



## FRAMEWORK CONTRACT FOR SUPPLIES

### Supply of mobile devices, accessories and associated services

CONTRACT NUMBER – ENISA F-CSS-23-C01

#### MAIN CONDITIONS

1. The European Union Agency for Cybersecurity, represented for the purposes of the signature of this framework contract by the authorised representative indicated in the respective field under “SIGNATURES” below,

of the one part and

*[Option 1: The tender was submitted by a single tenderer or by a group of economic operators with a separate legal personality:]*

2. [Contractor’s full official name]  
[Contractor’s official legal form]  
[Contractor’s statutory registration number or ID or passport number]  
[Contractor’s full official address]  
[OPTION for contractors with VAT: VAT registration number]  
(‘the contractor’)

*[Option 2: The tender was submitted by a group of economic operators without a separate legal personality:]*

2. [[Include the name of the group if any], group of economic operators who submitted a joint tender (‘the group’) composed of the following members who are jointly and severally liable vis-a-vis the contracting authority for the implementation of this framework contract:  
[Contractor’s official legal form]  
[Contractor’s statutory registration number or ID or passport number]

[Contractor's full official address]

[OPTION for contractors with VAT: VAT registration number]

appointed as leader of the group by the members of the group that submitted the joint tender,  
[repeat the above data as many times as there are contractors in case of joint tender and  
continue numbering]  
(collectively "the contractor"),

represented for the purposes of signing this framework contract by the authorised representative  
indicated in the respective field under "SIGNATURES" below,  
on the other part,

## **HAVE AGREED as follows:**

### **1. Subject matter and appointment of the contractor**

The title of this framework contract (FWC) is: "Supply of mobile devices, accessories and associated services"

The terms and conditions applying to this FWC are laid down hereafter and in the special and general conditions and their annexes. They shall be deemed to form and be read and construed as an integral part of this FWC in the order described in the special conditions.

The contracting authority appoints the contractor for a single FWC.

The FWC does not confer on the contractor any exclusive right to provide the supplies subject of this FWC.

### **2. Contract value**

The maximum amount covering all purchases under this FWC including all renewals is EUR 400.000,00 excluding VAT. However, this does not bind the contracting authority to purchase for the maximum amount.

### **3. Entry into force and duration**

This FWC enters into force on the date on which the last party signs it.

The maximum duration of this FWC is *48 months* from the date this FWC enters into force.

### **4. Bank account**

Payments shall be made in accordance with the special conditions into the following bank account:

Name of bank: [insert bank name]

Exact denomination of account holder: [full name of account holder]

Bank account number: [insert bank account number].

## Signatures

### For the contractor

[signature contractor]

Done on [date]

### For the contracting authority

[signature contracting  
authority]

Done on [date]

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## **I. SPECIAL CONDITIONS**

### **I.1. ORDER OF PRECEDENCE**

The following documents shall be deemed to form and be read and construed as part of this framework contract (FWC):

- Main conditions,
- Special conditions (including its Appendix 1 - List of Supplies/Services and schedule of prices<sup>1</sup>),
- General conditions for framework contracts,
- the following annexes:

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

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

**Annex III** – Model for order forms and for specific contracts<sup>2</sup>

**Annex IV** – e-Procurement Interchange Agreement

If there is any conflict between the provisions of the main conditions, special conditions, general conditions and annexes I and II of this FWC, the following order of precedence shall apply:

- a. Main conditions;
- b. Special conditions;
- c. General conditions;
- d. Tender specifications (Annex I);
- e. Contractor's tender (Annex II).

If there is any conflict between the provisions of the *specific contracts* signed during the FWC implementation and their annexes, the following order of precedence shall apply:

- a. Signed *specific contracts*;
- b. Requests for *specific contracts* (if applicable);
- c. Contractor's specific tender/documents submitted for a *specific contract* (if applicable).

In case of a conflict, the provisions set out in the FWC and its annexes I and II take precedence over those in the *specific contracts* and their annexes.

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<sup>1</sup> The initial version of Appendix 1 is based on the unit prices from the Contractor's price tender (included in Annex II), and shall be updated following every price revision.

<sup>2</sup> Provided order forms and specific contracts are only templates. These templates can be updated and actual order forms and specific contracts can differ from them to adjust to concrete situations.

## I.2. SCOPE OF THE FWC

The subject matter of the FWC is indicated in Article 1 of the Main conditions.

The scope of the FWC is delivery of supplies by the contractor to the contracting authority in accordance with the terms and requirements set out in Annex I.

This FWC sets out:

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

Any reference to *specific contract(s)* in this FWC applies also to order form(s).

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

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

**I.3.1** The FWC is concluded for an initial period of 12 months from the date indicated in Article 3 of the Main conditions.]<sup>3</sup> The entry into force and the maximum duration of the FWC [, including any renewals] are indicated in Article 3 of the Main conditions.

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

**I.3.3** The parties must sign any *specific contract* before the FWC expires or is terminated.

The FWC continues to apply to such *specific contracts* after its expiry or termination. The supplies relating to such *specific contracts* must be delivered no later than six months after the expiry or termination of the FWC. At the end of this period, all remaining *specific contracts* are automatically terminated.

**I.3.4** The suspension of the *implementation* of the FWC or a *specific contract* due to *force majeure* as provided for in Article II.17 will automatically extend the duration of the FWC and of the *specific contract* by the duration of the suspension.

**I.3.5** If, after the end of the FWC, one party continues to perform its obligations without opposition from the other party, such performance is not and cannot be construed as a renewal of the FWC.

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<sup>3</sup> Option to be used only if the clause under I.3.6 “Renewal of the FWC” is used.

### I.3.6 Renewal of the FWC

The FWC is renewed automatically 3 times for 12 months each, unless one of the parties receives *formal notification* to the contrary at least [three] months before the end of the ongoing duration. Renewal does not change or postpone any existing obligations. Article I.3.6 applies to the performance of obligations after the last automatic renewal.

For the avoidance of doubt, a renewal of the FWC in the sense of this Article I.3.6 does not imply the conclusion of a new FWC but only the extension of the initial duration of the FWC.

## I.4. IMPLEMENTATION OF THE FWC

**I.4.1** The period for the provision of the supplies starts to run from the date indicated in the *specific contract*.

**I.4.2** All *specific contracts/order forms* and the provision of the supplies shall conform to the provisions set out in the FWC, including its annexes.

### I.4.3 Implementation of single FWC

The FWC is implemented as follows:

- a) The contracting authority orders supplies by sending the contractor a *request for specific contract*. The *request for specific contract* must determine the time limit for the contractor to state its intention to reply or not (which may not be less than [complete] days of receipt of the *request for specific contract* ) and the reply time limit (which may not be less than [complete] days of receipt of the *request for specific contract* ).
- b) Within the time limit indicated in the *request for specific contract*, the contractor must state its intention to reply to the *request for specific contract* or not. The intention not to reply must be motivated appropriately.
- c) The contractor's reply to the *request for specific contract* must be submitted within the time limit indicated in the *request for specific contract* .
- d) The contracting authority has the right to proceed with the opening and the assessment of the contractor's reply, immediately after its receipt, without having to wait for the expiration of the submission period specified in the *request for specific contract*.
- e) The reply is binding on the contractor at least for the validity period mentioned in the *request for specific contract*, which should not be less than [complete] days.
- f) The *specific contract* has to be signed by the contractor within the time-limit indicated by the contracting authority in the invitation to sign the *specific contract*.
- g) If the contractor repeatedly fails to reply to the *requests for specific contractor* fails to sign the resulting *specific contracts* within the set time limit, the contractor may be considered in breach of its obligations under this FWC as set out in Article II.17.1 (c).

When the use of electronic exchange system under Article I.7.1 is not activated [for one or more of the contracting authorities]<sup>4</sup>, the contracting authority(ies) may decide to order supplies by sending the contractor a *specific contract* which the contractor must either send back duly signed and dated within [complete] days, or , instead, send an explanation of why it cannot accept the order. ]

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<sup>4</sup> Option for inter-institutional FWCs.



## I.4.4 Delivery

The supplies must be delivered at ENISA premises<sup>5</sup>.

[The contractor must notify the contracting authority of the exact date of delivery at least [complete] days in advance. All deliveries must be made between [complete] hours and [complete] hours at the agreed place of delivery.] [Deliveries may be made on any working day during normal working hours, at the agreed place of delivery.]

## I.5. PRICES

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

The maximum amount covering all purchases under this FWC including all renewals is indicated in Article 2 of the Main conditions. However, this does not bind the contracting authority to purchase for the maximum amount.

The [maximum] prices of the supplies are listed in Appendix 1 to the Special conditions.

### I.5.2. Price revision index

Price revision is determined by the formula set out in Article II.19 and using the trend in the harmonised indices of consumer prices (HICP) [complete]<sup>6</sup> published at <http://ec.europa.eu/eurostat/web/hicp/data/database> under HICP (2015 = 100) - monthly data (index) (prc\_hicp\_midx).]

The contractor must commit itself to updating the prices for supplies at least once every six months, and to providing supplies and their options and extensions at a price whose relationship to the prevailing market price for equivalent items remains constant. In updating its price list, prices may be reduced at any time, but never increased.

Benchmarking is an assessment process carried out by a qualified and objective third party which: tests, evaluates and measures the performance of the contractor by comparison with similar products provided by other companies; and/or analyses the evolution of the relation between the prices laid down in the FWC and the market prices for similar products ("*the benchmarking*").

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<sup>5</sup> Incoterms 2010 of the International Chamber of Commerce are legal clauses on delivery of supplies, transfer of risk and insurances. If they are used, the DG should purchase a copy (for sale on the website) and fully respect the attached copyrights. The tender specifications should announce that these terms are for sale to tenderers on the website <http://www.iccwbo.org/incoterms/>.

