



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR ENERGY

Directorate C - Renewables, Research and Innovation, Energy Efficiency
The Director

CALL FOR TENDERS

N° ENER/C2/2013-148

Smart Cities Stakeholder Platform

TENDER SPECIFICATIONS

TABLE OF CONTENTS

1	INFORMATION ON TENDERING.....	3
1.1.	Participation.....	3
1.2.	Contractual conditions.....	3
1.3.	Joint tenders.....	3
1.4.	Subcontracting.....	3
1.5.	Content of the tender.....	4
1.6.	Identification of the tenderer: legal capacity and status.....	4
2	EVALUATION AND AWARD.....	5
2.1	Evaluation steps.....	5
2.2	Exclusion criteria.....	5
2.3	Selection criteria.....	5
2.4	Award criteria.....	6
2.5	Technical offer.....	7
2.6	Financial offer.....	7
3	TECHNICAL SPECIFICATIONS.....	8
3.1	Introduction.....	8
3.2	Rationale and aims.....	9
3.3	Work Packages.....	12
3.4	Project Deliverables.....	17
3.5	Duration of the tasks.....	19
3.6	Place of performance.....	19
3.7	Estimate of the amount of work involved.....	19
4	ANNEXES.....	20

1 INFORMATION ON TENDERING

1.1. Participation

Participation in this tender procedure is open on equal terms to all natural and legal persons coming within the scope of the Treaties and to all natural and legal persons in a third country which has a special agreement with the Union in the field of public procurement on the conditions laid down in that agreement. Where the Multilateral Agreement on Government Procurement¹ concluded within the WTO applies, the participation to the call for tender is also open to nationals of the countries that have ratified this Agreement, on the conditions it lays down.

1.2. Contractual conditions

The tenderer should bear in mind the provisions of the draft contract which specifies the rights and obligations of the contractor, particularly those on payments, performance of the contract, confidentiality, and checks and audits.

1.3. Joint tenders

A joint tender is a situation where a tender is submitted by a group of economic operators (consortium). Joint tenders may include subcontractors in addition to the joint tenderers.

In case of joint tender, all economic operators in a joint tender assume joint and several liability towards the Contracting Authority for the performance of the contract as a whole.

These economic operators shall designate one of them to act as leader with full authority to bind the grouping or the consortium and each of its members. It shall be responsible for the receipt and processing of payments for members of the grouping, for managing the service administration and for coordination. The composition and constitution of the grouping or consortium, and the allocation of the scope of tasks amongst the members, shall not be altered without the prior written consent of the Commission.

The tenderers should indicate in their offer whether the partnership takes the form of:

- a) a new or existing legal entity which will sign the contract with the Commission in case of award

or

- b) a group of partners not constituting a new legal entity, who via a power of attorney, signed by an authorised representative of each partner (except the lead partner), designate one of the partners as lead partner, and mandate him as lead contractor to sign the contract with the Commission in case of award.

1.4. Subcontracting

Subcontracting is permitted in the tender but the contractor will retain full liability towards the Contracting Authority for performance of the contract as a whole.

¹ See http://www.wto.org/english/tratop_E/gproc_e/gp_gpa_e.htm

Tenderers must give an indication of the part of the services and proportion of the contract that they intend to subcontract.

Tenderers are required to identify subcontractors whose share of the contract is above 20%.

During contract execution, the change of any subcontractor identified in the tender will be subject to prior written approval of the Contracting Authority.

1.5. Content of the tender

The tenders must be presented as follows:

- Part A: Identification of the tenderer (see section 1.6)
- Part B: Evidence for exclusion criteria (see section 2.2)
- Part C: Evidence for selection criteria (see section 2.3)
- Part D: Technical offer (see section 2.5)
- Part E: Financial offer (see section 2.6)
- Part F: Power of attorney (for consortia only)

1.6. Identification of the tenderer: legal capacity and status

- The tenderer's identification form in **Annex 1** shall be filled in and signed by:
 - The tenderer (including any member of a consortium or grouping)
 - Sub-contractor(s) whose share of the work represents more than 20% of the contract.
- In order to prove their legal capacity and their status, all tenderers (including any member of a consortium or grouping) must provide a signed **Legal Entity Form with its supporting evidence**. The form is available on:
http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm

Tenderers that are already registered in the Contracting Authority's accounting system (i.e. they have already been direct contractors) must provide the form but are not obliged to provide the supporting evidence.

- If it has not been included with the Legal Entity Form, tenderers must provide the following information
 - For **legal persons**, a legible copy of the notice of appointment of the **persons authorised to represent the tenderer** in dealings with third parties and in legal proceedings, or a copy of the publication of such appointment if the legislation which applies to the legal entity concerned requires such publication. Any delegation of this authorisation to another representative not indicated in the official appointment must be evidenced.
 - For **natural persons**, where applicable, a proof of registration on a professional or trade register or any other official document showing the registration number.

The tenderer (only the leader in case of joint tender) must provide a **Financial Identification Form and supporting** documents. The form is available on:
http://ec.europa.eu/budget/contracts_grants/info_contracts/index_en.cfm

2 EVALUATION AND AWARD

2.1 Evaluation steps

The evaluation is based on the information provided in the submitted tender. It takes place in three steps:

- (1) Verification of non-exclusion of tenderers on the basis of the exclusion criteria
- (2) Selection of tenderers on the basis of selection criteria
- (3) Evaluation of tenders on the basis of the award criteria (technical and financial evaluation)

Only tenders meeting the requirements of one step will pass on to the next step.

2.2 Exclusion criteria

All tenderers shall provide a declaration on their honour (see Annex 2), duly signed and dated by an authorised representative, stating that they are not in one of the situations of exclusion listed in the Annex 2.

The declaration on honour is also required for identified subcontractors whose intended share of the contract is above 20%.

The successful tenderer shall provide the documents mentioned as supporting evidence in Annex 2 before signature of the contract and within a deadline given by the contracting authority. This requirement applies to all members of the consortium in case of joint tender. In case of doubt on this declaration on the honour, the contracting authority may also request the evidence for subcontractors whose intended share of the contract is above 20%.

2.3 Selection criteria

Tenderers must prove their economic, financial, technical and professional capacity to carry out the work subject to this call for tender.

The tenderer may rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the Contracting Authority that it will have at its disposal the resources necessary for performance of the contract, for example by producing an undertaking on the part of those entities to place those resources at its disposal.

2.3.1 Economic and financial capacity criteria and evidence

In order to prove their economic and financial capacity, the tenderer (i.e. in case of joint tender, the combined capacity of all members of the consortium) must provide evidence for an annual turnover of minimum 1.000.000 EUR, for the past three years.

Tenderers must provide proof of their financial and economic capacity by means of the following documents: the balance sheets or extracts from balance sheets for the last three financial years, and a statement of overall turnover and turnover relating to the relevant services for the last three financial years.

If, for some exceptional reason which the Contracting Authority considers justified, a tenderer is unable to provide one or other of the above documents, he or she may prove his

or her economic and financial capacity by any other document which the Contracting Authority considers appropriate. In any case, the Contracting Authority must at least be notified of the exceptional reason and its justification in the tender. The Commission reserves the right to request any other document enabling it to verify the tenderer's economic and financial capacity.

2.3.2 Technical and professional capacity criteria and evidence

Tenderers must demonstrate that all the following requirements are covered by the proposal and by the team proposed:

- Experience of at least three years in developing and managing activities (such as setting up an organisation, data management, communication and dissemination) similar to the ones requested by the tender specifications.
- Experience of at least two years in working with stakeholders at municipal /community level.
- Experience of at least three years in writing English texts for website(s).
- Knowledge of energy, transport, ICT, water and waste management, and socio-economic topics and experience of at least one year in managing stakeholder contacts in these fields.

