



**EUROPEAN COMMISSION**

DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

Directorate L. Economic analysis, perspectives and evaluations

**L.4. Evaluation of measures applicable to agriculture; studies**

## **SERVICE CONTRACT**

CONTRACT NUMBER - [to be completed by DG AGRI.I2]

The European Community (hereinafter referred to as "the Community"), represented by the Commission of the European Communities (hereinafter referred to as "the Commission"), which is represented for the purposes of the signature of this contract by Leo MAIER, Sub-delegated Authorising Officer and Head of Unit DG AGRI L.4,

of the one part,

and

[official name in full]

[official legal form]

[statutory registration number]

[official address in full]

[VAT registration number]

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

of the other part,

HAVE AGREED

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

**Annex I** Tender Specifications (Invitation to Tender No AGRI-2009-EVAL-01)

**Annex II** Contractor's Tender (No [*complete*] of [*complete*])

**Annex III** Deliverables

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).

Subject to the above, the several instruments forming part of the Contract are to be taken as mutually explanatory. Ambiguities or discrepancies within or between such parts shall be explained or rectified by a written instruction issued by the Commission, subject to the rights of the Contractor under Article I.7 should he dispute any such instruction.

## **I – SPECIAL CONDITIONS**

### **ARTICLE I.1 - SUBJECT**

- I.1.1.** The subject of the Contract is the study on the inventory of certification schemes for agricultural products and foodstuffs marketed in the EU Member States.
- I.1.2.** The Contractor shall execute the tasks assigned to him in accordance with the Tender Specifications annexed to the Contract (Annex I).

### **ARTICLE I.2 - DURATION**

- I.2.1.** The Contract shall enter into force on the date on which it is signed by the last contracting party.
- I.2.2.** Execution of the tasks may under no circumstances begin before the date on which the Contract enters into force.
- I.2.3.** The duration of the tasks, with the exception of the possible corrections to the draft final deliverable (corrections to be made after the last day of performance period by the Contractor on request from the Commission, according to provisions of Annex III, Deliverables), shall not exceed 10 months. This period and all other periods specified in the Contract are calculated in calendar days. Execution of the tasks shall start from the date of entry into force of the Contract. The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses.

The Commission is not obliged to react to any request for extension of the duration of the tasks received less than two months before expiry of the period of execution or with less than one third of the period of execution left to run, whichever period is the shorter.

### **ARTICLE I.3 – CONTRACT PRICE**

- I.3.1.** The total amount to be paid by the Commission under the Contract shall be EUR [amount in figures and in words] covering all tasks executed.
- I.3.2.** All amounts mentioned under the Contract are excluding VAT. In the case of a Member State which applies the reimbursement method for exemption of VAT by the Commission, the invoices presented by the Contractor shall indicate his place of taxation for VAT purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

### **ARTICLE I.4 – PAYMENT PERIODS AND FORMALITIES**

Payments under the Contract shall be made in accordance with Article II.4. Payments shall be executed only if the Contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted.

#### **I.4.1. Pre-financing:**

No pre-financing payment will be made.

#### **I.4.2 Interim payment:**

Requests for interim payment by the Contractor shall be admissible if accompanied by the relevant invoices. The Contractor must only send the invoices to the Commission after the completion of the approval procedure for the interim deliverables – see Annex III (Deliverables).

Within 30 days of the date on which the invoice is received for the first interim deliverable, an interim payment corresponding to [the relevant invoices][EUR complete amount in figures and in words] [equal to complete 20% of the total amount referred to in Article I.3.1 shall be made.

Within 30 days of the date on which the invoice is received for the third interim deliverable, an interim payment corresponding to [the relevant invoices][EUR complete amount in figures and in words] [equal to complete 40% of the total amount referred to in Article I.3.1 shall be made.

#### **I.4.3. Payment of the balance:**

The request for payment of the balance of the Contractor shall be admissible if accompanied by the relevant invoice. The Contractor must only send the invoice to the Commission after the completion of the approval procedure for the final deliverable – see Annex III (Deliverables).

Within 30 days of the date on which the invoice is received, payment of the balance corresponding to [the relevant invoices][EUR complete amount in figures and in words equal to complete 40% of the total amount referred to in Article I.3.1 shall be made.

