

Appendix 9 – Draft Waiting room Agreement Design & creative services

The undersigned

1. EIT Digital IVZW, located Rui Guimard 7, B-1040, Brussels Belgium, hereinafter referred to as “Client”, lawfully represented by its legal representative CEO Mr. Prof. W. Jonker,

And

2. **NAME SECOND BEST TENDERER**, established in **(STREET, NUMBER, POSTAL CODE, CITY, COUNTRY)**, hereinafter referred to as Contractor, lawfully represented by its legal representative **NAME AND FUNCTION**.

Hereinafter individually or collectively referred to as “Party” or “Parties”.

Considering the following:

- Client is a leading European digital innovation and entrepreneurial education organisation driving Europe’s digital transformation.
- To obtain Design & creative services, Client has conducted a procurement procedure in accordance with its own procurement policy, in which it launched a request for proposal (RFP) for the assignment: Design & Creative services (hereinafter “the Assignment”).
- Contractor specializes Design and creative services and is in that capacity, able and willing to provide services according to the RFP Documents;
- Contractor has submitted its offer on **DATE**, 2018 (hereinafter “the Tender”);
- The Tender of Contractor meets the requirements set by Client;
- The Tender of Contractor was scored as the offer which is expected to obtain the second Best Value for Money;
- Client has decided to conclude the agreement on executing the Assignment with **NAME AWARDED TENDERER**;
- Client wishes to make a provision in case the agreement with **NAME AWARDED TENDERER** is prematurely terminated and/or not renewed during an initial term of 24 months.
- Client and Contractor wish to lay down the terms and conditions regarding their relationship in this Waiting room Agreement (hereinafter “the Agreement”);
- Terms defined in the RFP shall have the same meaning in this Agreement unless otherwise provided for.

The following are agreed as follows:

Article 1 – General provisions

1. If the agreement with **NAME AWARDED TENDERER** as referred to in the considerations of this Agreement is prematurely terminated and/or not renewed during the first 24 months after signing this Agreement, Client has the discretionary power to assign the services and/or deliveries as laid down in the RFP Documents to Contractor for the remainder of the Assignment and the remaining extension possibilities.

2. Contractor declares that it is prepared to provide and/or perform the services and/or deliveries as described in the RFP Documents and in accordance with its statements in its Tender if the agreement with NAME AWARDED TENDERER is terminated and/or not renewed.
3. The Tender remains valid for a period of twenty-four (24) months after the signing of this Agreement.
4. Contractor will be entering the Realization Phase on first request and will enter into an agreement with Client for the Assignment after finishing said phase, without conditions which differ from the RFP Documents its Tender.
5. The indexation option mentioned in the RFP may be implemented in consultation with and after approval by Client.
6. Contractor cannot derive any rights from this Agreement, or from the situation in which Client decides not to enter into an agreement with Contractor upon termination of the agreement with NAME AWARDED TENDERER.
7. Client shall not be held to any liability with respect to any claim by Contractor on accounts of or arising from this Agreement.

Article 2 – Applicable law and competent court

1. This Agreement, any subsequent agreements and/or any out of this Agreement forthcoming legal relationships between Client and Contractor are governed by Belgium law, hereby excluding its choice of law principles and the United Nations Convention on Contracts for the International Sale of Goods.
2. Unless the law diverges compulsively, the court in Brussels (Belgium) is authorized to settle disputes between Parties.
3. Client and Contractor will however only appeal to the court after they have made every effort to settle the dispute by mutual understanding.

Article 3 – Appendixes

The following documents are an integral part of this Agreement. To the extent there is a conflict between them the first mentioned document prevails above the latter:

- a. This Agreement;
- b. The note(s) of information;
- c. The RFP documents;
- d. The Tender from Contractor.

Article 4 – Final Provisions

1. This Agreement shall apply to, inure to the benefit of and be binding upon the Parties hereto and upon their respective successors and permitted assigns. Neither Party may assign this Agreement without the other's written consent which shall not be unreasonably withheld. Any attempted assignment not in compliance with this subsection will be null and void.
2. The Parties acknowledge that the terms and conditions of this Agreement are written in the English language and that it is the intent of the Parties that the English translation shall always apply. Contractor confirms that Contractor understands English.
3. Parties agree to waive the obligations resulting from article 1325 of the Belgian civil code, and agree that the signed copies, as provided for in electronic manner, shall be deemed to have the same evidential value as an original (signed) document.



Thus, agreed and signed per Esigning

To PLACE dated DATE

EIT Digital IVZW

NAME CONTRACTOR

Prof. W. Jonker

NAME

CEO

FUNCTION

