SPECIFIC ADMINISTRATIVE CLAUSES DOCUMENT GOVERNING THE TENDER, BY MEANS OF OPEN PROCEDURE, FOR PROCUREMENT OF THE SUPPLY OF CNC FILAMENT WINDING MACHINE INCLUDING TOWPREG PROCESSING AND AUTOMATED TAPE LAYING HEAD.

1. OBJECT OF CONTRACT

The purpose of this procedure is the procurement by CIDETEC FOUNDATION of a contractor to provide the supply set out in **point 1 of the Cover Document** of this Specific Administrative Clauses Document (hereinafter, the Cover Document).

The aforementioned supply shall be rendered in accordance with this Bidding Document, the Technical Specifications Document, and the contractor's proposal.

Whenever the independent performance of different parts of the contract is divided into lots, **point 1 of the Cover Document** indicates: the specific lots the contract is divided into; where applicable, the number of lots the same bidder may submit an offer for; where applicable, the number of lots that may be awarded to each bidder; any other aspects as determined in each case.

The CPV Code of the contract is shown in **point 1 of the Cover Document**.

2. PROCURER AND PROCUREMENT BODY

The procurer is CIDETEC FOUNDATION (hereinafter the procurer).

The Procurement Body is as set out in **point 2 of the Cover Document**, which, if applicable and in accordance with applicable private law regulations, may expressly empower any persons it deems appropriate to carry out specific actions in relation to the contract.

3. AWARD PROCEDURE

The contract shall be awarded by means of an open procedure to the bidder submitting the offer that represents the best value for money in accordance with the award criteria set out in this Bidding Document (hereinafter the best offer).

4. VARIANTS

The possibility for bidders to offer variants is indicated, if applicable, in **point 3 of the Cover Document**.

If variants are admitted, **point 3 of the Cover Document** expresses the minimum

requirements, modalities and characteristics, as well as their relation to the object of the contract.

5. CONTRACTUAL DOCUMENTS

The following documents shall be contractual in nature:

- The present Specific Administrative Clauses Document and Cover Document.
- The Technical Specifications Document.
- The offer submitted by the successful bidder.
- Any other documentation as set out in **point 4 of the Cover Document**.

These documents shall be signed by the successful bidder as proof of conformity when the contract is formalised.

6. TIME AND PLACE OF DELIVERY OF GOODS

The time and place of delivery of the contract shall be as set out in **point 5 of the Cover Document**.

7. FINANCIAL MATTERS

7.1. BASE TENDER BUDGET AND CONTRACT PRICE

The base tender budget is set out in **point 6.1 of the Cover Document**.

The contract price is also determined in **point 6.1 of the Cover Document**.

The aforementioned contract price shall include all costs necessary for the performance of the contract, including, but not limited to, the following:

- All direct and indirect costs necessary for the performance of the contract, in accordance with the provisions of this Bidding Document and the Technical Specifications Document, not admitting a posteriori any invoicing for items that should have been previously identified in the final price.
- Any items inherent to the performance of the contract and all expenses related to personnel employed for this performance (i.e. salaries and social security, vacations and overtime, night and holiday work, sick leave or substitutions, individual accident insurance, etc.), as well as all taxes (except VAT), insurance, licenses, authorisations and other general expenses.

- Costs of delivery, transfers and transportation of the goods being supplied to the place of delivery.

- Any means, tools, vehicles, equipment, instruments, computer equipment and apparatus to be used by the contractor in performing the contract.

- Any other items listed in **point 6.1 of the Cover Document**.

7.2. ESTIMATED VALUE OF CONTRACT

For the purposes of Article 101 of Act 9/2017, of 8 November, on Public Sector Contracts, transposing into Spanish law the Directives of the European Parliament and of the Council 2014/23/EU and 2014/24/EU, of 26 February 2014 (hereinafter Public Sector Contracts Act), the estimated value of the contract is the amount set out in **point 6.2 of the Cover Document**.

This estimated value has been calculated in accordance with the provisions of article 101 of the Public Sector Contracts Act.

This provision does not generate a specific undertaking for the procurer.

8. PAYMENT OF PRICE

Payment of the price by the procurer shall be made in the manner set out in **point 7 of the Cover Document**.

9. PRICE REVIEW

The provisions of **point 8 of the Cover Document** shall apply.

10. PUBLISHING

The following shall be published in the procurer profile:

a) Notice of the invitation to tender.

b) Notice of the award of the contract.

c) Notice of the formalisation of the contract.

d) All remaining information listed in Article 63 of the Public Sector Contracts Act.

The procurer profile shall be accessed at the following website: […]

The notice of invitation to tender and the notice of conclusion of contract shall also be published in the Official Journal of the European Union.

Any amendment of the contract agreed by the Procurement Body in accordance with Clause 29 of this Bidding Document, shall be published in the Official Journal of the European Union, in the terms established in Article 207.3 of the Public Sector Contracts Act.

11. DEFINITIVE GUARANTEE

The bidder who has submitted the best offer shall be required to provide a definitive guarantee for the amount set out in **point 9 of the Cover Document**.

The bidder that has submitted the best offer must accredit the existence of the aforementioned definitive guarantee within 10 working days from the day following the day on which it received the request made to this effect by the Procurement Body.

The aforementioned definitive guarantee shall cover the items listed in Article 110 of the Public Sector Contracts Act.

The guarantee may be established in any of the forms provided for in Article 108 of the Public Sector Contracts Act, without it being necessary to establish it in the General Depository.

If presented in the form of surety, this shall be in accordance with the form attached to this Bidding Document as **Annex I**.

The guarantee may be accredited electronically.

Whenever penalties or indemnities due by the contractor are paid on the definitive guarantee, the contractor must replace or extend the guarantee by the corresponding amount within fifteen calendar days of execution, otherwise the contract shall be terminated.

Whenever the contract price changes due to the contract being amended, the contractor shall readjust the definitive guarantee so it is proportional to the new amended price. The term for the contractor to modify the guarantee shall be fifteen calendar days from the date of notification of the amendment agreement.

The guarantee shall be returned in accordance with the provisions of Article 111 of the Public Sector Contracts Act, once the guarantee period has elapsed and all contractual obligations have been met by the contractor.

The guarantee shall be returned upon the issue of a favourable report by the procurer.

The provisions of Articles 106 et seq. of the Public Sector Contracts Act shall apply for all matters not provided for in this Clause.

