

# **REQUEST FOR PROPOSAL**

**ECMWF/RFP/2019/297**

**FOR**

**THE PROVISION OF LEGAL CONSULTANCY RELATING TO THE  
ESTABLISHMENT OF A CLOUD COMPUTING INFRASTRUCTURE AT  
ECMWF (THE “EUROPEAN WEATHER CLOUD PILOT”)**

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## **1. BACKGROUND**

### **1.1 Introduction**

This Request for Proposal (RFP) has been prepared by the European Centre for Medium-Range Weather Forecasts, (governed by its Convention and associated Protocol on Privileges and Immunities, which came into force on 1 November 1975 and was amended on 6 June 2010) ("ECMWF") for the purposes of obtaining proposals from suppliers for provision of consultancy services to advise ECMWF in all legal matters which may potentially arise in conjunction with the establishment of a cloud computing infrastructure at ECMWF.

The submission of a response to this RFP shall constitute an offer that may be accepted by ECMWF, so as to become a binding contract. However, ECMWF is not bound to accept any proposals. If ECMWF elects to accept a proposal, subject to contract, the parties shall execute a formal contract incorporating the terms and conditions contained in the RFP and any other agreed terms.

ECMWF is an independent inter-governmental organisation supported by 34 nation States. Information on ECMWF's activities can be found at <https://www.ecmwf.int/en/about>. ECMWF's Convention and Protocol as well as the hosting agreements with the United Kingdom and the Italian Republic are available at <https://www.ecmwf.int/en/about/who-we-are/official-documents>.

### **1.2 Background to the Project**

The European Weather Cloud pilot is a two-year pilot project ("the Project") to set up a federated cloud computing infrastructure offering meteorological data and services primarily to National Meteorological Services of Member States (hereinafter NMSs), but also other entities (e.g. commercial companies). Services provided will range from delivery of weather forecast data to the provision of computing and storage resources, software applications, user support and expert advice. The "Federation" aspect means that users will see one interface by means of which they will be able to subscribe to, access and manage the resources provided by all entities.

The Project is conducted in close collaboration with EUMETSAT, the European Organisation for the Exploitation of Meteorological Satellites. EUMETSAT also has the status of an International Organisation and a very similar user base. Details about EUMETSAT's legal status can be found at <https://www.eumetsat.int/website/home/AboutUs/WhoWeAre/index.html>. The two organisations will develop their own cloud infrastructure, which will then be federated to allow users access to data at high speed from both organisations and process them in their choice of cloud infrastructure (at ECMWF or EUMETSAT).

This RFP is about the provision of legal advice covering all matters that may arise in conjunction with the Project, with a focus on any matters specific to ECMWF and EUMETSAT as International Organisations, as well as all policy, security and liability aspects.

### **1.3 Confidentiality**

The contents of this RFP together with all other information, materials, specifications or other documents provided by ECMWF, or prepared by respondents specifically for ECMWF, shall be treated at all times as confidential by the respondents unless it is already in the public domain. Respondents shall not disclose any such information, materials, specifications or other documents to any third parties or to any other part of the respondents' group or use them for any purpose

other than for the preparation and submission of a response to this RFP nor shall respondents publicise ECMWF's name or the project without the prior written consent of ECMWF. ECMWF in turn confirms that it shall treat all information provided to it by the respondent as confidential and further confirms that such information will not be disclosed by ECMWF to any third parties, other than its professional advisers and consultants.

Respondents shall ensure that all third parties to whom disclosure is made shall keep any such information, materials, specifications or other documents confidential and not disclose them to any other third party except as set out above.

#### 1.4 **Enquiries and contact procedure**

Any enquiries or requests for clarification of any matters arising from this RFP should be sought from the Procurement Section at ECMWF and must be made by e-mail as follows:

E-mail: [procurement@lists.ecmwf.int](mailto:procurement@lists.ecmwf.int)

The subject of the email must be: **“Clarification to RFP/2019/297 European Weather Cloud”**

Where ECMWF supplies further information, it will make this information available to all recipients of this RFP who have indicated their intention to submit a response and provided ECMWF with an e-mail address for communication of additional information.

#### 1.5 **Timetable for procurement**

ECMWF envisages the following timetable for this RFP:

- Final date/time for receipt by ECMWF of clarification questions: 20 May 2019
- Date by which clarification questions will be answered: 23 May 2019
- Closing date/time for submission of responses: **31 May 2019 (12:00 noon, UK local time)**
- Evaluation of proposals by ECMWF: by mid-June 2019 (including clarification of bidder responses if required)
- Negotiations with one or more proposers: by end of June 2019
- Award of contract: July 2019
- Start of work under contract: Mid July 2019

#### 1.6 **Submission of responses**

The invitee is requested to confirm to the email address shown in 1.4 above whether or not it will be submitting a response and must provide a contact point and contact details to which all further information will be sent.

