



TENDER SPECIFICATIONS

NEGOTIATED PROCEDURE WITH MINIMUM 5 COMPAINES

‘BBI JU PROMOTIONAL VIDEOS’

BBI JU 2016 – 17-32-59 D189

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1. INTRODUCTION: THE CONTRACTOR AND THE CONTRACT

1.1. Overview of the assignment

The Bio-Based Industries Joint Undertaking is the €3.7 billion public-private partnership between the EU and the Bio-based Industries Consortium established in 2014. Operating under Horizon 2020 rules, it is driven by the Vision and Strategic Innovation and Research Agenda developed by industry. BBI JU's objectives are to contribute to a more resource-efficient and sustainable low-carbon economy and to encourage economic growth and employment, particularly in rural areas, by developing a sustainable and competitive fully-developed bio-based sector in Europe, centred around advanced biorefineries that source their biomass sustainably.

The aim of this tender is produce a series of promotional videos over the course of the contract, including some general videos about BBI and its activities, and videos and other audio-visual material on specific ongoing project-related subjects.

BBI JU will retain editorial and content control over the materials.

1.2. Duration of the contract

- Activities should start as soon as the contract is concluded (estimated August 2016).
- Overall duration of the initial contract is in principle estimated as 12 months.

1.3. Volume of the contract

The maximum cost of the services under the initial 12 month contract shall not exceed 135,000 Euros. Please refer to [Chapter 1.2](#), above for the details of the contract duration and to [Chapter 2.2](#), below for the details of the deliverables.

1.4. Timetable and clarification requests

The deadline for the submission of the offers is **08 August 2016** See 1.7 below on how to submit a bid.

The deadline for request of clarifications from BBI is 1 August 2016. Written requests for clarifications shall be sent to the e-mail address procurement@bbi.europa.eu. Last date for BBI JU to issue responses to clarification requests is 3 August 2016.

1.5. Subcontracting

Subcontracting is allowed. Where a sub-contractor's part of the work is expected to account for more than 25% of the contract amount, it must also provide the documentation required for the exclusion and selection criteria (see chapters 3 and 4 below).

1.6. Joint tenders (consortia)

Partners in a joint tender assume joint and several liabilities towards the BBI JU for the performance of the contract as a whole.

Statements saying, for instance:

- that one of the partners of the joint tender will be responsible for part of the contract and another one for the rest, or
- that more than one contract should be signed if the joint offer is successful,

are thus incompatible with the principle of joint and several liabilities. The BBI JU will disregard any such statement contained in a joint tender, and reserves the right to reject such offers without further evaluation on the grounds that they do not comply with the tender specifications.

If a joint tender is proposed with one or several partners and the organisation has already set up a consortium or similar entity to that end, this fact should be mentioned in the tender, together with any other relevant information in this connection. If this step is not yet taken, the entity should be aware that, if the contract is awarded to this entity, the BBI JU will require giving a formal status to its collaboration before the contract is signed. This can take the form of:

- an entity with legal personality recognised by a Member State;
- an entity without legal personality but offering sufficient protection of the BBI JU's financial interests (depending on the Member State concerned, this may be, for example, a consortium or a temporary association);
- or the signature by all the partners of a "power of attorney" (see Annex V).

1.7. Presentation and delivery of bids

If you are interested in this contract, **you should submit a tender in one of the official languages of the European Union.**

The candidate shall submit the tender by electronic mail not later than 03/08/2016 to procurement@bbi.europa.eu .

Tender must be:

- signed by a duly authorised representative of the candidate;
- perfectly legible so that there can be no doubt as to words and figures;

The tenders must contain the following elements:

Part A – Administrative documents (see Chapters 3 and 4)

- The signed, dated and duly completed **Legal Entity Form including copies of the supporting documents** (Annex 2 – LEGAL ENTITY FORM)
- The **Financial Identification Form including copies of the supporting documents** (Annex 3 – Financial Identification)
- The **exclusion criteria declaration** (Annex 1 – Declaration on exclusion criteria)
- The **declaration on absence of conflict of interest** ([Annex 4 – Statement Of Absence Of Conflict Of Interest](#))

Part B – Technical proposal (see also section 5.2)

- **Methodology of work**, including proposed approach, methods and timing. The proposal should explain in detail how the tenderer proposes to provide the services as outlined in the Terms of Reference (ToR);
- The contractor should be able to demonstrate several (minimum 7) years of experience producing videos on complex scientific subjects for a lay audience.

- The contractor should send an example of previous work in this area, which demonstrates a number of different approaches to the material.

Expertise included in the team should be: Camera and sound technicians, editors and directors capable of ensuring the key messages and information are conveyed effectively. **Standard curriculum/vitae** describing the team so that competence, experience and aptitude can be evaluated with regard to the Terms of Reference.

The technical proposal should be no longer than 10 pages, excluding the CVs.

Part C – Financial Proposal (see section 5.4)

1.8. Period during which the tenders are binding

The Period of validity of the tenders, during which tenderers may not modify the terms of their tenders in any respect is at least 60 days after the deadline for the submission of tenders. In exceptional cases, before the period of validity expires, BBI may ask tenderers to extend the period for a specific number of days, which may not exceed 40 days.

1.9. Contacts between BBI and the tenderers

Contacts between BBI and tenderers are prohibited throughout the procedure save in exceptional circumstances and under the following conditions only:

A. Before the final date for submission of tenders:

- At the request of the tenderer, BBI may provide additional information solely for the purpose of clarifying the nature of the contract. Any request for additional information must be made in writing by e-mail at procurement@BBI.europa.eu and should indicate the title of the tender.
- Requests for additional information received after the deadline for requests for clarifications from BBI as specified in the timetable under point 1.4 will not be processed.
- BBI may, on its own initiative, inform interested parties of any error, inaccuracy, omission or any other clerical error in the text of the call for tender.

B. After the opening of tenders:

- If, after the tenders have been opened, some clarification is required in connection with a tender, or if obvious clerical errors in the submitted tender must be corrected, the BBI may contact the tenderer, although such contact may not lead to any alternation of the terms of the submitted tender.

1.10. Scope for additional services

BBI may, at its own discretion, extend the project in scope and/or duration subject to the availability of funding and to satisfactory performance by the Contractor.

1.11. Confidentiality and public access to documents

In the general implementation of its activities and for the processing of tendering procedures in particular, BBI observes the following rules:

- Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 and Regulation (EC) No 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, and;
- Council Regulation (EC) No 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

1.12. Contract provisions

In drawing up your tender, you should bear in mind the provisions of the draft contract (see [Annex 6 Draft Contract](#)) to the present tender specifications. In particular, the draft contract indicates the method and the conditions for payments to the contractor.

2. TERMS OF REFERENCE

2.1. Task to be completed

The Bio-based industries Joint Undertaking (BBI JU) envisages awarding a service contract for the production of audio-visual materials of BBI JU activities and the research projects funded by BBI JU.

The contractor will work with BBI and its partners to produce a range of audio-visual materials for general use during the period of the contract. This will include film-based videos, animated videos and animated infographics and presentations, photographic stills and other images and graphics delivered in an agreed format for dissemination over the internet and at BBI related or sponsored events.