12. FITNESS TO CONTRACT

Natural or legal persons, whether Spanish or foreign, who have full capacity to act, are not subject to any prohibitions on entering into contracts and can prove their solvency may enter into contracts with the procurer.

The bidders must also have the business or professional qualification required in order to perform the services covered by the contract.

Legal entities may only be awarded the contract when the services are included within the purposes, object or scope of their activity, as set out in their bylaws or founding rules.

In any case, any non-Spanish companies from Member States of the European Union or signatory States of the Agreement on the European Economic Area that, according to the legislation of the State in which they are based, are qualified to perform the service in question, may enter into contracts with the procurer, with the provisions of Article 67 of the Public Sector Contracts Act applying.

When the legislation of the State in which these companies are established requires special authorisation or belonging to a certain organisation in order to provide the service in question, bidders must prove that they comply with this requirement.

Without prejudice to the application of Spain's obligations deriving from international agreements, any natural or legal persons from States not belonging to the European Union or signatory States of the Agreement on the European Economic Area must justify by means of a report that the State of origin of the foreign company also admits the participation of Spanish companies in contracts with public sector entities similar to those listed in Article 3 of the Public Sector Contracts Act in a substantially analogous manner. This report shall be drafted by the relevant Spanish Economic and Commercial Office abroad and shall be submitted with the documentation.

The reciprocity report shall be waived for companies from signatory states of the World Trade Organisation's Agreement on Public Procurement.

Any business associations that are temporarily established for this purpose may enter into contracts with the procurer, without the need to formalise them in a public deed until the contract has been awarded to them, with the provisions of Article 69 of the Public Sector Contracts Act applying.

Bidders must meet the minimum economic and financial and professional or technical solvency conditions set out in **point 10 of the Cover Document**.

If applicable, bidders must assign to the contract at least the human and/or material resources set out in **point 10 of the Cover Document**.

Additionally, bidders must comply with any specific requirements set out in **point 10 of the Cover Document**.

Whenever bidders are required to undertake to assign certain human and/or material resources to the performance of the contract, this undertaking shall be considered an essential contractual obligation for the purposes set forth in Article 211. 1.f) of the Public Sector Contracts Act, with any breach therefore being cause for termination of contract, at the discretion of the procurer.

As an alternative to termination, the procurer may, in the event of unilateral alteration by the contractor of the persons assigned to the performance of the contract (either its own personnel or those of a subcontracted company), require the immediate assignment of the person in question or, whenever this is not possible due to reasons beyond the contractor's control, his or her immediate replacement by human resources with identical training and experience. Such persons must have the express consent of the procurer.

In order to accredit the required solvency and/or the undertaking to provide the means required, bidders may rely on the solvency and/or means of other entities, regardless of the legal nature of their links with them, provided they can prove that they shall effectively have such solvency and/or means throughout the whole term of the contract and the entity relied upon is not forbidden from entering into contracts.

Any bidders who intend to rely on the solvency and/or means of other entities must indicate so in the statement of compliance to be included in Envelope 1 (specifically, in Section C of Part II of the ESPD).

Additionally, if the bidder submitting the best offer intends to rely on the solvency and/or means of other entities, it must demonstrate that it will have the necessary resources by submitting a written undertaking from these entities (prepared in accordance with the form in **Annex II**).

This undertaking must be executed before a Notary Public by the entity or entities which the bidder submitting the best offer relies on in order to accredit the required solvency and/or the undertaking to provide the means required, stating: that it is fully aware of the terms and conditions of the tender it is bidding for; that it has the aforementioned solvency and/or means to assign, duly providing documentary evidence (in the manner set forth in Clause 17); and state its irrevocable willingness to place at the disposal of the aforementioned bidder, should it be awarded the contract, the means necessary for the performance of the contract (with express acceptance of the provisions of Article 1257.2 of the Civil Code, with any substitution or amendment being expressly authorised by the procurer). Submitting such a document shall imply acceptance by the procurer should the bidder in question be awarded the contract.

This undertaking shall be submitted by the bidder that has submitted the best offer within 10 working days from the day following the day on which the Procurement Body receives the request made to this effect by the bidder.

The circumstances relating to capacity, solvency and absence of prohibitions on entering into contracts referred to in this Clause must be present on the final date of submission of offers and subsist at the time of the contract is formalised.

13. SUBMISSION OF PROPOSALS AND DOCUMENTATION

13.1. ACCESS TO BIDDING DOCUMENTS AND OTHER COMPLEMENTARY DOCUMENTATION

The bidding documents and other complementary documentation shall be accessible in the procurer profile from the date of publication of the tender announcement and throughout the proposal submission period.

Whenever access to the Bidding Documents and other complementary documentation is provided through non-electronic means, this shall be indicated in **point 11.1 of the Cover Document**.

13.2. MEANS OF SUBMISSION

Proposals shall be submitted electronically, in accordance with the requirements set out in Additional Provision 15 of the Public Sector Contracts Act, unless any of the circumstances set forth in section 3 of the aforementioned Additional Provision of the Public Sector Contracts Act apply and this circumstance is indicated in **point 11.1 of the Cover Document**.

The information and Technical Specifications Document required for the electronic submission of proposals, including encryption and date validation, can be found on the website of the *Basque Government* Electronic Tender application at: http://www.contratacion.euskadi.eus

13.3. CONTENTS OF THE ENVELOPES OR ELECTRONIC FILES

Bidders' proposals must comply with this Bidding Document and its Cover Document, the Technical Specifications Document and all other contractual documentation, and their submission implies unconditional acceptance by the bidder of the contents of all of their clauses, without any proviso or reservation.

Each envelope or electronic file shall consist of the documents listed below, and shall contain a numbered list of the documents included therein.

They shall be called Envelope 1, Envelope 2 and Envelope 3, regardless of their format.

Envelope 1. "DOCUMENTATION REGARDING FULFILMENT OF PREREQUISITES".

