

## (DRAFT) Framework Service Contract and Annexes

### Contract No ERA 2016 02 FWC

The European Railway Agency (hereinafter referred to as "the Agency"), which is represented for the purposes of the signature of this contract by ..... , Head of .....

on the one part, and

[full official name]

[official legal form]

[statutory registration number]

[full official address ]

[VAT registration number]

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

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

HAVE AGREED

the I - **Special Conditions** and the II - **General Conditions** and the following Annexes:

**Annex I** Tender Specifications (ERA 2016 02 OP) and any clarifications by the prospective tenderers and clarifications by the Agency – Original archived at the Agency's premises;

**Annex II** Contractor's Tender dated ..... – Original archived at the Agency's premises

**Annex III** Financial Identification Form and Legal Entities Form;

**Annex IV** Specific Contract - Model;

which form an integral part of this contract (hereinafter referred to as "the Contract").

- *The terms set out in the Special Conditions shall take precedence over those in the General Conditions of the FWC;*
- *The terms set out in the General Conditions shall take precedence over those in the model specific contract*
- *The terms set out in the model specific contract shall take precedence over those in the other annexes.*
- *The terms set out in the tender specifications (Annex I) shall take precedence over those in the tender (Annex II).*
- *The terms set out in the framework contract shall take precedence over those in the specific contracts.*

Subject to the above, the several instruments forming part of the Contract are to be taken as mutually explanatory. Ambiguities or discrepancies within or between such parts shall be explained or rectified by a written instruction issued by the Agency subject to the rights of the Contractor under Article I.7 should he dispute any such instruction.

## I – Special Conditions

### ARTICLE I.1 – SUBJECT MATTER

- I.1.1** The subject matter of the FWC is [short description of subject].
- I.1.2** Signature of the FWC imposes no obligation on the contracting authority to purchase. Only performance of the FWC through order forms or specific contracts is binding on the contracting authority.
- I.1.3 Multiple framework contract:** The contractor is selected for a multiple FWC in cascade in [complete position.]

### ARTICLE I.2 - ENTRY INTO FORCE AND DURATION

- I.2.1** The Contract shall enter into force on the date on which it is signed by the last contracting party.
- I.2.2** Under no circumstances may implementation take place before the date on which the Contract enters into force. Specific Contracts may under no circumstances be placed before the date on which the Contract enters into force.
- I.2.3** The Contract is concluded for a period of two years with effect from the date on which it enters into force. This contractual period and all other periods specified in the Contract are calculated in calendar days unless otherwise indicated.
- I.2.4** The Specific Contracts pursuant to the Contract shall be returned signed before the Contract to which refers expires. The Contract shall continue to apply to Specific Contracts executed after the Contract expires. Such Specific Contracts shall be executed no later than six (6) months after expiry of the contract.
- I.2.5 FWC renewal :** The FWC could be renewed for an additional year, thus bring the validity up to a total of 3 years under the same conditions, provided that written correspondence related to the renewal modalities is exchanged between the parties at the latest three months before expiry of the period indicated in Article I.2.3. Renewal does not imply any modification or deferment of existing obligations.

### ARTICLE I.3 - CONTRACT PRICE

- I.3.1** The prices of this contract shall be as listed in Annex II.
- I.3.2** Prices shall be expressed in Euro.
- I.3.3 Price revision:**

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

At the beginning of the second and every following year of the Contract, 80% of each price may be revised upwards or downwards, if such revision is requested by one of the contracting parties by registered letter no later than three months before the anniversary of the date on which it was signed. The Agency shall purchase on the basis of the prices in force on the date on which order forms or specific contracts are signed. Such prices shall not be subject to revision.

This revision shall be determined by the trend in the harmonised consumer price index MUICP EU published for the first time by the Office for Official Publications of the European Communities in the Eurostat New Cronos Database <http://epp.eurostat.ec.europa.eu> (Theme 2 - Economy and Finance; Data; Price – Prices and Purchasing Power Parities; HICP – Harmonized Indices of Consumer Prices; HMIDX – Monthly data (index)).

Revision shall be calculated in accordance with the following formula:

$$Pr = 0,2xPo + 0,8xPo (Io/Ir)$$

where:

- **Pr** = revised price;
- **Po** = price in the original tender;
- **Io** = index for the month corresponding to the final date for submission of tenders;
- **Ir** = index for the month corresponding to the date of receipt of the letter requesting a revision of prices.

## **ARTICLE I.4 - PAYMENT ARRANGEMENTS AND PERFORMANCE OF THE FRAMEWORK CONTRACT**

### **I.1.4.1 Multiple framework contract in cascade**

Within seven working days of an order form or a request for services being sent by the contracting authority to the contractor, the contracting authority shall receive the completed order form or a specific tender back, duly signed and dated.

Should the contractor be unavailable, it shall give reasons for refusal within the same period and the contracting authority shall be entitled to send the order form or request for services to the next contractor on the list. In the event of failure to observe this deadline, the contractor shall be considered unavailable.

The period allowed for the execution of the tasks shall start to run on the date of the countersignature by the Agency in the specific contract.

NOTE: The specific tender shall be rejected if the contracting authority established that the contractor has conflicting interests which may negatively affect performance of the specific contract.

### **Article I.4.2 Payment Periods and Formalities**

Payments under the Contract shall be made in accordance with terms specified in the specific contracts and shall be executed only if the Contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted.

#### **I.4.2.1 Interim payment(s)**

The Contractor may request interim payment for interim payments equal to the percentages of the total price referred to in the relevant specific contract(s) or order form(s) signed between the two parties. The request for interim payment by the Contractor shall be admissible if accompanied by:

- the interim technical deliverable(s) in accordance with the instructions laid down in Annex I,
- the relevant invoices, indicating the reference number of the Contract and of the Specific Contract to which they refer,
- when payment is linked to acceptance, a certificate of conformity or where applicable the consignment note, duly signed by the Agency, shall be attached to the invoice, provided the requested interim payments and the deliverable(s) thereof have been approved by the Agency.

#### **I.4.2.2 Payment of the balance**

The request for payment of the balance of the total price referred to in the relevant specific contract or order form of the Contractor shall be admissible if accompanied by:

- the relevant invoices, indicating the reference number of the Contract and of the Specific Contract to which they refer.
- when payment is linked to acceptance, a copy of the Certificate of conformity or where applicable the Consignment note, shall be attached to the invoice.

