



FRAMEWORK CONTRACT FOR SERVICES

NUMBER SDA/CfT/2019/01/CFS

concerning services in issuing

Certificates on Financial Statements

for the SDA AISBL

1. The SESAR Deployment Alliance Association Internationale Sans But Lucratif ('the SDA AISBL'), represented for the purposes of the signature of this contract by Mr. Nicolas WARINSKO in his capacity of General Manager (hereinafter referred to as "the SDA AISBL"),

on the one part, and

2. [Full official name]

[Official legal form]

[Statutory registration number or ID or passport number]

[Full official address]

[VAT registration number]

[appointed as the leader of the group by the members of the group that submitted the joint tender]

[for joint tenders, repeat these data as many times as there are contractors and continue numbering]

[(collectively) 'the contractor'], represented for the purposes of the signature of this framework contract by [forename, surname, function of legal representative and name of company in the case of a joint tender],

on the other part,

HAVE AGREED

to the **special conditions**, the **general conditions for framework contracts** for services 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])
- Annex III** Model for specific contracts
- Annex IV** Model Terms of Reference for PSA SGAs
- Annex V** Model Terms of Reference for IP SGAs
- Annex VI** Letter of Representation
- Annex VII** Declaration on the list of pre-existing rights

which form an integral part of this framework contract ('the FWC').

This FWC sets out:

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

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

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I. SPECIAL CONDITIONS

I.1. ORDER OF PRIORITY OF PROVISIONS

If there is any conflict between different provisions in this FWC, the following rules must be applied:

- (a) The provisions set out in the special conditions take precedence over those in the other parts of the FWC.
- (b) The provisions set out in the general conditions take precedence over those in the *specific contract* (Annex III)
- (c) The provisions set out in the specific contract (Annex III) take precedence over those in the other annexes.
- (d) The provisions set out in the tender specifications (Annex I) take precedence over those in the tender (Annex II).
- (e) The provisions set out in the FWC take precedence over those in the specific contracts.

I.2. SUBJECT MATTER

The subject matter of the FWC is **the provision of services in issuing Certificates on Financial Statements for the SDA AISBL.**

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

- I.3.1** The FWC enters into force on the date on which the last party signs it.
- I.3.2** The implementation of the FWC cannot start before its entry into force.
- I.3.3** The FWC is concluded for a period of **12 months** with effect from the date of its entry into force.
- I.3.4** The parties must sign any specific contract before the FWC expires.

The FWC continues to apply to such specific contracts after its expiry. The services relating to such specific contracts must be performed no later than six months after the expiry of the FWC.

I.3.5 Renewal of the FWC

The FWC is renewed automatically up to **3 times** for **12 months each**, unless one of the parties receives *formal notification* to the contrary at least **3 months** before the end of the ongoing duration. Renewal does not change or postpone any existing obligations.

I.4. APPOINTMENT OF THE CONTRACTOR AND IMPLEMENTATION OF THE FWC

I.4.1. Appointment of the contractor

The SDA AISBL appoints the contractor for a FWC.

I.4.2. Period of provision of the services

The period for the provision of the services starts to run from the date on which the specific contract is signed by the last party.

I.4.3. Implementation of multiple FWC

The FWC is implemented as follows: the SDA AISBL orders services by sending a specific contract by e-mail to the contractor.

Within 10 working days, the contractor must either:

- (a) send the specific contract back to the SDA AISBL signed and dated; or
- (b) send an explanation of why it cannot accept the order.

If the contractor does not accept the order or fails to observe the deadline or if it is in a situation of conflicting interests that may negatively affect the performance of the specific contract (see Article II.7), the SDA AISBL may place the order with the next contractor on the cascade.

If the contractor repeatedly refuses to sign specific contracts or repeatedly fails to send them back on time, the contractor may be considered in breach of its obligations under this FWC as set out in Article II.18.1 (c).

I.5. PRICES

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

The maximum amount covering all purchases under this FWC, including all renewals is **EUR xxxx (xxxx euros)**. However, this does not bind the SDA AISBL to purchase for the maximum amount.

The maximum unit prices of individual audit assignments are as listed in Annex II.

I.5.2. Price revision index

Price revision is not applicable to this FWC.

I.5.3. Reimbursement of expenses

Reimbursement of expenses is not applicable to this FWC.

I.6. PAYMENT ARRANGEMENTS

I.6.1 Pre-financing

Pre-financing is not applicable to this FWC.

I.6.2 Interim payment

1. The contractor (or leader in the case of a joint tender) may claim an interim payment equal to 75% of the price referred to in the relevant specific contract in accordance with Article II.21.6.

The interim payment may only be claimed once all Certificates on the Financial Statements have been received by the SDA AISBL together with corresponding Financial Statements signed by respective Partners.

The contractor (or leader in the case of a joint tender) must send an invoice in paper format (with a copy by e-mail) for the interim payment as provided for in the tender specifications. The

invoice shall include the contractor's identification, including VAT number, the amount, the currency and the date, as well as the contract reference.

2. The SDA AISBL must approve any submitted documents or deliverables and pay within 60 days from receipt of the invoice.
3. If the SDA AISBL has observations to make, it must send them to the contractor (or leader in case of a joint tender) and suspend the time limit for payment in accordance with Article II.21.7. The contractor (or leader in case of a joint tender) has 10 days to submit additional information or corrections if the SDA AISBL requires it.
4. The SDA AISBL must give its approval and pay within the remainder of the time-limit indicated in point (2) unless it rejects partially or fully the submitted documents or deliverables.

I.6.3 Payment of the balance

1. The contractor (or leader in the case of a joint tender) may claim the payment of the balance in accordance with Article II.21.6.

The final payment may only be claimed once all final Certificates on the Financial Statements have been received by the SDA AISBL and all clarification requests have been addressed.

The contractor (or leader in the case of a joint tender) must send an invoice in paper format for payment of the balance due under a specific contract, as provided for in the tender specifications. The invoice shall include the contractor's identification, the amount, the currency and the date, as well as the contract reference. The invoice must be accompanied by the following:

- a list of all pre-existing rights to the results or parts of the results (Annex VII) or a declaration stating that there are no such pre-existing rights, as provided for in Article II.13.4.
2. The SDA AISBL must approve the submitted documents or deliverables and pay within 60 days from receipt of the invoice.
 3. If the SDA AISBL has observations to make, it must send them to the contractor (or leader in the case of a joint tender) and suspend the time limit for payment in accordance with Article II.21.7.

