



DRAFT FRAMEWORK CONTRACT

No. SJU/LC/00...-CTR

*Selection of Large Account Reseller (LAR) services for
the acquisition of Microsoft software products and
licences*

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 last modified by Council Regulation (EC) 1361/2008 of 16 December 2008,

Located at 100 avenue de Cortenbergh, BE-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 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,]]

OF THE OTHER PART,

HAVE AGREED

the **I Special Conditions**, the **II General Conditions** and the following Annexes:

- Annex I** – Power of Attorney
- Annex II** – Legal Entity(ies) Form(s) and Bank Account Form(s)
- Annex III** – Tender Specifications (Invitation to tender ref. SJU/LC/0049-CFT) – Original kept at the SJU premises
- Annex IV** – Contractor's Tender (No [*complete*] of [*complete*]) – Original kept at the SJU premises
- Annex V** – Order Form (for the provision of goods and services) – Model
- Annex VI** – Service Level Agreement

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

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

Subject to the above, the several instruments forming part of this 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.

I – SPECIAL CONDITIONS

ARTICLE I.1 - SUBJECT

- I.1.1** The subject of the Contract is the provision of Large Account Reseller's (LAR) services for the acquisition of Microsoft software products and licenses under:
- the Enterprise Subscription Agreement signed between the European Community represented by the Commission of the European Communities and Microsoft on 22 May 2007 (not attached hereto but known to both Parties), and
 - the Select Subscription Agreement signed between the European Community represented by the Commission of the European Communities and Microsoft on 22 May 2007 (not attached hereto but known to both Parties).
- I.1.2** Upon implementation of the Contract, the Contractor shall supply (and assemble if necessary) the goods and shall provide the services related to them in accordance with the Annexes attached hereto.
- I.1.3** The Contract confers on the Contractor an exclusive right to supply the goods and to provide the services referred to in the above paragraph.
- I.1.4** Signature of the Contract imposes no obligation on the SJU to purchase. Only the implementation of the Contract through Order Forms is binding on the SJU.
- I.1.5** All Order Forms implementing the Contract shall conform to the terms set out therein.

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 take place before the date on which the Contract enters into force. Order Forms may under no circumstances be placed before the date on which the Contract enters into force.
- I.2.3** The Contract is concluded for a period of one (1) year 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 pursuant to the Contract shall be returned signed before the Contract to which they refer expires.
- The Contract shall continue to apply to Order Forms executed after the Contract expires. Such Order Forms shall be executed no later than six (6) months after expiry of the Contract.
- I.2.5** The Contract may be renewed up to three (3) times, each time for a period of 1 (one) year, only before expiry of the Contract and with the express written agreement of the parties. Renewal does not imply any modification or deferment of existing obligations.

ARTICLE I.3 - PRICES

I.3.1 The Contractor grants a discount of% to the SJU in relation to the Microsoft Estimated Retail Prices.

ARTICLE I.4 – IMPLEMENTATION OF THE CONTRACT

I.4.1 Procedures for performing the Contract

i. Phases of execution of the Order Form

Sending of the Order Form

Whenever the SJU wishes services to be provided or goods to be supplied pursuant to the Contract, it shall send an Order Form to the Contractor, specifying the terms of the provision of services or supply of the goods, such as quantity, designation, quality, price, place of delivery and time allowed for delivery, in accordance with the conditions laid down in the Contract.

Acknowledgment of the Order Form by the Contractor

Within five (5) working days of an Order Form being sent by the SJU, the Contractor shall return it, duly signed and dated, thereby acknowledging receipt of the Order Form and acceptance of the terms.

Delivery

a) Date, time and place of delivery

The SJU shall be notified in writing of the exact date of delivery within the time allowed for delivery as indicated in the relevant Order Form. All deliveries shall be made at the agreed place of delivery (SESAR Joint Undertaking, 100 Avenue de Cortenbergh 1000 Brussels) from Monday till Friday between 09h00 a.m. and 17h30 p.m.

The Contractor shall bear all costs and risks involved in delivering the goods to the place of delivery indicated hereabove.

b) Consignment note

Each delivery shall be accompanied by a Consignment note in duplicate, duly signed and dated by the Contractor or his carrier, giving the Order Form reference number and particulars of the goods delivered. One copy of the Consignment note shall be countersigned by the SJU and returned to the Contractor or to his carrier.

Certificate of conformity

Signing of the Consignment note by the SJU, as provided for in subparagraph b) above, is simply an acknowledgment of the fact that the goods have been delivered and in no way implies conformity of the goods with the Order Forms.