Evidence of the capacity to fulfil the above requirements shall be provided on the basis of the following documents:

- A list detailing the position and tasks for each member of the international team.
- A detailed curriculum vitae (CV) for each member of the international team (including his or her educational background, degrees and diplomas, professional experience including the places of employment, research work, publications and linguistic skills).
- A list briefly summarising the activities similar to the ones requested by the tender specifications, delivered by the tenderer during the last 5 years, with indications of corresponding budgets, recipients and timing (i.e. year or years in which these activities were performed as well as duration of performing of each of these activities). Samples (such as produced communication materials and websites) resulting from such activities may be enclosed.

If several service providers/subcontractors are involved in the bid, each of them must have and show that they have the professional and technical capacity to perform the tasks assigned to them.

The CVs shall be presented, preferably, in accordance to the Commission Recommendation on a common European format for curricula vitae, published in OJ L79 of 22 March 2002, p. 66.

2.4 Award criteria

The contract will be awarded according to the criteria given below, on the basis of the economically most advantageous tender.

Only bids that have reached a total score of a minimum of 70% and a minimum score of 60% for each criterion will be taken into consideration for awarding the contract.

a) Quality evaluation criteria as weighted by percentage:

Criteria	Maximum score/ weighting
<p>1. Technical quality of the tender</p> <ul style="list-style-type: none"> • Clarity, completeness and full coverage of the tasks; • Quality of proposed methodology to set-up and make operational the stakeholder platform; • Quality and clarity of the work plan towards the objectives of the call for tender; • Quality and appropriateness of proposed communication and dissemination activities; • Potential impact through the development, dissemination and use of project results; • Quality of support activities to achieve the expected outcomes, ensuring knowledge transfer and monitoring, engagement with the stakeholders and public. 	70%
<p>2. Project management and resources</p> <p>This criterion relates to the appropriate overall project planning and management and the human and financial resources allocated to cope with and fulfil the obligations of the contract.</p>	30%
Total score	100%

b) Total price

The contract will be awarded to the tender who offers the best ratio quality/price.

2.5 Technical offer

The technical offer must cover all aspects and tasks required in the technical specification and provide all the information needed to apply the award criteria. Offers deviating from the requirements or not covering all requirements may be excluded on the basis of non-conformity with the tender specifications and will not be evaluated.

2.6 Financial offer

The price for the tender must be quoted in euro. Tenderers from countries outside the euro zone have to quote their prices in euro. The price quoted may not be revised in line with exchange rate movements. It is for the tenderer to assume the risks or the benefits deriving from any variation.

Prices must be quoted free of all duties, taxes and other charges, including VAT, as the European Union is exempt from such charges under Articles 3 and 4 of the Protocol on the privileges and immunities of the European Union. The amount of VAT may be shown separately.

The quoted price must be a fixed amount which includes all charges (including travel and subsistence). Travel and subsistence expenses are not refundable separately.

3 TECHNICAL SPECIFICATIONS

3.1 Introduction

One of the greatest challenges facing the EU is how best to design and adapt cities into smart intelligent and sustainable environments. Almost three quarters of Europeans live in cities, consuming 70% of the EU's energy. Congestion costs Europe about 1% of its GDP every year; most of it is located in urban areas. Smart urban technologies can make a major contribution to tackling many urban challenges.

By launching on the 10th of July 2012 the Smart Cities and Communities European Innovation Partnership (SCC EIP) the European Commission aims to boost the development of smart technologies in cities – by pooling research resources from energy, transport and ICT and concentrating them on a small number of demonstration projects which will be implemented in partnership with cities.

With this Smart Cities Partnership, the EU will help to establish strategic partnerships between those industries and European cities to develop and roll out the urban systems and infrastructures of tomorrow.

The Stakeholder Platform, to which the present tender refers, was defined as part of the governance structure of the SCC (<http://www.eu-smartcities.eu/>). The Innovation Union Flagship Communication described the concept of the European Innovation Partnership (EIP) and indicated that the 'smart cities' would be one of the themes of such an EIP.

To support the further development and implementation of the Smart Cities and Communities EIP during the first three years of the implementation of the EIP's Strategic implementation plan and the upcoming next framework programme – Horizon 2020 – as well as inputs for other funding programmes at EU, national, regional and local levels in the EU the European Commission is publishing this invitation to tender for services to conclude a contract with a service provider (or consortium) to manage the Smart Cities Stakeholder Platform. For this purpose, the service provider will continue to identify, to gather and to organise the various stakeholders relevant for the implementation of the Smart Cities and Communities EIP in the Stakeholder Platform. The service provider will primarily also give support to the European Commission for the implementation of the European Innovation Partnership for Smart Cities and Communities in terms of secretarial support to the High Level Group and the Sherpa Group of the EIP. The service provider will also provide organisational and secretarial support for the (to be created) member states representatives' group.

Based on the solutions, which were already developed during the pilot phase of the platform since late 2011, the Platform shall continue to identify and prioritise the needs and means to develop innovative solutions in the area of Energy, Mobility & Transport and ICT, in a built environment and make cities more sustainable and efficient.

In addition, horizontal actions such as market uptake measures (organisational innovation through innovative planning and business models, public procurement, standards, regulations and exchange of knowledge and best practices) should remain an important part of the deliverables of the platform.

Furthermore, the Smart Cities Stakeholder Platform will cooperate with the Covenant of Mayors Office, CONCERTO Premium, the CIVITAS Initiative the Green Digital Charter and forum network for promoting sustainable urban transport as well as other relevant EU initiatives.

The objective of this tender is to further strengthen the work of the Smart Cities Stakeholder Platform for the stakeholders primarily involved in actions at local level.

For this purpose, the selected tenderer should

- Enable the platform to perform its tasks efficiently and effectively by organising meetings and gathering and summarising the input of its members into high quality documents, focused on the crucial actions and deliverables that support the implementation of the EIP's Strategic Implementation Plan;
- Support organisationally the implementation of the actions that support the implementation of the EIP's Strategic Implementation Plan;
- Establish a close relationship between the platform, the various stakeholders (including public authorities) and the European Commission by means of regular meetings and reporting;
- Promote the activities of the platform and disseminating their outcome;
- Provide secretarial support to liaised Commission groups such as the High Level Group and the Sherpa Group of the European Innovation Partnership for Smart Cities and Communities.

The beneficiaries and users of the platform are public authorities at EU, national and local level as well as the industry and the research and financing community.

The expected outcomes of this tender are the following:

- Ensure a transparent and effective process for further improving the Smart Cities Stakeholder Platform;
- Organise the dialogue among the various stakeholders and provide feedback to the European Commission (EC) to further develop and implement the Smart Cities and Communities EIP;
- Combine the interests of the various stakeholders to support and implement the Smart Cities and Communities EIP in an effective way;
- Give concrete advise for future activities of the European Innovation Partnership for Smart Cities and Communities;
- Give concrete advice for possible subjects to be covered under EU research and innovation programmes.

The services to be delivered shall cover the European Union, Member States and its local communities as well as FP7 and Horizon 2020 Associated countries.

3.2 Rationale and aims

3.2.1 Background information

The Smart Cities and Communities Initiative was proposed as European Industrial Initiative in the Commission Communication on "Investing in the development of low carbon technologies" (related to the Strategic Energy Technology (SET)-Plan²). Furthermore in its

² http://europa.eu/legislation_summaries/energy/european_energy_policy/127079_en.htm
http://europa.eu/legislation_summaries/energy/european_energy_policy/127069_en.htm
http://ec.europa.eu/energy/publications/doc/2010_setplan_brochure.pdf

Communication "Energy 2020 - A strategy for competitive, sustainable and secure energy"³ the Commission identified the Smart Cities Initiative as a project of the European dimension to promote energy efficiency and accelerate the deployment of low carbon technologies. It aims at integrating innovative low carbon technologies in urban areas.

On 4 February 2011, the European Council invited the Commission to launch an Industrial Initiative inter alia on "energy saving solutions in cities". In line with this guidance, the Smart Cities and Communities Initiative initially relied on the organisational framework of the Strategic Energy Technology (SET)-Plan.

In the meantime this Industrial Initiative has been extended with Transport & Mobility as well as Information & Communication Technologies (ICT) in order to address the complex challenges in the urban context in a holistic and efficient way.

