

**LOW VALUE NEGOTIATED PROCEDURE WITH AT
LEAST THREE BIDDERS**

**Provision of HR related professional support and
consultancy services to the BEREC Office**

TENDER SPECIFICATIONS

25 January 2016

1. Contract objectives and scope of the work

1.1. Context

The BEREC Office has been set up to provide administrative and professional support to the BEREC, the Body of European Regulators for Electronic Communications. The seat of the BEREC Office is Riga, Latvia.

The BEREC Office has been established as a Body of the European Union by Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009 and is managed by an Administrative Manager under the supervision of a Management Committee composed of the Heads of the 28 National Regulatory Authorities (NRAs) and a representative of the European Commission. The Office will be financed by a subsidy from the EU financial contributions from Member States and from their NRAs made on a voluntary basis.

The Protocol on the Privileges and Immunities of the European Union shall apply to the BEREC Office.

Additional information about the BEREC Office is available on: <http://berec.europa.eu/>

English is the working language of the BEREC Office.

One of the objectives of the BEREC Office for 2016, as indicated in the BEREC Office work programme 2016, is to manage its human resources with quality and efficiency. In order to achieve this result, it is necessary to ensure that all HR methodologies and policies are implemented.

This includes:

- human resources planning and contribution to the multi-annual programming document,
- recruitment procedures, including the assistance to the Appointing Authority to manage the recruitment of staff,
- payrolls and determining individual rights,
- working time and leave,
- career development and mobility,
- missions management,
- training, including preparation and implementation of relevant plans,
- performance evaluation,
- ethics and integrity,
- equal opportunity and well-being,
- document management,
- Implementation of the traineeship programme,

1.2. Objectives and expected results

The general objective of this tender is to acquire additional professional and consultancy support to the HR activities of the BEREC Office in order to fulfil BEREC Offices annual and multi annual objectives and to meet requirements and the standards set by the European Court of Auditors, the European Ombudsman and the Internal Audit Service.

The contractor should provide 1(one) HR consultant to the BEREC Office. The consultant shall support the HR Officer of the BEREC Office from the moment of the signature of the service contract. The supporting activities may require executive, ancillary, technical, secretarial and drafting tasks. The discretionary powers remain at BEREC Office level.

The purpose of this procedure is to draw up a Multiple Framework Contract in Cascade (Framework Contract) with maximum 3 (three) contractors for the provision of HR related professional support and consultancy services. Signature of Framework Contract(s) does not bind the BEREC Office to order a particular volume of services. The BEREC Office reserves the right to adjust the volume according to its needs. Under no circumstances may the contractor demand that a minimum level of services be performed.

2. Scope of services

2.1. Description of services and job requirements

The provided consultant shall support the HR Officer.

The main tasks to be performed by the HR consultant are:

- Collection of documents, including storage and filing;
- Review of documents and drafting of replies;
- Drafting of documents. In particular, the consultant shall perform drafting of HR policies in accordance with the Privacy Law standards of the European Union;
- Preparation of answers/questions (Q/A) sessions at any time a request for clarification is proposed by potential applicants;
- Deal with requests to access documents;
- Analysis of EU legislation (or national legislations of EU member States) may be needed based on questions;
- Liaise with request to access documents under the strict supervision of BEREC Office relevant agents;
- Support in preparing decisions to the attention of the Management Committee or all hierarchical superiors;

- Support in preparing the letters to successful and unsuccessful tenderers;
- Support in reimbursement activities of candidates;
- Any other request for support from the HR activities of the BEREC Office;

2.1.1. Expected professional profile

The tenderer shall present one assigned HR consultant who shall agree to deliver his/her services along the lines described in Section 1.3.1. The consultant is expected to have proven previous experience in a similar position in HR related field.

The HR consultant shall have a very good command of English both written and oral (minimum C1 level of the Common European Framework of Reference for Languages).

Computer literacy and in particular a good knowledge of MS Outlook, MS Office and Internet is a must.

2.1.2. Place of performance of services

The BEREC Office is located in Riga, Latvia, at Zigrīda Annas Meierovica bulvāris No 14, 2nd floor, LV-1050.

The premises of the Office will be the place of performance of services for the HR consultant.

2.1.3. Working hours and availability

The default working time of the BEREC Office are flexible. The normal number of working hours shall be 40 hours per week, spread out over 5 working days, from Monday to Friday. The offer bandwidth and the core hours shall be respected and may be subject to change on the basis of the applicable rules.

The core services shall be provided in the premises of the BEREC Office in Riga, on the spot, the HR consultant shall be available for service for 2 full working days (16 hours) a week, with possibility to adjust the schedule in cases justified by the interest of the Service. The specific weekdays and times on which the HR consultant shall be present in the Office shall be agreed before the signature of the specific contract.