The contractor (or leader in the case of a joint tender) has 10 days to submit additional information or corrections or a new version of the documents if the SDA AISBL requires it.

4. The SDA AISBL must give its approval and pay within the remainder of the time-limit indicated in point (2.) unless it rejects partially or fully the services provided.

I.6.4 Performance guarantee

Performance guarantee is not applicable to this FWC.

I.6.5 Retention money guarantee

Retention money guarantee is not applicable to this FWC.

I.7. BANK ACCOUNT

Payments must be made to the contractor's (or leader's in the case of a joint tender) bank account denominated in [euro] [insert local currency where the receiving country does not allow transactions in EUR], identified as follows:

Name of bank: [complete]
Full address of branch: [complete]
Exact designation of account holder: [complete]
Full account number including codes: [complete]
IBAN¹ code: [complete]

I.8. COMMUNICATION DETAILS

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

SDA AISBL:

For technical issues²:

Mr. Marcel SOBOTTKA
Chief Finance, Partnerships and Corporate Services
SDA AISBL
Avenue de Cortenbergh, 100
B-1000 Brussels
[\[mailbox\]](#)

For financial issues:

Mr. Mark HASELWOOD
Senior Financial Controller
SDA AISBL
Avenue de Cortenbergh, 100
B-1000 Brussels
[\[mailbox\]](#)

For administrative issues:

SDA AISBL
Avenue de Cortenbergh, 100
B-1000 Brussels
[\[mailbox\]](#)

Contractor:

Mr/Mrs/Ms [complete]
[Function]
[Company name]
[Official address in full]
[Telephone, fax]
[E-mail address]

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

² Issues related to provision of services as described in technical specifications

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

I.9. DATA CONTROLLER

For the purpose of Article II.9, the data controller is the Chief Finance, Partnership Management and Corporate Services of the SDA AISBL.

I.10. EXPLOITATION OF THE RESULTS OF THE FWC

I.10.1. Detailed list of modes of exploitation of the results

In accordance with Article II.13.1 whereby the SDA AISBL acquires ownership of the results as defined in this FWC, including the tender specifications, these results may be used for any of the following modes of exploitation:

- (a) use for its own purposes:
 - making available to the staff of the SDA AISBL;
 - making available to the persons and entities working for the SDA AISBL or cooperating with it, including contractors, subcontractors whether legal or natural persons, Union institutions, agencies and bodies, Member States' institutions;
 - installing, uploading, processing;
 - arranging, compiling, combining, retrieving;
 - copying, reproducing in whole or in part and in unlimited number of copies.

The modes of exploitation may be defined in more details in the specific contract.

I.10.2. Licence or transfer of pre-existing rights

All pre-existing rights incorporated in the results, if any, are licensed to the SDA AISBL as set out in Article II.13.2.

I.10.3. Provision of list of pre-existing rights and documentary evidence

The contractor must provide the SDA AISBL with a list of pre-existing rights (Annex VII) as set out in Article II.13.4 together with the invoice for payment of the balance at the latest.

I.11. TERMINATION BY EITHER PARTY

Either party may terminate the FWC and/or the FWC and specific contracts by sending formal notification to the other party with 3 months written notice.

If the FWC or a specific contract is terminated:

- (a) neither party is entitled to compensation;
- (b) the contractor is entitled to payment only for the services provided before termination takes effect.

The second, third and fourth paragraphs of Article II.18.4 apply.

I.12. APPLICABLE LAW AND SETTLEMENT OF DISPUTES

- I.12.1** The FWC is governed by Belgian law, complemented, where necessary, by the provisions set-out in the Framework Partnership Agreement (FPA) and the Specific Grant Agreements (SGAs).
- I.12.2** The courts of Brussels have exclusive jurisdiction over any dispute regarding the interpretation, application or validity of the FWC.

I.13. OTHER SPECIAL CONDITIONS

Damages in the event of failure to perform contractual obligations within the time limits set

Should the contractor fail to perform his obligations under the contract within the time limits set, then, without prejudice to the contractor's actual or potential liability incurred in relation to the contract, the SDA AISBL may decide to impose damages for each calendar day of delay as set out in Article II.15.

The contractor may submit arguments against this decision within thirty days of notification by registered letter with acknowledgment of receipt or equivalent. In the absence of any reaction on his part, or of written withdrawal by the SDA AISBL within thirty days of the receipt of such arguments, the decision imposing damages shall become enforceable. Damages shall not be imposed where there is provision for interest for late completion. The SDA AISBL and the contractor expressly acknowledge that any sums payable under this Article are in the nature of damages and not penalties, and represent reasonable compensation for the losses that may be caused by such failure to perform obligations.

SIGNATURES

For the contractor,

[Company name/forename/surname/position]

Signature[s]: _____

Done at [place], [date]

For the SDA AISBL,

Nicolas WARINSKO

Signature[s]: _____

Done at [place], [date]

In duplicate in English.

II. GENERAL CONDITIONS FOR THE FRAMEWORK CONTRACT FOR SERVICES

II.1. DEFINITIONS

For the purpose of this FWC, the following definitions apply:

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

‘Confidential information or document’: any information or document received by either party from the other or accessed by either party in the context of the implementation of the FWC, that any of the parties has identified in writing as confidential. It may not include information that is publicly available;

‘Conflict of interest’: a situation where the impartial and objective implementation of the FWC by the contractor is compromised for reasons involving family, emotional life, political or national affinity, economic interest, or any other shared interest with the SDA AISBL or any third party related to the subject matter of the FWC;

‘Creator’: means any natural person who contributes to the production of the result;

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

‘Force majeure’: any unforeseeable, exceptional situation or event beyond the control of the parties that prevents either of them from fulfilling any of their obligations under the FWC. The situation or event must not be attributable to error or negligence on the part of the parties or on the part of the subcontractors and must prove to be inevitable despite their exercising due diligence. Defaults of service, defects in equipment or material or delays in making them available, labour disputes, strikes and financial difficulties may not be invoked as force majeure, unless they stem directly from a relevant case of force majeure;

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

‘Fraud’: any intentional act or omission affecting the SDA AISBL’s financial interests relating to the use or presentation of false, incorrect or incomplete statements or documents or to non-disclosure of information in violation of a specific obligation;

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

‘Irregularity’: any infringement of a provision of Belgian law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the SDA AISBL budget.

