



# **DRAFT FRAMEWORK SERVICE CONTRACT**

**No. SJU/LC/.....-CTR**

**Provision of Unified Communication Services and  
Supplies**

**(Lot 1, 2, 3 and 4)**

The **SESAR JOINT UNDERTAKING** (hereinafter referred to as "**SJU**"), a joint undertaking within the meaning of Article 187 of the Treaty on the Functioning of the European Union, set up by Council Regulation (EC) No 219/2007 of 27 February 2007 on the establishment of a Joint Undertaking to develop the new generation European air traffic management system (SESAR), as amended by Council Regulation (EC) 1361/2008 of 16 December 2008,

Located at 100 Avenue de Cortenbergh, 1000 - Brussels, Belgium,

Represented for the purpose of signing this contract by Mr Patrick KY, its Executive Director,

ON THE ONE PART,

and

[*official name in full*]

[*official legal form*]

[*statutory registration number*]

[*official address in full*]

[*VAT registration number*]

(hereinafter referred to as "the Contractor"), [represented for the purposes of the signature of this contract by [*forename, surname and function*,]]

[The parties identified above and hereinafter collectively referred to as 'the Contractor' shall be jointly and severally liable vis-à-vis the SJU for the performance of this contract.]

ON THE OTHER PART,

HAVE AGREED

the **Special Conditions** and the following Annexes<sup>1</sup> and Specific Contract:

- Annex I –**
  - (a) General Conditions
  - (b) Model Order Form and Model Specific Contract
- Annex II –** Tender Specifications (Invitation to Tender No [*complete*] of [*insert date*])
- Annex III –** Contractor's Tender (No [*complete*] of [*insert date*])
- Annex IV –** Service Level Agreement for each Lot

[*Other Annexes*]

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

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<sup>1</sup> Voluminous annexes may be replaced by a reference to publicly available documents.

- 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 model order form and model specific contract (Annex I)
- The terms set out in the model order form and model specific contract (Annex I) shall take precedence over those in the other Annexes.
- The terms set out in the Tender Specifications (Annex II) shall take precedence over those in the Tender (Annex III).
- The terms set out in the Contract shall take precedence over those in the order forms and specific contracts.
- The terms set out in the specific contracts shall take precedence over those in the Requests for Services.
- The terms set out in the Requests for Services shall take precedence over those in the specific tenders.

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 SJU, subject to the rights of the Contractor under Article 1.7 should he dispute any such instruction.

## **I – SPECIAL CONDITIONS**

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

- I.1.1** The subject of the Contract is provision of unified communication services and delivery of supplies by the Contractor to the SJU as described in Annex II and the parts of Annex III that have been accepted by the SJU.
- I.1.2** Signature of the Contract imposes no obligation on the SJU to purchase. Only implementation of the Contract through order forms and specific contracts is binding on the SJU. The choice between an order form or a specific contract will be made by the SJU on a case by case basis depending on its assessment of the complexity of the services or/and the supplies to be requested.
- I.1.3** Once implementation of the Contract has commenced, the Contractor shall provide the services and deliver the supplies in accordance with all terms and conditions of the Contract.

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

- I.2.1** The Contract shall enter into force on the date on which it is signed by the last contracting party.
- I.2.2** Under no circumstances may implementation commence before the date on which the Contract enters into force. Execution of the tasks may under no circumstances begin before the date on which the order form or specific contract enters into force.
- I.2.3** The Contract is concluded for a period of 12 months with effect from the date on which it enters into force. This contractual period and all other periods specified in the Contract are calculated in calendar days unless otherwise indicated.
- I.2.4** The order forms or specific contracts shall be returned signed before the Contract to which they refer expires.

The Contract shall continue to apply to such order forms and specific contracts after its expiry. They shall be executed no later than 6 months.

#### **I.2.5 Contract renewal**

The Contract shall be renewed automatically up to 3 times under the same conditions, unless written notification to the contrary is sent by one of the contracting parties and received by the other 3 months before expiry of the period indicated in Article I.2.3. The last extension of the Contract is subject to the extension of the SJU.<sup>2</sup> Renewal does not imply any modification or deferment of existing obligations.