<sup>6</sup> Specify the consumer price index or any other index adapted to the purchase, e.g.:

- 'Euro area (current composition)': for contracts expressed in euro (as a general rule);
- 'European Union (current composition)': for contracts performed in the European Union outside the euro area;
- consumer price index of the state in whose currency the FWC price is expressed:
  - a) index of the state where the contractor is mainly based; or
  - b) index of the state where the supply will be mainly delivered.
- Any other index corresponding to the main cost of the contract (e.g. index linked to salaries for interim services, oil prices for transport-related contracts, etc.).

The contracting authority may undertake the benchmarking of the levels and the charges of the supplies provided under this FWC by comparison with similar supplies provided by outsourcing vendors and/or in-house suppliers. The result of such benchmarking is available in identical form to both the contracting authority and the contractor.

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

- the scope of the supplies being provided by the contractor is taken into consideration;
- the comparison group consists of at least four enterprises to ensure statistical significance;
- the relevant comparison data must be guaranteed.

The benchmarking must not exceed four (4) months.

For the first benchmarking exercise, the comparison group is defined in a document entitled "Comparison Group Definition". The contracting authority reserves the right to change the comparison group algorithm to reflect any changes in its business from time to time.

The independent third party carrying out the benchmarking ("*the benchmarker*") must be a qualified and objective third party selected by the contracting authority through an appropriate market procedure. The contracting authority must pay all of its own costs and the benchmarker's costs during the benchmarking. The contractor must pay all of its own costs. Interpretation of the results of the benchmarking must be the sole prerogative of the benchmarker.

The contracting authority and the contractor must set aside sufficient time and resources for each stage of the benchmarking, such as:

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

The contracting authority and the contractor will be free to suggest changes in benchmarking parameters as the supplies evolve over the term of this FWC.

The benchmarker must treat as confidential, in accordance with Article II.8, all data provided by the contracting authority and the contractor, and must return all material and media once the benchmarking is completed.

If a benchmarking reveals that the level of a supply does not reach the comparison group's product quality levels, the contractor must immediately propose a supply equivalent to the comparison group's level, as specified by the benchmarker.

If a benchmarking reveals that charges are higher than the comparison group's charges, the contractor must immediately reduce its charges to the comparison group level specified by the benchmarker, with effect from the date on which the results of the benchmarking were delivered to the parties.

In the event contractor has not proposed an equivalent supply or reduced the price in line with the benchmarker's specification, the contracting authority may not use the FWC and must take

appropriate measures to terminate the FWC. In this case the contracting authority sends a written notification to the contractor and it is not required to pay compensation. The first paragraph of Article II.17.4 applies.]

## **I.6. PAYMENT ARRANGEMENTS<sup>7</sup>**

### **I.6.1. Bank account conditions**

Payments under the FWC shall be made to the contractor's bank account specified in Article 4 of the Main conditions in accordance with Article II.20, which is complemented by this article and the related provisions of the *specific contracts*.

The bank account is denominated in euro.

### **I.6.2. Pre-financing<sup>8</sup>**

Pre-financing is not applicable to this FWC.

### **I.6.3. Interim payment[s]**

1. Interim payment is not applicable to this FWC.

### **I.6.4. Payment of the balance**

1. The contractor may claim the payment of the balance in accordance with Article II.20.6.

The contractor must send an invoice for payment of the balance due under a *specific contract*, as provided for in the tender specifications and accompanied by the following:

- Delivery Note for the supplies
2. The contracting authority must approve the submitted documents or supplies and pay within 30<sup>9</sup> days from receipt of the invoice.
3. The contracting authority may suspend the time limit for payment specified in point (2.) in accordance with Article II.20.7. Once the suspension is lifted, the contracting authority shall give its approval and pay within the remainder of the time limit indicated in point (2.) unless it rejects partially or fully the submitted documents or supplies.

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<sup>7</sup> The insertion of pre-financing and interim payment articles is optional but the contract must always include provision for payment of the balance.

<sup>8</sup> In procurement contracts, pre-financing should be proposed in exceptional circumstances only. If applicable it should not exceed 30 % of the price of the specific contract.

<sup>9</sup> According to Article 116 of the Financial Regulation, the time limits for payments are:

- (a) 90 calendar days for contracts involving technical services or actions which are particularly complex to evaluate and for which payment depends on the approval of a report or a certificate;
- (b) 60 calendar days for all other contracts for which payment depends on the approval of a report or a certificate;
- (c) 30 calendar days for all other contracts.

### **I.6.5. Performance guarantee**

Performance guarantee is not applicable to this FWC.

### **I.6.6. Retention money guarantee**

Retention money guarantee is not applicable to this FWC.

## **I.7. COMMUNICATION DETAILS**

### **I.7.1. Communication via electronic exchange system**

After the entry into force of this FWC, at any time during its course the contracting authority may formally notify in writing the contractor that certain communications will be made by electronic means through the EU Funding & Tenders Portal (the Portal), in accordance with the Portal Terms and Conditions and using the forms and templates provided there. The Portal can be accessed via the following URL: <https://ec.europa.eu/info/funding-tenders/opportunities/portal/> The notification shall indicate whether all or only certain communications under the FWC will take place through the Portal. The notification shall have full legal effect from the date specified therein, which shall allow a reasonable period of time for the contractor to complete all necessary steps to have access to the Portal. The activation of the use of the Portal shall be at no additional cost for the contracting authority.

If the use of the Portal is activated, any communication covered by the activation notification related to the implementation of this FWC and any *specific contracts* shall be made through the Portal (except if explicitly instructed otherwise by the contracting authority or if communication via the Portal is hindered by factors beyond the control of the parties).

Communications by contractors through the Portal must be made by persons authorised according to the Portal Terms and Conditions. For naming the authorised persons to use the Portal, each contractor must designate before the date of effect of the activation notification a 'legal entity appointed representative (LEAR)'. The role and tasks of the LEAR are stipulated in their appointment letter (see Portal Terms and Conditions).

If the communication via the Portal is hindered, instructions will be provided by the contracting authority by email and may also be published on the Portal.

During the course of the FWC, the contracting authority reserve(s) the right to further extend the coverage of the communications made through the Portal (if its use has been already activated) or to activate the use of other electronic exchange systems, at no additional cost for the contracting authority.

In case of discrepancy between the clauses of the Portal Terms and Conditions or Terms and Conditions of other electronic exchange system and the clauses of this FWC, the clauses of this FWC (including its annexes) shall prevail.]

### **I.7.2. Mail or email communication**

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

Contracting authority:  
[European Commission]

[Directorate-General [complete]]  
 [Directorate [complete]]  
 [Unit [complete]]  
 [Postcode and city]  
 Email: [insert functional mailbox]

Contractor (or leader in the case of a joint tender):  
 [Full name]  
 [Function]  
 [Company name]  
 [Full official address]  
 Email: [complete]

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

## **I.8. PROCESSING OF PERSONAL DATA**

### **I.8.1. Processing of personal data by the contracting authority**

For the purpose of Article II.9.1,

- (a) for personal data processed in the context of the management of the framework contract, the data controller is the [European Commission] [if other, insert the name of the organisational entity] and can be contacted at [insert functional mailbox belonging to the lead contracting authority];
- (b) for personal data processed in the context of the management of the *specific contract*, the data controller will be specified in the *specific contract*;
- (c) the data protection notice is available at [https://ec.europa.eu/info/data-protection-public-procurement-procedures\\_en](https://ec.europa.eu/info/data-protection-public-procurement-procedures_en).

### **I.8.2. Processing of personal data by the contractor**

[For the purpose of Article II.9.2,

- (a) the subject matter and purpose of the processing of personal data by the contractor are [provide a short and concise description of the subject matter and purpose];
- (b) The localisation of and access to the personal data processed by the contractor shall comply with the following<sup>10</sup>:
  - i. the personal data shall only be processed within the territory of [the European Union and the European Economic Area][...<sup>11</sup>] and will not leave that territory;

<sup>10</sup> This clause must be adapted with care on the basis of a risk assessment related to the processing of personal data for the relevant contract.

<sup>11</sup> These brackets must be filled in cases of processing of personal data in countries other than those within the territory of the EU and EEA.

- ii. the data shall only be held in data centres located with the territory of [the European Union and the European Economic Area][...<sup>12</sup>];
- iii. [no access shall be given to such data outside of [the European Union and the European Economic Area][...<sup>13</sup>]] [access to data may be given on a need to know basis only to authorised persons established in a country which has been recognised by the European Commission as providing adequate protection to personal data];
- iv. the contractor may not change the location of data processing without the prior written authorisation of the contracting authority;
- v. any transfer of personal data under the FWC to third countries or international organisations shall fully comply with the requirements laid down in Chapter V of Regulation (EU)2018/1725<sup>14</sup>.]

## **I.9. [TERMINATION FOR CONVENIENCE BY EITHER PARTY<sup>15</sup>**

Either party may terminate the FWC and/or *specific contracts* for convenience by sending *formal notification* to the other party with *one month*<sup>16</sup> written notice.

If the FWC or a *specific contract* is terminated for convenience:

- (a) neither party is entitled to compensation;

the contractor is entitled to payment only for the supplies delivered before termination takes effect.

The second, third and fourth paragraphs of Article II.17.4 apply.]

## **I.10. APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

**I.10.1** The FWC is governed by Union law, complemented, where necessary, by the law of Greece. The application of the United Nations Convention on Contracts for the International Sales of Goods (CISG) is excluded.

**I.10.2** The courts of Athens shall have exclusive jurisdiction over any dispute regarding the validity, interpretation, performance or termination of the FWC or a *specific contract/Order Form*.

