European Centre for the Development of Vocational Training

FINANCE AND PROCUREMENT

# FRAMEWORK CONTRACT FOR SERVICES

NUMBER — **[***complete***]**

1. The European Union ('the Union'), represented by the European Centre for the Development of Vocational Training – "Cedefop" ('the contracting authority'), represented for the purposes of signing this framework contract by [*forename, surname, function, department of authorising officer*],

of the one part and

2. [*Full official name*]

[*Official legal form*]

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

[*Full official address*]

[*VAT registration number*]

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

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

([collectively] 'the contractor'), represented for the purposes of the signature of this 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 –** Tender specifications (reference No [*complete*] of [*insert date*])

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

**Annex III –** Model for order forms

**Annex IV** – Rules concerning the reimbursement of the travel, subsistence and miscellaneous expenses of experts, from outside Cedefop, invited to meetings

**Annex V** – Undertaking of Confidentiality and Non-Disclosure for the Contractor and its staff

[*Insert other annexes*]

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 ..... 7
I.7. Bank account ..... 8
I.8. Communication details ..... 8
I.9. Data controller ..... 9
I.10. Exploitation of the results of the FWC ..... 9
I.11. Termination by either party ..... 9
I.12. Applicable law and settlement of disputes ..... 9
I.13. Interinstitutional FWC – NOT APPLICABLE ..... 9
I.14. Service provided on the premises of the contracting authority ..... 9
I.15. Other special conditions ..... 10
II. GENERAL CONDITIONS FOR THE FRAMEWORK CONTRACT FOR SERVICES ..... 11
II.1. Definitions ..... 11
II.2. Roles and responsibilities in the event of a joint tender ..... 13
II.3. Severability ..... 13
II.4. Provision of services ..... 13
II.5. Communication between the parties ..... 14
II.6. Liability ..... 16
II.7. Conflict of interest and professional conflicting interests ..... 17
II.8. Confidentiality ..... 18
II.9. Processing of personal data ..... 18
II.10. Subcontracting ..... 20
II.11. Amendments ..... 20
II.12. Assignment ..... 20
II.13. Intellectual property rights ..... 20
II.14. Force majeure ..... 24
II.15. Liquidated damages ..... 25
II.16. Reduction in price ..... 26
II.17. Suspension of the implementation of the FWC ..... 26
II.18. Termination of the FWC ..... 27
II.19. Invoices, value added tax and e-invoicing ..... 29

II.20. Price revision ..... 30
II.21. Payments and guarantees ..... 31
II.22. Reimbursements ..... 33
II.23. Recovery ..... 34
II.24. Checks and audits ..... 35
ANNEX I - TENDER SPECIFICATIONS ..... 37
ANNEX II – CONTRACTOR'S TENDER ..... 38
ANNEX III – ORDER FORM ..... 39

# 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 (Annex III).
(c) The provisions set out in the order form (Annex III) take precedence over those in the other annexes.
(d) The provisions set out in the tender specifications (Annex I) take precedence over those in the tender (Annex II).
(e) The provisions set out in the FWC take precedence over those in the order forms.

**Any reference to specific contracts applies also to order forms.**

## I.2. SUBJECT MATTER

The subject matter of the FWC is **"Provision of services by a professional conference organiser".**

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

**I.3.4** The parties must sign any order form before the FWC expires.

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

### I.3.5 Renewal of the FWC

The FWC is renewed automatically 3 times for 12 months each, unless one of the parties receives formal notification to the contrary at least three months before the end of the ongoing duration. Renewal does not change or postpone any existing obligations.

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

### I.4.1. Appointment of the contractor

The contracting authority appoints the contractor for a single FWC.

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

The period for the provision of the services starts to run from the date on which the order form is signed by the last party.

### I.4.3. Implementation of single FWC

The contracting authority orders services by sending the contractor an order form in paper format.

Within 7 (seven) working days, the contractor must either:

- send the order form 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 order forms 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 under the contract is EUR [*amount in figures and in words*]. 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.

### I.5.2. Price revision index

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

### I.5.3. Reimbursement of expenses

In addition to the total price specified in specific contract, any ***extra*** travel, subsistence, accommodation and shipment expenses, besides those relating to meetings specifically foreseen in the Tender Specifications (see Annex I, point 2.5), that might be needed to perform the tasks related to the contract shall be subject to Cedefop's prior approval and shall be reimbursed by Cedefop separately on the basis of Article II.22, according to its relevant rules (see Annex III).