Conformity of the goods delivered shall be evidenced by the signing of a certificate to this effect by the SJU no later than one (1) month after the date of delivery, unless provision for a different period is made in the Order Form.

Conformity shall be declared only where the conditions laid down in the Contract and in the Order Form are satisfied and the goods conform to the Annex I.

Where, for reasons attributable to the Contractor, the SJU is unable to accept the goods, the Contractor shall be notified in writing at the latest by the deadline for conformity.

Conformity of the goods delivered with the Contract

- a) The goods delivered by the Contractor to the SJU must be in conformity in quantity, quality, price and packaging with the Contract and the relevant Order Form.
- b) The goods delivered must:
 - correspond to the description given in:
 - the Enterprise Subscription Agreement for products and services listed therein, or
 - the Select Subscription Agreement for products and services listed therein;
 - be fit for any specific purpose required of them by the SJU and made known to the Contractor at the time of conclusion of the Contract and accepted by the Contractor;
 - be fit for the purposes for which goods of the same type are normally used;
 - demonstrate the quality and performance which are normal in goods of the same type and which the SJU can reasonably expect, given the nature of the goods and taking into account any public statements on the specific characteristics of the goods made by the Contractor, the producer or his representative, particularly in advertising or on labelling;
 - be packaged according to the usual method for goods of the same type or, failing this, in a way designed to preserve and protect them.

Remedy

- a) The Contractor shall be liable to the SJU for any lack of conformity which exists at the time the goods are verified.
- b) In the event of lack of conformity, without prejudice to Article II.16 regarding liquidated damages applicable to the total price of the goods concerned, the SJU shall be entitled:
 - either to have the goods brought into conformity, free of charge, by repair or replacement;
 - or to have an appropriate reduction made in the price.
- c) Any repair or replacement shall be completed within a reasonable time and without any significant inconvenience to the SJU, taking account of

the nature of the goods and the purpose for which they are required by the SJU.

- d) The term 'free of charge' in paragraph b) refers to the costs incurred to bring the goods into conformity, particularly the cost of carriage, labour and materials.

Assembly

If required by the relevant Order Form, the Contractor shall assemble the goods delivered within a period of one (1) month unless otherwise specified in the Order Form.

Any lack of conformity resulting from incorrect installation of the goods delivered shall be deemed to be equivalent to lack of conformity of the goods if installation forms part of the Contract and the goods were installed by the Contractor or under his responsibility. This shall apply equally if the product was to be installed by the SJU and was incorrectly installed owing to a shortcoming in the installation instructions.

Services provided to goods

If required by the Contract, services to goods shall be provided accordingly.

ii. General provisions concerning goods

a) Packaging

The goods shall be packaged in strong boxes or crates or in any other way that ensures that the contents remain intact and prevents damage or deterioration.

Each box shall be clearly labelled with the following information:

- SESAR Joint Undertaking and address for delivery;
- name of Contractor;
- description of contents;
- date of delivery;
- reference number and date of Order Form .

b) Guarantee

The goods shall be guaranteed against all defects in manufacture or materials for two (2) years from the date of delivery, unless provision for a longer period is made in the Enterprise Subscription Agreement and/or in the Select Subscription Agreement.

The Contractor shall guarantee that any permits and licences required for manufacturing and selling the goods have been obtained.

The Contractor shall replace at his own expense, within a reasonable time limit to be determined by agreement between the parties, any items which become damaged or defective in the course of normal use during the guarantee period.

The Contractor is responsible for any conformity defect which exists at the time of delivery, even if this defect does not appear until a later date.

The Contractor is also responsible for any conformity defect which occurs after delivery and is ascribable to non-compliance with his obligations, including failure to provide a guarantee that, for a certain period, goods used for the purposes for which they are normally used or for a specific purpose will preserve their qualities or characteristics as specified.

If part of an item is replaced, the replacement part shall be guaranteed under the same terms and conditions for a further period of the same duration as that specified above.

If a defect is found to originate in a systematic flaw in design, the Contractor must replace or modify all identical parts incorporated in the other goods that are part of the Order Form, even though they may not have been the cause of any incident. In this case, the guarantee period shall be extended as stated above.

ARTICLE I.5 – PAYMENT PERIODS

Payments under the Contract shall be made in accordance with Article II.4. Payments shall be executed only if the Contractor has fulfilled all his contractual obligations pertaining to the relevant Order Form by the date on which the invoice is submitted. Payment requests may not be made if payments for previous Order Forms have not been executed as a result of default or negligence on the part of the Contractor.