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

‘Order form’: a simplified form of specific contract by which the SDA AISBL orders services under this FWC;

‘Performance of a specific contract’: the execution of tasks and delivery of the purchased services by the contractor to the SDA AISBL;

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

‘Pre-existing material’: any material, document, technology or know-how which exists prior to the contractor using it for the production of a result in the implementation of the FWC;

‘Pre-existing right’: any industrial and intellectual property right on pre-existing material; it may consist in a right of ownership, a licence right and/or right of use belonging to the contractor, the creator, the SDA AISBL as well as to any other third parties;

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

‘Related person’: any person who has the power to represent the contractor or to take decisions on its behalf;

‘Request for services’: a document from the SDA AISBL requesting that the contractors in a FWC provide a specific tender for services whose terms are not entirely defined under the FWC;

‘Result’: any intended outcome of the implementation of the FWC, whatever its form or nature, which is delivered and finally or partially approved by the SDA AISBL. A result may be further defined in this FWC as a deliverable. A result may, in addition to materials produced by the contractor or at its request, also include pre-existing materials;

‘Specific contract’: a contract implementing the FWC and specifying details of a service to be provided;

‘Substantial error’: any infringement of a contract provision resulting from an act or omission, which causes or might cause a loss to the SDA AISBL’s budget.

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

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

II.3. SEVERABILITY

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

II.4. PROVISION OF SERVICES

- II.4.1** Signature of the FWC does not guarantee any actual purchase. The SDA AISBL is bound only by specific contracts implementing the FWC.
- II.4.2** The contractor must provide services of high quality standards, in accordance with the state of the art in the industry and the provisions of this FWC, in particular the tender specifications and the terms of its tender.
- II.4.3** The contractor must comply with the minimum requirements provided for in the tender specifications. This includes compliance with applicable obligations under environmental, social and labour law established by Union law, national law and collective agreements or by the international environmental, social and labour law provisions.
- II.4.4** The contractor must obtain any permit or licence required in the State where the services are to be provided.
- II.4.5** All periods specified in the FWC are calculated in calendar days, unless otherwise specified.
- II.4.6** The contractor must not present itself as a representative of the SDA AISBL and must inform third parties that it is not part of the SDA AISBL.
- II.4.7** The contractor is responsible for the personnel who carry out the services and exercises its authority over its personnel without interference by the SDA AISBL. The contractor must inform its personnel that:
- (a) they may not accept any direct instructions from the SDA AISBL; and
 - (b) their participation in providing the services does not result in any employment or contractual relationship with the SDA AISBL.
- II.4.8** The contractor must ensure that the personnel implementing the FWC and any future replacement personnel possess the professional qualifications and experience required to provide the services, as the case may be on the basis of the selection criteria set out in the tender specifications.
- II.4.9** At the SDA AISBL's reasoned request, the contractor must replace any member of personnel who:
- (a) does not have the expertise required to provide the services; or
 - (b) has caused disruption at the premises of the SDA AISBL.
- The contractor bears the cost of replacing its personnel and is responsible for any delay in providing the services resulting from the replacement of personnel.
- II.4.10** The contractor must record and report to the SDA AISBL any problem that affects its ability to provide the services. The report must describe the problem, state when it started and what action the contractor is taking to resolve it.

II.5. COMMUNICATION BETWEEN THE PARTIES

II.5.1. Form and means of communication

Any communication of information, notices or documents under the FWC must:

- (a) be made in writing in paper or electronic format in the language of the contract;
- (b) bear the FWC number and, if applicable, the specific contract number;
- (c) be made using the relevant communication details set out in Article I.8; and
- (d) be sent by mail, email or, for the documents specified in the special conditions.

If a party requests written confirmation of an e-mail within a reasonable time, the other party must provide an original signed paper version of the communication as soon as possible.

The parties agree that any communication made by email has full legal effect and is admissible as evidence in judicial proceedings.

II.5.2. Date of communications by mail and email

Any communication is deemed to have been made when the receiving party receives it, unless this FWC contract refers to the date when the communication was sent.

E-mail is deemed to have been received by the receiving party on the day of dispatch of that e-mail, provided that it is sent to the e-mail address indicated in Article I.8. The sending party must be able to prove the date of dispatch. In the event that the sending party receives a non-delivery report, it must make every effort to ensure that the other party actually receives the communication by email or mail. In such a case, the sending party is not held in breach of its obligation to send such communication within a specified deadline.

Mail sent to the SDA AISBL is deemed to have been received by the SDA AISBL on the date on which the department responsible referred to in Article I.8 registers it.

Formal notifications are considered to have been received by the receiving party on the date of receipt indicated in the proof received by the sending party that the message was delivered to the specified recipient.

II.6. LIABILITY

- II.6.1** The SDA AISBL is not liable for any damage or loss caused by the contractor, including any damage or loss to third parties during or as a consequence of implementation of the FWC.
- II.6.2** If required by the relevant applicable legislation, the contractor must take out an insurance policy against risks and damage or loss relating to the implementation of the FWC. It must also take out supplementary insurance as reasonably required by standard practice in the industry. Upon request, the contractor must provide evidence of insurance coverage to the SDA AISBL.
- II.6.3** The contractor is liable for any loss or damage caused to the SDA AISBL during or as a consequence of implementation of the FWC, including in the event of subcontracting, but only up to an amount not exceeding three times the total amount of the relevant specific contract. However, if the damage or loss is caused by the gross negligence or wilful misconduct of the contractor or of its personnel or subcontractors, the contractor is liable for the whole amount of the damage or loss.
- II.6.4** If a third party brings any action against the SDA AISBL in connection with the implementation of the FWC, including any action for alleged breach of intellectual property rights, the contractor must assist the SDA AISBL in the legal proceedings, including by intervening in support of the SDA AISBL upon request.

If the SDA AISBL's liability towards the third party is established and that such liability is caused by the contractor during or as a consequence of the implementation of the FWC, Article II.6.3 applies.