#### **I.4.4. Invoicing**

Invoices must be prepared by the Contractor containing the following minimum information:

- the name and address of the Contractor;
- the date and number of the invoice;
- the Contract numbers mentioned on the first page of the contract)
- the type of payment (first interim or second interim or final payment);
- the price before and after any taxes;
- the rate and amount of any added value tax (VAT);
- VAT registration number.

Invoices sent before approval of the applicable deliverable will be suspended until after the approval of the deliverable.

## I.4.5. VAT

*[For Contractors established in Belgium : “En Belgique, les dispositions de ce contrat valent présentation d’une demande d’exemption de la TVA n° 450” or an equivalent statement in the Dutch or German language. The Contractor shall include the following statement in his invoice(s): “Exonération de la TVA, article 42, paragraphe 3.3 du code de la TVA” or an equivalent statement in the Dutch or German language.]*

*[For Contractors established in France, where the services under the contract are listed in Article 259B of ther CG : “Exonération directe sans formalité pour les prestations de services reprises à l'article 259B du Code Général des impôts accordée par le Ministre de l'Economie et des Finances 29/07/80".]*

### **ARTICLE I.5 – BANK ACCOUNT**

Payments shall be made to the Contractor’s bank account denominated in euro, identified as follows:

Name of bank: [complete]  
Address of branch in full: [complete]  
Exact designation of account holder: [complete]  
Full account number including codes: [complete]  
[IBAN code: [complete]]

### **ARTICLE I.6 – GENERAL ADMINISTRATIVE PROVISIONS**

Any communication relating to the Contract shall be made in writing and shall bear the Contract number. Ordinary mail shall be deemed to have been received by the Commission on the date on which it is registered by the department responsible indicated below. Communications shall be sent to the following addresses:

Commission:

Address 1, to be used for **management and technical matters** relating to the contract, including the submission of all deliverables:

Mr. Leo MAIER  
European Commission  
Directorate-General for Agriculture and Rural Development  
Office Loi 130 8/29  
Unit L.4, Evaluation of measures applicable to agriculture; studies  
BE - 1049 BRUSSELS

Address 2, to be used for **all invoices** from the Contractor to the Commission :

European Commission

DG Agriculture and Rural Development – CAD  
Office Loi 130 04/174  
BE - 1049 BRUSSELS

The Contractor shall ensure that the invoices mention the information according to Article I.4.4 of the Contract and the name of the AOSD: **Leo MAIER**.

Address 3, to be used for electronic transmission of all interim and final deliverables from the Contractor to the Commission (studies, etc):

[agri-evaluation@ec.europa.eu](mailto:agri-evaluation@ec.europa.eu)

Contractor:

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

## **ARTICLE I.7– APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

**I.7.1.** The Contract shall be governed by Community law, complemented, where necessary, by the national substantive law of Belgium.

**I.7.1a.** Without prejudice to Article I.7.2., in the event that any dispute arises between the parties resulting from the interpretation or application of the Contract and the dispute is not resolved by negotiation, the parties may agree to submit the dispute to mediation.

If any party to the dispute gives written notice to the other party of its desire to commence mediation, and the other party agrees in writing, the parties shall jointly appoint a mutually acceptable mediator within two weeks of the date of the said written agreement. If the parties are unable to agree upon the appointment of a mediator within that time period, any party may apply to [court, organization or person agreed to by the parties when signing the Contract], for the appointment of a mediator.

The mediator's written proposal or his written conclusion stating that no proposal can be made, shall be produced within two months of the date of the written agreement by the second party to commence mediation. The mediator's proposal or conclusion shall not be binding for the parties, who reserve the right to bring the dispute before the courts, as per Art. I.7.2.

Within two weeks of the date of notification of the proposal by the mediator, the parties can conclude a written agreement, duly signed by all parties, based on the proposal.

The parties further agree to share equally the costs of mediation by the mediator, which costs will not include any other costs incurred by a party in connection with the mediation.

**I.7.2.** Any dispute between the parties resulting from the interpretation or application of the Contract which cannot be settled amicably shall be brought before the courts of Brussels.

