



FRAMEWORK CONTRACT FOR SERVICES

NUMBER — **ECHA/2016/400**

1. The European Chemicals Agency (hereinafter referred to as "the Agency"), represented for the purposes of the signature of this framework contract by Mr [complete], Executive Director,

of the one part and

2. [Full official name]

[Official legal form]

[Statutory registration number or ID or passport number]

[Full official address]

[VAT registration number]

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

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

on the other part,

HAVE AGREED

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

Annex I – Specifications (reference No ECHA/2016/400 of xx/xx/2017 (Phase I) and xx/xx/xxxx (Phase II), including all annexes)

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

Annex III – Model for specific contracts

Annex IV – Daily subsistence allowances and accommodation flat-rates

Annex V – Model Performance/Retention money guarantee

Annex VI –

- (a) Declaration on the list of pre-existing rights
- (b) Statement of the contractor concerning rights to delivered results
- (c) Statement of creator (or right holder)

Annex VII – Signed Non-disclosure agreement

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

This FWC sets out:

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

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

TABLE OF CONTENT

FRAMEWORK CONTRACT FOR SERVICES	1
TABLE OF CONTENT.....	3
I. SPECIAL CONDITIONS.....	5
I.1. Order of priority of provisions.....	5
I.2. Subject matter	5
I.3. Entry into force and duration of the FWC	5
I.4. Appointment of the contractor and implementation of the FWC	6
I.5. Prices.....	6
I.6. Payment arrangements	8
I.7. Bank account.....	9
I.8. Communication details	9
I.9. Data controller	10
I.10. Exploitation of the results of the FWC	10
I.11. Termination by either party	11
I.12. Applicable law and settlement of disputes.....	12
I.13. Interinstitutional FWC	12
I.14. Service provided on the premises of the agency.....	12
I.15. Other special conditions.....	12
I.15.1. Quality and standards.....	12
I.16. Acceptance.....	13
I.17. Confidentiality and security	13
I.18. Insurance of contractor’s liability	14
I.19. Obligation of the contractor in case of termination of the FWC	14
I.20. Specific provision on collaboration with other parties during the Transition- out.....	15
I.21. Specific provisions on liquidated damages.....	16
I.22. Audit	16
I.23. Electronic Document Exchange.....	16
I.24. Processing of personal data under this FWC	16
I.25. Use of proprietary software	18
I.26. Intellectual property rights.....	18
I.27. Benchmarking.....	19
II. GENERAL CONDITIONS FOR THE FRAMEWORK CONTRACT FOR SERVICES	21
II.1. Definitions	21
II.2. Roles and responsibilities in the event of a joint tender.....	23
II.3. Severability.....	23
II.4. Provision of services.....	23

II.5. Communication between the parties.....	24
II.6. Liability	26
II.7. Conflict of interest and professional conflicting interests	27
II.8. Confidentiality	27
II.9. Processing of personal data	28
II.10. Subcontracting	29
II.11. Amendments	29
II.12. Assignment	29
II.13. Intellectual property rights.....	30
II.14. Force majeure	33
II.15. Liquidated damages.....	34
II.16. Reduction in price.....	35
II.17. Suspension of the implementation of the FWC.....	35
II.18. Termination of the FWC.....	36
II.19. Invoices, value added tax and e-invoicing.....	38
II.20. Price revision	38
II.21. Payments and guarantees.....	39
II.22. Reimbursements	41
II.23. Recovery.....	42
II.24. Checks and audits	43

I. SPECIAL CONDITIONS

I.1. ORDER OF PRIORITY OF PROVISIONS

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

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

Any reference to specific contracts applies also to order forms.

I.2. SUBJECT MATTER

The subject matter of the FWC is the provision of IT infrastructure services to the European Chemicals Agency, as described in Annex I.

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

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

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

I.3.3 The FWC is concluded for a period of 60 [sixty] months with effect from the date of its entry into force.

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

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

I.3.5 Renewal of the FWC

The FWC is renewed automatically 2 [two] times for 12 [twelve] months each, unless one of the parties receives formal notification to the contrary at least 9 [nine] months before the end of the ongoing duration. Renewal does not change or postpone any existing obligations.

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

I.4.1. Appointment of the contractor

The contracting authority appoints the contractor for a single FWC.

I.4.2. Period of provision of the services

The period for the provision of the services starts to run from the date on which the specific contract is signed by the last party, unless a different date is indicated in the specific contract.

I.4.3. Implementation of single FWC

Within a maximum of 10 [ten] working days of a request for services being sent by the Agency to the contractor, the Agency shall receive the completed specific offer back, duly signed and dated. This can happen by electronic means to the official email address as indicated in Art.I.8.

