

Annex 2: Framework Agreement template (between ECMWF and its contractors), including Service Contract template

ECMWF



THE EUROPEAN CENTRE FOR MEDIUM RANGE WEATHER FORECASTS

AND

[NAME OF CONTRACTOR]

FRAMEWORK AGREEMENT FOR COPERNICUS SERVICES

FRAMEWORK AGREEMENT [NUMBER] FOR THE PROVISION OF

[BRIEF DESCRIPTION OF SERVICES]

Version 7, issued 26 October 2015.



Funded by the European Union

Implemented by



This Agreement is made on **DG of ECMWF will insert date by hand when he signs**

By and between:

- (1) The European Centre for Medium-Range Weather Forecasts, an inter-governmental organisation, governed by its Convention and associated Protocol on Privileges and Immunities, based at Shinfield Park, Reading, RG2 9AX, United Kingdom (“**ECMWF**”); and
- (2) **[Name and address of Contractor]** the (“**Contractor**”)

(In the terms of this Agreement, ECMWF and the Contractor may each be referred to as a “**Party**” or, collectively as “**Parties**”.)

By the application of an authorised signature, the Parties each show their intention and willingness to be bound by the terms of this Agreement, with effect from the date shown above.

SIGNED for and on behalf of **ECMWF**:

.....

Signature

.....

Print name

.....

[Title]

SIGNED for and on behalf of **[.....]**

.....

Signature

.....

Print name

.....

[Title]

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1 Introduction

1.1 Framework Agreement - Parts

- 1.1.1 This framework agreement comprises:
 - 1.1.1.1 the Clauses;
 - 1.1.1.2 Annex 1 – ECMWF's Specification for the Framework Agreement (including any clarifications which extend the rights or obligations of either party);
 - 1.1.1.3 Annex 2 – Contractor's Tender for Framework Agreement (including any clarifications which extend the rights or obligations of either party);
 - 1.1.1.4 Annex 3 – Model of Service Contract;
 - 1.1.1.5 Annex 3A – ECMWF's Request for Services (including any clarifications which extend the rights or obligations of either party);
 - 1.1.1.6 Annex 3B - Contractor's Response to Request for Service (including any clarifications which extend the rights or obligations of either party);
 - 1.1.1.7 Annex 3C - Financial Annex in relation to specific Services (including any clarifications which extend the rights or obligations of either party);
 - 1.1.1.8 Annex 4 – Software;
 - 1.1.1.9 the other ITT Documentation (including any clarifications which extend the rights or obligations of either party);
all of which form an integral part of this framework agreement (hereinafter referred to as the **"Agreement"**).
- 1.1.2 Conflict between the provisions of one document in the Agreement and another shall be resolved in accordance with the following order of precedence:
 - 1.1.2.1 the clauses of a Service Contract;
 - 1.1.2.2 the Clauses;
 - 1.1.2.3 Annex 4 (Software) if applicable;
 - 1.1.2.4 Annex 3C (Financial Annex to Service Agreement);
 - 1.1.2.5 Annex 3A (ECMWF's Request for Service);
 - 1.1.2.6 Annex 1 (ECMWF's Specification for Framework Agreement);
 - 1.1.2.7
 - 1.1.2.8 Annex 3B (Contractor's Response to Request for Service);
 - 1.1.2.9 Annex 2 (Contractor's Tender for Framework Agreement); and
 - 1.1.2.10 other ITT Documentation and its subsequent amendments and clarifications.

1.2 Definitions and Interpretation

- 1.2.1 In this Agreement, the following words and phrases shall have the following meanings except where the context requires otherwise:

"Agreement" shall have the meaning set out in Clause 1.1.1

"Assets" means all tangible and intangible assets which:

- a) are created or acquired by the Contractor for the purpose of or in the course of performing the Services; and
- b) ECMWF funds, in whole or in part, through the payments it makes to the Contractor under the terms of this Agreement or a related Service Contract; and
- c) are worth more than Euro 7000; and
- d) are not items of Integrated Technology

“Business Day”

means a day other than a Saturday, Sunday or bank or public holiday in England & Wales or in the country in which the Contractor is situated;

“C3S”

means the Copernicus Climate Change Service referred to in the Copernicus Regulation;

“CAMS”

means the Copernicus Atmospheric Monitoring Service referred to in the Copernicus Regulation;

“Change”

means a change of all or part of the Services and/or the Specification requested in accordance with Clause 2.5 (Service Change);

“Claim”

means any action, claim, demand, proceeding, filing, objection or complaint of any nature or kind;

“Commission”

means the European Commission;

“Commitment”

shall have the meaning set out in article 10 of the Financial Regulation;

“Confidential Information”

means:

- a) the terms of this Agreement;
- b) all information disclosed to the relevant Party by or on behalf of the other Party in connection with this Agreement and/or a Service Contract and which relates to the provisions of this Agreement and/or a Service Contract or the negotiations relating to this Agreement and/or a Service Contract;
- c) know-how, secret processes and inventions disclosed to the relevant Party by or on behalf of the other Party in connection with this Agreement and/or a Service Contract;
- d) all other information disclosed to the relevant Party by or on behalf of the other Party (whether before or after the date of this Agreement) which is marked as or has been otherwise indicated to be confidential or which derives value to a Party from being confidential or which would be regarded as confidential by a reasonable business person;

“Conflict of Interests”	shall have the meaning set out in Clause 2.3.6.1;
“Contract Officer”	means ECMWF’s manager of this Agreement, relevant Service Contracts and the Services, appointed pursuant to Clause 2.4.3 (Contract Officers, Service Managers and other Key Personnel);
“Contractor Personnel”	means the employees, agents, consultants and Sub-contractors of the Contractor and of any Sub-contractor, who provide or who are involved in the delivery of the Services;
“Contractor’s Tender”	means the Contractor’s tender for the Framework Agreement set out at Annex 2;
“Copernicus Logo”	means the logo shown at http://www.copernicus.eu/ and registered at the European Office for the Harmonisation in the Internal Market https://oami.europa.eu/
“Copernicus Programme”	means the programme established by the Copernicus Regulation;
“Copernicus Regulation”	means Regulation (EU) No 377/2014 of the European Parliament and of the Council of 3 April 2014 establishing the Copernicus Programme, OJ L 122, 24/04/2014, p. 44;
“Corruption”	shall have the meaning defined in the Convention (made on the basis of Article K.3 (2)(c) of the Treaty on European Union) on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union of 26 May 1997 (OJ C 195, 25.6.1997);
“Criminal Organisation”	shall have the meaning defined by Decision 2008/841 OJ L 300, 11.11.2008, p. 42, see http://eur-lex.europa.eu/legal-content/EN/NOT/?uri=CELEX:32008F0841
“Data Protection Law”	means Directive 95/46/EC, as amended and subordinate national Law applicable to the Contractor;
“Default”	means any act, statement, failure to meet the Specification, non-performance of contractual obligations, omission or negligence by a Party in connection with, or in relation to, the subject matter of this Agreement and/or a Service Contract as a result of which the Party is legally liable to the other whether in contract or in tort;
“Deliverables”	mean all those things to be produced and delivered to or made accessible to ECMWF as part of the Services. Deliverables are identified in Annexes 1, 2 3A and 3B and may include individuals or multiples of the following, without limitation, numerical datasets, reports, graphics, web content, software, algorithms, models, prototypes, Copernicus Information (as defined at Article 3(8) of the

Copernicus Regulation), research and development results, and documentation of implemented processes and algorithms;

“Delegation Agreement”

means the Delegation Agreement between the European Commission and ECMWF in respect of the Copernicus Programme dated 11 November 2014;

“Dispute Resolution Procedure”

means the procedure set out in Clause 2.6 (Process of Resolving Disputes) for the resolution of disputes arising under or in connection with this Agreement and/or a Service Contract;

“Effective Date”

means the [date];

“Exceptions”

means occasions when the Contractor's internal controls are overridden ex ante;

“Final Report”

shall have the meaning set out in Clause 2.3.4(Final Report);

“Financial Regulation”

means the Financial Rules applicable to management of the budget of the Union (EU, EURATOM) No 066/2012 together with the associated Rules of Application (EU) No 1268/2012;

“Force Majeure”

means the occurrence of any cause or event that is beyond the reasonable control of the affected Party, provided that the affected Party is without fault in causing or failing to prevent such occurrence; and the effect of such occurrence on the affected Party could not have been circumvented by reasonable precautions or by the use of commercially reasonable alternative sources, workaround plans or other means. Force Majeure may include:

- a) natural disaster;
- b) epidemic or pandemic;
- c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- d) nuclear, chemical or biological contamination or sonic boom;
- e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- f) collapse of buildings, fire, explosion or accident;
- g) strikes, lockouts or other industrial disputes excluding any relating to or induced by the workforce of the affected Party; and
- h) interruption or failure of utility service;

“Fraud”	shall have the meaning defined in the Convention (made on the basis of Article K.3 of the Treaty on European Union) on the protection of the European Communities' financial interests of 26 July 1995 (OJ C 316, 27.11.1995);
“Funds”	means any sums of money paid by ECMWF to the Contractor, under the terms of this Agreement or a related Service Contract, including any sums, which the Contractor pays to a Sub-contractor for its contribution to the Services.
“Good Industry Practice”	means the degree of skill, diligence, prudence, efficiency, timeliness and foresight which would reasonably be expected from a skilled and experienced contractor of similar services seeking to comply with his contractual obligations and seeking to avoid any liability arising under any duty of care that might reasonably be contemplated by such a contractor;
“Implementation Plan”	means the plan required from the Contractor in advance of each Service Contract except the first and referred to at Clause 2.1.2.1(iv). The process for production of each Implementation Plan is explained in more detail in Annex 1 (ECMWF's Specification for Framework Agreement);
“Insolvency Event”	means where a person is bankrupt or being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
“Integrated Technology”	means any Technology which meets the first three conditions of being an Asset but which both Parties agree is indivisible from or impractical to use except in connection with one or more items of Pre-Existing Technology;
“Intellectual Property Rights”	means patents, petty patents, utility models, trade marks, design rights, applications for any of the foregoing, copyright, moral rights, database rights, semi-conductor topography rights, trade or business names, domain names, website addresses whether registerable or otherwise, (including applications for and the right to apply for registration of any such rights), and any similar rights in any country whether currently existing or created in the future, in each case for their full term, together with any renewals or extensions;
“ITT Documentation”	means the various documents forming part of ECMWF's Invitation to Tender, being Volumes I to V and associated

communications and templates, published through ECMWF's e-procurement portal;

“Key Performance Indicators”

also “KPI's” means those key performance indicators proposed by the Contractor in Annex 2 (Contractor's Tender for Framework Agreement), confirmed or varied in Annex 3B (Contractor's Response to Request for Service) and accepted by ECMWF as applying to the Services;

“Law”

means a statute, statutory instrument, regulation, order, and other legislative provision in any jurisdiction including any delegated or subordinate legislation, and any judgment of a relevant court of law or decision of a tribunal or competent authority;

“Loss”

means any Claims costs, damages, demands, expenses, fines, liabilities, losses, penalties and sanctions (including amounts paid in settlement, out-of-pocket expenses and interest);

“Milestone”

means an event identified as a milestone in this Agreement or a related Service Contract;

“Money Laundering”

shall have the meaning defined by INTERPOL at: <http://www.interpol.int/Crime-areas/Financial-crime/Money-laundering>

“Non-Compliance Event”

means an occasion when the Contractor's internal controls are overridden ex post;

“Ownership”

means legal and beneficial title, the right to assert ownership in all territories worldwide and control over all rights relating to the thing owned;

“Performance Targets”

means those performance targets, if any, which are identified and agreed for the Services covered by a particular Service Contract;

“Pre-Existing Technology”

means any Technology which is the subject of industrial and Intellectual Property Rights (e.g. rights of ownership and use by ECMWF, the Contractor, the creator, the Union or any third party) and which exists prior to ECMWF ordering something under this Agreement or a Service Contract for which such Technology is put to use with or without modification or adaptation;

“Price”

means the total price payable to the Contractor for the Services under a particular Service Contract. The Price is shown in the body of the Service Contract, in accordance with Annex 3 (Model Service Contract);

“Related Person”

means any natural person that has the power to represent the Contractor or to take decisions on its behalf;

