

Tender Specifications

**Open Procedure
No. ECHA/2013/03**

**Title: Provision of an HR System,
Implementation and Support Services**

Annex 5.3 Contractual Documentation

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5.3.1 DRAFT FRAMEWORK SERVICE CONTRACT

FRAMEWORK SERVICE CONTRACT

FRAMEWORK CONTRACT NUMBER – ECHA/2013/03

The European Chemicals Agency (hereinafter referred to as "the Agency"), represented for the purposes of the signature of this contract by Geert Dancet, *Executive Director*,

on the one part, and

[*full official name*]

[*official legal form*]

[*statutory registration number*]

[*full official address*]

[*VAT registration number*]

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

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

on the other part,

HAVE AGREED

to the **special conditions**, the **general conditions for service framework contracts**, the model order form and model specific contract and the following annexes:

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

Annex II – Contractor's tender (reference No [complete] of [insert date])
- Original archived at the Agency's premises

Annex III – Daily subsistence allowances and accommodation flat-rates

Annex IV – Power of Attorney

Annex V – Model Performance guarantee

Annex VI – Service Level Agreement

Annex VII – (a) Statement of the contractor concerning rights to delivered results

– (b) Statement of creator / intermediary in delivery

Annex VIII – Model Confidentiality Declaration

Annex IX – Model Non-disclosure agreement

[Other annexes]

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

- The terms set out in the special conditions shall take precedence over those in the other parts of the FWC.
- The terms set out in the general conditions shall take precedence over those in the model order form and model specific contract.
- The terms set out in the model order form and model specific contract shall take precedence over those in the other annexes.
- The terms set out in the tender specifications (Annex I) shall take precedence over those in the tender (Annex II).
- The terms set out in the framework contract shall take precedence over those in the order forms and specific contracts.

- The terms set out in the specific contracts shall take precedence over those in the requests for services.
- The terms set out in the requests for services shall take precedence over those in the specific quotes.

I – SPECIAL CONDITIONS

Article I.1 – Subject matter

- I.1.1** The subject matter of the FWC is the provision of an externally hosted HR System, implementation and support services.
- I.1.2** Signature of the FWC imposes no obligation on the Agency to purchase. Only performance of the FWC through order forms or specific contracts is binding on the Agency.

Article I.2 – Entry into force and duration

- I.2.1** The FWC shall enter into force on the date on which it is signed by the last party.
- I.2.2** Under no circumstances may performance commence before the date on which the FWC enters into force. Execution of the tasks may under no circumstances begin before the date on which the order form or specific contract enters into force.
- I.2.3** The FWC is concluded for a period of 2 years with effect from the date on which it enters into force. Unless otherwise specified, all periods specified in the FWC are calculated in calendar days.
- I.2.4** The order forms or specific contracts shall be signed by both parties before the FWC expires.

The FWC shall continue to apply to such order forms and specific contracts after its expiry. They shall be executed no later than six months after its expiry.

I.2.5 FWC renewal

The FWC shall be renewed automatically up to 2 times each time of an additional period of one year, unless written notification to the contrary is sent by one of the parties and received by the other three months before expiry of the period indicated in Article I.2.3.

In addition to the above and only for hosting, maintenance and related support services (including services for essential changes to the HR system), the FWC shall be renewed automatically for 4 additional times each time of a period of one year, unless written notification to the contrary is sent by one of the parties and received by the other three months before expiry of the period indicated in Article I.2.3.

Renewal does not imply any modification or deferment of existing obligations.

Article I.3 – Prices

- I.3.1** The maximum amount of the FWC shall be EUR [*amount in figures and in word*]. However, this must in no way be construed as a commitment on the Agency to purchase for the maximum amount.

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

I.3.2 Price revision

Prices shall be fixed and not subject to revision during the first two (2) years of duration of the FWC.

At the renewal of the FWC, the following prices:

- (1) Maintenance and support services;
- (2) Annual hosting fee.
- (3) On-site/ Off-site rates.

may be revised, upon mutual agreement, where such revision is requested by one of the contracting Parties by registered letter no later than three (3) months before the renewal. At the renewals the contractors has the right to require that the prices are revised in accordance with general costs trends, provided, however that the increase may not exceed two percent (2%) per each renewal period of one (1) year. If the general price level or the costs of providing the services decreases, the Contractor shall take this into account in the pricing. If the Agency so requires, the Contractor must submit a report on the costs tenders underlying the increase.

The Agency shall request the delivery of services on the basis of the prices in force on the date on which specific contracts or order forms are signed. Such prices shall not be subject to revision.

I.3.3. Reimbursement of expenses

In addition to the maximum total price specified in each order form or specific contract, and only for services to be provided outside the normal place of performance as defined in Annex I, travel, subsistence, accommodation and shipment expenses, shall be reimbursed in accordance with Article II.16.

The daily subsistence allowance referred to in Article II.16.4 (d) and the accommodation flat-rate ceiling referred to in Article II.16.4 (e) shall be as listed in Annex III.

Article I.4 – Payment arrangements and performance of the framework contract

I.4.1 Single framework contract

Within 10 working days of an order form or a specific contract being sent by the Agency to the contractor, the Agency shall receive it back, duly signed and dated.

Within 15 working days of a request for services being sent by the Agency to the contractor, the Agency shall receive a specific quote back, duly signed and dated.

The period allowed for the execution of the tasks shall start to run on the date the last party signs the order form or the specific contract, unless a different date is indicated on the form or in the specific contract.

I.4.2 Pre-financing

Not applicable.

I.4.3 Interim payment

The contractor shall submit an invoice for interim payment.

The request for interim payment of the contractor shall be admissible if accompanied by:

- a technical report or any other document in accordance with the relevant order form or specific contract;
- the respective deliverable(s) in accordance with the instructions laid down in Annex I and in the relevant order form or specific contract;
- if applicable, statements of reimbursable expenses in accordance with Article II.16;
- the relevant invoice.

provided the deliverable(s) has been accepted by the Agency.

The Agency shall make the payment within 30 days from receipt of the invoice.

I.4.4 Payment of the balance

The contractor shall submit an invoice for payment of the balance.

The request for payment of the balance of the contractor shall be admissible if accompanied by:

- a final technical report or any other document in accordance with the relevant order form or specific contract;
- the final deliverable(s) in accordance with the instructions laid down in Annex I and in the relevant order form or specific contract;
- if applicable, statements of reimbursable expenses in accordance with Article II.16;
- the relevant invoice.

provided the deliverable(s) has been accepted by the Agency.

The Agency shall make the payment within 30 days from receipt of the invoice.

I.4.5 Performance guarantee

For a specific contract the Agency may request a performance guarantee for an amount of 10% of the total value of that specific contract. The guarantee shall be issued by a bank, an authorised financial institution or a third party in favour of the Agency at the time of signature of the specific contract.

In the event of default, defective performance or delay in the execution of the specific contract, the guarantee shall be forfeited in proportion to the extent of the damages caused to the Agency.

The performance guarantee shall be released after final acceptance of the services.

The performance guarantee shall cover performance of the specific contract in accordance with the terms set out in the specific contract and in Annex I and Annex VI to the FWC.

Article I.5 – Bank account

Payments shall be made to the contractor's bank account denominated in euro, identified as follows:

Name of bank:

Full address of branch:

Exact designation of account holder:

Full account number including [bank] codes:

[IBAN¹ code:]

Article I.6 – Communication details and data controller

For the purpose of Article II.6, the data controller shall be the Agency.

Communications shall be sent to the following addresses:

The Agency:

European Chemicals Agency

Directorate [complete]

[Unit [complete]]

Annankatu 18

00120 Helsinki

Finland

Email: [insert functional mailbox]

Contractor:

[Full name]

[Function]

¹ BIC or SWIFT code for countries with no IBAN code.

[Company name]

[Full official address]

Email: [complete]

Article I.7 – Applicable law and settlement of disputes

I.7.1 The FWC shall be governed by Union law, complemented, where necessary, by the law of Finland.

I.7.2 Any dispute between the parties in relation to the interpretation, application or validity of the FWC which cannot be settled amicably shall be brought before the courts of Helsinki.

Article I.8 - Exploitation of the results of the FWC

I.8.1 Modes of exploitation

In accordance with Article II.10.2 whereby the Agency acquires ownership of the results as defined in the tender specifications (Annex I), these results may be used for any of the following purposes:

- (a) use for its own purposes:
 - (i) making available to the staff of the Agency
 - (ii) making available to the persons and entities working for the Agency or cooperating with it, including contractors, subcontractors whether legal or natural persons, Union institutions, agencies and bodies, Member States' institutions
 - (iii) installing, uploading, processing
 - (iv) arranging, compiling, combining, retrieving
 - (v) copying, reproducing in whole or in part and in unlimited number of copies
- (b) distribution to the public:
 - (i) publishing in hard copies
 - (ii) publishing in electronic or digital format
 - (iii) publishing on the internet as a downloadable/non-downloadable file
 - (iv) broadcasting by any kind of technique of transmission
 - (v) public presentation or display
 - (vi) communication through press information services
 - (vii) inclusion in widely accessible databases or indexes
 - (viii) otherwise in any form and by any method
- (c) modifications by the Agency or by a third party in the name of the Agency:
 - (i) shortening

- (ii) summarizing
 - (iii) modifying of the content
 - (iv) making technical changes to the content:
 - necessary correction of technical errors
 - adding new parts or functionalities
 - changing functionalities
 - providing third parties with additional information concerning the result (e.g. source code) with a view of making modifications, provide maintenance and related support services
 - (v) addition of new elements, paragraphs titles, leads, bolds, legend, table of content, summary, graphics, subtitles, sound, etc.
 - (vi) preparation in audio form, preparation as a presentation, animation, pictograms story, slide-show, public presentation etc.
 - (vii) extracting a part or dividing into parts
 - (viii) use of a concept or preparation of a derivate work
 - (ix) digitisation or converting the format for storage or usage purposes
 - (x) modifying dimensions
 - (xi) translating, inserting subtitles, dubbing in different language versions:
 - English, French, German
 - all official languages of EU
 - languages used within EU
 - languages of candidate countries
- (d) the modes of exploitation listed in article II.10.4
- (e) rights to authorise, license, or sub-license in case of licensed pre-existing rights, the modes of exploitation set out in any of the points (a) to (d) to third parties.

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

I.8.2 Pre-existing rights and transmission of rights

All pre-existing rights shall be licensed to the Agency in accordance with Article II.10.3.

The contractor shall provide to the Agency a list of pre-existing rights and third parties' rights including its personnel, creators or other right holders as provided for in Article II.10.5.

