



EUROPEAN CLIMATE, INFRASTRUCTURE AND ENVIRONMENT EXECUTIVE AGENCY (CINEA)

Directorate D Natural resources, climate, sustainable blue economy and clean energy
D.2 - LIFE Environment (Nature & Circular Economy)

FRAMEWORK SERVICE CONTRACT

NUMBER — CINEA/2022/OP/0011 Lot 1

1. The European Climate, Infrastructure and Environment Executive Agency (CINEA) ('the lead contracting authority') acting under the powers delegated by the European Commission, and the following contracting authorities:

The European Commission, represented by the Directorate-General for the Environment (DG ENV)

(collectively, 'the contracting authority'), represented for the purposes of signing this framework contract by

Anne Burrill, Head of Unit D2,

of the one part and

2. ELMEN EWIV

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appointed as the leader of the group by the members of the group that submitted the joint tender

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7. PARTICIP GMBH

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(collectively ‘the contractor’), represented for the purposes of the signature of this framework contract by Johannes-Georg Walter, Director of ELMEN EWIV and Iñigo Ortiz de Urbina Belsue, Director of ELMEN EWIV,

on the other part,

HAVE AGREED

to the **special conditions**, the **general conditions for framework contracts** for services and the following annexes:

Annex I – Tender specifications (reference No CINEA/2022/OP/0011 of 25/07/2022 and registered in ARES under reference Ares(2022)5341522 and Corrigendum published on 01/09/2022 and registered in ARES under reference Ares(2022)6090327)

Annex II – Contractor’s tender (reference No 300051021 of 18/10/2022 and registered in ARES under references Ares(2022)7204035 (receipt confirmation), Ares(2022)7258560 (tender submission), Ares(2022)7258583 (technical offer), Ares(2022)7258585 (financial offer) and Ares(2022)7258608 (administrative documents), and clarifications registered in ARES under references Ares(2022)7986598 of 18/11/2022, Ares(2022)8605441 of 12/12/2022 and Ares(2022)8859325 of 20/12/2022)

Annex III – Model for specific contracts

Annex IV – Consent form for on-site personnel (with Privacy statements)

Annex V – Template for the electronic list of relevant personal data for on-site personnel

which form an integral part of this framework contract (‘the FWC’).

This FWC sets out:

1. the procedure by which the contracting authority may order services from the contractor;
2. the provisions that apply to any specific contract which the contracting authority and the contractor may conclude under this FWC; and
3. the obligations of the parties during and after the duration of this FWC.

All documents issued by the contractor (end-user agreements, general terms and conditions, etc.) except its tender are held inapplicable, unless explicitly mentioned in the special conditions of this FWC. In all circumstances, in the event of contradiction between this FWC and documents issued by the contractor, this FWC prevails, regardless of any provision to the contrary in the contractor's documents.

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I. SPECIAL CONDITIONS

I.1. ORDER OF PRIORITY OF PROVISIONS

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

- (a) The provisions set out in the special conditions take precedence over those in the other parts of the FWC.
- (b) The provisions set out in the general conditions take precedence over those in the *order form* and specific contract (Annex III)
- (c) The provisions set out in the *order form* and specific contract (Annex III) take precedence over those in the other annexes.
- (d) The provisions set out in the tender specifications (Annex I) take precedence over those in the tender (Annex II).
- (e) The provisions set out in the FWC take precedence over those in the specific contracts.
- (f) The provisions set out in the specific contracts take precedence over those in the requests for specific contract.
- (g) The provisions set out in the requests for specific contract take precedence over those in the specific tenders/documents submitted for a specific contract (if applicable).

I.2. SUBJECT MATTER

The subject matter of the FWC is the provision of support for the monitoring of LIFE projects (action grants and operating grants), communication about the LIFE programme and other related activities.

Lot 1 - Provision of assistance for the technical and financial monitoring of ongoing projects funded from previous and on-going LIFE programmes and on thematic support.

I.3. ENTRY INTO FORCE AND DURATION OF THE FWC

I.3.1 The FWC enters into force on the date on which the last party signs it.

I.3.2 The *implementation of the FWC* cannot start before its entry into force.

I.3.3 The FWC is concluded for a period of 48 months with effect from the date of its entry into force.

I.3.4 The parties must sign any specific contract before the FWC expires.

The FWC continues to apply to such specific contracts after its expiry. The services relating to such specific contracts must be performed no later than twelve months after the expiry of the FWC.

I.4. APPOINTMENT OF THE CONTRACTOR AND IMPLEMENTATION OF THE FWC

I.4.1. Appointment of the contractor

The contracting authority appoints the contractor for a single FWC.

I.4.2. Period of provision of the services

The period for the provision of the services starts to run from the date indicated in the specific contract.

I.4.3. Implementation of single FWC

The contracting authority orders services by sending the contractor a Request for Services by email.

Within the time limit indicated in the Request for Services, the contractor must either:

- send back to the contracting authority its specific offer and the specific contract duly signed and dated or
- send an explanation of why it cannot accept the order.

The FWC is implemented as provided in for Section 1.4.11 of the tender specifications.

If the contractor repeatedly refuses to sign the specific contracts or repeatedly fails to send them back on time, the contractor may be considered in breach of its obligations under this FWC as set out in Article II.18.1 (c).

I.5. PRICES

I.5.1. Maximum amount of the FWC and maximum prices

The maximum amount covering all purchases under this FWC including reimbursement of expenses is EUR 50 000 000 (fifty million euro). However, this does not bind the contracting authority to purchase for the maximum amount.

The maximum prices of the services are as listed in Annex II.

I.5.2. Price revision index

Price revision is determined by the formula set out in Article II.20 and using the trend in the harmonised indices of consumer prices (HICP) Euro area (19 countries) published at <http://ec.europa.eu/eurostat/web/hicp/data/database> under HICP (2015 = 100) - monthly data (index) (prc_hicp_midx).

I.5.3. Reimbursement of expenses

The contracting authority must reimburse the following in accordance with Article II.22 and as provided in for by the Request for service:

- (a) travel, subsistence, accommodation and shipment expenses; and
- (b) any other expenses provided for in the tender specifications.

The total value of expenses may not exceed the maximum amount as indicated in the Request for service.

I.6. PAYMENT ARRANGEMENTS

Payment arrangements are defined in the Request for service and can follow one of the modality as indicated below:

I.6.1. Pre-financing

For specific contract of more than EUR 60 000, following signature of the specific contract by the last party and its receipt by the contracting authority, the contractor (or leader in the case of a joint tender) may claim a pre-financing payment of up to 30 % of the price referred to in the relevant specific contract. The contractor (or leader in the case of a joint tender) must send the contracting authority an invoice for the pre-financing payment.

The contractor (or leader in the case of a joint tender) must also provide a financial guarantee equal to 30 % of the price of the specific contract.

The contracting authority must pay the pre-financing within 30 days of receiving the invoice provided it has received the guarantee.

The contracting authority may suspend the time limit for payment in accordance with Article II.21.7.

I.6.2. Interim payments

1(a). The contractor (or leader in the case of a joint tender) may claim a first interim payment equal to 30 % of the price referred to in the relevant specific contract in accordance with Article II.21.6.

The contractor (or leader in the case of a joint tender) must send an invoice for the interim payment as provided for in the tender specifications, accompanied by the following:

- a first interim progress report, and any other deliverable in accordance with the tender specifications of the FWC (as provided in for section 1.4.8.2) and the request for service;

1(b). The contractor (or leader in the case of a joint tender) may claim a second interim payment equal to 30 % of the price referred to in the relevant specific contract in accordance with Article II.21.6.

The contractor (or leader in the case of a joint tender) must send an invoice for the interim payment as provided for in the tender specifications, accompanied by the following:

- a second interim progress report, and any other deliverable in accordance with the tender specifications of the FWC (as provided in for section 1.4.8.2) and the request for service;

2. The contracting authority must approve any submitted documents or deliverables and pay within 60 days from receipt of the invoice.

3. The contracting authority may suspend the time limit for payment specified in point (2.) in accordance with Article II.21.7. Once the suspension is lifted, the contracting authority shall give its approval and pay within the remainder of the time limit indicated in point (2.) unless it rejects partially or fully the submitted documents or deliverables.

I.6.3. Payment of the balance or single payment

1. The contractor (or leader in the case of a joint tender) may claim the payment of the balance in accordance with Article II.21.6.

The contractor (or leader in the case of a joint tender) must send an invoice for payment of the balance due under a specific contract, as provided for in the tender specifications and accompanied by the following:

- a list of all *pre-existing rights* to the *results* or parts of the *results* or a declaration stating that there are no such *pre-existing rights*, as provided for in Article II.13.4;
- a final report, and any other deliverable in accordance with the tender specifications of the FWC (as provided in for section 1.4.8.3) and the request for service;
- statements of reimbursable expenses in accordance with Article II.22.

2. The contracting authority must approve the submitted documents or deliverables and pay within 60 days from receipt of the invoice.

3. The contracting authority may suspend the time limit for payment specified in point (2.) in accordance with Article II.21.7. Once the suspension is lifted, the contracting authority shall give its approval and pay within the remainder of the time limit indicated in point (2.) unless it rejects partially or fully the submitted documents or deliverables.

I.6.4. Performance guarantee

Performance guarantee is not applicable to this FWC.

I.6.5. Retention money guarantee

Retention money guarantee is not applicable to this FWC.

I.7. BANK ACCOUNT

Payments must be made to the contractor's (or leader's in the case of a joint tender) bank account denominated in euro, identified as follows:

Name of bank: UNICREDIT BANK AG (HYPOVEREINSBANK)

Full address of branch: Arabellastrasse 12, 81925 München, Deutschland

Exact denomination of account holder: ELMEN EWIV

Full account number including bank codes: 02 7002 0270 0037 2535 37 - BIC: HYVEDEMM

IBAN code: DE02 7002 0270 0037 2535 37

I.8. COMMUNICATION DETAILS

I.8.1. Communication via electronic exchange system

After the entry into force of this FWC, at any time during its course the contracting authority may formally notify in writing the contractor that certain communications will be made by electronic means through the EU Funding & Tenders Portal (the Portal), in accordance with the Portal Terms and Conditions and using the forms and templates provided there. The Portal can be accessed via the following URL: <https://ec.europa.eu/info/funding-tenders/opportunities/portal/> The notification shall indicate whether all or only certain communications under the FWC will take place through the Portal. The notification shall have full legal effect from the date specified therein, which shall allow a reasonable period of time for the contractor to complete all necessary steps to have access to the Portal. The activation of the use of the Portal shall be at no additional cost for the contracting authority.

If the use of the Portal is activated, any communication covered by the activation notification related to the implementation of this FWC and any specific contracts shall be made through the Portal (except if explicitly instructed otherwise by the contracting authority or if communication via the Portal is hindered by factors beyond the control of the parties).

Communications by contractors through the Portal must be made by persons authorised according to the Portal Terms and Conditions. For naming the authorised persons to use the Portal, each contractor must designate before the date of effect of the activation notification a 'legal entity appointed representative (LEAR)'. The role and tasks of the LEAR are stipulated in their appointment letter (see Portal Terms and Conditions).