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<sup>2</sup> In accordance with Council Regulation (EC) No 219/2007 of 27 February 2007 on the establishment of a Joint Undertaking to develop the new generation European air traffic management system (SESAR), as amended by Council Regulation (EC) 1361/2008 of 16 December 2008, the SJU shall cease to exist on 31 December 2016 or eight years after an endorsement by the Council of the European Air Traffic Management Master Plan resulting from the definition phase of the SESAR project, whichever is the earlier.

## **ARTICLE I.3 – CONTRACT PRICES**

**I.3.1** The prices of the services and the supplies shall be as listed in Annex III.

The price indicated in the specific contract or order form covers any fees payable to the Contractor in relation to the vesting of rights in the SJU and where applicable the transfer of rights to the SJU and any use of the results by the SJU.

**I.3.2** Prices shall be expressed in EUR.

### **I.3.3 Price revision**

Prices shall be fixed and not subject to revision for implementation during the first year of duration of the Contract.

At the beginning of the second and every following year of the Contract, [80% of] each price may be revised upwards or downwards, if such revision is requested by one of the contracting parties by registered letter no later than three months before the anniversary of the date on which it was signed. The SJU shall purchase on the basis of the prices in force on the date on which order forms or specific contracts are signed. Such prices shall not be subject to revision.

This revision shall be determined by the trend in the harmonised indices of consumer prices (HICP) [complete]<sup>3</sup> published for the first time by [the Publications Office of the European Union in the Eurostat monthly 'Data in Focus' publication at <http://www.ec.europa.eu/eurostat/>].

Revision shall be calculated in accordance with the following formula:

$$Pr = Po \times \left( 0.2 + 0.8 \frac{Ir}{Io} \right)$$

where:

Pr = revised price;

Po = price 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].

## **ARTICLE I.4 – PAYMENTS AND IMPLEMENTATION OF THE CONTRACT**

### **I.4.1 Single framework contract**

Within 5 working days from the submittance of a request for services and /or supplies through an order form or through a specific contract sent by the SJU to the Contractor, the SJU shall receive the completed order form or an offer for a specific contract, duly signed and dated.

The period allowed for the execution of the tasks shall start to run on the date the Contractor signs the order form, unless a different date is indicated on the form or in the specific contract as the case may be.

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<sup>3</sup> Specify the consumer price index, e.g.:

- “MUICP”: (euro area) for contracts expressed in euro (as a general rule);
- “EICP”: for contracts performed in the European Union (outside the euro area);
- 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.

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

The Contractor shall submit an invoice, for an interim payment as specified in the relevant specific contract and/or order form equal to [*complete*] % of the total price referred to in the relevant order form or specific contract.

Invoices for interim payment shall be accompanied by any document in accordance with the relevant specific contract and/or order form.

Payment shall be made within thirty days of the receipt of the invoice.

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

The Contractor shall submit an invoice for payment of the balance as detailed in the relevant specific agreement and/or order form.

Payment shall be made within thirty days of the receipt of the invoice. The invoice shall be accompanied by any document in accordance with the relevant specific contract and/or order form.

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For Contractors established in Belgium, the provisions of the Contract and specific contract constitute a request for VAT exemption n° 450, article 42, paragraph 3.3 of the Belgian VAT code (circulaire 2/1978), provided the Contractor includes the following statement in its invoice(s) "Exonération de la TVA, article 42, paragraphe 3.3 du code de la TVA (circulaire 2/1978)" or an equivalent statement in the Dutch or German language.

#### **ARTICLE I.5 – BANK ACCOUNT**

Payments shall be made to the Contractor's bank account denominated in euro][*insert local currency where the receiving country does not allow transactions in EUR*], identified as follows:

Name of bank:

Full address of branch:

Exact designation of account holder:

Full account number including bank codes:

IBAN<sup>4</sup> code:

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

Any communication relating to the Contract or to its implementation shall be made in writing in paper or electronic format and shall bear the Contract and order form or specific contract numbers. Ordinary mail shall be deemed to have been received on the date on which it is registered by the SJU.

Electronic communication must be confirmed by paper communication when requested by any of the parties. The parties agree that paper communication can be replaced by electronic communication with electronic signature.

Communications shall be sent to the following addresses:

SJU:

Mr/Mrs/Ms [*complete*]

[Function]

SESAR Joint Undertaking  
100, Avenue Cortenberg  
BE-1000 Brussels

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<sup>4</sup> BIC or SWIFT code for countries with no IBAN code.

