

## Annex 1: Extracts from the Delegation Agreement signed between ECMWF and the EU

### ECWMF Obligations in Delegation Agreement (DA)

#### Article 6 - Conditions for the acceptance of direct cost

6.1 The Commission shall accept costs which meets the following criteria:

- (a) is actually incurred by the Entrusted Entity. Amounts that shall be recovered by the Entrusted Entity in accordance with Article 13 shall not be considered as actually incurred;
- (b) is incurred during the Agreement;
- (c) is indicated in the estimated budget in Annex II;
- (d) is linked to the implementation of the entrusted tasks and is necessary for its implementation.
- (e) is identifiable and verifiable, in particular being recorded in the accounts of the Entrusted Entity and determined according to the usual cost accounting practices of the Entrusted Entity;
- (f) complies with the requirements of applicable tax and social legislation;
- (g) is reasonable, justified and complies with the principles of sound financial management, in particular value for money and cost effectiveness.

6.2 The Commission shall not accept direct costs not compliant with Article 6.1 for the implementation of Entrusted Tasks, in particular:

- (a) Debt and debt service charges (interest);
- (b) Provisions for future losses and debts;
- (c) Exchange losses;
- (d) Cost of the type referred to in Article 32.4;
- (e) Deductible VAT (EU Institutions and Agencies are exempted from VAT, invoices to them shall be drawn without VAT)
- (f) Contributions in kind;
- (g) Costs declared under another Union or Euratom funding instrument;

6.3 Specific details on the eligibility of all direct costs are provided in Annex IV.

#### Article 8 - Visibility of Union funding

8.1 Unless the Commission requests or agrees otherwise, any communication or publication related to the implementation of the Entrusted Tasks, made by the Entrusted Entity, including at conferences, seminars or in any information or promotional materials (such as brochures, leaflets, posters, presentations, etc.), shall acknowledge that the Entrusted Tasks were carried out "with funding by the European Union" and shall display in an appropriate way the Copernicus logo. The size and prominence of the acknowledgement and logo shall be clearly visible in a manner that will not create any confusion regarding the identification of the activity as an activity of the Entrusted Entity.

8.2 When displayed in association with another logo, the Copernicus logo must have appropriate prominence.

8.5 Any communication or publication of Results shall be in the name of the Commission and in a form agreed with the Commission. However, it shall state that the Commission is not responsible for any use

that may be made of the information it contains.

#### **Article 9 - Publication of information on the recipients of Union funding**

9.1 The Entrusted Entity shall publish annually on its website information on the recipients of Union funds i.e. those who have been awarded one or more contracts for the supply of goods and/or services (excluding employment contracts) with a total value over the term equal to or higher than EUR 15 000.

#### **Article 10 - Processing of personal data by the Entrusted Entity**

10.1 Where the implementation of the Entrusted Tasks requires the processing of personal data by the Entrusted Entity, it shall be processed by the Entrusted Entity pursuant to Directive 95/46/EC of the European Parliament and of the Council<sup>5</sup>. For this purpose, the Entrusted Entity shall designate a responsible member of staff as its data controller and publish the contact details of its data controller, through the Copernicus Services Websites for use by the subjects of the personal data which it processes.

10.2 Where the implementation of the Entrusted Tasks requires the processing of personal data by a Contractor, the Entrusted Entity shall contract for it to be processed by the Contractor in accordance with the national data protection legislation to which the Contractor is subject or if the Contractor will process personal data outside the European Economic Area for it to be processed by the Contractor 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 staff as its data controller and publish the contact details of its data controller, through the Copernicus Services Websites for use by the Entrusted Entity and the subjects of the personal data which it processes.

#### **Article 14 - Central Exclusion Database**

14.3 The Entrusted Entity shall, through the CED Liaison Officer, communicate without delay to the Commission information, which comes to its attention on candidates and tenderers if they, or persons having powers of representation, decision-making or control over 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.

#### **Article 15 - Conflict of interests**

15.1 The Entrusted Entity shall take reasonable measures to prevent any situation where the impartial and objective implementation of the Entrusted Tasks is compromised for reasons involving economic interest, political or national affinity, family or emotional life or any other shared interest (a conflict of interests).