## I.6. PAYMENT ARRANGEMENTS

### I.6.1. Pre-financing

Pre-financing is not applicable to this FWC.

### I.6.2. Interim payment

Interim payment is not applicable to this FWC.

### I.6.3. Payment of the balance

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

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

- Specific costs for the meeting, such as hotel accommodation, meeting rooms, catering, special programme and entertainment and – in general – all goods and services provided by suppliers.

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

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

The contractor (or leader in the case of a joint tender) has 20 days to submit additional information or corrections or a new version of the documents if the contracting authority requires it.

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

- Invoices must state:

- the price in EUR and the total price excluding VAT
- that the amount invoiced is exempt from VAT under the Articles 3 and 4 of the Protocol on Privileges and Immunities of the European Union (PPI). The current provisions in Greece shall apply to VAT exemption.

- For contractors based in Greece, invoices will include VAT which is paid by Cedefop and later reimbursed by the State

- For contractors established in other countries exemption is direct (invoices are submitted without VAT), subject to fulfilling as necessary the requirements of Article 151 of Council Directive 2006/112/EC.

- [In Belgium, use of this contract constitutes a request for VAT exemption No. 450, VAT exemption article 42, paragraph 3.3 of the VAT code (circular 2/1978), provided the invoice includes: "Commande destinée à l'usage officiel de l'Union Européenne, Exonération de la TVA; art. 42 § 3.3 du code TVA (circulaire n° 2/1978)".]

- the VAT amount in EUR separately, even if it is zero (in case of direct exemption).
- the IBAN code and the BIC as identified in the contract (see article I.7 below); in case of change, prior information and a new Financial Identification Form must be duly addressed to Cedefop before the dispatch of the invoice.

### I.6.4. Performance guarantee

Performance guarantee is not applicable to this FWC.

### I.6.5. Retention money guarantee

Retention money guarantee is not applicable to this FWC.

## I.7. BANK ACCOUNT

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

Name of bank:
Full address of branch:
Exact denomination of account holder:
Full account number including bank codes:
IBAN code:
BIC:

## I.8. COMMUNICATION DETAILS

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

Contracting authority:

Cedefop:
European Centre for the Development of Vocational Training (Cedefop)
Procurement Service (C4T)
Office 4.19
PO Box 22427
GR – 55 102 Thessaloniki
Fax: +30 2310 490028
E-mail: c4t-services@cedefop.europa.eu

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

[*Full name*]
[*Function*]

[*Company name*]
[*Full official address*]
E-mail: [*complete*]

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

## I.9. DATA CONTROLLER

For the purpose of Article II.9, the data controller is the Head of Finance and Procurement Service for the processing of the personal data included in the FWC and the Head of Department for Resources and Support for the processing of the personal data in the implementation of the FWC.

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

This clause is not applicable to this FWC.

## I.11. TERMINATION BY EITHER PARTY

Either party may terminate the FWC and/or the FWC and order forms by sending formal notification to the other party with **one month** written notice.

If the FWC or an order form 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 Greece.

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

## I.13. INTERINSTITUTIONAL FWC – NOT APPLICABLE

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

If necessary for performance of an order form, 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 Cedefop and must be returned to the Facilities Service of Cedefop 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 contracting authority may claim as penalty the amount of 100 EUR for each day of delay up to a maximum of EUR 1000.

## I.15. OTHER SPECIAL CONDITIONS

### I.15.1 Confidentiality of information

Notwithstanding the provisions of Article II.8, the Contractor must sign the "Undertaking of Confidentiality and Non-Disclosure for the Contractor" found in Annex V.
Each member of the Contractor's staff that will be assigned to Cedefop for the implementation of the Contract must sign the "Undertaking of Confidentiality and Non-Disclosure for the Contractor's staff" found in Annex VI.

### I.15.2 Contract supervision

The following persons are empowered to supervise the performance of the contract:

For Cedefop:

For the Contractor:

**SIGNATURES**

| | |
|---|---|
| For the contractor, | For the contracting authority, |
| [*Company name/forename/surname/position*] | [*forename/surname/position*] |
| Signature: _____ | Signature:_____ |
| Done at [*place*], [*date*] | Done at [*place*], [*date*] |

In duplicate in English.