The contractor shall ensure the availability of the HR consultant for the whole duration of the Framework Service Contract. The BEREC Office and the contractor will set a planning for the work, which will be regularly checked.

The work of the HR Consultant shall be subject to the BEREC Office holiday's calendar, which differs from the Latvian public holidays calendar. The BEREC Office usually has around 17 public holiday days per year. For year 2016 there are 17 public holiday days (see Annex A).

2.1.4. Situation of temporary incapacity of service provider

If the consultant shall be in a situation of temporary incapacity due to illness the contactor must notify BEREC Office of their unavailability on the first day of absence. The BEREC Office and the contractor shall re arrange the assignments in accordance with the BEREC Office needs. If this is not possible, the specific contract is terminated by the BEREC Office and a new contract is signed with the next contractor in cascade.

2.2. Framework Contract

In drawing up its tender, the tenderer should bear in mind that the terms of the draft Framework Service Contract (see Annex B) will govern the contractual relationship between the BEREC Office and the contractor.

The tenderer shall pay particular attention to the clauses on confidentiality. The assignment is to be considered as a highly sensitive issue, considering that the contractor will not only have direct access and knowledge of the BEREC Office's internal organisation but will also have to deal with sensitive information. Thus the contractor will be requested to sign a non-disclosure agreement with the BEREC Office.

Any limitation, amendment or denial of the terms of the Framework Service Contract will lead to outright rejection of the tender.

The BEREC Office may, before the contract is concluded, either abandon the procurement procedure or cancel the award procedure without the tenderer being entitled to any indemnification or compensation.

2.2.1. Duration of Framework Contract

The duration of the Framework Service Contract is 1 (one) year as of the date of its signature.

The Framework Service Contract may be renewed automatically up to 3(three) times, each time for a period of 1(one) year, unless one party decides otherwise in writing, at least 3 (three) months before the end of the period. Renewal means extension of the Framework Service Contract under the same terms and conditions and does not imply any modification or deferment neither to the agreed terms and conditions nor to the existing obligations

The contract implementation shall start on the date of the signature of the contract.

2.2.2. Size of Framework Contract/Price

The contract's fixed price shall be expressed in EUR. Prices shall be firm and not subject to revision. Prices quoted shall be exclusive of all taxes. The BEREC Office, pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union, is exempt from all duties, taxes and dues, including value added tax (VAT).

The price must be quoted in EURO. It shall be fixed and not subject to revision during the performance of the Framework Service Contract.

The price offer is to be presented as a **daily fixed rate** per 8 hour working day of 1(one) HR consultant. The price quotation shall include all services of the assigned HR consultant.

Please note that a maximum total price of € 15,000.00, including fees and allowances, will be set for the initial period of 12 months, and € 15,000.00 for any renewal period of 12 months (for a total maximum amount of € 60,000.00). Thus the total payments under the Framework Service Contract will not exceed these amounts. However, the BEREC Office will not in any way guarantee that it will use the contractor's services up to the indicated amount. The BEREC Office undertake to make use of the consultant, only in its premises, twice a week throughout the all year, with possibility to adjust the schedule, but respecting the annual limits [on average 109 working days a year].

2.2.3. Signature of specific contract

The specific contract is the contract by which the HR consultant will be made available by the selected contractor(s) to the BEREC Office. The Model specific contract is attached as Annex II of the Framework Contract.

2.2.4. Responsibilities of the service contract

The contractor shall:

1. perform with high level of professionalism, outstanding competence in the human resources field, and excellent service manner;
2. comply with all the relevant Latvian labor legislation, taxes, health insurance, social and pension contributions;

3. ensure that HR consultant follows and obeys the internal regulations and rules of the BEREC Office, is acknowledged with job description and any additional requirements, which may be applicable;
4. be able to communicate in a timely manner. The contractor shall nominate a contact person. The contractor's response time shall not exceed 1 (one) working day;
5. possess appropriate command of English language (minimum C1 level of the Common European Framework of Reference for Languages). English shall be used throughout the implementation of the contract for all communication, reports and other documentation;
6. give at least 1 (one) months' notice to the BEREC Office of any change in the contractor's team, i.e. contact person;

3. Requirement to tenders

The present tender documents are drawn up in respect of the Decision MC/2014/1 of the Management Committee of the BEREC Office on the financial regulation applicable to the BEREC Office in conformity with the framework Financial Regulation for the bodies referred to in Article 208 of Council Regulation (EU, Euratom) No 966/2012 on the Financial Regulation applicable to the general budget of the European Union (hereinafter, the general Financial Regulation).

Participation in the BEREC Office's procurement procedure is open on equal terms to all natural and legal persons or groupings of such persons (consortia) coming within the scope of the Treaties. It includes all natural and legal persons established in the European Union.