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

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

II.7. CONFLICT OF INTEREST AND PROFESSIONAL CONFLICTING INTERESTS

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

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

The SDA AISBL may do any of the following:

- (a) verify that the contractor's action is appropriate;
- (b) require the contractor to take further action within a specified deadline;
- (c) decide not to award a specific contract to the contractor.

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

- (a) its personnel;
- (b) any natural person with the power to represent it or take decisions on its behalf;
- (c) third parties involved in the implementation of the FWC, including subcontractors.

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

II.8. CONFIDENTIALITY

II.8.1. The SDA AISBL and the contractor must treat with confidentiality any information or documents, in any format, disclosed in writing or orally, relating to the implementation of the FWC and identified in writing as confidential.

II.8.2. Each party must:

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

- (c) not disclose, directly or indirectly, confidential information or documents to third parties without the prior written agreement of the other party.

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

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

II.8.4 The contractor must obtain from any natural person with the power to represent it or take decisions on its behalf, as well as from third parties involved in the implementation of the FWC a commitment that they will comply with this Article. At the request of the SDA AISBL, the contractor must provide a document providing evidence of this commitment.

II.9. PROCESSING OF PERSONAL DATA

II.9.1 Any personal data included in the FWC must be processed in accordance with Regulation (EC) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation - GDPR)³. Such data must be processed by the data controller solely for the purposes of the implementation, management and monitoring of the FWC. This does not affect its possible transmission to bodies entrusted with monitoring or inspection tasks in application of Union law.

II.9.2 The contractor has 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.9.3 The contractor has right of recourse at any time to the competent National Supervisory Authority.

II.9.4 If the FWC requires the contractor to process any personal data, 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 that may be processed, the recipients of the data and the means by which the data subject may exercise its rights.

II.9.5 The contractor must grant personnel access to the data to the extent strictly necessary for the implementation, management and monitoring of the FWC.

II.9.6 The contractor must adopt appropriate technical and organisational security measures, giving due regard to the risks inherent in the processing and to the nature of the personal data concerned, in order to:

³OJ L 119, 4.5.2016, p. 1–88 (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32016R0679>)

- (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 inputting, 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 SDA AISBL;
- (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.

II.9.7 The contractor hereby confirms that, by signing this Agreement, the contractor was duly informed of the following:

- The SDA AISBL and its Members are recipients of personal data;
- The fact that the SDA AISBL intends to transfer personal data to the Commission and the Innovation & Networks Executive Agency (INEA) as well as to the Court of Auditors and the Anti-Fraud Office (OLAF), other authorised organisations or any external auditor acting on their behalf, which will be collected and processed according to Regulation (EC) No 45/2001 of 18 December 2001 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;
- Personal data is mainly stored in cloud-based solutions and that personal data is also disclosed to:
 - o Microsoft Corp.;
 - o One2Team;
 - o Business Integration Partners SpA;
 - o The Surgery Design and Digital Ltd;
 - o Meantime Communication Ltd for support services;
 - o WeTransfer.

The SDA AISBL IT systems are managed by Ultima Business Solution Ltd.

- Personal data which is collected and processed can be the following: email addresses, full name, phone numbers, professional positions, roles and résumés and any personal data submitted to the SDA AISBL in response to a Call for Tender or contained in deliverables or any other reports or documents provided to the SDA AISBL within the framework of the performance of this contract;

- The fact that the SDA AISBL will process and store personal data for the duration of this contract and up to five years after the payment of the balance of the last SGA for the purpose of which the contractor was contracted, in which case it is archived and kept so as to ensure the audit trail in compliance with Article II.27.2 of the FPA;
- All personal data are securely stored and can only be accessed by the SDA AISBL as controller and by processors who need to have accessed to carry-out their respective duties;
- The existence of the right to request from the SDA AISBL access to and rectification or restriction of processing concerning the data subject as well as the right to data portability;
- The right to lodge a complaint with the National supervisory authority;
- The provision of personal data is a contractual requirement, or a requirement necessary to enter into a contract, as well as that the data subject is obliged to provide the personal data and that failure to provide such data could make their assignment impossible;
- The SDA AISBL monitors internet traffic to ensure the security, performance and reliability of the system. The SDA AISBL also monitors individuals by the use of cameras to ensure safety and security. These monitoring systems are not used to evaluate performance of individuals.

II.10. SUBCONTRACTING

- II.10.1** The contractor must not subcontract and have the FWC implemented by third parties beyond the third parties already mentioned in its tender without prior written authorisation from the SDA AISBL.
- II.10.2** Even if the SDA AISBL authorises subcontracting, the contractor remains bound by its contractual obligations and is solely responsible for the implementation of the FWC.
- II.10.3** The contractor must ensure that the subcontract does not affect the rights of the SDA AISBL under this FWC, particularly those under Articles II.8, II.13 and II.24.
- II.10.4** The SDA AISBL may request the contractor to replace a subcontractor found to be in a situation provided for in points (d) and (e) of Article II.18.1.

II.11. AMENDMENTS

- II.11.1** Any amendment to the FWC or a specific contract must be made in writing before all contractual obligations have been fulfilled. A specific contract does not constitute an amendment to the FWC.
- II.11.2** Any amendment must not make changes to the FWC or a specific contract that might alter the initial conditions of the procurement procedure or result in unequal treatment of tenderers or contractors.

II.12. ASSIGNMENT

- II.12.1** The contractor must not assign any of the rights and obligations arising from the FWC, including claims for payments or factoring, without prior written authorisation from the SDA

AISBL. In such cases, the contractor must provide the SDA AISBL with the identity of the intended assignee.

II.12.2 Any right or obligation assigned by the contractor without authorisation is not enforceable against the SDA AISBL.

II.13. INTELLECTUAL PROPERTY RIGHTS

II.13.1. Ownership of the rights in the results

The SDA AISBL acquires irrevocably worldwide ownership of the results and of all intellectual property rights under the FWC. The intellectual property rights so acquired include any rights, such as copyright and other intellectual or industrial property rights, to any of the results and to all technological solutions and information created or produced by the contractor or by its subcontractor in implementation of the FWC. The SDA AISBL may exploit and use the acquired rights as stipulated in this FWC. The SDA AISBL acquires all the rights from the moment the SDA AISBL approves the results delivered by the contractor. Such delivery and approval are deemed to constitute an effective assignment of rights from the contractor to the SDA AISBL.