## **ARTICLE I.8 – DATA PROTECTION**

Any personal data included in the Contract shall be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. It shall be processed solely for the purposes of the performance, management and follow-up of the Contract by Leo MAIER, Sub-delegated Authorising Officer and Head of Unit DG AGRI L.4, without prejudice to possible transmission internal audit services, to the European Court of Auditors, to the Financial Irregularities Panel and/or to the European Anti-Fraud Office (OLAF) for the purposes of safeguarding the financial interests of the Community. The Contractor shall have the right of access to his personal data and the right to rectify any such data that is inaccurate or incomplete. Should the Contractor have any queries concerning the processing of his personal data, he shall address them to Leo MAIER, Sub-delegated Authorising Officer and Head of Unit DG AGRI L.4. The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.

## **ARTICLE I.9 – OTHER SPECIAL CONDITIONS**

### **I.9.1 Procedure for approval of deliverables**

Annex III describes the procedures for the approval of the deliverables.

### **I.9.2 Models for the financial guarantees**

Not applicable.

### **I.9.3 Penalties for failing to meet contractual obligations**

Should the Contractor fail to perform his obligations under the Contract with the expected highest professional performance standards then, without prejudice to the Contractor's actual or potential liability incurred in relation to the Contract or to the Commission's right to terminate the Contract, the Commission may decide to impose financial penalties representing up to 10 % of the price specified in Article I.3.1 of the contract. The Contractor may submit arguments against this decision within thirty days of notification by registered letter with acknowledgement of receipt or equivalent. In the absence of reaction on his part or of written withdrawal by the Commission within thirty days of the receipt of such arguments, the decision imposing the financial penalties shall become enforceable.

### **I.9.4 Combined penalties and liquidated damages**

The combined amount of the penalty under Article I.9.3, with the liquidated damages in Article II.16 cannot exceed 10% of the Contract price as specified in Article I.3.1 of the Contract.

### **I.9.5 Change of Bank Account**

In derogation of art II.18 of the General Conditions, changes of bank account (specified in article I.5 above) may simply be notified in writing to the Commission by the Contractor for the purposes of the implementation of this contract and must be specified in the request for payment, at the latest. A duly completed financial identification form, signed or countersigned by the official representative of the Contractor, which can be requested to the Commission or be downloaded from the following address: [http://ec.europa.eu/budget/execution/ftiers\\_en.htm](http://ec.europa.eu/budget/execution/ftiers_en.htm), will accompany such a request if a new account is to be used.

### **I.9.6 Articles of the General Conditions which are excluded for this Contract**

The following article(s) of the General Conditions will not be applicable in the framework of this Contract:

- **Article II.7 Reimbursement**

### **I.9.7 Termination by either contracting party**

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

## **II – GENERAL CONDITIONS**

### **ARTICLE II.1 – PERFORMANCE OF THE CONTRACT**

- II.1.1.** The Contractor shall perform the Contract to the highest professional standards. The Contractor shall have sole responsibility for complying with any legal obligations incumbent on him, notably those resulting from employment, tax and social legislation.
- II.1.2.** The Contractor shall have sole responsibility for taking the necessary steps to obtain any permit or licence required for performance of the Contract under the laws and regulations in force at the place where the tasks assigned to him are to be executed.
- II.1.3.** Without prejudice to Article II.3 any reference made to the Contractor's staff in the Contract shall relate exclusively to individuals involved in the performance of the Contract.
- II.1.4.** The Contractor must ensure that any staff performing the Contract has the professional qualifications and experience required for the execution of the tasks assigned to him.
- II.1.5.** The Contractor shall neither represent the Commission nor behave in any way that would give such an impression. The Contractor shall inform third parties that he does not belong to the European public service.
- II.1.6.** The Contractor shall have sole responsibility for the staff who execute the tasks assigned to him.

The Contractor shall make provision for the following employment or service relationships with his staff:

- staff executing the tasks assigned to the Contractor may not be given orders direct by the Commission;
  - the Commission may not under any circumstances be considered to be the staff's employer and the said staff shall undertake not to invoke in respect of the Commission any right arising from the contractual relationship between the Commission and the Contractor.
- II.1.7.** In the event of disruption resulting from the action of a member of the Contractor's staff working on Commission premises or in the event of the expertise of a member of the Contractor's staff failing to correspond to the profile required by the Contract, the Contractor shall replace him without delay. The Commission shall have the right to request the replacement of any such member of staff, stating its reasons for so doing. Replacement staff must have the necessary qualifications and be capable of performing the Contract under the same contractual conditions. The Contractor shall be responsible for

any delay in the execution of the tasks assigned to him resulting from the replacement of staff in accordance with this Article.

