

Sistema Socio Sanitario



Regione
Lombardia

ASST Cremona

Prot. _____

OUTLINE CONTRACT

**NEGOTIATED PROCEDURE PURSUANT TO ART. 63, PARAGRAPH 4, OF LEGISLATIVE DECREE
NO. 50/2016 AS AMENDED AND SUPPLEMENTED FOR THE ASSIGNMENT OF THE FINAL AND
WORKING PLAN OF THE NEW HOSPITAL IN CREMONA**

CIG: 9651909F43

CUP: I18I22000610003



BETWEEN

Azienda Socio-Sanitaria Territoriale di Cremona (Local Healthcare Authority of Cremona), Fiscal Code and VAT no. 01629400191, with registered office in Cremona, Viale Concordia no. 1 - represented by Mr. Maurizio Bracchi, Director of the S.C. Nuovo Ospedale, delegated to sign this contract pursuant to the resolution of the General Manager no. ____ of _____, hereinafter referred to as "Cremona ASST" or "Contracting Authority" for brevity;

AND

_____, P.I. _____ - registered office in _____,
Via _____ in the person of its legal representative *pro tempore*, Dr. _____,
pursuant to Special Power of Attorney of Notary Public Dr. _____ no. _____ of Repertory of
_____ (or proxy Prot. no. _____ of _____);

WHEREAS:

- The Azienda Socio-Sanitaria Territoriale di Cremona, on [#] 2023, pursuant to L.R. 24 July 2018, no. 10, called the International Design Competition "*New Hospital in Cremona*" aimed at the acquisition of a project with a level of depth equal to that of a technical and economic feasibility project, for the construction of the new building (hereinafter also only "Building") of the Cremona ASST, to be carried out by means of a restricted procedure, pursuant to Articles 61, paragraph 3 and 152, paragraph 1, letter a), of Legislative Decree 50/2016 (hereinafter also only "Code");
- In the notice relating to the Competition referred to in the previews point, the Cremona ASST has envisaged entrusting the final and executive design of the Building to the winner of the Competition, by means of a negotiated procedure pursuant to Article 63, paragraph 4, of the Code, attaching this contract outline to the same notice;
- as a result of the progress of the Competition referred to in the preceding paragraph, the winner of the procedure was [#], as per the decision of [#];
- by deed of [#], the Cremona ASST commenced the negotiated procedure pursuant to Article 63, paragraph 4, of the Public Contracts Code, for the assignment of the final and executive design for the construction works of the Building and requested the winner of the Competition to submit its offer;
- the Cremona ASST has successfully carried out the verifications ensuring that the winner possesses the general requirements and the economic, financial and technical-organisational capability requirements specified in Article 3 of the competition notice;
- the Parties have agreed to the contents of the Offer and it is their intention to proceed with the signing of this Contract;
- verifications on the legal requirements for signing of contracts with public administrations were successful;

➤ the performance of the contract is subject to the full, unconditional and unbreakable observance of all the agreements and conditions contained in the following documents to be considered an integral and substantial part of this contract even if not materially attached to it:

- Notice of competition;
- Design Guideline Document and its annexes;
- Code of Conduct for personnel and Code of Ethics of the Cremona Local Healthcare Authority", as per Decree of the General Director no. 355 of 30/11/2018, adopted pursuant to Presidential Decree 16/4/2013, no. 62 and published on the website www.asst-cremona.it (section "Transparent Administration" - General Provisions - General Acts).

The following documents are attached to this contract and form an integral and substantial part thereof:

- the Integrity Pact on public contracts of the Lombardy Region and the Entities of the Regional System as per DGR (Decree of the Regional Government) no. XI/1751 of 17/06/2019 signed by the company;
 - Privacy policy in accordance with Article 13 of Regulation (EU) 2016/679 on the protection of individuals with regard to the processing of personal data.
- The RUP (Program manager) is identified in the person of Arch. Maurizio Bracchi;
- The administrative support staff to the RUP (Program manager) are Ms. Greta Cogorno, Ms. Valentina Araldi and Ms. Elena Zanibelli;
- The technical support collaborator to the RUP (Program manager) is Ing. Donato Trioni;
- The contract amount for the full and perfect performance of the contract is set at € _____ plus VAT. __%, subject to any changes provided for in the competition documentation, as well as without prejudice to the possibility of extending the contract by recourse to Article 106, paragraph 12, Legislative Decree no. 50/2016 "[...] if during the execution it becomes necessary to increase the services up to a fifth of the contractual amount [...]".

NOW, THEREFORE

THE FOLLOWING IS AGREED AND STIPULATED

Article 1 - Applicable Rules

1.1. The premises, acts and documents referred to therein, even if not materially annexed, as well as the annexes to this Contract, including the documents annexed thereto, shall form an integral and substantial part of this Contract.

1.2. The performance of this Contract shall be governed:

- by the provisions of Legislative Decree No. 50/2016 and its implementing provisions;
- by Presidential Decree No. 207/2010, for the parts still in force;
- by Legislative Decree No. 81/2008;

- the Civil Code and other regulations on private law contracts to the extent not regulated by the above provisions.