The payment of the price includes any fees payable to the contractor about the acquisition of ownership of rights by the SDA AISBL including for all forms of exploitation and of use of the results.

II.13.2. Licensing rights on pre-existing materials

Unless provided otherwise in the special conditions, the SDA AISBL does not acquire ownership of pre-existing rights under this FWC.

The contractor licenses the pre-existing rights on a royalty-free, non-exclusive and irrevocable basis to the SDA AISBL, which may use the pre-existing materials for all the modes of exploitation set out in this FWC or in specific contracts. All pre-existing rights are licensed to the SDA AISBL from the moment the results are delivered and approved by the SDA AISBL.

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

The payment of the price as set out in the specific contracts is deemed to also include any fees payable to the contractor in relation to the licensing of pre-existing rights to the Union, including for all forms of exploitation and of use of the results.

Where implementation of the FWC requires that the contractor uses pre-existing materials belonging to the SDA AISBL, the SDA AISBL may request that the contractor signs an adequate licence agreement. Such use by the contractor will not entail any transfer of rights to the contractor and is limited to the needs of this FWC.

II.13.3. Exclusive rights

The SDA AISBL acquires the following exclusive rights:

- (a) reproduction: the right to authorise or prohibit direct or indirect, temporary or permanent reproduction of the results by any means (mechanical, digital or other) and in any form, in whole or in part;
- (b) communication to the public: the exclusive right to authorise or prohibit any display, performance or communication to the public, by wire or wireless means, including the making available to the

- public of the results in such a way that members of the public may access them from a place and at a time individually chosen by them; this right also includes the communication and broadcasting by cable or by satellite;
- (c) distribution: the exclusive right to authorise or prohibit any form of distribution of results or copies of the results to the public, by sale or otherwise;
 - (d) rental: the exclusive right to authorise or prohibit rental or lending of the results or of copies of the results;
 - (e) adaptation: the exclusive right to authorise or prohibit any modification of the results;
 - (f) translation: the exclusive right to authorise or prohibit any translation, adaptation, arrangement, creation of derivative works based on the results, and any other alteration of the results, subject to the respect of moral rights of authors, where applicable;
 - (g) where the results are or include a database: the exclusive right to authorise or prohibit the extraction of all or a substantial part of the contents of the database to another medium by any means or in any form; and the exclusive right to authorise or prohibit the re-utilization of all or a substantial part of the contents of the database by the distribution of copies, by renting, by on-line or other forms of transmission;
 - (h) where the results are or include a patentable subject-matter: the right to register them as a patent and to further exploit such patent to the fullest extent;
 - (i) where the results are or include logos or subject-matter which could be registered as a trademark: the right to register such logo or subject-matter as a trademark and to further exploit and use it;
 - (j) where the results are or include know-how: the right to use such know-how as is necessary to make use of the results to the full extent provided for by this FWC, and the right to make it available to contractors or subcontractors acting on behalf of the SDA AISBL, subject to their signing of adequate confidentiality undertakings where necessary;
 - (k) where the results are documents:
 - (i) the right to authorise the reuse of the documents;
 - (ii) the right to store and archive the results in line with the document management rules applicable to the SDA AISBL, including digitisation or converting the format for preservation or new use purposes;
 - (l) where the results are or incorporate software, including source code, object code and, where relevant, documentation, preparatory materials and manuals, in addition to the other rights mentioned in this Article:
 - (i) end-user rights, for all uses by the SDA AISBL or by subcontractors which result from this FWC and from the intention of the parties;
 - (ii) the rights to decompile or disassemble the software;
 - (m) to the extent that the contractor may invoke moral rights, the right for the SDA AISBL, except where otherwise provided in this FWC, to publish the results with or without mentioning the creator(s)' name(s), and the right to decide when and whether the results may be disclosed and published.

The contractor warrants that the exclusive rights and the modes of exploitation may be exercised by the SDA AISBL on all parts of the results, be they created by the contractor or consisting of pre-existing materials.

Where pre-existing materials are inserted in the results, the SDA AISBL may accept reasonable restrictions impacting on the above list, provided that the said materials are easily identifiable and separable from the rest, that they do not correspond to substantial elements of the results, and that, should the need arise, satisfactory replacement solutions exist, at no additional costs to the SDA AISBL. In such case, the contractor will have to clearly inform the SDA AISBL before making such choice and the SDA AISBL has the right to refuse it.

II.13.4. Identification of pre-existing rights

When delivering the results, the contractor must warrant that, for any use that the SDA AISBL may envisage within the limits set in this FWC, the results and the pre-existing material incorporated in the results are free of claims from creators or from any third parties and all the necessary pre-existing rights have been obtained or licensed.

To that effect, the contractor must establish a list of all pre-existing rights to the results of this FWC or parts thereof, including identification of the rights' owners. If there are no pre-existing rights to the results, the contractor must provide a declaration to that effect. The contractor must provide this list or declaration to the SDA AISBL together with the invoice for payment of the balance at the latest.

II.13.5. Evidence of granting of pre-existing rights

Upon request by the SDA AISBL, the contractor must provide evidence that it has the ownership or the right to use all the listed pre-existing rights, except for the rights owned or licensed by the Union. The SDA AISBL may request this evidence even after the end of this FWC.

This evidence may refer, for example, to rights to: parts of other documents, images, graphs, fonts, tables, data, software, technical inventions, know-how, IT development tools, routines, subroutines or other programs ('background technology'), concepts, designs, installations or pieces of art, data, source or background materials or any other parts of external origin.

This evidence must 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 if it is found that it does not hold the necessary rights, regardless of when and by whom this fact is 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.13.6. Quotation of works in the result

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

II.13.7. Moral rights of creators

By delivering the results, the contractor warrants that the creators will not object to the following on the basis of their moral rights under copyright:

- (a) that their names be mentioned or not mentioned when the results are presented to the public;
- (b) that the results be divulged or not after they have been delivered in their final version to the SDA AISBL;
- (c) that the results be adapted, provided that this is done in a manner which is not prejudicial to the creator's honour or reputation.

If moral rights on parts of the results protected by copyright may exist, the contractor must obtain the consent of creators regarding the granting or waiver of the relevant moral rights in accordance with the applicable legal provisions and be ready to provide documentary evidence upon request.

