceding sentence for (a) sub-contractor (s), the Contractor shall ensure that all its sub-contractors shall comply with data protection requirements at Annex I and the provisions of this Article, including guarantees in respect of the technical security measures and organizational measures.

The Contractor is responsible for ensuring the performance of this Article and compliance with it by its sub-contractors. If any evidence of compliance by

sub-contractors with this Article is requested by Europol, the Contractor shall be responsible for obtaining it.

7. If personal data of Europol staff is no longer necessary for the performance of the Contract, it shall be deleted or destroyed in accordance with Europol's instructions and such deletion or destruction shall be certified in writing.
8. The Contractor shall immediately notify Europol in the event that it becomes aware of any breach of this Article. The obligations in relation to personal data subsist for an unlimited period after the end [expiry or termination otherwise] of this Contract.
9. Europol or an outside body of its choice shall have the right of checks and audits on compliance with the obligations under this Article for a period of up to five years from the Contract Date.

#### *Article I-25*

##### *Termination of the contract*

By way of derogation and without prejudice to the rest of that Article II-19, Article II-19 (5) shall be modified as follows:

"5. Europol may claim compensation for any damage suffered and recover any sums paid to the Contractor under the Contract, should the termination be attributable to the Contractor in terms of this Article. Compensation for damage suffered shall be capped to the maximum values provided for at Article I-23 ("Liability")."

#### *Article I-26*

##### *Suspension of the contract*

Article II-24 ("Suspension of the contract") shall not apply.

## **II-General Conditions**

#### *Article II-1*

##### *General Definitions*

The following terms will be used with a capital letter in the Contract and as applicable, any Specific Contract concluded and/or Purchase Order placed under a Contract. These terms are understood to mean:

*Annex(es)*: attachment(s) to the Contract which form part of the Contract after being initialled by both parties;

*Contract*: the present framework contract and its Annexes;

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Europol's initials:  
Contractor's initials:

*Contract Date:* unless otherwise specified in the Special Conditions, the date on which the last party signs the Contract or, with regard to the Specific Contracts, the date on which the last party signs the Specific Contract;

*Contractor's Personnel:* personnel employed by the Contractor for the execution of the Contract, who work under the Contractor's responsibility. For purpose of clarification, this shall include any sub-contractor personnel;

*Europol:* the European Police Office, as established until 31/12/2009 by the Europol Convention the Council Act drawing up the Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (n° 7037/5/95, dated 20 July 1995) and thereafter by the Europol Council Decision effective from 1 January 2010 (06 April 2009 OJ L 121, 15.05.2009, p. 37);

*Europol Premises:* the offices of Europol, currently located Eisenhowerlaan 73, 2517 KK, The Hague, The Netherlands;

*Intellectual property rights (IPR)* unless otherwise specified in the Special Conditions IPR shall mean all industrial and intellectual property rights, such as, but not limited to, copyright, the rights of the producer of a database, patents, patent applications, utility models, any trademarks, trade names, designs and models;

*Working Day(s):* calendar day(s), with the exception of weekends and public holidays recognised as such by Europol, on which the agreed work will be carried out. A Working Day consists of 8 hours of work excluding travel to and from Europol and excluding breaks. Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971, OJ EC L124/1 will be applied to all periods, dates and time limits in this Contract.

In addition to the General Definitions used in this Article, Special Definitions may be defined at Article I-1 ("Special Definitions").

## *Article II- 2*

### *General Performance of the Contract*

1. The Contractor shall perform the Contract with due care, efficiency and diligence in accordance with the highest professional standards. The Contractor shall have sole responsibility for complying with its legal obligations, notably those resulting from employment, tax, health insurances and social legislation.
2. The Contractor shall have sole responsibility for taking the necessary steps to obtain any permit or licence required for performance of the Contract under the laws and regulations in force at the place where the tasks assigned to the Contractor are to be executed.
3. The Contractor shall neither represent Europol nor behave in any way that would give such an impression. The Contractor shall inform third parties that it does not belong to the European public service.
4. Should any unforeseen event, action or omission directly or indirectly hamper execution of the tasks, either partially or totally, the Contractor shall immediately and on its own initiative record it and report it to Europol. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with the obligations under the Contract. In such event the Contractor shall give priority to solving the problem rather than determining liability.
5. Should the Contractor fail to perform the obligations under the Contract in accordance with the provisions laid down therein, Europol may - without prejudice to its right to terminate the Contract - reduce or recover payments in proportion to the scale of the failure. In addition, Europol may impose penalties or liquidated damages provided for in Article II-20 ("Liquidated damages").

