



European Monitoring Centre
for Drugs and Drug Addiction

SERVICE CONTRACT

CONTRACT NUMBER – EMCDDA/OP/08/2016

The European Monitoring Centre for Drugs and Drug Addiction (hereinafter referred to as "the EMCDDA"), which is represented for the purposes of the signature of this contract by Head of Unit's name, Unit,

of the one part,

and

[official name in full]

[official legal form]

[statutory registration number]

[official address in full]

[VAT registration number]

(hereinafter referred to as "the Contractor"), represented for the purposes of the signature of this contract by [name in full and function]

of the other part,

HAVE AGREED

the **Special Conditions** and the **General Conditions** below and the following Annexes:

Annex I - Specifications

Annex II - Tender of the Contractor

Annex III – Reports

Annex IV – Budget

Annex V – Legal Entity Form

Annex VI – Financial Identification Form

[Other Annexes]

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

The terms set out in the Special Conditions shall take precedence over those in the other parts of the Contract. The terms set out in the General Conditions shall take precedence over those in the Annex(es). The terms set out in the Specifications (Annex I) shall take precedence over those in the Tender (Annex II).

Subject to the foregoing, the several instruments forming part of this Contract are to be taken as mutually explanatory of one another. In the case of ambiguities or discrepancies within or between such parts, the same shall be explained and adjusted by the issue of a written instruction by the EMCDDA, subject to Contractor's rights under Article 1.7 if Contractor disputes any such instruction.



I – SPECIAL CONDITIONS

ARTICLE I.1 - SUBJECT

- I.1.1. The subject of the Contract is [short description of subject].
- I.1.2. The Contractor shall execute the tasks assigned to him/her in accordance with the Specifications annexed to the Contract (Annex I).

ARTICLE I.2 - DURATION

- I.2.1. The Contract shall enter into force on [insert date] or on *[the date when both parties have signed as indicated below]*¹.
- I.2.2. Execution of the tasks may under no circumstances begin before the date on which the Contract enters into force.
- I.2.3. The duration of the contract shall not exceed *[days/months]*. This period, as well as all other periods of the Contract, is calculated according to calendar days. Execution of the contract shall start from *[date of entry into force of the Contract]* or *[indicate]*. The duration of the contract may be extended only with the express written agreement of the parties before such period elapses.
- I.2.4. The Contract may be renewed up to *[complete]* times for a period of *[days/months]* each with the express written agreement of the parties indicating the date when the renewed contract will start. Renewal does not imply any modification or deferment of existing obligations.

or

[The contract will be renewed automatically up to *[complete]* times, each time for a period of *[complete]* months, starting from the day following the end of the duration of the previous concerned contract, unless one of the parties opposes to this renewal, by means of written communication notified to the other party not less than 3 months before the end of the duration of the contract to be renewed. Renewal does not imply any modification or deferment of existing obligations²].

ARTICLE I.3 - CONTRACT PRICE

- I.3.1. The *[maximum]* total amount to be paid by the EMCDDA under the Contract shall be *[up to]* EUR *[amount in figures and in words]* covering all tasks executed.
- I.3.2. *(IF APPLICABLE)* The *[amount(s)]* *[prices]* referred to in the above paragraph shall be fixed and not subject to revision for the first period of performance of the Contract.

From the beginning of the second period of performance of the Contract, and every following period of the contract, the *[amount(s)]* *[prices]* may be revised upwards or downwards each time, where such revision is requested by one of the contracting parties, and duly accepted by the EMCDDA, in case the request comes from the Contractor. The request for revision has to be presented by registered letter to be sent before the date of ending of the first period of performance of the contract.

¹ As a rule the EMCDDA, in its capacity of contracting authority, signs last. In this case, the contractor should be duly informed of the date on which the contract enters into force (date of signature of both parties).

² It is recommended to use automatic renewal for contracts for provision of routine/continuous services.



The revision shall be calculated in accordance with the following formula:

$$Ar = Ao \frac{Ir}{Io}$$

where:

- Ar = revised [amount] [price];
- Ao = [amount] [price] in the original tender;
- Io = index for the month corresponding to the final date for submission of tenders;
- Ir = latest index published on the date of the letter requesting a revision of [amount(s)] [prices].

