

Annex 1 - Draft Service Multiple Framework Contract and Annexes

Contract Number – Provisional No ERA 2017 16 FWC nn

The European Union Agency for Railways (hereinafter referred to as "the Agency"), which is represented for the purposes of the signature of this contract by Mr Jens Engelmann, Head of CME,

of the one part,

and

[official name in full][official name in full]

[official legal form][official legal form]

[statutory registration number][statutory registration number]

[official address in full][official address in full]

[VAT registration number][VAT registration number]

(hereinafter referred to as "the Contractor"¹) represented for the purposes of the signature of this contract by [name in full and function],

of the other part,

The parties identified above and hereinafter collectively referred to as 'the Contractor' shall be jointly and severally liable vis-à-vis the Agency for the performance of this contract.

HAVE AGREED

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

Annex I Tender Specifications (Invitation to tender ERA 2017 16 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 (No ..complete..of...complete); – Original archived at the Agency's premises

Annex III Power of Attorney;

Annex IV Financial Identification Form and Legal Entities Form;

Annex V 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 Contract;
- The terms set out in the Contract shall take precedence over those in the Specific Contracts.
- The terms set out in the Tender Specifications shall take precedence over those in the Contractor's Tender.

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.

¹ In the case of a joint offer and provided the invitation to tender so specifies, the following clause should be added below the identification of the parties: "The parties identified above and hereinafter collectively referred to as 'the Contractor' shall be jointly and severally liable vis-à-vis the Agency for the performance of this contract".

Preamble

On *(include details)* the Agency, acting on its own behalf, published, in the Official Journal of the European Union, a Contract Notice *(include details)* for a call for tenders under reference n. *(include details)* for the provision of *.....(include details)*

The Contractor is selected as a contractor of a multiple FWC with reopening of competition (herein under the “Contract”) at the conclusion of the evaluation process, on the basis of its bid submitted on *[.././2017]* in response to the invitation to tender.

The other selected contractors of the multiple framework contract are *[...][...]* with the contracts No *[...][...]* respectively.

This Framework contract contains all the conditions for concluding and executing Specific Contracts.

I – Special Conditions

The draft contract is provided solely for information. The tenderer should note that in the case that his offer is successful the resulting contract will be based on this draft contract.

Article I.1 - Subject

1.1.1 The subject of the Contract is the provision to the Agency of deliverables related to various tasks the contractor will have to perform, namely:

- *providing, for each category of data, a complete and clear definition of the data category*
- *identification of adequate sources of data, including their geographical/sectoral coverage*
- *defining and applying the sampling and survey methodology*
- *defining assumptions, where necessary, and checking their robustness*
- *performing the data collection*
- *applying normalization methods, as needed*
- *performing data quality checks*
- *preparing data presentation/display/delivery*
- *providing recommendations on the methodologies for data collection and for the production of estimates in case of poor data availability*
- *providing supporting information (meta-data) and any other information needed to derive any meaningful knowledge from the data*

The final datasets constituting the main deliverables of the work performed shall be supported by additional information that provide evidence regarding the origins, quality and representativeness of the data.

Details are included in the Tender Specifications (Annex I)

1.1.2 Upon implementation of the Contract, the Contractor shall execute the tasks in accordance with the tender specifications and his offer submitted in reply to the Call for tenders *and to the published clarifications.*

1.1.3 The Contract does not confer on the Contractor any exclusive right to provide services referred to in the above paragraph.

1.1.4 Signature of the Contract imposes no obligation on the Agency to purchase. Only the implementation of the Contract through Specific Contracts is binding on the Agency.

1.1.5 All Specific Contracts implementing the Contract shall conform to the terms set out therein.

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 three 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.

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 – Implementation of the Multiple framework contract with reopening of competition

The re-opening to competition mechanism is a mechanism applied for using multiple framework contracts. In general, all contractors for which this mechanism applies shall be invited simultaneously to submit offers under each initial request. When replying to those requests, it will be up to the contractors to define the appropriate team structure (profiles, levels, individual workloads) and a lump sum price all inclusive. If asked for justifying the price, the contractors will have to use the fee rates included in the framework contracts:

they shall be considered to be maximum rates and they can only be increased on the basis of indexations. However, in reply to initial requests those can be reduced at the discretion of contractors.

Within [complete] working days of a request for services being sent by the contracting authority to the contractors, the contracting authority shall receive the specific tender back, duly signed and dated. In the event of failure to observe these conditions the contractor shall be considered to waive its participation in the specific competition. The contracting authority may sign a specific contract with the contractor who has submitted the best specific tender on the basis of the award criteria set out in the tender specifications.

Within [complete] working days of a specific contract being sent by the contracting authority to the contractor, the contracting authority shall receive it back, duly signed and dated. The period allowed for the execution of the tasks shall start to run on the date indicated in the specific contract.

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.5 – Payment Periods and Formalities

Payments under the Contract shall be made in accordance with Article II.5. Payments shall be executed only if the Contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted.

I.5.1 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.

Within thirty days of the date of receipt of the relevant invoice the payment of the interim amount(s) corresponding to the relevant invoices shall be made. The balance will be paid with the payment of the balance (final payment).

I.5.2 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 Belgium, the orders shall include the following provision: “En Belgique, l’utilisation de ce bon de commande vaut présentation d’une demande d’exemption de la TVA n° 450, article 42, paragraphe 3.3 of the Belgian VAT code (circulaire 2/1978)” or an equivalent statement in the Dutch or German language. The Contractor shall include the following statement in his invoice(s): “Exonération de la TVA, article 42, paragraphe 3.3 du code de la TVA (circulaire 2/1978)” or an equivalent statement in the Dutch or German language.