The contractor shall present relevant and exhaustive evidence about the acquisition of all the necessary pre-existing rights and third parties' rights together with delivery of the final report at the latest. This obligation should be fulfilled by presentation of the contractor's statement prepared in accordance with Annex VII A and third parties' statements prepared in accordance with Annex VII B and the relevant evidence listed in article II.10.5 as appropriate.

Article I.9 – Termination by either party

Either party may, unilaterally and without being required to pay compensation, terminate either the FWC or the FWC and order forms or specific contracts by formally notifying the other party and by giving three months' notice. Should the Agency terminate the FWC, order forms or specific contracts, the contractor shall only be entitled to payment corresponding to the part-performance of the services ordered before the termination date. The first paragraph of Article II.14.3 shall apply.

Article I.10 – Inter-institutional framework contract

Not applicable.

Article I.11 – Other special conditions

I.11.1 Definitions

Without prejudice to Article II.10.1, when used in the FWC with a capitalised first letter and in italics, the following terms shall have the following meaning:

“Commissioned Software”:

Software 'off the shelf', configured, customised and/or developed by the contractor for the Agency under the FWC.

“Compatibility”:

Ability of a *Product* to function in accordance with the *System* specifications or type of equipment into which it will be integrated.

“Consignment note”

Note in duplicate duly signed and dated by the contractor or his carrier, giving the Specific Contract number and particulars of the goods delivered to be countersigned by the Agency and returned to the contractor or his carrier. This note acknowledges the fact that the goods have been delivered and in no way implies conformity of the goods with the Specific Contract.

“Certificate of conformity”

Certificate signed by the Agency, evidencing conformity of the goods delivered, no later than one month after the date of delivery, unless provision is made in the Special Conditions or General terms and conditions for a different period.

“Delivery date”:

Date, determined in the FWC, on which a *Product*, a *System* or an *Extension* thereto is to be delivered to the Agency.

“Documentation”:

Instructions and manuals supplied with the *Product(s)* and/or *Service(s)*, whether intended for support/technical staff or for end-users, and whether in printed or in electronic form.

“Extension”:

Set of *Products* to supplement or extend a *System*.

“Extended working hours”:

Any working hours other than *Normal working hours*.

“Informatics Services”:

All *Services* related to information technology, such as (but not limited to) training, consultancy, removal, logistics, integration work, engineering, development, maintenance and writing of documentation, as further described in the FWC.

“Internal use”

Within the Agency’s premises and the use by a European Union official as defined by the Staff Regulations of the Union, elsewhere than in his normal office located in the Agency’s premises, but within the context of his official work.

“Means of communication”:

Any communication between the Parties relating to the execution of this FWC, whether made by letter, facsimile, telegram, e-mail or by any other *Means of communication*, the content of which can be printed on paper. These *Means of communication* also include communication by telephone, SMS, or any other *Means of communication* whose content cannot be printed on paper, provided such communication is confirmed within two (2) *Normal working days* by a communication by one of the means mentioned in the first sentence.

“Means of registered communication”:

Any communication between Parties relating to the execution of this Contract, made by a *Means of communication* the content of which can be printed on paper whereby an independent third party is able to establish that the communication has reached its destination, whether such destination be a postal, an electronic (e-mail) or any other type of address.

“New release”:

Revision of an existing version of a *Software* program, usually amending the reference to the *Software’s* version from for example version 0.1 to version 0.2.

“New version”:

New version of a *Software* program, usually amending the reference to the *Software’s* version from for example version 0.1 to version 1.1.

“Normal working days”:

From Mondays to Fridays inclusive, excluding Agency holidays only.

When expressly so provided in the FWC or in a Specific Contract, Agency on-duty days (such as Holy Thursday, Good Friday, the day following Ascension Day and the period between 23 and 31 December) may be included in the *Normal working days*. If nothing is provided in this respect, such Agency on-duty days will be regarded as Agency holidays.

“Normal working hours”:

From 8 a.m. to 8 p.m. on *Normal working days*.

“Payment request”

Contractor’s request for a payment, by a *Means of communication*, for the execution of any of its obligations under the FWC.

“Person-day”:

Seven-and-a-half (7½) hours.

“Product”:

Any *Software, Hardware or Telecommunications product*. Where a distinction between the three types of *Products* is intended, it shall either be explicit, by the use of one of the three terms, or it may be implicitly deduced from the context of this FWC.

“Services”:

Informatics Services.

“Software”:

Any series of instructions constituting a computer-executable program or programs, and being (part of) the object of the FWC.

“System”:

Combination of *Products* serving a complete set of functions.

Article I.12 – Specific provisions relating to the development and maintenance of Commissioned software

I.12.1 Acceptance

The *Commissioned software* shall be developed in accordance with its specifications as agreed upon under specific contracts and the hosting and maintenance *Services* shall be provided in accordance with the conditions specified in order forms and specific contracts.

Delivery of the *Commissioned software* or as the case may be, its different versions, shall be recorded in a *Consignment note* presented by the contractor for signature by the Agency.

Acceptance period

The acceptance period will run up to a maximum of seventy-five (75) *Normal working days* from the day of signature of the *Consignment note*. During this acceptance period, the Agency shall notify any defaults in the *Commissioned software* to the Contractor by a *Means of registered communication*. As from the date of such notification, the running of the acceptance period will be suspended up to the date on which the Contractor notifies by a *Means of registered communication* that it has remedied the notified default, which date will reinitiate the acceptance period for the rest of the seventy-five (75) *Normal working days* period, with a guaranteed minimum period of twenty-five (25) *Normal working days* after the last notification by the Contractor that it has remedied a default.

The *Certificate of Conformity*

Upon the expiry of the acceptance period, acceptance of the *Commissioned software* will be recorded in a *Certificate of Conformity* which shall indicate inter alia any reservations the Agency may have regarding the *Commissioned software*. If no *Certificate of Conformity* has been issued at the end of the acceptance period and, if no notification of faulty operation is pending, the Agency is considered as having accepted the *Software*.

Without prejudice to the other provisions of this FWC, if, after three (3) attempts at acceptance, the *Commissioned software* still fails to meet the terms of the FWC, the Agency shall have the following options:

- (1) to require the contractor to supply, without charge, a replacement or additional set of *Software*;
- (2) to accept and retain part of the *Commissioned software*, at a reduced price agreed between the Agency and the contractor;

- (3) to refuse the *Commissioned software* and cancel the FWC or specific contract on reimbursement of any sums unduly paid.

The *Certificates of conformity* shall be annexed to the corresponding specific contract.

I.12.2. Warranty of proper operation of Commissioned software

Except in the case of hidden defects, for which its liability shall be of unlimited duration, the contractor shall guarantee the proper operation of *Commissioned software* in conformity with Annex I. It shall be held responsible for the immediate repair, at its own expense, of any breakdowns that occur during the guarantee period, unless it can prove that such breakdowns have occurred for reasons other than mistakes made in performance of the service, or other than manufacturing or design errors in that portion of the work for which it was responsible.

The Agency shall notify by a *Means of communication* the contractor of the type and scale of any failure as soon as it occurs. If the contractor does not repair the *Commissioned software* without delay, the Agency may have it repaired by a third party, on the responsibility and at the own and sole expense of the contractor.

The Parties shall jointly define and duly record in minutes the major problems that might affect the *Commissioned software*.

The duration of the guarantee shall be extended by the period which elapses between the notification of a major problem to the contractor duly sent by the Agency during the stated guarantee period and the date at which the Agency accepts the corrected work.

Upon expiration of the guarantee period, the contractor shall provide maintenance services as specified in the FWC.

I.12.3 User manuals and Documentation

The Contractor shall prepare the manuals and Documentation needed for the appropriate and proper operation of the *Commissioned software* and shall make them available to the Agency.

The material shall as a rule comprise:

- (1) an installation manual;
- (2) a "Getting Started" manual;
- (3) an administration manual;
- (4) a user manual;
- (5) implementation *Documentation*.

The manuals and the *Documentation* shall be in the file format of a word processing *Software* used by the Agency and prepared so that they may be published on the Agency's intranet.

The user manuals and the *Documentation* shall be supplied in at least English, unless otherwise agreed.

The Contractor shall update and, if necessary, replace at no additional cost the user manuals and *Documentation* files for the maximum length of the FWC.

I.12.4 Interfaces and Compatibility

Where the specific contract mentions interfaces that need to be observed, the contractor shall not modify such interfaces without the Agency's written agreement. Such agreement shall not be unreasonably withheld.

Where the *Commissioned software* supplied utilises *Software* from a third party and where that *Software* is updated, the contractor shall adapt the *Commissioned software* in accordance with terms jointly agreed.

The Contractor shall ensure that all the *Commissioned software* supplied under the FWC is compatible and operates by means of interfaces with all other *Software* specified in the FWC.

I.12.5. Software developments

The contractor shall ensure the stability of *Software*. Even if a *Software* is accepted by the Agency, any incompatibility with previous *Software* that becomes apparent in the course of its use shall be resolved by the contractor as swiftly as possible and at no cost to the Agency.

Software shall be available and maintained for the entire duration of the FWC. *Software* replacement shall be communicated to the Agency immediately. Replacement *Software* shall consist of *Software* in the same software range, meeting at least the same requirements as the original *Software*. Replacements shall be performed only upon prior written agreement by the Agency and at no additional cost to the Agency.

I.13 – Specific provision on Service Transition

The contractor agrees to co-operate with the Agency and any third party involved during service transition phases as defined in Annex I, in order to ensure a smooth transition, to minimise costs and to guarantee the continuity of the services for the Agency. The contractor agrees to attend meetings called for that purpose by the Agency.

Service transition phases shall be considered as part of the FWC and shall be performed by the contractor at no additional costs for the Agency.

I.14 – Specific provision relating to expiration or termination of the FWC

Without prejudice to Article II.14.3, in case of termination of the FWC, of order forms or specific contracts for any reason whatsoever, the Agency is entitled to continue to use the services on the same terms and conditions as immediately prior to the termination.

The contractor shall provide support and assistance as required by the Agency in accordance with the provisions of Article I.13 and the exit phase as defined in Annex I.

The contractor shall avoid any delay, interruption or adverse effect on the quality of the services provided during the exit phase.

The Contractor shall be entitled to charge for:

- (1) the continued provision of services during the exit phase on the same conditions and prices as immediately prior to the expiration or termination; and
- (2) an exit fee in accordance with prices in Annex II where applicable;
- (3) additional assistance outside the scope of the exit phase on a Time & Means basis in accordance with prices in Annex II;

However, if termination of the FWC, of order forms or specific contracts is requested by the contractor or is due to a breach of the FWC by the contractor, the exit phase, except the continued provision of services, shall be performed at no cost to the Agency.

