

## EMBL Legal Requirements

As part of their response, bidders are required to review the EMBL legal requirements.

As an intergovernmental institution, EMBL benefits from various privileges and immunities under their treaty agreement. The protection of these privileges and immunities are fundamental to EMBL and therefore we expect a period of contract negotiation to ensure a mutually agreeable contract is implemented with the successful bidder, meeting both of the parties requirements.

The following table outlines some legal concepts material to EMBL in any Supplier provision. The clauses are provided as indicative and representative of the standards EMBL would generally expect by any Supplier provision. Further explanation providing additional background is also provided. The clauses should not necessarily be read as non-negotiable, but rather as an outline and invitation to any bidder to present their solution they believe best meets EMBL's needs in light of those standards, and the specific resources, processes and capabilities of the bidder. Bidders should be aware that any material deviation from the standards may be taken into account in the decision making.

The Legal Requirements schedule is the bidder's opportunity to review these clauses and provide acceptance to the principles or suggest amendments or non-compliance.

EMBL envisages further legal dialogue will be required with the bidders during the tender process in order to mitigate any risks once the tender submissions have been received.

1			
Legal Concepts	EMBL indicative model wording	Explanation	Full Compliance / Partial Compliance / Non-Compliant
1. Modification to provision of Goods, Services and related Terms	Supplier will not change, modify or amend the services and/or Goods provided to EMBL without the prior written consent of EMBL. Any proposed addition, reduction or replacement of the services and/or Goods will be notified by the Supplier to EMBL in writing with advance notice of 2 months. EMBL retains the right to object to the intended changes and it may withhold its consent, within a period	EMBL requires control over the scope and type of services and/or goods provided. We would expect that proposed changes are either triggered because they are required by law, or objective improvements to the service and/or goods provided.  In both cases, we need to reserve certain rights to object in material cases and/or terminate the agreement.	

	of 14 days from the date of receipt of the notice. EMBL reserves the right to terminate the Agreement upon 30 days prior written notice.		
2. Warranties and SLA	<p>Supplier warrants that:</p> <p>(a) it will process data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments and with EMBL's documented instructions; and</p> <p>(b) it will co-operate with EMBL in all matters relating to the Services, and comply with all instructions of EMBL;</p> <p>(c) the Goods will: (a) correspond with their description and applicable specification; (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by EMBL, expressly or by implication, and in this respect EMBL relies on the Supplier's skill and judgment; (c) where applicable, be free from defects in design, materials and workmanship; (d) be properly packed and secured in such manner as to enable them to reach their destination in good condition and (e) comply with all applicable statutory and regulatory requirements;</p> <p>(d) the Services will be performed</p>	EMBL are asking for customary warranties that provide us assurance (and legal remedies) that the services and/or goods are provided as expected and agreed.	

	<p>with reasonable skill and care, in accordance with good industry practice, in a timely and professional manner using appropriately qualified and experienced personnel and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Agreement;</p> <p>(d) the Services will be performed in accordance with any health and safety rules and regulations and any other security requirements and at the location provided under the tender documentation to this Agreement and in accordance with all applicable laws and regulations;</p> <p>(e) it will provide all equipment, tools and vehicles and such other items as are required to provide the Goods and the Services;</p> <p>(f) it has, and shall maintain, at all times, all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Agreement;</p> <p>(g) it owns or has obtained valid licences of all third party Intellectual Property Rights which are necessary for the performance of any of its obligations hereunder;</p> <p>(h) by performing the Services, manufacturing or supplying the Goods under this Agreement, Supplier will not infringe any</p>	
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	<p>Intellectual Property Rights of any third party;</p> <p>(i) the Services will at all times conform to the service level description outlined in the tender documentation;</p> <p>(j) it will hold all materials, equipment and tools, drawings, specifications and data supplied by EMBL to the Supplier (EMBL Materials) in safe custody at its own risk, maintain the EMBL Materials in good condition until returned to EMBL, and not dispose of or use the EMBL Materials other than in accordance with EMBL's written instructions or authorisation;</p> <p>(k) the Supplier will supply the Goods on the date specified in the Order/Agreement and shall meet any performance dates for the Services [specified in the Order/Agreement or] that EMBL notifies to the Supplier and time is of the essence in relation to any of those dates.</p>		
3. EMBL remedies for late delivery	<p>If the Supplier fails to deliver the Goods by the applicable date or to perform the Services by the applicable date, EMBL shall, without limiting or affecting other rights or remedies available to it, have any one or more of the following rights and remedies:</p> <p>(a) to terminate the Agreement</p>		