The respondent must submit their response to [RFP297@ecmwf.int](mailto:RFP297@ecmwf.int) as an email with attachments containing its complete response to this RFP including its response to requirements as set out in **Annexes 1** through **3**. The attachments must contain a printable version of the response in Microsoft Word format or Adobe Portable Document Format (PDF) and in Microsoft Excel format for any spreadsheets. The email should confirm that the response has been submitted by a duly authorised director or senior officer of the respondent.

The subject of the email must be: **“Response to RFP/2019/297 European Weather Cloud”**

You must NOT send or copy your response to the contact email address in 1.4 above. ECMWF will not consider any late or partial responses to this RFP nor will it consider requests for extension of

the time or date fixed for the submission of responses. It may, however, at its own absolute discretion extend the time or date fixed for submission and in such an event ECMWF will notify all respondents who have provided an e-mail address.

Please note that ECMWF reserves the right to contact bidders during the evaluation process in order to clarify points in their response, therefore the contact point should be monitored during this period.

#### 1.7 **Costs of preparation of response**

Recipients of this RFP will be responsible for and bear all of their own costs, liabilities and expenses, which may be incurred in the preparation of their responses to this RFP.

#### 1.8 **Evaluation method and selection criteria**

Quality of Proposal and Proposed Services 60%, including:

- Relevant experience;
- Understanding of ECMWF's anomalous situation;
- Ability to tailor services to ECMWF's requirements;

Price/Rates 40%.

ECMWF reserves the right to negotiate with one or more respondents before taking a decision on the placing of a contract. This may involve a meeting either in person (on site in Reading) or via video-conferencing. ECMWF cannot reimburse the respondents for any costs relating to such meetings.

#### 1.9 **Warnings/disclaimers**

Nothing contained in this RFP or any other communication made between the respondent and ECMWF or its representatives shall constitute an agreement, contract or representation between ECMWF and any other party (except for a formal award of contract made in writing by ECMWF). Receipt by a respondent of this RFP does not imply the existence of a contract or commitment by or with ECMWF for any purpose.

ECMWF reserves the right to change any aspect of, or cease, the RFP at any time.

While ECMWF has taken all reasonable steps to ensure, as at the date of this document, that the facts which are contained in this RFP are true and accurate in all material respects, ECMWF does not make any representation or warranty as to the accuracy or completeness or otherwise of this RFP, or the reasonableness of any assumptions on which this document may be based. ECMWF accepts no liability to respondents whatsoever and however arising and whether resulting from the use of this RFP, or any omissions from or deficiencies in this document.

ECMWF may use the information included in a response for any reasonable purpose connected with this RFP.

## 2. **SCOPE OF SERVICE REQUIREMENTS**

See **Annex 2**.

### **3. REQUIRED INFORMATION**

#### **3.1 Summary**

Respondents should include a brief executive summary at the beginning of its proposal.

#### **3.2 Contact details**

Please supply details of the person at your organisation who can be contacted by ECMWF in relation to your proposal. Please give their name, title, address and location, telephone number, and e-mail address.

#### **3.3 Company details**

Please give details of your company, stating its full registered address and company registration number. Please include this information for sites you may have particularly in the United Kingdom and Italy. ECMWF may check the financial status of the company.

#### **3.4 Staff resources**

- (a) Please give details of your staff numbers, skills and locations relevant to the services requested (including CVs or an outline of the particular qualifications and experience by key staff proposed);
- (b) Please set out any key skill or employee dependencies and the availability of replacement skills in those areas, particularly as regards the envisaged permanent point of contact.

#### **3.5 Customers and references**

Please describe in brief terms your company's history and your recent provision of EU competition law services and services related to international organizations. Please supply a list of three customers total to whom similar services to those requested in this RFP have been provided giving details of the annual revenue from the relevant contract and the types of services being provided.

ECMWF reserves the right to seek references from one or all of these customers.

#### **3.6 Commercial arrangements**

Please provide an hourly rate for the different services which can be derived from **Annex 2** or any additional type of service you deem relevant to provide comprehensive legal consultancy to the Project (see **Annex 1**). You may consider different hourly rates depending on the level of seniority of the counsels involved. In addition, you may also want to consider a model for a monthly retainer for ongoing advice for pre-defined time periods. The model must allow to carry over unused monthly hours and regularly reminders when the agreed hours are exhausted. Please also provide a flat fee, including all expenses, for a comprehensive kick-off meeting in Reading. The hourly rates shall otherwise be inclusive of all constituent elements, such as unit price, overhead rates (if any), expenses etc. The price shall be firm and fixed and quoted in Pound Sterling (GBP; £) net of taxes and VAT. Travel expenses will only be reimbursed by ECMWF on the basis of its own rules and regulations. Travel time will not be subject to the agreed hourly rates.

### 3.7 **Standards and procedures**

Please provide a list of your quality assurance processes and management systems and if applicable, any quality related accreditations or certifications you hold.

### 3.8 **Responses to the Specification of Requirements**

Respondents should demonstrate their ability to meet the requirements set out in **Annex 2**, as well as any additional information as deemed appropriate.

### 3.9 **Terms and Conditions**

The terms and conditions for this contract are at **Annex 3**.

