

#PARTIES

SERVICE CONTRACT UNDER THE GA NO. CEN/**GA REFERENCE**

BETWEEN, party of the first part,

The French Standards Association (AFNOR), an association governed by the law of 1 July 1901, recognised to be of public utility, with its registered office at 11 rue Francis de Pressensé - La Plaine Saint Denis (93571), duly represented by Mr Olivier PEYRAT, in their capacity as Managing Director

hereinafter referred to as "**AFNOR**"

AND, party of the second part,

PARTIE*

COMPANY NAME, COMPANY FORM (E.G.: ASSO/SA/SA, etc.) with headquarters at **ADDRESS OF THE CONTRACTOR'S REGISTERED OFFICE**, registered in the Trade and Companies Register **TOWN REGISTERED IN** with the number **REGISTERED NUMBER**, duly represented by **FIRST NAME AND LAST NAME OF THE AUTHORISED REPRESENTATIVE**, in their capacity as **ROLE OF AUTHORISED REPRESENTATIVE**

Hereinafter referred to as the "**CONTRACTOR**",

Or individually referred to as the "Party" and jointly as the "Parties".

Whereas*:

Wishing to continue their partnership, the purpose of which is to contribute to achieving the objective of the Community's policy on standardisation, the European Commission (EC) and the European Committee for Standardisation (CEN) have developed the subsidy scheme for standardisation activities as part of the EC's policy of simplification through harmonisation of custom procedures, in particular contractual processes. For this purpose, a new grant contract model or "Grant Agreement" (GA) was introduced, which constitutes the common base of legal clauses for all directly managed grant programmes. When the European Innovation Council and SME's Executive Agency (EISMEA) of the European Commission decides to award a grant for carrying out a standardisation task, it proposes that CEN and the standardisation office designated by it sign this Grant Agreement.

It is in this context that the European Commission and CEN concluded the Grant Agreement N° CEN/REFERENCE OF GA, attached hereto (hereinafter the "GA") entrusting AFNOR with the performance of the work, for which the technical specifications and the corresponding budget are defined in the annexes to the GA.

Part of this work, the technical specifications of which are more fully defined in the consultation documents of the call for tenders "[*TITLE OF CALL FOR TENDER*]" issued on [*PUBLICATION DATE OF CALL FOR TENDER*] (hereinafter the "Tender"), and to which the CONTRACTOR wished to respond, is the subject of this subcontract.

The CONTRACTOR, selected at the end of the Tender, having read the Tender documents and the GA, has declared that it has the required skills and experience and that it has the organisation, material and human resources necessary to provide the service requested as defined in the Call for Tender documents. The CONTRACTOR undertakes to comply with all the obligations set out in the GA.

The contractual documents governing the relationship between the parties are set out in descending order below:

- The GA and its appendices
- This service contract and any amendments thereto
- The Tender documents

In the event of any discrepancy, the provisions of the GA and its annexes shall prevail over those of this service contract and any amendments thereto.

Now, therefore, the parties hereto agree as follows:

Article 1. Subject matter

AFNOR hereby engages the CONTRACTOR, which accepts, to perform, in accordance with a performance requirement, the project management of all the operations needed to complete the tasks assigned to it and which are set out in annex 1 of the GA and in the Tender documents (hereinafter the "Services").

Article 2. Obligations of the CONTRACTOR

The CONTRACTOR agrees to use its best efforts in performing the Services in accordance with the GA and the best practices of its profession.

The CONTRACTOR agrees to:

- comply with a general obligation to give advice, information and warning regardless of AFNOR's expertise or level of knowledge; assign qualified staff with the time and resources needed to perform the Services perfectly;
- comply with the provisions of the GA, in particular Articles 11 (proper implementation), 12 (conflict of interest), 13 (confidentiality and security), 14 (ethics), 17.2 (privacy protection) and 17.3 (protection of the environment), 18 (specific rules for carrying out actions), 19 (information) and 20 (record keeping) of the GA.
- send AFNOR the name and job title of the person directly responsible for the performance of the Services;
- send AFNOR all the deliverables set out in the GA within the set deadlines;
- draw up and send to AFNOR, at the key stages of the project defined in the Annex to the GA, a report specifying the progress of the services carried out, i.e. an interim report and a final report in accordance with the requirements set out in Article 4.2 of the GA and according to the model proposed by CEN;
- draw up and send AFNOR a progress report regarding the Services on 31 December of each year;
- notify AFNOR of any modification pertaining to the organisation and performance of the tasks such as changes to the structure or the people responsible for the performance of the contract.

