

Sistema Socio Sanitario



Regione
Lombardia

ASST Garda

OGGETTO: ADESIONE, SU INVITO DI REGIONE LOMBARDIA, AL PROGETTO DELLA COMMISSIONE EUROPEA DI DONAZIONE DI UN ROBOT PER LA DISINFEZIONE DEGLI AMBIENTI OSPEDALIERI.

IL DIRETTORE GENERALE – Dr. Carmelo Scarcella

Nominato in forza della Deliberazione della Giunta Regionale di Lombardia n. XI/1069 del 17/12/2018

Acquisiti i pareri:

del Direttore Sanitario – Dr. Gaetano Elli

del Direttore Socio Sanitario f.f. – Dr. Augusto Olivetti

del Direttore Amministrativo f.f. – Dott.ssa Manuela Pedroni



PREMESSO che la Commissione Europea ha promosso, nell'ambito delle azioni di contrasto alla pandemia da Covid-19, un progetto che prevede la messa a disposizione gratuita a favore degli ospedali europei di robots in grado di disinfettare gli ambienti ospedalieri utilizzando la sola luce ultravioletta. L'iniziativa è destinata a contribuire alla messa in sicurezza del personale sanitario ed a prevenire e ridurre la diffusione del Covid-19 all'interno delle strutture ospedaliere.

PRESO ATTO della nota del 06.07.2021 con cui Regione Lombardia ha trasmesso, a tutte le Aziende lombarde, l'informativa dell'Ufficio di Rappresentanza della Commissione Europea nella quale si comunica che sono ancora a disposizione un certo numero di robots, invitando tutti gli ospedali italiani interessati a farne richiesta;

EVIDENZIATO che:

- l'ASST del Garda ha aderito alla suddetta proposta con la mera compilazione on-line e conseguente invio di uno specifico modulo alla Commissione Europea da parte del Responsabile Igiene Polo Ospedaliero e Territoriale;
- con nota del 21.07.2021, la Commissione Europea ha comunicato l'accoglimento della suddetta adesione dell'ASST del Garda, trasmettendo contestualmente l'allegato contratto di donazione nel quale viene messo a disposizione di questa Azienda un robot UVD, Tablet, unità di ricarica automatica, UVD Tower Protection, inclusi 12 mesi di garanzia, supporto remoto e aggiornamenti SW, del valore di € 60.000,00 (sessantamila euro), da adibire alla disinfezione degli ambienti ospedalieri;

DATO ATTO che la donazione di cui sopra non costituisce, ad alcun titolo, presupposto per il condizionamento in futuro di acquisti vincolati di beni;

INDIVIDUATO nel Ing. Alessandro Cresceri, quale Responsabile Ingegneria Clinica, il responsabile dell'accettazione del suddetto robot e di tutti gli adempimenti conseguenti propedeutici all'utilizzo di quest'ultimo all'interno delle strutture ospedaliere;

PRESO ATTO del parere favorevole espresso dal Direttore Sanitario relativamente all'utilità della donazione di cui trattasi, nonché della possibilità dell'impiego di quest'ultima all'interno delle strutture ospedaliere;

VISTA l'istruttoria compiuta dal Responsabile del procedimento Dott.ssa Alessandra Beretta, che ai sensi del Capo II della Legge 7 agosto 1990 n. 241 e successive modificazioni e integrazioni, ne attesta la completezza;

VISTA la proposta del Coordinatore delle attività del Servizio Affari Generali e Legali, Dott.ssa Alessandra Beretta, che attesta la regolarità tecnica e la legittimità del presente provvedimento;

VISTA l'attestazione del Dirigente Responsabile del Servizio Economico – Finanziario in ordine alla regolarità contabile;

ACQUISITI i pareri favorevoli in merito espressi dal Direttore Sanitario, dal Direttore Socio Sanitario f.f. e dal Direttore Amministrativo f.f.;

DECRETA

Per quanto in premessa indicato:



1. di aderire, su invito di Regione Lombardia, al progetto della Commissione Europea con la quale quest'ultima ha messo a disposizione a favore degli Ospedali Europei alcuni Robots in grado di disinfettare gli ambienti ospedalieri utilizzando la sola luce ultravioletta;
2. di procedere conseguentemente alla sottoscrizione dell'allegato contratto di donazione, nel quale viene messo a disposizione di questa Azienda un robot UVD, Tablet, unità di ricarica automatica, UVD Tower Protection, del valore di € 60.000,00 (sessantamilaeuro), da adibire alla disinfezione degli ambienti ospedalieri (Allegato 1 quale parte integrante e sostanziale del presente decreto composto da n. pag. 24);
3. di evidenziare che la donazione di cui sopra non costituisce, ad alcun titolo, presupposto per il condizionamento in futuro di acquisti vincolati di beni;
4. di individuare il Responsabile dell'Ingegneria Clinica aziendale, Ing. Alessandro Cresceri, quale Responsabile dell'accettazione del robot di disinfezione UVD, Tablet, unità di ricarica automatica, UVD Tower Protection, nonché di tutti i conseguenti adempimenti propedeutici all'utilizzo di quest'ultimo all'interno delle strutture ospedaliere;
5. di prevedere che l'acquisizione del bene in argomento, nelle modalità derivanti dal presente provvedimento, incrementerà di € 60.000,00 (IVA inclusa) il valore delle immobilizzazioni di riferimento nello Stato Patrimoniale con registrazione al conto "Attrezzature per manutenzione e pulizia" codice 02.05.020.010;
6. di dare atto che il medesimo importo sarà registrato nella contabilità aziendale dell'anno 2021 al conto "Riserve donazioni e successioni" codice 05.01.026.010 per complessivi € 60.000,00 (sessantamilaeuro) e che si provvederà alla sterilizzazione della relativa quota di ammortamento;
7. di incaricare l'Ufficio Inventario Beni Mobili, in conformità al Titolo V° della L.R. 31.12.1980 n. 106 e successive modificazioni e integrazioni, dell'iscrizione dell'inventario generale dei beni mobili di questa Azienda dei beni patrimoniali oggetto del presente decreto;
8. di dare mandato all'U.O.C. Affari Generali e Legali per la comunicazione del presente provvedimento a tutti i Servizi e/o Strutture aziendali interessate, per i successivi adempimenti di competenza;
9. di dare atto che il presente provvedimento è sottoposto al controllo del Collegio Sindacale, in conformità ai contenuti dell'art. 3-ter del D.Lgs. n. 502/1992 e ss.mm.ii. e dell'art. 12, comma 14, della L.R. 33/2009;
10. di disporre, a cura dell'U.O.C. Affari Generali e Legali, la pubblicazione all'Albo pretorio on-line dell'ASST del Garda– ai sensi dell'art. 17, comma 6, della L.R. n. 33/2009, e dell'art. 32 della L. n. 69/2009, ed in conformità alle disposizioni ed ai provvedimenti nazionali e comunitari in materia di protezione dei dati personali;