- II.1.8.** Should any unforeseen event, action or omission directly or indirectly hamper execution of the tasks, either partially or totally, the Contractor shall immediately and on his own initiative record it and report it to the Commission. 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 his obligations under the Contract. In such event the Contractor shall give priority to solving the problem rather than determining liability.
- II.1.9.** Should the Contractor fail to perform his obligations under the Contract in accordance with the provisions laid down therein, the Commission may - without prejudice to its right to terminate the Contract - reduce or recover payments in proportion to the scale of the failure. In addition, the Commission may impose penalties or liquidated damages provided for in Article II.16.

## **ARTICLE II.2 – LIABILITY**

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

## **ARTICLE II.3 - CONFLICT OF INTERESTS**

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

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

**II.3.2.** The Contractor shall abstain from any contact likely to compromise his independence.

**II.3.3.** The Contractor declares:

- that he has not made and will not make any offer of any type whatsoever from which an advantage can be derived under the Contract,
- that he has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, where such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, inasmuch as it is an incentive or reward relating to performance of the Contract.

**II.3.4.** The Contractor shall pass on all the relevant obligations in writing to his staff, board, and directors as well as to third parties involved in performance of the Contract. A copy of the instructions given and the undertakings made in this respect shall be sent to the Commission should it so request.

## **ARTICLE II.4 – PAYMENTS**

**II.4.1.** Pre-financing:

Where required by Article I.4.1, the Contractor shall provide a financial guarantee in the form of a bank guarantee or equivalent supplied by a bank or an authorised financial institution (guarantor) equal to the amount indicated in the same Article to cover pre-financing under the Contract. Such guarantee may be replaced by a joint and several guarantee by a third party.

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

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

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

#### **II.4.2. Interim payment:**

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

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

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

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

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

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

#### **II.4.3. Payment of the balance:**

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

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

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

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

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

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

## **ARTICLE II.5 – GENERAL PROVISIONS CONCERNING PAYMENTS**

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

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

The Commission shall notify the Contractor accordingly and set out the reasons for the suspension by registered letter with acknowledgment of receipt or equivalent. Suspension shall take effect from the date of dispatch of the letter. The remainder of the period referred to in Article I.4 shall begin to run again once the suspension has been lifted.

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

## **ARTICLE II.6 – RECOVERY**

- II.6.1.** If total payments made exceed the amount actually due under the Contract or if recovery is justified in accordance with the terms of the Contract, the Contractor shall reimburse the appropriate amount in euro on receipt of the debit note, in the manner and within the time limits set by the Commission.
- II.6.2.** In the event of failure to pay by the deadline specified in the request for reimbursement, the sum due shall bear interest at the rate indicated in Article II.5.3. Interest shall be payable from the calendar day following the due date up to the calendar day on which the debt is repaid in full.
- II.6.3.** The Commission may, after informing the Contractor, recover amounts established as certain, of a fixed amount and due by offsetting, in cases where the Contractor also has a claim on the Communities that is certain, of a fixed amount and due. The Commission may also claim against the guarantee, where provided for.

## **ARTICLE II.7 - REIMBURSEMENTS**

- II.7.1.** Where provided by the Special Conditions or by Annex I, the Commission shall reimburse the expenses which are directly connected with execution of the tasks on production of original supporting documents, including receipts and used tickets.
- II.7.2.** Travel and subsistence expenses shall be reimbursed, where appropriate, on the basis of the shortest itinerary.
- II.7.3.** Travel expenses shall be reimbursed as follows:
- a)** travel by air shall be reimbursed up to the maximum cost of an economy class ticket at the time of the reservation;
  - b)** travel by boat or rail shall be reimbursed up to the maximum cost of a first class ticket;
  - c)** travel by car shall be reimbursed at the rate of one first class rail ticket for the same journey and on the same day;
  - d)** travel outside Community territory shall be reimbursed under the general conditions stated above provided the Commission has given its prior written agreement.
- II.7.4.** Subsistence expenses shall be reimbursed on the basis of a daily allowance as follows:
- a)** for journeys of less than 200 km (return trip) no subsistence allowance shall be payable;

- b) daily subsistence allowance shall be payable only on receipt of a supporting document proving that the person concerned was present at the place of destination;
- c) daily subsistence allowance shall take the form of a flat-rate payment to cover all subsistence expenses, including accommodation, meals, local transport, insurance and sundries;
- d) daily subsistence allowance, where applicable, shall be reimbursed at the rate specified in Article I.3.3.