If the communication via the Portal is hindered, instructions will be provided by the contracting authority by email and may also be published on the Portal.

During the course of the FWC, the contracting authority reserve(s) the right to further extend the coverage of the communications made through the Portal (if its use has been already activated) or to activate the use of other electronic exchange systems, at no additional cost for the contracting authority.

In case of discrepancy between the clauses of the Portal Terms and Conditions or Terms and Conditions of other electronic exchange system and the clauses of this FWC, the clauses of this FWC (including its annexes) shall prevail.

I.8.2. Mail or email communication

For the purpose of this FWC, mail or email communications must be sent to the following addresses:

Contracting authority:

European Climate, Infrastructure and Environment Executive Agency (CINEA)

Directorate D

Unit D2 - LIFE Environment (Nature & Circular Economy)

B-1049 Brussels, Belgium

Email: CINEA-LIFE-ENQUIRIES@ec.europa.eu

Contractor (or leader in the case of a joint tender):
Éric Evrard
General Coordinator
ELMEN EWIV
83 rue du Prince Royal, 1050 - Ixelles, Belgium
Email: eric.evrard@elmen-eeig.eu

By derogation from this Article, different contact details for the contracting authority or the contractor may be provided in specific contracts.

I.9. PROCESSING OF PERSONAL DATA

I.9.1 Processing of personal data by the contracting authority

For the purpose of Article II.9.1,

- (a) for personal data processed in the context of the management of the framework contract, the data controller is the Head of Unit D.2 LIFE Environment (Nature & Circular Economy) of the European Climate, Infrastructure and Environment Executive Agency (CINEA) and can be contacted at CINEA-LIFE-ENQUIRIES@ec.europa.eu;
- (b) for personal data processed in the context of the management of the specific contract, the data controller will be specified in the specific contract;
- (c) the data protection notice is available at https://cinea.ec.europa.eu/about-us/data-protection/data-protection-notice-procurement_en

I.9.2 Processing of personal data by the contractor

For the purpose of Article II.9.2,

- (a) the subject matter and purpose of the processing of personal data by the contractor are
 - Curriculum Vitae of the experts
 - Data included by applicants in their project grant agreement and communication associated to the project implementation.
- (b) The localisation of and access to the personal data processed by the contractor shall comply with the following:
 - i. the personal data shall only be processed within the territory of the European Union and the European Economic Area and will not leave that territory;
 - ii. the data shall only be held in data centres located with the territory of the European Union and the European Economic Area;
 - iii. access to data may be given on a need to know basis only to authorised persons established in a country which has been recognised by the European Commission as providing adequate protection to personal data;
 - iv. the contractor may not change the location of data processing without the prior written authorisation of the contracting authority;

- v. any transfer of personal data under the FWC to third countries or international organisations shall fully comply with the requirements laid down in Chapter V of Regulation (EU)2018/1725¹.

I.10. EXPLOITATION OF THE RESULTS OF THE FWC

I.10.1. Detailed list of modes of exploitation of the results

In accordance with Article II.13.1 whereby the Union acquires ownership of the *results* as defined in this FWC, including the tender specifications, these *results* may be used for any of the following modes of exploitation:

- (a) use for its own purposes:
- making available to the staff of the contracting authority;
 - making available to the persons and entities working for the contracting authority or cooperating with it, including contractors, subcontractors whether legal or natural persons;
 - making it available to the other Union institutions, agencies and bodies, Member States' institutions;
 - installing, uploading, processing;
 - arranging, compiling, combining, retrieving;
 - copying, reproducing in whole or in part and in unlimited number of copies.
- (b) distribution to the public in hard copies, in electronic or digital format, on the internet including social networks as a downloadable or non-downloadable file;
- (c) communication through press information services;
- (d) inclusion in widely accessible databases or indexes, such as via 'open access' or 'open data' portals, or similar repositories, whether freely accessible or accessible only upon subscription;
- (e) modifications by the contracting authority or by a third party in the name of the contracting authority, including:
- shortening;
 - summarising;

¹ Regulation (EU) 2018/1725 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 295/39, 21.11.2018, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1725&from=EN>

- modifying the content, the dimensions;
- making technical changes to the content (necessary correction of technical errors), adding new parts or functionalities, changing functionalities, providing third parties with additional information concerning the *result* (e.g. source code) with a view to making modifications;
- addition of new elements, paragraphs, titles, leads, bolds, legend, table of content, summary, graphics, subtitles, sound;
- addition of metadata, for text and data-mining purposes; addition of right-management information; addition of technological protection measures;
- preparation in audio form, preparation as a presentation, animation, pictograms story, slide-show, public presentation;
- extracting a part or dividing into parts;
- incorporating, including by cropping and cutting, the *results* or parts thereof in other works, such as on websites and webpages;
- translating, inserting subtitles, dubbing in different language versions:
 - English, French, German;
 - all official languages of EU;
 - languages used within EU;
 - languages of candidate countries;
 - languages of participating countries² in the LIFE Programme.

(f) rights to authorise or license the modes of exploitation set out in any of the points (a) to (e) to third parties, provided however that this does not apply to *pre-existing rights* and *pre-existing materials*, if they are only licensed to the Union, except as foreseen by Article II.13.2.;

(g) other adaptations which the parties may later agree; in such case, the following rules apply: the contracting authority must consult the contractor. If necessary, the contractor must in turn seek the agreement of any *creator* or other right holder and must reply to the contracting authority within one month by providing its agreement, including any suggestions of modifications, free of charge. The contractor may refuse the intended modification only if a *creator* can demonstrate that the intended modification may harm his/her honour or reputation, thereby violating his/her moral rights.

The modes of exploitation may be defined in more details in the specific contract.

The list above is in addition to whatever rights already accrue to the Union on the basis of existing exceptions in the applicable legislation, such as the copyright exception to ensure the proper performance or reporting of administrative proceedings, in cases where such exceptions apply.

² https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/life/guidance/list-3rd-country-participation_life_en.pdf

I.10.2. Licence or transfer of pre-existing rights

All *pre-existing rights* incorporated in the *results*, if any, are licensed to the Union as set out in Article II.13.2.

I.10.3. Provision of list of pre-existing rights and documentary evidence

The contractor must provide the contracting authority with a list of *pre-existing rights* as set out in Article II.13.4 together with the invoice for payment of the balance at the latest.

I.11. TERMINATION BY EITHER PARTY

Either party may terminate the FWC and/or the FWC and specific contracts by sending *formal notification* to the other party with three months written notice.

If the FWC or a specific contract is terminated:

- (a) neither party is entitled to compensation;
- (b) the contractor is entitled to payment only for the services provided before termination takes effect.

The second, third and fourth paragraphs of Article II.18.4 apply.

I.12. APPLICABLE LAW AND SETTLEMENT OF DISPUTES

I.12.1 The FWC is governed by Union law, complemented, where necessary, by the law of the Kingdom of Belgium.

I.12.2 The courts of Brussels, Belgium have exclusive jurisdiction over any dispute regarding the interpretation, application or validity of the FWC.

I.13. INTERINSTITUTIONAL FWC

I.13.1 This FWC is interinstitutional. The lead contracting authority acts on its own behalf and on behalf of the bodies listed in the title of the FWC as the contracting authorities, which provided the lead contracting authority with a power of attorney before FWC signature. The lead contracting authority signs the FWC and any amendments on behalf of itself and of all other contracting authorities.

I.13.2 Each contracting authority is responsible for the particular specific contracts it awards.

I.13.3 If the contractor has a complaint about the conclusion, performance or termination of a specific contract, the contractor remains bound by its obligations under the FWC and other specific contracts.

I.14. SPECIFIC SECURITY RULES FOR THE CONTRACTOR'S³ PERSONNEL

1. For the purpose of this clause, the following definition apply:

'Personnel': natural persons employed directly or indirectly or contracted by the contractor to implement the direct contract or FWC.

2. Pursuant to Articles 3, 7 and 8 of Commission Decision (EU, Euratom) 2015/443 of 13.3.2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41), background checks can be carried out on personnel in order to prevent and control risks to the security of Commission staff, assets and information. In addition and pursuant to the Belgian Act of 11.12.1998 on classification and security clearances, security certificates and security advices (Belgian Official Gazette of 7.5.1999, p. 15.752), as further amended, access rights for personnel to the premises or IT assets (equipment and networks) of the Contracting Authority, may be conditional on a positive security advice to be delivered by the Belgian authorities.

For personnel residing in Belgium who is granted access rights to the Contracting Authority premises in Belgium and/or IT assets for a short or long term period, when necessary for executing a specific contract, on the basis of an individual consent, the Belgian National Security Authority will provide a security advice. The Contracting Authority will have discretionary power to decide on granting access rights based on the advice received.

For personnel residing in other EU countries and using Commission IT assets and/or connecting to the Commission's internal network via the remote access service for Commission staff, the Belgian National Security Authority will perform a limited screening using their available international data sources.

3. To allow the Belgian authorities to give a security advice, the contractor will submit to the relevant personnel the Consent Form. The duly completed and signed Consent Form⁴ and the acknowledgment of the privacy statements together with an up-to-date electronic list of relevant personal data as listed in the Belgian Excel template⁵ will be sent to the address "EC-SECURITY-SCREENING@ec.europa.eu" at least 30 days before the start date of a new contract.

4. Failure or refusal to complete the Consent Form may result in refusal of access rights to Commission buildings and IT assets for the concerned personnel.

5. Retribution fee⁶ is to be paid by the contractor of the natural person for whom a security verification is requested.

³ The notion of contractors used in this clause has the same meaning as the notion of external contractors used in the screening Memorandum of Understanding.

⁴ The Consent Form attached requires: full official name and forenames; function or occupation; nationality; national Belgian registry number; passport or ID number, place of birth; date of birth; official complete address (including house or flat number and postal code); company and number of company.

⁵ The compulsory template of the electronic list summarises the information provided by the proposed personnel in the Consent Form. It is transferred to the Belgian authorities.

⁶ Currently 50€ in Belgium.

6. The Contracting Authority acknowledges that in exceptional cases it may not be possible for the contractor to, at short notice, provide personnel having received a positive security advice. Nevertheless, the contractor undertakes to provide at all times only personnel having received a positive security advice for the following Commission buildings: Berlaymont, Breydel, Charlemagne, Centre Albert Borschette, Luxembourg 46, Montoyer 59 and Madou. This list can be subject to modification upon request from the Commission Department of Security. In such case, the Contracting Authority will duly notify the contractor of such modification. The Contracting Authority may terminate the specific contract if the contractor is unable to provide at all times only personnel having received a positive security advice for the listed Commission buildings.

7. If access rights for personnel are granted by means of a Commission access card, this card remains the property of the Commission. It must be returned within 10 calendar days to the Service Card Office or to the guards at the reception of any Commission building upon request, expiry or where the access conditions are no longer met and in particular where the personnel no longer benefits from a positive security advice.

8. If the Commission access card is not returned, the Contracting Authority may claim liquidated damages of 100 EUR from the contractor for each day of delay up to a maximum of EUR 1.000. This represents a reasonable estimate of fair compensation for the damage incurred.