The contracting authority orders services by sending the contractor a specific contract in paper format and/or by e-mail.

Within a maximum of 2 [two] working days, the contractor must either:

- send the specific contract back to the contracting authority signed and dated; or
- send an explanation of why it cannot accept the order.

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

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 is 35 400 000 EUR [thirty-five million four hundred thousand Euro]. However, this does not bind the contracting authority to purchase for the maximum amount.

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

Nonetheless, specific contracts shall be established on the basis of the unit prices indicated in the Contractor's tender (Annex II to the FWC). However, the Agency may request the contractor to propose supplementary services of the same type as those listed in the Contractor's tender (Annex II). The supplementary elements may not depart from the essential terms fixed in the FWC and may be requested only if they are absolutely necessary for the execution of the request for services. Supplementary elements will be ordered on the basis of a quote provided by the contractor which shall require prior approval by the Agency.

I.5.2. Price revision index

Prices shall be fixed and not subject to revision for specific contracts placed during the first year of implementation of the Contract.

For consultancy services, price revision is determined by the formula set out in Article II.20 and using the trend in the harmonised indices of consumer prices (HICP) MUICP [Monetary union index of consumer prices'] published for the first time in Eurostat's monthly 'Data in Focus' publication available on the website: <http://www.ec.europa.eu/eurostat/>.

For the other services in the scope of the FWC, the Price list may be revised:

- where such revision is requested by one of the contracting parties by registered letter once a year enclosing a duly substantiated proposal and based on general costs trends on the relevant market. This price revision requires a mutual agreement. However, any increase may not exceed two percent (2%) per 1 [one] year, unless duly justified. If the Agency so requires, the Contractor must submit a report on the cost trends underlying the increase.
- where significant decrease in the costs of providing the services is achieved by the Contractor by continuous optimisation and cost reduction over time, as provided for in section 10 of Annex I to the FWC.

The Agency shall request the delivery of services on the basis of the prices in force on the date on which specific contracts are signed. Such prices might be revised following the price revision at FWC level, as indicated above and once both parties have agreed in writing.

I.5.3. Reimbursement of expenses

The Agency must reimburse the following in accordance with Article II.22:

- (a) travel, subsistence and accommodation expenses.

The daily subsistence allowance referred to in Article II.22.4 (d) and the accommodation flat-rate ceiling referred to in Article II.22.4(e) are as listed in Annex IV.

I.5.4. Innovation

When duly justified, to accommodate innovation with respect to new and/or existing services or technologies not available or immature on the market at the time of establishment of the FWC, or for them to be sourced or delivered in a different manner/modality, both parties can agree on the provision of those services or technologies under the FWC insofar they are technically similar to the ones covered by the Specifications of the FWC and do not render the Contract materially different.

The parties shall mutually agree the prices for such services and/or technologies to be provided under the FWC. The prices for the new services and/or technologies shall to the greatest extent possible be based on the prices for the same or similar services or technologies as laid down in the Price Catalogue included in Annex II to the FWC.

These new services or technologies will be ordered on the basis of a quote provided by the contractor, which shall require prior approval by the Agency.

I.6. PAYMENT ARRANGEMENTS

I.6.1. Pre-financing

Pre-financing is not applicable to this FWC.

I.6.2. Interim payment

1. The contractor (or leader in the case of a joint tender) may claim an interim payment in accordance with the relevant specific contract and in accordance with Article II.21.6.

The contractor (or leader in the case of a joint tender) must send an invoice in electronic format, unless requested in paper, 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;
- A relevant technical report or deliverable result or reference to tender specifications or specific contract;
- statements of reimbursable expenses in accordance with Article II.22.

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

3. If the Agency 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 10 [ten] working days to submit additional information or corrections or a new version of the documents if the Agency requires it.

4. The Agency 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 electronic format, unless requested in paper, 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;
- relevant final technical report or deliverable or reference to tender specifications or specific contract;
- statements of reimbursable expenses in accordance with Article II.22.

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

3. If the Agency 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 10 [ten] working days to submit additional information or corrections or a new version of the documents if the Agency requires it.

4. The Agency 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

A performance guarantee constituted by a bank guarantee in accordance with the conditions laid down in Article II.21.5 may be requested for the amount provided in the relevant specific contract.

I.6.5. Retention money guarantee

A retention money guarantee may be requested for an amount provided in the relevant specific contract and constituted by a corresponding deduction on each payment. At the request of the contractor, and subject to approval by the Agency, the deduction on payment may be replaced by a bank guarantee in accordance with the conditions laid down in Article II.21.5.

