



EUROPEAN COMMISSION

Directorate-General for Communications Networks Content and Technology

Resources and Support

Finance and Administration

FRAMEWORK CONTRACT FOR R&D SERVICES FOR THE EU BLOCKCHAIN PRE-COMMERCIAL PROCUREMENT

NUMBER — [complete]

1. The European Union ('the Union'), represented by the European Commission ('the contracting authority'), represented for the purposes of signing this framework contract by [forename, surname, function, department of authorising officer],

of the one part and

2. [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 the case of a joint tender],

on the other part,

HAVE AGREED

to the **special conditions**, the **general conditions for this “Framework contract for R&D services for the EU Blockchain pre-commercial procurement”** and the following annexes:

Annex I – Tender specifications (reference No [complete] of [insert date])

Annex II – Contractor’s tender (reference No [complete] of [insert date])

Annex III – Model for order forms and model for specific contracts

Annex IV – Model Notification Document for on-site personnel

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

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

This FWC sets out:

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

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

TABLE OF CONTENT

FRAMEWORK CONTRACT FOR R&D SERVICES FOR	THE
EU BLOCKCHAIN PRE-COMMERCIAL PROCUREMENT	1
TABLE OF CONTENT	3
I. SPECIAL CONDITIONS	5
I.1. Order of priority of provisions	5
I.2. Subject matter	5
I.3. Entry into force and duration of the FWC	5
I.4. Appointment of the contractor and implementation of the FWC	6
I.5. Prices	7
I.6. Payment arrangements	7
I.7. Bank account	10
I.8. Communication details	10
I.9. Processing of personal data	11
I.10. Exploitation of the results of the FWC	12
I.11. Applicable law and settlement of disputes	12
I.12. Service provided on the premises of the contracting authority	12
I.13. Other special conditions	13
II. GENERAL CONDITIONS FOR THE FRAMEWORK CONTRACT FOR R&D SERVICES FOR THE EU BLOCKCHAIN PRE-COMMERCIAL PROCUREMENT	16
II.1. Definitions	16
II.2. Roles and responsibilities in the event of a joint tender	19
II.3. Severability	19
II.4. Provision of services	19
II.5. Communication between the parties	21
II.6. Liability	23
II.7. Conflict of interest and professional conflicting interests	24
II.8. Confidentiality	24
II.9. Processing of personal data	25
II.10. Subcontracting	27
II.11. Amendments	28
II.12. Assignment	28
II.13. Intellectual property rights	28
II.14. Force majeure	39
II.15. Liquidated damages	39
II.16. Reduction in price	40
II.17. Suspension of the implementation of the FWC	41
II.18. Termination of the FWC	42
II.19. Invoices, value added tax and e-invoicing	44

II.20. Price revision	44
II.21. Payments and guarantees.....	45
II.22. Reimbursements	48
II.23. Recovery.....	49
II.24. Checks and audits	50
SPECIFIC CONTRACT	53

I. SPECIAL CONDITIONS

I.1. ORDER OF PRIORITY OF PROVISIONS

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

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

Any reference to specific contracts applies also to order forms.

I.2. SUBJECT MATTER

The subject matter of the FWC is the EU Blockchain Pre-Commercial Procurement.

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

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

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

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

The period of performance of the contract may be extended only with the express written agreement of the parties before the expiration of such period.

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

The FWC continues to apply to such specific contracts after its expiry. The services relating to such specific contracts must be performed no later than 12 months after the expiry of the FWC.

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

I.4.1. Appointment of the contractor

The contracting authority appoints the contractor for a multiple FWC in cascade and with reopening of competition for phase 2 of the pre-commercial procurement between at least 7 contractors.

I.4.2. Period of provision of the services

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

I.4.3. Implementation of multiple FWC in cascade and with reopening of competition for phase 2

The FWC is implemented as follows:

For the first specific contract for phase 1 of the pre-commercial procurement, the *request for services* for phase 1 is already included in the Tender specifications (Annex I). The contractor's tender (Annex II) contains both the contractor's binding offer for the FWC and the contractor's binding offer for the specific contract for phase 1.

For the specific contract for phase 2 of the pre-commercial procurement, the contracting authority reopens competition and orders services by sending via e-mail a *request for services* to all contractors. The contractors send their specific tenders for phase 2 to the contracting authority within the time limit indicated in the *request for services* by e-mail.

The contracting authority evaluates the specific tenders and selects the most economically advantageous specific tenders based on the award criteria and the budget allocation for each phase of the pre-commercial procurement that are set out in the Tender Specifications (Annex I). When doing so, it takes into account any conflicting interests which may negatively affect the *performance of the specific contract* (see Article II.7). The contracting authority awards and sends the specific contracts to each successful contractor for its signature.

The contracting authority orders services by sending via e-mail a specific contract to those contractors (expected to be minimum 7 contractors for phase 1 and 4 contractors for phase 2 according to the Tender Specifications) who are ranked first in the cascade.

Within 5 working days, the contractor must either:

- (a) send back to the contracting authority the specific contract duly signed and dated in paper format¹; or
- (b) send an explanation of why it cannot accept the order.

¹ At least an electronic advanced copy of the signed contract should be received back before the start date of the provision of services. The original signed contract in paper format should be received back at the latest together with the first invoice.

If the contractor does not accept the order or fails to observe the deadline or if it is in a situation of conflicting interests that may negatively affect the *performance of the specific contract* (see Article II.7), the contracting authority may place the order with the next contractor on the cascade.

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

The contractor must send back to the contracting authority the specific contract duly signed and dated in paper format¹ within 5 working days of receipt.

At any stage of the implementation, the Contracting Authority may terminate the FWC or any on-going specific contract according to the provisions set out in Art I.13.

I.5. PRICES

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

The maximum amount covering all purchases under this FWC is EUR 6 200 000 (six million two hundred thousand euros). However, this does not bind the contracting authority to purchase for the maximum amount.

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

I.5.2. Price revision index

Price revision is not applicable to this FWC.

I.5.3. Reimbursement of expenses

Reimbursement of expenses is not applicable to this FWC.

I.6. PAYMENT ARRANGEMENTS

I.6.1. Pre-financing

Pre-financing is not applicable to this FWC.

I.6.2. Payment arrangements for Phase 1

1(a). The contractor (or leader in the case of a joint tender) may claim **an interim payment for Phase 1** equal to 20 % of the price for Phase 1 referred to in the specific contract for Phase 1 in accordance with Article II.21.6.

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

- Deliverables D1.1 in accordance with the Tender Specifications.

- Completion of Milestone M1.1 in accordance with the Tender Specifications.

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

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

- Deliverable D1.3 in accordance with the Tender Specifications;
- Completion of Milestone M1.3 in accordance with the Tender Specifications.

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

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

I.6.3. Payment arrangements for Phase 2

For Phase 2A of the EU Blockchain PCP

1(a). The contractor (or leader in the case of a joint tender) may claim a **first interim payment for Phase 2** equal to 35 % of the price for Phase 2A referred to in the specific contract for Phase 2 in accordance with Article II.21.6.

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

- Deliverables D2.2 in accordance with the Tender Specifications

1(b). The contractor (or leader in the case of a joint tender) may claim a **second interim payment for Phase 2** equal to 65 % of the price for Phase 2A referred to in the specific contract for Phase 2 in accordance with Article II.21.6.

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

- Deliverables D2.4 and D2.5 in accordance with the Tender Specifications

For Phase 2B of the EU Blockchain PCP

1(c). The contractor (or leader in the case of a joint tender) may claim a **third interim payment for Phase 2**, equal to 30 % of the price for Phase 2B, referred to in the specific contract for Phase 2 in accordance with Article II.21.6.