I.5.1 Payment of the balance:

The request for payment of the balance of the Contractor shall be admissible if accompanied by:

- the relevant invoices, indicating the reference number of the Contract and of the Order Form to which they refer;
- copies of the Certificate of conformity and the Consignment note drawn up in accordance with Article I.4.1 i) hereabove.

Within sixty (60) days of the date of receipt of the relevant invoice(s), payment of the balance of corresponding to the relevant invoices shall be made.

I.5.2 Bank Account

Payments shall be made to the Contractor's bank account denominated in euro, stated in the Contractor's Bank Account Form set out in Annex II.

ARTICLE I.6 – GENERAL ADMINISTRATIVE PROVISIONS

Any communication relating to the Contract shall be made in writing and shall bear the Contract and Order Form numbers. Ordinary mail shall be deemed to have been received

by the SJU on the date on which it is registered by the department responsible indicated below. Communications shall be sent to the following addresses:

SJU:

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

Contractor:

Mr/Mrs/Ms [complete]
[Function]
[Company name]
[Contact 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 the law of the European Union complemented by the Belgian law, where the Union law does not regulate the specific legal issue.
- 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 or relating to the Contract, including its execution 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. The data shall be processed solely for the purposes of the performance, management and monitoring of the Contract by the SJU without prejudice to possible transmission to the bodies charged with a monitoring or inspection task in application of Union law. 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. The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.

Where the Contract requires the processing of personal data, 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.

The data shall be confidential within the meaning of Regulation (EC) No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by Community institutions and bodies and on the free movement of such data. The Contractor shall limit access to the data to the staff strictly necessary for the performance, management and monitoring of the Contract.

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 persons from using 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 I.9 – TERMINATION

Should the SJU terminate the Contract, the Contractor shall only be entitled to payment corresponding to the goods and services ordered and provided before the termination date. 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 delivered good and the services rendered up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

ARTICLE I.10– SPECIFIC QUALITY STANDARDS

Quality parameters and performance indicators are fixed in the Service Level Agreement attached hereto as Annexe VI.

ARTICLE I.11– SPECIFIC MAINTENANCE SECURITY RULES

The Framework Contract shall provide for the possibility of conducting audits (security or other) by third parties.

II – GENERAL CONDITIONS

ARTICLE II. 1 – PERFORMANCE OF THE CONTRACT

- II.1.1** The Contractor shall perform the Contract to the highest professional standards. The Contractor shall have sole responsibility for complying with any legal obligations incumbent on him, notably those resulting from employment, tax and social legislation.
- II.1.2** The Contractor shall have sole responsibility for taking the necessary steps to obtain any permit or licence required for performance of the Contract under the laws and regulations in force at the place where the services assigned to him are to be provided.
- II.1.3** Without prejudice to Article II.3 any reference made to the Contractor's staff in the Contract shall relate exclusively to individuals involved in the performance of the Contract.
- II.1.4** The Contractor must ensure that any staff performing the Contract have the professional qualifications and experience required for the provision of the services 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 provide the services assigned to him.

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

- staff providing the services assigned to the Contractor 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.
- 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 provision of the services

assigned to him resulting from the replacement of staff in accordance with this Article.

- II.1.8** Should any unforeseen event, action or omission directly or indirectly hamper provision of the services, either partially or totally, the Contractor shall immediately and on 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 in accordance with the provisions laid down therein, 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 impose penalties or liquidated damages provided for in Article II.16.

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 caused by himself in performance of the Contract, including in the event of subcontracting under Article II.13. The SJU shall not be liable for any act or default on the part of the Contractor in performance of the Contract.
- II.2.3** The Contractor shall provide compensation in the event of any action, claim or proceeding brought against the 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. A copy of the instructions given and the undertakings made in this respect shall be sent to the SJU should it so request.

ARTICLE II. 4 – INVOICING AND PAYMENTS

II.4.1 Pre-financing:

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

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

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

The guarantee shall specify that it enters into force at the latest on the date on which the Contractor receives the pre-financing. The SJU shall release the guarantor from its obligations as soon as the Contractor has demonstrated that any pre-financing has been covered by equivalent work. The guarantee shall be retained until the pre-

financing has been deducted from interim payments or payment of the balance to the Contractor. It shall be released the following month or, at the latest, three months after the issuance of a recovery order. The cost of providing such guarantee shall be borne by the Contractor.

II.4.2 Interim payment:

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

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

If the report is a condition for payment, on receipt the 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 report.

