



DRAFT SERVICE CONTRACT

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

***Performance of a study on an ATM Performance Model
and supporting methodology***



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,

OF THE ONE PART,

and

[official name of the Coordinator in full],

[official name in full]

[official legal form]

[statutory registration number]

[official address in full]

[VAT registration number]

(hereinafter referred to as "the Contractor"),

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

[Acting in the name and on behalf of the following legal entities, which shall accede to this Agreement as "Consortium Members" in accordance with the procedure referred to in Article 3.1 below, assuming the rights and obligations established by this contract:]

[official name in full]

[official legal form]

[statutory registration number]

[official address in full]

[The Coordinator and the Consortium Member(s) together form the "Consortium"]

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

OF THE OTHER PART,

hereinafter referred to individually as a "Party" and collectively the "Parties".



HAVE AGREED

the **Special Conditions** and the following Annexes¹:

Annex I - General Conditions for service contracts

Annex II – Tender Specifications (Invitation to Tender No SJU/LC/0085-CFT of 26 October 2012)

Annex III – Contractor's Tender (No [*complete*] of [*insert date*])

[*Annex IV – Accession of Consortium Members to the Agreement*]

[*Annex V- Consortium not set up as a legal entity*]

Annex VI - Statement of Contractor concerning right to delivered result

Annex VII - Statement of creator / intermediary in delivery

[*Other Annexes*]

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

- The terms set out in the Special Conditions shall take precedence over those in the other parts of the Contract.
- The terms set out in the General Conditions shall take precedence over those in the other Annexes.
- The terms set out in the Tender Specifications (Annex II) shall take precedence over those in the Tender (Annex III).

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 I.7 should he dispute any such instruction.

¹ Voluminous annexes may be replaced by a reference to publicly available documents.



I – SPECIAL CONDITIONS

ARTICLE I.1 - SUBJECT

- I.1.1.** The subject of the Contract is to set forth the terms and conditions according to which the Contractor [*Consortium*] undertakes to perform a study on an Air Traffic Management (ATM) Performance Model and supporting methodology as defined in Annex II attached hereto (“the Tasks”).
- I.1.2.** The Contractor [*Consortium*] shall execute the Tasks in accordance with the Tender Specifications annexed to the Contract (Annex II).
- I.1.3.** The Contract does not confer on the Contractor [*Consortium*] any exclusive right to provide the Tasks described in Annex II to the SJU.

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. The Contract is concluded for a period of six (6) months from the date of the kick-off meeting.
- I.2.2.** Under no circumstances may implementation of the Tasks commence before the date on which the Contract enters into force.
- I.2.3.** The duration of the execution of the Tasks shall not exceed six (6) months. This period and all other periods specified in the Contract are calculated in calendar days. Execution of the Tasks shall start from T₀ (i.e. at Kick-Off meeting) following the signature of the Contract. The final version of the Deliverables as described in Section 2.1. D) of the Annex II shall be finalised within six (6) months from the date of the kick-off meeting, unless agreed otherwise in writing by the parties. The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses.

[ARTICLE I-2 BIS ACCESSION OF CONSORTIUM MEMBERS]

[The Coordinator shall send to the SJU one duly completed and signed Annex IV per Consortium Member at the latest forty-five (45) calendar days after the entry into force of the Agreement.]

Should any legal entity identified above, fail or refuse to accede to the Agreement within the deadline established in the previous paragraph, the SJU is no longer bound by its offer to the said legal entity(ies). The Coordinator may propose to the SJU, within the time-limit



to be fixed by the latter, appropriate solutions to ensure the good implementation of the Project.]

ARTICLE I.3 – CONTRACT PRICE

I.3.1. The total amount to be paid by the SJU to the Contractor [*Consortium*] for the performance of the Tasks shall be [...] **EUR** [*amount in figures and in words*] VAT excluded, covering all tasks executed, as shown in the estimated budget included in the financial proposal attached hereto as Annex III.

This price also covers any fees payable to the Contractor [*Consortium*] 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.

ARTICLE I.4 – PAYMENTS

[I.4.1. Pre-financing

Following signature of the Contract by the last contracting party and its receipt by the SJU, within [thirty] days of the receipt of the relevant invoice indicating the reference number of the Contract [and the receipt by the SJU of a duly constituted financial guarantee equal to at least EUR [*amount in figures and in words*] a pre-financing payment of EUR [*amount in figures and in words*] equal to [*complete*]% of the total amount referred to in Article I.3.1 shall be made.]