15.2 Should any situation come to the attention of the Entrusted Entity, constituting or likely to lead to a conflict of interests during the implementation of the Entrusted Tasks, it shall be notified to the Commission, in writing without delay. The Entrusted Entity shall take reasonable steps to rectify this situation. The Commission reserves the right to verify that the measures taken are appropriate and may require additional measures to be taken within a specified deadline.

## **16.2 Assets**

(b) Annually, by 31 January, the Entrusted Entity shall provide to the Commission an inventory of all Assets acquired or developed and accepted by the Entrusted Entity in the previous calendar year. This yearly provision inventory shall be deemed to constitute an effective assignment of Ownership of the identified Assets to the Union. The inventory of Assets should include as minimum information about their identification numbers (part and serial number), individual values in EUR, dates of acquisition, contract references and their physical location.

## **16.4 Integrated Technology**

(b) During the course of this Agreement, the Entrusted Entity shall maintain an inventory of the Integrated Technology and provide all information needed for keeping account of the Integrated Technology.

## **Article 18 - Obligation to inform the Commission**

18.2 With respect to the implementation of the Entrusted Tasks, the Entrusted Entity shall also inform the Commission without delay of:

- (a) any substantial changes to its systems, rules or procedures that relate to the management of the Copernicus Funds;
- (b) any substantial change in its legal, financial, technical, organisational or ownership situation;
- (c) any fraud or irregularity which comes to its attention and any situation which may give rise thereto and the measures taken;
- (d) any event that may harm the Union's financial interests;
- (e) any event which may delay or jeopardize performance of the Entrusted Tasks.

## **Article 21 - Annual Reporting**

21.2 The Entrusted Entity shall submit to the Commission by the 31 of March of the year N an annual implementation report, relating to year N-1, indicating:

- (e) a summary of the interim audit reports and of controls carried out, including an analysis of the nature and extent of errors and weaknesses identified in the systems, as well as corrective action taken or planned;
- (j) a list of all Exceptions and Non-Compliance Events related to the implementation of the Entrusted Tasks;

21.4 An audited version of the financial information, for year N-1, in the documents referred to in Article 21.2 shall be accompanied by an opinion of an independent audit body to be provided to the Commission no later than 31 July of the year N. The opinion shall be drawn up in accordance with internationally accepted audit standards. The opinion shall establish whether:

- (a) the accounts give a true and fair view;
- (b) the control systems put in place function properly;
- (c) the underlying transactions are legal and regular;
- (d) the audit work puts in doubt the assertions made in the management declaration under point (m) of Article 21.2.

## **Article 22 - Quarterly Reporting**

22.2 (d) A section on checks, audits and risk management detailing:

where appropriate, a summary of ex-post audits on Contractors and of the regular checks carried by the Entrusted Entity and their main findings

## **Article 24 - Final report**

24.1 The Entrusted Entity shall submit to the Commission, as soon as possible and at the latest 90 calendar days after completion of the Entrusted Tasks under this Agreement or termination thereof, a Final report, which shall contain in particular:

(d) the following annexes shall be attached to the final report:

(ii) a summary inspection report indicating the number and results of on-site checks and ex-post audits carried out by the Entrusted Entity on Contractors, accompanied, if appropriate, by current information on measures taken to remedy any problems identified;

## **Article 26 - Currency**

26.2 Currency for the documents and requests for payments and conversion into EUR:

Where the Entrusted Entity keeps its accounts in a currency other than the EUR, 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 Union, determined over the corresponding reporting period.

Where no daily EUR 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 website determined over the corresponding reporting period.

Where the Entrusted Entity keeps its accounts in EUR, it shall convert costs incurred in another currency into EUR according to its usual accounting practices.

## **Article 27 - Checks, audits, investigations and evaluation by the Commission, OLAF and the Court of Auditors**

27.1 The Commission, including the European Anti-fraud Office (OLAF), and the Court of Auditors may at any time during the implementation of the Entrusted Tasks and up to five years after the Final Payment carry out checks and audits on the implementation of the Entrusted Tasks.

