



## EUROPEAN COMMISSION

Directorate-General for Financial Stability, Financial Services and Capital Markets Union

RESOURCES AND COMMUNICATION  
**Financial Resources and Internal Control**

Brussels, 07/03/2016

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### LETTER OF INVITATION TO TENDER

Dear Sir/Madam,

**Subject: Open call for tender FISMA/2015/146(01)/C**

#### **Drivers of corporate bond market liquidity**

1. The **European Commission** (hereinafter referred to as "*the contracting authority*") is planning to award the public contract referred to above. Please find enclosed the related procurement documents, consisting in the contract notice, this invitation letter, the tender specifications with their annexes and the draft service contract.
2. If you are interested in this contract, you are hereby invited to submit a tender in one original (containing **original signatures** where requested) and 2 copies, in one of the official languages of the European Union.
3. Tenderers shall submit tenders exclusively on paper:
  - a) either by registered post or by courier not later than **29/04/2016**, in which case the evidence of the date of dispatch shall be constituted by the postmark or the date of the deposit slip, to the address indicated below.
  - b) or delivered in person (hand delivery) not later than **29/04/2016** to the address indicated below. In this case, a receipt must be obtained as proof of submission, signed and dated by the official in the Commission's central mail department who took delivery.

Mail can be received from 07.30 to 17.30 Monday to Fridays. The service is closed on Saturdays, Sundays and official holidays of the contracting authority.

<u>By registered post:</u> CALL FOR TENDER <b>FISMA/2015/146(01)/C</b> European Commission Directorate-General for Financial Stability, Financial Services and Capital Markets	<u>By courier or in person:</u> CALL FOR TENDER <b>FISMA/2015/146(01)/C</b> European Commission Directorate-General for Financial Stability, Financial Services and Capital Markets
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Union, Financial Resources and Internal Control Office: SPA2 – 01/40 B – 1049 Brussels Belgium	Union, Financial Resources and Internal Control Office: SPA2 – 01/40 Avenue du Bourget 1 B-1140 Brussels (Evere) Belgium
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Tenders must be placed inside two sealed envelopes. Both the inner and outer envelope, addressed as indicated above, should be marked as follows: "CALL FOR TENDER **FISMA/2015/146(01)/C** – NOT TO BE OPENED BY THE INTERNAL MAIL DEPARTMENT". If self-adhesive envelopes are used, they must be sealed with adhesive tape and the sender must sign across this tape.

The inner envelope must also contain two sealed envelopes, one containing the technical tender and the other the financial tender. Each of these envelopes must clearly indicate the content ("*Technical*" and "*Financial*").

4. Tenders must:
  - be signed by a duly authorised representative of the tenderer;
  - be perfectly legible so that there can be no doubt as to words and figures;
  - be drawn up using the model reply forms in the tender specifications (Annexes 2 to 6).
5. The period of validity of the tender, during which tenderers may not modify the terms of their tenders in any respect, is 9 months from the date indicated in point 3.
6. Submission of a tender implies acceptance of all the terms and conditions set out in the procurement documents and, where appropriate, waiver of the tenderer's own general or specific terms and conditions. Submission of a tender is binding on the tenderer to whom the contract is awarded for the duration of the contract.
7. All costs incurred during the preparation and submission of tenders are to be borne by the tenderers and will not be reimbursed.
8. A maximum of two representatives per tender can attend the opening of tenders as provided in Section IV.2.7 of the contract notice. For organisational and security reasons, the tenderer must provide the full name and ID or passport number of the representatives at least 3 working days in advance to: [EC-FISMA-CONTRACTS@ec.europa.eu](mailto:EC-FISMA-CONTRACTS@ec.europa.eu). Failing that, the contracting authority reserves the right to refuse access to its premises.
9. Contacts between the contracting authority and tenderers are prohibited throughout the procedure save **in exceptional circumstances** and under the following conditions only:

Before the date of receipt indicated in point 3:

Upon request, the contracting authority may provide additional information solely for the purpose of clarifying the procurement documents.

Any request for additional information must be made in writing only through the eTendering website at:

<https://etendering.ted.europa.eu/cft/cft-display.html?cftId=1379>

in the "*questions and answers*" tab, by clicking "*create a question*".

The contracting authority may, on its own initiative, inform interested parties of any error, inaccuracy, omission or any other type of clerical error in the text of the procurement documents.

Any additional information including that referred to above will be posted on the eTendering website indicated above (<https://etendering.ted.europa.eu/cft/cft-display.html?cftId=1379>).

The website will be updated regularly and it is your responsibility to check for updates and modifications during the submission period.

After the opening of tenders:

If obvious clerical errors in the tender need to be corrected or confirmation of a specific or technical element is necessary, the contracting authority will contact the tenderer provided this does not lead to substantial changes to the terms of the submitted tender.

10. This invitation to tender is in no way binding on the contracting authority. The contracting authority's contractual obligation commences only upon signature of the contract with the successful tenderer.
11. Up to the point of signature, the contracting authority may either abandon the procurement or cancel the award procedure, without the candidates or tenderers being entitled to claim any compensation. This decision must be substantiated and the tenderers notified.
12. Once the contracting authority has opened the tender, the document shall become the property of the contracting authority and it shall be treated confidentially.
13. You will be informed of the outcome of this procurement procedure. It is your responsibility to provide a valid e-mail address together with your contact details in your tender and to check it regularly. Submission of a tender implies acceptance of receiving notification on the outcome of the procedure by electronic means.
14. If processing your reply to the invitation to tender involves the recording and processing of personal data (such as your name, address and CV), such data will be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Unless indicated otherwise, your replies to the questions and any personal data requested are required to evaluate your tender in accordance with the specifications of the invitation to tender and will be processed solely for that purpose by the European Commission. Details concerning the processing of your personal data are available on the privacy statement at: [http://ec.europa.eu/dataprotectionofficer/privacystatement\\_publicprocurement\\_en.pdf](http://ec.europa.eu/dataprotectionofficer/privacystatement_publicprocurement_en.pdf).

15. Your personal data may be registered in the Early Detection and Exclusion System (EDES) if you are in one of the situations mentioned in Article 106 of the Financial Regulation<sup>1</sup>. For more information, see the Privacy Statement on [http://ec.europa.eu/budget/explained/management/protecting/protect\\_en.cfm#BDCE](http://ec.europa.eu/budget/explained/management/protecting/protect_en.cfm#BDCE)).
16. You may submit any observations concerning the procurement procedure to the contracting authority using the contact means under point 9. If you believe that there was maladministration, you may lodge a complaint to the European Ombudsman within two years of the date when you became aware of the facts on which the complaint is based (see <http://www.ombudsman.europa.eu>).
17. Within two months of notice of the award decision, you may launch an action for annulment of the award decision. Any request you may make and any reply from us, or any complaint for maladministration, will have neither the purpose nor the effect of suspending the time-limit for launching an action for annulment or to open a new period for launching an action for annulment. The body responsible for hearing annulment procedures is indicated in Section VI.4.1 of the contract notice.

I look forward to receiving your tender in response to this call for tender.

Yours sincerely,  
(*signed*)

Pamela Brumter-Coret  
Director A – Resources and  
Communication

Annexes: Tender specifications, draft service contract and other annexes

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<sup>1</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298 of 26.10.2012, p. 1) as amended.

**CALL FOR TENDER**

FISMA/2015/146(01)/C

Drivers of corporate bond market liquidity

**TENDER SPECIFICATIONS**

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## **1. INFORMATION ON TENDERING**

### **1.1 PARTICIPATION**

Participation in this tender procedure is open on equal terms to all natural and legal persons coming within the scope of the Treaties, as well as to international organisations.

It is also open to all natural and legal persons in a third country which has a special agreement with the Union in the field of public procurement on the conditions laid down in that agreement. Where the Multilateral Agreement on Government Procurement concluded within the WTO applies, the participation to the call for tender is also open to nationals of the countries that have ratified this Agreement, on the conditions it lays down.

### **1.2 VOLUME OF THE MARKET**

The estimated maximum amount for the execution of all the tasks referred to in this call for tender is EUR 400 000 including all charges and expenses, including the travel and subsistence expenses. No contract offer above this amount will be considered.