[I.4.2 Interim payment

The Contractor [*Coordinator*] shall submit an admissible invoice indicating the reference number of the Contract for an interim payment of EUR [*amount in figures and in words*] equal to [*complete*] % of the total amount referred to in Article I.3.1.

[Invoices for interim payment shall be admissible if accompanied by [a progress report in accordance with the instructions laid down in Annex II] [and] [statements of reimbursable expenses in accordance with Article II.18].]

a) [First interim payment

The request for first interim payment by the Contractor [*Coordinator*] shall be declared admissible if accompanied by:

- [...],

- the relevant invoices,

provided the Deliverables listed hereabove have been approved by the SJU.]

b) [Second interim payment



The request for first interim payment by the Contractor [*Coordinator*] shall be declared admissible if accompanied by:

- [...],

- the relevant invoices,

provided the Deliverables listed hereabove have been approved by the SJU.]

[Option 1 - No progress report]

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

[Option 2 - Separate time-limits for approval of report and payment]

[The SJU shall have fifteen (15) days from receipt to approve or reject the relevant deliverable items due under the Contract, and the Contractor [*Coordinator*] shall have ten (10) days in which to submit additional information or a new deliverable item in accordance with the SJU's requirements.]

Provided the documents accompanying a request for payment are approved by the SJU, the SJU shall have [thirty] (30) days from the date of receipt of the relevant invoice to pay an interim payment.

[Option 3 - Single time-limit for approval of both report and payment]

[The SJU shall have [complete] days from receipt to approve or reject the progress report and to pay an interim payment. The Contractor [*Coordinator*] shall have [complete] days in which to submit additional information or a new progress report.]]

[I.4.3 Payment of the balance]

The request for a final payment shall be admissible, if accompanied by:

- the Final ATM Performance Model drawn up in accordance with the requirements set in Section 2.1, D) "Deliverables" of Annex II attached hereto,
- [...],
- the relevant invoices,
- provided that the SJU has formally approved the satisfactory delivery and acceptance of all deliverable items due under this Contract.]

Within sixty days of completion of the tasks referred to in Annex II, the Contractor [*Coordinator*] shall submit an admissible invoice indicating the reference number of the Contract for payment of the balance.

[The invoice shall be admissible if accompanied by [the final progress report in accordance with the instructions laid down in Annex II] [and] [statements of reimbursable expenses in accordance with Article II.18].]

[The SJU shall have fifteen (15) calendar days from receipt to approve or reject the deliverable items due under this Contract, and the Contractor [*Coordinator*] shall have ten (10) calendar days in which to submit additional information or a new deliverable item in accordance with the SJU's requirements.]



Within thirty (30) calendar days of the date on which the documents accompanying a request for payment are approved by the SJU and upon fulfilment of all contractual obligations under this Contract by the Contractor [*Consortium*], the final payment corresponding to the relevant invoices shall be made.

[For Contractors established in Belgium, the provisions of the Contract constitute a request for VAT exemption No 450, provided the Contractor includes the following statement in his invoice(s): “Exonération de la TVA, article 42, paragraphe 3.3 du code de la TVA (circulaire 2/1978)” or an equivalent statement in the Dutch or German language.]]

I.4.4. Milestone Payment Plan

The SJU payments shall be made to the Contractor [*Coordinator*] by bank transfer and according to the following Milestone Payment Plan:



Table 1: Deliverables and Milestones

<i>No</i>	<i>Deliverables</i>	<i>Description</i>	<i>Due date for submission of the Deliverables</i>	<i>Corresponding Payment</i>	<i>Payment due date</i>
D0	Project Plan	Updated Project Plan based on outcome of Kick-off meeting	T ₀ + 2w		
D1	Report on relevant experience	Review of existing models/methodologies	T ₀ + 6w		
D2a	Methodology and ATM Performance Model	Initial Guidance Material	T ₀ + 10w		
		Gate Review	T ₀ + 12w		
D2b	Methodology and ATM Performance Model	Updated Guidance Material and Model – 1 st version	T ₀ + 16w		
D3a	Worked Example	Worked example of the Model including User Manual	T ₀ + 16w		
D4	Workshop	Stakeholders Workshop	T ₀ + 18w		
D4a	Workshop report	Workshop report	T ₀ + 20w		
D2c	ATM Performance Model	Update of Guidance Material and Model based on the Workshop	T ₀ + 22w		
D2d, D3b	Final ATM Performance Model	Model and Final Guidance Material	T ₀ + 24w		