This extension has been organised in the fifth European Innovation Partnership (EIP), the European Innovation Partnership for Smart Cities and Communities which has been officially announced in a communication launched by the European Commission on 10 July 2012⁴.

3.2.2 Strategy

The Smart Cities Stakeholder Platform should be oriented towards the implementation of the Smart Cities and Communities EIP. This EIP will cover different technologies and organisational measures and will involve different actors' interests from both the public and private sector. For that reason, the Smart Cities Stakeholder Platform should be able to deliver crucial outcomes (such as input to further develop and support the implementation of the Smart Cities and Communities EIP) within short periods (e.g. once a year).

Furthermore, the Smart Cities Stakeholder Platform should continue focusing at streamlining the application of innovative measures in European cities and ensuring high replication potential across Europe while taking into account the diversity of European cities and respecting the subsidiarity principle.

The actions to be proposed by stakeholders should be innovative and accelerate the development and market deployment of low carbon technology applications and solutions in the urban environment in a holistic approach which embraces all three above mentioned technology pillars: Energy, Mobility & Transport and ICT. They should contribute to measurable targets agreed by the stakeholders. Moreover, these actions should be presented in a rolling ten years agenda, which is updated yearly (i.e. an agenda constantly presenting the period of the next ten years).

3.2.3 General issues

The main tasks of the selected tenderer will be to maintain and improve the operational procedures of the platform and to ensure effective interaction among the relevant stakeholders (including the European Commission).

The selected tenderer will maintain the platform as an open virtual forum for all interested stakeholders taking the following into account:

³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0639:EN:HTML:NOT>
http://ec.europa.eu/energy/publications/doc/2011_energy2020_en.pdf

⁴ http://ec.europa.eu/energy/technology/initiatives/doc/2012_4701_smart_cities_en.pdf

The European Innovation Partnerships have been introduced in the Communication SEC(2010)1161 – "Europe 2020 Flagship Initiative - Innovation Union" in 2010, http://ec.europa.eu/research/innovation-union/pdf/innovation-union-communication_en.pdf#view=fit&pagemode=none

- Interested stakeholders may register at the platform without limitation.
- Access to topic discussions and being enabled to contribute is only possible after publication of the respective user profile.
- In addition to this, membership in the physically convening sub-selections of the respective working groups is subject to a selection procedure, for which the following guidelines shall be considered:
 - The selected tenderer should provide transparent selection criteria for identifying and furthermore selecting stakeholders admitted to the "physical groups" (e.g. based on appropriate evaluation of their expertise) with the aim of enabling these groups to be as efficient and focused as possible and to ensure that only members who contribute tangible input are admitted, which shall ultimately put these groups in the position to efficiently support the further implementation of the Smart Cities and Communities EIP.
 - The selection of members of the "physical groups" shall take into account a geographical balance and composition is subject to prior approval by the EC before groups are finalised.
 - The proposed selection criteria will be subject to EC approval.
- While the platform shall in general be open to everyone the potential categories of stakeholders which can be admitted to the "physical groups" of the platform may include, but are not limited to, the following categories:
 - City authorities;
 - Energy agencies and regulators;
 - Technology providers (on demonstration and pilot projects as well as on real market projects) and existing related Technology Platforms (such as RES Heating and Cooling, PV, Electricity Grids, Electronic Components and Systems PPP on energy efficiency in buildings and Future Internet PPP, etc.);
 - EU Member States' and Associated Countries' representatives (including Ministries of energy, industry, research, economy, telecommunications and transport);
 - Industry/Companies (energy producers, energy engineering companies, energy services providers, telecom operators, Internet service providers, ICT systems integrators, various suppliers and technology industries relevant for transport, ICT and energy management);
 - Research community;
 - Associations, Networks, Alliances, NGOs, etc. (energy users, consumers, citizens), such as:
 - EUROCITIES (based on the Green Digital Charter),
 - Covenant of Mayors office (representatives),
 - Local Governments for Sustainability (ICLEI-Europe),
 - European Regions Research and Innovation Network (ERRIN),
 - European Network on Living Labs (EnoLL),
 - Others: consultants and practitioners in the field.

Following the above described approach the selected tenderer shall always ensure an open access to the platform and be neutral vis-à-vis the various stakeholders.

Measures to avoid unwanted content (e.g. spam messages) are nevertheless essential in this context.

The platform will be built on state of the art ICT technology. Particular attention will be given to provide a personalised access to information. An ontology for categorising the set of reported actions should be defined and tools for ontology maintenance should be used to guarantee its controlled evolution. Rendering of results will be based on advanced graphical presentations and existing tools as Google Maps will be used when appropriate.

The Smart Cities Stakeholder Platform is responsible for proposing measures such as:

- The development and implementation of programmes promoting technological innovations and demonstrations of low carbon technologies covering various sectors: Foremost Energy, Transport, ICT, but also Water & Waste, etc.
- Promoting the launch of new initiatives to propose to modify public procurement rules, standardisation or regulation, organisational innovation to speed up the deployment of low carbon innovations in cities.
- Exchange of knowledge and best practices and the development of an appropriate monitoring system of the progress of the Smart Cities and Communities EIP and the identified actions towards the objectives of the EIP. This moreover also includes feedback from projects and measures being triggered and funded as a result of the activities of the EIP.

3.3 Work Packages

The tender is structured in five work packages (WPs) which will be implemented in an integrated way during the duration of the contract:

- The objective of **WP 1 (Project and quality management)** is to ensure an effective management of the project and application of a sound quality management system as well as the organisation of various meetings.
- The objective of **WP 2 (Organisation and cooperation)** is to build upon and to expand the stakeholder base under the umbrella of the Smart Cities Stakeholder Platform and facilitate their cooperation with a view of supporting the development of the Smart Cities and Communities. This will also include functioning as a secretariat regarding contacts with the Sherpa and High-Level Group.
- The objective of **WP 3 (Monitoring and knowledge transfer)** is to monitor and analyse the information gathered through monitoring activity, to identify and propose measures which initiate the circle of innovation in cities and ensure the transfer of knowledge
- The objective of **WP 4 (Representation and Communication)** is to provide the Smart Cities Stakeholder Platform with the maximum visibility towards the stakeholders and decision makers, to disseminate the knowledge arising from gathering and analysing information, and to promote the smart cities concept.
- The objective of **WP 5 (Transfer at the end of the contract)** is to provide all the necessary procedures and means to guarantee a smooth transfer of the website of the Smart Cities Stakeholder Platform and the knowledge and know-how gathered during the duration of the contract to the EC or another entity designated by the EC.

WP 1: Project and quality management

The selected tenderer must follow an integrated approach to the overall management of the Smart Cities Stakeholder Platform, ensuring efficient management and coordination of the activities. This shall be done by performing appropriate organisational and logistical tasks while also ensuring a transparent management of all its activities.

The main tasks will include:

- Organisation and management of project meetings;
- Organisation of high-level workshops, meetings (such as an annual workshop to update the European Commission on the latest achievements and developments of the Platform) and conferences (such as Platform sessions or side-events at major EU energy conferences including those prepared by the Covenant of Mayors, and organisation of annual Smart Cities Stakeholder Platform conferences). An appropriate number of such events and all the costs related to them shall be presented in the tender submission, but the scope and contents of the individual event will remain subject to EC approval. Preparation of such events must ensure a strong cooperation with the Technology Platforms of the SET-Plan's European Industrial Initiatives, and other EU initiatives relevant for the Smart Cities EIP (such as the Covenant of Mayors, CONCERTO Premium);
- Moderation of the virtual working groups;
- Regular reporting to the European Commission, including statistics on virtual work;
- Coordination of project and platform activities (The selected tenderer will host the Secretariat of the Platform, providing it with overall coordination and supervision.);
- Regular assessment of the development of the Platform and taking the necessary steps to overcome any problems and to improve the user experience (including anti-spam measures, interface improvements, etc.);
- Maintaining the membership base of the Platform;

The tenders shall include all the tenderer's expenses for the abovementioned meetings and also for any other travels and any other work of the tenderer's staff and/or tenderer's subcontractors needed for providing the deliverables requested by this tender. The tasks attributed to the contractor(s) shall be presented separately in the tenders.