Article 2 - Object

2.1. The object of this contract is the awarding of design services, pursuant to Articles 23 and 24 of the Public Contracts Code and Articles 14-43 of Presidential Decree No. 207/2010, relating to the construction of the New Hospital of Cremona, which will be located at Viale Concordia No. 1 in Cremona, as well as all the provisions of the Competition documents and the Offer.

In particular, with reference to the above, the subject matter of the Award includes the following Performances (also collectively referred to as the "Project"):

- Final Design (PD);
- working plan comprising specifications and bills of quantity (Italian Progetto Esecutivo).

2.2. The Project must in any case comply with the national and regional laws and regulations in force concerning public contracts, even if they have come into force during the course of the contractual relationship, be strictly consistent with the urban planning instruments relating to the area on which the Building and the other elements subject to feasibility planning by the Contractor will be located, as well as strictly consistent with the prescriptions contained in the Competition documentation and with the winning project of the aforesaid Competition by the Cremona ASST, including, in particular, compliance with the maximum timeframes for the realisation of the works designed by the Contractor (hereinafter, as a whole, also referred to as the "Works") and the maximum amount of expenditure indicated therein.

2.3. The cost for the realisation of the Works to be designed by the Contractor is estimated at € 198,000,000.00, VAT excluded, and is intended for the realisation of the intervention according to the performance levels indicated in the Design Guidelines Document.

2.4. The Contractor shall be obliged to complete the Performances on its own, with organisation of means and management at its own risk, and may resort to subcontracting within the limits and under the conditions set forth in the relevant laws in force.

Article 3 - Payments

3.1. The Payment for the completion of the Performances covered by this Contract shall be determined, in an amount equal to the amount indicated in the annexed "*Calculation of Fees Pursuant to Ministerial Decree of 17 June 2016*" reduced by a percentage equal to 20%, plus VAT and supplementary contributions to the Autonomous Professional Institutions, if due, for a value equal to € 8,609,415.21 (also only the "Payment"), of which:

- € 4,258,614.91 for Final Design activities;
- € 4,350,800.30 for Executive Design activities.

Since these are services of an intellectual nature, safety charges for interference risks are € 00.00.

3.2. The Payment shall be understood as including and remunerating all that is necessary, also in an ancillary and complementary manner, with no exclusions or exceptions, for the punctual performance of the Services, in a workmanlike manner, in all its performance components, in compliance with the applicable regulations, with the provisions of this Contract and the documents attached hereto or referred to by it and in accordance with the provisions of the Offer.

Article 4 - Invoicing and payment terms

4.1. The Contractor shall issue invoices, in accordance with the procedures to be indicated later by the Cremona ASST, for the amounts accrued in consideration of the progress of the activities, and in particular upon achievement of the following *milestones*:

- 5% (five per cent) of the Payment, by way of advance payment, shall be invoiced following the signature of the Parties to this Agreement;
- 20% (twenty per cent) of the Payment shall be invoiced following the delivery by the Contractor of the final project to the Cremona ASST;
- 25% (twenty-five per cent) of the Payment shall be invoiced following the communication to the Licensee of the approval of the final project;
- 25% (twenty-five per cent) of the Payment shall be invoiced following the delivery by the Contractor of the executive project to the Cremona ASST;
- 25% (twenty-five per cent) of the Payment shall be invoiced following the communication to the Contractor of the approval of the executive project.

4.2. It should be noted that, before issuing an invoice for the purpose of payment of the service covered by this assignment, the Economic Operator is requested to advance the pro forma note in due time to this e-mail address: nuovo.ospedale@asst-cremona.it in order to obtain the approval of the RUP.

Subsequently, the contractor shall send the invoice to the contracting authority in electronic form, in accordance with the specifications contained in Ministerial Decree No. 55 of 3 April 2013 concerning '*Regulations on the issue, transmission and receipt of electronic invoices to be applied to public administrations pursuant to Article 1, paragraphs 209 to 213 of Law No. 244 of 24 December 2007*'.

In addition to the CIG (Contract reference number) and the CUP (Project Code), the invoice must include certain data indicated in the electronic order transmitted by the contracting station, namely: order identifier (ID), date of order issue and sender identification.

The Contracting Authority's unique code is as follows: UFDXLU.

The invoice will be settled within sixty days from its acceptance, received in electronic format through the national interchange system (SDI), after the acquisition of the single document of contributory regularity (DURC), certifying the positive outcome of the relevant checks.

As per resolution no. 358 of 27 March 2018, pursuant to Articles 69 and 70 of R.D. no. 2440/1923 and Article 9, Appendix E, of Law no. 2248/1865, the Cremona Local Health Authority does not accept or

adhere to the assignment of credit. It also rejects the assignments of credit pursuant to Article 106(13) of Legislative Decree No. 50 of 18 April 2016.

4.3. Pursuant to Article 30, paragraph 5 bis, of the Code, on the amount of each instalment, a withholding of 0.50% (zero point fifty per cent) shall be made as a guarantee that the Contractor complies with the rules and prescriptions of collective agreements, laws and regulations on the protection, safety, health, insurance and assistance of workers. The withholding shall be released upon approval by Cremona ASST of the executive design, subject to invoicing of the relative amount.