ARTICLE I.5 – BANK ACCOUNT

Payments shall be made to the Contractor's [*Coordinator's*] bank account identified as follows:

Name of bank:
Address of branch in full:
Exact designation of account holder:
[*XX The Coordinator*]
Full account number including codes:
[IBAN² code:]

All payments should be made in Euros (EUR).

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 form and shall bear the Contract number. 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:
SESAR JOINT UNDERTAKING
100, avenue de Cortenbergh
B-1000 Brussels
Belgium

Any questions about technical matters shall be addressed to:

Mr/Mrs/Ms [complete]
[Function]
SESAR Joint Undertaking
100, Avenue Cortenbergh
BE-1000 Brussels
[Telephone No.]
[FAX No.]
[E-mail address]

² BIC or SWIFT code for countries with no IBAN code.



With copy to the Legal Affairs and Contract Unit Representative nominated hereunder.

Any questions about financial, contractual and administrative matters shall be addressed to:

Mr/Mrs/Ms [complete]
[Function]
SESAR Joint Undertaking
100, Avenue Cortenbergh
BE-1000 Brussels
[Telephone No.]
[FAX No.]
[E-mail address]

With copy to the Technical Representative nominated hereabove.

Contractor [*Coordinator*]:

Any questions about technical matters shall be addressed to:

Mr/Mrs/Ms [complete]
[Function]
[*Company name*]
[Official address in full]
[Telephone No.]
[FAX No.]
[E-mail address]

With copy to the Legal Affairs and Contract Unit Representative nominated hereunder.

Any questions about financial, contractual and administrative matters shall be addressed to:

Mr/Mrs/Ms [complete]
[Function]
SESAR Joint Undertaking
100, Avenue Cortenbergh
BE-1000 Brussels
[Telephone No.]
[FAX No.]
[E-mail address]

With copy to the Technical Representative nominated hereabove.



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

I.9.1 Modes of exploitation

All studies/analysis/elaborations/thesis/materials/reports, dramatic, musical, architectural, cinematographic or other artistic work, performance, scientific work, broadcasts, designs, drawings, website layout or content, computations, documented data, database format and data, methods of creation, industrial design, discoveries produced within this Contract and for which the rights vest in the SJU and thereby the SJU has acquired the ownership in accordance with Article II.10 may be used in the following way:

- [i) distribution:
- publishing in paper copies
 - publishing in electronic form as downloadable/non-downloadable file
 - making available on internet
 - broadcasting
 - public presentation or display
 - communication through a press information services,
 - inclusion in widely accessible databases or indexes
 - in any form and by any method existing at this date and in the future



- giving access on individual requests without right to reproduce or exploit, as provided for by Regulation 1049/2001 regarding public access to European Parliament, Council and SJU documents
- ii) storage:
 - in paper format
 - in electronic format
 - in original format (sculpture, maquette etc.)
- ii) archiving in line with the applicable document management rules
- iii) iv) modifications made by the SJU or by a third party:
 - shortening
 - making a summary
 - modification of the content
 - technical changes to the content:
 - necessary correction of technical errors
 - adding new parts or functionalities
 - changing functionalities
 - providing third parties with additional information concerning the result (e.g. source code)
 - addition of new elements, paragraphs titles, leads, bolds, legend, table of content, summary, graphics, subtitles, sound, etc.,
 - preparation in audio form, preparation as a presentation, animation, pictograms story, slide-show, public presentation etc.
 - extracting a part or dividing into parts
 - use of a concept or preparation of a derivative work
 - digitisation or converting the format for storage or usage purposes
 - translate, subtitle, dub
- v) language versions:
 - working languages of EC
 - official languages of EU
 - languages used within EU
 - languages of candidate countries
- vi) use for own purposes:
 - making available to the staff of the SJU
 - making available to the SJU Members
 - making available to the persons and entities working for the SJU or cooperating with it, including: contractors, subcontractors whether legal or natural persons, EU-institutions, agencies and bodies, Member States institutions
 - installing, uploading, processing
 - arranging, compiling, combining, retrieving
 - making a copy, reproducing
- vii) allow use of results by third parties:
 - for commercial or non commercial purposes,
 - against payment, without payment or against fulfilment of other conditions



- assignment in full or in part
- giving a licence
- for a particular period or unlimited in time]

Where the SJU becomes aware that scope of modifications exceeds the scope envisaged in the Contract the creator shall be consulted. The creator will be obliged to provide his response within [two weeks]. He shall provide his agreement including any suggestions of modifications free of charge. The creator may refuse the intended modification only when it may harm his honour, reputation or distort integrity of the work.