Please note that as a result of ECMWF's immunity from jurisdiction, any contract resulting from this RFP must contain an arbitration clause which is offered by ECMWF to all contracting parties. Further information may be found at <https://www.ecmwf.int/en/about/suppliers> in document "ECMWF's status: Arbitration and VAT". Please confirm that you agree to the Terms and Conditions in **Annex 3**. The proposal which you submit, clarified if necessary, will be part of the contract.

## **ANNEX 1 - OVERVIEW OF THE EUROPEAN WEATHER CLOUD PILOT PROJECT**

The Project explores the possibilities and challenges for ECMWF to transform the way weather data and services are provided and consumed. The volume of data produced and archived daily by ECMWF is so vast that no user is able to download and exploit them fully. A new paradigm is necessary, whereby instead of sending data out to users to be processed on their side, users can process the data and move relevant parts of their research and operational activities to ECMWF, by using cloud technologies. This Project will be conducted in close collaboration with EUMETSAT, the European Organisation for the Exploitation of Meteorological Satellites. The two organisations will each develop their own cloud infrastructure, which will then be federated to allow users accessing data at high speed from both organisations and process such data at their choice of cloud infrastructure (at ECMWF or EUMETSAT). For this cloud federation to work, the two organisations will have to build together an orchestration layer allowing for the two infrastructures to communicate to each other.

### **A) PROJECT SCOPE**

The Project will:

- Develop a cloud infrastructure and an orchestration layer that will enable the federation with the cloud at EUMETSAT.
- Investigate services that can be operated on the cloud, establish guidelines, common tools to support such services, identify risks and good practices for security.
- Investigate business models for the funding of such infrastructure and services at least partially via a charging mechanism applicable to commercial entities and a cost recovery mechanism applicable to NMSs.
- Investigate legal, policy and security aspects connected with the provision of such services to NMSs and other users in community/private/public cloud deployment.

The project will make use of technical and policy advice and input from domain experts drawn from the NMSs. In particular, a Subgroup of the ECMWF plenary organ, the Council, comprising Directors of NMSs will provide input with regards to strategic and policy matters and a Working Group will take such input to provide studies, recommendations etc. with regards specifically to business models, policy implementations and legal matters.

## **ANNEX 2 - SPECIFICATION OF REQUIREMENTS**

ECMWF is seeking to enter into call-off contract with an external counsel, or a law firm, or a team of counsels. The following specifications of requirements have been identified by ECMWF:

**An external counsel to advise ECMWF in all legal matters which may potentially arise in conjunction with the European Weather Cloud pilot. The counsel should highlight areas of concern to ECMWF and the Working Group and propose practical solutions to address them. In general, this counsel:**

- (a) **Must to be aware of and fully acquainted with ECMWF's legal status as an inter-governmental/international organisation as regards in particular privileges and immunities and have experience with practical consequences of such a status on the territories of the ECMWF Member States and Co-operating non-Member States, including ECMWF's host nations the United Kingdom and the Italian Republic;**
- (b) **Must be able to advise in English to a very high standard;**
- (c) **Should particularly be able to give advice on international and European law, including European and national Competition Law, State Aid, the (revised) PSI Directive, and Intellectual Property Law;**
- (d) **Shall have the capabilities to give extensive expert advice on short notice;**
- (e) **Must be able to quote ECMWF for individual projects on short notice on the basis of billable hours;**
- (f) **Should generally provide ECMWF with a permanent single point of contact.**

**The counsel should also be able to provide advice in selected areas of concern that have already been identified and that may become subject of a call-off request by ECMWF, as follows:**

- (g) **The limitation of ECMWF's liabilities, in particular vis-à-vis- user activity in relation to the Project;**
- (h) **The risks of entering into a commercial cloud market, in particular considering ECMWF's status as an international organisation and the potential relevance of EU Competition Law, the (revised) PSI Directive, EU State Aid provisions etc. and advise on legal risk mitigation. (Note: ECMWF has undertaken a comprehensive legal study to establish the legal status quo. The results will be shared with the counsel (under privilege));**
- (i) **The possibilities for ECMWF to charge for services above marginal cost, in particular, considering ECMWF's status as an international organisation and its purposes, objectives and activities as defined in Article 2 of the Convention, as well as considering European law, such as the (revised) PSI Directive;**
- (j) **The level of extent and how it would be possible to exercise control over digital data if the right to redistribute such data is awarded to users;  
The level of extent and how it would be possible to restrict the provision of cloud services to the "meteorological industry" only;**

- (k) **The validation of the legal framework for all options put forward by ECMWF with regards to different business models ECMWF may devise; and,**
- (l) **As a final step, assist with the development of terms and conditions and/or Service Level Agreements for the provision of services under the chosen model for the Project to different kinds of users (e.g. Member States; commercial users, non-commercial users etc.).**

**CONTRACT FOR PROCUREMENT**

**ECMWF/RFP/2019/297**

for

**THE PROVISION OF LEGAL CONSULTANCY RELATING TO THE ESTABLISHMENT OF A  
CLOUD COMPUTING INFRASTRUCTURE AT ECMWF (THE "EUROPEAN WEATHER  
CLOUD PILOT")**