	<p>with immediate effect by giving written notice to the Supplier;</p> <p>(b) to refuse to accept any subsequent performance of the Services or delivery of the Goods which the Supplier attempts to make;</p> <p>(c) to recover from the Supplier any costs incurred by EMBL in obtaining substitute goods or services from a third party;</p> <p>(d) to require a refund from the Supplier of sums paid in advance (if any) for Services that the Supplier has not provided or Goods that it has not delivered; and</p> <p>(e) to claim damages for any additional costs, loss or expenses incurred by EMBL which are in any way attributable to the Supplier's failure to meet such dates.</p>		
4. Indemnity by Supplier	<p>The Supplier agrees to indemnify and keep indemnified and defend at its own expense EMBL from and against all costs, claims, fines, damages or expenses incurred by EMBL or for which EMBL may become liable due to any failure by the Supplier or its employees or agents to comply with any of its obligations under this Agreement. The Supplier agrees to maintain this indemnity until such time as 6 years</p>	<p>EMBL require certain indemnities to be provided by supplier, while EMBL itself will not be obliged to provide any indemnity for supplier's benefit. The model wording contains concepts we would typically expect to see provided, along with the financial coverage.</p>	

	<p>after the agreement with EMBL terminates for whatever reason</p> <p>a. The Supplier also agrees to indemnify EMBL and defend at its own expense EMBL from and against all costs, claims, fines, damages or expenses that may arise due to, but in no way limited to,</p> <p>(1) any 3rd party IP claims</p> <p>(2) any breaches of confidentiality</p> <p>(3) any data protection deviations</p> <p>(4) any Security breaches</p> <p>(5) any breaches by subcontractors or subprocessors</p> <p>(6) any claim made against EMBL by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, as delivered, or any other Deliverables; and</p> <p>(7) any claim made against EMBL by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Agreement by the Supplier, its employees, agents or</p>		
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	<p>subcontractors.</p> <p>b. The Supplier shall take out insurance sufficient to cover any payment that may be required under the indemnity and produce the policy and receipt for premium paid, to the EMBL on request.</p> <p>c. The indemnity is not subject to any limitations or exclusions of liability contained elsewhere in the Agreement.</p>		
5. Limitation of Liability	<p>1. Parties do not limit or exclude their liability:</p> <p>a) for acts or omission due to willful misconduct;</p> <p>b) in respect of any deceit, theft, fraud or fraudulent misrepresentation by its employees, consultants or Subcontractors;</p> <p>c) for death or personal injury caused by its negligence or that of its employees, consultants or subcontractors, as applicable;</p> <p>d) for violation of Intellectual Property Rights;</p> <p>e) for breaches of Confidentiality;</p> <p>f) for breaches of Data Protection obligations;</p> <p>g) to the extent that such limitation or exclusion is not</p>	<p>EMBL would expect customary wording on limitation of liability to be provided, and we would be prepared to accept financial limitations commensurate with the risks involved and the value (or multiples thereof) of the agreement.</p>	