I.9.2 Pre-existing rights, intermediaries, creators' rights

Where industrial and intellectual property rights, including rights of ownership and use of the Contractor [*the Consortium members*] and third parties, exist prior to the Contract being entered into, ("pre-existing rights") the Contractor [*Consortium*] shall establish a list which shall specify all pre-existing rights and disclose it to the SJU at the latest when delivering a final result.

All pre-existing rights to delivered results shall vest in the SJU and thereby under the terms of the Contract be effectively transferred to the SJU, as provided for in Article I.9.1.

The Contractor [*the Consortium members*] shall present relevant and exhaustive proofs of acquiring all necessary rights [together with delivery of the final report at the latest] [together with presentation of relevant result] [*specify other earlier stage*]. The latter should be fulfilled by presentation of [the contractors', all subcontractors' intermediating in the transfer of rights and creators' statements prepared in accordance with [annex A1] [annexes A1 and A2]] [and] [the following information and documents:

- Name and version number of the software product
- 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 origin easily
- Full identity of the author, developer, creator, translator, data entry person, graphic designer, publisher, editor, photographer
- Copy of the licence to use the product or reference to it
- Agreement transferring the right to the product to the Contractor [*the Consortium members*]
- Text of the disclaimer notice]
- In case parts of the results were created by employees of the Contractor [*the Consortium members*], documentary evidence shall be provided as to how the creators' or authors' rights were transferred to the Contractor [*the Consortium member concerned*], i.e. a copy of the relevant agreement or extract from the employment contract should be provided.

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I.9.3 Partial vesting of rights (pre-existing or not pre-existing)

In case the partial vesting of particular rights to the results was envisaged in the tender specification and the offer, the Contractor [*the Consortium members*] shall list precisely at the moment of delivery of the final report at the latest all materials, information, IT tools,



methodology and any other results or parts of the result to which third persons have rights, even if originally owned by the Contractor [*the Consortium member*], or for which the right is not to be unconditionally given to the SJU. For every listed item the Contractor [*the Consortium member*] shall describe precisely the scope of pre-existing rights and not pre-existing rights and the scope and the way, direct or indirect, of the partial vesting and thereby the effective transfer of rights to the SJU.

The information obligation refers also to the intention of using any listed item referred to in the first paragraph for which the rights are already entirely or partially owned by the SJU. This obligation is in addition to the duty to disclose pre-existing rights referred in Article I.9.2.

ARTICLE I.10 – TERMINATION OF THE CONTRACT

Should the SJU terminate the Contract, the Contractor [*the Consortium*] shall only be entitled to payment corresponding to part-performance of the Contract before the termination date. Article II.14.4 applies accordingly. On receipt of the letter terminating the Contract, the Contractor [*the Consortium*] shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He [*It*] shall draw up the documents required by the Special Conditions for the services rendered up to the date on which termination takes effect, within a period not exceeding sixty (60) days from that date.

ARTICLE I.11 – CONTRACT CONCLUDED DURING STANDSTILL PERIOD

In case this Contract was signed by both the SJU and the Contractor [*the Consortium*] before the expiry of 14 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.



SIGNATURES

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

For the SESAR Joint Undertaking,
Mr Patrick KY,
Executive Director

signature[s]: _____

signature: _____

Done at [Brussels], [date]

Done at Brussels, [date]

In duplicate in English.