The contractor will need to produce a series of audio-visual thematic video clips on BBI JU activities, including the projects which are located in regional areas across European member states and associated countries, in particular but not exhaustively Germany, Italy and Hungary. The subject areas will be discussed and agreed with BBI. An indication of the kinds of areas BBI covers can be found on the website. The finished videos for the projects should be between 1 minute 30 seconds and 2 minutes long. The finished BBI general video should be between 1 and 2 minutes long.

Each video may also include some on-location shooting, including where agreed face-to-face interviews. Still photographs should also be taken and provided to BBI in suitable digital formats. The contractor will provide all services related to the filming, static and dynamic images, special effects, animations, text images, audio tracks and music either composed for the video specifically or selected and purchased rights/royalties free by the supplier in agreement with BBI.

The production means the full process from concept through to post production and final delivery, and includes developing and agreeing all (and any) related documents (shot lists, story boards, interview questions, narrative scripts, selecting and procuring appropriate music and other sound effects agreed, release forms, still photos, animations and images, etc.) that is agreed as part of the package to be delivered. The contractor will also have work with and advise BBI on choices of specialist techniques to be employed to ensure full and professional treatment and translation of the key communications messages for each video.

Material for the production will be gathered by the contractor through a number of means, including face-to-face and remote interviews with BBI and its associates, on-location and local shoots, developing animation and graphics as agreed. The supplier should include all actions that would be necessary in the post production phase to ensure editing, and audio-visual synchronisation and any other technical processes needed are delivered so that the final format of the video is both ready for communications purposes at events, and for the

website, in the agreed final digital formats specified by BBI JU. Visual consistency must be maintained among all the materials and videos produced. The specific products may also be used by external media outlets with the permission of BBI JU – for example - television stations, online web-based media, fully edited documentaries, corporate promotion videos or any other type of audio-visual products.

The content will be developed by the contractor, and will be agreed and signed off by BBI at each stage of production. These stages include the development of an overall BBI look and feel for a common approach to presenting the projects and the BBI organisations.

BBI will select people across Europe involved in BBI projects – names and contact details will be provided by BBI. Interviews should ideally be shot where the interviewees work, and include footage of the work going on in the projects. The contractor will be responsible for contacting interviewees and arranging and carrying out recordings.

2.2. Deliverables

The contractor is expected to carry out the following tasks:

Videos should convey the message that BBI is an innovative industry-driven initiative, supporting research into the bio-based economy where there is a market failure and a need for innovation.

The videos are for the general public and the language used in the different clips should reflect this, e.g. jargon should be avoided (or explained).

After final agreement from BBI the videos should be delivered to BBI in a format that can be uploaded to the BBI JU website and other websites, YouTube, Twitter, Linked In and similar online platforms.

All videos should be in English, with all voice overs done by a native speaker (British/Irish, only). Where possible, interviews should be carried out in English – if an interviewee’s English is not good enough for the interview, a voice-over interpretation by a native English speaker should be provided.

2.3. General

In their tender and during the execution of all services the contractor should show flexibility and should cooperate in a constructive way with BBI JU services providing BBI JU with assistance, guidance and advice. To this aim it is paramount to conduct the process in a participatory manner to ensure full ownership and understanding by involved staff members at all levels. Therefore, direct participation of BBI JU employees in this exercise is vital.

2.4. Conditions of payment

Payments under this specific contract shall be made on the following basis.

| | Deliverables | Condition for payment | Payment |
|------------------------|--|------------------------------|---|
| Interim Payment | After a details description of the videos have been accepted section 2.2 above | Upon approval by BBI | 30 % of the total fixed price of the contract |

| | | | |
|----------------------|--|---|---|
| Final Payment | For each agreed project, when the final video has been produced and accepted by BBI as defined in section 2.2 and covering all the aspects specified in section 2.1 above. | Upon approval by BBI of the last video delivered. | 70 % of the total fixed price of the contract |
|----------------------|--|---|---|

Requests for payment shall be admissible only where they are based on an invoice made in good and due form.

Each invoice must be accompanied by a short supporting document describing the subject of the invoice, this supporting document, which is subject to acceptance by the BBI JU.

Final payment

The request for final payment shall be admissible if:

- the requested videos have been approved by BBI JU and delivered to BBI JU.
- it is accompanied by a statement of the contractor that all services related to the specific contract are included in the final payment request.

See also [Draft Service Contract in Annex 6](#) for the payment conditions.

3. EXCLUSION CRITERIA

Participation to this tender is only open to tenderers who are not in one of the situations listed below:

Candidates or tenderers shall be excluded from participation in procurement procedures if:

(a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;

(b) they or persons having powers of representation, decision making or control over them have been convicted of an offence concerning their professional conduct by a judgment of a competent authority of a Member State which has the force of res judicata;

(c) they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify including by decisions of the EIB and international organisations;

(d) they are not in compliance with their 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 they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;

(e) they or persons having powers of representation, decision making or control over them have been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation, money laundering or any other illegal activity, where such illegal activity is detrimental to the Union's financial interests;

(f) they are subject to an administrative penalty referred to in Article 109(1).

Points (b) and (e) of the first subparagraph shall not apply where the candidates or tenderers can demonstrate that adequate measures have been adopted against the persons having powers of representation, decision making or control over them, who are subject to a judgement as referred to in points (b) or (e) of the first subparagraph.

In addition to the above, a contract shall not be awarded to candidates or tenderers who, during the procurement procedure for the contract:

- i) are subject to a conflict of interests;
- ii) are guilty of misrepresenting the information required by the contracting authority as a condition of participation in the procurement procedure or fail to supply that information;
- iii) find themselves in one of the situations of exclusion, referred to in Article 106(1), for the procurement procedure.

Means of proof required

With their bid, tenderers shall provide

- a declaration on their honour (see model in **Annex 1 – Declaration on exclusion criteria**); and
- **Annex 4 – Statement Of Absence Of Conflict Of Interest** duly signed and dated, stating that they are not in one of the situations referred to above.

Only the tenderer to whom the contract is to be awarded shall provide the documentary evidence listed in Annex I before signature of the contract.

4. SELECTION CRITERIA

Economic and Financial Capacity

- The tenderer shall also provide a duly filled in and signed **Financial Identification Form** (see Annex 3 – Financial Identification) specifying the bank account to be used for payments.
- a statement of overall turnover and turnover concerning the services covered by the contract during the past two years.

The threshold applied to the latter criterion is a minimum of 50.000,00 EUR of overall turnover annually and a minimum of 25.000,00 EUR on average per year in services similar to the current contract.

Technical and Professional Capacity

- The tenderer shall provide a duly filled in and signed **Legal Entity Form** (see Annex 2 – LEGAL ENTITY FORM) accompanied by the documents requested therein.
- a list of the principal services provided in the past two years similar to the current tender topic.

The measure applied to the latter criterion is at least two assignments comparable to the current contract in the past two years.

5. AWARD OF THE CONTRACT

Only the tenders meeting the requirements of the exclusion and selection criteria will be evaluated in terms of quality and price.

The contract shall be awarded to the tenderer submitting the tender offering the best-value-for-money (best quality-price ratio) according to the criteria set out below.

