



EUROPEAN COMMISSION

DG

FRAMEWORK CONTRACT

NUMBER – [complete]

1. The European Union ('the Union'), represented by the European Commission ('the Commission' or 'the lead contracting authority'), and the following contracting authorities

No.	NAME OF THE INSTITUTION, AGENCY OR BODY	SHORT NAME	LOCATION
1.	Agency for the Cooperation of Energy Regulators	ACER	(SI) Ljubljana
2.	Bio-based Industries Joint Undertaking	BBI JU	(BE) Brussels
3.	Translation Centre for the Bodies of the European Union	CDT	(LU) Luxembourg
4.	European Centre for the Development of Vocational Training	CEDEFOP	(GR) Thessaloniki
5.	European Union Agency for Law Enforcement Training	CEPOL	(HU) Budapest
6.	Consumers, Health and Food Executive Agency	CHAFEA	(LU) Luxembourg
7.	Clean Sky Joint Undertaking	CSJU	(BE) Brussels
8.	Court of Justice	CURIA	(LU) Luxembourg
9.	Education, Audiovisual and Culture Executive Agency	EACEA	(BE) Brussels
10.	European Aviation Safety Agency	EASA	(DE) Köln
11.	Executive Agency for Small and Medium-sized Enterprises	EASME	(BE) Brussels
12.	European Asylum Support Office	EASO	(MT) Valletta
13.	European Court of Auditors	ECA	(LU) Luxembourg
14.	European Centre for Disease Prevention and Control	ECDC	(SE) Stockholm
15.	Electronic Components and Systems for European Leadership	ECSEL Joint Undertaking	(BE) Brussels
16.	European Defence Agency	EDA	(BE) Brussels
17.	European Environment Agency	EEA	(DK) Copenhagen
18.	European External Action Service	EEAS	(BE) Brussels
19.	European Economic and Social Committee / Committee of Regions	EESC/ CoR	(BE) Brussels
20.	European Fisheries Control Agency	EFCA	(ES) Vigo
21.	European Food Safety Authority	EFSA	(IT) Parma
22.	European Institute for Gender Equality	EIGE	(LT) Vilnius

No.	NAME OF THE INSTITUTION, AGENCY OR BODY	SHORT NAME	LOCATION
23.	European Insurance and Occupational Pensions Authority	EIOPA	(DE) Frankfurt am Main
24.	European Medicines Agency	EMA	(UK) London
25.	European Monitoring Centre for Drugs and Drug Addiction	EMCDDA	(PT) Lisbon
26.	European Maritime Safety Agency	EMSA	(PT) Lisbon
27.	European Parliament	EP	(BE) Brussels, (LU) Luxembourg, (FR) Strasbourg
28.	European Union Agency for Railways	ERA	(FR) Valenciennes
29.	European Research Council Executive Agency	ERCEA	(BE) Brussels
30.	Euratom Supply Agency	ESA	(LU) Luxembourg
31.	European Union Intellectual Property Office	EUIPO	(ES) Alicante
32.	European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice	eu-LISA	(EE) Tallinn/ FR(Strasbourg), (BE) Brussels / (AT) Sankt Johann im Pangau
33.	European Agency for Safety and Health at Work	EU-OSHA	(ES) Bilbao
34.	European Foundation for the Improvement of Living and Working Conditions	EUROFOUND	(EI) Dublin
35.	European Police Office	EUROPOL	(NL) The Hague
36.	European Schools	EURSC	(BE) Brussels, Luxembourg, Spain, Italy, Netherlands, Germany, UK
37.	European Joint Undertaking for ITER and the Development of Fusion Energy (Fusion for Energy)	F4E	(ES) Barcelona/ (FR)
38.	Fuel Cells and Hydrogen 2 Joint Undertaking	FCH 2 JU	(BE) Brussels
39.	European Union Agency for Fundamental Rights	FRA	(AT) Vienna
40.	European Border and Coast Guard Agency	FRONTEX	(PL) Warsaw
41.	European Global Navigation Satellite Systems Agency	GSA	(CZ) Prague
42.	Innovative Medicines Initiative 2 Joint Undertaking	IMI 2 JU	(BE) Brussels
43.	Innovation and Networks Executive Agency	INEA	(BE) Brussels

No.	NAME OF THE INSTITUTION, AGENCY OR BODY	SHORT NAME	LOCATION
44.	Research Executive Agency	REA	(BE) Brussels
45.	European Union Satellite Centre	SATCEN	(ES) Madrid
46.	Single Resolution Board	SRB	(BE) Brussels

(collectively, ‘the contracting authority’), represented for the purposes of signing this framework contract by [forename, surname, function, department of authorising officer], Directorate C, Directorate-General for Informatics,

of the one part and

2. [Consortium's name or joint tender consisting of]

Company A

[Full official name]

[Official legal form]

[Statutory registration number or ID or passport number]

[Full official address]

[VAT registration number]

Company B

[Full official name]

[Official legal form]

[Statutory registration number or ID or passport number]

[Full official address]

[VAT registration number]

Company C (acting as group leader)

[Full official name]

[Official legal form]

[Statutory registration number or ID or passport number]

[Full official address]

[VAT registration number]

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

([collectively] ‘the contractor’), represented for the purposes of the signature of this framework contract by [forename, surname, function of legal representative and name of company in case of a joint tender]

on the other part

HAVE AGREED

to the **special conditions**, the **general conditions for framework contracts**, the **general terms and conditions for information technologies contracts, version 2.1** and the following annexes:

Annex I	<ul style="list-style-type: none"> List of Hardware or Software products, Extended Guarantee and Documentation covered by the contract and schedule of prices
Annex II	<ul style="list-style-type: none"> List of Services covered by the contract and schedule of prices.
Annex III	<ul style="list-style-type: none"> Tendering Specifications (enclosed to Invitation to Tender for call for tenders DIGIT/R3/PO/2016/020 – Data Centre Compute Solutions (DCCS) – Lot 1 of [complete date]), including Commission's replies to objections and questions raised by tenderers during the tendering stage of Call for tenders No. DIGIT/R3/PO/2016/020 – Original stored by the Commission.
Annex IV	<ul style="list-style-type: none"> Contractor's Tender No. [complete], submitted on [complete date], including all replies by the Contractor to clarification requests made by the Commission during the evaluation stage of Call for tenders DIGIT/R3/PO/2016/020 – Original stored by the Commission.
Annex V	<ul style="list-style-type: none"> Order form and Specific contract – Draft Templates (Contract Body and Data Appendix)
Annex VI	<ul style="list-style-type: none"> Performance guarantee – Model <p>Not applicable</p>
Annex VII	<ul style="list-style-type: none"> Service Level Agreement (SLA)
Annex VIII	<ul style="list-style-type: none"> e-Request, e-Ordering, e-Fulfilment and e-Invoicing Interchange Agreement (Web Services & Supplier Portal)
Annex IX	<ul style="list-style-type: none"> Notification document for On-Site Personnel – template
Annex X	<ul style="list-style-type: none"> Personal data form – template
Annex XI	<ul style="list-style-type: none"> Declaration on confidentiality

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 supplies and/or services from the contractor;
2. the provisions that apply to any order form or 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.

By submitting a tender, the contractor waives its own terms and conditions. All documents of this nature (end-user agreements, contractor's general conditions, etc.) 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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PREAMBLE

On [.././20XX], the Commission, acting on its own behalf and on behalf of the abovementioned contracting authorities, launched the call for tenders under the reference n° DIGIT/R3/PO/2016/020, for Data Centre Compute Solutions (DCCS) – Lot 1.

The contractor was selected at the conclusion of the evaluation process, on the basis of its tender submitted on [.././20XX], in response to the invitation to tender.

The present FWC is applicable to all the above-mentioned existing contracting authorities.

Newly created institutions, agencies, or bodies may join the FWC at any time by way of an amendment. Such amendment shall take the form of a written notification from the contracting authority to the contractor. This written notification shall have full legal effect from the day following the day on which the notification was sent or on the day indicated therein.

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 including the Service Level Agreement take precedence over those in the other parts of the FWC.
- (b) The provisions set out in the general conditions and in the tendering specifications (Annex III to the FWC) take precedence over those in the general terms and conditions for information technologies contracts.
- (c) The provisions set out under point (b) take precedence over those in the contractor's bid and in the order forms and specific contracts (Annex V to the FWC) signed during the contract execution.
- (d) The provisions set out in the order form or specific contract take precedence over those in the request for supplies/services.
- (e) In case of reopening of competition, the provisions set out in the request for supplies/services take precedence over those in the specific offers.

Any reference to specific contracts applies also to order forms.

I.2. SUBJECT MATTER

I.2.1 The subject matter of the FWC is the sale and leasing to the Commission of complex or other than complex hardware and the provision of Extended Guarantee and documentation (as set out in Annex I to the FWC).

The products and/or services covered by this contract are listed in Annex I and Annex II to the FWC. For the sake of convenience, both Annexes are merged into one excel-file.

I.2.2 All specific contracts shall conform to the provisions set out in the FWC, including its annexes.

I.2.3 Upon implementation of the FWC, the contractor shall supply the products and/or provide the services in accordance with the provisions of the contract, including its annexes.

I.2.4 The contract does not confer on the contractor any exclusive right to supply the products and to provide the services referred to in the above paragraph.

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, being the date on which the Commission signs.

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 as follows:

- for acquisitions of servers and associated equipment: four (4) years;
- for leasing of servers and associated equipment: nine (9) years;
- for extended guarantee, upgrades and associated services: nine (9) years;

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 supplies and/or services relating to such specific contracts must be delivered/performed no later than six (6) months after its expiry.

I.3.5 Renewal of the FWC

Not applicable.

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

Not applicable.

I.5. PRICES

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

The maximum awarded amount covering all purchases under this FWC, including all renewals is or will be published in the relevant contract award notice. However, this does not bind the contracting authority to purchase for the maximum amount.

The maximum prices of the supplies and/or services are listed in Annex I and Annex II to the FWC.

Voluntary price revision: The unit prices of the products shall be all-inclusive and not revisable until the end of the first year of the duration of the Framework Contract. However, in this period, prices can be reduced in Order Forms or Specific Contracts. The contractor may reduce the prices for supplies and/or services voluntarily at any time.

I.5.2. Price revision index

If there is a fluctuation of 10% or more in the USD/EUR rates (daily nominal effective exchange rate as published on the ECB website on the first working day of July), compared to the applicable rate on the date of submission of the tender, this price revision based on USD exchange rate will take place first. Prices may be revised upwards or downwards on the basis of the following formula:

$$Q \leq 100 \times \frac{(T_0 - T_r)}{T_0}$$

where:

Q = Percent change (needs to be equal or higher than 10, or equal or lower than -10 in order for the revision to take place)

To = Original exchange rate, as applicable on 12 April 2017, rounded to the third decimal

Tr = Exchange rate on the first working day of July of the year in which the yearly price revision is calculated, rounded to the third decimal

The percent change (Q) needs to be equal or higher than 10, or equal or lower than -10 in order for the revision to take place. If Q is equal or higher than 10, prices will be increased by the applicable percentage. If Q is equal or higher than -10, prices will be decreased by the applicable percentage. The price revision for supplies or services will be applied thereafter.

Price revision for supplies or services is determined by the formula set out in Article II.19 using the following indices:

For services: For the price revision based on the trend in the index “Harmonised Indices of Consumer Prices (HICP all items)”, under “First Published Data (prc_hicp_fp)”, published on Eurostat’s official website, **the index to be used is the one reflecting the member evolution of the Euro Area overtime or its successor (i.e. EA11-2000, EA12-2006, EA13-2007, EA15-2008, EA16-2010, EA17-2013, EA18-2014, EA19) using the latest base year (currently index, 2015=100).**

For supplies: For the price revision based on the trend in the index “Producer prices in industry, domestic market - monthly data [sts_inppd_m]” (PPI NACE C262), published on Eurostat’s official website, **the index to be used is the one reflecting the evolution in the European Union (28 countries) or its successor using the latest base year (currently index, 2010=100).**

I.5.3. Benchmarking

Benchmarking is an assessment process carried out by a qualified and objective third party which: tests, evaluates and measures the performance of the contractor by comparison with similar services or products provided by other companies; and/or analyses the evolution of the relation between the prices laid down in the FWC and the market prices for similar or equivalent items ('the benchmarking').