The aforementioned indexes (Io and Ir) refer to the harmonised indices of consumer prices (HICP-all items) [complete]³ published by the Publications Office of the European Union in the Eurostat monthly 'Data in Focus' publication at <http://www.ec.europa.eu/eurostat/>.

1.3.3. (IF APPLICABLE) In addition to the total amount specified in Article 1.3.1, travel, subsistence and shipment expenses shall be reimbursed in accordance with Article II.7, as shall other expenses provided for by the Specifications up to a maximum amount of EUR [amount in figures and in words]. The daily subsistence allowance referred to in Article II.7.4(d) shall be EUR [amount in figures and in words].

1.3.4 (IF APPLICABLE) The EMCDDA will pay the contract price by means of bank transfer in accordance with the "SHA" protocol. Pursuant to this protocol the banking fees to be paid for each transfer shall be shared between the EMCDDA and the beneficiary of the payment. As a consequence the EMCDDA shall pay the fees established by its own bank, whereas any extra fees set by the bank of the beneficiary of the payment shall be paid by the latter.

ARTICLE I.4 – PAYMENT PERIODS AND FORMALITIES

Payments under the Contract shall be made in accordance with Article II.4. Each payment is carried out only if the Contractor has fulfilled all his/her contractual obligations by the date relating to the introduction of an invoice.

I.4.1. Pre-financing:

Following the signature of the Contract by the last contracting party, within 30 days of the receipt by the EMCDDA of a request for pre-financing with a relevant invoice, a pre-financing payment of EUR [complete amount in figures and in words] equal to [30%] of the total amount referred to in Article 1.3.1 shall be made.

I.4.2. Interim payment:

Each request for interim payment by the Contractor shall be admissible provided the interim technical report or delivery has been approved by the EMCDDA.

- The contractor shall submit an interim report in accordance with the instructions laid down in Annex III [if applicable, statements of reimbursable expenses in accordance with Article

³ Specify the consumer price index, e.g.:

- Euro area for contracts expressed in euro (as a general rule);
- EU (European Union) for contracts performed in the European Union (outside the euro area);



II.7]

- On receipt, the EMCDDA shall have 20 days to approve or reject the report, and the Contractor shall have 20 days in which to submit additional information or a new report.
- Once the report has been approved by the EMCDDA, the contractor may submit the relevant invoice. Within 30 days of the receipt of the invoice an interim payment corresponding to [40%] of the total amount referred to in Article I.3.1 shall be made.

I.4.3. Payment of the balance:

The request for payment of the balance by the Contractor shall be admissible provided the required final technical report or delivery has been approved by the EMCDDA.

- The contractor shall submit a final technical report in accordance with the instructions laid down in Annex III [if applicable, statements of reimbursable expenses in accordance with Article II.7]
- On receipt, the EMCDDA shall have 20 days to approve or reject the report, and the Contractor shall have 20 days in which to submit additional information or a new report.
- Once the report has been approved by the EMCDDA, the contractor may submit the relevant invoice. Within 30 days of the receipt of the invoice, a payment of the balance corresponding to [30%] of the total amount referred to in Article I.3.1 shall be made.

ARTICLE I.5 – BANK ACCOUNT

Payments shall be made to the Contractor's bank account denominated in euro, identified in the financial identification form enclosed as Annex VI.

ARTICLE I.6 – GENERAL ADMINISTRATIVE PROVISIONS

Any communication relating to the Contract shall be made in writing and shall bear the Contract number. Ordinary mail shall be considered received by the EMCDDA at the date it is registered by the department responsible mentioned below. Communications shall be sent to the following addresses:

EMCDDA:
Mr/Mrs/Ms [complete]
[Function]
[Unit [complete]]
Cais do Sodré, 1249-289, Lisboa

Contractor:
Mr/Mrs/Ms [complete]
[Function]
[Company name]
[Official address in full]

ARTICLE I.7– APPLICABLE LAW AND SETTLEMENT OF DISPUTES

- I.7.1. The Contract shall be governed by the national substantive law of Portugal.**



- 1.7.2.** Any dispute between the parties resulting from the interpretation or application of the Contract which cannot be settled amicably shall be brought before the courts of Lisbon.