# II. GENERAL CONDITIONS FOR THE FRAMEWORK CONTRACT FOR 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 s*upplier 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 Union's financial interests relating to the use or presentation of false, incorrect or incomplete statements or documents or to non-disclosure of information in violation of a specific obligation;

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

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

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

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

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

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

**'Personnel'**: persons employed directly or indirectly or contracted by the contractor to implement the FWC;

**'Pre-existing material'**: any material, document, technology 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 Union's budget.

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

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

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

## II.3. SEVERABILITY

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

## II.4. PROVISION OF SERVICES

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

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

**II.4.3** The contractor must comply with the minimum requirements provided for in the tender specifications. This includes compliance with applicable obligations under environmental, social and labour law established by Union law, national law and collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU[1].

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

[1] OJ L 94 of 28.03.2014, p. 65

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

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

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

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

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

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

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

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

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

## II.5. COMMUNICATION BETWEEN THE PARTIES

### II.5.1. Form and means of communication

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

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

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

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

### II.5.2. Date of communications by mail and email

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

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

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

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

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

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

### II.5.4. Validity and date of e-documents

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

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

2. The parties expressly waive any rights to contest the validity of such a document solely on the grounds that communications between the parties occurred through *e-PRIOR* or that the document has been signed through *e-PRIOR*. If a direct connection is established between the parties' *back offices* to allow electronic transfer of documents, the parties agree that an e-document, sent as mentioned in the *interface control document*, qualifies as an *EDI message*.
3. If the e-document is dispatched through the *supplier portal*, it is deemed to have been legally issued or sent when the contractor (or leader in the case of a joint tender) is able to successfully submit the e-document without any error messages. The generated PDF and XML document for the e-document are considered as a proof of receipt by the contracting authority.
4. In the event that an e-document is dispatched using a direct connection established between the parties' *back offices*, the e-document is deemed to have been legally issued or sent when its status is 'received' as defined in the *interface control document*.
5. When using the *supplier portal*, the contractor (or leader in the case of a joint tender) can download the PDF or XML message for each e-document for one year after submission. After this period, copies of the e-documents are no longer available for automatic download from the *supplier portal*.

### II.5.5. Authorised persons in e-PRIOR

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

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

## II.6. LIABILITY

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

**II.6.2** If required by the relevant applicable legislation, the contractor must take out an insurance policy against risks and damage or loss relating to the *implementation of the FWC*. It must also take out supplementary insurance as reasonably required by standard practice in the industry. Upon request, the contractor must provide evidence of insurance coverage to the contracting authority.

**II.6.3** The contractor is liable for any loss or damage caused to the contracting authority during or as a consequence of *implementation of the FWC*, including in the event of subcontracting, but only up to an amount not exceeding three times the total amount of the relevant specific contract. However, if the damage or loss is caused by the gross negligence or wilful misconduct of the contractor or of its *personnel* or subcontractors, the contractor is liable for the whole amount of the damage or loss.

**II.6.4** If a third party brings any action against the contracting authority in connection with the *implementation of the FWC*, including any action for alleged breach of intellectual property rights, the contractor must assist the contracting authority in the legal proceedings, including by intervening in support of the contracting authority upon request.
If the contracting authority's liability towards the third party is established and that such liability is caused by the contractor during or as a consequence of the *implementation of the FWC*, Article II.6.3 applies.

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

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

## II.7. CONFLICT OF INTEREST AND PROFESSIONAL CONFLICTING INTERESTS

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

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

The contracting authority may do any of the following:

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

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

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

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

## II.8. CONFIDENTIALITY

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

**II.8.2.** Each party must:

(a) not use *confidential information or documents* for any purpose other than to perform its obligations under the FWC or a specific contract without the prior written agreement of the other party;

(b) ensure the protection of such *confidential information or documents* with the same level of protection as its own *confidential information or documents* and in any case with due diligence;

(c) not disclose, directly or indirectly, *confidential information or documents* to third parties without the prior written agreement of the other party.

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

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

(b) the *confidential information or documents* become public through other means than a breach of the confidentiality obligation;

(c) the applicable law requires the disclosure of the *confidential information or documents*.

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

## II.9. PROCESSING OF PERSONAL DATA

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

its possible transmission to bodies entrusted with monitoring or inspection tasks in application of Union law.

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

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

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

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

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

(a) prevent any unauthorised person from gaining access to computer systems processing personal data, and especially:

(i) unauthorised reading, copying, alteration or removal of storage media;

(ii) unauthorised data inputting, as well as any unauthorised disclosure, alteration or erasure of stored personal data;

(iii) unauthorised use of data processing systems by means of data transmission facilities;

(b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;

(c) record which personal data have been communicated, when and to whom;

(d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting authority;

(e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;

(f) design its organisational structure in such a way that it meets data protection requirements.