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

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

II.4.3 Payment of the balance:

Within sixty days of completion of the services referred to in each order the Contractor shall submit to the SJU a formal request for payment accompanied by those of the following documents, which are provided for in the Special Conditions:

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

If the report is a condition for payment, on receipt the 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 report.

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

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

ARTICLE II. 5 – GENERAL PROVISIONS CONCERNING PAYMENTS

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

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

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

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

ARTICLE II. 6 – RECOVERY

II.6.1 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.6.2 In the event of failure to pay by the deadline specified in the request for reimbursement, the sum due shall bear interest at the rate indicated in Article II.5.3. Interest shall be payable from the calendar day following the due date up to the calendar day on which the debt is repaid in full.

II.6.3 In the event of failure to pay by the deadline specified in the request for reimbursement, 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 Union or the European Atomic Energy Community that is certain, of a fixed amount and due. The SJU may also claim against the guarantee, where provided for.

ARTICLE II. 7 - REIMBURSEMENTS

II.7.1 Where provided by the Special Conditions, the SJU shall reimburse the expenses that are directly connected with provision of the services on production of original supporting documents, including receipts and used tickets.

II.7.2 Travel and subsistence expenses shall be reimbursed, where appropriate, on the basis of the shortest itinerary.

II.7.3 Travel expenses shall be reimbursed as follows:

- a) travel by air shall be reimbursed up to the maximum cost of an economy class ticket at the time of the reservation;
- b) travel by boat or rail shall be reimbursed up to the maximum cost of a first class ticket;
- c) travel by car shall be reimbursed at the rate of one first class rail ticket for the same journey and on the same day;
- d) travel outside Union territory shall be reimbursed under the general conditions stated above provided the SJU has given its prior written agreement.

II.7.4 Subsistence expenses shall be reimbursed on the basis of a daily allowance as follows:

- a) for journeys of less than 200 km (return trip) no subsistence allowance shall be payable;
- b) daily subsistence allowance shall be payable only on receipt of a supporting document proving that the person concerned was present at the place of destination;
- c) daily subsistence allowance shall take the form of a flat-rate payment to cover all subsistence expenses, including accommodation, meals, local transport, insurance and sundries;
- d) daily subsistence allowance, where applicable, shall be reimbursed at the rate specified in Article I.3.

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

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

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

ARTICLE II. 9 – CONFIDENTIALITY

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

II.9.2. The Contractor shall obtain from each member of his staff, board and directors an undertaking that they will respect the confidentiality of any information which is linked, directly or indirectly, to provision of the services 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 services.

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

II.10.1 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 or relating to the Contract, in particular the identity of the Contractor, the subject matter, the duration, the amount paid and the reports. Where personal data is concerned, Article I.9 shall apply.

II.10.2 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 publish the documents or information supplied, the Contractor may not have them distributed or published elsewhere without prior written authorisation from the SJU.

II.10.3 Any distribution or publication of information relating to the Contract by the Contractor shall require prior written authorisation from the SJU and shall mention the amount paid by the Union. It shall state that the opinions expressed are those of the Contractor only and do not represent the SJU's official position.

II.10.4 The use of information obtained by the Contractor in the course of the Contract for purposes other than its performance shall be forbidden, unless the SJU has specifically given prior written authorisation to the contrary.

ARTICLE II. 11 – TAXATION

- II.11.1** The Contractor shall have sole responsibility for compliance with the tax laws which apply to him. Failure to comply shall make the relevant invoices invalid.
- II.11.2** The Contractor recognises that the 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.11.3** The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the goods and services required for performance of the Contract are exempt from taxes and duties, including VAT.
- II.11.4** Invoices presented by the Contractor shall indicate his place of taxation for VAT purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

ARTICLE II. 12 – FORCE MAJEURE

- II.12.1** Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the contracting parties which prevents either of them from performing any of their obligations under the Contract, was not due to error or negligence on their part or on the part of a subcontractor, and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making it available, labour disputes, strikes or financial problems cannot be invoked as force majeure unless they stem directly from a relevant case of force majeure.
- II.12.2** Without prejudice to the provisions of Article II.1.8, if either contracting party is faced with force majeure, it shall notify the other party without delay by registered letter with acknowledgment of receipt or equivalent, stating the nature, likely duration and foreseeable effects.
- II.12.3** Neither contracting party shall be held in breach of its contractual obligations if it has been prevented from performing them by force majeure. Where the Contractor is unable to perform his contractual obligations owing to force majeure, he shall have the right to remuneration only for services actually provided.
- II.12.4** The contracting parties shall take the necessary measures to reduce damage to a minimum.

ARTICLE II. 13 – SUBCONTRACTING

- II.13.1** The Contractor shall not subcontract without prior written authorisation from the SJU nor cause the Contract to be performed in fact by third parties.
- II.13.2** 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.13.3 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.17.

ARTICLE II. 14 – ASSIGNMENT

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

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

ARTICLE II. 15 – TERMINATION BY THE SJU

II.15.1 The SJU may terminate the Contract and/or a pending order in the following circumstances:

- (a) where the Contractor is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) where the Contractor has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;
- (c) where the SJU has evidence or seriously suspects the Contractor or any related entity or person, of professional misconduct;
- (d) where the SJU has evidence or seriously suspects the Contractor or any related entity or person, of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Union's financial interests;
- (e) where the SJU has evidence or seriously suspects the Contractor or any related entity or person, of substantial errors, irregularities or fraud in the award procedure or the performance of the Contract;
- (f) where the Contractor is in breach of his obligations under Article II.3;
- (g) where the Contractor was guilty of misrepresentation in supplying the information required by the SJU as a condition of participation in the Contract procedure or failed to supply this information;

- (h) where a change in the Contractor's legal, financial, technical or organisational situation could, in the SJU's opinion, have a significant effect on the performance of the Contract;
- (i) where provision of the services under a pending order has not actually commenced on the date foreseen;
- (j) where the Contractor is unable, through his own fault, to obtain any permit or licence required for performance of the Contract;
- (k) where the Contractor, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period following receipt of the formal notice, remains in serious breach of his contractual obligations;
- (l) 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.15.2 In case of force majeure, notified in accordance with Article II.12, either contracting party may terminate the Contract, where performance thereof cannot be ensured for a period corresponding to at least to one fifth of the period laid down in Article I.2.3.

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

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

II.15.4 Consequences of termination:

In the event of the SJU terminating the Contract or a pending order in accordance with this Article and without prejudice to any other measures provided for in the Contract, the Contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required by the Special Conditions for the services provided 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 provide 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 enforceable under the Contract.

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

Where, after the award of the Contract, the award procedure or the performance of the Contract prove to have been subject to substantial errors, irregularities or fraud, and where such errors, irregularities or fraud are attributable to the Contractor, the 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 of fraud.

ARTICLE II. 16 – LIQUIDATED DAMAGES

Should the Contractor fail to perform his obligations under the Contract within the time limits set by the Contract, then, without prejudice to the Contractor's actual or potential liability incurred in relation to the Contract or to the SJU's right to terminate the Contract, the SJU may decide to impose liquidated damages of 0.2% of the amount of the relevant purchase per calendar day of delay. The Contractor may submit arguments against this decision within thirty days of notification by registered letter with acknowledgement of receipt or equivalent. In the absence of reaction on his part or of written withdrawal by the 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. 17 – CHECKS AND AUDITS

- II.17.1.** The Contractor shall provide free of charge all the detailed information requested by the SJU or by an outside body of the SJU's choice with a view to checking that the Contract is being properly performed.
- II.17.2.** The Contractor shall keep at the SJU's disposal the original or, in exceptional cases, duly authenticated copies of all documents relating to the Contract for a period of five (5) years from payment of the balance.
- II.17.3.** The SJU may, at any time within the period specified in the paragraph above, arrange for an audit to be carried out either by an outside body of its choice or by the SJU itself. The object of such an audit shall be limited to checking that the Contractor has complied with the Contract. The cost shall be borne by the SJU.
- II.17.4.** In order to carry out these audits, the SJU and the outside bodies concerned shall have the total on-the-spot access at all times to all the information needed to

check that the Contractor has complied with the Contract, including information in electronic format.

II. 17.5. The Court of Auditors and 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 of the documents of the Contractor and its sub-contractors which have received Union funds, including inspections at the premises of the final beneficiaries, from the date of signature of this Contract up to five (5) years after final payment of the balance.

ARTICLE II. 18 – AMENDMENTS

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

ARTICLE II. 19 – SUSPENSION OF THE CONTRACT

Without prejudice to the SJU's right to terminate the Contract, the SJU may at any time and for any reason suspend execution of the Contract, pending orders 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 may at any time following suspension give notice to the Contractor to resume the work suspended. The Contractor shall not be entitled to claim compensation on account of suspension of the Contract, of the orders, or of part thereof.

SIGNATURES

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

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

signature: _____

signature: _____

Done at [Brussels], [date]

Done at Brussels, [date]

In duplicate in English.