

ANNEX B

DRAFT FRAMEWORK SERVICE CONTRACT

Provision of MS Dynamics CRM Consultancy Services

F/SE/10/07

The European Union Agency for Fundamental Rights (hereinafter referred to as "the Contracting Authority"), and with its seat at Schwarzenbergplatz 11, Vienna 1040, Austria, which is represented for the purposes of the signature of this Framework Contract by Mr Morten Kjaerum, Director,

of the one part,

and

[Official name]

[Legal Form]

[Registration number]

[Address]

[VAT_ Reg. Number]

(hereinafter referred to as "the Contractor"¹), represented for the purposes of the signature of this Framework Contract by [Title, Full name],

of the other part,

¹ In the case of a joint offer and provided the invitation to tender so specifies, the following clause should be added below the identification of the parties: "The parties identified above and hereinafter collectively referred to as 'the Contractor' shall be jointly and severally liable vis-à-vis the Contracting Authority for the performance of this contract".

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HAVE AGREED

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

- Annex I** Tender and Technical Specifications (Invitation to Tender No F/SE/10/07 of XX/XX/2010) – Original archived at the Contracting Authority’s premises
- Annex II** Contractor's Tender (No [complete] of [complete]) – Original archived at the Contracting Authority’s premises
- Annex III** (a) Order Forms
(b) Specific Contract
- Annex IV** Financial Identification Form and Legal entities – Original archived at the Contracting Authority’s premises

[Other Annexes]

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

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

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 Contracting Authority, subject to the rights of the Contractor under Article I.8 should he dispute any such instruction.



PREAMBLE

On [complete], the Contracting Authority published, in the Official Journal of the European Communities, a call for tenders under reference [complete], for the provision of Building Inspection, Maintenance, Repair and Alteration Services.

The Contractor was selected, as the <Rank> contractor of a multiple contract at the conclusion of the evaluation process, on the basis of its bid submitted on <bidDate> in response to the invitation to tender].

This Framework Contract contains all the conditions for concluding and executing Specific Contracts/Order. Please note that reference to Specific Contracts in the different parts of the Framework contract may be understood, where relevant, as references to Orders.

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1 - SPECIAL CONDITIONS

1.1 SUBJECT

- 1.1.1 The subject of the Contract is the provision of MS Dynamics CRM Consultancy Services to the Contracting Authority as set out in the Tender and Technical Specifications (Annex I).
- 1.1.2 Signature of the Contract imposes no obligation on the Contracting Authority to purchase. Only the implementation of the Contract through Specific Contracts and Orders is binding on the Contracting Authority.
- 1.1.3 Once implementation of the Contract has been asked or has commenced, the Contractor shall reply and execute the tasks in accordance with all terms and conditions of the Contract.
- 1.1.4 The Contract does not confer on the Contractor any exclusive right to provide services described in Annex I to the Contracting Authority. *[The Contractor is selected as the [complete] contractor for a multiple framework contract]*².

1.2 DURATION

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

The Contract shall continue to apply to such orders and specific contracts executed after its expiry, but not later than six (6) months.
- 1.2.5 The Contract shall be renewed automatically up to one (1) time, under the same conditions, unless written notification to the contrary is sent by one of the contracting parties and received by the other before expiry of the period indicated in Article 1.2.3. Renewal does not imply any modification or deferment of existing obligations.

² Only to be added in the case of multiple "cascade" framework contracts.



1.3 PRICES

1.3.1 The prices of this contract shall be as listed in Annex II.

1.3.2 Prices shall be expressed in EUR.

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

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

This revision shall be determined by the trend in the harmonised consumer price index "MUICP" (eurozone) published for the first time by the Publications Office of the European Union in the Eurostat monthly 'Data in Focus' publication at <http://www.ec.europa.eu/eurostat/>.

Revision shall be calculated in accordance with the following formula:

$$Pr = Po \left(\frac{I_r}{I_o} \right)^{0,2+0,8}$$

where:

Pr = revised price;

Po = price in the original tender;

Io = index for the month corresponding to the final date for submission of tenders;

Ir = index for the month corresponding to the date of receipt of the letter requesting a revision of prices.