## II.10. SUBCONTRACTING

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

**II.10.2** Even if the contracting authority authorises subcontracting, the contractor remains bound by its contractual obligations and is solely responsible for the *implementation of the FWC*.

**II.10.3** The contractor must ensure that the subcontract does not affect the rights of the contracting authority under this FWC, particularly those under Articles II.8, II.13 and II.24.

**II.10.4** The contracting authority may request the contractor to replace a subcontractor found to be in a situation provided for in points (d) and (e) of Article II.18.1.

## II.11. AMENDMENTS

**II.11.1** Any amendment to the FWC or a specific contract must be made in writing before all contractual obligations have been fulfilled. A specific contract does not constitute an amendment to the FWC.

**II.11.2** Any amendment must not make changes to the FWC or a specific contract that might alter the initial conditions of the procurement procedure or result in unequal treatment of tenderers or contractors.

## II.12. ASSIGNMENT

**II.12.1** The contractor must not assign any of the rights and obligations arising from the FWC, including claims for payments or factoring, without prior written authorisation from the contracting authority. In such cases, the contractor must provide the contracting authority with the identity of the intended assignee.

**II.12.2** Any right or obligation assigned by the contractor without authorisation is not enforceable against the contracting authority.

## II.13. INTELLECTUAL PROPERTY RIGHTS

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

The Union acquires irrevocably worldwide ownership of the *results* and of all intellectual property rights under the FWC. The intellectual property rights so acquired include any rights, such as copyright and other intellectual or industrial property rights, to any of the *results* and in all technological solutions and information created or produced by the contractor or by its subcontractor in *implementation of the FWC*. The contracting authority may exploit and use the acquired rights as stipulated in this FWC. The Union acquires all the rights from the moment the contracting authority approves the *results* delivered by the contractor. Such delivery and approval are deemed to constitute an effective assignment of rights from the contractor to the Union.

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

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

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

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

The licensing of *pre-existing rights* to the Union under this 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 Union, including for all forms of exploitation and of use of the *results*.

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

### II.13.3. Exclusive rights

The Union acquires the following exclusive rights:

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

utilization of all or a substantial part of the contents of the database by the distribution of copies, by renting, by on-line or other forms of transmission;

(h) where the *results* are or include a patentable subject-matter: the right to register them as a patent and to further exploit such patent to the fullest extent;

(i) where the *results* are or include logos or subject-matter which could be registered as a trademark: the right to register such logo or subject-matter as a trademark and to further exploit and use it;

(j) where the *results* are or include know-how: the right to use such know-how as is necessary to make use of the *results* to the full extent provided for by this FWC, and the right to make it available to contractors or subcontractors acting on behalf of the contracting authority, subject to their signing of adequate confidentiality undertakings where necessary;

(k) where the *results* are documents:

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

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

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

  (i) end-user rights, for all uses as it *results* from this FWC and the intention of the parties, both by the Union or by subcontractors acting on behalf of the Union;

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

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

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

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

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

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

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

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

Upon request by the contracting authority, the contractor must provide evidence that it has the ownership or the right to use all the listed *pre-existing rights*, except for the rights owned or licensed by the Union. The contracting authority may request this evidence even after the end of this FWC.

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

This evidence must include, as appropriate:

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

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

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

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

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

### II.13.7. Moral rights of creators

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

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

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

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

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

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

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

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

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

## II.14. FORCE MAJEURE

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

**II.14.2** A party is not liable for any delay or failure to perform its obligations under the FWC if that delay or failure is a *result* of *force majeure*. If the contractor is unable to

fulfil its contractual obligations owing to *force majeure*, it has the right to remuneration only for the services actually provided.

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

## II.15. LIQUIDATED DAMAGES

### II.15.1. Delay in delivery

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

0.3 x (*V/d*)

where:

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

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

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

### II.15.2. Procedure

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

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

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

(a) of the withdrawal of its intention to apply liquidated damages; or

(b) of its final decision to apply liquidated damages and the corresponding amount.

### II.15.3. Nature of liquidated damages

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

### II.15.4. Claims and liability

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

## II.16. REDUCTION IN PRICE

### II.16.1. Quality standards

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

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

### II.16.2. Procedure

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

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

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

(a) of the withdrawal of its intention to reduce payment; or

(b) of its final decision to reduce payment and the corresponding amount,.

