



THE EUROPEAN CENTRE FOR MEDIUM RANGE WEATHER FORECASTS

AND

[NAME OF CONTRACTOR]

AGREEMENT FOR COPERNICUS SERVICES

AGREEMENT [NUMBER] FOR THE PROVISION OF

[BRIEF DESCRIPTION OF SERVICES]

Third Edition (January 2024, adapted in July 2024 for CJS2 156a)



Funded by the European Union

Implemented by



This Agreement is made 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, acting through its duty station at Robert-Schuman-Platz 3, 53175 Bonn, Germany (“**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, by hand or by electronic signature, the Parties each show their intention and willingness to be bound by the terms of this Agreement, with effect from the effective date shown below in Clause 1.2.1 of the Agreement.

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

.....

Signature

.....

[Print name]

.....

[Title]

Date:

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

.....

Signature

.....

[Print name]

.....

[Title]

Date:

1. Introduction

1.1 Agreement – Parts and Precedence

1.1.1 This agreement comprises:

1.1.1.1 The clauses (1-6) of this document (the "**Clauses**");

1.1.1.2 Annex 1 – ECMWF's [Expression of Interest (EOI) or Request for Proposal (RFP)] (including any clarifications which extend the rights or obligations of either Party);

1.1.1.3 Annex 2 – Contractor's [Tasks or Proposal] (including any clarifications which extend the rights or obligations of either Party);

1.1.1.4 Annex 3 – Payment Plan;

1.1.1.5 Annex 4– Personal Data Protection;

1.1.1.6 Annex 5– Logos;

1.1.1.7 the other RFP documentation (including any clarifications which extend the rights or obligations of either Party);

(the "**Agreement**"). Conflicts between the provisions of documents in this Agreement shall be resolved in the above order of precedence.

1.2 Agreement – Duration and Use by ECMWF and Others

1.2.1 The duration of this Agreement shall start on [insert effective date of this Agreement] and shall end on [insert end date for this Agreement] unless agreed otherwise in writing by both Parties.

1.2.2 The benefits of this Agreement, including but not limited to the Deliverables (according to Clause 3.2.1) subject to Intellectual Property Rights (according to Clause 3.2.3), shall be for unlimited use by the European Commission (hereinafter referred to as "**Commission**"), 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 (e.g. Article 15 of the Convention) or Conventions to cooperate and other authorised users of ECMWF services.

1.2.3 References throughout this Agreement to use of the services by ECMWF shall be deemed to include use by those organizations referred to in Clause 1.2.2.

1.3 Condition Precedent

The confirmation of funding by the Commission is a condition precedent (section 158 BGB – "Bürgerliches Gesetzbuch" (German Civil Code), hereinafter referred to as "**BGB**"). The Contractor shall not be entitled to any claims pursuant to section 311 (2) BGB in case the Commission does not provide the confirmation of funding. The subsistence of the Contribution Agreement between the Commission and ECMWF in respect of the implementation of the Copernicus Atmosphere Monitoring and Climate Change Monitoring Services, which entered into force on 22 July 2021, is regarded as the basis of the Agreement ("Geschäftsgrundlage" in accordance with section 313 BGB).

2. Operation of Services

2.1 Contractor's Performance and Related Obligations

2.1.1 Contractor's Undertakings

The Contractor represents, warrants and undertakes:

- (i) that neither the Contractor nor any Contractor Personnel, i.e. the employees, agents (including vicarious agents according to section 278 BGB), consultants and sub-contractors of the Contractor and of any sub-contractor, who provide or who are involved in the delivery of the services, 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;
- (ii) to comply with (and to procure that the Contractor Personnel comply with) ECMWF's reasonable requests in performing the contractual obligations;
- (iii) the performance of the contractual obligations shall not infringe any Intellectual Property Rights of any third party;
- (iv) 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 contractual obligations in accordance with this Agreement;
- (v) that the Contractor and its sub-contractors are not engaging, and will not engage, in any type of double financing by entering into this Agreement, i.e. acquiring some form of funding, consideration or reimbursement, in addition to the funds paid by ECMWF to the Contractor in return for supplying or providing access to some or all of the same or essentially the same Deliverables (according to Clause 3.2.1) or Assets (according to Clause 3.1.1) as ECMWF is paying for with the funds under this Agreement; and
- (vi) where assets need to be imported in the European Union or exported outside the European Union or transferred within the European Union as part of the contractual obligations, and export control or transfer control restrictions apply, that it shall secure the necessary licences and authorisations.

2.1.2 Contractor's Obligations

The Contractor shall:

- (i) perform its contractual obligations and provide the services as set out in Annex 1 and Annex 2 to this Agreement;
- (ii) report to and liaise with ECMWF's Contract Officer and other key personnel (Clause 2.3.3) and to act in accordance with the instructions given to the Contractor from time to time by them;

- (iii) promptly report to ECMWF:
 - (a) any breach of this Agreement by the Contractor or the Contractor Personnel;
 - (b) any circumstances likely to adversely affect or delay the delivery of the services or to prevent the Contractor from complying with its obligations under this Agreement;
 - (c) any change to the identity of the Contractor's Authorised Representatives (see Clause 2.3.1) or Service Manager (see Clause 2.3.3);
 - (d) any substantial change in its legal, financial, technical or organisational situation, or any changes in membership or ownership situation;
 - (e) any **Fraud**, i.e. any act or omission described in: (i) Article 3 of EU Directive 2017/1371; or (ii) Article 1 of 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, as well as any other wrongful or criminal deception intended to result in financial or personal gain, or any **Irregularity**, i.e. any intentional act or omission by the relevant party, which has or would have the effect of substantially prejudicing the general budget of the European Union, either by reducing or losing revenue or by an unjustified item of expenditure, which comes to its attention and any situation which may give rise thereto and the measures taken, which could impact the delivery of the services;
 - (f) any event that may harm the European Union's financial interests; and
 - (g) if the Contractor is no longer established in a Copernicus participating state in accordance with the conditions laid down in the **Space Regulation** (Regulation (EU) 2021/696 of the European Parliament and of the Council of 28 April 2021 establishing the Union Space Programme and the European Union Agency for the Space Programme and repealing Regulations (EU) No 912/2010, (EU) No 1285/2013 and (EU) No 377/2014 and Decision No 541/2014/EU).
- (iv) not support actions that contribute to money laundering, terrorism financing, tax avoidance, tax fraud or tax evasion;
- (v) ensure appropriate communication to ECMWF regarding the contractual obligations and all relevant activities, achievements and results, in particular by meeting any reporting requirements as set out in Annex 1; and
- (vi) not make the funds paid by ECMWF to the Contractor available, directly or indirectly, to or for the benefit of any **Restricted Person**, i.e. any entity, individual or group of individuals designated by the EU as subject to the EU Restrictive Measures in the lists provided at www.sanctionsmap.eu or a **Concerned Entity**, i.e., any EU government entity as defined in Article 2 (b) of Regulation 2020/2092 (where '**government entity**' means a public authority at any level of government, including national, regional and local authorities, as well as Member State organisations within the meaning of point (42) of Article 2 of the **Financial**

Regulation (Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, OJ L193 of 30 July 2018, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012¹) and/or any entity linked to it, as it may be established in the relevant Conditionality Decision.

2.1.3 Compliance with Laws

2.1.3.1 The Contractor shall perform its obligations under this Agreement in a manner that complies with all laws in force during the term of this Agreement, and in a manner that is consistent with ECMWF's obligation to comply with the Financial Regulation and the Space Regulation, and to act in accordance with the financial interests of the European Union. The Contractor shall not cause ECMWF to breach any laws when executing this Agreement.