<sup>12</sup> These brackets must be filled in cases of storage of personal data in countries other than those within the territory of the EU and EEA.

<sup>13</sup> These brackets must be completed in consistency with brackets under points i. and ii of Article I.9.2.(b).

<sup>14</sup> Regulation (EU) 2018/1725 of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295/39, 21.11.2018, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1725&from=EN>

<sup>15</sup> This article may be deleted on the basis of a risk assessment taking into account the specific market and the need for business continuity

<sup>16</sup> The duration of the notification should be defined on a case-by-case basis, ie. considering the time taken to launch a new procedure, the total duration of the FWC and the nature of the supplies.

*notification.*]

## **I.11. OTHER SPECIAL CONDITIONS**

### **I.13.1 – Use of e-Request and e-Invoicing**

The submission of invoices by the Contractor to the Contracting Authority will be carried out via electronic means only. As per Article II.18.2 and Annex IV – Interchange Agreement, the contractor shall submit invoices to the Contracting Authority electronically via the e-Prior platform and specifically by using the e-Invoicing Suppliers Web Portal.

### **I.13.2 – Electronic storage of Annexes**

The Annexes I and II shall be construed as an integral part of this Contract to the same extent as if the same had been attached verbatim herein. All the documents included and constituting Annex I (Tender Specifications) are legally stored electronically on the servers of ENISA and TED eTendering platform and Annex II (Contractors Tender) on the eSubmission platform.



## **II. GENERAL CONDITIONS FOR THE FRAMEWORK CONTRACT FOR SUPPLIES**

### **II.1. DEFINITIONS**

For the purpose of this FWC and the *specific contracts* signed to implement it, the following definitions (indicated in *italics* in the text) apply:

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

**‘Breach of obligations’**: failure by a party to fulfil one or more of its contractual obligations;

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

**‘Conflict of interest’**: a situation where the impartial and objective *implementation of the FWC* by the contractor is compromised or negatively affected for reasons involving family, emotional life, political or national affinity, economic interest, any other direct or indirect personal interest of the contractor, its *related persons* or *personnel* or any third party related to the subject matter of the FWC;

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

**‘Electronic exchange system’**: is an electronic exchange system meeting the requirements of Article 148 of the *Financial Regulation*,<sup>17</sup>

**‘EUI’**: European Union institution;

**‘Force majeure’**: any unforeseeable and unavoidable situation or event beyond the control of the parties that prevents either of them from fulfilling any of their obligations under the FWC. The situation or event must not be attributable to the negligence of the debtor. Breaches or negligence of subcontractors, defaults, defects in equipment or material or delays in making them available, labour disputes, strikes and financial difficulties may not be invoked as *force majeure*, unless they stem directly from a relevant case of *force majeure*;

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

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<sup>17</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, OJ L 193 of 30.7.2018, p.1 <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1544791836334&uri=CELEX:32018R1046>

**‘Fraud’:** an act or omission committed in order to make an unlawful gain for the perpetrator or another by causing a loss to the Union's financial interests, and relating to: i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or assets from the Union budget, ii) the non-disclosure of information in violation of a specific obligation, with the same effect or iii) the misapplication of such funds or assets for purposes other than those for which they were originally granted, which damages the Union's financial interests;

**‘Grave professional misconduct’:** a violation of applicable laws or regulations or ethical standards of the profession to which a contractor or a *related person* belongs, including any conduct leading to sexual or other exploitation or abuse, or any wrongful conduct of the contractor or a *related person* which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence;

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

**‘Interoperability network’:** independent third party platforms enforcing the European standards and Directives on cross-border interoperability in a certain domain;

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

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

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

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

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

**‘Portal’:** EU Funding & Tenders Portal; electronic exchange system managed by the European Commission and used by itself and other EU institutions, bodies, offices or agencies for the management of their funding, prizes and procurement;

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

**‘Related person’:** any natural or legal person who is a member of the administrative, management or supervisory body of the contractor, or who has powers of representation, decision or control with regard to the contractor;

**‘Reply to a request for *specific contract*’:** written commitment, submitted by the contractor in response to a received request for *specific contract* under a single FWC or a multiple FWC in cascade, on the basis of which the contracting authority may award a *specific contract*;

**‘Request for *specific contract*’:** document(s) from the contracting authority requesting that the contractors in a multiple FWC with re-opening of competition provide specific tenders. In a single FWC, it means document(s) from the contracting authority ordering supplies from the contractor. In a FWC in cascade, it means document(s) from the contracting authority ordering supplies from the contractor to which the request is sent.

**‘*Specific contract*’:** a contract implementing the FWC and specifying details of a supply to be provided.

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

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

## **II.3. SEVERABILITY**

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

## **II.4. DELIVERY OF SUPPLIES**

**II.4.1** Signature of the FWC does not oblige the contracting authority to enter into a *specific contract*.

**II.4.2** The contractor must comply with the minimum requirements provided for in the tender specifications. This includes compliance with applicable obligations under environmental, social and labour law established by Union law, national law and collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU<sup>18</sup>, compliance with data

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<sup>18</sup> OJ L 94 of 28.03.2014, p. 65

protection obligations resulting from Regulation (EU) 2016/679<sup>19</sup> and Regulation (EU) 2018/1725<sup>20</sup>.

**II.4.3** All periods specified in the FWC are calculated in calendar days, unless otherwise specified.

**II.4.4** The contractor must not present itself as a representative of the contracting authority and must inform third parties that it is not part of the European public service.

**II.4.5** The contractor is responsible for the *personnel* who perform the contract and exercises its authority over its *personnel* without interference by the contracting authority. The contractor must inform its *personnel* that:

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

**II.4.6** The contractor must ensure that the *personnel* implementing the FWC and any future replacement *personnel* possess the professional qualifications and experience required to provide the supplies, as the case may be on the basis of the selection criteria set out in the tender specifications.

**II.4.7** At the contracting authority's reasoned request, the contractor must replace any member of *personnel* who:

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

The contractor bears the cost of replacing its *personnel* and is responsible for any delay in providing the supplies resulting from the replacement of *personnel*. Before deciding to replace a member of *personnel*, the contractor should first give him the opportunity to present observations.

**II.4.8** The contractor must record and report to the contracting authority any problem that affects its ability to deliver the supplies. The report must describe the problem, state when it started and what action the contractor is taking to resolve it.

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<sup>19</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, OJ L 119, 4.5.2016, p. 1, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2016.119.01.0001.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.119.01.0001.01.ENG)

<sup>20</sup> Regulation (EU) 2018/1725 of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295/39, 21.11.2018, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1725&from=EN>

**II.4.9** The contractor must immediately inform the contracting authority of any changes in the exclusion situations as declared, according to Article 137 (1) of the *Financial Regulation*.

#### **II.4.10 Delivery**

(a) Time allowed for delivery

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

(b) Date, time and place of delivery

The contracting authority must be notified in writing of the exact date of delivery within the period indicated in Article I.4. All deliveries must be made at the agreed place of delivery during the hours indicated in Article I.4.

Notwithstanding the applicable Incoterm set out in Article I.4.4, the contractor must bear all costs and risks involved in delivering the supplies to the place of delivery.

(c) Consignment note

Each delivery must be accompanied by a consignment note in duplicate, duly signed and dated by the contractor or its carrier, giving the *specific contract* number and particulars of the supplies delivered. One copy of the consignment note must be countersigned by the contracting authority and returned to the contractor or to its carrier.

#### **II.4.11 Certificate of conformity**

Signature of the consignment note by the contracting authority, as provided for in point (c) of Article II.4.10 is simply an acknowledgment of the fact that the delivery took place and in no way implies conformity of the supplies with the *specific contract*.

Conformity of the supplies delivered must be evidenced by the signature of a certificate to this effect by the contracting authority no later than one month after the date of delivery, unless otherwise specified in the special conditions or in the tender specifications.

Conformity must be declared only where the conditions laid down in the FWC and in the *specific contract* are satisfied and the supplies conform to the tender specifications.

If, for reasons attributable to the contractor, the contracting authority is unable to accept the supplies, the contractor must be formally notified at the latest by the deadline for conformity.

#### **II.4.12 Conformity of the supplies delivered with the FWC**

The supplies delivered by the contractor to the contracting authority must be in conformity in quantity, quality, price and packaging with the FWC and the relevant *specific contract*.

To be in conformity, the supplies delivered must:

- (a) correspond to the description given in the tender specifications and possess the characteristics of the supplies provided by the contractor to the contracting authority as a sample or model;
- (b) be fit for any specific purpose required of them by the contracting authority and made known to the contractor at the time of conclusion of this FWC and accepted by the contractor;
- (c) be fit for the purposes for which supplies of the same type are normally used;
- (d) demonstrate the high quality standards and performance which are normal in supplies of the same type and which the contracting authority can reasonably expect, given the nature of the supplies and taking into account any public statements on the specific characteristics of the supplies made by the contractor, the producer or its representative, particularly in advertising or on labelling; in accordance with the state of the art in the industry and the provisions of this FWC, in particular the tender specifications and the terms of its tender.
- (e) be packaged according to the requirements laid down in Article II.4.16(a) and according to the usual method for supplies of the same type or, failing this, in a way designed to preserve and protect them.

#### **II.4.13 Remedy**

The contractor is liable to the contracting authority for any lack of conformity which exists at the time the supplies are verified.

In case of a lack of conformity, without prejudice to Article II.14 on liquidated damages applicable to the total price of the supplies concerned, the contracting authority is entitled:

- (a) either to have the supplies brought into conformity, free of charge, by repair or replacement;
- (b) or to have an appropriate reduction made in the price in accordance with Article II.15.