Within thirty days of the date of receipt of the relevant invoice payment of the balance corresponding to the relevant invoice(s) plus any amount still due from previous interim payments shall be made.

**For Contractors established in other countries than Belgium:** pursuant to articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union, the Agency is exempt from all taxes, duties and charges, in particular value added tax, on payments made under this order. The contractor receives and keeps in his records the form entitled "VAT and Excise Duty Exemption Certificate" duly completed and signed by the Agency. The invoice must contain the following statement: "VAT Exemption / International Body / Article 151 of Council Directive 2006/112/EC".

**I.4.3. Bank Account**

Payments shall be made to the Contractor's bank account denominated in euro, stated in the Contractor's identification form set out in **ANNEX III: FINANCIAL IDENTIFICATION AND LEGAL ENTITIES**.

**ARTICLE I.5 - GENERAL ADMINISTRATIVE PROVISIONS**

Any communication relating to the Contract shall be made in writing and shall bear the Contract number. Ordinary mail shall be deemed to have been received by the Agency on the date on which it is registered by the department responsible indicated below. Communications shall be sent to the following addresses:

<p><u>For the Agency:</u></p> <p>The Accountant / RSU          European Railway Agency          120, rue Marc Lefrancq          59300 Valenciennes          France          Email: [insert functional mailbox]</p>	<p><u>For the Contractor:</u></p> <p>[Full name]          [Function]          [Company name]          [Full official address]          Email: [complete]</p>
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**ARTICLE I.6 - APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

**I.1.1** The Contract shall be governed by the European Union law supplemented, when necessary, by the national substantive law of France.

**I.1.2** Any dispute between the parties resulting from the interpretation or application of the Contract which cannot be settled amicably shall be brought before the courts of Lille.

**ARTICLE I.7 – EXPLOITATION OF THE RESULTS OF THE CONTRACT**

**I.7.1 Modes of exploitation**

Whereby the Agency acquires ownership of the results as defined in the tendering specifications (Annex I), these results may be used for any of the following purposes:

- (a) use for its own purposes:
  - I. making available to the staff of the Agency
  - II. making available to the persons and entities working for the Agency or cooperating with it, including contractors, subcontractors whether legal or natural persons, Union institutions, agencies and bodies, Member States' institutions
  - III. installing, uploading, processing
  - IV. arranging, compiling, combining, retrieving
  - V. copying, reproducing in whole or in part and in unlimited number of copies
- (b) distribution to the public:
  - I. publishing in hard copies
  - II. publishing in electronic or digital format

- III. publishing on the internet as a downloadable/non-downloadable file
  - IV. broadcasting by any kind of technique of transmission
  - V. public presentation or display
  - VI. communication through press information services
  - VII. inclusion in widely accessible databases or indexes
  - VIII. otherwise in any form and by any method
- (c) modifications by the Agency or by a third party in the name of the Agency:
- I. shortening
  - II. summarizing
  - III. modifying of the content
  - IV. 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 of making modifications
  - V. addition of new elements, paragraphs titles, leads, bolds, legend, table of content, summary, graphics, subtitles, sound, etc.
  - VI. preparation in audio form, preparation as a presentation, animation, pictograms story, slide-show, public presentation etc.
  - VII. extracting a part or dividing into parts
  - VIII. use of a concept or preparation of a derivate work
  - IX. digitisation or converting the format for storage or usage purposes
  - X. modifying dimensions
  - XI. translating, inserting subtitles, dubbing in different language versions:
    - English, French, German
    - all official languages of EU
    - languages used within EU
    - languages of candidate countries
- (d) the modes of exploitation
- (e) 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 (d) to third parties.

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

### **1.7.2 Pre-existing rights and transmission of rights**

All pre-existing rights shall be licensed to the Agency. The Contractor shall provide to the Agency a list of pre-existing rights and third parties' rights including its personnel, creators or other right holders.

## ARTICLE I.8 - DATA PROTECTION

**I.8.1** Any personal data included in the present Contract or used within the context of performance thereof shall be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Union institutions and bodies and on the free movement of such data. It shall be processed solely for the purposes of the performance, management and follow-up of the Contract by the entity acting as data controller (**Head of CME Unit at the Agency**) without prejudice to possible transmission to the bodies charged with a monitoring or inspection task in conformity with Community law. The Contractor shall have the right of access to his personal data and the right to rectify any such data that is inaccurate or incomplete. Should the Contractor have any queries concerning the processing of his personal data, he shall address them to the entity acting as data controller. The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.

**I.8.2** When processing personal data on behalf of the Contracting authority in the performance of the Contract the Contractor:

- shall act only on instructions from the Contracting authority;
- shall comply with the obligations set out in Articles 21 and 22 of Regulation (EC) 45/2001 on the confidentiality and the security of processing unless, by virtue of Article 16 or Article 17(3), second indent, of Directive 95/46/EC, the Contractor is already subject to obligations with regard to confidentiality and security laid down in the national law of one of the Member States.

Appropriate technical and organisational measures will be taken by the Contractor for the security of the processing in accordance with Article 22 of Regulation (EC) 45/2001 and will have to be agreed between the Contractor and the Contracting authority(ies) in writing or in another equivalent form.

## ARTICLE I.9 - TERMINATION BY EITHER CONTRACTING PARTY

Either contracting party may, of its own volition and without being required to pay compensation, terminate the Contract by serving 6 months formal prior notice. Should the Agency terminate the Contract, the Contractor shall only be entitled to payment corresponding to the services ordered and delivered before the termination date. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required by the Special Conditions for the Services rendered up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

## ARTICLE I.10 - SPECIFIC PROVISIONS

### I.10.1 Travel

In case of travel to locations other than the normal locations of delivery – Valenciennes (France) and/or Lille (France) – that is conducted on request of the Agency, the contractor shall be entitled to reimbursement of travel costs and daily allowances; the rules, regulations and rates will be included in the specific contract. Otherwise the cost is borne by the lump sum price included in the specific contract.

### I.10.2 Additional Services

The Agency may exercise the option to increase the estimated market amount at a later stage In case the use of FWC is faster than initially assumed or additional similar services are required, provided that these do not account for more than 50% of the initial contract value, and to do so in compliance with Article 114a (3) (a) of the Financial Regulations.

