



EUROPEAN COMMISSION

DG

Directorate

Unit

## SERVICE CONTRACT

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

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 [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"), [*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** - Technical Specifications

**Annex II** – Reporting

**Annex III** - Budget

which form[s] an integral part of this contract (hereinafter referred to as "the Contract").

<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.

B-1049 Brussels, Belgium. Office: B 232 02/106

Telephone: direct line (+32-2)2994472, switchboard 299.11.11. Fax: 2959844

Telex: COMEU B 21877. Telegraphic address: COMEUR Brussels.

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.

## **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 assigned to him in accordance with the Technical 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>5</sup> [*or on indicate date if it has already been signed by both contracting parties*]<sup>6</sup>.
- 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*]. 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 the tasks have been completed.
- [I.2.4.** *The Contract may be renewed [complete]<sup>6</sup> for a period of [complete]<sup>7</sup> only with the express written agreement of the parties before payment of the balance. Renewal does not imply any modification or deferment of existing obligations.]*

### **ARTICLE I.3 – AMOUNT**

- I.3.1.** The [*maximum*]<sup>8</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.** 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 shall other expenses provided for by the Technical 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 as follows:

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<sup>5</sup> As a rule the Commission signs last.

<sup>6</sup> Specify number of times (once, twice...).

<sup>7</sup> Specify length of the period of renewal (number of months, years...).

<sup>8</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.

Belgium	149,63 €	France	130,29 €	Portugal	142,98 €
Denmark	179,28 €	Ireland	165,20 €	UK	199,21 €
Germany	127,10 €	Italy	129,82 €	Austria	121,81 €
Greece	113,19 €	Luxembourg	143,48 €	Finland	155,60 €
Spain	141,30 €	Netherlands	147,69 €	Sweden	156,54 €

## **ARTICLE I.4 – PAYMENTS**<sup>9</sup>

Payments under the Contract shall be made in accordance with Article II.4.

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

Following the signature of the Contract by the last contracting party<sup>10</sup>, within 45 days of the receipt of a request for pre-financing with a relevant invoice,

[and the receipt of a duly constituted financial guarantee equal to at least EUR [amount in figures and in words]]<sup>11</sup>

a pre-financing payment of EUR [amount in figures and in words] equal to 30%<sup>12</sup> of the total amount referred to in Article I.3.1 shall be made.

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

Each request for interim payment shall be valid if accompanied by<sup>13</sup>

- an interim technical report in accordance with the instructions laid down in Annex II;
- the relevant invoices;
- statements of reimbursable expenses in accordance with Article II.7;

provided the above documents have been approved by the Commission.

The Commission shall have 45 days to approve or reject the documents, and the Contractor shall have [complete] days in which to submit new documents.

Within 45 days of the date on which the documents accompanying a request for payment are approved by the Commission, an interim payment corresponding to the relevant invoices shall be made.

<sup>9</sup> The insertion of pre-financing and interim payment clauses is optional but there must always be provision for payment of the balance (the words '*of the balance*' must clearly be omitted if there is no provision for other payments).

<sup>10</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>11</sup> This guarantee shall be mandatory for pre-financing payments exceeding EUR 150 000.

<sup>12</sup> The initial payment shall not exceed 30% of the global amount of the contract.

<sup>13</sup> Delete where not applicable.

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

The request for payment of the balance shall be valid if accompanied by<sup>14</sup>

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

provided the above documents have been approved by the Commission.

The Commission shall have 45 days to approve or reject the documents, and the Contractor shall have [complete] days in which to submit new documents.

Within 45 days of the date on which the documents accompanying a request for payment are approved by the Commission, payment of the balance corresponding to the relevant invoices shall be made.

[For Contractors established in Belgium, the provisions of the Contract constitute request for VAT exemption no 450, provided that the Contractor indicates in his invoice(s) as follows: “Exonération de la TVA, article 42, paragraphe 3.3 du code de la TVA.” or equivalent indication in Dutch or German language.]

## **ARTICLE I.5 – BANK ACCOUNT**

Payments shall be made to the Contractor’s bank account denominated in euro, identified<sup>15</sup> as follows:

Name of bank: [complete]

Address of branch: [complete]

Exact designation of account holder: [complete]

Full account number including codes: [complete]

[*IBAN*<sup>16</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. It shall be sent to the following addresses:

### **Commission:**

European Commission

Directorate-General [complete]

<sup>14</sup> Delete where not applicable.

<sup>15</sup> By a document issued or certified by the bank.

<sup>16</sup> BIC code for countries with no IBAN code.

[Directorate [complete]]  
[Unit [complete]]  
[Postcode and city]

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 [*country of competent authorising officer, as provided by the internal rules for the implementation of the budget*]<sup>17</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 [*seat of competent authorising officer, as provided by the internal rules for the implementation of the budget*]<sup>18</sup>.

## **[ARTICLE I.8 – OTHER SPECIAL CONDITIONS]<sup>19</sup>**

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<sup>17</sup> As a general rule, the country where the institution to which the authorising officer belongs has its seat, except where duly justified (see following footnote).