Firmato digitalmente
IL DIRETTORE GENERALE
(Dr. Carmelo Scarcella)



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR COMMUNICATIONS NETWORKS, CONTENT AND
TECHNOLOGY

Resources and Support

DONATION CONTRACT

CONTRACT NUMBER - C

The European Commission, whose registered seat is 200 rue de la Loi, at 1049 Brussels, Belgium represented for the purposes of signing this contract by Morten Fjalland, Director, Resources and Support, Directorate General for Communications Networks, Content and Technology, hereinafter referred to as **”the Commission”**,

of the one part,

and

L’Azienda Socio Sanitaria Territoriale del Garda (ITALIA) Codice Fiscale e Partita IVA n. 03775660982, “il Beneficiario” rappresentata ai fini della firma del presente contratto dal Direttore Generale Dr. Carmelo Scarcella, domiciliato per la carica in Desenzano del Garda (BS), Località Montecroce, PEC: protocollo@pec.asst-garda.it

on the other part,

Collectively referred to as (“the parties”),

HAVE AGREED

the provisions below and the following Annexes:

Annex I – Delivery acceptance form

Annex II – Privacy statement

which form an integral part of this Contract (hereinafter referred to as “the Contract”).

ARTICLE 1 - ORDER OF PRIORITY OF PROVISIONS

If there is any conflict between different provisions in this Contract, the following rules must be applied:

- The provisions set out in the Contract shall take precedence over those in the Annexes
- The provisions set out in the Delivery acceptance form (Annex I) shall take precedence over those in the other annexes.

ARTICLE 2 - SUBJECT

Subject to the terms and conditions agreed in this contract, the Commission agrees to donate to the Beneficiary, who accepts, the following Good(s) (hereinafter: “the Goods”):

- One UV-Disinfection Robot incl. Tablet, automatic charging unit, UVD Tower Protection, including 12 months warranty, remote support and software updates.
- Shipping and packaging: Packaging in wooden pallet box and shipping by road transport.
- Installation and operator training: Standard installation & training up to 4 days depending on local conditions and requirements. This includes mapping, configuration, testing, validation and operator training.
- Maintenance: Additional 12 months spare parts warranty, excluding wear and tear parts.

ARTICLE 3 – ENTRY INTO FORCE

This Contract shall enter into force on the date on which it is signed by the last party.

ARTICLE 4 – DEFINITIONS

1. **Fraud:** Fraud within the meaning of Article 3 of EU Directive 2017/1371¹ and Article 1 of the Convention on the protection of the European Communities' financial interests, drawn up by the Council Act of 26 July 1995², as well as any other wrongful or criminal deception intended to result in financial or personal gain.
2. **Irregularities:** Any type of breach (regulatory or contractual) which could impact the EU financial interests, including irregularities within the meaning of Article 1(2) of EU Regulation 2988/95³.
3. **Grave professional misconduct:** Any type of unacceptable or improper behaviour in exercising one's profession, especially by employees, including grave professional misconduct within the meaning of Article 136(1)(c) of EU Financial Regulation 2018/1046.
4. **Conflict of interest:** a situation where the impartial and objective implementation of this Contract by the Beneficiary is compromised for reasons involving family, emotional life, political or national affinity, economic interest, any other direct or indirect personal interest, or any other shared interest with the Commission or any third party related to the subject matter of this Contract.

¹ Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29).

² OJ C 316, 27.11.1995, p. 48.

³ Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ L 312, 23.12.1995, p. 1).

ARTICLE 5 – DELIVERY OF GOODS

1. The Goods are delivered to the Beneficiary at the following place **AZIENDA SOCIO SANITARIA TERRITORIALE DEL GARDA Località Montecroce 25015- Desenzano del Garda (BS)**

Servizio Ingegneria Clinica Ing. Alessandro Cresceri e-mail: alessandro.cresceri@asst-garda.it telefono 0309145434 cellulare 3204321621;

2. The delivery of the Goods shall be made *ex-works* at the delivery point (*ICC Incoterms 2020*).
3. The agent of the Commission as designated shall confirm to the Beneficiary, at least_5 working days before the delivery, the date when the Goods will be delivered to the Beneficiary, “**the delivery date**”.
4. The agent of the Commission as designated will specify the hours for the delivery and any other applicable conditions.
5. The Beneficiary must, in its turn, communicate, within 3 working days before the **delivery date** to the agent of the Commission as designated the name and contact details of the Beneficiary’s agent that will receive the Goods donated and its availability.
6. Failure to receive the Goods at the time and place agreed may be considered by the Commission as a Breach of the Beneficiary’s obligations.
7. In case of Force majeure, or any exceptional circumstance, which prevents the Beneficiary from receiving the Goods, this must be immediately communicated to the Commission and to the agent of the Commission as designated.