### **1.3 DURATION**

The duration of the execution of the tasks shall not exceed 10 months from the date of signature of the contract by the last contracting party. Work will follow the timetable detailed in the technical specifications.

### **1.4 CONTRACTUAL CONDITIONS**

The tenderer should bear in mind the provisions of the draft service contract which specifies the rights and obligations of the contractor, particularly those on payments, performance of the contract, confidentiality and checks and audits.

The tender must comply with applicable environmental, social and labour law obligations established by Union law, national legislation, collective agreements or the international environmental, social and labour conventions listed in Annex X to Directive 2014/24/EU<sup>2</sup>.

### **1.5 LOTS**

- Not applicable to the present invitation to tender.

### **1.6 JOINT TENDERS**

A joint tender is a situation where a tender is submitted by a group of economic operators (consortium). Joint tenders may include subcontractors in addition to the joint tenderers.

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<sup>2</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

All economic operators in a joint tender assume joint and several liability towards the contracting authority for the performance of the contract as a whole. Nevertheless, tenderers must designate a single point of contact for the contracting authority.

After the award, the contracting authority will sign the contract either with all members of the group or with the member duly authorised by the other members via a power of attorney (model provided in Annex 5).

## **1.7 SUBCONTRACTING**

Subcontracting is defined as the situation where a contract has been or is to be established between the contracting authority and a contractor and where the contractor, in order to carry out that contract, enters into legal commitments with other legal entities for performing part of the work.

Subcontracting is permitted in the tender but the contractor will retain full liability towards the contracting authority for performance of the contract as a whole. The contracting authority has no direct legal commitment with the subcontractor(s).

Tenderers must give an indication of the proportion of the contract that they intend to subcontract. Where the tenderer relies on the capacities of other entities with regard to criteria relating to economic and financial capacity, the contracting authority may require that the economic operator and those entities should be jointly liable for the performance of the contract.

Tenderers are required to identify the subcontractor(s) whose share of the contract is above 10% and document their willingness to accept the tasks and the terms and conditions set out in the tender specifications via a letter of intent (model provided in Annex 6)

Full details of such subcontractors must also be provided in Annex 2.

During contract execution, the change of any subcontractor identified in the tender will be subject to prior written approval of the contracting authority.

## **1.8 CONTENT OF THE TENDER**

The tenders must be presented as follows:

- Section 1: Identification of the tenderer (see point 1.9)
- Section 2: Evidence for exclusion and selection criteria (see points 2.2 and 2.3)
- Section 3: Technical offer (see point 2.5)
- Section 4: Financial offer (see point 2.6)

## **1.9 IDENTIFICATION OF THE TENDERER: LEGAL CAPACITY AND STATUS**

To identify himself, the tenderer must include a duly signed letter of submission of tender (see Annex 2) presenting the name of the tenderer (including all entities in case of joint offer) and

identified subcontractors if applicable, and the name of the single contact person in relation to this tender.

If applicable, the letter of submission of tender must indicate the proportion of the contract to be subcontracted.

In case of joint tender, the letter of submission of tender must be signed by a duly authorised representative for each tenderer, or by a single tenderer duly authorised by other tenderers with power of attorney (model provided in annex 5). The signed powers of attorney must be included in the tender as well.

Subcontractors whose share of the contract is above 10% must provide a duly signed letter of intent (model provided in annex 6) stating their willingness to provide the service foreseen in the offer and in line with the present tender specifications.

In order to prove their legal capacity and their status, all tenderers and identified subcontractors must indicate the state of establishment and provide a signed Legal Entity Form **with the supporting evidence** indicated in the form, acceptable under the law of the state of establishment. This Legal Entity Form is to be signed by a representative of the tenderer authorised to sign contracts with third parties. The form is available for individuals, private entities and public entities on:

[http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/legal\\_entities/legal\\_entities\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm)

Tenderers and identified subcontractors that are already registered in the contracting authority's accounting system (i.e. they have already been direct contractors) must provide the form but are not obliged to provide the supporting evidence.

Tenderers must provide the following information if it has not been included with the Legal Entity Form:

- For legal persons, a **legible copy of the notice of appointment of the persons authorised to represent the tenderer in dealings with third parties** and in legal proceedings, or a copy of the publication of such appointment if the legislation which applies to the legal entity concerned requires such publication. Any delegation of this authorisation to another representative not indicated in the official appointment must be evidenced.
- For individuals, where applicable, a **proof of registration** on a professional or trade register or any other official document showing the registration number.

The tenderer (or the single point of contact in case of joint tender) must provide a Financial Identification Form and supporting documents. Only one form per offer should be submitted (no form is needed for subcontractors and other joint tenderers). The form is available on:

[http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/financial\\_id/financial\\_id\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/financial_id/financial_id_en.cfm)

## 2. EVALUATION AND AWARD

### 2.1. EVALUATION STEPS

The evaluation is based on the information provided in the submitted tender.

It takes place in two steps:

- Verification of non-exclusion of tenderers on the basis of the exclusion criteria and selection of tenderers on the basis of selection criteria;
- Evaluation of tenders on the basis of the award criteria (minimum requirements, technical and financial evaluation).

Only tenders meeting the requirements of the first step will pass on to the next step.

### 2.2. EXCLUSION CRITERIA

The tenderers shall provide a declaration on their honour (see Annex 3), **duly signed and dated** by an authorised representative, stating that they are not in one of the situations of exclusion listed in this Annex 3. In the case of a joint tender, the declaration on the honour shall be provided by each member of the group.

The declaration on honour is also required for identified subcontractors whose intended share of the contract is above 10%.

The successful tenderer shall provide the documents mentioned as supporting evidence in Annex 3 before signature of the contract and within a deadline given by the contracting authority. This requirement applies to all members of the consortium in case of joint tender (and to subcontractors whose intended share of the contract is above 10%).

The contracting authority reserves the right to check the information on the declaration of absence of conflict of interest.

### 2.3. SELECTION CRITERIA

Tenderers shall provide a declaration on their honour (see Annex 3), **duly signed and dated** by an authorised representative, stating if they have the economic, financial, technical and professional capacity to carry out the work subject to this call for tender.

The successful tenderer shall provide the documents mentioned as supporting evidence in Annex 3 before signature of the contract and within a deadline given by the contracting authority. This requirement applies to all members of the consortium in case of joint tender (and to subcontractors whose intended share of the contract is above 10%). However a consolidated assessment will be made to verify compliance with the minimum capacity levels.

The tenderer may rely on the capacities of other entities to fulfil the selection criteria, regardless of the legal nature of the links which it has with them. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary for

performance of the contract, for example, by producing an undertaking on the part of those entities to place those resources at its disposal.

### 2.3.1. ECONOMIC AND FINANCIAL CAPACITY CRITERIA AND EVIDENCE

Tenderers will provide sufficient information to satisfy the contracting authority of their financial standing and that they and any subcontractors do have the necessary resources and financial means to carry out the work that is subject of the tender.

The tenderers must prove their economic and financial capacity by a turnover equal or higher than the volume of the market mentioned in section 1.2 of the present tender specifications.

The contracting authority shall analyse the adequacy of tenderers' financial standing. Where it considers this insufficient, the contracting authority shall have the right either to reject any offer or to accept it subject to conditions or to any interim payments being deferred until the work has been completed. Submission of a tender implies acceptance that the contracting authority's decision will be final and that it will not enter into negotiations with tenderers on this subject.

The following evidence should be provided:

- Copy of the profit & loss account and balance sheet for the last two years for which accounts have been closed;
- Failing that, appropriate statements from banks;

If, for some exceptional reason which the contracting authority considers justified, a tenderer is unable to provide one or other of the above documents, it may prove its economic and financial capacity by any other document which the contracting authority considers appropriate. In any case, the contracting authority must at least be notified of the exceptional reason and its justification in the tender. The contracting authority reserves the right to request any other document enabling it to verify the tenderer's economic and financial capacity.

