



DRAFT SERVICE CONTRACT

No. SJU/LC/0082-CTR

*Performance of an economic study to
elaborate Business Cases associated to a pilot
common project*



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 in full]

[*official legal form*]

[*statutory registration number*]

[official address in full]

[*VAT registration number*]

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

(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 **Special Conditions** and the **General Conditions** below and the following
Annexes:

Annex I – Tender Specifications (Invitation to Tender No SJU/LC/0082-CFT of
9 August 2012)

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

Annex III – Work Order (for services under Lot 2)

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

The terms set out in the Special Conditions shall take precedence over those in the other parts of the Contract. The terms set out in the General Conditions shall take precedence over those in the Annexes. The terms set out in the Tender Specifications (Annex I) shall take precedence over those in the Work Orders (Annex III), the latter taking precedence over the Tender (Annex II).

Subject to the above, the several instruments forming part of the Contract are to be taken as mutually explanatory. Ambiguities or discrepancies within or between such parts shall be explained or rectified by a written instruction issued by the SJU, subject to the rights of the Contractor under Article I.8 should he dispute any such instruction.



I – SPECIAL CONDITIONS

ARTICLE I.1 - SUBJECT

- I.1.1** The purpose of this Contract is to set forth the terms and conditions according to which the Contractor undertakes to perform an economic study as well as complementary advisory activities as defined in Annex I attached hereto (“*Services*”).
- I.1.2** The Services are composed of the following elements:
- Lot 1 (“*Basic Services*”): Performance of an economic study to support the SJU to elaborate the Business Cases associated to a pilot common project,
 - Lot 2 (“*Optional Services*”): Performance of complementary advisory activities, in accordance with Annex I.
- I.1.3** Implementation of the Basic Services will commence upon entry into force of the Contract in accordance with Annex I.
- I.1.4** The Optional Services will be implemented through Work Orders placed between the SJU and the Contractor as per Article I.4 below. Signature of the Contract imposes no obligation on the SJU to request performance of the Optional Services. Only implementation of the Contract through Work Orders is binding on the SJU. Once the Contract has entered into force, the Contractor shall provide the Optional Services subject to the terms and conditions of the Contract.
- I.1.5** The Contract does not confer on the Contractor any exclusive right to provide the Services described in Annex I 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.
- I.2.2** Under no circumstances may implementation of the Basic Services commence before the date on which the Contract enters into force. The final deliverables as described in Section 2.2 C) of Annex I shall be finalised by the end of April 2013 at the latest, unless agreed otherwise in writing by the Parties.
- I.2.3** Provision of the Optional Services may under no circumstances begin before the date on which the Contract and the specific Work Order enter into force.
- I.2.4** 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.2.5** Work Orders related to the provision of the Optional Services shall be returned signed before the Contract to which they refer expires.

The Contract shall continue to apply to such Work Orders after its expiry, but no later than three (3) months.

- I.2.6** The Contract may be renewed up to three times, each time for a period of one (1) 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 **fixed and firm** price to be paid by the SJU to the Contractor for the performance of the Basic Services is [to be completed].

- I.3.2** The unit prices based on which the price for the Optional Services will be calculated shall be as listed in Annex II and the total amount for the Optional Service cannot in any case exceed 150.000,00 EUR.

- I.3.3** Prices for the Basic and Optional Services shall be expressed in EUR.

Prices for the Basic and Optional Services shall be fixed and not subject to revision for the overall duration of the Contract, including any potential renewals.

ARTICLE I.4 – IMPLEMENTATION OF THE CONTRACT

- I.4.1** This Contract shall cover the immediate implementation of the Basic Services, except the Optional Services which shall only be performed upon request of the SJU and after mutual agreement of the Parties through specific Work Orders according to the model Work Order in Annex III. The Optional Services to be carried out under each Work Order shall be performed in accordance with the provisions of this Contract and the following documents which constitute an integral part thereof and are listed in order of precedence in case of conflict:

- Work Order and attached Appendixes,
- Contractor's Work Proposal.

- I.4.2** Within 10 working days of a request for services being sent by the SJU to the Contractor, the SJU shall receive an estimate of the resources to be allocated for its execution.



I.4.3 Within 5 working days of a Work Order being sent by the SJU to the Contractor, the SJU shall receive it back, duly signed and dated.