The contracting authority may undertake the benchmarking of the levels and the charges of the supplies and/or services provided under this FWC by comparison with similar or equivalent supplies and/or services provided by outsourcing vendors and/or in-house service providers and suppliers. The result of such benchmarking is available in identical form to both the contracting authority and the contractor.

In order to guarantee that a valid comparison is made, the contracting authority will ensure that:

- the scope of the supplies and/or services being provided by the contractor is taken into consideration;
- the comparison group consists of at least four enterprises to ensure statistical significance;
- the relevant comparison data must be guaranteed.

The benchmarking must not exceed four (4) months.

For the first benchmarking exercise, the comparison group is defined in a document entitled "Comparison Group Definition". The contracting authority reserves the right to change the comparison group algorithm to reflect any changes in its business from time to time.

The independent third party carrying out the benchmarking ('the benchmarker') must be a qualified and objective third party selected by the contracting authority through an appropriate market procedure. The contracting authority must pay all of its own costs and the benchmarker's costs during the benchmarking. The contractor must pay all of its own costs. Interpretation of the results of the benchmarking must be the sole prerogative of the benchmarker.

The contracting authority and the contractor must set aside sufficient time and resources for each stage of the benchmarking, such as:

- identification and location of benchmarking data,
- performing the benchmarking, and
- implementation of the conclusions of the benchmarker.

The contracting authority and the contractor will be free to suggest changes in benchmarking parameters as the supplies and/or services evolve over the term of this FWC.

The benchmarker must treat as confidential, in accordance with Article II.8, all data provided by the contracting authority and the contractor, and must return all material and media once the benchmarking is completed.

If a benchmarking reveals that the level of a supply and/or service does not reach the comparison group's product quality levels, the contractor must immediately propose a supply and/or service similar or equivalent to the comparison group's level, as specified by the benchmarker.

If a benchmarking reveals that charges are higher than the comparison group's charges, the contractor must immediately reduce its charges to the comparison group level specified by the benchmarker, with effect from the date on which the results of the benchmarking were delivered to the parties.

In the event the contractor has not proposed a similar or equivalent supply and/or service or reduced the price in line with the benchmarker's specification, the contracting authority reserves the right not to use the FWC and may take appropriate measures.

In derogation to Article II.8, for the purposes of any benchmarking exercise, and to the extent necessary, the Commission is entitled to disclose information or documents to the third party benchmarker.

I.5.4. Reimbursement of expenses

Not applicable.

I.6. PAYMENT ARRANGEMENTS

1. Payments under the FWC shall be made in accordance with Article II.20, which is complemented by Article III.1.5 and the provisions of the order forms or specific contracts (Annex V to the FWC).

2. The contracting authority must approve any submitted documents or supplies/deliverables and pay within 30 days from receipt of the invoice.

3. If the contracting authority has observations to make, it must send them to the contractor (or leader in case of a joint tender) and suspend the time limit for payment in accordance with Article II.20.7.

The contractor (or leader in case of a joint tender) has 15 days to submit additional information or corrections or new supplies or new version of the documents if the contracting authority requires it.

4. The contracting authority must 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 supplies/deliverables.

5. Payments shall be executed only if the contractor has fulfilled all its contractual obligations by the date on which the invoice is submitted. Payments requests may not be made if payments for previous orders or specific contracts have not been executed as a result of default or negligence on the part of the contractor.

6. In the event of its budget not being adopted, the contracting authority may, after giving prior notice, pay invoices by monthly instalments. In such cases, it shall notify the contractor once it is in a position to resume normal payment arrangements.

I.6.1. Pre-financing

Not applicable.

I.6.2. Interim payment

Not applicable.

I.6.3. Payment of the balance

Not applicable.

I.6.4. Performance guarantee

Not applicable.

I.6.5. Retention money guarantee

Not applicable.

I.7. BANK ACCOUNT

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

Name of bank:

Full address of branch:

Exact denomination of account holder:

Full account number including bank codes:

IBAN/BIC/SWIFT code:

I.8. COMMUNICATION DETAILS

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

Contracting authority:

European Commission

Directorate-General for Informatics

Directorate R

DIGIT Contracts Information Centre

Unit R3

Office MO15 07/P001

Rue Montoyer 15

1049 Brussels

Email: DIGIT-CONTRACTS-INFO-CENTRE@ec.europa.eu

Contractor (or leader in case of a joint tender):

[Full name]

[Function]

[Company name]

[Full official address]

Email: [complete]

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

I.9. DATA CONTROLLER

For the purpose of Article II.9, the data controller is the Head of Unit of Unit R3 – ICT Procurement and Contract Management of the Directorate-General for Informatics.

I.10. 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 six (6) months' prior notice.

If the FWC or a specific contract is terminated:

- a) neither party is entitled to compensation unless provided otherwise in the SLA;
- b) the contractor is entitled to payment only for the supplies and/or services delivered before termination takes effect, and only subject to their acceptance.

The second, third and fourth paragraphs of Article II.17.4 apply.

I.11. APPLICABLE LAW AND SETTLEMENT OF DISPUTES

I.11.1 The FWC is governed by Union law, complemented, where necessary, by the law of Belgium.

I.11.2 The courts of Brussels have exclusive jurisdiction over any dispute regarding the interpretation, application or validity of the FWC.

I.12. INTER-INSTITUTIONAL FWC

I.12.1 This FWC is inter-institutional. 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, unless explicitly provided otherwise.

I.12.2 Each contracting authority is responsible for the particular specific contracts it awards.

I.12.3 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.13. EXPLOITATION OF THE RESULTS OF THE FWC

Exploitation of the results of the FWC is not applicable to this FWC.

I.14. SPECIFIC DEROGATIONS TO GENERAL CONDITIONS AND TO GENERAL TERMS AND CONDITIONS FOR INFORMATION TECHNOLOGIES CONTRACTS (GTCs)

In derogation of the last paragraph of Article II.14.1, the total maximum amount of liquidated damages that can be imposed shall be capped at 100% of the value of the relevant Specific Contract(s) or Order Form(s) for which the Contractor is in breach for liquidated damages laid down in the SLA.

Specific derogations from the GTCs are laid down in the Service Level Agreement.