The Contract consists of

ANNEX 1: ECMWF's Terms and Conditions of Contract - Services

ANNEX 2: the Contractor's Proposal and

ANNEX 3: ECMWF/RFP/2019/297 for Legal Consultancy for the "European Weather Cloud pilot"

[ANNEX 4: ECMWF's Acceptance Letter - if applicable]

In the event of any conflict between these Annexes the order of precedence shall be:

- 1) ANNEX 1: ECMWF's Terms and Conditions of Contract - Services
- 2) ANNEX 3: ECMWF/RFP/2019/297 for Legal Consultancy for the "European Weather Cloud pilot".
- 3) [ANNEX 4: ECMWF's Acceptance Letter - if applicable]
- 4) ANNEX 2: The Contractor's Proposal.

Under this Contract made and entered into this            day of [month year]

by and between

the European Centre for Medium-Range Weather Forecasts (ECMWF), governed by its Convention and associated Protocol on Privileges and Immunities which came into force on 1 November 1975 and was amended on 6 June 2010,

and

[Contractor, Contractor's address], registered in [State; City; Institution] no. [Registration number]  
(the Contractor),

ECMWF agrees to acquire and the Contractor agrees to provide the products and services described in this Contract on the terms and conditions provided herein. As for the agreed pricing, please refer to **Annex 2**, as amended by the parties.

IN WITNESS WHEREOF this Contract has been duly executed as of the date set forth above.

Signed for and on behalf of ECMWF

Signed for and on behalf of the Contractor

By Mr Luiz Neves

by (name): \_\_\_\_\_

Its Director of Administration

Its: \_\_\_\_\_

Addresses for contract notices:

For ECMWF

For the Contractor

Director of Administration

ECMWF

Shinfield Park

READING

Berkshire

RG2 9AX

United Kingdom

**YOU ARE NOT REQUIRED TO SIGN THIS AS PART OF YOUR RESPONSE**

**However, you should confirm your agreement to the Terms and Conditions in accordance with para 3.9 of the Request for Proposal**

## TERMS AND CONDITIONS OF CONTRACT - SERVICES

### 1 INTRODUCTION AND DEFINITIONS

- 1.1 These Terms and Conditions (“T&C”) shall apply to the procurement of any intangible beneficial function (e.g. advice, consultancy or some form of specialist activity) which is not ancillary to the supply of goods. These T&C shall also apply to any tangible items (e.g. documents, datasets and other materials) which are provided by the supplier or its agents, contractors or employees, as part of or in association with the function (“Deliverables”). In these T&C, the function and the Deliverables shall be referred to collectively as the “Services”.
- 1.2 ECMWF and the person or entity whose offer is accepted by ECMWF (“Contractor”) are “Parties” to these T&C. No third party is entitled to claim any rights under these T&C.
- 1.3 The Contract contains the entire agreement between the Parties relating to the acquisition of Services.
- 1.4 No variation of these T&C shall be valid unless it is confirmed in writing by authorised signatories of both Parties.

### 2 SUPPLY OF SERVICES

- 2.1 The Contractor shall from the date set in the Request or any other date agreed upon by the Parties in writing (“Commencement Date”) and for the duration of the Contract provide the Services to ECMWF in accordance with the terms of the Contract.
- 2.2 The Contractor shall meet any performance dates requested by ECMWF.
- 2.3 In providing the Services, the Contractor shall
  - co-operate with ECMWF and comply with all instructions of ECMWF;
  - perform the Services with care, skill, diligence in accordance with best practice in Contractor’s industry, profession or trade;
  - ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Request, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Contractor by ECMWF;
  - acquire for itself and at its own expense, all equipment, tools, vehicles and such other items as are required to provide the Services;
  - use high quality goods, materials, standards and techniques, and ensure that the Deliverables will be free from defects in workmanship, installation and design;
  - obtain and at all times maintain all necessary licences and consents, and comply with all laws applicable to the Contractor;
  - comply with all relevant rules and regulations in force at ECMWF premises;
  - hold all materials and data supplied by ECMWF to the Contractor in safe custody at its own risk and return them in good condition, unless agreed otherwise by ECMWF.
- 2.4 ECMWF shall
  - provide the Contractor with reasonable access at reasonable times to ECMWF’s premises and other facilities for the purpose of providing the Services;
  - provide such information to the Contractor as the Contractor may reasonably request and ECMWF considers reasonably necessary for the purpose of providing the Services.

### 3 CALL-OFF CONTRACT/SEPARATE ORDERS

- 3.1 Meeting ECMWF’s full RFP needs may require more than one order. In such cases, the Contractor agrees that ECMWF may order further Services following the initial acquisition under the Contract and at the price/price rates set out in the final and agreed version of the Contractor’s Proposal

(Annex 2).