ARTICLE 1.8 – DATA PROTECTION

Any personal data (such as name, contact details, bank account reference) included in the Contract and in the invoices and other documents supporting financial transactions relating to the execution of the Contract, shall be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

Such data shall be processed solely for the purposes of the performance, management, follow up and monitoring of the Contract and related financial transactions by the Head of the Administration unit of the EMCDDA acting as Data Controller, pursuant to the relevant provisions of the EU Financial Regulations applicable to the EMCDDA.

This shall not prejudice the possible transmission of these data to the bodies in charge of monitoring, inspection or audit task, in accordance with the relevant legislation of the European Union, (such as the European Commission's Internal Audit Service, the European Court of Auditors, the European Anti-fraud Office – OLAF), these bodies being obliged not to use the personal data received for any further purpose than the one for which the data were transmitted to them.

Any personal data included in the Contract and in the documents supporting financial transactions relating to the execution of the Contract, will be kept as follows:

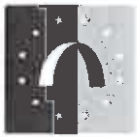
- Documents and files relating to the Contract concluded, including personal data, are to be retained until when the Contract is in force and for a period of seven years following the signature of the Contract (if the Contract is no longer in force).
- Extracts from the judicial records are to be retained for two years after the accomplishment of the particular procedure.
- Invoices and other documents supporting financial transactions relating to the execution of the Contract, including personal data, are to be retained for a period of five years from the date of the decision granting discharge in respect of the implementation of the budget for the financial year to which the concerned invoices and documents relate.
- Until the end of a possible audit, if one started before the end of the aforementioned periods.

After the periods mentioned above have elapsed, the documents and files containing personal data are destroyed.

The Contractor shall have the right of access to his/her personal data and the right to rectify any such data. Should the Contractor have any queries concerning the processing of his/her personal data, he/she shall address them to the Data Controller, as identified here above. The Contractor may also contact the EMCDDA 's Data Protection Officer (dpo@emcdda.europa.eu) for any questions relating to the processing of his/her personal data.

The Contractor shall have right of recourse at any time to the European Data Protection Supervisor (<http://www.edps.europa.eu>).

Where the Contract requires the processing of personal data by the Contractor, the Contractor may act only under the supervision of the Data Controller, in particular with regard to the purposes of the processing, the categories of data which may be processed, the recipients of the data, and the means by which the data subject may exercise his/her rights.



The Contractor shall limit access to the data to the staff strictly necessary for the performance, management and monitoring of the Contract.

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 having access to computer systems processing personal data, and especially:
 - aa) unauthorised reading, copying, alteration or removal of storage media;
 - ab) unauthorised data input as well as any unauthorised disclosure, alteration or erasure of stored personal data;
 - ac) unauthorised using 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 institution or body;
- 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 I.9 – TERMINATION BY FORMAL PRIOR NOTICE

The EMCDDA may, without being required to pay compensation, terminate the Contract by serving [complete] formal prior notice. Should the EMCDDA terminate the Contract, the Contractor shall only be entitled to payment corresponding to part-performance of the Contract. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his/her commitments. The Contractor shall draw up the documents required by the Special Conditions for the tasks executed up to the date on which termination takes effect, within a period not exceeding sixty days from that date.