I.7. BANK ACCOUNT

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

Name of bank:

Full address of branch:

Exact denomination of account holder:

Full account number including bank codes:

IBAN code: [complete]

I.8. COMMUNICATION DETAILS

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

The Agency:

European Chemicals Agency
Directorate Information Systems
[Unit [complete]]
Annankatu 18
00120 Helsinki
Finland
E-mail: [insert functional mailbox]

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

[Full name]

[Function]

[Company name]

[Full official address]

E-mail: [complete]

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

I.9. DATA CONTROLLER

For the purpose of Article II.9, the data controller is the Agency. ECHA is the sole controller of the data processing and the contractor and its partners or subcontractors act as a processor, only under the instructions of the controller and cannot process the data further for their own purposes.

I.10. EXPLOITATION OF THE RESULTS OF THE FWC

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

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

- (a) use for its own purposes:
- making available to the staff of the Agency;
 - making available to the persons and entities working for the contracting authority or cooperating with it, including contractors, subcontractors whether legal or natural persons, Union institutions, agencies and bodies, Member States' institutions;
 - installing, uploading, processing;
 - arranging, compiling, combining, retrieving;
 - copying, reproducing in whole or in part and in unlimited number of copies.
- (b) distribution to the public in hard copies, in electronic or digital format, on the internet including social networks as a downloadable or non-downloadable file;
- (c) communication through press information services;
- (d) inclusion in widely accessible databases or indexes, such as via 'open access' or 'open data' portals, or similar repositories, whether freely accessible or accessible only upon subscription;
- (e) modifications by the Agency or by a third party in the name of the contracting authority, including:
- shortening;
 - summarising;
 - modifying the content;
 - making technical changes to the content (necessary correction of technical errors), adding new parts or functionalities, changing functionalities, providing third parties

with additional information concerning the *result* (e.g. source code) with a view to making modifications;

- addition of new elements, paragraphs, titles, leads, bolds, legend, table of content, summary, graphics, subtitles, sound;
- addition of metadata, for text and data-mining purposes; addition of right-management information; addition of technological protection measures;
- preparation in audio form, preparation as a presentation, animation, pictograms story, slide-show, public presentation;
- extracting a part or dividing into parts;
- translating, inserting subtitles, dubbing in different language versions:
 - English, French, German;
 - all official languages of EU;
 - languages used within EU;
 - languages of candidate countries.

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

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

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 Agency 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 Agency with a list of *pre-existing rights* as set out in Article II.13.4 together with the invoice for payment of the balance at the latest.

In addition, the contractor must provide the Agency with relevant and exhaustive evidence of the acquisition of all the necessary *pre-existing rights* together with a presentation of relevant *result*. To this effect, the contractor must provide [a statement in accordance with Annex VI (b)] [the relevant evidence listed in Article II.13.5 as appropriate or, failing that, third parties' statements in accordance with Annex VI (c)].

I.11. TERMINATION BY EITHER PARTY

Either party may terminate the FWC and/or the FWC and specific contracts by sending *formal notification* to the other party with 9 [nine] months' written notice for FWC and 9 [nine] months for specific contracts.

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 Finland.

I.12.2 The courts of Finland 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 AGENCY

If necessary for *performance of a specific contract*, the contracting authority may give the *personnel* of the contractor access to its premises by means of an access card. The access card remains the property of the Agency and must be returned to the Agency upon request, upon expiry or in cases where the application conditions are no longer met.

If the access card is not returned on the day it expires, the Agency 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

I.15.1. QUALITY AND STANDARDS

The Contractor shall provide the services in accordance with technical norms, standards and procedures based on best professional practice in the informatics field. With respect to contract management, the Contractor shall provide the services in accordance with ISO 9001 or equivalent. Quality standards may be revised in line with market developments. The Contractor warrants that software supplied or developed under the FWC will not fail to execute its programming instructions due to defects in materials and workmanship when properly installed and used on the device designated by the Contractor. It shall be devoid of any deliberate mechanism which leaves it under the Contractor's control after supply to the Agency. It shall meet the operating requirements, specifications and characteristics specified in the Contractor's documents or laid down in the FWC or specific contracts.

The software deliverables will be materially error free for a period of 6 [six] months after acceptance and after each installation of an upgrade or update. The warranty period is extended by the sum of the recovery times for all critical and major issues, where the Agency cannot use the software deliverable during the warranty period. After the warranty period, when requested, the Contractor shall, following best professional practices as provided for in this article, deliver software maintenance services for the period of execution of tasks under the FWC. Such service shall be subject to one or several specific contracts under this FWC.