ARTICLE I.5 – PAYMENT PERIODS

I.5.1. General

Payments shall be executed only if the Contractor has fulfilled all its contractual obligations by the date on which the invoice is submitted. Payment requests may not be made if payments for previous specific Work Orders have not been executed as a result of default or negligence on the part of the Contractor.

I.5.2. Basic Services

i. Pre-financing

Following signature of the Contract by the last contracting party, within thirty (30) days of the receipt by the SJU of a relevant invoice, a pre-financing payment of EUR [complete amount in figures and in words] equal to [complete] of the total amount referred to in Article I.3.1 shall be made.

ii. Final payment

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

- the final version of the deliverable items described in Annex I, and
- the relevant invoices,

provided that the SJU has formally approved the satisfactory delivery and acceptance of all deliverable items due under this Contract.

The SJU shall have fifteen (15) calendar days from receipt to approve or reject the deliverable items due under this Contract, and the Contractor 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, the final payment corresponding to the relevant invoices shall be made.

I.5.3. Optional Services

i. Payment of the balance

The payment of the balance shall be made subject to the conditions laid down below and in accordance with the provisions of Article II.4.3.

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



- The final deliverable(s) as well as the relevant breakdown of services provided, as specified in Annex I as well as in each specific Work Order;
- the relevant detailed invoices, indicating the reference number of the Contract and of the specific Work Order to which they refer.

The SJU shall have fifteen (15) calendar days from receipt to approve or reject the deliverable items due under this Contract, and the Contractor 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) days of the date of receipt of the relevant invoice(s), payment of the balance under the Contract shall be made in accordance with Article II.4.

I.5.4. Milestone Payment Plan

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

Deliverable	Due-date for submission of the deliverable	Corresponding amount	Payment due-date

ARTICLE I.6 – BANK ACCOUNT

Payments shall be made to the Contractor's bank account denominated in euro, identified as follows:

Name of bank: [complete]
Address of branch in full: [complete]
Exact designation of account holder: [complete]
Full account number including codes: [complete]
IBAN¹ code: [complete]

ARTICLE I.7 – GENERAL ADMINISTRATIVE PROVISIONS

¹ BIC or SWIFT code for countries with no IBAN code.



Any communication relating to the Contract or to its implementation shall be made in writing and shall bear the Contract and Work Orders numbers. Ordinary mail shall be deemed to have been received on the date on which it is registered by the SJU. 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*]
[Official address in full]
[Telephone No.]
[FAX No.]
[E-mail address]

ARTICLE I.8 – APPLICABLE LAW AND SETTLEMENT OF DISPUTES

- I.8.1** The Contract shall be governed by Union law, complemented, where necessary, by the national substantive law of Belgium.
- I.8.2** 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 Belgium.

ARTICLE I.9 – 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. The 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 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 data controller to the following e-mail address: sju.dpc@sesarju.eu. 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.10 – TERMINATION

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

ARTICLE 1.10a – CONTRACT CONCLUDED DURING STANDSTILL PERIOD

In case this Contract was signed by both the SJU and the Contractor 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.



II – GENERAL CONDITIONS

ARTICLE II.1 – PERFORMANCE OF THE CONTRACT

- II.1.1** The Contractor shall perform the Contract to the highest professional standards. The Contractor shall have sole responsibility for complying with any legal obligations incumbent on him, notably those resulting from employment, tax and social legislation.
- II.1.2** The Contractor shall have sole responsibility for taking the necessary steps to obtain any permit or licence required for performance of the Contract under the laws and regulations in force at the place where the tasks assigned to him are to be executed.
- II.1.3** Without prejudice to Article II.3 any reference made to the Contractor's staff in the Contract shall relate exclusively to individuals involved in the performance of the Contract.
- II.1.4** The Contractor must ensure that any staff performing the Contract have the professional qualifications and experience required for the execution of the tasks assigned to him.
- II.1.5** The Contractor shall neither represent the SJU nor behave in any way that would give such an impression. The Contractor shall inform third parties that he does not belong to the European public service.
- II.1.6** The Contractor shall have sole responsibility for the staff who execute the tasks assigned to him.

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

- staff executing the tasks 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 execution of the tasks assigned to him resulting from the replacement of staff in accordance with this Article.