ARTICLE 6 – VERIFICATION AND ACCEPTANCE

1. The agent of the Commission as designated shall make available to the Beneficiary the following documents before and/or at the **delivery point**.
 - a) Packing list.
 - b) Certificate of origin [if applicable]
 - c) Certificate of inspection [if applicable]
 - d) Customs documents [if applicable]
 - e) Other documents [if applicable]:
2. The Beneficiary or the Beneficiary’s agent shall verify the documents, the number and description of the Goods and proceed to an external verification of the Goods.
3. Upon verification, the Beneficiary or the Beneficiary’s agent shall sign a Delivery acceptance form (Annex I) – to be delivered to the Commission’s Agent before delivery at the agreed premises. Any remarks regarding the external verification carried out must be reported to the Commission’s Agent in situ and annotated in the Delivery acceptance form (Annex I), which shall be countersigned by the Commission’s agent.

4. If the Beneficiary refuses to sign the Delivery acceptance form, the Goods shall not be permitted to be delivered at the delivery point and the Beneficiary may be considered in breach of its obligations under this Contract.

ARTICLE 7 - VALUE AND COSTS

1. The Commission shall, upon request, provide the Beneficiary the value (or where appropriate, copy of the purchase invoice) of the Goods donated for accounting, taxation or insurance purposes only. It shall have the right to blank any sensitive information that may seem fit, such as personal names or bank account numbers.
2. As from the delivery of the Goods, in accordance with the provision above, the Beneficiary shall assume all costs (including insurances, etc.) relating to the Goods.

ARTICLE 8 - TITLE AND TRANSFER OF RISK

1. The transfer of property shall be valid as from the acceptance and signature of the Donation Contract together and the Delivery acceptance form (Annex I).
2. The duly signed and dated Donation Contract together with duly signed and dated Delivery acceptance form (Annex 1) shall constitute a property title.

ARTICLE 9 – DAMAGES – LIABILITY

1. The Commission accepts no responsibility for, and gives no warranty in relation to the accuracy, completeness and functionality of the Goods. The Goods are provided by the Commission "as is".
2. The Commission will transfer or assign to the Beneficiary, any guarantees or rights it may hold from the seller and/or the Manufacturer of the products, insurance, shipping agent or verification bureau related to the Goods.
3. Without prejudice to point 1 of this article, the Beneficiary must proceed to verify and examine as soon as possible and with no delay the quantity, quality and state of the Goods received. It shall inform immediately the Commission/the Commission's agent of the result of such verification, and may at this point request from the Commission the transfer or assignment of its rights regarding such Goods.
4. The Commission is not liable for any direct, indirect, incidental, special, exemplary or consequential damage or loss caused to the Beneficiary or any third party, arising in any way during or as a consequence of the implementation of this Contract and out of the use of the Goods delivered, even if advised of the possibility of such damage or loss.
5. If required by the relevant applicable legislation, the Beneficiary shall carry an insurance policy against risks and damage or loss relating to the implementation of this Contract and the use of the Goods delivered. Upon request, the Beneficiary must provide evidence of insurance coverage to the Commission.
6. If a third party brings any action against the Commission in connection with the implementation of this Contract or as a consequence thereof, the Beneficiary shall assist the Commission in the legal proceedings, including by intervening in support of the Commission upon request. That assistance shall not be remunerated.
7. The Beneficiary shall keep the Commission informed about any claim brought by a third party directly against the Beneficiary in relation to the Goods delivered under this Contract.

ARTICLE 10 – OBLIGATIONS OF THE BENEFICIARY FOLLOWING THE DONATION

1. The Beneficiary is fully responsible towards the Commission for using the donated Goods properly according to their intended purpose. The Beneficiary must implement its obligations to its best abilities, in Good faith and in compliance with all legal obligations under applicable EU, international and national law.
2. The Beneficiary may not sell, rent or borrow the Goods within two years of the receipt.
3. The Beneficiary may not further donate the Goods to third entities or persons who are not the ultimate recipients of the Goods, except if such donation is explicitly approved by the Commission. These entities shall undertake to comply with all the conditions and obligations referred to in this contract.
4. The Beneficiary undertakes, at the end of the good's lifetime, to dispose or recycle the Goods according to applicable legislation.
5. In case of theft or destruction of the Goods, the Beneficiary shall take appropriate action (e.g. report to the police and/or the insurance) and inform the Commission.
6. The Beneficiary commits to ensure the respect of basic EU values (such as respect for human dignity, freedom, democracy, equality, the rule of law and human rights, including the rights of minorities).

7. The conditions under which the Beneficiary may transfer the right of ownership or use of the Goods to the intermediate or to the final recipients shall not contain any provision contrary to this Contract.
8. The Beneficiary shall submit to the Commission, 12 months and 24 months after the transfer of property, a report on the actual use of the donated Goods including an assessment of the impact on internal procedures and effectiveness, challenges for the adoption and use of the robot.