Any repair or replacement must be completed within a reasonable time and without any significant inconvenience to the contracting authority, taking account of the nature of the supplies and the purpose for which they are required by the contracting authority.

The term ‘free of charge’ in paragraph (a) refers to the costs incurred to bring the supplies into conformity, particularly the cost of postage, labour and materials.

#### **II.4.14 Assembly**

If required by the tender specifications (Annex I), the contractor must assemble the supplies delivered within a period of one month unless otherwise specified in the special conditions.

Any lack of conformity resulting from incorrect installation of the supplies must be deemed to be equivalent to lack of conformity of the supplies if installation forms part of the FWC and the supplies were installed by the contractor or under its responsibility. This applies equally if the product was to be installed by the contracting authority and was incorrectly installed owing to a shortcoming in the installation instructions.

#### **II.4.15 Services provided to supplies**

If required by the tender specifications, services to supplies must be provided accordingly.

#### **II.4.16 General provisions concerning supplies**

##### **(a) Packaging**

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

Unless otherwise specified in the special conditions or in the tender specifications (Annex I), pallets must be considered as one-way packaging and must not be returned. Each box must be clearly labelled with the following information:

- Name of contracting authority and address for delivery;
- name of contractor;
- description of contents;
- date of delivery;
- number and date of *specific contract*;
- EC code number of article.

Supplies that are not packaged in accordance with this Article, shall be considered to represent a lack of conformity in the sense of Article II.4.12(e).

##### **(b) Guarantee**

The supplies must be guaranteed by the contractor against all defects in manufacture or materials for two years from the date of delivery, unless provision is made for a longer period in the tender specifications.

The contractor must guarantee that any permits and licences required for manufacturing and selling the supplies have been obtained.

The contractor must replace at its own expense, within a reasonable time and without any significant inconvenience to the contracting authority, taking account of the nature of the supplies and the purpose for which they are required by the contracting authority, 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 its obligations, including failure to provide a guarantee that, for a certain period, supplies 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 must 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 supplies that are part of the order, even though they may not have been the cause of any incident. In this case, the guarantee period must be extended as stated above.

**II.4.17** If the contractor fails to deliver the supply in accordance with the FWC or a *specific contract* or if it fails to deliver the supply in accordance with the expected quality levels specified in the tender specifications, the contracting authority may, even if these failings constitute a breach that could trigger Article II.17.1, without prior notice of default to the contractor or judicial intervention being required, decide to have these obligations performed by a third party, at the contractor's expense. The contracting authority shall *formally notify* the contractor of its decision to have the contractor substituted and the grounds for this substitution.

Any such substitution does not affect the contractor's liability and is without prejudice to the contracting authority's other rights and remedies, including but not limited to its right to claim damages under Article II.18 that the substitution would not cover.

## **II.5. COMMUNICATION BETWEEN THE PARTIES**

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

Any *notifications*, communication of information or exchange of documents under the FWC must be made in writing, in the language of the FWC and SC, if applicable, and must clearly identify the FWC number and *specific contract* number, if applicable.

Communication between the parties can take place:

- by electronic means, via electronic exchange system, in accordance with the provisions of Article II.5.2.;
- by electronic means, via email, in accordance with the provisions of Article II.5.3.;
- on paper, via mail - by courier service with proof of delivery or by registered post with proof of delivery, in accordance with the provisions of Article II.5.4.

In the cases where this FWC mandates the use of formal notifications, those formal communications are considered to have been made with their receipt by the receiving party. The specific rules when *formal notifications* are considered to have been received are provided in Sections II.5.2.2, II.5.3.2 and II.5.4.2 below.

Communication details to be used for all communication between the parties are indicated in Article I.8.

### **II.5.2. Communication via electronic exchange system (EES)**

The contracting authority may use an EES for all exchanges with the contractor during the *implementation of the FWC*.

If communication via the EES is hindered by factors beyond the control of one party, including technical problems, the party who first discovers the hinderance must *notify* the other party immediately and the parties must take the necessary measures to restore this communication via the EES. Upon such *notification*, the parties shall use alternative means of communication



until communication via electronic exchange system is restored. The provisions applicable to alternative means of communication are described in Articles II.5.3 and II.5.4 below.

If the EES is temporarily unavailable, the sending party cannot be considered in *breach of its obligation* to send a communication within a specified deadline. In any event, for reasons linked to business continuity, the contracting authority reserves the right to use alternative means of communication at any moment.

#### **II.5.2.1 Date of communication via electronic exchange system for other than formal notifications**

*Notifications* through the EES are generally considered to have been made when they are sent by the sending party (i.e. on the date and time they are sent through the EES) as indicated by the time logs.

#### **II.5.2.2 Date of communication via electronic exchange system for formal notifications**

The receiving date for *formal notifications* made through the EES will be the date and time the communication is accessed, as indicated by the time logs. *Formal notifications* that have not been accessed within 10 days after sending, will be considered to have been accessed.

### **II.5.3. Communication via email**

When communicating via e-mail, the parties shall send their messages to the email addresses indicated in Article I.8.

#### **II.5.3.1 Date of communications via email for other than formal notifications**

Without prejudice to Article II.19 below and Point 31.3 of Annex I to the FR, *notifications* via email are considered to have been made and the email is deemed to have been received by the receiving party on the date of dispatch of that e-mail, if it is sent to the email address indicated in Article I.8 and does not have characteristics that could reasonably prevent its proper delivery (such as sending extremely voluminous e-mails that can be blocked for their size or emails containing elements that the majority of the spam filters would block). The sending party must be able to prove the date of dispatch. If the sending party sends the email to the email address indicated in Article I.8 and receives a non-delivery report, it must make every reasonable effort to ensure that the other party receives the communication.

#### **II.5.3.2 Date of communications via email for formal notifications**

*Formal notifications* by email are considered to have been received on the date of dispatch of a return email expressly or impliedly acknowledging receipt. In case no such email is received by the party who sent the *formal notification* within 10 days, the *formal notification* should be re-sent via courier service with proof of delivery or registered post (see Article II.5.4.2 below).

### **II.5.4. Communication via mail**

As a rule, mail is used by way of exception for *formal notifications* and as alternative means of communication when the other means are not available.

When communicating via mail, the parties should send their letters to the postal addresses indicated in Article I.8.

#### **II.5.4.1. Date of communications via mail for other than formal notifications**

Without prejudice to Article 116 of the *Financial Regulation*, *notifications* via mail are considered to have been made at the date of receipt by the receiving party.

A receiving party cannot make use of its own refusal to be informed of the communication in order to render it ineffective.

Invoices sent to the contracting authority via mail are deemed to be received on the date when they are registered by the authorised department of the authorizing officer responsible.

#### **II.5.4.2. Date of communications via mail for formal notifications**

*Formal notifications* by courier service with proof of delivery are considered to have been received on the date indicated in the proof of delivery. *Formal notifications* by registered post with proof of delivery are considered to have been received either on the delivery date registered by the postal service or the deadline for collection at the post office.

### **II.6. LIABILITY**

**II.6.1** The contractor shall perform the contract at its own risk. The contractor warrants and holds the contracting authority harmless against any action or claim brought by a third party for any damage or loss suffered during or as a consequence of *implementation of the FWC* (including the related costs such as lawyer fees).

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

**II.6.3** Except in case of *force majeure*, the contractor is liable for any loss or damage caused to the contracting authority during or as a consequence of *implementation of the FWC* resulting from a breach attributable to the contractor, including in the event of subcontracting, but only up to an amount not exceeding three times the total amount of the relevant *specific contract*. However, if the damage or loss is caused by the gross negligence or wilful misconduct of the contractor, a *related person*, its *personnel* or its subcontractors, or if an injury has been caused to the life or the physical integrity of a person, as well as in the case of an action brought against the contracting authority by a third party for breach of its intellectual property rights, the contractor is liable for the whole amount of the damage or loss.

**II.6.4** If a third party brings any action against the contracting authority in connection with the *implementation of the FWC*, the contractor must assist the contracting authority in the legal proceedings, including by intervening in support of the contracting authority upon request.

If the contracting authority's liability towards the third party is established and that such liability is caused by the contractor during or as a consequence of the *implementation of the FWC*, Article II.6.1 applies. In that case, the limitations of liability foreseen in Article II.6.3 do not apply.

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

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

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

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

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

The contracting authority may do any of the following:

- (a) verify that the contractor's action is appropriate;
- (b) require the contractor to take further action within a specified deadline to rectify the situation;
- (c) decide not to award any *specific contract* to the contractor until the situation has been rectified.

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

- (a) its *personnel*;
- (b) any *related person*;
- (c) third parties involved in the *implementation of the FWC*, including subcontractors.

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

## **II.8. CONFIDENTIALITY**

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

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

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

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

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

**II.8.4** The contractor must obtain from any *related person* and its *personnel*, as well as from third parties involved in the *implementation of the FWC*, a written commitment that they will comply with this Article. At the request of the contracting authority, the contractor must provide a document providing evidence of this commitment.

**II.8.5** The contracting authority is entitled to make available (any part of) the *confidential information or documents* to its staff and the staff of other Union institutions, agencies and bodies, as well to other persons and entities working for the contracting authority or cooperating with it. This includes other contractors or subcontractors and their *personnel*, who need to know the same for the *implementation of the FWC*, who know they must treat it confidentially and who are bound by confidentiality obligations that are no less restrictive than the contracting authority's confidentiality obligations set out in this section.

**II.8.6** The receiving party will, on request from the other party, return all copies and records of the *confidential information or documents* of the other party and will not retain any copies or records of the *confidential information or documents* of the other party.

