

# DRAFT CONTRACT

## SERVICE CONTRACT FOR EUROPEAN UNION EXTERNAL ACTIONS

N<sup>o</sup> <Contract number>

### FINANCED FROM THE [GENERAL BUDGET OF THE UNION] [EDF]

[For direct management: European Union, represented by the European Commission, B-1049 Brussels, Belgium, on behalf of and for the account of the government of <name of the partner country>]

[For indirect management: <Name and address of the contracting authority>]

(‘the contracting authority’),

of the one part,

and

<Full official name of the contractor>

[<Legal status/title>]<sup>1</sup>

[<Official registration number>]<sup>2</sup>

<Full official address>

[<VAT number>]<sup>3</sup>,

(‘the contractor’)

of the other part,

have agreed as follows:

**PROJECT** <Title and reference in the financing agreement/decision>

**CONTRACT TITLE** <contract title>

**Identification number** <publication reference>

#### (1) Subject

- 1.1 The subject of this contract is <contract title>done [at] [in]<location> with identification number <publication reference> (‘the services’).
- 1.2 The contractor shall execute the tasks assigned to him in accordance with the terms of reference annexed to the contract (Annex II)

#### (2) Contract value

[Option 1: Fee-based contracts (technical assistance contracts)]

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<sup>1</sup>Where the contracting party is an individual.

<sup>2</sup>Where applicable. For individuals, mention their ID card, passport or equivalent document number.

<sup>3</sup>Except where the contracting party is not VAT registered.

This contract, established in [Euro][<national currency>for indirect management only], is a fee-based contract. Based on the maximum fees, [lumpsum], incidental expenditure and provision made for expenditure verification set out in Annex V, the maximum contract value is [Euro] [<national currency>for indirect management only]<amount>.]

[Option 2: Global price contracts (studies and other result-based contracts)]

This contract, established in [Euro][<national currency>for indirect management only], is a global price contract. The contract value is [Euro] [<national currency>for indirect management only] <amount>.]

### **(3) Order of precedence of contract documents**

The following documents shall be deemed to form and be read and construed as part of this contract, in the following order of precedence:

- the contract agreement;
- the special conditions
- the general conditions (Annex I);
- the terms of reference [including clarification before the deadline for submitting tenders and minutes of the information meeting/site visit] (Annex II)
- the organisation and methodology [including clarification from the tenderer provided during tender evaluation] (Annex III);
- [Key experts (Annex IV)For contracts requiring key experts];
- Budget [For fee-based contracts only: breakdown] (Annex V);
- specified forms and other relevant documents (Annex VI));

[For fee-based contracts only:

- Report of factual findings and terms of reference for an expenditure verification(Annex VII)]

**The various documents making up the contract shall be deemed to be mutually explanatory; in cases of ambiguity or divergence, they shall prevail in the order in which they appear above. Addenda shall have the order of precedence of the document they are amending.**

### **(4) Language of the contract**

The language of the contract and of all written communications between the contractor and the contracting authority and/or the project manager shall be English.

### **(5) Other specific conditions applying to the contract**

For direct management insert the following

[For the purpose of Article 42 of the General Conditions,

- (a) [For DG INTPAthe data controller is the head of legal affairs unit of DG International Partnerships]  
[For DG NEAR the data controller is the head of contracts and finance unit R4 of DG Neighbourhood and Enlargement Negotiations]  
[For any other DGthe data controller is<please add the function of your controller >.]

(b) the data protection notice is available at:  
[https://wikis.ec.europa.eu/display/ExactExternalWiki/Annexes#Annexes-AnnexesA\(Ch.2\):General](https://wikis.ec.europa.eu/display/ExactExternalWiki/Annexes#Annexes-AnnexesA(Ch.2):General)

For indirect management insert the following

[For the purpose of Article 42 of the general conditions, for the part of the data transferred by the contracting authority to the European Commission:

(a) the controller for the processing of personal data carried out within the Commission is

[For DG INTPA the head of legal affairs unit of DG International Partnerships.]

[For DG NEAR the head of contracts and finance unit R4 of DG Neighbourhood and Enlargement Negotiations] [For any other DG <please add the function of your controller >.]

(b) the data protection notice is available at:  
[https://wikis.ec.europa.eu/display/ExactExternalWiki/Annexes#Annexes-AnnexesA\(Ch.2\):General](https://wikis.ec.europa.eu/display/ExactExternalWiki/Annexes#Annexes-AnnexesA(Ch.2):General)

[If necessary and after having obtained prior approval/derogation by the competent services:

The following conditions to the contract shall apply:

By derogation from Article ... ]

Done in English in [two][three] originals, [For direct management: [one][two] originals for the European Commission] [For indirect management: one original for the contracting authority, one original for the European Commission], and one original for the contractor.