9. The security screening, as described under paragraphs 1-8 above, may be extended at any time to other participants of the Screening Memorandum of Understanding (MoU) in any of their places of work.

10. The Commission or other participants of the Screening MoU, that decides to extend the procedure as provided for above, shall notify the contractor of the practical modalities for its implementation. This notification shall have full legal effect under the contract or FWC as from the date indicated in the notification.

I.15. PROVISION OF SERVICES

I.15.1 Any change of Coordinator, Expert or other staff member involved in the framework contract or specific contract must be notified to the contracting authority by the framework contractor prior to its replacement. Before his/her appointment, the CV of the proposed expert must be presented for contracting authority's opinion. Conditions of Art.II.4.8 apply.

I.16. REDUCTION IN PRICE

I.16.1 By reference to Article II.16.1, when the contracting authority makes use of the provisions set out in that article and in the following articles under II.16 of the General Conditions, the following will be used as a basis to determine:

- a) 'unperformed obligations': failure to evaluate all project reports and visit every project once per year (unless agreed differently with the contracting authority) in accordance with the tender specifications;

b) 'low quality delivery': when the quality of a service delivery is such that the objectives for which the service was requested cannot be reached, with reference to the requirements defined in the tender specifications.

I.17. LIQUIDATED DAMAGES

I.17.1 By reference to Article II.15.1, when the contracting authority makes use of the provisions set out in that article and in the following articles under II.15 of the General Conditions, the applicable time limits shall be the ones defined by the contracting authority in the tender specifications and/or in Annex 1 - Request for services, of the specific contract.

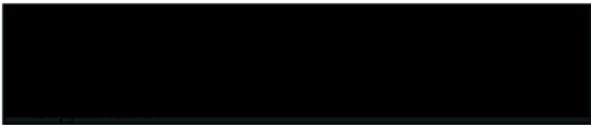
SIGNATURES

For the contractor,

ELMEN EWIV

Johannes-Georg Walter

Director

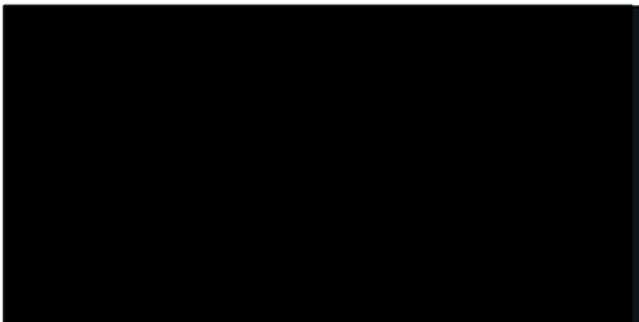


Done at

ELMEN EWIV

Iñigo Ortiz de Urbina Belsue

Director



Signature:

Done at

In duplicate in English.

For the contracting authority,

Anne Burrill

Head of Unit D2



Signature: _____

Done at Brussels,

II. GENERAL CONDITIONS FOR THE FRAMEWORK CONTRACT FOR SERVICES

II.1. DEFINITIONS

For the purpose of this FWC, the following definitions (indicated in *italics* in the text) apply:

‘Back office’: the internal system(s) used by the parties to process electronic invoices;

‘Breach of obligations’: failure by the contractor to fulfil one or more of its contractual obligations.

‘Confidential information or document’: any information or document received by either party from the other or accessed by either party in the context of the *implementation of the FWC*, that any of the parties has identified in writing as confidential. It may not include information that is publicly available;

‘Conflict of interest’: a situation where the impartial and objective *implementation of the FWC* by the contractor 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 contracting authority or any third party related to the subject matter of the FWC;

‘Creator’: means any natural person who contributes to the production of the *result*;

‘EDI message’ (electronic data interchange): a message created and exchanged through the electronic transfer, from computer to computer, of commercial and administrative data using an agreed standard;

‘Electronic exchange system’: is an electronic exchange system meeting the requirements of Article 148 of [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](#) ¹

‘EUI’: European Union institution

‘Force majeure’: any unforeseeable, exceptional situation or event beyond the control of the parties that prevents either of them from fulfilling any of their obligations under the FWC. The situation or event must not be attributable to error or negligence on the part of the parties or on the part of the subcontractors and must prove to be inevitable despite their exercising due diligence. Defaults of service, defects in equipment or material or delays in making them available, labour disputes, strikes and financial difficulties may not be invoked as *force majeure*, unless they stem directly from a relevant case of *force majeure*;

‘Formal notification’ (or ‘formally notify’): form of communication between the parties made in writing by mail or email, which provides the sender with compelling evidence that the message was delivered to the specified recipient;

‘Fraud’: an act or omission committed in order to make an unlawful gain for the perpetrator or another by causing a loss to the Union's financial interests, and relating to: i) the use or

presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or assets from the Union budget, ii) the non-disclosure of information in violation of a specific obligation, with the same effect or iii) the misapplication of such funds or assets for purposes other than those for which they were originally granted, which damages the Union's financial interests;

'Grave professional misconduct': a violation of applicable laws or regulations or ethical standards of the profession to which a contractor or a related person belongs, including any conduct leading to sexual or other exploitation or abuse, or any wrongful conduct of the contractor or a related person which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence.

'Implementation of the FWC': the purchase of services envisaged in the FWC through the signature and *performance of specific* contracts;

'Interoperability network': independent third party platforms enforcing the European standards and Directives on cross-border interoperability in a certain domain.

'Irregularity': any infringement of a provision of Union law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the Union's budget or a budget managed by the Union.

'Notification' (or 'notify'): form of communication between the parties made in writing including by electronic means;

'Order form': a simplified form of specific contract by which the contracting authority orders services under this FWC;

'Performance of a specific contract': the execution of tasks and delivery of the purchased services by the contractor to the contracting authority;

'Personnel': persons employed directly or indirectly or contracted by the contractor to implement the FWC;

'Portal': EU Funding & Tenders Portal; electronic exchange system managed by the European Commission and used by itself and other EU institutions, bodies, offices or agencies for the management of their funding, prizes and procurement.

'Pre-existing material': any material, document, technology or know-how which exists prior to the contractor using it for the production of a *result* in the *implementation of the FWC*;

'Pre-existing right': any industrial and intellectual property right on *pre-existing material*; it may consist in a right of ownership, a licence right and/or right of use belonging to the contractor, the *creator*, the contracting authority as well as to any other third parties;

'Professional conflicting interest': a situation in which the contractor's previous or ongoing professional activities affect its capacity to implement the FWC or to perform a specific contract to an appropriate quality standard.

‘Related person’: any natural or legal person who is a member of the administrative, management or supervisory body of the contractor, or who has powers of representation, decision or control with regard to the contractor;

‘Request for *specific contract*’: a document from the contracting authority requesting that the contractors in a multiple FWC with re-opening of competition provide a specific tender for services whose terms are not entirely defined under the FWC. This can be used for single FWC or FWC in cascade, when applicable.

‘Result’: any intended outcome of the *implementation of the FWC*, whatever its form or nature. A *result* may be further defined in this FWC as a deliverable. A *result* may, in addition to newly created materials produced specifically for the contracting authority by the contractor or at its request, also include *pre-existing materials*;

‘Specific contract’: a contract implementing the FWC and specifying details of a service to be provided;

II.2. ROLES AND RESPONSIBILITIES IN THE EVENT OF A JOINT TENDER

In the event of a joint tender submitted by a group of economic operators and where the group does not have legal personality or legal capacity, one member of the group is appointed as leader of the group.

II.3. SEVERABILITY

Each provision of this FWC is severable and distinct from the others. If a provision is or becomes illegal, invalid or unenforceable to any extent, it must be severed from the remainder of the FWC. This does not affect the legality, validity or enforceability of any other provisions of the FWC, which continue in full force and effect. The illegal, invalid or unenforceable provision must be replaced by a legal, valid and enforceable substitute provision which corresponds as closely as possible with the actual intent of the parties under the illegal, invalid or unenforceable provision. The replacement of such a provision must be made in accordance with Article II.11. The FWC must be interpreted as if it had contained the substitute provision as from its entry into force.

II.4. PROVISION OF SERVICES

II.4.1 Signature of the FWC does not guarantee any actual purchase. The contracting authority is bound only by specific contracts implementing the FWC.

II.4.2 The contractor must provide services of high quality standards, in accordance with the state of the art in the industry and the provisions of this FWC, in particular the tender specifications and the terms of its tender. Where the Union has the right to make modifications to the *results*, they must be delivered in a format and with the necessary information which effectively allow such modifications to be made in a convenient manner.

II.4.3 The contractor must comply with the minimum requirements provided for in the tender specifications. This includes compliance with applicable obligations under environmental, social and labour law established by Union law, national law and

collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU⁷, compliance with data protection obligations resulting from Regulation (EU) 2016/679⁸ and Regulation (EU) 2018/1725⁹.

- II.4.4** The contractor must obtain any permit or licence required in the State where the services are to be provided.
- II.4.5** All periods specified in the FWC are calculated in calendar days, unless otherwise specified.
- II.4.6** The contractor must not present itself as a representative of the contracting authority and must inform third parties that it is not part of the European public service.
- II.4.7** The contractor is responsible for the *personnel* who carry out the services and exercises its authority over its *personnel* without interference by the contracting authority. The contractor must inform its *personnel* that:
- (a) they may not accept any direct instructions from the contracting authority; and
 - (b) their participation in providing the services does not result in any employment or contractual relationship with the contracting authority.
- II.4.8** The contractor must ensure that the *personnel* implementing the FWC and any future replacement personnel possess the professional qualifications and experience required to provide the services, as the case may be on the basis of the selection criteria set out in the tender specifications.
- II.4.9** At the contracting authority's reasoned request, the contractor must replace any member of *personnel* who:
- (a) does not have the expertise required to provide the services; or
 - (b) has caused disruption at the premises of the contracting authority.

The contractor bears the cost of replacing its *personnel* and is responsible for any delay in providing the services resulting from the replacement of *personnel*.

⁷ OJ L 94 of 28.03.2014, p. 65

⁸ 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, OJ L 119, 4.5.2016, p. 1, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.119.01.0001.01.ENG

⁹ Regulation (EU) 2018/1725 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 295/39, 21.11.2018, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1725&from=EN>

II.4.10 The contractor must record and report to the contracting authority any problem that affects its **ability** to provide the services. The report must describe the problem, state when it started and what action the contractor is taking to resolve it.

II.4.11 The contractor must immediately inform the contracting authority of any changes in the exclusion situations as declared, according to Article 137 (1) of Regulation (EU) 2018/1046.

II.5. COMMUNICATION BETWEEN THE PARTIES

II.5.1. Form and means of communication

Any notifications, communication of information or exchange of documents under the FWC must be made in writing, in the language of the contract and must clearly identify the FWC number and specific contract number, if applicable.

Communication between the parties can take place:

- by electronic means, via electronic exchange system, in accordance with the provisions of Article II.5.2.,
- by electronic means, via email, in accordance with the provisions of Article II.5.3.,
- on paper, via mail - by courier service with proof of delivery or by registered post with proof of delivery, in accordance with the provisions of Article II.5.4.

