

ANNEX IV

CONTRACTUAL GENERAL TERM AND CONDITIONS **FOR THE DEVELOPMENT OF MEETING MANAGEMENT SYSTEM** **(Hereinafter THE PRODUCT)**

The following essential terms and conditions constitute a non-negotiable basis on which the WCO and the selected candidate will negotiate a formal agreement following the award of the contract.

1 – Duties and responsibilities of the Service Provider

The Service Provider is committed to develop the Product as described in the call for tender in accordance with the specifications mentioned and in its offer.

The Service Provider shall respect the following calendar defined in the call for tender.

2 – Terms and conditions of execution

2.1. Delivery and preliminary acceptance

The Service Provider shall deliver to the WCO the Product in due time

The delivery of the Product shall give rise to the signature of a notice of receipt, it being understood that only final acceptance amounts to the recognition of the conformity of the Product with the contractual requirements. The date of the signature of the notice will be considered as the date of first delivery (the “**Date of first Delivery**”).

2.2. Technical validation and final acceptance

Within a period of sixty (60) calendar days (hereinafter referred as the “**Period**”) following the delivery, the WCO shall carry out technical validation of the Product in order to verify that it functions correctly and may request the Service Provider to amend or correct the Product.

The Service Provider shall have five (5) working days to implement, without any further costs, any amendment or correction requested by the WCO and to provide the WCO with an amended version of the Product. Such process shall be repeated as long as the technical validation is not considered satisfactory by the WCO or until the above mentioned time limit has expired.

On the last day of the Period or within five (5) calendar days after the Period in the case of a request of modification/correction was made by the WCO the last day of the Period, the Service Provider shall deliver the Product including all the modifications and corrections to the WCO. Such a date will be considered as the date of last delivery (the “**Date of Last Delivery**”).

When the technical validation of the Product is considered satisfactory by the WCO, the Parties will sign a notice of final acceptance. The date of signature of such notice shall be considered as the date of final acceptance (the “**Date of Final Acceptance**”).

3 - Contact persons

No later than ten (10) working days following the signature of the Agreement, each Party shall designate a contact person and a substitute in case of sickness or leave, (the “**Contact Person**”) and notify the other Party thereof.

These Contact Persons will serve as the primary communication link between the Parties: any information, request, claim, delivery, or notification whatsoever, for any purpose, under the Agreement shall be exclusively addressed to the Contact Person who will then pass it on to the appropriate department and/or person.

4 – Guarantees and warranty

4.1. Conformity

The Service Provider warrants for a period of one (1) calendar year following the Date of Final Acceptance (the “**Warranty Period**”) that the Product will conform in all material respects to the specifications set forth in the Agreement.

The Service Provider undertakes to correct or repair any non-conformance to such warranty standards of the Product of which the WCO has notified the Service Provider in writing during the applicable Warranty Period, provided that the Product has not been modified or altered by the WCO or any third party.

The Service Provider undertakes to supply an amended version of the Product within ten (10) working days following the request by the WCO mentioning such non-conformance.

4.2. Guarantee of compatibility

The Service Provider shall guarantee the compatibility of the Product with further standard development normally foreseeable.

4.3. International security standards compliance

The Service Provider warrants and represents that at time of delivery to the WCO, the Product will comply with the International security standards, frameworks and good and best practices.

4.4. Counterfeiting

The Service Provider warrants that the Product and any other document provided by the Service Provider under the Agreement (exclusive of any Source Files and any other

information, file or document provided by the WCO within the context of the Agreement) do not constitute an infringement of an intellectual property right.

The Service Provider, shall, at its own expense, defend, hold harmless and indemnify the WCO and its affiliates, and their officers, directors, employees and contractors, from any and all liabilities, damages, losses, costs and expenses (including reasonable attorneys' fees) (collectively, "**Liabilities**") to the extent such Liabilities arise out of or in connection with any third party claim that the Product as performed or provided by the Service Provider hereunder, infringe any patent, copyright, trademark, trade secret, moral or any other intellectual property rights of such third party. The WCO shall promptly notify the Service Provider in writing of any such claim and allow the Service Provider to control the defense and settlement of such claim, provided that the WCO may participate in the defense and settlement at its own expense with counsel of its own choosing. The Service Provider shall not agree to any settlement of claims against the WCO or other indemnified parties, without the WCO's prior written consent.

In the event that the entirety or any part of Product become the subject of a claim of infringement of a third party's rights, the Service Provider shall, obtain at its own expense, the right for the WCO to continue using the Product.

