



EUROPEAN COMMISSION  
DG  
Directorate  
Unit

## SERVICE CONTRACT\*

CONTRACT NUMBER – [complete]<sup>1</sup>

The European [*Atomic Energy*] 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 [name in full, function, department]<sup>2</sup>,

of the one part,

and

[official name in full]  
[*official legal form*]<sup>3</sup>  
[*statutory registration number*]<sup>4</sup>  
[official address in full]  
[*VAT registration number*]

(hereinafter referred to as "the Contractor"<sup>5</sup>), [*represented for the purposes of the signature of this contract by [name in full and function,]*]

of the other part,

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\* The footnotes/options are internal instructions for authorizing officers only and must be deleted/completed before contracts are sent out. The General Conditions contain references to articles in the Special Conditions, the re-numbering of which should be avoided.

<sup>1</sup> Options [*in italics*] to be deleted where not applicable.

Options [in roman] to be completed.

<sup>2</sup> The Commission official must be an authorising officer (by delegation or subdelegation) designated in accordance with Note No 60008 of 22 February 2001 "Mise en place de la Charte des ordonnateurs".

<sup>3</sup> Delete if contractor is a natural person or a body governed by public law.

<sup>4</sup> Delete if contractor is a body governed by public law. For natural persons, indicate the number of their identity card or, failing that, of their passport or equivalent.

<sup>5</sup> In the case of a joint offer and provided the invitation to tender so specifies, the following clause should be added below the identification of the parties: "The parties identified above and hereinafter collectively referred to as 'the Contractor' shall be jointly and severally liable vis-à-vis the Commission for the performance of this contract".

HAVE AGREED

the **Special Conditions** and the **General Conditions** below and the following Annexes<sup>6</sup>:

**Annex I** – Tender Specifications (Invitation to Tender No [complete] of [complete]) and Monitoring

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

[Other Annexes]<sup>7</sup>

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.

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<sup>6</sup> Voluminous annexes may be replaced by a reference to the documents concerned, provided the content of such documents is not subject to challenge (by virtue of their public nature).

<sup>7</sup> Specific additional rules resulting from the specific requirements of the contract concerned or imposed by the applicable legislation.

## **I – SPECIAL CONDITIONS**

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

- I.1.1.** The subject of the Contract is [short description of subject].
- I.1.2.** The Contractor shall execute the tasks<sup>8</sup> 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]<sup>9</sup> [on complete if it has already been signed by both contracting parties]]*.
- 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 shall not exceed [days/months]. This period and all other periods specified in the Contract are calculated in calendar days. Execution of the tasks shall start from [date of entry into force of the Contract] or [indicate]. 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 [complete] 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.]*

- [I.2.4.]** *The Contract may be renewed up to [complete]<sup>10</sup> times, each time for a period of execution of tasks of [days/months]<sup>11</sup>, only before payment of the balance and with the express written agreement of the parties, indicating the date on which execution of the tasks shall start. Renewal does not imply any modification or deferment of existing obligations.]*

*[The Contract shall be renewed automatically up to [complete] times, each time for a period of execution of tasks of [days/months], starting [[from][days/months after]] the date of [[payment of the balance][completion of the tasks]] of the previous period, unless written notification to the contrary is sent by one of the contracting parties and received by the other [[before*

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<sup>8</sup> Depending on the nature of the tasks, 'execution of the tasks' could possibly be replaced by 'provision of the services' throughout the Contract.

<sup>9</sup> As a rule the Commission signs last. In this case, the Contractor should be duly informed of the date on which the Contract enters into force.

<sup>10</sup> Specify number of times (once, twice...).

<sup>11</sup> Specify length of the period of renewal (number of months, years...). The total duration of the Contract must not exceed the period specified in the invitation to tender.

*payment of the balance][before complete date]]. Renewal does not imply any modification or deferment of existing obligations.]*

### **ARTICLE I.3 – CONTRACT PRICE**

**[I.3.1.]** The [*maximum*]<sup>12</sup> 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]** *The total amount referred to in the above paragraph shall be fixed and not subject to revision for the first year of performance of the Contract.*

*From the beginning of the second year of performance of the Contract, the amount(s) may be revised upwards or downwards each year, where such revision is requested by one of the contracting parties by registered letter received by the other no later than three months before the anniversary of the date on which the Contract was signed.*

*This revision shall be determined by the trend in the [harmonised] consumer price index [complete]<sup>13</sup> published for the first time by [the Office for Official Publications of the European Communities in the Eurostat monthly bulletin at <http://www.ec.europa.eu/eurostat/>].*