27.3 In addition, the Commission may carry out interim or final evaluation of the impact of the implementation of the Entrusted Tasks measured against the objectives of the Union programme concerned.

27.4 The Entrusted Entity shall keep all original documents, especially accounting and tax records stored on any appropriate medium, including digitalised originals when they are authorised by its national law and under the conditions laid down therein, for a period of five years after the Final Payment.

27.5 This period set out in the first subparagraph shall be longer if there are on-going audits, appeals, litigation or pursuit of claims concerning the Agreement. In such cases, the Entrusted Entity shall keep the documents until such audits, appeals, litigation or pursuit of claims are closed.

27.6 The Entrusted Entity shall provide any information, including information in electronic format, requested by the Commission or by any outside persons authorised by it, in the context of checks, audits or evaluations.

27.7 During an on-site visit, for which reasonable notice has been given, the Entrusted Entity shall grant Commission staff and other persons authorised by the Commission access to all sites and premises where the Agreement is performed (including those of Contractors and sub-Contractors as applicable) and to all the necessary information, including information in electronic format. It shall ensure that the requested information is readily available on the occasion of the on-the-spot visit, for which reasonable notice has been given and that information requested is handed over in an appropriate form.

27.8 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 Article 28 or Article 29, whichever is relevant.

27.9 OLAF shall have the same rights of access as the Commission, for the purpose of carrying out on-site checks and inspections.

27.10 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 (O LAF)<sup>10</sup> 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 irregularities<sup>11</sup> 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 implementation of the Entrusted Tasks.

27.11 Where appropriate, OLAF findings may lead to financial corrections and recovery by the Commission.

27.13 The European Court of Auditors shall have the same rights of access as the Commission, for the purpose of audits.

## **Article 39 - Liability**

39.2 As Results 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.

39.3 Subject to the other terms of this Agreement, in particular but not limited to Articles 7, 20.2, 33.3, 39.1 and 39.2, 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.

39.4 Subject to the other terms of this Agreement, in particular but not limited to Articles 7, 20.2, 33.3, 39.1 and 39.2, 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.

## **Article 40 - Confidentiality**

40.1 The Parties shall preserve the confidentiality of any information and documents, in any form, which are disclosed in writing or orally in relation to the implementation of the Entrusted Tasks and which are either explicitly indicated as confidential or which the recipient could reasonably be expected to treat as confidential.

40.2 Neither Party shall use confidential information and documents for any reason other than fulfilling its obligations under the Agreement, unless otherwise agreed with the originating Party in writing or required by the Copernicus Regulation or the Financial Regulation.

40.3 The Parties shall be bound by the obligation referred to in the above paragraph during the implementation of the Agreement and for a period of five years starting from the date of its termination, unless:

- (a) the concerned Party agrees to release the other Party from the confidentiality obligations earlier;
- (b) the confidential information becomes public through other means than in breach of the confidentiality obligation through disclosure by the Party bound by that obligation;
- (c) the disclosure of the confidential information is required by law.

## DA Annex IV – ECMWF DIRECT COST ELIGIBILITY RULES

The purpose of this Annex is to define the ECMWF eligible costs referred to in Article 6 of this Agreement, in accordance with ECMWF's Chart of Accounts and with ECMWF's Financial Rules.

### Criteria for eligibility

Direct costs are eligible if they meet the following criteria:

- a) they are actually incurred by ECMWF. Amounts that shall be recovered by ECMWF in accordance with Article 15 shall not be considered as actually incurred;
- b) they are incurred during the period specified in Art 4.2 and 4.4 of the Agreement;
- c) they are indicated in the estimated budget in Annex II;
- d) they are linked to the implementation of the Entrusted Tasks and is necessary for its implementation;
- e) they are identifiable and verifiable, in particular being recorded in the accounts of ECMWF and determined according to the usual cost accounting practices of ECMWF;
- f) they comply with the requirements of applicable tax and social legislation;
- g) they are reasonable, justified and complies with the principles of sound financial management, in particular value for money and cost-effectiveness.

Costs are recognised when the good has been received or the service rendered and will be eligible in accordance with the normal accrual and prepayment practices of ECMWF.