WP 2: Organisation and cooperation

The tenders must include a proposed strategy for establishing and maintaining contacts and good working relationships with a wide range of stakeholders from the EU, Member States and FP7 Associated Countries as well as with the High Level and Sherpa Group of the EIP for Smart Cities and Communities.

The organisational structure of the Smart Cities Stakeholder Platform should be maintained and – where possible and needed – improved. The structure shall continue to identify and analyse innovation measures in a holistic manner (such as the application of low carbon technologies in urban areas and measures to promote mass market uptake of specific urban solutions). The actions shall cover at least the main areas of the EIP for Smart Cities and Communities: Energy, Mobility & Transport and ICT. These actions are – however – not excluding other related areas such as Water & Waste Management. Moreover, the Platform should facilitate the matching and cooperation of cities with an interest to develop common projects in the above mentioned areas.

Furthermore, the tenderer should ensure consistency with the Covenant of Mayors initiative, especially regarding the development of Sustainable Energy Action Plans (concerning requirements, assessment criteria, methodology, etc.).

All the issues relevant for realising the ambition of transforming Europe's cities into Smart Cities shall be tackled. The selected tenderer's approach should allow the identification and development of technical, economic and organisational solutions which can be applied to European cities at large scale. The proposed measures should aim at accelerating the deployment of low carbon technologies by creating frame conditions for reaching a critical mass that would make innovative solutions commercially interesting. To this aim the Platform should enable the key players to come together and also help identifying and tackling the barriers holding back innovative products and services in the city environment. It shall support behavioural changes which bring about greater individual, collective and corporate responsibility for impacts of energy consumption and mobility. Furthermore the "paradox" between more energy intensive (new) products and energy efficiency gains should be addressed.

The main tasks will include:

- Maintenance and further improvement of the platform's structure to make it more transparent and effective, enabling the stakeholders' contribution to the development and implementation of the Smart Cities and Communities EIP;
- Organisation of the platform around the proposed structure. This activity will focus on the maintenance and creation of appropriate bodies (e.g. Working Groups) and involvement of different members/stakeholders which will carry out tasks regarding the development and support for the implementation of the Smart Cities EIP. The selected tenderer will – in cooperation with these bodies (including the chair and secretaries) – develop and regularly update Work Plans presenting the annual tasks and their timelines;
- Creation of - and organisational and secretarial support to - a Member States Group in which a representative of each member state (and associated country) and sector may take part. The selection of members will be defined until the end of the inception phase of the contract at the latest (i.e. at the end of month 3 at the latest);
- Support to the bodies created (e.g. Working Groups) in their implementation of their tasks;
- Secretarial support to the High Level and Sherpa Group of the EIP for Smart Cities and Communities, if this should be needed;
- The Platform should work towards developing appropriate objectives and priority actions for the Smart Cities and Communities EIP, aiming at accelerating the deployment of low carbon technologies, creating the markets and giving the industries and cities a competitive edge while ensuring the high quality of life in the cities. The first element which should be considered is the integration aspect, i.e. an integrated approach to improve mainly the Energy and Transport situation. Different cities might require different needs and actions for example due to different geographical, climatic, organisational, economic conditions;
- To strike the right balance between the subsidiarity principle and the need for EU guidance, it is necessary to combine a bottom-up approach (which lets cities develop the most suitable measures reflecting local specificities) and a top-down approach (which will propose concrete measures to the cities). The platform is expected to propose and provide organisational support for the implementation of actions along the following main categories:
 - Technological innovation to test full scale technology applications;

- Market uptake solutions to speed up the deployment of low carbon innovations in cities;
- Exchange of knowledge and best practices and improving the relevant qualifications.
- As already mentioned the sectors to be covered are Energy, Mobility & Transport, ICT and potentially other related sectors such as Water & Waste Management including their integration aspects:
 - The actions in the Energy sector can be grouped in measures for buildings, energy networks (electricity and heating and cooling), supply technologies (new supply energy technologies) and the management of energy models and flows;
 - As regards the Mobility & Transport sector, the main topics include clean and energy efficient transport solutions, improved public transport and improved interconnections and intermodal transport;
 - Finally, the ICT sector aims at enabling integrated solutions ideally covering the intersections with both Energy and Mobility & Transport to make for true integration of the three sectors. ICT solutions shall aim to provide intelligence to all above mentioned technology sectors from a single system point of view. Data Centres shall also be taken into consideration.

At the same time various market uptake oriented solutions can be looked upon (e.g. city plans and sustainable energy and transport planning, business and financial models, public procurement rules and standards, which support sustainable technologies).

WP 3: Monitoring and knowledge transfer

The technical monitoring of the Smart Cities projects shall be carried out by the forthcoming tender CONCERTO Platinum (in continuation of the data collection and assessment techniques developed in the CONCERTO Premium tender. CONCERTO Platinum (CP) will also be in charge of the technical monitoring, assessment and communication of results of the EeB PPP projects and the CONCERTO projects. It will monitor the building-, ICT-, transport-, energy networks-, technology integration-, as well as social acceptance and economic aspects. In the communication of results and organisation of dissemination events the Smart Cities Stakeholder Platform and CONCERTO Platinum shall coordinate their respective efforts regularly to avoid overlap but to ensure synergies (e.g. in the form of CONCERTO Platinum organised sessions in SCSP events and vice versa, and with regards to content of the respective websites. The SCSP shall, where necessary, support the CP data collection effort.

In knowledge-transfer efforts the SCSP shall also collaborate closely with the other existing and future initiatives (such as the Covenant of Mayors, the Green Digital Charter Europe and the CIVITAS Initiative).

The main tasks will include:

- Identification and development of the approaches which will enable knowledge transfer. This could encompass elements such as auditing measures, typology of the cities, specifications for financing instruments, training needs, etc.
- Support the CONCERTO Platinum tenderer in developing a monitoring system which will enable the monitoring of the impact of the Smart Cities and Communities EIP projects.

WP 4: Representation and Communication

The selected tenderer will carry out communication activities, such as the production of information leaflets, brochures, reports, newsletters and other relevant documents which should be budgeted accordingly in the tender submission. The selected tenderer will ensure the

promotion of actions and facilitate the flow and exchange of information among the stakeholders. A close cooperation with the Covenant of Mayors office and other urban EU initiatives should be established.

The selected tenderer will develop a communication and valorisation campaign which can encompass elements such as publication of advertisements in specialised media, publication in specialised magazines of the articles focusing on Platform's activities, publication of a monthly newsletter (which will be sent to Platform's members, selected EC officials, project partners and other relevant stakeholders) etc.

The selected tenderer will maintain and further improve the platform's website (with view to the mentioned communication among the stakeholders, knowledge sharing, etc). The website shall be further transformed to be the "one-stop" communication platform for the Smart Cities and Communities EIP offering various stakeholders (acting either in their personal or professional capacity) the possibility of exchanging ideas, presenting plans, raising questions and being able to discuss any Smart Cities related issues with the other users of the website. Various interactive tools (such as blogs and discussion forums) are already part of the website and should be further improved where possible and suitable.

The information on the website and in any other published materials shall be provided in English (possibly including web-links to any other websites containing relevant information in any language). Tenderers shall propose in their tenders a cost-effective way of translation of the information published on the Smart Cities Stakeholder Platform's website into other official EU languages by making use of state-of-the-art technology, thus helping users across the EU in understanding the published contents.

The contents published by the selected tenderer must be published impartially and independent of any special interests. The website should not be used for the distribution of interest-based information (besides clearly identified events and news items) or for third-party advertising.

The contents published on the website shall be open to public access and must therefore be subject to the selected tenderer's internal quality control.

The selected tenderer must maintain and update all sections of the website throughout the duration of the contract.