### 2.3.2. TECHNICAL AND PROFESSIONAL CAPACITY CRITERIA AND EVIDENCE

#### **a. Criteria relating to tenderers**

Tenderers (in case of a joint tender the combined capacity of all tenderers and identified subcontractors) must comply with the following criteria:

- The tenderer must prove experience in the field of European Union financial markets with at least 2 projects delivered in this field in the last 5 years.
- The tenderer must prove capacity to draft reports in English with at least 2 studies or projects delivered in the last 5 years.
- The tenderer must prove experience in data collection, statistical analyses and drafting reports and recommendations, with at least 1 project in the last 5 years.

**b. Criteria relating to the team delivering the service:**

The team delivering the service should include, as a minimum, the following profiles:

**Project Manager:** At least 5 years of experience in project management, including overseeing project delivery, quality control of delivered service, client orientation and conflict resolution experience in projects with an international dimension.

**Language quality check:** At least 1 member of the team should have native-level language skills in English or equivalent, as guaranteed by a certificate or past relevant experience.

**Expert in finance:** At least 2 members of the team should have a Masters degree or equivalent, in economics, finance, accounting or business, and at least 2 years of professional experience in financial markets, or, in absence of the relevant Masters degree or equivalent, at least 10 years' professional experience in financial markets.

**Team for data collection:** At least 2 members of the team should have documented data skills, including proven experience of working with datasets.

**Continuity of the service:** the tenderers shall confirm the continuity of the team possessing the profile and qualifications mentioned above for the whole duration of the execution of the tasks. They shall inform the contracting authority without delay of any modification occurring in the team delivering the service. Article II.1.6 of the draft contract attached hereto is applicable.

**c. Declaration and evidence**

The tenderers (and each member of the group in case of joint tender) and subcontractors whose capacity is necessary to fulfil the selection criteria must provide the declaration on honour (see Annex 3), signed and dated by an authorised representative, stating that they fulfil the selection criteria applicable to them. In case of joint tender or subcontracting, the criteria applicable to the tenderer as a whole will be verified by combining the various declarations for a consolidated assessment.

This declaration is part of the declaration used for exclusion criteria (see section 2.2 of the tender specifications) so only one declaration covering both aspects should be provided by each concerned entity.

The Contracting Authority will evaluate selection criteria on the basis of the declarations on honour. Nevertheless, it reserves the right to require evidence of the legal and regulatory, financial and economic and technical and professional capacity of the tenderers at any time during the procurement procedure and contract performance. In such case the tenderer must provide the requested evidence without delay. The Contracting Authority may reject the tender if the requested evidence is not provided in due time.

After contract award, the successful tenderer will be required to provide the evidence mentioned below before signature of the contract and within a deadline given by the contracting authority. This requirement applies to each member of the group in case of joint tender as well as to subcontractors whose capacity is necessary to fulfil the selection criteria.

A tenderer (or a member of the group in case of joint tender, or a subcontractor) is not required to submit the documentary evidence if it has already been submitted for another procurement procedure and provided that the documents were issued not more than one year before the date of their request by the contracting authority and are still valid at that date. In such cases, the tenderer must declare on its honour that the documentary evidence has already been provided in a previous procurement procedure, indicate the reference of the procedure and confirm that there has been no change in its situation.

A tenderer (or a member of the group in case of joint tender, or a subcontractor) is not required to submit a specific document if the contracting authority can access the document in question on a national database free of charge.

The following evidence should be provided by the successful tenderer in order to prove the fulfilment of the criteria mentioned in section 2.3.2 (a) and 2.3.2 (b) of the tender specifications:

- **List of relevant services** provided in the past 5 years, with sums, dates and recipients, public or private. The most important services shall be accompanied by certificates of satisfactory execution, specifying that they have been carried out in a professional manner and have been fully completed;
- **Detailed curriculum vitae** for each of the team members of up to two A4 pages and covering relevant educational and professional qualifications. The CVs must specify:
  - The different diplomas obtained (copies of which may be requested by the contracting authority where appropriate);
  - Languages spoken;
  - Expertise and experience relevant to the subject matter of the present invitation to tender gathered within the last 10 years;
  - For the project manager, proof of experience in project management gathered within the last 10 years.
  - For the experts in finance not in possession of a relevant diploma, proof of experience gathered within the last 15 years.

The successful tenderer shall provide, within a time limit set by the contracting authority and preceding the signature of the contract, the evidence mentioned above in relation with the selection criteria.

The contracting authority shall verify whether the entities on whose capacity the tenderer intends to rely or the envisaged subcontractors (for subcontracting above 10%) fulfil the relevant selection criteria. The contracting authority may request that some critical tasks, relating to the selection criteria, are performed directly by the tenderer himself or by a member of the group of economic operators, in case of joint offers.

## 2.4. AWARD CRITERIA

The tender will be awarded according to the best-value-for-money procedure.

The quality of the tender will be evaluated based on the following criteria. The maximum total quality score is 100 points.

- **Relevance of proposed methodology for analysing the drivers of corporate bond market liquidity (45 points)**

- **Sub-criterion 1 (10 points):** Literature review: the contractor should indicate the strategy that will be followed in order to gather the existence of knowledge and ensure that the study will provide new added value.
- **Sub-criterion 2 (15 points):** expected quality of the empirical analysis on the drivers of market liquidity in corporate bond markets, in terms of breadth, depth and statistical robustness (e.g. sample sizes, likely respondent rates if surveys are used, number of factors and metrics analysed etc.). The proposed methodology should clearly set out how the contractor proposes to conduct the empirical analysis.
- **Sub-criterion 3 (20 points):** extent to which the methodology allows conclusions to be drawn about whether the characteristics/features set out in Section 3.2.1 of the tender specifications can explain the relative differences in market liquidity across different corporate bond segments. Particular focus will be made on the ability of the methodology to analyse the questions on electronic trading and pre-trade transparency obligations on corporate bond markets in Europe.

- **Quality of data generated or used (35 points)**

- **Sub-criterion 1 (10 points):** the extent of coverage by the relevant data on market liquidity, in terms of number of data fields available, length of historical time series, frequency of data and geographical coverage across the EU.
- **Sub-criterion 2 (10 points):** the relevance, quality and readability of the data made available for assessing the different drivers of and demand for market liquidity.
- **Sub-criterion 3 (15 points):** the extent to which the methodology and data generated provides **new** qualitative and quantitative evidence that is not available from other publically available sources, including (but not limited to) the studies and reports set out in Annex 8.

- **Organisation of the work (10 points)**

This criterion will assess how the roles and responsibilities of the proposed team and of the economic operators (in case of joint tenders, including subcontractors if applicable) are distributed for each task. It also assesses the global allocation of time and resources to the project and to each task or deliverable, and whether this allocation is adequate for the work.

The tender should provide details on the allocation of time and resources and the rationale behind the choice of this allocation.

The tender should include a summary table indicating the members of the team and describing their roles and involvement in each project phase. It should also include breakdown of costs per team member and number of hours / days each team member will spend on each project phase.

- **Quality control measures (10 points)**

This criterion will assess the quality control system applied to the service foreseen in the tender specifications concerning the quality of the deliverables, the verification of the compliance with the rules on citation and intellectual property rights, the language quality check, and continuity of the service in case of absence of the member of the team. The quality system should be detailed in the tender and specific to the tasks at hand; a generic quality system will result in a low score.

The evaluation committee will consider further only those tenders that have obtained at least a technical quality score of 60 points.

After evaluation of the quality of the tenders, the evaluation committee will proceed with the financial comparison of the tenders retained for further consideration according to the following procedure.

The retained tender with the lowest total price receives a financial score equal to the maximum score awarded for the technical quality award criteria. The other retained tenders are awarded points by means of the following formula:

Financial score = (lowest total price/total price of the tender being considered) x (maximum score awarded for the technical quality award criteria).

The most economically advantageous offer is established by means of the computation of a final score according to the following formula:

Final score = (technical quality score x 70%) + (financial score x 30%).

## **2.5. TECHNICAL OFFER**

The technical offer must cover all aspects and tasks required in the technical specifications and provide all the information needed to apply the award criteria. Offers deviating from the requirements or not covering all requirements may be excluded on the basis of non-conformity with the tender specifications and will not be evaluated.