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.

2.1.3.3 As soon as the Contractor becomes aware of any change that should be made to the contractual obligations to ensure that the performance of them conform to any law, good industry practice or any new legal or regulatory requirement which affects the contractual obligations 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 Conflict of Interest

2.1.4.1 The Contractor shall refrain from any action which may give rise to a **Conflict of Interest**, i.e. a situation where the impartial and objective exercise of the functions of a financial actor or other person is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other direct or indirect personal interest, and take appropriate measures to prevent a Conflict of Interests from arising in the delivery of the services.

2.1.4.2 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 contractual obligations, it shall be notified to ECMWF, in writing without delay. The Contractor shall take all necessary 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.

2.1.5 Exclusion Situations and Restricted Persons

2.1.5.1 The Contractor shall notify ECMWF in writing and within five (5) business days if the Contractor, any of its sub-contractors or any third party that receives payment for the Contractor in connection with the contractual obligations is in an **Exclusion Situation** as defined in Article 136 of the Financial Regulation at any time during the term of this Agreement. The Contractor shall regularly update ECMWF about the status of any Exclusion Situation reported under this Clause.

¹ 'Member State organisation' means an entity established in a Member State as a public law body, or as a body governed by private law entrusted with a public service mission and provided with adequate financial guarantees from the Member State.

- 2.1.5.2 If and when the Contractor notifies ECMWF of an Exclusion Situation under Clause 2.1.5.1 or a Fraud or Irregularity under Clause 2.1.2(iii)(e), ECMWF shall transmit the information to the Commission for entry on the Early Discovery and Exclusion System and publication on the website of the Commission.
- 2.1.5.3 The Contractor shall regularly assess whether the Contractor, any sub-contractor, or any other entity that receives payment from the Contractor in connection with the contractual obligations, is a Restricted Person. If the Contractor identifies any such parties as a Restricted Person, the Contractor shall notify ECMWF in writing as soon as reasonably practicable.
- 2.1.5.4 In the event that the Contractor notifies ECMWF of a Restricted Person under Clause 2.1.5.3 or ECMWF otherwise determines that the Contractor, any sub-contractor, or any other entity that receives payment from the Contractor in connection with the contractual obligations is a Restricted Person:
- (i) the Contractor shall co-operate and participate in any related consultation process with ECMWF and the Commission (and shall procure the co-operation and participation of any necessary third parties);
 - (ii) the Contractor shall comply with any remedial measures proposed by ECMWF in connection with that Restricted Person;
 - (iii) ECMWF shall be entitled to recover from the Contractor, as a debt, any funds provided to a Restricted Person; and
 - (iv) ECMWF shall be entitled to suspend or terminate this Agreement without notice.
- 2.1.6 Conditionality Decision(s)
- 2.1.6.1 In the event of the adoption of a **Conditionality Decision**, i.e., a Council Implementing Decision adopted in accordance with Article 6 of EU Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, OJ L 433I, 22.12.2020, p. 1–10, containing **Conditionality Measures**, i.e., measures adopted under a Council Implementing Decision pursuant to Regulation 2020/2092 on a general regime of conditionality for the protection of the Union budget, against the Contractor and/or any of its sub-contractors as a Concerned Entity(ies), ECMWF shall without undue delay notify the Contractor of the adoption of the Conditionality Decision, the Conditionality Measures against the Contractor and/or any of its sub-contractors as Concerned Entity(ies) stipulated in the Conditionality Decision. ECMWF shall further notify the Contractor in the case of the adoption of a Conditionality Decision lifting the Conditionality Measures.
- 2.1.6.2 For the purposes of the Agreement, the date of entry into force of the Conditionality Measures and of the Conditionality Decision lifting the Conditionality Measures shall be the date of receipt by ECMWF of the formal notification by the Commission for the respective Conditionality Measures or any such future date expressly stated in the respective formal notifications, which shall not be earlier than the date of receipt by ECMWF of that formal notification itself.
- 2.1.6.3 The Contractor shall regularly assess whether the Contractor, any sub-contractor, or any other entity that receives payment from the Contractor in connection with the services, is a Concerned Entity. If the Contractor identifies any such parties as a Concerned Entity,

the Contractor shall immediately notify ECMWF in writing and shall ensure that the terms and conditions of the respective Conditionality Decision are duly applied.

2.1.6.4 The provisions of this Clause 2.1.6 are without prejudice to the rights of ECMWF to suspend or terminate this Agreement for good cause without notice and/or to recover any funds paid by ECMWF under this Agreement.

2.1.6.5 For the avoidance of doubt, the Parties acknowledge that if a recipient of any funds provided under this Agreement becomes a Concerned Entity after the date on which such funds were made available to, or for the benefit of such recipient, the Conditionality Decision shall not apply with respect to the funds made available to, or for the benefit of the Concerned Entity before the entry into force of the relevant Conditionality Decision.

2.1.7 Quality of Deliverables

2.1.7.1 ECMWF shall have the right to inspect any Deliverables (according to Clause 3.2.1) at any time on or after delivery by the Contractor to ensure each Deliverable complies with the requirements of this Agreement.

2.1.7.2 If ECMWF discovers that any Deliverable does not comply with the requirements of this Agreement, ECMWF shall be entitled to notify the Contractor specifying the non-compliance and requiring remedy by the Contractor.

2.1.7.3 Within a reasonable time of receiving notice pursuant to Clause 2.1.7.2 and in any event within thirty (30) calendar days, the Contractor shall remedy any non-compliance in a Deliverable and re-submit the Deliverable to ECMWF.

2.1.7.4 Until such time as the Contractor has complied with Clause 2.1.7.3, 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 thirty (30) calendar days referred to in Clause 2.1.7.3, to reject the relevant Deliverable and to require repayment and not to make any further payment in relation to the relevant Deliverable. Additional claims by ECMWF and third parties under this Agreement against the Contractor shall remain unaffected.

2.1.8 Insurance Requirements

2.1.8.1 The Contractor shall, at its own expense, arrange and maintain in force: (i) insurance policies with a reputable insurer; or (ii) other cover or contingency arrangements, such as coverage via public self-insurance schemes or governmental guarantee schemes, that are acceptable to ECMWF; to meet the requirements set out in this Clause 2.1.8 (“**Insurance**”).

2.1.8.2 The value and the terms of the Insurance shall be adequate to cover the Contractor’s liabilities, to the sub-contractors, to ECMWF and to third parties, under this Agreement and the applicable law and adequate to protect the Contractor, the sub-contractors and ECMWF against the consequences of all reasonably foreseeable risks associated with this Agreement including third party property damage and professional indemnity cover. In any event, the Parties have agreed that the minimum value of the Insurance cover shall be two times the Price per occurrence and in the aggregate annually for the benefit of ECMWF.

2.1.8.3 The Contractor shall ensure that the Insurance applies for a period of time including the

duration of this Agreement and the duration of any obligations, which survive the expiry or termination of this Agreement.

2.1.8.4 As and when requested by ECMWF, the Contractor shall provide evidence of or a declaration about the Insurance to the satisfaction of ECMWF.

2.2 Reporting

2.2.1 The Contractor shall supply ECMWF with all requested information in due time and comply with any reporting requirements as set out in Annex 1.

2.2.2 If the Contractor fails to submit the documents or the revised documents referred to in Clause 2.2.1 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 5.2. If any additional information or documents are requested under Clause 2.2.1, 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 Communications by and between the Parties

2.3.1 Authorised Representatives

The sole positions with authority to sign this Agreement and any variations of the same for ECMWF are [Position]. The sole positions with authority to sign this Agreement and any variations of the same for the Contractor are [Position].

