

Appendix 8 – Draft Framework 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 CONTRACTOR**, established in (**STREET, NUMBER, POSTAL CODE, CITY, COUNTRY**), hereinafter referred to as Contractor, lawfully represented by its legal representative **NAME AND FUNCTION**.

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 in design and creative services and it is in that capacity, able and willing to provide services and/or deliveries 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 Best Value for Money;
- Client wishes to enter into the Framework agreement for the full initial contract duration and its renewals as provided for in the RFP (in total 5 years), it being understood that Client only undertakes legally binding commitments for the initial contract term of 1 year, due to the annual cycle of its business plan according to the FPA and SGA;
- Contractor agrees to perform the services all upon the terms and subject to the conditions set forth in this 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 –Definitions

Agreement – This Framework agreement under which the Sub-assignments will be executed in accordance with the RFP.

Appendix(es) – Integrated part of this Agreement as documented in an attachment to this Agreement.

Assignment – The complete services and products that Contractor will deliver in accordance with the RFP and the Agreement. The Assignment is explicitly described in article 2 and in the Appendixes for the details.

Confidential Information - Any information disclosed by one Party (“Disclosing Party”) to the other Party (“Receiving Party”) under this Agreement (i) that is clearly marked as proprietary and/or confidential when disclosed or, (ii) from which the confidentiality and proprietary nature can be reasonably interfered under the circumstances. Without limiting the generality of the foregoing, the terms and conditions of this Agreement, including prices, are Confidential Information of both Parties.

Consortium – A group of legal entities in the capacity of Contractor who are jointly and severally liable for the performance of the Assignment.

Contractor – The legal entity (or entities in a Consortium) that submitted the winning Tender in accordance to the Assignment and corresponding requirements as formulated in the RFP.

FPA (Framework Partnership Agreement) - The agreement between Client and the European Institute of Innovation and Technology. The FPA lays down the conditions under which Client and the European Institute of Innovation and Technology work together, a.o. with respect to organizing the KIC Activities and receiving the funding from the European Institute of Innovation and Technology.

KPI (Key Performance Indicators) – Variables to analyse the performance of Contractor, its products and/or its services.

Legal representative – The natural person who, according to the corporate regulations of Contractor, is entitled to bind the Contractor legally.

Nodes – Co-location centres of EIT Digital located in Berlin, Eindhoven, Helsinki, London, Paris, Stockholm, Trento, Budapest, Madrid and Silicon Valley (USA).

Note of information – Combined answers of Client on questions of all Tenderers concerning the RFP documents during the procurement procedure.

Professional error – Shortcomings, such as mistakes, negligence, omissions, incorrect advices/services/deliveries which wouldn’t be given by a skilled and careful professional Contractor under the given circumstances, considering normal alertness and normal professional knowledge and normal practice.

RFP (Request for Proposal) – Underlying document with which Contractor was asked to submit its Tender provided that it was fulfilling the minimum requirements.

RFP documents – All documents (including the RFP) that are provided by Client during the procurement procedure.

Service(s) and/or Products – Requested services and/or products as defined in this Agreement and its Appendixes which will lead to achieving the defined goals.

SGA – (Specific Grant Agreement) The Agreement that sets out specific terms and conditions and rights and obligations that are applicable to the specific grants awarded to Client.

Sub-assignment – Detailed (partial) assignments within the scope of the Assignment on which the provisions of the Agreement are applicable. The execution of Sub-assignments will always be preceded by consultation of Parties and an order confirmation.

Tender – The winning offer of the Contractor on which Client determined this offer to be the offer which provides the best value for money.

Third parties – All parties except: Client, Contractor and all their affiliated entities.

Working day – A calendar day, not the Saturday or Sunday, not an internationally respected holiday and/or the equivalent of such a day as respected by Client.