- 3.2 Each order shall describe the work to be undertaken and shall indicate the end date for the work. The Contractor shall not be allowed to expend effort beyond this end date without the written authorisation by ECMWF.
- 3.3 Each order shall be transmitted to the Contractor's representative identified in Annex 2 (Contractor's Proposal).
- 3.4 In response to the order, the Contractor shall confirm the end date and propose a founded maximum number of billable hours the Contractor anticipates for the order. The description of work in the relevant order shall, upon acceptance by the Contractor and ECMWF, become the basis for the order.
- 3.5 The award of this Contract and any related order does in no way limit ECMWF's right to invite, contract with or send orders to third parties for the same or similar Services.

#### 4 PRICE, CURRENCY, VAT AND OTHER TAXES

- 4.1 The contract price or price rates and the maximum price for a given package of Services shall all be set out in the final and agreed version of the Contractor's Proposal (Annex 2) or in the Contractor's acceptance of an order under this Contract.
- 4.2 Unless otherwise agreed the items referred to in Clause 4.1 shall remain fixed for the duration of the Contract or order and shall not be subject to any adjustment on the basis of the Contractor's cost experience in performing the Contractor order.
- 4.3 The price or price rates referred to in Clause 4.1 shall be inclusive of all the Contractor's charges, disbursements, fees and ancillary costs, including costs relating to the Contractor's personnel. The said price or price rates shall also be inclusive of all direct and indirect taxes, duties, pension, medical or social security contributions which may be payable in relation to the provision of the relevant Services by or in respect of the Contractor, its agents, employees or other personnel.
- 4.4 Should the Contractor and ECMWF agree a daily price for the Services, such price shall include the price for work undertaken inside and outside ECMWF's normal working hours and the Contractor's normal working hours. ECMWF will not pay for overtime, undertaken by the Contractor or its personnel.
- 4.5 If it transpires that, without fault of the Contractor, an agreed package of Services cannot be performed within the pre-agreed maximum price, the Contractor shall not be obliged to perform work entailing cost beyond the pre-agreed maximum price.
- 4.6 The currency of the Request shall be in Pound Sterling (GBP; £). The Contractor's prices shall be quoted in GBP (£). The Contractor's invoices shall be submitted in GBP (£). Payments by ECMWF to the Contractor shall be made in GBP (£). As a rule, ECMWF is exempt from all taxes and duties, including VAT, pursuant to the provisions of Article 4 of its Protocol on Privileges and Immunities, available at <http://www.ecmwf.int/en/about/who-we-are/official-documents>. ECMWF does not undertake "economic activities". Therefore, it is not a taxable person under Article 9 of Directive 2006/112/EC. Consequently, it does not have a VAT number.
- 4.7 In accordance with Article 151 of Directive 2006/112/EC and by way of a letter, dated 3 March 2016, reference number: VAT INT/DP/39/2016, the Government of ECMWF's host member state has given ECMWF authority to issue certificates of exemption from VAT in respect of all purchases of goods and services for ECMWF's official use.
- 4.8 Accordingly, if the Contractor is located outside the UK it shall take all necessary steps to facilitate ECMWF's exemption from VAT which might otherwise be payable in relation to the Services. For these purposes, it shall request the necessary instructions from ECMWF and provide in due time the information which ECMWF requires.

4.9 ECMWF will not pay any other taxes or duties relating to the Contract or the Services.

## 5 INVOICING AND PAYMENT

Save where different payment terms have been specified in the Request, ECMWF shall pay all invoices within 30 days of receipt, provided the Contractor has complied with its obligations under the Contract, particularly with Clause 2 of these T&C. The invoice must be correct, stating the applicable Services, the price, the Contractor's VAT number and any purchase order number provided by ECMWF. It must have been sent electronically to **finance@ecmwf.int**.

## 6 CONSULTANTS AND OTHER PERSONNEL

- 6.1 For the purposes of this Contract, a Consultant means a member of the Contractor's personnel who is nominated by the Contractor and accepted by ECMWF, to work directly with ECMWF for provision of the Services.
- 6.2 If ECMWF accepts a particular Consultant, nominated by the Contractor in its Proposal or in its acceptance of an order, such acceptance shall be on the understanding that the particular Consultant is willing and able to provide the Services for the whole of the specified period and such Consultant shall not be released or replaced by the Contractor without prior written consent by ECMWF. ECMWF's consent shall not be withheld unreasonably. The replacement shall have equivalent experience and skills to the Consultant he/she is replacing, shall be suitable for the responsibilities of the Consultant he/she is replacing in relation to the Services and shall physically replace the Consultant as soon as possible and not more than four weeks after the departure of the Consultant.
- 6.3 Any Contractor personnel, including a Consultant, shall be replaced at ECMWF's request subject to four weeks' written notice, unless extraordinary circumstances require a shorter notice period. In that case, ECMWF has to provide the Contractor with a written statement of grounds.
- 6.4 Personnel, other than a Consultant may be exchanged at the Contractor's discretion subject to four weeks' written notice, unless extraordinary circumstances require a shorter notice period. In that case, the Contractor has to provide ECMWF with a written statement of grounds.
- 6.5 The Contractor shall ensure that Consultants maintain their professional and technical expertise with relevance to the Services, thus ECMWF is ready to accommodate short periods of unavailability of a Consultant for training purposes. The Contractor shall bear the costs for the training.
- 6.6 The Contractor takes note that, on or soon after first attending ECMWF's premises, the Consultant will be required by ECMWF to sign a declaration in the form shown in **Appendix 1** to these Terms and Conditions. Among other things, the declaration alerts the Consultant to the policies (e.g. concerning health & safety, information security and ethics), with which the Consultant will have to comply, whilst working with ECMWF.
- 6.7 A Consultant shall assist ECMWF as required but the Contractor shall not cede its supervisory responsibility regarding the work of a Consultant to ECMWF and nothing in this contract shall be interpreted as relieving the Contractor of any of its obligations regarding its personnel, including the Consultant. Consequently, the Contractor shall remain responsible for any acts or omissions of a Consultant and for the management of the performance of the same Consultant.
- 6.8 The Contractor hereby confirms that any Consultant, including any replacement is/shall be an employee of the Contractor at all times when performing the Services. The Contractor further hereby confirms that no Consultant or replacement does/shall own a significant proportion of the shares of the Contractor or is/shall be part of the management of the Contractor while performing the Services.
- 6.9 In order to avoid the risks of unintended employment, no individual Consultant shall provide the