<sup>18</sup> As a general rule, the seat of the institution to which the authorising officer belongs, except where duly justified. Such exceptions include for example: a service contract concluded by a Representation of the Commission in a Member State.

<sup>19</sup> To be completed by the department responsible, where appropriate. The unit responsible for contracts in DG BUDG must be informed in advance of any change to the model standard contract.

## **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 may 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. They may not be given orders direct by the Commission.

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 working 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. 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, as 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 misconduct or 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 indemnify the Commission in full and undertakes to provide compensation in the event of any action, claim or proceeding brought against it 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.** In the event of any action brought by a third party against the Contractor in connection with performance of the Contract, the Commission may assist the Contractor if a written request is made by the Contractor to this effect. Expenditure incurred by the Commission to this end shall be borne by the Contractor.

**II.2.6.** The Contractor shall take out the insurance against risks and damage relating to performance of the Contract required by the relevant legislation . He shall take out supplementary insurance if he deems it necessary and appropriate in order to perform the Contract. 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 or end 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.

The Commission reserves the right to verify that such measures are adequate and may require additional measures to be taken if necessary. 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, constituting an illegal practice or involving corruption, either directly or indirectly, as 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.

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 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 evidenced by acceptance of the services or approval of the interim or final report(s). 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 discharged 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 for approval 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 or Annex II (where applicable);
- the relevant invoices indicating the reference number of the Contract to which they refer;
- statements of reimbursable expenses in accordance with Article II.7.

On receipt of the documents the Commission shall have the period of time indicated in the Special Conditions in which:

- to approve them, with or without comments, reservations or requests for additional information; or
- to request new documents.

If the Commission does not react within this period, the documents shall be deemed to have been approved. Approval of the documents accompanying the request for payment does not imply recognition either of their regularity or of the authenticity, completeness or correctness of the declarations or information enclosed.

Where the Commission requests new documents, these shall be submitted within the period of time indicated in the Special Conditions. The new documents 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 for approval 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 or Annex II (where applicable);
- the relevant invoices indicating the reference number of the Contract to which they refer;
- statements of reimbursable expenses in accordance with Article II.7.

On receipt of the documents the Commission shall have the period of time indicated in the Special Conditions in which :

- to approve them, with or without comments, reservations or requests for additional information; or
- to request new documents.

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

Where the Commission requests new documents, these shall be submitted within the period of time indicated in the Special Conditions. The new documents 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 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 produced.

The Commission shall notify the Contractor accordingly by registered letter with acknowledgement of receipt or equivalent. Suspension shall take effect from the date of dispatch of the letter.

**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.

**II.5.4.** The Financial Regulation applicable to the general budget of the European Communities imposes a final date for implementation on legal commitments towards third parties extending over more than one financial year

by which all the phases of execution have to be completed and the payments made.

This final date shall be determined by adding to the date on which the tasks have to be completed :

- the maximum periods laid down for the submission of reports and other documents required from the Contractor,
- the maximum periods laid down for their approval,
- the maximum payment period,
- where applicable, the maximum period laid down for acceptance of the services and release of the performance guarantee.

In the event of amendment of the date on which the tasks have to be completed or of the periods indicated above, the final date for implementation shall automatically be modified accordingly.

## **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. Such interest rate is published in the C series of the Official Journal of the European Union. 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 receivable 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. The agreement of the Contractor is not required.

**II.6.4.** The Contractor is aware that the Commission may formally establish an amount as being receivable from persons other than States by means of a decision which shall be enforceable within the meaning of Article 256 of the EC Treaty.

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

**II.7.1.** Where provided by the Special Conditions, the Commission shall reimburse the expenses which are directly connected with execution of the tasks specified in Article I.1.

**II.7.2.** Travel and subsistence expenses shall be reimbursed, where appropriate, on the basis of the shortest itinerary on production of original supporting documents, including receipts and used tickets.

**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 is 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 already exist.

## **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 the 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 Commission shall be entitled to use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, information relating to the Contract, in particular the identity of the Contractor, the subject matter, the duration, the amount paid and the reports.
- II.10.2.** 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 dues, 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 dues, including VAT.

**II.11.4.** Invoices presented by the Contractor shall specify separately his VAT taxation place, 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.** If either of the contracting parties is faced with force majeure, it shall notify the other party without delay by registered letter with acknowledgement 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.

**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**

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

- a) where a change in the Contractor's legal, financial, technical or organisational situation could have a significant effect on the Contract;
- b) where performance of the Contract has not actually commenced within three months of the date foreseen for the commencement of execution of the tasks, and the new date proposed, if any, is considered unacceptable by the Commission;
- c) where the Contractor is unable, through his own fault, to obtain any permit or licence required for performance of the Contract;
- d) where the Contractor has failed to perform the Contract;
- e) where the Contractor has been found guilty by the competent bodies of serious professional misconduct;
- f) where the Contractor is declared bankrupt, is wound up, has ceased trading, has been wound up by court order or is in composition with his creditors entailing suspension of business, is in receivership or is in any other comparable situation provided for by the laws or regulations of his country;
- g) where the Contractor has made false, incomplete or incorrect statements or has failed to provide information in an attempt to obtain the Contract or any benefit resulting therefrom, or where this was the effect of his action;
- h) where the Contractor has, intentionally or by negligence, committed an irregularity in performance of the Contract or in relation to other contracts concluded with an institution, organ or agency of the European Communities and, more generally, in the event of fraud, corruption or any other illegal activity detrimental to the Communities' financial interests on the part of the Contractor.