Bidders must submit the following documentation:

1. Statement of compliance in accordance with the European Single Procurement Document (hereinafter, ESPD) form which is attached to this Bidding Document as **Annex III**, to be completed as indicated below:

    e) The ESPD must be completed in accordance with the Instructions set out in Annex I of Commission Implementing Regulation (EU) 2016/7 of 5 January 2016 establishing the standard form of the European Single Procurement Document.

    f) With specific reference to "Part IV: Selection Criteria" of the ESPD, bidders must complete section A only: "Global indication relating to all selection criteria".

    g) Whenever the bidder relies on the solvency and/or means of other entities in accordance with Clause 12 of this Bidding Document, each of them must also submit a statement of compliance containing the relevant information required in sections A ("Information about the economic operator") and B ("Information about the economic operator's representatives") of Part II, and in Part III of the ESPD.

    h) Whenever several entrepreneurs take part in a joint venture, a statement of compliance shall be provided by each participating company, containing the information required in parts II to V of the ESPD.

2. If, in accordance with **point 10 of the Cover Document**, at least certain human and/or material resources must be assigned to the performance of the contract, bidders must present an undertaking to assign such human and/or material resources to the performance of the contract in accordance with the form attached to this Bidding Document as **Annex IV**.

3. Any entrepreneurs wishing to bid as part of a joint venture must state the names and circumstances of each member, stating that they assume the undertaking to formally establish a joint venture if successful. Entrepreneurs wishing to bid as part of a joint venture shall be jointly bound, and must appoint a sole representative or attorney for the joint venture with sufficient powers to exercise the rights and meet all contractual obligations if successful, without prejudice to any joint powers that may be executed in order to collect and pay significant amounts.

4. Foreign companies must present a declaration that they agree to abide by the jurisdiction of Spanish courts and tribunals of any type for all incidents that may directly or indirectly arise from the contract, therefore waiving any other foreign jurisdiction the bidder may be entitled to.

NOTE:

The procurer may ask bidders to submit all or part of the supporting documents whenever it considers that there is reasonable doubt as to the validity or reliability of the statement referred to in point 1, or when this is necessary for the procedure to develop correctly.

Notwithstanding the foregoing, when the entrepreneur is registered in the Official Register of Public Sector Bidders and Classified Companies, in the Official Register of Contractors of the Basque Country, or appears in a national database of a Member State of the European Union, such as a virtual company file, an electronic document storage system or a pre-qualification system, and these are freely accessible to the aforementioned bodies, there shall be no obligation to submit supporting documents or other documentary proof of the data so registered.

Envelope 2. "DOCUMENTS REGARDING CRITERIA TO BE QUANTIFIED SUBJECT TO A VALUE JUDGEMENT".

Bidders must submit the documentation set out in **point 11.2 of the Cover Document** in this envelope.

The bidder must take special care when preparing the documentation to be included in this envelope, in line with all indications on content. Furthermore, no references may be made that could guide or disclose aspects of the documentation related to criteria that can be evaluated by means of formulas.

Any offers that breach these principles shall be rejected and excluded from the procedure.

The procurer also reserves the right to carry out any verifications it deems appropriate or to request any further documentation in order to check the veracity of the information provided by bidders.

If, in accordance with **point 12 of the Cover Document**, the human resources to be assigned to the performance of the contract are assessed, the procurer may, in the event of unilateral alteration by the contractor of the persons assigned to the performance of the contract (either its own personnel or those of a subcontracted company), require the immediate assignment of the persons in question or, whenever this is not possible due to reasons beyond the contractor's control, their immediate replacement by human

resources with identical training and experience. Such persons must have the express consent of the procurer.

Envelope 3. "DOCUMENTS REGARDING CRITERIA THAT CAN BE EVALUATED BY MEANS OF FORMULAS".

Bidders must submit documentation relating to criteria that can be evaluated by means of formulas in accordance with the form attached to this Bidding Document as **Annex V**.

The procurer may verify, both before and after the award and during the course of the contract, the veracity of the contents of the documents included in Envelopes 1, 2 and 3, it being understood that any false data or circumstances presented by the company may be cause for nullity of the contract due to non-compliance attributable to the contractor.

14. AWARD CRITERIA

The award criteria and weightings shall be as set out in **point 12 of the Cover Document**.

15. EVALUATION COMMITTEE

The Procurement Body shall be assisted by an Evaluation Committee made up of the members set out in **point 13 of the Cover Document**.

16. OPENING OF PROPOSALS

The Evaluation Committee shall first qualify the documents contained in Envelope 1 ("Documents regarding fulfilment of prerequisites"), submitted in due time and form. The procurer shall give the bidder a period of three calendar days to correct any defects identified in the documentation submitted.

Subsequently, Envelope 2 ("Documentation related to criteria to be quantified subject to a value judgement") shall be opened in order to study and evaluate the documentation inside.

If the criteria to be quantified subject to a value judgement are assigned a higher weighting than for the criteria that can be evaluated by means of formulas, the criteria to be quantified subject to a value judgement shall be evaluated by a Committee made up of the members set out in **point 14 of the Cover Document**.

Envelope 3 ("Documentation related to criteria that can be evaluated by means of

formulas") shall be opened once the documentation in Envelope 2 has been studied and evaluated.

Before opening Envelope 3 ("Documentation related to criteria that can be evaluated by means of formulas"), the bidders shall be informed of the result of the evaluation of the documentation related to criteria to be quantified subject to a value judgement.

Once this has been done, the documentation contained in Envelope 3 ("Documentation related to criteria that can be evaluated by means of formulas") shall be opened, via the Basque Government's Electronic Tender application, for study and evaluation.

The Evaluation Committee shall reject any proposals subject to the causes set forth in Article 84 of Royal Decree 1098/2001, and shall submit the list of proposals submitted to the Procurement Body, duly classified in descending order, in accordance with the award criteria set out in **point 12 of the Cover Document**, identifying the best offer.

Whenever it is decided to exclude a particular bidder, the procurer shall expressly notify the excluded bidder of this circumstance.

Before formulating its proposal, it may request as many technical reports as deemed appropriate.

If the offer of the bidder that has obtained the best score is presumed to be abnormally low in accordance with the parameters indicated, where appropriate, in **point 12 of the Cover Document**, the Evaluation Committee shall follow the procedure set forth in Article 149 of the Public Sector Contracts Act, allowing the bidder to submit justification documents.

The award proposal does not create any rights in favour of the proposed bidder vis-à-vis the procurer. However, when the Procurement Body does not award the contract in accordance with the formulated proposal, it shall give the reasons for its decision.

17. AWARD OF CONTRACT

When selecting the successful bidder, the Procurement Body shall, as a general rule, follow the proposal made by the Evaluation Committee. If this is not the case, the Procurement Body must give the reasons for its decision to overlook the proposal, and, if applicable, complete the final ranking of the proposals.