2.3.2 Formal Notices

Formal notices shall be deemed received when delivered by mail, or an email which shall be deemed to be received when it enters the recipient's inbox followed by a hardcopy by mail. The relevant addresses are as follows:

ECMWF	Contractor
ECMWF Bonn	[]
Robert-Schuman-Platz 3	
53173 Bonn	
Germany	
Attention: The Director General	Attention: []
Copernicus.notices@ecmwf.int	Email address []

2.3.3 Contract Officers, Service Managers and Other Key Personnel

2.3.3.1 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).

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

For ECMWF:

Contract Officer: [contact details]

Alternative contact: [contact details]

For Contractor:

Service Manager: [contact details]

Alternative contact: [contact details]

2.3.4 Publicity

2.3.4.1 Within the purpose of this Agreement, the Contractor shall take all appropriate measures to actively promote and enhance the reputation of ECMWF and the Commission in public communications whatever their form, and shall refrain from any actions or omissions which may be detrimental to the image and reputation of ECMWF and the Commission. Whenever relevant, public communications shall acknowledge the role of ECMWF and the Commission and shall underline the Parties' relationship.

2.3.4.2 The Contractor undertakes to:

- (i) cooperate with ECMWF and third parties to raise awareness, visibility and uptake of activities carried out under ECMWF's agreement with the Commission, and where appropriate, of other Copernicus Programme or Space Programme-related activities; and
- (ii) co-ordinate with ECMWF all communication and media activities implemented under this Agreement.

2.3.4.3 Unless ECMWF requests or agrees otherwise, the Contractor shall take all appropriate measures to publicise the fact that the Copernicus is a component of the Space Programme, and the services were funded by the European Union. Unless ECMWF requests or agrees otherwise, any communication or publication related to this Agreement, made by the Contractor, including at conferences, seminars or in any information or promotional materials (such as brochures, leaflets, posters, presentations, etc.), shall:

- (i) acknowledge that the relevant Copernicus service (i.e. the **Copernicus Atmosphere Monitoring Service** referred to in the Space Regulation, hereinafter "CAMS"; the **Copernicus Climate Change Service** referred to in the Space Regulation, hereinafter "C3S") was or is being "Funded by the European Union" and "Implemented by ECMWF";
- (ii) display reference to the Space Programme, as well as, on equal footing the text of "Programme of the" followed by the EU Logo, together with the text

"European Union", followed by the Copernicus Logo and the text "implemented by" and the ECMWF logo;

- (iii) use only factually accurate information; and
- (iv) carry the following disclaimer (translated into local languages where appropriate): "This document was produced with funding by the European Union. Views and opinions expressed are those of the author(s) only and the European Commission and ECMWF cannot be held responsible for any use which may be made of the information contained therein."

2.3.4.4 The size and prominence of the acknowledgements and logos shall be clearly visible in a manner that will not create any confusion regarding the involvement of the Contractor, ECMWF and the Union in the relevant activity.

2.3.4.5 The obligation to display the acknowledgements and the ECMWF logos, the Copernicus Logo, and the EU Logo does not confer to the Contractor a right of exclusive use. The Contractor shall not appropriate the Copernicus Logo, the EU Logo or the ECMWF logo any similar trademarks or logos, either by registration or by any other means.

2.3.4.6 For the purposes of Clause 2.3.4.1 and under the conditions specified therein, the Contractor is authorised to use the EU Logo and the Copernicus Logo without prior permission from the Commission and to use the ECMWF logo without permission from ECMWF, subject to compliance with the conditions of use specified in the Administrative agreement with the Council of Europe regarding the use of the European emblem by third parties (2012/C 271/04).²

2.3.4.7 The Contractor shall ensure that the Contractor Personnel including sub-contractors comply with the provisions of this Clause 2.3.4.

2.3.4.8 Subject to the provisions of Clause 2.5, ECMWF reserves the right to publish anything about the Agreement, the services or the Deliverables (according to Clause 3.2.1).

2.3.4.9 The provisions of this Clause 2.3.4 shall apply during the term of this Agreement and indefinitely thereafter.

2.3.4.10 The Contractor shall submit copies of all reports, publications, press releases and updates related to this Agreement to the addresses listed in Clause 2.3.2 at the time of publication.

2.4 Amendments

2.4.1 Any amendment to the Agreement shall be agreed in writing by the duly authorised representatives of each Party, identified at Clause 2.3.1.

2.4.2 An amendment to this Agreement may not have the purpose or the effect of making changes to this Agreement which would call into question the Contractor's selection by ECMWF.

2.5 Confidentiality

2.5.1 Subject to Clause 2.5.2, each Party shall treat all **Confidential Information**, i.e.: (a) the terms of this Agreement; (b) all information disclosed to the relevant Party by or on behalf of the other Party in

² The Administrative agreement with the Council of Europe regarding the use of the European emblem by third parties (2012/C 271/04) is available at the following link: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:42012Y0908\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:42012Y0908(01)&from=EN)

connection with this Agreement and which relates to the provisions of this Agreement or the negotiations relating to this Agreement; (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; (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, as strictly confidential and shall not disclose Confidential Information to any person. Neither Party shall use Confidential Information for any reason other than fulfilling its obligation under the Agreement, unless otherwise agreed with the disclosing Party in writing or required by the Financial Regulation or the Space Regulation.

2.5.2 A Party may disclose Confidential Information if and to the extent:

2.5.2.1 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);

2.5.2.2 disclosed on a necessary basis to the professional advisers, auditors and bankers of such Party, who themselves are under a professional obligation of confidentiality;

2.5.2.3 the Confidential Information has come into the public domain other than by a breach of any obligation of confidentiality; or

2.5.2.4 with the prior written approval of the other Party.

2.5.3 The restrictions contained in this Clause 2.5 shall continue to apply after the termination or expiry of this Agreement (however arising) for five (5) 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.

2.5.4 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, that Party shall notify the other of the same and the two Parties shall consult regarding appropriate redactions from the Agreement before publication.

2.6 Personal Data Protection

The Parties shall comply with Annex 4.

2.7 Sub-contracting

2.7.1 The Contractor shall not enter into any sub-delegation agreement, outsource its overall responsibility for the contractual obligations or assign any of its rights and obligations under this Agreement to a third party.

2.7.2 The Contractor and/or a sub-contractor may engage one or more sub-contractors, subject to the other provisions of this Clause 2.7 and on the following conditions, which are pre-conditions to engagement:

2.7.2.1 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);