Article 2 – Object of the Agreement

1. Contractor undertakes to provide the Services and/or Products to Client as provided for in this Agreement and as further described in the Tender and in the Sub-assignments following from this Agreement. The main objectives of the Assignment can be broadly distinguished in:
 - a. Providing Design and creative services with regard to Clients marketing and communication goals;
 - b. Delivering printed and digital products with regard to any outgoing communication.
2. Client may, based on this Agreement, provide Contractor with an order to perform Sub-assignments as described in the RFP documents.
3. The following documents (attached as appendixes to this Agreement) are an integral part of this Agreement. To the extent there is a conflict between these documents than the first mentioned document will take precedence and govern:
 - a. The Agreement;
 - b. The note of information;
 - c. RFP documents;
 - d. The Tender.
4. All provisions on Contractors forms are deemed deleted.
5. If any of the provisions of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, this Agreement will be construed as if it did not contain the invalid or unenforceable provision(s).
6. This Agreement and all documents referenced herein or attached hereto, including the documents mentioned in article 2 sub 2, constitute the entire agreement of the Parties with respect to its subject matter, there being no other promises, terms, conditions, or obligations, referring to the subject matter not contained herein.
7. Modifications or amendments to this Agreement shall be valid only if these are foreseen in the RFP documents and there is written prior consent of both parties to the modifications and/or amendments.

Article 3 – Duration of the Agreement

1. This Agreement has a duration of one year and starts at January 1st, 2019 (hereinafter: “the Effective Date”).
2. This Agreement will be effective as of the Effective Date and shall remain in effect until December 31st, 2019 (“Initial Term”).
3. This Agreement may be renewed by Client for four (4) consecutive twelve (12) month periods (“Renewal Term”) by giving Contractor written notice thirty (30) days prior to the expiration of the Initial Term or any Renewal Term.
4. For the avoidance of doubt, the tacit reconduction of the Agreement cannot be interpreted as a renewed commitment from Client.

Article 4 – Execution of the Assignment

1. Contractor warrants that the Assignment will be performed in a diligent, workman-like and professional manner, in compliance with industry and legal standards, and in accordance with all specifications, instructions and/or documentation described in the RFP Documents, the Tender or as otherwise agreed.
2. Contractor guarantees that all services and/or deliveries that are carried out, are in accordance with the requirements of this Agreement.
3. Contractor is obliged to give due timely and responsible indication of the outcome of the Assignment.
4. Contractor will make a tailored offer (with regard to the expected number of deployment hours) for each Sub-assignment in which it will provide Client with multiple scenarios (at least two) regarding the level of expertise, so Client can make an educated choice with regard to the deployment of the experts (on junior or senior level). For the remainder Contractor will, when carrying out the Assignment, take reasonable wishes (amongst which but not limited to wishes with regard to the deployment of junior or senior employees) of Client into account where possible.
5. Tailored offers with regard to Sub-assignments for copy/printing/”repro” activities can be challenged by Client. Client is not obligated to assign these activities to Contractor.
6. It is the responsibility of Contractor to further adjust the execution of the Assignment to changing conditions. Contractor will discuss impending relevant changes in statutory regulations impacting the execution of this Agreement with Client in a timely matter.
7. Contractor shall immediately notify Client of the (partial)completion of the Assignment, if Client would otherwise not be aware of it.
8. Contractor reports on a monthly basis to which extent issues have occurred during the execution that influence the execution of the Assignment and which are outside its control and responsibility.
9. Neither Party shall be liable for delays in performance or non-performance, in whole or in part - except for payments due - resulting from causes beyond its reasonable control, such as acts of God, fire, strikes, embargo, acts of the government, or other similar causes. In such event, the Party delayed shall promptly give notice to the other party. The Party affected by the delay may: (a) extend the time for performance for the duration of the event, or (b) cancel all or any part of the unperformed part if such delay exceeds ninety (90) days.
10. Contractor will ensure that the assigned Services and/or delivery of Products continue in an undisturbed matter and are carried out properly and completely. Contractor shall always ensure that continuation and execution is not interrupted due to illness, holidays or other reasons for the absence of personnel engaged for the services. Contractor will immediately take the necessary measures to make the required facilities and/ or the deployment of replacement personnel, as the case may be.
11. Contractor shall refrain from changing key personnel during the execution of this Agreement. In the event that key personnel will have to be replaced, Contractor shall consult with Client regarding such replacements. It being understood that the final decisions regarding allocation of personnel always remains with Contractor. Contractor shall in any event be liable for any costs and expenses pertaining to the replacement of key personnel.
12. The relationship of Parties is that of independent contractors, and nothing in this Agreement or otherwise shall be deemed to create any other relationship, including employment, partnership, agency or joint venture, between Parties. Nothing in this Agreement shall be deemed or construed by the Parties or any third party as creating the relationship of principal and agent, franchisor and franchisee, partnership or of a joint venture, it being understood and agreed that no provision contained herein, and no act of the Parties, shall be deemed to create any relationship between the Parties other than the relationship of independent contractor.