2.1. The CONTRACTOR agrees, under penalty of article 5 hereof, to comply with the agreed deadlines in accordance with the calendar set out in the GA and in the Tender documents.

2.2. Given that this contract forms part of a programme of the European Commission, the CONTRACTOR agrees to be audited regarding the performance of the services and the use of the sums paid by AFNOR. It consequently agrees to allow AFNOR and/or an audit company appointed by AFNOR and/or any body mentioned in article 25 of the GA, to access its premises and documents relating to the execution of the contract on simple request.

2.3. The CONTRACTOR must maintain and keep, for a period of 5 years from the last payment received, a file including the reports, minutes of the tasks undertaken within the context hereof, the time sheets of the person/people involved in the performance of the service, the assignment's expenses statement and the payments made to any authorised sub-contractors.

Article 3. Obligations of AFNOR

AFNOR shall give the CONTRACTOR the information needed to effectively fulfil the Services. AFNOR shall appoint a primary point of contact in order to maintain dialogue throughout the different stages of the services entrusted.

Should the conditions defined in the Tender documents or in the GA be modified by a decision of the European Commission or CEN, AFNOR undertakes to inform the CONTRACTOR.

Article 4. Remuneration

The price and payment terms are set out in Annex 2 ("Financial Terms") hereof.

AFNOR reject costs or contributions which are not eligible (in accordance with the provisions of Article 6 of the GA), in particular as a result of checks, examinations, audits or investigations (which may be carried out as described in Article 25 of the GA). The rejection may also be based on findings made in the context of other grants paid by the European Commission.

If AFNOR rejects fees or contributions, these will be deducted from the fees or contributions reported.

Article 5. Penalties

If the contractual deadlines are not adhered to or in the event of a serious breach of its obligations, the CONTRACTOR shall be liable, simply by virtue of the fact that a delay or breach is noted, to financial penalties, the amount of which shall be fixed in proportion to the seriousness of the delay or breach concerned pursuant to the provisions of Article 138-2 of the European Regulation 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union.

The maximum amount of such penalties shall not exceed 10% of the total value of the remuneration provided for herein.

The penalties shall be applied independently of any other sanctions arising from the lateness or failure, including the possible termination of the contract and the terms set out in article 6 without the exclusion of a claim for damages.

Article 6. Term – Termination

6.1. Term*

This contract takes effect from **START DATE OF GA** and will terminate on the date on which the GA ends and/or under the provisions of the GA (Article 32).

6.2. Termination

This contract may be automatically terminated early by either Party by recorded letter with acknowledgement of receipt, in the following instances:

- in the event of a serious failure of either Party to fulfil its obligations without remedy within fifteen (15) calendar days of the reception of the notification of the failures in question sent by recorded letter with acknowledgement of receipt, the other Party shall automatically be entitled to terminate the contract without prejudice to any claim for damages;
- in the event that the CONTRACTOR going into receivership without the contract being pursued by the receiver or the termination of its commercial activities, this contract shall automatically be terminated on the date of the adjudication of the receivership of the assets or on the day of the effective termination of the commercial activities if this contract is not pursued by the receiver;
- in the event of the termination of the GA by the CEN or the European Commission.

Article 7. Intellectual Property

7.1 Principle of granting intellectual property rights relating to the Results

The European Commission does not obtain ownership of the results produced under the action.

However, the beneficiaries of the GA must give each other and the other participants access to the tangible or intangible elements of the action, such as data, know-how or information, whatever their form or nature, whether or not they can be protected, as well as to the rights attached thereto, including the intellectual property rights resulting from the Services (hereinafter referred to as the "Results"), which have been identified as being necessary for the implementation of the action, subject to any specific rules set out in Annex 5 to the GA.

Consequently, the CONTRACTOR grants to AFNOR, in the form of a free, non-exclusive and irrevocable licence, which will transfer them to CEN, which will then transfer them to the European Commission:

a) rights of use for the purposes of the European Commission and in particular making available to persons working for the Commission, other institutions, agencies and bodies of the Union and the

institutions of the Member States, as well as copying and reproduction in whole or in part and in an unlimited number of copies;

b) rights of public dissemination, including publication on paper and in electronic or digital form, publication on the Internet, including the Europa website, in the form of a downloadable or non-downloadable file, dissemination by any kind of public transmission, display or presentation technique, communication through press information services, inclusion in databases or widely accessible indexes;

c) translation rights;

d) access rights on individual request without reproduction or exploitation rights of the Council and the Commission;

e) storage rights in paper, electronic or other form;

f) archiving rights in accordance with the Commission's document management rules;

g) the rights to authorise or sub-licence the modes of exploitation referred to in points b) and c) to third parties.