## ARTICLE I.11 SPECIFIC QUALITY STANDARDS

The services conducted by the Contractor under this Contract shall be the subject of the following standards:

- a) the experts included in the proposal of the contractor (see Annex II) are bound to perform the services subject of this contract;
- b) should any of the experts become unavailable, the Contractor has the contractual obligation to inform the Contracting Authority and propose a replacement who shall have at least equal qualifications and experience;
- c) time schedule is a contractual commitment;
- d) specific type and quality of deliverables (C.2.10 of the Specifications) shall be prepared by the Contractor according to terms agreed with the Agency;
- e) deliverables shall be drawn up in English and shall be supplied in electronic format to be delivered simultaneously with the paper copy and submitted as per the contractual time schedule.

Should the Contractor fail to comply with any of the above quality standards and/or with the quality control system included in its technical proposal, the Agency shall grant in writing a cure period of 7 calendar days, and if the Contractor has not remedied the failure, the Agency may - without prejudice to its right to terminate the Contract - reduce or recover payments in proportion to the scale of the failure. In addition, the Agency may impose penalties or liquidated damages provided for in Article II.16 and up to a maximum of the value of the specific contract.

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

### **ARTICLE II. 1 – PERFORMANCE OF THE FWC**

- II.1.1** The contractor shall perform the FWC to the highest professional standards.
- II.1.2** The contractor shall be solely responsible for taking the necessary steps to obtain any permit or licence required for performance of the FWC under the laws and regulations in force at the place where the tasks assigned to him are to be executed.
- II.1.3** Without prejudice to Article II.4 any reference made to the contractor's personnel in the FWC shall relate exclusively to individuals involved in the performance of the FWC.
- II.1.4** The contractor must ensure that the personnel performing the FWC possesses the professional qualifications and experience required for the execution of the tasks assigned to it.
- II.1.5** The contractor shall neither represent the contracting authority nor behave in any way that would give such an impression. The contractor shall inform third parties that it does not belong to the European public service.
- II.1.6** The contractor shall be solely responsible for the personnel who executes the tasks assigned to him.  
The contractor shall stipulate the following employment or service relationships with its personnel:
- (a) personnel executing the tasks assigned to the contractor may not be given orders directly by the contracting authority;
  - (b) the contracting authority may not under any circumstances be considered to be the employer of the personnel referred to in point (a) and the personnel shall undertake not to invoke against the contracting authority any right arising from the contractual relationship between the contracting authority and the contractor.
- II.1.7** In the event of disruption resulting from the action of one of the contractor's personnel working on the contracting authority's premises or in the event that the expertise of one of the contractor's personnel fails to correspond to the profile required by the FWC, the contractor shall replace him without delay. The contracting authority shall have the right to make a reasoned request for the replacement of any such personnel. The replacement personnel must have the necessary qualifications and be capable of performing the FWC under the same contractual conditions. The contractor shall be responsible for any delay in the execution of the tasks assigned to him resulting from the replacement of personnel.
- II.1.8** Should the execution of the tasks be directly or indirectly hampered, either partially or totally, by any unforeseen event, action or omission, the contractor shall immediately and on its own initiative record it and report it to the contracting authority. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the contractor to ensure full compliance with its obligations under this FWC. In such an event the contractor shall give priority to solving the problem rather than determining liability.
- II.1.9** Should the contractor fail to perform its obligations under the FWC or order form or specific contract, the contracting authority may - without prejudice to its right to terminate the FWC order form or specific contract or - reduce or recover payments in proportion to the scale of the unperformed obligations. In addition, the contracting authority may claim compensation or impose liquidated damages in accordance with Article II.12.

### **ARTICLE II.2 – MEANS OF COMMUNICATION**

- II.2.1** Any communication relating to the FWC or to its performance shall be made in writing and shall bear the FWC number, and if applicable the order form or specific contract number. Any communication is deemed to have been made when it is received by the receiving party unless otherwise provided for in this FWC.
- II.2.2** Electronic communication shall be deemed to have been received by the parties on the day of dispatch of that communication provided it is sent to the addressees listed in Article I.6. Without prejudice to the preceding, if the sending party receives a message of non-delivery to or of absence of the addressee, it shall make every effort to ensure the actual receipt of such communication by the other party.

Electronic communication shall be confirmed by an original signed paper version of that communication if requested by any of the parties provided that this request is submitted without unjustified delay. The sender shall send the original signed paper version without unjustified delay.

**II.2.3** Mail sent using the postal services is deemed to have been received by the contracting authority on the date on which it is registered by the department responsible referred to in Article I.6.

Any formal notification shall be made by registered mail with return receipt or equivalent, or by equivalent electronic means.

**ARTICLE II. 3 – LIABILITY**

**II.3.1** The contractor shall be solely responsible for complying with any legal obligations incumbent on it.

**II.3.2** The contracting authority shall not be held liable for any damage caused or sustained by the contractor, including any damage caused by the contractor to third parties during or as a consequence of performance of the FWC, except in the event of wilful misconduct or gross negligence on the part of the contracting authority.

**II.3.3** The contractor shall be held liable for any loss or damage sustained by the contracting authority in performance of the FWC, including in the event of subcontracting, and for any claim by a third party, but only to an amount not exceeding three times the total amount of the relevant order form or specific contract. Nevertheless, 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 shall have unlimited liability for the amount of the damage or loss.

**II.3.4** The contractor shall indemnify and hold the Union harmless for all damages and costs incurred due to any claim. The contractor shall provide compensation in the event of any action, claim or proceeding brought against the contracting authority by a third party as a result of damage caused by the contractor during the performance of the FWC. In the event of any action brought by a third party against the contracting authority in connection with the performance of the FWC including any alleged breach of intellectual property rights, the contractor shall assist the contracting authority. Such expenditure incurred by the contractor may be borne by the contracting authority.

**II.3.5** The contractor shall take out an insurance policy against risks and damage relating to the performance of the FWC if required by the relevant applicable legislation. It shall take out supplementary insurance as reasonably required by standard practice in the industry. A copy of all the relevant insurance contracts shall be sent to the contracting authority should it so request.

**ARTICLE II. 4 - CONFLICT OF INTERESTS**

**II.4.1** The contractor shall take all the necessary measures to prevent any situation of conflict of interest. Such situation arises where the impartial and objective performance of the FWC is compromised for reasons involving economic interest, political or national affinity, family or emotional ties, or any other shared interest.