II – GENERAL CONDITIONS

ARTICLE II.1 – PERFORMANCE OF THE CONTRACT

- II.1.1.** The Contractor shall perform the Contract to the highest professional standards. The Contractor shall have sole responsibility for complying with any legal obligations incumbent on him/her, notably those resulting from employment, tax and social legislation.
- II.1.2.** The Contractor shall have sole responsibility for taking the necessary steps to obtain any permit or licence required for performance of the Contract under the laws and regulations in force at the place where the tasks assigned to him/her are to be executed.
- II.1.3.** Without prejudice to Article II.3 any reference made to the Contractor's staff in the Contract shall relate exclusively to individuals involved in the performance of the Contract.
- II.1.4.** The Contractor must ensure that any staff performing the Contract have the professional qualifications and experience required for the execution of the tasks assigned to him/her.
- II.1.5.** The Contractor shall neither represent the EMCDDA nor behave in any way that would give such an impression. The Contractor shall inform third parties that he/she does not belong to the European public service.
- II.1.6.** The Contractor shall have sole responsibility for the staff who execute the tasks assigned to him/her. The Contractor shall make provision for the following employment or service relationships with his/her staff:
- staff executing the tasks assigned to the Contractor may not be given orders direct by the EMCDDA;
 - the EMCDDA may not under any circumstances be considered to be the staff's employer and the said staff shall undertake not to invoke in respect of the EMCDDA any right arising from the contractual relationship between the EMCDDA and the Contractor.
- II.1.7.** In the event of disruption resulting from the action of a member of the Contractor's staff working on EMCDDA premises or in the event of the expertise of a member of the Contractor's staff failing to correspond to the profile required by the Contract, the Contractor shall replace him/her without delay. The EMCDDA shall have the right to request the replacement of any such member of staff, stating its reasons for so doing. Replacement staff must have the necessary qualifications and be capable of performing the Contract under the same contractual conditions. The Contractor shall be responsible for any delay in the execution of the tasks assigned to him/her resulting from the replacement of staff in accordance with this Article.
- II.1.8.** Should any unforeseen event, action or omission directly or indirectly hamper execution of the tasks, either partially or totally, the Contractor shall immediately and on his/her own initiative record it and report it to the EMCDDA. The report shall include a description of the problem, an indication of the date on which it started and of the corrective actions taken by the Contractor to ensure full compliance with his/her obligations under the Contract. In such event the Contractor shall give priority to solving the problem rather than determining liability.
- II.1.9.** Should the Contractor fail to perform his/her obligations under the Contract in accordance with the provisions laid down therein, the EMCDDA may - without prejudice to its right to terminate the Contract - reduce or recover payments in proportion to the scale of the failure. In addition, the EMCDDA may impose penalties or liquidated damages, as provided for in Article II.16.



ARTICLE II.2 – LIABILITY

- II.2.1.** The EMCDDA shall not be liable for damage sustained by the Contractor in performance of the Contract except in the event of wilful misconduct or gross negligence on the part of the EMCDDA.
- II.2.2.** The Contractor shall be liable for any loss or damage caused by himself/herself in performance of the Contract, including in the event of subcontracting under Article II.13. The EMCDDA shall not be liable for any act or default on the part of the Contractor in performance of the Contract.
- II.2.3.** The Contractor shall provide compensation in the event of any action, claim or proceeding brought against it by a third party as a result of damage caused by the Contractor in performance of the Contract.
- II.2.4.** In the event of any action brought by a third party against the EMCDDA in connection with performance of the Contract, the Contractor shall assist the EMCDDA. Expenditure incurred by the Contractor to this end may be borne by the EMCDDA.
- II.2.5.** The Contractor shall take out an insurance against risks and damage relating to performance of the Contract if required by the relevant applicable legislation. He/She shall take out supplementary insurance reasonably required under standard industry practice. A copy of all the relevant insurance contracts shall be sent to the EMCDDA should it so request.

ARTICLE II.3 - CONFLICT OF INTERESTS

- II.3.1.** The Contractor shall take all necessary measures to prevent any situation that could compromise the impartial and objective performance of the Contract. Such conflict of interests could arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest. Any conflict of interests which could arise during performance of the Contract must be notified to the EMCDDA in writing without delay. In the event, the Contractor shall immediately take all necessary steps to resolve the conflict.

The EMCDDA reserves the right to verify that such measures are adequate and may require additional measures to be taken if necessary, within the time limit fixed by the EMCDDA. The Contractor shall ensure that his/her staff, board and directors are not placed in a situation which could give rise to conflict of interests. Without prejudice to Article II.1 the Contractor shall replace, immediately and without compensation from the EMCDDA, any member of his/her staff exposed to such a situation.

- II.3.2.** The Contractor shall abstain from any contact likely to compromise his/her independence.
- II.3.3.** The Contractor declares:
- that he/she has not made and will not make any offer of any type whatsoever from which an advantage can be derived under the Contract,
 - that he/she 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 an advantage constitutes an illegal practice or involves corruption, either directly or indirectly, by being an incentive or reward relating to performance of the Contract.
- II.3.4.** The Contractor shall pass on all the relevant obligations in writing to his/her staff, board, and directors as well as to third parties involved in performance of the Contract. A copy of the instructions given and the undertakings made in this respect shall be sent to the EMCDDA should it so request.