The selected tenderer must ensure that no restrictions based on personal data and/or confidentiality and/or intellectual property rights are to be expected from any third party due to the publication of any data and documents on the website or in any other material produced and publically available. The selected tenderer must fully respect the intellectual property rights. Should the tenderer for providing the deliverables or services under this contract intend to use any data which cannot be published, this must be explicitly mentioned in the tender. While fully respecting the corresponding legislation, the selected tenderer shall actively search out new contacts and interested parties to be included in the distribution lists of the Smart Cities Stakeholder Platform's dissemination products. Subscription and removal from the distribution list shall be easy.

The Smart Cities Stakeholder Platform's website shall be a copyrighted product of the EC.

In general an interrelation with the Covenant of Mayors communication tools system should be considered.

WP 5: Transfer at the end of the contract

The selected tenderer must:

- Produce complete and user friendly documentation on all the procedures and means used in developing, maintaining and updating the Smart Cities Stakeholder Platform's website and
- Provide training and information sessions during the last 6 months of the contract to the EC staff members and/or staff members of other entity designated by the EC, in order to enable them to take over all the Smart Cities Stakeholder Platform's activities after the end of the contract.

At the end of the contract, as part of the transfer, the full contents of the Smart Cities Stakeholder Platform's website (including the latest version of the source codes as written for the Smart Cities Stakeholder Platform's website during the course of the contract) are to be delivered to the EC on DVDs, if requested by the EC staff members and/or staff members of other entity designated by the EC, underlying data structures shall be transferred, too, by the most efficient means in view of ensuring an uninterrupted continuation of the work.

All the costs of all activities related to the abovementioned transfer shall be presented in the tenders.

3.4 Project Deliverables

The execution of the tasks begins after the date on which the contract enters into force.

The implementation of the contract will be monitored through a number of reports (see below), all of them giving a full overview and evaluation of the implementation, use of resources, main achievements, outputs and impacts, as well as any problems encountered and the updated plan of further activities. The Progress Reports and the Interim Technical Report will be reviewed during the meetings held in Brussels between the EC and the selected tenderer. The tenderers should include quantitative targets for monitoring the implementation of the contract, with schedule of submitting them to the EC.

Deliverables other than reports are described in the previous sections of these tender specifications.

Reports	Delivery date (month after the signature of the contract)
Inception Report	3
1 st Progress Report	6
2 nd Progress Report	12
Interim Technical Report	18
3 rd Progress Report	30
Draft Final Technical Report	34
Final Technical Report	36

In principle, the deadlines set out above cannot be extended. The Contractor is deemed solely responsible for delays occasioned by subcontractors or other third parties (except for rare cases of force majeure). Adequate resources and appropriate organisation of the work

including management of potential delays should be put in place in order to observe the timetable above.

The Commission shall have 30 days from receipt to approve or reject any of the above mentioned reports. Within 20 days of receiving the Commission's observations, the Contractor will submit additional information or another report. All reports shall be delivered in English.

In general, the selected tenderer should be able to respond to requests from the EC within 3 working days (or within 3 working days provide justification for a different deadline).

Payments

There will be three payments: a pre-financing after entering into force of the contract, an interim payment after reception and approval of the Interim Technical Report and a final payment after reception and approval of the Final Technical Report. These payments are subject to the conditions specified in the service contract.

Kick-off meeting

At the latest 15 days following the signature of the contract, a kick-off meeting between the selected tenderer and the EC will be held in Brussels. This meeting will ensure that the selected tenderer has a clear understanding of the terms of contract and objectives.

Inception Report

The Inception Report, expected within 3 months after the signature of the contract, will serve as a reference document for the EC and for the selected tenderer during the lifetime of the project. It will contain the detailed management and work programme (including also the communication and dissemination plan as well as proposed structure and content of interim and final technical reports), based on these tender specifications, but will take into account any changes agreed during the finalisation of the contract as well as issues further discussed after the contract signature, in particular during the kick-off meeting. It will clearly present measurable performance indicators and targets based on them, making it possible to objectively estimate the success of the work done under the contract.

Within 3 months after the signature of the contract, an Inception Report shall be submitted, outlining a detailed work plan and elaborating on the proposed methodology. The inception meeting will review the Inception Report. A set of performance indicators, proposed by the selected tenderer, will be agreed with the EC and used at later stages for assessing the outcomes of the Smart Cities Stakeholder Platform.

Progress Reports

The Progress Reports will be submitted to the EC 6, 12 and 30 months after the signature of the contract. They will present a full overview of the progress of the work, together with any deviations and corrective actions taken, giving a complete overview and evaluation of the implementation of the contract (including through measurable performance indicators), main achievements, outputs and impacts, users' feedback as well as any problems encountered and also the updated plan of further activities.

Interim Technical Report

The Interim Technical Report will be submitted to the EC 18 months after the signature of the contract. It will be following the structure of Progress reports, thus present a full overview of the progress of the work, together with any deviations and corrective actions taken, giving a complete overview and evaluation of the implementation of the contract (including through measurable performance indicators), main achievements, outputs and impacts, users' feedback as well as any problems encountered and also the updated plan of further activities. In addition, it will include an annex providing detailed description of the financial resources used under this contract.

Draft Final Technical Report

The draft Final Technical Report, mainly following the structure of the Progress Reports, will be submitted to the EC at the latest 34 months after the signature of the contract.

Final Technical Report

The Final Technical Report, mainly following the structure of the Progress Reports and taking into account the EC's comments on the draft Final Technical Report, must be delivered to the EC by the 15th of the last month of the duration of the contract.

Three copies of the abovementioned inception, progress, interim, draft final and final technical reports shall be submitted to the EC in paper form and one copy in electronic form, either in MS Word or in HTML format. The Final Technical Report shall also be submitted to the EC in PDF format. All copies, both in electronic and in paper form, shall be sent to the EC on the same day.

The quality of the Final Technical Report will be assessed. If the report is judged as non-sufficient the selected tenderer will be required to submit additional information or a new report.

The EC may publish the results of the services provided. For this purpose, the selected tenderer must ensure that the information contained in the abovementioned reports and other materials to be published is not subject to any restrictions deriving from personal data, confidentiality or intellectual property rights of third parties. Should the selected tenderer for providing the deliverables or services under this contract intend to use any data which cannot be published, the selected tenderer can only include such data in a separate annex of the abovementioned reports and must clearly mark this annex's cover page as "confidential annex".

3.5 Duration of the tasks

The duration of the tasks shall not exceed 36 months. This period is calculated in calendar days.

3.6 Place of performance

The tasks will be performed on the Contractor's premises. Meetings between the contractor and the Commission shall be held on Commission premises in Brussels.

3.7 Estimate of the amount of work involved

The amount of work involved to carry out this contract is assessed at 3000 man days.

4 ANNEXES

1. Tenderer 's Identification Form
2. Declaration related to the exclusion criteria and absence of conflict of interest
3. Power of Attorney (mandate in case of joint tender)
4. Draft Contract (attached as separate document)

ANNEX 1

IDENTIFICATION OF THE TENDERER

(Each service provider, including any member of a consortium or grouping and subcontractor(s) whose share of the work is more than 20% of the contract must complete and sign this identification form)

Call for tender ENER/C2/2013-148

Identity	
Name of the tenderer	
Legal status of the tenderer	
Date of registration	
Country of registration	
Registration number	
VAT number	
Description of statutory social security cover (at the level of the Member State of origin) and non-statutory cover (supplementary professional indemnity insurance) ⁵	
Address	
Address of registered office of tenderer	
Where appropriate, administrative address of tenderer for the purposes of this invitation to tender	
Contact Person	
Surname: First name: Title (e.g. Dr, Mr, Ms) : Position (e.g. manager): Telephone number:	

⁵ For natural persons

Fax number: E-mail address:	
Legal Representatives	
Names and function of legal representatives and of other representatives of the tenderer who are authorised to sign contracts with third parties	
Declaration by an authorised representative of the organisation⁶ I, the undersigned, certify that the information given in this tender is correct and that the tender is valid.	
Surname: First name:	Signature:

⁶ This person must be included in the list of legal representatives; otherwise the signature on the tender will be invalidated.