**II.4.2** Any situation constituting or likely to lead to a conflict of interest during the performance of the FWC shall be notified to the contracting authority in writing without delay. The contractor shall immediately take all the necessary steps to rectify the situation. The contracting authority reserves the right to verify that the steps taken are appropriate and may require that additional steps be taken within a specified deadline.

**II.4.3** The contractor declares that it has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, when such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, in so far as it serves as an incentive or reward relating to the performance of the FWC.

**II.4.4** The contractor shall pass on all the relevant obligations in writing to its personnel and to any natural person with the power to represent it or take decisions on its behalf and ensure that it is not placed in a situation which could give rise to conflicts of interest. The contractor shall also pass on all the relevant obligations in writing to third parties involved in the performance of the FWC including subcontractors.

**ARTICLE II.5 – CONFIDENTIALITY**

**II.5.1.** The contracting authority and the contractor shall treat with confidentiality any information and documents, in any form, disclosed in writing or orally in relation to the performance of the FWC and identified in writing as confidential.

The contractor shall:

- (a) not use confidential information and documents for any purpose other than fulfilling its obligations under the FWC, order form or specific contract without prior written agreement of the contracting authority;
- (b) ensure the protection of such confidential information and documents with the same level of protection it uses to protect its own confidential information, but in no case any less than reasonable care;
- (c) not disclose directly or indirectly confidential information and documents to third parties without prior written agreement of the contracting authority.

**II.5.2** The confidentiality obligation set out in Article II.5.1 shall be binding on the contracting authority and the contractor during the performance of the FWC and for five years starting from the date of the payment of the balance unless:

- (a) the disclosing party agrees to release the other party from the confidentiality obligation earlier;
- (b) the confidential information becomes public through other means than in breach of the confidentiality obligation, through disclosure by the party bound by that obligation;
- (c) the disclosure of the confidential information is required by law.

**II.5.3** The contractor shall obtain from any natural person with the power to represent it or take decisions on its behalf, as well as from third parties involved in the performance of the FWC, order form or specific contract an undertaking that they will comply with the confidentiality obligation set out in Article II.5.1.

**ARTICLE II.6 – PROCESSING OF PERSONAL DATA**

**II.6.1** Any personal data included in the FWC shall be processed pursuant to Regulation (EC) 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Such data shall be processed by the data controller solely for the purposes of the performance, management and monitoring of the FWC without prejudice to its possible transmission to the bodies charged with monitoring or inspection tasks in application of Union law.

**II.6.2** The contractor shall have 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.6.3** The contractor shall have right of recourse at any time to the European Data Protection Supervisor.

**II.6.4** Where the FWC requires the processing of personal data by the contractor, 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 which may be processed, the recipients of the data and the means by which the data subject may exercise his rights.

**II.6.5** The contractor shall grant personnel access to the data to the extent strictly necessary for the performance, management and monitoring of the FWC.

**II.6.6** The contractor undertakes to adopt appropriate technical and organisational security measures having 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 input, 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.

#### **ARTICLE II. 7 – SUBCONTRACTING**

- II.7.1** The contractor shall not subcontract without prior written authorisation from the contracting authority nor cause the FWC to be de facto performed by third parties.
- II.7.2** Even where the contracting authority authorises the contractor to subcontract to third parties, it shall nevertheless remain bound by its contractual obligations and shall be solely responsible for the proper performance of this FWC.
- II.7.3** The contractor shall make sure that the subcontract does not affect rights and guarantees granted to the contracting authority by virtue of this FWC, notably by Article II.18.

#### **ARTICLE II. 8 – AMENDMENTS**

- II.8.1** Any amendment to the FWC or order form or specific contract shall be made in writing before fulfilment of all contractual obligations. An order form or a specific contract may not be deemed to constitute an amendment to the FWC.
- II.8.2** The amendment may not have the purpose or the effect of making changes to the FWC or to order forms or specific contracts which might call into question the decision awarding the FWC, order form or specific contract or result in unequal treatment of tenderers or contractors.

#### **ARTICLE II. 9 – ASSIGNMENT**

- II.9.1** The contractor shall not assign the rights, including claims for payments, and obligations arising from the FWC, in whole or in part, without prior written authorisation from the contracting authority.
- II.9.2** In the absence of such authorisation, or in the event of failure to observe the terms thereof, the assignment of rights or obligations by the contractor shall not be enforceable against the contracting authority and shall have no effect on it.

#### **ARTICLE II. 10 – OWNERSHIP OF THE RESULTS - INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS**

##### **II.10.1 Definitions**

In this FWC the following definitions apply:

- (1) 'results' means any intended outcome of the performance of the FWC which is delivered and finally accepted by the contracting authority.
- (2) 'creator' means any natural person who contributed to the production of the result and includes personnel of the contracting authority or a third party.
- (3) 'pre-existing rights' means any industrial and intellectual property rights, including background technology, which exist prior to the contracting authority or the contractor ordering them for the purpose of the FWC performance and include rights of ownership and use by the contractor, the creator, the contracting authority and any other third parties.

### **II.10.2 Ownership of the results**

The ownership of the results shall be fully and irrevocably acquired by the Union under the FWC including any rights in any of the results listed in the FWC and order forms or specific contracts, including copyright and other intellectual or industrial property rights, and all technological solutions and information contained therein, produced in performance of the FWC. The contracting authority may exploit them as stipulated in this FWC or order forms or specific contracts. All the rights shall be acquired by the Union from the moment the results are delivered by the contractor and accepted by the contracting authority. Such delivery and acceptance are deemed to constitute an effective assignment of rights from the contractor to the Union.

The payment of the price as set out in the order forms or specific contracts is deemed to include any fees payable to the contractor in relation to the acquisition of ownership of rights by the Union including all forms of use of the results.

The acquisition of ownership of rights by the Union under this FWC covers all territories worldwide.

Any intermediary sub-result, raw data, intermediary analysis made available by the contractor cannot be used by the contracting authority without the written consent of the contractor, unless the FWC or specific contract or order form explicitly provides for it to be treated as a self-contained result.

### **II.10.3 Licensing of pre-existing rights**

The Union shall not acquire ownership of the pre-existing rights.

The contractor shall license the pre-existing rights on a royalty-free, non-exclusive and irrevocable basis to the Union which may use the pre-existing right as foreseen in Article I.8.1 or in order forms or specific contracts. All the pre-existing rights shall be licensed to the Union from the moment the results were delivered and accepted 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 whole duration of intellectual property rights protection.

