



FRAMEWORK CONTRACT FOR SERVICES

FRAMEWORK CONTRACT NUMBER — [complete]

The European Centre for Disease Prevention and Control (hereinafter referred to as "the Centre" or ('the contracting authority'), represented for the purposes of signing this framework contract by Andrea Ammon, Director,

on the one part and

[full official name]¹

[official legal form]²

[statutory registration number³ 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]

[(hereinafter referred to as 'the contractor'), represented for the purposes of the signature of this framework contract by [forename, surname, function of legal representative and name of company in the case of a joint tender],

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

on the other part,

¹ In case of a consortium, please add the leader of the consortium and name of the consortium, as well as the names of the members of the consortium.

² Delete if contractor is a natural person or a body governed by public law.

³ Delete if contractor is a body governed by public law. For natural persons, indicate the number of their identity card or, failing that, of their passport or equivalent.

HAVE AGREED

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

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

Annex II – Service Level Agreement

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

Annex IV – Model for specific contracts

Annex V (a) – List of pre-existing rights

Annex V (b) – Declaration of no pre-existing rights

Annex VI– Certificate of conformity

Annex VII a – Quoted Times&Means form

Annex VII b – Time reporting for Times & Means contracts

Annex VIII – Declaration on confidentiality and interests

Annex IX – Data Protection Agreement

[Other annexes]

which form an integral part of this framework contract (hereinafter referred to as “the FWC”).

This FWC sets out:

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

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

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I. SPECIAL CONDITIONS

I.1. ORDER OF PRIORITY OF PROVISIONS

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

- (a) The provisions set out in the special conditions take precedence over those in the other parts of the FWC.
- (b) The provisions set out in the Service Level Agreement (SLA) and Data Protection Agreement (DPA) take precedence over the general conditions and those in the other annexes.
- (c) The provisions set out in the general conditions take precedence over those in the order form and specific contract (Annex IV)
- (d) The provisions set out in the order form and specific contract (Annex IV) take precedence over those in the other annexes.
- (e) The provisions set out in the tender specifications (Annex I) take precedence over those in the tender (Annex III).
- (f) The provisions set out in the FWC take precedence over those in the specific contracts and order forms.
- (g) The provisions set out in the specific contracts or order forms take precedence over those in the requests for services.
- (h) The provisions set out in the requests for services take precedence over those in the specific tenders.

Any reference to specific contracts applies also to order forms.

I.2. SUBJECT MATTER

The subject matter of the FWC is IT services consisting of end user services, hosting services and technical services

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

- I.3.1** The FWC enters into force on the date on which the last party signs it.
- I.3.2** The *implementation of the FWC* cannot start before its entry into force. Execution of the tasks may under no circumstances begin before the date on which the order form *or specific contract* enters into force.
- I.3.3** The FWC is concluded for a period of 24 months with effect from the date of its entry into force. Unless otherwise specified, all periods specified in the FWC are calculated in calendar days
- I.3.4** The parties must sign any specific contract or order form before the FWC expires.

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

I.3.5 Renewal of the FWC

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

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

I.4.1. Appointment of the contractor

The contracting authority appoints the contractor for a multiple FWC in sleeping cascade in [complete] position.

I.4.2. Period of provision of the services

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

I.4.3. Implementation of multiple FWC in “sleeping “ cascade

The first contractor in the order of the cascade shall be asked to provide the services foreseen in the FWC. The second contractor in the order of the cascade will only be asked to provide the services foreseen in the FWC if the FWC with the first contractor has been terminated. The third contractor in the order of the cascade will only be asked to provide the services foreseen in the FWC if the FWC with the first and the second contractor have been terminated.

For specific contract within ten (10) working days of a request for services being sent by the contracting authority to the contractor, the contracting authority shall receive the completed specific tender back, duly signed and dated.

Within five (5) working days of a specific contract being sent by the contracting authority to the contractor, the contracting authority shall receive it back, duly signed and dated. The contractor shall at the same time send to the contracting authority a copy of the signed and dated specific contract by e-mail.

The period allowed for the execution of the tasks shall start to run on the date the contracting authority signs the specific contract , unless a different date is indicated on the specific contract.

In case of time & means specific contracts, the contracting authority is not obliged to fully take up all man-days ordered and to pay for those not having been provided.

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

I.5. PRICES

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

The maximum amount covering all purchases under this FWC, including all renewals and reimbursement of expenses (if any) is EUR [amount in figures and in words]. However, this does not bind the contracting authority to purchase for the maximum amount.

The prices of the services are : as listed in Annex III.

I.5.2. Price revision index

Price revision is determined by the formula set out in Article II.20 and using the trend in the harmonised indices of consumer prices (HICP) *EICP* published for the first time in Eurostat's monthly 'Data in Focus' publication available on the website: <http://www.ec.europa.eu/eurostat/>

I.5.3. Reimbursement of expenses

Reimbursement of expenses is not applicable to this FWC.

I.6. PAYMENT ARRANGEMENTS

I.6.1. Pre-financing

Pre-financing is not applicable to this FWC.

I.6.2. Interim payments

1. The contractor (or leader in the case of a joint tender) may claim an interim payment(s) as set out in the relevant specific contract 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 or via *e-PRIOR* for the interim payment as provided for in the tender specifications, accompanied by the following:

- a list of all *pre-existing rights* to the *results* or parts of the *results* or a declaration stating that there are no such *pre-existing rights*, as provided for in Article II.13.4;
- any other document in accordance with the tender specifications or specific contract

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

3. If the contracting authority has observations to make, it must send them to the contractor (or leader in 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 5 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.6.3. 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 or via *e-PRIOR* for payment of the balance due under a specific contract, as provided for in the tender specifications and accompanied by the following:

- a list of all *pre-existing rights* to the *results* or parts of the *results* or a declaration stating that there are no such *pre-existing rights*, as provided for in Article II.13.4;
- any other document in accordance with the specific contract.

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

3. If the contracting authority has observations to make, it must send them to the contractor (or leader in 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 5 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.6.4. Performance guarantee

Performance guarantee is not applicable to this FWC.

I.6.5. Retention money guarantee

Retention money guarantee is not applicable to this FWC.

I.7. BANK ACCOUNT

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

Name of bank:

Full address of branch:

Contract number: *[complete]*

Exact denomination of account holder:

Full account number including bank codes:

IBAN code:

I.8. COMMUNICATION DETAILS

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

Contracting authority:

European Centre for Disease Prevention and Control

Attn: *[insert project manager name and surname]*, Project manager

Gustav III:s Boulevard 40

169 73 Solna, Sweden

Email: *[insert functional/ business mailbox]*

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

[Full name]

[Function]

[Company name]

[Full official address]

E-mail: *[complete]*

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

I.9. DATA CONTROLLER

Data protection matters shall be governed by the Data Protection Agreement in Annex IX, which is further supported by Article II.9. For the purpose of Article II.9 and the Data Protection Agreement in Annex IX, the data controller shall be the Centre.

I.10. EXPLOITATION OF THE RESULTS OF THE FWC

I.10.1. Modes of exploitation

In accordance with Article II.13.1 whereby the Centre acquires ownership of the results as defined in the tender specifications (Annex I), these results may be used for any purpose,

including but not limited to alteration or further transferring of the rights acquired and reproduction in an unlimited amount of copies.

Where the contracting authority becomes aware that the scope of modifications exceeds that envisaged in the contract, the contracting authority shall consult the contractor. Where necessary, the contractor shall in turn seek the agreement of any creator or other right holder. The contractor shall reply to the contracting authority within one month and shall provide its agreement, including any suggestions of modifications, free of charge. The creator may refuse the intended modification only when it may harm his honour, reputation or distort integrity of the work.

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

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

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

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, if applicable*, as set out in Article II.13.4 together with the invoice for payment of the balance at the latest.

I.11. TERMINATION BY EITHER PARTY

By either party

Without prejudice to the contracting authority's and the contractor's right to terminate the contract on the basis of the grounds listed in Article II.18.1 and II.18.2, either party may terminate the FWC and/or the FWC and specific contracts by sending *formal notification* to the other party with three months written notice.

If the FWC or a specific contract is terminated:

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

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

I.12. APPLICABLE LAW AND SETTLEMENT OF DISPUTES

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

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

I.13. INTERINSTITUTIONAL FWC

Not applicable

I.14. SERVICE PROVIDED ON THE PREMISES OF THE CONTRACTING AUTHORITY

If necessary for *performance of a specific contract or order form*, the contracting authority may give the *personnel* of the contractor access to its premises by means of an access card.