4.4. In the case of temporary groupings of competitors, in accordance with the provisions of the memorandum of association, each party constituting the group shall be required to invoice the transactions relating to the performance of the service for which it is responsible. The agent company shall be responsible for taking care of and checking in advance the correctness of the invoices issued by the mandators. In the case of temporary groups of competitors, payments shall be made exclusively in the hands of the agent, subject to pro-rata invoicing by each member of the group.

Article 5 - Traceability of financial flows

5.1. By entering into this Contract, the Contractor assumes, under penalty of the absolute nullity of this Contract, the obligations of traceability of financial flows set forth in Article 3 of Law No. 136/2010. The Contract shall be terminated by right in the event transactions are executed in breach of the provisions of Law No. 136/2010.

5.2. The Contractor, under its own exclusive responsibility, shall promptly notify Cremona ASST of any variations that may occur with regard to the above-mentioned crediting methods. In the absence of such communication, even if the variations are published in the manner required by law, the Contractor shall not be entitled to raise exceptions with regard to any delays in payment, nor with regard to payments already made.

Article 6 - Obligations of the Contractor

6.1. The Contractor shall be liable under civil and criminal law for all activities arising out of and in connection with this Contract and for all damages that may occur in the performance of the assignment, either directly or indirectly, to persons, including contractors, works and property.

6.2. The Contractor confirms that it has an adequate organisation for the performance of the activities covered by this Contract, which it undertakes to carry out with its own personnel and means, with the exception of any subcontracted or sub-entrusted parts.

6.3. The Contractor undertakes to comply with the laws, regulations, collective agreements and supplementary company agreements concerning labour relations, even if entered into after the conclusion of this Contract, in relation to all persons who perform activities on its behalf, whether as a direct employee or as a casual employee, consultant or of any other nature, and assumes all responsibility for damages and injuries that may be caused to or by said persons in the performance of any activity, directly or

indirectly, inherent in the services covered by this Contract, indemnifying and guaranteeing Cremona ASST from any burden, liability or damage that the latter may suffer.

6.4. The Contractor undertakes to comply with the laws on public works, labour, environment and safety, as well as with the current CCNL and CCPL of the building industry. The Contractor also undertakes to comply with the salary and contribution obligations in the performance of labour relations deriving from the Law and from the Collective Labour Agreements of every level signed by the Trade Unions, as well as with all the current labour safety and accident prevention regulations.

6.5. The Contractor undertakes to pay the personnel employed to carry out performances an economic, social security, regulatory, insurance and welfare treatment not less than the minimum treatment envisaged by the applicable regulations, indemnifying Cremona ASST as of now against any damage caused by its employees, collaborators, consultants, subcontractors or suppliers in general during the performance of the contract. The provisions of Article 30, paragraphs 5 and 6, of the Code shall apply.

6.6. The Contractor shall be solely responsible for anything that may happen to anyone working in its employ or on its behalf during the performance of the activities covered by this Contract.

6.7. In any case, it is expressly agreed, as of now, that the Contractor shall indemnify and hold harmless Cremona ASST in relation to any claims that may be brought in or out of court by the personnel used, by social security institutions or by any third party in connection with the performance of the individual activities and in relation to the application or breach of the applicable regulations.

6.8. The assignment covered by this Contract includes:

- the drafting of the final design and working plan comprising specifications and bills of quantity (Italian Progetto Esecutivo) of the Works, in compliance with the provisions of Articles 23 et seq. of Legislative Decree no. 50/2016 and Articles 14 to 43 of Presidential Decree no. 207/2010;
- the execution of the surveys, investigations, verifications and assessments necessary for the complete elaboration of the Project, as better described in the documents attached to the Competition;
- the activities of drafting drawings, assistance and technical and administrative support, including support in obtaining all the necessary authorisations from the Authorisation Bodies in charge of the execution of the project (Lombardy Region, Municipality, Province, ATS, Fire Brigade, ARPA (Regional Agency for Environment Protection) etc.). In the case of service conferences, the Contractor shall also assist the Cremona ASST, if participating, during all the meetings convened and undertake to hold preparatory meetings at the Bodies that will make it possible to reduce the number of such meetings;
- in general, the performance of any other professional services attributed by the regulations in force to the person in charge of the three design levels of the Works.

6.9. For each design drawing and any other document prepared for each phase of each project level, the Contractor will deliver to Cremona ASST **no. five paper copies for Final Design/Working Plan comprising specifications and bills of quantity (Italian Progetto Esecutivo) and no. one copy recorded on digital support - both in editable and reproducible format and in .pdf format**, signed

and stamped in accordance with the provisions issued by Cremona ASST. Any additional copies will be prepared by the Contractor at the request of the Cremona ASST, subject to reimbursement of only the out-of-pocket expenses for reproduction borne by the Cremona ASST

All project documentation, and any other related documents or papers, must be developed according to the BIM methodology and returned to Cremona ASST in the manner prescribed by Cremona ASST.

6.10. The remuneration for all activities referred to in this Article is included in the Payment referred to in Article 4 of this Contract.