## **II.9. PROCESSING OF PERSONAL DATA**

### **II.9.1 Processing of personal data by the contracting authority**

Any personal data included in or relating to the FWC, including its *implementation*, shall be processed in accordance with Regulation (EU) 2018/1725<sup>21</sup>. Such data shall be processed solely for the purposes of the *implementation*, management and monitoring of the FWC by the data controller.

The contractor or any other person whose personal data is processed by the data controller in relation to this FWC has specific rights as a data subject under Chapter III (Articles 14-25) of Regulation (EU) 2018/1725, in particular the right to access, rectify or erase their personal data and the right to restrict or, where applicable, the right to object to processing or the right to data portability.

Should the contractor or any other person whose personal data is processed in relation to this FWC have any queries concerning the processing of its personal data, it shall address itself to the data controller. They may also address themselves to the Data Protection Officer of the data controller. They have the right to lodge a complaint at any time to the European Data Protection Supervisor.

Details concerning the processing of personal data are available in the data protection notice referred to in Article I.8.

## **II.9.2 Processing of personal data by the contractor**

The processing of personal data by the contractor shall meet the requirements of Regulation (EU) 2018/1725 and be processed solely for the purposes set out by the controller.

The contractor shall assist the controller for the fulfilment of the controller's obligation to respond to requests for exercising rights of person whose personal data is processed in relation to this FWC as laid down in Chapter III (Articles 14-25) of Regulation (EU) 2018/1725. The contractor shall inform without delay the controller about such requests.

The contractor may act only on documented written instructions and under the supervision of the controller, in particular with regard to the purposes of the processing, the categories of data that may be processed, the recipients of the data and the means by which the data subject may exercise its rights.

The contractor shall grant *personnel* access to the data to the extent strictly necessary for the *implementation*, management and monitoring of the FWC. The contractor must ensure that *personnel* authorised to process personal data has committed itself to confidentiality or is under appropriate statutory obligation of confidentiality in accordance with the provisions of Article II.8.

The contractor shall adopt appropriate technical and organisational security measures, giving due regard to the risks inherent in the processing and to the nature, scope, context and purposes of processing, in order to ensure, in particular, as appropriate:

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<sup>21</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32018R1725>

- (a) the pseudonymisation and encryption of personal data;
- (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- (c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
- (d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing;
- (e) measures to protect personal data from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed.

The contractor shall *notify* relevant personal data breaches to the controller without undue delay and at the latest within 48 hours after the contractor becomes aware of the breach. In such cases, the contractor shall provide the controller with at least the following information:

- (a) nature of the personal data breach including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;
- (b) likely consequences of the breach;
- (c) measures taken or proposed to be taken to address the breach, including, where appropriate, measures to mitigate its possible adverse effects.

The contractor shall immediately inform the data controller if, in its opinion, an instruction infringes Regulation (EU) 2018/1725, Regulation (EU) 2016/679, or other Union or Member State data protection provisions as referred to in the tender specifications.

The contractor shall assist the controller for the fulfilment of its obligations pursuant to Article 33 to 41 under Regulation (EU) 2018/1725 to:

- (a) ensure compliance with its data protection obligations regarding the security of the processing, and the confidentiality of electronic communications and directories of users;
- (b) *notify* a personal data breach to the European Data Protection Supervisor;
- (c) communicate a personal data breach without undue delay to the data subject, where applicable;
- (d) carry out data protection impact assessments and prior consultations as necessary.

The contractor shall maintain a record of all data processing operations carried on behalf of the controller, transfers of personal data, security breaches, responses to requests for exercising rights of people whose personal data is processed and requests for access to personal data by third parties.

The contracting authority is subject to Protocol 7 of the Treaty on the Functioning of the European Union on the privileges and immunities of the European Union, particularly as regards the inviolability of archives (including the physical location of data and services as set out in Article I.8.2) and data security, which includes personal data held on behalf of the contracting authority in the premises of the contractor or subcontractor.

The contractor shall *notify* the contracting authority without delay of any legally binding request for disclosure of the personal data processed on behalf of the contracting authority made by any

national public authority, including an authority from a third country. The contractor may not give such access without the prior written authorisation of the contracting authority.

The duration of processing of personal data by the contractor will not exceed the period referred to in Article II.22.2. Upon expiry of this period, the contractor shall, at the choice of the controller, return, without any undue delay in a commonly agreed format, all personal data processed on behalf of the controller and the copies thereof or shall effectively delete all personal data unless Union or national law requires a longer storage of personal data.

For the purpose of Article II.10, if part or all of the processing of personal data is subcontracted to a third party, the contractor shall pass on the obligations referred to in Articles I.8.2 and II.9.2 in writing to those parties, including subcontractors. At the request of the contracting authority, the contractor shall provide a document providing evidence of this commitment.

## **II.10. SUBCONTRACTING**

- II.10.1** The contractor must not subcontract and have the FWC implemented by third parties beyond the third parties already mentioned in its tender without prior written authorisation from the contracting authority.
- II.10.2** Even if the contracting authority authorises subcontracting, the contractor remains bound by its contractual obligations and remains entirely responsible for the *implementation of the FWC* vis-à-vis the contracting authority.
- II.10.3** The contractor must ensure that the subcontract does not affect the rights of the contracting authority under this FWC, particularly those under Articles II.8, II.13 and II.22.
- II.10.4** The contracting authority may request the contractor to replace a subcontractor found to be in a situation provided for in points (d) and (e) of Article II.17.1. The contractor bears the costs of such replacement.

## **II.11. AMENDMENTS**

- II.11.1** Any amendment to the FWC or a *specific contract* must be made in writing before all contractual obligations have been fulfilled. A *specific contract* does not constitute an amendment to the FWC. Any acceptance or payment by the contracting authority of an invoice referring to the general terms and conditions of the contractor does not constitute a valid amendment to the FWC or to a *specific contract* and does not make these general terms and conditions applicable to the FWC or a *specific contract*.
- II.11.2** Any amendment must not make changes to the FWC or a *specific contract* that might alter the initial conditions of the procurement procedure or result in unequal treatment of tenderers or contractors.

## **II.12. ASSIGNMENT OF THE CONTRACT TO A THIRD-PARTY**

- II.12.1** The contractor must not assign any of the rights and obligations arising from the FWC or a *specific contract*.

**II.12.2** By way of exception to the preceding clause, in duly justified exceptional circumstances, rights and / or obligations arising from the FWC and/or a *specific contract* may be assigned with the prior written authorisation of the contracting authority. This authorisation shall be granted or not at the discretion of the contracting authority and upon request by the contractor. The contractor's request shall detail the exceptional circumstances on which it is based and provide the identity of the intended assignee. The contracting authority may request additional information.

**II.12.3** Any right or obligation assigned by the contractor without the authorisation mentioned in the preceding clause is not enforceable against the contracting authority. Accordingly, the assignor will remain jointly and severally bound with the assignee vis-à-vis the contracting authority.

## **II.13. FORCE MAJEURE**

**II.13.1** If a party is affected by *force majeure*, it must immediately *notify* the other party, stating the nature of the circumstances, their likely duration and foreseeable effects.

**II.13.2** A party is not liable for any delay or failure to perform its obligations under the FWC or a specific contract if that delay or failure is a result of force majeure. If the contractor is unable to fulfil its contractual obligations owing to force majeure, it has the right to remuneration only for the supplies actually delivered and which obtain a certificate of conformity.

**II.13.3** The parties must take all necessary measures to limit any damage due to *force majeure*.

**II.13.4** *Force majeure* either suspends the *implementation of the FWC* as provided for in Article II.17 or leads to the termination of the FWC as provided for in Article II.18. The effects of the suspension of the FWC due to *Force Majeure* on the duration is laid down in Article I.3.5.

## **II.14. LIQUIDATED DAMAGES FOR DELAY IN DELIVERY**

### **II.14.1. Delay in delivery**

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

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

where:

*V* is the price of the relevant purchase or supply;

*d* is the duration specified in the relevant *specific contract* for delivery of the relevant purchase or supply 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 *specific contract*, expressed in days.



Liquidated damages for delay in delivery may be imposed together with a reduction in price under the conditions laid down in Article II.15 or a substitution of the contractor under the conditions laid down in Article II.4.17.

Any claim for liquidated damages does not affect (a) the contractor's liability for damages that liquidated damages would not cover, (b) the contracting authority's rights under Article II.17, nor (c) the contracting authority's rights under Article II.4.17 or (d) any other right or remedy that the contracting authority may have under the FWC or a *specific contract*.

#### **II.14.2. Procedure**

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

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

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

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

#### **II.14.3. Nature of liquidated damages**

The parties expressly acknowledge and agree that any amount payable under this Article is not a penalty and, in view of all the circumstances including the legitimate interest of the contracting authority for a timely delivery to fulfil its mission of public services, represents a reasonable estimate of fair compensation for the damage that may be incurred by the contracting authority due to failure to provide the supplies within the applicable time limits set out in this FWC or in a *specific contract*.

### **II.15. REDUCTION IN PRICE**

#### **II.15.1. Quality standards**

If the contractor fails to deliver the supply in accordance with the FWC or a *specific contract* ('unperformed obligations') or if it fails to deliver the supply in accordance with the expected quality levels specified in the tender specifications ('low quality delivery'), the contracting authority may, even if these failings constitute a breach that could trigger Article II.17.1, reduce the price. The price reduction will be directly proportional to the difference, upon the time of the signature of the FWC, between the value of the unperformed obligations or low quality delivery and the value of the agreed supply. This includes in particular cases where the contracting authority cannot approve a document or deliver a certificate of conformity for supply as defined in Article I.6 after the contractor has submitted the required additional information, correction or new supply.

A reduction in price may be imposed together with liquidated damages for delay in delivery under the conditions of Article II.14.

Any reduction in price does not affect the contractor's liability or the contracting authority's rights under Article II.17 for damages that the reduction in price would not cover or (c) any other right or remedy that the contracting authority may have under the FWC or a *specific contract*.