For Contractors established in other countries: 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.5.3. 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 the Financial Identification.

Article I.6 – 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</p>	<p><u>For the Contractor:</u></p> <p>Mr/Mrs/MsMr/Mrs/Ms [complete][complete] [Function][Function] [Company name][Company name] [Official address in full][Official address in full]</p>
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Article I.7 – Applicable law and settlement of disputes

I.7.1 The Contract shall be governed by the European Union law supplemented, when necessary, by the national substantive law of France.

I.7.2 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.8 – Exploitation of the results of the contract

I.8.1 Modes of exploitation

In accordance with Article II.17.2 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 listed in article II.17.4
- (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.

I.8.2 Pre-existing rights and transmission of rights

All pre-existing rights shall be licensed to the Agency in accordance with Article II.17.3.

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 as provided for in Article II.17.5.

Article I.9 - Data Protection

I.9.1 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 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.9.2 When processing personal data on behalf of the Contracting authority(ies) 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.10 - 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.11 - Specific Provisions

I.11.1 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.

I.11.2 Additional Services

The Agency may exercise the option to increase the estimated market amount at a later stage via negotiated procedure with the contractor in accordance with Art. 134.1.e. of the Rules of Application of the Financial Regulation.

Article I.12 Specific Quality Standards

Complementary to Article II.1 – Performance of the contract of the General Conditions, the study 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 of deliverables (e.g. work plan, interim report(s), final report(s) / summary report(s) / training material and any other deliverable(s)) 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 *(include the value of the specific contract)* EUR.

II – General Conditions

Article II.1 – PROCEDURES FOR PERFORMING THE CONTRACT

II.1.1 Phases of execution of the Specific Contract

Sending of the Specific Contract

Whenever the Agency wishes services to be provided or goods to be supplied pursuant to the Contract, it shall send a Specific Contract to the Contractor, in duplicate, specifying the terms of the provision of services or supply of the goods, such as quantity, designation, quality, price, place of delivery and time allowed for delivery, in accordance with the conditions laid down in the Contract.

Acknowledgment of the Specific Contract by the Contractor

Within the period indicated in Article I.4, the Contractor shall return one original of the Specific Contract, duly signed and dated, thereby acknowledging receipt of the Specific Contract and acceptance of the terms.

Delivery

a) Time allowed for delivery

The time allowed for delivery shall be calculated in accordance with Article I.4.

b) Date, time and place of delivery

The Agency shall be notified in writing of the exact date of delivery within the period indicated in Article I.4. All deliveries shall be made at the agreed place of delivery during the working hours of the Agency indicated in Article I.4. The Contractor shall bear all costs and risks involved in delivering the products to the place of delivery.

c) Consignment note

Each delivery shall be accompanied by a *Consignment note* in duplicate, duly signed and dated by the Contractor or his carrier, giving the Specific Contract number and particulars of the products delivered. One copy of the *Consignment note* shall be countersigned by the Agency (or its representative) and returned to the Contractor or to his carrier.

Certificate of conformity

Signing of the *Consignment note* by the Agency, as provided for in subparagraph c) above, is simply an acknowledgment of the fact that the products have been delivered and in no way implies conformity of the products with the Specific Contract.

Conformity of the products delivered shall be evidenced by the signing of a certificate to this effect by the Agency no later than one month after the date of delivery, unless provision for a different period is made in the Special Conditions or in the General Terms and Conditions for Information Technologies Contracts.

Conformity shall be declared only where the conditions laid down in the Contract and in the Specific Contract are satisfied and the products conform to the Annex I.

Where, for reasons attributable to the Contractor, the Agency is unable to accept the products, the Contractor shall be notified in writing at the latest by the deadline for conformity.

Conformity of the products delivered with the Contract

- a) The products delivered by the Contractor to the Agency must be in conformity in quantity, quality, price and packaging with the Contract and the relevant Specific Contract.
- b) The products delivered must:

- correspond to the description given in Annex I and possess the characteristics of the products supplied by the Contractor to the Agency as a sample or model;
- be fit for any specific purpose required of them by the Agency and made known to the Contractor at the time of conclusion of the Contract and accepted by the Contractor;
- be fit for the purposes for which products of the same type are normally used;
- demonstrate the quality and performance which are normal in products of the same type and which the Agency can reasonably expect, given the nature of the products and taking into account any public statements on the specific characteristics of the products made by the Contractor, the producer or his representative, particularly in advertising or on labelling;
- be packaged according to the usual method for products of the same type or, failing this, in a way designed to preserve and protect them.

Remedy

- a) The Contractor shall be liable to the Agency for any lack of conformity which exists at the time the products are verified.
- b) In the event of lack of conformity, without prejudice to Article II.4 regarding liquidated damages applicable to the total price of the products concerned, the Agency shall be entitled:
 - either to have the products brought into conformity, free of charge, by repair or replacement;
 - or to have an appropriate reduction made in the price.
- c) Any repair or replacement shall be completed within a reasonable time and without any significant inconvenience to the Agency, taking account of the nature of the products and the purpose for which they are required by the Agency.
- d) The term 'free of charge' in paragraph b) refers to the costs incurred to bring the products into conformity, particularly the cost of carriage, labour and materials.

Assembly

If required by Article I.1.2 of the Special Conditions, the Contractor shall assemble the products delivered within a period of one month unless otherwise specified in the Special Conditions or in the General Terms and Conditions for Information Technologies Contracts.

Any lack of conformity resulting from incorrect installation of the products delivered shall be deemed to be equivalent to lack of conformity of the products if installation forms part of the Contract and the products were installed by the Contractor or under his responsibility. This shall apply equally if the product was to be installed by the Agency and was incorrectly installed owing to a shortcoming in the installation instructions.