Article 7 - Design Development

7.1. The Contractor shall introduce in the Project, during the authorisation phase, all the changes requested by Cremona ASST that are aimed at optimising the Project and are justified by objective and recognisable technical-regulatory requirements, even if dependent on provisions that have arisen during the development of the design, including the prescriptions of the Authorising Bodies and Supplying Bodies, without this entitling the Contractor to greater compensation. Such changes may also entail a decrease in the work to be designed.

7.2. The Parties shall discuss with each other on an ongoing basis with regard to the development of the activities covered by this Contract, undertaking as of now to agree, within five days from the date of signature of the Contract, on a schedule of periodic meetings on a weekly basis. The Contractor also undertakes to coordinate with the person or body in charge of the validation referred to in Article 26 of Legislative Decree No. 50/2016, through constant comparisons in order to minimise any risks of a negative outcome of the verification of the Project.

7.3. The meetings referred to in Article 7.2, the minutes of which shall be drawn up and signed by all participants, shall be attended by:

- for the Cremona ASST: the Program Manager (hereinafter also referred to as "RUP"), or a person delegated by the latter, as well as the technicians of the Cremona ASST that the Program Manager decides to convene from time to time;
- for the Contractor: the coordinator pursuant to Article 31, paragraph 8, of the Code, or/and any other person identified for the purpose by the Contractor or any other collaborators whose participation is required by the Cremona ASST.

Article 8 - Contract Duration

8.1. This Agreement shall run from the date of its signature until the mutual performance is fully completed.

8.2. The **final design**, comprising all that is required by this Contract and by the applicable laws and regulations, as well as the verifications with the competent Authorities, shall be completed within and no later than [#] natural and consecutive days from the date of issuance of the specific service order of commencement of the final design by the RUP.

8.3. The **working plan comprising specifications and bills of quantity** (Progetto Esecutivo), including all that is required by this Contract and by the applicable laws and regulations, shall be completed within and no later than [#] natural and consecutive days from the date of issue of the specific service order of commencement of the executive project design by the RUP.

8.4. The above deadlines for the designs will also take into consideration and include survey activities, investigations, research and tests for the best definition of the state of affairs, as well as the preparatory activities for obtaining opinions, without reservations and acts of assent, however denominated, such as, for example, the presentation and informal sharing of the design solutions with the competent Bodies.

8.5. On the other hand, the time required for the completion of the services conference and/or for the acquisition of opinions or authorisations, however denominated, as well as the time required for the verification, validation and approval of the projects will not be considered in the above time limits, although they remain the responsibility of the designer.

Article 9 - Project Verification, Validation and Approval

9.1. The Cremona ASST, through the RUP and with the assistance of the persons appointed for this purpose, will carry out design monitoring activities during the development of the two design stages.

9.2. The verification of each project level (final and executive) will be carried out, in accordance with the provisions of Article 26 of Legislative Decree no. 50/2016, by the economic operator identified by the Cremona ASST on the basis of the regulations in force.

9.3. The validation will be signed by the RUP, making precise reference to the final report of the subject in charge of the verification and to any counter-deductions by the Contractor. Subsequently, the projects shall be submitted to the Cremona ASST for approval in accordance with the provisions of Article 27 of Legislative Decree no. 50/2016.

In the event that the Project delivered for verification does not adequately meet the evaluation criteria as per art. 9.2, Cremona ASST shall request the Contractor to make the necessary changes and additions, assigning a deadline consistent with the extent of the changes requested.

9.5. In the event of non-compliance with the deadlines referred to in Article 9.4, the documents subject to the verification procedure shall be deemed not to have been submitted on time and the penalties referred to in Article 11 of this Contract shall be applied.

9.6. The project activity, if any, referred to in Clause 9.4. above shall in no case give rise to higher fees if attributable to the Contractor. In default, Article 10 below shall apply.

Article 10 - Amendments and variations

10.1. It is the right of Cremona ASST to request the Contractor to make changes, additions or variations to the Project, both while it is being drafted and when it has already been drafted and submitted, pursuant to and for the purposes of Article 106 of Legislative Decree no. 50/2016.



Article 11 - Penalties

11.1. Failure to comply with the deadlines for the delivery of each project level, as set forth in Article 8 above, as well as failure to comply with the deadlines set forth in Article 9.4. of this Contract, which is due to a cause attributable to the Contractor, shall entail the application of a penalty equal to 1 (one) per thousand of the individual performance for each day of delay starting from the expiry of the deadline for fulfilment.

11.2. The above-mentioned penalties shall be imposed by means of a charge note to be charged against future payments, upon notification to the Contractor by the RUP by certified e-mail. The penalties shall be deemed accepted eight days after the receipt of the notice without the Contractor having submitted justified counter-deductions. The amounts charged shall be recovered by means of direct deduction from the Payment relating to the phase in which the measure is taken.

11.3. The application of the penalty shall not preclude Cremona ASST from claiming compensation for any greater damage as a consequence of the delay.

11.4. It is understood that the total amount of the penalty may not exceed 10% of the amount of this Contract, failing which the Contract shall be terminated to the detriment of the Contractor, with at least ten days' notice by means of a PEC certified email.