Once the Evaluation Committee's proposal has been accepted by the Procurement Body, the procurer shall ask the bidder that has submitted the best offer to present the following documentation within ten working days from the day following the day on which the request was received:

1. Documentation justifying compliance, on the final date for the submission of offers, with all legal conditions necessary in order to enter into contracts with

the procurer, and all requirements in terms of capacity, solvency and absence of prohibitions on entering into contracts, as required in Clause 12 of this Bidding Document, in the manner indicated below.

If the proposal has been formulated by entrepreneurs who intend to compete as part of a joint venture, the aforementioned documentation must refer to all of the companies that are to form part of the joint venture.

(i) Documents accrediting the bidder's personality and capacity to act, and, if applicable, its representation:

- Entrepreneurs who are legal persons must present their deed or document of incorporation, bylaws or founding act setting out the rules governing their activity, duly registered, where appropriate, in the corresponding Public Register, according to the type of legal person in question.

- Non-Spanish entrepreneurs from EU Member States must provide proof of registration in accordance with the law in their home country, or submit a sworn statement or certificate, in accordance with applicable Community provisions.

- All other foreign entrepreneurs must present a report from the Permanent Diplomatic Mission of Spain in the corresponding State or from the Consular Office in the territory where the company is domiciled. This report must justify that the State of origin of the foreign company also admits the participation of Spanish companies in contracts with the Administration and with entities, agencies or public sector entities similar to those listed in Article 3 of the Public Sector Contracts Act in a substantially analogous manner.

  The reciprocity report shall be waived for companies from signatory states of the World Trade Organisation's Agreement on Public Procurement.

- Entrepreneurs who are natural persons must submit their National Identity Card, or the equivalent of their respective State.

- Any persons who appear or sign proposals on behalf of another must submit a copy of their National Identity Document and accredit sufficient power of attorney. If the company is a legal entity, the power of attorney must be registered in the Companies Register whenever so required in accordance with the provisions of Article 94 of the Commercial Register Regulations or, where appropriate, in the Public Register corresponding to the type of legal entity in question.

All these documents must be submitted as originals or a duly certified copy.

Those bidders who are registered in the Official Register of Contractors of the Basque Country or in the Official Register of Bidders and Classified Companies of the State may submit a copy of the current certificate of registration issued by the Registrar in substitution of the documentation required in this section (i). The certificate of registration must be accompanied by a statement of compliance signed by the bidder stating that the circumstances set out in the document have not changed.

(ii) Documentation accrediting the economic and financial and technical or professional solvency required in Clause 12 of this Bidding Document.

- Economic and financial solvency. If applicable, the bidder's annual turnover shall be demonstrated by means of:

  - Annual accounts approved and deposited in the Companies Register, whenever the entrepreneur is registered in this register, or, failing this, those deposited in the mandatory official register. Any individual entrepreneurs not registered in the Companies Register shall prove their annual turnover by means of their inventory books and annual accounts legalised by the Companies Register.

  - Statement of compliance signed by the bidder indicating the bidder's turnover.

- Technical or professional solvency. Where applicable, the required solvency shall be evinced by means of a list of the supplies made during the last three years, indicating the amount, date and recipient, public or private. The aforementioned supplies shall be evinced by certificates issued or endorsed by the competent body when the recipient is a public sector entity; when the recipient is a private party, these supplies shall be evinced by a certificate issued by this party, or, failing this, by a statement by the bidder accompanied by all documents in the bidder's possession attesting to the performance of the service.

(i) Statement of compliance in accordance with the form included in this Bidding Document as **Annex VI**, indicating that the bidder is not subject to any of the prohibitions on entering into contracts established in Article 71 of the Public Sector Contracts Act.

Proof of not being in arrears with tax and Social Security obligations.

(iii) Documentation accrediting compliance with any specific requirements set out in **point 10 of the Cover Document**.

2. If applicable, documentation accrediting the effective availability of the human and material resources committed for the contract.

(i) The successful bidder shall provide the following documentation in order to assign performance of the contract with respect to any human resources committed:

i) Nominal identification of the whole team assigned to the performance of the contract, together with their curriculum vitae accrediting fulfilment of the requirements:

1. Official academic qualification.

2. Experience in the relevant field.

3. Any other aspects required by the procurer, as appropriate.

j) Documentation accrediting the availability of the totality of these human resources.

It is hereby stated that, in accordance with the provisions of the applicable national and European Union regulations on personal data protection and in view of the nature of the information included in the aforementioned documentation regarding human resources, (i) collection and use shall entail personal data processing by the bidder, as the Data Controller; and (ii) delivery to the procurer in compliance with the provisions of this Clause shall imply communication of personal data made by the procurer, as the assignor.

For these purposes, the successful bidder must comply with all obligations deriving from the provisions of applicable national and European Union regulations on personal data protection in relation to the processing and communication of the data referred to in the preceding paragraph. In particular (and without prejudice to any other obligations that the successful bidder, as the Data Controller, must guarantee), under its sole liability, compliance with the requirements in terms of lawfulness and information regarding the aforementioned communication of personal data, which must be duly accredited before the procurer whenever so required.

(ii) The successful bidder shall provide the following documentation in order to assign performance of the contract with respect to any material resources committed:

k) Identification of the material means assigned to the performance of the contract, together with the documentation that accredits compliance with the requirements in question.

l) Documentation accrediting the availability of the totality of these material resources.

The procurer reserves the right to carry out any verifications it deems appropriate or to request any further documentation in order to check the veracity of the information provided by bidders.

3. Proof of having established the definitive guarantee envisaged in Clause 11 of this Bidding Document.

4. If applicable, notarised statement of declarations whenever the bidder, in order to accredit the required solvency and/or the undertaking to provide the required resources, intends to rely on the solvency and/or resources of other entities, according to the form included in **Annex II**.

5. If applicable, accreditation of its legal incorporation as a joint venture, with the appointment of a sole representative or attorney-in-fact with sufficient powers as to exercise the rights and meet the obligations arising from the contract, through to its termination.

The procurer reserves the right to carry out any verifications it deems appropriate or to request any further documentation in order to check the veracity of the information provided by bidders.

The procurer may give the bidder a period of three calendar days to correct any defects identified in the documentation submitted.