In the cases where this FWC mandates the use of formal notifications, those formal communications are considered to have been made with their receipt by the receiving party. The specific rules when formal notifications are considered to have been received are provided in Sections II.5.2.2, II.5.3.2 and II.5.4.2 below.

Communication details to be used for all communication between the parties are indicated in Article I.8.

II.5.2. Communication via electronic exchange system (EES)

The contracting authority may use an EES for all exchanges with the contractor during the implementation of the contract.

If communication via the EES is hindered by factors beyond the control of one party, it must notify the other party immediately and the parties must take the necessary measures to restore this communication via the EES. Upon such notification, the parties shall use alternative means of communication until communication via electronic exchange system is restored. The provisions applicable to alternative means of communication are described in Articles II.5.3 and II.5.4 below.

If the EES is temporarily unavailable, the sending party cannot be considered in breach of its obligation to send a communication within a specified deadline. In any event, for reasons linked to business continuity, the contracting authority reserves the right to use alternative means of communication at any moment.

II.5.2.1 Date of communication via electronic exchange system for other than formal notifications

Notifications through the EES are generally considered to have been made when they are sent by the sending party (i.e. on the date and time they are sent through the EES) as indicated by the time logs.

II.5.2.2 Date of communication via electronic exchange system for formal notifications

The receiving date for formal notifications made through the EES will be the date and time the communication is accessed, as indicated by the time logs. Formal notifications that have not been accessed within 10 days after sending, will be considered to have been accessed.

II.5.3. Communication via email

When communicating via e-mail, the parties should send their messages to the email addresses indicated in Article I.8.

II.5.3.1 Date of communications via email for other than formal notifications

Without prejudice to Article II.19.1. below and Point 31.3 of Annex I to the FR, notifications via email are generally considered to have been made and the email is deemed to have been received by the receiving party on the date of dispatch of that e-mail, if it is sent to the email address indicated in Article I.8 and does not have characteristics that could reasonably prevent its proper delivery (such as sending extremely voluminous e-mails that can be blocked for their size or emails containing elements that the majority of the spam filters would block). The sending party must be able to prove the date of dispatch. If the sending party sends the email to the email address indicated in Article I.8 and receives a non-delivery report, it must make every reasonable effort to ensure that the other party receives the communication.

II.5.3.2 Date of communications via email for formal notifications

Formal notifications by email are considered to have been received on the date of dispatch of a return email expressly or impliedly acknowledging receipt. In case no such email is received by the party who sent the formal notification within a reasonable period, the formal notification should be re-sent via courier service with proof of delivery or registered post (see Article II.5.4.2 below).

II.5.4. Communication via mail

As a rule, mail is used by way of exception for formal notifications and as alternative means of communication when the other means are not available.

When communicating via mail, the parties should send their letters to the postal addresses indicated in Article I.8.

II.5.4.1. Date of communications via mail for other than formal notifications

Without prejudice to Article 116 of the FR, notifications via mail are generally considered to have been made at the date of receipt by the receiving party.

Payment requests sent to the contracting authority via mail are deemed to be received on the date when they are registered by the authorised department of the authorizing officer responsible.

II.5.4.2. Date of communications via mail for formal notifications

Formal notifications by courier service with proof of delivery are considered to have been received on the date indicated in the proof of delivery. Formal notifications by registered post with proof of delivery are considered to have been received either on the delivery date registered by the postal service or the deadline for collection at the post office.

II.6. LIABILITY

II.6.1 The contracting authority is not liable for any damage or loss caused by the contractor, including any damage or loss to third parties during or as a consequence of *implementation of the FWC*.

II.6.2 If required by the relevant applicable legislation, the contractor must take out an insurance policy against risks and damage or loss relating to the *implementation of the FWC*. It must also take out supplementary insurance as reasonably required by standard practice in the industry. Upon request, the contractor must provide evidence of insurance coverage to the contracting authority.

II.6.3 The contractor is liable for any loss or damage caused to the contracting authority during or as a consequence of *implementation of the FWC*, including in the event of subcontracting, but only up to an amount not exceeding three times the total amount of the relevant specific contract. However, if the damage or loss is caused by the gross negligence or wilful misconduct of the contractor or of its *personnel* or subcontractors, as well as in the case of an action brought against the contracting authority by a third party for breach of its intellectual property rights, the contractor is liable for the whole amount of the damage or loss.

II.6.4 If a third party brings any action against the contracting authority in connection with the *implementation of the FWC*, including any action for alleged breach of intellectual property rights, the contractor must assist the contracting authority in the legal proceedings, including by intervening in support of the contracting authority upon request.

If the contracting authority's liability towards the third party is established and that such liability is caused by the contractor during or as a consequence of the *implementation of the FWC*, Article II.6.3 applies.

II.6.5 If the contractor is composed of two or more economic operators (i.e. who submitted a joint tender), they are all jointly and severally liable to the contracting authority for the *implementation of the FWC*.

II.6.6 The contracting authority is not liable for any loss or damage caused to the contractor during or as a consequence of *implementation of the FWC*, unless the loss or damage was caused by wilful misconduct or gross negligence of the contracting authority.

II.7. CONFLICT OF INTEREST AND PROFESSIONAL CONFLICTING INTERESTS

II.7.1 The contractor must take all the necessary measures to prevent any situation of *conflict of interest* or *professional conflicting interest*.

II.7.2 The contractor must *notify* the contracting authority in writing as soon as possible of any situation that could constitute a *conflict of interest* or a *professional conflicting interest* during the *implementation of the FWC*. The contractor must immediately take action to rectify the situation.

The contracting authority may do any of the following:

- (a) verify that the contractor's action is appropriate;
- (b) require the contractor to take further action within a specified deadline;
- (c) decide not to award a specific contract to the contractor.

II.7.3 The contractor must pass on all the relevant obligations in writing to:

- (a) its *personnel*;
- (b) any natural person with the power to represent it or take decisions on its behalf;
- (c) third parties involved in the *implementation of the FWC*, including subcontractors.

The contractor must also ensure that the persons referred to above are not placed in a situation which could give rise to conflicts of interest.

II.8. CONFIDENTIALITY

II.8.1. The contracting authority and the contractor must treat with confidentiality any information or documents, in any format, disclosed in writing or orally, relating to the *implementation of the FWC*.

II.8.2. Each party must:

- (a) not use *confidential information or documents* for any purpose other than to perform its obligations under the FWC or a specific contract without the prior written agreement of the other party;
- (b) ensure the protection of such *confidential information or documents* with the same level of protection as its own *confidential information or documents* and in any case with due diligence;
- (c) not disclose, directly or indirectly, *confidential information or documents* to third parties without the prior written agreement of the other party.

II.8.3 The confidentiality obligations set out in this Article are binding on the contracting authority and the contractor during the *implementation of the FWC* and for as long as the information or documents remain confidential unless:

- (a) the disclosing party agrees to release the receiving party from the confidentiality obligation earlier;
- (b) the *confidential information or documents* become public through other means than a breach of the confidentiality obligation;

(c) the applicable law requires the disclosure of the *confidential information or documents*.

II.8.4 The contractor must 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 *implementation of the FWC* a commitment that they will comply with this Article. At the request of the contracting authority, the contractor must provide a document providing evidence of this commitment.

II.8.5 The Contracting authority is entitled to make available (any part of) the confidential information or documents to its staff and the staff of other Union institutions, agencies and bodies, as well to other persons and entities working for the Contracting authority or cooperating with it. This includes other contractors or subcontractors and their personnel, who need to know the same for the performance of the Contract, who know they must treat it confidentially and who are bound by confidentiality obligations that are no less restrictive than the Contracting authority's confidentiality obligations set out in this section.

II.8.6 The receiving party will, on request from the other party, return all copies and records of the confidential information or documents disclosed by the other party and will not retain any copies or records of the confidential information or documents disclosed by the other party.

II.9. PROCESSING OF PERSONAL DATA

II.9.1 Processing of personal data by the contracting authority

Any personal data included in or relating to the FWC, including its implementation, shall be processed in accordance with Regulation (EU) 2018/1725. Such data shall be processed solely for the purposes of the implementation, management and monitoring of the FWC by the data controller.

The contractor or any other person whose personal data is processed by the data controller in relation to this FWC has 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 their personal data and the right to restrict or, where applicable, the right to object to processing or the right to data portability.

Should the contractor or any other person whose personal data is processed in relation to this FWC have any queries concerning the processing of its personal data, it shall address itself to the data controller. They may also address themselves to the Data Protection Officer of the data controller. They have the right to lodge a complaint at any time to the European Data Protection Supervisor.

Details concerning the processing of personal data are available in the data protection notice referred to in Article I.9.

II.9.2 Processing of personal data by the contractor

The processing of personal data by the contractor shall meet the requirements of Regulation (EU) 2018/1725 and be processed solely for the purposes set out by the controller.

The contractor shall assist the controller for the fulfilment of the controller's obligation to respond to requests for exercising rights of person whose personal data is processed in relation to this FWC as laid down in Chapter III (Articles 14-25) of Regulation (EU) 2018/1725. The contractor shall inform without delay the controller about such requests.

The contractor may act only on documented written instructions and under the supervision of the controller, in particular with regard to the purposes of the processing, the categories of data that may be processed, the recipients of the data and the means by which the data subject may exercise its rights.

The contractor shall grant personnel access to the data to the extent strictly necessary for the implementation, management and monitoring of the FWC. The contractor must ensure that personnel authorised to process personal data has committed itself to confidentiality or is under appropriate statutory obligation of confidentiality in accordance with the provisions of Article II.8.

The contractor shall adopt appropriate technical and organisational security measures, giving due regard to the risks inherent in the processing and to the nature, scope, context and purposes of processing, in order to ensure, in particular, as appropriate:

- (a) the pseudonymisation and encryption of personal data;
- (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- (c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
- (d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing;
- (e) measures to protect personal data from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed.

The contractor shall notify relevant personal data breaches to the controller without undue delay and at the latest within 48 hours after the contractor becomes aware of the breach. In such cases, the contractor shall provide the controller with at least the following information:

- (a) nature of the personal data breach including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;
- (b) likely consequences of the breach;
- (c) measures taken or proposed to be taken to address the breach, including, where appropriate, measures to mitigate its possible adverse effects.

The contractor shall immediately inform the data controller if, in its opinion, an instruction infringes Regulation (EU) 2018/1725, Regulation (EU) 2016/679, or other Union or Member State data protection provisions as referred to in the tender specifications.

The contractor shall assist the controller for the fulfilment of its obligations pursuant to Article 33 to 41 under Regulation (EU) 2018/1725 to:

- (a) ensure compliance with its data protection obligations regarding the security of the processing, and the confidentiality of electronic communications and directories of users;
- (b) notify a personal data breach to the European Data Protection Supervisor;
- (c) communicate a personal data breach without undue delay to the data subject, where applicable;
- (d) carry out data protection impact assessments and prior consultations as necessary.