Any deliverable provided by the Contractor under the FWC will be quality controlled by the Contractor, in the place of performance, before delivery. On the request of the Agency, the Contractor has to be in a position to show that the outcome of the quality control was positive.

The Contractor undertakes to comply with the above quality standards as well as with the customer satisfaction management and poor performance claim requirements as specified in Annex I. Compliance with the standards shall be monitored by the Agency. In the event of non-compliance with one or more of the standards over a sliding period of three [3] months, the Contractor shall submit an improvement plan. In the event of non-compliance with one or more of the standards for six [6] months, consecutive or not, over a sliding period of twelve [12] months, a service whose quality has proved substandard may be withdrawn from the FWC, or the FWC may be terminated where service quality is substandard, without prejudice to other contractual remedies that may be exercised by the Agency.

I.16. ACCEPTANCE

The acceptance procedure outlined in Annex I of the FWC shall apply to the services and deliverables.

Without prejudice to Article II.18, if the Agency does not accept the deliverables related to the performance of the tasks referred to in Article I.2 and foreseen in a specific contract, the contractor will be given a formal notice in writing with acknowledgement of receipt to comply within a reasonable period, specifying the nature of the alleged failure. After being given the opportunity to remedy the failure, if the Contractor fails to comply within the given period, the Agency can terminate the specific contract.

I.17. CONFIDENTIALITY AND SECURITY

I.17.1. The Contractor may only utilise the information contained in the material encountered during the duration of the FWC and any specific contract (including any data on any Agency network) for the purposes identified in the FWC, in accordance with the terms and conditions of the Non-Disclosure Agreement in Annex VII.

I.17.2. The Contractor shall take all appropriate steps for each deliverable, provided under the FWC, in order to ensure that the data and the media upon which they are stored are safely preserved in accordance with Annex I. The services and deliverables provided shall not contain any mechanism (for example viruses) which could compromise their proper operation and that of other services, deliverable and products. The cost of repairing the services, deliverable(s) and products and any resulting damage for the Agency caused by such a mechanism shall be borne by the Contractor in conformity with Article II.6.

I.17.3. The Contractor undertakes to inform the Agency in writing as soon as he has any knowledge of faults in his products that endanger the security of the configurations of which they form a part. The Contractor shall immediately take any measures necessary to restore the security of the configurations and correct the faults in accordance with Annex I.

I.17.4. The Contractor shall provide the services in accordance with Annex I to the FWC and with technical norms, standards and procedures based on best professional practice in the field of information security. The Contractor may be requested by ECHA to put in place systems or procedures, such that the Contractor can securely remotely access ECHA's systems. The Contractor undertakes to put in place such systems and procedures

in accordance with ISO27001 (or equivalent standards or measures). Failure to meet the relevant security requirements of Annex I of the FWC may be considered by the Agency as grounds for termination of the FWC, without prejudice to other contractual remedies that may be exercised by the Agency.

I.17.5. All service delivery facilities used by the Contractor for providing services to ECHA under the Framework Contract must be located in EU territory. The Contractor shall ensure, by having appropriate controls in place, that the Contractor's staff never accesses ECHA data or systems from outside this territory when delivering services to ECHA.

I.18. INSURANCE OF CONTRACTOR'S LIABILITY

I.18.1. The contractor shall be insured against all claims relating to its liabilities and activities under the FWC with a reputable insurance company. This insurance cover should be for a sum not less than 5 million EUR per claim, and for an aggregate value of not less than 10 million EUR for any 12 months period. In accordance with the terms of the insurance policy, compensation shall be paid to the Agency directly or to the contractor that shall have an obligation to forward the compensation to the Agency in full. The contractor's insurance obligations shall in no way limit or diminish its indemnification obligations or liability under the FWC.

I.18.2. The contractor shall provide the required insurance coverage either by utilising its existing insurance policies or by acquiring new insurance policies for the purposes of this FWC only. The contractor shall provide proof of insurance cover upon request by the Agency, within thirty [30] days of the signature of the FWC. A copy of the contract of insurance shall be given to the Agency without charge. The Agency may consider the Contractor's failure to provide proof of insurance as sufficient grounds to terminate the FWC, without prejudice to other contractual remedies that may be exercised by the Agency.

I.18.3. Before the implementation of any change in the terms of the insurance contract referred to in paragraph 2 of this article, of its termination by the insurer, of its replacement by a new contract, of a change in insurer, or of any other change materially affecting the contract referred to in paragraph 2 of this article, the contractor shall notify the Agency in advance in writing and request its consent. The Agency may offer its comments and may withhold its consent should it find that the change may result in the absence of the necessary insurance cover, as described in paragraph 1. In the event of the contractor's failing to find insurance cover meeting the criteria of paragraph 1 of this article, the Agency may consider the Contractor's failure to provide the necessary insurance cover as sufficient grounds to terminate the FWC, without prejudice to other contractual remedies that may be exercised by the Agency.