If the request for documentation is not duly complied with within the period indicated, or if the documentation submitted contains defects or omissions that cannot be rectified, it shall be understood that the bidder has withdrawn its offer, and the amount of 3 percent of the base tender budget (excluding VAT) shall be applied as a penalty; the same documentation shall then be requested from the next bidder, in the order in which the offers were classified.

The Procurement Body shall award the contract within five working days following receipt of the aforementioned documentation and within two months of the opening of the proposals.

The award shall be agreed by the Procurement Body by reasoned decision, shall be notified to the candidates and bidders through the means for the receipt of notifications they have designated for this purpose, and shall be published in the procurer profile within 15 calendar days.

18. FINALISING AND FORMALISING THE CONTRACT

The contract shall be finalised by formalising it.

The contract shall be formalised in a private document conforming exactly to the tender conditions. In no case may clauses that alter the terms and conditions be included in the document that formalises the contract.

The successful bidder may, however, request that the contract be converted into a public deed, at its own expense.

If the contract involves the contractor processing personal data on behalf of the procurer, the successful bidder must, before formalising the contract, submit a statement of compliance in accordance with the form attached to this Specific Administrative Clauses Document as **Annex VII**, identifying the physical location of the servers that will process the personal data and the location of the associated services.

The contract may not be formalised until fifteen working days have passed since the notification of the award was sent to the bidders and candidates.

The contract formalisation shall be published, together with the associated contract, in the procurer profile within a period not exceeding fifteen calendar days after the contract has been finalised. Furthermore, the formalisation notice must be published in the Official Journal of the European Union, to which end the Procurement Body shall send the notice to the Official Journal of the European Union no later than 10 days after the formalisation of the contract.

When, for reasons attributable to the successful bidder, the contract has not been formalised within the indicated term, the amount of 3% of the base tender budget (excluding VAT) shall be required as a penalty, which shall be paid, in the first instance, against the definitive guarantee, without prejudice to the provisions of letter b) of section 2) of Article 71 of the Public Sector Contracts Act. In this case, the contract shall be awarded to the next bidder in the order in which the offers have been classified, upon submission of the documentation required in Clause 17 of this Bidding Document, granting a period of ten working days for submission.

19. CONTRACT MANAGER

The Procurement Body shall designate a contract manager, who shall be in charge of supervising its execution and implementing the decisions and issuing the instructions necessary to ensure the correct performance of the agreed service, within the scope of the powers attributed by the procurer.

The contract manager may be a natural or legal person, whether related to the procurer

or not.

All instructions given by the contract manager shall be binding on the contractor.

20. PERFORMANCE OF CONTRACT

The contract shall be performed in accordance with the following conditions:

a) The contractor shall perform the contract according to its terms and conditions, as set forth in the present Specific Administrative Clauses Document and Cover Document, in the Technical Specifications Document and in the offer submitted by the contractor, and in accordance with the instructions given to the contractor by the procurer.

b) The contract is subject to compliance with all legal, regulatory and conventional provisions in force as apply to labour, social security and occupational health and safety.

c) The contract shall be performed at the contractor's risk.

d) The procurer may control, verify and supervise, at any time and by any means, the correct fulfilment of the contractual obligations and the proper performance of the contract.

   To this end, the procurer may request any external assistance it deems appropriate in order to verify or audit correct fulfilment of the contractual obligations, as well as the adequate level of quality in carrying out the work.

   The contractor shall furnish all data related to the performance of the contract as required by the procurer, providing, at no additional cost, all necessary assistance, including allowing labour, administrative or other documentation related to the contracted supply to be viewed.

   The contractor may not obstruct any inspection and control work carried out by the procurer.

   Any type of non-compliance or objection the procurer identifies shall be communicated directly to the contract manager, who shall ultimately have the power to organise, supervise or, if applicable, sanction the personnel providing the supply.

e) All personnel shall depend exclusively on the contractor, which shall have the rights and duties inherent to its status as entrepreneur, without any claim being made against the procurer as deriving from such labour relations or other obligations.

The contractor shall be solely responsible for any accident or claim (judicial or extrajudicial) related to personnel working on performing the contract (whether in-house or subcontracted), without the procurer assuming any type of occupational (including safety, hygiene and occupational health), social security or tax liability corresponding directly or indirectly to the contractor. Likewise, the contractor shall exclusively assume any liabilities arising from claims related to the performance of the contract.

f) The contractor, as the Data Controller, shall comply with all its obligations as arising under the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (hereinafter GDPR), along with any other rules on data protection applicable during the term of the contract due to it processing personal data within the framework of its activities and on its own account and decision.

   The aforementioned obligation is established without prejudice to that, where appropriate, set out specifically in **point 17 of the Cover Document** in relation to any processing of personal data on behalf of the procurer.

g) The contractor is obliged to comply with all conditions, where appropriate, set out specifically in **point 15 of the Cover Document**.

21. ESSENTIAL CONTRACTUAL OBLIGATIONS

The essential contractual obligations shall be as follows:

a) Fulfilling the main obligation of the contract, in strict compliance with the provisions of its clauses and this Bidding Document and the Technical Specifications Document.

b) Meeting the delivery deadline set out in point 5 of the Cover Document.

c) Complying with the guarantee period set out in point 26 of the Cover Document.

d) Complying with all legal, regulatory and conventional provisions in force, as apply to labour, social security and occupational health and safety.

e) Assigning to the performance of the contract all human resources, whether in-house or subcontracted personnel, and/or materials committed in the contractor's offer.

f) Obtaining and paying for any licenses and permits that may be necessary for the activity.

g) Providing the supply in line with the provisions of applicable sectoral regulations in force at any given time. For such purposes, both the contractor and the contractor's personnel must have all relevant certificates to accredit compliance with any obligations required by the regulations in force at any given time.

h) Maintaining and replacing the definitive guarantee.

i) Taking out and maintaining, at least for the length of the performance of the contract, the coverage and insurance required of the contractor in Clause 25 of this Bidding Document.

j) Compensating for all damage caused to third parties as a consequence of the operations necessary in order to execute the contract.

k) Complying with all conditions, where appropriate, set out specifically in **point 16 of the Cover Document**.

The obligations set forth in this Clause and in **point 16 of the Cover Document** shall be considered essential contractual obligations for the purposes set forth in Article 211.1 f) of the Public Sector Contracts Act, meaning their breach would be cause for termination of contract, at the discretion of the procurer.