Pursuant to Article 119 of the general Financial Regulation the participation is open to all natural and legal persons from a third country which has a special agreement with the European Union in the field of public procurement on the conditions laid down in that agreement. The BEREC Office can therefore accept tenders from and sign contracts with tenderers from 34 countries, namely: the 28 EU Member States, 3 European Economic Area (EEA) Countries (Lichtenstein, Norway, Iceland) and 4 Stabilization and Associations Agreements (SAA) Countries (FYROM, Albania, Montenegro and Serbia).

Tenders can be submitted in any of the official languages of the EU.

3.1. Layout of the tender

All tenders must be clear, complete and consistent with all the requirements laid down in the tendering documents and presented in 2 sections as follows:

Section A

This part should include all the information and documents required by the BEREC Office for the appraisal of tenders on the basis of the Exclusion criteria (see Section 4.1. “Exclusion Criteria”) as well as documents for administrative purpose:

- (a) **Administrative identification form:** contained in Annex C (original filled in and signed by (an) authorized representative(s)).

- (b) **Financial form:** a standard template in each EU language is available at http://ec.europa.eu/budget/contracts_grants/info_contracts/financial_id/financial_id_en.cfm (original filled in according to the instructions contained in this form).
If the corresponding bank account of candidate is already registered in the BEREC Office’s files they are not obliged to provide a new form, on the condition that they confirm that no change in the information already provided has occurred. In case of doubt, we recommend submitting a new form.

- (c) **Legal entity form:** a standard template in each EU language is available at http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm (Original filled in according to the instructions contained in this form). Candidates already registered as a legal entity in the BEREC Offices files (i.e. they are or have been contractors of the BEREC Office) are not obliged to provide a new form, on the condition that they confirm that no change in the information already provided has occurred. In case of doubt, we recommend submitting a new form.

- (d) **Declaration of honour on Exclusion Criteria (Section 4.1) and absence of conflict of interest:** contained in Annex D (Original filled in and signed by (an) authorized representative(s)).

Section B

This part should include all the information and documents required by the BEREC Office for the appraisal of tenders on the basis of the Award Criteria (see Section 4.3 “Award Criteria”), including:

- (a) Description of proposed methodology;
- (b) Justification of the conformity of the tender with the tender specifications described in Section 2;
- (c) Proposed price (Section 2.2.2).

4. Criteria for the assessment and award

4.1. Exclusion criteria

In accordance with the terms set in Article 143.1 of the Rules of Application of the Financial Regulation, tenderers are asked to declare on their honour that they are not in one of the situations referred to in Articles 106 and 107 of the Financial Regulation by returning Annex D duly filled in and signed.

The BEREC Office may, where it has doubts as to whether the tenderer to whom the contract is to be awarded is in one of the situations of exclusion, require him to provide the evidence referred to in paragraph 3 of Article 143 of the Rules of Application of the Financial Regulation.

4.2. Selection criteria

In accordance with the terms set in Article 146.6 (a) of the Implementing Rules of the Financial Regulation, the contracting authority chose not to ask the candidate to provide documentary proof of financial, economic, technical and professional capacity.

4.3. Award criteria

The award of the contract will be based on the criterion of the lowest price per worked full day under the condition that all the requirements laid down in the invitation are fully met and that the price is acceptable to the contracting authority with respect to the principle of sound financial management. The maximum price shall not exceed 137 Euro per day.

4.4. Award of the contract

The award criteria which will apply to this procedure is the lowest price.

The Framework Contract(s) in cascade will be awarded to the maximum 3 (three) tenderers offering the lowest price.

The lowest tender will be proposed as the FIRST contractor in the cascade. The second lowest tender will be proposed as the SECOND contractor in the cascade. The third lowest tender will be proposed as the THIRD contractor in the cascade. Each time the BEREC OFFICE will need to sign a specific contract, the FIRST contractor will be notified. In case no specific contract can be signed, the SECOND contractor will be notified. In case no specific contract can be signed with the SECOND contractor, the third contractor in cascade will be notified.

The aggregate value of price paid by the BEREC Office may not exceed the total maximum amount for the duration of the Framework Contract as it is stated in Section 1.4.2.

5. Negotiations

Once the tender has been evaluated with respect to all of the criteria stated in the Tender Specifications, the BEREK Office may negotiate the tender to adapt it to the requirements set out in the specifications. Please note that the negotiations may cover both the technical and the financial aspects of the tender, but may not concern the minimum (compulsory) technical or administrative specifications outlined in the tender documents.

The negotiations shall be conducted formally in writing, more informally on the basis of an exchange of postal or electronic correspondence or orally. For reasons of transparency, evidence of each contact will be kept. These notes/records will be sent to the tenderer, indicating a time limit for any addition or correction.

Once the negotiation phase is completed, the tenderer(s) shall submit a modified offer, taking into account any amendment agreed upon by both parties, within a time limit specified by the BEREK Office. The final evaluation (follow up evaluation) of the tenders will then take place and the Framework Service Contract will be awarded to the candidate in accordance with Section 4.4 "Award of the Contract" above.