Services provided to products

If required by the Contract, services to products shall be provided accordingly.

II.1.2 General provisions concerning products

a) Packaging

The products shall be packaged in strong boxes or in any other way that ensures that the contents remain intact and prevents damage or deterioration. Packaging, pallets, etc., including contents, shall not weigh more than 500 kg.

Unless otherwise specified in the Special Conditions, pallets shall be considered as one-way packaging and shall not be returned. Each box shall be clearly labelled with the following information:

- European Railway Agency and address for delivery;
- name of Contractor;
- description of contents;
- date of delivery;
- number and date of Specific Contract;
- number of Contract.

b) Guarantee

The goods shall be guaranteed against all defects in manufacture or materials for two years from the date of delivery, unless provision for a longer period is made in Annex I.

The Contractor shall guarantee that any permits and licences required for providing the products have been obtained.

The Contractor shall replace at his own expense, within a reasonable time limit to be determined by agreement between the parties, any items which become damaged or defective in the course of normal use during the guarantee period.

The Contractor is responsible for any conformity defect which exists at the time of delivery, even if this defect does not appear until a later date.

The Contractor is also responsible for any conformity defect which occurs after delivery and is ascribable to non-compliance with his obligations, including failure to provide a guarantee that, for a certain period, products used for the purposes for which they are normally used or for a specific purpose will preserve their qualities or characteristics as specified.

If part of an item is replaced, the replacement part shall be guaranteed under the same terms and conditions for a further period of the same duration as that specified above.

If a defect is found to originate in a systematic flaw in design, the Contractor must replace or modify all identical parts incorporated in the other goods that are part of the Specific Contract, even though they may not have been the cause of any incident. In this case, the guarantee period shall be extended as stated above.

II.1.3 Performance of the Contract

- a) The Contractor shall perform the Contract to the highest professional standards. The Contractor shall have sole responsibility for complying with any legal obligations incumbent on him, notably those resulting from employment, tax and social legislation.
- b) The Contractor shall have sole responsibility for taking the necessary steps to obtain any permit or licence required for performance of the Contract under the laws and regulations in force at the place where the tasks assigned to him are to be executed.
- c) Without prejudice to Article II.3 any reference made to the Contractor's staff in the Contract shall relate exclusively to individuals involved in the performance of the Contract.
- d) The Contractor must ensure that any staff performing the Contract have the professional qualifications and experience required for the execution of the tasks assigned to him.
- e) The Contractor shall neither represent the Agency nor behave in any way that would give such an impression. The Contractor shall inform third parties that he does not belong to the European public service.
- f) The Contractor shall have sole responsibility for the staff who execute the tasks assigned to him. The Contractor shall make provision for the following employment or service relationships with his staff:

- staff executing the tasks assigned to the Contractor may not be given orders direct by the Agency;
 - the Agency may not under any circumstances be considered to be the staff's employer and the said staff shall undertake not to invoke in respect of the Agency any right arising from the contractual relationship between the Agency and the Contractor.
- g) In the event of disruption resulting from the action of a member of the Contractor's staff working on Agency premises or in the event of the expertise of a member of the Contractor's staff failing to correspond to the profile required by the Contract, the Contractor shall replace him without delay. The Agency shall have the right to request the replacement of any such member of staff, stating its reasons for so doing. Replacement staff must have the necessary qualifications and be capable of performing the Contract 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 staff in accordance with this Article.
- h) Should any unforeseen event, action or omission directly or indirectly hamper execution of the tasks, either partially or totally, the Contractor shall immediately and on his own initiative record it and report it to the Agency. 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 his obligations under the Contract. In such event the Contractor shall give priority to solving the problem rather than determining liability.
- i) Should the Contractor fail to perform his obligations under the Contract in accordance with the provisions laid down therein, 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.4.
- j) The Office, in the framework of the execution of a Specific Agreement might organize interviews with the Contractor's proposed staff. These interviews aim to validate the technical capacity of the Contractor or of its staff members.
- k) The Contractor must verify the identity and the information contained in the CVs of the proposed staff and confirm that such information is full, reliable and true. Moreover, the staff must comply with Section 13.1, b) and e) of Annex I – Tender Specifications.

Article II.2 – LIABILITY

II.2.1 The Agency shall not be liable for damage sustained by the Contractor in performance of the Contract except in the event of wilful misconduct or gross negligence on the part of the Agency.

II.2.2 The Contractor shall be liable for any loss or damage caused by himself in performance of the Contract, including in the event of subcontracting under Article II.10. The Agency shall not be liable for any act or default on the part of the Contractor in performance of the Contract. Notwithstanding the above, the Contractor shall not be liable for consequential loss and/or indirect damage exceeding the sum as set out for his professional risk insurance provided that this sum is no less than three times the total price/total amount of the *Specific Contract(s)* the execution of which is relevant for the loss or damage. The Contractor shall remain liable without any limitation as to the amount if the damage or loss is caused by the gross negligence or wilful conduct of the Contractor or by its employees, and for death caused by negligence or wilful conduct of its employees.

II.2.3 Subject to the maximum amount provided in II.2.2, the Contractor shall provide compensation in the event of **any** action, claim or proceeding brought against the Agency by a third party as a result of damage caused by the Contractor in performance of the Contract.

II.2.4 In the event of any action brought by a third party against the Agency in connection with performance of the Contract, the Contractor shall assist the Agency. Expenditure incurred to this end may be borne by the Agency.

II.2.5 The Contractor shall take out insurance against risks and damage relating to performance of the Contract if required by the relevant applicable legislation. He 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 Agency should it so request.