No exit fee shall be charged upon expiration of the FWC at the end of its maximum duration. The terms set out in Annex I for the FWC phase-out procedure shall apply.

I.15 – Specific provision on Confidentiality

The Contractor shall obtain from each member of his personnel, in respect of article II.5, a written undertaking that they will respect the confidentiality of any information brought to their attention in the performance of the tasks referred to in Article I.1. The undertaking shall follow the model in Annex VIII of the FWC. The original undertaking shall be sent to the Agency within 5 working days from the date of entry into force of the FWC. For new personnel/ replacement of existing personnel during the implementation of the FWC, the original undertaking shall be sent to the Agency upon personnel assignment.

I.16 – Specific provision on Security

The contractor and its staff, when performing tasks in execution of the FWC, undertake to comply with technical norms, standards and procedures based

on best professional practices in the informatics field, and in particular with ISO 27001 or equivalent and BS 25999 or equivalent. These standards may be revised in line with market developments.

The contractor shall take all appropriate steps for each *Product* to ensure that the data and the magnetic media upon which they are stored are safely preserved. *Products* shall not contain any mechanism (for example viruses) which could compromise their availability, integrity or confidentiality and that of other hardware/software *Products*. The cost of repairing the damage caused by such a mechanism shall be borne by the contractor.

The contractor undertakes to inform the Agency by *Means of registered communication* as soon as he has any knowledge of faults in *Products* that endanger the security of the configurations of which they form a part. The contractor shall immediately take any measures necessary to restore the security of the configurations and correct the faults.

The contractor shall ensure that all security precautions for each *Product* are clearly spelled out in the relevant user manuals and technical documentation supplied to the Agency.

Where required by the nature of the services to be provided under this FWC, the Agency shall require the contractor to comply with the security provisions governing the handling of sensitive data, as defined in:

the Commission's security provisions (See COMMISSION DECISION/2001/844/EC, ECSC, Euratom of 29 November 2001 amending its internal Rules of Procedure (JO L 317, 3.12.2001, p.1) as last amended by Decision 2006/548/CE, Euratom of 2 August 2006 (JO L 215, 5.8.2006, p. 38) adopting the "Commission Provisions on Security"; and the COUNCIL DECISION/2011/292/UE of 31 March 2011 adopting the "security rules for protecting EU classified information" (OJ L 141, 27.5.2011, p. 17).

I.17 – Specific provision on Quality standards

When providing services for hosting, development or maintenance of *Software* to the Agency, the contractor undertakes, in addition to the service level requirements as specified in the SLA in Annex VI, to observe inter alia technical norms, standards and procedures based on latest best professional practice in the informatics field, and in particular ISO 9001 or equivalent. Service level requirements and quality standards may be revised in line with market developments.

I.18 – Specific provisions on liquidated damages

Complementary to ECHA's right to impose liquidated damages as stipulated in Article II.12 of the General Conditions, the provisions of Annex VI: Service

Level Agreement regarding contractor's failure to quote, deliver and report within the time limits set by the FWC shall be applied in the first place.

I.19 – Insurance of contractor's liability

The contractor shall be insured against all claims relating to its liabilities and activities under the FWC with a reputable insurance company. This insurance cover should be for a sum not less than one (1) million EUR. In accordance with the terms of the insurance policy, compensation shall be paid to the Agency directly or to the contractor that shall have an obligation to forward the compensation to the Agency in full. The contractor's insurance obligations shall in no way limit or diminish its indemnification obligations or liability under the FWC.

The contractor shall provide the required insurance coverage either by utilising its existing insurance policies or by acquiring new insurance policies for the purposes of this FWC only. The contractor shall provide proof of insurance cover upon request by the Agency, within thirty (30) days of the signature of the FWC. A copy of the contract of insurance shall be given to the Agency without charge. Should the contractor fail to provide this proof of insurance, the Agency shall be entitled, in conformity with article II.14.1(c), to terminate the FWC at the contractor's expense and be entitled to damages and interest thereof.

Before the implementation of any change in the terms of the insurance contract referred to in paragraph 2 of this article, of its termination by the insurer, of its replacement by a new contract, of a change in insurer, or of any other change materially affecting the contract referred to in paragraph 2 of this article, the contractor shall notify the Agency in advance in writing and request its consent. The Agency may offer its comments and may withhold its consent should it find that the change may result in the absence of the necessary insurance cover. In the event of the contractor's failing to find insurance cover meeting the criteria of paragraph 1 of this article, the Agency shall be entitled to terminate the FWC, in conformity with Article II.14.1(c).

In the event of the contract of insurance being terminated by the insurer, or the terms of the insurance being changed, such that the sum of the insurance cover referred to in paragraph 1 of this article is materially affected, the contractor shall immediately notify the Agency of the fact. The contractor shall then seek new insurance meeting the requirements of this article. Before accepting the new insurance policy, the contractor shall advise the Agency and obtain its consent.

Should the contractor fail to notify the Agency of any change in accordance with paragraphs 3 and 4 of this article, the Agency shall be entitled to terminate the FWC, in conformity with Article II.14.1(c), at the contractor's expense. The Agency shall also be entitled to seek damages and interest thereof from the contractor.

SIGNATURES

For the contractor,

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

signature[s]:

Done at [], [date]

In duplicate in English.

For the Agency,

[forename/surname/function]

signature[s]: _____

Done at Helsinki, [date]

II – GENERAL CONDITIONS FOR SERVICE FRAMEWORK CONTRACTS

Article II. 1 – Performance of the FWC

II.1.1 The contractor shall perform the FWC to the highest professional standards.

II.1.2 The contractor shall be solely responsible for taking the necessary steps to obtain any permit or licence required for performance of the FWC under the laws and regulations in force at the place where the tasks assigned to him are to be executed.

II.1.3 Without prejudice to Article II.4 any reference made to the contractor's personnel in the FWC shall relate exclusively to individuals involved in the performance of the FWC.

II.1.4 The contractor must ensure that the personnel performing the FWC possesses the professional qualifications and experience required for the execution of the tasks assigned to it.

II.1.5 The contractor shall neither represent the Agency nor behave in any way that would give such an impression. The contractor shall inform third parties that it does not belong to the European public service.

II.1.6 The contractor shall be solely responsible for the personnel who executes the tasks assigned to him.

The contractor shall stipulate the following employment or service relationships with its personnel:

- (a) personnel executing the tasks assigned to the contractor may not be given orders directly by the Agency;
- (b) the Agency may not under any circumstances be considered to be the employer of the personnel referred to in point (a) and the personnel shall undertake not to invoke against the Agency any right arising from the contractual relationship between the Agency and the contractor.

II.1.7 In the event of disruption resulting from the action of one of the contractor's personnel working on the Agency's premises or in the event that the expertise of one of the contractor's personnel fails to correspond to the profile required by the FWC, the contractor shall replace him without delay. The Agency shall have the right to make a reasoned request for the replacement of any such personnel. The replacement personnel must have the necessary qualifications and be capable of performing the FWC under the same contractual conditions. The contractor shall be responsible for any delay in the execution of the tasks assigned to him resulting from the replacement of personnel.

II.1.8 Should the execution of the tasks be directly or indirectly hampered, either partially or totally, by any unforeseen event, action or omission, the contractor shall immediately and on its own initiative record it and

report it to the Agency. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the contractor to ensure full compliance with its obligations under this FWC. In such an event the contractor shall give priority to solving the problem rather than determining liability.

II.1.9 Should the contractor fail to perform its obligations under the FWC or order form or specific contract, the Agency may - without prejudice to its right to terminate the FWC order form or specific contract - reduce or recover payments in proportion to the scale of the unperformed obligations. In addition, the Agency may claim compensation or impose liquidated damages in accordance with Article II.12.

Article II.2 – Means of communication

II.2.1 Any communication relating to the FWC or to its performance shall be made in writing and shall bear the FWC number, and if applicable the order form or specific contract number. Any communication is deemed to have been made when it is received by the receiving party unless otherwise provided for in this FWC.

II.2.2 Electronic communication shall be deemed to have been received by the parties on the day of dispatch of that communication provided it is sent to the addressees listed in Article I.6. Without prejudice to the preceding, if the sending party receives a message of non-delivery to or of absence of the addressee, it shall make every effort to ensure the actual receipt of such communication by the other party.

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

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

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

Article II. 3 – Liability

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

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

II.3.3 The contractor shall be held liable for any loss or damage sustained by the Agency in performance of the FWC, including in the event of

subcontracting, and for any claim by a third party, but only to an amount not exceeding three times the total amount of the relevant order form or specific contract. Nevertheless, if the damage or loss is caused by the gross negligence or wilful misconduct of the contractor or of its personnel or subcontractors, the contractor shall have unlimited liability for the amount of the damage or loss.

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

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

Article II. 4 – Conflict of interests

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

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

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

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

shall also pass on all the relevant obligations in writing to third parties involved in the performance of the FWC including subcontractors.

Article II.5 – Confidentiality

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

The contractor shall:

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

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

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

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

Article II.6– Processing of personal data

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

II.6.2 The contractor shall have the right to access its personal data and the right to rectify any such data. The contractor should address any

queries concerning the processing of its personal data to the data controller.

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

II.6.4 Where the FWC requires the processing of personal data by the contractor, the contractor may act only under the supervision of the data controller, in particular with regard to the purposes of the processing, the categories of data which may be processed, the recipients of the data and the means by which the data subject may exercise his rights.

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

II.6.6 The contractor undertakes to adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned in order to:

- (a) prevent any unauthorised person from gaining access to computer systems processing personal data, and especially:
 - (i) unauthorised reading, copying, alteration or removal of storage media;
 - (ii) unauthorised data input, as well as any unauthorised disclosure, alteration or erasure of stored personal data;
 - (iii) unauthorised use of data-processing systems by means of data transmission facilities;
- (b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
- (c) record which personal data have been communicated, when and to whom;
- (d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the Agency;
- (e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
- (f) design its organisational structure in such a way that it meets data protection requirements.

Article II. 7 – Subcontracting

II.7.1 The contractor shall not subcontract without prior written authorisation from the Agency nor cause the FWC to be de facto performed by third parties.

II.7.2 Even where the Agency authorises the contractor to subcontract to third parties, it shall nevertheless remain bound by its contractual

obligations and shall be solely responsible for the proper performance of this FWC.

II.7.3 The contractor shall make sure that the subcontract does not affect rights and guarantees granted to the Agency by virtue of this FWC, notably by Article II.18.

