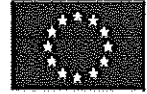


Contract number: [complete]



ANNEX A

DRAFT FRAMEWORK SERVICE CONTRACT

CONTRACT NUMBER – [complete]

between the

EUROPEAN FISHERIES CONTROL AGENCY (EFCA)

and

[INSERT NAME OF THE COMPANY]

Purpose of Contract: [complete]

The European Fisheries Control Agency (hereinafter referred to as "EFCA"), 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 contractor' shall be jointly and severally liable vis-à-vis EFCA for the performance of this framework contract.]

on the other part,

HAVE AGREED

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

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

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

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

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



I – SPECIAL CONDITIONS

ARTICLE I.1 – SUBJECT MATTER

- I.1.1 The subject matter of the FWC is [short description of subject].
- I.1.2 Signature of the FWC imposes no obligation on EFCA to purchase. Only performance of the FWC through order forms is binding on EFCA.

ARTICLE I.2 – ENTRY INTO FORCE AND DURATION

- I.2.1 The FWC shall enter into force on [insert date] if it has already been signed by both parties.
- I.2.2 Under no circumstances may performance commence before the date on which the FWC enters into force. Execution of the tasks may under no circumstances begin before the date on which the order form enters into force.
- I.2.3 The FWC is concluded for a period of 24 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 order forms shall be signed by both parties before the FWC expires.

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

I.2.5 FWC renewal

The FWC shall be renewed automatically up to two times, each time for a period of one year, under the same conditions, unless written notification to the contrary is sent by one of the parties and received by the other three months before expiry of the period indicated in Article I.2.3. Renewal does not imply any modification or deferment of existing obligations.

ARTICLE I.3 – PRICES

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

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

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

I.4.1 Single framework contract

Within two working days of an order form being sent by EFCA to the contractor, EFCA shall receive the completed order form back, duly signed and dated.

The period allowed for the execution of the tasks shall start to run on the date the contractor signs the order form, unless a different date is indicated on the form.



Contract number: [complete]

1.4.2 Payment of the balance

The contractor shall submit a monthly invoice for payment of the balance in a period of a calendar month.

The invoice shall

- indicate the reference number of the FWC and the orders to which it refers
- itemise separately the cost of the tickets (and other types) and the transaction fees
- be subdivided in separate invoices, one for each Unit and one for the Directorate, in accordance with the information provided in the order forms
- be accompanied by a consolidated monthly report detailing all transactions that took place in the referred month, in particular:
 - Description of transaction / service rendered with indication of related order form: analytical information shall be provided, inter alia, itinerary, dates of stay, cost.

A service is considered rendered at the finalisation of the mission concerned. The booking of the tickets or hotels is not considered rendered until the end of the relevant mission.

No payments shall be requested as a transaction fee, if there has not been a written confirmation of the booking (order form) from a responsible staff member of the EFCA. The contractor shall not charge fees for simply providing preliminary prices/costs estimates for a tentative booking, after having surveyed the market providing the EFCA with the requested information.

For all additional costs relating to any detours or parts of the journey made for private reasons, the contractor shall demand payment directly by the member of staff going on mission. EFCA takes no responsibility and accepts no request for payment of the cost of such travelling arrangements for private reasons.

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

1.4.3 Account management

EFCA reserves the right to modify the essential elements which shall be included in the invoices and supporting documentation, their format and presentation as well as the technical methods of transmission of the data and documents, communicated to the contractor according to the Agency's needs, with written notice of one month.

EFCA does not accept invoices relating to services provided more than six months before the corresponding invoicing, except for requests for payment introduced beyond this time period for internal reasons of the EFCA (i.e. late delivery of the supporting documents by the person in charge of the mission or similar).

The credit notes shall be drawn up within a maximum of 30 days following the reception of the transport documents not used, except if the refunding requested to a supplier justifies additional time.

ARTICLE 1.5 – BANK ACCOUNT

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

Name of bank:



Contract number: [complete]

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 Resources Unit.

Communications shall be sent to the following addresses:

EFCA:

For administrative and financial matters:

[Full name]

E-mail: [complete]

Avda. García Barbón 4

E- 36201 Vigo

Spain

For technical and operational matters:

[Full name]

Email: [complete]

Avda. García Barbón 4

E- 36201 Vigo

Spain

Contractor:

[Full name]

[Function]

[Company name]

[Full official address]

Email: [complete]

ARTICLE I.7 – APPLICABLE LAW AND SETTLEMENT OF DISPUTES

1.7.1 The FWC shall be governed by Union law, complemented, where necessary, by the law of Spain.

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

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

Not applicable.