Article II.3 – CONFLICTS OF INTEREST

II.3.1 The Contractor shall take all necessary measures in order to prevent any situation that could compromise the impartial and objective performance of the Contract. Such conflict of interests could arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest. Any conflict of interests which could arise during performance of the Contract must be notified to the Agency in writing without delay. In the event of such conflict, the Contractor shall immediately take all necessary steps to resolve it.

The Agency reserves the right to verify that such measures are adequate and may require that additional measures be taken, if necessary, within a time limit which it shall set. The Contractor shall ensure that his staff, board and directors are not placed in a situation which could give rise to conflict of interest. Without prejudice to Article II.1 the Contractor shall replace, immediately and without compensation from the Agency, any member of his staff exposed to such a situation.

II.3.2 The Contractor shall abstain from any contact likely to compromise his independence.

II.3.3 The Contractor declares:

- that he has not made, and will not make, any offer of any type whatsoever, from which an advantage can be derived under the Contract,
- that he 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, where such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, inasmuch as it is an incentive or reward relating to the performance of the Contract.

II.3.4 The Contractor shall pass on all the relevant obligations in writing to his staff, board, and directors as well as to third parties involved in performance of the Contract. A copy of the instructions given and the undertakings made in this respect shall be sent to the Agency should it so request.

Article II.4 – LIQUIDATED DAMAGES

Should the Contractor fail to perform his obligations under the Contract within the time limits set by the Contract, then, without prejudice to the Contractor's actual or potential liability incurred in relation to the Contract or to the Agency's right to terminate the Contract, the Agency may decide to impose liquidated damages of 0.2% of the amount of the relevant Specific Contract per calendar day of delay. The Contractor may submit arguments against this decision within thirty days of notification by registered letter with acknowledgment of receipt or equivalent. In the absence of reaction on his part or of written withdrawal by the Agency within thirty days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable. These liquidated damages shall not be imposed where there is provision for interest for late completion. The Agency and the Contractor 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 that may be reasonably anticipated from such failure to perform obligations.

Article II.5 – INVOICING AND PAYMENTS

II.5.1 Interim payment:

At the end of each of the periods indicated in the Specific Contract the Contractor shall submit to the Agency a formal request for payment accompanied by those of the following documents which are provided for in the Special Conditions:

- an interim technical report/deliverable 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;
- statements of reimbursable expenses in accordance with Article II.7, if applicable.

If the report/deliverable is a condition for payment, on receipt the Agency shall have the period of time indicated in the Special Conditions in which to:

- approve it, with or without comments or reservations, or suspend such period and request additional information; or
- reject it and request a new report/deliverable.

If the Agency does not react within this period, the report/deliverable shall be deemed to have been approved. Approval of the report/deliverable does not imply recognition either of its regularity or of the authenticity, completeness or correctness of the declarations or information enclosed.

Where the Agency requests a new report/deliverable because the one previously submitted has been rejected, this shall be submitted within the period of time indicated in the Special Conditions. The new report/deliverable shall likewise be subject to the above provisions.

II.5.2 Payment of the balance:

Within sixty days of completion of each Specific Contract, the Contractor shall submit to the Agency a formal request for payment accompanied by those of the following documents, which are provided for in the Special Conditions:

- a final technical report/deliverable 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;

If the report/deliverable is a condition for payment, on receipt the Agency shall have the period of time indicated in the Special Conditions in which:

- to approve it, with or without comments or reservations, or suspend such period and request additional information; or
- to reject it and request a new report/deliverable.

If the Agency does not react within this period, the report/deliverable shall be deemed to have been approved. Approval of the report/deliverable does not imply recognition either of its regularity or of the authenticity, completeness or correctness of the declarations and information enclosed.

Where the Agency requests a new report/deliverable because the one previously submitted has been rejected, this shall be submitted within the period of time indicated in the Special Conditions. The new report/deliverable shall likewise be subject to the above provisions.

Article II.6 – GENERAL PROVISIONS CONCERNING PAYMENTS

II.6.1 Payments shall be deemed to have been made on the date on which the Agency's account is debited.

II.6.2 The payment periods referred to in Article I.5 may be suspended by the Agency at any time if it informs the Contractor that his *payment request* is not admissible, either because the amount is not due or

because the necessary supporting documents have not been properly produced. In case of doubt on the eligibility of the expenditure indicated in the *payment request*, the Agency may suspend the time limit for payment for the purpose of further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the expenditure is eligible.

The Agency shall notify the Contractor accordingly by registered letter with acknowledgment of receipt or equivalent. Suspension shall take effect from the date of dispatch of the letter. The remainder of the period referred to in Article I.4 shall begin to run again once the suspension has been lifted.

II.6.3 In the event of late payment the Contractor may claim interest within two months of receiving the payment. Interest shall be calculated at the rate applied by the European Central Bank to its most recent main refinancing operations (*“the reference rate”*) plus seven percentage points (*“the margin”*). The reference rate in force on the first day of the month in which the payment is due shall apply. Such interest rate is published in the C series of the Official Journal of the European Union. Interest shall be payable for the period elapsing from the calendar day following expiry of the time limit for payment up to the day of payment. Suspension of payment by the Agency may not be deemed to constitute late payment.

Article II.7 – RECOVERY

II.7.1 If total payments made exceed the amount actually due under the Specific Contract or if recovery is justified in accordance with the terms of the Contract, the Contractor shall reimburse the appropriate amount in euro on receipt of the debit note, in the manner and within the time limits set by the Agency.