## **2.6. FINANCIAL OFFER**

Tenderers must complete the Annex 4 with the data of their financial offer.

The price for the tender must be quoted in euro even for tenderers from countries outside the euro zone. The price quoted may not be revised in line with exchange rate movements. It is for the tenderer to assume the risks or the benefits deriving from any variation.

Prices must be quoted free of all duties, taxes, including VAT, and other charges as the European Union is exempt from such charges under Articles 3 and 4 of the Protocol on the privileges and immunities of the European Union. The amount of VAT may be shown separately.

The quoted price must be a fixed amount. That price should include all charges (fees, meetings, administrative expenses, overheads, travel and subsistence expenses. No additional refund request in respect of the above mentioned charges will be accepted.

Different price options will not be accepted and will entail the refusal of the offer.

### 3. TECHNICAL SPECIFICATIONS

#### 3.1 GENERAL BACKGROUND AND PURPOSE OF THE CONTRACT

The Capital Markets Union (CMU) Action Plan includes a review of EU corporate bond markets by 2017 with a focus on how to improve market liquidity: in particular, the review will consider the impact of regulation, market developments and voluntary standardisation of offer documentation.

The EU corporate bond markets have witnessed significant structural and cyclical changes since the onset of the crisis, due to, *inter alia*, unconventional monetary policy, technological developments, changing risk appetites in response to the crisis, and financial reform. Policy responses put in place in response to the financial crisis to make the EU financial system more resilient, such as stricter bank prudential rules, tighter limits on hedging requirements, and a push for greater transparency may also be contributing to a changing landscape.

The changing dynamics of market liquidity in the corporate bond market is subject to debates in financial markets at this juncture. While current liquidity levels in corporate bond markets may still be regarded as sufficient for effective trading, there are concerns<sup>3</sup> that corporate bond liquidity levels may be unstable. In particular, reduced liquidity could mutate into a systemic risk in response to an adverse shock, e.g. changed stance of monetary policy. The review will seek to understand how various structural and cyclical policy changes have impacted on the functioning of EU corporate bond markets.

Market liquidity is a difficult metric to measure, with a number of dimensions that ideally would be assessed together before any policy conclusions are drawn on the state of affairs. But a lack of standardised public reporting mean that analysts have to rely on *ad-hoc* and sparse data sources. The updated EU rules for markets in financial instruments<sup>4</sup> will improve the market reporting going forward: however, until those rules are into force, analysts in Europe will have to rely on limited data availability and quality.

The purpose of this targeted tender on specific elements of corporate bond markets is to help the Commission to better understand the dynamics at play and the implications of recent structural changes. The research will be used as an input to in-depth reflection on how a combination of market-led responses and public policy can enhance the functioning of European corporate bond markets.

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<sup>3</sup> For example, see the 2015 IMF Global Financial Stability Report or the March 2015 BIS Quarterly Review.

<sup>4</sup> Markets in Financial Instruments Directive II (DIRECTIVE 2014/65/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU) and the Markets in Financial Instruments Regulation (REGULATION (EU) No 600/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012).

## 3.2. CONTRACT SPECIFICATIONS

### 3.2.1. GENERAL AND SPECIFIC OBJECTIVES

The Commission expects methodologically rigorous and empirically robust analysis of the main drivers of liquidity in EU corporate bond markets. For the purpose of this tender, "*corporate bonds*" refers to unsecured bonds issued by non-financial or financial corporations. This should allow conclusions to be drawn about whether specific characteristics, such as for example issuance and denomination size, currency, the dispersion of investor allocations of new issues, holdings by certain types of investors, contract features/covenants, etc. can explain the relative differences in market liquidity across different corporate bond segments. Those features could relate to either the incentive structure of the buy or sell side, to instrument design, or to trading technology, or a combination of them. A clear distinction should be made between financial and non-financial corporate bonds.

The Commission also wishes to obtain quantitative and qualitative information on the degree to which voluntary efforts by market participants to establish all-to-all trading platforms, so as to compensate for reduced traditional principal-based market-making activities, would improve the market liquidity of EU corporate bonds. In particular, through both quantitative and qualitative empirical analysis, we want to understand (i) the extent and drivers of electronic trading in corporate bonds (financials and non-financials), and (ii) what factors drive the relative suitability of corporate bonds (financials and non-financials) to be traded electronically (e.g. would further standardisation of offer documentation facilitate more market liquidity?); and (iii) the importance of pre-trade transparency obligations for efficient price formation for different types of corporate bonds and possible implications for trading behaviour and liquidity.

On the demand side, the study should also provide a best-efforts mapping of the holders of EU corporate bonds by type (pension fund, insurance company, bank, private bank, asset manager/investment fund, hedge fund, etc.) over time. It should indicate the share of total market size that is held in open-ended Undertakings for Collective Investments in Transferable Securities (UCITS) and alternative investment funds (split between EU and non-EU, subject to data availability).

### 3.2.2. TASKS TO BE CARRIED OUT AND EXPECTED RESULTS

The following tasks will be carried out:

- **Literature review:** overview of the current research on the different drivers of market liquidity.
- **Data collection:** the contractor shall extract and/or generate its own data on the characteristics of corporate bonds markets in the European Union to enable the subsequent empirical analysis.

- **Creation of sample sets:** the contractor may need to define sample sets of different categories of corporate bonds (e.g. bonds actively traded, bonds very actively traded, and bonds not traded at all) to conduct the empirical analysis on the different drivers and sensitivity analysis of corporate bond market liquidity. While the contractor could consider using the definitions of market liquidity produced by the European Securities and Markets Authority<sup>5</sup> (ESMA) and the European Banking Authority<sup>6</sup> (EBA), the contractor should look more broadly into what drives liquidity and what makes bonds liquid, rather than producing a binary definition on liquidity. Where categorisation is proposed, a multiple/progressive approach would be preferred. A clear distinction should be made between financial and non-financial corporate bonds.
- **Empirical analysis on the drivers of market liquidity in EU corporate bonds markets:** We expect the issuance size, issuer's creditworthiness, denomination size, and proximity to the issuance date (i.e. timing) to be key drivers. We are also interested in better understanding the relative importance of other factors, including the dispersion of investor allocations at the time new bonds are issued, holdings by certain types of investors, contract features/covenants, sector (e.g. financials, manufacturing, utilities, transportation etc.), whether they are traded electronically, trading protocols used by the platform, etc.
- **Empirical analysis to identify the different levels of market liquidity between corporate bonds which are traded electronically and those only traded over-the-counter:** this analysis will use several metrics for liquidity, such as bid-offer spread, daily traded volume, zero trading days, turnover ratios, price impact metrics, etc. The analysis should look at electronic trading both on regulated markets, Multilateral Trading Facilities and on all-to-all trading platforms. A clear distinction should be made between financial and non-financial corporate bonds. This analysis should include the assessments of the extent and drivers of electronic trading and the importance of transparency obligations for efficient price formation and possible implications for trading behaviour and market liquidity.
- **Sensitivity analysis of the credit spreads of EU corporate bonds to changes in dealer inventories:** the study should provide sensitivity analyses of EU corporate bonds credit spreads to changes in dealer inventories in response to selling pressure, and provide this assessment for as many cohorts of corporate bonds as possible (as a minimum the EU Investment-Grade and EU High-Yield corporate bond segments should be covered). In addition, it should provide a decomposition of market-makers' profits, showing the effects of capital requirements, yields on inventory holdings, bid-offer spreads, and trading volumes on Return on Equity. A clear distinction should be made between financial and non-financial corporate bonds.

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<sup>5</sup> For example, see ESMA's cost-benefit analysis as part of its draft regulatory technical standards on the Market in Financial Instruments Regulation (MiFIR) non-equity transparency rules.

<sup>6</sup> For example, see EBA's quantitative analysis as part of its proposed Capital Requirement Regulation Liquidity Coverage Ratio calibrations:

<https://www.eba.europa.eu/documents/10180/16145/EBA+BS+2013+413+Report+on+definition+of+HQLA.pdf>

### 3.2.3. MINIMUM REQUIREMENTS

The tender shall be rejected as irregular if it does not comply with the applicable environmental, social and labour law obligations established by Union law, national legislation, collective agreements or the applicable international social and environmental conventions listed in Annex X to Directive 2014/24/EU.