ARTICLE II.4 – PAYMENTS

II.4.1. Pre-financing :

Where required, the Contractor shall provide a financial guarantee in the form of a bank guarantee or equivalent supplied by a bank or an authorised financial institution (guarantor) equal to the amount indicated in the same Article to cover pre-financing under the Contract. This guarantee may be replaced by a joint and several guarantee by a third party.

The guarantor shall pay to the EMCDDA at its request an amount corresponding to payments made by it to the Contractor, which have not yet been covered by equivalent work on his part.

The guarantor shall stand as first-call guarantor and shall not require the EMCDDA to have recourse against the principal debtor (the Contractor).

The guarantee shall specify that it enters into force at the latest on the date on which the Contractor receives the pre-financing. The EMCDDA shall release the guarantor from its obligations as soon as the Contractor has demonstrated that any pre-financing has been covered by equivalent work. The guarantee shall be retained until the pre-financing has been deducted from interim payments or payment of the balance to the Contractor. It shall be discharged the following month. The cost of providing such guarantee shall be borne by the Contractor.

II.4.2. Interim payment :

At the end of each of the periods indicated in Annex I the Contractor shall submit to the EMCDDA a formal request for payment accompanied by those of the following documents which are provided for in the Special Conditions:

- an interim technical report in accordance with the instructions laid down in Annex III;
- the relevant invoices indicating the reference number of the Contract to which they refer;
- statements of reimbursable expenses in accordance with Article II.7.

When the report is a condition for payment, on receipt the EMCDDA shall have the period of time indicated in the Special Conditions in which:

- to approve it, with or without comments, reservations or suspend the period and requests for additional information; or
- to reject it and request a new report.

If the EMCDDA does not react within this period, the report shall be deemed to have been approved. Approval of the report does not imply recognition either of its regularity or of the authenticity, completeness or correctness of the declarations or information enclosed.

Where the EMCDDA requests a new report, because the one previously submitted is rejected, this shall be submitted within the period of time indicated in the Special Conditions. The new report shall likewise be subject to the above provisions.

II.4.3. Payment of the balance:

Within sixty days of completion of the tasks referred to in Annex I, the Contractor shall submit to the EMCDDA a formal request for payment accompanied by those of the following documents which are provided for in the Special Conditions:

- a final technical report in accordance with the instructions laid down in Annex I;
- the relevant invoices indicating the reference number of the Contract to which they refer;
- statements of reimbursable expenses in accordance with Article II.7.



When the report is a condition for payment, on receipt the EMCDDA shall have the period of time indicated in the Special Conditions in which :

- to approve it, with or without comments, reservations or suspend the period and requests for additional information; or
- to reject it and request a new report.

If the EMCDDA does not react within this period, the report shall be deemed to have been approved. Approval of the report does not imply recognition either of its regularity or of the authenticity, completeness or correctness of the declarations and information enclosed.

Where the EMCDDA requests a new report, because the one previously submitted is rejected, this shall be submitted within the period of time indicated in the Special Conditions. The new report shall likewise be subject to the above provisions.

ARTICLE II.5 – GENERAL PROVISIONS CONCERNING PAYMENTS

II.5.1. Payments shall be deemed to have been made on the date on which the EMCDDA's account is debited.

II.5.2. The payment periods referred to in Article I.4 may be suspended by the EMCDDA at any time if it informs the Contractor that his/her payment request is not admissible, either because the amount is not due or because the necessary supporting documents have not been produced correctly. In case of doubt on the eligibility of expenditure appearing in a payment request, the EMCDDA may suspend the time limit for payment for the purpose of further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the expenditure is indeed eligible.

The EMCDDA 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 EMCDDA.

The remainder of the period referred to in Article I.4 shall begin to run again after the end of suspension.

II.5.3. In the event of late payment the Contractor shall be entitled to interest, provided the calculated interest exceeds EUR 200. Interest shall be calculated at the rate applied by the European Central Bank to its most recent main refinancing operations (*"the reference rate"*) plus eight percentage points (*"the margin"*). The reference rate in force on the first day of the month in which the payment is due shall apply. Such interest rate is published in the C series of the Official Journal of the European Union. Interest shall be payable for the period elapsing from the calendar day following expiry of the time-limit for payment up to the day of payment. Suspension of payment by the EMCDDA may not be deemed to constitute late payment.