5.1. Technical evaluation

The quality of each technical offer will be evaluated in accordance with the award criteria and the associated weighting as detailed in the evaluation grid below.

| N° | Criteria | Max. points |
|----|--|-------------|
| 1 | Detailed implementation plan and scope for the requested videos (see 2.1 and 2.2 above) and their relevance to BBI's requirements | 60% |
| 2 | Curricula vitae | 20% |
| 3 | Experience of similar services and knowledge of the bioeconomy sector | 20% |

5.2. Technical proposal

The assessment of the technical quality will be based on the ability of the tenderer to meet the purpose of the contract as described in the terms of reference. To this end, the technical proposal shall contain, in separate chapters and clearly indicated in the table of contents, the following information to allow the evaluation of the tender according to the technical criteria mentioned above:

- **A detailed implementation plan for the requested services**, including the proposed strategy, methodology used and rationale, as well as the time scales and deliverables (see [2.1](#) and [2.2](#) above),
- **Curriculum vitae** describing the personnel who are to be deployed to carry out the consultancy work,
- **Experience in the sector** with a list of institutions that the experts have provided similar services to so that competence, experience and aptitude can be evaluated with regard to the terms of reference.

The technical proposal should be no longer than 10 pages, excluding the CVs.

5.3. Financial evaluation

Only tenders scoring 60 points or more (of a maximum of 100) total points against the technical evaluation criteria (see table under 5.1 above) will have their financial proposal evaluated.

The financial offers will be first checked for any arithmetical errors in computation and summation. Errors will be corrected by the Evaluation Committee as follows: where there is a discrepancy between a unit price and the total amount derived from the multiplication of the unit price and the quantity, the unit price as quoted will be the price taken into account.

The financial evaluation will be made on the basis of the total price offered.

5.4. Financial Proposal

The financial proposal shall consist of the total price of the deliverables described in Chapter 2.2 above.

When preparing their financial proposal, tenderers must observe the following:

- Prices must be quoted in **EURO** and include all expenses necessary to perform the contract.

- The total price shall include all related costs including expenses related to meeting organisation etc.
- Prices shall be fixed and not subject to revision for the first year of performance of the Contract. In case of renewal, from the beginning of the second year of performance of the Contract, prices may be subject to revision. The revision shall be done as stipulated in the annexed draft contract.
- Prices must be quoted free of all duties, taxes and other charges (including VAT) as BBI is exempt from such charges under Articles 3 and 4 of the Protocol on the privileges and immunities of the European Communities.
- Costs incurred in preparing and submitting tenders are borne by the tenderer and shall not be reimbursed.

5.5. Selection of the successful contractor

The most economically advantageous tender is established by weighing technical quality against price on 70 / 30 basis.

The final note to tenderers will be attributed according to the following formulae:

$$\frac{FP_{best}}{FP_{tender}} \times 30\% + \frac{Q_{tender}}{Q_{best}} \times 70\%$$

Where:

FP_{best} = the cheapest Final Price of the received tenders

FP_{tender} = the Final price for the tender in question

Q_{tender} = the quality score for the tender in question

Q_{best} = the best quality score obtained from the technical evaluation criteria

The contract will be attributed to the tender having received the highest score.

6. ANNEX 1 – DECLARATION ON EXCLUSION CRITERIA

(To be completed and signed by the tenderer)

The undersigned:

Name of the individual/company/organisation:

Legal address:

Registration number/ID Card No.:

VAT number:

Declares on oath that the individual/company/organisation mentioned above is not in any of the situations mentioned below:

- (a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) they have been convicted of an offence concerning their professional conduct by a judgement which has the force of *res judicata*;
- (c) they have been guilty of grave professional misconduct proven by any means which BBI can justify;
- (d) they have 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 they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;
- (e) they have been the subject of a judgement which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- (f) following another procurement procedure or grant award procedure financed by the Community budget, they have been declared to be in serious breach of contract for failure to comply with their contractual obligations.

in case of award of contract, the undersigned shall provide the evidence that they are not in any of the situations described in points a, b, d, e above.

For situations described in (a), (b) and (e), production of a recent extract from the judicial record is required or, failing that, a recent equivalent document issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied. Where the Tenderer is a legal person and the national legislation of the country in which the Tenderer is established does not allow the provision of such documents for legal persons, the documents should be provided for natural persons, such as the company directors or any person with powers of representation, decision making or control in relation to the Tenderer.

For the situation described in point (d) above, recent certificates or letters issued by the competent authorities of the State concerned are required. These documents must provide evidence covering all taxes and social security contributions for which the Tenderer is liable, including for example, VAT, income tax (natural persons only), company tax (legal persons only) and social security contributions.

For any of the situations (a), (b), (d) or (e), where any document described in two paragraphs above is not issued in the country concerned, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.

I the undersigned understand that contracts may not be awarded if during the procurement procedure the individual/company/organisation mentioned above:

- is subject to a conflict of interest;
- is guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the contract procedure or fail to supply this information;

Full name:

Date & Signature:

7. ANNEX 2 – LEGAL ENTITY FORM

A model in English is given hereafter. Forms in all official EU languages can be found in the following link:

http://ec.europa.eu/budget/info_contract/legal_entities_en.htm



LEGAL ENTITIES

PRIVACY STATEMENT http://ec.europa.eu/budget/execution/legal_entities_fr.htm

PRIVATE COMPANIES

| | | | |
|------------------------|------------------------------|-----------------------------|---------------------------------|
| TYPE OF COMPANY | <input type="text"/> | | |
| NGO | YES <input type="checkbox"/> | NO <input type="checkbox"/> | (Non-Governmental Organisation) |
| NAME(S) | <input type="text"/> | | |
| | <input type="text"/> | | |
| | <input type="text"/> | | |
| | <input type="text"/> | | |
| ABBREVIATION | <input type="text"/> | | |
| ADDRESS OF HEAD OFFICE | <input type="text"/> | | |
| | <input type="text"/> | | |
| | <input type="text"/> | | |
| POSTCODE | <input type="text"/> | P.O. BOX | <input type="text"/> |
| TOWN/CITY | <input type="text"/> | | |
| COUNTRY | <input type="text"/> | | |
| VAT (1) | <input type="text"/> | | |
| PLACE OF REGISTRATION | <input type="text"/> | | |
| DATE OF REGISTRATION | <input type="text"/> | <input type="text"/> | <input type="text"/> |
| | D D | M M | Y Y Y Y |
| REGISTRATION No (2) | <input type="text"/> | | |
| PHONE | <input type="text"/> | FAX | <input type="text"/> |
| E-MAIL | <input type="text"/> | | |

THIS "LEGAL ENTITIES" FORM SHOULD BE COMPLETED AND RETURNED TOGETHER WITH:
1. A COPY OF THE VAT REGISTRATION DOCUMENT IF APPLICABLE AND IF THE VAT NUMBER DOES NOT APPEAR ON THE OFFICIAL DOCUMENT REFERRED TO AT 2 BELOW.
2. A COPY OF SOME OFFICIAL DOCUMENT (OFFICIAL GAZETTE, COMPANY REGISTER ETC.) SHOWING THE NAME OF THE LEGAL ENTITY, THE ADDRESS OF THE HEAD OFFICE AND THE REGISTRATION NUMBER GIVEN TO IT BY THE NATIONAL AUTHORITIES.