“Request for Service”	means ECMWF’s written call for Services, for a specific period of time within the Term, under the terms of this Agreement, a copy of which shall be annexed to the resulting Service Contract (Annex 3A);
“Response to Request for Service”	means the Contractor’s response to a Request for Service by ECMWF, a copy of which shall be annexed to the resulting Service Contract (Annex 3B);
“Risk Register”	means the risk register and risk management plan, which is required in Annex 1 (ECMWF’s Specification for Framework Agreement), which the Contractor has set out in Annex 2 (Contractor’s Tender for Framework Agreement), which Contractor will keep up-to-date during the Term and which the Parties will discuss in relation to the Services, from time to time;
“Service Contract”	means an agreement for the provision of the Services by the Contractor to ECMWF over a specific period of time within the Term, agreed in accordance with Clause 1.5 (Service Contracts – Purpose and Process);
“Service Manager”	means the Contractor’s manager of this Agreement, relevant Service Contracts and the Services, appointed pursuant to Clause 2.4.3 (Contract Officers, Service Managers and other Key Personnel);
“Services”	means the services described in Annex 1 (ECMWF’s Specification for Framework Agreement) and Annex 3A (ECMWF’s Request for Service) and acknowledged in Annex 2 (Contractor’s Tender for Framework Agreement) and Annex 3B (Contractor’s Response to Request for Service) such services to be provided by the Contractor pursuant to this Agreement and any related Service Contract;
“Site”	means ECMWF’s premises in Reading, Berkshire;
“Specification”	means Annex 1 (ECMWF’s Specification for Framework Agreement);
“Substantial Errors”	means errors which the Parties agree to be substantial or which are determined to be substantial by an arbitrator, appointed in accordance with Clause 6.9 (Governing Law and Arbitration);
“Sub-contractor”	means any person with its own legal identity, which is engaged by the Contractor or by another Sub-contractor in connection with the Services. Terms for the engagement of Sub-contractors are set out at Clause 2.9 (Sub-contracting);
“Systemic or Recurrent Errors”	means errors which the Parties agree to be systemic or recurrent or which are determined to be systemic or

	recurrent by an arbitrator, appointed in accordance with the provisions of Clause 6.9 (Governing Law and Arbitration);
“Technology”	means any know-how, method, process, system, machinery, software or other form of technology put to use by the Contractor in the course of performing the Services;
“Term”	means the period beginning on the Effective Date and ending on the termination, or expiry of this Agreement;
“Union”	means the European Union;
“VAT and Value Added Tax”	means value added tax as provided for in Directive 2006/112/EC and subordinate national Law or any similar sales or turnover tax;
“Work Packages”	means the packages of work into which the Services are split, as referred to in Annexes 1 and 2, and as confirmed or varied in Annexes 3A and 3B; and
“Year”	means a calendar year within the period from the Effective Date to the termination or expiry of this Agreement.

1.2.2 In this Agreement and any Service Contract, unless the context otherwise requires or the contrary intention appears:

1.2.2.1 any reference to an enactment (which term shall include any directly applicable EC legislation) includes:

- i. that enactment as amended, extended, consolidated, re-enacted or applied by or under any other enactment before or after this Agreement and/or a Service Contract; and
- ii. any subordinate legislation made (before or after this Agreement and/or a Service Contract) under that or any other applicable enactment, including one within this Clause 1.2.2;

1.2.2.2 the singular includes the plural and vice versa, and reference to any gender includes the other genders;

1.2.2.3 references to a person include any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having a separate legal personality);

1.2.2.4 references to this Agreement or any other agreement or document are to this Agreement or such other agreement or document as it may be validly varied, amended, supplemented, restated, renewed, novated or replaced from time to time (in each case, however fundamentally);

1.2.2.5 references to a Party to this Agreement or a Service Contract include a reference to its successors and permitted assigns under this Agreement or a Service Contract;

1.2.2.6 references to “written” or “in writing” include faxes and emails into which a verifiable electronic signature is incorporated but exclude all other emails;

1.2.2.7 any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing includes, in respect of any jurisdiction other than England, a reference to what most nearly

- approximates in that jurisdiction to the English legal term;
- 1.2.2.8 the words “including” and “in particular” and any similar words or expressions are by way of illustration and emphasis only and do not operate to limit the generality or extent of any other words or expressions;
 - 1.2.2.9 all Annexes and the Introduction to this Agreement form part of it and take effect as if set out in this Agreement, and any reference to this Agreement includes the Annexes and the Introduction;
 - 1.2.2.10 all annexes to a Service Contract form part of it and take effect as if set out in the relevant Service Contract and any reference to the Service Contract includes the annexes to it; and
 - 1.2.2.11 references to Clauses Annexes and Paragraphs refer to clauses of, annexes to and paragraphs in annexes to, this Agreement or a Service Contract (as applicable).
- 1.2.3 The headings in this Agreement or a Service Contract are for convenience only and do not affect its interpretation.
- 1.2.4 The footnotes in this Agreement or a Service Agreement are for information only and do not affect its interpretation.

1.3 Framework Agreement - Purpose and Effect

- 1.3.1 This Agreement gives ECMWF the option to require the Contractor to supply ECMWF with the Services on the terms of this Agreement pursuant to one or more Service Contracts which will be signed on behalf of the Contractor and ECMWF and which will take the form set out at Annex 3 (Model of Service Contract). ECMWF’s option shall be enforceable as many times as ECMWF wishes prior to expiry of the Term;
- 1.3.2 The Price referred to in Clause 4.1(Price) includes all charges for the Services, and there shall be no other charges unless expressly stated for any of:
- 1.3.2.1 acquisition by the Contractor of any data, information, materials or Technology for the purpose of providing the Services;
 - 1.3.2.2 carrying out any and all necessary tests;
 - 1.3.2.3 licences for Software;
 - 1.3.2.4 support and maintenance of Software, including on-site analyst support and migration aid where agreed in this Agreement;
 - 1.3.2.5 for any other work which is ancillary or incidental to the carrying out of the Services;
 - 1.3.2.6 any costs or expenses except as expressly referred to in Clause 4.1(Price), Annex 2 (Contractor's Tender for Framework Agreement) or in a specific Service Contract.
- 1.3.3 Use by ECMWF and Others
- 1.3.3.1 The benefits of this Agreement and each Service Contract shall be for unlimited use by: the Commission in accordance with the Copernicus Regulation and Delegated Regulation EC/1159/2013 (establishing registration and licensing conditions for [Copernicus] users).
 - 1.3.3.2 The benefits of this Agreement and each Service Contract shall also be for unlimited use by: ECMWF; the government and national agencies of ECMWF Member States as are Parties from time to time to the Convention signed on 11 October 1973 or any successor Convention thereto; and governmental and non-governmental international scientific and technical organizations with which ECMWF is required or expected under such Convention or Conventions to co-operate and other authorised users of ECMWF services.

- 1.3.3.3 References throughout this Agreement and each Service Contract to use of the Services by ECMWF shall be deemed to include use by those organizations referred to in Clause 1.3.3.1 and 1.3.3.2.

1.4 Framework Agreement - Commencement And Duration

- 1.4.1.1 The Term shall start on the Effective Date and shall end on or before [end date for this Framework Agreement].

1.5 Service Contracts – Purpose and Process

- 1.5.1 This Agreement governs the overall relationship of the Parties in relation to the Services, and sets out:
- i. in this Clause 1.5, the procedure for ECMWF to request the provision of the Services from the Contractor under Service Contracts; and
 - ii. in Annex 3 the template form of Service Contract to be entered into by ECMWF and the Contractor.
- 1.5.2 The terms of this Agreement shall be deemed to be incorporated into each Service Contract, as amended by each Service Contract.
- 1.5.3 ECMWF shall be entitled from time to time to request in writing the provision of any or all of the Services from the Contractor by submitting a Request for Service to the Contractor. The Request for Service will specify a period of time, within the Term, for which the Services must be provided and the Request for Service will usually be made subject to confirmation of funding by the Commission for the relevant period of time.
- 1.5.4 Within [twenty (20)] Business Days of receipt of a written Request for Service from ECMWF, the Contractor shall complete and submit a Response to the Request for Service based on or referring to information previously submitted in Annex 2 (Contractor's Tender for Framework Agreement).
- 1.5.5 Subject to satisfaction with the Contractor's Response to Request for Service and subject to confirmation of funding by the Commission for the relevant period of time, ECMWF will issue a draft Service Contract containing the information set out in Annex 3 (Model of Service Contract) for execution by both Parties.
- 1.5.6 A Service Contract shall not enter into force, be legally binding or have any other effect unless:
- 1.5.6.1 the Service Contract contains the information required at Annex 3 (Model of Service Contract);
 - 1.5.6.2 the Service Contract has been signed by the authorised representatives of both Parties; and
 - 1.5.6.3 as at the date of the Service Contract, this Agreement has not terminated or expired.
- 1.5.7 Each Service Contract:
- 1.5.7.1 shall be entered into by ECMWF and the Contractor;
 - 1.5.7.2 forms a separate contract between its signatories; and
 - 1.5.7.3 shall incorporate the terms of this Agreement, as amended by the relevant Service Contract.
- 1.5.8 Any amendment to this Agreement agreed by ECMWF and the Contractor in accordance with Clause 6.4 (Amendments) shall apply to any Service Contract which is current at the date of such amendment and to all Service Contracts entered into after the date of such

amendment.

2 Operation of Services

2.1 Contractor's Performance And Related Obligations

2.1.1 Contractor's Undertakings

2.1.1.1 The Contractor represents, warrants and undertakes:

- i. that it will perform its obligations under this Agreement and each Service Contract in a timely and professional manner using Good Industry Practice as well as its own established internal procedures;
- ii. that all Contractor Personnel have the qualifications and experience claimed or attributed to them in Annex 2 (Contractor's Tender) and are, in any event, suitably skilled, experienced and qualified to carry out the duties and tasks assigned to them in connection with the performance of the Services;
- iii. that neither the Contractor nor any Contractor Personnel or any person acting on its behalf has offered, given or agreed to give or will offer, give or agree to give any person any inducement or reward (or anything which might be considered an inducement or reward) in connection with ECMWF entering into this Agreement or any Service Contract;
- iv. to comply with (and to procure that the Contractor Personnel comply with) ECMWF's reasonable requests in performing the Services;
- v. the performance of the Services shall not infringe any Intellectual Property Rights of any third party;
- vi. that it has the full capacity and authority to make the assignments of Ownership and to grant the licences referred to in this Agreement and each Service Contract;
- vii. that the contents of Annex 2 (including its answers to all ITT questions) are correct and that ECMWF will be informed within five (5) Business Days of any of the contents becoming incorrect, during the Term;
- viii. that it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of ECMWF;
- ix. that it has raised all relevant due diligence questions with ECMWF before the Effective Date;
- x. that it has entered into this Agreement in reliance on its own due diligence alone; and
- xi. that if, at any time during the Term it receives funding or reimbursement from another source, towards the resource costs set out at Annex 2 (Contractor's Tender for Framework Agreement) or for providing some or all of the same or essentially the same Deliverables as agreed in this Agreement or for acquiring or developing some or all of the same or essentially the same Assets as agreed in this Agreement, it shall consult with ECMWF and adjust the Price accordingly.

2.1.2 Contractor's obligations

2.1.2.1 The Contractor shall:

- i. provide the Services as set out in Annex 1 and Annex 2 to this Agreement and as confirmed or varied in Annex 3A and 3B to the relevant Service Contract, including, without limitation, meeting the agreed Deliverables, Milestones, KPI's and Performance Targets;
- ii. report to and liaise with ECMWF's Contract Officer and other key personnel (ref Clause

2.4.3) and act only to the extent of the instructions given to the Contractor from time to time by them;

iii. promptly report to ECMWF:

A. any breach of this Agreement and/or a Service Contract by the Contractor or the Contractor Personnel; and

B. any fact or matter that is reasonably likely to prevent the Contractor from complying with his obligations under this Agreement and/or a Service Contract,

within three (3) Business Days of becoming aware of the same;

iv. during each of the current Service Contracts, except for the last possible Service Contract in the Term, the Contractor will assume that the current Service Contract is to be followed by another and, on the basis of that assumption the Contractor will prepare, in a timely way and in cooperation with ECMWF, an Implementation Plan for provision of the Services over the period of the next Service Contract. The Implementation Plan will have to meet with ECMWF's requirements and will feed into ECMWF's own implementation plan for provision of CAMS/C3S (as appropriate) in the next year of the Copernicus Programme.

2.1.3 Compliance with Laws

2.1.3.1 The Contractor shall perform its obligations under this Agreement and each Service Contract in a manner that complies with all Laws in force during the Term and shall not cause ECMWF to breach any Laws in force during the Term.

2.1.3.2 The Contractor shall immediately notify ECMWF if it becomes aware of any allegation of non-compliance with any Law by any person in relation to this Agreement and/or a Service Contract.

2.1.3.3 As soon as the Contractor becomes aware of any change that should be made to the Services to ensure that the Services and the performance of them conform to any Law, Good Industry Practice or any new legal or regulatory requirement which affects the Services the Contractor shall notify ECMWF of the change and, unless otherwise instructed by ECMWF, the Contractor shall carry out the change at no charge to ECMWF.

2.1.4 Contractor Personnel

2.1.4.1 The Contractor shall retain overall control of the Contractor Personnel at all times so that the Contractor Personnel shall not be deemed to be employees, agents or contractors of ECMWF;

2.1.4.2 If it appears to ECMWF that the Services are being disrupted by the actions or behaviour of a member of the Contractor Personnel or that his qualifications, expertise or work do not correspond to the relevant HR profile in Annex 2 (Contractor's Tender for Framework Agreement) or to Good Industry Practice, ECMWF shall have the right to make a reasoned request for his immediate replacement in relation to the Services;

2.1.4.3 Any Contractor Personnel replaced following ECMWF's request pursuant to Clause 2.1.4.2 must have the appropriate qualifications, expertise and ability to correspond to the relevant HR profile in Annex 2 (Contractor's Tender for Framework Agreement) or to Good Industry Practice. The Contractor shall be responsible for any delay in the execution of the tasks assigned to it resulting from the replacement of Contractor Personnel.