Art. 12 Interruption or reduction of assignment

12.1. The ASST reserves the right to withdraw unilaterally from the contract, pursuant to art. 1373 of the Italian Civil Code, at any time it deems opportune, with simple notice, to be notified to the Contractor by PEC. Following termination, the Cremona ASST shall pay only for the services actually performed, with the Contractor waiving any other compensation, indemnity or damages.

12.2. If, in its unquestionable judgement, the Cremona ASST deems it not convenient to proceed with the completion of one or more parts of the Project, it may declare the assignment exhausted, without the possibility of opposition or claim on the part of the Contractor. Following the reduction of the assignment, the ASST shall only pay for the services actually performed.

Article 13 - Temporary Suspension of the Effectiveness of the Contract - Force Majeure

13.1. For justified reasons, ASST shall have the right to temporarily suspend the performance of the assignment at its own discretion. The suspension shall be notified to the Contractor of the service by means of a PEC certified email and shall take effect from the date of receipt by the Contractor.

13.2. Should the suspension of the Contract exceed, on a single occasion or in its entirety, the period of thirty natural days, limited to the period of suspension exceeding the first thirty natural days, the Contractor shall have the right to reimbursement of the fixed charges relating to the personnel employed in the performance of the assignment at the time the suspension takes effect, suitably documented to Cremona ASST. In this case, the Contractor expressly waives any other compensation, indemnity or damages, as well as the corresponding actions.

13.3. Should a Force Majeure event occur, the Contractor, whose fulfilment of obligations is prevented or delayed by the event, shall promptly notify Cremona ASST:

- i.* indicating the foreseeable duration of the event, with a description thereof, and the impact thereof on the performance of its obligations;
- ii.* indicating the remedies it intends to activate.

Subsequently, the Parties shall verify these circumstances by means of a special report and identify, in an adversarial manner, possible joint actions to mitigate the effects caused by the Force Majeure event.

13.4. Upon the occurrence of a Force Majeure event leading to a delay in the performance of the Contract, the Contractor shall be entitled to an extension of the contractual terms for a period equal to the actual delay.

Should the Force Majeure event lead to a suspension of the activity for a period not exceeding 30 natural and consecutive days, starting from the above-mentioned communication, the Contractor shall only be entitled to an extension of the time for the performance of the assignment equal to the actual delay, with the exclusion of any compensation, indemnity or damages.

Article 14 - Guarantees and insurance cover

14.1. The final performance bond required pursuant to Article 103 of Legislative Decree No. 50/2016 and subsequent amendments and additions is set at € _____ and is lodged by the company _____ by means of Surety Policy No. _____ of _____ issued by _____ of _____. The guarantee shall cover the charges for non-fulfilment or incorrect fulfilment and shall cease to have effect only on the date of issue of the certificate of regular performance. The Contractor undertakes to keep the aforesaid guarantee valid and effective for the entire duration of the contract and, in any case, until the date of issuance of the certificate of regular performance, under penalty of legal termination thereof.

14.2. The security deposit expressly provides for the waiver of the principal debtor's prior enforcement, the waiver of the objection pursuant to Article 1957, paragraph 2, of the Civil Code, as well as the operability of the surety within fifteen days, upon the beneficiary's simple and first written request.

14.3. The beneficiary of the aforesaid guarantee shall be entitled to forfeit the security deposit, in whole or in part, for any damage it claims to have suffered, without prejudice to its rights against the Contractor for the reimbursement of any further damage in excess of the amount forfeited.

14.4. The beneficiary shall be entitled to make direct use of the security deposit for the application of penalties and/or for the fulfilment of contractual obligations, without prejudice in any case to compensation for greater damages.

14.5. In any case, the Contractor shall be obliged to reinstate the security deposit of which the Beneficiary has availed itself, in whole or in part, during the performance of the Contract, within the term of ten days from receipt of the relevant request.



14.6. In the event of non-fulfilment of this obligation, Cremona ASST has the right to declare this Contract terminated by right.

14.7. Insurance cover for liability for material and non-material damage to third parties and third party property is provided by the Company _____ by means of insurance policy no. _____ issued by _____ valid from _____ to _____.

On the occurrence of the expiry of the policy, the company undertakes to transmit to the Cremona ASST, documentation attesting to its renewal.

Article 15 - Interdisciplinary Design Group

15.1. The Contractor, for the purpose of entering into this Contract, has indicated the composition of the design team, as governed by Art. 3 of the Notice of Competition.

15.2. Any changes in the design team must be communicated to and approved by Cremona ASST in advance.

15.3. The Cremona ASST has the right to request, at any time and for justified reasons, due to and/or ascribable to the noted professional unsuitability of the personnel in charge of performing the Services object of this Contract, the replacement of the same; in the event of a request for replacement, the Contractor must proceed with the same within ten natural and consecutive days from receipt of the formal request by the Cremona ASST.

15.4. In any case, the personnel proposed for replacement must have the requisites and professional skills that are not inferior to those replaced and must in any case be approved by Cremona ASST.