### Categorisation of costs

Costs will be categorised as:

- a) Industrial costs – Third Party  
which cover procured services and equipment directly linked to the implementation of this Agreement. These costs are reported as direct costs.
- b) Industrial costs – ECMWF  
which cover services and equipment provided by the ECMWF and directly linked to the implementation of this Agreement. These costs are reported as direct costs.
- c) Technical Management Costs - ECMWF  
which cover the co-ordination of all industrial activities of Copernicus service(s). These costs may be reported as direct costs.

### Classification of specific costs – Direct Costs

The following costs will be classified as Direct Costs:

#### 1. Industrial costs – Third Party

Industrial costs – Third Party include all procured services and equipment directly linked to the implementation of this Agreement. The actual costs incurred for services delivered by external companies will be based on identifiable dedicated work-packages and/or if applicable, will be supported by time sheets.

The costs to be charged will be supported by invoices from the third party, supported by the appropriate documentation as specified in the contract.

## 2. ECMWF Costs

Industrial costs, Technical Management costs and some Expenditure Management costs will be classified as direct costs where they can be directly attributable to the implementation of this Agreement. The type of costs which may be charged include:

### 2.1. Human Resource costs

#### 2.1.1. – Staff

Human Resources are composed of staff working under an employment contract with ECMWF and assigned fully or partially to Copernicus activities.

The costs of these staff includes all salaries, allowances, employer's share of pension contributions and other costs included in the remuneration, provided that these costs are in accordance with ECMWF's usual policy as provided for in its Staff Regulations.

Direct staff costs can be allocated to Copernicus in three different ways:

- Full time (100%) allocation; or
- Fixed percentage of allocation to Copernicus included in the job description or
- Allocation based on approved monthly timesheets.

The job description will indicate the fixed level of effort allocated to the Copernicus programme through a fixed ratio (5% - 100%) and all elements of the remuneration will be eligible as direct cost according to the ratio indicated in the job description. No timesheet will be required for staff whose job description has been updated as indicated above.

In accordance with the ECMWF rules and working practices, accrued annual leave, home leave and overtime of staff coming from or leaving towards another ECMWF programme will be charged to the corresponding programme as costs incurred but not yet paid.

#### 2.1.2. Human Resource costs – Consultants & temporary Contract Staff

This includes Consultants and temporary Contract staff working at ECMWF premises and / or under ECMWF's direct supervision. Consultants and contract staff shall be charged to the Copernicus programme on the basis of their related invoices on one of the following bases:

- Full time (100%) allocation; or
- Fixed percentage of allocation to Copernicus included in the contract or
- Allocation based on approved monthly timesheets.

#### 2.1.3. Time sheets

Staff working partially on Copernicus and not having a fixed level of effort indicated in the job description shall keep timesheets which shall be the basis for the cost charged to the Commission.

$$\frac{\text{Annual remuneration}}{\text{Total annual productive hours}} \times \text{Copernicus productive hours} = \text{Copernicus remuneration}$$

The total annual productive hours shall take into account annual leave, official public holidays, the average home leave and the average sick leave.



Productive hours calculation	
Total days in a year	365
Less : Weekends	104
<b>Subtotal</b>	<b>261</b>
Less : Annual Holidays	30
Less : Statutory Holidays	10.5
Less : Average home leave	2
Less : Average Sick leave	6
Less : Average Special Leave	1
<b>Productive days per year</b>	<b>211.5</b>
Hours per day	8
<b>Productive hours per year</b>	<b>1692</b>

The individual timesheets shall display all productive hours in the month/week and will clearly indicate the number of hours/days charged to the Copernicus programme. The total charge to Copernicus for productive hours/days declared for a person for a year cannot exceed the annual remuneration of that person.

## 2.1. Travel costs

Travel costs which are related to participation in meetings, conferences, and seminars directly linked to the implementation of this Agreement shall be considered direct costs. They cover the cost of missions (travel, subsistence, related duties, taxes and other charges such as non-deductible value added tax (VAT)) in accordance with ECMWF's travel policy applicable at the time of the travel.

Travel costs for the signature of this Agreement shall be reported as direct costs as the costs result from actions necessary for the timely implementation of the activities.