On the day of its expiry date, the access card must be returned to the Centre's office at Gustav III:s Boulevard 40, 161 73 Solna, Sweden. If the access card is not returned on the day it expires, the contracting authority may claim liquidated damages of 100 EUR for each day of delay up to a maximum of EUR 1000. This represents a reasonable estimate of fair compensation for the damage incurred.

I.15. OTHER SPECIAL CONDITIONS

Handover

Upon termination of the FWC, the contractor is obliged to execute the handover, as required in point 2.2.8.3 of Annex I to this Framework Contract (Tender Specifications).

I.16. SECURITY

The contractor shall take all necessary measures reasonably required to ensure the proper functioning of the Centre's information infrastructure and the preservation and security of the data therein.

I.16.1. Risk management

The contractor shall inform the Centre in writing as soon as there is knowledge of any faults in products supplied or other issues (for example, viruses, covert channels, Trojan code) that may pose a risk to the security or proper operation of the Centre's information infrastructure. The contractor shall immediately take any measures necessary to restore the security of the configurations and correct the faults and keep the Centre regularly updated on progress made to resolve the problems. The contractor shall be liable for any damage caused as a result of such incidents.

The contractor shall ensure that any security measures applicable to specific products are specified in the user manuals and the supporting technical documentation is supplied to the Centre.

I.16.2. Personell security

The contractor and its staff must conform to the Centre's internal information security policy. Should a member of the contractor's staff breach a rule detailed therein the contractor is required to remove the individual and provide a suitable replacement of equivalent professional experience, as soon as possible, at no additional cost to the Centre.

The contractor agrees to impose the security obligations of this Article upon his subcontractors and their staff when performing tasks for the Centre in execution of this FWC.

I.16.3. Security monitoring

The Centre shall be entitled to monitor compliance with these security obligations detailed herein via on-site visits to the contractor’s premises, presuming reasonable notice is given to the contractor.

I.17. DECLARATION ON CONFIDENTIALITY AND INTERESTS

The contractor shall obtain from each member of its personnel, in respect of Article II.7 and II.8, a written undertaking that they will respect the confidentiality of any information brought to their attention and disclose any potential conflicts of interest during the performance of this FWC. The undertaking shall follow the model in Annex VIII of the FWC. The original undertaking shall be sent to the Centre upon signature of the FWC. For new personnel/replacement of existing personnel during the implementation of the FWC, the original undertaking shall be sent to the Centre upon personnel assignment.

SIGNATURES

For the contractor,

For the contracting authority,

[Company name/forename/surname/function]

[forename/surname/function]

Signature: _____

Signature:_____

Done at [place], [date]

Done at Stockholm [date]

In duplicate in English.

II. GENERAL CONDITIONS FOR THE FRAMEWORK CONTRACT FOR SERVICES

II.1. DEFINITIONS

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

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

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

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

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

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

‘e-PRIOR’: the service-oriented communication platform that provides a series of web services and allows the exchange of standardised electronic messages and documents between the parties. This is done either through web services, with a machine-to-machine connection between the parties’ *back office* systems (*EDI messages*), or through a web application (the *supplier portal*). The Platform may be used to exchange electronic documents (e-documents) such as electronic requests for services, electronic specific contracts, and electronic acceptance of services or electronic invoices between the parties. 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II.3. SEVERABILITY

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

II.4. PROVISION OF SERVICES

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

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

II.4.3 The contractor must comply with the minimum requirements provided for in the tender specifications. This includes compliance with applicable obligations under environmental, social and labour law established by Union law, national law and collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU⁴.

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

⁴ OJ L 94 of 28.03.2014, p. 65

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

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

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

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

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

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

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

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

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

II.5. COMMUNICATION BETWEEN THE PARTIES

II.5.1. Form and means of communication

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

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

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

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

II.5.2. Date of communications by mail and email

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

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

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

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

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

1. If provided for in the special conditions, the exchange of electronic documents (e-documents) such as requests for services, specific contracts and invoices between the parties is automated through the use of the *e-PRIOR* platform. This platform provides two possibilities for such exchanges: either through web services (machine-to-machine connection) or through a web application (the *supplier portal*).
2. The contracting authority takes the necessary measures to implement and maintain electronic systems that enable the *supplier portal* to be used effectively.
3. In the case of machine-to-machine connection, a direct connection is established between the parties' *back offices*. In this case, the parties take the measures necessary on their side to implement and maintain electronic systems that enable the machine-to-machine connection to be used effectively. The electronic systems are specified in the *interface control document*. The contractor (or leader in the case of a joint tender) must take the necessary technical measures to set up a machine-to-machine connection and at its own cost.
4. If communication via the *supplier portal* or via the web services (machine-to-machine connection) is hindered by factors beyond the control of one party, it must *notify* the other immediately and the parties must take the necessary measures to restore this communication.
5. If it is impossible to restore the communication within two working days, one party must *notify* the other that alternative means of communication specified in Article II.5.1 will be used until the *supplier portal* or the machine-to-machine connection is restored.
6. When a change in the *interface control document* requires adaptations, the contractor (or leader in the case of a joint tender) has up to six months from receipt of the *notification* to implement this change. This period can be shortened by mutual agreement of the parties. This period does not apply to urgent measures required by the security policy of the contracting authority to ensure integrity, confidentiality and non-repudiation of information and the availability of *e-PRIOR*, which must be applied immediately.

II.5.4. Validity and date of e-documents

1. The parties agree that any e-document, including related attachments exchanged via *e-PRIOR*:
 - (a) is considered as equivalent to a paper document;
 - (b) is deemed to be the original of the document;
 - (c) is legally binding on the parties once an *e-PRIOR* authorised person has performed the ‘sign’ action in *e-PRIOR* and has full legal effect; and
 - (d) constitutes evidence of the information contained in it and is admissible as evidence in judicial proceedings.
2. The parties expressly waive any rights to contest the validity of such a document solely on the grounds that communications between the parties occurred through *e-PRIOR* or that the document has been signed through *e-PRIOR*. If a direct connection is established between the parties’ *back offices* to allow electronic transfer of documents, the parties agree that an e-document, sent as mentioned in the *interface control document*, qualifies as an *EDI message*.
3. If the e-document is dispatched through the *supplier portal*, it is deemed to have been legally issued or sent when the contractor (or leader in the case of a joint tender) is able to successfully submit the e-document without any error messages. The generated PDF and XML document for the e-document are considered as a proof of receipt by the contracting authority.
4. In the event that an e-document is dispatched using a direct connection established between the parties’ *back offices*, the e-document is deemed to have been legally issued or sent when its status is ‘received’ as defined in the *interface control document*.
5. When using the *supplier portal*, the contractor (or leader in the case of a joint tender) can download the PDF or XML message for each e-document for one year after submission. After this period, copies of the e-documents are no longer available for automatic download from the *supplier portal*.

II.5.5. Authorised persons in e-PRIOR

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

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

II.6. LIABILITY

- II.6.1** The contracting authority is not liable for any damage or loss caused by the contractor, including any damage or loss to third parties during or as a consequence of *implementation of the FWC*.

- II.6.2** If required by the relevant applicable legislation, the contractor must take out an insurance policy against risks and damage or loss relating to the *implementation of the FWC*. It must also take out supplementary insurance as reasonably required by standard practice in the industry. Upon request, the contractor must provide evidence of insurance coverage to the contracting authority.
- II.6.3** The contractor is liable for any loss or damage caused to the contracting authority during or as a consequence of *implementation of the FWC*, including in the event of subcontracting, but only up to an amount not exceeding three times the total amount of the relevant specific contract. However, if the damage or loss is caused by the gross negligence or wilful misconduct of the contractor or of its *personnel* or subcontractors, the contractor is liable for the whole amount of the damage or loss.
- II.6.4** If a third party brings any action against the contracting authority in connection with the *implementation of the FWC*, including any action for alleged breach of intellectual property rights, the contractor must assist the contracting authority in the legal proceedings, including by intervening in support of the contracting authority upon request.
If the contracting authority's liability towards the third party is established and that such liability is caused by the contractor during or as a consequence of the *implementation of the FWC*, Article II.6.3 applies.
- II.6.5** If the contractor is composed of two or more economic operators (i.e. who submitted a joint tender), they are all jointly and severally liable to the contracting authority for the *implementation of the FWC*.
- II.6.6** The contracting authority is not liable for any loss or damage caused to the contractor during or as a consequence of *implementation of the FWC*, unless the loss or damage was caused by wilful misconduct or gross negligence of the contracting authority.