### **II.10.4 Modes of exploitation**

The Union shall acquire ownership of each of the results produced as an outcome of the FWC which may be used for any of the following purposes:

- (a) giving access upon individual requests without the right to reproduce or exploit, as provided for by Regulation 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents;
- (b) storage of the original and copies made in accordance with this FWC or specific contract or order form;
- (c) archiving in line with the document management rules applicable to the contracting authority.

### **II.10.5 Identification and evidence of granting of pre-existing rights and rights of third parties**

When delivering the results, the contractor shall warrant that they are free of rights or claims from creators and third parties including in relation to pre-existing rights, for any use envisaged by the contracting authority. This does not concern the moral rights of natural persons.

The contractor shall establish to that effect a list of all pre-existing rights and rights of creators and third parties on the results of this FWC or parts thereof. This list shall be provided no later than the date of delivery of the final results.

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

Upon request by the contracting authority, the contractor shall provide evidence of ownership or rights to use all the listed pre-existing rights and rights of third parties except for the rights owned by the Union.

This evidence may refer, inter alia, to rights to: parts of other documents, images, graphs, tables, data, software, technical inventions, know-how etc. (delivered in paper, electronic or other form), IT development tools, routines,

subroutines and/or other programs ("background technology"), concepts, designs, installations or pieces of art, data, source or background materials or any other parts of external origin.

The evidence shall 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 in case it is found that it does not hold the necessary rights, regardless of when and by whom this fact was 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.10.6 Creators**

By delivering the results the contractor warrants that the creators undertake not to oppose that their names be recalled when the results are presented to the public and confirms that the results can be divulged. Names of authors shall be recalled on request in the manner communicated by the contractor to the contracting authority.

The contractor shall obtain the consent of creators regarding the granting of the relevant rights and be ready to provide documentary evidence upon request.

#### **II.10.7 Persons appearing in photographs or films**

If natural, recognisable persons appear in a result or their voice is recorded the contractor shall submit a statement of these persons (or of the persons exercising parental authority in case of minors) where they give their permission for the described use of their image or voice on request by the contracting authority. This does not apply to persons whose permission is not required in line with the law of the country where photographs were taken, films shot or audio records made.

#### **II.10.8 Copyright for pre-existing rights**

When the contractor retains pre-existing rights on parts of the results, reference shall be inserted to that effect when the result is used as set out in Article I.8.1 with the following disclaimer: © - year – European Union. All rights reserved. Certain parts are licensed under conditions to the EU.

#### **II.10.9 Visibility of Union funding and disclaimer**

When making use of the results, the contractor shall declare that they have been produced within 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.

### **ARTICLE II. 11 – FORCE MAJEURE**

**II.11.1** 'Force majeure' means any unforeseeable and exceptional situation or event beyond the parties' control which prevents either of them from fulfilling any of their obligations under the FWC, which was not attributable to error or negligence on their part or on the part of subcontractors and which proves to be inevitable in spite of exercising due diligence. Any default of a service, defect in equipment or material or delays in making them available, unless they stem directly from a relevant case of force majeure, as well as labour disputes, strikes or financial difficulties, cannot be invoked as force majeure.

**II.11.2** A party faced with force majeure shall formally notify the other party without delay, stating the nature, likely duration and foreseeable effects.

**II.11.3** The party faced with force majeure shall not be held in breach of its contractual obligations if it has been prevented from fulfilling them by force majeure. Where the contractor is unable to fulfil its contractual obligations owing to force majeure, it shall have the right to remuneration only for the tasks actually executed.

**II.11.4** The parties shall take all the necessary measures to limit any damage due to force majeure.

**ARTICLE II. 12 – LIQUIDATED DAMAGES**

The contracting authority may impose liquidated damages should the contractor fail to complete its contractual obligations, also with regard to the required quality level, according to the tender specifications.

Should the contractor fail to perform its contractual obligations within the time limits set by the FWC or the relevant order form or specific contract, then, without prejudice to the contractor's actual or potential liability or to the contracting authority's right to terminate the FWC or the relevant order form or specific contract, the contracting authority may impose liquidated damages for each and every calendar day of delay according to the following formula:  
 $0.3 \times (V/d)$

*V* is the price of the relevant purchase;

*d* is the duration specified in the relevant order form or specific contract or, failing that, the period between the date specified in Article I.4.1 and the date of delivery or performance specified in the relevant order form or specific contract, expressed in calendar days

The contractor may submit arguments against this decision within 30 days of receipt of the formal notification. In the absence of a reaction on its part or of written withdrawal by the contracting authority within 30 days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable.

The parties expressly acknowledge and agree that any sums payable under this article are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the losses incurred due to failure to fulfil obligations which may be reasonably anticipated.

**ARTICLE II. 13 – SUSPENSION OF THE PERFORMANCE OF THE FWC**

**II.13.1 Suspension by the contractor**

The contractor may suspend the performance of the FWC or order form or specific contract or any part thereof if a case of force majeure makes such performance impossible or excessively difficult. The contractor shall inform the contracting authority about the suspension without delay, giving all the necessary reasons and details and the envisaged date for resuming the performance of the FWC, order form or specific contract.

Once the circumstances allow resuming performance, the contractor shall inform the contracting authority immediately, unless the contracting authority has already terminated the FWC, order form or specific contract.

**II.13.2 Suspension by the contracting authority**

The contracting authority may suspend the performance of the FWC or order form or specific contract or any part thereof:

- (a) if the FWC or order form or specific contract award procedure or the performance of the FWC prove to have been subject to substantial errors, irregularities or fraud;
- (b) in order to verify whether presumed substantial errors, irregularities or fraud have actually occurred.

Suspension shall take effect on the day the contractor receives formal notification, or at a later date where the notification so provides. The contracting authority shall as soon as possible give notice to the contractor to resume the service suspended or inform the contractor that it is proceeding with termination of the FWC or order form or specific contract. The contractor shall not be entitled to claim compensation on account of suspension of the FWC or order form or specific contract or of part thereof.