## *Article II-3*

### *Contractor's Personnel*

*(complemented by Article I-20)*

1. The Contractor shall be solely responsible for the Personnel executing tasks assigned to the Contractor.
2. The Contractor must ensure that any Personnel performing the Contract has the professional qualifications and experience required for the execution of the tasks assigned.
3. The Contractor shall make provision for the following employment or service relationships with the Contractor's Personnel:
  - Without prejudice to Article II-11 ("Confidentiality and Security"), Personnel executing the tasks assigned to the Contractor may not be given orders directly by Europol;

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Europol's initials:  
Contractor's initials:

- Europol may not, under any circumstances, be considered to be the employer of the Contractor's Personnel and the said Personnel shall undertake not to invoke in respect of Europol any right arising from the contractual relationship between Europol and the Contractor.
4. In the event of disruption resulting from the action of a member of the Contractor's Personnel working on Europol Premises or in the event of the expertise of a member of the Contractor's Personnel failing to correspond to the profile required by the Contract, the Contractor shall replace the Contractor's Personnel without delay. Europol shall have the right to request the replacement of any such member of Personnel, stating its reasons for so doing. Replacement Personnel must have the necessary qualifications and be capable of performing the Contract under the same contractual conditions. The Contractor shall be responsible for any delay in the execution of the tasks assigned to him resulting from the replacement of Personnel in accordance with this Article.

*Article II-4*

*Supply of goods*

*(complemented by Article I-13)*

1. This Article shall be applicable whenever Europol purchases goods under the Contract. If applicable and in accordance with Article I-7 ("Implementation of the Contract"), the phases of execution of a Purchase Order shall be as follows:
- (a) Sending the Purchase Order  
Whenever Europol wishes to be supplied pursuant to the Contract, it shall send a Purchase Order to the Contractor, in duplicate, specifying the terms of supply of the goods, such as quantity, designation, quality, price, place of delivery and time allowed for delivery, in accordance with the Conditions laid down in the Contract.
  - (b) Acknowledgement of the Purchase Order by the Contractor  
Within the period indicated in the Special Conditions, the Contractor shall return one original of the Purchase Order, duly signed and dated, thereby acknowledging receipt of the Order and acceptance of the terms.
2. Delivery of goods:
- (a) Europol shall be notified in writing of the exact date of delivery within the period indicated in the Special Conditions. All deliveries shall be made at the agreed place of delivery during the hours indicated in the Contract.
  - (b) The Contractor shall bear all costs and risks involved in delivering the goods to the place of delivery.
  - (c) Each delivery shall be accompanied by a *Consignment note* in duplicate, duly signed and dated by the Contractor or the Contractor's carrier, giving the Contract number and particulars of the goods delivered. One copy of the *Consignment note* shall be countersigned



by Europol and returned to the Contractor or to the Contractor's carrier.

- (d) All goods delivered to Europol Premises will be inspected and scanned prior to acceptance by Europol. The goods shall be packaged according to the usual method for goods of the same type or, failing this, in a way designed to preserve and protect that the contents remain intact and prevents damage or deterioration. Each box shall be clearly labelled with the following information:
- name (Europol) and address for delivery;
  - name of the Contractor;
  - description of contents;
  - date of delivery.
  - contract reference

Any damaged or suspiciously packaged goods will be refused.