[Telephone No.]  
[FAX No.]  
[E-mail address]

Contractor:

Mr/Mrs/Ms [complete]

[*Function*]

[*Company name*]

[Official *address* in full]

[Telephone No.]

[FAX No.]

[E-mail address]

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

- I.7.1** The Contract shall be governed by European Union law, complemented, where necessary, by the national substantive law of Brussels.
- I.7.2** Any dispute between the parties resulting from the interpretation or application of the Contract which cannot be settled amicably shall be brought before the courts of Brussels.

#### **ARTICLE I.8 – DATA PROTECTION**

Any personal data included in the Contract shall be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Such data shall be processed solely for the purposes of the performance, management and monitoring of the Contract by the SJU data controller without prejudice to possible transmission to the bodies charged with monitoring or inspection task in application of European Union law.

#### **ARTICLE I.9 - USE OF THE RESULTS**

[NOT APPLICABLE]

#### **ARTICLE I.10 – 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 6 months formal prior notice. Should the SJU terminate the Contract, the Contractor shall only be entitled to payment corresponding to the part-performance of the services ordered before the termination date. Article II.14.4 applies accordingly.

#### **ARTICLE I.11– CONTRACT CONCLUDED DURING STANDSTILL PERIOD**

In case this Contract was signed by both the SJU and the Contractor before the expiry of 10 calendar days from the day after simultaneous dispatch of information about the award decisions and decisions to reject, this Contract shall be null and void.

This article is not applicable for contracts not covered by Directive 2004/18/EC and in cases indicated in Article 158a(2) of the rules for the implementation of the Financial Regulation (Regulation No 2342/2002).

**ARTICLE I.12 – TRANSITION**

Without prejudice to the clause of termination, at the end of the Contract and for the maximum duration of 6 months the current Contractor shall exercise its best efforts and cooperation to ensure an orderly and efficient phase-in of its successor. The costs of the Contractor related to such phase-in shall be covered by the relevant specific contracts placed under this Contract.

**ARTICLE I.13 – SPECIFIC QUALITY STANDARDS**

Quality parameters and performance indicators are fixed in the Service Level Agreements for each Lot attached hereto as Annex IV.

**SIGNATURES**

For the Contractor,

[*Company  
name/forename/surname/function*]

For the SESAR Joint  
Undertaking,

Mr Patrick KY,  
Executive Director

signature[s]:

\_\_\_\_\_

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

\_\_\_\_\_

Done at [place], [date]

In duplicate in English.

Done at Brussels, [date]



## ANNEX I

### **II – GENERAL CONDITIONS FOR SERVICE FRAMEWORK CONTRACTS**

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

- II.1.1** The Contractor shall perform the Contract to the highest professional standards. The Contractor shall have sole responsibility for complying with any legal obligations incumbent on him, notably those resulting from employment, tax and social legislation.
- II.1.2** The Contractor shall have sole responsibility for taking the necessary steps to obtain any permit or licence required for performance of the Contract under the laws and regulations in force at the place where the tasks assigned to him are to be executed.
- II.1.3** Without prejudice to Article II.3 any reference made to the Contractor's staff in the Contract shall relate exclusively to individuals involved in the performance of the Contract.
- II.1.4** The Contractor must ensure that any staff performing the Contract has the professional qualifications and experience required for the execution of the tasks assigned to him.
- II.1.5** The Contractor shall neither represent the SJU 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:
- (a) staff executing the tasks assigned to the Contractor may not be given orders direct by the SJU;
  - (b) the SJU 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 SJU any right arising from the contractual relationship between the SJU 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 SJU 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 SJU 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.
- 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 at his own initiative record it and report it to the SJU. 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, the SJU 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 SJU may claim compensation or impose liquidated damages provided for in Article II.12.

## **ARTICLE II. 2 – LIABILITY**

- II.2.1** The SJU 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 SJU.
- II.2.2** The Contractor shall be liable for any loss or damage sustained by the SJU in performance of the Contract, including in the event of subcontracting under Article II.6 but only up to three times the total amount of the Contract. Nevertheless, if the damage or loss is caused by the gross negligence or wilful misconduct of the Contractor or by its employees, the Contractor shall remain liable without any limitation as to the amount of the damage or loss.
- II.2.3** The Contractor shall provide compensation in the event of any action, claim or proceeding brought against the SJU 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 SJU in connection with performance of the Contract, the Contractor shall assist the SJU. Expenditure incurred by the Contractor to this end may be borne by the SJU.
- 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 SJU 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 SJU in writing without delay. In the event of such conflict, the Contractor shall immediately take all necessary steps to resolve it.