I.15. SPECIFIC DEFINITIONS

Not applicable.

I.16. SPECIFIC QUALITY STANDARDS

Specific quality requirements are stated in the Service Level Agreement (Annex VII to the FWC) which is an integral part of the special conditions of the Framework Contract.

I.17. SPECIFIC SECURITY RULES FOR SERVICES PROVIDED ON THE PREMISES OF THE CONTRACTING AUTHORITY IN BELGIUM

1. For the purpose of this article, the following definitions apply:

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

'On-Site Personnel': personnel who is granted access rights to the Contracting Authority premises in Belgium for a short or long term period, when necessary for executing a specific contract.

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 On-Site 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 On-Site Personnel to the premises of the Contracting Authority may be conditional on a positive security advice to be delivered by the Belgian authorities.

3. In order to allow the Belgian authorities to give a security advice, the Contractor will submit to the relevant On-Site Personnel the attached form (Notification Document¹). The duly completed and signed Notification Documents (marked "Notification Document") will

¹ The Notification Document is attached as Annex IX and contains: full official name and forenames; nationality; national Belgian registry number; place of birth; date of birth; function or occupation; official complete address (including house or flat number and postal code).

be returned to the Commission Department of Security (European Commission, HR.DS - BERL 3/190) and an up-to-date electronic list of relevant personal data as listed in the attached template² will be sent to the address "EC-SECURITY-SCREENING@ec.europa.eu" at least 35 days before the start date of a new contract.

4. Failure or refusal to complete the Notification Document may result in refusal of access rights to Commission buildings for the Personnel.

5. The Contracting Authority acknowledges that in exceptional cases it may not be possible for the Contractor to provide at short-term On-Site Personnel having received a positive security advice. Nevertheless the Contractor undertakes to provide at all times only On-Site 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 On-Site Personnel having received a positive security advice for the listed Commission buildings.

6. If access rights for On-Site Personnel are granted by means of a Commission access card, this card remains the property of the Commission and must be returned to the Service Card Office (Rue Montoyer 34 — 1049 Brussels – MEZ/120 – Monday to Friday 08:30-16:30) upon request, upon expiry or where the access conditions are no longer met and in particular where the On-Site Personnel does not benefit anymore from a positive security advice.

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.

I.18. EXTENSION OF BACKGROUND CHECKS TO OTHER CASES

The background checks, as described under Article I.17 for on-site personnel working in the premises of the contracting authority, may be extended at any time:

- to the Commission's places of work located outside Belgium; and/or
- to the EU Institutions, Agencies and/or Other Bodies, other than the Commission, who are contracting parties, in any of their places of work.

The Commission or an EU Institution, Agency or Other Body that decides to extend the procedure as provided for above shall notify the practical modalities for its implementation to the Contractor. This notification shall have full legal effect under the Framework Contract as from the date indicated in the notification.

Specific security rules for a number of other EUIs are laid down in Annex 4 to the Service Level Agreement.

² The compulsory template of the electronic list attached as Annex X is to be transferred to the Belgian authorities and summarizes the information as provided by the proposed on-site personnel in the Notification Document.

I.19. SUBCONTRACTING

Further to Article II.10, additional or replacing subcontractors can be accepted during the lifetime of the Framework Contract, subject to the Commission's prior written consent on the basis of a detailed justification provided by the Contractor, along with supporting evidence that the proposed subcontractor possesses the required capacity.

Apart from the above, freelancers, one-person companies, and CVs of staff of companies within the contractor's corporate group (or in case of a joint tender, the group of any of its members) can be authorised at any stage, provided they can prove compliance with the exclusion criteria and the mandatory technical requirements which are relevant to their envisaged role under the Framework Contract, and provided that those companies have submitted written undertakings in support of the contractor.

Freelancers/one-person companies shall be considered to be only those natural or legal persons who are:

- an individual (self-employed natural person); OR
- a representative of a company (legal person) having at the date of signature of the present declaration:
 - Only one owner/administrator who is also the only active person (employee or not) providing IT services in that company;
 - Several company owners or administrators, but in which only one person (employee or not) is active in providing IT services;
 - One or several company owners/administrators, in which maximum two (2) persons (employees or not) with family ties are active in providing IT services.

SIGNATURES

For the contractor,

For the contracting authority,

[Company name/forename/surname/position]

[forename/surname/position]

Signature[s]: _____

Signature[s]: _____

Done at [place], [date]

Done at [place], [date]

In duplicate in English.

II. GENERAL CONDITIONS FOR THE FRAMEWORK CONTRACT

II.1. DEFINITIONS

For the purpose of this FWC, the following definitions apply:

‘Back office’: the internal system(s) used by the parties to process electronic documents such as orders and invoices;

‘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;

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

‘EDI message’: an electronic document structured by using an agreed standard, prepared in a computer readable format and capable of being automatically and unambiguously processed;

‘e-PRIOR’: the service-oriented communication platform that provides a series of web services and allows the exchange of standardised electronic messages and documents between the parties. This is done either through web services, with a machine-to-machine connection between the parties’ back office systems (EDI messages), or through a web application (the supplier portal). The Platform may be used to exchange electronic documents (e-documents) such as electronic requests for services/supplies (request for quotation, final offer, etc.) electronic specific contracts and order forms, electronic transmission of timesheets, deliverables and its acceptance (service receipt, dispatch advices and receipt advices) or electronic invoices between the parties. Technical specifications (i.e. the interface control document), details on access and user manuals are available at the following website: <https://webgate.ec.europa.eu/fpfis/wikis/display/ePRIOR/The+e-Procurement+suite>.