The analysis must be conducted on at least corporate bond markets in the European Union and must be able to provide new data and evidence that cannot be found elsewhere.

The overall analysis should cover all 28 Member States. Where resource or data constraints require it, deeper analysis can be restricted to specific market segments, or Member States, if it is not possible to conduct analysis for all 28 Member States in every case. The analysis could also look at countries outside the EU if they provide useful case studies (e.g. looking at the importance of transparency rules in third countries). A clear distinction should be made between financial and non-financial corporate bonds.

### 3.3. INDICATIVE METHODOLOGY

A literature review is needed. The contractor should compile the knowledge accumulated so far and investigate new issues that will provide added value, and avoid duplicating existing research such as that undertaken by the BIS.

New qualitative and quantitative evidence for what is driving corporate bond market liquidity is required. The contractor should provide empirical and quantitative evidence to support the analysis. This could involve different combinations of survey work and statistical and econometric analysis. The latter will be needed to support the analysis of drivers and causality of market liquidity. For the assessment of regulatory impact, agent-based computational modelling should be envisaged.<sup>7</sup>

### 3.4. PLACE OF WORK

The tasks are to be performed at the premises designated by the contractor. A maximum of 4 co-ordination meetings with the contracting authority will be held in Brussels: one to two meetings to present interim findings and two meetings to present final results, including to expert groups or workshops.

### 3.5. DELIVERABLES

#### 3.5.1. INCEPTION REPORT AND INTERIM STUDY

The inception report shall be submitted by the contractor to the contracting authority within one month after the date on which the contract entered into force. The inception report shall include at least the following:

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<sup>7</sup> See Chen, F and Zhong, Z (2012) "pre-trade transparency in over-the-counter markets" for an overview of the research using computational modelling to analyse the impact of pre-trade transparency on market liquidity. Similar research methods could be employed for the EU corporate bond markets.

- A detailed description of how the data collection will be conducted, including a justification on the sample sets chosen, and the form of the new data generated.
- A detailed description of how the contractor plans to conduct the empirical analysis to determine the drivers of market liquidity in corporate bond markets. This should include how the contractor plans to look at the impact of electronic trading and the sensitivity analysis of corporate bond spreads to changes in dealer inventories.
- An updated project risk assessment.

The contracting authority will comment on the document submitted within 30 days after the date of its reception. Should the contracting authority not comment within 30 days, the inception report will be deemed to have been accepted.

The interim study shall be submitted by the contractor to the contracting authority within 4 months after the date on which the contract entered into force. The interim study shall include at least the following:

- The interim report should clearly set out the methodology and interim findings of the empirical analysis.
- It should contain an Annex with full data tables, and a spreadsheet file with underlying data and other supporting evidence collected up until that point. Any programming code used for modelling or transforming source data has to be provided, models used must be documented and the code delivered with sufficient documentation to allow replication of any output.

The contracting authority will comment on the document submitted within 30 days after the date of its reception. If the contracting authority has not reacted within this period, the interim study shall be deemed to have been approved.

### 3.5.2. FINAL STUDY

The draft final study shall be submitted by the contractor to the contracting Authority within 8 months after the date on which the contract entered into force. The draft final study shall include at least all the elements specified in the sections 2.3 “Contract specifications” and 3.4. “Indicative methodology”. It should also clearly set out the methodology and final findings and contain an Annex with full data tables and a spreadsheet file with all underlying data and other supporting evidence collected: any programming code used for modelling or transforming source data has to be provided, models used must be documented and the code delivered with sufficient documentation to allow replication of any output.

The contracting authority will comment on the draft final study within 30 days after the date of its reception. If the contracting authority has not reacted within this period, the draft final study shall be deemed to have been approved.

Within 10 months from the date on which the contract entered into force, the contractor will submit the final study in its definitive form, taking full account of the observations made by the contracting authority on the draft final study, either by following them precisely or by explaining clearly why not.

The contracting authority will accept the final study in its definitive form or comment on it within 30 days of its reception. If the contracting authority has not reacted within this period, the final study shall be deemed to have been approved.

Should the contracting authority still not consider the final study acceptable, the contractor may be invited to amend it; in this case liquidated damages will be applied in accordance with Article II.15 of the draft contract. Should the contracting authority reject the final study, the contracting authority may terminate the contract in accordance with Article II.14.

### 3.5.3. DETAILS ON DELIVERABLES AND QUALITY REQUIREMENTS

- Each deliverable will be submitted in 3 copies in English, in paper version and in electronic format compatible with Word or in .pdf or in .xml format (high resolution). All supporting data shall be provided in an Excel file and computer code in the format used for the respective modelling or data transformation purpose.
- The contractor will have all deliverables verified by a person with a perfect knowledge of the English language.

The contractor will ensure that all the deliverables are in conformity with the rules on citation of existing work and, as stipulated in article II.13 of the draft contract, with the ownership of intellectual and industrial property rights, in particular with the licencing of pre-existing rights, if applicable.

- Where information that is not publicly available is provided by other institutions, associations or firms, the accuracy of this information, as expressed in the deliverable will have to be checked and its consequent use approved by those who have provided it to the contractor.

### 3.5.4. INDICATIVE TIMETABLE

<b>Actions/Deliverables</b>	<b>Timetable</b>
Start date of the contract (reference date A)	Date of signature of the contract
Inception report submission	Reference date A + 1 month
European Commission comments	Reference date A + 2 months
Interim report submission (reference date B)	Reference date A + 4 months
Contracting authority's acceptance	Reference date B +30 days
Draft final report submission	Reference date A + 8 months
European Commission comments	Reference date A + 9 months
Final report submission (reference date C)	Reference date A + 10 months
Final report approved	Reference date C + 30 days

### 3.5.5. CONTENT, STRUCTURE AND GRAPHIC REQUIREMENTS OF THE FINAL DELIVERABLES

#### 3.5.5.1. *Content*

##### - *Final study*

The final study shall include:

- an abstract of no more than 200 words in at least English and French. The purpose of the abstract is to act as a reference tool helping the reader to quickly ascertain the study's subject.
- the following standard disclaimer:

“The information and views set out in this study are those of the author(s) and do not necessarily reflect the official opinion of the European Commission. The European Commission does not guarantee the accuracy of the data included in this study. Neither the European Commission nor any person acting on the European Commission’s behalf may be held responsible for the use which may be made of the information contained therein.”
- Specific identifiers provided by the contracting authority which shall be incorporated on the cover page.

##### - *Publishable executive summary*

The publishable executive summary of maximum 6 pages shall be provided in both in English and French. It shall provide information on the (i) purpose/motivation/problem statement, (ii) methodology/procedure/approach, (iii) results/findings and (iv) conclusion/implications/recommendations. It shall include:

- The following standard disclaimer:

“The information and views set out in this [report/study/article/publication...] are those of the author(s) and do not necessarily reflect the official opinion of the European Commission. The European Commission does not guarantee the accuracy of the data included in this [report/study/article/publication...]. Neither the European Commission nor any person acting on the European Commission’s behalf may be held responsible for the use which may be made of the information contained therein.”
- Specific identifiers provided by the contracting authority which shall be incorporated on the cover page.

- ***Requirements for publication on Internet***

- The Commission is committed to making online information as accessible as possible to the largest possible number of users including those with visual, auditory, cognitive or physical disabilities, and those not having the latest technologies. The Commission supports the Web Content Accessibility Guidelines 2.0 of the W3C.
- For full details on the Commission policy on accessibility for information providers, see: [http://ec.europa.eu/ipg/standards/accessibility/index\\_en.htm](http://ec.europa.eu/ipg/standards/accessibility/index_en.htm)
- For the publishable versions of the study, abstract and executive summary, the contractor must respect the W3C guidelines for accessible pdf documents as provided at: <http://www.w3.org/WAI/>.

***3.5.5.2. Graphic requirements***

The contractor must deliver the study and all publishable deliverables in full compliance with the corporate visual identity of the European Commission, by applying the graphic rules set out in the European Commission's Visual Identity Manual, including its logo.