The SJU 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 SJU, 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 unjustified 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.

#### **ARTICLE II. 4 – CONFIDENTIALITY**

- II.4.1.** 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.4.2.** 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.5 - DATA PROTECTION**

- II.5.1** The Contractor shall have the right of access to his/her personal data and the right to rectify any such data. Should the Contractor have any queries concerning the processing of his/her personal data, s/he shall address them to the SJU data controller to the following e-mail address: [sju.dpc@sesariu.eu](mailto:sju.dpc@sesariu.eu).
- II.5.2** The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.
- II.5.3** Where the Contract requires the processing of personal data by the Contractor, the Contractor may act only under the supervision of the data controller, in particular with regard to the purposes of the processing, the categories of data which may be processed, the recipients of the data, and the means by which the data subject may exercise his/her rights.
- II.5.4** The Contractor shall limit access to the data to the staff strictly necessary for the performance, management and monitoring of the Contract.
- II.5.5** The Contractor undertakes to adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned in order to:
- a) prevent any unauthorised person from having access to computer systems processing personal data, and especially:
    - aa) unauthorised reading, copying, alteration or removal of storage media;
    - ab) unauthorised data input as well as any unauthorised disclosure, alteration or erasure of stored personal data;
    - ac) unauthorised use of data-processing systems by means of data transmission facilities;
  - b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
  - c) record which personal data have been communicated, when and to whom;
  - d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting institution or body;

- e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
- f) design its organisational structure in such a way that it meets data protection requirements.

#### **ARTICLE II. 6 – SUBCONTRACTING**

- II.6.1** The Contractor shall not subcontract without prior written authorisation from the SJU nor cause the Contract to be performed in fact by third parties.
- II.6.2** Even where the SJU authorises the Contractor to subcontract to third parties, he shall none the less remain bound by his obligations to the SJU under the Contract and shall bear exclusive liability for proper performance of the Contract.
- II.6.3** The Contractor shall make sure that the subcontract does not affect rights and guarantees to which the SJU is entitled by virtue of the Contract, notably Article II.19.

#### **ARTICLE II. 7 – AMENDMENTS**

Any amendment to the Contract shall be the subject of a written agreement concluded by the contracting parties before fulfilment of all their contractual obligations. An oral agreement shall not be binding on the contracting parties. An order form or a specific contract may not be deemed to constitute an amendment to the Contract.

#### **ARTICLE II. 8 – ASSIGNMENT**

- II.8.1** The Contractor shall not assign the rights and obligations arising from the Contract, in whole or in part, without prior written authorisation from the SJU.
- II.8.2** In the absence of such authorisation, 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 SJU.

#### **ARTICLE II.9 - USE, DISTRIBUTION AND PUBLICATION OF INFORMATION ABOUT THE CONTRACT**

- II.9.1** The Contractor shall authorise the SJU to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, any data contained in the Contract, in particular the identity of the Contractor, the subject matter, the duration and the amount paid. Where personal data is concerned, Articles I.8 and II.5 shall apply.
- II.9.2** Unless otherwise provided by the Special Conditions, the SJU shall not be required to distribute or publish documents or information supplied in performance of the Contract. If it decides not to distribute or publish the documents or information supplied, the Contractor may not have them distributed or published elsewhere without prior written authorisation from the SJU.
- II.9.3** Any distribution or publication of information relating to the Contract or use of outcome of the implementation of the Contract and provided as such by the Contractor shall require prior written authorisation from the SJU and, if so requested, shall mention that it was produced within a contract with the SJU. It shall state that the opinions expressed are those of the Contractor only and do not represent the SJU's official position.

- II.9.4** 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 SJU has specifically given prior written authorisation to the contrary.

**ARTICLE II. 10 – OWNERSHIP OF THE RESULTS - INTELLECTUAL AND INDUSTRIAL PROPERTY**

- II.10.1** A result shall be any outcome of the implementation of the Contract and provided as such by the Contractor.

A creator shall be any person who contributed to production of the result.