## 2.2. High Performance Computing (HPC) costs

### 2.2.1. Copernicus Charge

The costs of the HPC usage by Copernicus will be based upon a pre-agreed purchase of HPC capacity, expressed in System Billing Units (SBU's) by each service, which will be reserved for Copernicus Services by ECMWF. The requirement to purchase capacity is so that ECMWF can establish in good time the necessary equipment and infrastructure to meet that capacity demand. The volume of capacity required will be based on historic use patterns as adjusted for planned changes in activity levels as agreed in the annual work programme and implementation plan and

The cost of this capacity will be the subject of an internal invoice to the Copernicus services from ECMWF and will be classified as a direct cost.

### 2.2.2. SBU price

The SBU price will be determined in advance each year by ECMWF taking into account the total budgeted costs associated with the operation of the HPC, its associated storage and communications links and the overall computing capacity provided by the HPC facility at ECMWF. These costs will include inter alia, the cost of the HPC service contract, the cost, including depreciation of appropriate of other ancillary equipment and services, the cost of data storage

media and consumables, electricity, HPC operations and support staff, data centre (including supporting infrastructure) costs and other running costs of the facility.

Any costs included in the determination of HPC SBU price will not be chargeable to Copernicus under any other heading and shall exclude any costs which are considered to be indirect costs and included in the fee referenced in the main Delegation Agreement in Article 5.2(b).

### **2.3. Other IT Equipment & software**

The cost of other IT items equipment & software (including hardware, software, communications or other equipment, maintenance and other services) procured directly for the implementation of this agreement will be charged to Copernicus as Direct costs.

### **2.4. Consumables**

Consumables acquired specifically for the implementation of the activities entrusted under this Agreement shall be reported as direct costs. Consumables are defined in accordance with ECMWF's normal accounting policy.

### **2.5. Conferences, events for launch campaigns**

All costs directly linked to communication and/or publication related to the implementation of the Entrusted Tasks or resulting from additional or complementary tasks shall be reported as direct costs.

### **2.6. Representation Expenses**

Representation expenditure for Copernicus in the form of invitations to third parties (Experts and official visitors in the frame of the Copernicus Agreement) by authorised ECMWF Officials, in accordance with the ECMWF internal procedures shall be reported as direct costs.

### **2.7. Insurance costs**

Insurance costs incurred resulting directly from the implementation of the Agreement shall be reported as direct costs.

### **2.8. Fees & Services**

The cost of professional fees and services from third parties, including legal, accounting, procurement and advisory, incurred resulting directly from the implementation of the Agreement shall be reported as direct costs.

### **2.9. Acquisition of Copernicus Assets**

As indicated in Article 16.2, the Union shall become owner of all Assets. Acquisition cost, costs of replacement in case of obsolescence management, costs of enhancements and the costs of disposal of the Assets shall be accepted as direct Cost.

As such, even where they meet the criteria for asset recognition specified in this agreement, these assets will not be recognised as assets in the accounts of ECMWF, but will be reported to the Commission in line with agreed reporting processes.

The purchase price of Assets shall be reported as direct costs.

Dismantling and transportation costs following decision by the Union to retrieve part or fully the Assets from their designated premises at the end of this Agreement shall be borne by the Union.

### **2.10. Depreciation costs**

The depreciation of the equipment owned by ECMWF and directly linked to the implementation of the Copernicus activities are eligible as direct costs. Use of assets which are

owned by ECMWF and partly used by Copernicus will be charged as depreciation on a pro-rate basis.

Only the portion of the equipment's depreciation corresponding to the duration of the Copernicus activities and the ratio of the actual use can be charged to the Copernicus programme.

The depreciation rates to be applied shall be in line with ECMWF accounting policies for the same asset category. The term "Depreciation" covers depreciation and amortisation without specific reference to the tangible or intangible assets category.

The amount of depreciation shall be charged to the Copernicus Programme via internal invoice and be duly documented. Depreciation costs charged as direct costs will not be chargeable to Copernicus under any other heading and shall exclude any costs which are considered to be indirect costs and included in the fee referenced in the main Delegation Agreement in Article 5.2(b).