This transfer shall be concluded for the entire world and shall produce its effects throughout the entire legal term of the protection of the intellectual property rights. The remuneration set out in this contract includes the transfer of the intellectual property rights.

The CONTRACTOR warrants and represents that AFNOR has free, full and undisturbed use of all easements of the transferred rights against any disturbances, claims and evictions. In particular, the CONTRACTOR warrants and represents that it has obtained the prior transfer of the intellectual property rights regarding the Results from its employee(s) or any authorised agents.

The following information about the CONTRACTOR will be inserted when the Result is disclosed by the European Commission: "© - year - name of the copyright owner All rights reserved. Licensed by the European Union under conditions. "

7.2 Exception for standardisation deliverables

In view of the specific business model of the standards organisations, and in accordance with the provisions of Annex 5 of the GA, the access fees in the European standardisation actions referred to above do not include the following elements:

- the right to make standards and standardisation deliverables available to people working for other EU services (including institutions, bodies, offices, agencies, etc.) other than the EMEAE or to persons working for an institution or body of an EU Member State;

- to copy or reproduce them in whole or in part, in unlimited numbers; and communication through press information services

- the right to distribute standards and standardisation deliverables to the public (in particular, publication on paper and in electronic or digital format, publication on the Internet, in the form of a downloadable or non-downloadable file, dissemination through any channel, public exhibition or presentation, communication through the press information services, etc.) public presentation, communication through press information services, or inclusion in widely accessible databases or indexes)

- the right to edit or redraft standards and standardisation deliverables

- translation of standards and standardisation products

- processing, analysing and aggregating the standards and standardisation deliverables received and producing derived works.

Article 8. Non-disclosure

Each party agrees not to disclose the data, information and various documents sent by the other party or to which it becomes exposed, even by coincidence, in the performance hereof. Each party agrees to enforce these provisions upon its agents and employees.

The data, information and various communicated documents to which the Parties are exposed may not be used for any other purposes than for the due and proper performance hereof.

This clause shall survive the termination or expiration of this contract and shall apply to the parties throughout the term of the contract and for an additional five (5) years.

Article 9. Transferability and sub-contracting

This contract is entered into *out of consideration of the other party*. The CONTRACTOR shall not, without the prior express written consent of AFNOR, entrust the completion, in whole or in part, of the Services, for which it is responsible, to a third party. In any case, the CONTRACTOR shall be exclusively responsible for paying the sub-contractor and shall assume full responsibility for any failure attributable to this sub-contractor, without AFNOR incurring any liability whatsoever.

Article 10. Liability, Insurance, Compliance with legislation

The CONTRACTOR shall assume full liability for the performance of all the obligations entrusted to it by this contract and shall indemnify AFNOR for any losses caused by itself, its employees or any of its agents. If the CONTRACTOR fails to comply with any of its obligations under this contract, the amount to be paid to it may be reduced as set out in the "Penalties" section above.

The CONTRACTOR warrants and represents that it has taken out a business liability insurance policy with a well-known reputable company, whose certificate, which is valid for the year on which the contract is signed, shall be sent to AFNOR. AFNOR reserves the right to request a valid insurance certificate for each year during which the contract is performed.

Whatever the circumstances, the CONTRACTOR shall act in accordance with currently applicable laws and regulations.

The SERVICE SUPPLIER provides AFNOR, a French client subject to article D 8222-5 of the French Labour Code, with the following information:

- documentary evidence of the company's registration on concluding the Contract: e.g. an extract of the registration with the Trade and Companies Register (K or K bis); an identification card proving registration with the directory of trades; a receipt for the submission of a declaration to a business formalities centre for natural persons or legal entities whose registration is in progress;
- on concluding the Contract and for an additional six (6) months, a certificate from the social welfare authorities for the recovery of contributions declaring that the corporate declarations have been submitted and the Social Security contributions have been paid;
- on concluding the Contract, the list of the names of the foreign employees requiring work permits assigned to carrying out the Services within Europe. This list shall provide the following information for each employee concerned: recruitment date (1st), nationality (2nd), type and order number of the work permit document (3rd).

Article 11. Miscellaneous provisions

11.1. Legal nature of the agreement

The relationship formed between the parties and that of independent and autonomous businesses. None of the clauses in this contract may be construed as granting either party the power to govern the activities of

the other party. Nothing in the form or intention of this contract shall imply the constitution of a company de jure or de facto.

11.2. Invalidity

Should any of the causes of this contract be deemed contrary to applicable regulations, it shall be deemed invalid, but shall not lead to the invalidity of the rest of the contract. Each party shall strive to replace the clause with a similar provision that does not modify the economic balance of the contract.