DATE AND SIGNATURE OF AUTHORISED REPRESENTATIVE

8. ANNEX 3 – FINANCIAL IDENTIFICATION

A model in English is given hereafter. Forms in all official EU languages can be found in the following link:

http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm



FINANCIAL IDENTIFICATION

PRIVACY STATEMENT

http://ec.europa.eu/budget/execution/fiers_fr.htm

| ACCOUNT NAME | |
|-----------------------------|----------------------|
| ACCOUNT NAME ⁽¹⁾ | <input type="text"/> |
| ADDRESS | <input type="text"/> |
| TOWN/CITY | <input type="text"/> |
| COUNTRY | <input type="text"/> |
| POSTCODE | <input type="text"/> |

| | |
|-----------|----------------------|
| CONTACT | <input type="text"/> |
| TELEPHONE | <input type="text"/> |
| FAX | <input type="text"/> |
| E - MAIL | <input type="text"/> |

| BANK | |
|---------------------|----------------------|
| BANK NAME | <input type="text"/> |
| BRANCH ADDRESS | <input type="text"/> |
| TOWN/CITY | <input type="text"/> |
| COUNTRY | <input type="text"/> |
| ACCOUNT NUMBER | <input type="text"/> |
| IBAN ⁽²⁾ | <input type="text"/> |
| POSTCODE | <input type="text"/> |

REMARKS:

| | |
|--|--|
| BANK STAMP + SIGNATURE OF BANK REPRESENTATIVE (Both Obligatory) ⁽³⁾ | DATE + SIGNATURE ACCOUNT HOLDER : (Obligatory) |
| <input type="text"/> | DATE <input type="text"/> |

⁽¹⁾ The name or title under which the account has been opened and not the name of the authorized agent

⁽²⁾ If the IBAN Code (International Bank account number) is applied in the country where your bank is situated

⁽³⁾ It is preferable to attach a copy of recent bank statement, in which event the stamp of the bank and the signature of the bank's representative are not required. The signature of the account-holder is obligatory in all cases.

9. ANNEX 4 – STATEMENT OF ABSENCE OF CONFLICT OF INTEREST

<Letterhead of the Tenderer>

I, the undersigned, being the authorised signatory for the abovementioned company for the tender BBI.2016.SC.0XX,

I hereby solemnly declare that we are not in any situation which could give raise to a conflict of interest in what concerns the implementation of the contract. In the event of the contract being awarded to us, we commit ourselves to act with complete impartiality and in good faith in what concerns its performance and outcome.

.....

Date

and

Signature

10. ANNEX 5 – POWER OF ATTORNEY (ONLY IN CASE OF CONSORTIUM)

Agreement / Power of Attorney

We the undersigned :

Mr/Ms XXX, function, company name, address, VAT number

Mr/Ms XXX, function, company name, address, VAT number

Mr/Ms XXX, function, company name, address, VAT number

....

Each of them having the legal capacity required to act on behalf of his/her company,

HEREBY AGREE AS FOLLOWS:

The BBI JU has awarded Framework Contract (« **the Contract** ») to *Company names* (« **the Group Members** »), based on the joint offer submitted by them on XX/XX/XXXX for the provision of services for («**the Services** »).

As participants of the Contract, all the Group Members :

Shall be jointly and severally liable towards the BBI JU for the performance of the Contract, even when subcontractors, mentioned in the tender, are performing the work.

Shall comply with the terms and conditions of the Contract and ensure the proper execution of their respective share of the Services.

To this effect, the Group Members designate, *Company Name* and address as **Group Leader**.

The Group Members shall bear exclusive liability for proper performance of the Contract when subcontractors, mentioned in the tender, are acting.

Payments by the BBI JU related to the Services shall be made through the Group Leader's bank account (*name of the bank, address and account number*).

The Group Members grant to the Group Leader all the necessary powers to act on their behalf in connection with the Services. This mandate involves in particular the following tasks.

The Group Leader shall sign any contractual documents—including the Framework Contract, Specific Contracts and Amendments thereto—and issue any invoices related to the Services on behalf of the Group Members.

The Group Leader shall act as single point of contact for the BBI JU in connection with the Services to be provided under the Contract. It shall co-ordinate the provision of the Services by the Group Members to the BBI JU, and shall see to a proper administration of the Contract.

Any modification to the present agreement / power of attorney shall be subject to the BBI JU's express approval.

This agreement / power of attorney shall expire when all the contractual obligations of the Group Members towards the BBI JU in connection with the Services to be provided under

the Contract have ceased to exist. The parties cannot terminate it before that date without the BBI JU's consent.

Signed in _____ on _____

Name Function Company

Name Function Company

Name Function Company

Name Function Company

11. ANNEX 6 – DRAFT SERVICE CONTRACT

For reference only – to be signed only after the award by the selected tenderer



SERVICE CONTRACT

CONTRACT NUMBER – **BBI.2016.SC.0XX**

The Bio-based Industries Joint Undertaking (hereinafter referred to as "BBI JU"), which is represented for the purposes of the signature of this contract by Philippe Mengal, Executive Director,

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 [*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 the BBI JU for the performance of this contract.]

of the other part,

HAVE AGREED

to the **special conditions**, the **general conditions for service contracts** and the following annexes:

Annex I – Tender specifications (reference No BBI.2016.SC.0XX of [*insert date*])

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

which form 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 annexes.
- The terms set out in the tender specifications (Annex I) shall take precedence over those in the tender (Annex II).

I – SPECIAL CONDITIONS

ARTICLE I.1 – SUBJECT MATTER

- I.1.1** The subject matter of the contract is the provision of promotional videos for BBI JU.
- I.1.2** The contractor shall execute the tasks assigned to it in accordance with the tender specifications annexed to the contract (Annex I).

ARTICLE I.2 – ENTRY INTO FORCE AND DURATION

- I.2.1** The contract shall enter into force on the date on which it is signed by the last party.
- I.2.2** Under no circumstances may performance commence before the date on which the contract enters into force.

ARTICLE I.3 – PRICE

- I.3.1** The maximum total amount to be paid by the contracting authority under the contract shall be EUR [*amount in figures and in words*] covering all tasks executed.

I.3.2 Price revision

The total amount referred to in the Article I.3.1 shall be fixed and not subject to revision.

ARTICLE I.4 – PAYMENT ARRANGEMENTS

I.4.1 Interim payment

The contractor shall submit an invoice for an interim payment of EUR [*amount in figures and in words*] equal to 30% of the total amount referred to in Article I.3.1.

Invoices for interim payment shall be accompanied by a report or any other document in accordance with the tender specifications. The contracting authority shall make the payment within 60 days from receipt of the invoice. The contractor shall have 15 days in which to submit additional information or corrections or a new progress report or documents if required by the contracting authority.

I.4.2 Payment of the balance

The contractor shall submit an invoice for payment of the balance.

The invoice shall be accompanied by the final progress report or any other document in accordance with the tender specifications. The contracting authority shall make the payment within 60 days from receipt of the invoice. The contractor shall have 15 days in which to submit additional information or corrections, a new final progress report or other documents if it is required by the contracting authority.

Where VAT is due in Belgium, the provisions of the contract constitute a request for VAT exemption No 450, Article 42, paragraph 3.3 of the VAT code (circular 2/1978), provided the contractor includes the following statement in the invoice(s): “Exonération de la TVA, Article 42, paragraphe 3.3 du code de la TVA (circulaire 2/1978)” or an equivalent statement in the Dutch or German language.