The Service Provider shall have no obligation pursuant to this section for claims or Liabilities to the extent same result from:

- (i) any Source Files and any other information, file or document provided by the WCO within the context of the Agreement or any part thereof;
- (ii) the Service Provider's compliance with the WCO's detailed specifications set out in the Agreement;
- (iii) the combination of the Product with other components not created by the Service Provider; or
- (iv) modification of the Product by anyone other than the Service Provider, its affiliates, or their employees or contractors.

The WCO shall, at its own expense, defend, hold harmless and indemnify the Service Provider and its affiliates, and their officers, directors, employees and contractors, from any and all Liabilities to the extent such Liabilities arise out of or in connection with any third party claim that the Source Files, any other information, file or document provided by the WCO within the context of the Agreement or any part thereof, infringes any patent, copyright, trademark, trade secret, moral, or any other intellectual property rights of such third party. The Service Provider shall promptly notify the WCO in writing of any such claim and allow the WCO to control the defense and settlement of such claim, provided that the Service Provider may participate in the defense and settlement at its own expense with counsel of its own choosing. The WCO shall not agree to any settlement of claims against the Service Provider or other indemnified parties, without the Service Provider's prior written consent. Should any Source Files or any other information, file or document provided by the WCO within the context of the Agreement or any part thereof become, or in the WCO's opinion be likely to become, the subject of any claim of infringement, the WCO shall notify the Service Provider and the Service Provider shall promptly discontinue any further work on such

material. This section states the WCO's sole liability and the Service Provider's exclusive remedy for intellectual property infringement.

5 – Penalties

The Service Provider shall acknowledge the WCO's right to require payment of daily penalties in the following cases and for the following amounts:

- (i) delay on the part of the Service Provider in delivery of the Product: an amount of five hundred (500) euro per day as from the Date of Last Delivery until the Date of Final Acceptance;
- (ii) delay on the part of the Service Provider in delivery of amended versions of the Product to the WCO within the framework of the Warranty Period (Article 3): an amount of one thousand (1000) euro per day as from the due date as provided by the Agreement.

Both Parties shall expressly agree that such penalties shall apply without requirement for prior notice requirement or any other formality.

Such penalties are conventional injunctions, without prejudice to damages that the WCO could be entitled to claim due to delays on the part of the Service Provider in fulfilling its obligations under the Agreement.

Moreover, the WCO shall also be entitled to invoke termination for material breach by a Party.

The Service Provider shall not be responsible for any delay that is solely caused by the WCO or any third party under contract with the WCO. In such case, the above mentioned daily penalty shall not apply. Any delay of this kind shall be evaluated and validated by the Parties and shall give rise to a statement for inclusion in the meeting minutes under the heading "**Notice of WCO delay**". If the Parties so agree, the date on which the Product shall be delivered shall be postponed accordingly as a result of this delay.

6 – Intellectual Property

By express agreement, the ownership of the Product and any other document created by the Service Provider (including source code) in the framework of the Agreement shall, without exception or reservation, be transferred to the WCO.

The Service Provider shall, without exception, therefore transfer all its intellectual property rights on the Product and any other document it has created in the framework of the Agreement as well as without limitation any reproduction rights, adaptation rights, arrangement rights to use the material in any form whatsoever. Therefore, the WCO will be the sole owner of all intellectual property rights on the Product and any other document created by the Service Provider in the framework of the Agreement.

The WCO may also freely adapt and modify the Product and any other document created by the Service Provider under the Agreement, add or delete functions or combine with other files or software.

The WCO shall acquire ownership of the Product and any other document created by the Service Provider under the Agreement as and when they are created. In the case of termination of the Agreement, for whatever reason, it shall be granted ownership of the Product and any other document created by the Service Provider under the Agreement, as they stand.

Notwithstanding the foregoing, Developer Tools (as hereinafter defined) shall not constitute intellectual property rights owned by the WCO hereunder as part of Product or any other document created by the Service Provider in the framework of the Agreement. The term “**Developer Tools**” means any and all technology, software, tools, products, know-how, trade secrets, language resources, glossaries and dictionaries, processes, and methods that are owned, controlled, developed, modified, or licensed by the Service Provider, and all derivatives thereof, used by the Service Provider in providing services to third parties generally. The WCO acknowledges that the Developer Tools may constitute confidential, valuable proprietary information and/or trade secrets of the Service Provider. The WCO agrees not to use, copy, disclose or otherwise make available to any third party any Developer Tools which may come into its possession, knowledge or control.