22. INTELLECTUAL AND/OR INDUSTRIAL PROPERTY

The contractor shall ensure the harmonious use of all goods, equipment or other assets it supplies and/or installs for the procurer under this procurement, undertaking to grant or obtain from authorised sources, at its sole expense, in favour of the procurer and at no additional cost to it, any licenses and rights of use and/or exploitation of such elements and/or their components (including hardware and software, where applicable). All of the above shall be under the terms and conditions necessary for the procurer to use and exploit this equipment and its components under the terms set out in this Bidding Document and in the Technical Specifications Document that govern this procurement.

In any case, the contractor shall be liable for any claims relating to intellectual and/or industrial property that may be raised by third parties outside the contract in relation to the equipment covered by it and each of its components, and shall indemnify the procurer for any damages for claims relating to such concepts.

All of the foregoing is established without prejudice to that specifically set out in **point 18 of the Cover Document**.

23. CONFIDENTIALITY AND DUTY OF SECRECY

Without prejudice to current legislation on access to public information and the

provisions set out in the Public Sector Contracts Act relating to publishing the award and the information to be given to candidates and bidders, the procurer may not disclose any information provided by bidders that has been designated as confidential when submitting their offer. This confidentiality affects, among others, technical or commercial secrets, confidential aspects of the offers, and any other information which may be used to distort competition, whether in this or subsequent tender procedures.

The contractor shall respect the confidential nature of the information it has access to during the performance of the contract and which has been specified as confidential in the Tender Documents or in the contract, or which, by its very nature, must be treated as such.

This duty of confidentiality shall remain valid for the time established in **point 19 of the Cover Document**.

24. LIABILITY

The contractor shall be liable for the technical quality of the work performed and the services rendered, as well as for the consequences for the procurer or third parties of any omissions, errors, inadequate methods or incorrect conclusions in performing the contract.

The contractor is obliged to compensate for all damage caused to third parties as a consequence of the operations necessary in order to perform the contract.

25. INSURANCE

The contractor shall take out, for the entire term of the contract, at its own expense, the insurance indicated in **point 20 of the Cover Document**, under the terms and conditions also indicated therein.

26. PENALTIES

a) Penalties for delay.

Whenever the contractor, for causes attributable to it, is late in meeting any of the deadlines set out in this Bidding Document and/or in the Cover Document, the procurer may opt, indistinctly, to terminate the contract under the terms of Clause 33 of this Bidding Document, or to continue with the contract, in which case the procurer shall be entitled, in addition to any applicable compensation for damages, to the penalties set out in **point 21 of the Cover Document**.

Any default by the contractor shall not require the procurer to issue a legal notice of breach.

b) Penalties for defective performance of the contracted services or breach of any other contractual conditions.

Whenever the contractor, for causes attributable to it, has defectively executed the contracted services or failed to meet any other contractual conditions, the procurer may opt, indistinctly, to terminate the contract under the terms of Clause 33 of this Bidding Document, or to continue performing it, in which case the procurer shall be entitled, in addition to any applicable compensation for damages, to the penalties set out in **point 21 of the Cover Document**.

Such penalties shall be paid by deducting the amounts from any sums which, as total or partial payment, must be paid to the contractor, or, failing this, from the guarantee, with any amounts exceeding the guarantee also being due.

The procurer may unilaterally decide to continue with the contract for the time it deems necessary, either by its own means or those of third parties, passing on the deriving costs to the contractor in all cases (termination or continuation), without prejudice to any compensation for damages and other effects provided for in this Clause.

27. ASSIGNMENT OF CONTRACT

Apart from the cases of succession of contractor established in Article 98 of the Public Sector Contracts Act, any subjective amendment of the contract shall only be possible by contractual assignment, within the limits set out in this Clause and when expressly provided for in **point 22 of the Cover Document**.

Such assignment shall require fulfilment of all the requirements set forth in letters a), b), c) and d) of Article 214.2 of the Public Sector Contracts Act, namely:

a) That the Procurement Body expressly authorises the assignment, in the terms established in Article 214.2.a) of the Public Sector Contracts Act. The deadline to notify the final decision on the request for authorisation shall be two months, after which point it shall be deemed to have been granted.

b) That the assignor has executed at least 20% of the amount of the contract, in the terms established in Article 214.2.b) of the Public Sector Contracts Act.

c) That the assignee has the capacity to enter into contracts with public sector entities, has the economic and financial and technical or professional solvency required, and is not subject to a cause of prohibition as established in article 214.2.c) of the Public Sector Contracts Act.

d) That the assignment is formalised between the successful bidder and the assignee in a public deed, in the terms established in Article 214.2.d) of the Public Sector Contracts Act.

In the case of assignment, the assignee shall take over all rights and obligations corresponding to the assignor.

28. SUBCONTRACTING

The contractor may enter into contracts with third parties for the partial performance of the service subject to the provisions of this Clause and Article 215 of the Public Sector Contracts Act, except for any services indicated in **point 23 of the Cover Document**.

The contractor must, after the award of the contract and, at the latest, when starting to perform the contract, communicate in writing to the Procurement Body its intention to enter into subcontracts, indicating the part of the service to be subcontracted and the identity, contact details and legal representative or representatives of the subcontractor, sufficiently justifying the suitability of the subcontractor by indicating its technical and human elements and experience, duly certifying that it is not subject to any prohibition on entering into contracts in accordance with Article 71 of the Public Sector Contracts Act.

The main contractor must notify the Procurement Body in writing of any changes to this information during the performance of the main contract, along with all information necessary on new subcontractors.

If the subcontractor has the classification necessary to perform the part of the contract that is to be subcontracted, this circumstance can be communicated by simply accrediting the suitability of the subcontractor.

The subcontractor's suitability may be accredited immediately after the conclusion of the subcontract whenever the subcontracting is due to an emergency or the need to implement urgent measures, always sufficiently justified.

The subcontractors shall only be contractually bound with respect to the main contractor, who shall therefore be fully liable vis-à-vis the procurer for the performance of the contract, in strict accordance with the Tender Documents and the terms of the contract, including compliance with all environmental, social and labour obligations referred to in Article 201 of the Public Sector Contracts Act.

The fact that the procurer is aware of the subcontracts entered into by the main contractor shall not alter the sole liability of the main contractor.

All payments to subcontractors and suppliers, as well as the verification of such payments, shall be made in accordance with the provisions of Articles 216 and 217 of the Public Sector Contracts Act.

