



BMF

**FEDERAL MINISTRY
OF FINANCE**

Author: Maier
Version 1.1
Vienna, 05. Juli 2012

European VCD System General Terms and Conditions



Table of contents

1. INTRODUCTION	2
2. PARTIES	3
3. SERVICES	5
4. ACCEPTANCE OF TERMS.....	5
5. USE OF THE SERVICES	6
6. PROPRIETARY RIGHTS	7
7. DATA PROTECTION	8
8. CHARGES.....	9
9. TERMINATION	10
10. DISCLAIMER/LIABILITY	11
11. FORCE MAJEURE	12
12. CHANGES TO THE TERMS AND CONDITIONS.....	13
13. JURISDICTION/GOVERNING LAW.....	13

1. INTRODUCTION

- 1.1. The European VCD ("Virtual Company Dossier") System contains information and knowledge about the procurement law of all member states and about Directive 2004/18/EC. The European VCD System is a result of the joined project PEPPOL (Pan European Public Procurement OnLine) which aims to implement common standards enabling EU-wide public eProcurement. The European VCD System provides a repository of the most frequently requested criteria and evidence demanded during public procurement to prove the eligibility of tenderers within the member states.
- 1.2. Short description of the services - if you are an economic operator or a CA - this is about the objectives and meaning of the functionalities, reference [should be made] to a document describing the functionalities.

2. PARTIES

- 2.1. The Service Provider of the European VCD System ("Provider") and the "User" (together referred as "the Parties") have entered into this agreement ("the Agreement") to specify the legal terms and conditions under which the VCD services will be provided by the Service Provider of the European VCD System.
- 2.2. The "User" is defined as "Economic Operator" and "Legal Entity"; the "Operator" is a natural person who acts on behalf of the User and is authorized to act by the User.
- 2.3. Users of the European VCD System are companies wishing to create a Virtual Company Dossier for participation in public procurement proceedings, either national or transnational.
- 2.4. Users of the VCD package are Contracting Authorities that want to obtain evidence of the eligibility of Economic Operators.
- 2.5. The Service Provider
 - 2.5.1. The Service Provider of the European VCD System during the Piloting phase is only responsible for providing the functionality described below. The Piloting phase lasts until end of August 2012. During this phase the Service Provider is PEPPOL.AT
 - 2.5.2. The Service Provider of the National VCD System: In some countries there may exist National Service Providers running the National VCD System that may interact with the European VCD System.

Austria: ARGE PEPPOL.AT www.bmf.gv.at (Federal Ministry of Finance, Federal Computing Centre, Federal Procurement Agency)

Italy:

Germany:

France:

Greece:

2.6. Information Provider: These Providers are any services providing the necessary information on the ontology. It is the legal framework and legal background behind the system.

Austria: During the Pilot Phase this is PEPPOL.AT

Italy:

Germany:

France:

Greece:

3. SERVICES

- 3.1. The European VCD System is more than a simple web service. It is a web application available via web service interface, or a “knowledge repository” available via web service interface. The European VCD System is an IT-Service creating a VCD Skeleton Container.
- 3.2. The VCD Skeleton Container is a preliminary VCD with a standardised structure consisting of information about the evidence (list of evidence) necessary to prove the criteria (“packing list” for evidence) in procurement proceedings.
- 3.3. The European VCD System must provide/provides functionality to:
 - interact with the User and/or a National VCD System
 - support the User in specifying the structure of economic operators (e.g. sole proprietor, bidding consortium)
 - support the User in identifying and selecting the requested criteria
 - support the User in identifying and selecting suitable evidence to prove the requested criteria
 - build a preliminary VCD with a standardised structure based on the requested criteria and the list of evidence (VCD Skeleton Container)
 - prepare the VCD Skeleton Container for download / further processing

4. ACCEPTANCE OF TERMS

- 4.1. In order to use the services of the Provider, the User must agree to the terms by pressing the button: “Accepting and Agreeing the Terms”; otherwise he/she will not be permitted to use the services. By accepting the Agreement the “Operator” confirms that he/she is authorised to act on behalf of the respective Economic Operator.