II.7.2 In the event of failure to pay by the deadline specified in the request for reimbursement, the sum due shall bear interest at the rate indicated in Article II.6.3. Interest shall be payable from the calendar day following the expiry of the due date up to the calendar day on which the debt is repaid in full.

II.7.3 In the event of failure to pay by the deadline specified in the request for reimbursement, the Agency may, after informing the Contractor, recover amounts established as certain, of a fixed amount and due by offsetting, in cases where the Contractor also has a claim on the Communities that is certain, of a fixed amount and due. The Agency may also claim against the guarantee, where provided for.

Article II.8 – TAXATION

II.8.1 The Contractor shall have sole responsibility for compliance with the tax laws which apply to him. Failure to comply shall make the relevant invoices invalid.

II.8.2 The Contractor recognises that the Agency is, as a rule, exempt from all taxes and duties, including value added tax (VAT), pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union.

II.8.3 The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the products and services required for performance of the Contract are exempt from taxes and duties, including VAT.

II.8.4 Invoices presented by the Contractor shall indicate his place of taxation for VAT purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

Article II.9 – FORCE MAJEURE AFFECTING THE CONTRACT OR THE SPECIFIC CONTRACT(S)

II.9.1 Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the contracting parties which prevents either of them from performing any of their obligations under the Contract, was not due to error or negligence on their part or on the part of a subcontractor and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making it available, labour disputes, strikes or financial problems cannot be invoked as force majeure unless they stem directly from a relevant case of force majeure.

II.9.2 Without prejudice to the provisions of Article II.1.3(h), if either contracting party is faced with force majeure, it shall notify the other party without delay by registered letter with acknowledgment of receipt or equivalent, stating the nature, likely duration and foreseeable effects.

II.9.3 Neither contracting party shall be held in breach of its contractual obligations if it has been prevented from performing them by force majeure. Where the Contractor is unable to perform his contractual obligations owing to 'force majeure', he shall have the right to remuneration for the products actually delivered and any service provided.

II.9.4 The contracting parties shall take the necessary measures to reduce damage to a minimum.

Article II.10 – Subcontracting

II.10.1 The Contractor shall not subcontract without prior written authorisation from the Agency nor cause the Contract to be performed in fact by third parties.

II.10.2 Even where the Agency authorises the Contractor to subcontract to third parties, he shall none the less remain bound by his obligations to the Agency under the Contract and shall bear exclusive liability for proper performance of the Contract.

II.10.3 The Contractor shall make sure that the subcontract does not affect rights and guarantees to which the Agency is entitled by virtue of the Contract, notably Article II.14.

Article II.11 – Assignment

II.11.1 The Contractor shall not assign the rights and obligations arising from the Contract, in whole or in part, without prior written authorisation from the Agency.

II.11.2 In the absence of the authorisation referred to in 1 above, or in the event of failure to observe the terms thereof, assignment by the Contractor shall not be enforceable against and shall have no effect on the Agency.

Article II.12 – Termination By The Agency

II.12.1 The Agency may terminate the Contract, a pending Specific Contract in the following circumstances:

- a) where the Contractor is being wound up, is having his 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;
- b) where the Contractor has been convicted of an offence concerning his professional conduct by a judgment which has the force of *res judicata*;
- c) where the Contractor has been guilty of grave professional misconduct proven by any means which the Agency can justify;
- d) where the Contractor has not fulfilled 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 he is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;
- e) where the Agency seriously suspects the Contractor of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- f) where the Contractor is in breach of his obligations under Article II.3;
- g) where the Contractor was guilty of misrepresentation in supplying the information required by the Agency as a condition of participation in the Contract procedure or failed to supply this information;

- h) where a change in the Contractor's legal, financial, technical or organisational situation could, in the Agency's opinion, have a significant effect on the performance of the Contract;
- i) where execution of the tasks under a pending Specific Contract has not actually commenced within [fifteen (15) days] of the date provided for, and the new date proposed, if any, is considered unacceptable by the Agency;
- j) where the Contractor is unable, through his own fault, to obtain any permit or licence required for performance of the Contract;
- k) where the Contractor, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period following receipt of the formal notice, remains in serious breach of his contractual obligations.

II.12.2 In the event of force majeure, notified in accordance with Article II.9, either contracting party may terminate the Contract, where performance thereof cannot be ensured for a quantity of products corresponding to at least one fifth of the quantity of products ordered or where performance thereof cannot be ensured for a period corresponding to at least to one fifth of the period laid down in Article I.2.3.

II.12.3 Prior to termination under point e), h) or k), the Contractor shall be given the opportunity to submit his observations. Termination shall take effect on the date on which a registered letter with acknowledgment of receipt terminating the Contract is received by the Contractor, or on any other date indicated in the letter of termination.

II.12.4 Consequences of termination:

In the event of the Agency terminating the Contract in accordance with this Article and without prejudice to any other measures provided for in the Contract, the Contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work. 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 products supplied and/or services rendered up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

The Agency may claim compensation for any damage suffered and recover any sums paid to the Contractor under the Contract.

On termination the Agency may engage any other contractor to supply the products and/ or to execute or complete the services. The Agency shall be entitled to claim from the Contractor all extra costs incurred in doing so, without prejudice to any other rights or guarantees it has under the Contract.

Article II.13 – Cancellation of Specific Contracts

Where execution of the Specific Contract has not actually commenced [within fifteen (15) days] of the date foreseen for the commencement of execution and the new date proposed, if any, is considered unacceptable by the Agency, the Agency may cancel such Specific Contract with no prior notice. Cancellation shall take effect from the day after the day on which the Contractor receives a registered letter with acknowledgment of receipt or equivalent.