**For the contractor**

**For the contracting authority**

Name:

Name:

Title:

Title:

Signature:

Signature:

Date:

Date:

[For indirect management with ex-ante controls if the European Commission makes payments under the contract:

**Endorsed for financing by the European Union**

Name:

Title:

Signature:

Date:



## SPECIAL CONDITIONS

These conditions amplify and supplement the general conditions governing the contract. Unless the special conditions provide otherwise, the general conditions remain fully applicable. The numbering of the Articles of the special conditions is not consecutive but follows the numbering of the general conditions. Exceptionally, and with the approval of the competent European Commission departments, other clauses can be indicated to cover particular situations.

### How to complete these special conditions:

**Where you see < ... >, enter the information relevant to the special conditions.** The phrases in square brackets [ ] should only be included if relevant. The paragraphs shaded in grey should only be amended in exceptional cases, depending on the requirements of particular tender procedures.

**Note that the special conditions provide for allowed deviations from the general conditions. The use of further deviations from the general conditions requires an exception to be granted by the relevant services of the European Commission.**

Please remember to delete this paragraph and all pointed and square brackets in the final version of the special conditions.

### Article 2 Communications

- 2.1 <Indicate here the contact persons, addresses of the parties, their other contact details, the documents to provide and the procedure to be used by the parties for communication.>
- 2.2 An electronic system will be used by the contracting authority and the contractor for all stages of implementation including, inter alia, management of the contract (amendments and administrative orders), reporting (including reporting on results) and payments. The contractor will be required to register in and use the appropriate electronic exchange system to allow for the e-management of the contract. With regard to interim and final reports, if they are required according to Article 26 or to the terms of reference, the contractor will be expected to use the forms in the electronic system for encoding and submitting the reports.

The electronic management of the contract through the aforementioned system may commence on the date on which implementation of the contract starts, as described in Article 19 below, or at a later date. In the latter case, the contracting authority will inform the contractor in writing that he will be required to use the electronic system for all communications within a maximum period of 3 months.

### Article 4 Subcontracting

- 4.9 [EDF only:  
In the selection of subcontractors and/or other independent contractors from an eligible country, preference shall be given to natural persons, companies and firms of ACP States capable of implementing the tasks required on similar terms. ]

### Article 7 General obligations

- 7.8 <Specify the specific activities to be put in place by the contractor to comply with its minimum obligation towards visibility and, if applicable, any additional communication activities agreed by the European Commission. These activities must comply with the latest Communication and Visibility Requirements for EU-funded external action, laid down and published by the European Commission.>

### Article 12 - Liabilities

- 12.2 <Specify here the specific requirements of liability for damages to the contracting authority>[For contracts of an amount above one million EUR: in some cases contractors may create damages of a value much higher than the contract value. This is especially the case when this service contract is linked to another contract and where the financial risk is high. This is a non-exhaustive list of cases: design or supervision of works, evaluation, audit, preparation of ToRs/TS, PEs. If you find it necessary to set a cap higher than that referred to in the general conditions, add the following clause:

‘By way of derogation from Article 12.2, paragraph 2, of the general conditions, compensation for damage resulting from the contractor's liability in respect of the contracting authority is capped at an amount equal to<complete with an amount that can be a multiple of the contract value>.’]

[For contracts of amount below one million EUR: in some cases capping contractors liability to one million EUR may be disproportional compared to the content of this contract. This is especially the case where the financial risk is low, for instance for technical assistance or studies. If you find it necessary to set a cap lower than that referred to in the general conditions, add the following clause:

‘By way of derogation from Article 12.2, paragraph 2, of the general conditions, compensation for damage resulting from the contractor's liability in respect of the contracting authority is capped at an amount equal to<complete with an amount between the contract value and one million EUR>.’]

## **Article 13 - Insurance**

- 13.2 a) <Specify here specific requirements on when the requirements of proof of completion of adequate insurance must be provided> [If you find it necessary to tailor differently when the requirements for proof of insurance must be met, add the following clause:

By derogation from Article 13.2 a) of the general conditions, [indicate when], the contractor shall ensure that itself, its staff, its subcontractors and any person for which the contractor is answerable, are adequately insured with insurance companies recognized on the international insurance market, unless the contracting authority has given its express written consent on a specific insurance company.]