Article II. 8 – Amendments

II.8.1 Any amendment to the FWC or order form or specific contract shall be made in writing before fulfilment of all contractual obligations. An order form or a specific contract may not be deemed to constitute an amendment to the FWC.

II.8.2 The amendment may not have the purpose or the effect of making changes to the FWC or to order forms or specific contracts which might call into question the decision awarding the FWC, order form or specific contract or result in unequal treatment of tenderers or contractors.

Article II. 9 – Assignment

II.9.1 The contractor shall not assign the rights, including claims for payments, and obligations arising from the FWC, in whole or in part, without prior written authorisation from the Agency.

II.9.2 In the absence of such authorisation, or in the event of failure to observe the terms thereof, the assignment of rights or obligations by the contractor shall not be enforceable against the Agency and shall have no effect on it.

Article II. 10 – Ownership of the results - Intellectual and industrial property rights

II.10.1 – Definitions

In this FWC the following definitions apply:

(1) 'results' means any intended outcome of the performance of the FWC which is delivered and finally accepted by the Agency.

(2) 'creator' means any natural person who contributed to the production of the result and includes personnel of the Agency or a third party.

(3) 'pre-existing rights' means any industrial and intellectual property rights, including background technology, which exist prior to the Agency or the contractor ordering them for the purpose of the FWC performance and include rights of ownership and use by the contractor, the creator, the Agency and any other third parties.

II.10.2 – Ownership of the results

The ownership of the results shall be fully and irrevocably acquired by the Agency under the FWC including any rights in any of the results listed in the FWC and order forms or specific contracts, including copyright and other intellectual or industrial property rights, and all technological solutions and

information contained therein, produced in performance of the FWC. The Agency may exploit them as stipulated in this FWC or order forms or specific contracts. All the rights shall be acquired by the Union from the moment the results are delivered by the contractor and accepted by the Agency. Such delivery and acceptance are deemed to constitute an effective assignment of rights from the contractor to the Agency.

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

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

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

II.10.3 – Licensing of pre-existing rights

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

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

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

II.10.4 – Modes of exploitation

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

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

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

When delivering the results, the contractor shall warrant that they are free of rights or claims from creators and third parties including in relation to pre-

existing rights, for any use envisaged by the Agency. This does not concern the moral rights of natural persons.

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

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

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

This evidence may refer, *inter alia*, to rights to: parts of other documents, images, graphs, tables, data, software, technical inventions, know-how etc. (delivered in paper, electronic or other form), IT development tools, routines, subroutines and/or other programs ("background technology"), concepts, designs, installations or pieces of art, data, source or background materials or any other parts of external origin.

The evidence shall include, as appropriate:

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

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

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

II.10.6 – Creators

By delivering the results the contractor warrants that the creators undertake not to oppose that their names be recalled when the results are presented to the public and confirms that the results can be divulged. Names of authors

shall be recalled on request in the manner communicated by the contractor to the Agency.

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

II.10.7 – Persons appearing in photographs or films

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

II.10.8 – Copyright for pre-existing rights

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

II.10.9 – Visibility of Agency funding and disclaimer

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

Article II. 11 – Force majeure

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

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

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

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

Article II. 12 – Liquidated damages

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

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

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

V is the price of the relevant purchase;

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

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

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

Article II. 13 – Suspension of the performance of the FWC

II.13.1 Suspension by the contractor

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

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

II.13.2 Suspension by the Agency

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

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

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

Article II. 14 – Termination of the FWC

II.14.1 – Grounds for termination

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

- (a) if a change to the contractor's legal, financial, technical or organisational or ownership situation is likely to affect the performance of the FWC or order form or specific contract substantially or call into question the decision to award the FWC;
- (b) if execution of the tasks under a pending order form or a specific contract has not actually commenced within 15 days of the date foreseen, and the new date proposed, if any, is considered unacceptable by the Agency, taking into account article II.8.2;
- (c) if the contractor does not perform the FWC or an order form or specific contract as established in the tender specifications or request for service or fails to fulfil another substantial contractual obligation; termination of three or more order forms or specific contracts on this ground shall constitute ground for termination of the FWC;
- (d) in the event of force majeure notified in accordance with article II.11 or if the performance of the FWC or order form or specific contract has been suspended by the contractor as a result of force majeure, notified in accordance with article II.13, where either resuming performance is impossible or the modifications to the FWC or order form or specific contract might call into question the decision awarding the FWC or order form or specific contract, or result in unequal treatment of tenderers or contractors;
- (e) if the contractor is declared bankrupt, is being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;

- (f) if the contractor or any natural person with the power to represent it or take decisions on its behalf has been found guilty of professional misconduct proven by any means;
- (g) if the contractor is not in compliance with its obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which it is established or with those of the country of the applicable law of this FWC or those of the country where the FWC is to be performed;
- (h) if the Agency has evidence that the contractor or any natural persons with the power to represent it or take decisions on its behalf have committed fraud, corruption, or are involved in a criminal organisation, money laundering or any other illegal activity detrimental to the Union's financial interests;
- (i) if the Agency has evidence that the contractor or any natural persons with the power to represent it or take decisions on its behalf have committed substantial errors, irregularities or fraud in the award procedure or the performance of the FWC, including in the event of submission of false information;
- (j) if the contractor is unable, through its own fault, to obtain any permit or licence required for performance of the FWC or order form or specific contract;
- (k) if the needs of the Agency change and it no longer requires new services under the FWC;
- (l) when due to the termination of the FWC with one or more of the contractors there is no minimum required competition within the multiple framework contract with reopening of competition.

II.14.2 – Procedure for termination

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

If the Agency does not confirm acceptance of these observations by giving written approval within 30 days of receipt, the termination procedure shall proceed. In any case of termination the Agency shall formally notify the contractor about its decision to terminate the FWC or order form or specific contract. In the cases referred to in points (a), (b), (c), (e), (g), (j), (k) and (l) of Article II.14.1 the formal notification shall specify the date on which the termination takes effect. In the cases referred to in points (d), (f), (h), and (i) of Article II.14.1 the termination shall take effect on the day following the date on which notification of termination is received by the contractor.

II.14.3 – Effects of termination

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

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

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

Article II. 15 – Reporting and payments

II.15.1 – Date of payment

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

II.15.2 Currency

The FWC shall be in euros.

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

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

II.15.3 – Costs of transfer

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

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

II.15.4 – Invoices and Value Added Tax

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

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

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

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

II.15.5 – Pre-financing and performance guarantees

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

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

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

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

The cost of providing such guarantee shall be borne by the contractor.

II.15.6 – Interim payments and payment of the balance

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

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

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

Payment of the balance may take the form of recovery.

II.15.7 – Suspension of the time allowed for payment

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

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

Suspension shall take effect on the date the notification is sent by the Agency. The remaining payment period shall start to run again from the date on which the requested information or revised documents are received or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension period exceeds two months, the contractor may request the Agency to justify the continued suspension.

Where the payment periods have been suspended following rejection of a document referred to in the first paragraph and the new document produced is also rejected, the Agency reserves the right to terminate the order form or specific contract in accordance with Article II.14.1(c).

II.15.8 – Interest on late payment

On expiry of the payment periods specified in Article I.4, and without prejudice to Article II.15.7, the contractor is entitled to interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in Euros (the reference rate) plus eight points. The reference rate shall be the rate in force on the first day of the month in which the payment period ends, as published in the C series of the *Official Journal of the European Union*.

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

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

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

Article II. 16 - Reimbursements

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

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

II.16.3 Travel expenses shall be reimbursed as follows:

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

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

II.16.4 Subsistence expenses shall be reimbursed on the basis of a daily subsistence allowance as follows:

- (a) for journeys of less than 200 km for a return trip, no subsistence allowance shall be payable;
- (b) daily subsistence allowance shall be payable only on receipt of supporting documents proving that the person concerned was present at the destination;
- (c) daily subsistence allowance shall take the form of a flat-rate payment to cover all subsistence expenses, including meals, local transport which includes transport to and from the airport or station, insurance and sundries;
- (d) daily subsistence allowance shall be reimbursed at the flat rates specified in Article I.3;
- (e) accommodation shall be reimbursed on receipt of supporting documents proving the necessary overnight stay at the destination, up to the flat-rate ceilings specified in Article I.3.

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

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

Article II. 17 – Recovery

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

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

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

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

Article II. 18 – Checks and audits

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

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

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

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

II.18.3 The contractor shall allow the Agency's staff and outside personnel authorised by the Agency the appropriate right of access to sites and premises where the FWC is performed and to all the information, including information in electronic format, needed in order to conduct such checks and audits. The contractor shall ensure that the information is readily available at the moment of the check or audit and, if so requested, that information be handed over in an appropriate form.

II.18.4 On the basis of the findings made during the audit, a provisional report shall be drawn up. It shall be sent to the contractor, which shall have 30 days following the date of receipt to submit

observations. The final report shall be sent to the contractor within 60 days following the expiry of that deadline.

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

II.18.5 By virtue of Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspection carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities and Regulation (EC) No 1073/1999 of the European Parliament and the Council of 25 May 1999 concerning investigation conducted by the European Anti-Fraud Office (OLAF), the OLAF may also carry out on-the-spot checks and inspections in accordance with the procedures laid down by Union law for the protection of the financial interests of the Union against fraud and other irregularities. Where appropriate, the findings may lead to recovery by the Agency.

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

5.3.2 MODEL SPECIFIC CONTRACT – FIXED PRICE

FIXED PRICE

SPECIFIC CONTRACT No [complete]

implementing Framework contract No [complete]

The European Chemicals Agency (hereinafter referred to as "the Agency"), represented for the purposes of the signature of this specific contract by [forename, surname, function, directorate],

on the one part,

and

[full official name]

[official legal form]

[statutory registration number]

[full official address]

[VAT registration number]

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

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

on the other part,

HAVE AGREED

PREAMBLE

This specific contract is based on the contractor's quote dated XX.XX.XXXX (reference). Once signed by the parties, the specific contract shall be governed by the FWC. This specific contract does not amend the provisions of the FWC.

ARTICLE 1: SUBJECT MATTER

- 1.1** This specific contract implements Framework Contract (FWC) No [complete] signed by the Agency and the contractor on [complete date] [last amended by amendment No XX, signed on XX/XX/XXXX].
- 1.2** The subject matter of this specific contract is [short description of subject]. [This specific contract relates to lot [complete] of the FWC.]
- 1.3** The contractor undertakes, in accordance with the terms set out in the FWC and in this specific contract and the annex[es] thereto, which form an integral part thereof, to perform the [following tasks:] [tasks specified in Annex [complete].]