I.18.4. Should the contractor fail to notify the Agency of any change in accordance with paragraph 3 of this article, the Agency may consider the Contractor's failure to provide the necessary insurance cover as sufficient grounds to terminate the FWC, without prejudice to other contractual remedies that may be exercised by the Agency.

I.19. OBLIGATION OF THE CONTRACTOR IN CASE OF TERMINATION OF THE FWC

In case of termination of the FWC, the Contractor shall hand over the following items:

I.19.1. Where the Agency is the rightful owner of the deliverables, the Contractor shall hand over within 10 working days, or as otherwise agreed by the parties, the specifications, *results*, sources and documentation, including access keys.

I.19.2. Without prejudice to Article II.18.4, in case of termination of the FWC or a specific contract for any reason whatsoever, the Agency is entitled to continue to use the services with the same rights and obligations during a Transition out period (as defined below and in Annex I) as during the term of the FWC and/or specific contract, and the Contractor shall upon request of the Agency:

- (1) Continue the provision of services on the same terms and conditions as immediately prior to the termination; and/or
- (2) Provide support and termination assistance as required by the Agency in order to transfer the services to a third party service provider.

Activities of the Contractor referred to above in sub-sections 1 and 2 are jointly referred to as "Transition out".

I.19.3. The Termination Assistance comprises all assistance and support, including provision of information, materials, documentation and services by the Contractor, necessary for the smooth and cost-efficient execution of the Transition out to the effect that the Agency is able to assign services to a third party service provider without any delay or interruption or adverse effect on the quality or the services or otherwise.

I.19.4. The Transition out shall be provided until completing its successful execution, which must take place within the time frame indicated in the corresponding specific contracts and be completed no later than twelve (12) months after the termination of the FWC and/or specific contracts. The Agency has the right to terminate the Termination Assistance in part or in whole by providing two (2) months prior notice to the Contractor.

I.19.5. The Contractor is entitled to charge for:

- (1) the continued provision of services during the "Transition out" on the same basis and charges, as stipulated in the FWC, as immediately prior to the termination;
- (2) additional Termination Assistance other than the provision of ongoing services as stipulated in the FWC.

I.19.6. However, in case of termination of the FWC and/or a specific contract by the Agency due to the circumstances described in II.18.1, the Transition out, except the continued provision of services, shall be provided free of charge.

I.20. SPECIFIC PROVISION ON COLLABORATION WITH OTHER PARTIES DURING THE TRANSITION-OUT

At the end of the contractual period, and as an integral part of the services provision, the contractor shall, actively collaborate with other parties during the migration period to ensure the smooth transition out of the services, also by attending joint-meetings at ECHA premises and / or premises of 3rd parties (for instance, incumbent or new contractor's premises) with staff from ECHA and/or staff from a 3rd party, where the Contractor is explaining / presenting / performing knowledge transfer to ECHA and/or staff from a 3rd party on any service in scope of this FWC, by providing complete information and documentation on the services, with the future service provider and with the Agency, in order to minimise the costs and to guarantee the continuity of the services. This constitutes part of the handover/knowledge transfer.

I.21. SPECIFIC PROVISIONS ON LIQUIDATED DAMAGES

Without prejudice to ECHA's right to impose liquidated damages as stipulated in Article II.15 of the General Conditions, the penalties specified in the provisions of the Service Level Agreement in Annex I regarding the contractor's failure to deliver within the parameters set by the FWC shall be applied in the first place.

I.22. AUDIT

The Agency will access and use the data in support of the investigations, operations and analytical work which are aimed in particular to protect the financial interests of the EU.

The Agency may redistribute the results of the analyses based on the data, reports or extracts from the data to any person or body cooperating with the Commission (OLAF) in its field of competences, in particular with regard to the protection of the EU's financial interests in electronic, paper or other format and state the source of the data. There will be no redistribution for commercial purposes.

The Court of Auditors and the European Data Protection Supervisor have the same rights as the contracting authority, particularly right of access, for the purpose of checks and audits.

I.23. ELECTRONIC DOCUMENT EXCHANGE

It is intended that the document exchange (e.g. invoices, deliverables, order forms/specific contracts, etc.) between the Agency and the Contractor will have to be carried out via electronic means.

At the request of the Agency, the use of such electronic applications will become mandatory, upon mutual agreement, during the performance of the contract, at no additional cost for the Agency.