- 13.2 b) first paragraph <Specify here specific requirements on when the requirements of communication of cover notes and/or insurance certificates must be fulfilled> [If you find it necessary to tailor differently the moment cover notes and/or insurance certificates must be communicated, add the following clause :

By derogation from Article 13.2, b), paragraph 1 of the general conditions it is [state when] that the contractor shall provide the contracting authority with all cover notes and/or insurance certificates showing that the contractor's obligations relating to insurance are fully respected. ]

## **Article 19 Implementation of the tasks and delays**

- 19.1 [The start date for implementation shall be<date/date of signature of the contract by both parties>]



[The date on which implementation starts shall be within 3 months of the signature of this contract by both parties and shall be set in an administrative notice issued by the project manager.]

19.2 The period for implementing the tasks is <number> months from the start date.

## **Article 26 Interim and final reports**

The contractor shall submit progress reports as specified in the terms of reference.

## **Article 27 Approval of reports and documents**

27.5 [For contracts in indirect management under the general budget of the Union for which a financing agreement was signed before 01/01/2013 and for 10<sup>th</sup> EDF /11<sup>th</sup> EDF:

The contracting authority shall, within 45 days of receipt, notify the contractor of its decision concerning the documents or reports received by it, giving reasons should it reject the reports or documents, or request amendments. If the contracting authority does not give any comments on the documents or reports within the time limit, the contractor may request written acceptance of them. The documents or reports shall in any case be deemed to have been approved by the contracting authority if it does not expressly inform the contractor of any comments within 45 days of the receipt of the documents or reports.]

## **Article 28 Expenditure verification**

28.2 [Fee-based contract The expenditure verification(s) referred to in the general conditions shall be carried out by < name, address, telephone and fax numbers>.]

## **Article 29 Payment and interest on late payment**

29.1 Payments shall be made in accordance with the following the option:

Option 1: Fee-based contract

<b>Month</b>		<b>[EUR] [&lt;ISO code of national currency&gt; for indirect management only]</b>
<b>1</b>	<b>Maximum pre-financing payment<sup>4</sup></b>	<Maximum amount> <X> % <sup>5</sup>
<b>6-monthly</b>	<b>Interim payments</b>	<amount (balance of pre-financing payment and forecast balance)>
<b>&lt;Month number&gt;</b>	<b>Forecast balance</b>	10 % of the maximum contract value
	<b>Total</b>	<maximum contract value>

The actual amounts payable after the pre-financing payment will vary. They shall be based on the contractor's invoice accompanied by an interim progress report and an expenditure

<sup>4</sup>The contractor is not obliged to ask for pre-financing.

<sup>5</sup>Maximum of 20 % of the maximum contract value.

verification report and are subject to approval of the reports in accordance with Article 27 of the general conditions.

The interim invoices must be paid such that the sum of the payments does not exceed 90 % of the maximum contract value stated in Article (2) of the contract. Payment of the balance of the final value of the contract, subject to the maximum contract value stated in Article (2) of the contract, is made after deduction of the amounts already paid, within 90 days of the contracting authority receiving an invoice accompanied by the final progress report and a final expenditure verification report, the incidental expenditure and expenditure verification actually incurred during the period, subject to approval of those reports.

#### Option 2: Global price contract

Month		[EUR] [<ISO code of national currency> for indirect management only]
1	Maximum pre-financing payment <sup>6</sup>	<Max. 40 % of the contract value>
<Month/ year number>	[If applicable: Interim payment ]	<X % of the contract value>
<Month/ year number>	Balance	<Maximum 60 % of the contract value>
	Total	<Total contract value>

[Contract in indirect management under the general budget of the Union only: By derogation, the payments to the contractor of the amounts due under interim and final payments shall be made within 90 days after receipt by the contracting authority of an invoice and of the reports, subject to approval of those reports in accordance with Article 27 of the general conditions.]

[Contract under 10<sup>th</sup> EDF only: By derogation, the pre-financing payment shall be made within 90 days from the date on which an admissible invoice is registered by the contracting authority. The interim and final payments to the contractor of the amounts due shall be made within 90 days following approval of the reports in accordance with Article 27 of the general conditions, after receipt by the contracting authority of an admissible invoice.]

[Contract in indirect management under 11<sup>th</sup> EDF only where the Commission executes payments: By derogation, the pre-financing payment shall be made within 60 days from the date on which an admissible invoice is registered by the contracting authority. The interim and final payments to the contractor of the amounts due shall be made within 90 days from the date on which an admissible invoice is registered by the contracting authority.]