ARTICLE 2: ENTRY INTO FORCE AND DURATION

- 2.1** This specific contract shall enter into force [on the date on which it is signed by the last party] [on [insert date] if it has already been signed by both parties].
- 2.2** The duration of the execution of the tasks shall not exceed [complete] [days][months]. Execution of the tasks shall start from [the date of entry into force of this specific contract] [insert date].

The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses.

ARTICLE 3: PERFORMANCE

The tasks performed by the contractor under this specific contract shall result in "**deliverables**", defined according to the provisions of Annex A.

ARTICLE 4: PRICE

- 4.1** The maximum total price to be paid under this specific contract shall be EUR [amount in figures and in words] covering all tasks executed.
- 4.2** In addition to the maximum total price [no reimbursable expenses are foreseen.] [expenses up to the amount of EUR [amount in figures and in words] shall be reimbursed according to the provisions of the FWC].

ARTICLE 5: PAYMENTS

Payments under the specific contract shall be made in accordance with Article II.15 of the General Conditions of the FWC. Payments shall be executed only if the contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted. Payment requests may not be made if payments for previous periods have not been executed as a result of default or negligence on the part of the contractor.

- 5.1** The invoicing procedures for the services, once accepted by the Agency, are as follows:

[Specify one of the following options:

- (Maximum of) xx % on receipt of first deliverable².
- (Minimum of) xx % on completion of the work, each based on receipt advice slips accepted and signed by the Agency in accordance with the form in Annex B (to be attached to the invoice)

or

- 100 % on completion of the work, based on receipt advice slips accepted and signed by the Agency in accordance with the form in Annex B (to be attached to the invoice)

For work performed in instalments:

- Payment by instalment for the deliverables specified in the Annex A, based on receipt advice slips accepted and signed by the Agency in accordance with the form in Annex B (to be attached to the invoice)]

5.2 Payments shall be made to the contractor's bank account denominated in euro as identified in Article I.5 of the FWC, on production of the invoice showing separately the amount of the fees and the VAT applied and within no more than 30 calendar days from the date the invoice is received by the Unit indicated in article 5.5 below. Invoices presented by the contractor shall indicate his place of taxation for VAT purposes and shall specify separately the amounts not including VAT from those amounts including VAT.

[Option: for contractors for which VAT is due in Belgium]

[Where VAT is due in Belgium, the provisions of this specific contract constitute a request for VAT exemption No 450, Article 42, paragraph 3.3 of the VAT code (circular 2/1978), provided the contractor includes the following statement in the invoice(s): "Exonération de la TVA, Article 42, paragraph 3.3 du code de la TVA (circulaire 2/1978)" or an equivalent statement in the Dutch or German language.]

[Option: for contractors for which VAT is due in Luxembourg]

[Where VAT is due in Luxembourg, the contractor shall 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 2ième tiret de la loi modifiée du 12.02.79." In case of intra-Community purchases, the statement to be included in the invoices is: "For the official use of the European Union. VAT Exemption / European Union/ Article 151 of Council Directive 2006/112/EC."]

[Option: for contractors for which VAT is due in other EU countries]

² The Agency will define at the time of signature of the specific contract the number of documents and deliverables which qualify as first deliverable.

[Pursuant to articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities, the Agency is exempt from all taxes, duties and charges, in particular value added tax, on payments made under this specific contract. The contractor receives and keeps in his records the form entitled "VAT and Excise Duty Exemption Certificate" duly completed and signed by the Agency. The invoice must contain the following statement: "VAT Exemption / International Body / Article 151 of Council Directive 2006/112/EC"]

5.3 The address for invoices is:

European Chemicals Agency
Directorate [complete]
[Unit [complete]]
Annankatu 18
00120 Helsinki
Finland
Email: [insert functional mailbox]

ARTICLE 6: SUB-CONTRACTING³

[Not applicable]

or

- 6.1 In conformity with Article II.7 of the General Conditions of the FWC, the contractor has been permitted to subcontract.
- 6.2 Tasks stated in Annex A may be performed by the subcontractor *Name and address of subcontractor*, entirely at the risk of the contractor.
- 6.3 Without prejudice to the Agency's other rights under Article II.14 of the General Conditions of the FWC, if the contractor fails to meet his obligations, the specific contract with the Agency may be terminated in accordance with Article II.4 of the General Conditions of the FWC. This clause applies throughout the term of the specific contract.

ARTICLE 7: GUARANTEES

[Not applicable]

or

[A performance guarantee for an amount of EUR [*amount in figures and in words*] shall be issued according to the conditions laid down in Article II.15.5.]

³ Please check if the contractor is permitted or not to subcontract. In case the contractor is not permitted to subcontract use the option 'Not Applicable'. **Please note that the contractor has to be authorised to subcontract before concluding this specific contract – See Article II.7 of the FWC.**

ARTICLE 8: GENERAL ADMINISTRATIVE PROVISIONS

8.1 Any communication under this specific contract shall be made in accordance with Article I.6 of the Framework Contract.

8.2 The persons responsible for the implementation of this Specific Contract are:

For the Agency:

European Chemicals Agency
P.O. Box 400,
00121 HELSINKI, Finland
Fax: +358 9 68618210
[Name & Office address of the contract manager]
Email: [to be completed]

For the contractor:

Mr/Mrs
[Function]
[Company name]
[Official address in full]

ARTICLE 9: PLACE OF PERFORMANCE

The tasks shall be executed at the premises of [the contractor] and/or [the Agency].

[If the services are to be performed at both Agency and contractor premises, specify how the services are to be divided between these two locations].

ARTICLE 10: EXPLOITATION OF THE RESULTS

[Not applicable]

or

[Insert details on the intended use of results linked to the specific request for service supplementing or replacing Article I.8 of the Special Conditions of the FWC]

ARTICLE 11: ANNEXES

The following annexes form an integral part of this specific contract:

Annex A: Technical Annex / Tasks description

Annex B: Task acceptance form

SIGNATURES

For the contractor,

For the Agency,

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

[forename/surname/function]

signature[s]: _____

signature[s]: _____

Done in [place], [date]

Done in Helsinki, [date]

In duplicate in [English].

Annex A

TECHNICAL ANNEX: TASKS DESCRIPTION

1. TASKS

[As outlined in the request for offer by the Agency]

2. DELIVERABLES

The specific deliverables, which are all the subject of acceptance unless specified otherwise, are:

- [list of all requested deliverables as outlined in the request for offer by the Agency]

3. DELIVERY SCHEDULE

The delivery schedule is as follows:

- T0 being the date of signature of this agreement;
- [list of all requested deliverables with timetable]

4. QUALITY STANDARDS AND PROCEDURES

5. SECURITY REQUIREMENTS

Annex B

RECEIPT ADVICE SLIP FOR "DELIVERABLES"

FOR SPECIFIC CONTRACT No XX UNDER FRAMEWORK CONTRACT No ECHA/2013/03

Original document - duly signed - to be attached to the invoice

SIGNING FOR WORK

To be filled in by the contractor and the Agency:

	Contractor	Agency
Date of delivery/signing:		
Person responsible for checking (in block capitals):		
Comments:		
Date and signature :		

ACCEPTANCE OF WORK

To be filled in by the Agency:

Official responsible for acceptance (in block capitals) : OIA (*)	
Date and signature	
Official responsible for final validation (in block capitals) : OVA (*)	
Date and signature	

(*) OIA: The Agency's responsible in charge of the reception of the work is obliged to act as OIA (Operational initiating agent).

OVA: The Agency's responsible in charge of the final validation of the work is obliged to act as OVA (Operational verifying agent).

5.3.3 MODEL SPECIFIC CONTRACT – QUOTED TIME & MEANS

QUOTED TIME & MEANS

SPECIFIC CONTRACT No [complete]

implementing Framework Contract No ECHA/2013/03

The European Chemicals Agency (hereinafter referred to as "the Agency"),
which is represented for the purposes of the signature of this contract by
[official name in full],

of the one part,

and

[official name in full]

[official legal form]

[statutory registration number]

[official address in full]

[VAT registration number]

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

of the other part,

HAVE AGREED

PREAMBLE

This specific contract is based on the contractor's quote dated XX.XX.XXXX
(reference). Once signed by the parties, the specific contract shall
be governed by the FWC. This specific contract does not amend the
provisions of the FWC.

ARTICLE 1: SUBJECT MATTER

- 1.1** This specific contract implements Framework Contract (FWC) No [complete] signed by the Agency and the contractor on [complete date] [last amended by amendment No XX, signed on XX/XX/XXXX].
- 1.2** The subject matter of this specific contract is [short description of subject]. [This specific contract relates to lot [complete] of the FWC.]
- 1.3** The contractor undertakes, in accordance with the terms set out in the FWC and in this specific contract and the annex[es] thereto, which form an integral part thereof, to perform the [following tasks:] [tasks specified in Annex [complete].]

ARTICLE 2: ENTRY INTO FORCE AND DURATION

- 2.1** This specific contract shall enter into force [on the date on which it is signed by the last party] [on [insert date] if it has already been signed by both parties].
- 2.2** The duration of the execution of the tasks shall not exceed [complete] [days][months]. Execution of the tasks shall start from [the date of entry into force of this specific contract] [insert date].

The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses.

- 2.3** If the number of days agreed has not been fully taken up, the Agency shall not be obliged either to use or to pay for the days not worked and the contractor shall not be entitled to claim damages for them.

ARTICLE 3: PERFORMANCE

The tasks to be performed by the contractor under this specific contract are described in detail in Annex A. These tasks shall be executed on the basis of 'quotations' or 'sub-tasks' drawn up using the form in Annex B.

Within five working days from the date on which the Agency sends the request by means of the form attached in Annex B, the contractor shall return it to the Agency duly completed. If the Contractor fails to meet the above-mentioned deadline, liquidated damages according to Article II.12 of the General Conditions of the FWC shall apply.

The time estimated for the execution of the relevant 'sub-task' shall be approved by the Agency within a maximum of 10 working days from the date on which the Agency received the estimate. If no approval has been sent by the end of the above-mentioned period, the Agency shall be deemed not to have approved that estimate.

Signature by the Agency of the certificate of conformity attached in Annex C provides evidence of the work performed.

ARTICLE 4: PRICE

- 4.1** The Agency undertakes to pay the contractor in consideration for the services provided in performance of this specific contract an amount of EUR [to be completed] per day of actual services rendered, for [to be completed] days, i.e. a total of EUR [to be completed].