*Revision shall be calculated in accordance with the following formula:*

$$Ar = Ao \frac{Ir}{Io}$$

*where*

*Ar = revised total amount;*

*Ao = total amount in the original tender;*

*Io = index for the month [[in which the validity of the tender expires] [corresponding to the final date for submission of tenders]];*

*Ir = index for the month [[corresponding to the date of receipt of the letter requesting a revision of prices] [in which the revised prices take effect]]<sup>14</sup>.]<sup>15</sup>*

**[I.3.3.]** *In addition to the total amount specified in Article I.3.1, travel, subsistence and shipment expenses shall be reimbursed in accordance with Article II.7, as*

<sup>12</sup> Where it is not possible to set out in Annex I a detailed schedule for execution of the tasks (on a regular basis), the authorising officer must keep written evidence of the tasks ordered in accordance with Article I.6.

<sup>13</sup> Specify the consumer price index, e.g.:

- “MUICP”: (euro zone) for contracts expressed in euro (as a general rule);
- “EICP”: for contracts performed in the European Union (outside the euro zone);
- consumer price index of the State in whose currency the contract price is expressed:
  - a) index of the State where the contractor is mainly based; or
  - b) index of the State where the service will be mainly carried out.

<sup>14</sup> This option is not recommended when payments have to be made in the first month, given the availability of the indexes.

<sup>15</sup> The invitation to tender must state clearly whether the price is subject to revision or not. When there is no provision for price revision, we suggest keeping Article I.3.2 blank and replacing the clause with the comment “not applicable” to avoid any need for article re-numbering or problems of cross-reference.

*shall other expenses provided for by the Tender Specifications up to a maximum amount of EUR [amount in figures and in words]. The daily subsistence allowance referred to in Article II.7.4(d) shall be [EUR complete][determined in accordance with Annex complete]<sup>16</sup>.]*

## **ARTICLE I.4 – PAYMENT PERIODS AND FORMALITIES**<sup>17</sup>

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. *[Payment requests may not be made if payments for previous periods have not been executed as a result of default or negligence on the part of the Contractor.]*

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

*Following signature of the Contract by the last contracting party<sup>18</sup>, within [complete]<sup>19</sup> days of [the latest of the following dates:]*

- *the receipt by the Commission of a request for pre-financing with a relevant invoice*
- *[the receipt by the Commission of a duly constituted financial guarantee equal to at least EUR [amount in figures and in words]<sup>20</sup>*

*a pre-financing payment of*

*EUR [complete amount in figures and in words] equal to [complete]%<sup>21</sup> of the total amount referred to in Article I.3[.1]*

*shall be made.]*

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

*Requests for interim payment by the Contractor shall be admissible if accompanied by<sup>22</sup> :*

<sup>16</sup> When more than one country is concerned. You can refer to the lists produced by DG ADMIN.

<sup>17</sup> The insertion of pre-financing and interim payment clauses is optional but there must always be provision for payment of the balance.

<sup>18</sup> Where the Contractor is the last to sign, this clause should be worded as follows: “the date on which the signed Contract was received by the Commission”.

<sup>19</sup> The maximum payment period allowed is thirty days under the rules for the implementation of the Financial Regulation (No 1605/2002), unless otherwise provided by the contract.

<sup>20</sup> This guarantee is mandatory for pre-financing payments exceeding EUR 150 000 or in the case referred to in Article 135(6), second subparagraph IR (if the contracting authority does not require proof of the selection criteria capacity for contracts lower or equal to EUR 60.000, pre-financing must be backed by a financial guarantee of the same amount). However, where the contractor is a public body, the authorising officer responsible may, depending on his risk assessment, waive that obligation.

<sup>21</sup> It is suggested that the pre-financing does not exceed 30% of the total amount of the Contract.

<sup>22</sup> Delete where not applicable.

- *[an interim technical report<sup>23</sup> in accordance with the instructions laid down in Annex I]*
- *the relevant invoices*
- *[statements of reimbursable expenses in accordance with Article II.7]*

*[provided the report has been approved by the Commission.]*

#### Option 1

*[The Commission shall have [twenty - forty-five - sixty]<sup>24</sup> days from receipt to approve or reject the report, and the Contractor shall have [complete] days in which to submit additional information or a new report.]*

*Within [complete]<sup>25</sup> days [of the date on which the report is approved by the Commission,] an interim payment corresponding to [the relevant invoices][EUR complete amount in figures and in words] [equal to complete % of the total amount referred to in Article I.3.1] shall be made.]*

#### Option 2

*[The Commission shall have [complete]<sup>26</sup> days from receipt to approve or reject the report and to pay an interim payment corresponding to [the relevant invoices][EUR complete amount in figures and in words equal to complete % of the total amount referred to in Article I.3.1.]. The Contractor shall have [complete] days in which to submit additional information or a new report.]*