2.1.5 IT and other Security

- 2.1.5.1 The Contractor shall, and shall procure that all Contractor Personnel shall, comply with any of ECMWF's site security procedures if and when at the Site.
- 2.1.5.2 The Contractor shall, and shall procure that all Contractor Personnel shall, comply with ECMWF's IT security requirements, as appropriate, including for the transmission of Deliverables. These will be communicated between ECMWF and the Contractor as necessary.
- 2.1.5.3 ECMWF shall provide all security passes and controlled access for Contractor Personnel who are to have access to the Site.
- 2.1.6 Quality of Deliverables
 - 2.1.6.1 ECMWF shall have the right to inspect any Deliverables at any time on or after delivery by the Contractor to ensure each Deliverable complies with the requirements of this Agreement and of the relevant Service Contract.
 - 2.1.6.2 If ECMWF discovers that any Deliverable does not comply with the requirements of this Agreement or of the relevant Service Contract, ECMWF shall be entitled to notify the Contractor specifying the non-compliance and requiring remedy by the Contractor.
 - 2.1.6.3 Within a reasonable time of receiving notice pursuant to Clause 2.1.6.2 and in any event within 30 calendar days, the Contractor shall remedy any non-compliance in a Deliverable and re-submit the Deliverable to ECMWF.
 - 2.1.6.4 Until such time as the Contractor has complied with Clause 2.1.6.3, ECMWF shall be entitled:
 - i. to withhold payment relating to the relevant Deliverable;
 - ii. to accept the relevant Deliverable despite the non-conformance and withhold a reasonable proportion of the payment relating to that Deliverable; or
 - iii. at any time after expiry of the period of 30 calendar days referred to in Clause 2.1.6.3, to reject the relevant Deliverable and to require repayment and not to make any further payment in relation to the relevant Deliverable.
- 2.1.7 Insurance requirements
 - 2.1.7.1 Save as otherwise agreed with ECMWF, the Contractor shall effect and maintain appropriate insurances with insurers who are at all times of good financial standing and reputation and for a period of insurance which includes:
 - i. for all insurances, the Term of this Agreement but shall also provide cover for obligations that survive expiry or termination of this Agreement and each Service Contract; and
 - ii. for professional indemnity insurance, the period of 6 years following the expiry or termination of this Agreement.
 - 2.1.7.2 Save as otherwise agreed with ECMWF, the Contractor shall maintain:
 - i. third party property damage insurance for an amount not less than [£5,000,000] for any single occurrence and in the aggregate as to the number of occurrences in respect of liability for all plant, equipment and motor vehicles owned or used by the Contractor or any Sub-contractor directly or indirectly engaged in providing the Services; and
 - ii. professional indemnity insurance for an amount not less than [£10,000,000] per occurrence and in the aggregate annually.

2.1.7.3 The Contractor shall provide evidence of the insurances referred to in this Clause 2.1.7, or such other cover or contingency arrangements as the Contractor maintains, to the satisfaction of ECMWF.

2.2 Software

The provisions of Annex 4 shall apply to the extent that the agreed Deliverables include any software or code.

2.3 Reporting

2.3.1 Annual Reporting

2.3.1.1 By 15 January of each Year, the Contractor shall transmit preliminary financial information concerning the Services and relating to the previous Year, as required by ECMWF and in a format specified by ECMWF in order to comply with its accounting closure requirements.

2.3.1.2 The Contractor shall submit to ECMWF by the 28 of February of each Year an annual implementation report, relating to the previous Year, including:

- i. a summary description of the performance of the Services;
- ii. a summary breakdown of the prices claimed and the costs and expenses incurred for the Services; a summary of the audit reports and of controls carried out in relation to Sub-contractors, including an analysis of the nature and extent of errors and weaknesses identified in their systems, as well as corrective action taken or planned;
- iii. an overview of the content of the Risk Register over the past Year, including the results and effectiveness of any risk analysis and mitigation actions, as well as recommendations for possible improvements of the Contractor's overall risk management approach;
- iv. a list of all Exceptions and Non-Compliance Events related to the Services;
- v. details on delays in the performance of the Services;
- vi. a management declaration confirming that, in the opinion of those in charge of the Contractor :
 - A. the information is properly presented, complete and accurate;
 - B. the Funds were used for their intended purpose as defined in this Agreement and the objectives of the Copernicus Regulation; and
 - C. the control systems which the Contractor has in place give the necessary guarantees concerning the legality and regularity of the underlying transactions.

2.3.1.3 If requested by ECMWF, the Contractor shall organise an annual service performance review meeting to substantiate the technical achievements reported. This may involve participation of the Contractor's representatives.

2.3.1.4 At the end of its annual financial audit cycle, the Contractor shall send to ECMWF a copy of its audited annual report, together with a letter, from its auditors, containing an opinion on the financial aspects of the Contractor's most recent annual implementation report to ECMWF (of the type referred to at Clause 2.3.1.2). The opinion shall establish whether:

- i. the accounts give a true and fair view;
- ii. the control systems put in place for the management of Sub-contractors function properly;
- iii. the underlying transactions are legal and regular; and

- iv. the audit work puts in doubt the assertions made in the management declaration under Clause 2.3.1.2 (vi).
- 2.3.1.5 ECMWF may request additional information related to the content of the documents. The Contractor shall make reasonable efforts to supply the requested information within ten (10) calendar days of the request;
- 2.3.1.6 If the Contractor fails to submit the documents referred to in Clauses 2.3.1.1 and 2.3.1.2 or the requested information or the revised documents referred to in Clause 2.3.1.3 by the set deadline or if the submitted new documents are not properly revised, ECMWF reserves the right to suspend payments in accordance with Clause 5.3 (Suspension of Payments). If any additional information or documents are requested under this Clause 2.3.1, the time-limit for scrutiny shall be suspended and shall resume once the information or documents concerned have been received by ECMWF. Approval of the report shall not imply recognition of the legality and regularity of the underlying costs or of the authenticity, completeness and correctness of the declaration and information they contain.
- 2.3.1.7 The Contractor may be asked to present its report(s) to bodies and committees related to the governance of the Copernicus Programme.
- 2.3.2 Quarterly Reporting
 - 2.3.2.1 During the Term of this Agreement, the Contractor shall submit to ECMWF quarterly implementation reports at the latest twenty (20) calendar days after the expiry of the relevant calendar quarter.
 - 2.3.2.2 The quarterly implementation reports shall describe the progress made in the performance of the Services covering programmatic, technical, and contractual aspects, including the status of the Risk Register and any deviations from the foreseen schedules and/or budgeted limits. It shall consist of three (3) parts:
 - i. a section on the performance of the Services under this Agreement and each Service Contract detailing programmatic, technical and contractual aspects;
 - A. a report on the Key Performance Indicators as defined in Annex 1 (ECMWF's Specification) or Annex 3A (ECMWF's Request for Service), their trends and a brief analysis and projection into the next reporting period; and
 - B. an updated, cumulative electronic database comprising all data necessary to determine the Key Performance Indicators on the service execution and quality, as well as to process these Key Performance Indicators;
 - ii. a section on the use of Funds invoiced to ECMWF under this Agreement and/or a Service Contract, providing a breakdown of the underlying costs and expenses incurred.
 - iii. a section on the anticipated costs, expenses and price claims for the next two calendar quarters;
 - iv. a section on checks, audits and risk management detailing:
 - A. where appropriate, a summary of ex-post audits on Sub-Contractors and of the regular checks carried out by the Contractor and their main findings; and
 - B. an overview of the risks, including the results of the effectiveness of any risk analysis and mitigations actions, as well as, if appropriate, the recommendations for possible improvements of the overall risk management approach.
 - 2.3.2.3 The Contractor may be asked to present its report(s) to bodies and committees related to

the governance of the Copernicus Programme.

2.3.3 Ad-Hoc Reporting

ECMWF may ask for information or ad-hoc reports whenever it considers that to be necessary for the performance of the Services or to satisfy the requirements of the Commission. The Contractor shall make reasonable efforts to supply additional information within ten (10) calendar days of the request and ad-hoc reports within twenty (20) calendar days of the request.

2.3.4 Final Report

2.3.4.1 The Contractor shall submit to ECMWF, as soon as possible and at the latest sixty (60) calendar days after termination or expiry of the last Service Contract in the Term, a final report (the “**Final Report**”), which shall contain in particular:

- i. a description of the Contractor’s actual achievements in the performance of this Agreement and each Service Contract with respect to the expected achievements (as defined in particular in Annex I (ECMWF’s Specification for Framework Agreement) and in the relevant Implementation Plans;
- ii. the totals of prices claimed and costs and expenses incurred under this Agreement and each Service Contract, including the total amount actually paid by the Contractor to Sub-contractors;
- iii. the following annexes shall be attached to the Final Report:
 - A. a summary table setting out the final amount of this Agreement and each Service Contract and the reference of the related implementation reports for each action;
 - B. a summary inspection report indicating the number and results of on-Site checks and ex-post audits carried out by the Contractor on Sub-contractors, accompanied, if appropriate, by current information on measures taken to remedy any problems identified; and
 - C. a list of all Intellectual Property Rights which have been acquired by ECMWF since the Effective Date under Clause 3 (Assets and Intellectual Property Rights).

2.3.4.2 The Contractor shall supply any information requested by ECMWF in relation to the Final Report within ten (10) calendar days of receiving a request.

2.3.5 Central Exclusion Database

2.3.5.1 The Contractor shall notify ECMWF in writing and within five (5) Business Days if the Contractor, any of its Sub-contractors or any persons having powers of representation, decision-making or control over any of them have their names entered into the Union’s Central Exclusion Database at any time during the Term;

2.3.5.2 The Contractor shall notify ECMWF in writing and within five (5) Business Days if the Contractor, any of its Sub-contractors or any persons having powers of representation, decision-making or control over any of them have been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation, money laundering or any other illegal activity, where such conduct was detrimental to the Union’s financial interests;

2.3.5.3 If and when the Contractor notifies ECMWF under Clause 2.3.5.2, ECMWF shall transmit the information to the Commission for entry on the Central Exclusion Database.

2.3.6 Conflict of Interest

2.3.6.1 The Contractor shall take reasonable measures to prevent any situation where the impartial and objective performance of the Services is compromised for reasons involving economic

interest, political or national affinity, family or emotional life or any other shared interest (a "Conflict of Interests").

2.3.6.2 Should any situation come to the attention of the Contractor, constituting or likely to lead to a Conflict of Interests during the performance of the Services, it shall be notified to ECMWF, in writing without delay. The Contractor shall take reasonable steps to rectify this situation. ECMWF reserves the right to verify that the measures taken are appropriate and may require additional measures to be taken within a specified deadline.

2.3.7 Obligation to inform ECMWF

2.3.7.1 The Contractor shall provide any information requested by ECMWF in order to verify compliance with this Agreement and/or any Service Contract.

2.3.7.2 With respect to the performance of the Services, the Contractor shall also inform the ECMWF without delay of:

- i. the death, departure or absence (for one calendar month or more) of any Contractor Personnel who have been identified in Annex 2 (Contractor's Tender for Framework Agreement);
- ii. any substantial changes to its systems, rules or procedures that relate to the management of the Funds;
- iii. any substantial change in its legal, financial, technical, organisational or ownership situation;
- iv. any Fraud or irregularity which comes to its attention and any situation which may give rise thereto and the measures taken;
- v. any event that may harm the Union's financial interests; and
- vi. any event which may delay or jeopardize performance of the Services.

2.4 Communications by and between the Parties

2.4.1 Authorised Representatives

The sole individuals with authority to sign this Agreement, related Service Contracts and any variations of the same are:

For ECMWF: [Name and position]

For the Contractor: [Name and position]

2.4.2 Formal Notices

Formal notices shall be deemed received when delivered except for a letter by prepaid first class mail which shall be deemed received two (2) Business Days after despatch, or a fax which shall be deemed to be received immediately the sender shall have received a signal to that effect provided that a copy of such fax shall be mailed within twelve (12) hours of the sending of such fax or an email which shall be deemed to be received when it enters the recipient's inbox, provided that a verifiable electronic signature is incorporated into the email and a copy of such email shall be mailed within twelve (12) hours of the sending of such email. The relevant addresses etc. are as follows:

ECMWF

Contractor

ECMWF
Shinfield Park
Reading
RG2 9AX
United Kingdom

[REDACTED]

Attention: The Director General

Attention:

Copernicus.notices@ecmwf.int

2.4.3 Contract Officers, service Managers and other Key Personnel

ECMWF shall have a Contract Officer and the Contractor shall have a Service Manager to represent their interests in day-to-day discussions and meetings. The appointing Party may change such appointments from time to time by notice in writing to the other Party, provided that in the case of the Contractor's Service Manager any change shall only be made with the consent of ECMWF (such consent not to be unreasonably withheld).