7 – Confidentiality

Each Party agrees that it shall refrain from divulging to any person, directly or indirectly, any or part of any commercial, industrial, technical, financial, nominal etc. information which it has been provided by the other Party or which it has obtained when executing the Agreement. All information provided shall be deemed as confidential.

The receiving Party acknowledges that any disclosure of confidential information would damage the interests of the disclosing Party and that it would be held responsible for such disclosure.

Each Party undertakes to ensure that its duly authorized employees, representatives or sub-contractors comply with the above-mentioned confidentiality clause.

Each Party shall refrain from revealing to a third party any information concerning the Agreement or all or part of the task with which it has been entrusted.

Each Party shall ensure that all its staff and any other person who has full or partial access to confidential information, sign a similar confidentiality agreement.

The obligations of either Party under this Article will not apply to information that the receiving Party can demonstrate (i) was in its possession at the time of disclosure hereunder and without restriction as to confidentiality, (ii) is or becomes generally available to the public through no breach of this Article by the receiving Party, (iii) has been received from a third party without restriction on disclosure, or (iv) is independently developed by the receiving Party without use of the Confidential Information of the other Party. In addition, the receiving Party may disclose confidential information as required to comply with applicable law or any

judicial or governmental order, provided that the receiving Party notifies the disclosing Party of such required disclosure and cooperates with the disclosing Party in its efforts to seek to limit such disclosure or obtain a protective order or other confidential treatment with respect thereto.

This reciprocal agreement shall continue to apply for five (5) calendar years after expiry of the Agreement.

If one of the Parties were not to comply with the terms of this confidentiality agreement, it would automatically owe the other Party a fixed compensation of an amount equal to ten thousand (10.000) euros for every proven violation, without prejudice to any other penalty, compensation or damages which the other Party might invoke in accordance with the Agreement.

8 – Dispute resolution

Any dispute between the Parties regarding the interpretation and/or fulfilment of the Agreement shall be settled in accordance with the procedure laid down in Part I of Customs Co-operation Council Decision CCCXXXI.

Annex 1

DECISION OF THE COUNCIL No. 331

117th/118th Sessions - June 2011

SETTLEMENT OF DISPUTES

HAVING REGARD to Article IX, Section 24, of the Annex to the Convention establishing a Customs Co-operation Council,

THE COUNCIL DECIDES :

- (i) to rescind Council Decision No. XXXIII of November 1954; and
- (ii) to adopt the following modes of settlement of disputes arising out of contracts or other disputes of a private character to which the Council is a party and of disputes involving any official of the Council who, by reason of his/her official position enjoys immunity, if immunity has not been waived in accordance with the provisions of Sections 19 and 21 of the Annex to the Convention establishing a Customs Co-operation Council.

**I. Mode of settlement of disputes between
the Customs Co-operation Council and third persons
(other than its officials), arising out of contracts**

All contracts or agreements, in any form, entered into by the Customs Co-operation Council (the “**Council**”) shall contain an arbitration clause by which the Council and the other Party (or Parties) to the contract undertake to refer to a tribunal of arbitrators, which shall reach its decision by application of law and without appeal, any disputes involving the Council regarding the interpretation or fulfilment of the contract they have entered into.

Unless otherwise specified, in any contract or agreement entered into by on the one hand, the Council, and on the other hand, one or more States and/or one or more international organizations, the said arbitration clause shall be worded as follows :

(1) Settlement of disputes by arbitration

Any claim or dispute regarding the interpretation or fulfilment of this contract shall be settled by a tribunal of three arbitrators (the “**Arbitral Tribunal**”), who shall render a majority decision, reached by application of law and without appeal.

(2) Initiation of the arbitral proceedings

(i) *Notice of damage*

In order for its claim to be admissible, each Party to the contract shall, within a period of six (6) months from the date when it became aware of the damage sustained, or an absolute time limit of two (2) years beginning on the day after the day when the incident which caused the damage occurred (the action shall be time-barred as soon as one of these time limits has expired), give notice of the claim, by registered letter (with acknowledgment of receipt), to any other Party to the contract against which it wishes to file a claim (the "**Notice of damage**").

The Party initiating the Notice of damage shall be called "**the Claimant**", and the Party which receives the Notice of damage shall be called "**the Respondent**".

(ii) *Mandatory conciliation*

Beginning on the date when the Notice of damage is sent, there shall be a period of mandatory conciliation between the Parties lasting thirty (30) calendar days (the "**conciliation period**").

(iii) *Notice of arbitration*

In the event that the Parties have not been able to reach an amicable agreement by the end of the conciliation period, it shall be up to the Claimant(s) to notify the Respondent(s) of his/her/their desire to initiate arbitral proceedings by sending a registered letter (with acknowledgment of receipt) (the "**Notice of arbitration**") no later than ten (10) calendar days after the end of the conciliation period.