ARTICLE 11 – VISIBILITY

1. The Beneficiary must acknowledge in all instances EU support and display the European flag (emblem) and funding statement (translated into local languages where appropriate):



Funded by the
European Union

2. The emblem must remain distinct and separate and cannot be modified by adding other visual marks, brands or text. Apart from the emblem, no other visual identity or logo may be used to highlight the EU support. When displayed in association with other logos (e.g. of beneficiaries or sponsors), the emblem must be displayed at least as prominently and visibly as the other logos.
3. For the purposes of its obligation under this Article, the Beneficiary may use the emblem without first obtaining approval from the Commission. This does not, however, give the Beneficiary the right to exclusive use. Moreover, the Beneficiary may not appropriate the emblem or any similar trademark or logo, either by registration or by any other means.
4. Any communication or dissemination activity related to the donation must use factually accurate information. Moreover, it must indicate the following disclaimer (translated into local languages where appropriate):

“Funded by the European Union. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or the Commission. Neither the European Union nor the Commission can be held responsible for them.”

ARTICLE 12 – DONATION BY THE BENEFICIARY

1. In justified cases, the Beneficiary may request the transfer of the donation to another entity or person (“the final Beneficiary”), provided this would not call into question the objectives of the donation under this Contract, the initial conditions of the selection process for this donation or breach the principle of equal treatment of applicants. The Beneficiary shall:
 - notify in advance the Commission and provide the details of the final Beneficiary and the reasons for the transfer,
 - provide the Commission with a Declaration on honour from the final Beneficiary that the latter is not in an exclusion situation of article 136 of the Financial Regulation⁴;
 - ensure that the final Beneficiary signs a document undertaking to abide and respect all the conditions and obligations referred to in this Contract.
2. Once the Commission notifies its agreement to the transfer of the donation to the Beneficiary and the final Beneficiary, the latter shall assume the rights and obligations under this Contract with effect from the date of such notification.

ARTICLE 13 - CONTRACTING THIRD PARTIES

1. In case the Beneficiary contracts third parties to perform any activity linked to this Contract, it shall nonetheless remain bound by its obligations to the Commission under this Contract and shall bear exclusive liability for proper performance of this Contract.
2. The Beneficiary shall make sure that the agreement governing its contract with third parties does not affect rights to which the Commission is entitled by virtue of this Contract.

ARTICLE 14 – CONSEQUENCES OF NON-COMPLIANCE

⁴ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, OJ L 193 of 30.7.2018, p.1 <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1544791836334&uri=CELEX:32018R1046>

1. The Commission may notify to the Beneficiary its intention to recover the Goods or request compensation, if the Beneficiary (or a person having powers of representation, decision-making or control, or person essential for the award/implementation of the grant) has committed:
 - a) substantial errors, irregularities, fraud, grave professional misconduct, or
 - b) serious breach of obligations under this Contract or during its implementation.
2. The amount of compensation will be proportionate to the seriousness and the duration of the errors, irregularities or fraud or breach of obligations.
3. The Commission will request from the Beneficiary, recovery or compensation, by notification, which will include the amount involved and the reasons for this. The Beneficiary may — within 30 days of receiving the formal notification — submit observations if it disagrees with the recovery or compensation.
4. If the Commission does not receive observations or decides to pursue with the recovery or request for compensation despite the observations it has received, it will confirm its decision to the Beneficiary (confirmation letter). Otherwise, it will formally notify that the procedure is discontinued.
5. Should the Commission decide to request compensation, it will formally notify a debit note to the Beneficiary, specifying the date of payment. The Beneficiary must pay in accordance with the provisions specified in the debit note.
6. If the Beneficiary does not pay by the due date, the Commission authority may, after informing the contractor in writing, recover the amounts due:
 - a) by offsetting them against any amounts owed to the Beneficiary by the Union or by an executive agency when it implements the Union budget;
 - b) by taking legal action.
7. If the Beneficiary does not honour the obligation to pay the amount due by the date set by the Commission in the debit note, the amount due bears interest at the rate applied by the European Central Bank for its main refinancing operations in euros (the reference rate) plus eight points. The reference rate is the rate in force, as published in the C series of the Official Journal of the European Union, on the first day of the month in which the payment period ends. Interest on late payments will cover the period starting on the day after the due date for payment and ending on the date when the contracting authority receives the full amount owed.
8. Any partial payment is first entered against charges and interest on late payment and then against the principal amount.

ARTICLE 15 — FORCE MAJEURE

1. A party prevented by force majeure from fulfilling its obligations under this Contract cannot be considered in breach of them.
2. ‘Force majeure’ means any situation or event that:
 - prevents either party from fulfilling their obligations under this Contract,

- was unforeseeable, exceptional and beyond the parties' control,
 - was not due to error or negligence on their part (or on the part of other participants involved in the action), and
 - proves to be inevitable in spite of exercising all due diligence.
3. Any situation constituting force majeure must be formally notified to the other party without delay, stating the nature, likely duration and foreseeable effects.
 4. The parties must immediately take all the necessary steps to limit any damage due to force majeure and do their best to resume implementation of this Contract as soon as possible.

ARTICLE 16 – CHECKS, REVIEWS, AUDITS AND INVESTIGATIONS

1. The Commission may – during the emergency support activation period of article 1 of Council Regulation (EU) 2020/521⁵ or afterwards – check the proper use of the Goods delivered and compliance of the obligations under this Contract. Such checks will be conducted following notification of the Beneficiary by the Commission.
2. The Commission may carry out audits on the proper use of the Goods delivered and compliance with the obligations under this Contract. Such audits may be started from the moment the Goods are delivered and within 5 years from the transfer of property. They will be notified to the Beneficiary and will be considered to start on the date of the notification.
3. The Commission may use its own audit service, delegate audits to a centralised service or use external audit firms. If it uses an external firm, the Beneficiary will be informed and have the right to object on grounds of commercial confidentiality or conflict of interest.
4. On the basis of the audit findings, a draft audit report will be drawn up. The auditors will formally notify the draft audit report to the beneficiary concerned, which has 30 days from receiving notification to make observations (contradictory audit procedure). The final audit report will take into account observations by the Beneficiary and will be formally notified to them.
5. Audits (including audit reports) will be in the language of this Contract.
6. The following bodies may also carry out checks, reviews, audits and investigations — during the action or afterwards:
 - the European Anti-Fraud Office (OLAF) under Regulations No 883/20136 and No 2185/96⁷;
 - the European Public Prosecutor's Office (EPPO) under Regulation 2017/1939.