- 2.7.2.2 the Contractor must satisfy ECMWF that the sub-contractor meets the following eligibility criteria:
- (i) the sub-contractor is not in any Exclusion Situation as defined in Article 136 of the Financial Regulation at any time during the term of this Agreement;
 - (ii) the sub-contractor, any natural person that has the power to represent the Contractor or to take decisions on its behalf and its affiliates are not Restricted Persons and/or a Concerned Entity as defined in Clause 2.1.2(vi); and
 - (iii) any other criteria or participation limitations the Commission deems necessary and appropriate to preserve the security, integrity and resilience of the operational Union systems (as notified by ECMWF to the Contractor in writing);
- 2.7.2.3 the Contractor must in any event obtain ECMWF's prior written consent, which shall not be unreasonably withheld.
- 2.7.3 ECMWF's written consent for the Contractor and/or a sub-contractor to engage a sub-contractor shall not relieve the Contractor from any liability or obligation under this Agreement. The Contractor shall remain responsible and shall be liable for all acts and omissions of each sub-contractor and its personnel as if they were the acts and omissions of the Contractor. For the avoidance of doubt, ECMWF shall not be obliged to manage any sub-contractors or enforce the terms of any agreements between the Contractor and its sub-contractors.
- 2.7.4 Participation in tenders or calls for sub-contractors shall preferably be open to entities established in Member States of the Union and to entities established in Copernicus participating states in accordance with the conditions laid down in the Space Regulation.
- 2.7.5 The Contractor shall ensure that each sub-contractor is engaged on terms which are consistent with, and not less onerous than, the applicable terms of this Agreement. The Contractor shall ensure each sub-contractor is required to meet the same obligations as the Contractor is required to meet under the following Clauses: 2.1.1 (Contractor's Undertakings), 2.1.4 (Conflict of Interest), 2.1.5 (Exclusion Situations and Restricted Persons), Clause 2.1.6 (Conditionality Decision(s)), 2.3.4 (Publicity), 2.5 (Confidentiality), 2.6 (Personal Data Protection), 3 (Assets and Intellectual Property Rights), 5.1 (Audits) and (on a mutatis mutandis basis) 5.6.1 and 5.8.3.
- 2.7.6 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. Assets and Intellectual Property Rights

3.1 Asset Technology/Assets

- 3.1.1 "**Asset Technology (Asset/Assets)**" means tangible and intangible assets, excluding Intellectual Property Rights (according to Clause 3.2.3): (a) which are created, developed or acquired by the Contractor, or its sub-contractor, for the purpose of or in the course of performing the services; and (b) which are funded by the funds; and (c) which have a purchase value of more than Euro 7,000³; and which are not consumables.

³ Items are covered if their value is not simply transitory and if their individual value is more than Euro 7,000 or if they are closely associated with or part of a group or sequence of items, the collective value of which is more than Euro 7,000. If in doubt, the Contractor should consult with ECMWF.

- 3.1.2 ECMWF shall have the option to acquire ownership of any Assets in accordance with Clause 3.1.3.⁴
- 3.1.3 ECMWF shall notify the Contractor in writing if it wishes to exercise its option to acquire ownership of any Assets. In such case the Contractor shall be bound to accept the offer of ECMWF for the assignment of ownership in the identified Assets, the remuneration for which is already included in the Price.
- 3.1.4 During the term of this Agreement, 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, including those Assets assigned to ECMWF under Clause 3.1.3, and ensure such Assets are maintained and kept in good repair. All risks and liabilities linked to the Assets shall remain with the Contractor. At the end of the term of this Agreement, the Contractor may be required to deliver up some or all Assets which ECMWF or the Commission requires. If the total cost of the required delivery is Euro 500 or less, the Contractor shall bear it. Otherwise, ECMWF shall bear the delivery cost.
- 3.1.5 The assignment under Clause 3.1.3, shall operate to assign 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.
- 3.1.6 Unless otherwise agreed in writing, a licence is granted to the Contractor, by virtue of this Agreement to use the Assets assigned to ECMWF under Clause 3.1.3 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 of this Agreement only. The licence allows the licensee to grant sub-licences but only for the duration of the term of this Agreement.
- 3.1.7 The Contractor shall ensure that all:
- 3.1.7.1 consumables and physical assets which do not meet the definition of 'Asset'; and
 - 3.1.7.2 any Assets which ECMWF and the Union have declined to take ownership of under Clause 3.1.3,
- are decommissioned and disposed of, at the Contractor's cost and responsibility, when they are at the end of their useful life, as determined by ECMWF's relevant accounting policy.
- 3.1.8 For any Assets owned by ECMWF or the Union, the Contractor shall request the approval of ECMWF to decommission and dispose of the Assets. If ECMWF approves the request, the Contractor shall decommission and dispose of such Assets at its cost, following a write-off procedure notified to it by ECMWF.

3.2 Deliverables and Intellectual Property Rights

- 3.2.1 “**Deliverables**” mean all those things to be created, manufactured or engineered for ECMWF as part of the services, including any intended outcome of this Agreement, whatever its form or nature (including tangible and intangible assets, in particular data and information products or software products). Deliverables are identified in Annex 1 and Annex 2 and may include individuals or multiples of the following, without limitation, numerical datasets, reports, graphics, web content, software, algorithms, models, prototypes, any information from the Copernicus services (including following processing or modelling), research and development results, and documentation of implemented processes and algorithms.

⁴ Contractors should note that ECMWF is obliged to assign ownership of all Assets to the Commission under the terms of the Contribution Agreement.

- 3.2.2 **“Intellectual Property”** means any and all work product which is subject to intellectual property rights and/or protections under the laws of any country in which the intellectual property rights are sought or granted, including but not limited to works of authorship, copyrighted and copyrightable works, mask works, patented, patentable and non-patentable inventions, registered and non-registered trademarks, company and product names, marks, brands, designs, technical and nontechnical documentation, data, datasets, confidential information, formulas, software (e.g. computer programs in object code and/or source code format, requirements analysis, technical and/or application specifications, documentation etc.), devices, trade secrets and any other intellectual property of whatever nature.
- 3.2.3 **“Intellectual Property Rights”** means any exclusive or non-exclusive right which exist in any Intellectual Property, in particular (but not limited to) any patents, petty patents, utility models, trademarks, service 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 together with any benefits which such Intellectual Property Rights give to the holder, in particular (but not limited to) the right to use, copy, modify, correct, adapt, enhance, improve, update, make new releases or new versions of, make derivative works of, offer, sell, lease, rent, license, distribute in any other way against or without payment, display, broadcast, transmit, or make accessible in networks (e.g. Internet, Intranet) the Intellectual Property in question in whole or in part and any copies thereof.
- 3.2.4 The Contractor assigns to ECMWF, with full title guarantee, title to and all present and future rights (including Intellectual Property Rights) and the rights of use respectively in the Deliverables from the date of creation, or shall at its own cost procure that the owner of such rights assigns them to ECMWF on the same basis. The Contractor shall, at its own cost, do all such things and execute all documents and instruments requested by ECMWF which are reasonably necessary to enable ECMWF to obtain, defend or otherwise protect or enforce the rights (including Intellectual Property Rights) in the Deliverables both during and after the term of this Agreement.
- 3.2.5 The **Price**, i.e. the total price payable to the Contractor for the services under this Agreement, is deemed to include any fees payable in relation to the acquisition of Deliverables, and any rights (including Intellectual Property Rights) subsisting in the Deliverables, by ECMWF. For the avoidance of doubt, if the Price is payable on a Cost Reimbursement Basis, the Contractor shall not be entitled to reimbursement of such fees.
- 3.2.6 During the term of this Agreement, 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.
- 3.2.7 The archive, referred to in Clause 3.2.6 shall be physically located in the European Union or such place where the Space Regulation and the related delegated legislation (e.g. the Copernicus Data Policy defined in Chapter III of the Space Regulation) can be enforced. The archive shall continue to be located in such a place if and for so long as the Contractor maintains the archive after the end of the term of this Agreement.
- 3.2.8 Unless otherwise agreed in writing, a licence to use the Deliverables is granted to the Contractor, by virtue of this Agreement, subject to the following conditions:
- 3.2.8.1 the Contractor may use the Deliverables for any of its own purposes, including commercial purposes;
- 3.2.8.2 the licence is non-exclusive, irrevocable, worldwide, free of charge and without limitation in time.