ARTICLE I.5 – BANK ACCOUNT

Payments shall be made to the contractor’s bank account denominated in [euro][*insert local currency where the receiving country does not allow transactions in EUR*], identified as follows:

Name of bank:

Full address of branch:

Exact designation of account holder:

Full account number including [bank] codes:

[IBAN¹ code:]

ARTICLE I.6 – COMMUNICATION DETAILS AND DATA CONTROLLER

For the purpose of Article II.6, the data controller shall be BBI JU.

Communications shall be sent to the following addresses:

Contracting authority:

BBI JU

TO 56-6

B-1049 Brussels

BELGIUM

Email: procurement@BBI.europa.eu

Contractor:

[*Full name*]

[*Function*]

[*Company name*]

[*Full official address*]

Email: [*complete*]

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

ARTICLE I.7– APPLICABLE LAW AND SETTLEMENT OF DISPUTES

- I.7.1.** The contract shall be governed by Union law, complemented, where necessary, by the law of Belgium.
- I.7.2.** Any dispute between the parties in relation to the interpretation, application or validity of the contract which cannot be settled amicably shall be brought before the courts of Brussels, Belgium.

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

I.8.1 Modes of exploitation

In accordance with Article II.10.2 whereby BBI JU acquires ownership of the results as defined in the tender specifications (Annex I), these results may be used for any of the following purposes:

- (a) use for its own purposes:
- (i) making available to the staff of the contracting authority
 - (ii) making available to the persons and entities working for the contracting authority or cooperating with it, including contractors, subcontractors whether legal or natural persons, Union institutions, agencies and bodies, Member States' institutions
 - (iii) installing, uploading, processing
 - (iv) arranging, compiling, combining, retrieving
 - (v) copying, reproducing in whole or in part and in unlimited number of copies
- (b) distribution to the public:
- (i) publishing in hard copies
 - (ii) publishing in electronic or digital format
 - (iii) publishing on the internet as a downloadable/non-downloadable file
 - (iv) broadcasting by any kind of technique of transmission
 - (v) public presentation or display
 - (vi) communication through press information services
 - (vii) inclusion in widely accessible databases or indexes
 - (viii) otherwise in any form and by any method
- (c) modifications by the contracting authority or by a third party in the name of the contracting authority:
- (i) shortening
 - (ii) summarizing

- (iii) modifying of the content
 - (iv) making technical changes to the content:
 - necessary correction of technical errors
 - adding new parts or functionalities
 - changing functionalities
 - providing third parties with additional information concerning the result (e.g. source code) with a view of making modifications
 - (v) addition of new elements, paragraphs titles, leads, bolds, legend, table of content, summary, graphics, subtitles, sound, etc.
 - (vi) preparation in audio form, preparation as a presentation, animation, pictograms story, slide-show, public presentation etc.
 - (vii) extracting a part or dividing into parts
 - (viii) use of a concept or preparation of a derivate work
 - (ix) digitisation or converting the format for storage or usage purposes
 - (x) modifying dimensions
 - (xi) translating, inserting subtitles, dubbing in different language versions:
 - English, French, German
 - all official languages of EU
 - languages used within EU
 - languages of candidate and associated countries
- (d) the modes of exploitation listed in article II.10.4
- (e) rights to authorise, license, or sub-license in case of licensed pre-existing rights, the modes of exploitation set out in any of the points (a) to (c) to third parties.

Where the contracting authority becomes aware that the scope of modifications exceeds that envisaged in the contract the contracting authority shall consult the contractor. Where necessary, the contractor shall in turn seek the agreement of any creator or other right holder. The contractor shall reply to the contracting authority within one month and shall provide its agreement, including any suggestions of modifications, free of charge. The creator may refuse the intended modification only when it may harm his honour, reputation or distort integrity of the work.

Where the BBI JU becomes aware that scope of modifications exceeds the scope envisaged in the Contract the creator shall be consulted. The creator will be obliged to provide his response within two weeks. He shall provide his agreement including any suggestions of modifications free of charge. The creator may refuse the intended modification only when it may harm his honour, reputation or distort integrity of the work.

Without prejudice to the above, BBI JU commits itself to allow to the Contractor the usage of the results upon prior authorisation by BBI JU.

I.8.2 Pre-existing rights and transmission of rights

All pre-existing rights shall be fully and irrevocably acquired by BBI JU as provided for in Article II.10.2 and by derogation to Article II.10.3.

All pre-existing rights incorporated in the results and directly related to the uses foreseen in Article I.8.1 shall be fully and irrevocably acquired by BBI JU as provided for in Article II.10.2 and by derogation to Article II.10.3.

Where applicable, the contractor shall provide to the contracting authority a list of pre-existing rights and third parties' rights including its personnel, creators or other right holders as provided for in Article II.10.5.

The contractor shall present relevant and exhaustive evidence about the acquisition of all the necessary pre-existing rights and third parties' rights together with delivery of the final report at the latest. This obligation should be fulfilled by presentation of the contractor's statement prepared in accordance with Annex A and third parties' statements prepared in accordance with Annex B and the relevant evidence listed in article II.10.5 as appropriate.

ARTICLE I.9 – TERMINATION BY EITHER PARTY

Either party may, unilaterally and without being required to pay compensation, terminate the contract by formally notifying the other party by giving two months' notice. Should the contracting authority terminate the contract, the contractor shall only be entitled to payment corresponding to part-performance of the contract before the termination date. The first paragraph of Article II.14.3 shall apply.

SIGNATURES

For the contractor,

For the contracting authority,

[*Company name/forename/surname/function*]

[*forename/surname/function*]

signature[s]: _____

signature[s]: _____

Done at [Brussels], [date]

Done at [Brussels], [date]

In duplicate in English.

II – GENERAL CONDITIONS FOR SERVICE CONTRACTS

ARTICLE II.1 – PERFORMANCE OF THE CONTRACT

- II.1.1** The contractor shall perform the contract 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 contract 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 contract shall relate exclusively to individuals involved in the performance of the contract.
- II.1.4** The contractor must ensure that the personnel performing the contract possesses the professional qualifications and experience required for the execution of the tasks assigned to it.
- II.1.5** The contractor shall neither represent the contracting authority nor behave in any way that would give such an impression. The contractor shall inform third parties that it does not belong to the European public service.
- II.1.6** The contractor shall be solely responsible for the personnel who executes the tasks assigned to the contractor.

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

- (a) personnel executing the tasks assigned to the contractor may not be given orders directly by the contracting authority;
 - (b) the contracting authority may not under any circumstances be considered to be the employer of the personnel referred to in point (a) and the personnel shall undertake not to invoke against the contracting authority any right arising from the contractual relationship between the contracting authority and the contractor.
- II.1.7** In the event of disruption resulting from the action of one of the contractor's personnel working on the contracting authority's premises or in the event that the expertise of a member of the contractor's personnel fails to correspond to the profile required by the contract, the contractor shall replace him without delay. The contracting authority shall have the right to make a reasoned request for the replacement of any such personnel. The replacement personnel must have the necessary qualifications and be capable of performing the contract 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 the

contracting authority. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the contractor to ensure full compliance with its obligations under this contract. 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 contract, the contracting authority may - without prejudice to its right to terminate the contract - reduce or recover payments in proportion to the scale of the unperformed obligations. In addition, the contracting authority may claim compensation or impose liquidated damages in accordance with Article II.12.