⁵ Council Regulation (EU) 2020/521 of 14 April 2020 activating the emergency support under Regulation (EU) 2016/369, and amending its provisions taking into account the COVID-19 outbreak, OJ L 117, 15.4.2020, p. 3.

⁶ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18/09/2013, p. 1).

⁷ Council Regulation (Euratom, EC) No 2185/1996 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15/11/1996, p. 2).

- the European Court of Auditors (ECA) under Article 287 of the Treaty on the Functioning of the EU (TFEU) and Article 257 of EU Financial Regulation 2018/1046.
- 7. If requested by these bodies, the Beneficiary must provide full, accurate and complete information in the format requested and allow access to sites and premises for on-the-spot visits or inspections — as provided for under these Regulations.
- 8. The Beneficiary shall cooperate diligently and provide — within the deadline requested — any information and data requested on the basis of this Article. For on-the-spot visits, the Beneficiary shall allow access to sites and premises (including for any external audit entity) and must ensure that information requested is readily available accurate, precise and complete and in the format requested, including electronic format. Sensitive information and documents will be treated in accordance with Article 17.
- 9. The Beneficiary shall keep all relevant information relating to the use of the Goods, at least within 5 years from the transfer of property and, in any case, until any ongoing checks, reviews, audits, investigations, litigation or other pursuits of claims have been concluded.
- 10. Findings in checks, reviews, audits or investigations carried out on the basis of this Contract, may lead to recovery of Goods or request for compensation by the Commission, following the procedure established in paragraphs 2 to 7 of Article 14.

ARTICLE 17 - CONFIDENTIALITY

1. The parties shall keep confidential any data, documents or other material, in any form, disclosed in writing or orally in relation to the performance of the Contract and identified in writing as sensitive during the implementation of the Contract and for at least for 5 years starting from the date of delivery.
2. If the Beneficiary requests it, the Commission may agree to keep such information confidential for a longer period.
3. Unless otherwise agreed between the parties, they may use sensitive information only to implement this Contract.
4. The Beneficiary may disclose sensitive information to other parties involved in the implementation of this Contract, only if they:
 - (a) need to know it in order to implement this Contract,
 - (b) are bound by an obligation of confidentiality and
 - (c) following prior written agreement of the Commission.
5. The Commission may disclose sensitive information to its staff and to other EU institutions and bodies. It may moreover disclose sensitive information to third parties, if:
 - (a) this is necessary to implement this Contract or safeguard the EU financial interests and
 - (b) the recipients of the information are bound by an obligation of confidentiality.
6. The confidentiality obligations no longer apply if:

- (a) the disclosing party agrees to release the other party
- (b) the information becomes publicly available, without breaching any confidentiality obligation
- (c) the disclosure of the sensitive information is required by EU, international or national law.

7. The Beneficiary shall obtain from any natural person with the power to represent it or take decisions on its behalf, as well as from third parties involved in the performance of the Contract, an undertaking that they will comply with the confidentiality obligations set out in this Article

ARTICLE 18 - DATA PROTECTION

1. Any personal data under this Contract will be processed under the responsibility of the data controller of the Commission in accordance with Regulation 2018/1725⁸.
2. The Beneficiary shall process personal data under this Contract in compliance with the applicable EU, international and national law on data protection (in particular, Regulation (EU) 2016/679⁹).
3. The Beneficiary shall ensure that personal data is:
 - a) processed lawfully, fairly and in a transparent manner in relation to the data subjects
 - b) collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes
 - c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed
 - d) accurate and, where necessary, kept up to date
 - e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data is processed and
 - f) processed in a manner that ensures appropriate security of the data.
4. The Beneficiary may grant its personnel or third parties performing activities linked to this Contract, access to personal data only if it is strictly necessary for implementing, managing and monitoring this Contract. The Beneficiary shall ensure that the personnel or third parties implementing this Contract are under a confidentiality obligation.
5. The Beneficiary shall inform the persons whose data are transferred to the Commission and provide them with the Privacy Statement in Annex II to this contract.¹⁰

⁸ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

⁹ 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, and repealing Directive 95/46/EC ('GDPR') (OJ L 119, 4.5.2016, p. 1).

¹⁰ The standard privacy statement found in https://ec.europa.eu/info/funding-tenders/rules-public-procurement/data-protection-public-procurement-procedures_en is valid also in this context *mutatis mutandis*.