3.3 Background IPR and Data Provisions

3.3.1 Background IPR

3.3.1.1 ECMWF and its licensors shall retain all right, title and interest in and to the ECMWF Background IPRs. The Contractor and its licensors shall retain all right, title and interest in and to the **Contractor Background IPRs**, i.e. all Intellectual Property Rights or other proprietary rights (i) in existence at the time of signing this Agreement; or (ii) developed independently of this Agreement; which are owned by the Contractor, its sub-contractors or any third party, the use of which is necessary for or incidental to:

- (a) the provision of the services and Deliverables; or
- (b) the receipt of the full benefit of the services and the Deliverables by ECMWF,
- (c) but excludes the Intellectual Property Rights subsisting in the Deliverables or the Brokerage Datasets.

3.3.1.2 If any Deliverable is dependent, for its value to the Copernicus Programme, upon a continued association with Contractor's Background IPR, which is owned by the Contractor or a sub-contractor and which has been used by them in the performance of the contractual obligations, then by virtue of this Agreement, a licence is granted to ECMWF to use such Contractor's Background IPR for all acts necessary for (i) the use of the Deliverables by ECMWF and the Union, including those envisaged in the Copernicus Programme; and (ii) any purpose necessary to fulfil ECMWF or the Union's obligations under the Copernicus Data Policy defined in Chapter III of the Space Regulation. The licence is non-exclusive, irrevocable, worldwide, royalty-free and without limitation in time. The licence may be assigned or sub-licensed as ECMWF sees fit.

3.4 Improvements

3.4.1 "**Improvement**" means any improvements, enhancements or additions to materials in which Background IPR subsists, which are indivisible from or impractical to use except in connection with such materials.

3.4.2 All Improvements to ECMWF's Background IPR shall vest in ECMWF on creation in accordance with Clause 3.1. The Contractor assigns to ECMWF, with full title guarantee, title to and all present and future rights and interest in any Improvements to ECMWF's Background IPR from the date of creation, or shall at its own cost procure that the owner of the Improvement assigns them to ECMWF on the same basis. ECMWF accepts this assignment.

3.4.3 If the Contractor considers that any Deliverable produced in accordance with this Agreement is an Improvement to the Contractor's Background IPR, it may request that ECMWF assigns the IPR subsisting in such Deliverable back to the Contractor. The Contractor's request shall be in writing and shall precisely identify the relevant Deliverable.

3.4.4 If on receipt of a request under Clause 3.4.3, ECMWF agrees that such material is an Improvement to the Contractor's Background IPR, ECMWF shall, at its sole discretion, execute (or procure the execution of) any document and/or do anything else necessary to assign to the Contractor, with full title guarantee and free from all encumbrances the IPR subsisting in the agreed Deliverable together with the right to sue for and recover damages or other relief in respect of the infringement of the IPR subsisting in the Deliverable.

- 3.4.5 Following assignment under Clause 3.4.4, the relevant Deliverable shall be deemed to form part of the Contractor's Background IPR and shall be licensed to ECMWF on the terms of Clause 3.3.1.2.
- 3.4.6 During the term of this Agreement, the Contractor shall maintain an inventory of any Improvements to the Contractor's Background IPR which are assigned to the Contractor in accordance with Clause 3.4.3, and report its contents annually.

4. Finance

4.1 Price

4.1.1 This Agreement shall set out:

4.1.1.1 for each service or Deliverable, whether ECMWF shall pay the Contractor on a **Pre-Agreed Price Basis**, where the Price payable by ECMWF for the service is agreed by the Parties before the service commences, or **Cost Reimbursement Basis**, where the Price is calculated by reference to the Contractor's actual direct costs of providing the services and Deliverables; and

4.1.1.2 a Payment Plan that defines the payment terms.

4.1.2 For the following purposes: the Contractor's determination of Price; payment, on a Cost Reimbursement Basis; and audit – in all cases, a cost will only be acceptable if it meets all the following criteria: (i) it is actually incurred by the Contractor. Amounts that shall be recovered from the Contractor shall not be considered as actually incurred; (ii) it is incurred during the term of this Agreement; (iii) it is a direct cost, that is directly linked to and necessary for the performance of the contractual obligations; (iv) it is indicated in the Payment Plan; (v) it is consistent with any pricing proposed by the Contractor in Annex 2; (vi) it is identifiable and verifiable, in particular being recorded in the accounts of the Contractor and determined according to the usual cost accounting practices of the Contractor; (vii) it complies with applicable law, in particular, on taxes, labour and social security (if any); and (viii) it is reasonable, justified and complies with the principles of sound financial management, in particular value for money and cost.

4.1.3 The following types of cost shall not be acceptable under Clause 4.1.2, even if the relevant cost meets the criteria set out in Clause 4.1.2: (i) debt and debt service charges (interest); (ii) provisions for future losses and debts; (iii) currency exchange losses; (iv) cost resulting from commitments relating to any suspended services during the period of suspension; (v) deductible or recoverable VAT; (vi) in-kind contributions; (vii) costs related to return on capital and dividends paid; (viii) interest owed, with the exception of negative interest; (ix) bank costs; (x) excessive or reckless expenditure; (xi) costs as per the terms and conditions of any applicable Conditionality Decision; and (xii) costs that are part of the Contractor's normal activities (i.e. not undertaken only because of this Agreement).

4.2 Cost Reimbursement

4.2.1 Where elements of the Price are payable by ECMWF on a Cost Reimbursement Basis, the terms of this Clause 4.2 shall apply.

4.2.2 The Price for the services and Deliverables shall not exceed the **Maximum Budget**, i.e. the maximum amount that ECMWF may pay under this Agreement. The Maximum Budget shall be the maximum amount payable by ECMWF for the associated services and Deliverables, and the Contractor shall not be entitled to any other payment in relation to such services and Deliverables or otherwise under this Agreement.

- 4.2.3 Subject to Clauses 4.1, 4.2.2 and 4.2.5, ECMWF shall reimburse the Contractor in accordance with this Agreement for its direct costs, including overheads and margins for the Contractor's resources shown in Euros in Annex 2.
- 4.2.4 The Contractor shall ensure that costs must be carefully calculated in line with the specific needs of the **Work Packages**, i.e. the packages of work into which the services are split, as referred to in Annex 1 and Annex 2 and tasks and, where necessary, converted into Euros at the exchange rate set out in Clause 4.4.
- 4.2.5 Where ECMWF has agreed that ECMWF shall reimburse the Contractor for any specific expenses, in order for an actual expense to be reimbursed by ECMWF under Clause 4.2.2, it must meet the following criteria:
- 4.2.5.1 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;
 - 4.2.5.2 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;
 - 4.2.5.3 the expense of travel by boat or rail should be no more than the maximum cost of a first-class ticket;
 - 4.2.5.4 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;
 - 4.2.5.5 the expense of subsistence should not be incurred for a return journey of less than 200 km;
 - 4.2.5.6 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; and
 - 4.2.5.7 conversion between another currency and EUR shall be made as specified in Clause 4.4.

4.3 Pre-Agreed Price

- 4.3.1 Where elements of the Price are payable by ECMWF on a Pre-Agreed Price Basis, the terms of this Clause 4.3 shall apply.
- 4.3.2 Subject to the Contractor performing the services and supplying the Deliverables and its other obligations under this Agreement, ECMWF will pay the Price to the Contractor in accordance with this Agreement.
- 4.3.3 Save to the extent that the Contractor's expenses are included in the Price, ECMWF shall not reimburse any of the Contractor's expenses. The Pre-Agreed Price shall be the entire amount payable by ECMWF for the associated services, and the Contractor shall not be entitled to any other payment in relation to such services.

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.