3. Certificate of conformity:

- (a) Signature of the *Consignment note*, as provided for in paragraph 2 (c) above, by Europol is simply an acknowledgement of the fact that the delivery took place and in no way implies conformity of the goods with the Contract.
- (b) Conformity of the goods delivered shall be evidenced by the signing of a certificate to this effect by Europol no later than fifteen (15) days after the date of delivery.
- (c) Conformity shall be declared only where the conditions laid down in the Contract are satisfied and the goods conform to the tender specifications and the order quantity.
- (d) Where, for reasons attributable to the Contractor, Europol is unable to accept the goods, the Contractor shall be notified in writing at the latest by the deadline for conformity.
- (e) The certification of conformity in no way implies acceptance by Europol of latent defects (see paragraph 7 of this Article).

4. Conformity of the goods delivered:

- (a) The goods delivered by the Contractor to Europol must be in conformity with the quantity, quality, price and packaging specified in the Special Conditions and/or Annex I ("Tender Specifications").
- (b) The goods delivered must:
- be fit for any specific purpose required of them by Europol and made known to the Contractor at the time of conclusion of the Contract and accepted by the Contractor;
  - be fit for the purposes for which goods of the same type are normally used;

- if applicable, correspond to the description given in the tender specifications and possess the characteristics of the goods supplied by the Contractor to Europol as a sample or model;
- demonstrate the quality and performance which are normal in goods of the same type and which Europol can reasonably expect, given the nature of the goods and taking into account any public statements on the specific characteristics of the goods made by the Contractor, the manufacturer or its representative, particularly in advertising or on labelling;

5. Remedy:

- (a) The Contractor shall be liable to Europol for any lack of conformity which exists at the time the goods are verified.
- (b) In case of lack of conformity, without prejudice to Article II-20 ("Liquidated Damages") applicable to the total price of the goods concerned, Europol shall be entitled:
  - either to have the goods brought into conformity, free of charge, by repair or replacement;
  - or to have an appropriate reduction made in the price.
- (c) Any repair or replacement shall be completed within a reasonable time and without any significant inconvenience to Europol, taking account of the nature of the goods and the purpose for which they are required by Europol.
- (d) The term 'free of charge' in sub-paragraph (b) above refers to the costs incurred to bring the goods into conformity, particularly the cost of delivery, postage, labour and materials.

6. Assembly and/or Installation:

- (a) The Contractor shall assemble the goods delivered within a period of one month unless otherwise specified in the Special Conditions and/or in Annex I ("Tender Specifications").
- (b) Any lack of conformity resulting from incorrect installation of the goods delivered shall be deemed to be equivalent to lack of conformity of the goods if installation forms part of the Contract and the goods were installed by the Contractor or under its responsibility. This shall apply equally if the goods were to be installed by Europol and were incorrectly installed due to a shortcoming in the installation instructions.

7. Guarantee:

The goods shall be guaranteed against all defects in manufacture or materials for a minimum period of two (2) years from the date of delivery, unless provision is made for a different period in the Special Conditions and/or in Annex I ("Tender Specifications").

The Contractor shall guarantee that any permits and licenses required for manufacturing and selling the goods have been obtained.

The Contractor shall replace at its own expense, within a reasonable time limit to be determined by written agreement between the parties, any goods and/or parts of goods which become damaged or defective in the course of normal use during the guarantee period. The Contractor is responsible for any conformity defect which existed at the time of delivery, even if this defect does not appear until a later date (latent defect).

The Contractor is also responsible for any conformity defect which occurs after delivery and is ascribable to non-compliance with the contractual obligations, including failure to provide a guarantee that, for a certain period, goods used for the purposes for which they are normally used or for specific purpose will preserve their qualities or characteristics as specified in writing between the parties.

If part of an item is replaced, the replacement part shall be guaranteed under the same terms and conditions for a further period of the same duration as that specified above.

If a defect is found to originate in a systematic flaw in design, the Contractor must replace or modify all identical parts incorporated in the other goods that are part of the Contract, even though they may not have been the cause of any incident. In this case the guarantee period shall be extended as stated above.