‘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 may 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, 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’: any intentional act or omission affecting the Union’s financial interests relating to the use or presentation of false, incorrect or incomplete statements or documents or to non-disclosure of information in violation of a specific obligation;

‘Implementation of the FWC’: the purchase of supplies and/or services envisaged in the FWC through the signature and performance of specific contracts;

‘Interface control document’: the guideline document which lays down the technical specifications, message standards, security standards, checks of syntax and semantics, etc. to facilitate machine-to-machine connection. This document is updated on a regular basis and is available on the e-PRIOR website;

‘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;

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

‘Order form’: a form by which the contracting authority orders supplies and related maintenance under this FWC;

‘Performance of a specific contract’: the performance of tasks and delivery of the purchased supplies/services by the contractor to the contracting authority;

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

‘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 person who has the power to represent the contractor or to take decisions on its behalf;

‘Result’: any intended outcome of the implementation of the FWC, whatever its form or nature, which is delivered and finally or partially approved by the contracting authority. A result may be further defined in this FWC as a deliverable. A result may, in addition to materials produced by the contractor or at its request, also include pre-existing materials;

‘Request for supplies/services’: a document from the contracting authority requesting that the contractors provide a specific tender for supplies/services whose terms are not entirely defined under the FWC;

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

‘Substantial error’: any infringement of a contract provision resulting from an act or omission, which causes or might cause a loss to the Union’s budget;

‘Supplier portal’: the e-PRIOR portal, which allows the contractor to receive or exchange electronic documents, such as quotations, orders, dispatch and receiving advices or invoices,

through a graphical user interface. When necessary, these documents can be signed electronically by the authorised persons. Its main features can be found in the supplier portal overview document available on: <https://webgate.ec.europa.eu/fpfs/wikis/display/ePRIOR/The+e-Procurement+suite>.

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.

In the case a group of tenderers creates a separate entity with legal personality one member is appointed as manager 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.

II.4. DELIVERY OF SUPPLIES / PROVISION OF SERVICES

II.4.1. Delivery of Supplies

II.4.1.1 Signature of the FWC does not guarantee any actual purchase. The contracting authority is bound only by specific contracts implementing the FWC.

II.4.1.2 Not applicable. .

II.4.1.3 Not applicable.

II.4.1.4 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.4.1.5 The contractor is responsible for the personnel who perform the contract 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 supplies does not result in any employment or contractual relationship with the contracting authority.

II.4.1.6 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 supplies, as the case may be on the basis of the selection criteria set out in the tendering specifications.

II.4.1.7 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 supplies; 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 supplies resulting from the replacement of personnel.

II.4.1.8 Not applicable.

II.4.1.9 Delivery

Not applicable.

II.4.1.10 Certificate of conformity

Not applicable.

II.4.1.11 Conformity of the supplies delivered with the FWC

Not applicable.

II.4.1.12 Remedy

Not applicable.

II.4.1.13 Assembly

Not applicable.

II.4.1.14 Services provided to supplies

Not applicable.

II.4.1.15 General provisions concerning supplies

Not applicable.

II.4.2. Provision of services

Not applicable.

II.5. COMMUNICATION BETWEEN THE PARTIES

II.5.1. Form and means of communication

Any communication of information, notices or documents under the FWC must:

- (a) be made in writing in paper or electronic format in the language of the FWC;
- (b) bear the FWC number and, if applicable, the specific contract number;
- (c) be made using the relevant communication details set out in Article I.8; and
- (d) be sent by mail, email or, for the documents specified in the special conditions, via e-PRIOR.

If a party requests written confirmation of an e-mail within a reasonable time, the other party must provide an original signed paper version of the communication as soon as possible.

The parties agree that any communication made by email has full legal effect and is admissible as evidence in judicial proceedings.

II.5.2. Date of communications by mail and email

Any communication is deemed to have been made when the receiving party receives it, unless this FWC contract refers to the date when the communication was sent.

E-mail is deemed to have been received by the receiving party on the day of dispatch of that e-mail, provided that it is sent to the e-mail address indicated in Article I.8. The sending party must be able to prove the date of dispatch. In the event that the sending party receives a non-delivery report, it must make every effort to ensure that the other party actually receives the communication by email or mail. In such a case, the sending party is not held in breach of its obligation to send such communication within a specified deadline.

Mail sent to the contracting authority is deemed to have been received by the contracting authority on the date on which the department responsible referred to in Article I.8 registers it.

Formal notifications are considered to have been received by the receiving party on the date of receipt indicated in the proof received by the sending party that the message was delivered to the specified recipient.

II.5.3. Submission of e-documents via e-PRIOR

If provided for in the special conditions, the exchange of electronic documents (e-documents) such as specific contracts and invoices between the parties is automated through the use of the e-PRIOR platform. This platform provides two possibilities for such exchanges: either through web services (machine-to-machine connection) or through a web application (the supplier portal).

The contracting authority takes the necessary measures to implement and maintain electronic systems that enable the supplier portal to be used effectively.

In the case of machine-to-machine connection, a direct connection is established between the parties' back offices. In this case, the parties take the measures necessary on their side to implement and maintain electronic systems that enable the machine-to-machine connection to be used effectively. The electronic systems are specified in the interface control document. The contractor (or leader in case of a joint tender) must take the necessary technical measures to set up a machine-to-machine connection and at its own cost.

If communication via the supplier portal or via the web services (machine-to-machine connection) is hindered by factors beyond the control of one party, it must notify the other immediately and the parties must take the necessary measures to restore this communication.

If it is impossible to restore the communication within two working days, one party must notify the other that alternative means of communication specified in Article II.5.1 will be used until the supplier portal or the machine-to-machine connection is restored.

When a change in the interface control document requires adaptations, the contractor (or leader in case of a joint tender) has up to six months from receipt of the notification to implement this change. This period can be shortened by mutual agreement of the parties. This period does not apply to urgent measures required by the security policy of the contracting authority to ensure integrity, confidentiality and non-repudiation of information and the availability of e-PRIOR, which must be applied immediately.

II.5.4. Validity and date of e-documents

The parties agree that any e-document, including related attachments exchanged via e-PRIOR:

- (a) is considered as equivalent to a paper document;
- (b) is deemed to be the original of the document;
- (c) is legally binding on the parties once an e-PRIOR authorised person has performed the 'sign' action in e-PRIOR and has full legal effect; and
- (d) constitutes evidence of the information contained in it and is admissible as evidence in judicial proceedings.

The parties expressly waive any rights to contest the validity of such a document solely on the grounds that communications between the parties occurred through e-PRIOR or that the document has been signed through e-PRIOR. If a direct connection is established between the parties' back offices to allow electronic transfer of documents, the parties agree that an e-document, sent as mentioned in the interface control document, qualifies as an EDI message.