ANNEX I

GENERAL CONDITIONS FOR SERVICE CONTRACTS

ARTICLE II.1 – PERFORMANCE OF THE CONTRACT

- II.1.1.** The Contractor [*the Consortium*] shall perform the Contract to the highest professional standards. The Contractor [*the Consortium member*] 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 [*the Consortium member*] 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 [*the Consortium member's*] staff in the Contract shall relate exclusively to individuals involved in the performance of the Contract.
- II.1.4.** The Contractor [*the Consortium member*] 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 [*the Consortium member*] shall neither represent the SJU nor behave in any way that would give such an impression. The Contractor [*the Consortium member*] shall inform third parties that he does not belong to the European public service.
- II.1.6.** The Contractor [*the Consortium member*] shall have sole responsibility for the staff who executes the tasks assigned to him.
- The Contractor [*the Consortium member*] shall make provision for the following employment or service relationships with his staff:
- staff executing the tasks assigned to the Contractor [*the Consortium member*] may not be given orders direct by the SJU;
 - 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 [*the Consortium*].
- II.1.7.** In the event of disruption resulting from the action of a member of the Contractor's [*the Consortium's*] staff working on SJU premises or in the event of the expertise of a member of the Contractor's [*the Consortium's*] staff failing to correspond to the profile required by the Contract, the Contractor [*the Consortium member*] 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 [*the Consortium*] 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 [*the Consortium*] 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 [*the Consortium*] 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 [*the Consortium*] 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 [*the Consortium members*] in the 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 [*the Consortium*] 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 [*the Consortium member*] or by its [*their*] employees, the Contractor [*the Consortium*] shall remain liable without any limitation as to the amount of the damage or loss.
- II.2.3.** The Contractor [*the Consortium*] 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 [*the Consortium*] 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 [*the Consortium*] shall assist the SJU. Expenditure incurred by the Contractor [*the Consortium*] to this end may be borne by the SJU.
- II.2.5.** The Contractor [*the Consortium*] shall take out insurance against risks and damage relating to performance of the Contract if required by the relevant applicable legislation. He [*It*] 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 [*the Consortium*] 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 [*the Consortium*] 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 [*the Consortium member*] 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 [*the Consortium member*] shall replace, immediately and without compensation from the SJU, any member of his staff exposed to such a situation.

II.3.2. The Contractor [*the Consortium member*] shall abstain from any contact likely to compromise his independence.

II.3.3. The Contractor [*the Consortium member*] 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 [*the Consortium member*] 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 [*the Consortium member*] 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 [*the Consortium member*] shall continue to be bound by this undertaking after completion of the tasks.



II.4.2. The Contractor [*the Consortium member*] 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 [*the Consortium member*] shall have the right of access to his/her personal data and the right to rectify any such data. Should the Contractor [*the Consortium member*] 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@sesarju.eu.

II.5.2 The Contractor [*the Consortium member*] 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 Consortium*], the Contractor [*the Consortium*] 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 [*the Consortium member*] 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 [*the Consortium members*] 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 [*the Consortium*] 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 [*the Consortium*] 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 [*the Consortium*] 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.20.

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.

ARTICLE II.8 – ASSIGNMENT

- II.8.1.** The Contractor [*Consortium*] shall not assign the rights and obligations arising from the Contract, in whole or in part, to any third Party without the 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 [*the Consortium*] 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 [*the Consortium*] 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 Consortium member*], 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 [*the Consortium*] 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 [*the Consortium*] 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 [*the Consortium*] only and do not represent the SJU's official position.
- II.9.4.** The use of information obtained by the Contractor [*the Consortium*] 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 [*the Consortium*].

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 Consortium*], 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 [*the Consortium members*] 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 [*the Consortium*] 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 [*the Consortium*] cannot be used by the SJU without written consent of the Contractor [*the Consortium*], unless the tender specification explicitly provides for it to be treated as self-contained result.
- II.10.4** The Contractor [*the Consortium*] 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 [*the Consortium*] 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 [*the Consortium*] 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 [*the Consortium*] 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 [*the Consortium*] 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 [*the Consortium*] 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 [*the Consortium*] 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 [*the Consortium*] 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 [*the Consortium*] 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 [*the Consortium*] is unable to perform his [*its*] 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 [*the Consortium*] fail to perform his obligations under the Contract within the time limits set by the Contract, then, without prejudice to the Contractor's [*the Consortium'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 amount specified in Article I.3.1;



d is the duration specified in Article I.2.3 expressed in days

The Contractor [*the Consortium*] 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 [*the Consortium*] 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 or any part thereof. Suspension shall take effect on the day the Contractor [*the Consortium*] 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 [*the Consortium*] to resume the service suspended or inform that it is proceeding with contract termination. The Contractor [*the Consortium*] shall not be entitled to claim compensation on account of suspension of the Contract or of part thereof.