The Notice of arbitration shall, on pain of invalidity, include at least the following :

(i) appointment of an arbitrator, (ii) reference to the arbitration clause invoked, (iii) reference to the agreement or relationship out of or in relation to which the dispute arises, (iv) the relief sought and, where appropriate, an estimate of the amount claimed.

Within twenty (20) calendar days following the sending of the Notice of arbitration, the Respondent(s) must select his/her/their own arbitrator and notify the Claimant(s) and the arbitrator already selected by the latter of his/her/their choice. At the same time, the Respondent(s) shall make any counter-claims.

If the Respondent(s) fail(s) to appoint an arbitrator within the time allowed, that arbitrator shall be appointed by the Secretary-General of the Permanent Court of Arbitration (PCA) within thirty (30) calendar days following a request by the Claimant.

Where there is more than one Claimant and/or more than one Respondent, the Claimants jointly shall appoint one arbitrator and the Respondents jointly shall appoint one arbitrator.

(3) Composition of the Arbitral Tribunal

(i) Appointment

The two arbitrators appointed by the Claimant(s) and the Respondent(s) shall, by common agreement, select a third arbitrator who shall chair the Arbitral Tribunal *de jure*.

If the first two arbitrators fail to appoint the third arbitrator within fifteen (15) calendar days of notification of the appointment of the second arbitrator, the third arbitrator shall be nominated by the Secretary-General of the Permanent Court of Arbitration (PCA) within thirty (30) calendar days following a request by the first Party to take action or the arbitrators selected by the Parties.

The three arbitrators thus appointed shall constitute the Arbitral Tribunal.

(ii) Independence and impartiality of the arbitrators

Only persons who are independent of the Parties and of their legal counsel may serve as arbitrators.

Each arbitrator shall sign a declaration of independence in which he/she undertakes to abide by the rules of good conduct set out therein and sets out, in writing, any facts and circumstances that could lead any of the Parties to doubt his/her independence. The Parties shall have twenty (20) calendar days following receipt of each arbitrator's declaration of independence to make any comments.

Moreover, an arbitrator shall immediately disclose in writing to the Parties any facts or circumstances of a similar nature to those referred to in the preceding paragraph which may arise during the arbitration.

(iii) Challenge and replacement of arbitrators

a. Challenge

Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to his/her impartiality or independence.

A Party who intends to challenge an arbitrator shall send notice of his/her challenge within twenty (20) calendar days after the declaration of independence of the challenged arbitrator has been notified to the challenging Party or within twenty (20) calendar days after the circumstances referred to in paragraph (3) (ii) § 3 above became known to that Party.

The challenge shall be notified to the other Party, to the arbitrator who is challenged and to the other members of the Arbitral Tribunal. The notification shall be in writing and shall state the reasons for the challenge.

When an arbitrator has been challenged by one Party, the other Party may agree to the challenge; in that case the arbitrator shall be required to withdraw. The challenged

arbitrator may also withdraw voluntarily. In neither case does this imply acceptance of the validity of the grounds for the challenge.

If the other Party does not agree to the challenge and the challenged arbitrator does not withdraw, the decision on the challenge shall be a matter for the Secretariat of the Permanent Court of Arbitration. The Court shall decide on the admissibility and on the merits of the challenge after it has afforded an opportunity for the arbitrator concerned, the other Parties and the other members of the Arbitral Tribunal to comment in writing within a specified period of time. Such comments shall be communicated to the Parties and to the arbitrators, who may respond to them within the time period specified by the Secretariat of the Permanent Court of Arbitration.

b. Replacement

In the event of an arbitrator's death, challenge, accepted withdrawal, resignation, or if there is a cause preventing him from fulfilling his duties, or upon request of all Parties, the arbitrator shall be replaced.

Any new arbitrator shall be nominated by the Secretariat of the Permanent Court of Arbitration within thirty (30) calendar days following a request by the first Party to take action or the remaining arbitrators.

(4) Procedural rules

(i) Terms of Reference

The Arbitral Tribunal shall draw up its Terms of Reference, signed for acceptance by the Parties and the arbitrators, and including at least the following :

- (i) rules of procedure setting out the procedural rules expressly stipulated herein, and also setting out procedural formalities not expressly provided for under the terms of this Decision;
- (ii) a summary of the facts and claims of each Party;
- (iii) the arbitrators' signed declarations of independence.