6. Tender preparations costs

Costs incurred in preparing and submitting tenders are borne by the tenderers and will not be reimbursed.

7. Validity of the tender

Period of validity of the tender shall be 6 (six) months from the closing date for submission of the tender given above.

8. Additional provisions

Expenses incurred in respect of the preparation and presentation of tenders cannot be refunded.

No information of any kind will be given on the state of progress with regard to the evaluation of tenders.

All documents submitted by tenderers will become property of the BEREK Office and will be regarded as confidential.

9. Personal data

The processing of personal data by the BEREC Office for the purpose of implementing this procurement procedure is subject to Regulation (EC) No. 45/2001. The Privacy statement – the BEREC Office Policy document on Processing of personal data within the implementation of the Public Procurement Procedures organized by the BEREC Office can be found on the BEREC Office website.

ANNEX A	BEREC Office’s Public Holidays for 2016
ANNEX B	Draft Framework Service Contract
ANNEX C	Administrative identification form
ANNEX D	Declaration of honour and absence of conflict of interests

ANNEX A

BEREC Office Public holidays for 2016

1 January	Friday, New Year's Day
24 March	Maundy Thursday
25 March	Good Friday
28 March	Easter Monday
5 May	Thursday, Ascension Day
6 May	Friday after Ascension Day
23 June	Thursday, Līgo Diena (Summer Solstice)
24 June	Friday, Jāņi (Midsummer)
15 August	Monday, Assumption Day
1 November	Tuesday, All Saints' Day
2 November	Wednesday, All Souls' Day
23 December to 30 December	Friday to Friday (6 end-of-year days)
Total	17 days

Work will resume as normal on Tuesday, 3 January 2017.

Without prejudice to the schedule of public holidays for 2017, Monday 2 January 2017 will be a holiday.

BEREC Office reserves the right to modify these provisions, should the needs of service so require.

The necessity for the minimum staff presence during public holidays will be specified during the year 2016.

Approved on 30 October 2015

László Ignéczi
Administrative Manager

Annex B

FRAMEWORK SERVICE CONTRACT

FRAMEWORK CONTRACT NUMBER – BEREC/XX/XXX

The Office of the Body of European Regulators for Electronic Communications (hereinafter referred to as "**the BEREC Office**"), which is represented for the purposes of the signature of this framework contract by [*forename, surname, function, department*]

on the one part, and

[*full official name*]

[*official legal form*]

[*statutory registration number*]

[*full official address*]

[*VAT registration number*]

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

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

on the other part,

HAVE AGREED

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

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

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

Annex III – Model Specific Contract

[Other annexes]

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

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

I – SPECIAL CONDITIONS

ARTICLE I.1 – SUBJECT MATTER

- I.1.1** The subject matter of the FWC is the provision of HR consultancy services for BEREC Office.
- I.1.2** Signature of the FWC imposes no obligation on the BEREC Office to purchase. Only performance of the FWC through specific contracts is binding on the BEREC Office.
- I.1.3 Multiple framework contract**

The contractor is selected for a multiple FWC in cascade in [complete] position.

ARTICLE I.2 – ENTRY INTO FORCE AND DURATION

- I.2.1** The FWC shall enter into force on the date on which it is signed by the BEREC Office as a last party.
- I.2.2** Under no circumstances may performance commence before the date on which the FWC enters into force. Execution of the tasks may under no circumstances begin before the date on which the specific contract enters into force.
- I.2.3** The FWC is concluded for a period of 12 (twelve) months with effect from the date on which it enters into force. Unless otherwise specified, all periods specified in the FWC are calculated in calendar days.
- I.2.4** The specific contracts shall be signed by both parties before the FWC expires.

The FWC shall continue to apply to such specific contracts after its expiry. They shall be executed no later than 6 (six) months after its expiry.

I.2.5 FWC renewal

The FWC shall be renewed automatically up to 3 (three) times under the same conditions and up to a maximum duration of 4 (four) years, unless written notification to the contrary is sent by one of the parties and received by the other 3 (three) months before expiry of the period indicated in Article I.2.3. Renewal does not imply any modification or deferment of existing obligations.

ARTICLE I.3 – PRICES

- I.3.1** The total maximum amount of the FWC for the initial duration of 12 (twelve) months shall not exceed **EUR 15 000 (thousand euro)**, excluding VAT. The total maximum amount of the FWC for the maximum duration of the FWC all renewals included (representing the maximum duration of 48 months) shall not exceed EUR 60 000 (euro), excluding VAT.

However, this must in no way be construed as a commitment on the BEREC Office to purchase for the maximum amount.

The price of the services will be the result of multiplying the coefficient offered by the contractor to the gross salary of the HR consultant, indicated per hour of work.