Services or any other services to ECMWF for continuous or interrupted period(s), which when added together would last for more than two years. ECMWF and the Contractor shall cooperate to implement this form of security, no matter how inconvenient to either of them or to the Consultant.

## 7 WARRANTY REMEDIES; TERMINATION

7.1 If the Services are not performed in accordance with Clause 2.3 and the Contractor fails to correct any breach in due time, ECMWF shall be entitled to avail itself of any one or more of the following remedies at its discretion: (a) to rescind or suspend the Contract with immediate effect; (b) to refuse to accept any further Service performance and to source alternatives without any liability to ECMWF; (c) to carry out at the Contractor's expense any work necessary to make the Services comply with the Contract; and (d) to claim such damages as may have been sustained in consequence of the Contractor's breach of Contract; and (e) to reclaim any advance payments ECMWF may have made; and (f) to offset any such claims for damages or refunds against any outstanding portion of the price.

7.2 ECMWF may resort to any one or more of the remedies stipulated in Clause 7.1 *mutatis mutandis* and with immediate effect upon written notification, if it comes to the conclusion:

- That the Contractor has committed errors, irregularities, fraud or breaches of other obligations under the Contract; or
- That the Contractor is involved in any legal proceedings concerning its solvency, or ceases trading, or commits an act of bankruptcy or is adjudicated bankrupt, or enters into liquidation whether compulsory or voluntary (other than for the purposes of an amalgamation or reconstruction) or makes an arrangement with its creditors or the Contractor is placed into administration or has an administrator, receiver or manager appointed over all or any part of its assets or generally becomes unable to pay its debts; or is acquired by or merged with any third party.

It is left to the Contractor to provide evidence to rebut ECMWF's conclusions. ECMWF may take timely rebuttals into account, reconsider the remedies, or enter into negotiations with the Contractor.

7.3 ECMWF reserves the right to terminate any Contract at thirty (30) days' notice, without limiting its other rights and remedies. The Contractor has the right to terminate any Contract at sixty (60) days' notice without limiting its other rights and remedies.

## 8 CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason, the Contractor shall immediately deliver to ECMWF all Deliverables whether or not then complete, and return all material and data supplied by ECMWF. Upon inspection of the Deliverables, ECMWF may choose to keep and pay for incomplete Deliverables proportionately or otherwise return them to the Contractor and not make any payment for incomplete Deliverables.

## 9 FORCE MAJEURE

Neither party shall be liable to the other party for any delay in or failure to perform its obligations as a result of any cause beyond its reasonable control ("Force Majeure") provided the affected party notifies the other party as soon as reasonably practicable. If any Force Majeure event continues for at least 90 days, either party shall be entitled to terminate the Contract with immediate effect by notice in writing to the other party.

## 10 INTELLECTUAL PROPERTY RIGHTS

- 10.1 ECMWF shall own the Deliverables and all intellectual property rights in the Deliverables.
- 10.2 Clause 10.1 does not apply to the Contractor's pre-existing intellectual property rights or rights that the Contractor may have developed or acquired independently of the performance of his obligations under these T&C.
- 10.3 Ownership of the Deliverables shall be fully and irrevocably acquired by ECMWF under the Contract from the moment they are accepted by ECMWF as being in compliance with the Contractor's obligations under the Contract, particularly with Clause 2 of these T&C. ECMWF shall notify the Contractor in due time if it does not accept the Deliverables. If so, it shall notify the Contractor and, if necessary, return the Deliverables immediately.