ANNEX 2

Declaration of honour on exclusion criteria and absence of conflict of interest

(Complete or delete the parts in yellow italics in parentheses)

[Choose options for parts in grey between square brackets]

The undersigned *(insert name of the signatory of this form)*:

in [his][her] own name *(for a natural person)*

or

representing the following legal person: *(only if the economic operator is a legal person)*

full official name:

official legal form:

full official address:

VAT registration number:

➤ declares that [the above-mentioned legal person][he][she] is not in one of the following situations:

- a) is bankrupt or 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;
- b) has been convicted of an offence concerning professional conduct by a judgment of a competent authority of a Member State which has the force of *res judicata*;
- c) has been guilty of grave professional misconduct proven by any means which the contracting authorities can justify including by decisions of the European Investment Bank and international organisations;
- d) is not in compliance with all its obligations relating to the payment of social security contributions and the payment of taxes in accordance with the legal provisions of the country in which it is established, with those of the country of the contracting authority and those of the country where the contract is to be performed;
- e) has been the subject of a judgement which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation, money laundering or any other illegal activity, where such activity is detrimental to the Union's financial interests;
- f) is a subject of an administrative penalty for being guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in a procurement procedure or failing to supply this information, or having been declared to be in serious breach of its obligations under contracts covered by the Union's budget.

➤ *(Only for legal persons other than Member States and local authorities, otherwise delete)* declares that the natural persons with power of representation, decision-

making or control⁷ over the above-mentioned legal entity are not in the situations referred to in b) and e) above;

- declares that [the above-mentioned legal person][he][she]:
- g) has no conflict of interest in connection with the contract; a conflict of interest could arise in particular as a result of economic interests, political or national affinity, family, emotional life or any other shared interest;
- h) will inform the contracting authority, without delay, of any situation considered a conflict of interest or which could give rise to a conflict of interest;
- i) has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept any advantage, financial or in kind, to or from any party whatsoever, where such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, inasmuch as it is an incentive or reward relating to award of the contract;
- j) provided accurate, sincere and complete information to the contracting authority within the context of this procurement procedure ;
- acknowledges that [the above-mentioned legal person][he][she] may be subject to administrative and financial penalties⁸ if any of the declarations or information provided prove to be false.

In case of award of contract, the following evidence shall be provided upon request and within the time limit set by the contracting authority:

For situations described in (a), (b) and (e), production of a recent extract from the judicial record is required or, failing that, a recent equivalent document issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied. Where the tenderer is a legal person and the national legislation of the country in which the tenderer is established does not allow the provision of such documents for legal persons, the documents should be provided for natural persons, such as the company directors or any person with powers of representation, decision making or control in relation to the tenderer.

For the situation described in point (d) above, recent certificates or letters issued by the competent authorities of the State concerned are required. These documents must provide evidence covering all taxes and social security contributions for which the tenderer is liable, including for example, VAT, income tax (natural persons only), company tax (legal persons only) and social security contributions.

For any of the situations (a), (b), (d) or (e), where any document described in two paragraphs above is not issued in the country concerned, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.

⁷ This covers the company directors, members of the management or supervisory bodies, and cases where one natural person holds a majority of shares.

⁸ As provided for in Article 109 of the Financial Regulation (EU, Euratom) 966/2012 and Article 145 of the Rules of Application of the Financial Regulation

If the tenderer is a legal person, information on the natural persons with power of representation, decision making or control over the legal person shall be provided only upon request by the contracting authority.

Full name

Date

Signature

ANNEX 3
POWER OF ATTORNEY

Mandating one of the partners in a joint tender as lead partner and lead contractor⁹

The undersigned:

– Signatory (Name, Function, Company, Registered address, VAT Number)

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

HEREBY AGREES TO THE FOLLOWING:

- 1) To submit a tender as a partner in the group of partners constituted by Company 1, Company 2, Company N, and led by Company X, in accordance with the conditions specified in the tender specifications and the terms specified in the tender to which this power of attorney is attached.
- 2) If the European Commission awards the Contract to the group of partners constituted by Company 1, Company 2, Company N, and led by Company X on the basis of the joint tender to which this power of attorney is attached, all the partners shall be co-signatories of the Contract in accordance with the following conditions:
 - (a) All partners shall be jointly and severally liable towards the European Commission for the performance of the Contract.
 - (b) All partners shall comply with the terms and conditions of the Contract and ensure the proper delivery of their respective share of the services and/or supplies subject to the Contract.
- 1) Payments by the European Commission related to the services and/or supplies subject to the Contract shall be made through the lead partner's bank account: [Provide details on bank, address, account number].
- 2) The partners grant to the lead partner all the necessary powers to act on their behalf in the submission of the tender and conclusion of the Contract, including:
 - (a) The lead partner shall submit the tender on behalf of the group of partners.
 - (b) The lead partner shall sign any contractual documents — including the Contract, and Amendments thereto — and issue any invoices related to the Services on behalf of the group of partners.
 - (c) The lead partner shall act as a single contact point with the European Commission in the delivery of the services and/or supplies subject to the Contract. It shall co-ordinate the delivery of the services and/or supplies by the group of partners to the European Commission, and shall see to a proper administration of the Contract.

Any modification to the present power of attorney shall be subject to the European Commission's express approval. This power of attorney shall expire when all the contractual obligations of the group of partners towards the European Commission for the delivery of the services and/or supplies subject to the Contract have ceased to exist. The parties cannot terminate it before that date without the Commission's consent.

Signed in on [dd/mm/yyyy]

Place and date:

Name (in capital letters), function, company and signature:

⁹ To be filled in and signed by each of the partners in a joint tender, except the lead partner;

ANNEX 4
DRAFT CONTRACT

(see next page)



SERVICE CONTRACT

CONTRACT NUMBER ENER/C2/2013-148

The European Union (hereinafter referred to as "the Union"), represented by the European Commission (hereinafter referred to as "the contracting authority"), which is represented for the purposes of the signature of this contract by Mrs Marie Donnelly, Director in the Directorate-General for Energy, Directorate C - Renewables, Research and Innovation, Energy Efficiency,

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 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 contracting authority for the performance of this contract.]

on the other part,

HAVE AGREED

to the **special conditions**, the **general conditions for service contracts** 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*])

[*Other annexes*]

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

- The terms set out in the special conditions shall take precedence over those in the other parts of the contract.
- The terms set out in the general conditions shall take precedence over those in the annexes.
- The terms set out in the tender specifications (Annex I) shall take precedence over those in the tender (Annex II).

I – SPECIAL CONDITIONS

ARTICLE I.1 – SUBJECT MATTER

I.1.1 The subject of the contract is the continuation and further development of the Smart Cities Stakeholder Platform in order to support the further development and implementation of the Smart Cities and Communities EIP during the first three years of the implementation of the EIP's Strategic implementation plan and the upcoming next framework programme – Horizon 2020 – as well as inputs for other funding programmes at EU, national, regional and local levels in the EU.

For this purpose, the contractor will continue to identify, to gather and to organise the various stakeholders relevant for the implementation of the Smart Cities and Communities EIP in the Stakeholder Platform. The contractor provider will primarily also give support to the European Commission for the implementation of the European Innovation Partnership for Smart Cities and Communities in terms of secretarial support to the High Level Group and the Sherpa Group of the EIP. The contractor will also provide organisational and secretarial support for the (to be created) member states representatives' group.

I.1.2 The contractor shall execute the tasks assigned to it in accordance with the tender specifications annexed to the contract (Annex I).

ARTICLE I.2 – ENTRY INTO FORCE AND DURATION

I.2.1 The contract shall enter into force on the date on which it is signed by the last party.

I.2.2 Under no circumstances may performance commence before the date on which the contract enters into force.

I.2.3 The duration of the execution of the tasks shall not exceed 36 months. Unless otherwise specified, all periods specified in the contract are calculated in calendar days. Execution of the tasks shall start from the date of entry into force of the contract.