If the e-document is dispatched through the supplier portal, it is deemed to have been legally issued or sent when the contractor (or leader in case of a joint tender) is able to successfully submit the e-document without any error messages. The generated PDF and XML document for the e-document are considered as a proof of receipt by the contracting authority.

In the event that an e-document is dispatched using a direct connection established between the parties' back offices, the e-document is deemed to have been legally issued or sent when its status is 'received' as defined in the interface control document.

When using the supplier portal, the contractor (or leader in case of a joint tender) can download the PDF or XML message for each e-document for one year after submission. After this period, copies of the e-documents are no longer available for automatic download from the supplier portal.

II.5.5. Authorised persons in e-PRIOR

The contractor submits a request for each person who needs to be assigned the role of 'user' in e-PRIOR. These persons are identified by means of the EU Login (former European Communication Authentication Service (ECAS)) and authorised to access and perform actions in e-PRIOR within the permissions of the user roles that the contracting authority has assigned to them.

User roles enabling these e-PRIOR authorised persons to sign legally binding documents such as specific offers or specific contracts are granted only upon submission of supporting documents proving that the authorised person is empowered to act as a legal representative of the contractor.

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 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, 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, 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 directly by wilful misconduct or gross negligence of the contracting authority.

II.7. PROFESSIONAL CONFLICTING INTERESTS

- II.7.1** The contractor must take all the necessary measures to prevent any situation of 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 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 professional conflicts of interest.

II.7.4 The contractor declares:

- (a) that it has not made, and will not make, any offer of any type whatsoever from which an unlawful advantage can be derived under the FWC;
- (b) that it has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, where such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, inasmuch as it is an incentive or reward relating to the FWC.

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 and identified in writing as confidential.

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 obligation set out in this Article is binding upon 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.9. PROCESSING OF PERSONAL DATA

- II.9.1** Any personal data included in the FWC must be processed in accordance with Regulation (EC) No. 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Such data must be processed by the data controller solely for the purposes of the implementation, management and monitoring of the FWC. This does not affect its possible transmission to the bodies entrusted with monitoring or inspection tasks in application of Union law.
- II.9.2** The contractor has the right to access its personal data and the right to rectify any such data. The contractor should address any queries concerning the processing of its personal data to the data controller.
- II.9.3** The contractor has right of recourse at any time to the European Data Protection Supervisor.
- II.9.4** If the FWC requires the contractor to process any personal data, the contractor may act only under the supervision of the data 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.
- II.9.5** The contractor must grant personnel access to the data to the extent strictly necessary for the implementation, management and monitoring of the FWC.
- II.9.6** The contractor must adopt appropriate technical and organisational security measures giving due regard to the risks inherent in the processing and to the nature of the personal data concerned, in order to:
- (a) prevent any unauthorised person from gaining access to computer systems processing personal data, and especially:
 - (i) unauthorised reading, copying, alteration or removal of storage media;
 - (ii) unauthorised data inputting, as well as any unauthorised disclosure, alteration or erasure of stored personal data;
 - (iii) unauthorised use of data processing systems by means of data transmission facilities;
 - (b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
 - (c) record which personal data have been communicated, when and to whom;
 - (d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting authority;
 - (e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
 - (f) design its organisational structure in such a way that it meets data protection requirements.

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 and II.22.
- 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.17.1.
- II.10.5** For services provided at a facility directly under the oversight of the contracting authority, the Contractor must, at the contracting authority's request, indicate the names, contacts and authorised representatives of subcontractors involved in the performance of the contract, including any changes of subcontractors.

II.11. AMENDMENTS

- II.11.1** Any amendment to the FWC or a specific contract must be made in writing before any contractual obligations are 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

- II.12.1** The contractor may not assign any of the rights and obligations arising from the FWC, including claims for payments or factoring, without prior written authorisation from the contracting authority. In such cases, the contractor must provide the contracting authority with the identity of the intended assignee.
- II.12.2** Any right or obligation assigned by the contractor without authorisation is not enforceable against the contracting authority.

II.13. FORCE MAJEURE

- II.13.1** 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.13.2** 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 due to force majeure, it has the right to remuneration only for the supplies/services actually delivered and which obtain a certificate of conformity.
- II.13.3** The parties must take all necessary measures to limit any damage due to force majeure.

II.14. LIQUIDATED DAMAGES

II.14.1. Liquidated damages for failure of the Contractor to perform obligations within the applicable time limits

For any issues not explicitly regulated by the Service Level Agreement, should the Contractor fail to perform his obligations under the Contract within the time limits set by the Contract or to deliver a result for which a firm and binding time limit is agreed, and without prejudice to the Contractor's actual or potential liability incurred in relation to the Contract or to the Commission's right to terminate the Contract, the Commission may decide to impose liquidated damages of 0.5% of the amount of the relevant Specific Contract(s) or Order Form(s) per calendar day of delay or non-compliance.

The total maximum amount of liquidated damages that can be imposed shall be capped to 50% of the value of the relevant Specific Contract(s) or Order Form(s) for which the Contractor is in breach.

II.14.2. Precedence of liquidated damages foreseen in the Service Level Agreement

Unless otherwise stipulated in the Service Level Agreement and for the key performance indicators defined therein, the service level agreement liquidated damages prevail over the liquidated damages foreseen above.

II.14.3. 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.14.4. 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 supplies/services within the applicable time limits or with regard to the required quality and security levels set out in this FWC (including the ones set out in the Service Level Agreement and in the tendering specifications).

II.14.5. 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.17.

II.15. REDUCTION IN PRICE

II.15.1. Quality standards

If the contractor fails to deliver the supply and/or provide the services in accordance with the FWC or a specific contract ('unperformed obligations') or if it fails to deliver the supply and/or provide the services in accordance with the expected quality and security levels specified in the tendering 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 document or deliver a certificate of conformity for supply after the contractor has submitted the required additional information, correction or new supply.

A reduction in price may be imposed together with liquidated damages under the conditions of Article II.14.

II.15.2. 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.15.3. 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.17.

II.16. SUSPENSION OF THE IMPLEMENTATION OF THE FWC

II.16.1. Suspension by the contractor

If the contractor is affected by force majeure, it may suspend the performance of 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 performance of the contract.

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.16.2. 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) if the procedure for awarding the FWC or a specific contract or the implementation of the FWC proves to have been subject to substantial errors, irregularities or fraud;
- (b) in order to verify whether the presumed substantial errors, irregularities or fraud actually occurred.