If the Arbitral Tribunal finds it necessary, during the proceedings, to take decisions regarding their organization (by means of "**Procedural orders**"), the Arbitral Tribunal shall take the decision it deems most appropriate with a view to the sound management of the proceedings, whilst ensuring that the Parties are treated equally and that each Party is given the opportunity of presenting his/her case. However, under no circumstances, except with the agreement of the Parties, shall there be any derogations from the rules expressly stipulated under the terms of this Decision.

(ii) Place of arbitration

The Arbitral Tribunal shall meet at the headquarters of the Customs Co-operation Council in Brussels (Belgium).

(iii) *Law applicable*

The Arbitral Tribunal shall decide the dispute or claim by application of the standards laid down by the WCO and, failing that, by Belgian law or, if appropriate, the law designated by application of the rules of private international law as applied in Belgium.

The Parties agree that under no circumstances shall the Arbitral Tribunal take its decision on the basis of equitable principles, assume the powers of an *amiable compositeur* or decide *ex aequo et bono*.

(iv) *Language of the arbitration*

The arbitration proceedings shall take place in one of the official languages of the WCO (English, French), as determined by the Parties.

(v) *Witness statements and experts*

If either Party so requests, at any appropriate stage of the proceedings the Arbitral Tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument.

(vi) *Interim measures of protection*

The Arbitral Tribunal may, at the request of either Party, take any interim measures it deems necessary to preserve the respective rights of either Party or in respect of the matter in dispute.

Such interim measures may be established in the form of an interim award. The Arbitral Tribunal shall be entitled to require security for the costs of such measures.

A request for interim measures addressed by either Party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

(vii) *Settlement during proceedings*

If, before the award is made, the Parties agree on a settlement of the dispute, the Arbitral Tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by both Parties and accepted by the Tribunal, record the settlement in the form of an arbitral award on agreed terms.

(viii) *Costs and expenses of arbitration*

a. *Advance(s)*

An advance payment shall be made in respect of the costs of arbitration; it shall be estimated by the Arbitral Tribunal on the basis of the amount of the principal claims and of any counterclaims, according to the Scale of Arbitration Costs of the Belgian Centre for Arbitration and Mediation (CEPANI) in effect on the date of Notice of arbitration.

b. Attribution

The Arbitral Tribunal shall decide upon the final amount of the costs of arbitration in the framework of the final award, in the light of the services rendered and the costs incurred.

Unless the Parties agree otherwise, in principle the costs of arbitration shall be divided equally between the Parties. However, the Arbitral Tribunal may decide on a different apportionment of the costs if it determines that this is reasonable taking into account the circumstances of the case, provided however that it states the reasons for this decision.

Unless the Parties agree otherwise, each Party shall bear the costs it has incurred for legal representation and assistance. However, the Arbitral Tribunal, taking into account the circumstances of the case, shall be free to determine which Party shall bear such costs or may apportion them between the Parties if it determines that this is reasonable, provided however that it states the reasons for this decision.

(ix) Confidentiality

The Parties and the arbitrators undertake to ensure the confidentiality of the arbitral proceedings.

(5) Arbitral Award

(i) *Final award, stating the reasons on which it is based*

No later than three (3) months after the closing of the proceedings, the Arbitral Tribunal, by majority decision, shall render its final award, stating the factual and legal grounds on which it is based, and communicate it to the Parties.

The Parties agree to accept the arbitral award rendered in accordance with the foregoing provisions as constituting final settlement of the claim or dispute.

The award may be made public, in whole or in part, only with the consent of both Parties unless the Arbitral Tribunal decides otherwise, stating the reasons for its decision, following a specific request made by a Party in the framework of the arbitral proceedings.

(ii) *Interpretation of the award*

Within twenty (20) calendar days after receipt of the final award or of the corrections made thereto in application of paragraph 5 (iii) below, either Party, with notice to the other Party, may request that the Arbitral Tribunal give an interpretation of the award.

The interpretation shall be given in writing within twenty (20) calendar days after receipt of the request. The interpretation shall form part of the award.

(iii) Correction of the award

Within twenty (20) calendar days after receipt of the final award or of the interpretation given thereof in application of paragraph 5 (ii) above, either Party, with notice to the other Party, may request the Arbitral Tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors of a similar nature. The Arbitral Tribunal may, within twenty (20) calendar days after the communication of the award to the Parties, make such corrections on its own initiative.

(6) Privileges and immunities

The Council declares that no provision contained in the present arbitration clause will be considered by it as a waiver, either explicit or implicit, of any privilege or immunity which it may enjoy in law or by virtue of its statute.