I.24. PROCESSING OF PERSONAL DATA UNDER THIS FWC

I.24.1. 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 or any legal statute that may replace it. 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.

I.24.2. The contractor has the right to access its personal data and the right to rectify any such data. Under certain conditions, a right to erasure, restriction, objection and/or data portability also applies. The contractor should address any queries concerning the processing of its personal data to the data controller.

I.24.3. The contractor has right of recourse at any time to the European Data Protection Supervisor.

I.24.4. 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, the means by which the data subject may exercise its rights and with regard to transfers of personal data to a third country or an international organisation, unless required to do so by Union or Member State law to which the processor is subject.

I.24.5. The contractor must grant *personnel* access to the data to the extent strictly necessary for the implementation, management and monitoring of the FWC.

I.24.6. 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.

I.24.7. The contractor may only store (incl. back-up storage) and treat personal data using datacentres or similar premises, located on the territory of the European Union member states. Every additional data storage and/or treatment location within the European Union member states envisaged during the period of implementation of the contract, must be communicated in advance to the Agency. Data 'at rest' and data in transit cannot be routed, transferred, nor accessed by the contractor to/from outside these countries.

I.24.8. The contractor shall have measures and system tools in place to ensure that the data subjects can exercise their right of access, rectification, blocking and erasure in an easy manner. Taking into account the nature of the processing, they shall assist the controller by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the controller's obligation to respond to requests for exercising the data subject's rights.

I.24.9. The contractor shall maintain a record of all categories of personal data processing activities carried out on behalf of the controller.

I.24.10. Without prejudice to Art. I.17.3, the contractor shall inform the Agency without undue delay, and at the very latest within twenty-four (24) hours of detection, of any information security incident affecting personal data ("personal data breach"), indicating which data was or potentially was accessed / modified / copied / made available to non-authorised persons. The contractor remains responsible for such personal data breach and is subject to damage repair and penalties except if the origin is due to a fault of the Agency or one or more of its staff. In addition, the contractor is required to implement internally appropriate mechanisms to deal promptly and effectively with personal data breaches and security incidents.

I.24.11. The Agency's data is protected by the Protocol of Privileges & Immunities applicable to the EU Institutions and Bodies, which means that they are inviolable and shall

be exempt from search, requisition, confiscation or expropriation by national law enforcement bodies. In its capacity of controller, the Agency must be notified of any request to access the data without undue delay and in any event before the request is granted.

I.25. USE OF PROPRIETARY SOFTWARE

I.25.1. In order to provide the services, the Contractor may, subject to Annex I, use proprietary software of the Contractor or of a third party provided that it has a valid license or other right to use such software.

I.25.2. Unless otherwise specified in Annex I or in the specific contracts, the Contractor is responsible for acquiring all software licences needed in connection with the provision of the services.

I.26. INTELLECTUAL PROPERTY RIGHTS

I.26.1. The Contractor undertakes:

- not to allow any other party than the Contractor to copy any software owned by or licensed to the Agency without prior written authorisation from the Agency;
- to use such software exclusively in the context of this Contract;
- to protect the Agency against all third-party actions for breach of copyright or other intellectual property rights which might arise out of this Contract, as set out in Article I.26.2.

I.26.2. The Contractor shall at its own cost defend, indemnify and hold the Agency harmless against all claims, suits, actions and proceedings which are attributable to or based on the infringement or alleged infringement of intellectual property right or other right of a third party by the Agency's use of the services or utilization of any license, intellectual property right or other rights relating to the services under the Contract ("Claims"), as follows:

- When in order to provide the services, the Contractor uses proprietary software of a third party without a valid license or other right to use such software.
- When in order to provide the services, the Contractor uses ECHA's owned licences and the Contractor has advised the Agency in an inappropriate use of such licences or has implemented the services contrary to agreement between both parties.

The Contractor shall pay a) any and all compensation, liabilities, damages, costs and expenses relating to the Claims, as well as b) compensate to the Agency reasonable legal costs and other reasonable out-of-the-pocket expenses incurred by the Agency as a result of such Claims.

The limitations of liability expressed in Art. II.6 shall not apply to the Contractor's intellectual property infringement indemnification obligations under the Contract.

I.26.3. The Agency and the Contractor shall exchange all information on any industrial property right, copyright or other intellectual property right that could impede the performance of the Contract.

I.27. BENCHMARKING

The Agency may undertake a Benchmarking of the levels and the charges of the Services provided under this Contract by comparison with similar Services provided by outsourcing vendors and/or in-house IT service providers and suppliers. The results of such Benchmarking shall be available in identical form to both the Agency and the Contractor.