ARTICLE II.2 – MEANS OF COMMUNICATION

- II.2.1** Any communication relating to the contract or to its performance shall be made in writing and shall bear the contract number. Any communication is deemed to have been made when it is received by the receiving party unless otherwise provided for in this contract.

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

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

- II.2.3** Mail sent using the postal services is deemed to have been received by the contracting authority on the date on which it is registered by the department responsible referred to in Article I.6.

Any formal notification shall be made by registered mail with return receipt or equivalent, or by equivalent electronic means.

ARTICLE II.3 – LIABILITY

- II.3.1** The contractor shall be solely responsible for complying with any legal obligations incumbent on it.

- II.3.2** The contracting authority shall not be held liable for any damage caused or sustained by the contractor, including any damage caused by the contractor to third parties during or as a consequence of performance of the contract, except in the event of wilful misconduct or gross negligence on the part of the contracting authority.

- II.3.3** The contractor shall be held liable for any loss or damage sustained by the contracting authority in performance of the contract, 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 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 BBI JU harmless for all damages and costs incurred due to any claim. The contractor shall provide compensation in the event of any action, claim or proceeding brought against the contracting authority by a third party as a result of damage caused by the contractor during the performance of the contract. In the event of any action brought by a third party against the contracting authority in connection with the performance of the contract, including any alleged breach of intellectual property rights, the contractor shall assist the contracting authority. Such expenditure incurred by the contractor may be borne by the contracting authority.

II.3.5 The contractor shall take out an insurance policy against risks and damage relating to the performance of the contract, if required by the relevant applicable legislation. It shall take out supplementary insurance as reasonably required by standard practice in the industry. A copy of all the relevant insurance contracts shall be sent to the contracting authority should it so request.

ARTICLE II.4 - CONFLICT OF INTEREST

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 contract 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 contract shall be notified to the contracting authority in writing without delay. The contractor shall immediately take all the necessary steps to rectify the situation. The contracting authority reserves the right to verify that the steps taken are appropriate and may require that additional steps be taken within a specified deadline.

II.4.3 The contractor declares that it has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, when such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, in so far as it serves as an incentive or reward relating to the performance of the contract.

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 contract including subcontractors.

ARTICLE II.5 – CONFIDENTIALITY

II.5.1 The contracting authority and the contractor shall treat with confidentiality any information and documents, in any form, disclosed in writing or orally in relation to the performance of the contract 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 contract without prior written agreement of the contracting authority;
- (b) ensure the protection of such confidential information and documents with the same level of protection it uses to protect its own confidential information, but in no case any less than reasonable care;
- (c) not disclose directly or indirectly confidential information and documents to third parties without prior written agreement of the contracting authority.

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

- (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 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 contract 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 contract 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 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 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 contract.

II.6.6 The contractor undertakes to adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned in order to:

- (a) prevent any unauthorised person from gaining access to computer systems processing personal data, and especially:
 - (i) unauthorised reading, copying, alteration or removal of storage media;
 - (ii) unauthorised data input, as well as any unauthorised disclosure, alteration or erasure of stored personal data;
 - (iii) unauthorised use of data-processing systems by means of data transmission facilities;
- (b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
- (c) record which personal data have been communicated, when and to whom;
- (d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting authority;
- (e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
- (f) design its organisational structure in such a way that it meets data protection requirements.

ARTICLE II.7 – SUBCONTRACTING

II.7.1 The contractor shall not subcontract without prior written authorisation from the contracting authority nor cause the contract to be de facto performed by third parties.

II.7.2 Even where the contracting authority authorises the contractor to subcontract to third parties, it shall nevertheless remain bound by its contractual obligations and shall be solely responsible for the proper performance of this contract.

II.7.3 The contractor shall make sure that the subcontract does not affect rights and guarantees granted to the contracting authority by virtue of this contract, notably by Article II.18.

ARTICLE II.8 – AMENDMENTS

II.8.1 Any amendment to the contract shall be made in writing before fulfilment of any new contractual obligations and in any case before the date of payment of the balance.

II.8.2 The amendment may not have the purpose or the effect of making changes to the contract which might call into question the decision awarding the contract or result in unequal treatment of tenderers.

ARTICLE II.9 – ASSIGNMENT

II.9.1 The contractor shall not assign the rights, including claims for payments, and obligations arising from the contract, in whole or in part, without prior written authorisation from the contracting authority.

II.9.2 In the absence of such authorisation, or in the event of failure to observe the terms thereof, the assignment of rights or obligations by the contractor shall not be enforceable against the contracting authority and shall have no effect on it.

ARTICLE II.10 – OWNERSHIP OF THE RESULTS - INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS

II.10.1 Definitions

In this contract the following definitions apply:

(1) 'results' means any intended outcome of the performance of the contract which is delivered and finally accepted by the contracting authority;

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

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

II.10.2 Ownership of the results

The ownership of the results shall be fully and irrevocably acquired by BBI JU under this contract including any rights in any of the results listed in this contract. 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 contract. The contracting authority may exploit them as stipulated in this contract. All the rights shall be acquired by BBI JU from the moment the results are delivered by the contractor and accepted by the contracting authority. Such delivery and acceptance are deemed to constitute an effective assignment of rights from the contractor to BBI JU.

The payment of the price as set out in the contract is deemed to include any fees payable to the contractor in relation to the acquisition of rights by BBI JU including all forms of use of the results.

The acquisition of rights by BBI JU under this contract covers all territories worldwide.

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

II.10.3 Licensing of pre-existing rights

BBI JU 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 BBI JU which may use the pre-existing right as foreseen in Article I.8.1. All the pre-existing rights shall be licensed to BBI JU from the moment the results were delivered and accepted by the contracting authority.

The licensing of pre-existing rights to BBI JU under this contract covers all territories worldwide and is valid for the whole duration of intellectual property rights protection.

II.10.4 Modes of exploitation

BBI JU shall acquire ownership of each of the results produced as an outcome of this contract 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 contract;
- (c) archiving in line with the document management rules applicable to the contracting authority.

II.10.5 Identification and evidence of granting of pre-existing rights and rights of third parties

When delivering the results, the contractor shall warrant that they are free of rights or claims from creators and third parties including in relation to pre-existing rights, for any use envisaged by the contracting authority. This does not concern the moral rights of natural persons.

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 contract or parts thereof. This list shall be provided no later than the date of delivery of the final results.

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

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

This evidence may refer, inter alia, to rights to: parts of other documents, images, graphs, tables, data, software, technical inventions, know-how etc. (delivered in paper, electronic or other form), IT development tools, routines, subroutines and/or other programs ("background technology"), concepts, designs, installations or pieces of art, data, source or background materials or any other parts of external origin.

The evidence shall include, as appropriate:

- (a) the name and version number of a software product;
- (b) the full identification of the work and its author, developer, creator, translator, data entry person, graphic designer, publisher, editor, photographer, producer;
- (c) a copy of the licence to use the product or of the agreement granting the relevant rights to the contractor or a reference to this licence;
- (d) a copy of the agreement or extract from the employment contract granting the relevant rights to the contractor where parts of the results were created by its personnel;
- (e) the text of the disclaimer notice if any.

Provision of evidence does not release the contractor from its responsibilities in case it is found that it does not hold the necessary rights, regardless of when and by whom this fact was revealed.