Profile of service provider: _____

[profile of the contractor and daily rate to be specified in accordance with the profiles listed in Annex I of the FWC]

- etc⁴

- 4.2** The total amount to be paid by the Agency under this specific contract shall be EUR XXX [amount in figures] covering all tasks executed. This amount shall cover all expenditure incurred by the contractor in performing this specific contract.
- 4.3** In addition to the maximum total price [no reimbursable expenses are foreseen.] [expenses up to the amount of EUR [amount in figures and in words] shall be reimbursed according to the provisions of the FWC].

ARTICLE 5: PAYMENTS

Payments under the specific contract shall be made in accordance with Article II.15 of the General Conditions of the FWC. Payments shall be executed only if the contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted. Payment requests may not be made if payments for previous periods have not been executed as a result of default or negligence on the part of the contractor.

- 5.1** The invoicing procedures for the services, once accepted by the Agency, are as follows:

[Specify one of the following options:

- at the end of each calendar quarter, on the basis of quotation forms duly completed and signed by both the Agency and the contractor using the form in Annex B and C. Duly completed Forms in Annex B and C must be attached to the invoice.

or

- once the work has been completed, on the basis of quotation forms duly completed and signed by both the Agency and the

⁴ Please note that more than one profile may be included in this provision – in order to include more profiles, please copy and paste the standard wording as included in the indent above.

contractor using the form in Annex B and C. Duly completed Forms in Annex B and C must be attached to the invoice.

- 5.2** Payments shall be made to the contractor's bank account denominated in euro as identified in Article I.5 of the FWC, on production of the invoice showing separately the amount of the fees and the VAT applied and within no more than 30 calendar days from the date the invoice is received by the Unit indicated in article 5.5 below. Invoices presented by the contractor shall indicate his place of taxation for VAT purposes and shall specify separately the amounts not including VAT from those amounts including VAT.

[Option: for contractors for which VAT is due in Belgium]

[Where VAT is due in Belgium, the provisions of this specific contract constitute a request for VAT exemption No 450, Article 42, paragraph 3.3 of the VAT code (circular 2/1978), provided the contractor includes the following statement in the invoice(s): "Exonération de la TVA, Article 42, paragraphe 3.3 du code de la TVA (circulaire 2/1978)" or an equivalent statement in the Dutch or German language.]

[Option: for contractors for which VAT is due in Luxembourg]

[Where VAT is due in Luxembourg, the contractor shall 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 2ième tiret de la loi modifiée du 12.02.79." In case of intra-Community purchases, the statement to be included in the invoices is: "For the official use of the European Union. VAT Exemption / European Union/ Article 151 of Council Directive 2006/112/EC."]

[Option: for contractors for which VAT is due in other EU countries]

[Pursuant to articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities, the Agency is exempt from all taxes, duties and charges, in particular value added tax, on payments made under this specific contract. The contractor receives and keeps in his records the form entitled "VAT and Excise Duty Exemption Certificate" duly completed and signed by the Agency. The invoice must contain the following statement: "VAT Exemption / International Body / Article 151 of Council Directive 2006/112/EC"]

- 5.3** The address for invoices is:

European Chemicals Agency
Directorate [complete]
[Unit [complete]]
Annankatu 18
00120 Helsinki
Finland
Email: [insert functional mailbox]

ARTICLE 6: SUB-CONTRACTING⁵

[Not applicable]

or

- 6.1** In conformity with Article II.7 of the General Conditions of the FWC, the contractor has been permitted to subcontract.
- 6.2** Tasks stated in Annex A may be performed by the subcontractor *Name and address of subcontractor*, entirely at the risk of the contractor.
- 6.3** Without prejudice to the Agency's other rights under Article II.14 of the General Conditions of the FWC, if the contractor fails to meet his obligations, the specific contract with the Agency may be terminated in accordance with Article II.4 of the General Conditions of the FWC. This clause applies throughout the term of the specific contract.

ARTICLE 7: GUARANTEES

[Not applicable]

or

[A performance guarantee for an amount of EUR [*amount in figures and in words*] shall be issued according to the conditions laid down in Article II.15.5.]

ARTICLE 8: GENERAL ADMINISTRATIVE PROVISIONS

- 8.1** Any communication under this specific contract shall be made in accordance with Article I.6 of the Framework Contract.
- 8.2** The persons responsible for the implementation of this Specific Contract are:

For the Agency:

European Chemicals Agency
P.O. Box 400,
00121 HELSINKI, Finland
Fax: +358 9 68618210
[Name & Office address of the contract manager]
Email: [to be completed]

⁵ Please check if the contractor is permitted or not to subcontract. In case the contractor is not permitted to subcontract use the option 'Not Applicable'. **Please note that the contractor has to be authorised to subcontract before concluding this specific contract – See Article II.7 of the FWC.**

For the contractor:

Mr/Mrs
[Function]
[Company name]
[Official address in full]

ARTICLE 9: PLACE OF PERFORMANCE

The tasks shall be executed at the premises of [the contractor] and/or [the Agency].

[If the services are to be performed at both Agency and contractor premises, specify how the services are to be divided between these two locations].

ARTICLE 10: EXPLOITATION OF THE RESULTS

[Not applicable]

or

[Insert details on the intended use of results linked to the specific request for service supplementing or replacing Article I.8 of the Special Conditions of the FWC]

ARTICLE 11: ANNEXES

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

Annex A: Technical Annex / Tasks description

Annex B: Quotation Form

Annex C: Certificate of Conformity

SIGNATURES

For the contractor,

[Company
name/forename/surname/function]

signature[s]: _____

For the Agency,

[forename/surname/function]

signature[s]: _____

Done in [place], [date]

Done in Helsinki, [date]

In duplicate in [English].

Annex A

TECHNICAL ANNEX: TASKS DESCRIPTION

WORKING METHOD: QUOTED TIME & MEANS

The work covered by the present Specific Contract is divided into various sub-tasks according to the detailed description provided in §2 below.

1. CONTEXT/INTRODUCTION AND OBJECTIVES

2. DESCRIPTION OF TASKS

[As outlined in the request for offer by the Agency]

3. WORK ENVIRONMENT/CONDITIONS

4. DESCRIPTION OF THE METHOD FOR ACCEPTING EACH SUB-TASK WORKING DAYS ESTIMATE

Since the work will be divided into various sub-tasks (or "**quoted time & means**"), the Agency will provide the contractor with a detailed description of each requested sub-task. The contractor will then send the Agency an estimate of the number of days needed to perform the sub-task and the expected delivery date.

Once the estimate has been accepted by the Agency, only the number of days indicated in the estimate will be chargeable. (See Annex B)

The invoicing, approved by the Agency, will be carried out on the basis of each "sub-task" accepted and signed for by the Agency using the form in Annex B and in accordance with Article 5.2.

5. ACCEPTANCE OF THE WORK

See Annex C – Certificate of Conformity (to be submitted together with the invoice)

6. DELIVERY SCHEDULE

7. QUALITY STANDARDS AND PROCEDURES

8. SECURITY REQUIREMENTS

Annex B

"QUOTED TIME & MEANS" FORM

FOR SPECIFIC CONTRACT No .. UNDER FRAMEWORK CONTRACT No ECHA/2013/03 Task (and Sub-task) Number

Original document - duly signed - to be attached to the invoice

REQUEST AND DESCRIPTION OF WORK

To be filled in by the Agency.

Title:
Date of request:
Responsible person at Agency:
Description of work:
Expected results:

WORKING DAYS ESTIMATE

To be filled in by the contractor.

PROFILE	PRICE/DAY	NUMBER OF DAYS	LAST POSSIBLE DATE FOR EXECUTION	TOTAL PRICE
Planned starting date of work:				
Planned delivery date for work				
Date and contractor's signature:				

To be filled in by the Agency.

Date and signature denoting Agency's agreement:	
---	--

Annex C

"QUOTED TIME & MEANS" CERTIFICATE OF CONFORMITY
FOR SPECIFIC CONTRACT No XX UNDER FRAMEWORK CONTRACT No
ECHA/2013/03

Task (and Sub-task) Number

Original document - duly signed - to be attached to the invoice

RECEIPT OF WORK

To be filled in by the contractor and the Agency.

	Contractor	Agency
Date of delivery/signing:		
Person responsible for checking (in block capitals):		
Comments:		
Date and signature :		

ACCEPTANCE AND VALIDATION OF WORK

To be filled in by the Agency.

Official responsible for acceptance (in block capitals) : OIA (*)	
Date and signature	
Official responsible for final validation (in block capitals) : OVA (*)	
Date and signature	

(*) OIA : The Agency's responsible in charge of the reception of the work is obliged to act as **OIA** (Operational initiating agent).

OVA : The Agency's responsible in charge of the final validation of the work is obliged to act as **OVA** (Operational verifying agent).

5.3.4 MODEL SPECIFIC CONTRACT – TIME & MEANS

TIME & MEANS

SPECIFIC CONTRACT No [complete]

implementing Framework Contract No ECHA/2013/03

The European Chemicals Agency (hereinafter referred to as "the Agency"), which is represented for the purposes of the signature of this contract by [official name in full],

of the one part,

and

[official name in full]

[*official legal form*]

[*statutory registration number*]

[official address in full]

[*VAT registration number*]

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

of the other part,

HAVE AGREED

PREAMBLE

This specific contract is based on the contractor's quote dated XX.XX.XXXX (reference). Once signed by the parties, the specific contract shall be governed by the FWC. This specific contract does not amend the provisions of the FWC.

ARTICLE 1: SUBJECT MATTER

- 1.1** This specific contract implements Framework Contract (FWC) No [complete] signed by the Agency and the contractor on [complete date] [last amended by amendment No XX, signed on XX/XX/XXXX].
- 1.2** The subject matter of this specific contract is [short description of subject]. [This specific contract relates to lot [complete] of the FWC.]
- 1.3** The contractor undertakes, in accordance with the terms set out in the FWC and in this specific contract and the annex[es] thereto, which form an integral part thereof, to perform the [following tasks:] [tasks specified in Annex [complete].]

ARTICLE 2: ENTRY INTO FORCE AND DURATION

- 2.1** This specific contract shall enter into force [on the date on which it is signed by the last party] [on [insert date] if it has already been signed by both parties].
- 2.2** The duration of the tasks shall not exceed the amount of person days specified in Annex A. The amount of person days of the specific contract may however be extended for additional tasks which are a repetition of similar services or a continuation of the work carried out under the specific contract, provided that these services or work conform to the same basic project. This extension shall be done only with the express written agreement of the parties before the period specified in Annex A elapses.
- 2.3** If the number of days agreed has not been fully taken up, the Agency shall not be obliged either to use or to pay for the days not worked and the contractor shall not be entitled to claim damages for them.
- 2.4** Work shall be performed overtime only upon request by the Agency. Approved overtime is compensated according to Annex I to the FWC.