The graphic rules, the Manual and further information are available at:  
[http://ec.europa.eu/dgs/communication/services/visual\\_identity/index\\_en.htm](http://ec.europa.eu/dgs/communication/services/visual_identity/index_en.htm)

For graphic requirements please refer to the template available in Annex 7.

If you want to use other logos than the Commission logo, the additional logo may only be placed on the cover page of the study if they are in one of the following categories:

- A logo duly authorised by the Secretary General and the Director-General for Communication of the European Commission;
- The logo of the author of the study (i.e. the contractor);
- In case of co-branded studies, the logo of a partner organisation involved in the production of the study.

## ANNEX 1 – DRAFT SERVICE CONTRACT



### EUROPEAN COMMISSION

Directorate-General for Financial Stability, Financial Services and Capital Markets Union

RESOURCES AND COMMUNICATION  
Financial resources and Internal Control

## SERVICE CONTRACT

NUMBER – FISMA/2015/146(01)/C1/ST/OP

1. The **European Union** (*‘the Union’*), represented by the **European Commission** (*‘the contracting authority’*) represented for the purposes of signing this contract by Ms Pamela Brumter-Coret, Authorising officer by Sub-delegation, Directorate-General for Financial Stability, Financial Services and Capital Markets Union,

on the one part,

and

2. [Full official name]

[Official legal form]

[Statutory registration number or ID or passport number]

[Full official address]

[VAT registration number]

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

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

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

on the other part,



## EUROPEAN COMMISSION

Directorate-General for Financial Stability, Financial Services and Capital Markets Union

RESOURCES AND COMMUNICATION  
**Financial Resources and Internal Control**

### HAVE AGREED

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

**Annex I** – Tender specifications (reference No FISMA/2015/146(01)/C of 07/03/2016)

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

which form an integral part of this contract (*'the contract'*).

This contract sets out the obligations of the parties during and after the duration of this contract.

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 contract. In all circumstances, in the event of contradiction between this contract and documents issued by the contractor, this contract prevails, regardless of any provision to the contrary in the contractor's documents.

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## I. SPECIAL CONDITIONS

### **I.1. ORDER OF PRIORITY OF PROVISIONS**

If there is any conflict between different provisions in this contract, 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 contract.
- (b) The provisions set out in the general conditions take precedence over those in the other annexes.
- (c) The provisions set out in the tender specifications (Annex I) take precedence over those in the tender (Annex II).

### **I.2. SUBJECT MATTER**

The subject matter of the contract is a study on the drivers of the corporate bond market liquidity in the European Union.

### **I.3. ENTRY INTO FORCE AND DURATION**

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

**I.3.2** The performance of the contract cannot start before its entry into force.

**I.3.3** The duration of the performance of the contract must not exceed 10 (ten) months. Performance of the contract starts from the date of entry into force of the contract.

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

### **I.4. PRICE**

#### **I.4.1. Price of the contract and maximum amount**

The price payable under this contract excluding renewals, reimbursement of expenses and price revision is EUR [*amount in figures and in words*].

#### **I.4.2. Price revision index**

Price revision is not applicable to this contract.

#### **I.4.3. Reimbursement of expenses**

Reimbursement of expenses is not applicable to this contract.

### **I.5. PAYMENT ARRANGEMENTS**

#### **I.5.1. Pre-financing**

Pre-financing is not applicable to this contract.

### **I.5.2. Interim payment[s]**

1. The contractor (or leader in the case of a joint tender) may claim an interim payment equal to **30 % (thirty percent)** of the price referred to in Article I.4.1 in accordance with Article II.21.6.

The contractor must send an invoice in paper format for the interim payment as provided for in the tender specifications, accompanied by the following:

(a) the interim report.

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

3. If the contracting authority has observations to make, it must send them to the contractor (or leader in the case of a joint tender) and suspend the time limit for payment in accordance with Article II.21.7. The contractor (or leader in case of a joint tender) has 30 days to submit additional information or corrections or a new version of the documents if the contracting authority requires it.

4. The contracting authority must give its approval and pay within the remainder of the time-limit indicated in point (2) unless it rejects partially or fully the submitted documents or deliverables.

### **I.5.3. Payment of the balance**

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

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

(a) the final report.

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

3. If the contracting authority has observations to make, it must send them to the contractor (or leader in the case of a joint tender) and suspend the time limit for payment in accordance with Article II.21.7.

The contractor (or leader in the case of a joint tender) has 30 days to submit additional information or corrections or a new version of the documents if the contracting authority requires it.

4. The contracting authority must give its approval and pay within the remainder of the time-limit indicated in point (2.) unless it rejects partially or fully the submitted documents or deliverables.]

\*\*\*

*[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)’.]

*[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 2ème tiret de la loi modifiée du 12.02.79. ‘In the case of intra-Community purchases, the statement to be included in the invoices is: "For the official use of the European Union. VAT Exemption / European Union/ Article 151 of Council Directive 2006/112/EC.’"]

## **I.6. GUARANTEES**

Guarantees are not applicable to this contract.

### **I.6.1. Performance guarantee**

Performance guarantee is not applicable to this contract.

### **I.6.2. Retention money guarantee**

Retention money guarantee is not applicable to this contract.

## **I.7. BANK ACCOUNT**

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

Name of bank:

Full address of branch:

Exact denomination of account holder:

Full account number including bank codes:

[IBAN<sup>8</sup> code:]

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

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

Contracting authority:

European Commission

Directorate-General for Financial Stability, Financial Services and Capital Markets

Union

Directorate C – Financial Markets

Unit C1 – Capital Markets Union

B-1049 Brussels

Email: FISMA-C1@ec.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>8</sup> BIC or SWIFT code for countries with no IBAN code.

E-mail: [complete]

## **I.9. DATA CONTROLLER**

For the purpose of Article II.9, the data controller is the Head of Unit A2 of Directorate-General for Financial Stability, Financial Services and Capital markets Union.

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

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

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

[(a) use for its own purposes:

- making available to the staff of the contracting authority;
- making available to the persons and entities working for the contracting authority or cooperating with it, including contractors, subcontractors whether legal or natural persons, Union institutions, agencies and bodies, Member States' institutions;
- installing, uploading, processing;
- arranging, compiling, combining, retrieving;
- copying, reproducing in whole or in part and in unlimited number of copies.]

[(b) distribution to the public in hard copies, in electronic or digital format, on the internet including social networks as a downloadable or non-downloadable file;]

[(c) communication through press information services;]

[(d) inclusion in widely accessible databases or indexes, such as via 'open access' or 'open data' portals, or similar repositories, whether freely accessible or accessible only upon subscription;]

[(e) modifications by the contracting authority or by a third party in the name of the contracting authority, including:

- shortening;
- summarising;
- modifying the content, the dimensions;
- making technical changes to the content (necessary correction of technical errors), adding new parts or functionalities, changing functionalities, providing third parties with additional information concerning the result (e.g. source code) with a view to making modifications;
- addition of new elements, paragraphs, titles, leads, bolds, legend, table of content, summary, graphics, subtitles, sound;
- addition of metadata, for text and data-mining purposes; addition of right-management information; addition of technological protection measures;

- preparation in audio form, preparation as a presentation, animation, pictograms story, slide-show, public presentation;
- extracting a part or dividing into parts;
- translating, inserting subtitles, dubbing in different language versions:
  1. English, French, German;
  2. all official languages of EU;
  3. languages used within EU;
  4. languages of candidate countries;
  5. [list or name other languages].]

[(f) rights to authorise, license, or sub-license in case of licensed pre-existing rights, the modes of exploitation set out in any of the points (a) to (e) to third parties.]

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

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

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

[By derogation to Article II.13.2, the Union acquires fully and irrevocably all pre-existing rights incorporated in the results, if any [except for the following rights [insert exceptions].]

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

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

[In addition, the contractor must provide the contracting authority with relevant and exhaustive evidence of the acquisition of all the necessary pre-existing rights together with a presentation of relevant result. To this effect, the contractor must provide [the relevant evidence listed in Article II.13.5 as appropriate or, failing that, third parties' statements.