#### *Article II-5*

##### *Liability*

NOT APPLICABLE; REPLACED BY ARTICLE I-23

#### *Article II-6*

##### *Conflicts of Interest*

1. The Contractor shall take all necessary measures to prevent any situation that could compromise the impartial and objective performance of the Contract. Such conflict of interests could arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest. Any conflict of interests which could arise during performance of the Contract must be notified to Europol in writing without delay. In the event of such conflict, the Contractor shall immediately take all necessary steps to resolve it.
2. Europol reserves the right to verify that such measures are adequate and may require additional measures to be taken, if necessary, within a time limit which it shall set. The Contractor shall ensure that its Personnel, board and directors are not placed in a situation which could give rise to conflict of interests. Without prejudice to Articles II-2 ("General Performance of the Contract) II-3 ("Contractor's Personnel") and II-4 ("Supply of goods"), the Contractor shall replace, immediately and without compensation from Europol, any member of its Personnel exposed to such a situation.

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Europol's initials:  
Contractor's initials:

3. The Contractor shall abstain from any contact likely to compromise its independence.
4. The Contractor declares that it has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, where such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, inasmuch as it is an incentive or reward relating to performance of the Contract.
5. The Contractor shall pass on all the relevant obligations in writing to its Personnel, board, and directors involved in the performance of the Contract. A copy of the instructions given and the undertakings made in this respect shall be sent to Europol should it so request.

#### *Article II-7*

#### *Invoicing and payment*

##### *Pre-financing:*

1. Where required by Article I-5 ("Payment periods"), the Contractor shall provide a financial guarantee in the form of a bank guarantee or equivalent supplied by a bank or an authorised financial institution (guarantor) equal to the amount indicated in the same Article to cover pre-financing under the Contract. Such guarantee may be replaced by a joint and several liability by a third party.
2. The guarantor shall pay to Europol at its request an amount corresponding to payments made by it to the Contractor which have not yet been covered by equivalent work on its part.
3. The guarantor shall stand as first-call guarantor and shall not require Europol to have recourse against the principal debtor (the Contractor).
4. The guarantee shall specify that it enters into force at the latest on the date on which the Contractor receives the pre-financing. Europol shall release the guarantor from its obligations as soon as the Contractor has demonstrated that any pre-financing has been covered by equivalent work. The guarantee shall be retained until the pre-financing has been deducted from interim payments or payment of the balance to the Contractor. It shall be released the following month. The cost of providing such guarantee shall be borne by the Contractor.

##### *Interim Payment:*

5. At the end of each of the periods indicated in the Special Conditions and/or Annex I ("Tender Specifications") the Contractor shall submit to Europol a formal request for payment accompanied by the following, as applicable:
  - a) any document (s) and/or information specifically required in the Special Conditions;

- b) an interim technical report in accordance with the instructions laid down in the Special Conditions and/or in Annex I ("Tender Specifications");
- c) the relevant invoices indicating the reference number of the Contract and/or of the Specific Contract and/or of the Purchase Order to which they refer;
- d) if applicable, statements of reimbursable expenses in accordance with Article I-6 ("Reimbursement of expenses");
- e) If the report is a condition for payment, on receipt Europol shall have the period of time indicated in the Special Conditions in which:
  - (i) to approve it, with or without comments or reservations, or suspend such period and request additional information; or
  - (ii) to reject it and request a new report.

If Europol does not react within this period, the report shall be deemed to have been approved. Approval of the report does not imply recognition either of its regularity or of its authenticity, completeness or correctness of the declarations or information enclosed.

Where Europol requests a new report because the one previously submitted has been rejected, this shall be submitted within the period of time indicated in the Special Conditions. The new report shall likewise be subject to the above provisions.