The contractor shall maintain a record of all data processing operations carried on behalf of the controller, transfers of personal data, security breaches, responses to requests for exercising rights of people whose personal data is processed and requests for access to personal data by third parties.

The contracting authority is subject to Protocol 7 of the Treaty on the Functioning of the European Union on the privileges and immunities of the European Union, particularly as regards the inviolability of archives (including the physical location of data and services as set out in Article I.9.2) and data security, which includes personal data held on behalf of the contracting authority in the premises of the contractor or subcontractor.

The contractor shall notify the contracting authority without delay of any legally binding request for disclosure of the personal data processed on behalf of the contracting authority made by any national public authority, including an authority from a third country. The contractor may not give such access without the prior written authorisation of the contracting authority.

The duration of processing of personal data by the contractor will not exceed the period referred to in Article II.24.2. Upon expiry of this period, the contractor shall, at the choice of the controller, return, without any undue delay in a commonly agreed format, all personal data processed on behalf of the controller and the copies thereof or shall effectively delete all personal data unless Union or national law requires a longer storage of personal data.

For the purpose of Article II.10, if part or all of the processing of personal data is subcontracted to a third party, the contractor shall pass on the obligations referred to in Articles I.9.2 and II.9.2 in writing to those parties, including subcontractors. At the request of the contracting authority, the contractor shall provide a document providing evidence of this commitment.

II.10. SUBCONTRACTING

II.10.1 The contractor must not subcontract and have the FWC implemented by third parties beyond the third parties already mentioned in its tender without prior written authorisation from the contracting authority.

II.10.2 Even if the contracting authority authorises subcontracting, the contractor remains bound by its contractual obligations and is solely responsible for the *implementation of the FWC*.

II.10.3 The contractor must ensure that the subcontract does not affect the rights of the contracting authority under this FWC, particularly those under Articles II.8, II.13 and II.24.

II.10.4 The contracting authority may request the contractor to replace a subcontractor found to be in a situation provided for in points (d) and (e) of Article II.18.1.

II.11. AMENDMENTS

II.11.1 Any amendment to the FWC or a specific contract must be made in writing before all contractual obligations have been fulfilled. A specific contract does not constitute an amendment to the FWC.

II.11.2 Any amendment must not make changes to the FWC or a specific contract that might alter the initial conditions of the procurement procedure or result in unequal treatment of tenderers or contractors.

II.12. ASSIGNMENT OF THE CONTRACT TO A THIRD-PARTY

II.12.1 The contractor must not assign any of the rights and obligations arising from the FWC.

II.12.2 By way of exception to the preceding clause, in duly justified exceptional circumstances, rights and / or obligations arising from the FWC may be assigned with the prior written authorisation of the contracting authority. This authorisation shall be granted or not at the discretion of the contracting authority and upon request by the contractor. The contractor's request shall detail the exceptional circumstances on which it is based and provide the identity of the intended assignee. The contracting authority may request additional information.

II.12.3 Any right or obligation assigned by the contractor without the authorisation mentioned in the preceding clause is not enforceable against the contracting authority.

II.13. INTELLECTUAL PROPERTY RIGHTS

II.13.1. Ownership of the rights in the results

The Union acquires irrevocably worldwide ownership of the *results* and of all intellectual property rights on the newly created materials produced specifically for the Union under the FWC and incorporated in the *results*, without prejudice however to the rules applying to *pre-existing rights on pre-existing materials*, as per Article II.13.2.

The intellectual property rights so acquired include any rights, such as copyright and other intellectual or industrial property rights, to any of the *results* and in all technological solutions and information created or produced by the contractor or by its subcontractor in *implementation of the FWC*. The contracting authority may exploit and use the acquired

rights as stipulated in this FWC. The Union acquires all the rights as from the moment the contractor has created the *results*.

The payment of the price includes any fees payable to the contractor about the acquisition of ownership of rights by the Union including for all modes of exploitation and of use of the *results*.

II.13.2. Licensing rights on pre-existing materials

Unless provided otherwise in the special conditions, the Union does not acquire ownership of *pre-existing rights* under this FWC.

The contractor licenses the *pre-existing rights* on a royalty-free, non-exclusive and irrevocable basis to the Union, which may use the *pre-existing materials* for all the modes of exploitation set out in this FWC or in specific contracts. Unless otherwise agreed, the licence is non-transferable and cannot be sub-licensed, except as provided hereafter:

(a) the *pre-existing rights* can be sub-licensed by the contracting authority to persons and entities working for it or cooperating with it, including contractors and subcontractors, whether legal or natural persons, but only for the purpose of their mission for the Union;

(b) if the *result* is a "document" such as a report or a study, and it is meant to be published, the existence of *pre-existing materials* in the *result* may not prevent the publication of the document, its translation or its "reuse", it being understood however that the "reuse" may only be made of the *result* as a whole and not of the *pre-existing materials* taken separately from the *result*; for the sake of this provision, "reuse" and "document" have the meaning given by the Commission Decision of 12 December 2011 on the reuse of Commission documents (2011/833/EU).

All *pre-existing rights* are licensed to the Union from the moment the *results* are delivered and approved by the contracting authority.

The licensing of *pre-existing rights* to the Union under this FWC covers all territories worldwide and is valid for the duration of intellectual property rights protection.

The payment of the price as set out in the specific contracts is deemed to also include any fees payable to the contractor in relation to the licensing of *pre-existing rights* to the Union, including for all forms of exploitation and of use of the *results*.

Where *implementation of the FWC* requires that the contractor uses *pre-existing materials* belonging to the contracting authority, the contracting authority may request that the contractor signs an adequate licence agreement. Such use by the contractor will not entail any transfer of rights to the contractor and is limited to the needs of this FWC.

II.13.3. Exclusive rights

The Union acquires the following exclusive rights:

- (a) reproduction: the right to authorise or prohibit direct or indirect, temporary or permanent reproduction of the *results* by any means (mechanical, digital or other) and in any form, in whole or in part;
- (b) communication to the public: the exclusive right to authorise or prohibit any display, performance or communication to the public, by wire or wireless means, including the making available to the public of the *results* in such a way that members of the public may access them from a place and at a time individually chosen by them; this also includes the communication on Internet and broadcasting by cable or by satellite;
- (c) distribution: the exclusive right to authorise or prohibit any form of distribution of *results* or copies of the *results* to the public, by sale or otherwise;
- (d) rental: the exclusive right to authorise or prohibit rental or lending of the *results* or of copies of the *results*;
- (e) adaptation: the exclusive right to authorise or prohibit any modification of the *results*;
- (f) translation: the exclusive right to authorise or prohibit any translation, adaptation, arrangement, creation of derivative works based on the *results*, and any other alteration of the *results*, subject to the respect of moral rights of authors, where applicable;
- (g) where the *results* are or include a database: the exclusive right to authorise or prohibit the extraction of all or a substantial part of the contents of the database to another medium by any means or in any form; and the exclusive right to authorise or prohibit the re-utilization of all or a substantial part of the contents of the database by the distribution of copies, by renting, by on-line or other forms of transmission;
- (h) where the *results* are or include a patentable subject-matter: the right to register them as a patent and to further exploit such patent to the fullest extent;
- (i) where the *results* are or include logos or subject-matter which could be registered as a trademark: the right to register such logo or subject-matter as a trademark and to further exploit and use it;
- (j) where the *results* are or include know-how: the right to use such know-how as is necessary to make use of the *results* to the full extent provided for by this FWC, and the right to make it available to contractors or subcontractors acting on behalf of the contracting authority, subject to their signing of adequate confidentiality undertakings where necessary;
- (k) where the *results* are documents:
 - (i) the right to authorise the reuse of the documents in conformity with the Commission Decision of 12 December 2011 on the reuse of Commission documents (2011/833/EU), to the extent it is applicable and the documents fall within its scope and are not excluded by any of its provisions; for the sake of this provision, "reuse" and "document" have the meaning given to them by this Decision;
 - (ii) the right to store and archive the *results* in line with the document management rules applicable to the contracting authority, including digitisation or converting the format for preservation or new use purposes;
- (l) where the *results* are or incorporate software, including source code, object code and, where relevant, documentation, preparatory materials and manuals, in addition to the other rights mentioned in this Article:
 - (i) end-user rights, for all uses by the Union or by subcontractors which result from this FWC and from the intention of the parties;
 - (ii) the rights to receive both the source code and the object code;

- (m) the right to license to third parties any of the exclusive rights or of the modes of exploitation set out in this FWC; however, for *pre-existing materials* which are only licensed to the Union, the right to sub-license does not apply, except in the two cases foreseen by Article II.13.2.;
- (n) to the extent that the contractor may invoke moral rights, the right for the contracting authority, except where otherwise provided in this FWC, to publish the *results* with or without mentioning the *creator(s)*' name(s), and the right to decide when and whether the *results* may be disclosed and published.

The contractor warrants that the exclusive rights and the modes of exploitation may be exercised by the Union on all parts of the *results*, be it via a transfer of ownership of the rights, on those parts which were specifically created by the contractor, or via a licence of the pre-existing rights, on those parts consisting of *pre-existing materials*.

Where *pre-existing materials* are inserted in the *results*, the contracting authority may accept reasonable restrictions impacting on the above list, provided that the said materials are easily identifiable and separable from the rest, that they do not correspond to substantial elements of the *results*, and that, should the need arise, satisfactory replacement solutions exist, at no additional costs to the contracting authority. In such case, the contractor will have to clearly inform the contracting authority before making such choice and the contracting authority has the right to refuse it.

II.13.4. Identification of pre-existing rights

When delivering the *results*, the contractor must warrant that, for any use that the contracting authority may envisage within the limits set in this FWC, the newly created parts and the *pre-existing material* incorporated in the *results* are free of claims from *creators* or from any third parties and all the necessary *pre-existing rights* have been obtained or licensed.

To that effect, the contractor must establish a list of all *pre-existing rights* to the *results* of this FWC or parts thereof, including identification of the rights' owners. If there are no *pre-existing rights* to the *results*, the contractor must provide a declaration to that effect. The contractor must provide this list or declaration to the contracting authority together with the invoice for payment of the balance at the latest.

II.13.5. Evidence of granting of pre-existing rights

Upon request by the contracting authority, the contractor must, in addition to the list mentioned under Article II.13.4., provide evidence that it has the ownership or the right to use all the listed *pre-existing rights*, except for the rights owned or licensed by the Union. The contracting authority may request this evidence even after the end of this FWC.

This provision also applies to image rights and sound recordings.

This evidence may refer, for example, to rights to: parts of other documents, images, graphs, sounds, music, tables, data, software, technical inventions, know-how, IT development tools, routines, subroutines or other programs ('background technology'), concepts, designs, installations or pieces of art, data, source or background materials or any other parts of external origin.

This evidence must include, as appropriate:

- (a) the name and version number of a software product;
- (b) the full identification of the work and its author, developer, *creator*, translator, data entry person, graphic designer, publisher, editor, photographer, producer;
- (c) a copy of the licence to use the product or of the agreement granting the relevant rights to the contractor or a reference to this licence;
- (d) a copy of the agreement or extract from the employment contract granting the relevant rights to the contractor where parts of the *results* were created by its *personnel*;
- (e) the text of the disclaimer notice if any.