ARTICLE I.9 – TERMINATION BY EITHER PARTY

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

ARTICLE I.10 – OTHER SPECIAL CONDITIONS

Key Performance Indicators

I.10.1 Service Level Metrics shall be applied to the provided services, with the Key Performance Indicators (KPI) laid down in the tables below.

KPI-1 KPI-3 KPI-4	<u>Response times minimum requirement:</u> Fare enquiries: As per tender in Annex II ¹ . Accommodation enquiries: As per tender in Annex II ² . Car rental enquiries: As per tender in Annex II ³ . On the basis of the quarterly report provided in accordance with Annex I, and EFCA verification.
KPI-2	<u>Response times minimum requirement:</u> Changes of tickets/routing: Two (2) hours as from the request. On the basis of the quarterly report provided in accordance with Annex I, and EFCA verification.
KPI-5	<u>Response times minimum requirement:</u> Booking meeting room enquiries: Three (3) working days from the date of the request. On the basis of the quarterly report provided in accordance with Annex I, and EFCA verification.

¹ Will be completed before contract signature.

² Will be completed before contract signature.

³ Will be completed before contract signature.

Contract number: [complete]

Should the contractor fail to comply with the above KPI, the EFCA may, in accordance with Article II.1.9 reduce or recover payments in proportion to the scale of the failure, in particular:

KPI-1, KPI-3 and KPI-4: Response time not respected quarterly. Number of occurrences >18	If number of occurrences during a quarter is greater than 18, 100 % of the related fees for each occurrence (response time not respected as per offer) will be deducted in the next invoice.
KPI-2: Response time not respected quarterly. Number of occurrences >3	If number of occurrences during a quarter is greater than 3, 100% of the related fees for each occurrence (response time not within 2 hours) will be deducted in the next invoice.
KPI-5: Response time not respected quarterly. Number of occurrences >1	If number of occurrences during a quarter is greater than 1, 100% of the related fees for each occurrence (response time not within 3 working days) will be deducted in the next invoice.

Liquidated damages

I.10.2 Without prejudice to Article II.12, if, for reasons imputable to the Contractor:

- a) it is proven that the Contractor did not provide in due time one or more transport documents which would have been normally required from the Contractor, the Contractor shall be indebted to EFCA of a sum equal to the price of the transport ticket(s) which EFCA will have had to pay to mitigate this deficiency.
- b) it is proven that the Contractor did not provide the most economic solution at the moment of the transaction and EFCA detects this failure in a formal way, the Contractor shall be indebted to EFCA of a sum equal to the difference between the invoiced price and the most economic price which the Contractor should have offered.
- c) it is proven that overcharging is noted in the event of a private part related to a mission being the private part of which the Contractor was informed by the person going on mission at the time of its request and, however, invoiced to EFCA, the Contractor shall be indebted to EFCA of a sum equal to this overcharging.
- d) it is proven that additional expenses are noted in the event of cancellation or modification of the initial request of the person going on mission and in so far as the Contractor cannot provide the proof of having informed the staff member taking the trip beforehand, the Contractor shall be indebted to EFCA of the amount of these expenses.

I.10.3 The liquidated damages in proportion to the scale of the failure as defined in Article I.10.2 are applied by way of a reduction/ recovery of payments in accordance with Article II.1.9.

Compliance with certifications and relevant regulations

I.10.4 All services provided by the contractor shall be carried out in strict compliance with the relevant regulations and legislation applicable to the type of service subject of this contract.

The contractor shall have all the permissions and authorisations needed for the good execution of the contract, under the applicable regulations and legislation.

Without prejudice to Article II.14, the validity of the contract is subject to the possession of the above mentioned authorisations and permissions. EFCA shall be immediately informed if any authorisation or permission has been suddenly withdrawn or is no longer valid.

EFCA internal rules for missions

I.10.5 Services shall be provided in conformity with the EFCA internal rules for missions ('EFCA Missions guide') and with any other instruction as communicated by the EFCA to the contractor. The internal rules for missions govern all aspects of official missions ordered by EFCA.