Payment of the balance:

6. Within sixty (60) days of completion of the tasks referred to in the Special Conditions and /or Annex I ("Tender Specifications"), each Specific Contract and/or Purchase Order, the Contractor shall submit to Europol a formal request for payment accompanied by the following, as applicable:
  - a) any document (s) and/or information specifically required in the Special Conditions;
  - b) a final technical report in accordance with the instructions laid down in the Special Conditions and/or Annex I ("Tender Specifications");
  - c) the relevant invoices indicating the reference number of the Contract and/or of the Specific Contract and/or of the Purchase Order to which they refer;
  - d) if applicable, statements of reimbursable expenses in accordance with Article I-6 ("Reimbursement of expenses");
  - e) If the report is a condition for payment, on receipt Europol shall have the period of time indicated in the Special Conditions in which:
    - (i) to approve it, with or without comments or reservations, or suspend such period and request additional information; or
    - (ii) to reject and request a new report.

If Europol does not react within this period, the report shall be deemed to have been approved. Approval of the report does not imply recognition either of its regularity or of its authenticity, completeness or correctness of the declarations and information enclosed.

Where Europol requests a new report because the one previously submitted has been rejected, this shall be submitted within the period of time indicated in the Special Conditions. The new report shall likewise be subject to the above provisions.

#### *Article II-8*

##### *General Conditions concerning Payments*

1. Request(s) for payment shall be sent to:  
Europol Finance Unit  
P.O. Box 90850  
2509 LW - THE HAGUE - The Netherlands (NL)
2. Payments shall be deemed to have been made on the date on which Europol's account is debited.
3. The payment periods referred to in Article I-5 in the Special Conditions ("Payment periods") may be suspended by Europol in the case as specified at Article II-15 ("Force Majeure") or at any time if it informs the Contractor that a payment request is not admissible, either because the amount is not due or because the necessary supporting documents have not been properly produced. In case of doubt on the eligibility of expenditure indicated in the payment request, Europol may suspend the time limit for payment for the purpose of further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the expenditure is eligible.
4. Europol shall notify the Contractor accordingly by registered letter with acknowledgement of receipt or equivalent. The remainder of the period referred to in Article I-5 ("Payment periods") shall begin to run again once the suspension has been lifted.
5. In the event of late payment the Contractor shall be entitled to interest (even without the need to submit a claim) provided the calculated interest exceeds EUR 200<sup>3</sup> (two hundred Euro). In case interest does not exceed EUR 200, the Contractor may claim interest within two (2) months of receiving the payment. Interest shall be calculated at the rate applied by the European Central Bank to its most recent main refinancing operations ("the reference rate") plus seven (7) percentage points ("the margin"). The reference rate in force on the first day of the month in which the payment is due shall apply. Such interest rate is published in the C series of the OJEU. Interest shall be payable for the period elapsing from the calendar day following expiry of the

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<sup>3</sup> The default interest begins to accrue from the first day following the expiry of the payment period.

time limit for payment up to the day of payment. Suspension of payment by Europol may not be deemed to constitute late payment.

6. If the Contractor requires payment to be made to a bank account outside The Netherlands, to facilitate international payments, the Contractor shall send with the invoice the following details:

- IBAN code
- Swift/BIC Code
- Full name and address of the bank
- Full name and address of the beneficiary (as registered with the Bank), and
- any other available details.

If those details are not provided, Europol shall charge the Contractor for the full banking costs, both domestic and international.

#### *Article II- 9*

##### *Recovery*

1. If total payments made exceed the amount actually due or if recovery is justified in accordance with the terms of the Contract, the Contractor shall reimburse the appropriate amount in EURO on receipt of the debit note, in the manner and within the time limits set by Europol.
2. In the event of failure to pay by the deadline specified in the request for reimbursement, the sum due shall bear interest at the rate indicated in Article II-8.5 ("General conditions concerning Payments"). Interest shall be payable from the calendar day following the due date up to the calendar day on which the debt is repaid in full.
3. In the event of failure to pay by the deadline specified in the request for reimbursement, Europol may, after informing the Contractor, recover amounts established as certain, of a fixed amount and due by offsetting, in cases where the Contractor also has a claim on Europol that is certain, of a fixed amount and due. Europol may also claim against the guarantee, where provided for.

#### *Article II-10*

##### *Ownership of the results- Intellectual and Industrial property*

Not applicable, see provisions at Special conditions

#### *Article II-11*

##### *Confidentiality and Security*

NOT APPLICABLE. REPLACED BY ARTICLE I-11.