The identities and contact details of the Contract Officer, the Service Manager and other key personnel are set out below:

For ECMWF

Contract Officer: [name and contact details]

Alternative contact: [name and contact details]

For Contractor:

Service Manager: [name and contact details]

Alternative contact: [name and contact details]

2.4.4 Progress Meetings

During the Term, the Contract Officer and the Service Manager shall conduct face to face, video conference or telephone conference meetings to review progress, discuss outstanding issues and identify any delays. The regularity and frequency of such meetings shall be agreed between the Parties, as appropriate to the nature and maturity of the Services. The Contractor shall be responsible for chairing such meetings and for recording their decisions in minutes and circulating those minutes to the appropriate individuals.

2.4.5 Other Meetings

ECMWF may invite or require the Service Manager and/or other representatives to attend other meetings relating to CAMS, C3S or the Copernicus Programme from time to time.

2.4.6 Publicity

2.4.6.1

The Contractor shall not, without first obtaining ECMWF's written consent, make any press announcements or publicity about this Agreement or any related Service Contract or the Services or the Deliverables or its role in providing the Services or the Deliverables or its contribution to CAMS/C3S;

- 2.4.6.2 The Contractor shall ensure that the Contractor Personnel comply with the provisions of Clause 2.4.6.1;
- 2.4.6.3 Subject to the provisions of Clause 2.7 (Confidentiality), ECMWF reserves the right to publish anything about the Agreement, a related Service Contract, the Services or the Deliverables.
- 2.4.6.4 The provisions of this Clause 2.4.6 shall apply during the Term and indefinitely thereafter.

2.5 Service Change

2.5.1 Request

If, at any time during the Term a Party wishes to alter any part of the Services, including the Specification of any part of the Services, then it shall provide the other Party with full written particulars of such Change.

2.5.2 Contractor's Quotation

The Contractor shall submit to ECMWF, together with its own request or within twenty (20) Business Days of receiving a request from ECMWF, a full written quotation for such requested Change. The quotation shall be based on the unit prices given for resources in the relevant year of the Term, in Annex 2 (Contractor's Tender for Framework Agreement). The quotation shall also specify what implications the Change will have for ECMWF, the Contractor's ability to meet its other obligations under this Agreement and/or any Service Contract and any variation to the terms of this Agreement and/or any Service Contract that will be required as a result including, changes to:

- 2.5.2.1 the Specification and the Services;
- 2.5.2.2 the Deliverables, Milestones, KPI's and Performance Targets;
- 2.5.2.3 details of the cost of implementing the Change;
- 2.5.2.4 details of the on-going costs required by the Change when implemented, including any increase or decrease in the Price, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
- 2.5.2.5 a timetable for the implementation, together with any proposals for the acceptance of the Change;
- 2.5.2.6 such other information as ECMWF may reasonably request in (or in response to) the Change; and
- 2.5.2.7 an analysis of the risks arising from the implementation of the Change and a proposal as to pro-active management, by both Parties, of the risks identified.

2.5.3 ECMWF Action on quotation

Upon receipt of such quotation, ECMWF may either:

- 2.5.3.1 accept such quotation, in which case this Agreement, the Service Contract(s) (including any agreed dates) and, if appropriate, the Specification shall be amended accordingly; or
 - 2.5.3.2 withdraw the proposed Change in which case this Agreement and each Service Contract shall continue in force unchanged.
- 2.5.4 No such Changes shall be effected unless approved in writing by the duly authorised representatives of ECMWF and the Contractor identified at Clause 2.4.1.

2.6 Process for Resolving Disputes

- 2.6.1 Any dispute which may arise between the Parties concerning this Agreement and/or any Service Contract shall be determined as provided in this Clause 2.6.
- 2.6.2 For the purpose of this Clause 2.6 a dispute shall be deemed to have arisen when one Party serves on the other a notice in writing stating the nature of the dispute.
- 2.6.3 Unless this Agreement and/or the relevant Service Contract has already been terminated or expired by the date of the notice of dispute, and except to the extent that Services are suspended (Clause 5.4) or payments for Services are suspended (Clause 5.3) before or after the date of the notice of dispute, the Contractor shall continue to perform the Services with all due diligence and ECMWF shall continue to make payments in accordance with this Agreement and/or the relevant Service Contract.
- 2.6.4 After service of the notice of dispute, the following procedure shall be followed by the Parties (all time periods specified in this Clause 2.6.4 shall be extendable by mutual agreement):
 - 2.6.4.1 Within two (2) Business Days, the Contract Officer and the Service Manager shall meet to attempt to settle the dispute;
 - 2.6.4.2 if no settlement results from or within two (2) Business Days of the meeting specified in Clause 2.6.4.1, ECMWF's Head of CAMS/C3S (as appropriate) shall meet with the Contractor's [identify manager] within the following five(5) Business Days to attempt to settle the dispute;
 - 2.6.4.3 if no settlement results from or within five (5) Business Days of the meeting specified in Clause 2.6.4.2 ECMWF's Director of Copernicus Services shall meet with the Contractor's [identify manager] within the following ten (10) Business Days to attempt to settle the dispute; and
 - 2.6.4.4 if no settlement results from or within ten (10) Business Days of the meeting specified in Clause 2.6.4.3, the Parties shall proceed in accordance with Clause 6.9.2 (Arbitration).

2.7 Confidentiality

- 2.7.1 Subject to Clause 2.7.2, each Party shall treat all Confidential Information as strictly confidential and shall not disclose Confidential Information to any person.
- 2.7.2 A Party may disclose Confidential Information if and to the extent:
 - 2.7.2.1 required by Law or order of the courts, or by any securities exchange or regulatory or governmental body to which such Party is subject or submits, wherever situated (whether or not the requirement for information has the force of law);
 - 2.7.2.2 disclosed on a necessary basis to the professional advisers, auditors and bankers of such Party, who themselves are under a professional obligation of confidentiality;
 - 2.7.2.3 the Confidential Information has come into the public domain other than by a breach of any obligation of confidentiality; or
 - 2.7.2.4 with the prior written approval of the other Party.
- 2.7.3 The restrictions contained in this Clause 2.7 shall continue to apply after the termination or expiry of this Agreement and each Service Contract (however arising) for five years , unless and to the extent that the Party who disclosed the relevant Confidential Information agrees to release the other Party from its confidentiality obligations earlier.
- 2.7.4 Publication of this Agreement

In the event that either Party is obliged by Law to publish to the general public all or part of this Agreement or any Service Contract, that Party shall notify the other of the same and the two Parties shall consult regarding appropriate redactions from the Agreement or Service Contract before publication.

2.8 Personal Data Protection

- 2.8.1 Where the performance of the Services requires the processing of personal data the Contractor shall process any personal data in accordance with the national data protection legislation to which the Contractor is subject. If the Contractor will process personal data outside the European Economic Area it will do so in a manner which satisfies EU personal data protection concerns (e.g. under a “safe harbour” agreement or equivalent). For this purpose, the Contractor shall designate a responsible member of Contractor Personnel as its data controller and publish the contact details of its data controller, through the Copernicus Services Websites for use by ECMWF and the subjects of the personal data which it processes.
- 2.8.2 Subjects of personal data processed by the Contractor shall have the right of access to their personal data and the right to rectify any such data. Should they have any queries concerning the processing of their personal data, they shall address them to the relevant data controller.
- 2.8.3 Subjects of personal data processed by the Contractor shall have the right of recourse at any time to the authority designated under relevant national legislation to receive complaints on personal data protection.

2.9 Sub-contracting

- 2.9.1 The Contractor shall not enter into any sub-delegation agreement, outsource its overall responsibility for the Services or assign any of its rights and obligations under this Agreement or a Service Contract to a third party.
- 2.9.2 The Contractor and/or a Sub-contractor may engage one or more Sub-contractors, subject to the other provisions of this Clause 2.9 and on the following conditions, which are pre-conditions to engagement:
 - 2.9.2.1 the Contractor must satisfy ECMWF that the Sub-contractor is suitable to make the proposed contribution to the Services (ECMWF will have complete discretion to judge suitability, which will include, without limitation, being suitably qualified and resourced to make the proposed contribution to the Services); and
 - 2.9.2.2 the Contractor must obtain ECMWF’s prior written consent, which shall not be unreasonably withheld.
- 2.9.3 ECMWF’s written consent for the Contractor and/or a Sub-contractor to engage a Sub-contractor shall not relieve the Contractor from any of its obligations under this Agreement or any Service Contract.
- 2.9.4 The Contractor shall ensure that each Sub-contractor is engaged in such a way that it accepts and is effectively required to meet the same obligations as the Contractor is required to meet under the following Clauses: 2.1.1 (Contractor’s Undertakings), 2.3.5 (Central Exclusion Database), 2.7 (Confidentiality), 2.8 (Personal Data Protection), 3 (Intellectual Property Rights), 4.6 (VAT and other Taxes) and 5.1 (Audits).
- 2.9.5 The Contractor shall advise ECMWF of all Sub-contractors and provide ECMWF with

information about all Sub-contractors so that ECMWF can fulfil its obligations under the Delegation Agreement to publish the identity of all persons with arrangements to supply goods or services in return for Funds totalling Euro 15000 or more.

- 2.9.6 If it appears to ECMWF that the Services are being disrupted by the acts or omissions of a Sub-contractor or that its qualifications or resources are no longer satisfactory or that its work does not conform to Good Industry Practice, ECMWF shall have the right to make a reasoned request for its replacement as soon as possible.

3 Intellectual Property Rights

3.1 Deliverables

- 3.1.1 Ownership of the Deliverables, including all Intellectual Property Rights in the Deliverables shall be fully and irrevocably acquired by ECMWF under this Agreement.¹
- 3.1.2 Ownership of the Deliverables shall be acquired by ECMWF from the moment they are delivered. Delivery shall be deemed to constitute an effective assignment of Ownership to ECMWF.
- 3.1.3 The Price is deemed to include any fees payable in relation to the acquisition of Ownership of Deliverables by ECMWF.
- 3.1.4 During the Term, the Contractor shall take care and custody of the Deliverables in the form of an archive, maintain an inventory of the Deliverables and provide all information needed for keeping account of the Deliverables.
- 3.1.5 Unless otherwise agreed in writing, a licence is granted to the Contractor, by virtue of this Agreement, subject to the following conditions:
- 3.1.5.1 the Contractor may use the Deliverables for any of its own purposes, including commercial purposes but excepting any purpose which conflicts with the aims of the Copernicus Programme;
- 3.1.5.2 if the Contractor communicates or publishes any of the Deliverables to any person other than ECMWF, the communication or publication must explicitly state that:
- i. the information/material contained is being communicated/published in the name of the Commission;
 - ii. the information/material contained has been produced “with funding by the European Union”; and
 - iii. the Commission is not responsible for any use that may be made of the information/material contained;
- 3.1.5.3 the licence is non-exclusive, irrevocable, worldwide, free of charge and without limitation in time;
- 3.1.5.4 the licence allows the licensee to modify the Deliverables and/or to grant sub-licences.

3.2 Assets

- 3.2.1 Ownership of Assets, including all Intellectual Property Rights in the Assets shall be fully and

¹ Contractors should note that ECMWF is obliged to assign ownership of most of the Deliverables to the Commission under the terms of the Delegation Agreement

irrevocably acquired by ECMWF under this Agreement.²

- 3.2.2 Annually, by 10 January or the first Business Day after 10 January, the Contractor shall provide to ECMWF an inventory of all Assets acquired or developed in the previous calendar year. This yearly provision inventory shall be deemed to constitute an effective assignment of Ownership of the identified Assets to ECMWF. The inventory of Assets should include, as a minimum, information about their identification numbers (part and serial number), individual values in EUR, dates of acquisition, contract references and their physical location.
- 3.2.3 The Price is deemed to include any fees payable in relation to the acquisition of Ownership of Assets by ECMWF.
- 3.2.4 During the Term, the Contractor shall maintain an updated inventory of the Assets and provide all information needed for keeping account of the Assets by ECMWF. The Contractor shall ensure care and custody of Assets under its responsibility. At the end of the Term, the Contractor shall deliver up those Assets which ECMWF requires, at its own expense.
- 3.2.5 Ownership of the Assets shall vest in ECMWF on creation. The Contractor hereby assigns to ECMWF with full title guarantee and free from all encumbrances all rights in the Assets including the right to sue for and recover damages or other relief in respect of the infringement of any rights in the Assets.
- 3.2.6 Unless otherwise agreed in writing, a licence is granted to the Contractor, by virtue of this Agreement to use the Assets for provision of the Services and any of its own purposes, including commercial purposes but excepting any purpose which conflicts with the aims of the Copernicus Programme. The licence is exclusive, free of charge and for the duration of the Term only. The licence allows the licensee to grant sub-licences but only for the duration of the Term.