Pre-existing intellectual property rights, sometimes referred to as background technology, are any industrial and intellectual property rights which exist prior to the contract being entered into and include rights of ownership and use of the Contractor, the SJU and any third parties ("pre-existing rights").

It shall be a material term of the Contract and of the essence of the Contract that Contractors shall be under a duty to provide a list of pre-existing rights at the date of delivery of the final result the latest.

- II.10.2** The ownership of all the results or rights thereon as listed in the tender specification and the tender attached to the contract, including copyright and other intellectual or industrial property rights, and all technological solutions and information embodied therein, obtained in performance of the Contract, shall be irrevocably and fully vested to the SJU, which may use them as described in the Contract. All the rights shall be vested on the SJU from the moment the results were delivered and accepted by the SJU.

For the avoidance of doubt and where applicable, any such vesting of rights is also deemed to constitute an effective transfer of the rights from the Contractor to the SJU.

The payment of the fee under Article I.3 is deemed to include all forms of use by the SJU of the results as set out in Article I.9.

The above vesting of rights in the SJU under this Contract covers all territories worldwide and is valid for the whole duration of intellectual property rights protection.

- II.10.3** Any intermediary sub-result, raw data, intermediary analysis made available to the SJU by the Contractor cannot be used by the SJU without written consent of the Contractor, unless the tender specification explicitly provides for it to be treated as self-contained result.

- II.10.4** The Contractor retains all right, title and interest in pre-existing rights not fully vested into the SJU in line with Article I.9.2, and hereby grants the SJU for the requested period a licence to use the pre-existing rights to the extent necessary to use the delivered results.

- II.10.5** The Contractor shall ensure that delivered results are free of rights or claims from third parties including in relation to pre-existing rights, for any use envisaged by the SJU. This does not concern the moral rights of natural persons and rights referred to in Article II.10.4.

- II.10.6** The Contractor shall clearly point out all quotations of existing textual works made by the Contractor. The complete reference should include as appropriate: name of the author, title of the work, date of publishing, date of creation, place of publication, address of publication on internet, number, volume and other information allowing to identify the origin easily.

- II.10.7** The Contractor shall clearly indicate all parts to which there are pre-existing rights and all parts of the result originating from external sources: parts of other documents, images, graphs, tables, data, software, technical inventions, know-how etc. (delivered in paper, electronic or other form).

For non-textual results or results provided in electronic form only, the description, instruction or information document shall list all parts coming from external sources: IT development tools, routines, subroutines and/or other programs ("background technology"), concepts, designs, installations or pieces of art, data, source or background materials or any other parts of external origin.

- II.10.8** If the SJU so requires, the Contractor shall provide proof of ownership or rights to use all necessary rights to the materials referred to in Article II.10.7.
- II.10.9.** By delivering the results the Contractor confirms that the creators undertake not to oppose their names being recalled when the results are presented to the public and confirms that the results can be divulged.

The Contractor shall possess all relevant agreements of the creator and provide proof by way of documentary evidence.

- II.10.10**By delivering the results the Contractor warrants that the above transfer of rights does not violate any law or infringe any rights of others and that he possesses the relevant rights or powers to execute the transfer. He also warrants that he has paid or has verified payment of all fees including fees to collecting societies, related to the final results.
- II.10.11.** The Contractor shall indemnify and hold the SJU harmless for all damages and cost incurred due to any claim brought by any third party including creators and intermediaries for any alleged breach of any intellectual, industrial or other property right based on the SJU's use of the works and in relation to which the Contractor has granted the SJU user rights.

#### **ARTICLE II. 11 – FORCE MAJEURE**

- II.11.1** 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.11.2** Without prejudice to 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.11.3** 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.11.4** The contracting parties shall take the necessary measures to reduce damage to a minimum.

#### **ARTICLE II. 12 – 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 SJU's right to terminate the Contract, the SJU may decide to

impose liquidated damages per calendar day of delay according to the following formula:

$$0.3 \times (V/d)$$

V is the price of the relevant purchase;

d is the duration specified in the relevant order form or specific contract expressed in days

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 SJU 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 SJU 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. 13 – SUSPENSION OF THE CONTRACT**

Without prejudice to the SJU's right to terminate the Contract, where the Contract is subject to substantial error, irregularity or fraud the SJU may suspend execution of the Contract, pending order forms or specific contracts 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 SJU shall as soon as possible give notice to the Contractor to resume the service suspended or inform that it is proceeding with contract termination. The Contractor shall not be entitled to claim compensation on account of suspension of the Contract, of the order forms or specific contracts, or of part thereof.