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

- Deliverable D3.2 in accordance with the Tender Specification

1(d). The contractor (or leader in the case of a joint tender) may claim a **fourth interim payment for Phase 2**, equal to 40 % of the price for Phase 2B referred to in the specific contract for Phase 2 in accordance with Article II.21.6.

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

- Deliverable D3.3 in accordance with the Tender Specifications

1(e). The contractor (or leader in the case of a joint tender) may claim the **payment of the balance for Phase 2**, equal to 30% of the price for Phase 2B, referred to in the specific contract for Phase 2 in accordance with Article II.21.6.

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

- Deliverable D3.4, D3.5 and D3.6 in accordance with the Tender Specifications

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

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

I.6.4. Performance guarantee

Performance guarantee is not applicable to this FWC.

I.6.5. Retention money guarantee

Retention money guarantee is not applicable to this FWC.

I.7. BANK ACCOUNT

Payments must be made to the contractor's (or leader's in the case of a joint tender) bank account denominated in [euro] *[insert local currency where the receiving country does not allow transactions in EUR]*, identified as follows:

Name of bank:

Full address of branch:

Exact denomination of account holder:

Full account number including bank codes:

[IBAN code:]

I.8. COMMUNICATION DETAILS

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

Contracting authority:

Technical matters:

European Commission
Directorate-General Communications Networks, Content and Technology
Directorate F: Digital Single Market
Unit F3: Digital Innovation and Blockchain
B-1049 Brussels
E-mail: CNECT-F3@ec.europa.eu

Administrative and financial matters:

European Commission
Directorate-General Communications Networks, Content and Technology
Directorate R: Resources and Support
Unit R2: Administration and Finance
Office: BU25, 04/20
B-1049 Brussels
E-mail: CNECT-PROCUREMENT@ec.europa.eu

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

[Full name]

[Function]

[Company name]

[Full official address]

E-mail: [complete]

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

I.9. PROCESSING OF PERSONAL DATA

I.9.1 Processing of personal data by the contracting authority

For the purpose of Article II.9.1,

- (a) the data controller is the Head of the Unit "Digital Innovation and Blockchain", Directorate "Digital Single Market", Directorate-General for Communications Networks, Content and Technology;
- (b) the data protection notice is available at https://ec.europa.eu/info/data-protection-public-procurement-procedures_en.

I.9.2 Processing of personal data by the contractor

For the purpose of Article II.9.2,

- (a) the subject matter and purpose of the processing of personal data by the contractor are for performing the research and development services for the EU blockchain pre-commercial procurement;
- (b) The localisation of and access to the personal data processed by the contractor shall comply with the following:
 - i. The personal data shall only be processed within the territory of the European Union and the European Economic Area and will not leave that territory;
 - ii. the data shall only be held in data centres located with the territory of the European Union and the European Economic Area;
 - iii. No access shall be given to such data outside of the European Union and the European Economic Area
 - iv. The contractor may not change the location of data processing without the prior written authorisation of the contracting authority;
 - v. Any transfer of personal data under the FWC to third countries or international organisations shall fully comply with the requirements laid down in Chapter V of Regulation (EU)2018/1725².

² Regulation (EU) 2018/1725 of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295/39, 21.11.2018, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1725&from=EN>

I.10. EXPLOITATION OF THE RESULTS OF THE FWC

Article II.13, which has been duly adapted for the context of this pre-commercial procurement, applies to this FWC.

I.11. APPLICABLE LAW AND SETTLEMENT OF DISPUTES

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

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

I.12. SERVICE PROVIDED ON THE PREMISES OF THE CONTRACTING AUTHORITY

For the purpose of this article, 'on-site personnel' means 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.

I.14.1 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.

I.14.2 In order to allow the Belgian authorities to give a security advice, the contractor will submit to the relevant *on-site personnel* the Notification Document attached as Annex IV (the 'Notification Document')³. The duly completed and signed Notification Document will 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 template attached as Annex V⁴ will be sent to the address "EC-SECURITY-SCREENING@ec.europa.eu" at least 35 days before the start date of a new contract.

I.14.3 Failure or refusal to complete the Notification Document may result in refusal of access rights to Commission buildings for the *personnel*.

³ The Notification Document attached 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).

⁴ The compulsory template of the electronic list attached to be transferred to the Belgian authorities summarizes the information as provided by the proposed on-site personnel in the Notification Document.

I.14.4 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.

I.14.5 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.13. OTHER SPECIAL CONDITIONS

1. According to Article II.18.1(c) the contracting authority may terminate the FWC or any ongoing specific contract if the contractor does not implement the FWC or perform the specific contract in accordance with the tender specifications or request for service. The contractor is aware that in the context of this pre-commercial procurement therefore:

(a) The contracting authority may terminate the FWC at the end of Phase 1, if the assessment of the end of Phase 1 deliverables and milestones (D1.3 and M1.3) determines that the contractor did not successfully complete Phase 1 in accordance with the Tender Specifications.

(b) The contracting authority may terminate the FWC and the ongoing specific contract for Phase 2 at the end of Phase 2A, if the assessment of the end of Phase 2A deliverables and milestones (D2.4 and M2.5) determines that

- i. the contractor did not successfully complete Phase 2A in accordance with the Tender Specifications (see in particular TS section 1.4.6 defining the criteria for assessing successful completion), or
- ii. the contractor did not complete Phase 2A successfully enough, as according to the end of Phase 2A assessment he is not among those that most successfully completed Phase 2A and that can be financed within the available budget for Phase 2B in accordance with the Tender Specifications (see in particular TS section 1.4.6 defining the criteria for assessing successful completion and TS section 1.6 defining the available budget)

In case of termination at the end of Phase 1 or Phase 2A, the contracting authority will *formally notify* the contractor of its intention to terminate the FWC or a specific contract and the grounds for termination. In such event, the contractor has, by derogation from article II.18.3, 10 working days following the date of receipt to submit observations. Failing that, the decision to terminate becomes enforceable the day after the time limit for submitting observations has elapsed.

(c) The contracting authority may terminate the ongoing FWC and the ongoing specific contract, if the contractor does not implement the FWC and specific contracts in compliance with any or all of the below obligations:

- (i) The 'Compliance with definition of R&D services' obligation in TS section 1.4.2.2.1
- (ii) The 'Place of performance' obligation defined in TS section 1.4.2.2.2
- (iii) The 'Place of establishment and control' obligation defined in TS section 2.2

(d) Without prejudice to its right to terminate the contract, the Contracting Authority may also - in accordance with Articles II.15, Article II.16 and Article II.23.2 - reduce payments, claim liquidated damages and recover amounts already paid, if the contractor does not implement the FWC and specific contracts in compliance with any or all of the above three obligations in point (c):

- (i) In case of breach of the 'Compliance with definition or R&D services' obligation in one of the phases of the pre-commercial procurement, the Contracting Authority may reduce all outstanding payments for that phase to zero and may recover all amounts already paid for that phase.
- (ii) In case the 'Place of performance' obligation that applies to all contract activities is breached in one of the phases of the pre-commercial procurement, the Contracting Authority may claim liquidated damages amounting to
 - 50% of the price for phase 1 referred to in the specific contract for phase 1
 - 50% for the price for phase 2A referred to in the specific contract for phase 2
 - 50% of the price for phase 2B referred to in the specific contract for phase 2

In case the place of performance conditions that applies to all contract activities is breached by more than 20%, meaning that less than 50% of the R&D activities are performed in the EU Member States or Horizon 2020 associated countries, the Contracting Authority may claim additional damages amounting to 50% of the price for the respective phase.

In case the 'Place of performance' obligation for the activities on new security components developed for the contract is breached in one of the phases of the pre-commercial procurement, the Contracting Authority may reduce all outstanding payments for that phase to zero and may recover all amounts already paid for that phase.