#### **[I.4.2.] [I.4.3.] Payment of the balance:**

The request for payment of the balance of the Contractor shall be admissible if accompanied by<sup>27</sup>

- *[the final technical report in accordance with the instructions laid down in Annex I]*
- *the relevant invoices*
- *[statements of reimbursable expenses in accordance with Article II.7]*

*[provided the report has been approved by the Commission.]*

#### Option 1

*[The Commission shall have [twenty - forty-five - sixty]<sup>28</sup> days from receipt to approve or reject the report, and the Contractor shall have [complete] days in which to submit additional information or a new report.]*

<sup>23</sup> Should the subject of the Contract be a study, the deliverable has to be clearly identified and should not be termed a 'report'. Otherwise there could be confusion with this technical report, the purpose of which is to describe the performance of the Contract.

<sup>24</sup> Twenty days for simple contracts, sixty days for contracts requiring complex technical assessment, and forty-five days for all other contracts.

<sup>25</sup> The maximum payment period allowed is thirty days under the rules for the implementation of the Financial Regulation (No 1605/2002), unless otherwise provided by the contract.

<sup>26</sup> The authorising officer may decide that a single time-limit for the approval of the report and payment shall apply. This single time-limit cannot exceed the aggregated maximum applicable periods for approval of the report and for payment.

<sup>27</sup> Delete where not applicable.

Within [complete]<sup>29</sup> days [of the date on which the report is approved by the Commission,] payment of the balance corresponding to [the relevant invoices][EUR complete amount in figures and in words equal to complete % of the total amount referred to in Article I.3.1] shall be made.

#### Option 2

[The Commission shall have [complete]<sup>30</sup> days from receipt to approve or reject the report and to pay the balance corresponding to [the relevant invoices][EUR complete amount in figures and in words equal to complete % of the total amount referred to in Article I.3.1]. The Contractor shall have [complete] days in which to submit additional information or a new report.]

[For Contractors established in Belgium, the provisions of the Contract constitute a request for VAT exemption No 450, provided the Contractor includes 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 Italy, the provisions of the Contract constitute a request for VAT exemption, provided the Contractor includes the following statement in his invoice(s): “Operazione non imponibile ai sensi dell’articolo 72, comma 3) paragrafo 3 del D.P.R. n. 633 del 26/10/1972 come modificato da ultimo dal D.L. n. 323 del 20/06/1996 convertito in Legge n. 425 dell’8/8/1996”.]

### **[[I.4.2.] [I.4.3.] [I.4.4.] Performance guarantee:**

#### **Option 1**

A performance guarantee shall be constituted by deduction[s] of 10% from [each] [the] interim payment[s]. It shall be discharged by payment of the balance. It shall cover performance of the Contract in accordance with the terms set out in Annex I.

#### **Option 2**

A performance guarantee shall be constituted by deduction[s] of 10% from [each] [the] interim payment[s], and up to 10% of the total value of the Contract from the payment of the balance. It shall be withheld for up to [complete]<sup>31</sup> months from the date of payment of the balance. It shall cover performance of the Contract in accordance with the terms set out in Annex I.

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<sup>28</sup> Twenty days for simple contracts, sixty days for contracts requiring complex technical assessment, and forty-five days for all other contracts.

<sup>29</sup> The maximum payment time allowed is thirty days under the rules for the implementation of the Financial Regulation (No 1605/2002), unless otherwise provided by the contract.

<sup>30</sup> The authorising officer may decide that a single time-limit for the approval of the report and payment shall apply. This single time-limit cannot exceed the aggregated maximum applicable periods for approval of the report and for payment.

<sup>31</sup> The period for discharge of the performance guarantee is determined by the need to check the execution of complex tasks. It may vary from the shortest possible period after payment (where the satisfactory performance of the contract is self-evident) to many months.

#### Option 3

*An amount corresponding to 10% of the total value of the Contract shall be withheld for up to [complete]<sup>32</sup> months from the date of payment of the balance in order to constitute a performance guarantee. It shall cover performance of the Contract in accordance with the terms set out in Annex I.*

#### Option 4

*A guarantee for an amount of [EUR complete amount in figures and in words] shall be issued by a bank, an authorised financial institution or a third party in favour of the Commission. It shall be released [complete]<sup>33</sup> after payment of the balance. It shall cover performance of the Contract in accordance with the terms set out in Annex I.] ]*

### **ARTICLE I.5 – BANK ACCOUNT**

Payments shall be made to the Contractor's bank account denominated in euro<sup>34</sup>, identified<sup>35</sup> 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<sup>36</sup> 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<sup>37</sup>:

#### Commission:

European Commission  
Directorate-General [complete]  
[Directorate [complete]]  
[Unit [complete]]  
[Postcode and city]

<sup>32</sup> The period for discharge of the performance guarantee is determined by the need to check the execution of complex tasks. It may vary from the shortest possible period after payment (where the satisfactory performance of the contract is self-evident) to many months.