II.7. CONFLICT OF INTEREST AND PROFESSIONAL CONFLICTING INTERESTS

- II.7.1** The contractor must take all the necessary measures to prevent any situation of *conflict of interest* or *professional conflicting interest*.
- II.7.2** The contractor must *notify* the contracting authority in writing as soon as possible of any situation that could constitute a *conflict of interest* or a *professional conflicting interest* during the *implementation of the FWC*. The contractor must immediately take action to rectify the situation.

The contracting authority may do any of the following:

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

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

- (a) its *personnel*;
- (b) any natural person with the power to represent it or take decisions on its behalf;

(c) third parties involved in the *implementation of the FWC*, including subcontractors.

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

II.8. CONFIDENTIALITY

II.8.1. The contracting authority and the contractor must treat with confidentiality any information or documents, in any format, disclosed in writing or orally, relating to the *implementation of the FWC* and identified in writing as confidential.

II.8.2. Each party must:

- (a) not use *confidential information or documents* for any purpose other than to perform its obligations under the FWC or a specific contract without the prior written agreement of the other party;
- (b) ensure the protection of such *confidential information or documents* with the same level of protection as its own *confidential information or documents* and in any case with due diligence;
- (c) not disclose, directly or indirectly, *confidential information or documents* to third parties without the prior written agreement of the other party.

II.8.3 The confidentiality obligations set out in this Article are binding on the contracting authority and the contractor during the *implementation of the FWC* and for as long as the information or documents remain confidential unless:

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

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

II.9. PROCESSING OF PERSONAL DATA

II.9.1 Any personal data included in the FWC must be processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Such data must be processed by the data controller solely for the purposes of

the implementation, management and monitoring of the FWC. This does not affect its possible transmission to bodies entrusted with monitoring or inspection tasks in application of Union law.

- II.9.2** The contractor has the right to access its personal data and the right to rectify any such data. The contractor should address any queries concerning the processing of its personal data to the data controller.
- II.9.3** The contractor has right of recourse at any time to the European Data Protection Supervisor.
- II.9.4** If the FWC requires the contractor to process any personal data, the contractor may act only under the supervision of the data controller, in particular with regard to the purposes of the processing, the categories of data that may be processed, the recipients of the data and the means by which the data subject may exercise its rights.
- II.9.5** The contractor must grant *personnel* access to the data to the extent strictly necessary for the implementation, management and monitoring of the FWC.
- II.9.6** The contractor must adopt appropriate technical and organisational security measures, giving due regard to the risks inherent in the processing and to the nature of the personal data concerned, in order to:
- (a) prevent any unauthorised person from gaining access to computer systems processing personal data, and especially:
 - (i) unauthorised reading, copying, alteration or removal of storage media;
 - (ii) unauthorised data inputting, as well as any unauthorised disclosure, alteration or erasure of stored personal data;
 - (iii) unauthorised use of data processing systems by means of data transmission facilities;
 - (b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
 - (c) record which personal data have been communicated, when and to whom;
 - (d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting authority;
 - (e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
 - (f) design its organisational structure in such a way that it meets data protection requirements.

II.10. SUBCONTRACTING

- II.10.1** The contractor must not subcontract and have the FWC implemented by third parties beyond the third parties already mentioned in its tender without prior written authorisation from the contracting authority.
- II.10.2** Even if the contracting authority authorises subcontracting, the contractor remains bound by its contractual obligations and is solely responsible for the *implementation of the FWC*.
- II.10.3** The contractor must ensure that the subcontract does not affect the rights of the contracting authority under this FWC, particularly those under Articles II.8, II.13 and II.24.
- II.10.4** The contracting authority may request the contractor to replace a subcontractor found to be in a situation provided for in points (d) and (e) of Article II.18.1.

II.11. AMENDMENTS

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

II.12. ASSIGNMENT

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

II.13. INTELLECTUAL PROPERTY RIGHTS

II.13.1. Ownership of the rights in the results

The Centre acquires irrevocably worldwide ownership of the *results* and of all intellectual property rights under the FWC. The intellectual property rights so acquired include any rights, such as copyright and other intellectual or industrial property rights, to any of the *results* and in all technological solutions and information created or produced by the contractor or by its subcontractor in *implementation of the FWC*. The contracting authority may exploit and use the acquired rights as stipulated in this FWC. The Centre 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 Centre.

The payment of the price includes any fees payable to the contractor about the acquisition of ownership of rights by the Centre 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 does not acquire ownership of *pre-existing rights* under this FWC.

The contractor licenses the *pre-existing rights* on a royalty-free, non-exclusive and irrevocable basis to the Centre, which may use the *pre-existing materials* for all the modes of exploitation set out in this FWC or in specific contracts. All *pre-existing rights* are licensed to the Centre from the moment the *results* are delivered and approved by the contracting authority.

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

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

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

II.13.3. Exclusive rights

The Centre acquires the following exclusive rights:

- (a) reproduction: the right to authorise or prohibit direct or indirect, temporary or permanent reproduction of the *results* by any means (mechanical, digital or other) and in any form, in whole or in part;
- (b) communication to the public: the exclusive right to authorise or prohibit any display, performance or communication to the public, by wire or wireless means, including the making available to the public of the *results* in such a way that members of the public may access them from a place and at a time individually chosen by them; this right also includes the communication and broadcasting by cable or by satellite;
- (c) distribution: the exclusive right to authorise or prohibit any form of distribution of *results* or copies of the *results* to the public, by sale or otherwise;
- (d) rental: the exclusive right to authorise or prohibit rental or lending of the *results* or of copies of the *results*;
- (e) adaptation: the exclusive right to authorise or prohibit any modification of the *results*;
- (f) translation: the exclusive right to authorise or prohibit any translation, adaptation, arrangement, creation of derivative works based on the *results*, and any other alteration of the *results*, subject to the respect of moral rights of authors, where applicable;
- (g) where the *results* are or include a database: the exclusive right to authorise or prohibit the extraction of all or a substantial part of the contents of the database to another medium by any means or in any form; and the exclusive right to authorise or prohibit the re-utilization

- of all or a substantial part of the contents of the database by the distribution of copies, by renting, by on-line or other forms of transmission;
- (h) where the *results* are or include a patentable subject-matter: the right to register them as a patent and to further exploit such patent to the fullest extent;
 - (i) where the *results* are or include logos or subject-matter which could be registered as a trademark: the right to register such logo or subject-matter as a trademark and to further exploit and use it;
 - (j) where the *results* are or include know-how: the right to use such know-how as is necessary to make use of the *results* to the full extent provided for by this FWC, and the right to make it available to contractors or subcontractors acting on behalf of the contracting authority, subject to their signing of adequate confidentiality undertakings where necessary;
 - (k) where the *results* are documents:
 - (i) the right to 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 Centre or by subcontractors which result from this FWC and from the intention of the parties;
 - (ii) the rights to decompile or disassemble the software;
 - (m) to the extent that the contractor may invoke moral rights, the right for the contracting authority, except where otherwise provided in this FWC, to publish the *results* with or without mentioning the *creator(s)*' name(s), and the right to decide when and whether the *results* may be disclosed and published.

The contractor warrants that the exclusive rights and the modes of exploitation may be exercised by the Centre 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 FWC, the *results* and the *pre-existing material* incorporated in the *results* are free of claims from *creators* or from any third parties and all the necessary *pre-existing rights* have been obtained or licensed.

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

II.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 Centre. The contracting authority may request this evidence even after the end of this FWC.

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

This evidence must include, as appropriate:

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

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

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

II.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 Centre for Disease Prevention and Control. All rights reserved. Certain parts are licensed under conditions to the European Centre for Disease Prevention and Control', 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 Centre funding and disclaimer

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

II.14. FORCE MAJEURE

- II.14.1** If a party is affected by *force majeure*, it must immediately *notify* the other party, stating the nature of the circumstances, their likely duration and foreseeable effects.
- II.14.2** A party is not liable for any delay or failure to perform its obligations under the FWC if that delay or failure is a *result* of *force majeure*. If the contractor is unable to fulfil its contractual obligations owing to *force majeure*, it has the right to remuneration only for the services actually provided.
- II.14.3** The parties must take all necessary measures to limit any damage due to *force majeure*.