13. Client expressly agrees that Contractor also performs services and/or deliveries for other clients, provided that this doesn't interfere with the proper execution of the Assignment between Client and Contractor and/or it doesn't harm (other) interests of Client.
14. Neither Party to this Agreement shall have any authority to bind the other to any obligation with any third party.
15. The failure of either Party to strictly enforce any of the terms or conditions of this Agreement shall not be considered a waiver of any right hereunder. If any term or provision of this Agreement is declared invalid or unenforceable, the remainder of this Agreement will not be affected thereby, and each term and provision of this Agreement will continue to be valid and enforceable to the fullest extent permitted by law.
16. Contractor may not transfer its rights and obligations ensuing from this Agreement to third parties in whole or in part without prior written permission from the Client. Conditions can be attached to the permission.

Article 5 – Remuneration and terms of payment

1. The yearly fee for the services is indicated in the Tender (Appendix 5 – Price sheet) such as submitted by Contractor on **DATE**, 2018.
2. The fees are fixed and specified by Contractor in Euros and excluding VAT.
3. Additional services will not be paid for unless the RFP documents contained an explicit possibility to do so, Client gave an additional order and parties have written prior consent on the scope and price of the additional services.
4. Fees may be adjusted – following the Belgian Health index (“Gezondheidsindex”) for the first time at the second Renewal of this Agreement (January 1st, 2021) provided that increases of fees can't exceed 2% from the previous financial year and provided that fee reductions are reviewed annually.
5. Fees increases are only allowed once a year as of January 1st, 2021. This must be agreed up on in writing at least two months prior to the intended date of entry.
6. If Contractor doesn't notify Client in writing of the fee changes, Client will assess the Agreement to be issued by Contractor after the 1st of January that year similar to the prices/rates of the previous year.
7. Contractor provides detailed statements regarding the services rendered for the time spend by its employees.

Article 6 – Taxes and invoicing

1. The remuneration mentioned in article 5 sub 1 will be specified and invoiced at the end of every month.
2. The remuneration will be charged by Contractor to Client monthly via a digital invoice addressed to easyform@eitdigital.eu.
3. Failure to comply with the requirements set out in this Agreement may result in non-timely payment without Contractor being able to derive any right therefrom and will not lead to any liability of Client.
4. Client shall make payment of a correct and undisputed invoice within thirty (30) days after receipt of the invoice. A “correct” invoice is an invoice that meets Clients invoicing requirements including, but not limited to, correctly reflecting the fee as agreed upon by the Parties as well as the description of the Services ordered and provided. In the event that the payment period defined herein differs from the maximum period permitted by the applicable law, the payment period shall be the maximum payment period permitted by such law.