### II.16.3. Claims and liability

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

## II.17. SUSPENSION OF THE IMPLEMENTATION OF THE FWC

### II.17.1. Suspension by the contractor

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

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

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

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

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

(a) if the procedure for awarding the FWC or a specific contract or the *implementation of the FWC* proves to have been subject to *substantial errors*, *irregularities* or *fraud*;

(b) in order to verify whether the presumed *substantial errors*, *irregularities* or *fraud* actually occurred.

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

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

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

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

## II.18. TERMINATION OF THE FWC

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

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

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

(d) if the contractor or any person that assumes unlimited liability for the debts of the contractor is in one of the situations provided for in points (a) and (b) of Article 106(1) of the Financial Regulation[2];
(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 that the tender specifications are no longer fulfilled or result in unequal treatment of tenderers or contractors;
(k) if the needs of the contracting authority change and it no longer requires new services under the FWC; in such cases ongoing specific contracts remain unaffected;
(l) if the termination of the FWC with one or more of the contractors means that the multiple FWC with reopening of competition no longer has the minimum required level of competition.

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

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

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

### II.18.3. Procedure for termination

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

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

[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

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

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

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

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

### II.18.4. Effects of termination

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

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

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

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

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

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

### II.19.1. Invoices and value added tax

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

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

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

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

### II.19.2. E-invoicing

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

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

## II.20. PRICE REVISION

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

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

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

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

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

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

The price revision is calculated using the following formula:

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

where: Pr = revised price;

Po = price in the tender;

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

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

## II.21. PAYMENTS AND GUARANTEES

### II.21.1. Date of payment

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

### II.21.2. Currency

Payments are made in euros or in the currency provided for in Article I.7.

### II.21.3. Conversion

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

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

http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm

### II.21.4. Costs of transfer

The costs of the transfer are borne as follows:

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

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

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

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

The contractor bears the cost of providing such guarantee.

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

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

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

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

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

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

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

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

Payment of the balance may take the form of recovery.

### II.21.7. Suspension of the time allowed for payment

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

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

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

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

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

### II.21.8. Interest on late payment

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

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

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

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

## II.22. REIMBURSEMENTS

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

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

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

(a) travel by air: up to the maximum cost of an economy class ticket at the time of the reservation;

(b) travel by boat or rail: up to the maximum cost of a first class ticket;

(c) travel by car: at the rate of one first class rail ticket for the same journey and on the same day;

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

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

(a) for journeys of less than 200 km for a return trip, no subsistence allowance is payable;

(b) the daily subsistence allowance is payable only on receipt of supporting documents proving that the person concerned was present at the destination;

(c) the daily subsistence allowance takes the form of a flat-rate payment to cover all subsistence expenses, including meals, local transport including transport to and from the airport or station, insurance and sundries;

(d) the daily subsistence allowance is reimbursed at the flat rates specified in Article I.5.3;

(e) accommodation is reimbursed on receipt of supporting documents proving the necessary overnight stay at the destination, up to the flat-rate ceilings specified in Article I.5.3.

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

## II.23. RECOVERY

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

### II.23.2. Recovery procedure

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

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

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

(a) by offsetting them against any amounts owed to the contractor by the Union or by the European Atomic Energy Community;

(b) by calling in a financial guarantee if the contractor has submitted one to the contracting authority;
(c) by taking legal action.

### II.23.3. Interest on late payment

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

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

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

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

If the leader does not pay by the due date and if the amount cannot be offset in accordance with Article II.23.2 (a), the contracting authority may claim the full amount to any other member of the group by *notifying* the debit note already sent to the leader under Article II.23.2.

## II.24. CHECKS AND AUDITS

**II.24.1** The contracting authority and the European Anti-Fraud Office may check or require an audit on the *implementation of the FWC*. This may be carried out either by OLAF's own staff or by any other outside body authorised to do so on its behalf.

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

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

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

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

check or audit and, if so requested, that information is handed over in an appropriate format.