II.15. LIQUIDATED DAMAGES

II.15.1. Delay in delivery

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

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

where:

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

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

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

II.15.2. Procedure

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

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

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

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

II.15.3. Nature of liquidated damages

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

II.15.4. Claims and liability

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

II.16. REDUCTION IN PRICE

II.16.1. Quality standards

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

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

II.16.2. Procedure

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

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

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

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

II.16.3. Claims and liability

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

II.17. SUSPENSION OF THE IMPLEMENTATION OF THE FWC

II.17.1. Suspension by the contractor

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

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

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

II.17.2. Suspension by the contracting authority

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

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

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

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

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

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

II.18. TERMINATION OF THE FWC

II.18.1. Grounds for termination by the contracting authority

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

- (a) if provision of the services under a pending specific contract has not actually started within 15 days of the scheduled date and the contracting authority considers the new date proposed, if any, unacceptable, taking into account Article II.11.2;
- (b) if the contractor is unable, through its own fault, to obtain any permit or licence required for *implementation of the FWC*;
- (c) if the contractor does not implement the FWC or perform the specific contract in accordance with the tender specifications or *request for service* or is in breach of another substantial contractual obligation or repeatedly refuses to sign specific contracts. Termination of three or more specific contracts in these circumstances also constitutes grounds for termination of the FWC;
- (d) if the contractor or any person that assumes unlimited liability for the debts of the contractor is in one of the situations provided for in points (a) and (b) of Article 106(1) of the Financial Regulation⁵;
- (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.

⁵ 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>. Note that ECDC acts in accordance with its own equivalent Financial Regulation and implementing rules, which refer back to Regulation (EU, EURATOM) No 966/2012.

- (f) if the procedure for awarding the FWC or the *implementation of the FWC* prove to have been subject to *substantial errors, irregularities or fraud*;
- (g) if the contractor does not comply with applicable obligations under environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU;
- (h) if the contractor is in a situation that could constitute a *conflict of interest* or a *professional conflicting interest* as referred to in Article II.7;
- (i) if a change to the contractor's legal, financial, technical, organisational or ownership situation is likely to substantially affect the *implementation of the FWC* or substantially modify the conditions under which the FWC was initially awarded;
- (j) in the event of *force majeure*, where either resuming implementation is impossible or the necessary ensuing amendments to the FWC or a specific contract would mean that the tender specifications are no longer fulfilled or result in unequal treatment of tenderers or contractors;
- (k) if the needs of the contracting authority change and it no longer requires new services under the FWC; in such cases ongoing specific contracts remain unaffected;
- (l) if the termination of the FWC with one or more of the contractors means that the multiple FWC with reopening of competition no longer has the minimum required level of competition.

II.18.2. Grounds for termination by the contractor

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

- (a) it has evidence that the contracting authority has committed *substantial errors, irregularities or fraud* in the procedure for awarding the FWC or the *implementation of the FWC*;
- (b) the contracting authority fails to comply with its obligations, in particular the obligation to provide the information needed for the contractor to implement the FWC or to perform a specific contract as provided for in the tender specifications.

II.18.3. Procedure for termination

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

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

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

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

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

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

II.18.4. Effects of termination

The contractor is liable for damage incurred by the contracting authority as a result of the termination of the FWC or a specific contract including the cost of appointing another contractor to provide or complete the services, unless the damage was caused by the situation specified in Article II.18.1(j), (k) or (l) 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 FWC or a specific contract, including loss of anticipated profits, unless the loss was caused by the situation specified in Article II.18.2.

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

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

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

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

II.19.1. Invoices and value added tax

Invoices must contain the contractor's (or leader's in the case of a joint tender) identification data, the amount, the currency and the date, as well as the FWC reference and reference to the specific contract.

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

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

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

II.19.2. E-invoicing

If provided for in the special conditions, the contractor (or leader in the case of a joint tender) submits invoices in electronic format if the conditions regarding electronic signature specified by Directive 2006/112/EC on VAT are fulfilled, i.e. using a qualified electronic signature or through electronic data interchange.

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

Should it not be possible to submit invoices as described due to circumstances beyond the control of the parties, the Centre may temporarily allow submission of invoices in other formats. Such submission shall only be permitted if prior approval has been granted in writing by the Centre and if the invoice is submitted in an alternative format specified by the Centre.

II.20. PRICE REVISION

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

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

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

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

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

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

The price revision is calculated using the following formula:

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

where: Pr = revised price;

Po = price in the tender;

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

I_r = 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

II.21.4. Costs of transfer

The costs of the transfer are borne as follows:

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

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

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

- (a) the financial guarantee is provided by a bank or a financial institution approved by the contracting authority or, at the request of the contractor and with the agreement of the contracting authority, by a third party;
- (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 specific contract. The contracting authority must release the guarantee fully after final approval of the service, as provided for in the specific contract.

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

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

II.21.6. Interim payments and payment of the balance

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

The contractor (or leader in the case of a joint tender) must send an invoice for payment of the balance within 60 days of the end of the period of provision of the services, as provided for in Article I.6, in the tender specifications or in the specific contract.

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

Payment of the balance may take the form of recovery.

II.21.7. Suspension of the time allowed for payment

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

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

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

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

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

II.21.8. Interest on late payment

On expiry of the payment periods specified in Article I.6, the contractor (or leader in the case of a joint tender) is entitled to interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in euros (the reference rate) plus eight points. The reference rate is the rate in force, as published in the C series of the *Official Journal of the European Union*, on the first day of the month in which the payment period ends.

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

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

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

II.22. REIMBURSEMENTS

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

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

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

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

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

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

- (a) for journeys of less than 200 km for a return trip, no subsistence allowance is payable;
- (b) the daily subsistence allowance is payable only on receipt of supporting documents proving that the person concerned was present at the destination;
- (c) the daily subsistence allowance takes the form of a flat-rate payment to cover all subsistence expenses, including meals, local transport including transport to and from the airport or station, insurance and sundries;
- (d) the daily subsistence allowance is reimbursed at the flat rates specified in Article I.5.3;
- (e) accommodation is reimbursed on receipt of supporting documents proving the necessary overnight stay at the destination, up to the flat-rate ceilings specified in Article I.5.3.

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

II.23. RECOVERY

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

II.23.2. Recovery procedure

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

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

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

- (a) by offsetting them against any amounts owed to the contractor by the European Centre for Disease Prevention and;
- (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 *implementation of the FWC*. This may be carried out either by OLAF's own staff or by any other outside body authorised to do so on its behalf.

Such checks and audits may be initiated at any moment during the *provision of services* and up to five years, starting from the payment of the balance of the last specific contract issued under this FWC.

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

II.24.2 The contractor must keep all original documents stored on any appropriate medium, including digitised originals if authorised under national law, for a period of five years starting from the date of expiry of the FWC.

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

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

must receive the final report within 60 days following the expiry of the deadline to submit observations.

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

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

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

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

ANNEX IV

- Model for specific contracts – Fixed price
- Model for specific contracts – Quoted Times & Means
- Model for specific contracts – Times & Means

SPECIFIC CONTRACT– Fixed Price

No [complete]

implementing framework contract No [complete]

1. The European Centre for Disease Prevention and Control (hereinafter referred to as "the Centre" or ('the contracting authority') , represented for the purposes of signing this specific contract by [*forename, surname, function, department of authorising officer*],

and

2. [*Full official name*]

[*Official legal form*]

[*Statutory registration number or ID or passport number*]

[*Full official address*]

[*VAT registration number*]

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

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

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

HAVE AGREED

ARTICLE 1 – SUBJECT MATTER

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

ARTICLE 2– ENTRY INTO FORCE AND DURATION

- 2.1 This specific contract enters into force on the date on which the last party signs it.
- 2.2 The provision of the services starts from [the date of entry into force of this specific contract] [insert date].
- 2.3 The provision of the services must not exceed [complete] [days] [months]. The parties may extend the duration by written agreement before it elapses and before expiry of the FWC.

ARTICLE 3 – PRICE

- 3.1 The price payable under this specific contract excluding reimbursement of expenses is EUR [amount in figures and in words] per month with a total of EUR [amount in figures and in words] during the duration of the contract.
- 3.2 Reimbursement of expenses is not applicable to this specific contract.

ARTICLE 4 – INTERIM PAYMENTS

- 4.1 In accordance with Article I.6 of the FWC, the contractor shall submit invoice(s) [in paper format] [e-prior] for monthly payment(s) in accordance with Article 3 upon provision of monthly deliverable[s] [complete with deliverable(s)] [by dd/mm/yyyy].
- 4.2 In accordance with Article I.6, the invoice shall be accompanied, inter alia, by [complete with documents relevant for the services provided] approved by ECDC.

ARTICLE 5 – PAYMENT OF THE BALANCE

- 5.1 In accordance with Article I.6 of the FWC, the contractor shall submit an invoice [in paper format]] [e-prior] for the payment of the balance, upon provision of the final deliverable[s] [complete with deliverable(s)] approved by ECDC.
- 5.2 In accordance with Article I.6, the invoice shall be accompanied, inter alia, by [complete with other documents relevant for the services provided].