	<p>permitted by law.</p> <p>2. Subject to clause 1, the maximum aggregate liability of either Party arising under or in connection with this Agreement (whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation (whether innocent or negligent), restitution or otherwise) shall be limited to an appropriate amount, i.e. Agreement value or a multiple thereof..</p>		
6. Data Protection	<p>EMBL and the Supplier acknowledge that for the purposes of the provision of the Services, the Supplier is a data processor on behalf of EMBL, with the exception of any data that, as a medical services provider, the Supplier, under applicable legislation and/or due to the nature of the specific service, acts as a controller. For this reason, a Data Processing Agreement shall be signed between EMBL and the Supplier, regulating, at least and without limitation, the following issues,:</p> <p>-The Supplier's obligation to process Personal Data only to the extent, and in such a manner, as is necessary for the purposes of the provision of the Services, in accordance with EMBL's instructions from time to time and the prohibition of processing such Personal Data for any other purpose.</p>	<p>EMBL, being an intergovernmental institution, is subject to a self-regulatory framework on data protection. Further details are available at:</p> <p><a href="https://www.embl.de/aboutus/administration/legal-services/data-protection/index.html">https://www.embl.de/aboutus/administration/legal-services/data-protection/index.html</a></p> <p>The supplier will act as EMBL's data processor, and requires that EMBL can exercise a robust level of control (and audit) over supplier's processing, including extending to the selection of sub-processors in some cases.</p>	

	<ul style="list-style-type: none"><li>-The Supplier's obligations as a processor in relation to (a) record keeping, (b) provision of assistance to EMBL in the preparation of Data Protection Impact Assessments and (c) in responding to data subject requests (such as request for access, rectification, erasure, etc.).</li><li>-The Supplier's obligations to notify EMBL in case of a Data Breach, or in any case of breach of the Data Processing Agreement and/or the applicable legislation, and the obligation to assist EMBL in responding to such breaches and in mitigating any adverse effects.</li><li>-The Supplier's obligations in relation to (a) the facilities and/or systems where the Personal Data will be processed, (b) the Supplier's personnel and (c) the subcontractors/sub-processors engaged by the Supplier for the processing of the Personal Data.</li><li>-The Technical and Organisational Measures (TOMs) that the Supplier will be obliged to implement and EMBL's right to audit the Supplier's compliance with such TOMs, the Data Processing Agreement and the applicable legislation.</li><li>-The Supplier's obligations in relation the Personal Data upon expiry and/or termination of the</li></ul>	
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	<p>Services.</p> <p>EMBL, as the Controller, having the status of an intergovernmental institution, is not subject to national data protection legislation. Consequently, no provision of the Data Processing Agreement will constitute a waiver of any of the privileges and immunities accorded to EMBL as an intergovernmental institution, or constitute acceptance by EMBL of any of the obligations contained in any national data protection law on the party controlling Personal Data. Processing of personal data by EMBL will only be subject to its Internal Policy No. 68 on General Data Protection. However, the Supplier, without prejudice to EMBL's privileges and immunities, will still be required to comply with its independent obligation as a processor and, where applicable, as a controller, under the applicable national data protection legislation.</p>		
7. Third Party and Law Enforcement Access	<p>Each Party will in respect of any Confidential Information of which it is the Recipient:</p> <p>1. use that Confidential Information only if and to the extent necessary for the purposes of performing its obligations under this agreement,</p>	<p>In order to reflect EMBL's international status, which includes the inviolability of our premises and archives in cases of attempted 3rd party data access, we require certain processes to be reflected in the agreement and operationally viable at supplier to ensure our data is either not accessed at all, or all possible measures are undertaken both at</p>	

	<p>and</p> <p>2. not disclose that Confidential Information to any person without the other party's prior written consent except for;</p> <p>2a. those employees who need access to the Confidential Information to meet the Supplier's obligations under this agreement; and</p> <p>2b. In the case of any access by an employee, such part or parts of the Confidential Information as is strictly necessary for performance of that employee's duties.</p> <p>3. Supplier will otherwise use its best endeavors to protect and maintain the confidentiality of that Confidential Information.</p> <p>4. If any information relating to EMBL or any data, including the Personal Data being processed by the Supplier, is sought from the other Party by any governmental body, including by regulatory and/or supervisory authorities, in such Party shall (i) promptly notify EMBL of this fact, (ii) consult with EMBL regarding the Party's response to the demand or request by such governmental body; (iii) cooperate with EMBL's reasonable requests in connections with efforts by EMBL to ensure that its privileges and</p>	<p>supplier and EMBL prior to access being granted.</p>	
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immunities are upheld; (iv) to the extent permissible by law, seek to contest or challenge the demand or request based on, inter alia, EMBL's status, including its privileges and immunities, contractual arrangements, etc.; and (v) upon EMBL's request, provide EMBL a true, correct and complete copy of the Party's response to such demand or request, and keep EMBL informed of all developments and communications with the governmental body.