Provision of evidence does not release the contractor from its responsibilities if it is found that it does not hold the necessary rights, regardless of when and by whom this fact is revealed.

The contractor also warrants that it possesses the relevant rights or powers to execute the transfer and that it has paid or has verified payment of all due fees including fees due to collecting societies, related to the final *results*.

II.13.6. Quotation of works in the result

In the *result*, the contractor must clearly point out all quotations of existing works. The complete reference should include as appropriate, the following: name of the author, title of the work, date and place of publication, date of creation, address of publication on the internet, number, volume and other information that allows the origin to be easily identified.

II.13.7. Moral rights of creators

By delivering the *results*, the contractor warrants that the *creators* will not object to the following on the basis of their moral rights under copyright:

- (a) that their names be mentioned or not mentioned when the *results* are presented to the public;
- (b) that the *results* be divulged or not after they have been delivered in their final version to the contracting authority;
- (c) that the *results* be adapted, provided that this is done in a manner which is not prejudicial to the *creator's* honour or reputation.

If moral rights on parts of the *results* protected by copyright may exist, the contractor must obtain the consent of *creators* regarding the granting or waiver of the relevant moral rights in accordance with the applicable legal provisions and be ready to provide documentary evidence upon request.

II.13.8. Image rights and sound recordings

If natural persons appear in a *result* or their voice or any other private element is recorded in a recognisable manner, the contractor must obtain a statement by these persons (or, in the case of minors, by the persons exercising parental authority) giving their permission for the described use of their image, voice or private element and, on request, submit a copy of the permission to the contracting authority. The contractor must take the necessary measures to obtain such consent in accordance with the applicable legal provisions.

II.13.9. Copyright notice for pre-existing rights

When the contractor retains *pre-existing rights* on parts of the *results*, reference must be inserted to that effect when the *result* is used as set out in Article I.10.1, with the following disclaimer: ‘© — year — European Union. All rights reserved. Certain parts are licensed under conditions to the EU’, or with any other equivalent disclaimer as the contracting authority may consider best appropriate, or as the parties may agree on a case-by-case basis. This does not apply where inserting such reference would be impossible, notably for practical reasons.

II.13.10. Visibility of Union funding and disclaimer

When making use of the *results*, the contractor must declare that they have been produced under a contract with the Union and that the opinions expressed are those of the contractor only and do not represent the contracting authority’s official position. The contracting authority may waive this obligation in writing or provide the text of the disclaimer.

II.14. FORCE MAJEURE

II.14.1 If a party is affected by *force majeure*, it must immediately *notify* the other party, stating the nature of the circumstances, their likely duration and foreseeable effects.

II.14.2 A party is not liable for any delay or failure to perform its obligations under the FWC if that delay or failure is a *result* of *force majeure*. If the contractor is unable to fulfil its contractual obligations owing to *force majeure*, it has the right to remuneration only for the services actually provided.

II.14.3 The parties must take all necessary measures to limit any damage due to *force majeure*.

II.15. LIQUIDATED DAMAGES

II.15.1. Delay in delivery

If the contractor fails to perform its contractual obligations within the applicable time limits set out in this FWC, the contracting authority may claim liquidated damages for each day of delay using the following formula:

$$0.3 \times (V/d)$$

where:

V is the price of the relevant purchase or deliverable or *result*;

d is the duration specified in the relevant specific contract for delivery of the relevant purchase or deliverable or *result* or, failing that, the period between the date specified in Article I.4.2 and the date of delivery or performance specified in the relevant specific contract, expressed in days.

Liquidated damages may be imposed together with a reduction in price under the conditions laid down in Article II.16.

II.15.2. Procedure

The contracting authority must *formally notify* the contractor of its intention to apply liquidated damages and the corresponding calculated amount.

The contractor has 30 days following the date of receipt to submit observations. Failing that, the decision becomes enforceable the day after the time limit for submitting observations has elapsed.

If the contractor submits observations, the contracting authority, taking into account the relevant observations, must *notify* the contractor:

- (a) of the withdrawal of its intention to apply liquidated damages; or
- (b) of its final decision to apply liquidated damages and the corresponding amount.

II.15.3. Nature of liquidated damages

The parties expressly acknowledge and agree that any amount payable under this Article is not a penalty and represents a reasonable estimate of fair compensation for the damage incurred due to failure to provide the services within the applicable time limits set out in this FWC.

II.15.4. Claims and liability

Any claim for liquidated damages does not affect the contractor's actual or potential liability or the contracting authority's rights under Article II.18.

II.16. REDUCTION IN PRICE

II.16.1. Quality standards

If the contractor fails to provide the service in accordance with the FWC or a specific contract ('unperformed obligations') or if it fails to provide the service in accordance with the expected quality levels specified in the tender specifications ('low quality delivery'), the contracting authority may reduce or recover payments proportionally to the seriousness of the unperformed obligations or low quality delivery. This includes in particular cases where the contracting authority cannot approve a *result*, report or deliverable as defined in Article I.6 after the contractor has submitted the required additional information, correction or new version.

A reduction in price may be imposed together with liquidated damages under the conditions of Article II.15.

II.16.2. Procedure

The contracting authority must *formally notify* the contractor of its intention to reduce payment and the corresponding calculated amount.

The contractor has 30 days following the date of receipt to submit observations. Failing that, the decision becomes enforceable the day after the time limit for submitting observations has elapsed.

If the contractor submits observations, the contracting authority, taking into account the relevant observations, must *notify* the contractor:

- (a) of the withdrawal of its intention to reduce payment; or
- (b) of its final decision to reduce payment and the corresponding amount,.

II.16.3. Claims and liability

Any reduction in price does not affect the contractor's actual or potential liability or the contracting authority's rights under Article II.18.

II.17. SUSPENSION OF THE IMPLEMENTATION OF THE FWC

II.17.1. Suspension by the contractor

If the performance of the contract is affected by *force majeure*, the contractor may suspend the provision of the services under a specific contract.

The contractor must immediately *notify* the contracting authority of the suspension. The *notification* must include a description of the *force majeure* and state when the contractor expects to resume the provision of services.

The contractor must *notify* the contracting authority as soon as it is able to resume *performance of the specific contract*, unless the contracting authority has already terminated the FWC or the specific contract.

II.17.2. Suspension by the contracting authority

The contracting authority may suspend the *implementation of the FWC* or *performance of a specific contract* or any part of it:

- (a) in case of force majeure affecting the performance of the *implementation of the FWC* or *performance of a specific contract*;
- (b) in order to verify whether the presumed *irregularities, fraud* or *breach of obligations* have actually occurred;
- (c) if the procedure for awarding the FWC or a specific contract or the *implementation of the FWC* proves to have been subject to *irregularities, fraud* or *breach of obligations*.

The contracting authority must *formally notify* the contractor of the suspension and the reasons for it. Suspension takes effect on the date of *formal notification*, or at a later date if the *formal notification* so provides.

The contracting authority must *notify* the contractor as soon as the verification is completed whether:

- (a) it is lifting the suspension; or
- (b) it intends to terminate the FWC or a specific contract under Article II.18.1(f) or (j).

The contractor is not entitled to compensation for suspension of any part of the FWC or a specific contract.

The contracting authority may in addition suspend the time allowed for payments in accordance with Article II.21.7.

II.18. TERMINATION OF THE FWC

II.18.1. Grounds for termination by the contracting authority

The contracting authority may terminate the FWC or any on-going specific contract in the following circumstances:

- (a) if provision of the services under an on-going specific contract has not actually started within 15 days of the scheduled date and the contracting authority considers that the new date proposed, if any, is unacceptable, taking into account Article II.11.2;
- (b) if the contractor is unable, through its own fault, to obtain any permit or licence required for *implementation of the FWC*;
- (c) if the contractor does not implement the FWC or perform the specific contract in accordance with the tender specifications or *request for service* or is in breach of another substantial contractual obligation or repeatedly refuses to sign specific contracts. Termination of three or more specific contracts in these circumstances also constitutes grounds for termination of the FWC;
- (d) if the contractor or any person that assumes unlimited liability for the debts of the contractor is in one of the situations provided for in points (a) and (b) of Article 136(1) of the Financial Regulation¹⁰;
- (e) if the contractor 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;
- (f) if the procedure for awarding the FWC or the *implementation of the FWC* prove to have been subject to *errors, irregularities, fraud or breach of obligations*;
- (g) if the contractor does not comply with applicable obligations under environmental, social and labour law established by Union law, national law, collective agreements or

¹⁰ 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>

by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU;

- (h) if the contractor is in a situation that could constitute a *conflict of interest* or a *professional conflicting interest* as referred to in Article II.7;
- (i) if a change to the contractor's legal, financial, technical, organisational or ownership situation is likely to substantially affect the *implementation of the FWC* or substantially modify the conditions under which the FWC 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 or the contractor becomes subject to restrictive measures hindering the implementation of the FWC;
- (j) in the event of *force majeure*, where either resuming implementation is impossible or the necessary ensuing amendments to the FWC or a specific contract would mean that the tender specifications are no longer fulfilled or result in unequal treatment of tenderers or contractors;
- (k) if the needs of the contracting authority change and it no longer requires new services under the FWC; in such cases ongoing specific contracts remain unaffected;
- (l) if the termination of the FWC with one or more of the contractors means that the multiple FWC with reopening of competition no longer has the minimum required level of competition;
- (m) if the contractor is in breach of the data protection obligations resulting from Article II.9.2;
- (n) if the contractor does not comply with the applicable data protection obligations resulting from Regulation (EU) 2016/679.

II.18.2. Grounds for termination by the contractor

The contractor may terminate the FWC or any on-going specific contract if the contracting authority fails to comply with its obligations, in particular the obligation to provide the information needed for the contractor to implement the FWC or to perform a specific contract as provided for in the tender specifications.

II.18.3. Procedure for termination

A party must *formally notify* the other party of its intention to terminate the FWC or a specific contract and the grounds for termination.

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.

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 the cases referred to in points (a) to (d), (g) to (i), (k) to (n) of Article II.18.1 and in Article II.18.2, the date on which the termination takes effect must be specified in the *formal notification*.

In the cases referred to in points (e), (f) and (j) of Article II.18.1, the termination takes effect on the day following the date on which the contractor receives *notification* of termination.

In addition, at the request of the contracting authority and regardless of the grounds for termination, the contractor must provide all necessary assistance, including information, documents and files, to allow the contracting authority to complete, continue or transfer the services to a new contractor or internally, without interruption or adverse effect on the quality or continuity of the services. The parties may agree to draw up a transition plan detailing the contractor's assistance unless such plan is already detailed in other contractual documents or in the tender specifications. The contractor 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.

II.18.4. Effects of termination

The contractor is liable for damage incurred by the contracting authority as a result of the termination of the FWC or a specific contract, including the additional cost of appointing and contracting another contractor to provide or complete the services, except if the damage is a result of a termination in accordance with Article II.18.1(j), (k) or (l) or Article II.18.2. The contracting authority may claim compensation for such damage.