ARTICLE 6 COMMUNICATION DETAILS

Contract number: [complete]

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

Contracting authority:

European Centre for Disease Prevention and Control

Attn: [insert project manager name and surname], Project manager

Gustav III:s boulevard 40

169 73 Solna, Sweden

Email: [insert functional/ business mailbox]

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

[Full name]

[Function]

[Company name]

[Full official address]

E-mail: [complete]

ARTICLE 7 PERFORMANCE GUARANTEE

Performance guarantee is not applicable to this specific contract.

ARTICLE 8 RETENTION MONEY GUARANTEE

Retention money guarantee is not applicable to this specific contract.

Annexes

Request for service

Contractor's specific tender of [insert date]

Signatures

For the contractor,

For the contracting authority,

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

Contract number: [complete]

signature:
Done at, on.....

signature:
Done at [place], [date]

In duplicate in English.

SPECIFIC CONTRACT – Quoted Times and Means

No [complete]

implementing framework contract No [complete]

1. The European Centre for Disease Prevention and Control (hereinafter referred to as "the Centre" or 'the contracting authority'), represented for the purposes of signing this specific contract by [*forename, surname, function, department of authorising officer*],

and

2. [*Full official name*]

[*Official legal form*]

[*Statutory registration number or ID or passport number*]

[*Full official address*]

[*VAT registration number*]

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

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

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

HAVE AGREED

ARTICLE 1 – SUBJECT MATTER

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

ARTICLE 2 – ENTRY INTO FORCE AND DURATION

- 2.1 This specific contract enters into force on the date on which the last party signs it.
- 2.2 The provision of the services starts from the date of entry into force of this specific contract.
- 2.3 The provision of the services must not exceed [complete] [hours] [days] [months]. The parties may extend the duration by written agreement before it elapses and before expiry of the FWC.
- 2.4 Nevertheless, the execution may continue beyond this date during an additional period of two (2) months, provided that the provision of the services is not fully exhausted and written notification has been sent by ECDC Project Manager or authorised ECDC representative to the contractor by mail or e-mail. The notification shall be sent before the duration elapses. In no case shall the services be executed later than six (6) months after expiry of the Framework Contract.

ARTICLE 3 – PRICE

- 3.1 ECDC undertakes to pay the contractor in accordance with the following terms, the rate of pay being dependent upon the profile of the consultant rendering the services provided in accordance with this specific contract:

[Profile of the service provider]

- An amount of [INSERT AMOUNT] EUR per hour, for [INSERT MAXIMUM NUMBER OF HOURS]
- [Repeat point as many times as there are different profiles.]

- 3.2 The total amount to be paid by the contracting authority under this specific contract shall be EUR XXX [amount in figures] covering all tasks executed.
- 3.3 Reimbursement of expenses is not applicable to this specific contract.

ARTICLE 4 – INTERIM PAYMENT(S)

- 4.1 In accordance with Article I.6 of the FWC, the contractor shall submit invoice(s) [in paper format] [e-prior] for monthly payment(s) for services delivered.

Contract number: [complete]

- 4.2 In accordance with Article I.6, the invoice shall be accompanied, inter alia, by a quoted times and means form approved by ECDC, certificate of conformity *[and complete with other documents relevant for the services provided]*.

ARTICLE 5 – PAYMENT OF THE BALANCE

- 5.1 In accordance with Article I.6 of the FWC, the contractor shall submit an invoice *[in paper format] [e-prior]* for the payment of the balance, upon provision of the final *[task[s] [complete with tasks]*
- 5.2 In accordance with Article I.6, the invoice shall be accompanied, inter alia, by a quoted times and means form approved by ECDC, certificate of conformity *and complete with other documents relevant for the services provided.*
- 5.3 If the number of hours/ days agreed has not been fully taken up, the contracting authority shall not be obliged either to use or to pay the time not worked and the Contractor shall not be entitled to claim damages for them.

Annexes

Request for service

Contractor's specific tender of *[insert date]*

Certificate of conformity

Quoted Time and Means Form

Signatures

For the contractor,

For the contracting authority,

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

signature:

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

signature:

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

In duplicate in English.

SPECIFIC CONTRACT –Time and Means

No [complete]

implementing framework contract No [complete]

1. The European Centre for Disease Prevention and Control (hereinafter referred to as "the Centre" or ('the [lead] contracting authority') [and the following contracting authorities [*insert relevant list*] ⁶ (hereinafter collectively, 'the contracting authority')), represented for the purposes of signing this specific contract by [*forename, surname, function, department of authorising officer*],

and

2. [*Full official name*]

[*Official legal form*]

[*Statutory registration number or ID or passport number*]

[*Full official address*]

[*VAT registration number*]

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

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

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

⁶ For example in case of inter-institutional contracts.

HAVE AGREED

ARTICLE 1 – SUBJECT MATTER

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

ARTICLE 2 – ENTRY INTO FORCE AND DURATION

- 2.1 This specific contract enters into force [on the date on which the last party signs it] [on [insert date], or on the date on which both parties signed it, whichever is later].
- 2.2 The provision of the services starts from [the date of entry into force of this specific contract] [insert date] [an event, a previous specific contract].
- 2.3 The provision of the services must not exceed [complete] [days] [months]. The parties may extend the duration by written agreement before it elapses and before expiry of the FWC.
- 2.4 Nevertheless, the execution may continue beyond the date specified in Article 2.1 above during an additional period of two (2) months, provided that the provision of the services is not fully exhausted and written notification has been sent by ECDC Project Manager or authorised ECDC representative to the contractor by mail or e-mail. The notification shall be sent before the duration elapses. In no case shall the services be executed later than six (6) months after expiry of the Framework Contract.

ARTICLE 3– PRICE

- 3.1 ECDC undertakes to pay the contractor in accordance with the following terms, the rate of pay being dependent upon the profile of the consultant rendering the services provided in accordance with this specific contract:

Profile of the service provider

- An amount of [INSERT AMOUNT] EUR per day, for a maximum of [INSERT MAXIMUM NUMBER OF DAYS] for the following profile: [INSERT PROFILE]
 - [Repeat point as many times as there are profiles.]
- 3.2 The maximum amount to be paid by the contracting authority under this specific contract shall be EUR XXX [amount in figures] covering all tasks executed.
 - 3.3 [Reimbursement of expenses is not applicable to this specific contract.] [Within the price payable, up to EUR [amount in figures and in words] is earmarked for expenses, which must be reimbursed in accordance with the FWC].

ARTICLE 4 –MONTHLY PAYMENTS

Contract number: [complete]

- 4.1 In accordance with Article I.6 of the FWC, the contractor shall submit an invoice for *monthly* payment upon provision of the following task[s] [and related deliverable(s)] [complete with task(s)/ deliverable(s)].
- 4.2 In accordance with Article I.6, the invoice shall be accompanied, inter alia, by a detailed time-sheet [and other documents relevant for the services provided] approved by the contracting authority.

ARTICLE 5– PAYMENT OF THE BALANCE

- 5.1.1 In accordance with Article I.6 of the FWC, the contractor shall submit an invoice for the payment of the balance, upon provision of the following task[s] [and related deliverable(s)] [complete with task(s)/ deliverable(s)].
- 5.2 In accordance with Article I.6, the invoice shall be accompanied, inter alia, by a detailed time-sheet [and other documents relevant for the services provided] approved by the contracting authority.
- 5.3 If the number of *hours/days* agreed has not been fully taken up, the contracting authority shall not be obliged either to use or to pay the time not worked and the Contractor shall not be entitled to claim damages for them.

Annexes

[Request for services]

[Contractor’s specific tender of [insert date]]

Signatures

For the contractor,

For the contracting authority,

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

signature:
Done at [place], [date]

signature:
Done at [place], [date]

In duplicate in English.

See comment

Annex V (a) – List of pre-existing rights

I, [*insert name of the authorised representative of the contractor*] representing [*insert name of the contractor*] ('the contractor'), party to the [framework] [specific] contract [*insert title and number*] warrant that the results and the pre-existing material incorporated in the results are free of rights or claims from creators or from any third parties for any use the contracting authority may envisage and declare that the results contain the following pre-existing rights:

Please fill in the table – one line per pre-existing right

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

Annex V (b) - Declaration of no pre-existing rights

I, [*insert name of the authorised representative of the contractor*] representing [*insert name of the contractor*] ('the contractor'), party to the [framework] [specific] contract [*insert title and number*] warrant that the results are free of rights or claims from creators or from any third parties for any use the contracting authority may envisage and declare that the results do not contain any pre-existing rights to the results or parts of the results or to pre-existing materials as defined in the above-mentioned contract.]