4.5 Notice of Acceptance and Invoices

- 4.5.1 The Contractor shall issue a **Payment Milestone Completion Notification**, i.e. a written submission to ECMWF as soon as it considers that the activities and Deliverables covered by a payment milestone to have been reached as specified in the Payment Plan. The Payment Milestone Completion Notification shall provide adequate justification of the milestone completion.
- 4.5.2 Receipt of the Contractor's Payment Milestone Completion Notification counts as the effective start date for ECMWF's assessment of the services and Deliverables in accordance with Clause 4.5.3.
- 4.5.3 Where the Payment Plan states that the services and Deliverables shall be assessed on:
 - 4.5.3.1 a continuous basis, ECMWF shall assess whether the services and Deliverables covered by the payment milestone (as set out in the Payment Plan) have been delivered to ECMWF's satisfaction, and meet the associated specification for the services and Deliverables to be delivered by the Contractor under this Agreement including Annex 2, and any other requirements agreed between the Parties;
 - 4.5.3.2 a quarterly basis, ECMWF shall assess the Contractor's performance of the services and supply of the Deliverables on the basis of the Key Performance Indicator (also "KPI") reporting completed by the Contractor according to the reporting requirements as set out in Annex 1 ;
 - 4.5.3.3 achievement of a KPI, ECMWF shall assess whether the Contractor has met one or more nominated KPIs nominated in the Payment Plan;
 - 4.5.3.4 a Milestone basis, ECMWF shall assess the Contractor's performance based on completion to ECMWF's satisfaction of all related tasks, activities and Deliverables to achieve the specified 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; and
 - 4.5.3.5 the basis of a report on the Use of Resources, ECMWF shall assess the Contractor's performance on a report submitted by the Contractor on the use of resources (based on the template as provided by ECMWF).
- 4.5.4 Based on ECMWF's assessment of whether the relevant payment milestone as described in Clause 4.5.3 has been achieved, ECMWF shall send a **Notice of Acceptance**, i.e. the official notice of ECMWF's approval of the Agreement performance for a payment milestone, or notice of the need for the Contractor to take some form of remedial action.
- 4.5.5 If ECMWF notifies the Contractor that remedial action is required, the Contractor shall complete the required remedial action without undue delay. In case of a need for remedial action, the "Anticipated review time" remains the same for any subsequent assessment completed by ECMWF, but counting from the date that the Contractor notifies ECMWF that all remedial actions have been closed and it is ready for review.
- 4.5.6 The Contractor may raise an invoice upon receiving a Notice of Acceptance from ECMWF.
- 4.5.7 Invoices shall be submitted in arrears in electronic form in any format reasonably requested by ECMWF and shall include the following information:
 - 4.5.7.1 the Contractor's identification;

- 4.5.7.2 a reference to this Agreement;
- 4.5.7.3 the purchase order number issued by ECMWF;
- 4.5.7.4 the date of the invoice;
- 4.5.7.5 the amount of the payment required, in EUR, not including VAT; and
- 4.5.7.6 if charging VAT in accordance with Clause 4.6:
 - (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.
- 4.5.8 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".
- 4.5.9 Payment shall be made by ECMWF within thirty (30) days after receipt of an invoice which is correct and in a form acceptable to ECMWF and in accordance with Annex 3.

If any sum due for payment by ECMWF under or in accordance with the provisions of this Agreement (i) is not paid on the due date; and (ii) has not been disputed by ECMWF, ECMWF shall pay interest on such sum from the due date until the date of actual payment (whether before or after judgment) at the rate of four (4) percentage points above the rate applied by the European Central Bank for its main refinancing operations in Euros, as published in the C series of the Official Journal of the EU, from time to time, such interest to accrue on a day to day basis. The Parties acknowledge that this amounts to a substantial remedy for late payment.
- 4.5.10 All invoices must be accompanied by a copy of any relevant Notice of Acceptance. If any element of the services is charged on a Cost Reimbursement basis, the invoice must also be accompanied by a report on the use of resources and (if applicable) any associated time sheets.

4.6 VAT and Other Taxes

- 4.6.1 The Contractor shall take all necessary steps to facilitate ECMWF's exemption resulting from its Protocol on Privileges and Immunities⁵ from taxes, including VAT (i.e. value added tax as provided for in Directive 2006/112/EC and subordinate national law or any similar sales or turnover tax), and customs duties which might otherwise be payable in relation to the contractual obligations. It will do so by carrying out the necessary formalities so as to bring about the exemption from taxes and duties which might otherwise be levied on the expenses it will incur, before it submits the invoice to ECMWF; and by complying with all necessary formalities so that ECMWF itself may be exempt from paying such taxes and duties. For these purposes, it shall request the necessary instructions from ECMWF and provide in due time the information which ECMWF requires.
- 4.6.2 ECMWF will not pay any other taxes or duties relating to the contractual obligations, the Deliverables or the Assets. The Contractor shall be liable for all other taxes, assessments, fees, licences, administrative customs charges or other governmental assessments or charges that are applicable to the performance of this Agreement. It is each Party's responsibility to inform itself of its liabilities in each country where such liabilities may arise.

⁵https://www.ecmwf.int/sites/default/files/amended_convention_privileges_en.pdf

4.6.3 The Contractor shall ensure that each sub-contractor is aware that sub-contractors are not eligible for and may not rely on ECMWF's exemption resulting from its Protocol on Privileges and Immunities from taxes, including VAT, and customs duties which might otherwise be payable.

4.7 Banking Arrangements

4.7.1 The time for payment of invoices under the payment process described in Clause 4.5 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.

4.7.2 The Contractor shall be responsible for any bank charges made in respect of receipt or management of payments from ECMWF.

4.7.3 The Contractor shall notify ECMWF immediately of any changes to its bank account details.

5. Governance

5.1 Audits

5.1.1 ECMWF and the Union reserve the right to audit the Contractor if and in whatever fashion required.

5.1.2 The Contractor shall keep accurate and regular records and accounts of the services and Deliverables, and the Contractor's compliance with this Agreement, for a period of at least six (6) years after the final payment of all sums due under this Agreement, and in any case until any ongoing checks, reviews, audits, investigations, litigation or other pursuits of claims have been concluded.

5.1.3 Any inspection or audit, or failure to inspect or audit, shall not in any way release the Contractor from its obligations under this Agreement.

5.1.4 In addition to the audit rights granted under Clause 5.1.1, OLAF, the European Public Prosecutor's Office and the European Court of Auditors may carry out investigations, including on-site checks and inspections, in accordance with the provisions and procedures laid down in EU law⁶.

5.2 Immediate Suspension of Payment

ECMWF may, in accordance with the principle of proportionality, suspend payments in all or in part in accordance with sections 273, 320 BGB, and in particular, but not limited to, if the Commission suspends or ceases payments to ECMWF under the Contribution Agreement or the Commission notifies ECMWF of a Conditionality Decision stipulating a suspension of payments with respect to the Contractor and/or any of its sub-contractors as a Concerned Entity. In such cases ECMWF shall resume payments from the date on which the Commission resumes payments to ECMWF under the Contribution Agreement, or respectively, from the date of entry into force the Council Implementing Decision lifting the Conditionality Measures.

5.3 Suspension of Services by ECMWF

⁶ Including 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); 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 irregularities; Regulation 2017/1939; and Article 287 of the Treaty on the Functioning of the EU (TFEU) and Article 257 of EU Financial Regulation 2018/1046.