The period of execution of the task may be extended only in exceptional and duly justified cases and with express written agreement of the parties. If the request for extension is made by the contractor, he must send it to the contracting authority in good time before it is due to take effect and at all events one month before the period of the execution of the tasks elapses, except in cases duly substantiated by the contractor and accepted by the contracting authority.

ARTICLE I.3 –PRICE

I.3.1 The maximum total amount to be paid by the contracting authority under the contract shall be EUR [*amount in figures and in words*] covering all tasks executed.

ARTICLE I.4 – PAYMENT ARRANGEMENTS

I.4.1 Pre-financing

Following signature of the contract by the last party and its receipt by the contracting authority, a pre-financing payment of EUR [*amount in figures and in words*] equal to 30%

of the total amount referred to in Article I.3.1 shall be made within 30 days of the receipt of an invoice. The contracting authority may refuse to make payments where the award procedure or the performance of the contract proof to have been subject to substantial errors, irregularities or fraud attributable to the contractor.

I.4.2 Interim payment

The contractor shall submit an invoice for an interim payment of EUR [*amount in figures and in words*] equal to 40% of the total amount referred to in Article I.3.1.

Invoices for interim payment shall be accompanied by a progress report or any other document in accordance with the tender specifications. The contracting authority shall make the payment within 90 days from receipt of the invoice. The contractor shall have 20 days in which to submit additional information or corrections or a new progress report or documents if required by the contracting authority.

I.4.3 Payment of the balance

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

The invoice shall be accompanied by a final progress report or/and any other document in accordance with the tender specifications. The contracting authority shall make the payment within 90 days from receipt of the invoice. The contractor shall have 20 days in which to submit additional information or corrections, a new final progress report or other documents if it is required by the contracting authority.

Where VAT is due in Belgium, the provisions of the 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.

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."

ARTICLE I.5 – BANK ACCOUNT

Payments shall be made to the contractor's bank account denominated in [euro][*insert local currency where the receiving country does not allow transactions in EUR*], identified as follows:

- Name of bank:
- Full address of branch:
- Exact designation of account holder:
- Full account number including [bank] codes:
[IBAN code:]

ARTICLE I.6 – COMMUNICATION DETAILS AND DATA CONTROLLER

For the purpose of Article II.6, the data controller shall be the Director of the Shared Resources Directorate.

Communications shall be sent to the following addresses:

Contracting authority:
European Commission
Directorate-General [*complete*]
[Directorate [*complete*]]
[Unit [*complete*]]
[*Postcode and city*]
Email: [*insert functional mailbox*]

Contractor:
[*Ms/Mr/Mrs*]
[*Function*]
[*Company name*]
[*Full official address*]
Email: [*complete*]

ARTICLE I.7 – APPLICABLE LAW AND SETTLEMENT OF DISPUTES

- I.7.1.** The contract shall be governed by Union law, complemented, where necessary, by the law of Belgium.
- I.7.2.** Any dispute between the parties in relation to the interpretation, application or validity of the contract which cannot be settled amicably shall be brought before the courts of Brussels.

ARTICLE I.8 - EXPLOITATION OF THE RESULTS OF THE CONTRACT

I.8.1 Modes of exploitation

In accordance with Article II.10.2 whereby the Union 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 contracting authority
 - (ii) making available to the persons and entities working for the contracting authority 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 contracting authority or by a third party in the name of the contracting authority:
- (i) shortening
 - (ii) summarizing
 - (iii) modifying of the content
 - (iv) making technical changes to the content:
 - necessary correction of technical errors
 - adding new parts or functionalities
 - changing functionalities
 - providing third parties with additional information concerning the result (e.g. source code) with a view of making modifications
 - (v) addition of new elements, paragraphs titles, leads, bolds, legend, table of content, summary, graphics, subtitles, sound, etc.
 - (vi) preparation in audio form, preparation as a presentation, animation, pictograms story, slide-show, public presentation etc.
 - (vii) extracting a part or dividing into parts
 - (viii) use of a concept or preparation of a derivate work
 - (ix) digitisation or converting the format for storage or usage purposes
 - (x) modifying dimensions
 - (xi) translating, inserting subtitles, dubbing in different language versions:
 - all official languages of EU
- (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 (c) to third parties.

Where the contracting authority becomes aware that the scope of modifications exceeds that envisaged in the contract the contracting authority 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 contracting authority 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 Union in accordance with Article II.10.3.

The contractor shall provide to the contracting authority 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 A and third parties' statements prepared in accordance with Annex 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 the contract by formally notifying the other party by giving [one month's] notice. Should the contracting authority terminate the contract, the contractor shall only be entitled to payment corresponding to part-performance of the contract before the termination date. The first paragraph of Article II.14.3 shall apply.

SIGNATURES

For the contractor,

For the contracting authority,

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

[*forename/surname/function*]

signature[s]: _____

signature[s]: _____

Done at [Brussels], [date]

Done at [Brussels], [date]

In duplicate in English.

II – GENERAL CONDITIONS FOR SERVICE CONTRACTS

ARTICLE II.1 – PERFORMANCE OF THE CONTRACT

- II.1.1** The contractor shall perform the contract 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 contract under the laws and regulations in force at the place where the tasks assigned to it are to be executed.
- II.1.3** Without prejudice to Article II.4 any reference made to the contractor's personnel in the contract shall relate exclusively to individuals involved in the performance of the contract.
- II.1.4** The contractor must ensure that the personnel performing the contract possesses the professional qualifications and experience required for the execution of the tasks assigned to it.
- II.1.5** The contractor shall neither represent the contracting authority nor behave in any way that would give such an impression. The contractor shall inform third parties that it does not belong to the European public service.
- II.1.6** The contractor shall be solely responsible for the personnel who executes the tasks assigned to the contractor.

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

- (a) personnel executing the tasks assigned to the contractor may not be given orders directly by the contracting authority;
 - (b) the contracting authority may not under any circumstances be considered to be the employer of the personnel referred to in point (a) and the personnel shall undertake not to invoke against the contracting authority any right arising from the contractual relationship between the contracting authority and the contractor.
- II.1.7** In the event of disruption resulting from the action of one of the contractor's personnel working on the contracting authority's premises or in the event that the expertise of a member of the contractor's personnel fails to correspond to the profile required by the contract, the contractor shall replace him without delay. The contracting authority shall have the right to make a reasoned request for the replacement of any such personnel. The replacement personnel must have the necessary qualifications and be capable of performing the contract under the same contractual conditions. The contractor shall be responsible for any delay in the execution of the tasks assigned to it resulting from the replacement of personnel.
- II.1.8** Should the execution of the tasks be directly or indirectly hampered, either partially or totally, by any unforeseen event, action or omission, the contractor shall immediately and on its own initiative record it and report it to the contracting authority. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the contractor to ensure full compliance with its obligations under this contract. 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 contract, the contracting authority may - without prejudice to its right to terminate the contract - reduce or recover payments in proportion to the scale of the unperformed obligations. In addition, the contracting authority may claim compensation or impose liquidated damages in accordance with Article II.12.

ARTICLE II.2 – MEANS OF COMMUNICATION

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

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

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

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

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

ARTICLE II.3 – LIABILITY

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

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

II.3.3 The contractor shall be held liable for any loss or damage sustained by the contracting authority in performance of the contract, 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 contract. Nevertheless, if the damage or loss is caused by the gross negligence or wilful misconduct of the contractor or of its personnel or subcontractors, the contractor shall have unlimited liability for the amount of the damage or loss.

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

shall assist the contracting authority. Such expenditure incurred by the contractor may be borne by the contracting authority.

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

ARTICLE II.4 - CONFLICT OF INTEREST

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

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

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

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

ARTICLE II.5 – CONFIDENTIALITY

II.5.1 The contracting authority and the contractor shall treat with confidentiality any information and documents, in any form, disclosed in writing or orally in relation to the performance of the contract 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 contract without prior written agreement of the contracting authority;
- (b) ensure the protection of such confidential information and documents with the same level of protection it uses to protect its own confidential information, but in no case any less than reasonable care;
- (c) not disclose directly or indirectly confidential information and documents to third parties without prior written agreement of the contracting authority.