ANNEX VI "CERTIFICATE OF CONFORMITY"

FOR SPECIFIC CONTRACT NO XX ECD.XXX

UNDER FRAMEWORK CONTRACT No. ECDC/2017/0xx

Original document - duly signed - to be attached to the invoice

PERIOD COVERED:

XXX

To be filled in by the supplier.

[Example: January of 20XX or from XX/XX/20XX-XX/XX/20XX]

TASK (AND SUB-TASK) NUMBER:

To be filled in by the person responsible for delivering the work, as defined by ECDC's contract manager.

1. ...
2. ...
3. ...

RECEIPT OF WORK

To be filled in by the supplier of the service and ECDC.

Contractor

By signing, the person responsible for delivering the work declares that the above tasks have been performed in the period indicated.

ECDC Project Manager

By signing, the Project Manager validates the work performed in the period indicated, for all scope delivered and quality criteria met.

Full name (block capitals)		
Comments/ Reservations		
Date and signature		

ANNEX VII (A) - QUOTED TIMES AND MEANS FORM

FOR SPECIFIC CONTRACT No [XX ECD.XXX] UNDER FRAMEWORK CONTRACT
No [ECDC/XXXX/XXX] Task [and sub-task] Number

Original document - duly signed - to be attached to the invoice

REQUEST AND DESCRIPTION OF WORK

To be filled in by the ECDC Project Manager

Title:
Date of request:
Responsible person at ECDC:
Description of work:
Expected results:

WORKING DAYS ESTIMATE

To be filled in by the Contractor.

PROFILE OF THE EXPERT	PRICE/HOUR	NUMBER OF HOURS	LAST POSSIBLE DATE FOR EXECUTION	MAXIMUM TOTAL PRICE (IN EUROS)
			<i>dd/mm/yyyy</i>	
Planned starting date of work:				
Planned delivery date for work				
Date and Contractor's signature:				

To be filled in by the ECDC Project Manager

Date and signature:	
---------------------	--

ANNEX VII (B) Time reporting for Time & Means

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ECDC Intranet

ECDC Intranet | Time Management Home

- Users
- Projects
- Timesheet**
- Reports
- Settings

Save January, 2012

Project	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	Total
Day code:	WE	WD	WD	WD	WD	WD	WE	WE	WD	WD	WD	WD	WD	WE	WE	WD	WD	WD	WD	WD	WD	WE	WE	WD								
Total hours:	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

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Contract number: [complete]

Annex VIII – Declaration on confidentiality and interests

In accordance with Articles I.18, II.7 and II.8 of Framework Contract number [complete] (hereinafter referred to as “the FWC”) signed between the European Centre for Disease Prevention and Control (“ECDC”) and [complete] (hereinafter referred to as “the contractor”), the undersigning personnel undertakes:

1. To treat in the strictest confidence and not make use of or divulge to a third party any information or documents which are linked to performance of the FWC and to continue to be bound by this undertaking after completion of the tasks entrusted to me under the FWC, or after the suspension, termination or expiry of the FWC;
2. I will use said information for the sole purpose of carrying out the duties established under the Contract. I undertake not to copy, replicate or reproduce the information without the prior written consent of ECDC and not to allow individuals who are not involved in the performance of the Contract to access the information. I will take all reasonable care to prevent unauthorised access to information under my control.
3. Where the FWC requires the processing of personal data, to act only under the supervision of ECDC, in particular with regard to the purposes of the processing, the categories of data which may be processed, the recipients of the data, and the means by which the data subject may exercise his/herrights.
4. The personal data processed under the FWC shall be treated in accordance with the provisions on confidentiality and security within the meaning of Regulation (EC) No 45/2001 of 18 December 2000 on the protection of individuals with regard to the processing of personal data by ‘Community institutions’ and bodies and on the free movement of such data. Access to personal data shall be limited to those staff strictly requiring it for the performance, management and monitoring of the FWC.
5. To be bound to the contractor’s technical and organizational security measures adopted having regard to the risks inherent in the processing and to the nature of the personal data, information and documents (data) concerned and in particular to:
 - a) Prevent any unauthorised person from having access to computer systems processing data, and especially:
 - aa) unauthorized reading, copying, alteration or removal of storage media;
 - ab) unauthorised data input as well as any unauthorised disclosure, alteration or erasure of stored data;
 - ac) unauthorised persons from using data-processing systems by means of data transmission facilities;
 - b) Ensure that authorised users of a data-processing system can access only the 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 institution or body;
 - e) Ensure that, during communication of 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.
6. I will disclose any interests which could potentially pose a conflict with my duties in terms of the FWC. Should ECDC determine that a conflict exists, I shall comply with any measures taken to remove the conflict.
 7. I will use the administrative access right to systems responsibly, with care and only when unavoidably required in order to undertake activities and technical duties prescribed by the contract. I will maintain and protect the confidentiality of any information to which I may have access, regardless of the method by which I came into knowledge of it.
 8. I will strive to ensure the necessary integrity, reliability, and availability of the systems for which I am responsible. I will design and maintain each system in a manner to support the purpose of the system as its required by the ECDC.
 9. I will be honest in my professional dealings and forthcoming about my competence and the impact of my mistakes. I will seek assistance from others when required.
 10. I will lead by example, maintaining high ethical standards and professionalism in the performance of all my duties. I will support colleagues and co-workers in complying with the requirements of this Declaration.
 11. I, the undersigned, confirm that I have read, understood and accepted the conditions laid down above and I declare that I will respect the confidentiality of any document or information which is linked, directly or indirectly, to the execution of the tasks under the FWC. I will not divulge to third parties or use for my own benefit or that of any third party any document or information not available publicly, even after completion of the tasks related to the FWC, or after the suspension, termination or expiry of the FWC.

Contractor's personnel name:

Function:

Signature:

Date and place:

Contract number: [complete]

Annex IX – Data Protection Agreement

Data Protection Agreement

between

**The European Centre for Disease Prevention and Control, Granits
väg 8, 171 65 Solna, Sweden**

hereinafter “data exporter”

and

[INSERT CONTRACTOR NAME]

hereinafter “data importer”

each a “party”; together “the parties”.

**Whereas the above stated parties have entered into [INSERT DETAILS OF FWC]
and hereby agree as follows:**

Definitions

For the purposes of the clauses:

- a) “personal data”, “special categories of data/sensitive data”, “process/processing”, “controller”, “processor”, “data subject” and “supervisory authority/authority” shall have the same meaning as in Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (hereinafter, “the Directive”) and the equivalent Regulation (EC) 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 (hereinafter, “the Regulation”).
 - b) As the Directive is due to be repealed, all references to it shall be replaced by Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (“the GDPR”), upon its coming into force on 25 May 2018. The same applies to the legislation (“the new Regulation”) due to repeal the Regulation;
 - c) “the data exporter” shall mean the controller who transfers the personal data;
 - d) “the data importer” shall mean the controller who agrees to receive from the data exporter personal data for further processing in accordance with the terms of these clauses;
 - e) “the authority” shall mean the European Data Protection Supervisor
- Data processing principles are specified in Annex A.

Contract number: [complete]

- The details of the transfer are specified in Annex B.
- Technical and security measures to be implemented in order to ensure the security of the personal data are specified in Annex C.

All annexes form an integral part of these clauses.

I. Obligations of the data exporter

The data exporter warrants and undertakes that:

- a) The personal data have been collected, processed and transferred in accordance with the laws applicable to the data exporter.
- b) It has used reasonable efforts to determine that the data importer is able to satisfy its legal obligations under these clauses.
- c) It will respond to enquiries from data subjects and the authority concerning processing of the personal data by the data importer, unless the parties have agreed that the data importer will so respond, in which case the data exporter will still respond to the extent reasonably possible and with the information reasonably available to it if the data importer is unwilling or unable to respond. Responses will be made within a reasonable time.
- d) It will make available, upon request, a copy of the clauses to data subjects who are third party beneficiaries under clause III, unless the clauses contain confidential information, in which case it may remove such information. Where information is removed, the data exporter shall inform data subjects in writing of the reason for removal and of their right to draw the removal to the attention of the authority. However, the data exporter shall abide by a decision of the authority regarding access to the full text of the clauses by data subjects, as long as data subjects have agreed to respect the confidentiality of the confidential information removed. The data exporter shall also provide a copy of the clauses to the authority where required.