The contracting authority must formally notify the contractor of the suspension. 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 possible whether:

- (a) it is lifting the suspension; or
- (b) it intends to terminate the FWC or a specific contract under Article II.17.1(f) or (j).

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

II.17. TERMINATION OF THE FWC

II.17.1. Grounds for termination by the contracting authority

The contracting authority may terminate the FWC and/or a specific contract in the following circumstances:

- (a) if provision of the supplies and/or services under a pending specific contract has not actually started within 15 days of the scheduled date and the contracting authority considers the new date proposed, if any, 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 tendering specifications or request for supplies/services 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 106(1) of the Financial Regulation³;
- (e) if the contractor or any related person is subject to any of the situations provided for in points (c) to (f) of Article 106(1) or to Article 106(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 substantial errors, irregularities or fraud;

³ Regulation (EU, EURATOM) No. 966/2012 on the financial rules applicable to the general budget of the Union, as amended <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32012R0966>

- (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 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 constitutes 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;
- (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 tendering 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 supplies and/or 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) where the contracting authority has evidence that the contractor or any related entity or person has violated any provisions on security and confidentiality included in the FWC and its annexes.
- (n) For specific services, where the Commission has evidence or seriously suspects the Contractor of, active or passive, intentional or negligent, disclosure of any data or information issued by the EU institutions and transferred through the network of the contractor during the performance of the current contract, to any authorities, legal or natural persons, with the sole exception of relevant formal requests submitted by EU judicial authorities for the purpose of criminal investigations.

II.17.2. Grounds for termination by the contractor

The contractor may terminate the FWC and/or a specific contract if:

- (a) it has evidence that the contracting authority has committed substantial errors, irregularities or fraud in the procedure for awarding the FWC or the implementation of the FWC;
- (b) 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 tendering specifications.

II.17.3. 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 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) (l) (m) and (n) of Article II.17.1 and in Article II.17.2, 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.17.1, 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 service or delivery of the supplies to a new contractor or internally, without interruption or adverse effect on the quality or continuity of the service or delivery of the supplies. 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 tendering 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.17.4. 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 cost of appointing another contractor to provide or complete the supplies/service, unless the damage was caused by the situation specified in Article II.17.1 (j), (k) or (l) or in Article II.17.2. 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 specific contract, including loss of anticipated profits, unless the loss was caused by the situation specified in Article II.17.2.

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 and any invoice required for supplies/service 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) or (g) of Article II.17.1, under the conditions set out in Article II.11.2.

II.18. INVOICES, VALUE ADDED TAX AND E-INVOICING

II.18.1. Invoices and value added tax

Invoices must contain the contractor's (or leader's in case of a joint tender) 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 (or leader in case of a joint tender) for value added tax (VAT) purposes and must specify separately amounts not including VAT and amounts including VAT.

The contracting authority is exempt from all taxes and duties, including VAT, in accordance with Articles 3 and 4 of the Protocol on the privileges and immunities of the European Union.

The contractor (or leader in case of a joint tender) must complete the necessary formalities with the relevant authorities to ensure that the supplies and/or services required for implementation of the FWC are exempt from taxes and duties, including VAT.

The contractor shall have sole responsibility for compliance with the tax laws which apply to him. Failure to comply shall make the relevant invoices invalid.

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)'.

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. 'In the case of intra-Community purchases, the statement to be included in the invoices is: "For the official use of the European Union. VAT Exemption / European Union/ Article 151 of Council Directive 2006/112/EC.'"

In other countries, use of this contract constitutes a request for VAT exemption, pursuant to articles 3 and 4 of the Protocol on the privileges and immunities of the European Union. The contractor must receive and keep in his records the form entitled "VAT and Excise Duty Exemption Certificate", duly completed and signed by the contracting authority. The invoice(s) must include the following statement: "VTA Exemption/International Body/Article 151 of Council Directive 2006/112/EC."

II.18.2. E-invoicing

If provided for in the special conditions, the contractor (or leader in case of a joint tender) 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.

Reception of invoices by standard format (pdf) or email is not accepted.

II.19. PRICE REVISION

If Article I.5.2 refers to a formula governing price revision, then the provisions set out in this Article apply.

II.19.1. Yearly price revision

The Parties agree that the prices shall be subject to a yearly price revision according to the provisions set out below.

II.19.2. Date of effect of the yearly price revisions

Price revisions shall always be applicable on 1st January. For a Framework Contract signed during calendar year N, the first price revision shall be calculated as set out below during year N+1 and become applicable on the 1st January of year N+2.

However, when a product or service was not included in a Framework Contract from the beginning, but introduced through an amendment signed in year O, otherwise than as a result of a Change Request, the first price revision for that product or service shall be calculated during year O+1 and become applicable on the 1st January of year O+2.

As regards Hardware, Complex and Other Than Complex Hardware, and unless otherwise agreed by the Parties, when a product is introduced into the Framework Contract through an amendment signed in year P as a result of a Change Request after the procedure set out in section II.19.3 below has been initiated, the new product shall bear the price of the product it replaces, i.e. the non-revised price for the remainder of year P, and the revised price as from the 1st January of year P+1.

II.19.3. Procedure for calculating the yearly price revision

Between 1 July and 30 September every year, the Commission shall send to the Contractor an initial written notification informing the latter about the result of the calculation of the yearly price revision.

The contractor has 30 days following the date of receipt to submit observations against the result of the calculation made by the Commission. In absence thereof, the initial written notification sent by the Commission shall acquire the status of an amendment with full legal effect and enters into force the day after the time limit for submitting observations has elapsed.

Should the Contractor formulate any observations on the correctness of the calculation made pursuant to paragraph 1 above within the deadline set out in paragraph 2 above, the Commission shall carefully and expediently consider them.

Following this assessment, the Commission shall send to the Contractor, within one month from the receipt of Contractor's letter, a final written notification including the result of the calculation of the yearly price revision. If applicable, this letter should state the reasons having led to the rejection of the observations put forward by the Contractor.

The final written notification sent by the Commission shall immediately enter into force and acquire the status of an amendment with full legal effect, but the Contractor shall be free to seek appropriate remedies.