1.4 IMPLEMENTATION OF THE CONTRACT

1.4.1 Within 5 working days of an order form being sent by the Contracting Authority to the Contractor, the Contracting Authority shall receive it back, duly signed and dated. Should the Contractor be unavailable, he shall give reasons for refusal within the same period and the Contracting Authority shall be entitled to place the order with the next contractor on the list. In the event of failure to observe this deadline, the Contractor shall be considered unavailable. The period allowed for



the execution of the tasks shall start to run on the date the Contractor signs the order form, unless a different date is indicated on the form.

- 1.4.2** Within 5 working days of a request for services being sent by the Contracting Authority to the Contractor, the Contracting Authority shall receive an estimate of the resources to be allocated for its execution, with particulars in support. Should the Contractor be unavailable, he shall give reasons for refusal within the same period and the Contracting Authority shall be entitled to send a request to the next contractor on the list. In the event of failure to observe this deadline or disagreement on the allocation of resources, the Contractor shall be considered unavailable.

Within 5 working days of a specific contract being sent by the Contracting Authority to the Contractor, the Contracting Authority shall receive it back, duly signed and dated. In the event of failure to observe this deadline, the Contractor shall be considered unavailable.

1.5 PAYMENT PERIODS

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

The invoicing procedure for extended specific contracts will be 100% on completion of the work, once accepted by the Contracting Authority.

1.5.1 Pre-financing

A pre-financing payment of the total value of the order or of the Specific Contract shall be made within thirty (30) days of the latest of the following date:

- the date on which the Contractor returns the order form or specific contract and the relevant invoice, indicating the reference number of the Contract and of the order or specific contract to which it refers.

1.5.2 Interim payment

Requests for interim payment by the Contractor shall be admissible if accompanied by:

- the relevant invoices, indicating the reference number of the Contract and of the order or specific contract to which they refer;
- when payment is linked to the acceptance of works, a Certificate of Conformity or where applicable the Consignment Note, duly signed by the Contracting Authority, shall be attached to the invoice;

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- when payment is linked to the acceptance of an inspection report, the request will be admissible provided that the report has been approved by the Contracting Authority.

The Contracting Authority shall have twenty (20) days from receipt to approve or reject the report, and the Contractor shall have ten (10) days in which to submit additional information or a new report.

Within thirty (30) days of the date of receipt of the relevant invoice(s) or of the date on which the report is approved by the Contracting Authority, an interim payment corresponding to the relevant invoices equal to 40 % of the total amount referred in the relevant order or specific contract shall be made.

1.5.3 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 Framework Contract and of the order or specific contract to which they refer;
- when payment is linked to final acceptance, a Certificate of Conformity or where applicable the Consignment Note, duly signed by the Contracting Authority, shall be attached to the invoice,
- when payment is linked to the acceptance of an inspection report, the request will be admissible provided that the report has been approved by the Contracting Authority

The Contracting Authority shall have sixty (60) calendar days from receipt to approve or reject the report or to issue the Certificate of Final Acceptance of the works, and the contractor shall have fourteen (14) calendar days in which to submit additional information. If requested, further comments or suggestions need to be implemented within seven (7) calendar days.

Within thirty (30) days of the date on which the relevant report is approved by the Contracting or the Certificate of Final Acceptance is issued, payment of the balance corresponding to the relevant invoices shall be made.

[For Contractors established in Belgium, the orders shall include the following provision: "En Belgique, l'utilisation de ce bon de commande vaut présentation d'une demande d'exemption de la TVA n° 450" or an equivalent statement in the Dutch or German language. The Contractor shall include the following statement in his invoice(s): "Exonération de la TVA, article 42, paragraphe 3.3 du code de la TVA" or an equivalent statement in the Dutch or German language].

[For Contractors established in Italy, the provisions of the Contract constitute a request for VAT exemption, provided the Contractor includes the following statement in his invoice(s): "Operazione non imponibile ai sensi dell'articolo 72, comma 3)

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paragrafo 3 del D.P.R. n. 633 del 26/10/1972 come modificato da ultimo dal D.L. n. 323 del 20/06/1996 convertito in Legge n. 425 dell'8/8/1996”].

1.5.4 Performance guarantee

A performance guarantee is not required for the execution of this framework contract.