II.5.2 The confidentiality obligation set out in Article II.5.1 shall be binding on the contracting authority and the contractor during the performance of the contract 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 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 contract 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 contract 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 contract 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 its personnel access to the data to the extent strictly necessary for the performance, management and monitoring of the contract.

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

- (a) prevent any unauthorised person from gaining access to computer systems processing personal data, and especially:
 - (i) unauthorised reading, copying, alteration or removal of storage media;
 - (ii) unauthorised data input, as well as any unauthorised disclosure, alteration or erasure of stored personal data;
 - (iii) unauthorised use of data-processing systems by means of data transmission facilities;
- (b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;

- (c) record which personal data have been communicated, when and to whom;
- (d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting authority;
- (e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
- (f) design its organisational structure in such a way that it meets data protection requirements.

ARTICLE II.7 – SUBCONTRACTING

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

ARTICLE II.8 – AMENDMENTS

- II.8.1** Any amendment to the contract shall be made in writing before fulfilment of any new contractual obligations and in any case before the date of payment of the balance.
- II.8.2** The amendment may not have the purpose or the effect of making changes to the contract which might call into question the decision awarding the contract or result in unequal treatment of tenderers.

ARTICLE II.9 – ASSIGNMENT

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

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

II.10.1 Definitions

In this contract the following definitions apply:

- (1) 'results' means any intended outcome of the performance of the contract which is delivered and finally accepted by the contracting authority.
- (2) 'creator' means any natural person who contributed to the production of the result and includes personnel of the contracting authority or a third party.

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

II.10.2 Ownership of the results

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

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

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

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

II.10.3 Licensing of pre-existing rights

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

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

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

II.10.4 Modes of exploitation

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

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

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

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

use envisaged by the contracting authority. This does not concern the moral rights of natural persons.

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

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

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

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

The evidence shall include, as appropriate:

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

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

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

II.10.6 Creators

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

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

II.10.7 Persons appearing in photographs or films

If natural, recognisable persons appear in a result or their voice is recorded the contractor shall submit a statement of these persons (or of the persons exercising parental authority in case of minors) where they give their permission for the described use of their image or voice on request by the contracting authority. This does not apply to persons whose

permission is not required in line with the law of the country where photographs were taken, films shot or audio records made.

II.10.8 Copyright for pre-existing rights

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

II.10.9 Visibility of Union funding and disclaimer

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

ARTICLE II.11 – FORCE MAJEURE

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

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

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

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

ARTICLE II.12 – LIQUIDATED DAMAGES

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

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

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

V is the amount specified in Article I.3.1;

d is the duration specified in Article I.2.3 expressed in calendar days.

The contractor may submit arguments against this decision within 30 days of receipt of the formal notification. In the absence of a reaction on its part or of written withdrawal by the

contracting authority within 30 days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable.

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

ARTICLE II.13 – SUSPENSION OF THE PERFORMANCE OF THE CONTRACT

II.13.1 Suspension by the contractor

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

Once the circumstances allow resuming performance, the contractor shall inform the contracting authority immediately, unless the contracting authority has already terminated the contract.

II.13.2 Suspension by the contracting authority

The contracting authority may suspend the performance of the contract or any part thereof:

- (a) if the contract award procedure or the performance of the contract 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 provided in the notification. The contracting authority shall give notice as soon as possible to the contractor to resume the service suspended or inform the contractor that it is proceeding with the termination of the contract. The contractor shall not be entitled to claim compensation on account of suspension of the contract or of part thereof.

ARTICLE II.14 – TERMINATION OF THE CONTRACT

II.14.1 Grounds for termination

The contracting authority may terminate the contract 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 contract substantially or calls into question the decision to award the contract;
- (b) if execution of the tasks has not actually commenced within three months of the date foreseen, and the new date proposed, if any, is considered unacceptable by the contracting authority, taking into account Article II.8.2;
- (c) if the contractor does not perform the contract as established in the tender specifications or fails to fulfil another substantial contractual obligation;
- (d) in the event of force majeure notified in accordance with Article II.11 or if the performance of the 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 contract might call into

question the decision awarding the contract or result in unequal treatment of tenderers;

- (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 contract or those of the country where the contract is to be performed;
- (h) if the contracting authority has evidence that the contractor or natural persons with the power to represent it or take decisions on its behalf have committed fraud, corruption, or are involved in a criminal organisation, money laundering or any other illegal activity detrimental to the Union's financial interests;
- (i) if the contracting authority has evidence that the contractor or 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 contract, 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 contract.

II.14.2 Procedure for termination

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

If the contracting authority does not confirm acceptance of these observations by giving written approval within 30 days of receipt, the termination procedure shall proceed. In any case of termination the contracting authority shall formally notify the contractor about its decision to terminate the contract. In the cases referred to in points (a), (b), (c), (e), (g) and (j) 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 for the tasks already executed on the date of termination and produce an

invoice if necessary. The contracting authority may recover any amounts paid under the contract.

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

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

ARTICLE II.15 – REPORTING AND PAYMENTS

II.15.1 Date of payment

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

II.15.2 Currency

The contract shall be in euros.

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

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

II.15.3 Costs of transfer

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

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

II.15.4 Invoices and Value Added Tax

Invoices shall contain the contractor's identification, the amount, the currency and the date, as well as the contract reference.

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

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

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

II.15.5 Pre-financing and performance guarantees

Pre-financing guarantees shall remain in force until the pre-financing is cleared against interim payments or payment of the balance and, in case the latter takes the form of a debit

note, three months after the debit note is notified to the contractor. The contracting authority shall release the guarantee within the following month.

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

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

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

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

II.15.6 Interim payments and payment of the balance

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

The contractor shall submit an invoice for payment of the balance within 60 days following the end of the period referred to in Article I.2.3, accompanied by a final progress report or any other documents provided for in for in Article I.4 or in the tender specifications.

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

Payment of the balance may take the form of recovery.

II.15.7 Suspension of the time allowed for payment

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

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

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

Where the payment periods have been suspended following rejection of a document referred to in the first paragraph and the new document produced is also rejected, the

contracting authority reserves the right to terminate the 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 periods in accordance with Article II.15.7 may not be considered as a late payment.

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

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

ARTICLE II.16 - REIMBURSEMENTS

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

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

II.16.3 Travel expenses shall be reimbursed as follows:

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

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

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

- (a) for journeys of less than 200 km for a return trip, no subsistence allowance shall be payable;
- (b) daily subsistence allowance shall be payable only on receipt of supporting documents proving that the person concerned was present at the destination;
- (c) daily subsistence allowance shall take the form of a flat-rate payment to cover all subsistence expenses, including meals, local transport which includes transport to and from the airport or station, insurance and sundries;

- (d) daily subsistence allowance shall be reimbursed at the flat rates specified in Article I.3;
- e) accommodation shall be reimbursed on receipt of supporting documents proving the necessary overnight stay at the destination, up to the flat-rate ceilings specified in Article I.3.

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

II.16.6 Conversion between the euro and another currency shall be made as specified in Article II.5.2.

ARTICLE II.17 – RECOVERY

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

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

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

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

ARTICLE II.18 – CHECKS AND AUDITS

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

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

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

II.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 payment of the balance.

II.18.3 The contractor shall allow the contracting authority's staff and outside personnel authorised by the contracting authority the appropriate right of access to sites and premises where the contract is performed and to all the information, including information in electronic format, needed in order to conduct such checks and audits. The contractor shall ensure that the information is readily available at the

moment of the check or audit and, if so requested, that information be handed over in an appropriate form.

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

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

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

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

[Optional]

Annex 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 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

Annex B Statement of creator / intermediary in delivery

of the [*title of the result*]

within the 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 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.]¹⁰

Date, place, signature

¹⁰ Necessary for creators