II.13.8. Image rights and sound recordings

If natural persons appear in a result or their voice or any other private element is recorded in a recognisable manner, the contractor must obtain a statement by these persons (or, in the case of minors, by the persons exercising parental authority) giving their permission for the described use of their image, voice or private element and, on request, submit a copy of the permission to the SDA AISBL. The contractor must take the necessary measures to obtain such consent in accordance with the applicable legal provisions.

II.13.9. Copyright notice for pre-existing rights

When the contractor retains pre-existing rights on parts of the results, reference must be inserted to that effect when the result is used as set out in Article I.10.1, with the following disclaimer: '© — year — SDA AISBL. All rights reserved. Certain parts are licensed under conditions to the SDA AISBL', or with any other equivalent disclaimer as the SDA AISBL may consider best appropriate, or as the parties may agree on a case-by-case basis. This does not apply where inserting such reference would be impossible, notably for practical reasons.

II.13.10. Disclaimer

When making use of the results, the contractor must declare that they have been produced under a contract with the SDA AISBL and that the opinions expressed are those of the contractor only and do not represent the SDA AISBL's official position. The SDA AISBL may waive this obligation in writing or provide the text of the disclaimer.

II.14. FORCE MAJEURE

- II.14.1** If a party is affected by force majeure, it must immediately notify the other party, stating the nature of the circumstances, their likely duration and foreseeable effects.
- II.14.2** A party is not liable for any delay or failure to perform its obligations under the FWC if that delay or failure is a result of force majeure. If the contractor is unable to fulfil its contractual obligations owing to force majeure, it has the right to remuneration only for the services actually provided.
- II.14.3** The parties must take all necessary measures to limit any damage due to force majeure.

II.15. LIQUIDATED DAMAGES

II.15.1. Delay in delivery

If the contractor fails to perform its contractual obligations within the applicable time limits set out in this FWC, the SDA AISBL may claim liquidated damages for each day of delay using the following formula:

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

where:

V is the price of the relevant purchase or deliverable or result;

d is the duration specified in the relevant specific contract for delivery of the relevant purchase or deliverable or result or, failing that, the period between the date specified in Article I.4.2 and the date of delivery or performance specified in the relevant specific contract, expressed in days.

Liquidated damages may be imposed together with a reduction in price under the conditions laid down in Article II.16.

II.15.2. Procedure

The SDA AISBL must formally notify the contractor of its intention to apply liquidated damages and the corresponding calculated amount.

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

If the contractor submits observations, the SDA AISBL, taking into account the relevant observations, must notify the contractor:

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

II.15.3. Nature of liquidated damages

The parties expressly acknowledge and agree that any amount payable under this Article is not a penalty and represents a reasonable estimate of fair compensation for the damage incurred due to failure to provide the services within the applicable time limits set out in this FWC.

II.15.4. Claims and liability

Any claim for liquidated damages does not affect the contractor's actual or potential liability or the SDA AISBL's rights under Article II.18.

II.16. REDUCTION IN PRICE

II.16.1. Quality standards

If the contractor fails to provide the service in accordance with the FWC or a specific contract ('unperformed obligations') or if it fails to provide the service in accordance with the expected quality levels specified in the tender specifications ('low quality delivery'), the SDA AISBL may reduce or recover payments proportionally to the seriousness of the unperformed obligations or low quality delivery. This includes in particular cases where the SDA AISBL cannot approve a result, report or deliverable as defined in Article I.6 after the contractor has submitted the required additional information, correction or new version.

A reduction in price may be imposed together with liquidated damages under the conditions of Article II.15.

II.16.2. Procedure

The SDA AISBL must formally notify the contractor of its intention to reduce payment and the corresponding calculated amount.

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

If the contractor submits observations, the SDA AISBL, taking into account the relevant observations, must notify the contractor:

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

II.16.3. Claims and liability

Any reduction in price does not affect the contractor's actual or potential liability or the SDA AISBL's rights under Article II.18.

II.17. SUSPENSION OF THE IMPLEMENTATION OF THE FWC

II.17.1. Suspension by the contractor

If the contractor is affected by force majeure, it may suspend the provision of the services under a specific contract.

The contractor must immediately notify the SDA AISBL of the suspension. The notification must include a description of the force majeure and state when the contractor expects to resume the provision of services.

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

II.17.2. Suspension by the SDA AISBL

The SDA AISBL may suspend the implementation of the FWC or performance of a specific contract or any part of it:

- (a) if the procedure for awarding the FWC or a specific contract or the implementation of the FWC proves to have been subject to substantial errors, irregularities or fraud;
- (b) in order to verify whether the presumed substantial errors, irregularities or fraud actually occurred.

The SDA AISBL must formally notify the contractor of the suspension. Suspension takes effect on the date of formal notification, or at a later date if the formal notification so provides.

The SDA AISBL must notify the contractor as soon as possible whether:

- (a) it is lifting the suspension; or
- (b) it intends to terminate the FWC or a specific contract under Article II.18.1(f) or (j).

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

II.18. TERMINATION OF THE FWC

II.18.1. Grounds for termination by the SDA AISBL

The SDA AISBL may terminate the FWC or a specific contract in the following circumstances:

- (a) if provision of the services under a pending specific contract has not actually started within 15 days of the scheduled date and the SDA AISBL considers the new date proposed, if any, unacceptable, taking into account Article II.11.2;
- (b) if the contractor is unable, through its own fault, to obtain any permit or licence required for implementation of the FWC;
- (c) if the contractor does not implement the FWC or perform the specific contract in accordance with the tender specifications or request for service or is in breach of another substantial contractual obligation or repeatedly refuses to sign specific contracts. Termination of three or more specific contracts in these circumstances also constitutes grounds for termination of the FWC;
- (d) if the contractor or any person that assumes unlimited liability for the debts of the contractor is in one of the situations provided for in points (a) and (b) of Article 136(1) of the Financial Regulation⁴;
- (e) if the contractor or any related person is subject to any of the situations provided for in points (c) to (f) of Article 136(1) or to Article 136(2) of the Financial Regulation.
- (f) if the procedure for awarding the FWC or the implementation of the FWC prove to have been subject to substantial errors, irregularities or fraud;
- (g) if the contractor does not comply with applicable obligations under environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions;
- (h) if the contractor is in a situation that could constitute a conflict of interest or a professional conflicting interest as referred to in Article II.7;
- (i) if a change to the contractor's legal, financial, technical, organisational or ownership situation is likely to substantially affect the implementation of the FWC or substantially modify the conditions under which the FWC was initially awarded;
- (j) in the event of force majeure, where either resuming implementation is impossible or the necessary ensuing amendments to the FWC or a specific contract would mean that the tender specifications are no longer fulfilled or result in unequal treatment of tenderers or contractors;