1.6 BANK ACCOUNT

Payments shall be made to the Contractor's bank account denominated in euro, stated in the Contractor's financial identification form set out in Annex IV as follows:

Name of bank: [complete]

Address of branch in full: [complete]

Exact designation of account holder: [complete]

Full account number including codes: [complete]

[*IBAN*³ code: [complete]

1.7 GENERAL ADMINISTRATIVE PROVISIONS

Any communication relating to the Contract shall be made in writing and shall bear the Contract and order or specific contract reference numbers. Ordinary mail shall be deemed to have been received by the Contracting Authority on the date on which it is registered by the department responsible indicated below. Communications shall be sent to the following addresses:

Contracting Authority:

European Union Agency for Fundamental Rights
to the attention of [Authorising Officer Full Name, Position]
Schwarzenbergplatz 11,
Vienna 1040,
Austria

Contractor:

<Contractor Contact Title>, <Contractor Full Name>
<Contractor Contact Function>
<Contractor Company Name>
<Contractor Full Address>

³ BIC or SWIFT code for countries with no IBAN code.



The following persons are empowered to supervise the performance of this Contract for the Contracting Authority:

<Authorising Officer Full Name>

<Technical Contact>

The following person(s) is (are) empowered to supervise the performance of this Contract for the Contractor:

<Contractor Administration Contact>

<Contractor Technical Contact>

1.8 APPLICABLE LAW AND SETTLEMENT OF DISPUTES

1.8.1 The Contract shall be governed by Union Law, complemented, where necessary, by the national substantive law of Austria.

1.8.1a Without prejudice to Article 1.8.2, in the event that any dispute arises between the parties resulting from the interpretation or application of the Contract and the dispute is not resolved by negotiation, the parties may agree to submit the dispute to mediation.

If any party to the dispute gives written notice to the other party of its desire to commence mediation, and the other party agrees in writing, the parties shall jointly appoint a mutually acceptable mediator within two weeks of the date of the said written agreement. If the parties are unable to agree upon the appointment of a mediator within that time period, any party may apply to [court, organization or person agreed to by the parties when signing the Contract], for the appointment of a mediator.

The mediator's written proposal or his written conclusion stating that no proposal can be made, shall be produced within two months of the date of the written agreement by the second party to commence mediation. The mediator's proposal or conclusion shall not be binding for the parties, who reserve the right to bring the dispute before the courts, as per Art. 1.8.2.

Within two weeks of the date of notification of the proposal by the mediator, the parties can conclude a written agreement, duly signed by all parties, based on the proposal.

The parties further agree to share equally the costs of mediation by the mediator, which costs will not include any other costs incurred by a party in connection with the mediation.

1.8.2 Any dispute between the parties resulting from the interpretation or application of the Contract which cannot be settled amicably shall be brought before the Court of Justice of the European Communities.

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1.9 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 head of Administration of the Agency 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 Head of Administration of the Agency. 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;

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- 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.

1.10 TERMINATION BY EITHER CONTRACTING PARTY

Either contracting party may, of its own volition and without being required to pay compensation, terminate the Contract by serving three months' formal prior notice. Should the Contracting Authority terminate the Contract, the Contractor shall only be entitled to payment corresponding to the goods and/or 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 goods delivered and services rendered up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

ARTICLE I.10a – CONTRACT CONCLUDED DURING STANDSTILL PERIOD

In case this Contract was signed by both the Contracting Authority 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.

1.11 FISCAL PROVISIONS

The Contracting Authority is in respect of its financial interest in this Contract exempt from all duties and taxes, including value added tax.

The Contractor is subject to Value Added Tax. The Value Added Tax registration No. of the contractor is: <Contractor VAT Number>

If the Contractor is not exempt from Value Added and other Taxes, he shall make available to the Contracting Authority, upon request, all supporting documents which the Contracting Authority might need in order to apply to the tax authorities for the reimbursement pursuant to Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities of any duties and taxes paid in the course of the performance of this Contract.

Where the Contractor is exempt from Value Added Tax, he is required to submit proof from to this effect from his tax authorities or by a professional, who enjoys special public trust (certified accountant, attorney).