## 11 INDEMNITIES

- 11.1 The Contractor hereby agrees to indemnify ECMWF against any claim for actual or alleged infringement of a third party's intellectual property rights, brought against ECMWF arising out of, or in connection with ECMWF's receipt or use of the Services, to the extent that the claim is attributable to the acts or omissions of the Contractor or any of its personnel, agents or subcontractors.
- 11.2 The Contractor hereby agrees to indemnify ECMWF against any claim by any of the Contractor's personnel, including any Consultant, which alleges or which is predicated upon an allegation of employment status with ECMWF and which relates to provision of the Services.
- 11.3 This Clause 11 shall survive termination of the Contract.

## 12 PUBLICITY & CONFIDENTIALITY

- 12.1 The Contractor may not use ECMWF's name for advertisement, reference or publicity purposes without ECMWF's prior written consent.
- 12.2 If either party learns of confidential or proprietary information of the other party, it may not disclose such information without prior written consent of the other party. This obligation will survive the expiry or termination of the Contract for a period of five (5) years or until such earlier time as the confidential information concerned reaches the public domain other than through the receiving party's own default.
- 12.3 Either Party shall keep all of the other Party's confidential technical or commercial know-how, specifications, inventions, processes, or trade secrets ("Confidential Information") in strict confidence, unless otherwise required by law or any regulatory authority. This obligation applies to the Parties' affiliates or Member States, their employees, agents, or sub-contractors. Each Party shall only disclose such Confidential Information to those EC or affiliates' or Member States' employees, agents, or sub-contractors who need to know it for the purpose of discharging the disclosing Party's obligations under the Contract. Each Party must assure that all such recipients of Confidential Information comply with the obligations set out in this Clause. This Clause 12.3 shall survive the termination of the Contract.

## 13 INSURANCE

The Contractor shall carry general, professional liability, automobile and employer's liability insurance (or equivalent cover or contingency arrangements) for all liabilities that may arise out of or in connection with the Contractor's performance or non-performance of its obligations under the Contract. Upon request, the Contractor shall provide evidence of such insurances or such other cover or contingency arrangements as the Contractor maintains, to the satisfaction of ECMWF.

## 14 PERSONAL DATA

- 14.1 Where the processing of personal data by the Contractor is required under the Contract, the Contractor shall process personal data in accordance with the General Data Protection Regulation 2016/679/EU (“GDPR”), as amended, and any other data protection law applicable to the Contractor (“Data Protection Law”) during the term of this Contract. If the Contractor processes personal data outside the European Economic Area (“EEA”), or allows such personal data to be accessed from outside the EEA, it shall do so in a manner which satisfies applicable Data Protection Law for the implementation of adequate safeguards for transfers of personal data to third countries not subject to an adequacy decision of the European Commission (e.g. under an agreement between the Contractor and the third-country recipient organisation using European Commission approved Model Contract Clauses or, in the case of the United States of America, covered by the Commission approved “Privacy Shield” or any subsequent similar arrangement).
- 14.2 The Contractor shall implement appropriate technical and organisational measures to ensure the security of personal data processed pursuant to this Contract. Upon termination or expiry of this Contract or upon ECMWF’s request, the Contractor shall either delete or return to ECMWF all personal data processed under this Contract, unless Data Protection Law requires otherwise.
- 14.3 If so required under applicable Data Protection Law, the Contractor shall designate a Data Protection Officer (“DPO”) and supply appropriate contact details of its DPO to ECMWF and the data subjects. ECMWF may publish that information through its websites for use by the data subjects, whose personal data is processed by the Contractor. The Contractor shall promptly report to ECMWF any change to the identity of the Contractor’s DPO.
- 14.4 The Contractor shall, without delay, pass on to the DPO of ECMWF any requests or complaints made by data subjects relating to the processing of their personal data in the exercise of their rights under applicable Data Protection Law. The Contractor shall provide, free of charge, all support necessary for ECMWF to respond to and/ or fulfil all such requests and complaints.
- 14.5 The Contractor shall notify ECMWF of any security incidents, events or weaknesses (e.g. data breaches or suspected data breaches) impacting or capable of impacting the security of personal data processed under the Contract.
- 14.6 The Contractor shall process, or permit to be processed, personal data only for the purposes of performing its obligations under the Contract and shall ensure that personnel of the Contractor is subject to an obligation of confidentiality in respect of the processing of personal data under the Contract.
- 14.7 ECMWF, an ‘international organization’ under Chapter V of the GDPR, shall comply with its own policies and procedures in respect of the protection of personally identifiable information, notably the Policy for Personally Identifiable Information Protection, as amended. ECMWF’s DPO can be reached as follows: pii-protection-officer@ecmwf.int or ECMWF PII Protection Officer; ECMWF, Shinfield Park, Reading, RG2 9AX, United Kingdom.

## 15 RECOVERY

ECMWF reserves a right to recover from the Contractor any amounts that have been paid to the Contractor but which are not due. When ECMWF identifies such amounts and notifies the Contractor of its intention to recover such amounts, they shall be treated by both parties as debts and shall be payable by the Contractor immediately. If applicable, ECMWF may choose to set off such amounts in full against any outstanding claim the Contractor may have against ECMWF.

## 16 REPORTS

The Contractor pledges to supply ECMWF with all requested information in due time.