*Article II-12*

*Use, distribution and publication of information*

1. The Contractor shall authorise Europol to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, any data contained in or relating to the Contract, in particular the identity of the Contractor, the subject matter, the duration, the amount paid and the reports. Where personal data is concerned, Article II-13 ("Data protection") shall apply.
2. Unless otherwise provided by the Special Conditions, Europol shall not be required to distribute and/or publish documents and/or information supplied in performance of the Contract. If it decides not to publish the documents and/or information supplied, the Contractor may not have them distributed or published elsewhere without prior written authorisation from Europol.
3. Any distribution and/or publication of information relating to the Contract by the Contractor shall require prior written permission from Europol. Europol is entitled to stipulate conditions when granting permission. It shall state that the opinions expressed are those of the Contractor only and do not represent Europol's official position.
4. The use of information obtained by the Contractor in the course of the Contract for purposes other than its performance shall be forbidden, unless Europol has specifically given prior explicit written authorisation to the contrary.

*Article II-13*

*Data protection*

NOT APPLICABLE. REPLACED BY ARTICLE I-24.

*Article II-14*

*Taxation*

1. The Contractor shall have sole responsibility for compliance with the tax laws which apply to him. Failure to comply shall make the relevant invoices invalid.
2. The Contractor recognises that Europol is, as a rule, exempt from all taxes and duties, including value added tax (VAT), pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union.
3. The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the goods and services required for performance of the Contract are exempt from taxes and duties, including VAT.



4. Invoices presented by the Contractor shall indicate its place of taxation for VAT purposes and shall specify separately the amounts not including VAT and the amounts including VAT.
5. If the Contractor is a Dutch registered company, the Contractor shall ensure that all invoices issued to Europol under the Contract are including VAT, which shall be reclaimed by Europol from the Dutch Tax authorities. If required, the Contractor shall provide Europol with all necessary assistance to facilitate the procedure to reclaim VAT.

#### *Article II-15*

#### *Force Majeure*

1. Force Majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the parties which prevents either of them from performing any of their obligations under the Contract, was not due to error or negligence on their part or on the part of a subcontractor, and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making it available, labour disputes, strikes or financial problems cannot be invoked as Force Majeure unless they stem directly from a relevant case of Force Majeure.
2. Without prejudice to the provisions of Articles II-2 ("General Performance of the Contract), II-3 ("Contractor's Personnel") and II-4 ("Supply of goods"), if either party is faced with Force Majeure, it shall notify the other party without delay by registered letter with acknowledgment of receipt or equivalent, stating the nature, likely duration and foreseeable effects. A party affected by an event of Force Majeure shall take all reasonable measures to remove such party's inability to fulfil its obligations hereunder with a minimum delay.
3. Neither party shall be considered to be in breach of its obligations under the Contract if the performance of such obligations is prevented by any circumstances of Force Majeure which arise after the date of notification of the award of the Contract or the date when the Contract becomes effective.
4. When faced with Force Majeure, the Contractor shall continue to perform its obligations under the Contract as far as is reasonably practicable, and shall seek all reasonable alternative means for performance of its obligations which are not prevented by the Force Majeure event. The Contractor shall not put into effect such alternative means without Europol's prior written consent.
5. Where the Contractor is unable to perform its obligations owing to Force Majeure, the Contractor shall have the right to remuneration only for tasks actually executed.

#### *Article II-16*

#### *Subcontracting*

1. The Contractor shall not subcontract without prior written authorisation from Europol nor cause the Contract to be performed in fact by third parties.

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Europol's initials:  
Contractor's initials:

2. Even where Europol authorises the Contractor to subcontract to third parties, the Contractor shall none the less remain bound by its obligations to Europol under the Contract and shall bear exclusive liability for proper performance of the Contract.
3. The Contractor shall make sure that the subcontract does not affect rights and guarantees to which Europol is entitled by virtue of the Contract, notably Article II-21 ("Checks and audits").