ARTICLE 3: PERFORMANCE

- 3.1** Every day the service provider shall - according to procedures laid down by the competent technical person in the Agency as specified in the specific contract - notify the Agency of the time spent working under the specific contract. At the end of every month, the service provider shall complete and sign the time sheet contained in Annex B and send it to the competent technical person in the Agency for verification.
- 3.2** The service providers are:

Name and profile]
[Name and profile

ARTICLE 4: PRICE

4.1 The Agency undertakes to pay the contractor, in consideration for the services rendered under this specific contract:

- an amount of **EUR XXX** per day of actual services rendered, for **XX** days for

(name of service provider), i.e. a total of **EUR XXXXX**

Profile of service provider:

[specify the profile of the service provider in accordance with the profiles listed in the price list in Annex II to the FWC]

- an amount of **EUR XXX** per day of actual services rendered, for **XX** days for

(name of service provider), i.e. a total of **EUR XXXXX**

Profile of service provider:

[specify the profile of the service provider in accordance with the profiles listed in the price list in Annex II to the FWC]

4.2 The total amount to be paid by the Agency under this specific contract shall be **EUR XXX** [amount in figures] covering all tasks executed.

[4.2. *This amount shall cover all expenditure incurred by the Contractor in performing this Specific Contract]*

[4.3 *In addition to the amount specified in Article 3.1, travel and subsistence expenses up to a maximum amount of EUR [amount in figures and in words] shall be reimbursed according to the provisions of the FWC.*

The daily subsistence allowance shall be [...]

ARTICLE 5: PAYMENTS

Payments under the specific contract shall be made in accordance with Article II.15 of the General Conditions of the FWC. Payments shall be executed only if the contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted. Payment requests may not be made if payments for previous periods have not been executed as a result of default or negligence on the part of the contractor.

5.1 Interim payments

Payments shall be carried out monthly, unless otherwise specified.

The request for payment shall be valid if accompanied by:

- Timesheets (Annex B) signed and dated by the service provider;
- Statements of reimbursable expenses in accordance with Article II.16 of the FWC, where applicable;
- The relevant invoices, indicating the reference number of the FWC and the specific contract to which they refer

Provided the above time sheet has been countersigned by the Agency for approval, following verification against its flexitime system at the end of each calendar month.

5.2 Payment of the balance

The request for payment of the balance shall be valid if accompanied by:

- Timesheets signed by the service provider;
- Statements of reimbursable expenses in accordance with Article II.16 of the FWC, where applicable;
- The relevant invoices, indicating the reference number of the FWC and the specific contract to which they refer.

Provided the above time sheet has been countersigned by the Agency for approval, following verification against its flexitime system at the end of the last calendar month, during which services have been provided.

5.3 Payments shall be made to the contractor's bank account denominated in euro as identified in Article I.5 of the FWC, on production of the invoice showing separately the amount of the fees and the VAT applied and within no more than 30 calendar days from the date the invoice is received by the Unit indicated in article 5.5 below. Invoices presented by the contractor shall indicate his place of taxation for VAT purposes and shall specify separately the amounts not including VAT from those amounts including VAT.

[Option: for contractors for which VAT is due in Belgium]

[Where VAT is due in Belgium, the provisions of this specific contract constitute a request for VAT exemption No 450, Article 42, paragraph 3.3 of the VAT code (circular 2/1978), provided the contractor includes the following statement in the invoice(s): "Exonération de la TVA, Article 42, paragraphe 3.3 du code de la TVA (circulaire 2/1978)" or an equivalent statement in the Dutch or German language.]

[Option: for contractors for which VAT is due in Luxembourg]

[Where VAT is due in Luxembourg, the contractor shall 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 2ième tiret de la loi modifiée du 12.02.79." In case of intra-Community purchases, the statement to be included in the invoices is: "For the official use of the European Union. VAT Exemption / European Union/ Article 151 of Council Directive 2006/112/EC."]

[Option: for contractors for which VAT is due in other EU countries]

[Pursuant to articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities, the Agency is exempt from all taxes, duties and charges, in particular value added tax, on payments made under this specific contract. The contractor receives and keeps in his records the form entitled "VAT and Excise Duty Exemption Certificate" duly completed and signed by the Agency. The invoice must contain the following statement: "VAT Exemption / International Body / Article 151 of Council Directive 2006/112/EC"]

5.4 The address for invoices is:

European Chemicals Agency
Directorate [complete]
[Unit [complete]]
Annankatu 18
00120 Helsinki
Finland
Email: [insert functional mailbox]

ARTICLE 6: SUB-CONTRACTING⁶

[Not applicable]

or

- 6.1** In conformity with Article II.7 of the General Conditions of the FWC, the contractor has been permitted to subcontract.
- 6.2** Tasks stated in Annex A may be performed by the subcontractor *Name and address of subcontractor*, entirely at the risk of the contractor.
- 6.3** Without prejudice to the Agency's other rights under Article II.14 of the General Conditions of the FWC, if the contractor fails to meet his obligations, the specific contract with the Agency may be terminated in

⁶ Please check if the contractor is permitted or not to subcontract. In case the contractor is not permitted to subcontract use the option 'Not Applicable'. **Please note that the contractor has to be authorised to subcontract before concluding this specific contract – See Article II.7 of the FWC.**

accordance with Article II.4 of the General Conditions of the FWC. This clause applies throughout the term of the specific contract.

ARTICLE 7: GUARANTEES

[Not applicable]

or

[A performance guarantee for an amount of EUR [*amount in figures and in words*] shall be issued according to the conditions laid down in Article II.15.5.]

ARTICLE 8: GENERAL ADMINISTRATIVE PROVISIONS

8.1 Any communication under this specific contract shall be made in accordance with Article I.6 of the FWC.

8.2 The persons responsible for the implementation of this specific contract are:

For the Agency:

European Chemicals Agency
P.O. Box 400,
00121 HELSINKI, Finland
Fax: +358 9 68618210
[Name & Office address of the contract manager]
Email: [to be completed]

For the contractor:

Mr/Mrs
[Function]
[Company name]
[Official address in full]

ARTICLE 9: PLACE OF PERFORMANCE

The tasks shall be executed at the premises of [the Agency] and/or [the contractor].

[If the services are to be performed at both Agency and contractor premises, specify how the services are to be divided between these two locations].

ARTICLE 10: EXPLOITATION OF THE RESULTS

[Not applicable]

or

[Insert details on the intended use of results linked to the specific request for service supplementing or replacing Article I.8 of the Special Conditions of the FWC]

ARTICLE 11: ANNEXES

The following annexes form an integral part of this specific contract:

Annex A: Technical Annex

Annex B: Time sheet

SIGNATURES

For the contractor,

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

signature[s]: _____

Done in [place], [date]

In duplicate in [English].

For the Agency,

[forename/surname/function]

signature[s]: _____

Done in Helsinki, [date]

Annex A

TECHNICAL ANNEX

The European Chemicals Agency wishes to procure the services of IT service providers with the profile described below:

1. DESCRIPTION OF REQUIRED IT RESOURCES

X man days – profile of service provider – preferred start date:

Weekly availability: X days/week

Location:

Requisites

2. TASKS

[As outlined in the request for offer by the Agency]

3. DELIVERABLES (IF REQUESTED)

The specific deliverables, which are all the subject of acceptance unless specified otherwise, are:

- [list of all requested deliverables as outlined in the request for offer by the Agency]

4. DELIVERY SCHEDULE

The delivery schedule is as follows:

- T0 being the date of signature of this agreement;
- [list of all requested deliverables with timetable]

5. QUALITY STANDARDS AND PROCEDURES

6. SECURITY REQUIREMENTS

7. REPORTING

Annex B

TIME SHEET

[Insert time sheet]

5.3.5 MODEL ORDER FORM

 <p>ECHA EUROPEAN CHEMICALS AGENCY</p>		<p>FRAMEWORK CONTRACT</p> <p>ORDER FORM</p>			
Directorate and unit: Tel.: E-mail:	Order number: Currency of payment: EUR Offer (date and reference):	(Name and address of contractor)			
This order is governed by the provisions of Framework Contract No. _____ in force from _____ to _____					
LISTING OF THE SUPPLIES / SERVICES and code		UNIT	QUANTITY	PRICE in €	
				UNIT PRICE	TOTAL
Pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union, the Agency is exempt from all taxes and dues, including value added tax, on payments due in respect of this contract. For intra-community purchases, the mention "VAT Exemption / European Union / Article 151 of Council Directive 2006/112/EC" should be added on the invoice.		Packaging Insurance Transport Assembly VAT			
		TOTAL :			
Place of delivery or performance and/or Incoterm: Final date of delivery or performance: Terms of payment: Guarantee:		Contractor's signature			
		Name: Position: Date:			
Date of issue: Signature [name and position] [ECHA stamp]:					
The invoice shall be paid only if the contractor has returned the signed order form.					

5.3.6 MODEL PERFORMANCE GUARANTEE

PERFORMANCE GUARANTEE

<To be completed on paper bearing the letterhead of the financial institution >

[Place/Date]

European Chemicals Agency
Annankatu 18
00120 Helsinki
Finland

Contract performance guarantee No ECHA/2013/03

We hereby confirm that we give the European Chemicals Agency an unconditional and irrevocable joint and several guarantee for an unlimited period to the value of EUR [...] (in words: ... Euro) for performance of the Contract concluded between the European Chemicals Agency and [Firm/Name/Address – as given in the Contract (No/exact title – hereinafter “the Contract”)] (hereinafter “the Contractor”).

If the European Chemicals Agency gives notice that the Contractor has for any reason failed to fulfil his obligations under the Contract by the due date, the Bank, acting on behalf of the Contractor, undertakes to pay up to the above amount into a bank account designated by the European Chemicals Agency immediately on receipt of a first written request from the European Chemicals Agency (sent by registered post, with acknowledgement of receipt).

The Bank waives the right to require exhaustion of remedies against the principal, any right to withhold performance, any right of retention, any right of avoidance, any right to offset, and the right to assert any other claims which the Contractor may have against the European Chemicals Agency under the Contract or in connection with it or on any other grounds.

The Bank may be released from this guarantee only with the European Chemicals Agency’s written consent and does not have the right of deposit without its consent.

The Bank’s obligations under this guarantee are not affected by any arrangements or agreements made by the European Chemicals Agency with the Contractor which may concern his obligations under the Contract.