3.3 Pre-Existing Technology

- 3.3.1 This Agreement shall not affect the Ownership of Pre-Existing Technology.
- 3.3.2 Even though the Contractor may use the Pre-Existing Technology in the performance of the Services, ECMWF shall not acquire any intellectual property rights in that Pre-Existing Technology.
- 3.3.3 By virtue of this Agreement, a licence is granted to ECMWF to use such Pre-Existing Technology as is necessary to render the Deliverables useable, for the purposes of the Copernicus Programme. The licence is non-exclusive, irrevocable, worldwide, free of charge and without limitation in time. The licence allows the licensee to grant sub-licences.

3.4 Integrated Technology

- 3.4.1 Integrated Technology shall be owned by the owner of the Pre-Existing Technology into which it is integrated.
- 3.4.2 During the Term, the Contractor shall maintain an inventory of the Integrated Technology and provide all information needed for keeping account of the Integrated Technology.
- 3.4.3 By virtue of this Agreement, a licence is granted to ECMWF to use Integrated Technology

² Contractors should note that ECMWF is obliged to assign ownership of all of the Assets to the Commission under the terms of the Delegation Agreement

and such Pre-Existing Technology as is necessary to render the relevant Integrated Technology useable, for the purposes of the Copernicus Programme and any future programme with the same or similar purposes to the Copernicus Programme. The licence is non-exclusive, irrevocable, worldwide, free of charge and without limitation in time. The licence allows the licensee to modify the Integrated Technology and/or to grant sub-licences³.

3.5 Warranties

- 3.5.1 The Contractor warrants that it owns, or has all necessary rights, authorisations and licences in respect of, all Intellectual Property Rights used in the provision of the Services to enable the Contractor to perform the Services in accordance with this Agreement and each Service Contract and to comply with the Contractor's obligations under this Clause 3.5.1
- 3.5.2 The Contractor shall procure that each agreement which it enters into with Contractor Personnel or other third parties in accordance with this Agreement or a Service Contract permits ECMWF to achieve and to exercise all the rights set out for it in Clause 3 (Intellectual Property Rights).

4 Finance

4.1 Price

The Price of the Services is set out in the relevant Service Contract. ECMWF shall pay the Price subject to the terms of this Agreement.

4.2 Costs

- 4.2.1 The basis for the Price shall be a set of unit costs and overheads for the Contractor's resources, shown in Annex 2 (Contractor's Tender for Framework Agreement) to this Agreement.
- 4.2.2 For audit purposes (see Clause 5.1 (Audits)) the Contractor shall keep and maintain throughout the Term and until the expiry of six (6) years after the end of the Term full and accurate records of the Contractor's costs and overheads incurred in the performance of the Services.
- 4.2.3 The Contractor shall take all necessary steps to ensure the integrity of all records held in accordance with Clause 4.2.2 and to prevent any corruption or loss of such records.
- 4.2.3.1 In order for an actual cost to be acceptable for audit purposes it must meet all the following criteria:
- i. it is actually incurred by the Contractor. Amounts that shall be recovered from the Contractor in accordance with Clause 5.2 (Recovery) shall not be considered as actually incurred;
 - ii. it is incurred during the Term;
 - iii. it is linked to and is necessary for the performance of the Services.
 - iv. it is identifiable and verifiable, in particular being recorded in the accounts of the

³ Contractors should note that ECMWF is obliged to licence Integrated Technology on to the Commission under the terms of the Delegation Agreement

- Contractor and determined according to the usual cost accounting practices of the Contractor;
- v. it complies with the requirements of applicable tax and social legislation;
 - vi. it is reasonable, justified and complies with the principles of sound financial management, in particular value for money and cost
- 4.2.3.2 The following types of cost shall not be acceptable, for audit purposes, even if the relevant cost meets the criteria set out in Clause 4.2.3.1:
- i. debt and debt service charges (interest);
 - ii. provisions for future losses and debts;
 - iii. exchange losses;
 - iv. cost resulting from Commitments relating to any suspended Services during the Period of suspension;
 - v. deductible VAT; and
 - vi. contributions in kind.

4.3 Expenses

- 4.3.1 The Price includes the Contractor's reasonable expenses that are directly incurred in the performance of the Services.
- 4.3.2 Save to the extent that the Contractor's expenses are included in the Price, ECMWF shall not reimburse any of the Contractor's expenses.
- 4.3.3 For audit purposes (see Clause 5.1 (Audits)) the Contractor shall keep and maintain throughout the Term and until the expiry of six (6) years after the end of the Term full and accurate records of the Contractor's expenses incurred in the performance of the Services.
- 4.3.4 The Contractor shall take all necessary steps to ensure the integrity of all records held in accordance with Clause 4.3.3 and to prevent any corruption or loss of such records.
- 4.3.5 In order for an actual expense to be acceptable for audit purposes it must meet the following criteria:
- 4.3.5.1 travel and subsistence expenses should be incurred on the basis of the shortest itinerary and the minimum number of nights necessary for overnight stay at the destination;
 - 4.3.5.2 the expense of travel by air should be no more than the maximum cost of an economy class ticket at the time of the reservation;
 - 4.3.5.3 the expense of travel by boat or rail should be no more than the maximum cost of a [first class] ticket;
 - 4.3.5.4 the expense of travel by car should be no more than the maximum cost of a [first class] rail ticket for the same journey on the same day;
 - 4.3.5.5 the expense of subsistence should not be incurred for a return journey of less than 200km;
 - 4.3.5.6 the expense of daily subsistence, including accommodation, meals, sundries and local transport between the airport or station, the accommodation and the destination should not exceed [EUR 300];
 - 4.3.5.7 conversion between another currency and EUR shall be made as specified in Clause 4.4 (Currency).

4.4 Currency

- 4.4.1 Payments shall be made by ECMWF in EUR.

- 4.4.2 The Contractor shall submit invoices to ECMWF in EUR.
- 4.4.3 Where the Contractor keeps its accounts in a currency other than the euro, it shall convert costs incurred in another currency into EUR at the average of the daily exchange rates published in the C series of the Official Journal of the European Union⁴, determined over the corresponding reporting period.
- 4.4.4 Where no daily euro exchange rate is published in the Official Journal of the European Union for the currency in question, conversion shall be made at the average of the monthly accounting rates established by the Commission and published on its website⁵, determined over the corresponding reporting period.

4.5 Invoices

- 4.5.1 Subject to the provisions of Annex 3C (Financial Annex) of a particular Service Contract, the Contractor may raise an invoice in respect of the Services in arrears in printed and electronic form in any format reasonably requested by ECMWF and shall include the following information:
- 4.5.1.1 the Contractor's identification;
 - 4.5.1.2 a reference to this Framework Agreement or to a specific Service Contract;
 - 4.5.1.3 the date of the invoice;
 - 4.5.1.4 the amount of the payment required, in EUR, not including VAT;
 - 4.5.1.5 where possible, the following statement - "This supply is VAT exempt pursuant to Article 4 of the Protocol on the Privileges and Immunities of ECMWF, Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union and Article 151 of Council Directive 2006/112/EC (concerning official usage of supplies by the European Union)"; and
 - 4.5.1.6 if charging VAT is unavoidable:
 - i. the amount of VAT required;
 - ii. the Contractor's VAT number; and
 - iii. contact details for the authority from whom ECMWF should claim reimbursement of VAT.
- 4.5.2 The electronic form of all invoices should be sent to finance@ecmwf.int and the printed form should be sent to ECMWF's postal address and marked "Finance Section";
- 4.5.3 All invoices must be accompanied by a copy of the relevant Notice of Acceptance (see Annex 3C) and, if Annex 3C states that the Services, to which the invoice relates are being paid for on a "Cost Reimbursement" basis, the invoice must also be accompanied by a Report on the Use of Resources (See Annex 3C).

4.6 VAT and Other Taxes

- 4.6.1 As a rule, ECMWF is exempt from all taxes and duties, including VAT, pursuant to the provisions of Article 4 of its Protocol on Privileges and Immunities⁶;
- 4.6.2 ECMWF does not undertake "economic activities". Therefore it is not a taxable person under Article 9 of Directive 2006/112/EC. Consequently, it does not have a VAT number.

⁴ <https://www.ecb.int/stats/exchange/eurofxref/html/index.en.html>

⁵ http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm

⁶ http://old.ecmwf.int/about/basic/governance/convention_and_protocol/amending_convention/original_official_languages/en/amended_convention_protocol_privileges_en.pdf

- 4.6.3 ECMWF is purchasing the Services from the Contractor, for official use by the European Union, which is itself exempt from VAT, pursuant to the provisions of Articles 3 and 4 of its own Protocol on Privileges and Immunities⁷ and pursuant to Article 151 of Directive 2006/112/EC;
- 4.6.4 Accordingly, the Contractor shall take all necessary steps to facilitate ECMWF's exemption from VAT which might otherwise be payable in relation to the Services. For these purposes, it shall request the necessary instructions from ECMWF and provide in due time the information which ECMWF requires;
- 4.6.5 ECMWF will not pay any other taxes or duties relating to the Services, the Deliverables or the Assets.

4.7 Payment Process

- 4.7.1 ECMWF will pay within thirty (30) days after receipt of an invoice which is correct and in a form acceptable to ECMWF, together with supporting records that conform to the requirements of Clause 4.5 (Invoices) and Annex 3C (Financial Annex) to the relevant Service Contract, unless ECMWF disputes the whole or any portion of the invoice, in which case the amount in dispute shall not be due and ECMWF shall notify the Contractor of the amount in dispute and the nature of the dispute. Where part of an invoice is disputed, ECMWF shall pay the undisputed amount within thirty (30) days after receipt of the relevant invoice and supporting records. ECMWF and the Contractor shall use reasonable endeavours to resolve the dispute in question within ten (10) Business Days of the dispute arising. If they fail to so resolve the dispute, either ECMWF or the Contractor may refer the matter to the Dispute Resolution Procedure. Following resolution of the dispute:
 - 4.7.1.1 the Contractor will issue an invoice that meets the requirements of Clause 4.5 and Annex 3C in the agreed amount (or in the amount determined under the Dispute Resolution Procedure to be payable); and
 - 4.7.1.2 ECMWF will pay the agreed amount (or the amount determined under the Dispute Resolution Procedure to be payable) to the Contractor within thirty (30) days after receipt of a correct invoice in respect of such amount.

4.8 Banking Arrangements

- 4.8.1 The time for payment of invoices under the payment process described in Clause 4.7 (Payment Process) will not begin to run until and unless ECMWF has first received official written notification of the Contractor's bank account details from the Contractor.
- 4.8.2 The Contractor shall be responsible for any bank charges made in respect of receipt or management of payments from ECMWF.
- 4.8.3 The Contractor shall notify ECMWF immediately of any changes to its bank account details.

4.9 Financial Corrections

- 4.9.1 If the Contractor has breached any of its obligations under this Agreement or a Service Contract, ECMWF may apply financial corrections by excluding payments, in proportion to the value and seriousness of the breach.

⁷ https://www.ecb.europa.eu/ecb/legal/pdf/c_32620121026en_protocol_7.pdf

- 4.9.2 Before applying financial corrections pursuant to Clause 4.9.1, the Parties will seek settlement according to the first stage of the Dispute Resolution Procedure
- 4.9.3 If no settlement can be reached, ECMWF shall formally notify its intention to the Contractor:
 - 4.9.3.1 specifying the corrections it intends to apply and the reasons and;
 - 4.9.3.2 inviting it to submit observations within thirty (30) days of receiving notification.
- 4.9.4 If ECMWF does not receive any observations or decides to apply the financial corrections regardless of observations it has received, it shall formally notify confirmation of the corrections giving its reasons thereof.
- 4.9.5 If ECMWF applies the financial corrections pursuant to Clause 4.9.4, the Contractor may continue the Dispute Resolution Procedure.

5 Governance

5.1 Audits

- 5.1.1 The Contractor shall keep secure and maintain until six (6) years after the final payment of all sums due under this Agreement and each Service Contract:
 - 5.1.1.1 full and accurate records of the Services and the Contractor's compliance with this Agreement and each Service Contract; and
 - 5.1.1.2 full and accurate details of the Prices and all other payments made by ECMWF; and
 - 5.1.1.3 invoices, information used to prepare the invoices and other documents relating to the provision of the Services.
- 5.1.2 ECMWF and the Commission shall each have the right from time to time and on reasonable notice to perform, either itself or through its representatives (which, for the Commission shall include OLAF, the European Court of Auditors and any other person authorised by the Commission):
 - 5.1.2.1 full and detailed audits and inspections of:
 - i. the Contractor's performance of the Services;
 - ii. the Prices invoiced to ECMWF under this Agreement and each Service Contract;
 - iii. the costs and expenses behind the Prices; and
 - iv. the Contractor's compliance with the provisions of this Agreement and each Service Contract generally; and
 - 5.1.2.2 checks on risk-based and random samples of transactions.
- 5.1.3 The Contractor shall, at its cost, provide ECMWF and ECMWF's representatives with all reasonable assistance in order to enable ECMWF to initiate, carry out and complete any audit contemplated in this Clause 5.1 (Audits).
- 5.1.4 ECMWF and ECMWF's representatives shall have the right to take copies of records, invoices, documents and information referred to in Clause 5.1.1 at the Contractor's cost.
- 5.1.5 If, as a result of ECMWF's exercise of its rights under this Clause 5.1 (Audits), it is found that the Contractor has failed to perform its obligations under this Agreement and/or any Service Contract, ECMWF may make these findings available to the Contractor and, in such a case, the Contractor shall respond promptly to the issues raised setting out actions it proposes to take with respect to the findings to remedy his failure.
- 5.1.6 If as a result of ECMWF's exercise of its rights under this Clause 5.1 (Audits), it is found that

there has been an overpayment of the Price or any other charges, the Contractor shall promptly reimburse ECMWF for its costs (including professional fees and expenses) incurred in exercising its rights and shall forthwith pay to ECMWF the amount of overpayment together with interest calculated at a reasonable rate.