5. Client will, without prejudice to its obligation to pay, pay Contractor an interest equal to the statutory interest over the period after expiry of the said term that the invoice is stayed unpaid for invoices that remain unpaid for more than 30 days from the date of receipt of the invoice.
6. Client is entitled to suspend payment of invoices or to automatically repay the amount collected by Contractor in case of alleged material misstatement of the facts. Client objects to Contractor's invoice before expiry of the payment period or within 30 days of direct debit. In that case Contractor will remain liable for the execution of the Agreement.
7. Invoices shall be paid electronically by Client to the banking institution/account number provided by Contractor, namely **ADD BANK DETAILS CONTRACTOR**. In the event of a change of banking institutions and/or account numbers, Contractor shall provide the applicable account numbers to Client thirty (30) days prior written notice.
8. Contractor shall take all necessary measures to comply with tax laws and regulations of each country in which it operates for the performance of this Agreement.
9. The specified fees do not include any VAT or sales tax or Transfer Taxes or any other analogous tax in any relevant jurisdiction ("VAT") and are inclusive of any other taxes, custom duties, levies and similar charges.
10. Client shall be responsible for any applicable VAT with respect to the prices paid for the services and/or deliveries and shall reimburse Contractor for any such VAT paid by Contractor on Client behalf. Contractor will not charge an otherwise applicable VAT the services and/or deliveries are exempt from VAT.
11. Except as otherwise provided in this Agreement, all duties, taxes and social insurance contributions ("Taxes") arising out of or relating to Contractors performance under this Agreement will be paid by Contractor. If the Client so requests, payment receipts from the Tax and/or other Authorities concerning the Contractor and its subcontractors will be provided within one month.

Article 7 – Confidentiality

1. The Receiving Party shall (a) only use Confidential Information to exercise its rights and fulfil its obligations under this Agreement; and (b) maintain the confidentiality of Confidential Information and not disclose Confidential Information to any third party.
2. Parties are required to secrecy against third parties regarding confidential information obtained from the (pre-) contractual relationship and/or obtained during and/or after termination of this Agreement that regards one or both parties.
3. Contractor is not permitted to reproduce, disclose or exploit any correspondence produced by Client, contracts and/or other proprietary products with or without third party involvement, without Clients prior written consent.
4. Where the Receiving Party is obliged to disclose the Confidential Information, in whole or in part, in order to comply with a court order, a verdict, an administrative act or a statutory requirement, the Receiving Party shall notify the Disclosing Party thereof without delay and in advance of such disclosure and shall support the Disclosing Party in defending against the requirement for disclosure or seeking further protection of such confidential information.
5. In accordance with Clients written instructions, Contractor will, at its own expense, destroy (and certify in writing such destruction) or return the original and any copies of Confidential Information to Client.
6. Breaching/violating these obligations are penalized by a direct payment of 10.000,- Euro per offense.

Article 8 – Processing personal data

In the event Contractor qualifies as a processor as referred to in the General Data Protection Regulation while Contractor processes personal data for Client during the Assignment, Contractor guarantees the application of appropriate technical and organizational measures, for the processing to meet the requirements of the General Data Protection Regulation and the protection of the data subjects is guaranteed. Contractor processes personal data exclusively on commission and based on written instructions from Client, except for deviating legal prescriptions.

Article 9 – Intellectual property

1. All (intellectual) property rights and related rights, including but not limited to copyright and patent rights, on all results of Contractor's activities under this Agreement, as well as on the materials used and/or developed thereunder shall be vest with Client. Client shall maintain the full and unrestricted ownership of the information and materials it delivers to Contractor in the execution of this Agreement.
2. Contractor shall waive all rights relating to such material and shall not reproduce, publish or supply any such material to any third party without Clients prior written approval.
3. Contractor is not permitted to use the word / figurative mark of other intellectual property rights of Client in any way or for advertising, promotional and/or acquisition purposes, unless with prior written consent of Client.
4. Breaching/violating these obligations are penalized by a direct payment of 10.000,- Euro per offense.