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

- the scope of the Services and supplies being provided by the Contractor is taken into consideration;
- the comparison group consists of at least four enterprises to ensure statistical significance
- in case no such comparison group exists the relevant industry best practices or markets with similar requirements shall be taken into account;
- the relevant comparison data must be guaranteed

The work of the Benchmarking should in principle not exceed four (4) months.

For the first Benchmarking exercise, the comparison group shall be defined in a document entitled "Comparison Group Definition". The Agency reserves the right to change the comparison group algorithm to reflect any changes in its business from time to time.

The Benchmarking shall be a qualified and objective third party selected by the Agency. The Agency shall ensure that no conflict of interest exists on the side of the Benchmarking. The Agency will pay all of its own costs and the Benchmarking's costs during the Benchmarking. The Contractor will pay all of its own costs.

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

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

The Agency and the Contractor will be free to suggest changes in Benchmarking parameters as the Services evolve over the term of this Framework contract.

The Benchmarking shall treat as confidential all data provided by the Agency and the Contractor, and will return all material and media once the Benchmarking is completed.

If a Benchmarking reveals that the level of a Service does not reach the comparison group's service levels or the level based on the relevant industry best practices or of markets with similar requirements, the Contractor shall immediately prepare an action plan, which will specify all actions necessary to rectify the deviations. The full and measurable implementation of the action plan shall in no circumstances exceed one (1) year. If the Contractor fails to fully implement the action plan, the Agency may claim damages.

If a Benchmarking reveals that charges are higher than the comparison group's charges, the reduction of the prices shall be applicable on the 30th day from the date on which the results of the Benchmarking were delivered to the Parties. The reduction shall not have retroactive effect and shall be only valid for the specific contracts concluded after this date.

SIGNATURES

For the contractor,

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

Signature: _____

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

For the Agency,

[complete]

Executive Director

Signature: _____

Done at [*place*], [*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 Agency'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 Agency'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 Agency'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 Agency 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/EU¹.

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

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

II.4.6 The contractor must not present itself as a representative of the Agency 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 Agency. The contractor must inform its *personnel* that:

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

¹ OJ L 94 of 28.03.2014, p. 65

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 Agency'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 Agency.

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 Agency 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 Agency is deemed to have been received by the Agency 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 Agency 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 Agency 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 Agency.

4. In the event that an e-document is dispatched using a direct connection established between the parties' *back offices*, the e-document is deemed to have been legally issued or sent when its status is 'received' as defined in the *interface control document*.
5. When using the *supplier portal*, the contractor (or leader in the case of a joint tender) can download the PDF or XML message for each e-document for one year after submission. After this period, copies of the e-documents are no longer available for automatic download from the *supplier portal*.

II.5.5. Authorised persons in e-PRIOR

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

II.6.3 The contractor is liable for any loss or damage caused to the Agency 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 Agency in connection with the *implementation of the FWC*, including any action for alleged breach of intellectual property rights, the contractor must assist the Agency in the legal proceedings, including by intervening in support of the Agency upon request. If the Agency'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 Agency for the *implementation of the FWC*.

II.6.6 The Agency 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 Agency.

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 Agency 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 Agency 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 Agency 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 Agency 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 Agency, 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 or any legal statute that may replace it. 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. Under certain conditions, a right to erasure, restriction, objection and/or data portability also applies. 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, the means by which the data subject may exercise its rights and with regard to transfers of personal data to a third country or an international organisation, unless required to do so by Union or Member State law to which the processor is subject.

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 Agency;
- (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 Agency.
- II.10.2** Even if the Agency 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 Agency under this FWC, particularly those under Articles II.8, II.13 and II.24.
- II.10.4** The Agency 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 Agency. In such cases, the contractor must provide the Agency 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 Agency.

II.13. INTELLECTUAL PROPERTY RIGHTS

II.13.1. Ownership of the rights in the results

The Agency 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 Agency may exploit and use the acquired rights as stipulated in this FWC. The Agency acquires all the rights from the moment the Agency 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 Agency.

The payment of the price includes any fees payable to the contractor about the acquisition of ownership of rights by the Agency 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 Agency 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 Agency, 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 Agency from the moment the *results* are delivered and approved by the Agency.