Should, exceptionally, the Commission fail to initiate the procedure as set out in paragraph 1, the Contractor may, until 15 October, give formal notice to the Commission requiring the latter to send the initial written notification. The Commission shall comply with this requirement within 15 calendar days from receipt of the contractor's letter. Paragraphs 2, 3, 4 and 5 above shall apply thereafter.

Should the Commission not act as provided for in paragraph 1 above, nor the Contractor as provided for in paragraph 6, the yearly price revision shall not apply for the relevant yearly period.

II.19.4. Formula for the yearly price revisions

The yearly price revisions shall be calculated using the following formula:

$$Pr = Po \times \frac{Ir}{Io}$$

where:

Pr = Revised price

Po = Original price in the tender (or, if applicable, in the amendment introducing the price for the service or product for the first time)

Ir = Index for the month of May of the year in which the yearly price revision is calculated

Io = Index for the month in which the Framework Contract (or, if applicable, the amendment introducing the price for the service or product for the first time) entered into force

the quotient of $\frac{Ir}{Io}$ is rounded to the fourth decimal.

II.19.5. Indices to be used for the yearly price revisions

For services: As regards Services, the revision shall be based on the trend in the index “Harmonised Indices of Consumer Prices (HICP all items)”, under “First Published Data (prc_hicp_fp)”, published on Eurostat’s official website.

For supplies: As regards Hardware, Complex and Other Than Complex Hardware, the revision shall be based on the trend in the index “Producer prices in industry, domestic market - monthly data [sts_inppd_m]” (PPI NACE C262), published on Eurostat’s official website.

The precise index to be used is indicated in Article I.5.2.

In case of a change in the base year of an index, the values of Io and Ir shall be adapted accordingly on the basis of the official figures published by Eurostat using the latest base year.

Should Eurostat cease to publish any of the indices referred to above, the Commission shall —as part of the procedure set out in paragraph II.19.3 above— base the calculation of the revised price on the most similar index which is available, providing reasons for its choice.

II.19.6. Prices applicable for supply and service purchases

The Commission shall purchase Hardware, Complex and Other Than Complex Hardware on the basis of the prices applicable on the date of signature of the Specific Contract by the last contracting party.

The Commission shall purchase Services on the basis of the prices applicable on the date which is indicated as start date (start of the tasks) of the Specific Contract.

II.20. PAYMENTS AND GUARANTEES

II.20.1. Date of payment

Payments are deemed to be effected on the date when they are debited to the contracting authority’s account.

II.20.2. Currency

Payments are made in euros or in the currency provided for in Article I.7.

II.20.3. 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.20.4. 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.20.5. Pre-financing, performance and retention money 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;
- (b) the guarantor stands as first-call guarantor and does not require the contracting authority to have 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 supply/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 certificate of conformity of the supply has been delivered and/or the services were approved, as provided for in the specific contract.

Retention money guarantees cover full delivery of the supplies/service in accordance with the specific contract including during the contract liability period and until their final certificate of

conformity has been delivered 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.20.6. Interim payments and payment of the balance

The contractor (or leader in case of a joint tender) must send an invoice for interim payment, as provided for in Article I.6or in the tendering specifications or in the specific contract.

The contractor (or leader in case of a joint tender) must send an invoice for payment of the balance within 60 days of the end of the period of provision of the supplies/service, as provided for in Article I.6, in the tendering 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.20.7. Suspension of the time allowed for payment

The contracting authority may suspend the payment periods specified in Article I.6at any time by notifying the contractor (or leader in 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 supplies/deliverables or documents;
or
- (c) because the contracting authority has observations on the supplies/deliverables or documents submitted with the invoice.

The contracting authority must notify the contractor (or leader in case of a joint tender) as soon as possible of any such suspension, giving the reasons for 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 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.17.1(c).

II.20.8. Interest on late payment

On expiry of the payment periods specified in Article I.6, the contractor (or leader in 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.20.7 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.20.1.

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

II.21. RECOVERY

II.21.1. Principle

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.21.2. 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;
- (b) by calling in a financial guarantee if the contractor has submitted one to the contracting authority;
- (c) by taking legal action.

In case of a joint tender, the contracting authority first claims the full amount to the leader of the group. If the leader does not pay by the due date, the contracting authority may claim the full amount to any other member of the group by notifying the debit note already sent to the leader.

II.21.3. 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.20.8. 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.22. CHECKS AND AUDITS

II.22.1 The contracting authority and the European Anti-Fraud Office may check or require an audit on the implementation of the FWC. This may be carried out either by OLAF's own staff or 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 supplies/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.22.2 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.22.3 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.22.4 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.21 and may take any other measures which it considers necessary.

II.22.5 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 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 performance of the contract and up to five years starting from the payment of the balance of the last specific contract issued under this FWC.

II.22.6 The Court of Auditors has the same rights as the contracting authority, particularly right of access, for the purpose of checks and audits.

II.23. INTELLECTUAL PROPERTY RIGHTS

II.23.1. Ownership of the rights in the results

The Union acquires irrevocably worldwide ownership of the results and of all intellectual property rights under the FWC. 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 to 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 from the moment the contracting authority approves the results delivered by the contractor. Such delivery and approval are deemed to constitute an effective assignment of rights from the contractor to the Union.

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 forms of exploitation and of use of the results.

II.23.2. 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. 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.23.3. 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 right also includes the communication 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 it 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 decompile or disassemble the software;
- (m) 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 they created by the contractor or 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.23.4. 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 results 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.23.5. Evidence of granting of pre-existing rights

Upon request by the contracting authority, the contractor must 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 evidence may refer, for example, to rights to: parts of other documents, images, graphs, fonts, 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.23.6. 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.23.7. 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.23.8. 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.23.9. 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.13.1, 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.23.10. 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.24. REIMBURSEMENTS

II.24.1 If provided for in the special conditions or in the tendering specifications, the contracting authority must reimburse expenses directly connected with the delivery of supplies or provision of the services either when the contractor provides it with supporting documents or on the basis of flat rates.

II.24.2 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.24.3 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.24.4 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.5.4;
- (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.5.4.

II.24.5 The contracting authority reimburses the cost of shipment of equipment or unaccompanied luggage if it has given its prior written approval for the expense.