#### **ARTICLE II. 14 – TERMINATION BY THE SJU**

II.14.1 The SJU may terminate the Contract, a pending order form or a specific contract in the following circumstances:

- (a) if the Contractor declared bankrupt, 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) if the contractor or any natural person with the power to represent it or take decisions on its behalf has been found guilty of professional misconduct proven by any means;
- (b) if the Contractor is not in compliance with its 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 law to the Contract or those of the country where the Contract is to be performed;
- (c) if the SJU has evidence that the Contractor or any natural person with the power to represent it or take decisions on its behalf have committed fraud, corruption, or are involved in a criminal organisation, money laundering or any other illegal activity detrimental to the European Union's and/or SJU's financial interests;
- (e) if the SJU has evidence that the Contractor or any natural person with the power to represent it or take decisions on its behalf have committed substantial errors, irregularities or fraud in the award procedure or the performance of the Contract including in the event of submission of false information;

- (f) if the Contractor is unable, through its own fault, to obtain any permit or licence required for performance of the Contract or order form or specific contract;
- (g) if the needs of the SJU change and it no longer requires new services under the framework contract;
- (jh) when due to the termination of the contract with one or more of the contractors there is no minimum required competition within the multiple framework contract with reopening of competition.

**II.14.2** In case of force majeure, notified in accordance with Article II.11, 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.14.3** Prior to termination under point c), d), e), h) or k), the Contractor shall be given the opportunity to submit his observations.

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

#### **II.14.4 Consequences of termination**

In the event of the SJU terminating the Contract or a pending order form or specific 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 service. 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 SJU may claim compensation for any damage suffered and recover any sums paid to the Contractor under the Contract.

On termination the SJU may engage any other contractor to execute or complete the services. The SJU shall be entitled to claim from the Contractor all extra costs incurred in doing so, without prejudice to any other rights or guarantees it has under the Contract.

### **ARTICLE II.14a – SUBSTANTIAL ERRORS, IRREGULARITIES AND FRAUD ATTRIBUTABLE TO THE CONTRACTOR**

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

### **ARTICLE II. 15 – INVOICING AND PAYMENTS**

#### **II.15.1 Date of payment**

Payments shall be deemed to be effected on the date when they are debited to the SJU's account.

Payments shall be executed only if the Contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted.

At the end of each of the periods indicated in Annex II the Contractor shall submit to the SJU an invoice accompanied by the documents provided for in the Special Conditions.



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

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

Approval of the progress report shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information it contains.

Where the SJU requests a new progress 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 progress report shall likewise be subject to the above provisions.

#### **II.15.2 Payment currency and costs**

Payments are executed in the currency of the contract.

Costs of the transfer are borne in the following way:

- (a) costs of dispatch charged by the bank of the SJU are borne by the SJU,
- (b) cost of receipt charged by the bank of the Contractor are borne by the Contractor,
- (c) all costs of repeated transfer caused by one of the parties are borne by the party who caused repetition of the transfer.

#### **II.15.3 Invoices and Value Added Tax**

Invoices shall contain the contractor's identification, the amount, the currency and the date, as well as the framework contract reference and reference to the order form or specific contract.

**II.15.4** Invoices shall indicate the place of taxation of the contractor for value added tax (VAT) purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

The SJU is, as a rule, exempt from all taxes and duties, including VAT, pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union.

**II.15.5** 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.15.6 Pre-financing and performance guarantees**

Pre-financing guarantees shall remain in force until the pre-financing is cleared against interim payments or payment of the balance and, in case the latter takes the form of a debit note, three months after the debit note is notified to the contractor. The SJU shall release the guarantee within the following month.

Performance guarantees shall cover performance of the service in accordance with the terms set out in the request for services until its final acceptance by the SJU. The amount of the performance guarantee shall not exceed the total price of the order form or specific contract. The guarantee shall provide that it remains in force until final acceptance. The SJU shall release the guarantee within a month following the date of final acceptance.

Where, in accordance with Article I.4, a financial guarantee is required for the payment of pre-financing, or as performance guarantee, it shall fulfil the following conditions:

- (a) the financial guarantee is provided by a bank or an approved financial institution or, at the request of the contractor and agreement by the SJU, by a third party;
- (b) the guarantor stands as first-call guarantor and does not require the SJU to have recourse against the principal debtor (the contractor).