Personnel appointed by the contractor for the implementation of the FWC shall be properly instructed according to the rules mentioned above. The personnel shall always crosscheck if a request coming from the EFCA is in line with the 'EFCA Missions Guide'.

Direct agreements

I.10.6 Any benefit acquired by EFCA through direct agreements with other companies/providers of similar services before the signature of the framework contract and/or during its implementation, are reserved and the contractor shall not derive any benefit from them.

EFCA reserves the right to directly negotiate with any transport company, with or without the assistance of the contractor, according to its own selection criteria.

The contractor shall apply the transport fares as negotiated beforehand, except when the price of the transaction at the time of the request is cheaper than the originally negotiated price.

EFCA reserves the right to conclude direct agreements with third parties: airline companies, rail companies and any other transport companies, as well as hotels, car rental companies, etc.

The contractor shall use the prices resulting from the above-mentioned agreements to make the requested bookings, except if a lower price published or negotiated by the contractor is made available. The procedures for booking shall be the one agreed with EFCA, whatever is the data-processing support (i.e. booking systems, Internet, Intranet) or means of communication (i.e. fax, e-mail) needed. The contractor shall not be allowed to use the conditions laid down in the agreements mentioned above for customers outside of the said agreements.

If, within the framework of the agreements mentioned above, the contractor profits of commercial conditions more advantageous than those obtained by EFCA, these conditions shall be automatically applicable to EFCA.



Contract number: *[complete]*

The contractor shall put in place all necessary measures to promptly and effectively implement the agreements and negotiated fares referred to in this paragraph.

SIGNATURES

For the contractor,

For EFCA,

[Company name/forename/surname/function]

[forename/surname/function]

signature[s]: _____

signature: _____

Done at [xxx], [date]

Done at Vigo, [date]

In duplicate in English.



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 it 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 EFCA 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 EFCA;
- (b) EFCA 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 EFCA any right arising from the contractual relationship between EFCA and the contractor.
- II.1.7** In the event of disruption resulting from the action of one of the contractor's personnel working on EFCA'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. EFCA 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 it resulting from the replacement of personnel.
- II.1.8** Should the execution of the tasks be directly or indirectly hampered, either partially or totally, by any unforeseen event, action or omission, the contractor shall immediately and on its own initiative record it and report it to EFCA. 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, EFCA may - without prejudice to its right to terminate the FWC or order form or specific contract - reduce or recover payments in proportion

Contract number: [complete]

to the scale of the unperformed obligations. In addition, EFCA 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 EFCA 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 EFCA 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 EFCA.

II.3.3 The contractor shall be held liable for any loss or damage sustained by EFCA 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 EFCA 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 EFCA 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 EFCA in connection with the performance of the FWC including any alleged breach of intellectual property rights, the contractor shall assist EFCA. Such expenditure incurred by the contractor may be borne by EFCA.

Contract number: [complete]

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 EFCA 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 EFCA in writing without delay. The contractor shall immediately take all the necessary steps to rectify the situation. EFCA 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. EFCA 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 EFCA;
- (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 EFCA.

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



Contract number: [complete]

- (a) the concerned 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 its 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;

Contract number: [complete]

- (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 EFCA;
- (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 EFCA nor cause the FWC to be de facto performed by third parties.
- II.7.2 Even where EFCA 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 EFCA 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 EFCA.
- 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 EFCA 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 EFCA;

Contract number: [complete]

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

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

II.10.2 Ownership of the results

The ownership of the results shall be fully and irrevocably acquired by EFCA under the FWC including any rights in any of the results listed in the FWC and order forms or specific contracts. Those rights in the results may include copyright and other intellectual or industrial property rights, as well as all technological solutions and information contained within these technological solutions, produced in performance of the FWC. EFCA may exploit them as stipulated in this FWC or order forms or specific contracts. All the rights shall be acquired by EFCA from the moment the results are delivered by the contractor and accepted by EFCA. Such delivery and acceptance are deemed to constitute an effective assignment of rights from the contractor to EFCA.

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 rights by EFCA including all forms of use of the results.

The acquisition of rights by EFCA under this FWC covers all territories worldwide.

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

II.10.3 Licensing of pre-existing rights

EFCA 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 EFCA 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 EFCA from the moment the results were delivered and accepted by EFCA.