**II.7.5.** The cost of shipment of equipment or unaccompanied luggage shall be reimbursed provided the Commission has given prior written authorisation.

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

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

## **ARTICLE II.9 – CONFIDENTIALITY**

**II.9.1.** The Contractor undertakes to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to performance of the Contract. The Contractor shall continue to be bound by this undertaking after completion of the tasks.

**II.9.2.** The Contractor shall obtain from each member of his staff, board and directors an undertaking that they will respect the confidentiality of any information which is linked, directly or indirectly, to execution of the tasks and that they will not divulge to third parties or use for their own benefit or that of any third party any document or information not available publicly, even after completion of the tasks.

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

**II.10.1.** The Contractor shall authorise the Commission to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, any data contained in or relating to the Contract, in particular the identity of the Contractor, the subject matter, the duration, the amount paid and the reports. Where personal data is concerned, Article I.8 shall apply.

**II.10.2.** Unless otherwise provided by the Special Conditions, the Commission shall not be required to distribute or publish documents or information supplied in performance of the Contract. If it decides not to publish the documents or information supplied, the Contractor may not have them distributed or

published elsewhere without prior written authorisation from the Commission.

- II.10.3.** Any distribution or publication of information relating to the Contract by the Contractor shall require prior written authorisation from the Commission and shall mention the amount paid by the Community. It shall state that the opinions expressed are those of the Contractor only and do not represent the Commission's official position.
- II.10.4.** The use of information obtained by the Contractor in the course of the Contract for purposes other than its performance shall be forbidden, unless the Commission has specifically given prior written authorisation to the contrary.

### **ARTICLE II.11 – TAXATION**

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

### **ARTICLE II.12 – FORCE MAJEURE**

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

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

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

### **ARTICLE II.13 – SUBCONTRACTING**

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

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

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

### **ARTICLE II.14 – ASSIGNMENT**

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

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

### **ARTICLE II.15 – TERMINATION BY THE COMMISSION**

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

- (a) where the Contractor is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) where the Contractor has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;

- (c) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of professional misconduct;
- (d) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- (e) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of substantial errors, irregularities or fraud in the award procedure or the performance of the Contract;
- (f) where the Contractor is in breach of his obligations under Article II.3;
- (g) where the Contractor was guilty of misrepresentation in supplying the information required by the Commission as a condition of participation in the Contract procedure or failed to supply this information;
- (h) where a change in the Contractor's legal, financial, technical or organisational situation could, in the Commission's opinion, have a significant effect on the performance of the Contract;
- (i) where execution of the tasks has not actually commenced within three months of the date foreseen, and the new date proposed, if any, is considered unacceptable by the Commission;
- (j) where the Contractor is unable, through his own fault, to obtain any permit or licence required for performance of the Contract;
- (k) where the Contractor, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period following receipt of the formal notice, remains in serious breach of his contractual obligations.

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

**II.15.3.** Prior to termination under point c), d), e), h) or k), the Contractor shall be given the opportunity to submit his observations.

Termination shall take effect on the date on which a registered letter with acknowledgment of receipt terminating the Contract is received by the Contractor, or on any other date indicated in the letter of termination.

**II.15.4.** Consequences of termination:

In the event of the Commission terminating the Contract in accordance with this Article and without prejudice to any other measures provided for in the Contract, the Contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work. On receipt of

the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required by the Special Conditions for the tasks executed up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

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

On termination the Commission may engage any other contractor to complete the services. The Commission shall be entitled to claim from the Contractor all extra costs incurred in making good and completing the services, without prejudice to any other rights or guarantees it has under the Contract.

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

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

### **ARTICLE II.16 – LIQUIDATED DAMAGES**

Should the Contractor fail to perform his obligations under the Contract within the time limits set by the Contract, then, without prejudice to the Contractor's actual or potential liability incurred in relation to the Contract or to the Commission's right to terminate the Contract, the Commission may decide to impose liquidated damages of 0.2% of the amount specified in Article I.3.1 per calendar day of delay. The Contractor may submit arguments against this decision within thirty days of notification by registered letter with acknowledgement of receipt or equivalent. In the absence of reaction on his part or of written withdrawal by the Commission within thirty days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable. These liquidated damages shall not be imposed where there is provision for interest for late completion. The Commission and the Contractor 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 that may be reasonably anticipated from such failure to perform obligations.