ARTICLE II.6 – RECOVERY

II.6.1. If total payments made exceed the amount actually due under the Contract or if recovery is justified in accordance with the terms of the Contract, the Contractor shall reimburse the appropriate amount in euro on receipt of the debit note, in the manner and within the time limits set by the EMCDDA.

II.6.2. In the event of failure to pay by the deadline specified in the request for reimbursement, the sum due shall bear interest at the rate indicated in Article II.5.3. Such interest rate is published in the C series of the Official Journal of the European Union. Interest shall be payable from the calendar day following the due date up to the calendar day on which the debt is repaid in full.



- II.6.3.** The EMCDDA may, after informing the Contractor, recover amounts established as certain, of a fixed amount and due by offsetting, in cases where the Contractor also has a claim on the Union that is certain, of a fixed amount and due. The EMCDDA may also claim against the guarantee, where provided for.

ARTICLE II.7 - REIMBURSEMENTS

- II.7.1.** Where provided by the Special Conditions or in Annex I, the EMCDDA shall reimburse the expenses which are directly connected with execution of the tasks on production of original supporting documents, including receipts and used tickets.
- II.7.2.** Where provided by the Special Conditions or in Annex I Travel and subsistence expenses shall be reimbursed, where appropriate, on the basis of the shortest itinerary.
- II.7.3.** 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;
 - (d) travel outside Union territory shall be reimbursed under the general conditions stated above provided the EMCDDA has given its prior written agreement.
- II.7.4.** Subsistence expenses shall be reimbursed on the basis of a daily allowance as follows:
- (a) for journeys of less than 200 km (return trip) no subsistence allowance is payable;
 - (b) daily subsistence allowance shall be payable only on receipt of a supporting document proving that the person concerned was present at the place of destination;
 - (c) daily subsistence allowance shall take the form of a flat-rate payment to cover all subsistence expenses, including accommodation, meals, local transport, insurance and sundries;
 - (d) daily subsistence allowance, where applicable, shall be reimbursed at the rate specified in Article I.3.3.
- II.7.5.** The cost of shipment of equipment or unaccompanied luggage shall be reimbursed provided the EMCDDA has given prior written authorisation.

ARTICLE II.8 – OWNERSHIP OF THE RESULTS- INTELLECTUAL AND INDUSTRIAL PROPERTY

Any results or rights thereon, including copyright and other intellectual or industrial property rights, obtained in performance of the Contract, shall be owned solely by the Union, which may use, publish, assign or transfer them as it sees fit, without geographical or other limitation, except where industrial or intellectual property rights exist prior to entering into the Contract.

ARTICLE II.9 – CONFIDENTIALITY

- II.9.1.** The Contractor undertakes to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to the performance of the Contract. The Contractor shall continue to be bound by this undertaking after completion of the tasks.
- II.9.2.** The Contractor shall obtain from each member of his/her staff, board and directors an undertaking that they will respect the confidentiality of any information which is linked, directly or indirectly, to execution of the tasks and that they will not divulge to third parties or use for their own benefit or that of any third party any document or information not available publicly, even after completion of the tasks.



ARTICLE II.10 - USE, DISTRIBUTION AND PUBLICATION OF INFORMATION

- II.10.1.** The Contractor authorises the EMCDDA to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, any data enclosed in or related to the Contract, in particular the identity of the Contractor, the subject matter, the duration, the amount paid and the reports.
- II.10.2.** Unless otherwise provided for in the Special Conditions, the EMCDDA shall not be required to distribute or publish documents or information supplied in performance of the Contract. If it decides not to publish the documents or information supplied, the Contractor may not have them distributed or published elsewhere without prior written authorisation from the EMCDDA.
- II.10.3.** Any distribution or publication of information relating to the Contract by the Contractor shall require prior written authorisation from the EMCDDA and shall mention the amount paid by the Union. It shall state that the opinions expressed are those of the Contractor only and do not represent the EMCDDA's official position.
- II.10.4.** The use of information obtained by the Contractor in the course of the Contract for purposes other than its performance shall be forbidden, unless the EMCDDA has specifically given prior written authorisation to the contrary.