4.2. The Agreement shall enter into force upon confirmation by the User.

5. USE OF THE SERVICES

- 5.1. In order to access certain services, the User will be required to provide information about himself for identification or contract details as part of the registration process for the services.
- 5.2. The User of the European VCD System agrees that any registration information he/she provides to the European VCD System will be accurate, correct and up to date.
- 5.3. The User agrees that he/she will not engage in any activity that interferes with the services. "Interferes" means taking any actions that may entail the destruction of the services, e.g. a denial-of-service attack.
- 5.4. The User of the European VCD System agrees to use the services only for purposes permitted under (a) the terms and (b) any applicable law or generally accepted practices or guidelines in the relevant jurisdictions.
- 5.5. The User of the European VCD System agrees that he/she will not reproduce, duplicate, copy, sell, trade or resell the services for any purpose.
- 5.6. The Parties shall protect their own data systems against illicit use, malicious code, viruses, computer intrusions, infringements and illegal tampering of data and other comparable actions by third parties in accordance with state-of-the-art practices. Each Party agrees to use commercially reasonable efforts to avoid transmitting to the other Party any viruses, worms or similar malware or any computer programming routines that may interfere with the other Party's computer systems.
- 5.7. The Parties shall notify each other without delay if they observe disturbances or errors within their sphere of responsibility, which may jeopardise the fulfilment of the tasks agreed.

- 5.8. If any of the Parties is unable to fulfil their obligations under the agreement, for any reason whatsoever, the party should inform the other party without delay.
- 5.9. The User shall keep his/her accounts and passwords confidential. The User must contact the Service Provider of the European VCD System /immediately if he/she suspects any misuse of his/her accounts or any security breach with respect to the service.

6. PROPRIETARY RIGHTS

- 6.1. The User of the European VCD System shall not have any right, title or interest in the European VCD System and its services.
- 6.2. The User has proprietary rights to the VCD Skeleton Container generated by the European VCD System upon his request.
- 6.3. The User of the European VCD System is not allowed to use any trade names, trademarks, service marks, logos, domain names and other distinctive brand features. All the contributions on this website are protected by copyright law.

7. DATA PROTECTION

- 7.1. The Parties undertake to observe the confidentiality of any data, documents or other material that they have received from the other Party or otherwise in relation to the execution of their responsibilities and services under this agreement and which are identified as confidential.
- 7.2. If it is necessary for a Party to provide to its employees or advisors any information that is subject to confidentiality, the information may not be disclosed to other persons than those for whom it is necessary to receive such information and who are bound by a confidentiality undertaking either under an agreement or under the law.
- 7.3. The obligation of confidentiality shall survive the termination of the Agreement.
- 7.4. Data (Data given by a User and Data concerning specific procurement procedures) stored by the Service Provider of the European VCD System shall be retained for as long as the data is required in order to perform its obligations under this Agreement or to offer, or follow-up on, services by the Users. After 30 days the data will be deleted by the Service Provider of the European VCD System unless renewed or confirmed by the data subject (User).
- 7.5. The Service Provider of the European VCD System is responsible for backing up the data stored by the User on the service. If the service is suspended or cancelled by the User, the Service Provider of the European VCD System may permanently delete the data from the service. If data is stored with an expiry date, the Service Provider of the European VCD System may also delete the data as of that date.

- 7.6. The Service provider of the European VCD System shall not collect or save any of its Users' data except if the data is required to perform its obligations in accordance with this agreement. The User may save its own data, information or content for any other purpose than performing its obligations in accordance with this Agreement.
- 7.7. The User takes care on his/her own that he/she saves the data. (Passwords...)
- 7.8. The Parties shall protect the personal data they receive, collect and process according to the provisions set out in Directive 95/46, Directive 2002/58 and their revised forms.

8. CHARGES

- 8.1. During pilot production, there will not be any charges for accessing the Service of the European VCD System. In the future a few services may be subject to charges, and in this case the Service Provider of the European VCD System will inform the User accordingly.
- 8.2. Equally, the User will not be subject to any charges for sending or receiving documents.