**ARTICLE II. 14 – TERMINATION OF THE FWC**

**II.14.1 Grounds for termination**

The contracting authority may terminate the FWC, an order form or a specific contract respectively in the following circumstances:

- (a) if a change to the contractor's legal, financial, technical or organisational or ownership situation is likely to affect the performance of the FWC or order form or specific contract substantially or call into question the decision to award the FWC;
- (b) if execution of the tasks under a pending order form or a specific contract has not actually commenced within 15 days of the date foreseen, and the new date proposed, if any, is considered unacceptable by the contracting authority, taking into account article II.8.2;
- (c) if the contractor does not perform the FWC or an order form or specific contract as established in the tender specifications or request for service or fails to fulfil another substantial contractual obligation; termination of three or more order forms or specific contracts on this ground shall constitute ground for termination of the FWC;
- (d) in the event of force majeure notified in accordance with article II.11 or if the performance of the FWC or order form or specific contract has been suspended by the contractor as a result of force majeure, notified in accordance with article II.13, where either resuming performance is impossible or the modifications to the FWC or order form or specific contract might call into question the decision awarding the FWC or order form or specific contract, or result in unequal treatment of tenderers or contractors;
- (e) if the contractor is declared bankrupt, is being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (f) if the contractor or any natural person with the power to represent it or take decisions on its behalf has been found guilty of professional misconduct proven by any means;
- (g) if the contractor is not in compliance with its obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which it is established or with those of the country of the applicable law of this FWC or those of the country where the FWC is to be performed;
- (h) if the contracting authority has evidence that the contractor or any natural persons with the power to represent it or take decisions on its behalf have committed fraud, corruption, or are involved in a criminal organisation, money laundering or any other illegal activity detrimental to the Union's financial interests;
- (i) if the contracting authority has evidence that the contractor or any natural persons with the power to represent it or take decisions on its behalf have committed substantial errors, irregularities or fraud in the award procedure or the performance of the FWC, including in the event of submission of false information;
- (j) if the contractor is unable, through its own fault, to obtain any permit or licence required for performance of the FWC or order form or specific contract;
- (k) if the needs of the contracting authority change and it no longer requires new services under the FWC;
- (l) when due to the termination of the FWC with one or more of the contractors there is no minimum required competition within the multiple framework contract with reopening of competition.

**II.14.2 Procedure for termination**

When the contracting authority intends to terminate the FWC or order form or specific contract it shall formally notify the contractor of its intention specifying the grounds thereof. The contracting authority shall invite the contractor to make any observations and, in the case of point (c) of Article II.14.1, to inform the contracting authority about the measures taken to continue the fulfilment of its contractual obligations, within 30 days from receipt of the notification.

If the contracting authority does not confirm acceptance of these observations by giving written approval within 30 days of receipt, the termination procedure shall proceed. In any case of termination the contracting authority shall formally notify the contractor about its decision to terminate the FWC or order form or specific contract. In the cases referred

to in points (a), (b), (c), (e), (g), (j), (k) and (l) of Article II.14.1 the formal notification shall specify the date on which the termination takes effect. In the cases referred to in points (d), (f), (h), and (i) of Article II.14.1 the termination shall take effect on the day following the date on which notification of termination is received by the contractor.

### **II.14.3 Effects of termination**

In the event of termination, the contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work. On receipt of the notification of termination, the contractor shall take all the appropriate measures to minimise costs, prevent damages, and cancel or reduce its commitments. The contractor shall have 60 days from the date of termination to draw up the documents required by the special conditions or order forms or specific contracts for the tasks already executed on the date of termination and produce an invoice if necessary. The contracting authority may recover any amounts paid under the FWC.

The contracting authority may claim compensation for any damage suffered in the event of termination.

On termination the contracting authority may engage any other contractor to execute or complete the services. The contracting authority shall be entitled to claim from the contractor all extra costs incurred in this regard, without prejudice to any other rights or guarantees it may have under the FWC.

## **ARTICLE II. 15 – REPORTING AND PAYMENTS**

### **II.15.1 Date of payment**

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

### **II.15.2 Currency**

The FWC shall be in euros.

Payments shall be executed in euros or in the local currency as provided for in Article I.5.

Conversion between the euro and another currency shall be made according to the daily euro exchange rate published in the *Official Journal of the European Union* or, failing that, at the monthly accounting exchange rate established by the European Commission and published on its website, applicable on the day on which the payment order is issued by the contracting authority.

### **II.15.3 Costs of transfer**

The costs of the transfer shall be borne in the following way:

- (a) costs of dispatch charged by the bank of the contracting authority shall be borne by the contracting authority,
- (b) cost of receipt charged by the bank of the contractor shall be borne by the contractor,
- (c) costs for repeated transfer caused by one of the parties shall be borne by the party causing repetition of the transfer.

### **II.15.4 Invoices and Value Added Tax**

Invoices shall contain the contractor's identification, the amount, the currency and the date, as well as the FWC reference and reference to the order form or specific contract.

Invoices shall indicate the place of taxation of the contractor for value added tax (VAT) purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

The contracting authority is, as a rule, exempt from all taxes and duties, including VAT, pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union.

The contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the supplies and services required for performance of the FWC are exempt from taxes and duties, including VAT exemption.

### **II.15.5 Pre-financing and performance guarantees**

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

Performance guarantees shall cover performance of the service in accordance with the terms set out in the request for services until its final acceptance by the contracting authority. The amount of the performance guarantee shall not exceed the total price of the order form or specific contract. The guarantee shall provide that it remains in force until final acceptance. The contracting authority shall release the guarantee within a month following the date of final acceptance.

Where, in accordance with Article I.4, a financial guarantee is required for the payment of pre-financing, or as performance guarantee, it shall fulfil the following conditions:

- (a) the financial guarantee is provided by a bank or an approved financial institution or, at the request of the contractor and agreement by 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 cost of providing such guarantee shall be borne by the contractor.

#### **II.15.6 Interim payments and payment of the balance**

The contractor shall submit an invoice for interim payment upon delivery of intermediary results, accompanied by a progress report or any other documents, as provided for in Article I.4 or in the tender specifications or in the order form or specific contract.

The contractor shall submit an invoice for payment of the balance within 60 days following the end of the period referred to in Article III.2.2, accompanied by a final progress report or any other documents provided for in Article I.4 or in the tender specifications or in the order form or specific contract.

Upon receipt, the contracting authority shall pay the amount due as interim or final payment, within the periods specified in Article I.4, provided the invoice and documents have been approved and without prejudice to Article II.15.7. Approval of the invoice and documents shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information they contain.

Payment of the balance may take the form of recovery.