29. CONTRACT AMENDMENTS

The Procurement Body may amend the contract in those cases provided for in Article 205 of the Public Sector Contracts Act.

Additionally, the Procurement Body may amend the contract when **point 24 of the Cover Document** expressly warns of this possibility, under the terms and conditions set forth therein.

Amendments to the contract may not involve setting new unit prices that are not envisaged in the contract.

Contract amendments must be formalised in accordance with the provisions of Article 153 of the Public Sector Contracts Act.

Notwithstanding, if the price of the supply contract is determined by unit prices, the number of units to be supplied may be increased by up to 10% of the contract price, as referred to in Article 205.2.c).3 of the Public Sector Contracts Act, without it being necessary to process the corresponding amendment file, in accordance with the provisions of Article 301 of the Public Sector Contracts Act, which is expressly declared to be applicable for these purposes.

30. RECEIPT AND GUARANTEE PERIOD

The contract shall be deemed to have been fulfilled by the contractor when it has been fully performed in accordance with the terms thereof and to the satisfaction of the procurer.

Notwithstanding, definitive receipt of the goods shall be at the moment of delivery, issuing the corresponding Record. At this moment, the procurer shall determine whether this is in a state to be received and meets the established requirements, and, where appropriate, shall give the contractor the instructions necessary to correct the defects identified upon receipt or proceed with a new supply in accordance with that agreed.

The procurer may reject the work performed whenever, due to defects or flaws attributable to the contractor, it does not conform to the contracted service, in which case the procurer shall be exempted from the payment obligation or, where appropriate, entitled to recover the price paid.

All this shall be without prejudice to the provisions of Clause 26, with the procurer being entitled to demand the corresponding penalties, in addition to compensation for damages due to delay, defective performance of the contracted services, and/or breach of any other contractual conditions.

The guarantee period is established in point 25 of the Cover Document.

Should defects or flaws in the goods supplied be accredited during the aforementioned guarantee period, the Procurement Body shall be entitled to demand that the contractor repair or replace them, as appropriate.

Should the Procurement Body, during the guarantee period, believe that the good supplied is not suitable for the intended purpose as a result of defects or flaws attributable to the contractor and that such defects or flaws cannot be repaired or replaced, it may reject the good prior to the end of the aforementioned period and return it to the contractor, with the procurer being exempt from the payment obligation or entitled, where appropriate, to recover the price paid.

The contractor shall be exempt from liability for the services rendered whenever the guarantee period expires without the procurer having made any of the objections or complaints referred to in this Clause.

31. SUSPENSION OF CONTRACT

The procurer may suspend the contract provided it pays to the contractor the damages provided for in Article 208.2 of the Public Sector Contracts Act, which for these purposes is expressly established as applicable.

32. TERMINATION OF CONTRACT

The contract shall be terminated or expire in accordance with the following provisions.

The contract may be terminated at the discretion of the procurer in the following cases:

a) Declaration of insolvency or bankruptcy in any other procedure.

b) Failure by the contractor to meet the delivery deadline.

c) Failure to comply with the main obligation of the contract.

d) Failure to comply with the other essential obligations, whenever these have been qualified as such.

e) Impossibility to provide the service in the terms initially agreed, whenever the contract cannot be amended in accordance with the provisions of this Bidding Document.

f) Non-payment by the contractor, during the performance of the contract, of salaries to workers, or failure to meet the conditions set out in the applicable collective bargaining agreements for these workers.

g) In general, any breach of contractual obligations, in accordance with the provisions of article 1.124 of the Civil Code.

h) The causes for termination of contract established in Article 306 of the Public Sector Contracts Act, which are expressly declared as applicable, shall be as follows:

1. Withdrawal before the start of supply or suspension of the start of supply for causes attributable to the procurer for a period of more than four months calculated from the date set out in the contract for delivery.

2. Withdrawal once execution of the supply has begun, or suspension of the supply for a period of more than eight months, as agreed by the procurer.

In any of the cases of termination provided for in this Clause, such termination shall occur automatically, with the sole requirement being certified notification by the procurer to the contractor of its decision to this effect.

Upon receipt of such notification, the contractor shall be obliged to immediately deliver to the procurer all documents it has drafted up to this date in order to carry out the contracted services, along with any other documentation or information that may have been generated as a result of the contract, together with all documents used and delivered by the procurer to the contractor, all of which shall become the property of the procurer.

All of the above shall be without prejudice to the subsequent economic liquidation of the contract, as provided for below.

Any economic liabilities arising from termination of contract for the causes set forth in this Clause, or for any others that may legally apply, shall be settled once the contract has been effectively terminated, and shall not prevent the procurer from continuing with its performance.

In the event of termination, the contractor shall, in principle, be entitled to receive the price of all accepted services which have been effectively rendered.

When termination of contract occurs for any cause attributable to the contractor, the amount provided for in **point 26 of the Cover Document**, plus any applicable damages, shall accrue cumulatively in favour of the procurer. Both amounts shall be deducted from the definitive guarantee and from the price to be paid to the contractor, with the procurer being entitled to claim any excess amounts should these prove insufficient.

Notwithstanding the foregoing, the application of paragraphs 2 and 3 of Article 307 of the Public Sector Contracts Act is expressly declared, i.e.:

a) In the cases of termination provided for in letter h.1 of this Clause, the contractor

shall only be entitled to receive, for all concepts, compensation of 3% of the contract award price (excluding VAT).

b) In the cases of termination provided for in letter h.2 of this Clause, the contractor shall only be entitled to receive, for all concepts, 6% of the contract award price of the uncompleted supplies by way of industrial profit (excluding VAT).

Finally, the contract may be terminated by mutual agreement between the procurer and the contractor, in which case the rights of the parties shall be in accordance with that legally agreed.

33. LEGAL SYSTEM

The contract is private in nature and governed, in terms of its drafting and awarding, by this Specific Administrative Clauses Document, by the Technical Specifications Document, and, for all matters not provided for therein, by the rules established to this end in the Public Sector Contracts Act (for contracts subject to harmonised regulation by public sector entities that can enter into tender processes and are not a Public Administration).

As regards its effects and termination, the contract shall be governed by this Specific Administrative Clauses Document, by the Technical Specifications Document and, for all matters not foreseen therein, by the rules of private law. The rules set forth in Article 319 of the Public Sector Contracts Act on "Effects and Termination" shall apply to the contract in all cases.