⁴ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union (<https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32018R1046>)

- (k) if the needs of the SDA AISBL change and it no longer requires new services under the FWC; in such cases ongoing specific contracts remain unaffected;

II.18.2. Grounds for termination by the contractor

The contractor may terminate the FWC or a specific contract if:

- (a) it has evidence that the SDA AISBL has committed substantial errors, irregularities or fraud in the procedure for awarding the FWC or the implementation of the FWC;
- (b) the SDA AISBL fails to comply with its obligations, in particular the obligation to provide the information needed for the contractor to implement the FWC or to perform a specific contract as provided for in the tender specifications.

II.18.3. Procedure for termination

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

The other party has 30 days following the date of receipt to submit observations, including the measures it has taken to continue fulfilling its contractual obligations. Failing that, the decision to terminate becomes enforceable the day after the time limit for submitting observations has elapsed.

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

In the cases referred to in points (a) to (d), (g) to (i) and (k) of Article II.18.1 and in Article II.18.2, the date on which the termination takes effect must be specified in the formal notification.

In the cases referred to in points (e), (f) and (j) of Article II.18.1, the termination takes effect on the day following the date on which the contractor receives notification of termination.

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

II.18.4. Effects of termination

The contractor is liable for damage incurred by the SDA AISBL as a result of the termination of the FWC or a specific contract including the cost of appointing another contractor to provide or complete the services, unless the damage was caused by the situation specified in Article II.18.1(j) or (k) or in Article II.18.2. The SDA AISBL may claim compensation for such damage.

The contractor is not entitled to compensation for any loss resulting from the termination of the FWC or a specific contract, including loss of anticipated profits, unless the loss was caused by the situation specified in Article II.18.2.

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

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

In the case of joint tenders, the SDA AISBL may terminate the FWC or a specific contract with each member of the group separately on the basis of points (d), (e) or (g) of Article II.18.1, under the conditions set out in Article II.11.2

II.19. INVOICES, VALUE ADDED TAX AND E-INVOICING

II.19.1. Invoices and value added tax

Invoices must contain the contractor's (or leader's in the case of a joint tender) identification data, the amount, the currency and the date, as well as the FWC reference and reference to the specific contract.

Invoices must indicate the place of taxation of the contractor (or leader in the case of a joint tender) for value added tax (VAT) purposes and must specify separately amounts not including VAT and amounts including VAT.

II.19.2. E-invoicing

Reception of invoices by standard format (pdf) or email is not accepted.

II.20. PRICE REVISION

Price revision is not applicable to this FWC.

II.21. PAYMENTS AND GUARANTEES

II.21.1. Date of payment

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

II.21.2. Currency

Payments are made in euros or in the currency provided for in Article I.7.

II.21.3. Conversion

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

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

http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm

II.21.4. Costs of transfer

The costs of the transfer are borne as follows:

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

II.21.5. Pre-financing, performance and money retention guarantees

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

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

The contractor bears the cost of providing such guarantee.

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

Performance guarantees cover compliance with substantial contractual obligations until the SDA AISBL has given its final approval for the service. The performance guarantee must not exceed 10 % of the total price of the specific contract. The SDA AISBL must release the guarantee fully after final approval of the service, as provided for in the specific contract.

Retention money guarantees cover full delivery of the service in accordance with the specific contract including during the contract liability period and until its final approval by the SDA AISBL. The retention money guarantee must not exceed 10 % of the total price of the specific contract. The SDA AISBL must release the guarantee after the expiry of the contract liability period as provided for in the specific contract.

The SDA AISBL must not request a retention money guarantee for a specific contract where it has requested a performance guarantee.

II.21.6. Interim payments and payment of the balance

The contractor (or leader in the case of a joint tender) must send an invoice for interim payment, as provided for in Article I.6 or in the tender specifications or in the specific contract.

The contractor (or leader in the case of a joint tender) must send an invoice for payment of the balance within 60 days of the end of the period of provision of the services, as provided for in Article I.6, in the tender specifications or in the specific contract.

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

Payment of the balance may take the form of recovery.

II.21.7. Suspension of the time allowed for payment

The SDA AISBL may suspend the payment periods specified in Article I.6 at any time by notifying the contractor (or leader in the case of a joint tender) that its invoice cannot be processed. The reasons the SDA AISBL may cite for not being able to process an invoice are:

- (a) because it does not comply with the FWC;
- (b) because the contractor has not produced the appropriate documents or deliverables; or
- (c) because the SDA AISBL has observations on the documents or deliverables submitted with the invoice.

The SDA AISBL must notify the contractor (or leader in the case of joint tender) as soon as possible of any such suspension, giving the reasons for it.

Suspension takes effect on the date the SDA AISBL sends the notification. The remaining payment period resumes 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 (or leader in the case of a joint tender) may request the SDA AISBL to justify the continued suspension.

Where the payment periods have been suspended following rejection of a document referred to in the first paragraph of this Article and the new document produced is also rejected, the SDA AISBL reserves the right to terminate the specific contract in accordance with Article II.18.1(c).

II.21.8. Interest on late payment

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

Suspension of the payment period as provided for in Article II.21.7 is not considered as giving rise to late payment.

Interest on late payment covers the period running from the day following the due date for payment up to and including the date of payment as defined in Article II.21.1.

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

II.22. REIMBURSEMENTS

II.22.1 Not applicable

II.23. RECOVERY

II.23.1 If an amount is to be recovered under the terms of the FWC, the contractor must repay the SDA AISBL the amount in question.

II.23.2. Recovery procedure

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

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

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

- (a) by offsetting them against any amounts owed to the contractor by the SDA;
- (b) by calling in a financial guarantee if the contractor has submitted one to the SDA AISBL;
- (c) by taking legal action.

II.23.3. Interest on late payment

If the contractor does not honour the obligation to pay the amount due by the date set by the SDA AISBL in the debit note, the amount due bears interest at the rate indicated in Article II.21.8. Interest on late payments will cover the period starting on the day after the due date for payment and ending on the date when the SDA AISBL receives the full amount owed.