Article 16 - Project Ownership

16.1. The Project shall be and remain the full and absolute property of Cremona ASST, which shall be free to use, reproduce or publicise it. It may also, at its own unquestionable judgement, execute it or not, as well as introduce, in the manner and with the means it deems most appropriate, all the variations and additions that will be recognised as necessary or opportune.

16.2 The Contractor shall not use in any way whatsoever the work carried out under the Entrusting without the prior consent of Cremona ASST.

16.3 The Contractor shall assume all liability resulting from the use of devices or the adoption of technical or other solutions that infringe the patent rights, copyrights and in general the private property rights of others and that are used by the same for the performance of the contract.

If legal action is brought against the Cremona ASST by third parties claiming rights on the technical or other solutions used by the Contractor for the performance of the contract, the latter shall bear all the consequent charges, including any expenses incurred for legal defence. In this case, Cremona ASST shall promptly inform the Contractor of the aforesaid legal action.

Article 17 - Termination, express termination clause and withdrawal

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17.1. This Contract may be terminated pursuant to Art. 1453 and 1454 of the Civil Code in the case of serious and repeated breaches of contract, in the case of non-conformity of the Performances carried out by the Contractor with what is indicated in this Contract; in the case of suspension or interruption of the contractual activities for reasons not dependent on force majeure or on non-fulfilment or on the fault of Cremona ASST; in the event of failure on the part of the Contractor to comply with its obligations, under the applicable social security and insurance laws and the relevant national and local labour contracts, when it has received a notice from Cremona ASST specifically identifying the alleged non-fulfilment and has not complied within the peremptory term of thirty days from receipt of the notice from Cremona ASST.

17.2. Cremona ASST reserves the right to terminate the Contract, pursuant to and for the purposes of Article 1456 of the Civil Code, without the need for prior warning and without prejudice to the claim for any greater damages and consequent expenses to be borne by the successful contractor, in the following cases

- ascertainment of the lack or loss of any of the subjective requirements set out in Article 80 of Legislative Decree No. 50/2016, the lack or loss of which entails the legal termination of the Contract;
- gross negligence or fraud or in the other cases referred to in Article 108 of Legislative Decree No. 50/2016 in the performance of contractual obligations;
- application of the penalties provided for in Article 11 above for a total amount exceeding 10% of the contractual amount;
- not expressly authorised subcontracting;
- violation of Cremona's ASST Code of Ethics;
- breach of payment traceability provisions;
- application of a mafia-type crime prevention measure against the Contractor;
- the perpetration by the Contractor of acts of corruption or disruption of the freedom of tenders or the possible discovery by the competent authorities of the above-mentioned unlawful acts.

17.3. The Cremona ASST reserves the right to unilaterally withdraw from the Contract in the event the Contractor is subjected to composition with creditors or bankruptcy. This right shall be exercised by sending, by means of PEC certified mail, a specific written notice.

17.4. Withdrawal shall not become effective until thirty days have elapsed from the date of receipt of the notice provided for in the preceding paragraph. From the effective date of withdrawal, the Contractor shall cease all contractual services, ensuring that such termination does not cause any damage to Cremona ASST.

17.5. In the event of termination of the Contract, the Contractor shall be paid only the amounts relating to the services already performed or in progress at the time of termination, as well as the expenses incurred as of the date of notice thereof, any other claim for damages being excluded, as well as any further compensation, indemnity and/or reimbursement of expenses.

Cremona ASST reserves the right to unilaterally withdraw from the Contract at any time, even if the relative services have already begun, applying the provisions of Article 109 of Legislative Decree no. 50/2016.

Article 18 – Transfer of Debt

18.1. In compliance with the principles of transparency and traceability of financial flows, it is the intention of the Cremona ASST to pay the sums due for the performance of the assignment *at issue* only to the company awarded the contract:

- Transfer of Debt deriving from the supply/service/work is not permitted, and therefore any application will be duly rejected by the aforesaid Company, in accordance with the provisions of Article 70 RD no. 2240/1923;
- it is in any case the specific intention of this ASST to refuse, pursuant to and for the purposes of Article 106, paragraph 13 of Legislative Decree No. 50/2016, any requests for assignment of credit;
- any irrevocable powers of attorney and/or warrants for collection in favour of third parties will not be taken into consideration for the purpose of settling the claim, and Cremona ASST, legitimately and with discharging effect, will make payments to the winner of the competition, the sole and only holder of the right to claim, with the consequent extinction of the obligatory relationship.

Article 19 - Privacy and Data Processing

19.1. Pursuant to and for the purposes of EU Regulation 679/2016 ("GDPR"), the Parties mutually acknowledge and agree that, in the performance of the activities under this Contract, personal data relating to each of them will be processed for purposes related to the performance of this Contract pursuant to Article 6.1(b) of the GDPR, including by electronic means or to implement obligations under applicable law or by the competent Authorities.

19.2. Each Party undertakes, in its capacity as data controller, to process the respective personal data in compliance with the security measures provided for by the GDPR, as well as in compliance with the regulations in force at the time of such processing, for the sole purpose of executing the services charged to it in this Contract.