(iii) In case of breach of the 'Place of establishment and control' obligation in one of the phases of the pre-commercial procurement, the Contracting Authority, the Contracting Authority may reduce all outstanding payments for that phase to zero and may recover all amounts already paid for that phase.

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

The procedure liquidated damages described in Article II.15.2 of the FWC remain applicable to the present Article. By derogation from article II.15.2, the Contractor has 10 working days following the date of receipt of the notification from the Contracting Authority to submit observations. The liability provisions on liquidated damages described in Article II.15.4 of the FWC remain applicable to the present Article.

The above rights are without prejudice to the Contracting Authority's right to require the transfer of the results to the contracting authority (Article II.13.5.4) in case of breach of any of the above three obligations in point (c).

2. The Contractor is aware that the Contracting Authority may decide to keep the results and reports in the 'security and EBSI integration issues' parts of deliverables D1.3, D2.5 and D3.5 strictly confidential and shall not take any decision or act in a manner which could jeopardize or diminish such confidentiality.

SIGNATURES

For the contractor,

For the contracting authority,

[*Company name/forename/surname/position*]

[*forename/surname/position*]

Signature: _____

Signature: _____

Done at [*place*], [*date*]

Done at [*place*], [*date*]

In duplicate in English.

II. GENERAL CONDITIONS FOR THE FRAMEWORK CONTRACT FOR R&D SERVICES FOR THE EU BLOCKCHAIN PRE- COMMERCIAL PROCUREMENT

II.1. DEFINITIONS

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

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

‘Background’: any material, document, technology, solution, information, data or know-how (*Background material*), whatever its form or nature (tangible or intangible) regardless of whether or not it can be protected, including any attached rights such as intellectual property rights (*Background rights*), which: (i) exists prior to the implementation of the framework contract; (ii) is needed for the *implementation of the FWC* or for exploiting the results of the FWC; see also *Pre-existing material*;

‘Background rights’: any rights, including industrial and intellectual property rights on *background*; 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 including subcontractors;

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

‘Commercial exploitation of the results’: marketing commercial applications of the *results* (including parts or future evolutions of the *results*, or other products, services or processes derived from the *results*) with the objective to generate revenue, whether directly (via sales) or indirectly such as via a transfer or via licenses (which includes, as the case may be, building a business and generating commercial revenue from *results* that are licensed under open source conditions).

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

‘Conflict of interest’: a situation where the impartial and objective *implementation of the FWC* by the contractor is compromised for reasons involving family, emotional life, political or national affinity, economic interest, any other direct or indirect personal interest, or any other shared interest with the contracting authority or any third party related to the subject matter of the FWC;

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

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

‘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, electronic specific contracts, electronic acceptance of services and electronic invoices between the parties;

‘Fair and reasonable conditions’: appropriate conditions, including financial terms or royalty-free conditions, taking into account the specific circumstances of the request for access (for example, the actual or potential value of the results, background or sideground to which access is requested and/or the scope, duration or other characteristics of the exploitation envisaged);

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

‘Foreground’: see ‘*Result*’;

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

‘Fraud’: an act or omission committed in order to make an unlawful gain for the perpetrator or another by causing a loss to the Union's financial interests, and relating to: i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or assets from the Union budget, ii) the non-disclosure of information in violation of a specific obligation, with the same effect or iii) the misapplication of such funds or assets for purposes other than those for which they were originally granted, which damages the Union's financial interests;

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

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

‘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;

‘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 simplified form of specific contract by which the contracting authority orders services under this FWC;

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

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

‘Pre-existing material’: any material, document, technology, solution, information, data or know-how, whatever its form or nature, tangible or intangible, regardless of whether or not it can be protected, which exists prior to the contractor using it for the production of a *result* in the *implementation of the FWC*; includes both the *background material* and the *sideground material*;

‘Pre-existing rights’: any rights, including industrial and intellectual property rights 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 including subcontractors; includes both *background rights* and *sideground rights*;

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

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

‘Request for services’: a document from the contracting authority requesting that the contractors in a multiple FWC with re-opening of competition provide a specific tender for services whose terms are not entirely defined under the FWC;

‘Result’ (or **‘Foreground’**): any output, whatever its form or nature, tangible or intangible, regardless of whether or not it can be protected, that is generated in the *implementation of the FWC*. This includes any material, document, technology, solution, data, know-how or information (Foreground material) as well as any attached rights such as intellectual property rights (*Rights on results*). A *result* may be further defined in this FWC as a deliverable. A *result* may, in addition to *newly created materials* produced specifically for the contracting authority by the contractor or at its request in the implementation of the FWC, also include *pre-existing materials* (*background and/or sideground material*);

‘Rights on results’: any rights, including industrial or intellectual property rights on the *results*; it may consist of rights on newly created materials and rights on pre-existing materials

(background rights and sideground rights) that are included in the *results*; 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 including subcontractors;

'Sideground': any material, document, technology, solution, data, know-how or information (Sideground material), whatever its form or nature (tangible or intangible) regardless of whether or not it can be protected, including any attached rights such as intellectual property rights (*Sideground rights*), that is: (i) generated during the timespan of the FWC but not in the *implementation of the FWC*; and that (ii) is needed for the *implementation of the FWC* or to exploit the results of the FWC; see also *Pre-existing material*';

'Sideground rights': any rights, including industrial and intellectual property rights on *sideground 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 including subcontractors;

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

'Supplier portal': the *e-PRIOR* portal, which allows the contractor to exchange electronic business documents, such as invoices, through a graphical user interface.

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

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

II.3. SEVERABILITY

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

II.4. PROVISION OF SERVICES

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

II.4.2 The contractor must provide services of high quality standards, in accordance with the state of the art in the industry and the provisions of this FWC, in particular the tender specifications and the terms of its tender. Where the Union has the right to make

modifications to the *results*, they must be delivered in a format and with the necessary information which effectively allow such modifications to be made in a convenient manner.

- II.4.3** The contractor must comply with the minimum requirements provided for in the tender specifications. This includes compliance with applicable obligations under environmental, social and labour law established by Union law, national law and collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU⁵, compliance with data protection obligations resulting from Regulation (EU) 2016/679⁶ and Regulation (EU) 2018/1725⁷.
- II.4.4** The contractor must obtain any permit or licence required in the State where the services are to be provided.
- II.4.5** All periods specified in the FWC are calculated in calendar days, unless otherwise specified.
- II.4.6** The contractor must not present itself as a representative of the contracting authority and must inform third parties that it is not part of the European public service.
- II.4.7** The contractor is responsible for the *personnel* who carry out the services and exercises its authority over its *personnel* without interference by the contracting authority. The contractor must inform its *personnel* that:
- (a) they may not accept any direct instructions from the contracting authority; and
 - (b) their participation in providing the services does not result in any employment or contractual relationship with the contracting authority.
- II.4.8** The contractor must ensure that the *personnel* implementing the FWC and any future replacement personnel possess the professional qualifications and experience required to provide the services, as the case may be on the basis of the selection criteria set out in the tender specifications.
- II.4.9** At the contracting authority's reasoned request, the contractor must replace any member of *personnel* who:
- (a) does not have the expertise required to provide the services; or
 - (b) has caused disruption at the premises of the contracting authority.

⁵ OJ L 94 of 28.03.2014, p. 65

⁶ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, OJ L 119, 4.5.2016, p. 1, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.119.01.0001.01.ENG

⁷ Regulation (EU) 2018/1725 of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295/39, 21.11.2018, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1725&from=EN>

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

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

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

II.5. COMMUNICATION BETWEEN THE PARTIES

II.5.1. Form and means of communication

Any 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 contract;
- (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

1. If provided for in the special conditions, the exchange of electronic documents (e-documents) such as requests for services, 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*).
2. The contracting authority takes the necessary measures to implement and maintain electronic systems that enable the *supplier portal* to be used effectively.
3. 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 the case of a joint tender) must take the necessary technical measures to set up a machine-to-machine connection and at its own cost.
4. 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.
5. 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.
6. When a change in the *interface control document* requires adaptations, the contractor (or leader in the 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

1. 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.
2. 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*.

3. 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 the 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.
4. 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*.
5. When using the *supplier portal*, the contractor (or leader in the 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 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 tenders 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 up to an amount not exceeding three times the total amount of the relevant specific contract. However, if the damage or loss is caused by the gross negligence or wilful misconduct of the contractor or of its *personnel* or subcontractors, as well as in the case of an action brought against the contracting authority by a third party for breach of its intellectual property rights, the contractor is liable for the whole amount of the damage or loss.
- II.6.4** If a third party brings any action against the contracting authority in connection with the *implementation of the FWC*, including any action for alleged breach of intellectual property rights, the contractor must assist the contracting authority in the legal

proceedings, including by intervening in support of the contracting authority upon request.

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

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

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

II.7. CONFLICT OF INTEREST AND PROFESSIONAL CONFLICTING INTERESTS

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

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

The contracting authority may do any of the following:

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

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

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

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

II.8. CONFIDENTIALITY

II.8.1. The contracting authority and the contractor must treat with confidentiality any information or documents, in any format, disclosed in writing or orally, relating to the *implementation of the FWC* 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 obligations set out in this Article are binding on the contracting authority and the contractor during the *implementation of the FWC* and for as long as the information or documents remain confidential unless:

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

II.8.4 The contractor must obtain from any natural person with the power to represent it or take decisions on its behalf, as well as from third parties involved in the *implementation of the FWC* a commitment that they will comply with this Article. At the request of the contracting authority, the contractor must provide a document providing evidence of this commitment.

II.9. PROCESSING OF PERSONAL DATA

II.9.1 Processing of personal data by the contracting authority

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

The contractor or any other person whose personal data is processed by the data controller in relation to this FWC has specific rights as a data subject under Chapter III (Articles 14-25) of Regulation (EU) 2018/1725, in particular the right to access, rectify or erase their personal data and the right to restrict or, where applicable, the right to object to processing or the right to data portability.

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

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

II.9.2 Processing of personal data by the contractor

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II.10. SUBCONTRACTING

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

- II.10.2** Even if the contracting authority authorises subcontracting, the contractor remains bound by its contractual obligations and is solely responsible for the *implementation of the FWC*.
- II.10.3** The contractor must ensure that the subcontract does not affect the rights of the contracting authority under this FWC, particularly those under Articles II.8, II.13 and II.24.
- II.10.4** The contracting authority may request the contractor to replace a subcontractor found to be in a situation provided for in points (d) and (e) of Article II.18.1.

II.11. AMENDMENTS

- II.11.1** Any amendment to the FWC or a specific contract must be made in writing before all contractual obligations have been fulfilled. A specific contract does not constitute an amendment to the FWC.
- II.11.2** Any amendment must not make changes to the FWC or a specific contract that might alter the initial conditions of the procurement procedure or result in unequal treatment of tenderers or contractors.

II.12. ASSIGNMENT

- II.12.1** The contractor must 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. INTELLECTUAL PROPERTY RIGHTS

The contractor is responsible for ensuring that all natural persons and entities that collaborate with the contractor during and after FWC respect all intellectual and industrial property related obligations towards the contracting authority. In its contracts and other type of agreements with others, the contractor shall therefore ensure that it passes on the below obligations to any of its affiliates, subcontractors or other third parties that it collaborates with in the implementation of its obligations under this FWC, both during the performance of the FWC and in any subsequent commercial exploitation of the results after the FWC.

Also in case of a merger, split, takeover or other corporate restructuring, the rights of the contracting authority under this FWC must continue to be upheld. The rights and obligations under this FWC of the contractor, subcontractor or other third party that undergoes such a corporate change, shall in such case automatically transfer to the new (where this is the case) legal entity that is to continue the activities encompassed by this FWC. In no case shall the intellectual or industrial property rights and obligations of the contracting authority be affected by any such corporate changes, unless the contracting authority explicitly agrees to such change in writing.

For the avoidance of doubt, the parties confirm that the provisions in section II.13 on intellectual property rights apply regardless whether the contractor participates in all phases of the pre-commercial procurement or only in some of them, and that the provisions that extend beyond the duration of the FWC remain in force even if the contractor is not selected for the next phase of the pre-commercial procurement and the FWC with the contractor is terminated.

II.13.1. Ownership of the results

Subject to the conditions in II.13.2, II.13.3, II.13.4, II.13.5 and II.13.6, the contractor retains the ownership of all the *rights on the results* that it generates: this includes the rights on newly created material generated by the contractor and the rights on *background and sideground material* generated by the contractor that may be included in the *results* or that is essential for the functioning of the use of the *results* (see section II.13.8).

Notwithstanding that the contractor retains the ownership of the rights on the *results* that it generates, the contracting authority is entitled to receive, and will obtain the legal ownership of, at least one exemplar of each *foreground material*, together with all the necessary documentation to use the *foreground material* as foreseen by the FWC. This applies notably where foreground material is software but also prototypes or first solution implementations (products or services), simulations, designs, data models, etc. In order to enable the contracting authority to use and adapt the results (see section II.13.3), it obtains also a copy of the source code and of the design specifications and any other relevant technical documentation concerning the creation, construction and functioning of the *results*.

The contractor retains the ownership of all other exemplars of the foreground material for which the contracting authority does not obtain ownership.

II.13.2. Protection of the results

The contractor shall be responsible for the management of all the *rights on the results* that it holds and shall bear any associated costs including for the protection, examination, grant, maintenance, defence and litigation of the *rights on the results*.

The contracting authority shall be entitled to monitor the management of all *rights on the results* held by the contractor. The contractor shall respond at any time to requests for information from the contracting authority about the handling of the *rights on the results*.

The contractor shall ensure that the *results* are identified, recorded and carefully distinguished from the outputs of other research and development activities that are not covered by the FWC. The contractor shall ensure that prior to any publication on the *results*, the protection of any protectable *results* is duly considered and, where it is reasonable so to do, applications for protection are filed at the relevant Member State or European Patent Office. The contractor shall ensure that all applications for the protection of *results* are diligently executed and prosecuted having regard to all relevant circumstances.

The contractor shall inform the contracting authority of any *results* it generates that can be exploited, regardless of whether they can be protected or not, at the latest two months from the generation of the result. The notification shall include information about the contents of the *results*, the confirmation by the contractor of its decision to protect said *results*, the type of protection that will be pursued and, for registered IPRs such as patents and design rights, the

planned timing and geographical scope of such protection, such as the jurisdictions for which the contractor will seek to obtain protection.

If the contractor decides to protect its *results* it shall, for registered intellectual property, file an application for protection within one year after notifying the contracting authority of its decision to seek protection. Wherever possible under the applicable rules, the contractor shall include, within any application for protection and within any certificate of protection that is consequently issued, the following statement: '*These results were achieved with EU support. The European Union has certain rights in these results*'. In case of any decision not to continue an application for protection, not to pay maintenance fees, or not to defend in a re-examination or opposition proceeding, in any country, the contractor shall notify the contracting authority not less than 60 days before the deadline for responding to the procedure for protection, maintenance or litigation.

If the contractor decides not to protect the *results* that it generated or does not seek timely or sufficient protection to enable the contracting authority to use the *results* as defined in the FWC, for example in terms of jurisdictions for registered IPRs, the contracting authority retains the right to seek itself protection of these *results* and to obtain ownership of the *rights on these results*. In the event that the contracting authority decides to exercise this right, the contracting authority will inform the contractor in writing of its decision to exercise this right.

The contractor shall put a copy of the *results* it generates (e.g. source codes of software and all related documentation, design specifications of prototypes, documentation about the foreground IP etc.) under escrow with a reputable escrow agent. If requested by the contracting authority, a tri-party agreement shall be signed between the escrow agent, the contractor and the contracting authority, duly protecting the interests of the contracting authority in case of bankruptcy or liquidation of the contractor and ensuring that in such cases the contracting authority shall obtain a copy of the *results*.

If the contractor becomes aware of any product or activity of any third party that involves or may involve infringement or other violation of the *rights on the results*, the contractor shall promptly notify the contracting authority of the infringement or violation.

II.13.3. Access to the results for the contracting authority

The contractor grants the Union and the European Blockchain Partnership (EBP) members⁸, including their affiliated institutes, a royalty-free, non-exclusive, worldwide, irrevocable and non-sub-licensable (except as explicitly authorised under this FWC) license to use its *results* for their own purposes, during and after the FWC. The contractor also grants a royalty-free, non-exclusive, worldwide, irrevocable and non-sub-licensable license to contractors and subcontractors of the Union and of EBP members to practice the *results* for the Union's or for the EBP members' own purposes, during and after the FWC.

- For those *results* that are design specifications, including the rights on such type of *results*, the access rights are unlimited in duration, or at least until expiration of the attached rights if any. For the avoidance of any doubt, use for its own purposes also

⁸ List of countries that are European Blockchain Partnership (EBP) members: <https://ec.europa.eu/digital-single-market/en/news/european-countries-join-blockchain-partnership>. This list of members may evolve over time.

allows the contracting authority and EBP members to use the design specifications in tender specifications of future public procurements related to the *results*.

- For those *results* that are an implementation of the design specifications into simulations, prototypes, demonstrators or first products /services, the access rights are limited to a duration of four (4) years after the end of the FWC, with the aim to enable wider validation of the *results* in production (e.g. across a larger set of future use cases, datasets, EBP members and users), and the license is limited to use of the *results* for the Union or EBP member organizations own non-commercial purposes. Save in exceptional conditions subject to the conditions in II.3.2 (decision of the contractor not to protect/exploit certain *results*), II.13.4 (failure of the contractor to license *results* to third parties) and II.13.5 (failure of the contractor to commercially exploit the *results* or abuse of the *results* against the public interest), the contracting authority does not aim to commercially exploit/sell itself the contractor's *results*; *commercial exploitation* of the contractor's *results* is in the first place the responsibility of the contractor, as specified in section II.13.5.

Without prejudice to above rights to access the *results* for various purposes, the contracting authority, EBP members and their (sub)contractors enjoy in particular:

- the right to make the *results* available to the staff of the contracting authority and of the EBP members and to persons and entities working for them or cooperating with them, including contractors, subcontractors, Union institutions, agencies and bodies, institutions or EBP member countries;
- the right to integrate the results into the European Blockchain Service Infrastructure (EBSI) and to use the *results* as part of the EBSI (including the right to load, display, transmit and run the *results* on the EBSI) at least for four (4) years after the end of the FWC;
- the right to make the necessary copies of the *results* for internal distribution, archiving, back-up, correcting errors, studying or testing of the functioning of the *results*;
- the right to make compilations, translations, adaptations or other types of arrangements or alterations to the *results* as is necessary for their intended use, for example to ensure interoperability with other systems implemented by the Union or EBP members;
- the right to publish summaries of the *results*, after consultation with the contractor to ensure that no confidential information is thereby disclosed or that the publication would not interfere with the protection of intellectual or industrial property rights;

These rights for the contracting authority are in addition to rights provided for by law, such as the unwaivable rights of, and exceptions for the benefit of lawful users of software or of databases, as foreseen by applicable law.

These rights do not allow, unless expressly permitted by the contractor, the right for the contracting authority to make the *results* available to the market, neither for free or under open licence terms (open source, open data) nor under market commercial conditions, neither to the general public nor to sectors of the economy. However, the contracting authority reserves the right to make available to the public for free any cross-border EBSI services (new use cases developed by the Union and EBP) that make use of the new functionalities enabled by the *results* that have been integrated in the EBSI infrastructure.

The contractor retains the right to commercial exploitation of the *results* (see section II.13.5) to third parties for any purposes of using the *results* beyond the scope of the EBSI. The contracting authority reserves the right to require the contractor (see section II.13.4) to give access under fair and reasonable conditions to the *results* to third parties, for example to third parties interested in developing and commercialising their own use cases on top of the EBSI.

In case of *commercial exploitation* of products, services or processes arising or developed from the *results* by the contractor or any entities affiliated to it or succeeding it in the ownership or development of the *results*, the contractor shall and shall procure that such affiliates or successors offer to the Union and EBP members the best price it or such affiliates or successors would offer in similar situations to any other third party for such commercial products or services, it being understood that no additional cost shall be charged in the offered price for any license of the *rights on the results*, as the Union and EBP members have already acquired license free right to use the *rights on the results* according to the first paragraph of this section II.13.3.

II.13.4. Access to the results for third parties

Whereas section II.13.3 defines the access rights to the *results* for the Union, EBP members as well as (sub)contractors of the Union and of EBP members that practice the *results* for the Union's or for the EBP members' own non-commercial use, this section defines the access rights to the *results* for other third parties.

The contractor shall, upon request of the contracting authority and within a reasonable time period specified in the said request, grant to third parties that are specified by the contracting authority a non-exclusive and non-sub-licensable license to use and exploit the *results*, and any *background* or *sideground* which may be necessary for the use or exploitation of the *results*, under fair and reasonable conditions.

In case the contractor fails or refuses to grant the license to the third parties specified by the contracting authority within the reasonable time period specified in the request of the contracting authority, the contracting authority retains the right to grant itself (or to appoint an independent third party to do so) a non-exclusive and non-sub-licensable license to said third parties to use and exploit the *results*.

II.13.5. Commercial exploitation of results

II.13.5.1. Responsibility of the contractor to commercially exploit results

Consistent with the good management of the *rights on the results* as covered by section II.13.2, the contractor shall take prompt action to exploit commercially its *results*, even if they cannot be protected, in order to generate revenue by marketing commercial applications of the *results*.

The contractor shall take measures to ensure that within minimum four (4) years after the end of the FWC, its *results*, where they are capable of *commercial exploitation*, are exploited commercially.

If the contractor fails to commercially exploit the *results* within four (4) years after the end of the FWC, and the circumstances of the case show that the contractor has not used its best

efforts to do so, the contracting authority is entitled to require that the contractor transfers the ownership of the non-exploited *results* to the contracting authority in order to ensure that the results are commercially exploited.

If at the end of the four (4) year period, despite the contractors' best efforts to exploit commercially the *results*, the contractor has justified reasons why no commercial exploitation has taken place yet, but this is expected to happen within a reasonable time that is acceptable to the contracting authority in view of safeguarding the operational needs of the EBSI, the contracting authority may grant the contractor in writing a prolongation of the period.

II.13.5.2. Alignment with public interests, including EU security and strategic autonomy interests

In order to safeguard the cross-border delivery of services through the EBSI infrastructure against potential physical and cyber threats and to protect the exchange of security sensitive information, the contractor shall ensure to safeguard EU security interests in the *commercial exploitation* of the *results*.

In order to safeguard security of supply of inputs critical to the functioning of the EBSI and fair competition in the supply chain compliant with EU rules and interests, the contractor shall ensure to safeguard EU strategic autonomy in the *commercial exploitation* of the *results*.

The contractor shall therefore ensure that a significant amount of the *commercial exploitation* of the *results* takes place in the EU Member States and/or countries associated to Horizon 2020. In particular, the contractor must produce minimum 50% of the products, services or processes that incorporate *results* or that are produced through the use of *results* in the EU Member States and/or countries associated to Horizon 2020⁹. For those *results* that are security components, the contractor must produce 100% in the EU Member States.

The contractor must ensure that in the *commercial exploitation* of *results* any cooperation with entities established in other countries, or controlled by such countries or entities from such countries, does not affect the EU security or strategic autonomy interests and avoids potential negative effects over security of supply of inputs critical to the functioning of EBSI.

The contractor must ensure that these obligations also apply to its subcontractors, affiliated entities and other third parties it cooperates with in the commercialisation of the *results*, as well as to any entities succeeding them in their ownership or development of the *results*.

If the contractor uses the *results* to the detriment of the public interest, including EU strategic autonomy or security interests, the contracting authority is entitled to require that the contractor transfers the ownership of the *results* to the contracting authority, in order to stop use of the results against the public interest and ensure commercial exploitation of the results by another party in line with the exploitation conditions.

II.13.5.3. Commercialisation provisions in case of mergers and takeovers

Contractors that are in process that is preceding a possible merger with or takeover by an entity from a country (or controlled by a country) that is not an EU Member State or country

⁹ The countries associated to Horizon 2020 are those listed as associated countries in the Funding & Tenders Portal [Online Manual: https://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/hi/3cpart/h2020-hi-list-ac_en.pdf](https://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/hi/3cpart/h2020-hi-list-ac_en.pdf)

associated by Horizon 2020, must notify the contracting authority at least three (3) months in advance of the decision to implement the possible merger or takeover and:

- describe in detail the identity, ownership and control structure of the potential new merged entity or the potential new owner(s)
- include a reasoned assessment of the likely impact of the possible merger/takeover on:
 - the access to the *results* and to the *background* and *sideground* that is essential for accessing the *results*, as foreseen by the FWC for the contracting authority and for third parties
 - the *commercialisation exploitation* of the *results*, including the EU security interests and EU strategic autonomy objectives above

The contracting authority may request the contractor for additional information to verify the potential impact, upon which the contractor must promptly provide the requested information. In case the impact analysis concludes that the merger or takeover negatively impacts the access to or the *commercial exploitation* of the *results*, including the EU security interests and EU strategic autonomy objectives set out in section II.13.5, the contracting authority is entitled to require that the contractor (both the contractor before or after the merger or takeover) transfers the ownership of the *results* to the contracting authority.

II.13.5.4. Commercialisation provisions in case of breach of contractual obligations

The contractor shall implement the contract in compliance with all of the following obligations:

- (i) The ‘Compliance with definition of R&D services’ obligation in TS section 1.4.2.2.1
- (ii) The ‘Place of performance obligation’ obligation in TS section 1.4.2.2.2
- (iii) The ‘Place of establishment and control’ obligation in TS section 2.2

In case of breach of any of the above contractual obligations, the contracting authority is entitled to require that the contractor transfers the ownership of the *results* to the contracting authority.

II.13.5.5. Common provisions

Before exercising the above right to require the transfer of the ownership of the *results*, the contracting authority will first contact the contractor to verify any measures that the contractor has taken to achieve successful commercial exploitation of the results, to safeguard EU strategic autonomy and security interests and rules, to prevent use of the results to the detriment of the public interest and to comply with its contractual obligations. Following the transfer of the ownership of the results to the contracting authority, the contracting authority may grant licenses to third parties to use and exploit the *results* (see section II.13.4.)

The contractor shall ensure that the *commercial exploitation* of the *results* will not infringe any of its other obligations under this FWC, such as its obligations regarding security, confidentiality and the protection of intellectual property or its obligations under data protection legislation.

The contracting authority shall be entitled to monitor the exploitation of the *results* held by the contractor during and after the FWC. The contractor shall submit periodical reports, when requested by the contracting authority, no more frequently than annually on the exploitation of the *results*, including the *rights on the results*, by the contractor, its licensees or assignees. The contractor shall respond at any time to requests for information from the contracting authority about the exploitation of the *results*.

II.13.6. Transfer and licensing of results

II.13.6.1. Non-exclusive licensing of results

The contractor may on its own initiative without prior authorization from the contracting authority, give non-exclusive licenses to third parties to exploit the *results* that it owns, to the extent that such licenses do not affect the rights of the contracting authority and the EBP members related to such *results*. The contractor must thus ensure in the licensing agreement that all its obligations under the FWC are passed on to the third party and that the third party has the obligation to pass on these obligations in any potential subsequent licensing.

II.13.6.2. Exclusive licensing and transfer of ownership of results

Due to EU strategic autonomy and security reasons, exclusive licensing and transfers of ownership of the *results* are restricted as follows:

- the contractor may not transfer ownership of its *results* or give exclusive licences if the *results* would become subject to controls or other restrictions by a country (or entity from a country) which is not an EU Member State or country associated to Horizon 2020
- the contractor must ensure that its obligations under the FWC are passed on to the new owner and licensee and that this new owner/licensee has the obligation to pass them on in any subsequent transfer/licensing.

Contractors that intend exclusive licensing or transfers of ownership of the *results* to an entity from a country (or controlled by a country) that is not an EU Member State or country associated by Horizon 2020, must request prior authorisation from the contracting authority. The intention of such exclusively licensing or transfer must first be notified to the contracting authority at least three (3) months in advance and:

- identify the specific *results* concerned
- describe in detail the intended new owner and the planned or potential exploitation of the *results* and
- include a reasoned assessment of the likely impact of the intended transfer or exclusive license on:
 - the access rights to the *results* and on the *background* and *sideground* that is essential for accessing the *results* as foreseen by the FWC for the contracting authority and for third parties
 - the *commercialisation exploitation* of the *results*, including the EU security interests and EU strategic autonomy objectives set out in section II.13.5

The contracting authority may request the contractor for additional information to verify the potential impact, upon which the contractor must promptly provide the requested information. Before granting the authorisation, the contracting authority will verify the potential impact of the intended transfer or exclusive licensing. The contracting authority may condition its authorisation to measures ensuring that the transfer or exclusive licensing will not have unintended or undesirable consequences. Before the contracting authority gives its written authorization, the transfer may not take place and any transfer or exclusive licensing agreement concluded before or without a written authorization will be null and void.

II.13.7. Dissemination of results

Consistent with the good management of the *rights on the results* as covered by section II.13.2, the contractor shall promote the dissemination of its *results*, in particular through publication and contribution to standardisation.

II.13.7.1. Publication

The contractor must notify the contracting authority of all its planned written or oral publication and/or communications or any other type of disclosure whatever the media or form relating to the *performance of the contract* or the *results* ('publication').

The contractor must submit a draft copy of any publication to the contracting authority:

- for a written publication, at the same time as the submission to the editor for publication or at least one month before the date intended for publication whichever is earlier;
- for an oral communication or any other type of disclosure, twenty (20) calendar days before the forecasted date of submission to the organiser of a scientific meeting or of said other type of disclosure

The contractor shall, on request of the contracting authority, remove any confidential or security sensitive information before the disclosure.

Section II.13.3 specifies the rights of the contracting authority regarding publication of summaries of the *results*, and the prior consultation with the contractor to ensure that such publications do not disclose confidential information of the contractor or interfere with the protection of intellectual or industrial property rights by the contractor.

Both parties agree that they will balance any of their requests to remove confidentiality, security or intellectual property sensitive aspects from a publication proposed by the other party against the other party's objective to maintain sufficient information related to the *performance of the contract* or the *results* that is necessary for the appropriate presentation or understanding of the publication.

II.13.7.2. Standardisation

The contractor and contracting authority will establish at the start of the FWC a list of appropriate standards to contribute to and will keep this list updated throughout the FWC.

II.13.7.3. Common provisions

If *results* are incorporated in a publication or standard or otherwise, the contractor must — unless the contracting authority requests or agrees otherwise in writing or unless it is impossible — ask the publisher / standardisation body to include the following statement in (information related to) the publication / standard: ‘Funded by the European Union’.

The contractor shall ensure that the dissemination of the *results* will not infringe any of its other obligations under this FWC, such as its obligations regarding protection of intellectual property, confidentiality, security or its obligations under data protection legislation.

II.13.8. Ownership of and access to the pre-existing materials and pre-existing rights (background and sideground).

Background and *sideground* remain the property of the party providing it, or as the case may be, its licensor(s) and nothing contained in this FWC shall affect the rights of each party in its *background* or *sideground*.

Subject to pre-existing obligations that may apply to *background* or *sideground*, the contracting authority grants the contractor a royalty-free, non-exclusive, irrevocable and non-sub-licensable license to use its *background* and *sideground* for the *performance of the FWC* during the period of the FWC. The contracting authority does not have any *background* in the field of blockchain.

Subject to pre-existing obligations that may apply to *background* or *sideground*, the contractor grants the contracting authority, the EBP members and (sub)contractors that assist them in executing the FWC including in particular in evaluation or testing of solutions a royalty-free, non-exclusive, irrevocable and non-sub-licensable (except as explicitly authorised under this FWC) license to use its *background* and *sideground* for the execution of the FWC and during the period of the FWC.

Subject to pre-existing obligations that may apply to *background* or *sideground*, the contractor grants to the contracting authority, the EBP members – and also to (sub)contractors that practice the results for their own non-commercial use - a license to use its *background* and *sideground* under fair and reasonable conditions to the extent needed to use the *results* for their own non-commercial purposes, beyond the execution of the FWC and after the FWC.

These licenses are in addition to rights provided for by law, such as the unwaivable rights of, and exceptions for the benefit of lawful users of software or of databases, as foreseen by applicable law.

II.13.9. Identification of pre-existing materials and pre-existing rights (background and sideground)

In order to be able to distinguish clearly between rights on newly created materials and newly created rights on the one hand and pre-existing materials and pre-existing rights on the other hand, and to establish which pre-existing materials and rights are held by whom, the parties must establish an agreed list of all their *pre-existing materials and pre-existing rights (background and sideground)* that may be used for the performance of this FWC or parts thereof, including identification of the rights’ owners.

The contractor must provide the declaration listing pre-existing materials and pre-existing rights in its offer for the FWC and must provide an updated version of it to the contracting authority within the bid for each specific contract in order to have the updated list approved by the contracting authority at the latest 30 days after the start of each specific contract. If there are no *pre-existing materials nor pre-existing rights*, the contractor must provide a declaration to that effect.

The list of pre-existing material and pre-existing rights shall identify for each pre-existing material and right the tasks, deliverables or other aspects related to the performance of the contract that may be affected by pre-existing material and/or right, the pre-existing material and/or right concerned, the rights to the pre-existing material, the rights holder and any prior obligations on the pre-existing rights that may apply to the results. Such list will include, but is not limited to, a list of the software necessary for the performance of the FWC (including but not limited to software necessary for the operation of the prototypes and products or services that will be developed during the FWC), specifying which software is closed source software.

The contractor shall inform the contracting authority about any evolutions in any of its pre-existing material and pre-existing rights that affect the performance of the FWC. This includes any changes to the *background* (including the rights on the *background*) and about the generation of new *sideground* (including new rights on the *sideground*) within 30 days from the change or generation and at the latest by the end of the corresponding phase and with each bid for the next phase.

II.13.10. Evidence of granting of pre-existing rights

Upon request by the contracting authority, the contractor must, in addition to the list mentioned under Article II.13.4., provide evidence that it has the ownership or the right to use all the listed *pre-existing materials and 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, sounds, music, tables, data, software, technical inventions, know-how, IT development tools, routines, subroutines or other programs ('background technology'), concepts, designs, installations or pieces of art, data, source or background materials or any other parts of external origin.

This evidence must include, as appropriate:

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

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

II.13.11. Visibility of Union funding and disclaimer

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

II.14. FORCE MAJEURE

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

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

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

II.15. LIQUIDATED DAMAGES

II.15.1. Delay in delivery

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

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

where:

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

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

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

II.15.2. Procedure

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

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

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

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

II.15.3. Nature of liquidated damages

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

II.15.4. Claims and liability

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

II.16. REDUCTION IN PRICE

II.16.1. Quality standards

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

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

II.16.2. Procedure

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

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

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

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

II.16.3. Claims and liability

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

II.17. SUSPENSION OF THE IMPLEMENTATION OF THE FWC

II.17.1. Suspension by the contractor

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

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

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

II.17.2. Suspension by the contracting authority

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

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

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

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

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

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

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

II.18. TERMINATION OF THE FWC

II.18.1. Grounds for termination by the contracting authority

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

- (a) if provision of the services under an on-going specific contract has not actually started within 15 days of the scheduled date and the contracting authority considers that the new date proposed, if any, is unacceptable, taking into account Article II.11.2;
- (b) if the contractor is unable, through its own fault, to obtain any permit or licence required for *implementation of the FWC*;
- (c) if the contractor does not implement the FWC or perform the specific contract in accordance with the tender specifications or *request for service* or is in breach of another substantial contractual obligation or repeatedly refuses to sign specific contracts. Termination of three or more specific contracts in these circumstances also constitutes grounds for termination of the FWC;
- (d) if the contractor or any person that assumes unlimited liability for the debts of the contractor is in one of the situations provided for in points (a) and (b) of Article 136(1) of the Financial Regulation¹⁰;
- (e) if the contractor or any *related person* is in one of the situations provided for in points (c) to (h) of Article 136(1) or to Article 136(2) of the Financial Regulation;
- (f) if the procedure for awarding the FWC or the *implementation of the FWC* prove to have been subject to *irregularities, fraud or breach of obligations*;
- (g) if the contractor does not comply with applicable obligations under environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU;
- (h) if the contractor is in a situation that could constitute a *conflict of interest* or a *professional conflicting interest* as referred to in Article II.7;
- (i) if a change to the contractor's legal, financial, technical, organisational or ownership situation is likely to substantially affect the *implementation of the FWC* or substantially modify the conditions under which the FWC was initially awarded or a change regarding the exclusion situations listed in Article 136 of Regulation (EU) 2018/1046 that calls into question the decision to award the contract;
- (j) in the event of *force majeure*, where either resuming implementation is impossible or the necessary ensuing amendments to the FWC or a specific contract would mean that the tender specifications are no longer fulfilled or result in unequal treatment of tenderers or contractors;
- (k) if the needs of the contracting authority change and it no longer requires new services under the FWC; in such cases ongoing specific contracts remain unaffected;
- (l) if the termination of the FWC with one or more of the contractors means that the multiple FWC with reopening of competition no longer has the minimum required level of competition;

¹⁰ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, OJ L 193 of 30.7.2018, p.1 <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1544791836334&uri=CELEX:32018R1046>

- (m) if the contractor is in breach of the data protection obligations resulting from Article II.9.2;
- (n) if the contractor does not comply with the applicable data protection obligations resulting from Regulation (EU) 2016/679.

II.18.2. Grounds for termination by the contractor

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

II.18.3. Procedure for termination

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

The other party has 30 days following the date of receipt to submit observations, including the measures it has taken or will take to continue fulfilling its contractual obligations. Failing that, the decision to terminate becomes enforceable the day after the time limit for submitting observations has elapsed.

If the other party submits observations, the party intending to terminate must *formally notify* it either of the withdrawal of its intention to terminate or of its final decision to terminate.

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

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

In addition, at the request of the contracting authority and regardless of the grounds for termination, the contractor must provide all necessary assistance, including information, documents and files, to allow the contracting authority to complete, continue or transfer the services to a new contractor or internally, without interruption or adverse effect on the quality or continuity of the services. The parties may agree to draw up a transition plan detailing the contractor's assistance unless such plan is already detailed in other contractual documents or in the tender specifications. The contractor must provide such assistance at no additional cost, except if it can demonstrate that it requires substantial additional resources or means, in which case it must provide an estimate of the costs involved and the parties will negotiate an arrangement in good faith.

II.18.4. Effects of termination

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

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

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

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

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

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

II.19.1. Invoices and value added tax

Invoices must contain the contractor's (or leader's in the 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 the 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 7 of the Treaty on the Functioning of the European Union on the privileges and immunities of the European Union.

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

II.19.2. E-invoicing

If provided for in the special conditions, the contractor (or leader in the 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.20. PRICE REVISION

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

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

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

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

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

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

The price revision is calculated using the following formula:

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

where: Pr = revised price;

Po = price in the tender;

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

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

II.21. PAYMENTS AND GUARANTEES

II.21.1. Date of payment

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

II.21.2. Currency

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

II.21.3. Conversion

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

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

http://ec.europa.eu/budget/contracts_grants/info_contracts/infoeuro/infoeuro_en.cfm

II.21.4. Costs of transfer

The costs of the transfer are borne as follows:

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

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

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

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

The contractor bears the cost of providing such guarantee.

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

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

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

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

II.21.6. Interim payments and payment of the balance

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

The contractor (or leader in the 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 services, as provided for in Article I.6, in the tender specifications or in the specific contract.

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

Payment of the balance may take the form of recovery.

II.21.7. Suspension of the time allowed for payment

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

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

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

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

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

II.21.8. Interest on late payment

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

Central Bank for its main refinancing operations in euros (the reference rate) plus eight points. The reference rate is the rate in force, as published in the C series of the *Official Journal of the European Union*, on the first day of the month in which the payment period ends.

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

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

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

II.22. REIMBURSEMENTS

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

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

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

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

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

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

- (a) for journeys of less than 200 km for a return trip, no subsistence allowance is payable;
- (b) the daily subsistence allowance is payable only on receipt of supporting documents proving that the person concerned was present at the destination;

- (c) the daily subsistence allowance takes the form of a flat-rate payment to cover all subsistence expenses, including meals, local transport including transport to and from the airport or station, insurance and sundries;
- (d) the daily subsistence allowance is reimbursed at the flat rates specified in Article I.5.3;
- (e) accommodation is reimbursed on receipt of supporting documents proving the necessary overnight stay at the destination, up to the flat-rate ceilings specified in Article I.5.3.

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

II.23. RECOVERY

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

II.23.2. Recovery procedure

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

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

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

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

II.23.3. Interest on late payment

If the contractor does not honour the obligation to pay the amount due by the date set by the contracting authority in the debit note, the amount due bears interest at the rate indicated in Article II.21.8. Interest on late payments will cover the period starting on the day after the due date for payment and ending on the date when the contracting authority receives the full amount owed.

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

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

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

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

II.24. CHECKS AND AUDITS

II.24.1 The contracting authority 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 services and up to five years starting from the payment of the balance of the last specific contract issued under this FWC

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

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

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

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

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

II.24.5 In accordance with Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspection carried out by the Commission in order to protect the European Communities' financial interests against *fraud* and other *irregularities* and Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office, the European Anti-Fraud Office may carry out investigations, including on the spot checks and inspections, to establish whether there has been *fraud*, corruption or any other illegal activity under the contract affecting the financial interests of the Union. Findings arising from an investigation may lead to criminal prosecution under national law.

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

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

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

ANNEX III

- Model for specific contracts
- Model for order forms

SPECIFIC CONTRACT

No [complete]

implementing framework contract No [complete]

1. The European Union ('the Union'), represented by the European Commission ('the contracting authority'), represented for the purposes of signing this specific contract by [forename, surname, function, department of authorising officer],

and

2. [Full official name]

[Official legal form]

[Statutory registration number or ID or passport number]

[Full official address]

[VAT registration number]

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

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

([collectively] "the contractor"), represented for the purposes of signing this specific contract by [forename, surname and function of legal representative,]

HAVE AGREED

ARTICLE 1 SUBJECT MATTER

- 1.1** This specific contract implements framework contract (FWC) No [complete], signed by the parties on [complete date].
- 1.2** In accordance with the provisions set out in the FWC and in this specific contract and [its][their] annex[es], which form an integral part of it, the contractor must provide the [following services:] [services specified in Annex [complete].]

ARTICLE 2 ENTRY INTO FORCE AND DURATION

- 2.1** This specific contract enters into force on [insert date] if both parties have already signed it.
- 2.2** The provision of the services starts from [insert date].
- 2.3** The provision of the services must not exceed [complete] [days] [months]. The parties may extend the duration by written agreement before it elapses and before expiry of the FWC.

ARTICLE 3 PRICE

- 3.1** The price payable under this specific contract excluding reimbursement of expenses is EUR [amount in figures and in words].

[The maximum amount covering all services to be provided under this specific contract including reimbursement of expenses and excluding price revision is EUR [amount in figures and in words].]

- 3.2** Reimbursement of expenses is not applicable to this specific contract.

In Belgium, use of this contract constitutes a request for VAT exemption No 450, Article 42, paragraph 3.3 of the VAT code (circular 2/1978), provided the invoice includes the statement: 'Exonération de la TVA, Article 42, paragraphe 3.3 du code de la TVA (circulaire 2/1978)' or an equivalent statement in the Dutch or German language.

ARTICLE 4 COMMUNICATION DETAILS

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

Contracting authority:

European Commission

Directorate-General [complete]

[Directorate [complete]]

[Unit [complete]]

[Postcode and city]

E-mail: [insert functional mailbox]

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

[Full name]

[Function]

[Company name]

[Full official address]

E-mail: [complete]

ARTICLE 5 PERFORMANCE GUARANTEE

Performance guarantee is not applicable to this specific contract.

ARTICLE 6 RETENTION MONEY GUARANTEE

Retention money guarantee is not applicable to this specific contract.

ARTICLE 7 SPECIAL CONDITIONS

The special conditions specified in Article I.13 of the framework contract apply to this specific contract.

Annexes

Request for service

Contractor's specific tender of [insert date]

Signatures

For the contractor,

For the contracting authority,

[Company name/forename/surname/function]

[forename/surname/function]


signature:

Done at [place], [date]

signature:

Done at [place], [date]

In duplicate in English.

		FRAMEWORK CONTRACT ORDER FORM			
EUROPEAN COMMISSION DG and unit: Tel.: E-mail:		Order number: <hr/> Currency of payment: EUR <hr/> Tender (date and reference):	(Name and address of contractor)		
This order is governed by Framework Contract No _____ in force from _____ to _____					
LISTING OF THE SUPPLIES / SERVICES and code		UNIT	QUANTITY	PRICE in € UNIT PRICE TOTAL	
- -					
<p>In accordance with Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union, the Commission is exempt from all taxes and dues, including value added tax, on payments due under this contract. For intra-community purchases, the statement 'VAT Exemption / European Union / Article 151 of Council Directive 2006/112/EC' should be added on the invoice.</p> <p>[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; art. 42 § 3.3 du code TVA (circulaire n° 2/1978)'.]</p>		Packaging Insurance Transport Assembly VAT TOTAL :			
Place of delivery or performance and/or Incoterm: Final date of delivery or performance: Payment provisions: Guarantee:		Contractor's signature Name: Position: Date:			
Date of issue: Signature [name and position] [and for Belgium, Commission stamp]: [Pour la Belgique, numéro de dossier auprès du Protocole du SPF Affaires Etrangères] The invoice will be paid only if the contractor has returned the signed order form.					