The contractor also warrants that it possesses the relevant rights or powers to execute the transfer and that it has paid or has verified payment of all due fees including fees due to collecting societies, related to the final results.

II.10.6 Creators

By delivering the results the contractor warrants that the creators undertake not to oppose that their names be recalled when the results are presented to the public and confirms that the results can be divulged. Names of authors shall be recalled on request in the manner communicated by the contractor to the contracting authority.

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

II.10.7 Persons appearing in photographs or films

If natural, recognisable persons appear in a result or their voice is recorded the contractor shall submit a statement of these persons (or of the persons exercising parental authority in case of minors) where they give their permission for the described use of their image or voice on request by the contracting authority. This does not apply to persons whose permission is not required in line with the law of the country where photographs were taken, films shot or audio records made.

II.10.8 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 Union. All rights reserved. Certain parts are licensed under conditions to the EU.

II.10.9 Visibility of Union funding and disclaimer

When making use of the results, the contractor shall declare that they have been produced within a contract with BBI JU and that the opinions expressed are those of the contractor only and do not represent the contracting authority's official position. The contracting authority may waive this obligation in writing.

ARTICLE II.11 – FORCE MAJEURE

II.11.1 'Force majeure' means any unforeseeable and exceptional situation or event beyond the parties' control which prevents either of them from fulfilling any of their obligations under the contract, which was not attributable to error or negligence on their part or on the part of subcontractors and which proves to be inevitable in spite of exercising due diligence. Any default of a service, defect in equipment or material or delays in making them available, unless they stem directly from a relevant case of force majeure, as well as labour disputes, strikes or financial difficulties, cannot be invoked as force majeure.

II.11.2 A party faced with force majeure shall formally notify the other party without delay, stating the nature, likely duration and foreseeable effects.

II.11.3 The party faced with force majeure shall not be held in breach of its contractual obligations if it has been prevented from fulfilling them by force majeure. Where the contractor is unable to fulfil its contractual obligations owing to force majeure, it shall have the right to remuneration only for the tasks actually executed.

II.11.4 The parties shall take all the necessary measures to limit any damage due to force majeure.

ARTICLE II.12 – LIQUIDATED DAMAGES

The contracting authority may impose liquidated damages should the contractor fail to complete its contractual obligations, also with regard to the required quality level, according to the tender specifications.

Should the contractor fail to perform its contractual obligations within the time-limits set by the contract, then, without prejudice to the contractor's actual or potential liability or to the contracting authority's right to terminate the contract, the contracting authority may impose liquidated damages for each and every calendar day of delay according to the following formula:

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

V is the amount specified in Article I.3.1;

d is the duration specified in Article I.2.3 expressed in calendar days.

The contractor may submit arguments against this decision within 30 days of receipt of the formal notification. In the absence of a reaction on its part or of written withdrawal by the contracting authority within 30 days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable.

The parties expressly acknowledge and agree that any sums payable under this article are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the losses incurred due to failure to fulfil obligations which may be reasonably anticipated.

ARTICLE II.13 – SUSPENSION OF THE PERFORMANCE OF THE CONTRACT

II.13.1 Suspension by the contractor

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

Once the circumstances allow resuming performance, the contractor shall inform the contracting authority immediately, unless the contracting authority has already terminated the contract.

II.13.2 Suspension by the contracting authority

The contracting authority may suspend the performance of the contract or any part thereof:

- (a) if the contract award procedure or the performance of the contract 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. The contracting authority shall give notice as soon as possible to the contractor to resume the service suspended or inform the contractor that it is proceeding with the termination of the contract. The contractor shall not be entitled to claim compensation on account of suspension of the contract or of part thereof.

ARTICLE II.14 – TERMINATION OF THE CONTRACT

II.14.1 Grounds for termination

The contracting authority may terminate the contract 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 contract substantially or calls into question the decision to award the contract;
- (b) if 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 contracting authority, taking into account Article II.8.2;
- (c) if the contractor does not perform the contract as established in the tender specifications or fails to fulfil another substantial contractual obligation;
- (d) in the event of force majeure notified in accordance with Article II.11 or if the performance of the 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 contract might call into question the decision awarding the contract or result in unequal treatment of tenderers;

- (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 contract or those of the country where the contract is to be performed;
- (h) if the contracting authority has evidence that the contractor or 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 BBI JU's financial interests;
- (i) if the contracting authority has evidence that the contractor or 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 contract, including in the event of submission of false information;
- (j) if the contractor is unable, through its own fault, to obtain any permit or licence required for performance of the contract.

II.14.2 Procedure for termination

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

If the contracting authority does not confirm acceptance of these observations by giving written approval within 30 days of receipt, the termination procedure shall proceed. In any case of termination the contracting authority shall formally notify the contractor about its decision to terminate the contract. In the cases referred to in points (a), (b), (c), (e), (g) and (j) 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 for the tasks already executed on the date of termination and produce an invoice if necessary. The contracting authority may recover any amounts paid under the contract.

The contracting authority may claim compensation for any damage suffered in the event of termination.

On termination the contracting authority may engage any other contractor to execute or complete the services. The contracting authority shall be entitled to claim from the contractor all extra costs incurred in this regard, without prejudice to any other rights or guarantees it may have under the contract.

ARTICLE II.15 – REPORTING AND PAYMENTS

II.15.1 Date of payment

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

II.15.2 Currency

The contract shall be in euros.

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

Conversion between the euro and another currency shall be made according to the daily euro exchange rate published in the *Official Journal of the European Union* or, failing that, at the monthly accounting exchange rate established by the European Commission and published on its website, applicable on the day on which the payment order is issued by the contracting authority.

II.15.3 Costs of transfer

The costs of the transfer shall be borne in the following way:

- (a) costs of dispatch charged by the bank of the contracting authority shall be borne by the contracting authority,
- (b) cost of receipt charged by the bank of the contractor shall be borne by the contractor,
- (c) costs for repeated transfer caused by one of the parties shall be borne by the party causing repetition of the transfer.

II.15.4 Invoices and Value Added Tax

Invoices shall contain the contractor's identification, the amount, the currency and the date, as well as the contract reference.

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

The contracting authority is, as a rule, exempt from all taxes and duties, including VAT, pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union.

The contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the supplies and services required for performance of the contract are exempt from taxes and duties, including VAT exemption.

II.15.5 Pre-financing and performance guarantees

Pre-financing guarantees shall remain in force until the pre-financing is cleared against interim payments or payment of the balance and, in case the latter takes the form of a debit note, three months after the debit note is notified to the contractor. The contracting authority shall release the guarantee within the following month.

Performance guarantees shall cover performance of the service in accordance with the terms set out in the tender specifications until its final acceptance by the contracting authority. The amount of a performance guarantee shall not exceed the total price of the contract. The guarantee shall provide that it remains in force until final acceptance. The contracting authority shall release the guarantee within a month following the date of final acceptance.

Where, in accordance with Article I.4, a financial guarantee is required for the payment of pre-financing, or as performance guarantee, it shall fulfil the following conditions:

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

The cost of providing such guarantee shall be borne by the contractor.

II.15.6 Interim payments and payment of the balance

The contractor shall submit an invoice for interim payment upon delivery of intermediary results, accompanied by a progress report or any other documents, as provided for in Article I.4 or in the tender specifications.