**II.15.2.** In case of force majeure, notified in accordance with Article II.12, either contracting party may terminate the Contract.

**II.15.3.** Registered letter with acknowledgement of receipt or equivalent shall initiate the termination procedure. Where prior notice is not required (points c), e), f)



g) and h)), termination shall take effect from the day after the day on which the letter terminating the Contract is received.

Where prior notice is required (points a), b) and d)), termination shall take effect after a period of three months, which shall start to run on the date on which the letter terminating the Contract is received. The Contractor may submit arguments against termination within thirty days. In the absence of reaction on his part or of written withdrawal of the termination notice by the Commission within thirty days of the receipt of such arguments, the termination procedure shall be maintained.

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

In the event of the Commission terminating the Contract in accordance with this Article, 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 Contractor shall be entitled to remuneration for the tasks carried out in accordance with Annex I and accepted by the Commission. The Contractor shall accept as the aggregate liability of the Commission payment of the contract price corresponding to the tasks executed by him in accordance with the Contract as at the effective date of termination. However, in the event of termination on the grounds set out in points (b), (c), (d), (e), (g) or (h) of Article II.15.1, the Commission may recover any sums paid to the Contractor under the Contract.

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

**II.16.1.** Under the Financial Regulation applicable to the general budget of the European Communities contractors who have been found to have seriously failed to meet their contractual obligations are subject to financial penalties representing 2% to 10% of the total value of the contract in question. This rate may be increased to 4% to 20% in the event of a repeat offence within five years of the first infringement.

**II.16.2.** Should the Contractor fail to perform his obligations under the Contract within the time specified in Article I.2, 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.

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

**II.17.1.** The Contractor shall provide free of charge all the detailed information requested by the Commission or by an outside body of the Commission's choice with a view to checking that the Contract is being properly performed.

**II.17.2.** The Contractor shall keep at the Commission's disposal the original or, in exceptional cases, duly authenticated copies of all documents relating to the Contract for a period of five years from payment of the balance.

**II.17.3.** The Commission may, at any time within the period specified in the paragraph above, arrange for an audit to be carried out either by an outside body of its choice or by the Commission departments themselves. The object of such an audit shall be limited to checking that the Contractor has complied with the Contract. The cost shall be borne by the Commission.

**II.17.4.** In order to carry out these audits, the Commission departments and the outside bodies concerned shall have total on-the-spot access, notably to the Contractor's offices, at all times and to all the information needed to check that the Contractor has complied with the Contract, including information in electronic format.

**II.17.5.** The European Court of Auditors and the European Anti-Fraud Office shall have the same rights as the Commission, notably right of access, for the purpose of checks and audits.

## **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.

### **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 [language].

## ANNEX I

### **Technical Specifications and Monitoring<sup>20</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.

- (a) The Technical Specifications comprise the tender submitted by the Contractor and accepted by the Commission on the basis of invitation to tender<sup>21</sup> No [complete].
- (b) So that the Commission can regularly identify the progress made in execution of the tasks in accordance with the Technical 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 reports – terms for approval, structure and content ;
  - (ii) schedule of audits to be carried out in accordance with Article II.17 of the Contract.

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<sup>20</sup> The following instructions are to be followed but not published.

<sup>21</sup> One of the best practices is to print the technical specifications on a form to be completed and returned by the tenderer.

## REPORTS AND DOCUMENTS

The work carried out by the Contractor under the contract will be the subject of the following reports, which must be sent to the Commission by the Contractor.

- **Interim reports or documents** : \$ copies.

The reports or documents will describe the work carried out and the results obtained during each period or phase, the duration of which is specified below, and state in particular:

- the effects, if any, of the results obtained on the overall work covered by the contract;
- the work programme planned for the following period.

Interim reports or documents must be sent to the Commission no later than \$ months after signature of the contract.

- **Final report** : \$ copies.

The final report will describe all the work carried out and the results obtained under the contract. It will also contain a summary of the main results obtained.

The draft report must be submitted to the Commission no later than \$ months after signature of the contract. The Commission will then either inform the Contractor that it approves the draft or will send him its comments.

Within \$ days of receiving any such comments, the Contractor will send the Commission his final report, which will either take account of the comments or put forward alternative points of view.

In the absence of any comments from the Commission within 45 days of its receiving the draft report, the Contractor may request written acceptance of it.

The final report will be deemed to have been approved by the Commission if it does not expressly inform the Contractor of any comments within 45 days of its receipt.

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