- 5.3.1 ECMWF may, in accordance with the principle of proportionality, suspend the contractual obligations in full or in part, in particular if the Commission has suspended or is threatening to suspend all or part of CAMS/C3S, including or requiring the relevant contractual obligations.
- 5.3.2 ECMWF may suspend the services in full or in part with immediate effect if the Commission notifies ECMWF of a Conditionality Decision stipulating a suspension of the implementation of the legal commitment with the Contractor and/or any of its sub-contractors as a Concerned Entity. The Contractor shall resume the services from the date of entry into force of the Council Implementing Decision lifting the Conditionality Measures as notified by ECMWF.
- 5.3.3 Any cost resulting from commitments relating to the suspended contractual obligations and made by the Contractor during the period of suspension shall not be accepted by ECMWF.

5.4 Termination by ECMWF with Immediate Effect for Good Cause

ECMWF may terminate this Agreement with immediate effect for good cause by notice in writing without compensation to the Contractor, such termination not prejudicing or affecting any right of action or remedy which shall have accrued or shall accrue thereafter to ECMWF. Such good cause shall be deemed in particular, but not limited to:

- (i) if the Contractor or any persons having powers of representation, decision making or control over it is subject to an **Insolvency Event**, i.e. 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; or
- (ii) if the Contribution Agreement expires or is terminated or suspended or otherwise interrupted for any reason; or
- (iii) 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 contractual obligations or call into question the outcome of ECMWF's assessment of its rules and procedures; or
- (iv) the Contractor has failed to comply with fundamental obligations under this Agreement, including but not limited to a breach of Clauses 2.1.1 (Contractor's Undertakings), 2.1.2 (Contractor's Obligations), 2.1.3 (Compliance with Laws), 2.1.4 (Conflict of Interest), 2.1.5 (Exclusion Situations and Restricted Persons), 2.1.6 (Conditionality Decision(s)); 2.3.4 (Publicity), 2.5 (Confidentiality), 2.6 (Personal Data Protection), 2.7 (Sub-contracting), 3 (Assets and Intellectual Property Rights), 5.1 (Audits) and 5.6.1 and 5.8.3 of this Agreement; or
- (v) 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 European Union's Early Discovery and Exclusion System; or
- (vi) if ECMWF does not secure, from the budgetary authority of the Commission, sufficient funds to continue with the Agreement; or
- (vii) if the Commission determines that it is necessary and appropriate to exclude or limit the Contractor from providing the services in order to preserve the security,

- integrity and resilience of the operational Union systems; or
- (viii) the Contractor is no longer established in a Copernicus participating state in accordance with the conditions laid down in the Space Regulation; or
 - (ix) the Commission notifies ECMWF of a Conditionality Decision stipulating a termination of the legal commitment with the Contractor and/or any of its sub-contractors as a Concerned Entity.

5.5 Consequences of Termination or Expiry

5.5.1 Save for Clause 5.4, neither Party shall be entitled to claim compensation by the other Party on account of a termination or expiry of this Agreement.

5.5.2 Contractor's Obligations on Termination or Expiry

5.5.2.1 On the termination or expiry of this Agreement, the Contractor shall co-operate with ECMWF and with any new contractor under any arrangements notified to it by ECMWF.

5.5.2.2 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.

5.5.2.3 The Contractor shall repay to ECMWF, on demand and on a pro-rata basis, any charges pre-paid by ECMWF for services or Deliverables that have not been provided to ECMWF or have not been accepted by ECMWF.

5.5.3 Personnel on Termination or Expiry

It is not anticipated that the services to be provided under this Agreement will or are likely to give rise to a relevant transfer for the purposes of section 613a BGB or any equivalent or analogous law in any part of the world. Accordingly, the Contractor hereby agrees to indemnify ECMWF against all loss together with reasonable legal expenses suffered by ECMWF, which arise out of or in connection with:

- (i) any act or omission by the Contractor or a sub-contractor in respect of any of their obligations or liabilities in relation to current or former Contractor Personnel; and
- (ii) 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 or indirectly from section 613a BGB or any equivalent or analogous law in any part of the world 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 contractual obligations under this Agreement (a "New Supplier") as a result of section 613a BGB or any equivalent or analogous law in any part of the world or that ECMWF or a New Supplier has otherwise inherited liability as a result of section 613a BGB or any equivalent or analogous law in any part of the world).

5.6 Indemnities

- 5.6.1 Subject to the other terms of this Agreement, the Contractor agrees to indemnify, keep indemnified and hold harmless ECMWF from any claim, for damage or injury of any kind, which is made by a third party relating to the performance by the Contractor of its tasks, activities and responsibilities under this Agreement.
- 5.6.2 Subject to the other terms of this Agreement, the Contractor also agrees to indemnify, keep indemnified and hold harmless ECMWF from any claim, which is made by a third party in respect of the said third party's Intellectual Property Rights and/or rights of confidentiality and which, if proven would have the effect of limiting ECMWF's rights, under this Agreement, in respect of the Deliverables or any Technology.
- 5.6.3 Should any third party claim arise, the Party who first becomes aware of it shall notify the other Party of such claim in writing; ECMWF shall, 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; and the Contractor shall subsequently undertake at its own expense all negotiations and other work to defend or settle any such claim.

5.7 Limits of Liability

- 5.7.1 *Cap on Liabilities for Defaults* (i.e. any act, statement, failure to meet ECMWF's specifications for this Agreement, non-performance of contractual obligations, omission or negligence by a Party in connection with, or in relation to, the subject matter of this Agreement as a result of which the Party is legally liable to the other whether in contract or in tort) - Subject to the following provisions of this Clause 5.7, a Party's total aggregate liability to the other Party, in respect of all loss caused by its own and its sub-contractors' Defaults under or in connection with this Agreement shall be capped at a value of two times the Price.
- 5.7.2 *Cap on Liability for Indemnities* - Notwithstanding Clause 5.7.1 but subject to the following provisions of this Clause 5.7, the Contractor's total aggregate liability to ECMWF, in respect of the indemnities set out at Clause 5.6.1 and 5.6.2 shall be capped at a value of two times the Price and no amount payable in respect of such indemnities shall count towards the cap on liability for Defaults under Clause 5.7.1.
- 5.7.3 *Unlimited Liability* - Notwithstanding any contrary provision in this Agreement, neither Party limits or excludes its liability in respect of any death or personal injury caused by its negligence, any fraudulent misrepresentation, any intentional or gross negligent default or any other statutory or other liability, which cannot be excluded under applicable law.

5.8 Liabilities for Direct and Indirect Losses

- 5.8.1 The direct losses for which a Party may be liable to the other Party under or in connection with this Agreement shall include:
 - 5.8.1.1 any reasonable and actual operational and/or administrative costs and expenses arising from the Default, including costs relating to the time spent by the innocent Party's management and employees in dealing with the consequences of the Default; and
 - 5.8.1.2 any reasonable and actual costs and expenses incurred by the innocent Party in rectifying a Default of the other Party or a sub-contractor and in procuring new or replacement services for the remainder of the term of this Agreement.

- 5.8.2 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 this Agreement.
- 5.8.3 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 or activities under this Agreement. Neither Party shall be liable under this Agreement for any activities relevant to the services carried out jointly or separately prior to the signing of this Agreement.

6. Miscellaneous

6.1 Language

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

6.2 Severance

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction including arbitration tribunals, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement 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.

6.3 Independence of Contractor

- 6.3.1 Nothing in this Agreement 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.
- 6.3.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

6.4 Third Party Rights and Claims

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.

6.5 Entire Agreement

This Agreement 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 not, other than is expressly set forth in this Agreement. Nothing in this Clause 6.5 shall, however, operate to limit or exclude any liability for fraudulent misrepresentation.