The contractor is not entitled to compensation for any loss resulting from the termination of the FWC or a specific contract, including loss of anticipated profits, unless the loss was caused by the situation specified in Article II.18.2.

The contractor must take all appropriate measures to minimise costs, prevent damage and cancel or reduce its commitments.

Within 60 days of the date of termination, the contractor must submit any report, deliverable or *result* and any invoice required for services that were provided before the date of termination.

In the case of joint tenders, the contracting authority may terminate the FWC or a specific contract with each member of the group separately on the basis of points (d), (e), (g), (m) and (n) of Article II.18.1, under the conditions set out in Article II.11.2.

II.19. INVOICES, VALUE ADDED TAX AND E-INVOICING

II.19.1. Invoices and value added tax

Invoices must contain the contractor's identification data, the amount, the currency and the date, as well as the FWC reference and reference to the specific contract.

Invoices must indicate the place of taxation of the contractor for value added tax (VAT) purposes and must specify separately the taxable amount per rate or exemption, the VAT rate applied and the VAT amount payable.

The contracting authority is exempt from all taxes and duties, including VAT, in accordance with Articles 3 and 4 of the Protocol 7 of the Treaty on the Functioning of the European Union on the privileges and immunities of the European Union and Article 151, §1 of the Directive 2006/112/CE.

The contractor must complete the necessary formalities with the relevant authorities to ensure that the supplies and services required for *implementation of the FWC* are exempt from taxes and duties, including VAT. In case of joint tenders, where the group of economic operators has no legal personality, each member of the consortium shall issue an invoice to the Commission on its share/part of the service. The invoice shall be sent to the leader of the consortium. The leader will then collect all invoices and draw up a summary of them (including his own invoice). The Commission shall pay the global amount to the leader on its bank account.

In order to allow the entities taking part in a joint tender to complete the formalities with the relevant authorities to ensure the tax exemption, where the group of economic operators has no legal personality, the contracting authority shall issue a VAT exemption certificate for each respective group member of the joint tender, if the transaction is taxable for VAT purposes as an intra-community purchase. Each certificate shall cover only the member's part of the service supplied and shall include a description of it and its value. The contracting authority issues an annex to each order form (bon de commande) or specific contract for each member (including the leader) if the transaction is taxable for VAT purposes as a local purchase in Belgium. Each annex of the order form or specific contract shall include a description of the service supplied by each member and its value.

For the members (including leaders), if the transaction is taxable for VAT purpose as a local purchase in another Member State, local exemption rules apply.

For payment requests sent to the contracting authority via email, the reception date must be considered as the date on which the request for payment arrives in the functional mailbox of the contracting authority. The functional mailbox in which the payments requests are to be sent, should be provided in the specific contracts.

II.19.2. E-invoicing

If provided for in the special conditions, the contractor submits invoices in electronic format if the conditions regarding electronic signature specified by Directive 2006/112/EC on VAT are fulfilled, i.e. using a qualified electronic signature or through electronic data interchange.

E-invoices must be submitted by electronic means through the Portal, in accordance with the Portal Terms and Conditions and using the forms and templates provided there, or through means of supported interoperability networks compliant with the Directive 2014/55/EU on electronic invoicing in public procurement.

II.20. PRICE REVISION

If a price revision index is provided in Article I.5.2, this Article applies to it.

Prices are fixed and not subject to revision during the first year of the FWC.

At the beginning of the second and every following year of the FWC, each price may be revised upwards or downwards at the request of one of the parties.

A party may request a price revision in writing no later than three months before the anniversary date of entry into force of the FWC. The other party must acknowledge the request within 14 days of receipt.

At the anniversary date, the contracting authority must communicate the final index for the month in which the request was received, or failing that, the last provisional index available for that month. The contractor establishes the new price on this basis and communicates it as soon as possible to the contracting authority for verification.

The contracting authority purchases on the basis of the prices in force at the date on which the specific contract enters into force.

The price revision is calculated using the following formula:

$$Pr = Po \times \left(\frac{Ir}{Io} \right)$$

where: Pr = revised price;

Po = price in the tender;

Io = index for the month in which the FWC enters into force;

Ir = index for the month in which the request to revise prices is received.

II.21. PAYMENTS AND GUARANTEES

II.21.1. Date of payment

The date of payment is deemed to be the date on which the contracting authority's account is debited.

II.21.2. Currency

Payments are made in euros, unless another currency is provided for in Article I.7.

II.21.3. Conversion

The contracting authority makes any conversion between the euro and another currency at the daily euro exchange rate published in the Official Journal of the European Union, or failing that, at the monthly accounting exchange rate, as established by the European Commission and published on the website indicated below, applicable on the day when it issues the payment order.

The contractor makes any conversion between the euro and another currency at the monthly accounting exchange rate, established by the Commission and published on the website indicated below, applicable on the date of the invoice.

http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm

II.21.4. Costs of transfer

The costs of the transfer are borne as follows:

- (a) the contracting authority bears the costs of dispatch charged by its bank;
- (b) the contractor bears the costs of receipt charged by its bank;
- (c) the party causing repetition of the transfer bears the costs for repeated transfer.

II.21.5. Pre-financing, performance and money retention guarantees

If, as provided for in Article I.6, a financial guarantee is required for the payment of pre-financing, as performance guarantee or as retention money guarantee, it must fulfil the following conditions:

- (a) the financial guarantee is provided by a bank or a financial institution approved by the contracting authority or, at the request of the contractor and with the agreement of the contracting authority, by a third party; and
- (b) the guarantee shall have the effect of making the bank or financial institution or the third party provide irrevocable collateral security, or stand as first-call guarantor of the contractor's obligations without requiring that the contracting authority has recourse against the principal debtor (the contractor).

The contractor bears the cost of providing such guarantee.

Pre-financing guarantees must remain in force until the pre-financing is cleared against interim payments or payment of the balance. Where the payment of the balance takes the form of a debit note, the pre-financing guarantee must remain in force for three months after the debit note is sent to the contractor. The contracting authority must release the guarantee within the following month.

Performance guarantees cover compliance with substantial contractual obligations until the contracting authority has given its final approval for the service. The performance guarantee must not exceed 10 % of the total price of the specific contract. The contracting authority must release the guarantee fully after final approval of the service, as provided for in the specific contract.

Retention money guarantees cover full delivery of the service in accordance with the specific contract including during the contract liability period and until its final approval by the contracting authority. The retention money guarantee must not exceed 10 % of the total price of the specific contract. The contracting authority must release the guarantee after the expiry of the contract liability period as provided for in the specific contract.

The contracting authority must not request a retention money guarantee for a specific contract where it has requested a performance guarantee.

II.21.6. Interim payments and payment of the balance

The contractor must send an invoice for interim payment, as provided for in Article I.6 or in the tender specifications or in the specific contract.

The contractor must send an invoice for payment of the balance within 60 days of the end of the period of provision of the services, as provided for in Article I.6, in the tender specifications or in the specific contract.

Payment of the invoice and approval of documents does not imply recognition of the regularity, authenticity, completeness and correctness of the declarations and information they contain.

Payment of the balance may take the form of recovery.

II.21.7. Suspension of the time allowed for payment

The contracting authority may suspend the payment periods specified in Article I.6 at any time by *notifying* the contractor (or leader in the case of a joint tender) that its invoice cannot be processed. The reasons the contracting authority may cite for not being able to process an invoice are:

- (a) because it does not comply with the FWC;
- (b) because the contractor has not produced the appropriate documents or deliverables; or
- (c) because the contracting authority has observations on the documents or deliverables submitted with the invoice.

The contracting authority must *notify* the contractor (or leader in the case of joint tender) as soon as possible of any such suspension, giving the reasons for it. In cases b) and c) referred above, the contracting authority shall notify the contractor (or leader in case of a joint tender) the time limits to submit additional information or corrections or a new version of the documents or deliverables if the contracting authority requires it.

Suspension takes effect on the date the contracting authority sends the *notification*. The remaining payment period resumes from the date on which the requested information or revised documents are received or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension period exceeds two months, the contractor (or leader in the case of a joint tender) may request the contracting authority to justify the continued suspension.

Where the payment periods have been suspended following rejection of a document referred to in the first paragraph of this Article and the new document produced is also rejected, the contracting authority reserves the right to terminate the specific contract in accordance with Article II.18.1(c).

II.21.8. Interest on late payment

On expiry of the payment periods specified in Article I.6, the contractor (or leader in the case of a joint tender) is entitled to interest on late payment 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.

Suspension of the payment period as provided for in Article II.21.7 is not considered as giving rise to late payment.

Interest on late payment covers the period running from the day following the due date for payment up to and including the date of payment as defined in Article II.21.1.

However, when the calculated interest is EUR 200 or less, it must be paid to the contractor (or leader in the case of a joint tender) only if it requests it within two months of receiving late payment.

II.22. REIMBURSEMENTS

II.22.1 If provided for in the special conditions or in the tender specifications, the contracting authority must reimburse expenses directly connected with the provision of the services either when the contractor provides it with supporting documents or on the basis of flat rates.

II.22.2 The contracting authority reimburses travel and subsistence expenses on the basis of the shortest itinerary and the minimum number of nights necessary for overnight stay at the destination.

II.22.3 The contracting authority reimburses travel expenses as follows:

- (a) travel by air: up to the maximum cost of an economy class ticket at the time of the reservation;
- (b) travel by boat or rail: up to the maximum cost of a first class ticket;
- (c) travel by car: at the rate of one first class rail ticket for the same journey and on the same day;

In addition, the contracting authority reimburses travel outside Union territory if it has given its prior written approval for the expenses.

II.22.4 The contracting authority reimburses subsistence expenses on the basis of a daily subsistence allowance as follows:

- (a) for journeys of less than 200 km for a return trip, no subsistence allowance is payable;
- (b) the daily subsistence allowance is payable only on receipt of supporting documents proving that the person concerned was present at the destination;
- (c) the daily subsistence allowance takes the form of a flat-rate payment to cover all subsistence expenses, including meals, local transport including transport to and from the airport or station, insurance and sundries;

- (d) the daily subsistence allowance is reimbursed at the flat rates specified in Article I.5.3;
- (e) accommodation is reimbursed on receipt of supporting documents proving the necessary overnight stay at the destination, up to the flat-rate ceilings specified in Article I.5.3.

II.22.5 The contracting authority reimburses the cost of shipment of equipment or unaccompanied luggage if it has given its prior written approval for the expense.

II.23. RECOVERY

II.23.1 If an amount is to be recovered under the terms of the FWC, the contractor must repay the contracting authority the amount in question.

II.23.2. Recovery procedure

Before recovery, the contracting authority must *formally notify* the contractor of its intention to recover the amount it claims, specifying the amount due and the reasons for recovery and inviting the contractor to make any observations within 30 days of receipt.

If no observations have been submitted or if, despite the observations submitted, the contracting authority decides to pursue the recovery procedure, it must confirm recovery by *formally notifying* a debit note to the contractor, specifying the date of payment. The contractor must pay in accordance with the provisions specified in the debit note.