ARTICLE II.14 – TERMINATION BY THE SJU

II.14.1. The SJU may terminate the Contract in the following circumstances:

- (a) where the Contractor [*the Consortium member*] is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) where the Contractor [*the Consortium member*] has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;
- (c) where the SJU has evidence or seriously suspects the Contractor [*the Consortium member*] or any related entity or person, of professional misconduct;
- (d) where the SJU has evidence or seriously suspects the Contractor [*the Consortium member*] or any related entity or person, of fraud, corruption, involvement in a



criminal organisation or any other illegal activity detrimental to the European Union's and/or SJU's financial interests;

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

II.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 [*the Consortium member*] 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 [*the Consortium*], 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 in accordance with this article and without prejudice to any other measures provided for in the Contract, the Contractor [*the Consortium*] 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 [*the Consortium*] shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He [*it*] 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 [*the Consortium*] 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 [*the Consortium*] 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 Consortium*], the SJU may refuse to make payments, may recover amounts already paid or may terminate all the contracts concluded with the Contractor [*the Consortium*], in proportion to the seriousness of the errors, irregularities of fraud.

ARTICLE II.15 – INVOICING AND PAYMENTS

II.15.1. Pre-financing guarantee:

Where required by Article I.4.1, or if the pre-financing is over €150 000, the Contractor [*the Consortium*] shall provide a financial guarantee in the form of a bank guarantee or equivalent supplied by a bank or an authorised financial institution (guarantor) equal to the amount indicated in the same article to cover pre-financing under the Contract. Such guarantee may be replaced by a joint and several guarantee by a third party.

The guarantor shall pay to the SJU at its request an amount corresponding to payments made by it to the Contractor [*the Consortium*] which have not yet been covered by equivalent service rendered on his part.

The guarantor shall stand as first-call guarantor and shall not require the SJU to have recourse against the principal debtor (the Contractor) [*the Consortium*] .

The guarantee shall specify that it enters into force at the latest on the date on which the Contractor [*the Consortium*] receives the pre-financing. The guarantee shall be retained until the pre-financing has been cleared against interim payments or payment of the balance to the Contractor [*the Consortium*] . It shall be released the following month or, in the absence of such clearing, four months after the issuance of a corresponding debit note. The cost of providing such guarantee shall be borne by the Contractor [*the Consortium*].



II.15.2. Interim payments and payment of the balance:

Payments shall be executed only if the Contractor [*the Consortium*] 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 [*the Coordinator*] 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.15.3. Payment currency and costs:

Payments are executed in the currency of the contract.

Costs of the transfer are borne in the following way:

- costs of dispatch charged by the bank of the SJU are borne by the SJU,
- cost of receipt charged by the bank of the Contractor [*the Consortium*] are borne by the Contractor [*the Consortium*],
- all costs of repeated transfer caused by one of the parties are borne by the party who caused repetition of the transfer.

ARTICLE II.16 – GENERAL PROVISIONS CONCERNING PAYMENTS

II.16.1. Payments shall be deemed to have been made on the date on which the SJU's account is debited.

II.16.2. The payment periods referred to in Article I.4 may be suspended by the SJU at any time if it informs the Contractor [*the Coordinator*] that his invoice is not admissible, either because the amount is not due or because the necessary supporting documents have not been properly produced. The SJU may proceed with further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the invoice is admissible.



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

- II.16.3.** In the event of late payment the Contractor [*the Consortium*] shall be entitled to interest, provided the calculated interest exceeds EUR 200. In case interest does not exceed EUR 200, the Contractor [*the Consortium*] 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 SJU may not be deemed to constitute late payment.

ARTICLE II. 17 – TAXATION

- II.17.1.** The Contractor [*the Consortium*] shall have sole responsibility for compliance with the tax laws which apply to him [*it*]. Failure to comply shall make the relevant invoices invalid.
- II.17.2.** The Contractor [*the Consortium*] recognises that the SJU is, as a rule, exempt from all taxes and duties, including value added tax (VAT), pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union.
- II.17.3.** The Contractor [*the Consortium*] 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.17.4.** Invoices presented by the Contractor [*the Coordinator*] shall indicate his place of taxation for VAT purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

ARTICLE II.18 - REIMBURSEMENTS

- II.18.1.** Where provided by the Special Conditions or by Annex II, the SJU shall reimburse the expenses which are directly connected with execution of the tasks on production of original supporting documents, including receipts and used tickets.