If the Contract is subject to VAT outside Austria, but within the scope of application of Council Directive 77/388/EEC of 17 May 1977 in its current legally valid wording, the Contractor declares to accept and process (submit to the relevant tax authorities) the duly filled form according to Art. 15/10 of the specified Directive in order to enable the

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Contracting Authority to pay the net price of the contract excluding VAT instead of relying on VAT refund. In this case, the Contracting Authority will only pay the net remuneration of the Contract excluding VAT.

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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 Contracting Authority 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 Contracting Authority;
 - the Contracting Authority 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 Contracting Authority any right arising from the contractual relationship between the Contracting Authority 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority. 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 Contracting Authority 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 Contracting Authority may impose penalties or liquidated damages provided for in Article II.16.

ARTICLE II. 2 – LIABILITY

- II.2.1** The Contracting Authority 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 Contracting Authority.
- 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority in connection with performance of the Contract, the Contractor shall assist the Contracting Authority. Expenditure incurred by the Contractor to this end may be borne by the Contracting Authority.
- 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 Contracting Authority 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 Contracting Authority in writing without delay. In the event of such conflict, the Contractor shall immediately take all necessary steps to resolve it.

The Contracting Authority 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 Contracting Authority, 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority 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 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority's account is debited.

II.5.2 The payment periods referred to in Article I.5 may be suspended by the Contracting Authority 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority.
- 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority 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;

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- d) travel outside Union territory shall be reimbursed under the general conditions stated above provided the Contracting Authority 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 Contracting Authority 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 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

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- II.10.1** The Contractor shall authorise the Contracting Authority 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 Contracting Authority 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 Contracting Authority.
- II.10.3** Any distribution or publication of information relating to the Contract by the Contractor shall require prior written authorisation from the Contracting Authority 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 Contracting Authority'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 Contracting Authority 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 Contracting Authority 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

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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 Contracting Authority nor cause the Contract to be performed in fact by third parties.
- II.13.2** Even where the Contracting Authority authorises the Contractor to subcontract to third parties, he shall none the less remain bound by his obligations to the Contracting Authority 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 Contracting Authority 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 Contracting Authority.
- 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 Contracting Authority.

ARTICLE II. 15 – TERMINATION BY THE CONTRACTING AUTHORITY

- II.15.1** The Contracting Authority may terminate the Contract, a pending order or a specific contract in the following circumstances:

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- (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 Contracting Authority has evidence or seriously suspects the Contractor or any related entity or person, of professional misconduct;
- (d) where the Contracting Authority 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority'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 days⁴ of the date foreseen, and the new date proposed, if any, is considered unacceptable by the Contracting Authority;
- (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

⁴ This period can be modified in the Special Conditions depending on the nature of the contract.



- 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 Contracting Authority 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 Contracting Authority may claim compensation for any damage suffered and recover any sums paid to the Contractor under the Contract.

On termination the Contracting Authority may engage any other contractor to execute or complete the services. The Contracting Authority 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 Contracting Authority 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 Contracting Authority's right to terminate the Contract, the Contracting Authority may decide to impose liquidated damages of 0.2%⁵ 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 Contracting Authority 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 Contracting Authority 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** Pursuant to Article 142 of the Financial Regulation applicable to the general budget of the European Communities, the Court of Auditors shall be empowered to audit the documents held by the natural or legal persons receiving payments from the budget of the Union from signature of the Contract up to five years after payment of the balance of the last implementation.
- II.17.2** The Contracting Authority or an outside body of its choice shall have the same rights as the Court of Auditors for the purpose of checks and audits limited to compliance with contractual obligations from signature of the Contract up to five years after payment of the balance of the last implementation.
- II.17.3** In addition, the European Anti-Fraud Office may carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 and Parliament and Council Regulation (EC) No 1073/1999 from signature of the Contract up to five years after payment of the balance of the last implementation.

ARTICLE II. 18 – AMENDMENTS

⁵ The daily rate for liquidated damages may be modified in the Special Conditions where the subject of the contract so justifies.



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 Contracting Authority's right to terminate the Contract, the Contracting Authority 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 Contracting Authority 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,

<Contractor Company Name>

<Contractor Contact Full Name>

<Contractor Contact Function>

signature[s]: _____

Done at _____ date: _____

For the Contracting Authority,

<Authorising Officer Full Name>

<Authorising Officer Function>

signature[s]: _____

Done at Vienna date: _____

In duplicate in English.