19.3. Pursuant to and for the purposes of Article 13 of the EU Regulation of 27 April 2016, Cremona ASST processes the personal data of the data subject in the course of pre-contractual negotiations and to fulfil contractual, accounting, administrative and tax obligations, by means of electronic media and paper media. Data may also be communicated to third parties for administrative, accounting and tax purposes. The data controller is the Cremona ASST.

The complete information sheet drawn up in accordance with Article 13 of the Regulation is available at the offices and can be downloaded from the website www.asst-cremona.it.

Each Party acknowledges the circumstance that the respective data processing is compulsory, since it is carried out in performance of a contractual obligation, with the consequence that any refusal to provide the data would not allow the completion of this Contract, and also undertakes to process the data lawfully

and fairly, collecting and recording the same for specific, explicit and legitimate purposes, taking care to verify that the data are relevant, complete and not excessive in relation to the purposes for which they are collected or subsequently processed.

19.4. Each data subject is guaranteed the rights set forth in Articles 15 et seq. of the GDPR, consisting essentially of the right to receive information from the other contractual Party on the existence of the processing of his or her personal data, as well as to obtain the rectification, integration, updating, deletion or blocking thereof; each data subject shall also have the right to obtain a copy of his or her data, their integration, the restriction of processing and/or information on the storage period. To this end, each Party hereby declares to indemnify and hold harmless the other Party from any prejudice that may be caused to it as a consequence of non-compliance with the provisions contained in this article and/or any breach of the Privacy Law in force. For the above purposes, and in compliance with the regulations in force, the parties shall identify - for the purposes set forth in this contract - any data processors and persons in charge of data processing.

19.5. The Parties hereby declare that the personal data provided with this Agreement are accurate and correspond to the truth, releasing each other from any liability for material errors in compilation or for errors resulting from an inaccurate entry of such data in the electronic and paper files, without prejudice to the rights of the data subject under the GDPR.

19.6. As the entrusting subject of this contract requires the supplier to process personal data for which the Cremona ASST is the owner, an outsourcing processing responsibility pursuant to Article 28 of Regulation 679/2016/EU will be developed towards the supplier.

Article 20 - Confidentiality

20.1. The information in any way rendered and/or collected by each of the Parties and Cremona ASST during the execution of this Contract shall not be used for purposes other than those contemplated herein, nor shall it be disclosed or communicated to third parties without the prior written consent of the other Party, except, however, in the case in which the Party must comply with regulatory or legal obligations or with requests from Italian or foreign Authorities that cannot be refused, or such information is already in the public domain or has become so for causes other than the breach of confidentiality obligations established in this Contract.

20.2. The Parties further undertake not to make or permit others to make copies, extracts, notes, processing of any information or documents that come into their possession in connection with the performance of this Agreement.

20.3. The Parties also undertake to communicate and enforce the confidentiality obligations set out in this Article to their employees and to all those who, for whatever reason, cooperate or have cooperated in the performance of the services covered by this Contract.

20.4. The provisions and prohibitions set forth in this Article shall remain in force for two years from the expiration date of this Agreement, or from the termination, withdrawal or dissolution for any other reason of the relationship hereunder.

Article 21 - Anti-Corruption Clause

21.1. The Contractor undertakes to promptly notify the Prefect's Office and the Judicial Authority of any attempts at extortion that may have been made, in any way whatsoever, against it, its corporate bodies or the managers of its company. The aforementioned fulfilment is essential for the execution of this contract, and failure to fulfil it will result in the contract's express termination, pursuant to Article 1456 of the Italian Civil Code, whenever a precautionary measure has been ordered against public administrators who have exercised functions relating to the stipulation and execution of this contract, or when they have been committed for trial for the crime envisaged by Article 317 of the Italian Criminal Code.

21.2. The Cremona ASST may avail itself of the express termination clause pursuant to article 1456 of the Italian Civil Code, whenever, with regard to the supplier or members of the corporate structure or managers of the company with specific functions relating to the assignment the conclusion and performance of this contract, a precautionary measure has been ordered or an indictment has been issued for any of the offences referred to in Articles 317, 318, 319, 319-bis, 319-ter, 319-quater, 320, 322, 322-bis, 346-bis, 353, 353-bis of the Criminal Code.

Article 22 - Transparency and Traceability (T&T)

22.1 Obligations of the Winning Contractor and Subcontractors The Winning Contractor and the subcontractors, in whatever capacity involved in the performance of the contract, shall comply with this rule. In order to ensure the traceability and transparency of the performance of the contract, the Contractor and the subcontractors, are required, in the manner and at the times specified below, to transmit to the Contracting Authority, for each subcontract entrusted, the information referred to in paragraph 2 of Article 105 of Legislative Decree No. 50/2016, those referred to in paragraph 1 of Article 3 of Law No. 136/2010 transcribed below.

Paragraph 2 art. 105, Legislative Decree 50/2016: "The contractor shall inform the contracting station, before the start of the service, for all sublicensing that are not subcontracts, entered into for the performance of the contract, of the name of the indirect subcontractor, the amount of the sub-contract, the subject of the work, service or supply entrusted."