6.6 Provisions with Continuing Effect

The following Clauses together with all other provisions of this Agreement which are intended to

have effect following any expiry or termination of this Agreement, shall survive expiry or termination of this Agreement to the extent permissible by law: Clause 2.1.8 (Insurance Requirements); Clause 2.5 (Confidentiality); Clause 3 (Assets and Intellectual Property Rights); Clause 5.1 (Audits); Clause 5.5 (Consequences of Termination or Expiry); Clause 5.7 (Limits of Liability); and Clause 6 (Miscellaneous).

6.7 Governing Law and Arbitration

- 6.7.1 Unless otherwise agreed in writing, the laws of Germany with the exception of the German conflict of law rules and the provisions of the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980 (CISG), shall govern the validity, construction and performance of this Agreement.
- 6.7.2 In the event of a dispute arising in connection with this Agreement, it shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce with the exception of Article 28 para 2 of the ICC Arbitration Rules (2021) by three (3) arbitrators appointed in accordance with the said rules, sitting in London, England. The proceedings shall be in the English language and this arbitration agreement shall be governed by the laws of England whereas this Agreement as such is governed by German law in accordance with Clause 6.7.1. In accordance with the Arbitration Act 1996, the right of appeal by either Party to the courts of England and Wales on a question of law arising in the course of any arbitral proceedings including but not limited to sections 18, 44 and 45 of the Arbitration Act 1996 or out of an award made in any arbitral proceedings is hereby agreed to be excluded.
- 6.7.3 Nothing in this Agreement shall be considered a waiver of any of the privileges and immunities vested in ECMWF by virtue of its Convention and Protocol including but not limited to immunity from jurisdiction.

Annex 3 - Payment Plan

Annex 4- Personal Data Protection

This Annex 4 deals with the processing of personal data under the Agreement. In case of a conflict between the terms and conditions of the Agreement and this Annex, the terms and conditions set out in this Annex shall prevail.

1. Data Protection

- 1.1 Where the processing of personal data by the Contractor is required under this Agreement, the Contractor shall process personal data as a **Processor**.
- 1.2 The Contractor shall process personal data in accordance with the applicable data protection law during the term of this Agreement.
- 1.3 The personal data to be processed by the Contractor in accordance with this Agreement is as described in Appendix 1 to this Annex ("**Data**").
- 1.4 The Contractor shall process the Data for the purposes described in Appendix 1 ("**Permitted Purpose**") and strictly in accordance with the documented instructions of ECMWF, except where otherwise required by any law applicable to the Contractor. In no event shall the Contractor process the Data for its own purposes or those of any third party. Where any law applicable to the Contractor precludes the Contractor from processing the data in accordance with the documented instructions of ECMWF, the Contractor shall notify ECMWF, unless the law in question precludes the Contractor from so doing.
- 1.5 The Contractor shall not transfer the Data (nor permit the Data to be transferred to or accessed from) outside of the European Economic Area or the UK unless (i) it has first obtained ECMWF's prior written consent; and (ii) it takes such measures as are necessary to ensure the transfer is in compliance with the applicable data protection law. Such measures may include (without limitation) transferring the Data to a recipient in a country on the basis of the applicable adequacy decision(s)/regulation(s), or to a recipient that has executed Standard Contractual Clauses.
- 1.6 The Contractor shall implement appropriate technical and organisational measures to protect the Data (i) from accidental or unlawful destruction, and (ii) loss, alteration, unauthorised disclosure of, or access to the Data ("**Security Incident**"). At a minimum, such measures shall include the measures identified in Appendix 2.
- 1.7 The Contractor shall provide all reasonable and timely assistance (including by appropriate technical and organisational measures) to ECMWF (at the Contractor's own expense) to enable ECMWF to respond to: (i) any request from the natural person to whom the Data relates ("**Data Subject**") to exercise any of its rights (including its rights of access, correction, objection and erasure, as applicable); and (ii) any other correspondence, enquiry or complaint received from a Data Subject or other third party in connection with the processing of the Data. In the event that any such request, correspondence, enquiry or complaint is made directly to the Contractor, the Contractor shall promptly inform ECMWF's Data Protection Officer, providing full details of the same. ECMWF's Data Protection Officer can be reached as follows: pii-protection-officer@ecmwf.int or ECMWF PII Protection Officer; ECMWF, Shinfield Park, Reading, RG2 9AX, United Kingdom.
- 1.8 Upon becoming aware of a Security Incident, the Contractor shall inform ECMWF without undue delay and shall provide all such timely information and cooperation as ECMWF may require. The Contractor shall further take all such measures and actions as are necessary to remedy or mitigate

the effects of the Security Incident and shall keep ECMWF informed of all developments in connection with the Security Incident.

- 1.9 Upon termination or expiry of this Agreement, the Contractor shall (at ECMWF's election) destroy or return to ECMWF all Data (including all copies of the Data) in its possession or control (including any Data sub-contracted to a third party for processing). This requirement shall not apply to the extent that the Contractor is required by any EU (or any EU Member State) or other national law to retain some or all of the Data, in which event the Contractor shall isolate and protect the Data from any further processing except to the extent required by such law until deletion is possible.
- 1.10 The Contractor shall permit ECMWF (or its appointed third party auditors) to audit the Contractor's compliance with this Clause, and shall make available to ECMWF all information, systems and staff necessary for ECMWF (or its third party auditors) to conduct such audit. The Contractor acknowledges that ECMWF (or its third party auditors) may enter its premises for the purposes of conducting this audit, provided that ECMWF gives it reasonable prior notice of its intention to audit, conducts its audit during normal business hours, and takes all reasonable measures to prevent unnecessary disruption to the Contractor's operations. ECMWF will not exercise its audit rights more than once in any twelve (12) calendar month period, except if ECMWF believes a further audit is necessary due to a Security Incident suffered by the Contractor.

2. Sub-processing

- 2.1 The Contractor shall not sub-contract any processing of the Data to a third party sub-processor without the prior written consent of ECMWF.
- 2.2 If it appears to ECMWF that the services are being disrupted by the acts or omissions of a sub-processor or that its qualifications, resources or the service it provides are no longer satisfactory, ECMWF shall have the right to make a reasoned request for its replacement as soon as possible.

Appendix 1

Data Processing Description

This Appendix 1 forms part of the Agreement and describes the processing that the Contractor will perform on behalf of ECMWF.

ECMWF

ECMWF processes Data in the course of its activities as a research institute and an operational service, providing global numerical weather predictions. As part of those activities ECMWF collects personal data of staff and business contacts.

Contractor

The Contractor is **(please specify briefly the contractor's activities relevant to the processing)**:

Categories of Data Subjects

The Data to be processed concern the following categories of Data Subjects **(please specify below)**:

- ECMWF's business partners;
- Data relating to ECMWF's staff;
- Business contact details of ECMWF's partners including email addresses, telephone numbers, business address, name and corporate title.

Categories of Data

The Data to be processed concern the following categories **(please specify below)**:

- Business contact details of ECMWF's partners including name and corporate title, email addresses, telephone numbers, business addresses.

Special Category Data (if appropriate)

The Data to be processed concern the following Special Category Data **(please specify below)**:

Duration of the Processing

The duration of the processing is for the duration of the Agreement.

Nature of the Processing

The Data will be subject to the following processing activities: **[add here the type of operations performed as part of the processing (for example storing, recording, archiving, etc.)]**

Purpose of the Processing:

[insert]

Appendix 2

Minimum Security Measures

[List any minimum security measures here]

[OPTIONAL]

Appendix 3

Approved Sub-processors

[List any approved sub-processors here]

Name	Processing	Territory(ies)

Annex 5 – Logos

Copernicus Logo:



EU Logo:

