

## OPTION FOR SOLE TENDERER

### FRAMEWORK SERVICE CONTRACT<sup>1</sup>

TITLE – **[complete]**

FRAMEWORK CONTRACT NUMBER – **[complete]**

The European Food Safety Authority, hereinafter referred to as "the Contracting Authority", established by [Regulation \(EC\) No 178/2002](#)<sup>2</sup> of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, as last amended, with offices on Via Carlo Magno 1/a 43126 Parma (Italy), represented by Mr. Bernhard Url, Executive Director

on the one part, and

**[full official name]**

**[official legal form]**<sup>3</sup>

**[statutory registration number]**<sup>4</sup>

**[full official address]**

**[VAT registration number]**

[(hereinafter referred to as 'the contractor'),] [represented for the purposes of the signature of this contract by **[surname, name and function]**,]

on the other part,

HAVE AGREED

<sup>1</sup> If a subcontractor provides the whole or a very large part of the financial capacity OR executes the whole or a very large part of the tasks, EFSA may demand that the subcontractor signs the contract

<sup>2</sup> OJ L 31 of 01.02.2002

<sup>3</sup> Delete if contractor is a natural person or a body governed by public law.

<sup>4</sup> Delete if contractor is a body governed by public law. For natural persons, indicate the number of their identity card or, failing that, of their passport or equivalent.

**to the special conditions, the general conditions for service framework contracts 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 –** (a) [Model Order Form] [and]  
(b) [Model Specific Contract]<sup>5</sup>

**Annex IV –** Declaration on pre-existing<sup>6</sup> rights

[Other annexes]

which form an integral part of this framework contract (hereinafter referred to as “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 *Order form* or *Specific contract* which the contracting authority and the contractor may conclude under this FWC; and
3. the obligations of the parties during and after the duration of this FWC.

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

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<sup>5</sup> As a general rule, framework contracts are to be implemented using order forms or specific contracts or both instruments if some services are well defined and others are not.

<sup>6</sup> It is important that the awarded contractor fully understands the implications of signing this declaration and it is therefore advisable that a contractor consults with their legal advisors and/or seeks further clarification from EFSA in case of doubt.

## OPTION FOR JOINT OFFER

### FRAMEWORK SERVICE CONTRACT<sup>7</sup>

TITLE – **[complete]**

FRAMEWORK CONTRACT NUMBER – **[complete]**

The European Food Safety Authority, hereinafter referred to as "the Contracting Authority", established by [Regulation \(EC\) No 178/2002](#)<sup>8</sup> of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, as last amended, with offices on Via Carlo Magno 1/a 43126 Parma (Italy), represented by Mr Bernhard Url, Executive Director

on the one part, and

Leading Partner: **[full official name]**

**[official legal form]**<sup>9</sup>

**[statutory registration number]**<sup>10</sup>

**[full official address]**

**[VAT registration number]**

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

**[For joint tenders, repeat these data as many times as there are contractors and continue numbering]**

and

PARTNER 2: **[full official name]**

**[official legal form]**<sup>11</sup>

**[statutory registration number]**<sup>12</sup>

**[full official address]**

**[VAT registration number]**

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<sup>7</sup> If a subcontractor provides the whole or a very large part of the financial capacity OR executes the whole or a very large part of the tasks, EFSA may demand that the subcontractor signs the contract

<sup>8</sup> OJ L 31 of 01.02.2002

<sup>9</sup> Delete if contractor is a natural person or a body governed by public law.

<sup>10</sup> Delete if contractor is a body governed by public law. For natural persons, indicate the number of their identity card or, failing that, of their passport or equivalent.

<sup>11</sup> Delete if contractor is a natural person or a body governed by public law.

<sup>12</sup> Delete if contractor is a body governed by public law. For natural persons, indicate the number of their identity card or, failing that, of their passport or equivalent.

(collectively 'the contractor'), represented for the purposes of the signature of this framework contract by [*forename, surname, function of legal representative and name of lead company in the joint tender*] based on the Power of Attorney attached to this contract,

on the other part

HAVE AGREED

**to the special conditions, the general conditions for service framework contracts 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 –** (a) [*Model Order Form*] [*and*]  
(b) [*Model Specific Contract*]<sup>13</sup>

**Annex IV –** Declaration on pre-existing<sup>14</sup> rights

**Annex V –** Power of attorney

[*Other annexes*]

which form an integral part of this framework contract (hereinafter referred to as "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 *Order form* or *Specific contract* which the contracting authority and the contractor may conclude under this FWC; and
3. the obligations of the parties during and after the duration of this FWC.

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

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<sup>13</sup> As a general rule, framework contracts are to be implemented using order forms or specific contracts or both instruments if some services are well defined and others are not.

<sup>14</sup> It is important that the awarded contractor fully understands the implications of signing this declaration and it is therefore advisable that the contractor consults with their legal advisors and/or seeks further clarification from EFSA in case of doubt.

# **I – SPECIAL CONDITIONS FOR SERVICE FRAMEWORK CONTRACT**

## **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.

## **I.2 SUBJECT MATTER**

The subject matter of the FWC is the EFSA Journal as further explained in annex 1.

## **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 twelve months with effect from the date of its entry into force.

**I.3.4** The parties must sign any *Order form* or specific contract before the FWC expires.

The FWC continues to apply to such order forms and specific contracts after its expiry. The services relating to such order forms or specific contracts must be performed no later than six months after the expiry of the FWC.

### **I.3.5 FWC renewal**

The FWC is renewed automatically five times for 12 months each, unless one of the parties receives *formal Notification* to the contrary at least *three* months before the end of the ongoing duration. Renewal does not change or postpone any existing obligations.

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

### **I.4.1 Appointment of the contractor**

The contracting authority appoints the contractor for a single FWC.

#### **I.4.2 Period of provision of the services**

The period for the provision of the services starts to run from the date [on which it is signed by the last party] [indicated in the specific contract].

#### **I.4.3 Implementation of single FWC**

The contracting authority orders services by sending the contractor an *Order form* or specific contract [by e-mail].

Within *two* working days, the contractor must either:

- (a) send the *Order form* or specific contract back to the contracting authority signed and dated;  
or
- (b) send an explanation of why it cannot accept the order.

If the contractor repeatedly refuses to sign the order forms or 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 the specific contract back to the contracting authority signed and dated within five working days of receipt.

### **I.5 PRICES**

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

The maximum amount covering all purchases under this FWC, including all renewals and reimbursement of expenses (if any) is EUR4 800 000 [*four million eight hundred thousand*). However, this does not bind the contracting authority to purchase for the maximum amount.

The maximum prices of the services shall be: as listed in Annex II.

#### **I.5.2 Price revision index**

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

#### **I.5.3 Reimbursement of expenses<sup>15</sup>**

**Not applicable**

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<sup>15</sup> In most cases, this option is not applicable as it is recommended to use a global price covering all parts of the services. If reimbursable expenses have to be used, they must be defined in the framework contract, not in the specific contract.

## **I.6 PAYMENT ARRANGEMENTS AND PERFORMANCE OF THE FRAMEWORK CONTRACT**

### **I.6.1 Pre-financing**

**Not applicable**

### **I.6.2 Single framework contract**

Within five (5) working days of an order form or a request for services being sent by the contracting authority to the contractor, the contracting authority shall receive the completed order form or a specific tender back, duly signed and dated. Within five (5) working days of a specific contract being sent by the contracting authority to the contractor, the contracting authority shall receive it back, duly signed and dated. The period allowed for the execution of the tasks shall start to run on the date the contractor signs the order form/specific contract, unless a different date is indicated on the form or as indicated in the specific contract. The implementation modalities of the Contract are detailed in annex I of this contract (tender specifications, section 1.5)

### **I.6.3 Pre-financing**

Not applicable.

### **I.6.4 Interim payments**

The Contractor shall submit an invoice for an interim payment in line with the relevant order form or specific contract.

**Production services** will be the subject of one Order Form, a template of which is appended to the FWC at Annex III(a), covering a 12 month period (normally covering the period from 1<sup>st</sup> February year n to 31<sup>st</sup> January year n+1 and for the remaining duration of the FWC, specified in Article I.2.3), to be paid on the basis of two separate invoices:

- one interim payment – Not later than 15<sup>th</sup> October year n and each subsequent year for the duration of the FWC, the Contractor should invoice the Contracting Authority with details of the actual number of items processed from 1<sup>st</sup> February year n until 30<sup>th</sup> September year n plus 50% of the value of the residual number of items ordered for the remaining period from 1<sup>st</sup> October year n until 31<sup>st</sup> January of the year n+1 (the "Interim Invoice"). Payment of the Interim Invoice will be made by the Contracting Authority within 30 calendar days from receipt of the invoice.
- one final payment of the balance (see I.6.5 below).
- In the event that the Contracting Authority places an order for production services for a different contractual period payment for those services shall be made within 30 calendar days from receipt of invoices. The date by which the invoices shall be issued will be agreed between the Parties in the order form or specific contract.

### **I.6.5 Payment of the balance**

The contractor shall submit an invoice for payment of the balance.

Individual orders or specific contracts will specify the actual payment schedule in accordance with the options set out in points I.6.3, I.6.4 and I.6.5 above.

The above provision is complemented as follows for:

***Production services***

- No later than 15th February of year n+1, the Contractor should issue an invoice for payment of the balance of the production services. This invoice should contain details of the actual number of items processed from 1<sup>st</sup> October year n until 31st January year n+1, minus the 50% interim payment for the same period, included in the Interim Invoice.

***Annual fee services and/or start-up and/or configuration services and/or other services***

Services subject to a fixed annual fee, detailed in Annex II of the FWC - Financial Offer, will be ordered for a 12 months period (normally from 1<sup>st</sup> February year n until 31<sup>st</sup> January year n+1 and for the remaining duration of the FWC, specified in Article I.2.3). The Contractor shall issue an invoice, after 30<sup>th</sup> September year n and no later than 15<sup>th</sup> October year n and each subsequent year for the duration of the FWC, for 100% payment of the services subject to a fixed annual fee ("Fixed Annual Fee Invoice"). Payment of the Fixed Annual Fee Invoice shall be made by the Contracting Authority within 30 calendar days from receipt of the Fixed Annual Fee Invoice.

In the event that the Contracting Authority places an order for services with a fixed annual fee for a shorter period and/or start-up and/or configuration services and/or other services, 100% payment for those services shall be made within 30 calendar days from receipt of such invoice. The date by which the invoice shall be issued will be agreed between the Parties in the order form or specific contract.

***[Option: for contractors for which VAT is due in Belgium]***

[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.]

***[Option: for contractors for which VAT is due in Luxembourg]***

[In Luxembourg, the contractor must include the following statement in the invoices: "Commande destinée à l'usage officiel de l'Union européenne. Exonération de la TVA Article 43 § 1 k 2ième tiret de la loi modifiée du 12.02.79. 'In the case of intra-Community purchases, the statement to be included in the invoices is: "For the official use of the European Union. VAT Exemption / European Union/ Article 151 of Council Directive 2006/112/EC."']

***[Option: for contractors for which VAT is due in Italy]***

[For Contractors established in Italy, the provisions of the Contract constitute a request for VAT exemption, provided the Contractor includes the following statement in his invoice(s): "Operazione non imponibile ai sensi dell'articolo 9 della Legge n. 17 del 10/01/2006 (G.U. n. 21 del 26.01.2006)".]



#### **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 designation of account holder: ...

Full account number including [bank] codes: ...

IBAN<sup>16</sup> code: ...

#### **I.8 COMMUNICATION DETAILS**

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

Contracting authority:

European Food Safety Authority

Finance Unit – Procurement Team

Via Carlo Magno 1/A

43126 Parma -Italy

Email: [EFSAProcurement@efsa.europa.eu](mailto:EFSAProcurement@efsa.europa.eu)

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

[Full name]

[Function]

[Company name]

[Full official address]

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<sup>16</sup> BIC or SWIFT code for countries with no IBAN code.

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, the data controller is [insert name of Head of Unit in charge of the tasks and deliverables under this contract];

The data protection notice regarding the procurement process and contract management, is available on EFSA's website:

<http://www.efsa.europa.eu/sites/default/files/assets/procurementprivacystatement.pdf>.

### **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 the publication of the EFSA journal, which may include names of authors;
- (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. This requirement is applicable in the context of the United Kingdom's withdrawal from the European Union ;
- ii. the personal data shall only be held in data centres located within the territory of the European Union and the European Economic Area. This requirement is applicable in the context of the United Kingdom's withdrawal from the European Union
- iii. access to data may be given on a need to know basis only to authorised persons established in a country which has been recognised by the European Commission as providing adequate protection to personal data;
- iv. the contractor may not change the location of data processing without the prior written authorisation of the contracting authority;
- v. any transfer of personal data under the FWC to third countries or international organisations shall fully comply with the requirements laid down in Chapter V of Regulation (EU) 2018/1725<sup>17</sup>.

## **I.10 EXPLOITATION OF THE RESULTS OF THE FWC**

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

EFSA as the Contracting Authority is and shall remain the sole and exclusive owner of the EFSA Journal, including without limitation its title, content and all publishing rights, as well as without limitation the following rights in relation to the Journal and its content provided for inclusion in the Journal:

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<sup>17</sup> 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/legalcontent/EN/TXT/PDF/?uri=CELEX:32018R1725&from=EN>

- a) Use for the own purposes of EFSA as Contracting Authority;
- i. making available to the EFSA staff
  - ii. making available to the persons and entities working for EFSA or cooperating with it, including contractors, subcontractors whether legal or natural persons, Union institutions, agencies and bodies, Member States' institutions
  - iii. installing, uploading, processing
  - iv. arranging, compiling, combining, retrieving
  - v. copying, reproducing in whole or in part and in unlimited number of copies
- b) Distribution to the public;
- i. publishing in hard copies
  - ii. publishing in electronic or digital format
  - iii. publishing on the internet as a downloadable/non-downloadable file
  - iv. broadcasting by any kind of technique of transmission v. public presentation or display vi. communication through press information services
  - vii. inclusion in widely accessible databases or indexes viii. otherwise in any form and by any method
- c) Creation and/or modification of content for the EFSA Journal, including the right to;
- i. shorten
  - ii. summarize
  - iii. modify the content
  - iv. make technical changes to the content:
  - v. necessary correction of technical errors
  - vi. add new parts or functionalities
  - vii. change functionalities
  - viii. provide third parties with additional information concerning the result (e.g. source code) with a view of making modifications
  - ix. addition of new elements, paragraphs titles, leads, bolds, legend, table of content, summary, graphics, subtitles, sound, etc.
  - x. preparation in audio form, preparation as a presentation, animation, pictograms story, slide-show, public presentation etc.

- xi. extract a part or dividing into parts
- xii. use of a concept or preparation of a derivative work
- xiii. digitise or converting the format for storage or usage purposes
- xiv. modify dimensions
- xv. translate, insert subtitles, dub in different language versions:
  - all official languages of EU, especially English, French, German
  - other languages used within EU
  - languages of EU Candidate Countries

d) The modes of exploitation listed in article II.10.4

e) Subject to Article I.8(b), the rights to authorise, license, or sub-license in the case of pre-existing rights, the modes of exploitation set out in any of the points (i) to (iv) to third parties.

Where the Contracting Authority requires any modifications to the Journal that exceed the scope envisaged in the FWC and its Annexes, the Contracting Authority shall consult the Contractor. The Contractor shall reply to the Contracting Authority within one month and shall provide any suggestions free of charge. Any additions to the scope which necessitate additional costs being charged shall be discussed and agreed between the parties. The Contractor may refuse the intended modifications only when it may harm the Contractor's honour, reputation or distort the integrity of its work

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

### **I.10.2 Exclusivity of publication**

The Contracting Authority grants to the Contractor for the term of the FWC the exclusive right of the Contractor to publish, manufacture, reproduce, transmit, distribute, market, promote and license the EFSA Journal. This exclusivity does not preclude the right of the Contracting Authority to disseminate EFSA scientific outputs in advance of formal publication in the Journal, deposit EFSA scientific outputs in EU and other stakeholder repositories or dissemination via existing document delivery mechanisms. The Contractor shall have the right to sublicense these rights, including, but not limited to, the right to grant or license any permission, subsidiary, derivative or other rights in the Journal.

The parties acknowledge that such exclusive rights are subject to any rights granted pursuant to the use of Creative Commons licenses by creators of the EFSA Journal content.

EFSA hereby grants the Contractor, during the Term, a non-exclusive, worldwide license to use, and to sublicense the Contractor's subcontractors to use EFSA's name, branding or logo in connection to the EFSA Journal. The Contractor acknowledges that it has no ownership rights or any other rights in the name, branding or logo of EFSA of the EFSA Journal.

For the avoidance of doubt, the Contracting Authority is responsible for providing the content to the Contractor for publication in the Journal and shall ensure that the content provided shall be original, shall not infringe upon or violate any copyright, trademark, trade secret, obligation of confidentiality or any other right or the privacy of others or contain libelous matter, material or instructions that may cause deliberate harm or injury.

### **I.10.3 Licence or transfer of pre-existing rights**

The Contracting Authority does not acquire ownership of or any license to pre-existing rights belonging to the Contractor or its subcontractors. Pre-existing rights and any third party pre-existing rights relating to provision of the publishing services including those current and future rights relating to Wiley Online Library, Wiley Author Licensing Service, the Wiley Journal App Service and any software, source code or functionality in the Contractor's online or mobile platforms, all as they exist now or may be modified, enhanced, upgraded or replaced in the future.

**I.11 TERMINATION BY EITHER PARTY**

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

If the FWC or *Order form* or specific contract is terminated:

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

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

### **I.12 APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

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

**I.12.2** The General Court of the European Union has exclusive jurisdiction over any dispute regarding the interpretation, application or validity of the FWC.

### **I.13 INTER-INSTITUTIONAL FRAMEWORK CONTRACT**

Not applicable to this FWC

### **I.14 ELECTRONIC DOCUMENT EXCHANGE AND INSTRUCTIONS FOR INVOICING**

It is intended that the document exchange (e.g. invoices, deliverables, order forms/specific contracts, etc.) between the Contracting Authority and the Contractor will have to be carried out via electronic means. At the request of the Contracting Authority, the use of such electronic applications will become mandatory during the performance of the contract.

By derogation to article II.19.2, invoices must be submitted electronically via e-Prior following configuration.

Invoices must contain the following information:

- 1) Your contact at EFSA (name, title, telephone, number, email address);
- 2) The reference number of the contract, with the requested amount in euro;
- 3) The mention "the payment should be made into the following bank account" and the following information: beneficiary, bank name and address, bank account number;
- 4) Detailed billing information;
- 5) Each PDF file should only contain one invoice. Any other supporting documents should be scanned and saved separately to the PDF invoice.

## **I.15 OTHER SPECIAL CONDITIONS**

### **I.15.1 Signature of amendments**

Without prejudice to the art II.11 of the GENERAL CONDITIONS, contract amendments will be electronically signed by the delegated EFSA Finance Unit responsible in the following cases:

- Price revision;
- Change of bank account;
- Change of legal entity, and also in case of new name, or where the change of legal entity results from a merge or universal succession. This excludes change of legal entity involving:
  - \* assignment of contract to a new entity, total or partial, including the payments or;
  - \* change of legal entity where a new institutional DoI has to be assessed

### **I.15.2 Obligation to notify EFSA of changes**

The the contractor is obliged to notify EFSA of any change to their legal, financial, technical, organisational or ownership situation which is likely to substantially affect the *Implementation of the contract* or substantially modify the conditions under which the contract was initially awarded. This includes but is not limited to notifying EFSA of changes which may have affected the original declaration on honour on exclusion criteria; declaration on honour on selection criteria or the status of the contractor in the Early Detection and Exclusion System (EDES).

### **I.15.3. Declarations of interest**

With reference to Article II.10 the contractor shall provide individual declarations of interest for new members in the project team or updated individual declarations for those team members whose interests declared on the occasion of signature of the contract have substantially changed during the implementation of the contract. Updated institutional declarations of interest must also be provided when the interests declared on the occasion of signature of the contract have substantially changed during the implementation of the contract. The declarations will be screen in accordance with the [EFSA's Independence policy](#) and the [Decision of the Executive Director on Competing Interest Management which can be found on the EFSA website](#).

### **I.15.4. Provision of evidence**

The Contracting Authority during the Contract implementation reserves the right to ask the Contractor to provide updated documentary proof or statements required under the law of the country in which the contractor and any subcontractors are established, in order to evidence that they do not fall into any of the grounds for exclusion listed in the EFSA Guidance for tenderers available the EFSA website. In particular, if the contractor is found to be not in compliance with its obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which it is established or with those of the country of the applicable law

of this contract or those of the country where the contract is to be performed, by derogation to Article II.14.2, the Contracting Authority can terminate the contract without any prior notification

### **I.15.5 Benchmarking**

EFSA may undertake a Benchmarking, in month 24 and month 48 from the entry into force of the Contract, of the levels and the charges of the Services provided under the Contract by comparison with similar Services provided by outsourcing vendors and/or IT service providers of EFSA. The results of such Benchmarking shall be available in identical form to both EFSA and the Contractor.

In order to guarantee that a valid comparison is made, EFSA will ensure that:

- the scope of the Services being provided by the Contractor is taken into consideration;
- a significant comparison group shall be taken into account;
- in case no such significant comparison group exists, the relevant industry best practices or markets with similar requirements shall be taken into account;
- the relevant comparison data must be guaranteed

The work of the Benchmarker should in principle not exceed four (4) months. For the first Benchmarking exercise, the comparison group shall be defined in a document entitled "Comparison Group Definition". EFSA reserves the right to change the comparison group algorithm to reflect any changes in its business from time to time. The Benchmarker shall be a qualified and objective third party selected by EFSA. EFSA shall ensure that no conflict of interest exists on the side of the Benchmarker. EFSA will pay all of its own costs and the Benchmarker's costs during the Benchmarking. The Contractor will pay all of its own costs incurred during the benchmarking exercise, if any.

EFSA and the Contractor shall set aside sufficient time and resources for each stage of the Benchmarking, such as:

- identification and location of Benchmarking data,
- performing the Benchmarking, and
- implementation of the conclusions of the Benchmarking

EFSA and the Contractor will be free to suggest changes in Benchmarking parameters as the Services evolve over the term of this Contract. The Benchmarker shall treat as confidential, in accordance with Article II. 5 of the Contract, all data provided by EFSA and the Contractor, and will return all material and media once the Benchmarking is completed. If a Benchmarking reveals that the level of a Service does not reach the comparison group's service levels or the level based on the relevant industry best practices or of markets with similar requirements, the Contractor shall immediately prepare an action plan, which will specify all actions necessary to rectify the deviations. The full and measurable implementation of the action plan shall in no circumstances exceed one (1) year since the completion

of the Benchmarking. If the Contractor fails to fully implement the action plan, the EFSA may claim damages. If a Benchmarking reveals that charges are higher than the comparison group's charges, the reduction of the prices shall be applicable on the last calendar day of the month in which the results of the Benchmarking were delivered to the Parties. The reduction shall not have retroactive effect and shall be only valid for the specific contracts and order forms concluded after this date.

#### **I.15.6 Confidentiality**

I.15.6.1 Both the contracting authority and the contractor shall treat with confidentiality any information and documents, in any form, disclosed in writing or orally in relation to the performance of the FWC and identified in writing as confidential

The contractor shall:

(a) not use confidential information and documents for any purpose other than fulfilling its obligations under the FWC, order form or specific contract without prior written agreement of the contracting authority;

(b) ensure the protection of such confidential information and documents with the same level of protection it uses to protect its own confidential information, but in no case any less than reasonable care;

(c) not disclose directly or indirectly confidential information and documents to third parties without prior written agreement of the contracting authority.

I.15.6.2 The confidentiality obligation set out in Article I.15.6.1 shall be binding on both the contracting authority and the contractor during the performance of the FWC and for five years starting from the date of the payment of the balance of the final order form/specific contract unless:

(a) the disclosing party agrees to release the other party from the confidentiality obligation earlier;

(b) the confidential information becomes public through other means than in breach of the confidentiality obligation, through disclosure by the party bound by that obligation;

(c) the disclosure of the confidential information is required by law.

1.15.6.3. The contractor shall 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 performance of the FWC, order form or specific contract an undertaking that they will comply with the confidentiality obligation set out in Article I.15.6.1.

#### **I.15.7 Liability**

As a complement to article II.6. of the General Conditions, in the event of any action brought by a third party against the contractor in connection with the performance of the FWC for an alleged breach of intellectual property rights in the Journal content provided by EFSA as the contracting authority, such expenditure incurred by the contractor will be borne by the contracting authority. Should the contractor believe that Journal content provided by EFSA infringes upon any copyright, patent or obligation of confidentiality, or otherwise violates any rights of a third party, it shall contact EFSA to



resolve the matter prior to proceeding with assuming its publishing tasks and obligations under the present contract.

I.15.8 Editorial control EFSA as the contracting authority will retain full editorial control of its scientific outputs and will retain responsibility for journal policy and the appointment of the Editorial Board. The contracting authority shall be responsible for establishing editorial policy, defining the aims and scope of the EFSA Journal, controlling the content of the Journal, and for appointment and management of the "Editorial Board" and "Editor in Chief".

I.15.9 Use of professional credits The contracting authority shall ensure that during the term of this contract the Publisher shall have the right to use the names and professional credits of the Editor in Chief, Lead Editor, and Editorial Board members in connection with the publication of the Journal and in any material promoting and marketing the Journal.

#### **I.15.10 Use of electronic tools and processing of personal data**

In the event the Contractor, its partners in a joint offer or its subcontractors may require the use of IT tools or systems for the provision of services and as far as data on individuals will be processed therein, these tools or systems shall comply with *Article I.9.2* and *Article II.9.2*, laying down the requirements from the processing of personal data by the contractor. The compliance shall particularly be ensured with regard to the following points: the localisation of the personal data, including the localisation of data centres or servers in which they are held and related back-ups, the fact that the Contractor may only act on EFSA's documented written instruction related to personal data processing, the adoption of technical and organisational security safeguards and the notification without undue delay to EFSA of any personal data breaches within 48 hours of discovery.

## **II – GENERAL CONDITIONS FOR SERVICE FRAMEWORK CONTRACTS**

### **II.1. DEFINITIONS**

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

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

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

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

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

**'Creator'**: means any natural person who contributes to the production of the *Result*;

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

**'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, and electronic acceptance of services or electronic invoices between the parties.

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

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

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

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

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

**'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 contracting authority'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;

**'Personal Data':** any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

**'Personal Data processing':** any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;

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

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

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

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

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

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

**'Supplier portal'**: the e-PRIOR portal, which allows the contractor to exchange electronic business documents, such as invoices, through a graphical user interface; its main features can be found in the supplier portal overview document available on: [http://ec.europa.eu/dgs/informatics/supplier\\_portal/doc/um\\_supplier\\_portal\\_overview.pdf](http://ec.europa.eu/dgs/informatics/supplier_portal/doc/um_supplier_portal_overview.pdf)

## **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 Contracting Authority 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/EU<sup>18</sup>, compliance with data protection obligations resulting from Regulation (EU) 2016/679<sup>19</sup> and Regulation (EU) 2018/1725.<sup>20</sup>

**II.4.4** The contractor must obtain any permit or licence required in the State where the services are to be provided.

**II.4.5** All periods specified in the FWC are calculated in calendar days, unless otherwise specified.

**II.4.6** The contractor must not present itself as a representative of the contracting authority and must inform third parties that it is not part of the European public service.

**II.4.7** The contractor is responsible for the *Personnel* who carry out the services and exercises its authority over its *Personnel* without interference by the contracting authority. The contractor must inform its *Personnel* that:

- (a) they may not accept any direct instructions from the contracting authority; and
- (b) their participation in providing the services does not result in any employment or contractual relationship with the contracting authority.

**II.4.8** The contractor must ensure that the *Personnel* implementing the FWC and any future replacement personnel possess the professional qualifications and experience required to provide the services, as the case may be on the basis of the selection criteria set out in the tender specifications.

**II.4.9** At the contracting authority's reasoned request, the contractor must replace any member of *Personnel* who:

- (a) does not have the expertise required to provide the services; or
- (b) has caused disruption at the premises of the contracting authority.

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

**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.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

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<sup>18</sup> OJ L 94 of 28.03.2014, p. 65

<sup>19</sup> 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 (General Data Protection Regulation), OJ L 119, 4.5.2016, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&from=EN>

<sup>20</sup> 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>

(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 persons 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 and 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**

### **II.13.1 Ownership of the rights in the results**

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

The intellectual property rights so acquired include any rights, such as copyright and other intellectual or industrial property rights, to any of the *Results* and in all technological solutions and information created or produced by the contractor or by its subcontractor in *Implementation of the FWC*. The contracting authority may exploit and use the acquired rights as stipulated in this FWC. The Contracting Authority acquires all the rights from the moment the contractor has created the results

The payment of the price includes any fees payable to the contractor about the acquisition of ownership of rights by the Contracting Authority including for all forms of exploitation and of use of the *Results*.

### **II.13.2 Licensing rights on pre-existing materials**

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

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

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

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

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

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

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

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

### II.13.3 Exclusive rights

The contracting authority acquires the following exclusive rights:

- (a) reproduction: the right to authorise or prohibit direct or indirect, temporary or permanent reproduction of the *Results* by any means (mechanical, digital or other) and in any form, in whole or in part;
- (b) communication to the public: the exclusive right to authorise or prohibit any display, performance or communication to the public, by wire or wireless means, including the making available to the public of the *Results* in such a way that members of the public may access them from a place and at a time individually chosen by them; this right also include the communication and broadcasting by cable or by satellite;
- (c) distribution: the exclusive right to authorise or prohibit any form of distribution of *Results* or copies of the *Results* to the public, by sale or otherwise;
- (d) rental: the exclusive right to authorise or prohibit rental or lending of the *Results* or of copies of the *Results*;
- (e) adaptation: the exclusive right to authorise or prohibit any modification of the *Results*;
- (f) translation: the exclusive right to authorise or prohibit any translation, adaptation, arrangement, creation of derivative works based on the *Results*, and any other alteration of the *Results*, subject to the respect of moral rights of authors, where applicable;
- (g) where the *Results* are or include a database: the exclusive right to authorise or prohibit the extraction of all or a substantial part of the contents of the database to another medium by any means or in any form; and the exclusive right to authorise or prohibit the re-utilization of all or a substantial part of the contents of the database by the distribution of copies, by renting, by on-line or other forms of transmission;
- (h) where the *Results* are or include a patentable subject-matter: the right to register them as a patent and to further exploit such patent to the fullest extent;
- (i) where the *Results* are or include logos or subject-matter which could be registered as a trademark: the right to register such logo or subject-matter as a trademark and to further exploit and use it;
- (j) where the *Results* are or include know-how: the right to use such know-how as is necessary to make use of the *Results* to the full extent provided for by this FWC, and the right to make it available to contractors or subcontractors acting on behalf of the contracting authority, subject to their signing of adequate confidentiality undertakings where necessary;
- (k) where the *Results* are documents:
  - (i) the right to authorise the reuse of the documents in conformity with the Commission Decision of 12 December 2011 on the reuse of Commission documents (2011/833/EU), to the extent it is applicable and the documents fall within its scope and are not excluded by any of its provisions; for the sake of this provision, "reuse" and "document" have the meaning given to it by this Decision;
  - (ii) the right to store and archive the *Results* in line with the document management rules applicable to the contracting authority, including digitisation or converting the format for preservation or new use purposes;
- (l) where the *Results* are or incorporate software, concerning source code, object code and, where relevant, documentation, preparatory materials and manuals, in addition to the other rights mentioned in this Article:
  - (i) end-user rights, for all uses both by the contracting authority or by subcontractors which result from this FWC and from the intention of the parties
  - (ii) the rights to receive both the source code and the object code;
- (m) the right to license to third parties any of the exclusive rights or of the modes of exploitation set out in this FWC; however, for *pre-existing materials* which are only licensed to the contracting authority, the right to sub-license does not apply, except in the two cases foreseen by Article II.13.2.;

- (n) to the extent that the contractor may invoke moral rights, the right for the contracting authority, except where otherwise provided in this FWC, to publish the *Results* with or without mentioning the *creator(s)*' name(s), and the right to decide when and whether the *Results* may be disclosed and published.

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

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

#### **II.13.4 Identification of pre-existing rights**

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

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

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

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

This provision also applies to image rights and sound recordings.

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

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

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

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

#### **II.13.6 Quotation of works in the result**

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

#### **II.13.7 Moral rights of creators**

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

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

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

#### **II.13.8 Image rights and sound recordings**

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

#### **II.13.9 Copyright notice for pre-existing rights**

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

#### **II.13.10 Visibility of contracting authority funding and disclaimer**

When making use of the *Results*, the contractor must declare that they have been produced under a contract with the contracting authority 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 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 Regulation<sup>21</sup>;
- (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*;

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<sup>21</sup> 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/?uri=uriserv:OJ.L\\_.2016.119.01.0001.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.119.01.0001.01.ENG)

- (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;
- (j) in the event of *Force majeure*, where either resuming implementation is impossible or the necessary ensuing amendments to the FWC or a specific contract would mean that the tender specifications are no longer fulfilled or result in unequal treatment of tenderers or contractors;
- (k) if the needs of the contracting authority change and it no longer requires new services under the FWC; in such cases ongoing specific contracts remain unaffected;
- (l) if the termination of the FWC with one or more of the contractors means that the multiple FWC with reopening of competition no longer has the minimum required level of competition;
- (m) if the contractor is in breach of the data protection obligations resulting from Article II.9.2;
- (n) if the contractor does not comply with the applicable data protection obligations resulting from Regulation (EU) 2016/679.

### **II.18.2 Grounds for termination by the contractor**

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

### **II.18.3 Procedure for termination**

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

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

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

In the cases referred to in points (a) to (d), (g) to (i), (k) and (l) 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 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) or (g) 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/inforeuro/inforeuro\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm)

#### **II.21.4 Costs of transfer**

The costs of the transfer are borne as follows:

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

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

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

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

The contractor bears the cost of providing such guarantee.

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

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

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

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

#### **II.21.6 Interim payments and payment of the balance**

The contractor (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 other 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 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 after the payment of the balance of the last specific contract issued under this FWC.

**II.24.6** The Court of Auditors, the European Public Prosecutor's Office established by Council Regulation (EU) 2017/1939<sup>22</sup> ('the EPPO') and, for the processing of personal data, the European Data Protection Supervisor, have the same rights as the contracting authority, particularly right of access, for the purpose of checks, audits and investigations.

## SIGNATURES

For the contractor,  
[Company  
name/forename/surname/function]

For the Contracting Authority,  
[forename/surname/function]

signature[s]: \_\_\_\_\_

signature[s]: \_\_\_\_\_

Done at [place], [date]

Done at [place], [date]

In two copies in English.

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<sup>22</sup> Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office

## **ARTICLE 1341, 2<sup>ND</sup> PARAGRAPH OF THE ITALIAN CIVIL CODE**

In accordance with the provisions of Article 1341, 2<sup>nd</sup> paragraph, of the Italian Civil Code, the Contractor expressly declares to accept the following provisions:

- 1) Article I.3 Special Conditions (Entry into force and duration);
- 2) Article I.9 Special Conditions (Processing of Personal Data);
- 3) Article I.10 Special Conditions (Exploitation of the results of the contract);
- 4) Article I.11 Special Conditions (Termination by either party);
- 5) Article I.12 Special Conditions (Applicable Law and Settlement of disputes);
- 6) Article I.15 Special Conditions (Signature of amendment, obligation to notify EFSA of changes, Declaration of interest, provision of evidence, benchmarking, confidentiality, liability);
- 7) Article II.2 General Conditions (Joint Tenders);
- 8) Article II.3 General Conditions (Severability);
- 9) Article II.6 General Conditions (Liability);
- 10) Article II.10 General Condition (Subcontracting);
- 11) Article II.12 General Condition (Assignment);
- 12) Article II.13 General Conditions (Intellectual property rights);
- 13) Article II.14 General Conditions (Force majeure);
- 14) Article II.15 General Conditions (Liquidated damages);
- 15) Article II.16 General Conditions (Reduction in price);
- 16) Article II.17 General Conditions (Suspension of the Implementation of the FWC);
- 17) Article II.18 General Conditions (Termination of the FWC);
- 18) Article II.24 General Conditions (Checks and audits).