II.18.2. Travel and subsistence expenses shall be reimbursed, where appropriate, on the basis of the shortest itinerary.

II.18.3. 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.18.4. 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.18.5. The cost of shipment of equipment or unaccompanied luggage shall be reimbursed provided the SJU has given prior written authorisation.

II.18.6. 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.

ARTICLE II.19 – RECOVERY

II.19.1. If total payments made exceed the amount actually due or if recovery is justified in accordance with the terms of the Contract, the Contractor [*the Consortium*] 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.19.2. 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.16.3. Interest shall be payable from the calendar day following the due date up to the calendar day on which the debt is repaid in full.



II.19.3. The SJU may, after informing the Contractor [*the Consortium*] recover amounts established as certain, of a fixed amount and due by offsetting, in cases where the Contractor [*the Consortium*] 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.20 – CHECKS AND AUDITS

II.20.1. 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.

II.20.2. 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.

II.20.3. 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.



ANNEX II

TENDER SPECIFICATIONS **(INVITATION TO TENDER N° SJU/LC/0085-CFT** **OF 26 OCTOBER 2012)**



ANNEX III

CONTRACTOR'S [CONSORTIUM'S] TENDER N° [...] OF [...]



ANNEX IV

[ACCESSION OF CONSORTIUM MEMBERS TO THE AGREEMENT]

(to be filled in by each Member of the Consortium)

[full name and legal form of the Member], represented for the purpose hereof by *[name of legal representative) (function) [and/or (name of legal representative), (function)], or her/his/their authorised representative, established in (full address: city/state/province/country (person legally authorised to act on behalf of the legal entity)]* acting as its legal authorised representative, hereby consents to accede to the SJU Contract Number SJU/01...CTR relating to the performance of Project *[name]*, between the SESAR Joint Undertaking and *[name of the coordinator] established in (full address: city/state/province/country)]* and accepts in accordance with the provisions of the aforementioned Contract all the rights and obligations established by this Contract.

Done in three (3) copies, of which one shall be kept by the Coordinator and one by *[name of the Consortium Member]*, the third being sent to the SJU by the Coordinator in accordance with Article 3 of the Agreement.

Name of Legal Entity <i>[full name of the coordinator]</i>	Name of Legal Entity <i>[full name of the Member]</i>
Name of legal representative: <i>(written out in full)</i>	Name of legal representative: <i>(written out in full)</i>
Signature of legal representative:	Signature of legal representative:
Date:	Date:
Stamp of the organisation	Stamp of the organisation



ANNEX V

[CONSORTIUM NOT SET UP AS A LEGAL ENTITY]

MEMBERSHIP OF A CONSORTIUM

The Coordinator shall send to the SJU one duly completed and signed Annex IV (“Accession of Consortium Members”) of this Agreement per Consortium Member no later than forty-five (45) calendar days after the Effective Date.

Should any legal entity identified above, fail or refuse to accede to the Agreement within the deadline established in the previous paragraph, the SJU is no longer bound by its offer to the said legal entity(ies).

The Consortium may propose to the SJU, within the time-limit to be fixed by the latter, appropriate solutions to ensure the performance of the Project.

The Coordinator and the Consortium Member(s) are deemed to have concluded a consortium agreement (the “Consortium Agreement”) regarding the internal organisation of the Consortium. The Consortium Members and the Coordinator form together the Consortium.

The Coordinator and the Consortium Member(s) are collectively referred to as either the Consortium.

The composition and organisation of a Consortium shall be entirely transparent to the SJU.

The SJU may object to any change in the composition of the Consortium.

COORDINATOR

The Consortium Members shall be represented in this Agreement by a single entity acting as the Coordinator (the “Coordinator”).

The Coordinator, which shall be appointed among the Consortium Members, shall:

- perform its duties in accordance with the provisions of the Consortium Agreement;
- seek and obtain the involvement and approval of the other Consortium Member(s) in all dealings with the SJU;



- arrange for all meetings with the SJU, after having informed the other Consortium Member(s) on all such meetings;
- obtain or provide all documents or information that are necessary for the other Consortium Members to perform the Project and to meet their obligations under the Agreement.