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ANNEX I

Tender Specification

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ANNEX II

Contractor's Tender

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ANNEX III a

ORDER FORM No [complete]

governed by the provisions of Framework Contract No [complete] signed on [complete]

 <p>FRA EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS</p>	<p>Mr/Mrs/Ms [complete] [Function] [Company name] [Official address in full]</p>	
<p>Pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union, the Contracting Authority is exempt from all taxes and dues, including value added tax, on payments due in respect of this order form.</p> <p><i>[In Belgium, use of this order form constitutes a request for VAT exemption. The invoice must include the following statement: "Commande destinée à l'usage officiel de l'Union européenne. Exonération de la TVA; article 42 § 3.3 du code de la TVA".]</i></p>		
Description of the services	Quantity	Price

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TOTAL PRICE		_____
<i>[Fixed price without reimbursable costs] [Reimbursable costs up to a maximum amount of EUR ... to be added to the price according to the conditions laid down in the Contract]</i>		
<i>[The duration of the tasks shall not exceed complete].</i> <i>[Execution of the tasks shall start from [the date of Contractor's signature of this order form] [complete date].]</i>	<i>Other details:</i>	

Acceptance of this order implies that the Contractor waives all other terms of business or of execution of the services.

For the Contractor,

<Contractor Company Name>

<Contractor Contact Full Name>

<Contractor Contact Function>

signature[s]: _____

Done at _____ date: _____

For the Contracting Authority,

<Authorising Officer Full Name>

<Authorising Officer Function>

signature[s]: _____

Done at Vienna date: _____

In duplicate in English.

Framework Contract No: F/SE/10/07

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ANNEX III b

SPECIFIC CONTRACT No _____

implementing Framework Contract No F/SE/10/07

The European Union Agency for Fundamental Rights (hereinafter referred to as "the Contracting Authority"), and with its seat at Schwarzenbergplatz 11, A-1040 Vienna, Austria, which is represented for the purposes of the signature of this Specific Contract by (name/function),

of the one part,

and

«Official_name»

«Legal_form»

«Registration_number»

«Address»

«VAT_registration_number»

(hereinafter referred to as "the Contractor"), represented for the purposes of the signature of this Specific Contract by [«Title» «Full_name»],

of the other part,

HAVE AGREED

the following as regards the implementation of Framework Contract No F/SE/10/07 signed by the Contracting Authority and the Contractor on [complete date] [last amended by amendment No XX, signed on XX/XX/XXXX] for the provision of IT services:

1. PREAMBLE

1.1 This Specific Contract is based on the Contractor's bid dated XX/XX/XXXX (reference XXXXX). Once signed by the parties, the Specific Contract shall be governed by the Framework Contract. This Specific Contract does not amend the provisions of the aforementioned Framework Contract.

2. SUBJECT

2.1 The subject of this specific contract is [short description of subject].

Or

This Specific Contract relates to lot [complete] of the Framework Contract.

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2.2 The Contractor undertakes, on the terms set out in the Framework Contract and in this Specific Contract and its annex(es), which form an integral part of it, to perform the tasks *specified in Annex I*.

3 DURATION AND LOCATION

3.1 This Specific Contract shall enter into force at the earliest on the date it is signed. The execution of the tasks shall end at the latest on XX/XX/XXXX.

Or

(if this is an extended Specific Contract).

The Specific Contract shall enter into force at the earliest on the date it is signed and not before the end of Specific Contract No XX. The execution of the tasks shall end at the latest on XX/XX/XXXX.

3.2 The tasks shall be performed over a period of XX days as specified in Annex I. The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses by means of an amendment to this specific contract.

3.3 If the number of days agreed has not been fully taken up, the Contracting Authority shall not be obliged either to use or to pay for the days not worked and the Contractor shall not be entitled to claim damages for them.

3.4 The tasks shall be performed on the premises of [the Contractor] [the contracting Authority].

4 PERFORMANCE

Every day the service provider shall - according to procedures laid down by the competent technical person in the Contracting Authority as specified in the Specific Contract - notify the Contracting Authority of the time spent working under the Specific Contract. At the end of every month, the service provider shall complete and sign the time sheet contained in Annex II and send it to the competent technical person in the Contracting Authority for verification.