### **SIGNATURE**

For the Contractor,

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

signature[s]: \_\_\_\_\_

Date: \_\_\_\_\_

Done at *xxx*

## **ANNEX I – TENDER SPECIFICATIONS**

## **Annex II – CONTRACTOR'S TENDER**

## ANNEX III – MODEL SPECIFIC CONTRACT No [nr]

implementing Framework contract No [complete]

The European Food Safety Authority, hereinafter referred to as "the Contracting Authority", established by [Regulation \(EC\) No 178/2002](#)<sup>23</sup> of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, as last amended, with offices on Via Carlo Magno 1/a 43126 Parma (Italy), represented by Mr. Bernhard Url, Executive Director

on the one part,

and

[full official name]

[official legal form]<sup>24</sup>

[statutory registration number]<sup>25</sup>

[full official address]

[VAT registration number]

(hereinafter referred to as "the contractor"), [represented for the purposes of the signature of this specific contract by [forename, surname and function,]]

[The parties identified above and hereinafter collectively referred to as 'the contractor' shall be jointly and severally liable vis-à-vis the contracting authority for the performance of this specific contract.]

on the other part,

HAVE AGREED

### ARTICLE 1 SUBJECT MATTER

**1.1** This specific contract implements Framework Contract (FWC) No [complete] [lot XX] signed by the contracting authority and the contractor 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: insert] [services specified in Annex [complete]].

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<sup>23</sup> OJ L 31 of 01.02.2002

<sup>24</sup> Delete if contractor is a natural person or a body governed by public law.

<sup>25</sup> Delete if contractor is a body governed by public law. For natural persons, indicate the number of their identity card or, failing that, of their passport or equivalent.

## **ARTICLE 2 ENTRY INTO FORCE AND DURATION**

- 2.1** This specific contract enters into force [on the date on which the last party signs it] [on [insert date] if both parties have already signed it.].
- 2.2** The provision of the services starts from [the date of entry into force of this specific contract] [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.] [Within the maximum amount, up to EUR [amount in figures and in words] is earmarked for expenses, which must be reimbursed in accordance with the FWC].

\*\*\*

### **[Option: for contractors for which VAT is due in Belgium]**

[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.]

### **[Option: for contractors for which VAT is due in Luxembourg]**

[In Luxembourg, the contractor must include the following statement in the invoices: "Commande destinée à l'usage officiel de l'Union européenne. Exonération de la TVA Article 43 § 1 k 2ième tiret de la loi modifiée du 12.02.79. 'In the case of intra-Community purchases, the statement to be included in the invoices is: "For the official use of the European Union. VAT Exemption / European Union/ Article 151 of Council Directive 2006/112/EC.'"]

### **[Option: for contractors for which VAT is due in Italy]**

[For Contractors established in Italy, the provisions of the Contract constitute a request for VAT exemption, provided the Contractor includes the following statement in his invoice(s): "Operazione non imponibile ai sensi dell'articolo 9 della Legge n. 17 del 10/01/2006 (G.U. n. 21 del 26.01.2006)".]

## **ARTICLE 4 COMMUNICATION DETAILS**

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

Contracting authority:

European Food Safety Authority

[Unit *[complete]*]

*[Full official address]*

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.]*

*[This contract is subject to a performance guarantee of *[complete]*% of the price of the contract [excluding reimbursable expenses]]. The contractor (or leader in the case of a joint tender) must provide a performance guarantee in the form of a financial guarantee for EUR *[amount in figures and in words]* in accordance with the conditions laid down in Article II.21.5. The guarantee must be released *[30] [60] [90]* days after the final approval of the services.]<sup>26</sup>*

## **ARTICLE 6 RETENTION MONEY GUARANTEE**

*[Retention money guarantee is not applicable to this specific contract.]*

## **ARTICLE 7 OTHER PROVISIONS**

### **7.*[complete]* - Declaration on pre-existing rights**

The interim/final deliverables and related invoices must be accompanied by the declaration on pre-existing rights. Absence of such declaration when the deliverable and invoice is received will be understood by the Contracting Authority as confirmation that there are no pre-existing rights within the deliverable and the Contracting Authority will proceed with the payment.

### **7.*[complete]* – Institutional and Individual declarations of interest**

With reference to Article II.7 the framework contractor shall provide individual declarations of interest for all members of the proposed project team. During implementation of the specific contract, the contractor shall provide individual declaration of interest for any new members of the project team or updated individual declarations for those team members whose interests declared on the occasion of signature of this specific contract have substantially changed during the implementation of this specific contract. Updated institutional declarations of interest must also be provided when the interests declared on the occasion of signature of this specific contract have substantially changed during the implementation of this specific contract.

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<sup>26</sup> Requesting a performance guarantee is not allowed for contracts of less than EUR 60 000



## **ANNEXES**

Annex I – Technical specifications / request for service

Annex II – Contractor's specific tender ([insert date])

## **SIGNATURES**

For the contractor,  
[Company  
name/forename/surname/function]


For the Contracting Authority,  
[forename/surname/function]

signature[s]: \_\_\_\_\_  
Done at [place], [date]

signature[s]: \_\_\_\_\_  
Done at [place], [date]

In duplicate in English.

## ANNEX III – **MODEL** FRAMEWORK CONTRACT ORDER FORM

 <b>European Food Safety Authority</b>	<b>FRAMEWORK CONTRACT</b>  <b>ORDER FORM</b>			
Unit:  Tel.:  E-mail:	Order number: Currency of payment: EUR Tender (date and reference): Budget Line:	(Name and address of contractor)		
This order is governed by Framework Contract No _____ in force from _____ to _____				
Listing of the <b>supplies / services</b>  (and code)	UNIT	QUANTITY	PRICE in €	
			UNIT PRICE	TOTAL
<div style="display: flex;"> <div style="flex: 1;"> <p>In accordance with Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union, the Authority 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, VAT exemption 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> <p>[For contractors established in Italy, the provisions of the contract constitute a request for VAT exemption, provided that the contractor shall affix on each invoice the following words: "Operazione non imponibile ai sensi dell'articolo 9 della legge n. 17 del 10/01/2006 (G.U: n. 21 del 26.01.2006)"]</p> <p>The interim/final deliverables and related invoices must be accompanied by the declaration on pre-existing rights. <u>Absence of such declaration when the deliverable and invoice is received will be understood by the Contracting Authority as confirmation that there are no pre-existing rights within the deliverable and the Contracting Authority will proceed with the payment.</u></p> </div> <div style="flex: 1; padding-left: 10px;"> <p><b>Packaging</b></p> <p><b>Insurance</b></p> <p><b>Transport</b></p> <p><b>Assembly</b></p> <p>VAT</p> </div> </div>				
Place of delivery or performance:  Final date of delivery or performance:  Payment provisions:			<b>TOTAL :</b>  <b>Contractor's signature</b>  Name: Position:	

**Guarantee:**

Date:

Date of issue:

Signature [name and position]:

The period of execution of tasks may be extended only with the express written agreement of the parties before such period elapses and before expiry of the FWC.