<sup>33</sup> The period for release of the performance guarantee is determined by the need to check the execution of complex tasks. It may vary from the shortest possible period after payment (where the satisfactory performance of the contract is self-evident) to many months.

<sup>34</sup> Or local currency where the receiving country does not allow transactions in EUR.

<sup>35</sup> By a document issued or certified by the bank.

<sup>36</sup> BIC code for countries with no IBAN code.

<sup>37</sup> Fax number and e-mail accounts may be added. If an e-mail account is given, incoming e-mails should be redirected if the account holder is absent and a clause should be added specifying what is considered to be the reference date of the electronic communication (date of sending, receiving or opening).



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 the national substantive law of [*the country in which the competent authorising officer has his place of employment, as provided by the internal rules for the implementation of the budget*]<sup>38</sup>.
- 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 [the place of employment of *the competent authorising officer, as provided by the internal rules for the implementation of the budget*]<sup>39</sup>.

## **[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 [entity acting as data controller] without prejudice to possible transmission to the bodies charged with a monitoring or inspection task in conformity with Community law. 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 [entity acting as data controller]. The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.]*<sup>40</sup>

## **[ARTICLE I.9 – 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*

<sup>38</sup> Except where duly justified (see following footnote).

<sup>39</sup> Except where duly justified. Such exceptions include for example: a service contract concluded by a Representation of the Commission in a Member State.

<sup>40</sup> Article to be used where the processing of personal data falls within the scope of Regulation (EC) No 45/2001. It applies to the processing of personal data wholly or partly by automatic means, and to the processing other than by automatic means of personal data which form part of a filing system or are intended to form part of a filing system, viz. any structured set of personal data which is accessible according to specific criteria. Any questions should be referred to the Data Protection Officer (SG).

*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.]<sup>41</sup>*

**[ARTICLE I.10 – OTHER SPECIAL CONDITIONS<sup>42</sup>]**

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<sup>41</sup> The impact of this provision on prices, as well as the consequences of termination by the Contractor, should be carefully assessed in relation to the nature of the Contract before its inclusion.

<sup>42</sup> To be completed by the department responsible, where appropriate. Unit D2, responsible for contracts in DG BUDGET, may be consulted in advance for any change to the model standard contract, if such consultation is judged necessary.

## **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 have 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:

- Ø an interim technical report in accordance with the instructions laid down in Annex I;
- Ø the relevant invoices indicating the reference number of the Contract to which they refer;
- Ø 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:

- Ø to approve it, with or without comments or reservations, or suspend such period and request additional information; or
- Ø 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:

- Ø a final technical report in accordance with the instructions laid down in Annex I;
- Ø the relevant invoices indicating the reference number of the Contract to which they refer;
- Ø 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:

Ø to approve it, with or without comments or reservations, or suspend such period and request additional information; or

Ø 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 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 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 been convicted of an offence concerning his professional conduct by a judgment which has the force of *res judicata*;
- (c) where the Contractor has been guilty of grave professional misconduct proven by any means which the contracting authority can justify;
- (d) 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;
- (e) where the Commission seriously suspects the Contractor of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- (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<sup>43</sup> 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 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.

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<sup>43</sup> This period can be modified in the Special Conditions depending on the nature of the contract.

#### **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.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%<sup>44</sup> 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.

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<sup>44</sup> The daily rate for liquidated damages may be modified in the Special Conditions where the subject of the contract so justifies.

**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,  
[forename/surname/function]

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

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

Done at [Brussels], [date]

Done at [Brussels], [date]

In duplicate in English.

## ANNEX I

### **Tender Specifications and Monitoring**<sup>45</sup>

*The purpose of this Annex is to enable the Commission to conduct, throughout the duration of the Contract, an accurate appraisal of whether the Contractor is executing the tasks assigned to him in accordance with the provisions of the Contract.*

*So that the Commission can regularly identify the progress made in execution of the tasks in accordance with the Tender Specifications, appropriate monitoring, assessment, and supervisory procedures shall be set up. For these purposes, this Annex shall include all necessary details, in particular, where relevant, the following:*

- (i) schedule of interim and final reports – terms for approval, structure and content (where provision is made for such reports and a specific annex is not necessary);*
- (ii) schedule of audits to be carried out in accordance with Article II.17 of the Contract.*

*All details on Monitoring and Reporting are to be indicated and included in the Tender Specifications.*

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<sup>45</sup> The following instructions are to be followed by the authorising officer but not published.