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

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

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

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

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

# ANNEX I - Tender specifications

# ANNEX II – Contractor's Tender

# Annex III – Order Form

- Model for order forms

CEDEFOP

# FRAMEWORK CONTRACT
# ORDER FORM

| | | |
|---|---|---|
| Procurement Service<br><br>Tel: +30 2310 490064<br><br>E-mail: c4t-services@cedefop.europa.eu | Order number:<br>Currency of payment: EUR<br>Tender (date and reference): | (Name and address of contractor) |

This order is governed by Framework Contract No _____
in force from _____ to _____

| LISTING OF THE SUPPLIES / SERVICES and code | UNIT | QUANTITY | PRICE in € | |
|---|---|---|---|---|
| | | | UNIT PRICE | TOTAL |
| -<br>- | | | | |

| | |
|---|---|
| In accordance with Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union, the Commission is exempt from all taxes and dues, including value added tax, on payments due under this contract. For intra-community purchases, the statement 'VAT Exemption / European Union / Article 151 of Council Directive 2006/112/EC' should be added on the invoice.<br>[In Belgium, use of this contract constitutes a request for VAT exemption No. 450, Article 42, paragraph 3.3 of the VAT code (circular 2/1978), provided the invoice includes the statement:'Exonération de la TVA; art. 42 § 3.3 du code TVA (circulaire n° 2/1978)'.] | Packaging<br>Insurance<br>Transport<br>Assembly<br>VAT<br>**TOTAL :** |
| Place of delivery or performance and/or Incoterm:<br>Final date of delivery or performance:<br>Payment provisions:<br><br>Guarantee: | **Contractor's signature**<br><br>Name:<br>Position:<br>Date: |

Date of issue:
Signature [name, position and stamp]:

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

# ANNEX IV(a)

## UNDERTAKING OF CONFIDENTIALITY AND NON-DISCLOSURE FOR THE CONTRACTOR

Following the award by Cedefop to **..... (contractor)** of the **framework service contract No .....** (hereinafter called "contract") and for the implementation of this contract, Cedefop will provide to **..... (contractor)** access to internal information and personal data which includes but is not limited to: **.....**

Without prejudice to the relevant provisions of the above-mentioned Framework Service Contract, in particular **Article II.8**, **..... (contractor)** reiterates its commitment to treat in the strictest confidence and not make use of or disclose to third parties any information and/or documents which are linked to the performance of the tasks undertaken in the context of the aforementioned contract without the prior written authorisation by Cedefop. The non-disclosure of all matters related to the aforementioned contract includes also information and/or documents obtained prior to the date of signature of this undertaking. **..... (contractor)** shall continue to be bound by this undertaking after completion of the tasks in subject assigned by Cedefop.

**..... (contractor)** shall ensure that each member of its staff, board and directors will respect the confidentiality of any information which is linked, directly or indirectly, to the tasks related to the aforementioned contract, they will comply **with Directive 95/46/EC** on data protection as integrated in national legislation though **law 2472/1997**[3] and they will not disclose to third parties or use for their own benefit or that of any third party any information and/or document not available publicly, even after completion of the tasks.
For this purpose, **..... (contractor)** will obtain from each member of its staff, board and directors an undertaking of confidentiality in this respect.

Should **..... (contractor)** **and/or its employees assigned to Cedefop** breach this undertaking of confidentiality and non-disclosure, **..... (contractor)** shall be liable for any damages caused to Cedefop according to the provisions foreseen by the relevant legislation in force.

Signed by the legal representative of **..... (contractor)**

Name + function: .....

Signature + stamp Date of signature

[3] (reference to national law applicable only for contractors based in Greece only ***http://www.dpa.gr/portal/page?_pageid=33,123437&_dad=portal&_schema=PORTAL)***

# ANNEX IV (b)

## UNDERTAKING OF CONFIDENTIALITY AND NON-DISCLOSURE FOR CONTRACTOR'S STAFF

Following the award by Cedefop to **..... (contractor)** of the **framework service contract No.....** (hereinafter called "contract") and for the implementation of this contract, Cedefop will provide to **Ms/Mr. .....** (staff member of .....) access to internal information and personal data which includes but is not limited to: .....

I, the undersigned **.....,** declare that I undertake to treat in the strictest confidence and not make use of or disclose to third parties any information and/or documents which are linked to the performance of the tasks undertaken in the context of the aforementioned contract without the prior written authorisation by Cedefop. The non-disclosure of all matters related to the aforementioned contract includes also information and/or documents obtained prior to the date of signature of this undertaking. I shall continue to be bound by this undertaking after completion of the tasks assigned to me by **..... (contractor)** through its contract with Cedefop.

Signed by .....**,** who is among the staff members of **..... (contractor)**, assigned to Cedefop for the implementation of the contract

Name: .....

Signature Date of signature