#### *Article II-17*

##### *Assignment*

The Contractor shall not assign the rights and obligations arising from the Contract, in whole or in part, without prior written authorisation from Europol.

In the absence of such authorisation, or in the event of failure to observe the terms thereof, assignment by the Contractor shall not be enforceable against and shall have no effect on Europol.

#### *Article II-18*

##### *Substantial errors, irregularities and fraud attributable to the Contractor*

1. Where after the award of the Contract Europol becomes aware of the fact that the award procedure or performance of the Contract is or was vitiated by substantial errors or irregularities or by fraud, Europol may suspend the performance of the Contract.
2. Where such errors, irregularities or fraud are attributable to the Contractor, Europol may in addition refuse to make payments or may recover amounts already paid, in proportion to the seriousness of the errors, irregularities or fraud. Europol may also suspend payments in cases where there are suspected or established errors, irregularities or fraud committed by the Contractor in the performance of another Contract funded by the general budget of the European Union or by budgets managed by it which are likely to affect the performance of the Contract.

#### *Article II-19*

##### *Termination of the Contract*

1. Europol may terminate the Contract or as applicable, a Specific Contract and/or a pending Purchase Order in the following circumstances:
  - a. where the Contractor is being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislations or regulations;

- b. where the Contractor has been convicted of an offence concerning its professional conduct by a judgment which has the force of *res judicata*;
  - c. where the Contractor has been guilty of grave professional misconduct proven by any means which Europol can justify;
  - d. where the Contractor has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which the Contractor is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed. Europol may terminate a Contract without notice if the Contractor is unable, through its own fault, to obtain any permit or licence required for the performance of the Contract;
  - e. where Europol seriously suspects the Contractor of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Union's financial interests;
  - f. where the Contractor is in breach of the obligations under Article II-6 ("Conflicts of Interest");
  - g. where the Contractor was guilty of misrepresentation in supplying the information required by Europol as a condition of participation in the Contract procedure or failed to supply this information;
  - h. where a change in the Contractor's legal, financial, technical or organisational situation could, in Europol's opinion, have a significant effect on the performance of the Contract;
  - i. where the implementation of the Contract or as applicable, implementation of Specific Contracts, performance of obligations or execution of the tasks under a pending Purchase Order has not actually commenced within the delivery or performance set in the Contract and the new date proposed, if any, is considered unacceptable by Europol;
  - j. where the Contractor, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period following receipt of the formal notice, remains in serious breach of its contractual obligations.
2. In case of Force Majeure, notified in accordance with Article II-15, a party may terminate the Contract, where performance thereof cannot be ensured for a period corresponding to at least 1/5 (one fifth) of the period laid down in Article I-3 in the Special Conditions ("Duration").
  3. Prior to termination under point e) and h), the Contractor shall be given the opportunity to submit its observations.
  4. Termination shall take effect on the date on which a registered letter with acknowledgement of receipt terminating the Contract is received by the Contractor, or on any other date indicated in the letter of termination.
  5. In the event of Europol terminating the Contract, or as applicable the Specific Contract or a pending Purchase Order in accordance with this Article and without prejudice to any other measures provided for in the Contract, the

Contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce its commitments. The Contractor shall draw up the documents required by the Special Conditions for the tasks executed up to the date on which termination takes effect, within a period not exceeding sixty (60) days from that date.

Europol may claim compensation for any damage suffered and recover any sums paid to the Contractor under the Contract.

On termination Europol may engage any other contractor to execute and/or complete the goods and/or services. Europol shall be entitled to claim from the Contractor all extra costs incurred in doing so, without prejudice to any other rights or guarantees enforceable under the Contract.