### **ARTICLE II.17 – CHECKS AND AUDITS**

**II.17.1.** Pursuant to Article 142 of the Financial Regulation applicable to the general budget of the European Communities, the European Court of Auditors shall be empowered to audit the documents held by the natural or legal persons receiving payments from the budget of the European Communities from signature of the Contract up to five years after payment of the balance.

**II.17.2.** The Commission or an outside body of its choice shall have the same rights as the European Court of Auditors for the purpose of checks and audits limited to compliance with contractual obligations from signature of the Contract up to five years after payment of the balance.

**II.17.3.** In addition, the European Anti Fraud Office may carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 and Parliament and Council Regulation (EC) No 1073/1999 from signature of the Contract up to five years after payment of the balance.

### **ARTICLE II.18 – AMENDMENTS**

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

### **ARTICLE II.19 – SUSPENSION OF THE CONTRACT**

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

### **SIGNATURES**

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

For the Commission,  
By sub-delegation  
Name: Leo MAIER, Head of Unit DG  
AGRI L.4

signature[s]: \_\_\_\_\_

signature: \_\_\_\_\_

Done at [place and date]

Done at Brussels, [date]

In duplicate in English.

Visa of Unit I2:

# ANNEX I

## TENDER SPECIFICATIONS

Tender N° AGRI-2009-EVAL-01

### **TITLE:**

- 1. Purpose of the Contract**
- 2. Tasks to be performed by the Contractor**
- 3. Organisation of the work**
- 4. Description of the technical requirements and required profiles**
- 5. Timetable and physical location**

NB: In the final contract, the 5 above sections will repeat the beginning of the “Tender Specifications” attached to the present letter of invitation to tender as Document N° 1. These Sections are temporarily presented in a separate document.

## **ANNEX II**

**CONTRACTOR's TENDER N°. [*complete*] of [*complete*]**

## ANNEX III

### DELIVERABLES

The work to be carried out by the Contractor, as defined in Annex I of the present Contract, will be the subject of the following deliverables:

1. **First interim deliverable**
2. **Second interim deliverable**
3. **Third interim deliverable**
4. **Draft final deliverable**
5. **Final deliverable**

The contents and timing of these deliverables are set out in Annex I.

All deliverables will be subject to written approval by the Commission.

The procedure for approval of all deliverables, with the exception of the draft final deliverable and the final deliverable, will be the following:

After the receipt of the deliverable, the Commission will send the Contractor in writing (by registered mail) either an approval of the respective deliverable or its comments and fix a delay for submission of a revised deliverable. This delay will not change the delays for the subsequent deliverables. After having received the revised deliverable, the Commission will send the Contractor in writing (by registered mail) either an approval of this revised deliverable or additional comments and fix a new delay for revisions within 30 days. In the absence of written comments from the Commission within 60 days following the receipt (date of official reception) of the respective deliverable, this deliverable will be deemed to have been approved by the Commission. Where the specific deliverable is linked to an interim payment, the invoice can then be sent to the Commission with a request for payment.

The procedure for approval of the draft final deliverable will be the following:

The Commission will send the Contractor in writing (by registered mail) either an approval of the draft or its comments. In the absence of written comments from the Commission within 60 days following the receipt (date of official reception) of the draft final deliverable, this draft deliverable will be deemed to have been approved by the Commission.

The Contractor will then send the Commission his final deliverable, which will either take account of the Commission's written comments or put forward alternative points of view with due justification.

Unless otherwise provided, the original of the final deliverable, plus ten copies of it, must arrive (date of official reception) at the Commission no later than:

- Within 30 days from the receipt of the Commission's written comments on the draft final deliverable, if these comments were sent in writing and by registered mail within the above mentioned delay;
- In the absence of comments from the Commission in writing and by registered mail within the above mentioned delay, within 60 days from the Commission's receipt (date of official reception) of the draft final deliverable.

The final deliverable will be deemed to have been approved by the Commission if it does not expressly inform the Contractor in writing (by registered mail) of any comments within 30 days of its receipt (date of official reception in the archives of DG Agriculture and Rural Development). The invoice for the final payment can then be sent to the Commission with a request for payment.