Paragraph 1, Article 3, Law No. 136/2010: "In order to ensure the traceability of financial flows aimed at preventing criminal infiltration, contractors, direct and indirect subcontractors of the supply chain as well as the concessionaires of public funding, including European funding, for any reason whatsoever, interested in public works, services and supplies must use one or more bank or postal current accounts, opened with banks or with the company Poste Italiane Spa, dedicated, even if not exclusively, to (...)"



Paragraph 5, letter h, art. 80, Legislative Decree 50/2016: "Contracting stations shall exclude from participation in the tender procedure an economic operator in one of the following situations, also referring to one of its subcontractors in the cases referred to in Article 105, paragraph 6, if: (...) h) the economic operator has violated the prohibition of fiduciary header as referred to in Article 17 of Law No. 55 of 19 March 1990".

22.2. Verifications by the Contracting Authority

The Contracting Authority, the successful economic operator and the economic operators involved at any level in the subcontracting chain are bound to fully comply with the provisions of Article 3(9) of Law No. 136/2010 and transcribed below.

Paragraph 9, Article 3, Law No. 136/2010: "The contracting authority shall verify that in the contracts signed with the direct and indirect subcontractors of the chain of enterprises in any capacity involved in the works, services and supplies referred to in paragraph 1, an appropriate clause is included, under penalty of absolute nullity, whereby each of them assumes the obligations of traceability of financial flows referred to in this Law.

In the awarding of sub-contracts in any form, at any level of the chain, compliance with the rule is implemented by the transcription of this T&T CONTRACT NORDER in the sub-contract or by its explicit reference by the Contractor.

The contracting authority reserves the right, in the manner and timeframe independently defined, to carry out the checks provided for both in subcontracts awarded by the successful Contractor and in those awarded by other economic operators at any level of the subcontracting chain.

22.3. Information to be transmitted to the contracting station

The information obligations set forth in the above-mentioned regulatory provisions, without prejudice to the transmission to the Contracting Authority of the documentation relating to sub-contracts for authorisation or mere communication purposes, are fulfilled by the persons indicated therein by entering the required data in the T&T form referring to the relevant supply contract on the online Regional Platform "T&T and fulfilments for the performers' registry" accessible at: <https://www.trasparenza-subcontratti.servizirl.it>

The party that will be enabled to operate on the established T&T platform is the successful contract awardee.

22.4. Time and Mode of Transmission

The completion of the T&T form by the successful Contractor must take place at the same time as the transmission to the Administration of the documentation relating to the subcontracts (for authorisation or mere communication purposes).

22.5. Sanctions



ASST Cremona

Pursuant to the provisions of Article 3, paragraph 9 of Law No. 136/10, the failure to provide - within any type of Subcontract - the clause whereby the Principal and the Contractor assume the obligations of traceability of financial flows renders the Subcontract void.

Failure on the part of the Contractor to complete the T&T FORM shall prevent the Subcontractor from entering the building site.

Transmission to the Administration of information that does not correspond to the truth is equivalent to the case of failure to transmit the T&T FORM. In this case, the Administration reserves the right to inform the competent authorities.

In the event the Administration finds that the aforementioned clause has not been explicitly referred to or transcribed in a subcontract, without prejudice to its nullity pursuant to Article 3(9) of Law No. 136/2010, the Contractor of the subcontract shall be:

- subject to the payment of a penalty equal to 10% of the value of the subcontract entrusted, but not less than EUR 500.

In the event that the Administration establishes a delay in sending the T&T FORM, the Principal and the Contractor shall each be obliged to;

- pay a penalty of 1 per thousand of the value of the subcontract for each day of delay, up to 5% of the subcontract value.

In the event that the Contracting Authority ascertains that the T&T SHEET contains information that does not correspond to the truth, in addition to forwarding the information to the competent authorities, it reserves the right to enforce against the Contractor and the Contractor;

- a penalty each, ranging from a minimum of 5% to a maximum of 10% of the value of the subcontract in relation to the seriousness of the incorrect information provided.

Article 23 - Exclusive Jurisdiction

23.1. All disputes that may arise between the Parties in connection with the interpretation, execution and termination of this Contract shall be subject to the exclusive jurisdiction of the Court of Cremona.

Article 24 - Tax Charges and Contractual Expenses

24.1. All tax charges and contractual expenses shall be borne by the Contractor, with the exception of those to be borne by Cremona ASST pursuant to the law.

Read, confirmed and signed by the parties.

Sistema Socio Sanitario



Regione
Lombardia

ASST Cremona

THE CREMONA ASST

THE DIRECTOR S.C. NEW HOSPITAL

Arch. Maurizio Bracchi

AFFILIATE

LEGAL REPRESENTATIVE

Computer document digitally signed pursuant to the single text of Presidential Decree no. 445 of 28 December 2000 and Legislative Decree no. 82 of 7 March 2005 and related regulations.

Pursuant to and for the purposes of Articles 1341 and 1342 of the Italian Civil Code, the Contractor acknowledges and declares that this document has been carefully analysed and evaluated in each and every part and, therefore, by signing below, the previously expressed clauses are confirmed and approved.