#### **II.15.7 Suspension of the time allowed for payment**

The contracting authority may suspend the payment periods specified in Article I.4 at any time by notifying the contractor that its invoice cannot be processed, either because it does not comply with the provisions of the FWC, or because the appropriate documents have not been produced.

The contracting authority shall inform the contractor in writing as soon as possible of any such suspension, giving the reasons for it.

Suspension shall take effect on the date the notification is sent by the contracting authority. The remaining payment period shall start to run again 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 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 and the new document produced is also rejected, the contracting authority reserves the right to terminate the order form or specific contract in accordance with Article II.14.1(c).

#### **II.15.8 Interest on late payment**

On expiry of the payment periods specified in Article I.4, and without prejudice to Article II.15.7, the contractor 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 shall be the rate in force on the first day of the month in which the payment period ends, as published in the C series of the *Official Journal of the European Union*.

The suspension of the payment period in accordance with Article II.15.7 may not be considered as a late payment.

Interest on late payment shall cover the period running from the day following the due date for payment up to and including the date of actual payment as defined in Article II.15.1.

However, when the calculated interest is lower than or equal to EUR 200, it shall be paid to the contractor only upon request submitted within two months of receiving late payment.

#### **ARTICLE II. 16 - REIMBURSEMENTS**

**II.16.1** Where provided by the special conditions or by the tender specifications, the contracting authority shall reimburse the expenses that are directly connected with execution of the tasks on production of original supporting documents, including receipts and used tickets, or failing that, on production of copies or scanned originals, or on the basis of flat rates.

**II.16.2** Travel and subsistence expenses shall be reimbursed, where appropriate, on the basis of the shortest itinerary and the minimum number of nights necessary for overnight stay at the destination.

**II.16.3** Travel expenses shall be reimbursed as follows:

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

In addition, travel outside Union territory shall be reimbursed provided the contracting authority has given its prior written consent.

**II.16.4** Subsistence expenses shall be reimbursed 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 shall be payable;
- (b) daily subsistence allowance shall be payable only on receipt of supporting documents proving that the person concerned was present at the destination;
- (c) daily subsistence allowance shall take the form of a flat-rate payment to cover all subsistence expenses, including meals, local transport which includes transport to and from the airport or station, insurance and sundries;
- (d) daily subsistence allowance shall be reimbursed at the flat rates specified in Article I.3;
- (e) accommodation shall be reimbursed on receipt of supporting documents proving the necessary overnight stay at the destination, up to the flat-rate ceilings specified in Article I.3.

**II.16.5** The cost of shipment of equipment or unaccompanied luggage shall be reimbursed provided the contracting authority has given prior written authorisation.

**II.16.6.** Conversion between the euro and another currency shall be made as specified in Article II.15.2.

#### **ARTICLE II. 17 – RECOVERY**

**II.17.1** If an amount is to be recovered under the terms of the FWC, the contractor shall repay the contracting authority the amount in question according to the terms and by the date specified in the debit note.

**II.17.2** If the obligation to pay the amount due is not honoured by the date set by the contracting authority in the debit note, the amount due shall bear interest at the rate indicated in Article II.15.8. Interest on late payments shall cover the period from the day following the due date for payment up to and including the date when the contracting authority receives the full amount owed.

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

- II.17.3** If payment has not been made by the due date, the contracting authority may, after informing the contractor in writing, recover the amounts due by offsetting them against any amounts owed to the contractor by the Union or by the European Atomic Energy Community or by calling in the financial guarantee, where provided for in Article I.4 or in the specific contract.

**ARTICLE II. 18 – CHECKS AND AUDITS**

- II.18.1** The contracting authority and the European Anti-Fraud Office may check or have an audit on the performance of the FWC. It may be carried out either directly by its own staff or by any other outside body authorised to do so on its behalf.

Such checks and audits may be initiated during the performance of the FWC and during a period of five years which starts running from the date of expiry of the FWC.

The audit procedure shall be deemed to be initiated on the date of receipt of the relevant letter sent by the contracting authority. Audits shall be carried out on a confidential basis.

- II.18.2** The contractor shall keep all original documents stored on any appropriate medium, including digitised originals when they are authorised by national law and under the conditions laid down therein, for a period of five years which starts running from the date of expiry of the FWC.

- II.18.3** The contractor shall allow 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 performed and to all the information, including information in electronic format, needed in order to conduct such checks and audits. The contractor shall ensure that the information is readily available at the moment of the check or audit and, if so requested, that information be handed over in an appropriate form.

- II.18.4** On the basis of the findings made during the audit, a provisional report shall be drawn up. It shall be sent to the contractor, which shall have 30 days following the date of receipt to submit observations. The final report shall be sent to the contractor within 60 days following the expiry of that deadline.

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

- II.18.5** By virtue of 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 (EC) No 1073/1999 of the European Parliament and the Council of 25 May 1999 concerning investigation conducted by the European Anti-Fraud Office (OLAF), the OLAF may also carry out on-the-spot checks and inspections in accordance with the procedures laid down by Union law for the protection of the financial interests of the Union against fraud and other irregularities. Where appropriate, the findings may lead to recovery by the contracting authority.

- II.18.6** The Court of Auditors shall have the same rights as the contracting authority, notably right of access, for the purpose of checks and audits.

**ANNEX I TENDER SPECIFICATIONS (TENDER ERA 2016 01 OP)  
ORIGINAL ARCHIVED AT THE AGENCY'S PREMISES**

**ANNEX II: CONTRACTOR'S TENDER DATED ..... ORIGINAL  
ARCHIVED AT THE AGENCY'S PREMISES**

### **ANNEX III: FINANCIAL IDENTIFICATION AND LEGAL ENTITIES**

**SPECIFIC CONTRACT No [complete]**  
**implementing Framework contract No [complete]**

The European Railway Agency (hereinafter referred to as "the Agency"), which is represented for the purposes of the signature of this contract by ....., Head of .....,

on the one part, and

[full official name]

[official legal form]

[statutory registration number]

[full official address ]

[VAT registration number]

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

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

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

on the other part,

HAVE AGREED

**Article 1. Preamble**

This Specific Contract is based on the Contractor's bid dated [date] (reference [Bid Reference]). Once signed by the parties, the Specific Contract shall be governed by the Framework Contract. This Specific Contract does not amend the provisions of that Framework Contract.

**Article 2. Subject**

**2.1** The subject of this Specific Contract is [short description of subject].

.....