The Agency may cancel a Specific Contract at any time during execution thereof on the grounds and under the conditions set out in Article II.12 with respect to the part still outstanding. The Contractor shall accept, as the aggregate liability of the Agency, payment of the price of the products delivered or services provided by him as at the effective date of cancellation.

Article II.14 – Checks and Audits

II.14.1 The contracting authority and the European Anti-Fraud Office may check or have an audit on the performance of the contract. 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 contract and during a period of five years which starts running from the date of the payment of the balance.

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.14.2 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 payment of the balance.

II.14.3 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 contract 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.14.4 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 measure which it considers necessary.

II.14.5 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 Agency 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.15.6 The Court of Auditors shall have the same rights as the contracting authority, notably right of access, for the purpose of checks and audits.

Article II.15 – Amendments

Any amendment to the Contract shall be the subject of a written agreement concluded by the contracting parties. An oral agreement shall not be binding on the contracting parties.

Article II.16 – Confidentiality

II.16.1 The Contractor undertakes to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to performance of the Contract. The Contractor shall continue to be bound by this undertaking after execution of the Specific Contract.

II.16.2 The Contractor shall obtain from each member of his staff, board and directors an undertaking that they will respect the confidentiality of any information which is linked, directly or indirectly, to execution of the tasks and that they will not divulge to third parties or use for their own benefit or that of any third party any document or information not available publicly, even after execution of the Specific Contract.

Article II.17 – Ownership of the Results - Intellectual and Industrial Property

II.17.1 Definitions

In this Contract the following definitions apply:

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

II.17.2 Ownership of the results

The ownership of the results shall be fully and irrevocably acquired by the Agency under the Contract including any rights in any of the results listed in the Contract and Order Forms or Specific Contracts. Those rights in the results may include copyright and other intellectual or industrial property rights, as well as all technological solutions and information contained within these technological solutions, produced in performance of the Contract. The Agency may exploit them as stipulated in this Contract or Order Forms or Specific Contracts. All the rights shall be acquired by the Agency from the moment the results are delivered by the Contractor and accepted by the Agency. Such delivery and acceptance are deemed to constitute an effective assignment of rights from the Contractor to the Agency.

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 rights by the Union including all forms of use of the results.

The acquisition of rights by the Agency under this Contract covers all territories worldwide.

Any intermediary sub-result, raw data, intermediary analysis made available by the contractor cannot be used by the Agency without the written consent of the Contractor, unless the Contract or Order Form or Specific Contract explicitly provides for it to be treated as a self-contained result.

II.17.3 Licensing of pre-existing rights

The Agency 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 Agency 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 Agency from the moment the results were delivered and accepted by the Agency.

The licensing of pre-existing rights to the Agency under this Contract covers all territories worldwide and is valid for the whole duration of intellectual property rights protection.

II.17.4 Modes of exploitation

The Agency shall acquire ownership of each of the results produced as an outcome of the Contract 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 Agency documents;
- (b) storage of the original and copies made in accordance with this Contract or order form or specific contract;
- (c) archiving in line with the document management rules applicable to the Agency.

II.17.5 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 Agency. 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 Contract 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 Agency, the Contractor shall provide evidence of ownership of or rights to use all the listed pre-existing rights and rights of third parties except for the rights owned by the Agency.

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.17.6 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 Agency.

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.17.7 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 Agency. 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.17.8 Contractor's 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.17.9 Visibility of Agency funding and disclaimer

When making use of the results, the contractor shall declare that they have been produced within a framework contract with the Agency and that the opinions expressed are those of the contractor only and do not represent the Agency's official position. The Agency may waive this obligation in writing.

ARTICLE II.18 Suspension of the Contract

Without prejudice to the Agency's right to terminate the Contract, the Agency reserves the right to suspend performance of the Contract or pending Specific Contract or any part thereof at any time and as preliminary means to the potential application of Article II.12 – Termination by the Agency. Suspension shall take effect on the day the Contractor receives notification by registered letter with acknowledgment of receipt or equivalent, or at a later date where the notification so provides. The Agency may at any time following suspension give notice to the Contractor to resume performance of the Contract or pending Specific Contracts. The Contractor shall not be entitled to claim compensation on account of suspension of the Contract, the Specific Contracts or of part thereof.

SIGNATURES

For the Contractor,

[Company Name]Company Name]

[Forename][Forename] [Surname][Surname]

[Function][Function]

Signature[s]: _____

Done at, [date]

For the Agency,

Jens Engelmann

Head of CME

Signature: _____

Done at Valenciennes, [date]

In duplicate in English.

Annex I: Tender Specifications (Invitation to tender ERA 2017 16 OP)– Original archived at the Agency's premises

Annex II: Contractor's Tender (No ..complete..of...complete); – Original archived at the Agency's premises

Annex III: Power of Attorney

Model 1

Agreement/Power of Attorney*(Designating one of the companies of the group as leader and giving a mandate to it)*

We the undersigned:

- [Signatory 1 Name][Signatory 1 Name], [Signatory Function][Signatory Function], [Signatory Company][Signatory Company], [Signatory Registered address][Signatory Registered address], [Signatory VAT Number][Signatory VAT Number]
- [Signatory 2 Name][Signatory 2 Name], [Signatory Function][Signatory Function], [Signatory Company][Signatory Company], [Signatory Registered address][Signatory Registered address], [Signatory VAT Number][Signatory VAT Number]
-
- [Signatory N Name][Signatory N Name], [Signatory Function][Signatory Function], [Signatory Company][Signatory Company], [Signatory Registered address][Signatory Registered address], [Signatory VAT Number][Signatory VAT Number],

Each of them having the legal capacity required to act on behalf of his/her company,

HEREBY AGREE AS FOLLOWS:

1. The Agency has awarded **Framework Contract ERA 2017 16** (“**the Contract**”) to [Company 1][Company 1], [Company 2][Company 2], ..., [Company N][Company N] (“**the Group Members**”), based on the joint offer submitted by them on [date][date] for the supply of [Description][Description] and/or the provision of services for [Description][Description] (“**the Services**”).
2. As co-signatories of the Contract, all the Group Members:
 - 2.1. Shall be jointly and severally liable towards the Agency for the performance of the Contract.
 - 2.2. Shall comply with the terms and conditions of the Contract and ensure the proper execution of their respective share of the Supplies and/or the Services.
3. To this effect, the Group Members designate Company [Company Name][Company Name] as **Group Leader**. *[N.B.: The Group Leader has to be one of the Group Members]*
4. Payments by the Agency related to the Supplies or the Services shall be made through the Group Leader’s bank account (see BAF)
5. The Group Members grant to the Group Leader all the necessary powers to act on their behalf in connection with the Supplies and/or the Services. This mandate involves in particular the following tasks:
 - 5.1. The Group Leader shall sign any contractual documents —including the Framework Contract, Specific Agreements and Amendments thereto— and issue any invoices related to the Supplies or the Services on behalf of the Group Members.

5.2. The Group Leader shall act as single point of contact for the Agency in connection with the Supplies and/or the Services to be provided under the Contract. It shall co-ordinate the provision of the Supplies and/or the Services by the Group Members to the Agency, and shall see to a proper administration of the Contract.

Any modification to the present agreement/power of attorney shall be subject to the Agency’s express approval.

This agreement/power of attorney shall expire when all the contractual obligations of the Group Members towards the Agency in connection with the Supplies and/or the Services to be provided under the Contract have ceased to exist. The parties cannot terminate it before that date without the Agency’s consent.

Signed in [Location] on [date].

[Signatory Name]

[Signatory Function]

[Signatory Company]

Model 2

Agreement/Power of Attorney

(Creating the Group as separate entity, appointing a Group Manager and giving a mandate to him/her)

We the undersigned:

- [Signatory 1 Name], [Signatory Function], [Signatory Company], [Signatory Registered address], [Signatory VAT Number]
- [Signatory 2 Name], [Signatory Function], [Signatory Company], [Signatory Registered address], [Signatory VAT Number]
-
- [Signatory N Name], [Signatory Function], [Signatory Company], [Signatory Registered address], [Signatory VAT Number],

Each of them having the legal capacity required to act on behalf of his/her company,

HEREBY AGREE AS FOLLOWS:

1. The Agency has awarded Framework Contract **ERA 2017 16 ...** (“**the Contract**”) to **[Company 1], [Company 2], ..., [Company N]** (“**the Group Members**”), based on the joint offer submitted by them on [date] for the supply of [Description] and/or the provision of services for [Description] (“**the Services**”).
2. As co-signatories of the Contract, all the Group Members:
 - 2.1. Shall be jointly and severally liable towards the Agency for the performance of the Contract.
 - 2.2. Shall comply with the terms and conditions of the Contract and ensure the proper execution of their respective share of the Supplies and/or the Services.
3. To this effect, the Group Members have set up under the laws of [...] the Group [Group] (“**the Group**”). The Group has the legal form of a **[Legal Form]** *[Provide details on registration of the Group: VAT Number, Trade Register, etc.]*.
4. Payments by the Agency related to the Supplies or the Services shall be made through the Group’s bank account (see BAF).
5. The Group Members appoint **Mr/Ms [Name]** as **Group Manager**.
6. The Group Members grant to the Group Manager all the necessary powers to act alone on their behalf in connection with the Supplies and/or the Services. This mandate involves in particular the following tasks:
 - 6.1. The Group Manager shall sign any contractual documents —including the Framework Contract, Specific Agreements and Amendments thereto— and issue any invoices related to the Supplies or the Services on behalf of the Group Members.
 - 6.2. The Group Manager shall act as single point of contact for the Agency in connection with the Supplies and/or the Services to be provided under the Contract. He/she shall co-ordinate the

provision of the Supplies and/or the Services by the Group Members to the Agency, and shall see to a proper administration of the Contract.

Any modification to the present agreement/power of attorney shall be subject to the Agency's express approval.

This agreement/power of attorney shall expire when all the contractual obligations of the Group Members towards the Agency in connection with the Supplies and/or the Services to be provided under the Contract have ceased to exist. The parties cannot terminate it before that date without the Agency's consent.

Signed in [Location] on [date].

[Signatory Name]

[Signatory Function]

[Signatory Company]

Annex IV: Financial Identification and Legal Entities

http://ec.europa.eu/budget/contracts_grants/info_contracts/financial_id/financial_id_en.cfm

http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm

Annex V: Specific Contract – Model**Fixed Price**

SPECIFIC CONTRACT N° [.....]

implementing Framework Contract N° ERA 2017 10

FIXED PRICE

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

of the one part,

and

[official name in full]

[official legal form]

[statutory registration number]

[official address in full]

[VAT registration number]

represented for the purposes of the signature of this contract by [name in full and function],

of the other part,

HAVE AGREED

the following as regards the implementation of Multiple Framework Contract No ERA 2017 10 signed by the Agency and the Contractor on [date] [last amended by amendment No [Amendment Number], signed on [date]] for the provision ofservices:

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 Error! eference source not found..

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 **Error! Reference source not found.**. 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 **Error! Reference source not found.**

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.