## 17 CHECKS AND CONTROLS

- 17.1 ECMWF reserves the right to carry out all controls, including on-site checks, necessary to ensure that transactions under these T&C are legal, regular, effective, and correct.
- 17.2 The Contractor 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 (5) years after termination of the Contract. This period shall be longer if there are on-going audits, appeals, litigation or claims concerning the Contract. In such cases, the Contractor shall keep the documents until such audits, appeals, litigation or claims are closed.

## 18 GOVERNING LAW AND DISPUTE RESOLUTION

- 18.1 The parties shall attempt to settle any dispute between them in an amicable manner and, if unsuccessful, first refer the dispute to proceedings under the International Chamber of Commerce's (ICC) Mediation Rules. If the dispute has not been settled pursuant to the said Rules within 45 days following the filing of a request for mediation or within such other period as the Parties may agree in writing, such dispute shall thereafter be finally settled under the ICC Rules of Arbitration by three (3) arbitrators appointed in accordance with the said Rules of Arbitration. The Place of Mediation and Arbitration shall be London, England. The proceedings shall be in the English language.
- 18.2 Recourse to regular courts of law, also in cases of injunctive relief, is excluded.
- 18.3 It is the intention of the Parties that these T&C shall comprehensively govern the legal relations between the Parties, without interference or contradiction by any unspecified law. Without prejudice to ECMWF's status as an Intergovernmental Organization, reference shall be made to the substantive Laws of England and Wales where:
- A matter is not specifically covered by these T&C; or
  - A provision of these T&C is ambiguous or unclear.

## 19 MISCELLANEOUS

- 19.1 The Contractor may not sub-contract or assign any of its obligations under the Contract except with ECMWF's express written permission and upon the basis of specific terms, provided by ECMWF, to apply as between the Contractor and its sub-contractor or assignee.
- 19.2 No forbearance or delay by either party in enforcing its rights shall prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms shall be deemed to be a waiver of any other right or of any later breach.
- 19.3 In the event of any inconsistency between any terms of these T&C, or a contract incorporating the former, and any translation thereof into another language, the English language meaning shall prevail.
- 19.4 If any provisions of these T&C are or subsequently become invalid for any reason, the remaining provisions shall remain in full force and effect.

## APPENDIX 1

### FORM OF DECLARATION TO BE SIGNED BY CONSULTANT ON FIRST ARRIVAL AT ECMWF

**To be signed on or before arrival for first visit:**

Visiting Experts/Scientists

Consultants/Contractors/ Agency Staff

**Name:**

**Permanent Email Address:**

**Purpose of visit(s):**

**Period, over which visit/s is/are currently planned or scheduled:**

▪ **ECMWF Policies**

I acknowledge that I [have][have been given] a User ID for access to ECMWF's IT systems (including files, intranet, internet and email). I agree that, while working at ECMWF, I will be subject to the authority of the Director-General of ECMWF, I will use my access to ECMWF's IT systems solely with the interests of the Centre in mind and I will find, read and comply with the terms of ECMWF's various policy documents (e.g. Charter of Ethics, Information Security Policy, etc).

▪ **Intellectual Property Rights**

I acknowledge that I have been given access to the Centre's "**Intellectual Property Guidelines**" and agree to comply with its contents.

I further agree that all current and future Intellectual Property Rights - of whatever kind - subsisting in all works made wholly or partially by myself at any time during my visits at ECMWF shall automatically, on creation, vest in ECMWF absolutely. I agree to give ECMWF, upon request, full written details of all works embodying Intellectual Property Rights. I agree not to use or incorporate into the Centre's software any of my own or any third party software or data unless such software or data has already been assigned to the Centre. Upon completion of my visits, I shall not make use of or exploit any of the Intellectual Property Rights connected with my activities at ECMWF without prior written authorisation of the Director-General or his/her deputy.

I will adhere to the strictest rules of professional discretion for the protection of Intellectual Property Rights relating to the Centre's activities.

▪ **Confidentiality**

I agree that I will not disclose any confidential information and know-how provided to me or obtained by me during my visits to ECMWF to any third party without prior written approval of the Director-General or his/her deputy.

▪ **Arbitration**

I understand that ECMWF is an intergovernmental organisation with specific privileges and immunities granted to it by its Member States as reflected in [the ECMWF Convention and Protocol](#). One of these rights is ECMWF's immunity from jurisdiction. Accordingly, any matter between myself and the Centre, including any violation of my rights and obligations during my stay, should be resolved amicably. If that fails, both I and ECMWF shall attempt to fully resolve the issue by using ECMWF's internal dispute

resolution procedures. Any remaining issues between me and ECMWF will be finally settled by arbitration proceedings in English before one or more arbitrators, sitting in London. Such arbitration will be governed by suitable arbitration rules agreed between myself and ECMWF. I understand and accept that Recourse to domestic courts is excluded, except for the purpose of enforcing an arbitral award.

**I understand that the duties that I assume under this document shall remain in full force for all of my future visits to the Centre, until further notice**

Signature.....Date.....