- 5.1.7 Any inspection or audit, or failure to inspect or audit, shall not in any way release the Contractor from its obligations under this Agreement or any Service Contract.
- 5.1.8 The provisions of this Clause 5.1 shall survive termination or expiry of this Agreement and each Service Contract for any reason until the end of the sixth (6th) ECMWF financial year following the ECMWF financial year in which this Agreement terminates or expires.
- 5.1.9 Checks, audits, investigations and evaluation by the Commission, OLAF, the Court of Auditors or any other person authorised by the Commission:
 - 5.1.9.1 The Contractor agrees that the Commission, including the European Anti-Fraud Office (OLAF), and the Court of Auditors may at any time during the Term and up to five (5) years after the termination or expiry of this Agreement carry out checks and audits on the Services.
 - 5.1.9.2 The period set out in Clause 5.1.9.1 shall be longer if there are on-going audits, appeals, litigation or pursuit of claims concerning this Agreement, a Service Contract or the Delegation Agreement in such cases, the Contractor shall keep the documents which it is required to maintain under this Clause 5.1 until such audits, appeals, litigation or pursuit of claims are closed.
 - 5.1.9.3 On the basis of the audit findings, the Commission may take the measures which it considers necessary, including financial corrections and recovery of all or part of the payments made but only in accordance with Clause 4.9 (Financial Corrections) or Clause 5.2 (Recovery), whichever is relevant.
 - 5.1.9.4 OLAF may carry out investigations, including on-site checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF)⁸ and Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-site checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against Fraud and other irregularities⁹ with a view to establishing whether there has been Fraud, Corruption or any other illegal activity affecting the financial interests of the Union in connection with the performance of the Services.
 - 5.1.9.5 Where appropriate, OLAF findings may lead to financial corrections and/or recovery by the ECMWF.

5.2 Recovery

- 5.2.1 If any amount is to be recovered under the terms of this Agreement or a Service Contract, the Contractor shall repay ECMWF the amount in question.
- 5.2.2 Before recovery, the Parties will seek settlement according to the first stage of the Dispute Resolution Procedure.
- 5.2.3 If no settlement can be reached, ECMWF shall formally notify the Contractor of its intention

⁸ OJ L 248, 18.9.2013, p. 1

⁹ OJ L 292, 15.11.1996, p.2.

to recover the amount in question, specifying the amount due and the reasons for recovery and inviting the Contractor to make any observations within thirty (30) calendar days after the date of ECMWF's notification.

- 5.2.4 If no observations have been submitted or if, despite the observations submitted by the Contractor, ECMWF decides to pursue the recovery procedure, ECMWF may confirm recovery by giving its reasons and by formally issuing a debit note ("Debit Note"), specifying the terms and the date for payment.
- 5.2.5 If ECMWF decides to pursue the recovery procedure pursuant to Clause 5.2.4, the Contractor may continue the Dispute Resolution Procedure.
- 5.2.6 If payment has not been made by the date specified in the Debit Note, ECMWF shall recover the amount due:
 - 5.2.6.1 by offsetting it against any amounts owed to the Contractor; or
 - 5.2.6.2 by taking legal action in accordance with Clause 6.9.2.
- 5.2.7 If payment has not been made by the date set out in the Debit Note, the amount due shall bear interest at a reasonable rate for late payment interest.
- 5.2.8 Any partial payment shall first be appropriated against charges and interest on late payment and then against the principal.

5.3 Suspension of Payment

- 5.3.1 ECMWF may, in accordance with the principle of proportionality, suspend payments in all or in part:
 - 5.3.1.1 if it has substantiated evidence that the Contractor has committed Substantial Errors, irregularities or Fraud during its participation in ECMWF's selection procedure or during the performance of the Services, or if the Contractor fails to comply with its obligations under this Agreement and/or a Service Contract;
 - 5.3.1.2 if it has substantiated evidence that the Contractor has committed Systemic or Recurrent Errors, irregularities, Fraud or breach of obligations under this Agreement and/or a Service Contract which call into question the reliability of its internal control system or the legality and regularity of the underlying costs;
 - 5.3.1.3 if it suspects Substantial Errors, irregularities, Fraud or breach of obligations committed by the Contractor during its participation in ECMWF's selection procedure or the performance of the Services and needs to check whether they have occurred; and
 - 5.3.1.4 if the Commission suspends or ceases payments to ECMWF under the Delegation Agreement.
- 5.3.2 Before suspension of a payment, the Parties will seek settlement according to the first stage of the Dispute Resolution Procedure.
 - 5.3.2.1 If no settlement can be reached, ECMWF shall formally notify the Contractor of its intention to suspend payments, specifying the reasons thereof and, in the cases referred to in Clauses 5.3.1.1 and 5.3.1.2, the necessary conditions for resuming payments. The Contractor shall be invited to make any observations within thirty (30) calendar days after receipt of this notification.

- 5.3.2.2 If, after examination of the observations submitted by the Contractor, ECMWF decides to stop the procedure of payment suspension, ECMWF shall formally notify the Contractor thereof.
- 5.3.2.3 If no observations have been submitted or if, despite the observations submitted by the Contractor, ECMWF decides to pursue the procedure of payment suspension, it may suspend payments by formally notifying the Contractor, specifying the reasons for the suspension and, in the cases referred to in Clauses 5.3.1.1 and 5.3.1.2, the definitive conditions for resuming payments or, in the case referred to in Clause 5.3.1.3, the indicative date of completion of the necessary checks.
- 5.3.2.4 If ECMWF suspends payments pursuant to Clause 5.3.2.3, the Contractor may continue the Dispute Resolution Procedure.
- 5.3.3 The suspension of payments shall take effect on the date when the notification is sent by ECMWF.
- 5.3.4 In order to resume payments, the Contractor shall endeavour to meet the notified conditions as soon as possible and shall inform ECMWF of any progress made in this respect.
- 5.3.5 ECMWF shall, as soon as it considers that the conditions for resuming payments have been met or the necessary checks, including on-the-spot checks, have been carried out, formally notify the Contractor thereof.
- 5.3.6 During the period of suspension of payments and without prejudice to the right to terminate this Agreement and/or a Service Contract in accordance with Clause 5.5 (Termination), the Contractor is not entitled to submit any new invoices.
- 5.3.7 The corresponding invoices (covering costs incurred during the period of suspension) may be submitted as soon as possible after resumption of payments or may be included in the first request for payment due following resumption of payments.

5.4 Suspension of Services

- 5.4.1 Suspension of the Services by the Contractor
 - If any circumstances cause the Contractor to form the opinion that performance of all or part of the Services would be impossible, excessively difficult or financially damaging, it shall inform ECMWF without delay, giving the necessary reasons and details and giving as much notice as possible of its intention to suspend performance. If time allows, the Contractor shall consult with ECMWF, with a view to avoiding suspension of performance. Unless this Agreement or the relevant Service Contract is terminated in accordance with Clause 5.5, the Contractor shall, once the circumstances allow resuming the performance of the Services, inform ECMWF immediately.
- 5.4.2 Suspension of the Services by ECMWF
 - 5.4.2.1 ECMWF may, in accordance with the principle of proportionality, suspend the Services in full or in part if:
 - i. it has substantiated evidence that the Contractor has committed Substantial Errors, irregularities or Fraud during its participation in ECMWF's selection procedure or during the implementation of the Services or if the Contractor fails to comply with its obligations under this Agreement and/or a Service Contract; or
 - ii. it has substantiated evidence that the Contractor has committed Systemic or Recurrent Errors, irregularities, Fraud or breach of obligations under the present or other

- agreements funded by Union funds which call into question the reliability of its internal control system or the legality and regularity of the underlying costs; or
- iii. it suspects Substantial Errors, irregularities, Fraud or breach of obligations committed by the Contractor in its participation in ECMWF's selection procedure or in the performance of the Services and needs to check whether they have occurred; or
 - iv. the Commission has suspended or is threatening to suspend all or part of CAMS/C3S, including or requiring the relevant Services.
- 5.4.2.2 Before suspension, the Parties will seek settlement according to the first stage of the Dispute Resolution Procedure.
- 5.4.2.3 If no settlement can be reached, ECMWF shall formally notify the Contractor of its intention to suspend, specifying the reasons thereof and in the cases referred to in Clauses 5.4.2.1 (i) and 5.4.2.1 (ii), the necessary conditions for resuming the performance. The Contractor shall be invited to submit observations within thirty (30) calendar days from receipt of this notification.
- 5.4.2.4 If, after examination of the observations submitted by the Contractor, ECMWF decides to stop the suspension procedure, it shall formally notify the Contractor thereof.
- 5.4.2.5 If no observations have been submitted, or if, despite the observations submitted by the Contractor, ECMWF decides to pursue the suspension procedure, it may proceed with the suspension by formally notifying the Contractor thereof, specifying the reasons for the suspension, and in the cases referred to in Clauses 5.4.2.1 (i) and 5.4.2.1(ii) the definitive conditions for resuming the implementation or, in the case referred to in Clause 5.4.2.1(iii), the indicative date of completion of the necessary checks.
- 5.4.2.6 If ECMWF proceeds with the suspension of the Services pursuant to Clause 5.4.2.5, the Contractor may continue the Dispute Resolution Procedure.
- 5.4.2.7 The suspension of the Services pursuant to Clause 5.4.2.5 shall take effect on the day of the receipt of the notification by the Contractor or on a later date, where the notification so provides.
- 5.4.2.8 In order to resume the Services, the Contractor shall endeavour to meet the notified conditions as soon as possible and shall inform ECMWF of any progress made in this respect.
- 5.4.2.9 Unless this Agreement or the relevant Service Contract is terminated under Clause 5.5 (Termination), ECMWF shall as soon as it considers that the conditions for resuming the Services have been met or the necessary checks, including on-the-spot checks, have been carried out, formally notify the Contractor thereof.
- 5.4.3 Any cost resulting from Commitments relating to the suspended Services and made by the Contractor during the period of suspension shall not be accepted by ECMWF.

5.5 Termination

- 5.5.1 Termination by ECMWF
- 5.5.1.1 ECMWF may at any time in any of the following events, immediately terminate this Agreement and/or a Service Contract by notice in writing without compensation to the Contractor provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to ECMWF:
- i. if the Contractor or any persons having powers of representation, decision making or control over it is subject to an Insolvency Event; or

- ii. if there is a Critical Service Failure; or
- iii. upon the occurrence of an infringement under Clause 5.8.4.2 (Infringement) that cannot be remedied; or
- iv. if the Delegation Agreement expires or is terminated or suspended or otherwise interrupted for any reason; or
- v. if ECMWF, acting reasonably, considers that the Contractor has undergone changes in its legal, financial, technical, organisational or ownership situation or in its systems, rules or procedures which are likely to substantially affect the performance of the Services or call into question the outcome of its selection by ECMWF; or
- vi. the Contractor has failed to comply with its obligations under this Agreement and/or a Service Contract; or
- vii. in the event of Force Majeure notified in accordance with Clause 5.7 (Force Majeure) or in the event of suspension of the Services by the Contractor, where it appears to ECMWF that resuming the Services is impossible or would call into question the Contractor's selection by ECMWF; or
- viii. if the Contractor or any Related Person has been found guilty of professional misconduct proven by a final judgement or award; or
- ix. if ECMWF has substantiated evidence that the Contractor or any Related Person has committed Fraud, Corruption or is involved in a Criminal Organisation, Money Laundering or any other illegal activity detrimental to the financial interests of ECMWF or the Union; or
- x. if ECMWF has substantiated evidence that the Contractor or any Related Person has committed Substantial Errors, irregularities or Fraud in the performance of the Services, including in the event of submission of false information during its selection by ECMWF; or
- xi. if the Contractor, any of its Sub-contractors or any persons having powers of representation, decision-making or control over any of them have their names entered into the Union's Central Exclusion Database.