#### *Article II-20*

##### *Liquidated damages*

Should the Contractor fail to perform its obligations under the Contract within the time limits set by a Purchase Order placed or Specific Contract concluded under this Contract, then, without prejudice to the Contractor's actual or potential liability incurred in relation to the Contract or to Europol's right to terminate the Contract, the relevant Purchase Order or Specific Contract, Europol may decide to impose liquidated damages of 1% of the amount specified in the Purchase Order or Specific Contract relevant for the late delivery and/or late performance per calendar day of delay. The Contractor may submit written arguments against this decision within thirty (30) days of notification by registered letter with acknowledgement of receipt or equivalent. Unless the Contractor reacts within (30) days or unless Europol withdraws in writing the decision on impositions of liquidated damages, the decision shall become enforceable. These liquidated damages shall not be imposed where there is a provision for interest for late completion. Europol and the Contractor expressly acknowledge and agree that any sums payable under this Article are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the losses that may be reasonably anticipated from such failure to perform obligations.

#### *Article II-21*

##### *Checks and audits*

1. The European Court of Auditors shall be empowered to audit the documents held by the natural or legal persons receiving payments from the budget of the European Union from signature of the Contract up to five (5) years after payment of the balance of the last implementation.
2. Europol or an outside body of its choice shall have the same rights as the European Court of Auditors for the purpose of checks and audits limited to

compliance with contractual obligations from signature of the Contract up to five years after payment of the balance of the last implementation.

3. In addition, the European Anti-Fraud Office may carry out on-the-spot checks and inspections in accordance with Council regulation (Euratom, EC) No 2185/96 and Parliament and Council Regulation (EC) No 1073/1999 from signature of the Contract up to five (5) years after payment of the balance of the last implementation.

#### *Article II-22*

##### *Applicable law and Dispute Settlement*

1. The Contract shall be governed by the law of the Netherlands complemented, where necessary, by Union law.
2. Any dispute between the parties resulting from the interpretation and/or application of the Contract which cannot be settled amicably shall be brought before the courts of The Hague.
3. Without prejudice to paragraph 1 and 2 above, in the event that any dispute arises between the parties resulting from the interpretation or application of the Contract and the dispute is not resolved by negotiation, the Contracting parties may agree to submit the dispute to mediation.
4. If any party to the dispute gives written notice to the other party of its desire to commence mediation, and the other party agrees in writing, the parties shall jointly appoint a mutually acceptable mediator within 2 weeks of the date of the said written agreement. If the parties are unable to agree upon the appointment of the mediator within that time period, any party may apply to a court, organisation or person agreed by the parties when signing the Contract, for the appointment of a mediator.
5. The mediator's written proposal or his written conclusion stating that no proposal can be made, shall be produced within two (2) months of the date of the written agreement by the second party to commence mediation. The mediator's proposal or conclusion shall not be binding for the parties, who reserve the right to bring the dispute before the courts, in accordance with paragraph 1 and 2 above.
6. Within two (2) weeks of the date of notification of the proposal by the mediator, the parties can conclude a written agreement, duly signed by all parties, based on the proposal. The parties further agree to share equally the costs of mediation, which will not include any other costs incurred by a party in connection with the mediation.

#### *Article II-23*

##### *Amendments*

Any amendment to the Contract shall be the subject of a written agreement concluded by the parties. An oral agreement shall not be binding on the parties. A Specific Contract is not be deemed to constitute an amendment to the Contract.

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30 NOV 2020

*Article II-24*  
*Suspension of the Contract*

NOT APPLICABLE.

*Article II-25*  
*Severability*

1. If any provision of the Contract is, for any reason, held to be illegal, in full or in part, or invalid, or if its legality or validity is otherwise affected, the validity of the remaining legal and valid provisions of the Contract will not be affected. In place of such illegal or invalid provisions or for the purpose of filling a contractual gap in the Contract, an appropriate provision shall be applied, which, as far as legally possible will be as close as possible to the intentions and the purpose of the parties.
2. The parties agree to negotiate in good faith in order to replace an invalid provision with a provision which comes closest to the intent and purpose of the parties.

*Article II-26*  
*Final provision*

Notifications which parties make to each other based on the Contract with Europol will be made in writing. Verbal notifications, promises or agreements have no legal power unless they are confirmed in writing.

For Contractor

For Europol



signature\_\_\_\_\_

signature\_\_\_\_\_

Done at \_\_\_\_\_ on

Done at The Hague, on

In duplicate in English.

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