The contractor shall submit an invoice for payment of the balance within 60 days following the end of the period referred to in Article I.2.3, accompanied by a final progress report or any other documents provided for in Article I.4 or in the tender specifications.

Upon receipt, the contracting authority shall pay the amount due as interim or final payment within the periods specified in Article I.4, provided the invoice and documents have been approved and without prejudice to Article II.15.7. Approval of the invoice and documents shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information they contain.

Payment of the balance may take the form of recovery.

II.15.7 Suspension of the time allowed for payment

The contracting authority may suspend the payment periods specified in Article I.4 at any time by notifying the contractor that its invoice cannot be processed, either because it does not comply with the provisions of the contract, or because the appropriate documents have not been produced.

The contracting authority shall inform the contractor in writing as soon as possible of any such suspension, giving the reasons for it.

Suspension shall take effect on the date the notification is sent by the contracting authority. The remaining payment period shall start to run again from the date on which the requested information or revised documents are received or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension period exceeds two months, the contractor may request the contracting authority to justify the continued suspension.

Where the payment periods have been suspended following rejection of a document referred to in the first paragraph and the new document produced is also rejected, the contracting authority reserves the right to terminate the 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 periods in accordance with Article II.15.7 may not be considered as a late payment.

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

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

ARTICLE II.16 - REIMBURSEMENTS

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

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

II.16.3 Travel expenses shall be reimbursed as follows:

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

In addition, travel outside Union territory shall be reimbursed provided the contracting authority has given its prior written consent.

II.16.4 Subsistence expenses shall be reimbursed on the basis of a daily subsistence allowance as follows:

- (a) for journeys of less than 200 km for a return trip, no subsistence allowance shall be payable;
- (b) daily subsistence allowance shall be payable only on receipt of supporting documents proving that the person concerned was present at the destination;
- (c) daily subsistence allowance shall take the form of a flat-rate payment to cover all subsistence expenses, including meals, local transport which includes transport to and from the airport or station, insurance and sundries;
- (d) daily subsistence allowance shall be reimbursed at the flat rates specified in Article I.3;
- e) accommodation shall be reimbursed on receipt of supporting documents proving the necessary overnight stay at the destination, up to the flat-rate ceilings specified in Article I.3.

II.16.5 The cost of shipment of equipment or unaccompanied luggage shall be reimbursed provided the contracting authority has given prior written authorisation.

II.16.6 Conversion between the euro and another currency shall be made as specified in Article II.15.2.

ARTICLE II.17 – RECOVERY

II.17.1 If an amount is to be recovered under the terms of the contract, the contractor shall repay the contracting authority the amount in question according to the terms and by the date specified in the debit note.

II.17.2 If the obligation to pay the amount due is not honoured by the date set by the contracting authority in the debit note, the amount due shall bear interest at the rate indicated in Article II.15.8. Interest on late payments shall cover the period from the day following the due date for payment, up to and including the date when the contracting authority receives the full 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, the contracting authority may, after informing the contractor in writing, recover the amounts due by offsetting them against any amounts owed to the contractor by BBI JU or by the European Atomic Energy Community or by calling in the financial guarantee, where provided for in Article I.4.

ARTICLE II.18 – CHECKS AND AUDITS

II.18.1 The contracting authority and the European Anti-Fraud Office may check or have an audit on the performance of the contract. 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 contract and during a period of five years which starts running from the date of the payment of the balance.

The audit procedure shall be deemed to be initiated on the date of receipt of the relevant letter sent by the contracting authority. Audits shall be carried out on a confidential basis.

II.18.2 The contractor shall keep all original documents stored on any appropriate medium, including digitised originals when they are authorised by national law and under the conditions laid down therein, for a period of five years which starts running from the date of payment of the balance.

II.18.3 The contractor shall allow the contracting authority's staff and outside personnel authorised by the contracting authority the appropriate right of access to sites and premises where the contract is performed and to all the information, including information in electronic format, needed in order to conduct such checks and audits. The contractor shall ensure that the information is readily available at the moment of the check or audit and, if so requested, that information be handed over in an appropriate form.

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

On the basis of the final audit findings, the contracting authority may recover all or part of the payments made and may take any other measure 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 BBI JU in order to protect the European Communities' financial interests against fraud and other irregularities and Regulation (EC) No 1073/1999 of the European Parliament and the Council of 25 May 1999 concerning investigation conducted by the European Anti-Fraud Office (OLAF), the OLAF may also carry out on-the-spot checks and inspections in accordance with the procedures laid down by Union law for the protection of the financial interests of the European Union against fraud and other irregularities. Where appropriate, the findings may lead to recovery by the contracting authority.

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

Annex [A1]

Statement of Contractor concerning right to delivered result

[Option 1: general statement -low risk situations, e.g. limited use of the results]

I, *[insert name of the authorised representative of the Contractor]* representing *[insert name of the Contractor]*, party to the Contract *[insert title and/or number of the contract]* warrants that the Contractor holds full right to the delivered *[insert title and/or description of result]* which is free of any claims, including claim of the creators who transferred all their rights and *[were fully paid]* *[will be paid as agreed within [complete] weeks from [delivery of this statement.] [receipt of confirmation of acceptance of the work].*

[Option 2: detailed statement - higher risk situations, e.g. extensive use of the results]

I, *[insert name of the authorised representative of the Contractor]* representing *[insert name of the Contractor]*, party to the contract *[insert title and/or number of the contract]* warrants that *[, except for [the parts listed in [complete by reference to the Tender Specification and/or offer]] [or list parts for which rights are not transferred],]*² the Contractor holds a right to the delivered *[insert title and/or description of result]* which is/are free of any claims of third parties.

Work was prepared by *[insert names of creators]* *[, except for [the parts listed in [complete by reference to the Tender Specification and/or offer]] [or list parts that pre-*

² In case not all IP rights were fully transferred

existed and for which rights are not transferred],³ is [original and] free of rights of third persons. Creators transferred all their rights to the work (excluding moral rights of natural persons) to [*insert name of the entity that received rights from the creators*] [through a contract of [*insert date*] [a relevant extract of which is] herewith attached.

Creators [received all their remuneration on [*insert date*]] [will receive all their remuneration as agreed within [*complete*] weeks from [delivery of this statement] [receipt of confirmation of acceptance of the work]. [The statement of the creators confirming payment is attached].

Date, place, signature

³ In case parts of the work pre-existed and belonged to third parties

Annex [A2]

Statement of creator / intermediary in delivery

of the [*title of the result*]

within the Framework Contract number [*complete*]

Specific Contract No [*complete*]

concluded between the European BBI JU and [*name of the contractor(s)*]

I, [*insert name of the authorised representative of the intermediary*] representing [*insert name of the intermediary*] state that I am the right holder of: [*identify the relevant parts of the result*] [which I created] [for which I received rights from [*insert name*]].

I am aware of the above contract, especially Articles I.9, II.10 and point [*insert reference*] of the Request for Service and I confirm that I transferred all the relevant rights to [*insert name*].

I declare that [I received full remuneration.] [I agreed to receive remuneration by [*insert date*]].

[I also confirm that I do not oppose my name being recalled when the results are presented to the public and confirm that the results can be divulged.]⁴

Date, place, signature

⁴ Necessary for creators