5. In any event of such request for disclosure from a governmental body, the Party shall: (i) inform such governmental body that the Party understands that such information and data is privileged under the statutory rules applicable to EMBL and request such governmental body to redirect the relevant request for disclosure directly to EMBL; and (ii) in the event that such governmental body still seeks such information and data, request such governmental body that EMBL be given the opportunity to present before such governmental body EMBL's position regarding the confidentiality of such EMBL data or information; and (iii) where a Party is prohibited by applicable law or the governmental body from notifying EMBL of such request, so notify EMBL promptly upon the lapse, termination, removal

	or modification of such prohibition.		
8. Compliance with applicable laws etc	Supplier acknowledges that, as an intergovernmental institution, EMBL enjoys a number of privileges and immunities necessary for the exercise of its official functions. These include, but are not limited to, the inviolability of EMBL's archives and immunity from suit and legal process.	Any agreement would need to reflect that EMBL is not subject to national laws whether UK or otherwise and instead self regulates with a system of internal policies, staff and financial rules and regulations and codes. For clarity , EMBL is not subject to UK, European or other national employment or data protection laws. Further information can be found at <a href="https://www.embl.org/about/embl-legal-status/">https://www.embl.org/about/embl-legal-status/</a>	
9. Governing Law and Dispute Resolution	<p>Any dispute arising out of or in connection with this agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this clause.</p> <p>The number of arbitrators shall be three; one to be nominated by the Claimant; one to be nominated by the Respondent; and the third and presiding arbitrator to be nominated by the two arbitrators so nominated within 28 days of the nomination of the second arbitrator.</p> <p>The parties have further agreed as follows:</p> <p>Under Article 15.9 of the Rules and unless a hearing is requested by either party at any earlier stage, the</p>	We require binding arbitration as the sole means to resolve disputes, recognizing EMBL's privileges and immunities, and the substantive law of England and Wales. The model wording suggests LCIA rules.	

	<p>Arbitral Tribunal shall decide within 28 days after conclusion of the written stage of the arbitration if a hearing will be necessary to make its final award.</p> <p>Under Article 15.10 of the Rules, the Arbitral Tribunal shall complete its deliberations within three (3) months of the last submission from the parties (whether written or oral), unless the Arbitral Tribunal has reasonable grounds to extend such deadline, in which case it may do so without the parties' approval and shall notify the parties accordingly of a new deadline for its deliberations as well as the grounds for such extension.</p> <p>The seat, or legal place, of arbitration shall be Cambridge (UK).</p> <p>The language to be used in the arbitral proceedings shall be English.</p>		
	<p>The parties are not entitled to seek injunctive relief, specific performance or other equitable relief (for any threatened or actual breach of the terms of this agreement) from any court, tribunal or other forum, save that the parties are always free to seek such relief from the Arbitral Tribunal appointed pursuant to this clause and also to seek the expedited formation of the Arbitral</p>		

	<p>Tribunal and/or the appointment of an Emergency Arbitrator.</p> <p>The governing law of the agreement shall be the substantive law of England and Wales.</p> <p>Nothing in this Agreement nor any document or activity under or in relation thereto shall be deemed or interpreted as a waiver, express or implied, of any privileges or immunities accorded to EMBL by its constituent documents or international law, or as the acceptance by EMBL of the jurisdiction of (i) the courts of any country, including in case of injunctive relief sought, or (ii) any national regulatory or supervisory authority. Any references to any sets of rules, including, but not limited to, national laws, statutes, regulations, guidelines, shall, with respect to EMBL, be understood to refer to those sets of rules only to the extent these rules are applicable to EMBL as an intergovernmental institution, and, where EMBL has adopted its own sets of rules, to those sets of rules instead.</p>	
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