The Consortium Members may replace the Coordinator at any time after five (5) days notice to the SJU, in accordance with Article 8 (“Notices - Correspondence”) of the Agreement.

COORDINATOR POWERS

The Coordinator shall consult with and obtain the approval of the other Consortium Members for any action it may take in their name and on their behalf. The scope of such authority (e.g., commitments, collection and distribution of any sums owed or that could be owed to the Consortium shall be freely determined by the Consortium Members under the Consortium Agreement).

The Coordinator shall have authority to undertake any commitment in the name and on behalf of the other Consortium Members.

CONSORTIUM MEMBERS CONTRIBUTIONS

The participation to be made by each Consortium Member to the selected Project shall be defined in its Proposal.

The Consortium Members shall freely allocate the work to be done for each agreed Task between them so that the total work performed by all the Consortium Members together comprises the entire Project.

SUBCONTRACTING BY THE CONSORTIUM MEMBERS

The Consortium Members may, at their own expense, subcontract with any sub-supplier or independent Consortium to perform any portion of the Project allocated to the Consortium subject to compliance with the Agreement and prior approval of the SJU.

LIABILITIES

The Coordinator is liable towards the SJU for the Consortium’s overall undertaking.

In case of failure by the Coordinator, the Consortium Members shall be jointly and severally liable towards the SJU.



The liabilities of a Consortium towards the SJU are regulated by the Agreement. The Consortium Members shall organise said liabilities between themselves in the Consortium Agreement.



ANNEX VI

STATEMENT OF CONTRACTOR [THE CONSORTIUM MEMBERS] **CONCERNING RIGHT TO DELIVERED RESULT**

[Option 1: general statement -low risk situations, e.g. limited use of the results]

I, [insert name of the authorised representative of the Contractor] [the Consortium member] representing [insert name of the Contractor[the Consortium member]], party to the Contract [insert title and/or number of the contract] warrants that the Contractor[the Consortium member] holds full right to the delivered [insert title and/or description of result] which is free of any claims, including claim of the creators who transferred all their rights and [were fully paid] [will be paid as agreed within [complete] weeks from [delivery of this statement.] [receipt of confirmation of acceptance of the work].

[Option 2: detailed statement - higher risk situations, e.g. extensive use of the results]

I, [insert name of the authorised representative of the Contractor] [the Consortium member] representing [insert name of the Contractor[the Consortium member]], party to the contract [insert title and/or number of the contract] warrants that [, except for [the parts listed in [complete by reference to the Tender Specification and/or offer]] [or list parts for which rights are not transferred],] the Contractor [the Consortium member] holds a right to the delivered [insert title and/or description of result] which is/are free of any claims of third parties.

Work was prepared by [insert names of creators] [, except for [the parts listed in [complete by reference to the Tender Specification and/or offer]] [or list parts that pre-existed and for which rights are not transferred],] is [original and] free of rights of third persons. Creators transferred all their rights to the work (excluding moral rights of natural persons) to [insert name of the entity that received rights from the creators] [through a contract of [insert date] [a relevant extract of which is] herewith attached.

Creators [received all their remuneration on [insert date]] [will receive all their remuneration as agreed within [complete] weeks from [delivery of this statement] [receipt of confirmation of acceptance of the work]. [The statement of the creators confirming payment is attached].

Date, place, signature



ANNEX VII

STATEMENT OF CREATOR / INTERMEDIARY IN DELIVERY

of the *[title of the result]*
within the Framework Contract number *[complete]*
Specific Contract No *[complete]*

concluded between the SESAR Joint Undertaking and *[name of the contractor(s)]*

I, *[insert name of the authorised representative of the intermediary]* representing *[insert name of the intermediary]* state that I am the right holder of: *[identify the relevant parts of the result]* *[which I created]* *[for which I received rights from [insert name]]*.

I am aware of the above contract, especially Articles I.9, II.10 and point *[insert reference]* of the Request for Service and I confirm that I transferred all the relevant rights to *[insert name]*.

I declare that *[I received full remuneration.]* *[I agreed to receive remuneration by [insert date]].*

[I also confirm that I do not oppose my name being recalled when the results are presented to the public and confirm that the results can be divulged.]

Date, place, signature