The licensing of pre-existing rights to EFCA 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

EFCA 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 order form or specific contract;
- (c) archiving in line with the document management rules applicable to EFCA.

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 EFCA. This does not concern the moral rights of natural persons.

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

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

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

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 EFCA.

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



Contract number: [complete]

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 EFCA. 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 Contractor's 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 Fisheries Control Agency. All rights reserved. Certain parts are licensed under conditions to EFCA.

II.10.9 Visibility of European Union funding and disclaimer

When making use of the results, the contractor shall declare that they have been produced within a framework contract with EFCA and that the opinions expressed are those of the contractor only and do not represent EFCA's official position. EFCA 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

EFCA 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 EFCA's right to terminate the FWC or the relevant order form or specific contract, EFCA may impose liquidated damages for each and every calendar day of delay according to the following formula:

Contract number: [complete]

$0.3 \times (V/d)$

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 EFCA 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 EFCA 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 EFCA immediately, unless EFCA has already terminated the FWC, order form or specific contract.

II.13.2 Suspension by EFCA

EFCA 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 provided in the notification. EFCA 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

EFCA 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 calls 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 EFCA, 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 EFCA has evidence that the contractor or any natural persons with the power to represent it or take decisions on its behalf have committed fraud, corruption, or are involved in a criminal organisation, money laundering or any other illegal activity detrimental to the Union's financial interests;
- (i) if EFCA 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;



Contract number: [complete]

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

If EFCA 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 EFCA 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 on which termination takes effect 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. EFCA may recover any amounts paid under the FWC.

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

On termination EFCA may engage any other contractor to execute or complete the services. EFCA 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 EFCA's account.

II.15.2 Currency

The FWC shall be in euros.



Contract number: [complete]

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 EFCA.

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 EFCA shall be borne by EFCA,
- (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.

EFCA 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 and Article 20 of Regulation (EC) No 768/2005.

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. EFCA 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 EFCA. 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. EFCA 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 EFCA, by a third party;
- (b) the guarantor stands as first-call guarantor and does not require EFCA 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, EFCA 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

EFCA 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.

EFCA 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 EFCA. 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 EFCA 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, EFCA 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.



Contract number: [complete]

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, EFCA 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 EFCA 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 EFCA 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 EFCA 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 EFCA 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 EFCA receives the full payment of the amount owed.

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

- II.17.3** If payment has not been made by the due date, EFCA may, after informing the contractor in writing, recover the amounts due by offsetting them against any amounts owed to the contractor by EFCA 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** EFCA 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 their own staff or by any other outside body authorised to do so on their 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 EFCA. 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 EFCA's staff and outside personnel authorised by EFCA 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, EFCA may recover all or part of the payments made and may take any other measures which it considers necessary.

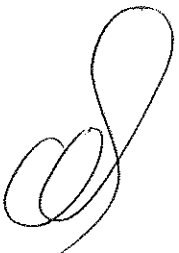
- II.18.5** By virtue of Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspection carried out by the Commission in order to protect the European Communities' financial interests against fraud and




Contract number: [complete]

other irregularities and Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council concerning investigations 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 EFCA.

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

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	FRAMEWORK CONTRACT ORDER FORM		
EUROPEAN FISHERIES CONTROL AGENCY Administrative Unit: Tel.: E-mail:	Order number (to be mentioned in all correspondence): <hr/> Currency of payment: EUR <hr/> Offer (date and reference):	Name and address of contractor	
This order is governed by the provisions of Framework Contract No. _____ in force from _____ to _____			
LISTING OF THE SUPPLIES / SERVICES and code	UNIT	QUANTITY	PRICE in € UNIT PRICE TOTAL
Pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union and Article 20 of Regulation (EC) No 768/2005, EFCA is exempt from all taxes and dues, including value added tax, on payments due in respect of this contract. For intra-European Union purchases, the mention "VAT Exemption / European Union / Article 151 of Council Directive 2006/112/EC" should be added on the invoice.	Packaging Insurance Transport Assembly VAT TOTAL :		
Place of delivery or performance and/or Incoterm: Final date of delivery or performance: Terms of payment: Contractor's bank account: Guarantee: Date of issue: Signature [name and position]: The invoice shall be paid only if the Contractor has returned the signed order form.	Contractor's signature Name: Position: Date:		