ARTICLE II.11 – TAXATION

- II.11.1.** The Contractor shall have sole responsibility for compliance with the tax laws which apply to him/her. Failure to comply shall make the relevant invoices invalid.
- II.11.2.** The Contractor recognises that the EMCDDA is, as a rule, exempt from all taxes and duties, including value added tax (VAT), pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union.
- II.11.3.** The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the goods and services required for performance of the Contract are exempt from taxes and duties, including VAT.
- II.11.4.** Invoices presented by the Contractor shall specify separately his VAT taxation place, the amounts not including VAT and the amounts including VAT.

ARTICLE II.12 – FORCE MAJEURE

- II.12.1.** Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the contracting parties which prevents either of them from performing any of their obligations under the Contract, was not due to error or negligence on their part or on the part of a subcontractor, and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making it available, labour disputes, strikes or financial problems cannot be invoked as force majeure unless they stem directly from a relevant case of force majeure.
- II.12.2.** Without prejudice to the terms of Article II.1.8, if either of the contracting parties is faced with force majeure, he/she shall notify the other party without delay by registered letter with acknowledgement of receipt or equivalent, stating the nature, likely duration and foreseeable effects.



II.12.3. Neither contracting party shall be held in breach of its contractual obligations if it has been prevented from performing them by force majeure. Where the Contractor is unable to perform his/her contractual obligations owing to force majeure, he/she shall have the right to remuneration only for tasks actually executed.

II.12.4. The contracting parties shall take the necessary measures to reduce damage to a minimum.

ARTICLE II.13 – SUBCONTRACTING

II.13.1. The Contractor shall not subcontract without prior written authorisation from the EMCDDA nor cause the Contract to be performed in fact by third parties.

II.13.2. Even where the EMCDDA authorises the Contractor to subcontract to third parties, he/she shall none the less remain bound by his obligations to the EMCDDA under the Contract and bear the exclusive liability for the proper performance of the Contract.

II.13.3. The Contractor shall make sure that the subcontract does not affect rights and guarantees to which the EMCDDA is entitled by virtue of the Contract, notably Article II.17.

ARTICLE II.14 – ASSIGNMENT

II.14.1. The Contractor shall not assign the rights and obligations arising from the Contract, in whole or in part, without prior written authorisation from the EMCDDA.

II.14.2. In the absence of the authorisation referred to in 1 above, or in the event of failure to observe the terms thereof, assignment by the Contractor shall not be enforceable against and shall have no effect on the EMCDDA.

ARTICLE II.15 – TERMINATION BY THE EMCDDA

II.15.1. The EMCDDA may terminate the Contract in the following circumstances:

- (a) where the Contractor is being wound up, is having his/her 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) where the Contractor has been convicted of an offence concerning his/her professional conduct by a judgment which has the force of res judicata;
- (c) where the Contractor has been guilty of grave professional misconduct proven by any means which the contracting authority can justify;
- (d) where the Contractor has not fulfilled 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 he/she is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;
- (e) where the Contractor is subject, in the EMCDDA's opinion, to serious suspicions of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Union's financial interests;
- (f) where the Contractor violates his/her obligations under Article II.3;
- (g) where the Contractor is guilty of misrepresentation in supplying the information required by the EMCDDA as a condition of participation in the Contract procedure or fails to supply this information;
- (h) where a change in the Contractor's legal, financial, technical or organisational situation could, in the EMCDDA's opinion, have a significant effect on the performance of the Contract;



- (i) where execution of the tasks has not actually commenced within three months of the date foreseen, and the new date proposed, if any, is considered unacceptable by the EMCDDA;
- (j) where the Contractor is unable, through his/her own fault, to obtain any permit or licence required for performance of the Contract;
- (k) where the Contractor, after receiving written summons to comply, specifying the nature of the alleged failure and after being given the opportunity to cure the failure within a reasonable time following receipt of written summons, persists to seriously fail to meet his/her contractual obligations.

II.15.2. In case of force majeure, notified in accordance with Article II.12, either contracting party may terminate the Contract, where performance of the Contract cannot be ensured for a period corresponding at least to one fifth of the time foreseen in Article I.2.3.