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

II.23.4. Recovery rules in the case of joint tender

If the contract is signed by a group (joint tender), the group is jointly and severally liable under the conditions set out in Article II.6 (liability). The SDA AISBL first claims the full amount to the leader of the group.

If the leader does not pay by the due date and if the amount cannot be offset in accordance with Article II.23.2 (a), the SDA AISBL may claim the full amount to any other member of the group by notifying the debit note already sent to the leader under Article II.23.2.

II.24. CHECKS AND AUDITS

The contractor hereby agrees that:

- the Commission, the Innovation & Networks Executive Agency (INEA), the European Anti-Fraud Office (OLAF) and the European Court of Auditors or any other authorised organisations may exercise their rights of checks and audits under Article II.27 of the FPA towards it;
- it will have no rights vis-à-vis the Commission or INEA under the Specific Grant Agreements (SGAs) concluded under the Framework Partnership Agreement (FPA) No MOVE/E2-2014-717/SESAR FPA;
- the provisions foreseen in Articles II.3 (liability for damages), II.4 (absence of conflicts of interests), II.5 (confidentiality) and II.8 (pre-existing rights and ownership and use of results) of the FPA are applicable to the contractor;
- it has no right to use the Deployment Manager logos for other purposes than supplying the Services under this Agreement.

The FPA can be consulted at the following link:

<http://www.sesardeploymentmanager.eu/wp-content/uploads/2015/11/Annex-18-SESAR-Framework-Partnership-Agreement-FPA.pdf>

II.24.2 The contractor must keep all original documents stored on any appropriate medium, including digitised originals if authorised under national law, for a period of six years starting from the payment of the balance of the last specific contract issued under this FWC.

II.24.3 The contractor must grant the Commission, the Innovation & Networks Executive Agency (INEA), the European Anti-Fraud Office (OLAF) and the European Court of Auditors or any other authorised organisations staff and outside personnel authorised by the Commission the appropriate right of access to sites and premises where the FWC is implemented and to all the information, including information in electronic format, needed to conduct such checks and audits. The contractor must ensure that the information is readily available at the moment of the check or audit and, if so requested, that information is handed over in an appropriate format.

II.24.4 On the basis of the findings made during the audit, a provisional report is drawn up. The SDA AISBL or its authorised representative must send it to the contractor, who has 30 days following the date of receipt to submit observations. The contractor must receive the final report within 60 days following the expiry of the deadline to submit observations.

On the basis of the final audit findings, the SDA AISBL may recover all or part of the payments made in accordance with Article II.23 and may take any other measures which it considers necessary.

II.24.5 In accordance with Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspection carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities and Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office, the European Anti-Fraud Office may carry out investigations, including on the spot checks and inspections, to establish whether there has been fraud, corruption or any other illegal activity under the contract affecting the financial interests of the Union. Findings arising from an investigation may lead to criminal prosecution under national law.

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

ANNEX I

TENDER SPECIFICATIONS

MODEL CONTRACT

ANNEX II

CONTRACTOR'S OFFER

MODEL CONTRACT

ANNEX III

MODEL SPECIFIC CONTRACT

MODEL CONTRACT



SPECIFIC CONTRACT

No [complete]

implementing framework contract No [complete]

1. The SESAR Deployment Alliance Association Internationale Sans But Lucratif ('the SDA AISBL'), represented for the purposes of the signature of this contract by Mr. Nicolas WARINSKO in his capacity of General Manager (hereinafter referred to as "the SDA AISBL"),

on the one part, and

2. [Full official name]

[Official legal form]

[Statutory registration number or ID or passport number]

[Full official address]

[VAT registration number]

[appointed as the leader of the group by the members of the group that submitted the joint tender]

([collectively] "the contractor"), represented for the purposes of signing this specific contract by [forename, surname and function of legal representative,]

HAVE AGREED

ARTICLE 1 SUBJECT MATTER

- 1.1 This specific contract implements framework contract (FWC) No [complete], signed by the parties on [complete date].
- 1.2 In accordance with the provisions set out in the FWC and in this specific contract and its annexes, which form an integral part of it, the contractor must provide the [following services:] [services specified in Annex 1.]

ARTICLE 2 ENTRY INTO FORCE AND DURATION

- 2.1 This specific contract enters into force [on the date on which the last party signs it] .
- 2.2 The provision of the services starts from [the date of entry into force of this specific contract].
- 2.3 The provision of the services must not exceed [complete] [days] [months]. The parties may extend the duration by written agreement before it elapses and before expiry of the FWC.

ARTICLE 3 PRICE

- 3.1 The price payable under this specific contract excluding reimbursement of expenses is EUR [amount in figures and in words].
- 3.2 [Reimbursement of expenses is not applicable to this specific contract.]

ARTICLE 4 COMMUNICATION DETAILS

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

SDA AISBL:

For technical issues⁵:

Mr. Marcel SOBOTTKA
Chief Finance, Partnership Management and Corporate Services
SDA AISBL
Avenue de Cortenbergh, 100
B-1000 Brussels
[mailbox]

For financial issues:

Mr. Mark HASELWOOD
Financial Controller
SDA AISBL
Avenue de Cortenbergh, 100
B-1000 Brussels
[mailbox]

⁵ Issues related to provision of services as described in technical specifications

For administrative issues:

SDA AISBL
Avenue de Cortenbergh, 100
B-1000 Brussels
[\[mailbox\]](#)

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

[\[Full name\]](#)

[\[Function\]](#)

[\[Company name\]](#)

[\[Full official address\]](#)

E-mail: [\[complete\]](#)

ARTICLE 5 PERFORMANCE GUARANTEE

Performance guarantee is not applicable to this specific contract.

ARTICLE 6 RETENTION MONEY GUARANTEE

Retention money guarantee is not applicable to this specific contract.

Annexes

1. Tender Specifications for specific contract
2. Contractor's Specific tender of [insert date]

Signatures

For the contractor,

[\[Company name/forename/surname/function\]](#)

signature:

Done at [\[place\]](#), [\[date\]](#)

For the SDA AISBL,

[\[Nicolas WARINSKO, General manager\]](#)

signature:

Done at [\[place\]](#), [\[date\]](#)

In duplicate in English.