The cost of providing such guarantee shall be borne by the contractor.

### **II.15.7 Interim payments and payment of the balance**

The contractor shall submit an invoice for interim payment upon delivery of intermediary results, accompanied by a progress report or any other documents, as provided for in Article I.4 or in the tender specifications or in the order form or specific contract.

The contractor shall submit an invoice for payment of the balance within 60 days following the end of the period referred to in the specific contract, accompanied by a final progress report or any other documents provided for in Article I.4 or in the tender specifications or in the order form or specific contract.

Upon receipt, the SJU shall pay the amount due as interim or final payment, within the periods specified in Article I.4, provided the invoice and documents have been approved and without prejudice to Article II.15.8. Approval of the invoice and documents shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information they contain.

Payment of the balance may take the form of recovery.

### **II.15.8 Suspension of the time allowed for payment**

The SJU may suspend the payment periods specified in Article I.4 at any time by notifying the contractor that its invoice cannot be processed, either because it does not comply with the provisions of the framework contract, or because the appropriate documents have not been produced.

The SJU shall inform the contractor in writing as soon as possible of any such suspension, giving the reasons for it.

Suspension shall take effect on the date the notification is sent by the SJU. The remaining payment period shall start to run again from the date on which the requested information or revised documents are received or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension period exceeds two months, the contractor may request the SJU to justify the continued suspension.

Where the payment periods have been suspended following rejection of a document referred to in the first paragraph and the new document produced is also rejected, the SJU reserves the right to terminate the order form or specific contract in accordance with Article II.14.1(c).

### **II.15.9 Interest on late payment**

On expiry of the payment periods specified in Article I.4, and without prejudice to Article II.15.7, the contractor is entitled to interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in Euros (the reference rate) plus eight points. The reference rate shall be the rate in force on the first day of the month in which the payment period ends, as published in the C series of the *Official Journal of the European Union*.

The suspension of the payment period in accordance with Article II.15.8 may not be considered as a late payment.

Interest on late payment shall cover the period running from the day following the due date for payment up to and including the date of actual payment as defined in Article II.15.1.

However, when the calculated interest is lower than or equal to EUR 200, it shall be paid to the contractor only upon request submitted within two months of receiving late payment.

## **ARTICLE II. 16 - REIMBURSEMENTS**

**II.16.1** Where provided by the Special Conditions or by Annex II, the SJU shall reimburse the expenses that are directly connected with execution of the tasks on production of original supporting documents, including receipts and used tickets.

- II.16.2** Travel and subsistence expenses shall be reimbursed, where appropriate, on the basis of the shortest itinerary.
- II.16.3** 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 European Union territory shall be reimbursed under the general conditions stated above provided the SJU has given its prior written agreement.
- II.16.4** 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.
- II.16.5** The cost of shipment of equipment or unaccompanied luggage shall be reimbursed provided the SJU has given prior written authorisation.
- II.16.6.** Conversion between the euro and another currency shall be made using the daily euro exchange rate published in the C series of the *Official Journal of the European Union* of the day on which the expense was made or, failing that, at the monthly accounting rate established by the SJU and published on its website.


## **ARTICLE II. 18 – RECOVERY**

- II.18.1** If total payments made exceed the amount actually due 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 SJU.
- II.18.2** In the event of failure to pay by the deadline specified in the debit note, the sum due shall bear interest at the rate indicated in Article II.15.9. 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.18.3** The SJU 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 SJU that is certain, of a fixed amount and due. The SJU may also claim against the guarantee, where provided for.

## **ARTICLE II. 19 – CHECKS AND AUDITS**

- II.19.1** Pursuant to Article 142 of the Financial Regulation applicable to the general budget of the European Communities, the 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 Union from signature of the Contract up to five years after payment of the balance of the last implementation.
- II.19.2** The SJU or an outside body of its choice shall have the same rights as the 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 of the last implementation.
- II.190.3** 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 of the last implementation.