Article 10 – Indemnity, liability and Insurance

1. The services provided by Contractor shall always comply with the (local and international) regulations in force at the time of delivery and any reasonably expected changes thereto. Contractor will discuss impending relevant changes in statutory regulations with Client on time. Contractor indemnifies, hold harmless and defend the Client against all claims in this regard.
2. To the maximum extent permitted by law, and except as otherwise provided in this Agreement, under no circumstances and under no legal theory, whether in tort (including negligence) contract or otherwise, shall Client be liable to Contractor for any special indirect, punitive, incidental or consequential damages resulting from or arising out of or relating to this Agreement, even if a Party has been informed of the possibility of those damages.
3. Contractor will indemnify, defend and hold harmless Client, its employees, agents, and the KIC Partners from any losses, damages, claims and expenses (including court costs and reasonable attorney's fees) that arise out of or result from: (1) injuries or death to persons or damage to property, including theft, in any way arising out of or relating to the services and/or deliveries, or any person or deliverable furnished by Contractor except to the extent directly caused by the negligence or wilful misconduct of Client; (2) assertions under workers' compensation or similar social insurance claims made by persons furnished by Contractor; or (3) Contractor's breach of any obligations under the following clauses: Taxes, Intellectual Property Rights, Publicity, Health insurance and compliance with law.
4. Contractor will provide Client, upon request, certificates or proof of insurance that are sufficient to cover the obligations of Contractor under this Agreement. Contractor is in this regard insured by a professional liability insurance with a minimum coverage of EUR 1.500.000,- (say: one million and five hundred thousand euros) per year.

Article 11 - Special conditions

1. Contractor acknowledges the obligations of Client under the FPA and the SGA, that Client receives grants from the European Institute of Innovation and Technology and that Client has the obligation to comply with controls, checks and audits and investigations (hereinafter “Audits”) that may be carried out by the European Institute of Innovation and Technology, the European Court of Auditors and/or the European Anti-Fraud Office (OLAF). Contractor shall do everything that is necessary to enable Client to comply with these obligations.
2. More in particular, Contractor acknowledges and agrees that the European Institute of Innovation and Technology, the Commission, the European Court of Auditors (ECA) and the European Anti-Fraud Office (OLAF) can exercise their rights under Articles 28 and 29 of the Framework Partnership Agreement also towards Contractor. Contractor agrees in this regard to comply with any requests (including but not limited to providing any information and/or documents at first request) made by the European Institute of Innovation and Technology, the European Court of Auditors and/or the European Anti-Fraud Office (OLAF) in the context of such audits as to the Agreement and the results of the Agreement by Contractor.

Article 12 – Termination of the agreement

1. Client is allowed to terminate this Agreement in the event Contractor breaches any material term or condition that relates to or arises from this Agreement (including all documents mentioned in article 2 sub 2) and where such breach remains uncured for more than thirty (30) days after Contractor is provided with written (e-mail) notice of such breach. However, in the event that the breach cannot be cured, Client is entitled to terminate this Agreement up on written notice with immediate effect.
2. Client is allowed to terminate this Agreement by written (e-mail) notice to Contractor if a proceeding is commenced against Contractor under any bankruptcy code and such proceeding has not been discharged, dismissed or terminated within sixty (60) days of its commencement.
3. Client is entitled without any notice or notice of default being required by the court to terminate the Agreement by registered letter if Contractor is in a state in which;
 - a. payment requests are (provisional) suspended;
 - b. (provisional) deferral is granted;
 - c. Bankruptcy or application of the bankruptcy statement is declared;
 - d. The current company ceases;
 - e. It fails to comply with the Agreement because of force majeure;
 - f. Permits required for the execution are withdrawn.
4. If Client enters a provisional termination of the Agreement, Client will immediately pay the invoices that are approved by it for services and/or deliveries already rendered.
5. If Client and/or Contractor is no longer able to comply with the Agreement by law of government and/or supranational institutions and/or by the development of the law and/or changes in the FPA and/or SGA, Client has the right to terminate the Agreement in a whole or partly, without any liability. The resulting situation will be reviewed by parties in good consultation.
6. Upon expiration or termination of this Agreement, Contractor shall cease performance of all services. Notwithstanding the aforementioned, the terms and conditions of this Agreement shall remain in effect for any services not cancelled at such time and any services still to be provided shall continue until such services are completed unless otherwise requested by Client. Clients liability shall be limited to payment of the amount due for services provided up to and including the date of expiration, termination or cancellation.

7. The termination or expiration of this Agreement will not affect the survival and continuing validity of any provision that expressly or by implication is intended to continue in force after such termination or expiration of this Agreement.

Article 13 – 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 is governed by Belgium law, 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 14 – 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