[+ add work performed outside Valenciennes (France) and Lille (France), if necessary) see: 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 In conformity with Article 1.5.4 of the FWC, the invoicing procedures for the services, once accepted by the Agency, are as follows:

[Specify one of the two possibilities:

1. Where this is an initial Specific Contract:

- Maximum of 30 % on receipt of first deliverable;
- Maximum of 30 % on receipt of deliverable by mid-term of the contract duration
- 40 % on completion of the work, based on receipt advice slips accepted and signed by the Agency in accordance with the form in **Annex II: Task Acceptance Form** (to be attached to the invoice).

[Where this is an extended Specific Contract, or for amounts in the Specific Contract below EUR 25 000:]

- 100 % on completion of the work, based on receipt advice slips accepted and signed by the Agency in accordance with the form in **Annex II: Task Acceptance Form** (to be attached to the invoice).

2. For work performed in instalments:

- Payment by instalment for the deliverables specified in the **Error! Reference source not found.** based on receipt advice slips accepted and signed by the Agency in accordance with the form in **Annex II: 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 5.5 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 Contractors established in Belgium]

The provisions of this contract constitute a request for VAT exemption No 450, provided the Contractor includes the following statement in their invoice(s): "Exonération de la TVA, article 42, paragraphe 3.3 du code de la TVA" or an equivalent statement in the Dutch or German language.

For other countries

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)², 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"

- 5.5. The address for invoices is:
The Accountant / RSU
European Union Agency for Railways
120, rue Marc Lefrancq
59300 Valenciennes
France
Email : Accounting@era.europa.eu

Article 6. Sub-Contracting

[Verify whether is applicable.

If not: specify "Not applicable")

Or]

6.1 In accordance with Article II.10 of the General Conditions, the Contractor has been permitted to subcontract by written authorisation dated [date][date].

6.2 Tasks stated in **Error! Reference source not found.** may be performed by the subcontractor Name and address of subcontractor, entirely at the risk of the Contractor.

6.3 Without prejudice to the Agency's other rights under Article II.12 of the General Conditions, if the Contractor fails to meet his obligations, the Specific Contract with the Agency may be terminated in accordance with Article II.12 (f) of the General Conditions. This clause applies throughout the term of the Specific Contract.

Administrative Provisions

6.4 The persons responsible for implementing this Specific Contract are:

For the Agency:

Administrative matters: (Administrative responsible)

SURNAME/First name: [Click here to enter text.](#)

² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:220:0003:0015:EN:PDF#page=7>

Office: Click here to enter text.

Tel.: Click here to enter text.

Technical matters:

SURNAME/First name: Click here to enter text.

Office: Click here to enter text.

Tel.: Click here to enter text.

For the Contractor:

Administrative and technical matters:

SURNAME/First name: Click here to enter text.

Tel.: Click here to enter text.

6.5 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:

Error! Reference source not found. The Agency' specifications and the Contractor's Offer

Annex II: Task Acceptance Form

Annex III: Extension Form

Annex IV: Declaration of Confidentiality

SIGNATURES

For the Contractor,

[Company Name]Company Name]

[Forename][Forename] [Surname][Surname]

[Function][Function]

For the Agency,

.....

.....

Signature[s]: _____

Signature: _____

Done at _____, [date]

Done at Valenciennes, [date][date]

In duplicate in English.

Error! Reference source not found. **The Agency' specifications and the Contractor's Offer**

Annex II: Task Acceptance Form



Consignment Note and Certificate of Conformity

For Specific Contract No. [Click here to enter text.](#)
under Multiple Framework [Contract ERA 2017 16](#) 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
Date of delivery/signing:	Click here to enter a date.	Click here to enter a date.
Person responsible for checking (in block capitals):	CLICK HERE TO ENTER TEXT.	CLICK HERE TO ENTER TEXT.
Comments:	Click here to enter text.	Click here to enter text.
Date and signature:	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
Official responsible for acceptance:	Click here to enter text.
Date and signature:	Click here to enter a date.
Official responsible for final acceptance and invoicing:	Click here to enter text.
Date and signature denoting final acceptance and invoicing:	Click here to enter a date.

Annex III: Extension Form

Extension of Specific Contract N°:		Click here to enter text.	
Extension N°:		Click here to enter text.	
Framework Contract N°:		Click here to enter text.	
Agency Initial Request Form ID:		Click here to enter text.	
Contractor's Initial Reference ID:		Click here to enter text.	
Name of the person:		Click here to enter text.	
From:	Contact person:	Click here to enter text.	Phone N°: Click here to enter text.
	Date:	Click here to enter a date.	Fax N°: Click here to enter text.
To:	Contractor:	Click here to enter text.	Phone N°: Click here to enter text.
	Contact person:	Click here to enter text.	Fax N°: Click here to enter text.
Description of the extension			
Deliverable(s):		...	
		...	
		...	
Description:		Updated technical annex (in line with the initial request) <i>or</i> The terms are those specified in the initial request form and are therefore not subject to modification.	
The proposal included in the initial referenced offer remains valid.			
Send your offer by fax before:		Click here to enter a date.	
Signature:			

Note: this Extension Form does not constitute any firm order until such time as a contractual document, signed by the Agency, has been received by you.

Annex IV: Declaration of Confidentiality

Declaration of Confidentiality

The Agency and the Contractor, having signed a Framework contract, number [Framework contract number] on [date][date]

and a Specific Contract, number [Specific Contract number] on [date][date]

For carrying out work governed by these agreements I, the undersigned, declare that I have read and shall comply with the security and confidentiality rules laid down in:

- Article II.16 of the General Conditions
- Article 23 of 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 (OJ L8, 12.1.2001, p. 1)³.

Date and place:

[date][date], [place][place]

[signature]

[Name][Name]

³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:008:0001:0022:EN:PDF>