The service providers are:

Xxxxx XXXXXXXXX

Xxxxx XXXXXXXXX

5 PRICES AND PAYMENTS

5.1 The Contracting Authority undertakes to pay the Contractor, in consideration for the services rendered under the Specific Contract,

- An amount of EUR XXXXX per day of actual services rendered, for a total of XX days for [name of service provider], i.e. a total of EUR XXXXXX.

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Profile of service provider:.....

5.2 The total amount to be paid by the Contracting Authority under this Specific Contract shall be EUR XXX [amount in figures] covering all tasks executed. This amount shall cover all expenditure incurred by the Contractor in performing this Specific Contract.

5.3 In conformity with Article 2.5 of the General conditions, the invoicing procedures for the services, once accepted by the Contracting Authority, are as follows:

Specify one of the two possibilities:

Where this is an initial Specific Contract:

Amounts in the Specific Contract over EUR 25 000:

at the end of each calendar quarter, on the basis of time sheets signed by both the Contracting Authority and the Contractor using the form in Annex II. The time sheets must be attached to the invoice.

Where this is an extended Specific Contract, or for amounts in the Specific

Contract below EUR 25 000:

once the work has been completed, on the basis of time sheets signed by both the Contracting Authority and the Contractor using the form in Annex II. The time sheets must be attached to the invoice.

5.4 Payments shall be made to account No XXXXXX held with XXXXXX on production of the invoice showing separately the amount of the fees and the VAT applied and within no more than thirty (30) calendar days from the date the invoice is received by the Unit indicated in article 5.4 below. Invoices presented by the Contractor shall indicate his place of taxation for VAT purposes and shall specify separately the amounts not including VAT from those amounts including VAT. The payment shall be deemed to have been effected on the day the Contracting Authority's financial account is debited.

5.5 The address for invoices is:

European Union Agency for Fundamental Rights
to the attention of Administration Department
Schwarzenbergplatz 11,
1040 WIEN
Austria

6 **SUB-CONTRACTING**

(Verify whether it is applicable or not.

If not: specify "Not applicable")

Or

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In conformity with Article 2.13 of the General Conditions, the Contractor has been permitted to subcontract.

Tasks stated in Annex I may be performed by the subcontractor Name and address of subcontractor, entirely at the risk of the Contractor.

Without prejudice to the Contracting Authority's other rights under Article 2.15 of the General Conditions, if the Contractor fails to meet his obligations, the Specific Contract with the Contracting Authority may be terminated in accordance with Article 2.15 (f) of the General Conditions. This clause applies throughout the term of the Specific Contract.

7 GUARANTEES

(Verify whether a guarantee is applicable.

If not: specify "Not applicable")

8 ADMINISTRATIVE PROVISIONS

The persons responsible for implementing this Specific Contract are:

For the Contracting Authority:

Administrative matters: Xxxxxxxx Xxxxxx; Tel.:.....

Technical matters: Xxxxxxxx xxxxxxx; Tel.:.....

For the Contractor:

Administrative and technical matters: Xxxxxx xxxxxxxx; Tel.:.....

All communication relating to the implementation of this Specific Contract must be in the form of written correspondence and be sent to the appropriate responsible persons.

9 ANNEXE[S]

The following documents are annexed to the Specific Contract and form an integral part of it:

Annex I: Technical Annex / Description of tasks

Annex II: Time sheet

SIGNATURES

For the Contractor,

For the Contracting Authority,

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[Company
name/forename/surname/function]

(name/function)

signature[s]: _____

signature[s]: _____

Done at Vienna, on [date] In duplicate in English.

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ANNEX I (OF THE SPECIFIC CONTRACT)

TECHNICAL ANNEX / DESCRIPTION OF TASKS

WORKING METHOD: TIME & MEANS

1. CONTEXT/INTRODUCTION AND OBJECTIVES

2. DESCRIPTION OF TASKS

Profile:

3. WORK ENVIRONMENT/CONDITIONS

4. ACCEPTANCE OF THE WORK

See Annex II attached – Time sheet (to be submitted together with the invoice)



ANNEX IV

Financial Identification Form and Legal Entities

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