### **I.11. TERMINATION BY EITHER PARTY**

Either party may, terminate the contract by sending *formal notification* to the other party with one month written notice.

If the 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 contract is governed by Union law, complemented, where necessary, by the law of the Kingdom of Belgium.

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

**I.13. OTHER SPECIAL CONDITIONS**

[not applicable to this contract]

**SIGNATURES**

For the contractor,

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

For the contracting authority,

Pamela Brumter-Coret

Authorising Officer by Sub-delegation

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

In duplicate in English.

## II. GENERAL CONDITIONS FOR THE SERVICE CONTRACT

### II.1. DEFINITIONS

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

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

**‘Confidential information or document’**: any information or document received by either party from the other or accessed by either party in the context of the *performance of the contract*, 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 *performance of the contract* by the contractor is compromised for reasons involving family, emotional life, political or national affinity, economic interest, or any other shared interest with the contracting authority or any third party related to the subject matter of the contract;

**‘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. Technical specifications (i.e. the *interface control document*), details on access and user manuals are available at the following website:

[http://ec.europa.eu/dgs/informatics/supplier\\_portal/documentation/documentation\\_en.htm](http://ec.europa.eu/dgs/informatics/supplier_portal/documentation/documentation_en.htm)

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

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

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

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

**‘Performance of the 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 perform the contract;

**‘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 *performance of the contract*;

**‘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 perform the contract to an appropriate quality standard.

**‘Related person’**: any person who has the power to represent the contractor or to take decisions on its behalf;

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

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

**‘Supplier portal’**: the *e-PRIOR* portal, which allows the contractor to 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 contract 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 contract. This does not affect the legality, validity or enforceability of any other provisions of the contract, 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 contract must be interpreted as if it had contained the substitute provision as from its entry into force.

## **II.4. PERFORMANCE OF THE CONTRACT**

**II.4.1** 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 contract, in particular the tender specifications and the terms of its tender.

**II.4.2** 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>9</sup>.

- II.4.3** The contractor must obtain any permit or licence required in the State where the services are to be provided.
- II.4.4** All periods specified in the contract are calculated in calendar days, unless otherwise specified.
- II.4.5** 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.4.6** 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.4.7** The contractor must ensure that the *personnel* performing the contract 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.4.8** 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.4.9** 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 contract must:

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

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

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

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<sup>9</sup> OJ L 94 of 28.03.2014, p. 65

#### 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 contract refers to the date when the communication was sent.

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

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

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

#### II.5.3 SUBMISSION OF E-DOCUMENTS VIA E-PRIOR

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

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

In the case of machine-to-machine connection, a direct connection is established between the parties' *back offices*. In this case, the parties take the measures necessary on their side to implement and maintain electronic systems that enable the machine-to-machine connection to be used effectively. The electronic systems are specified in the *interface control document*. The contractor (or leader in 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.

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

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

When a change in the *interface control document* requires adaptations, the contractor (or leader in 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

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

- (a) is considered as equivalent to a paper document;
- (b) is deemed to be the original of the document;
- (c) is legally binding on the parties once an *e-PRIOR* authorised person has performed the 'sign' action in *e-PRIOR* and has full legal effect; and

- (d) constitutes evidence of the information contained in it and is admissible as evidence in judicial proceedings.

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

If the e-document is dispatched through the *supplier portal*, it is deemed to have been legally issued or sent when the contractor (or leader in 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.

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

When using the *supplier portal*, the contractor (or leader in 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 *performance of the contract*.
- 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 *performance of the contract*. 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 *performance of the contract*, including in the event of subcontracting, but only up to an amount not exceeding three times the total amount of the contract. However, if the damage or loss is caused by the gross negligence or wilful misconduct of the contractor or of its *personnel* or subcontractors, the contractor is liable for the whole amount of the damage or loss.
- II.6.4** If a third party brings any action against the contracting authority in connection with the *performance of the contract*, 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 *performance of the contract*, 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 *performance of the contract*.

**II.6.6** The contracting authority is not liable for any loss or damage caused to the contractor during or as a consequence of *performance of the contract*, 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 *performance of the contract*. 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;

**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 *performance of the contract*, 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 *performance of the contract* 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 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* 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 *performance of the contract* 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 *performance of the contract*, a commitment that they will comply with this Article. At the request of the contracting authority, the contractor must provide a document providing evidence of this commitment.

## **II.9. PROCESSING OF PERSONAL DATA**

**II.9.1** Any personal data included in the contract must be processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Such data must be processed by the data controller solely for the purposes of the performance, management and monitoring of the contract. This does not affect its possible transmission to bodies entrusted with monitoring or inspection tasks in application of Union law.

**II.9.2** The contractor has the right to access its personal data and the right to rectify any such data. The contractor should address any queries concerning the processing of its personal data to the data controller.

**II.9.3** The contractor has right of recourse at any time to the European Data Protection Supervisor.

**II.9.4** If the contract requires the contractor to process any personal data, the contractor may act only under the supervision of the data controller, in particular with regard to the purposes of the processing, the categories of data that may be processed, the recipients of the data and the means by which the data subject may exercise its rights

**II.9.5** The contractor must grant *personnel* access to the data to the extent strictly necessary for the performance, management and monitoring of the contract.

**II.9.6** The contractor must adopt appropriate technical and organisational security measures giving due regard to the risks inherent in the processing and to the nature of the personal data concerned in order to:

- (a) prevent any unauthorised person from gaining access to computer systems processing personal data, and especially:
  - (i) unauthorised reading, copying, alteration or removal of storage media;
  - (ii) unauthorised data inputting, as well as any unauthorised disclosure, alteration or erasure of stored personal data;
  - (iii) unauthorised use of data-processing systems by means of data transmission facilities;
- (b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
- (c) record which personal data have been communicated, when and to whom;
- (d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting authority;
- (e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
- (f) design its organisational structure in such a way that it meets data protection requirements.

## **II.10. SUBCONTRACTING**

- II.10.1** The contractor must not subcontract and have the contract performed 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 *performance of this contract*.
- II.10.3** The contractor must ensure that the subcontract does not affect the rights of the contracting authority under this contract, 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 contract must be made in writing before all contractual obligations have been fulfilled.
- II.11.2** Any amendment must not make changes to the contract that might alter the initial conditions of the procurement procedure or result in unequal treatment of tenderers.

## **II.12. ASSIGNMENT**

- II.12.1** The contractor must not assign the rights and obligations arising from the contract, 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 Union acquires irrevocably worldwide ownership of the *results* and of all intellectual property rights under the contract. The intellectual property rights so acquired include any rights, such as copyright and other intellectual or industrial property rights, to any of the *results* and to all technological solutions and information created or produced by the contractor or by its subcontractor in *performance of the contract*. The contracting authority may exploit and use the acquired rights as stipulated in this contract. The Union acquires all the rights from the moment the contracting authority approves the *results* delivered by the contractor. Such delivery and approval are deemed to constitute an effective assignment of rights from the contractor to the Union.

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

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

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

The contractor licenses the *pre-existing rights* on a royalty-free, non-exclusive and irrevocable basis to the Union, which may use the *pre-existing materials* for all the modes of exploitation set

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

The licensing of *pre-existing rights* to the Union under this contract 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 contract is deemed to also include any fees payable to the contractor in relation to the licensing of *pre-existing rights* to the Union, including for all forms of exploitation and of use of the *results*.

Where *performance of the contract* 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 contract.