II.15.3. Prior to termination under points e), h) or k), Contractor shall be given the opportunity to present his observations. Termination shall take effect on the date on which a registered letter with acknowledgement of receipt terminating the Contract is received by Contractor, or on any other date mentioned in the termination letter.

II.15.4. Consequences of termination:

In the event of the EMCDDA terminating the Contract in accordance with this Article and without prejudice to any other measures provided for in the Contract, the Contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his/her commitments. He/She shall draw up the documents required by the Special Conditions for the tasks executed up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

The EMCDDA may claim compensation for any damage suffered and recover any sums paid to the Contractor under the Contract.

Upon termination the EMCDDA may engage any other contractor to complete the services. The EMCDDA will be entitled to claim from the Contractor all extra costs incurred in making good and completing the services, without prejudice to any other rights or guarantees of the EMCDDA under the Contract.

ARTICLE II.15a – SUBSTANTIAL ERRORS, IRREGULARITIES AND FRAUD ATTRIBUTABLE TO THE CONTRACTOR

Where, after the award of the Contract, the award procedure or the performance of the Contract prove to have been subject to substantial errors, irregularities or fraud, and where such errors, irregularities or fraud are attributable to the Contractor, the EMCDDA may refuse to make payments, may recover amounts already paid or may terminate all the contracts concluded with the Contractor, in proportion to the seriousness of the errors, irregularities or fraud.

ARTICLE II.16 – LIQUIDATED DAMAGES

Should the Contractor fail to perform his/her obligations under the Contract within the deadlines specified in the Contract, then, without prejudice to the Contractor's actual or potential liability incurred in relation to the Contract or to the EMCDDA's right to terminate the Contract, the EMCDDA may decide to impose liquidated damages of 0.2% of the amount specified in Article I.3.1 per calendar day of delay.



The Contractor may submit arguments against this decision within thirty days of notification by registered letter with acknowledgement of receipt or equivalent. In the absence of reaction on his/her part or of written withdrawal by the EMCDDA within thirty days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable. These liquidated damages are not enforced where late interests are foreseen. EMCDDA and Contractor expressly acknowledge and agree that any sums which would be payable under this paragraph are in the nature of liquidated damages and not a penalty, and represent a reasonable estimate of fair compensation for the losses that may be reasonably anticipated from such failure.

ARTICLE II.17 – CHECKS AND AUDITS

- II.17.1.** According to the Financial Regulation applicable to the general budget of the European Union, the European Court of Auditors shall be empowered to audit the documents held by the natural or legal persons receiving payments from the budget of the European Union up to five years after the final payment.
- II.17.2.** The EMCDDA or an outside body of its choice shall have the same rights as the European Court of Auditors for the purpose of checks and audits limited to the compliance of the tasks with the contractual obligations up to five years after the final payment.
- II.17.3.** In addition, the European Anti Fraud Office may carry out on-the-spot checks and inspections in accordance with the Council Regulation (Euratom, EC) No 2185/96 and with Regulation (EC) no 1073/1999 of the Parliament and the Council up to five years after the final payment.

ARTICLE II.18 – AMENDMENTS

Any amendment to the Contract shall be the subject of a written agreement concluded by the contracting parties. An oral agreement shall not be binding on the contracting parties.

ARTICLE II.19 – SUSPENSION OF THE CONTRACT

Without prejudice to the EMCDDA's right to terminate the Contract, the EMCDDA may at any time and for any reason suspend the execution of the tasks under the Contract or any part thereof. Suspension shall take effect on the day the Contractor receives notification by registered letter with acknowledgment of receipt or equivalent, or at a later date, where the notification provides so. The EMCDDA may at any time following a suspension give notice to Contractor to resume the work previously suspended. Contractor shall not be entitled to claim for compensation due to the suspension of the Contract or part thereof.

SIGNATURES

For the Contractor,
[Company name/forename/surname/function]

For the EMCDDA,
[forename/surname/function]

signature[s]: _____

signature[s]: _____

Done at Lisbon, in duplicate in English and signed by both parties on
[date to be inserted by the EMCDDA, as Contracting Authority]