The licensing of *pre-existing rights* to the Agency 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 Agency, 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 Agency, the Agency 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 Agency 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 Agency, subject to their signing of adequate confidentiality undertakings where necessary;
- (k) where the *results* are documents:
 - (i) the right to authorise the reuse of the documents in conformity with the Commission Decision of 12 December 2011 on the reuse of Commission documents (2011/833/EU), to the extent it is applicable and the documents fall within its scope and are not excluded by any of its provisions; for the sake of this provision, 'reuse' and 'document' have the meaning given to it by this Decision;
 - (ii) the right to store and archive the *results* in line with the document management rules applicable to the Agency, including digitisation or converting the format for preservation or new use purposes;
- (l) where the *results* are or incorporate software, concerning source code, object code and, where relevant, documentation, preparatory materials and manuals, in addition to the other rights mentioned in this Article:
 - (i) end-user rights, for all uses as it *results* from this FWC and the intention of the parties, both by the Agency or by subcontractors acting on behalf of the Agency;
 - (ii) the rights to decompile or disassemble the software;
- (m) to the extent that the contractor may invoke moral rights, the right for the Agency, 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 Agency 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 Agency 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 Agency. In such case, the contractor will have to clearly inform the Agency before making such choice and the Agency 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 Agency 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 Agency 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 Agency, 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 Agency. The Agency 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 Agency;
- (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 Agency. 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 — Agency. All rights reserved. Certain parts are licensed under conditions to the EU', or with any other equivalent disclaimer as the Agency 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 Agency funding and disclaimer

When making use of the *results*, the contractor must declare that they have been produced under a contract with the Agency and that the opinions expressed are those of the contractor only and do not represent the Agency's official position. The Agency 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 Agency 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 Agency 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 Agency, 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 Agency'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 Agency may reduce or recover payments proportionally to the seriousness of the unperformed obligations or low quality delivery. This includes in particular cases where the Agency 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 Agency 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 Agency, 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 Agency'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 Agency 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 Agency as soon as it is able to resume *performance of the specific contract*, unless the Agency has already terminated the FWC or the specific contract.

II.17.2. Suspension by the Agency

The Agency 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 Agency 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 Agency 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 Agency

The Agency 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 Agency 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 Regulation²;
- (e) if the contractor or any *related person* is subject to any of the situations provided for in points (c) to (f) of Article 106(1) or to Article 106(2) of the Financial Regulation;
- (f) if the procedure for awarding the 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

² 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>

- that the tender specifications are no longer fulfilled or result in unequal treatment of tenderers or contractors;
- (k) if the needs of the Agency 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 Agency has committed *substantial errors, irregularities or fraud* in the procedure for awarding the FWC or the *implementation of the FWC*;
- (b) the Agency 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 Agency and regardless of the grounds for termination, the contractor must provide all necessary assistance, including information, documents and files, to allow the Agency 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 Agency 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 Agency 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 Agency 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 Agency 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.

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 Agency 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 Agency for verification.

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

The price revision is calculated using the following formula:

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

where: Pr = revised price;

Po = price in the tender;

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

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

II.21. PAYMENTS AND GUARANTEES

II.21.1. Date of payment

Payments are deemed to be effected on the date when they are debited to the Agency'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 Agency 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 Agency 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 Agency or, at the request of the contractor and with the agreement of the Agency, by a third party;
- (b) the guarantor stands as first-call guarantor and does not require the Agency 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 Agency must release the guarantee within the following month.

Performance guarantees cover compliance with substantial contractual obligations until the Agency has given its final approval for the service. The performance guarantee must not exceed 10 % of the total price of the specific contract. The Agency 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 Agency. The retention money guarantee must not exceed 10 % of the total price of the specific contract. The Agency must release the guarantee after the expiry of the contract liability period as provided for in the specific contract.

The Agency 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 Agency 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 Agency 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 Agency has observations on the documents or deliverables submitted with the invoice.

The Agency 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 Agency 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 Agency 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 Agency 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 Agency 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 Agency 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 Agency 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 Agency reimburses travel outside Union territory if it has given its prior written approval for the expenses.

II.22.4 The Agency 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 Agency 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 Agency the amount in question.

II.23.2. Recovery procedure

Before recovery, the Agency 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 Agency 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 Agency may, after informing the contractor in writing, recover the amounts due:

- (a) by offsetting them against any amounts owed to the contractor by the Union or by the European Atomic Energy Community;
- (b) by calling in a financial guarantee if the contractor has submitted one to the Agency;
- (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 Agency 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 Agency 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 Agency 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 Agency 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 Agency and the European Anti-Fraud Office may check or require an audit on the *implementation of the FWC*. This may be carried out either by OLAF's own staff or by any other outside body authorised to do so on its behalf.

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

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

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

II.24.3 The contractor must grant the Agency's staff and outside personnel authorised by the Agency 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 Agency 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 Agency may recover all or part of the payments made in accordance with Article II.23 and may take any other measures which it considers necessary.

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

The investigations may be carried out at any moment during the provision of the services and up to five years 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 Agency, particularly right of access, for the purpose of checks and audits.