#### 29.3 [For indirect management]

<sup>6</sup>The contractor is not obliged to ask for pre-financing.



By derogation from Article 29.3 of the general conditions, once the deadline set in Article 29.1 has expired, the contractor shall, upon demand, be entitled to late-payment interest at the rate and for the period mentioned in the general conditions. The demand must be submitted within two months of receiving late payment.]

- 29.5 Payments shall be made in [euro] [<national currency> for indirect management only] in accordance with Articles 20.6 and 29.4 of the general conditions into the bank account notified by the contractor to the contracting authority.

[Optional: In the case of indirect management with ex ante control and where invoices are presented to the contracting authority, the contractor must inform the European Commission at <enter address of the unit in charge if this option is used>, thereof by sending a copy of the correspondence.]

### **Article 30 Financial guarantee**

- 30.1 [When the pre-financing requested is equal to or below EUR 300 000 and subject to a positive risk assessment<sup>7</sup> by the contracting authority, by derogation from Article 30 of the general conditions no pre-financing guarantee is required.]

### **Article 40 Settlement of disputes**

[For direct management:

- 40.4 Any disputes arising out of or relating to this contract which cannot be settled amicably shall be referred to the exclusive jurisdiction of the courts of Brussels, Belgium.]

[For indirect management:

[General budget of the Union:

- [40.4 Any disputes arising out of or relating to this contract which cannot be settled otherwise shall be referred to the exclusive jurisdiction of <specify> in accordance with the national legislation of the state of the contracting authority.]

OR

- [40.4 Any disputes arising out of or relating to this contract which cannot be settled otherwise shall be referred for arbitration to <specify the arbitration body> in accordance with the rules of arbitration of [the International Chamber of Commerce] [the United Nations Commission on International Trade Law] [<other internationally recognised procedure to be specified>].]

[EDF:

- 40.4 Any dispute arising out of or relating to this contract which cannot be settled otherwise shall be settled

(a) if it is a national contract [in accordance with the national legislation of the state of the contracting authority]

(b) if it is a transnational contract [either:

(i) if the parties to the contract so agree, in accordance with the national legislation of the state of the contracting authority or its established international practices; or

(ii) by arbitration in accordance with the procedural rules on conciliation and arbitration of contracts financed by the European Development Fund, adopted by

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<sup>7</sup>Such risk assessment is required, for example, when the contract is awarded to a company that does not comply itself with the selection criteria but relies on the capacity of another company.

Decision 3/90 of the ACP-EEC Council of Ministers of 29 March 1990 (Official Journal No L 382, 31.12.1990, Annex A12 to the practical guide ).]Please attach Annex A12 of the practical guide to the present contract.]

[Optional for contract awarded after negotiated procedure to an international organisation that cannot participate in competitive procedures according to its statute or act of establishment:

#### **Article 40 Settlement of disputes and Article 41 Applicable law**

Articles 40.3, 40.4 and 41.1 of the general conditions shall be replaced by the following:

In default of amicable settlement, the parties may refer the matter to arbitration in accordance with the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organisations and States in force at the date of conclusion of this agreement. The appointing authority shall be the Secretary General of the Permanent Court of Arbitration following a written request submitted by either party. The Arbitrator's decision shall be binding on all parties and there shall be no appeal.]

#### **Article 42 Data Protection**

[The following text is to be inserted for indirect management]

[1. Processing of personal data related to the implementation of the contract by the contracting authority takes place in accordance with the national legislation of the state of the contracting authority and with the provisions of the respective financing agreement.

2. To the extent that the contract covers an action financed by the European Union, the Contracting Authority may share communications related to the implementation of the contract, with the European Commission. These exchanges shall be made to the Commission, solely for the purpose of allowing the latter to exercise its rights and obligations under the applicable legislative framework and under the financing agreement with the Partner country – contracting authority. The exchanges may involve transfers of personal data (such as names, contact details, signatures and CVs) of natural persons involved in the implementation of the contract (such as contractors, staff, experts, trainees, subcontractors, insurers, guarantors, auditors and legal counsel). In cases where the contractor is processing personal data in the context of the implementation of the contract, he/she shall accordingly inform the data subjects of the possible transmission of their data to the Commission. When personal data is transmitted to the Commission, the latter processes them in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC<sup>8</sup> and as detailed in the specific privacy statement published at ePRAG.]

#### **Article 43 Further additional clauses**

<Add other clauses approved by the competent European Commission departments.>

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<sup>8</sup> OJ L 205 of 21.11.2018, p. 39

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