5.5.2 Termination by the Contractor

The Contractor may terminate this Agreement and/or a Service Contract immediately by notice in writing to ECMWF if ECMWF shall fail to pay any undisputed sum due under the terms of this Agreement and/or a Service Contract (otherwise than in consequence of any Default on the part of the Contractor) and such sum remains unpaid for thirty (30) calendar days after written notice from the Contractor that such sum has not been paid (such notice to contain a warning of the Contractor's intention to terminate).

5.5.3 Termination for Convenience

If either Party believes that this Agreement and/or a Service Contract can no longer be effectively or appropriately carried out, it shall consult the other Party. Failing agreement on a solution, either Party may terminate this Agreement and/or a Service Contract by formally notifying the other Party thereof. Termination shall take effect forty five (45) calendar days after receipt of the notification, unless agreed otherwise by the Parties.

5.5.4 Expiry and termination of this Agreement, howsoever arising, shall cause each Service Contract then in force at the effective date of such expiry or termination to terminate.

5.6 Consequences of Termination or Expiry

- 5.6.1 Any termination or expiry of this Agreement and/or a Service Contract (however occasioned) shall not affect any accrued rights or liabilities of either Party nor shall it affect the coming into force or continuance in force of any provision thereof which is expressly or by implication intended to come into or continue in force on or after such termination or expiry.
- 5.6.2 Neither Party shall be entitled to claim compensation by the other Party on account of a termination or expiry of this Agreement and/or a Service Contract.
- 5.6.3 Contractor's Obligations on Termination or Expiry
- 5.6.3.1 On the termination or expiry of this Agreement and/or a Service Contract, the Contractor shall co-operate with ECMWF and with any new contractor under any arrangements notified to him by ECMWF, to effect a full and orderly transition to ECMWF or to such new contractor and shall furnish ECMWF or a new contractor with any work in progress, Deliverables, Assets, information or documentation reasonably required by ECMWF.
- 5.6.3.2 The Contractor shall comply with all reasonable instructions from ECMWF with regard to termination or expiry and shall take reasonable steps to mitigate any costs which ECMWF shall incur as a result of termination of this Agreement and/or a Service Contract.
- 5.6.3.3 On ECMWF's request, the Contractor shall promptly deliver to ECMWF all ECMWF materials and documents in the Contractor's (or any Contractor Personnel's) possession together with all the documents and information (in any format) requested by ECMWF at the time of termination or expiry .
- 5.6.4 Personnel on Termination or Expiry
- 5.6.4.1 It is not anticipated that the Services to be provided under this Agreement or any Service Contract will or are likely to give rise to a relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended ("TUPE") or any equivalent or analogous Law in any part of the world. Accordingly, the Contractor hereby indemnifies ECMWF against all Loss together with reasonable legal expenses suffered by ECMWF, which arise out of or in connection with:
- i. any breach by the Contractor or a Sub-contractor of Regulation 13 (duty to inform and consult representatives) of TUPE or any equivalent or analogous provision in any Law in any part of the world;
 - ii. any act or omission by the Contractor or a Subcontractor in respect of any of their obligations or liabilities in relation to current or former Contractor Personnel; and
 - iii. any claim for redundancy payment, unfair dismissal compensation or notice monies and expenses or a protective award, in connection with or as a result of any claim or demand by any such Contractor Personnel whether arising directly from the termination or expiry of the Agreement or otherwise directly from TUPE and whether in respect of their employment or its termination (including any claim that they are employed either by ECMWF or by a person engaged to provide services which are the same or similar to the Services (a "New Supplier") as a result of TUPE or that ECMWF or a New Supplier has otherwise inherited liability as a result of TUPE).
- 5.6.4.2 The Contractor's indemnification obligations herein are subject to:
- i. ECMWF promptly providing the Contractor with notice of any matter which may come within the scope of the indemnity;
 - ii. ECMWF allowing the Contractor sole control over the defence of any claim and any

- related settlement negotiations; and
- iii. ECMWF reasonably co-operating with the Contractor's requests for assistance.

5.7 Force Majeure

- 5.7.1 A Party faced with Force Majeure shall formally notify the other Party without delay, stating the nature, likely duration and foreseeable effects.
- 5.7.2 The Parties shall use all reasonable endeavours to limit any damage due to Force Majeure. They shall use all reasonable endeavours to resume the performance of the Services as soon as possible.
- 5.7.3 The Party faced with Force Majeure shall not be held to be in breach of its obligations under this Agreement if it has been prevented from fulfilling them by Force Majeure.

5.8 Indemnities

- 5.8.1 The Contractor shall indemnify and hold harmless ECMWF for and against all Losses together with all reasonable legal costs, and disbursements suffered or incurred by ECMWF and that may be finally awarded by a court in respect of any Claim, that:
 - 5.8.1.1 the operation, possession or use of any part of the Services; or
 - 5.8.1.2 ECMWF's use, reproduction or exploitation of the Deliverables and/or the Assets; or
 - 5.8.1.3 ECMWF's use of the Integrated Technology in accordance with the rights granted under Clause 3.4 (Integrated Technology); infringes any Intellectual Property Rights or confidentiality rights of the said third party.
- 5.8.2 The Contractor shall also indemnify and hold harmless ECMWF for and against all Losses together with all reasonable legal costs and disbursements suffered or incurred by ECMWF as a result of:
 - 5.8.2.1 a breach of the Contractor's obligations under his confidentiality obligations set out in Clause 2.7 (Confidentiality);
 - 5.8.2.2 a breach of the Contractor's obligations to comply with any Laws set out in Clause 2.1.3 (Compliance with Laws);
 - 5.8.2.3 death or personal injury caused by any act or omission by the Contractor or any Contractor Personnel;
 - 5.8.2.4 any Loss of third party property caused by any act or omission of the Contractor or any Contractor Personnel.
- 5.8.3 Upon becoming aware of a Claim:
 - 5.8.3.1 ECMWF shall notify the Contractor in writing and will, at the Contractor's expense, give to the Contractor such authority, information and assistance as it shall reasonably require for the defence or settlement of such Claim.
 - 5.8.3.2 The Contractor shall undertake at his own expense all negotiations and other work to defend or settle any such Claim.
- 5.8.4 Infringement
 - 5.8.4.1 If a Court of competent jurisdiction holds or legal Counsel (having been selected and briefed by mutual agreement between the Parties) advises that, in respect of any part of the Services, there is an infringement as aforesaid, the Contractor shall, at his own expense and at his option:
 - i. procure for ECMWF the right to continue using such part of the Services;

- ii. replace such part with non-infringing substitutes, provided that such substitutes do not entail a material diminution in performance or function; or
- iii. modify such part so that it becomes non infringing without incurring a material diminution in performance or function.

5.8.4.2 In the event that the Contractor is unable to exercise any of the options set out above within a reasonable time then ECMWF, without prejudice to any rights or remedies either Party may have under this Agreement, under a Service Contract or at law, shall be entitled to terminate the licence for any affected Software at no cost to ECMWF and the Contractor shall refund Price and any other charges paid by ECMWF in respect of the affected Service. If any such infringement prevents the Services from being performed in accordance with the Specification then ECMWF will be able to terminate this Agreement and/or the relevant Service Contract in accordance with Clause 5.5 (Termination).

5.8.5 The Contractor shall not be liable to ECMWF in respect of any alleged infringement as aforesaid if the same results from any unauthorised alteration or modification to any part of the Services without the prior consent of the Contractor.

5.8.6 Subject to the other terms of this Agreement and/or a Service Contract, each Party agrees to indemnify and hold harmless the other Party for any claims, relating to damage or injury of any kind which the first Party causes to third parties in the performance of its tasks, activities and responsibilities under this Agreement and/or a Service Contract.

5.9 Limits of Liability

5.9.1 Neither Party shall be liable to the other for any loss of profit, loss of revenue, any loss of turnover, goodwill, reputation or opportunity or any indirect, or consequential loss, arising out of or in connection with:

5.9.1.1 this Agreement or

5.9.1.2 a Service Contract

whether or not that Party had been informed of or was aware that there was a serious possibility of such loss.

5.9.2 Subject to Clause 5.9.6, neither Party shall be liable to the other for any injury, loss or damage to staff, contractors or property arising out of activities undertaken pursuant to this Agreement and/or a Service Contract except and to the extent that such loss, damage or injury is caused by that Party's wilful misconduct or gross negligence.

5.9.3 Contractor's Total Aggregate Liability

Subject to Clauses 5.9.1 and 5.9.2, the Contractor's total aggregate liability in respect of all Loss caused by its own and its Sub-Contractors' Defaults under or in connection with a Service Contract shall not exceed two (2) times the Price agreed for the same Service Contract.

5.9.4 ECMWF'S Total Aggregate Liability

Subject to Clauses 5.9.1 and 5.9.2, ECMWF's total aggregate liability (in addition to its obligation to pay the Price for the Services) in respect of all Loss caused by its own Defaults under or in connection with a Service Contract shall not exceed half the Price agreed for the same Service Contract.

5.9.5 Clauses 5.9.3 (Contractor's Total Aggregate Liability) and 5.9.4 (ECMWF's Total Aggregate Liability) shall not limit either Party's liability in respect of:

- 5.9.5.1 any amounts payable by way of indemnity pursuant to this Agreement and/or a Service Contract; or
- 5.9.5.2 for Loss occasioned by wilful Default, wilful repudiation of all or part of this Agreement and/or a Service Contract by the Contractor, or abandonment of work by the Contractor in breach of the terms of this Agreement and/or a Service Contract, and no amount payable in respect of the items set out in this Clause 5.9.5 shall count towards the caps on liability under 5.9.3 (Contractor's Total Aggregate Liability) and 5.9.4 (ECMWF's Total Aggregate Liability).
- 5.9.6 Notwithstanding any contrary provision in this Agreement and/or a Service Contract, neither Party limits or excludes its liability in respect of:
 - 5.9.6.1 any death or personal injury caused by its negligence;
 - 5.9.6.2 any fraudulent misrepresentation ; or
 - 5.9.6.3 any other statutory or other liability which cannot be excluded under applicable Law.
- 5.9.7 Categories of Direct Loss
 - Notwithstanding Clause 5.8.1 ECMWF shall be entitled to recover as a direct loss:
 - 5.9.7.1 any additional operational and/or administrative costs and expenses arising from the Contractor's Default, including costs relating to the time spent by ECMWF's management and employees in dealing with the consequences of the Default; and
 - 5.9.7.2 reasonable costs and expenses incurred by ECMWF in rectifying a default of the Contractor, and in procuring new or replacement Services for the remainder of the Term.
- 5.9.8 As some of the Deliverables shall be provided to users without any warranty as regards quality or suitability for any purpose, the Parties shall cooperate to defend any claim brought by a user relating to the same.
- 5.9.9 Subject to the other terms of this Agreement and each Service Contract, each Party shall assume sole liability towards third parties, including liability for damage or injury of any kind sustained by third parties, in the course of the performance of its tasks, activities and responsibilities under this Agreement and each Service Contract.

6 Miscellaneous

6.1 General Undertakings

- 6.1.1 Each Party undertakes to the other that:
 - 6.1.1.1 it has all necessary power and authority to enter into and perform its obligations under this Agreement and each Service Contract;
 - 6.1.1.2 it has taken all requisite corporate and other action to approve the entering into and performance of this Agreement and each Service Contract and shall provide evidence of that action to the other Party on request;
 - 6.1.1.3 there are no actions, suits or proceedings or regulatory investigations pending or, to that Party's knowledge, threatened against or affecting that Party before any court or administrative body or arbitration tribunal that might affect the ability of that Party to meet and carry out its obligations under this Agreement and each Service Contract;
 - 6.1.1.4 once duly executed, this Agreement and each Service Contract will constitute legal, valid and binding obligations on it;

- 6.1.1.5 it is solvent and able to perform all of its obligations under this Agreement and each Service Contract and will remain so throughout the Term; and
- 6.1.1.6 entering into this Agreement and each Service Contract will not cause that Party to be in breach of any other contract to which it is a Party or any statutory or other legal requirement.

6.2 Language

All requests for payments, reports and documents under this Agreement and each Service Contract shall be transmitted in English.

6.3 Severance

If any provision of this Agreement or each Service Contract is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement and each Service Contract had been executed with the invalid illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Agreement, ECMWF and the Contractor shall immediately commence good faith negotiations to remedy such invalidity.

6.4 Amendments to this Agreement

- 6.4.1 Any amendment to the Agreement and/or each Service Contract shall be agreed in writing by the duly authorised representatives of each Party, identified at Clause 2.4.1.
- 6.4.2 An amendment to this Agreement and/or each Service Contract may not have the purpose or the effect of making changes to this Agreement and/or the relevant Service Contract which would call into question the Contractor's selection by ECMWF.
- 6.4.3 Amendments to this Agreement and/or each Service Contract shall enter into force on the date on which the last Party signs them.

6.5 Independence of Contractor

- 6.5.1 Nothing in this Agreement or any Service Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.
- 6.5.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

6.6 No Third Party Rights

Subject to the provisions of Clause 5.1 (Audits), no one other than a Party to this Agreement, or a Service Contract (as appropriate) shall have any right, under the Contracts (Rights of Third Parties) Act 1999 or otherwise, to enforce any of its terms.