The contractor's price is: [complete].

The contractor undertakes the obligation to make sure that the HR consultant is paid in accordance with the tender specifications without restrictions.

ARTICLE I.4 – PAYMENT ARRANGEMENTS AND PERFORMANCE OF THE FRAMEWORK CONTRACT

I.4.1 Multiple framework contract in cascade

Within 2 (two) working days of a request for services being sent by the BEREC Office to the contractor, the BEREC Office shall receive the contractor's reply on specific tender (offer). The specific tender (offer) shall be submitted in accordance with the terms and conditions specified in the request for services.

Should the contractor be unavailable, it shall give reasons for refusal within the same period and the BEREC Office shall be entitled to send the order form or request for services to the next contractor on the list. In the event of failure to observe this deadline, the contractor shall be considered unavailable.

Within 5 (five) working days of a specific contract being sent by the BEREC Office to the contractor, the BEREC Office shall receive it back, duly signed and dated. In the event of failure to observe this deadline, the contractor shall be considered unavailable.

The period allowed for the execution of the tasks shall start to run on the date that is indicated in the specific contract. The duration of the specific contract will be determined in the specific contract with a maximum duration of 6 (six) months.

I.4.2 Pre-financing

Not applicable.

I.4.3 Payment

The contractor shall prepare invoices for payments in accordance with the time sheets of HR consultant approved by the BEREC Office. The contractor shall submit an invoice for payments to the BEREC Office on monthly basis.

Invoices for payment shall be made in accordance with the relevant specific contract accompanied by time sheets of the consultant approved by the BEREC Office HR Officer or any other designated temporary or contract agent. The BEREC Office shall make the payment within 30 (thirty) days from receipt of the invoice. The contractor shall have 10 (ten) days in which to submit additional information or corrections, new documents if it is required by the BEREC Office.

I.4.3 Payment of the balance

The contractor shall submit an invoice for payment of balance.

The BEREC Office shall make the payment within 30 (thirty) days from receipt of the invoice.

ARTICLE I.5 – BANK ACCOUNT

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

Name of bank:

Full address of branch:

Exact designation of account holder:

Full account number including [bank] codes:

[IBAN code:]

ARTICLE I.6 – COMMUNICATION DETAILS AND DATA CONTROLLER

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

Communications shall be sent to the following addresses:

Contract number: [complete]

Contracting authority:

[Full name]

[Function]

BEREC Office

Z. A. Meierovica Bulv. 14, 2nd floor

Riga LV-1050, Latvia

Email: [complete]

Contractor:

[Full name]

[Function]

[Company name]

[Full official address]

Email: [complete]

ARTICLE I.7 – APPLICABLE LAW AND SETTLEMENT OF DISPUTES

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

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 Riga, the Republic of Latvia.

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

I.8.1 Modes of exploitation

In accordance with Article II.10.2 whereby the BEREC Office 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 BEREC Office,
 - (ii) making available to the persons and entities working for the BEREC Office 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 BEREC Office or by a third party in the name of the BEREC Office:
 - (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,
 - languages of the European Economic Area (EEA) States and from those States that are candidates for accession to the European Union, which have observer status in BEREC and the BEREC Office according to Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009 establishing the BEREC and the BEREC Office;
- (d) the modes of exploitation listed in article II.10.4;
- (e) rights to authorise, license, or sub-license in case of licensed pre-existing rights, the modes of exploitation set out in any of the points (a) to (d) to third parties.

Where the BEREC Office becomes aware that the scope of modifications exceeds that envisaged in the FWC, specific contract or order form, it 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 BEREC Office 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 incorporated in the results and directly related to the uses foreseen in Article I.8.1 shall be fully and irrevocably acquired by the BEREC Office as provided for in Article II.10.2 and by derogation to Article II.10.3.

The contractor shall provide to the BEREC Office 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.

ARTICLE I.9 – TERMINATION BY EITHER PARTY

Either party may, unilaterally and without being required to pay compensation, terminate either the FWC or specific contracts by formally notifying the other party and by giving 1 (one) month's notice. Should the BEREC Office terminate the FWC, specific contracts, the contractor shall only be entitled to payment corresponding to the part-performance of the services ordered before the termination date. The first paragraph of Article II.14.3 shall apply.

SIGNATURES

For the contractor,

[Company name/forename/surname/function]

For the BEREC Office,

[forename/surname/function]

Contract number: [complete]

signature[s]: _____

Done at Riga, [date]

In duplicate in English.

signature[s]: _____

Done at Riga, [date]

II – GENERAL CONDITIONS FOR SERVICE FRAMEWORK CONTRACTS

ARTICLE II. 1 – PERFORMANCE OF THE FWC

- II.1.1** The contractor shall perform the FWC to the highest professional standards.
- II.1.2** The contractor shall be solely responsible for taking the necessary steps to obtain any permit or licence required for performance of the FWC under the laws and regulations in force at the place where the tasks assigned to him are to be executed.
- II.1.3** Without prejudice to Article II.4 any reference made to the contractor's personnel in the FWC shall relate exclusively to individuals involved in the performance of the FWC.
- II.1.4** The contractor must ensure that the personnel performing the FWC possesses the professional qualifications and experience required for the execution of the tasks assigned to it.
- II.1.5** The contractor shall neither represent the 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 him.