#### **II.15.2. Procedure**

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

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

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

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

### **II.16. SUSPENSION OF THE IMPLEMENTATION OF THE FWC**

#### **II.16.1. Suspension by the contractor**

If the *performance of the contract* is affected by *force majeure*, the contractor may suspend the performance of a *specific contract*.

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

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

The contracting authority is not entitled to compensation for suspension of any part of the FWC or a *specific contract*, in the event of *force majeure*.

#### **II.16.2. Suspension by the contracting authority**

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

- (a) in case of *force majeure* affecting the performance or the *implementation of the FWC* or the *performance of a specific contract*;
- (b) in order to verify whether the presumed *irregularities, fraud* or *breach of obligations* have actually occurred;
- (c) if the procedure for awarding the FWC or a *specific contract* or the *implementation of the FWC* proves to have been subject to *irregularities, fraud* or *breach of obligations*.

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

The contracting authority must *notify* the contractor as soon as the verification is completed whether:

- (a) it is lifting the suspension; or
- (b) it intends to terminate the FWC or a *specific contract* under Article II.17.1(f) or (j).

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

The contracting authority may in addition suspend the time allowed for payments in accordance with Article II.20.7.

## **II.17. TERMINATION OF THE FWC**

### **II.17.1. Grounds for termination by the contracting authority**

The contracting authority may terminate the FWC or any on-going *specific contract* in the following circumstances:

- (a) if provision of the supplies under an on-going *specific contract* has not actually started within 15 days of the scheduled date and the contracting authority considers that the new date proposed, if any, is unacceptable, taking into account Article II.11.2;
- (b) if the contractor is unable, through its own fault, to obtain any permit or licence required for *implementation of the FWC*;
- (c) if the contractor fails to implement the FWC or to perform the *specific contract* in accordance with the tender specifications or *request for specific contract* or is materially in breach of another contractual obligation or repeatedly refuses to sign *specific contracts*. Termination of three or more *specific contracts* in these circumstances also constitutes grounds for termination of the FWC;
- (d) if the contractor or any person that assumes unlimited liability for the debts of the contractor is in one of the situations provided for in points (a) and (b) of Article 136(1) of the *Financial Regulation*;
- (e) if the contractor or any *related person* is in one of the situations provided for in points (c) to (h) of Article 136(1) or to Article 136(2) of the *Financial Regulation*;
- (f) if the procedure for awarding the FWC or the *implementation of the FWC* prove to have been subject to *errors, irregularities, fraud* or *breach of obligations*;
- (g) if the contractor does not comply with applicable obligations under environmental, social and labour law established by Union law, national law, collective agreements or

by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU;

- (h) if the contractor is in a situation that could constitute a *conflict of interest* or a *professional conflicting interest* as referred to in Article II.7 and does not rectify the situation;
- (i) if a change to the contractor's legal, financial, technical, organisational or ownership situation is likely to substantially affect the *implementation of the FWC* or substantially modify the conditions under which the FWC was initially awarded or a change regarding the exclusion situations listed in Article 136 of the *Financial Regulation* that calls into question the decision to award the contract or the contractor becomes subject to restrictive measures hindering the *implementation of the FWC*;
- (j) in the event of *force majeure*, where either resuming *implementation* is impossible or the necessary ensuing amendments to the FWC or a *specific contract* would mean that the tender specifications are no longer fulfilled or result in unequal treatment of tenderers or contractors;
- (k) if the needs of the contracting authority change and it no longer requires new supplies under the FWC; in such cases ongoing *specific contracts* remain unaffected;
- (l) if the termination of the FWC with one or more of the contractors means that the multiple FWC with reopening of competition no longer has the minimum required level of competition;
- (m) if the contractor is in breach of the data protection obligations resulting from Article II.9.2;
- (n) if the contractor does not comply with the applicable data protection obligations resulting from Regulation (EU) 2016/679<sup>22</sup>;
- (o) if it is manifest that, at a later date and before such breach becomes effective, the contractor will materially fail to implement the FWC or to perform the *specific contract* in accordance with the tender specifications or *request for specific contract* or will be materially in breach of another contractual obligation or will repeatedly refuse to sign *specific contracts*, unless the contractor provides the contracting authority with sufficient assurances of its future performance.

### II.17.2. Grounds for termination by the contractor

The contractor may terminate the FWC or any on-going *specific contract* if the contracting authority materially fails to comply with its obligations, in particular the obligation to provide the information needed for the contractor to implement the FWC or to perform a *specific contract* as provided for in the tender specifications.

The contractor may also terminate the FWC or any on-going *specific contract* in the event of *force majeure*, where resuming *implementation* is impossible.

### II.17.3. Procedure for termination

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

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<sup>22</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, <http://data.europa.eu/eli/reg/2016/679/2016-05-04>

The other party has 15 days following the date of receipt to submit observations, including the measures it has taken or will take to continue fulfilling its contractual obligations or, in the case of Article II.17.1(o), the assurances it gives to fulfil its contractual obligations in the future. Failing that, the decision to terminate becomes enforceable the day after the time limit for submitting observations has elapsed.

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

In the cases referred to in points (a) to (d), (g) to (i), (k) to (o) of Article II.17.1 and in Article II.17.2, the date on which the termination takes effect must be specified in the *formal notification*.

In the cases referred to in points (e), (f) and (j) of Article II.17.1, the termination takes effect on the day following the date on which the contractor receives *notification* of termination.

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

#### **II.17.4. Effects of termination**

The contractor is liable for damage incurred by the contracting authority as a result of the termination of the FWC or a *specific contract*, including the additional cost of appointing and contracting another contractor to provide or complete the supplies, except if the damage is a result of a termination in accordance with Article II.17.1(j), (k) or (l) or Article II.17.2. The contracting authority may claim compensation for such damage.

The contractor is not entitled to compensation for any loss resulting from the termination of the FWC or a *specific contract*, including loss of anticipated profits, unless the loss was caused by the situation specified in the first subparagraph of Article II.17.2.

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

Within 60 days of the date of termination, the contractor must submit any report and any invoice required for supplies that were provided before the date of termination.

In the case of joint tenders, the contracting authority may terminate the FWC or a *specific contract* with each member of the group separately on the basis of points (d), (e), (g), (m), (n) and (o) of Article II.17.1, under the conditions set out in Article II.11.2.

## **II.18. INVOICES, VALUE ADDED TAX AND E-INVOICING**

### **II.18.1. Invoices and value added tax**

Invoices must contain the contractor's identification data, the amount, the currency and the date, as well as the FWC reference and reference to the *specific contract*.

Invoices must indicate the place of taxation of the contractor for value added tax (VAT) purposes and must specify separately the taxable amount per rate or exemption, the VAT rate applied and the VAT amount payable.

The contracting authority is exempt from all taxes and duties, including VAT, in accordance with Articles 3 and 4 of the Protocol 7 of the Treaty on the Functioning of the European Union on the privileges and immunities of the European Union and Article 151, §1 of the Directive 2006/112/CE.

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

In case of joint tenders from a group of economic operators without separate legal personality, in order to allow the members of the group to complete the formalities with the relevant authorities to ensure the tax exemption, the contracting authority shall issue a VAT exemption certificate for each respective group member of the joint tender, if the transaction is taxable for VAT purposes as an intra-community purchase. Each certificate shall cover only the member's part of the service provided and shall include a description of it and its value.

The contracting authority shall attach to each *order form* or *specific contract* an annex if part of the transaction is taxable for VAT purposes as a local purchase in Belgium. The leader shall include in the annex a description of the supply provided by each member of the group, specify its value and sign it. If the repartition of the tasks is not known at the moment of the *specific contract* or *order form* signature, the group leader shall fill in the annex with the relevant information as soon as the repartition of the tasks is known and submit it to the Commission at the latest together with the invoices issued by each member of the group. The leader shall also send one copy of the annex to each member whose part of the supplies is taxable for VAT purposes as a local purchase in Belgium.

Each member of the group shall issue an invoice to the Commission on its share/part of the service, as outlined in the above mentioned annex(es).

The Commission shall pay the amounts corresponding to these invoices to the leader on its bank account.

Payments to the leader will discharge the Commission from its payment obligation vis à vis the other members of the group.

For the group members (including leaders), if the transaction is taxable for VAT purpose as a local purchase in another Member State, local exemption rules apply.

For invoices sent to the contracting authority via email, the reception date must be considered as the date on which the request for payment is registered after reception in the functional mailbox of the contracting authority. The functional mailbox in which the payments requests are to be sent, should be provided in the *specific contracts*.

## **II.18.2. E-invoicing**

If the use of electronic exchange system has been activated under Article I.7.1, the contractor submits invoices in electronic format if the conditions regarding electronic signature specified in particular in article 233 of Directive 2006/112/EC on VAT are fulfilled, i.e. using a qualified electronic signature or through electronic data interchange.

E-invoices must be submitted by electronic means through the Portal, in accordance with the Portal Terms and Conditions and using the forms and templates provided there, or through means of supported interoperability networks compliant with the Directive 2014/55/EU on electronic invoicing in public procurement.

For avoidance of doubt, the e-invoices must be issued in conformity with the repartition of tasks as per the annex mentioned in Article II.18.1 and the payment conditions described in the same article fully apply.

## **II.19. PRICE REVISION**

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

In that case, prices are fixed and not subject to revision during the first year of the FWC.

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

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

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

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

The price revision is calculated using the following formula:

$$Pr = 0,8 \times Po \times \left( \frac{Ir}{Io} \right) + 0,2 \times Po$$

where: Pr = revised price;

Po = price in the tender;

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

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

## **II.20. PAYMENTS AND GUARANTEES**

### **II.20.1. Date of payment**

The date of payment is deemed to be the date on which the contracting authority's account is debited.