9. TERMINATION

- 9.1. The Agreement is valid until further notice during pilot production.
- 9.2. Each Party has an independent right to terminate the Agreement at any time by giving written notice (electronically, via e-mail/information available on the Internet) to the other Party. After termination the User shall not be allowed to use the service. (This wording shall only apply accordingly, if the User has to accept these terms and conditions every time he/she accesses the service).
- 9.3. If the Service Provider of the European VCD System seriously defaults on his obligations under this agreement, the User is entitled to terminate the agreement with immediate effect.

10. DISCLAIMER/LIABILITY

- 10.1. The Service Provider of the European VCD System is not responsible for and cannot guarantee the accuracy of information on sites he does not manage. The Service Provider only manages the EVS site and is only responsible for the accuracy of information provided on this site.
- 10.2. The Service Provider of the European VCD System shall not be liable for any direct/indirect damages or similar damages or any loss or damage (damage caused by inaccurate information, malfunction of the system...), nor shall the Provider accept any responsibility for loss of income or loss of profit.
- 10.3. The Service Provider of the European VCD System will use its best endeavours to ensure that the data provided on this site is accurate and up to date.
- 10.4. During Pilot Production, the Service Provider of the European VCD System assumes no responsibility for the accuracy of the data provided on the platform, nor does he assume any responsibility for the content and information of the data provided.
- 10.5. The Service Provider of the European VCD System shall not guarantee the accuracy or timeliness of information available from the service. The User acknowledges that computer and telecommunication systems are not free of errors and occasional downtimes. The Service Provider of the European VCD System shall not guarantee that the service will be timely, secure, or error-free, or that no data will be lost; the Provider also doesn't guarantee that there will be no interruptions to the service.
- 10.6. The Service Provider of the European VCD System shall not be liable for any direct or consequential damage, such as loss of income or loss of profit, incurred by the other Party.

- 10.7. Each party is liable for the acts, failures or omissions of its employees, consultants and subcontractors, including any violation of the terms of this Agreement by such employees, consultants or subcontractors to the same extent as if said acts, failures or omissions were committed by the Party itself.
- 10.8. The User is responsible for selecting the suggested evidence and criteria. The User ultimately decides which evidence and criteria to include in the VCD. The User shall also contact the Contracting Authority and ask for clarifications if necessary.
- 10.9. The User of the European VCD System agrees that he/she is solely responsible for any breach of his/her obligations under the terms and conditions and for the consequences of any such breach.

11. FORCE MAJEURE

- 11.1. No Party shall be considered to be in breach of this Agreement if such breach is caused by force majeure.
- 11.2. The Parties shall not be liable for any loss or damage arising as a consequence of national or foreign legislation, the actions of national or foreign governmental authorities, acts of war, strikes, blockades, boycotts, lockouts, disruption of public traffic or data communications or other similar circumstances that are beyond the control of the Parties and which the Parties cannot prevent or overcome by exercising due diligence. The Parties shall not be liable for any loss or damage caused by similar circumstances at the Parties' subcontractors. This clause shall not excuse a Party's breach of its confidentiality obligations.

12. CHANGES TO THE TERMS AND CONDITIONS

- 12.1. The Service Provider of the European VCD System may make essential amendments or changes to this Agreement. The Service Provider may make changes ex parte. When such changes are made, the Service Provider of the European VCD System shall make available a new copy of the terms and conditions at XX.
- 12.2. The Service Provider of the European VCD System may change the agreement at any time. If changes are made, the User must confirm that he does not object to said changes.

13. JURISDICTION/GOVERNING LAW

- 13.1. The User and the Service Provider of the European VCD System agree to submit to the exclusive jurisdiction of the courts located in the Republic of Austria / at the registered office of the respective Service Provider of the European VCD System. International Private Law shall not apply.
- 13.2. Without prejudice to any mandatory national law that may apply to the Parties, the Agreement shall be governed by the law applicable to the respective Service Provider of the European VCD System.
- 13.3. Should any provision of this Agreement become invalid, illegal or unenforceable, it shall not affect the validity of the remaining provisions of this agreement. In such case, the Parties concerned shall be entitled to request that a valid and enforceable provision be negotiated which fulfils the purpose of the original.