6.7 Entire Agreement

This Agreement and each Service Contract (as appropriate) constitutes the entire understanding between the Parties relating to the subject matter thereof and it shall supersede all prior negotiations, understandings or agreements with respect to such subject matter. The Parties acknowledge that neither is relying on any statement, representation, warranty or understanding (whether negligently or innocently made) of any person, whether a Party to this Agreement, or to a Service Contract or not, other than is expressly set forth in this Agreement or the Service Contract (as appropriate). Nothing in this Clause 6.7 shall, however, operate to limit or exclude any liability for fraudulent misrepresentation.

6.8 Provisions With Continuing Effect

- 6.8.1 The following Clauses together with all other provisions of this Agreement and each Service Contract which are intended to have effect following any expiry or termination of this Agreement and each Service Contract, shall survive expiry or termination of this Agreement and each Service Contract to the extent permissible by law: Clause 1.2 (Definitions and Interpretation); Clause 2.1.7.1(ii) (PI Insurance Requirements); Clause 2.6 (Process for Resolving Disputes); Clause 2.7 (Confidentiality); Clause 3 (Assets and Intellectual Property Rights); Clause 5.1 (Audit); Clause 5.6 (Consequences of Termination); Clause 5.6.4.1 (Contractor's Obligations on Termination); Clause 5.8 (Indemnities); Clause 5.9 (Limits of Liability); and Clause 6 (Miscellaneous).

6.9 Governing Law and Arbitration

- 6.9.1 Unless otherwise agreed in writing, the laws of England shall govern the validity, construction and performance of this Agreement and each Service Contract.
- 6.9.2 In the event of a dispute arising in connection with this Agreement and/or a Service Contract, the Parties shall comply with Clause 2.6 (Process for Resolving Disputes) if any dispute cannot be so settled, it shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by three (3) arbitrators one each to be appointed by the Parties and the third to be appointed in accordance with the said rules sitting in London, England. The proceedings shall be in the English language and for the avoidance of doubt this arbitration agreement shall also be governed by the laws of England. In accordance with Clauses 45 and 69 of the Arbitration Act 1996, the right of appeal by either Party to the English Courts on a question of law arising in the course of any arbitral proceedings or out of an award made in any arbitral proceedings is hereby agreed to be excluded.

Annex 1 - ECMWF's Specification for Framework Agreement

Annex 2 - Contractor's Tender for Framework Agreement

Annex 3 - Model of Service Contract

SERVICE CONTRACT No [complete]
implementing Framework Agreement No [complete]

This Service Contract is made on ECMWF signatory will insert date by hand when he signs

- (1) The European Centre for Medium-Range Weather Forecasts, an inter-governmental organisation, governed by its Convention and associated Protocol on Privileges and Immunities, based at Shinfield Park, Reading, RG2 9AX, United Kingdom ("ECMWF"); and
- (2) [Name and address of Contractor] the ("Contractor")

In the terms of this Service Contract, ECMWF and the Contractor may each be referred to as a "Party" or, collectively as "Parties".

By the application of an authorised signature, the Parties each show their intention and willingness to be bound by the terms of this Service Contract, with effect from the date shown at Clause 2.1 below.

This Service Contract has been signed on behalf of each of the Parties by a duly authorised signatory on the date stated at the beginning of this document.

SIGNED for and on behalf of ECMWF:

.....

Signature

.....

Print name

.....

[Title]

SIGNED for and on behalf of [.....]

.....

Signature

.....

Print name

.....

[Title]

1. Subject Matter
 - 1.1 This Service Contract implements Framework Agreement No [complete] (the "Agreement").
 - 1.2 Unless otherwise defined in this Service Contract, terms used in this Service Contract shall have the meaning given to them in the Agreement.
 - 1.3 The subject matter of this Service Contract is [short description of subject].
 - 1.4 The Contractor undertakes, in accordance with the terms set out in the Agreement and in this Service Contract and the annexes thereto, which form an integral part thereof, to perform the Services set out in Annex 1 (ECMWF's Specification for the Framework Agreement) In accordance with Annex 3A (ECMWF's Request for Service) and Annex 3B (Contractor's Tender for Service Contract).
 - 1.5 The terms of the Agreement are incorporated into and form part of this Service Contract, as varied and amended by the other provisions of this Service Contract.
2. Effect and Duration
 - 2.1 The Parties agree that this Service Contract shall take effect on and from [date].
 - 2.2 The duration of the performance of the Services shall not exceed [complete] [days][months]. Performance of the Services shall start from the date of entry into force of this Service Contract.
 - 2.3 The period of performance of the Services may be extended only with the express written agreement of the Parties before such period elapses.
3. Price
 - 3.1 The maximum total price to be paid under this Service Contract shall be EUR [amount in figures and in words], which is broken down in detail in Annex 3C (Financial Annex) and/or Annex 2 (Contractor's Tender for Framework Agreement) and which shall cover all Services performed under this Service Contract.
4. Additional Terms
[Insert any Service Contract-specific terms].

Annexes 3A, 3B and 3C

Annex 3A – ECMWF's Request for Service

[To be completed by ECMWF]

Annex 3B – Contractor's Response to Request for Service

[To be completed by Contractor]

Annex 3C – Financial Annex

Service Contract 2015/XX_YY-LotAA-WW/SC1

1 Introduction

To implement the working relationship between ECMWF and the Contractor, the following provisions shall apply in addition to Clause 2 (Operation of Services) and Clause 4 (Finance).

Annex 3C specifies the practical specifications to verify the performance of the contract and lays down the agreed payment plan as part of Annex 3 - Service Contract.

For the purpose of this Annex, the following words and phrases shall have the following meanings:

“Accept” and “Acceptance”	shall refer to the process, whereby ECMWF satisfies itself that something meets the agreed expectations and “Notice of Acceptance” shall be written confirmation of Acceptance, from ECMWF to the Contractor;
“Cost Reimbursement”	shall mean that the price to be paid for Services is the actual and acceptable costs and expenses associated with the Services (See Clause 4 of Framework Agreement), claimed at rates which have been agreed between the Parties in advance;
“Fixed Price”	shall mean that the price to be paid for Services has been agreed between the Parties in advance.

2 Payment plan

Workpackages and tasks will be covered under the following payment method: [

- **Fixed-Price:** Activities covered under [WPX, WPY,... and WPN]
- **Cost Reimbursement:** Activities covered under [WPX, WPY,... and WPN]

3 Payment plan

The payment plan as laid down in the table below has been agreed for Service Contract [1]:

				Duration	Amount (EUR)	
Price Framework Contract				[months]	0.000.000,00[X]	
Price Service Contract [1]				[months]	0.000.000,00[Y]	
Payment number	Date request for payment	Period of activities /Milestone covered	Activities covered by payment	Amount (EUR)	Percentage	Cumulative budget (EUR)
[*, **]	[dd/mm/yyyy]	[Q1, Q2, Q3, Q4 + year or milestone T0+x, T0+y, etc.]	[indicate WP and deliverables numbers]	[]	[]%	[]
<i>[For payment at contract signature: * ECMWF reserves the rights to re-claim the payment on a pro-rata basis in case the contractor fails to perform as defined in the contract]</i>					100%	[]
<i>[For payment as a cost reimbursement: ** Payment amount is capped at the indicated maximum budget]</i>						
TOTAL						

[Select the relevant chapter(s) and paragraphs:

Payment procedure Fixed Price activities [x, y, z]:

Contract performance verification

Performance of contractual activities covered by **payment[s] [x, y, z – operational services]** will be verified by ECMWF on:

- *a continuous basis* on receipt of the relevant Deliverables and delivery of services respecting the agreed manner and submission dates as specified in Annex 3B, and
- *a quarterly basis*, on receipt of the Key Performance Indicators (KPI) report and the specified service provision. The KPI report is part of the Quarterly Report as specified in Clause 2.3.2, that shall be submitted using the template as provided by ECMWF.

Performance of contractual activities covered by **payment[s] [x, y, z – service developments]** will be verified by ECMWF on a *milestone* basis.

The performance will be verified based on completion to ECMWF's satisfaction of all related tasks, activities and deliverables as specified under the Contract to achieve the milestone. ECMWF shall assess the milestone completion on the basis of the progress of the work, fitness for purpose of deliverables, and quality of documentation. The Contractor shall notify ECMWF as soon as the Contractor considers that the milestone has been reached. The Notification shall provide adequate justification of the milestone completion.

A dedicated review meeting with the Contractor or other form of communication with the Contractor may be carried out to assess [milestone completion and/or any outstanding activities]. A plan for the review meetings is specified in Annex 3B.

For the last Service Contract within the Framework Contract, final payment is subject to the acceptance of the Final Report as specified in Clause 2.3.4.1 and using the template as provided by ECMWF.

Notice of Acceptance

Based on ECMWF's verification of the contract performance for [the periods and milestones] concerned, ECMWF sends a Notice of Acceptance or notice of the need for the Contractor to take some form of remedial action.

For payments [a, b, c – operational services], it is anticipated that the Contractor will receive Notice of Acceptance within [21] calendar days, of ECMWF's receipt of the Quarterly Report. The Contractor may only submit an invoice for the provision of operational services covered in that quarter on or after receipt of Notice of Acceptance of the same.

For payments [x, y, z - service developments], it is anticipated that in most cases the Contractor will receive Notice of Acceptance within [45] calendar days of ECMWF's receipt of the Milestone Completion Notification. The Contractor may only submit an invoice for a payment, which is dependent upon the milestone or linked target on or after receipt of Notice of Acceptance of the relevant milestone or target.

Payment procedure for Cost Reimbursement activities [x, y, z]:

Contract performance verification

Performance of contractual activities covered by **payment[s] [x, y, z]** will be verified by ECMWF on a *milestone* basis.

The performance will be verified based on following proof:

- Completion to ECMWF's satisfaction of all related tasks, activities and deliverables as specified under the Contract to achieve the milestone. ECMWF shall assess the milestone completion on the basis of the progress of the work, fit for purpose of deliverables, and quality of documentation;
- Report on the Use of Resources. The Contractor shall report on the use of resources based on the template as provided by ECMWF. The Report shall include a summary on the person-days spent and a breakdown of the underlying direct costs and expenses and overheads incurred per WorkPackage. This summary shall be provided for the Contractor and each of its Sub-Contractors. Cost breakdowns shall be made in line with the pricing tables in Annex 2 and respecting the eligibility criteria as specified in Clause 4.2.3.

The Contractor shall notify ECMWF as soon as the Contractor considers that the milestone has been reached. The Notification shall provide adequate justification of the milestone completion and shall include the Report on the Use of Resources.

A dedicated review meeting with the Contractor or other form of communication with the Contractor may be carried out to assess [milestone completion and/or any outstanding activities]. A plan for the review meetings is specified in Annex 3B.

For the last Service Contract within the Framework Contract, final payment is subject to the acceptance of the Final Report as specified in Clause 2.3.4.1 and using the template as provided by ECMWF.

Notice of Acceptance

Based on ECMWF's verification of the contract performance for [the periods and milestones] concerned, ECMWF sends a Notice of Acceptance or notice of the need for the Contractor to take some form of remedial action.

It is anticipated that in most cases the Contractor will receive Notice of Acceptance within [45] calendar days from ECMWF's receipt of the Milestone Completion Notification and Report on the Use of

Resources. The Contractor may only submit an invoice for a payment, which is dependent upon the milestone or linked target on or after receipt of Notice of Acceptance of the relevant milestone or target.

Invoice

The invoice must comply with the specifications as laid down in Art. 4.5. and must be accompanied by a copy of the Notice of Acceptance from ECMWF and respecting the payment plan as presented above.

The invoice shall be sent to the following email address: finance@ecmwf.int. Please indicate in the email subject the contract name and payment number.

For **Fixed-Price payments (payment X, Y and Z)**, the maximum price and the period covered by the payment are specified in the payment plan as described above.

NOTE: Justification on the use of resources shall be submitted on an annual basis according to the specifications of Clause 2.3.1.1 (preliminary financial information related to the previous year) and Clause 2.3.1.4 (audited annual financial report). Prices shall respect the eligibility criteria as specified in Clause 4.2.3. and the necessary evidence shall be provided for audit purposes.

For **Cost Reimbursement payments (payment X, Y and Z)**, justification on the use of resources is part of the Contract Performance Verification and the assessment is reflected in ECMWF's Notice of Acceptance. The payment plan will be adjusted according to the actual costs made, capped for each individual milestone and for the overall budget allocated for the Service Contract. ECMWF and the Contractor may agree for a revision of the overall budget allocated to the Service Contract provided that it does not exceed the maximum budget of the Framework Agreement.

]

Annex 4 - Software

The provisions set out in this Annex 4 shall apply to the extent that the agreed Deliverables include any software or code.

NOT APPLICABLE TO THIS PARTICULAR FRAMEWORK AGREEMENT OR TO ANY RELATED SERVICE CONTRACTS.