11.3. Modification of the contract

This contract may only be modified by a written amendment that is signed by the representatives of the parties who have been duly authorised to this end.

Consequently, if the SA is modified by an amendment, the parties shall agree to sign a corresponding amendment.

Article 12. Governing law and the settlement of disputes*

This contract, along with any acts resulting from it, is governed by French law. In the event of a dispute arising from the interpretation, formation or execution of the contract, the parties undertake to seek an amicable solution. If such a solution cannot be reached, the dispute will be brought before the exclusive jurisdiction of the courts of Bobigny, including in the event of a warranty claim, several defendants or summary proceedings.

Made in two originals, including one for each party. Place: La Plaine Saint Denis. Date

For AFNOR,
Olivier PEYRAT
Director General

For the CONTRACTOR
FIRST NAME AND LAST NAME OF AUTHORISED REPRESENTATIVE
ROLE OF AUTHORISED REPRESENTATIVE

ANNEX 1 - GA

ANNEX 2 – FINANCIAL TERMS

1. Eligibility of costs

To be eligible, the costs included in the CONTRACTOR's price must comply with the eligibility conditions defined in Articles 6 and 8 of the GA and be calculated on the basis of the costs actually incurred.

2. Price*

The price is quoted in euros, exclusive of VAT, and shall therefore be increased by the value of the taxes applicable on the invoice date.

In return for the completion of the Services by the CONTRACTOR, AFNOR shall pay the maximum firm all-inclusive and non-revisable price of: **MAXIMUM PRICE (IN NUMBERS AND IN EUROS) PAID BY AFNOR € excl. of VAT**

This price includes the transfer of intellectual property rights relating to the Results as well as the mission expenses invoiced in real terms and for which the supporting documents must imperatively be transmitted to AFNOR.

3. Payments

3.1. Invoicing procedure

The CONTRACTOR shall send AFNOR an invoice on the signature hereof and at every key stage of the project, as set out in the appendix of the GA and in the Tender documents.

Each invoice must include the following information, in addition to the legal notices: the references to the GA and those of the purchase order given by AFNOR.

3.2. Declaration of costs

Each invoice must comply with the requirements set out in the appendix of the GA and be accompanied by the following signed declaration:

"I, the undersigned represent the following, within the context of the contract [GA No. CEN/GA REFERENCE] concluded with AFNOR:

- having completed the services agreed in the contract, [from ... to ...], i.e. [Number] days (full-time equivalent)

- having spent € incl. of VAT, for the incidental costs associated with the services;"

3.3. Conditions for triggering the payment

All the payments, which follow the initial payment are only triggered if all of the following conditions are fulfilled:

- the acceptance by the European Commission of the interim and final reports as set out in the GA;
- if the CONTRACTOR has fulfilled all its contractual obligations on the date when the invoice is presented;
- if all the documentary evidence for the expenses incurred has been sent;
- if the invoice procedure has been followed;
- if the aforementioned cost declaration has been completed and signed;
- if AFNOR has received the funds attributed to the Services from the European Commission, through the CEN.

Consequently, if, for whatever reason, the European Commission does not pay the dedicated funds to AFNOR, the latter shall be unable to pay the CONTRACTOR and shall assume no liability for this situation.

3.4 Payment schedule

- **First payment** in the amount of **AMOUNT OF THE FIRST PAYMENT REPRESENTING 25% (IN EUROS) €** (25%), upon signing this contract.

- **Second payment** in the maximum amount of **AMOUNT OF THE SECOND PAYMENT (IN EUROS) €** (**PERCENTAGE REPRESENTED BY THE SECOND PAYMENT AMOUNT %**) upon acceptance of the second interim report and the financial justifications by the European Commission and provided that the invoicing arrangements have been respected and that the cumulative conditions referred to in Article 3.3 above are met.

- **Payment of the balance**, upon acceptance of the final report and financial statements by the European Commission and provided that the invoicing arrangements have been respected and that the cumulative conditions referred to in Article 3.3 above are met.

3.5 Payment procedure

Subject to the compliance with the aforementioned cumulative conditions, the payments will be made by bank transfer to a euro-denominated bank account within sixty (60) days of the reception date of the correctly presented invoice.

3.6. Retroactive request

If the European Commission should retroactively claim the funds paid to AFNOR for the payment of the CONTRACTOR, which have already been paid by AFNOR to the CONTRACTOR, AFNOR shall have the right to claim the said funds from the CONTRACTOR within the period imposed by the European Commission and will send a request to that end. In this case, the CONTRACTOR agrees to return the said funds to AFNOR within the period imposed by the European Commission without having to provide any grounds other than those invoked by the European Commission.