**2.2** The Contractor undertakes, subject to the terms set out in the Framework Contract and in this Specific Contract and its Annexes, which form an integral part thereof, to perform the tasks specified **in Annex Ia:** .

**Article 3. Duration and Location**

**3.1** This Specific Contract shall enter into force at the earliest on the date it is signed. [for a duration of [Number of Months] months] [or] [and shall end at the latest on [date]].

The execution of the tasks shall end at the latest on [date].

[or

if this is an extended Specific Contract:]

The Specific Contract shall enter into force at the earliest on the date it is signed and not before the end of Specific Contract No [Specific Contract Number]. The execution of the tasks shall [last for a duration of [Number of Months] months] [or] [end at the latest on [date]].

**3.2** The tasks shall be performed as specified in **Annex Ia**. The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses by means of an amendment to this specific contract.

**3.3** The tasks shall be performed on the premises of [the Contractor] [the Agency].

#### **Article 4. Performance**

**4.1** The tasks performed by the Contractor under this Specific Contract shall result in "**deliverables**", defined according to the provisions of **Annex Ia**:

#### **Article 5. Prices and Payments**

**5.1** The Agency undertakes to pay the Contractor, in consideration for the services rendered under this Specific Contract, a fixed price of EUR [Amount].

It is understood that this amount shall cover all expenditure incurred by the Contractor in carrying out the Specific Contract.

In case of travel to locations other than the normal locations of delivery – Valenciennes (France) and/or Lille (France) – that is conducted on request of the Agency, the contractor shall be entitled to reimbursement of travel costs and daily allowances; the rules, regulations and rates will be included in the specific contract..]

#### **5.2 Payment modalities**

- Maximum of 30 % on receipt of first deliverable;
- 70 % on completion of the work, based on receipt advice slips accepted and signed by the Agency in accordance with the form in **Annex IIa: Task Acceptance Form** (to be attached to the invoice).

**5.3** Payments shall be made to the account specified in the BAF on production of the invoice showing separately the amount of the fees and the VAT applied and within no more than 30 calendar days from the date the invoice is received by the Unit indicated in Article 5.4 below. Invoices presented by the Contractor shall indicate his place of taxation for VAT purposes and shall specify separately the amounts not including VAT and those including VAT. The payment shall be deemed to have been effected on the day the Agency's financial account is debited.

#### **For countries other than Belgium**

*According to Article 23 of Regulation No. 881/2004 of the European Parliament and of the Council of 29 April 2004 establishing a European railway agency (Agency Regulation)<sup>1</sup>, the Protocol on the Privileges and Immunities of the European Union shall apply to the Agency and its staff. Pursuant to articles 3 and 4 of this Protocol, the Agency is exempt from all taxes, duties and charges, in particular value added tax, on payments made under this order.*

*The contractor receives and keeps in his records the form entitled "VAT and Excise Duty Exemption Certificate" duly completed and signed by the Agency. The invoice must contain the following statement: "VAT Exemption / International Body / Article 151 of Council Directive 2006/112/EC"*

**5.4.** The address for invoices is:  
The Accountant / RSU - Email: [insert functional mailbox]  
European Railway Agency  
120, rue Marc Lefrancq  
59300 Valenciennes  
France

**Article 6. Sub-Contracting** [Verify whether is applicable. If not: specify "Not applicable"]

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<sup>1</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:220:0003:0015:EN:PDF#page=7>

Or]

**6.1** In accordance with Article 4 of the General Conditions, the Contractor has been permitted to subcontract by written authorisation dated [date][date].

*Tasks stated in **Annex Ia: The Agency's request and the Contractor's Offer** may be performed by the subcontractor Name and address of subcontractor, entirely at the risk of the Contractor.*

**6.2** Without prejudice to the Agency's other rights, if the Contractor fails to meet his obligations, the Specific Contract with the Agency may be terminated in accordance with Article 3 of the General Conditions. This clause applies throughout the term of the Specific Contract.

**6.3 Administrative Provisions**

The persons responsible for implementing this Specific Contract are:

**For the Agency:**

<u>Administrative matters:</u> (Administrative responsible)	<u>Technical matters:</u>
SURNAME/First name: Click here to enter text.	SURNAME/First name: Click here to enter text.
Office: Click here to enter text.	Office: Click here to enter text.
Tel.: Click here to enter text.	Tel.: Click here to enter text.

**For the Contractor:**

<u>Administrative and technical matters:</u>
SURNAME/First name: Click here to enter text.
Tel.: Click here to enter text.

**6.4** All communications relating to the implementation of the Specific Contract must be in the form of written correspondence and be sent to the appropriate responsible persons.

**Article 7. Annexes**

The following documents are annexed to the Specific Contract and form an integral part of it:

**Annex Ia: The Agency's request and the Contractor's Offer**

**Annex IIa: Task Acceptance Form**

**SIGNATURES**

For the Contractor,

.....

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

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

For the Agency,

..... Head of .....

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

Done at Valenciennes on .....

In duplicate in English.

## **Annex Ia: The Agency's request and the Contractor's Offer**

## Annex IIa: Task Acceptance Form

# Consignment Note and Certificate of Conformity

For Specific Contract No. [Click here to enter text.](#)  
 under Framework Contract **ERA ..... FWC** Original document – duly signed – to be attached to the  
 invoice

### Consignment Note (Receipt of Work)

To be filled in by the Contractor and the Agency:

	Contractor	Agency
<b>Date of delivery/signing:</b>	Click here to enter a date.	Click here to enter a date.
<b>Person responsible for checking</b> (in block capitals):	CLICK HERE TO ENTER TEXT.	CLICK HERE TO ENTER TEXT.
<b>Comments:</b>	Click here to enter text.	Click here to enter text.
<b>Date and signature:</b>	Click here to enter a date.	Click here to enter a date.

### Certificate of Conformity (Acceptance and Validation of Work)

To be filled in by the Agency:

	Agency
<b>Acceptance Criteria:</b>	<b>The deliverable described above has been reviewed against the prescribed acceptance criteria. Based on these criteria, the deliverable is accepted as complete and as fulfilling the requirements set in the Contract.</b>
<b>Official responsible for acceptance:</b>	Click here to enter text.
<b>Date and signature:</b>	Click here to enter a date.
<b>Official responsible for final acceptance and invoicing:</b>	Click here to enter text.
<b>Date and signature denoting final acceptance and invoicing:</b>	Click here to enter a date.