### **II.13.3. Exclusive rights**

The Union acquires the following exclusive rights:

- (a) reproduction: the right to authorise or prohibit direct or indirect, temporary or permanent reproduction of the *results* by any means (mechanical, digital or other) and in any form, in whole or in part;
- (b) communication to the public: the exclusive right to authorise or prohibit any display, performance or communication to the public, by wire or wireless means, including the making available to the public of the *results* in such a way that members of the public may access them from a place and at a time individually chosen by them; this right also includes the communication and broadcasting by cable or by satellite;
- (c) distribution: the exclusive right to authorise or prohibit any form of distribution of *results* or copies of the *results* to the public, by sale or otherwise;
- (d) rental: the exclusive right to authorise or prohibit rental or lending of the *results* or of copies of the *results*;
- (e) adaptation: the exclusive right to authorise or prohibit any modification of the *results*;
- (f) translation: the exclusive right to authorise or prohibit any translation, adaptation, arrangement, creation of derivative works based on the *results*, and any other alteration of the *results*, subject to the respect of moral rights of authors, where applicable;
- (g) where the *results* are or include a database: the exclusive right to authorise or prohibit the extraction of all or a substantial part of the contents of the database to another medium by any means or in any form; and the exclusive right to authorise or prohibit the re-utilization of all or a substantial part of the contents of the database by the distribution of copies, by renting, by on-line or other forms of transmission;
- (h) where the *results* are or include a patentable subject-matter: the right to register them as a patent and to further exploit such patent to the fullest extent;
- (i) where the *results* are or include logos or subject-matter which could be registered as a trademark: the right to register such logo or subject-matter as a trademark and to further exploit and use it;
- (j) where the *results* are or include know-how: the right to use such know-how as is necessary to make use of the *results* to the full extent provided for by this contract, and the right to make it available to contractors or subcontractors acting on behalf of the

contracting authority, subject to their signing of adequate confidentiality undertakings where necessary;

(k) where the *results* are documents:

(i) the right to authorise the reuse of the documents in conformity with the Commission Decision of 12 December 2011 on the reuse of Commission documents (2011/833/EU), to the extent it is applicable and the documents fall within its scope and are not excluded by any of its provisions; for the sake of this provision, ‘reuse’ and ‘document’ have the meaning given to it by this Decision;

(ii) the right to store and archive the *results* in line with the document management rules applicable to the contracting authority, including digitisation or converting the format for preservation or new use purposes;

(l) where the *results* are or incorporate software, including source code, object code and, where relevant, documentation, preparatory materials and manuals, in addition to the other rights mentioned in this Article:

(i) end-user rights, for all uses by the Union or by subcontractors which result from this contract and from the intention of the parties;

(ii) the rights to decompile or disassemble the software;

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

The contractor warrants that the exclusive rights and the modes of exploitation may be exercised by the Union on all parts of the *results*, be they created by the contractor or consisting of *pre-existing materials*.

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

#### **II.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 contract, the *results* and the *pre-existing material* incorporated in the *results* are free of claims from *creators* or from any third parties and all the necessary *pre-existing rights* have been obtained or licensed.

To that effect, the contractor must establish a list of all *pre-existing rights* to the *results* of this contract 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 provide evidence that it has the ownership or the right to use all the listed *pre-existing rights*, except for the rights owned or

licensed by the Union. The contracting authority may request this evidence even after the end of this contract.

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

This evidence must include, as appropriate:

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

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

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

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

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

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

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

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

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

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

If natural persons appear in a *result* or their voice or any other private element is recorded in a recognisable manner, the contractor must obtain a statement by these persons (or, in the case of minors, by the persons exercising parental authority) giving their permission for the described use of their image, voice or private element and, on request, submit a copy of the permission to the

contracting authority. The contractor must take the necessary measures to obtain such consent in accordance with the applicable legal provisions.

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

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

### **II.13.10. Visibility of Union funding and disclaimer**

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

## **II.14. FORCE MAJEURE**

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

**II.14.2** A party is not liable for any delay or failure to perform its obligations under the contract 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 contract, 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* or, failing that, the price specified in Article I.4.1;

*d* is the duration specified for delivery of the relevant purchase or deliverable or *result* or, failing that, the duration of *performance of the contract* specified in Article I.3.3 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 contract.

### **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 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.5 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 PERFORMANCE OF THE CONTRACT**

### **II.17.1. Suspension by the contractor**

If the contractor is affected by *force majeure*, it may suspend the *performance of the contract*. The contractor must immediately *notify* the contracting authority of the suspension. The *notification* must include a description of the *force majeure* and state when the contractor expects to resume the *performance of the contract*.

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

## **II.17.2. Suspension by the contracting authority**

The contracting authority may suspend the *performance of the contract* or any part of it:

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

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

The contracting authority must *notify* the contractor as soon as possible whether:

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

The contractor is not entitled to compensation for suspension of any part of the contract.

## **II.18. TERMINATION OF THE CONTRACT**

### **II.18.1. Grounds for termination by the contracting authority**

The contracting authority may terminate the contract in the following circumstances:

- (a) if provision of the services under the contract has not actually started within 15 days of the scheduled date and the contracting authority considers the new date proposed, if any, unacceptable, taking into account Article II.11.2;
- (b) if the contractor is unable, through its own fault, to obtain any permit or licence required for *performance of the contract*;
- (c) if the contractor does not perform the contract in accordance with the tender specifications or is in breach of another substantial contractual obligation.
- (d) if the contractor or any person that assumes unlimited liability for the debts of the contractor is in one of the situations provided for in points (a) and (b) of Article 106(1) of the Financial Regulation<sup>10</sup>;
- (e) if the contractor or any *related person* is subject to any of the situations provided for in points (c) to (f) of Article 106(1) or to Article 106(2) of the Financial Regulation.
- (f) if the procedure for awarding the contract or the *performance of the contract* prove to have been subject to *substantial errors, irregularities or fraud*;
- (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 *performance of the contract* or substantially modify the conditions under which the contract was initially awarded;

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<sup>10</sup> Regulation (EU, EURATOM) No 966/2012 on the financial rules applicable to the general budget of the Union, as amended <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32012R0966>

- (j) in the event of *force majeure*, where either resuming implementation is impossible or the necessary ensuing amendments to the contract would mean that the tender specifications are no longer fulfilled or result in unequal treatment of tenderers or contractors;

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

The contractor may terminate the contract if:

- (a) it has evidence that the contracting authority has committed *substantial errors, irregularities* or *fraud* in the procedure for awarding the contract or the *performance of the contract*;
- (b) the contracting authority fails to comply with its obligations, in particular the obligation to provide the information needed for the contractor to perform the 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 contract and the grounds for termination.

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

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

In the cases referred to in points (a) to (d) and (g) to (i) 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 contract including the cost of appointing another contractor to provide or complete the services, unless the damage was caused by the situation specified in Article II.18.1 (j) or in 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 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 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 contract reference.

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 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 *performance of the contract* 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.4.2, this Article applies to it.

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

At the beginning of the second and every following year of the contract, 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 contract. 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 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 contract 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**

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

### **II.21.2. Currency**

Payments are made in euros or in the currency 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 Articles I.5 or I.6, a financial guarantee is required for the payment of pre-financing, as performance guarantee or as retention money guarantee, it must fulfil the following conditions:

- (a) the financial guarantee is provided by a bank or a financial institution approved by the contracting authority or, at the request of the contractor and with the agreement of the contracting authority, by a third party;
- (b) the guarantor stands as first-call guarantor and does not require the contracting authority to have recourse against the principal debtor (the contractor).

The contractor bears the cost of providing such guarantee.

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

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

Retention money guarantees cover full delivery of the service in accordance with the 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 contract.

The contracting authority must release the guarantee after the expiry of the contract liability period as provided for in the contract.

The contracting authority must not request a retention money guarantee 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.5 or in the tender specifications.

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.5 or in the tender specifications.

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.5 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 contract;
- (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.

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 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.5, 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.4.3;
- (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.4.3.

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

## **II.23. RECOVERY**

**II.23.1** If an amount is to be recovered under the terms of the contract, 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;
- (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 first claims the full amount to the leader of the group.

If the leader does not pay by the due date and if the amount cannot be offset in accordance with Article II.23.2 (a), the contracting authority may claim the full amount to any other member of the group by *notifying* the debit note already sent to the leader under 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 *performance of the contract*. This may be carried out either by OLAF's own staff or by any outside body authorised to do so on its behalf.

Such checks and audits may be initiated at any moment during the *performance of the contract* and up to five years starting from the payment of the balance.

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.

**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 contract is performed 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 that 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 measure which it considers necessary.

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

The investigations may be carried out at any moment during the provision of the services and up to five years starting from the payment of the balance.

**II.24.6** The Court of Auditors has the same rights as the contracting authority, particularly right of access, for the purpose of checks and audits.