**ANNEX I**

	<b>SESAR Joint Undertaking</b>	<b>FRAMEWORK CONTRACT</b>			
		<b>ORDER FORM</b>			
		Order number:	<i>(Name and address of supplier)</i>		
SESAR Joint Undertaking unit:	Currency of payment: EUR				
	Date and reference of the offer:				
Tel.:					
E-mail:					
This order is governed by the provisions of Framework Contract No _____ in force from _____ to _____					
LISTING OF THE GOODS / SERVICES and code		UNIT	QUANTITY	PRICE in €	
				UNIT PRICE	TOTAL
Pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union, the SJU is exempt from all taxes and dues, including value added tax, on payments due in respect of this Contract. For intra-EU purchases, the mention "VAT Exemption / European Union / Article 151 of Council Directive 2006/112/EC" should be added on the invoice. [In Belgium, use of this Contract constitutes a request for VAT exemption. The invoice must include: "Commande destinée à l'usage officiel de l'Union Européenne, Exonération de la TVA; art. 42 § 3.3 du code TVA (circulaire n° 2/1978)".]		Packaging Insurance Transport Assembly VAT			
		<b>TOTAL :</b>			
Place of delivery or implementation and/or Incoterm:		<b>Contractor's signature</b>			
		Name:			
Final date of delivery or implementation:		Position:			
Terms of payment:		Date:			
Guarantee:					
Date of issue: Signature [name and position]:					

**ANNEX I**

**SPECIFIC CONTRACT No [complete]<sup>5</sup>**  
implementing Framework Contract No ...

The SESAR Joint Undertaking (hereinafter referred to as "the SJU"), represented for the purposes of the signature of this contract by Mr Patrick KY, its Executive Director,

of the one part,

and

[*official name in full*]

[*official legal form*]<sup>6</sup>

[*statutory registration number*]<sup>7</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 [*forename, surname and function*,]]

[The parties identified above and hereinafter collectively referred to as 'the Contractor' shall be jointly and severally liable vis-à-vis the SJU for the performance of this contract.]

of the other part,

HAVE AGREED

**ARTICLE III.1: SUBJECT**

**III.1.1** This specific contract implements Framework Contract No [complete] signed by the SJU and the Contractor on [complete date] [and renewed on [complete date]].

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<sup>5</sup> Comments [in italics] to be deleted and replaced by appropriate data  
Options [in roman] to be completed or deleted

<sup>6</sup> Delete if contractor is a natural person or a body governed by public law.

<sup>7</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.

III.1.2 The subject of this specific contract is [*short description of subject*]. [This specific contract relates to lot [*complete*] of the Framework Contract.]

III.1.3 The Contractor undertakes, on the terms set out in the Framework Contract and in this specific contract and the annex[es] thereto, which form an integral part thereof, to perform the following tasks [:] [specified in Annex [*complete*].]

#### **ARTICLE III.2: DURATION**

III.2.1 This specific contract shall enter into force [on the date on which it is signed by the last contracting party]<sup>8</sup> [on [*insert date*] if it has already been signed by both contracting parties].

III.2.2 The duration of the execution of the tasks shall not exceed [*complete*] [days/months]. This period and all other periods specified in the Contract are calculated in calendar days. Execution of the tasks shall start from [the date of entry into force of this specific contract] [*insert date*]. The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses.

#### **ARTICLE III.3: PRICE**

III.3.1 The total price to be paid by the SJU under this specific contract shall be EUR [*amount in figures and in words*] covering all tasks executed.

This price also covers any fees payable to the Contractor in relation to the vesting of rights in the SJU and where applicable the transfer of rights to the SJU and any use of the results by the SJU.

III.3.2 In addition to the price no reimbursable expenses are foreseen.

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For Contractors established in Belgium, the provisions of this specific 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 (circulaire 2/1978)" or an equivalent statement in the Dutch or German language.

#### **ARTICLE III.4: PERFORMANCE GUARANTEE**

[Not applicable]

#### **ARTICLE III.5: USE OF RESULTS**

[Not applicable]

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<sup>8</sup> As a rule the SJU signs last. In this case, the Contractor should be duly informed of the date on which the specific contract enters into force.

**ANNEXES**

**Annex A-** Request for service

**Annex B** - Contractor's Specific Tender (of [*insert date*])

**SIGNATURES**

For the Contractor,

[*Company name/forename/surname/function*]

For the SESAR Joint Undertaking,

Mr Patrick KY,  
Executive Director

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

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

Done at [Place], [date]

Done at Brussels, [date]

In duplicate in English.