This guarantee shall take immediate effect. It shall expire on return of this document, which must occur within 12 months after the final payment under the Contract has been made.

This guarantee is governed by the law applicable to the Contract.

The courts having jurisdiction for matters relating to the Contract shall have sole jurisdiction in respect of matters relating to this guarantee.

[Place/Date]

[Signature/Function]

[Signature/Function]

5.3.7 DAILY SUBSISTENCE ALLOWANCES AND ACCOMMODATION FLAT-RATES

The daily subsistence allowance is deemed to cover all subsistence expenses incurred during one day of travel, including meals, local transport which includes transport to and from the airport or station, insurance and sundries. Applicable rates are provided in the table below:

Travel location	Daily allowance	Accommodation flat-rate ceiling
AUSTRIA	95	130
BELGIUM	92	140
BULGARIA	58	169
CYPRUS	93	145
CHECH REPUBLIC	75	155
DENMARK	120	150
ESTONIA	71	110
FINLAND	104	140
FRANCE	95	150
GERMANY	93	115
GREECE	82	140
HUNGARY	72	150
IRELAND	104	150
ITALY	95	135
LATVIA	66	145
LITHUANIA	68	115
LUXEMBOURG	92	145
MALTA	90	115
NETHERLANDS	93	170
POLAND	72	145
PORTUGAL	84	120
ROMANIA	52	170
SLOVAKIA	80	125
SLOVENIA	70	110
SPAIN	87	125
SWEDEN	97	160
UNITED KINGDOM	101	175

5.3.8 STATEMENTS FROM CONTRACTOR REGARDING INTELLECTUAL PROPERTY RIGHTS

(A) Statement of contractor concerning right to delivered result

I, [*insert name of the authorised representative of the contractor*] representing [*insert name of the contractor*], party to the [*specific*] contract [*insert title and/or number*] warrant that the contractor holds all transferred rights to the delivered [*insert title and/or description of result*] which [*is*][*are*] free of any claims of third parties.

The above-mentioned results were prepared by [*insert names of creators*]. The creators transferred all their relevant rights to the results to [*insert name of the entity that received rights from the creators*] [through a contract of [*insert date*]] [a relevant extract of which is] herewith attached.

The creators [received all their remuneration on [*insert date*]] [will receive all their remuneration as agreed within [*complete*] weeks from [delivery of this statement.] [receipt of confirmation of acceptance of the work]. [The statement of the creators confirming payment is attached].

Date, place, signature

(B) Statement of creator / intermediary in delivery

of the [*title of the result*]

within the [framework] contract No [*complete*]

[Specific contract No [*complete*]]

concluded between the contracting authority and [*name of the contractor(s)*]

I, [*insert name of the authorised representative of the intermediary*] representing [*insert name of the intermediary*] state that I am the right holder of: [*identify the relevant parts of the result*] [which I created] [for which I received rights from [*insert name*]].

I am aware of the above [framework] contract, especially Articles I.8, II.10 and I confirm that I transferred all the relevant rights to [*insert name*].

I declare that [I received full remuneration] [I agreed to receive remuneration by [*insert date*]].

[As creator, I also confirm that I do not oppose my name being recalled when the results are presented to the public and confirm that the results can be divulged.]

Date, place, signature

5.3.9 MODEL CONFIDENTIALITY DECLARATION

[On Headed paper of the Contractor]

CONFIDENTIALITY DECLARATION⁷

In accordance with Articles I.15 and II.5 of Framework Contract ECHA/2013/03 (hereinafter referred to as "the FWC") signed between the European Chemicals Agency (ECHA) and _____ (hereinafter referred to as "the contractor") on _____, the undersigning personnel undertakes:

- To treat in the strictest confidence and not make use of or divulge to third party any information or documents which are linked to performance of the FWC. To continue to be bound by this undertaking after completion of the tasks entrusted to me under the FWC;
- Where the FWC requires the processing of personal data, to act only under the supervision of ECHA, in particular with regard to the purposes of the processing, the categories of data which may be processed, the recipients of the data, and the means by which the data subject may exercise his/her rights.
- The personal data processed under the FWC shall be confidential within the meaning of Regulation (EC) No 45/2001 of 18 December 2000 on the protection of individuals with regard to the processing of personal data by 'Community institutions' and bodies and on the free movement of such data. Access to personal data shall be limited to the staff strictly necessary for the performance, management and monitoring of the FWC.
- To be bound to the contractor's technical and organisational security measures adopted having regard to the risks inherent in the processing and to the nature of the personal data concerned and in particular to:
 - a) Prevent any unauthorised person from having access to computer systems processing personal data, and especially:

⁷ Any natural person with the power to represent the contractor or take decisions on its behalf, as well as from third parties involved in the performance of the FWC, order form or specific contract.

- aa) unauthorised reading, copying, alteration or removal of storage media;
- ab) unauthorised data input as well as any unauthorised disclosure, alteration or erasure of stored personal data;
- ac) unauthorised persons from using data-processing systems by means of data transmission facilities;
- b) Ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
- c) Record which personal data have been communicated, when and to whom;
- d) Ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting institution or body;
- e) Ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
- f) Design its organisational structure in such a way that it meets data protection requirements.

I, the undersigned, confirm that I have read, understood and accepted the conditions laid down above and I declare that I will respect the confidentiality of any information which is linked, directly or indirectly, to the execution of the tasks under the FWC and I will not divulge to third parties or use for my own benefit or that of any third party any document or information not available publicly, even after completion of the tasks related to the FWC.

Done in _____, insert date

Contractor's personnel name: _____

Function: _____

Signature: _____

Insert contractor's representative name: _____

Function: _____

Signature: _____

5.3.10 MODEL NON-DISCLOSURE AGREEMENT

NON-DISCLOSURE AGREEMENT

Framework Contract ECHA/2013/03

THIS AGREEMENT becomes effective on the last date of signature by one of the parties.

BETWEEN:

The European Chemicals Agency in Helsinki, ECHA (hereinafter called "the Agency"), which is represented for the purposes of the signature of this Agreement by **Mr Geert Dancet, Executive Director,**

And

.....

[official name in full]

[*official legal form*]

[*statutory registration number*]

[official address in full]

[*VAT registration number*]

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

[The parties⁸ identified above and hereinafter collectively referred to as the 'the contractor' shall be jointly and severally liable vis-à-vis the Agency for the performance of this agreement.]

RELATING TO the disclosure of confidential information exchanged during the implementation of Framework Contract ECHA/2013/03 for the provision of an externally hosted HR System, implementation and support services for the Agency (hereinafter called "the FWC").

⁸ Insert full details of partners and subcontractors.

WHEREAS:

- A) The Agency is obliged due to the nature of its mandate to maintain the highest standards of security and confidentiality in the performance of its legal duties and obligations under:
- the Regulation 2006/1907/EC concerning the registration, evaluation, authorisation and restriction of chemicals (REACH);
 - the Biocidal Product Regulation (BPR, Regulation (EU) 528/2012) concerning the placing on the market and use of biocidal products;
 - the Prior Informed Consent Regulation (PIC, Regulation (EU) 649/2012) which administers the import and export of certain hazardous chemicals;
- B) The Agency shall protect the fundamental rights and freedoms of natural persons, and in particular their right to privacy with respect to the processing of personal data pursuant Regulation (EC) No 45/2001 of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the 'Community institutions and bodies' and on the free movement of such data (OJ L 8, 12.01.2001, p. 11). Personal data processed under the FWC shall be confidential within the meaning of Regulation (EC) No 45/2001 of 18 December 2000.
- C) Each party possesses valuable information, technical knowledge, experience and data of a secret and confidential nature, which may be regarded as assets of scientific, business and commercial value;
- D) Without prejudice to Article I.8 of the FWC, in the context of the implementation of the FWC, each party is willing to disclose such information to the other on the condition that the other does not disclose the same to any third party, nor make use thereof in any manner except as set out below;
- F) Prior to the signature of the FWC, the contractor is required to sign a Non-Disclosure Agreement (NDA) with the Agency. The contractor may use the information received from the Agency in the context of the request for services of ECHA and the subsequent implementation of the FWC solely for the purpose of providing the services agreed upon in the FWC;

NOW IT IS HEREBY AGREED as follows:

1 CONFIDENTIAL INFORMATION

- 1.1 In this Agreement "Confidential Information" shall mean any and all information, know-how or data relating to the FWC which is disclosed or given by either party to the other party either directly or indirectly, whether in writing or by any other means, that is marked as confidential.

- 1.2 The information mentioned in F) above is considered by the Agency as confidential.

2 UNDERTAKING

- 2.1 In consideration of the disclosure of Confidential Information by either party to the other, each party undertakes to treat as strictly confidential and not divulge to any third party any of the Confidential Information disclosed by the other and not to make use of any such Confidential Information without the other's prior written consent.
- 2.2 In the event of either party visiting the establishment of the other, the visiting party undertakes that any further Confidential Information which may come to its knowledge as a result of such visit, shall be kept strictly confidential and will not be divulged to any third party and will not be made use of in any way by the visiting party without the other's prior written consent.

3 LIMITATION

The obligations of confidence and non-use herein shall not apply to any part of the Confidential Information which:

- 3.1 Was lawfully in the recipient party's possession at the time the information was received, without any restrictions as to confidentiality;
- 3.2 Was available to the public before that date or was in the public domain;
- 3.3 Becomes available to the public or to the public domain after that date otherwise than as a result of an act or default of the recipient;
- 3.4 Is received by the recipient from a third party not bound to the disclosing party by any obligation of secrecy;
- 3.5 Is independently developed by the recipient after that date without using the Confidential Information, as evidenced by written record;
- 3.6 Is to be disclosed pursuant to a requirement of law or court order, by which the recipient is bound to disclose the information in whole or in part, so long as the party required disclosing the information provides the other party with timely prior notice of such a requirement.

4 PERSONNEL'S OBLIGATIONS

Each party shall ensure that any of their personnel (employees, agents or colleagues) who receive the Confidential Information are both advised of and agree to be bound by the confidentiality and use terms of this Agreement.

5 TERM

This Agreement shall remain in effect for a period of ten (10) years from the date on which the agreement becomes effective.

6 GOVERNING LAW

- 6.1 This Agreement shall be subject to Finnish law.

6.2 Any dispute, controversy or claim between the parties resulting from the interpretation or application of the Agreement which cannot be settled amicably shall be settled by adjudication before the competent courts of Helsinki.

Signed by:

For and on behalf of ECHA

Geert Dancet

Executive Director

Date

Signed by:

For and on behalf of *Company name*

Name

Function

Date

For and on behalf of *Company name*

Name

Function

Date