II. Obligations of the data importer

The data importer warrants and undertakes that:

- a) In accordance with Annex C, it will have in place appropriate technical and organisational measures to protect the personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and which provide a level of security appropriate to the risk represented by the processing and the nature of the data to be protected.
- b) It will have in place procedures so that any third party it authorises to have access to the personal data, including processors, will respect and maintain the confidentiality and security of the personal data. This will be ensured through application of Binding Corporate Rules and/or standard contractual clauses following the model provided by the European Commission (Commission Decision C (2010) 593). Any person acting under the authority of the data importer, including a data processor, shall be obligated to sign a confidentiality declaration in accordance with [INSERT DETAILS OF FWC] and to process the personal data only on instructions from the data importer. This provision does not apply to persons authorised or required by law or regulation to have access to the personal data.
- c) It has no reason to believe, at the time of entering into these clauses, in the existence of any local laws that would have a substantial adverse effect on the guarantees provided for under these clauses, and it will inform the data exporter

(which will pass such notification on to the authority where required) if it becomes aware of any such laws.

- d) It will process the personal data for purposes described in Annex B, and has the legal authority to give the warranties and fulfil the undertakings set out in these clauses.
- e) It will identify to the data exporter a contact point within its organisation authorised to respond to enquiries concerning processing of the personal data, and will cooperate in good faith with the data exporter, the data subject and the authority concerning all such enquiries within a reasonable time.
- f) At the request of the data exporter, it will provide the data exporter with evidence of financial resources sufficient to fulfil its responsibilities under clause III (which may include insurance coverage).
- g) Upon reasonable request of the data exporter, it will submit its data processing facilities, data files and documentation needed for processing to reviewing, auditing and/or certifying by the data exporter (or any independent or impartial inspection agents or auditors, selected by the data exporter and not reasonably objected to by the data importer) to ascertain compliance with the warranties and undertakings in these clauses, with reasonable notice and during regular business hours. The request will be subject to any necessary consent or approval from a regulatory or supervisory authority within the country of the data importer, which consent or approval the data importer will attempt to obtain in a timely fashion.
- h) It will process the personal data in accordance with the Directive, the GDPR and the data processing principles set forth in Annex A.
- i) It will not disclose or transfer the personal data to a third party data controller located outside the European Economic Area (EEA) unless it obtains approval from the data exporter about the transfer and
 - i. the third party data controller processes the personal data in accordance with a Commission decision finding that a third country provides adequate protection, or
 - ii. the third party data controller becomes a signatory to these clauses or another data transfer agreement approved by a competent authority in the EU, or
 - iii. data subjects have been given the opportunity to object, after having been informed of the purposes of the transfer, the categories of recipients and the fact that the countries to which data is exported may have different data protection standards, or
 - iv. with regard to onward transfers of sensitive data, data subjects have given their unambiguous consent to the onward transfer.
- j) It will store personal data (including back-up storage) using data centres or similar facilities located within the territory of the European Economic Area

(“EEA”). Should a Cloud Computing solution be implemented, the data importer shall ensure that the relevant provider of these services is certified in accordance with a recognised certification scheme, such as the Cloud Certification Schemes List as published by ENISA at: <https://resilience.enisa.europa.eu/cloud-computing-certification> (or as published via a updated weblink on ENISA’s website.)

- k) It will notify the data exporter within twenty four (24) hours of detection, of any data security breach affecting the personal data, indicating which data was affected. The data importer (and any sub-processor) remains responsible for remedying the breach.
- l) The data importer shall ensure the portability of the data exporter’s data from its systems and any sub-processor system, to other providers of the data exporter’s choice within the timescale and in the format specified by the data exporter. The data importer shall ensure that the data exporter has access to the data during this period.
- m) Should the data importer cease its activities, the data exporter’s personal data shall be returned or transferred to a destination designated by the data exporter, without any undue delay, in an agreed format and without cost.
- n) The personal data shall be retained as described in the relevant section (Additional Information) of Annex B.

III. Liability and third party rights

- a) Each party shall be liable to the other parties for damages it causes by any breach of these clauses. Liability as between the parties is limited to actual damage suffered. Punitive damages (i.e. damages intended to punish a party for its outrageous conduct) are specifically excluded. Each party shall be liable to data subjects for damages it causes by any breach of third party rights under these clauses. This does not affect the liability of the data exporter under its data protection law.
- b) The parties agree that a data subject shall have the right to enforce as a third party beneficiary this clause and clauses I(a), I(c), I(d), II(a), II(b), II(d), II(e), II(h), II(i), II(j), II(k), III(a), V, VI(c) and VIII(a) against the data importer or the data exporter, for their respective breach of their contractual obligations, with regard to his personal data, and accept jurisdiction for this purpose in the data exporter’s country of establishment.
- c) In cases involving allegations of breach by the data importer, the data subject must first request the data exporter to take appropriate action to enforce his rights against the data importer; if the data exporter does not take such action within a reasonable period (which under normal circumstances would be one month), the data subject may then enforce his rights against the data importer directly. A data subject is entitled to proceed directly against a data exporter that has failed to use reasonable efforts to determine that the data importer is able to

satisfy its legal obligations under these clauses (the data exporter shall have the burden to prove that it took reasonable efforts).

IV. Law applicable to the clauses

These clauses shall be governed by the laws of Sweden.

V. Resolution of disputes with data subjects or the authority

- a) In the event of a dispute or claim brought by a data subject or the authority concerning the processing of the personal data against either or both of the parties, the parties will inform each other about any such disputes or claims, and will cooperate with a view to settling them amicably in a timely fashion.
- b) The parties agree to respond to any generally available non-binding mediation procedure initiated by a data subject or by the authority. If they do participate in the proceedings, the parties may elect to do so remotely (such as by telephone or other electronic means). The parties also agree to consider participating in any other arbitration, mediation or other dispute resolution proceedings developed for data protection disputes.
- c) Each party shall abide by a decision of a competent court of the data exporter's country of establishment or of the Court of Justice of the European Union, or of the authority, which is final and against which no further appeal is possible.

VI. Termination

- a) In the event that the data importer is in breach of its obligations under these clauses, then the data exporter may temporarily suspend the transfer of personal data to the data importer until the breach is repaired or this agreement is terminated.
- b) In the event that:
 - i. the transfer of personal data to the data importer has been temporarily suspended by the data exporter for longer than one month pursuant to paragraph (a);
 - ii. compliance by the data importer with these clauses would put it in breach of its legal or regulatory obligations in the country of import;
 - iii. the data importer is in substantial or persistent breach of any warranties or undertakings given by it under these clauses;
 - iv. a final decision against which no further appeal is possible of a competent court of the data exporter's country of establishment or the Court of Justice of the European Union or of the authority rules that there has been a breach of the clauses by the data importer or the data exporter; or
 - v. a petition is presented for the administration or winding up of the data importer, whether in its personal or business capacity, which petition is not dismissed within the applicable period for such dismissal under applicable law; a winding up order is made; a receiver is appointed over

any of its assets; a trustee in bankruptcy is appointed, if the data importer is an individual; a company voluntary arrangement is commenced by it; or any equivalent event in any jurisdiction occurs

then the data exporter, without prejudice to any other rights which it may have against the data importer, shall be entitled to terminate these clauses, in which case the authority shall be informed where required. In cases covered by (i), (ii), or (iv) above the data importer may also terminate these clauses.

- c) The parties agree that the termination of these clauses does not exempt them from the obligations and/or conditions under the clauses as regards the processing of the personal data transferred.

VII. Description of the Transfer

The details of the transfer and of the personal data are specified in Annex B. The parties may execute additional annexes to cover additional transfers, which will be submitted to the authority where required.

Dated:

FOR DATA IMPORTER

FOR DATA EXPORTER

.....

.....

.....

.....