If the contractor does not pay by the due date, the contracting authority may, after informing the contractor in writing, recover the amounts due:

- (a) by offsetting them against any amounts owed to the contractor by the Union or by the European Atomic Energy Community or by an executive agency when it implements the Union budget;
- (b) by calling in a financial guarantee if the contractor has submitted one to the contracting authority;
- (c) by taking legal action.

II.23.3. Interest on late payment

If the contractor does not honour the obligation to pay the amount due by the date set by the contracting authority in the debit note, the amount due bears interest at the rate indicated in Article II.21.8. 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.

Any partial payment is first entered against charges and interest on late payment and then against the principal amount.

II.23.4. Recovery rules in the case of joint tender

If the contract is signed by a group (joint tender), the group is jointly and severally liable under the conditions set out in Article II.6 (liability). The contracting authority shall send the debit note first to the leader of the group.

If the leader does not pay by the due date the whole amount, and if the amount due cannot be offset or can only be offset partially in accordance with Article II.23.2 (a), then the contracting authority may claim the amount still due to any other member or members of the group by respectively *notifying* them with a debit note in conformity with the provisions laid down in Article II.23.2.

II.24. CHECKS AND AUDITS

II.24.1 The contracting authority may check or require an audit on the *implementation of the FWC*. This may be carried out by any outside body authorised to do so on its behalf.

Such checks and audits may be initiated at any moment during the provision of the services and up to five years starting from the payment of the balance of the last specific contract issued under this FWC

The audit procedure is initiated on the date of receipt of the relevant letter sent by the contracting authority. Audits are carried out on a confidential basis.

II.24.2 The contractor must keep all original documents stored on any appropriate medium, including digitised originals if authorised under national law, for a period of five years starting from the payment of the balance of the last specific contract issued under this FWC.

II.24.3 The contractor must grant the contracting authority's staff and outside personnel authorised by the contracting authority the appropriate right of access to sites and premises where the FWC is implemented and to all the information, including information in electronic format, needed to conduct such checks and audits. The contractor must ensure that the information is readily available at the moment of the check or audit and, if so requested, that information is handed over in an appropriate format.

II.24.4 On the basis of the findings made during the audit, a provisional report is drawn up. The contracting authority or its authorised representative must send it to the contractor, who has 30 days following the date of receipt to submit observations. The contractor must receive the final report within 60 days following the expiry of the deadline to submit observations.

On the basis of the final audit findings, the contracting authority may recover all or part of the payments made in accordance with Article II.23 and may take any other measures which it considers necessary.

II.24.5 In accordance with Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspection carried out by the

Commission in order to protect the European Communities' financial interests against *fraud* and other *irregularities* and 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, the European Anti-Fraud Office may carry out investigations, including on the spot checks and inspections, to establish whether there has been *fraud*, corruption, *irregularities* or any other illegal activity under the contract affecting the financial interests of the Union. Findings arising from an investigation may lead to criminal prosecution under national law.

The investigations may be carried out at any moment during the provision of the services and up to five years starting from the payment of the balance of the last specific contract issued under this FWC.

II.24.6 The Court of Auditors and the European Public Prosecutor's Office established by Council Regulation (EU) 2017/1939¹¹ ('the EPPO') and, for the processing of personal data, the European Data Protection Supervisor have the same rights as the contracting authority, particularly right of access, for the purpose of checks, audits and investigations.

¹¹ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office

ANNEX III

- Model for specific contracts
- Model for order forms

SPECIFIC CONTRACT

No [complete]

implementing framework contract No [complete]

FEE-BASED

1. The European Climate, Infrastructure and Environment Executive Agency (CINEA) acting under the powers delegated by the European Commission

[The European Union ('the Union'), represented by the European Commission, [Directorate-General]

('the contracting authority')

represented for the purposes of the signature of this Specific Contract by the authorised representative indicated in the respective field under "SIGNATURES" below and

2. [Contractor's full official name]

[Contractor's official legal form]

[Contractor's statutory registration number or ID or passport number]

[Contractor's full official address]

[OPTION for contractors with VAT: VAT registration number]

[OPTION for joint tenders: appointed as leader of the group by the members of the group that submitted the joint tender]

[repeat these data as many times as there are contractors in case of joint tender and continue numbering]

([OPTION for joint tenders: collectively] "the contractor"),

represented for the purposes of signing this specific contract by the authorised representative indicated in the respective field under "SIGNATURES" below

HAVE AGREED

ARTICLE 1 SUBJECT MATTER

- 1.1 This specific contract implements framework contract (FWC) No [FWC number], signed by the parties on [FWC entry into force date]. The specific contract is established following the contracting authority's request for specific contracts [request number] of [request date] and the contractor's [specific tender] submitted on [date].
- 1.2 In accordance with the provisions set out in the FWC and in this specific contract and their annexes, which form an integral part of it, the contractor must provide the services specified in Annex I.

ARTICLE 2 ENTRY INTO FORCE, DURATION AND PLACE OF PERFORMANCE

- 2.1 This Specific Contract enters into force on the date on which the last party signs it.
- 2.2 The provision of the services starts [on the date the specific contract enters into force] [on the later between the following two dates: the date it is signed by the last contracting party, and DD-MM-YY] [on the date notified by the Contracting Authority with at least 7 days notice and in any case no sooner than the date of entry into force and no later than 3 months after the signature of the specific contract].
- 2.3 The [maximum] period of provision of the services, [must not exceed [number] [days/months/years]] [must end on or before DD-MM-YY]. This period may be extended only with the express written agreement of the parties before the expiration of such period, in accordance with the provisions of the FWC.
- 2.4 The tasks shall be performed as specified in the Request for specific contract [/Contractor's specific tender] (including the place of performance).

ARTICLE 3 PRICE AND VAT PROVISIONS

- 3.1 The [maximum] amount covering all purchases under this specific contract [,including reimbursement/payment of expenses as specified in the Request for specific contract,] is EUR [amount in figures and in words].]
- 3.2 [*Option: no reimbursement of expenses*: Reimbursement/payment of expenses is not applicable to this specific contract.]
- [*Option: reimbursement of expenses is applicable*: Within the maximum amount of this specific contract [,covering [all phases] [the initial period and all renewals]], the total value of expenses may not exceed EUR [amount in figures and in words]. The expenses must be reimbursed/paid in accordance with the FWC].
- 3.3 If the transaction is taxable for VAT purposes as a local purchase in Belgium, use of this contract constitutes a request for VAT exemption No 450, Article 42, paragraph 3.3 of the VAT code (circular 2/1978), provided the invoice includes the statement:

‘Exonération de la TVA, Article 42, paragraphe 3.3 du code de la TVA (circulaire 2/1978)’ or an equivalent statement in the Dutch or German language.

- 3.4** If the transaction is taxable for VAT purposes as a local purchase in Luxembourg, the contractor must include the following statement in the invoices: "Commande destinée à l'usage officiel de l'Union européenne. Exonération de la TVA Article 43 § 1 k 2ème tiret de la loi modifiée du 12.02.79.'
- 3.5** If the transaction is taxable for VAT purposes as a local purchase in a Member State of the European Union (other than Belgium or Luxembourg) where the fiscal legislation allows direct VAT exemption, the invoice must include a statement referencing the relevant national legislation.
- 3.6** If the transaction is taxable for VAT purposes as an intra-community purchase, the invoice must include the following sentence: "VAT exemption / European Union / Article 151 of Council Directive 2006/112/EC".
- 3.7** If the transaction is taxable for VAT purposes as an intra-community purchase in a Member State of the European Union, in which the fiscal legislation does not allow direct VAT exemption, at the request of the contracting authority, the contractor shall make available to it all the supporting documents which the contracting authority might need in order to apply to the tax authorities for the reimbursement of any duties and taxes paid in the course of the performance of the contract.

ARTICLE 4 INVOICES AND PAYMENTS

- 4.1** Payment arrangements provisions are set out in the framework contract /request for specific contracts.

[OPTION if pre-financing applicable: A first pre-financing payment of EUR [amount in figures and in words] shall be made, subject to the provisions of the Framework contract and to the receipt, by the contracting authority, of a financial guarantee covering the full amount of the pre-financing payment, in accordance with the provisions of the Framework contract.

- 4.2** The contractor should send the invoice(s) for the interim payment(s) and/or the payment of the balance [in paper format at the following address] [via email at the following email address] [via the electronic exchange system].

ARTICLE 5 COMMUNICATION DETAILS

- 5.1** For the purpose of this specific contract, paper or email communications must be sent to the following addresses:

Contracting authority:

[European Climate, Infrastructure and Environment Executive Agency (CINEA)]

Or [European Commission]
[Directorate-General [complete]]
[Directorate [complete]]
[Unit [complete]]
[Postcode and city]
E-mail: [functional mailbox]
Contractor (or leader in the case of a joint tender):

[Full name]

[Function]

[Company name]

[Full official address]

E-mail: [complete]

ARTICLE 6 PREFINANCING GUARANTEE

6.1 [Prefinancing guarantee is not applicable to this specific contract.]

[This contract is subject to a prefinancing guarantee of [complete] % The contractor (or leader in the case of a joint tender) must provide a pre-financing guarantee in the form of a financial guarantee for EUR [amount in figures and in words] in accordance with the conditions laid down in Article II.21.5 which lays down also the conditions for the release of the prefinancing guarantee by the contracting authority.]

ARTICLE 7 PERFORMANCE GUARANTEE

7.1 Performance guarantee is not applicable to this specific contract.

ARTICLE 8 RETENTION MONEY GUARANTEE

8.1 Retention money guarantee is not applicable to this specific contract.

ARTICLE 9 PROCESSING OF PERSONAL DATA

9.1 For personal data contained in this specific contract or required for its management, the data controller is the [European Climate, Infrastructure and Environment Executive Agency (CINEA)] [European Commission] and can be contacted using the communication details mentioned under Article 5 above.

ARTICLE 10 LANGUAGE OF THE CONTRACT

10.1 The language of the specific contract, as well as the working and reporting language and the language for all written communications with the contracting authority and/or the project manager under this specific contract shall be English.

Annexes

Annex I: Request for specific contract

Annex II: [Contractor's specific tender] [Contractor's documents submitted] of [insert date]

Annex III: Declaration on the list of pre-existing rights and statements

Signatures

For the contractor,

For the contracting authority,

[Company name/forename/surname/function]

[forename/surname/function]

signature:
Done on [date]

signature:
Done on [date]

Annex III to the Specific contract

Declaration on the list of pre-existing rights

I, *[insert name of the authorised representative of the contractor]* representing *[insert name of the contractor]* ('the contractor'), party to the [framework] [specific] contract *[insert title and number]* [*option 1*: warrant that the results are free of rights or claims from creators or from any third parties for any use the contracting authority may envisage and declare that the results do not contain any pre-existing rights to the results or parts of the results or to pre-existing materials as defined in the above-mentioned contract.] [*option 2*: warrant that the results and the pre-existing material incorporated in the results are free of rights or claims from creators or from any third parties for any use the contracting authority may envisage and declare that the results contain the following pre-existing rights:]

Please fill in the table – one line per pre-existing right

Result concerned	Pre-existing material concerned	Rights to pre-existing material	Identification of rights' holder