### **II.20.2. Currency**

Payments are made in euros, unless another currency is provided for in Article I.6.1.

### **II.20.3. Conversion**

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

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

[Exchange rate \(InforEuro\) | European Commission \(europa.eu\)](https://commission.europa.eu/funding-tenders/procedures-guidelines-tenders/information-contractors-and-beneficiaries/exchange-rate-infoeuro_en)<sup>23</sup>

### **II.20.4. Costs of transfer**

The costs of the transfer are borne as follows:

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

### **II.20.5. Pre-financing, performance and money retention guarantees**

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

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<sup>23</sup> [https://commission.europa.eu/funding-tenders/procedures-guidelines-tenders/information-contractors-and-beneficiaries/exchange-rate-infoeuro\\_en](https://commission.europa.eu/funding-tenders/procedures-guidelines-tenders/information-contractors-and-beneficiaries/exchange-rate-infoeuro_en)



- (a) the financial guarantee is provided by a bank or a financial institution approved by the contracting authority or, at the request of the contractor and with the agreement of the contracting authority, by a third party; and
- (b) the guarantee shall have the effect of making the bank or financial institution or the third party provide irrevocable collateral security, or stand as first-call guarantor of the contractor's obligations without requiring that the contracting authority has recourse against the principal debtor (the contractor).

The contractor bears the cost of providing such guarantee.

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

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

Retention money guarantees cover full delivery of the supplies in accordance with the *specific contract* including during the contract liability period and until their final certificate of conformity has been delivered by the contracting authority. The retention money guarantee must not exceed 10 % of the total price of the *specific contract*. The contracting authority must release the guarantee after the expiry of the contract liability period as provided for in the *specific contract*.

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

#### **II.20.6. Interim payments and payment of the balance**

The contractor must send an invoice for interim payment, as provided for in Article I.6 or in the tender specifications or in the *specific contract*.

The contractor must send an invoice for payment of the balance within 60 days of the end of the period of provision of the supplies, as provided for in Article I.6, in the tender specifications or in the *specific contract*.

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

Payment of the balance may take the form of recovery as provided for in Article II.21.

#### **II.20.7. Suspension of the time allowed for payment**

The contracting authority may suspend the payment periods specified in Article I.6 at any time by *notifying* the contractor (or leader in the case of a joint tender) that its invoice cannot be

processed. The reasons the contracting authority may cite for not being able to process an invoice are:

- (a) because it does not comply with the FWC;
- (b) because the contractor has not produced the appropriate supplies or documents; or
- (c) because the contracting authority has observations on the supplies or documents submitted with the invoice;
- (d) because it is manifest that, at a later date and before such breach becomes effective, the contractor will materially fail to implement the FWC or to perform the *specific contract* in accordance with the tender specifications or *request for specific contract* or will be in material breach of another contractual obligation or will repeatedly refuse to sign *specific contracts*, unless the contractor provides the contracting authority with sufficient assurances of its future performance.

The contracting authority must *notify* the contractor (or leader in the case of joint tender) as soon as possible of any such suspension, giving the reasons for it. In cases b) and c) referred above, the contracting authority shall *notify* the contractor (or leader in case of a joint tender) the time limits to submit additional information or corrections or a new version of the documents or deliverables if the contracting authority requires it.

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

Where the payment periods have been suspended following rejection of a document referred to in the first paragraph of this Article and the new document produced is also rejected, the contracting authority reserves the right to terminate the *specific contract* in accordance with Article II.17.1(c).

#### **II.20.8. Interest on late payment**

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

Suspension of the payment period as provided for in Article II.20.7 is not considered as giving rise to late payment.

Interest on late payment covers the period running from the day following the due date for payment up to and including the date of payment as defined in Article II.20.1.

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

## **II.21. RECOVERY**

**II.21.1** If an amount is to be recovered under the terms of the FWC, the contractor must repay the contracting authority the amount in question.

### **II.21.2 Recovery procedure**

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

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

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

- (a) by offsetting them against any amounts owed to the contractor by the Union or by the European Atomic Energy Community or by an executive agency when it implements the Union budget;
- (b) by calling in a financial guarantee if the contractor has submitted one to the contracting authority;
- (c) by taking legal action.

### **II.21.3 Interest on late payment**

If the contractor does not honour the obligation to pay the amount due by the date set by the contracting authority in the debit note, the amount due bears interest at the rate indicated in Article II.20.8. Interest on late payments will cover the period starting on the day after the due date for payment and ending on the date when the contracting authority receives the full amount owed.

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

### **II.21.4 Recovery rules in the case of joint tender**

If the contract is signed by a group (joint tender), the members of the group are jointly and severally liable under the conditions set out in Article II.6 (Liability). The contracting authority shall send the debit note first to the leader of the group.

If the leader does not pay by the due date the whole amount, and if the amount due cannot be offset or can only be offset partially in accordance with Article II.21.2 (a), the contracting authority may claim the amount still due from any other member or members of the group by

respectively *notifying* them with a debit note in conformity with the provisions laid down in Article II.21.2.

## **II.22. CHECKS AND AUDITS**

**II.22.1** The contracting authority may check or require an audit on the *implementation of the FWC*. This may be carried out by any outside body authorised to do so on its behalf.

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

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

**II.22.2** The contractor must keep all original documents stored on any appropriate medium, including digitised originals if authorised under national law, for a period of five years starting from the payment of the balance of the last *specific contract* issued under this FWC.

**II.22.3** The contractor must grant the contracting authority's staff and outside personnel authorised by the contracting authority the appropriate right of access to sites and premises where the FWC is implemented and to all the information, including information in electronic format, needed to conduct such checks and audits. The contractor must ensure that the information is readily available at the moment of the check or audit and, if so requested, that information is handed over in an appropriate format.

**II.22.4** On the basis of the findings made during the audit, a provisional report is drawn up. The contracting authority or its authorised representative must send it to the contractor, which has 30 days following the date of receipt to submit observations. The contractor must receive the final report within 60 days following the expiry of the deadline to submit observations.

On the basis of the final audit findings, the contracting authority may recover all or part of the payments made in accordance with Article II.21 and may take any other measures which it considers necessary.

**II.22.5** In accordance with Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspection carried out by the Commission in order to protect the European Communities' financial interests against *fraud* and other *irregularities* and Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office, the European Anti-Fraud Office may carry out investigations, including on the spot checks and inspections, to establish whether there has been *fraud*, corruption, *irregularities* or any other illegal activity under the contract affecting the financial interests of the Union. Findings arising from an investigation may lead to criminal prosecution under national law.

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

**II.22.6** The Court of Auditors and the European Public Prosecutor's Office established by Council Regulation (EU) 2017/1939<sup>24</sup> ('the EPPO') and, for the processing of personal data, the European Data Protection Supervisor have the same rights as the contracting authority, particularly right of access, for the purpose of checks, audits and investigations.

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<sup>24</sup> Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office

## **ANNEX III**

- Model for *specific contracts*
- Model for *order forms*

## SPECIFIC CONTRACT

No [complete]

implementing framework contract

No [complete]

*[Financed by Commission financing decision n° [insert number(s) of the Commission Financing Decision(s) e.g. COM 2018/476]*

1. The European Union ('the Union'), represented by the [European Commission, [Directorate-General]] ('the contracting authority') represented for the purposes of the signature of this Specific Contract by the authorised representative indicated in the respective field under "SIGNATURES" below and

2. [Contractor's full official name]

Legal form: [Contractor's official legal form]

Registration number: [Contractor's statutory registration number or ID or passport number]

Official address: [Contractor's full official address]

*[OPTION for contractors with VAT: VAT registration number]*

*[OPTION for joint tenders: appointed as leader of the group by the members of the group that submitted the joint tender]*

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

(*[OPTION for joint tenders: collectively]* "the contractor"),

represented for the purposes of signing this specific contract by the authorised representative indicated in the respective field under "SIGNATURES" below

HAVE AGREED

### ARTICLE 1 SUBJECT MATTER

**1.1** This specific contract implements framework contract (FWC) No [FWC number], signed by the parties on [FWC last signature date]. The title of this specific contract is: "[insert title of the contract]".

The specific contract is established following the contracting authority's request for

specific contracts [request number] of [request date] and the contractor's [specific tender]<sup>25</sup> [documents]<sup>26</sup> submitted on [date].

- 1.2 In accordance with the provisions set out in the FWC and in this specific contract and their annexes, which form an integral part of it, the contractor must provide the supplies specified in Annex I.

## **ARTICLE 2 ENTRY INTO FORCE, DURATION AND PLACE OF PERFORMANCE**

- 2.1 This *Specific Contract* enters into force on the date on which the last party signs it.
- 2.2 The *performance of the contract* starts [on the date the specific contract enters into force] [on the later between the following two dates: the date it is signed by the last contracting party and DD-MM-YY] [on the date notified by the Contracting Authority with at least 7 days notice and in any case no sooner than the date of entry into force and no later than 3 months after the signature of the specific contract].
- 2.3 The [maximum] period of performance of the contract—[, including all] [phases,] [renewals,] [must not exceed [number] [days/months/years]] [must end on or before DD-MM-YY]. This period may be extended only with the express written agreement of the parties before the expiration of such period, in accordance with the provisions of the FWC.
- 2.4 The tasks shall be performed as specified in the [Request for specific contract] [Contractor's specific tender]<sup>27</sup> (including the place of performance).

### **[OPTION IF EXECUTION IN PHASES <sup>28</sup>**

- 2.5 The *performance of the specific contract* is divided into phases. The duration of the first phase is [number] [days/months/years].