The invoice will be paid only if the contractor has returned the signed order form.

#### Annex IV - Declaration on pre-existing rights<sup>27</sup>

I, [insert name of the authorised representative of the contractor] representing [insert name of the contractor] ('the contractor'), party to the Framework contract [insert title and number]

[option 1: warrant that the results are free of rights or claims from creators or from any third parties for any use the contracting authority may envisage and declare that the results do not contain any pre-existing rights to the results or parts of the results or to pre-existing materials as defined in the above-mentioned contract.]

[option 2: warrant that the results and the pre-existing material incorporated in the results are free of rights or claims from creators or from any third parties for any use the contracting authority may envisage and declare that the results contain the following pre-existing rights:]

[Contractor to complete if option 2 selected] **Please fill in the table – one line per pre-existing right**

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

In addition, the creators transferred all their relevant rights to the results to [the contractor] [insert name of the rights holder] through [an agreement] [an employment contract] [a relevant extract of] which is attached to this statement.

The creators [received all their remuneration on [insert date]] [will receive all their remuneration as agreed within [complete] weeks from [delivery of this statement] [receipt of confirmation of acceptance of the work].

Signature:

Place:

Date:

<sup>27</sup> It is obligatory for the contractor to provide this declaration, appropriately adapted, signed and dated, with the interim/final deliverable and relevant invoice. Please contact EFSA Finance Team well in advance of submission of the interim/final deliverables in the event you have queries about how this declaration should be compiled or the implications of signing such declaration. Absence of such declaration when the deliverable and invoice is received will be understood by the Contracting Authority as confirmation that there are no pre-existing rights within the deliverable and the Contracting Authority will proceed with the payment.

### **Statement by the creator (or right holder)**

***Exceptionally, EFSA reserves the right, following submission of the final deliverable with the above-mentioned "Declaration on the list of pre-existing rights" to require the Contractor to provide an additional "Statement by the creator (or right holder)" following the template below.***

**Concerning [insert name of the relevant result] delivered as part of the Framework contract [insert title and number] concluded between the contracting authority and [name of the contractor]**

I the undersigned [insert name of the creator or authorised representative of the right holder] [representing [insert name of the right holder]] declare that I am the right holder of: [identify the relevant parts of the result] [which I created] [for which I received rights from [insert name of other right holder]].

I am aware of the above framework contract, especially Articles [I.10 and II.13] concerning intellectual property rights and exploitation of the results and I confirm that I transferred all the relevant rights to [insert name of contractor or other intermediary right holder].

I declare that [I have received full remuneration] [I agreed to receive remuneration by [insert date]].

[As creator, I also confirm that I do not object to the following:

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

Signature:

Place:

Date:



## **Annex V - POWER OF ATTORNEY<sup>28</sup> related to the contract XX**

we, partner number 1: official name in full, official legal form<sup>29</sup>, statutory registration number<sup>30</sup>, official address in full, VAT registration number, represented for the purposes of the signature of this power of attorney by function of legal representative of partner number 1,

and,

we, partner number 2: official name in full, official legal form<sup>31</sup>, statutory registration number<sup>32</sup>, official address in full, VAT registration number, represented for the purpose of this power of attorney by function of legal representative of partner number 2,

and,

we, partner number 3 (repeat as many times as necessary): official name in full, official legal form<sup>33</sup>, statutory registration number<sup>34</sup>, official address in full, VAT registration number, represented for the purpose of this power of attorney by function of legal representative of partner number 3,

we hereby agree as follows based on the joint tender submitted together:

- to be jointly and severally liable towards the European Food Safety Authority for the performance of the contract and any future amendments;
- to comply with the terms and conditions of the contract and ensure the proper execution of their respective tasks and commitments;
- to designate partner number 1 as leading partner, where the leading partner's legal representative shall sign the contract, any order forms or specific contracts in case of framework contract, and any future amendments to those/this contracts;
- to allow the leading partner's legal representative to delegate the power of signing any order forms/specific contracts and any potential amendments to order forms/specific contracts;
- any payments by the European Food Safety Authority under the contract(s) shall be made to the leading partner.

### **For the Leading Partner**

name in full and function of legal representative of organisation 1

Signature: .....

Done at ....., on.....

### **For Partner number 2**

name in full and function of legal representative of organisation 2

Signature: .....

Done at ....., on.....

### **For the Partner number 3(repeat as many times as necessary)**

name in full and function of legal representative of organisation 3

Signature: .....

Done at ....., on.....

<sup>28</sup> Any modification to the present power of attorney shall be subject to the European Food Safety Authority's express approval. This power of attorney shall expire when all the contractual obligations of the Members of the Group towards the European Food Safety Authority in connection with the Contract have ceased to exist. The parties cannot terminate it before that date without the European Food Safety Authority's consent.

<sup>29</sup> Delete if contractor is a natural person or a body governed by public law.

<sup>30</sup> Delete if contractor is a body governed by public law. For natural persons, indicate the number of their identity card or, failing that, of their passport or equivalent.

<sup>31</sup> Delete if contractor is a natural person or a body governed by public law.

<sup>32</sup> Delete if contractor is a body governed by public law. For natural persons, indicate the number of their identity card or, failing that, of their passport or equivalent.

<sup>33</sup> Delete if contractor is a natural person or a body governed by public law.

<sup>34</sup> Delete if contractor is a body governed by public law. For natural persons, indicate the number of their identity card or, failing that, of their passport or equivalent.