ARTICLE 19 – COMMUNICATION BETWEEN THE PARTIES

1. Any communication of information, notices or documents under this Contract must:
 - a) be made in writing in paper or electronic format in the language of the contract;
 - b) bear the Contract number;
 - c) be made using the relevant communication details set out in Article 19.7.; and
 - d) be sent by mail or email.
2. If a party requests written confirmation of an e-mail within a reasonable time, the other party must provide an original signed paper version of the communication as soon as possible.
3. The parties agree that any communication made by email has full legal effect and is admissible as evidence in judicial proceedings.
4. Any communication is deemed to have been made when the receiving party receives it, unless this contract refers to the date when the communication was sent.
5. E-mail is deemed to have been received by the receiving party on the day of dispatch of that e-mail, provided that it is sent to the e-mail address indicated in Article 19.7. The sending party must be able to prove the date of dispatch. In the event that the sending party receives a non-delivery report, it must make every effort to ensure that the other party actually receives the communication by email or mail. In such a case, the sending party is not held in breach of its obligation to send such communication within a specified deadline.
6. Mail sent to the Commission is deemed to have been received by the Commission on the date on which the department responsible referred to in Article 19.7 registers it.
7. For the purpose of this Contract, communications must be sent to the following addresses:

Commission:

European Commission

Directorate-General for Communications Networks, Content and Technology

Contact person: Cécile Huet

E-mail: CNECT-A1@ec.europa.eu

Beneficiary:

AZIENDA SOCIO SANITARIA TERRITORIALE DEL GARDA (ITALIA)

Ospedale di Desenzano del Garda

Località Montecroce 25015 Desenzano del Garda (BS)

E-mail: protocollo.aziendale@asst-garda.it

Telefono 0309145434

Cellulare 3204321621(Ing. Alessandro Cresceri)

ARTICLE 20 - APPLICABLE LAW AND SETTLEMENT OF DISPUTES

1. This Contract shall be governed by European Union law, complemented, where necessary, by the national substantive law of Belgium.
2. The Commission and the Beneficiary irrevocably submit to the exclusive jurisdiction of the courts located in Brussels, Belgium to settle any dispute, which may arise under or in connection with this Contract, unless the Beneficiary is a Member State, in which case, the competent court is the European Court of Justice – pursuant Art. 272 TFUE.

ARTICLE 21 - TERMINATION BY EITHER CONTRACTING PARTY

1. The Commission may terminate this Contract in the following circumstances:
 - (a) if the Beneficiary does not formally accept the Goods within 5 days from the date of delivery agreed in line with Article 6;
 - (b) if the Beneficiary is unable for any reason to obtain any insurance required by Union or national law for implementation of this Contract;
 - (c) if the Beneficiary or any person that assumes unlimited liability for the debts of the Beneficiary is in one of the situations provided for in points (a) and (b) of Article 136(1) of the Financial Regulation¹¹;
 - (d) if the Beneficiary or any related person is in one of the situations provided for in points (c) to (h) of Article 136(1) or to Article 136(2) of the Financial Regulation;
 - (e) if the procedure for awarding this Contract or the implementation of this Contract prove to have been subject to irregularities, fraud or breach of obligations;
 - (f) if the Beneficiary is in a situation that could constitute a conflict of interest or a professional conflicting interest as referred to in Article 4;
 - (g) if a change to the Beneficiary's legal, financial, technical, organisational or ownership situation is likely to substantially affect the implementation of this Contract or substantially modify the conditions under which this Contract was initially awarded or a change regarding the exclusion situations listed in Article 136 of Regulation (EU) 2018/1046 that calls into question the decision to award the contract;
 - (h) if the contractor the Commission has awarded the contract for the production of the Goods, fails to produce and/or deliver the Goods;
 - (i) if the Beneficiary is in breach of the data protection obligations resulting from Article 16;

¹¹ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, OJ L 193 of 30.7.2018, p.1 <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1544791836334&uri=CELEX:32018R1046>

2. The Beneficiary may terminate this Contract if there is a delay of 30 days in the delivery of Goods and it is no longer affordable/necessary for the Beneficiary to perform this Contract.
3. A party must formally notify the other party of its intention to terminate this Contract and the grounds for termination.
4. The other party has 30 days following the date of receipt to submit observations, including the measures it has taken or will take to continue fulfilling its contractual obligations. Failing that, the decision to terminate becomes enforceable the day after the time limit for submitting observations has elapsed.
5. If the other party submits observations, the party intending to terminate must formally notify it either of the withdrawal of its intention to terminate or of its final decision to terminate. In that case, the termination takes effect on the day following the date on which the party receives notification of termination.
6. At the request of the Commission and regardless of the grounds for termination, the Beneficiary must provide all necessary assistance, including information, documents and files, to allow the Commission to transfer the Goods to a new Beneficiary or internally, without interruption or adverse effect on the quality or continuity of the services. The Beneficiary must provide such assistance at no additional cost, except if it can demonstrate that it requires substantial additional resources or means, in which case it must provide an estimate of the costs involved and the parties will negotiate an arrangement in good faith.
7. The Beneficiary is liable for damage incurred by the Commission as a result of the termination of this Contract, including the additional cost of appointing and contracting another Beneficiary to receive the Goods. The Commission may claim compensation for such damage.
8. The Beneficiary is not entitled to compensation for any loss resulting from the termination of this Contract.
9. The Beneficiary must take all appropriate measures to minimise costs, prevent damage and cancel or reduce its commitments.

ARTICLE 22 - AMENDMENTS

Any amendment to this Contract shall be the subject to a written agreement concluded by the parties. An oral agreement shall not be binding on the parties.

ARTICLE 23 - TAXATION

The Beneficiary will promptly comply with all relevant tax legislation applicable to it in its capacity as Beneficiary of the Donation and will pay any and all taxes due by it as a result of being the Beneficiary of the Donation.

Signed in two originals in the English language.

SIGNATURES

**For the Beneficiary,
AZIENDA SOCIO SANITARIA For the Commission,
TERRITORIALE DEL GARDA**

Il Direttore Generale

(Dr. Carmelo Scarcella)

Signature: _____

Signature: ____

[Name, Function of signatory]

Done at ...,

Done at..., In duplicate in
English.