ANNEX A

DATA PROCESSING PRINCIPLES

1. Purpose limitation: Personal data may be processed and subsequently used or further communicated only for purposes described in Annex B or subsequently authorised by the data subject.
2. Data quality and proportionality: Personal data must be accurate and, where necessary, kept up to date. The personal data must be adequate, relevant and not excessive in relation to the purposes for which they are transferred and further processed.
3. Transparency: Data subjects must be provided with information necessary to ensure fair processing (such as information about the purposes of processing and about the transfer), unless such information has already been given by the data exporter.
4. Security and confidentiality: Technical and organisational security measures must be taken by the data controller that are appropriate to the risks, such as against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, presented by the processing. Any person acting under the authority of the data controller, including a processor, must not process the data except on instructions from the data controller.
5. Rights of access, rectification, deletion and objection: As provided in Article 12 of Directive 95/46/EC, and in the equivalent Regulation 45/2001, data subjects must, whether directly or via a third party, be provided with the personal information about them that an organisation holds, except for requests which are manifestly abusive, based on unreasonable intervals or their number or repetitive or systematic nature, or for which access need not be granted under the law of the country of the data exporter. Provided that the authority has given its prior approval, access need also not be granted when doing so would be likely to seriously harm the interests of the data importer or other organisations dealing with the data importer and such interests are not overridden by the interests for fundamental rights and freedoms of the data subject. The sources of the personal data need not be identified when this is not possible by reasonable efforts, or where the rights of persons other than the individual would be violated. Data subjects must be able to have the personal information about them rectified, amended, or deleted where it is inaccurate or processed against these principles. If there are compelling grounds to doubt the legitimacy of the request, the organisation may require further justifications before proceeding to rectification, amendment or deletion. Notification of any rectification, amendment or deletion to third parties to whom the data have been disclosed need not be made when this involves a disproportionate effort. A data subject must also be able to object to the processing of the personal data relating to him if there are compelling legitimate grounds relating to his particular situation. The burden of proof for any refusal rests on the data importer, and the data subject may always challenge a refusal before the authority.
6. Sensitive data: The data importer shall take such additional measures (e.g. relating to security) as are necessary to protect such sensitive data in accordance with its obligations under clause II.

ANNEX B

DESCRIPTION OF THE TRANSFER

Data subjects

Data subjects whose data shall be processed only in accordance with this agreement, are all ECDC staff (statutory and non-statutory) and all ECDC stakeholders who interact with ECDC, including EU institutions and agencies, international organisations, ECDC advisory forum and management board members, competent bodies, national contact points, functional contact bodies, external scientific experts, ECDC contractors and all other authorised users of ECDC systems.

Purposes of the transfer(s)

The transfer is made for the purpose of enabling the contractor to execute the IT infrastructure service provision and shall be used strictly for this purpose only. As a result of outsourcing of ECDC's ICT services, the contractor shall have access to all of ECDC's ICT infrastructure. Specific areas to highlight include:

- Management of the ECDC Identity management system and related data
- Processing of all IT communication traffic data, including phonecalls
- Management of the IT configuration management database
- Management of the service desk management tool and data

Categories of data

The personal data transferred concern the following categories of data:

- User identification data in the identity management system, user directories and the ECDC customer relationship system.
- All communication data including, telephone data, emails, applications use statistics, system logs.
- data in the ECDC backup and storage systems.
- Inventory data of ECDC assets linked to ECDC users and logging of the inventory and usage data.
- User data on service request and incidents.

Recipients

The personal data transferred may be disclosed only to the following recipients or categories of recipients: Contractors staff shall be granted access to systems and receipt of data on the basis of their contract for the provision of ICT services to ECDC. The extent of the personal data received by contractor personnel shall depend on their role and responsibilities and shall be limited to only that which is required in order for them to undertake their contractual activities. Higher level administrative access shall be limited to the lowest possible access rights.

Sensitive data (if appropriate)

The personal data transferred concern the following categories of sensitive data:

Within processing of IT communication data traffic, data from other data processing processes are supported and these may contain data relating to health processed by ECDC in accordance with its public health mandate, data on ECDC personnel (both regarding health and performance evaluations) as processed by the Human Resources function of the agency and data relating to security measures processed as part of agency operations.

Additional useful information (retention periods and other relevant information)

Access to the ECDC buildings by contractor's staff must be controlled in line with the ECDC physical access control rules:

According to ECDC/IP/86 on access to premises each member of contractor's staff working at the ECDC premises has to sign an individual non-disclosure declaration. After signature, each member of contractor's staff will be provided with a building access card. Everyone must visibly wear his/her identification card in the ECDC building. It is recommended not to wear it outside the building so as not to attract undue attention.

For access to the ECDCIT systems, staff must be controlled in line with the ECDC rules:

- Each member of contractor's staff working at ECDC must read, sign and comply the ECDC IT use policy (Annex 9)
- Each member of contractor's staff that will work on ECDC systems will sign a Declaration on confidentiality and security requirements (Annex 5)
- ECDC internal adaption of the EC(2006)3602 of 16 August 2006 of the Commission concerning the security of information systems used by the European Commission (Annex 10)

The following no disclosure rules must be respected:

- Any information, data and/or materials of whatever kind or nature that is transmitted to the contractor related to ECDC shall be considered as proprietary to ECDC, unless explicitly released as public information and must be treated as such by the Service Provider.
- The contractor shall neither use nor copy ECDC information for any purpose other than the execution of the service agreement and shall neither directly nor indirectly disclose or permit such information to be made available to any third party without prior written authorization from ECDC.
- Third parties may not access the ECDC internal processing systems unless formal contractual agreement is signed.
- The contractor undertakes that it will only disclose any information to those of its employees, subcontractors, or any other third parties on a "need to know basis". Prior to disclosing any information to any third party the contractor will:
 - inform that third party of the restrictions on the use and disclosure of ECDC information,
 - ensure that the third party is bound by a confidentiality undertaking.

The ECDC production systems are subject to strict change control management. All patches and service packs must be tested and validated before promotion to production. Automated updates must not be used as some updates may cause applications to fail. The decision to install changes in production is taken by the

system owner. Installation is typically performed after business hours; otherwise the service interruption procedure must be used in agreement with the ECDC domain manager.

Development, test and production software must run on different systems. Test and development software should run on either physically separated systems or different virtual partitions. The test system environment should emulate the production system environment as closely as possible. Production data including sensitive or private data should not be used to test applications software.

The contractor has the obligation to report all security incidents, software malfunctions, security weaknesses or threats to systems or services that their staff notice or is made aware of to the ECDC help desk or the ECDC LISO (Local information security officer).

ECDC has the right to monitor and examine any information stored on its information processing systems or communicated over its network or equipment. For several systems auditing is implemented to audit trail system changes and internet browsing.

All unnecessary system software, compilers, editors, and other development tools or system utilities are removed from the standardized ECDC production servers. All applications must be able to run on the standardised ECDC production servers configured to only offer functionality that is absolutely necessary for the provision of the envisaged service. Software must be controlled and checked to protect against possible covert channels and Trojan code.

In case of termination or upon expiry of the contract, all computer hardware, software and other equipment paid for or provided by ECDC shall be handed back by the contractor. This also applies to all documentation. The contractor will destroy any security critical information and piece of software that was provided by ECDC for the purpose of accessing its servers during the execution of the contract. This may include sensitive information, passwords, encryption keys, personal data of persons involved in the project, firewall and router configuration files, etc. The contractor will ensure that upon termination and exchange of personnel the access rights are revoked accordingly.

Contact points for data protection enquiries

Data importer:

[Full name]

[Function]

[Organisation name and address]

[Email address/Tel number]

Data exporter:

Stefan Fassbender

Head of ICT Infrastructure

ECDC, Granits väg 8, 171 65 Solna

[Email address/Tel number]

Annex C

Technical and security measures to be implemented in order to ensure the security of the personal data

The data importer agrees:

1. To undertake an Information Security Risk Assessment in order to identify security risks affecting personal data and to introduce the necessary organisational and security measures identified as necessary in order to mitigate these risks. Such measures shall be taken to prevent any unauthorised disclosure or access, accidental or unlawful destruction or accidental loss, or alteration, and to prevent all other unlawful forms of processing.
2. Where personal data are processed by automated means, additional measures shall be taken to:
 - a. Prevent any unauthorised access;
 - b. Prevent unauthorised removal of storage media;
 - c. Prevent any unauthorised memory inputs, disclosure, alteration or erasure;
 - d. Prevent unauthorised persons from using data-processing systems by means of data transmission facilities;
 - e. Ensure authorised users can access only that personal data their permissions refer to;
 - f. Record which personal data has been processed, at what times and by whom;
 - g. Ensure that during transmission, the personal data cannot be read, copied or erased without authorisation;
3. The contractor shall neither use nor copy ECDC information for any purpose other than the execution of the service agreement and shall neither directly nor indirectly disclose or permit such information to be made available to any third party without prior written authorization from ECDC. Examples of appropriate measures include but are not limited to:
 - a. Appointment of a security officer responsible for data security;
 - b. Development of a data security policy;
 - c. Allocation of data security responsibilities to staff and training on data protection;
 - d. Access controls such as passwords, encryption, encoding and other such mechanisms. Where appropriate, restrictions on physical access should also be implemented, including use of lockable filing cabinets and areas restricted to only those authorised personnel;
 - e. Remote access to ECDC is done only via the provided VPN and from a secure network (with adequate Virus and firewall protection)
 - f. Maintenance of a data breach register to record such incidents and remedial action taken, including notifying the data exporter;

Contract number: [complete]

- g. Regular audits of data security procedures to monitor and ensure necessary compliance;