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

- (a) personnel executing the tasks assigned to the contractor may not be given orders directly by the 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 one of the contractor's personnel fails to correspond to the profile required by the FWC, 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 FWC under the same contractual conditions. The contractor shall be responsible for any delay in the execution of the tasks assigned to him resulting from the replacement of personnel.
- II.1.8** Should the execution of the tasks be directly or indirectly hampered, either partially or totally, by any unforeseen event, action or omission, the contractor shall immediately and on its own initiative record it and report it to the 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 FWC. In such an event the contractor shall give priority to solving the problem rather than determining liability.
- II.1.9** Should the contractor fail to perform its obligations under the FWC or order form or specific contract, the contracting authority may - without prejudice to its right to terminate the FWC order form or specific contract or - 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 FWC or to its performance shall be made in writing and shall bear the FWC number, and if applicable the order form or specific contract number. Any communication is deemed to have been made when it is received by the receiving party unless otherwise provided for in this FWC.

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

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

- II.2.3** Mail sent using the postal services is deemed to have been received by the 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 FWC, 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 FWC, including in the event of subcontracting, and for any claim by a third party, but only to an amount not exceeding three times the total amount of the relevant order form or specific contract. Nevertheless, if the damage or loss is caused by the gross negligence or wilful misconduct of the contractor or of its personnel or subcontractors, the contractor shall have unlimited liability for the amount of the damage or loss.

- II.3.4** 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 FWC. In the event of any action brought by a third party against the contracting authority in connection with the performance of the FWC 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 FWC if required by the relevant applicable legislation. It shall take out supplementary insurance as reasonably required by standard practice in the industry. A copy of all the relevant insurance contracts shall be sent to the contracting authority should it so request.

ARTICLE II. 4 - CONFLICT OF INTERESTS

- 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 FWC 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 FWC 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 FWC.
- 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 FWC 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 FWC and identified in writing as confidential.

The contractor shall:

- (a) not use confidential information and documents for any purpose other than fulfilling its obligations under the FWC, order form or specific contract without prior written agreement of the 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 FWC and for five years starting from the date of the payment of the balance unless:

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

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

ARTICLE II.6 – PROCESSING OF PERSONAL DATA

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

- II.6.2** The contractor shall have the right to access its personal data and the right to rectify any such data. The contractor should address any queries concerning the processing of its personal data to the data controller.

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

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

- II.6.5** The contractor shall grant personnel access to the data to the extent strictly necessary for the performance, management and monitoring of the FWC.
- II.6.6** The contractor undertakes to adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned in order to:
- (a) prevent any unauthorised person from gaining access to computer systems processing personal data, and especially:
 - (i) unauthorised reading, copying, alteration or removal of storage media;
 - (ii) unauthorised data input, as well as any unauthorised disclosure, alteration or erasure of stored personal data;
 - (iii) unauthorised use of data-processing systems by means of data transmission facilities;
 - (b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
 - (c) record which personal data have been communicated, when and to whom;
 - (d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the 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 FWC 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 FWC.
- 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 FWC, notably by Article II.18.

ARTICLE II. 8 – AMENDMENTS

- II.8.1** Any amendment to the FWC or order form or specific contract shall be made in writing before fulfilment of all contractual obligations. An order form or a specific contract may not be deemed to constitute an amendment to the FWC.
- II.8.2** The amendment may not have the purpose or the effect of making changes to the FWC or to order forms or specific contracts which might call into question the decision awarding the FWC, order form or specific contract or result in unequal treatment of tenderers or contractors.

ARTICLE II. 9 – ASSIGNMENT

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

(1) 'results' means any intended outcome of the performance of the FWC which is delivered and finally accepted by the 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 FWC performance and include rights of ownership and use by the contractor, the creator, the contracting authority and any other third parties.

II.10.2 Ownership of the results

The ownership of the results shall be fully and irrevocably acquired by the Union under the FWC including any rights in any of the results listed in the FWC and order forms or specific contracts, including copyright and other intellectual or industrial property rights, and all technological solutions and information contained therein, produced in performance of the FWC. The contracting authority may exploit them as stipulated in this FWC or order forms or specific contracts. All the rights shall be acquired by the Union from the moment the results are delivered by the contractor and accepted by the 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 FWC 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 FWC or specific contract or order form explicitly provides for it to be treated as a self-contained result.