Annex I – Delivery acceptance form

Delivery acceptance form

Contract reference:

Contract subject: **DONAZIONE**

Beneficiary name: **Azienda Socio Sanitaria Territoriale del Garda (Italia)**

Beneficiary address: **Località Montecroce 25015 Desenzano del Garda (BS)**

The delivery related to the above mentioned contract has taken place at **Desenzano del Garda 25015**- on (date).

This delivery was concluded:

- without any remarks
- with the following remarks:

Nr.	Remark

	For the Commission/agent of the Commission as designated	For the Beneficiary
Date		
Name		
Signature		

Annex II – Privacy Statement

This is a privacy statement for processing personal data related to managing award procedures for procurement, grants and the selection of experts, and managing the execution of (procurement and experts) contracts and implementation of agreements (grants).

Processing operation: Managing award procedures for procurement, grants and the selection of experts, and managing the execution of (procurement and experts) contracts and implementation of agreements (grants)

Data Controller: European Commission

Record reference: DPR-EC-05067.1

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1. Introduction

The European Commission (hereafter ‘the Commission’) is committed to protect your personal data and to respect your privacy. The Commission collects and further processes personal data pursuant to [Regulation \(EU\) 2018/1725](#) of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data (repealing Regulation (EC) 45/2001).

This privacy statement explains the reason for the processing of your personal data, the way we collect, handle and ensure protection of all personal data provided, how that information is used and what rights you have in relation to your personal data. It also specifies the contact details of the responsible Data Controller with whom you may exercise your rights, the Data Protection Officer and the European Data Protection Supervisor.

This privacy statement concerns the processing operation ‘managing award procedures for procurement, grants and the selection of experts, and managing the execution of (procurement and experts) contracts and implementation of agreements (grants)’, undertaken by the Commission as presented below.

2. Why and how do we collect your personal data?

Purpose of the processing operation: The processing of personal data by the European Commission is necessary when managing award procedures (procurement, grants, experts) and managing the execution of contracts (procurement, experts) and the implementation of agreements (grants) concluded during the procedures. These processing operations are under the responsibility of the European Commission as Controller, regarding the collection and processing of personal data.

Your personal data will not be used for any automated decision-making including profiling.

If you are an external data subject, upon receipt by the European Commission of information related to an award procedure, contract or agreement (e.g. application document, communication) from you, personal data may be collected and processed by Commission services for the purpose of managing the procedure, contract or agreement.

If you are an internal data subject, personal data may be collected and processed by Commission services as part of you using corporate eProcurement IT tools which support managing award procedures, the execution of contracts (procurement, experts) and the implementation of agreements (grants).

3. On what legal ground(s) do we process your personal data

The legal basis for the processing operations on personal data is Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, (hereafter "the Financial Regulation") in particular Articles 160-179 for the procurement procedures, Articles 180-200 for the grant application and Articles 237-238 for selection of experts. In addition, financing decisions form part of the legal basis for a processing operation, where applicable, in line with Article 110 of the Financial Regulation.

The processing operations on personal data carried out in this context of are necessary and lawful under Article 5(1)(a), (b) and (c) of Regulation (EU) 1725/2018:

- (a) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the Union institution or body;
- (b) processing is necessary for compliance with a legal obligation to which the controller is subject ;
- (c) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract.

4. Which personal data do we collect and further process?

External data subjects provide personal data when they:

- participate in an award procedure regarding procurement, grants or the selection of experts; and
- execute a contract (procurement, expert) or implement an agreement (grant) that has been awarded to them.

Internal data subjects provide personal data when they:

- manage an award procedure regarding procurement, grants or the selection of experts;
- manage the execution of a contract (procurement, expert) or implementation of an agreement (grant);
- develop, maintain and support the use of corporate eProcurement IT systems which support the above purpose as part of business processes; and

- access corporate eProcurement IT systems for the purpose of acquisitions via a procurement procedure or contract, or for performing a monitoring, audit or inspection task in application of European Union law.

Types of personal data

Depending on whether the data subject is external or internal to the Commission, different data may be processed including:

Data subject external to the Commission:

- Identification data: name, surname, passport number, ID number, IP address;
- Function;
- Contact details (e-mail address, business telephone number, mobile telephone number, fax number, postal address, company name and department, country of residence, internet address);
- Certificates for social security contributions and taxes paid, extract from judicial records;
- Financial data: bank account reference (IBAN and BIC codes), VAT number;
- Information for the evaluation of selection criteria or eligibility criteria: expertise, technical skills and languages, educational background, professional experience including details on current and past employment;
- Declaration on honour or the equivalent with regard to exclusion criteria, selection criteria and/or eligibility criteria; and
- System related data: European Commission Authentication Service (EU Login) login name and password (only stored in EU Login), security data/log files (for audit trails).

Data subject internal to the Commission:

- Identification data: name, surname, email address, IP address;
- Organisational data: organisation, directorate, unit, etc.;
- Procedural data; Contracting Authority;
- Assignments and role; and
- System related data: European Commission Authentication Service (EU Login) login name and password (only stored in EU Login), security data/log files (for audit trails).

5. How long do we keep your data?

Your personal data are kept as follows:

For a procurement award procedure, data are retained for a period of 10 years following the procedure's closure, although:

- for unsuccessful tenderers, data specific to the tenderer are retained for 5 years following the closure of the procedure;
- for unsuccessful candidates in response to an invitation to request to participate or successful candidates who did not subsequently tender, data specific to the candidate are retained for 5 years following the closure of the procedure; and
- for candidates to a Call for Expressions of Interest, data specific to the candidate are retained for, whichever is later: 1) 5 years after the list's validity end date; 2) 5 years after the signature of the last contract concluded with a procedure based on the list; 3) 10 years after the signature of the last contract concluded with a procedure based on the list for which the candidate was a successful tenderer.