The start of each new phase is subject to fulfilment of conditions (such as the successful completion of the preceding phase, availability of the necessary funding from the contracting authority's budget etc.) in accordance with the terms of the Request for specific contract. The contractor is authorised to continue the performance of the specific contract in the next phase only with written consent of the contracting authority provided [number] [days/months] before the start of the next phase. The written consent of the contracting authority will indicate the start date, the duration and the maximum amount covering all purchases of the next phase.]

### **[OPTION IF RENEWALS<sup>29</sup>**

<sup>25</sup> Option in case of a FWC with reopening of competition.

<sup>26</sup> Option in case of a single FWC or a FWC in cascade.

<sup>27</sup> Option in case of a FWC with reopening of competition.

<sup>28</sup> This option can be selected only if the option of renewal is not selected, i.e. the two options are mutually exclusive.

<sup>29</sup> This option can be selected only if the option of execution in phases is not selected, i.e. the two options are mutually exclusive.



- 2.5** The *specific contract* is concluded for an initial period of [number] [days/months] and then renewed automatically [number] times for [number] [days/months] each, unless one of the parties receives formal notification to the contrary at least [number] [days/months] before the end of the ongoing duration.

Renewal does not change or postpone any existing obligations.]

### **ARTICLE 3 PRICE AND VAT PROVISIONS**

#### **[OPTION IF NO RENEWALS AND NO PHASES]**

- 3.1** The [maximum] amount covering all purchases under this *specific contract* is EUR [amount in figures and in words].

#### **OPTION IF EXECUTION IN PHASES**

- 3.1** The [maximum] amount covering all purchases under this specific contract throughout all the phases is EUR [amount in figures and in words].

The [maximum] amount covering all purchases during the first phase is EUR [amount in figures and in words].]

#### **[OPTION IF RENEWALS]**

- 3.1** The [maximum] amount covering all purchases for the initial duration under Article 2.5, is EUR [amount in figures and in words].

The [maximum] amount covering all purchases under each of the renewals is EUR [amount in figures and in words].

The maximum amount covering all purchases under this specific contract and including all the renewals is EUR [amount in figures and in words].]

- 3.2** If the transaction is taxable for VAT purposes as a local purchase in Belgium, use of this contract constitutes a request for VAT exemption No 450, Article 42, paragraph 3.3 of the VAT code (circular 2/1978), provided the invoice includes the statement: 'Exonération de la TVA, Article 42, paragraphe 3.3 du code de la TVA (circulaire 2/1978)' or an equivalent statement in the Dutch or German language.
- 3.3** If the transaction is taxable for VAT purposes as a local purchase in Luxembourg, the contractor must include the following statement in the invoices: "Commande destinée à l'usage officiel de l'Union européenne. Exonération de la TVA Article 43 § 1 k 2ème tiret de la loi modifiée du 12.02.79."
- 3.4** If the transaction is taxable for VAT purposes as a local purchase in a Member State of the European Union (other than Belgium or Luxembourg) where the fiscal legislation allows direct VAT exemption, the invoice must include a statement referencing the relevant national legislation.

- 3.5** If the transaction is taxable for VAT purposes as an intra-community purchase, the invoice must include the following sentence: “VAT exemption / European Union / Article 151 of Council Directive 2006/112/EC”.
- 3.6** If the transaction is taxable for VAT purposes as an intra-community purchase in a Member State of the European Union, in which the fiscal legislation does not allow direct VAT exemption, at the request of the contracting authority, the contractor shall make available to it all the supporting documents which the contracting authority might need in order to apply to the tax authorities for the reimbursement of any duties and taxes paid in the course of the performance of the contract.

#### **ARTICLE 4 INVOICES AND PAYMENTS**

- 4.1** Payment arrangements provisions are set out in the framework contract /*request for specific contracts*.

**[OPTION If pre-financing applicable]**

A first pre-financing payment of EUR [amount in figures and in words] shall be made, subject to the provisions of the Framework contract]

**[OPTION If pre-financing guarantee is applicable:** and to the receipt, by the contracting authority, of a financial guarantee covering the full amount of the pre-financing payment, in accordance with the provisions of the Framework contract.]

- 4.2** The contractor should send the invoice(s) for the interim payment(s) and/or the payment of the balance [via email at the following email address] [via the electronic exchange system].

#### **ARTICLE 5 COMMUNICATION DETAILS**

**[OPTION if the specific contract is managed in the electronic exchange system]**

- 5.1** Any communication related to the implementation of this specific contract shall be made through the electronic exchange system, accessed via the following URL:

<https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/home>

For the purpose of this specific contract, paper or email communications (if exceptionally allowed) must be sent to the following addresses:

Contracting authority:

[European Commission]

[Directorate-General [complete]]

[Directorate [complete]]

[Unit [complete]]

[Postcode and city]

E-mail: [functional mailbox]

Contracting Authority

[Full name]

[Full official address]

E-mail: [complete]

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

[Full name]

[Function]

[Company name]

[Full official address]

E-mail: [complete] ]

*[OPTION if the specific contract is managed outside of the electronic exchange system:*

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

Contracting authority:

[European Commission]

[Directorate-General [complete]]

[Directorate [complete]]

[Unit [complete]]

[Postcode and city]

E-mail: [functional mailbox]

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

[Full name]

[Function]

[Company name]

[Full official address]

E-mail: [complete] ]

## **ARTICLE 6 PREFINANCING GUARANTEE**

### ***[OPTION If pre-financing guarantee applicable***

- 6.1** This contract is subject to a pre-financing guarantee. The contractor (or leader in the case of a joint tender) must provide a prefinancing guarantee in the form of a financial guarantee for EUR [amount in figures and in words] in accordance with the conditions laid down in Article II.20.5 which lays down also the conditions for the release of the pre-financing guarantee by the contracting authority.]

### ***[OPTION If pre-financing guarantee is not applicable***

- 6.1** Pre-financing guarantee is not applicable to this specific contract.]

## **ARTICLE 7 PERFORMANCE GUARANTEE**

### ***[OPTION If performance guarantee applicable***

- 7.1** This contract is subject to a performance guarantee of [complete] % of the price of the specific contract. The contractor (or leader in the case of a joint tender) must provide a performance guarantee in the form of a financial guarantee for EUR [amount in figures and in words] in accordance with the conditions laid down in Article II.20.5. The guarantee must be released [complete] days after the final certificate of conformity of the supplies has been delivered.]<sup>30</sup>

### ***[OPTION If performance guarantee is not applicable***

- 7.1** Performance guarantee is not applicable to this specific contract.]

## **ARTICLE 8 RETENTION MONEY GUARANTEE**

### ***[OPTION If Retention money guarantee applicable***

- 8.1** This contract is subject to a retention money guarantee of [complete] % of the price of the specific contract.

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<sup>30</sup> Requesting a performance guarantee is not allowed for contracts of less than EUR 60 000

The guarantee is constituted by deduction of this amount on payments. It will be withheld for up to [complete] days after the final certificate of conformity of the supplies has been delivered. At the request of the contractor, and subject to approval by the contracting authority, the deduction on payment may be replaced by a bank guarantee in accordance with the conditions laid down in Article II.20.5.]

**[OPTION If Retention money guarantee is not applicable]**

**8.1** Retention money guarantee is not applicable to this specific contract.]

**ARTICLE 9 PROCESSING OF PERSONAL DATA**

**9.1** For personal data contained in this specific contract or required for its management, the data controller is the [European Commission][specify the controller if the specific contract is signed by another EUI] and can be contacted using the communication details mentioned under Article 5 above.]

**ARTICLE 10 LANGUAGE OF THE CONTRACT**

**10.1** The language of the specific contract, as well as the working and reporting language and the language for all written communications with the contracting authority and/or the project manager under this specific contract shall be [indicate the EU language].

**Annexes**

Annex I: Request for specific contract

Annex II: [Contractor's specific tender] [Contractor's documents submitted] of [insert date]

[Annex III: [Template for] annex indicating the group members' shares for VAT purpose (if applicable)]

**Signatures**

For the contractor,

For the contracting authority,

[Company name/forename/surname/function]


[forename/surname/function]

signature:

Done on [date]

signature:

Done on [date]

		<b>FRAMEWORK CONTRACT ORDER FORM</b>		
<b>EUROPEAN COMMISSION</b> DG and unit:  Tel.:  E-mail:		Order number: <hr/> Currency of payment: EUR <hr/> Tender (date and reference):	(Name and address of contractor)	
This order is governed by Framework Contract No _____ in force from _____ to _____				
<b>LISTING OF THE SUPPLIES / SERVICES</b>  and code		UNIT	QUANTITY	PRICE in €
				UNIT PRICE    TOTAL
-  -				
<p>In accordance with Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union, the Commission is exempt from all taxes and dues, including value added tax, on payments due under this contract. For intra-community purchases, the statement 'VAT Exemption / European Union / Article 151 of Council Directive 2006/112/EC' should be added on the invoice.</p> <p>[In Belgium, use of this contract constitutes a request for VAT exemption No. 450, Article 42, paragraph 3.3 of the VAT code (circular 2/1978), provided the invoice includes the statement: 'Exonération de la TVA; art. 42 § 3.3 du code TVA (circulaire n° 2/1978)'.]</p>		Packaging  Insurance  Transport  Assembly  VAT  <b>TOTAL</b> :		
Place of delivery or performance and/or Incoterm:  Final date of delivery or performance:  Payment provisions:  Guarantee:		<b>Contractor's signature</b>  Name:  Position:  Date:		
Date of issue: Signature [name and position] [and for Belgium, Commission stamp]: [Pour la Belgique, numéro de dossier auprès du Protocole du SPF Affaires Etrangères] The invoice will be paid only if the contractor has returned the signed order form.				