II.10.3 Licensing of pre-existing rights

The 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 FWC 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 the FWC which may be used for any of the following purposes:

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

Contract number: [complete]

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

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

Upon request by the 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 FWC, which was not attributable to error or negligence on their part or on the part of subcontractors and which proves to be inevitable in spite of exercising due diligence. Any default of a service, defect in equipment or material or delays in making them available, unless they stem directly from a relevant case of force majeure, as well as labour disputes, strikes or financial difficulties, cannot be invoked as force majeure.
- II.11.2** A party faced with force majeure shall formally notify the other party without delay, stating the nature, likely duration and foreseeable effects.
- II.11.3** The party faced with force majeure shall not be held in breach of its contractual obligations if it has been prevented from fulfilling them by force majeure. Where the contractor is unable to fulfil its contractual obligations owing to force majeure, it shall have the right to remuneration only for the tasks actually executed.
- II.11.4** The parties shall take all the necessary measures to limit any damage due to force majeure.

ARTICLE II. 12 – LIQUIDATED DAMAGES

The 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 FWC or the relevant order form or specific contract, then, without prejudice to the contractor's actual or potential liability or to the contracting authority's right to terminate the FWC or the relevant order form or specific 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 price of the relevant purchase;

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

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

II.13.1 Suspension by the contractor

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

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

II.13.2 Suspension by the contracting authority

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

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

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

ARTICLE II. 14 – TERMINATION OF THE FWC

II.14.1 Grounds for termination

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

- (a) if a change to the contractor's legal, financial, technical or organisational or ownership situation is likely to affect the performance of the FWC or order form or specific contract substantially or call into question the decision to award the FWC;
- (b) if execution of the tasks under a pending order form or a specific contract has not actually commenced within 15 days of the date foreseen, and the new date proposed, if any, is considered unacceptable by the contracting authority, taking into account article II.8.2;
- (c) if the contractor does not perform the FWC or an order form or specific contract as established in the tender specifications or request for service or fails to fulfil another substantial contractual obligation; termination of three or more order forms or specific contracts on this ground shall constitute ground for termination of the FWC;
- (d) in the event of force majeure notified in accordance with article II.11 or if the performance of the FWC or order form or specific contract has been suspended by the contractor as a result of force majeure, notified in accordance with article II.13, where either resuming performance is impossible or the modifications to the FWC or order form or specific contract might call into question the decision awarding the FWC or order form or specific contract, or result in unequal treatment of tenderers or contractors;
- (e) if the contractor is declared bankrupt, is being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (f) if the contractor or any natural person with the power to represent it or take decisions on its behalf has been found guilty of professional misconduct proven by any means;
- (g) if the contractor is not in compliance with its obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which it is established or with those of the country of the applicable law of this FWC or those of the country where the FWC is to be performed;
- (h) if the contracting authority has evidence that the contractor or any natural persons with the power to represent it or take decisions on its behalf have committed fraud, corruption, or are involved in a criminal organisation, money laundering or any other illegal activity detrimental to the Union's financial interests;

Contract number: [complete]

- (i) if the contracting authority has evidence that the contractor or any natural persons with the power to represent it or take decisions on its behalf have committed substantial errors, irregularities or fraud in the award procedure or the performance of the FWC, including in the event of submission of false information;
- (j) if the contractor is unable, through its own fault, to obtain any permit or licence required for performance of the FWC or order form or specific contract;
- (k) if the needs of the contracting authority change and it no longer requires new services under the FWC;
- (l) when due to the termination of the FWC with one or more of the contractors there is no minimum required competition within the multiple framework contract with reopening of competition.

II.14.2 Procedure for termination

When the contracting authority intends to terminate the FWC or order form or specific contract it shall formally notify the contractor of its intention specifying the grounds thereof. The 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 FWC or order form or specific contract. In the cases referred to in points (a), (b), (c), (e), (g), (j), (k) and (l) of Article II.14.1 the formal notification shall specify the date on which the termination takes effect. In the cases referred to in points (d), (f), (h), and (i) of Article II.14.1 the termination shall take effect on the day following the date on which notification of termination is received by the contractor.

II.14.3 Effects of termination

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

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 FWC.

ARTICLE II. 15 – REPORTING AND PAYMENTS

II.15.1 Date of payment

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

II.15.2 Currency

The FWC shall be in euros.

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

Conversion between the euro and another currency shall be made according to the daily euro exchange rate published in the *Official Journal of the European Union* or, failing that, at the

monthly accounting exchange rate established by the European Commission and published on its website, applicable on the day on which the payment order is issued by the 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 FWC reference and reference to the order form or specific contract.

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

The 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 FWC are exempt from taxes and duties, including VAT exemption.