As regards data collected when managing the execution of the contract, these are retained for 10 years following last payment made under the contract.

Data collected during the grant award procedure are retained for 10 years, although data from unsuccessful applicants are retained for 5 years following the closure of the procedure.

As regards data collected when managing the implementation of the grant agreement, these are retained for 10 years following the last payment under the agreement.

Data regarding the drawing up and maintaining of experts' lists and the management of experts' contracts are retained for 10 years, while data related to unsuccessful experts are eliminated five years after the closure of the procedure.

Notwithstanding the above retention periods, it should be noted that:

- As part of its general document management practices, a Commission file concerned with an award procedure, contract or agreement and which includes data may be selected or sampled at the end of the retention period, as a result of which some data may be retained in the Commission's Historical Archives;
- any retention of data may be temporarily extended if a monitoring, audit or inspection task in application of European law (e.g. internal audits, the Financial Irregularities Panel referred to in Article 93 of the Financial Regulation, the Exclusion Panel referred to in Article 143 of the Financial Regulation, European Anti-fraud Office - OLAF) is ongoing; and
- any action performed in corporate eProcurement IT systems by data subjects under their EU login is recorded without time limit in order to enable queries on financial, contractual and accounting matters as well as for audit trail purposes.

6. How do we protect and safeguard your personal data?

Where data are in an electronic form, they are stored on servers of the European Commission. Security requirements ensure that only designated persons have the possibility to access the data kept for the purpose of undertaking the processing operations.

Where data are kept in a paper format, they are stored in the premises of the competent services of the European Commission. Access into the premises and within the premises is controlled.

7. Who has access to your data and to whom is it disclosed?

For the purpose detailed above, access to your personal data is given to the following persons, without prejudice to a possible transmission to the bodies in charge of a monitoring or inspection task in accordance with European Union law:

- Commission staff members [members of the institutions, agencies and bodies participating in the award procedure in the case of inter-institutional procurement] as well as external experts and contractors who work on behalf of the Commission for the purposes of: 1) managing award procedures for procurement, grants and the selection of experts; 2) managing the execution of (procurement and experts) contracts and the implementation of grant agreements; 3) developing, maintaining and supporting the use of corporate eProcurement IT systems.
- for contracts awarded as part of a procurement procedure, Commission staff who may use the contract or may use the information (excluding personal data) related to the contract for the sole purpose of future procurement procedures;
- bodies charged with a monitoring, audit or inspection task in application of European Union law;
- members of the public who receive data of contractors or beneficiaries which is made public in accordance with the Financial Regulation, particularly Articles 38(2), 163 and 189(2). The data is published in supplement S of the Official Journal of the European Union and/or on the applicable website of the Commission. Additionally, selected experts may be listed in the Register of Commission Expert Groups of the Commission on <http://ec.europa.eu/transparency/regexpert/>. For more information on the provision of this register see record DPR-EC-00656 in the Data Protection Officer's registry on <http://ec.europa.eu/dataprotectionofficer>. Additionally, selected experts may be listed in the Register of Expert Groups of the Commission on <http://ec.europa.eu/transparency/regexpert/>.

8. What are your rights and how can you exercise them?

You have specific rights as a ‘data subject’ under Chapter III (Articles 14-25) of Regulation (EU) 2018/1725, in particular the right to access, rectify or erase your personal data and the right to restrict the processing of your personal data. Where applicable, you also have the right to object to the processing or the right to data portability.

You have the right to object to the processing of your personal data, which is lawfully carried out on grounds relating to your particular situation.

Special attention is drawn to the consequences of a request for deletion, as this may lead to an alteration of the terms of the tender and lead to rejection in line with Articles 151 and 141 of the Financial Regulation.

You can exercise your rights by contacting the Data Controller, or in case of conflict the Data Protection Officer. If necessary, you can also address the European Data Protection Supervisor. Their contact information is given under Heading 9 below.

Where you wish to exercise your rights in the context of one or several specific processing operations, please provide their description (i.e. their Record reference(s) as specified under Heading 10 below) in your request.

9. Contact information

- The Data Controller

If you would like to exercise your rights under Regulation (EU) 2018/1725, or if you have comments, questions or concerns, or if you would like to submit a complaint regarding the collection and use of your personal data, please feel free to contact the Data Controller by using the contact information mentioned in, for instance, a notice in the Official Journal of the European Union, invitation to participate or invitation to tender pertaining to the award procedure, the contract or the agreement, and by explicitly specifying your request.

- The Data Protection Officer of the European Commission

You may contact the Data Protection Officer (data-protection-officer@ec.europa.eu) with regard to issues related to the processing of your personal data under Regulation (EU) 2018/1725.

- The European Data Protection Supervisor (EDPS)

You have the right to have recourse (i.e. you can lodge a complaint) to the European Data Protection Supervisor, https://edps.europa.eu/data-protection/our-role-supervisor/complaints_en or edps@edps.europa.eu, if you consider that your rights under Regulation (EU) 2018/1725 have been infringed as a result of the processing of your personal data by the Data Controller.

10. Where to find more detailed information?

The Commission Data Protection Officer (DPO) publishes the register of all processing operations on personal data by the Commission, which have been documented and notified to him. You may access the register via the following link: <http://ec.europa.eu/dpo-register>.

This specific processing operation has been included in the DPO’s public register with the following Record reference: DPR-EC-05067.1.