- II.1.8** Should any unforeseen event, action or omission directly or indirectly hamper execution of the tasks, either partially or totally, the Contractor shall immediately and on his own initiative record it and report it to the 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 Article I.5.1, the Contractor shall provide a financial guarantee in the form of a bank guarantee or equivalent supplied by a bank or an authorised financial institution (guarantor) equal to the amount indicated in the same Article to cover pre-financing under the Contract. Such guarantee may be replaced by a joint and several guarantee by a third party.

The guarantor shall pay to the 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 or Work 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 tasks referred to in each order or specific contract, 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 or specific contract 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 Article I.5 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 Article I.5 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 or by Annex I, the SJU shall reimburse the expenses that are directly connected with execution of the tasks on production of original supporting documents, including receipts and used tickets.

II.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 SJU, which may use, publish, assign or transfer them as it sees fit, without geographical or other limitation, except where industrial or intellectual property rights exist prior to the Contract being entered into.

ARTICLE II. 9 – CONFIDENTIALITY

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

II.9.2. The Contractor shall obtain from each member of his staff, board and directors an undertaking that they will respect the confidentiality of any information which is linked, directly or indirectly, to execution of the tasks and that they will not divulge to third parties or use for their own benefit or that of any third party any document or information not available publicly, even after completion of the tasks.

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

II.10.1 The Contractor shall authorise the 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 tasks actually executed.

II.12.4 The contracting parties shall take the necessary measures to reduce damage to a minimum.

ARTICLE II. 13 – SUBCONTRACTING

II.13.1 The Contractor shall not subcontract without prior written authorisation from the 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, a pending order or a specific contract in the following circumstances:

- (a) where the Contractor is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or



is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;

- (b) where the Contractor has 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 execution of the tasks under a pending order or a specific contract has not actually commenced within fifteen days of the date foreseen, and the new date proposed, if any, is considered unacceptable by the SJU;
- (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 or specific contract in accordance with this Article and without prejudice to any other measures provided for in the Contract, the Contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required by the Special Conditions for the tasks executed up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

The SJU may claim compensation for any damage suffered and recover any sums paid to the Contractor under the Contract.

On termination the SJU may engage any other contractor to execute or complete the services. The SJU shall be entitled to claim from the Contractor all extra costs incurred in doing so, without prejudice to any other rights or guarantees 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 of verifying that the Contract is being performed properly.
- 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 of the documents of the Contractor and his 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 or a specific contract 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 specific contracts or any part thereof. Suspension shall take effect on the day the Contractor receives notification by registered letter with acknowledgment of receipt or equivalent, or at a later date where the notification so provides. The SJU 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 specific contracts, or of part thereof.

SIGNATURES

For the Contractor,
[*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 III (FOR LOT 2 ONLY)

**WORK ORDER No [complete]
implementing Contract No ...**

The SESAR Joint Undertaking (hereinafter referred to as "the SJU"), represented for the purposes of the signature of this Work Order 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 Work Order by *forename, surname and function*,

of the other part,

HAVE AGREED

ARTICLE III.1: SUBJECT

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

III.1.2 The subject of this Work Order is [short description of subject].

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



ARTICLE III.2: DURATION

III.2.1 This Work Order shall enter into force *[on the date on which it is signed by the last contracting party] [on complete if it has already been signed by both contracting parties]]*.

III.2.2 The duration of the tasks shall not exceed *[days/months]*. Execution of the tasks shall start from *[date of entry into force of this Work Order]* or *[indicate date]*. The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses.

ARTICLE III.3: PRICE

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

III.3.1a Payment of the balance

The request for payment of the balance of the Contractor under this Work Order shall be considered admissible if submitted in accordance with the provisions of Articles I.5.3 and II.4 of the Contract [and Article III.3.1b below].

III.3.1b Milestone Payment Plan

Payments under this Work Order shall be made to the Contractor in accordance with the following Milestone Payment Plan:

Deliverable	Due-date for submission of the deliverable	Corresponding amount	Payment due-date] ²

III.3.2 In addition to the price indicated in III.3.1 hereabove *[no reimbursable costs are foreseen] [costs up to an amount of EUR ... will be reimbursed according to the provisions of the Contract]*



ARTICLE III.4: ANNEXE[S]

Annex A – Request for a specific Work Proposal

Annex B – Contractor's Work Proposal (no [*complete*] of [*complete*])

SIGNATURES

For the Contractor,
[*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.