Furthermore, the Public Sector Contracts Act and Royal Decree 1098/2001, of 12 October, which approves the General Regulations of the Public Administration Contracts Act, shall apply insofar as this Bidding Document expressly refers to them.

The contract shall be subject to national and European Union regulations on the protection of personal data in all cases.

34. JURISDICTION

All legal issues related to the drafting, awarding and amending of the contract shall, in the event of a supposed breach of the provisions of Articles 204 and 205 of the Public Sector Contracts Act, be dealt with by the contentious-administrative jurisdictional body whenever it is understood that this circumstance should have been the subject of a new award.

Where applicable, an appeal shall be filed before the Administrative Body for Contractual Appeals of the Basque Country in accordance with the provisions of articles 44 et seq. of the Public Sector Contracts Act.

All disputes arising between the parties in relation to the effects and termination of contract shall be dealt with by civil jurisdiction, with the exception of the contractual amendments indicated in paragraph one of this Clause.

Annex I. Surety form.

The entity [...] (corporate name of the credit institution or mutual guarantee company), holder of tax document (C.I.F.) […], domiciled at [...] (for the purpose of notices and notifications) and, on its behalf, [...] (name and surnames of the attorneys-in-fact), with sufficient powers to execute this document, as evinced by the certificate of powers of attorney appearing at the bottom of this document, PROVIDES A SURETY FOR: [...] (principal's name and surname or company name), holder of tax document (CIF) [...] before [...] for the amount [...] euros in order to meet the obligations arising from the [...] contract.

The guarantor declares, under its liability, that it complies with the requirements set forth in Article 56.2 of Royal Decree 1098/2001, of 12 October, which approves the General Regulations of the Public Administration Contracts Act. This surety is established jointly and severally with respect to the principal, with express waiver of the benefit of excussion and division and with an undertaking to pay at the first request of […]

This surety shall remain in force until [...] authorises its cancellation or return.

In [...], on the date [...] of month [...] of year […]

[Signature]

Annex II. Notarised statement of declarations form, whenever the bidder intends to rely on the solvency and/or means of other entities to accredit the required solvency and/or the undertaking to provide the required means.

[NOTE: Only required if the bidder has submitted the best offer and intends to rely on the solvency and/or means of other entities in order to accredit the required solvency and/or the undertaking to provide the means required. ***To be completed by the third-party entity.****]*

Mr/Mrs [...], holder of ID document (DNI) [...], as legal representative of the company [...], holder of tax document (C.I.F.) […], declares that it is fully aware of the terms and conditions of the tender for procurement of [...] for which the bidder [...] (name of the bidding company) is bidding, and expressly agrees to place at the disposal of said bidder, should it be awarded the contract, the means necessary for the performance of the contract, with express acceptance of the provisions of article 1257.2 of the Civil Code, with any substitution or amendment requiring express authorisation by [...]

Submitting this document before […] shall imply acceptance of this undertaking should the bidder in question be awarded the contract.

In [...], on the date [...] of month [...] of year [….]

[Signature]

Annex III. **European Single Procurement Document (ESPD).**

[NOTE: The ESPD form will be available in the procurer profile in both PDF and xml formats.]

Annex IV. Undertaking to allocate human and/or material resources.

Mr/Mrs [...], domiciled at [...], holder of ID document (DNI) nº [...], in his/her own name or on behalf of [...], domiciled at [...] holder of ID document (DNI) or Tax Document (CIF) nº [...], with full legal capacity and ability to act, having been informed of the invitation to tender of [...], by means of the present document

STATES:

That it undertakes to assign to the performance of the contract, should it be the successful bidder, the minimum human and/or material resources required in point 10 of the Cover Document that governs the aforementioned procurement.

In witness whereof, this undertaking of assignment of human resources is hereby issued in [...], on date [...], [...] of month [...] of year [...]

[Signature]

Annex V. Proposal on criteria that can be evaluated using formulas.

Mr/Mrs [...], domiciled at [...], holder of ID document (DNI) nº [...], in his/her own name or on behalf of [...], domiciled at [...] holder of ID document (DNI) or Tax Document (CIF) nº [...], with full legal capacity and ability to act, having been informed of the invitation to tender, by way of procedure [...], for procurement of [...], by means of the present document

STATES

1. That it undertakes to execute the [...] contract pursuant to the following conditions:

   [NOTE: To be completed by the bidders according to the specific contents required for this document, as indicated in the Cover Document (e.g. proposal on the offered price(s), on the offered deadline(s), etc.).]

2. That it is aware of the contractual documentation governing the contract, which it expressly assumes and complies with in its entirety.

In [...], on the date [...] of month [...] of year [….]

[Signature]

Annex VI. Statement of compliance form.

Mr/Mrs [...], domiciled at [...], holder of ID document (DNI) nº [...], in his/her own name or on behalf of [...], domiciled at [...], holder of ID document (DNI or NIF) nº [...], with full legal capacity and ability to act, having been informed of the tender, through procedure [...], for procurement of [...], by means of the present document

STATES

One.- That, on the date of submission of this offer, it is not subject to any of the prohibitions on entering into contracts established in Article 71 of Act 9/2017, of 8 November, on Public Sector Contracts, transposing into Spanish law the Directives of the European Parliament and of the Council 2014/23/EU and 2014/24/EU, of 26 February 2014.

Two: That it expressly accepts that the procurer will ensure institutional transparency for all data derived from the tender, awarding and performance process (should it be the successful bidder), through to its completion.

In [...], on the date [...] of month [...] of year [...]

[Signature]

Annex VII. Declaration of location of servers and associated services form

Mr/Mrs [...], domiciled at [...], holder of ID document (DNI) nº [...], in his/her own name or on behalf of [...], domiciled at [...] holder of ID document (DNI) or Tax Document (CIF) nº [...], with full legal capacity and ability to act, for the purpose of complying with the obligations set out in the Specific Administrative Clauses Document, by means of the present document

STATES

1.- That the table below identifies the location of the servers to be used to process all data as arising from the performance of the contract by the procurer, and the place from where their associated services will be provided:

LOCATION OF THE SERVERS
LOCATION OF SERVICES ASSOCIATED WITH THE SERVERS

2.- That it undertakes to, during the life of the contract, communicate any changes to the information provided in this statement.

In [...], on the date [...] of month [...] of year [….]

[Signature]