II.15.5 Pre-financing and performance guarantees

Pre-financing guarantees shall remain in force until the pre-financing is cleared against interim payments or payment of the balance and, in case the latter takes the form of a debit note, three months after the debit note is notified to the contractor. The 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 request for services until its final acceptance by the contracting authority. The amount of the performance guarantee shall not exceed the total price of the order form or specific contract. The guarantee shall provide that it remains in force until final acceptance. The 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 fulfil the following conditions:

- (a) the financial guarantee is provided by a bank or an approved financial institution or, at the request of the contractor and agreement by the 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 or in the order form or specific contract.

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

Upon receipt, the 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 FWC, 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 order form or specific contract in accordance with Article II.14.1(c).

II.15.8 Interest on late payment

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

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

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

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

ARTICLE II. 16 - REIMBURSEMENTS

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

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

II.16.3 Travel expenses shall be reimbursed as follows:

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

In addition, travel outside Union territory shall be reimbursed provided the 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.15.2.

ARTICLE II. 17 – RECOVERY

- II.17.1** If an amount is to be recovered under the terms of the FWC, the contractor shall repay the 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 the full amount owed.
- Any partial payment shall first be entered against charges and interest on late payment and then against the principal amount.
- II.17.3** If payment has not been made by the due date, the 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 or in the specific contract.

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 FWC. It may be carried out either directly by its own staff or by any other outside body authorised to do so on its behalf.
- Such checks and audits may be initiated during the performance of the FWC and during a period of five years which starts running from the date of expiry of the FWC.
- The audit procedure shall be deemed to be initiated on the date of receipt of the relevant letter sent by the 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 expiry of the FWC.
- 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 FWC is performed and to all the information, including information in

electronic format, needed in order to conduct such checks and audits. The contractor shall ensure that the information is readily available at the moment of the check or audit and, if so requested, that information be handed over in an appropriate form.

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

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

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

SPECIFIC CONTRACT No [complete]

implementing Framework contract No [complete]

The Office of the Body of European Regulators for Electronic Communications (hereinafter referred to as "**the BEREC Office**"), which is represented for the purposes of the signature of this framework contract by [*forename, surname, function, department*]

on the one part, and

[*full official name*]

[*official legal form*]

[*statutory registration number*]

[*full official address*]

[*VAT registration number*]

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

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

on the other part,

HAVE AGREED

ARTICLE III.1: SUBJECT MATTER

III.1.1 This specific contract implements Framework Contract (FWC) No [complete] signed by the BEREC Office and the contractor on [complete date].

III.1.2 The subject matter of this specific contract is [short description of subject].

III.1.3 The contractor undertakes, in accordance with the terms set out in the FWC and in this specific contract and the annex[es] thereto, which form an integral part thereof, to perform the [following tasks:] [tasks specified in Annex [complete].]

ARTICLE III.2: ENTRY INTO FORCE AND DURATION

III.2.1 This specific contract shall enter into force [on the date on which it is signed by the last party] [on [insert date] if it has already been signed by both parties].

III.2.2 The duration of the execution of the tasks shall not exceed [complete] [days][months]. Execution of the tasks shall start from [the date of entry into force of this specific contract] [insert date].

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

ARTICLE III.3: PRICE

III.3.1 The maximum total price to be paid under this specific contract shall be EUR [amount in figures and in words] covering all tasks executed.

ARTICLE III.4: PERFORMANCE GUARANTEE

Not applicable

ARTICLE III.5: EXPLOITATION OF THE RESULTS

[Complete]

ANNEXES

Request for service

Contractor's specific tender (offer) No [complete] of [insert date]

SIGNATURES

For the contractor,

[Company name/forename/surname/function]

signature[s]: _____

Done at Riga, [date]

In duplicate in English.

For the BEREC Office,

[forename/surname/function]

signature[s]: _____

Done at Riga, [date]

ANNEX C: ADMINISTRATIVE IDENTIFICATION FORM

<u>TENDERER'S ID</u>	
Name	
Legal form	
Date of registration	
Country of registration	
Registration number	
VAT number	
Address of registered office	
Contact address (if different)	
URL	
<u>AUTHORISED REPRESENTATIVE(S)¹</u>	
<u>CONTACT PERSON</u>	
Name	
Forename	
Position	
Telephone	
Fax	
Email	
DECLARATION BY THE AUTHORISED REPRESENTATIVE(S): I, the undersigned, certify that the information given in this tender is correct and that the tender is valid.	

Place and date:

Name (in capital letters) and signature:

¹ Please include the names of the legal representative(s) whose contract signature is required in accordance with the statutes of the organisation and the official document to be provided as required under Section 2.3.3.

Annex D

DECLARATION OF HONOUR ON EXCLUSION CRITERIA AND ABSENCE OF CONFLICT OF INTEREST

(Complete or delete the parts in grey 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 control¹

¹ This covers the company directors, members of the management or supervisory bodies, and cases where one natural person holds a majority of shares.

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 penalties² 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.

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

² 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