

**ANNEX B**

**DRAF FRAMEWORK SUPPLY CONTRACT**

**Provision of Food, Beverages and Household Material**

**F/SU/10/01**

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"<sup>1</sup>), represented for the purposes of the signature of this Framework Contract by [Title, Full name],

of the other part,

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<sup>1</sup> 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/10/05 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 Orders.
- 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.7 should he dispute any such instruction.



## PREAMBLE

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/Orders. Please note that reference to Orders in the different parts of the Framework contract may be understood, where relevant, as references to Specific Contracts.

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# 1 - SPECIAL CONDITIONS

## 1.1 SUBJECT

- 1.1.1 The subject of the Contract is the provision of food, beverages and household material to the Contracting Authority as set out in the Tender and Technical Specifications (Annex I).
- 1.1.2 When an Order is issued, the Contractor shall supply the goods and shall provide the services related to them in accordance with the Tender Specifications annexed to the Contract (Annex I) and his specific Tender (Annex II).
- 1.1.3 The Contract does not confer on the Contractor any exclusive right to supply the goods or to provide services referred to in the above paragraph.
- 1.1.4 Signature of the Contract imposes no obligation on the Contracting Authority to purchase. Only the implementation of the Contract through Orders and Specific Contracts is binding on the Contracting Authority.
- 1.1.5 All Orders pursuant to the Contract shall conform to the terms set out therein.

## 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 and Orders be placed before the date on which the 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 pursuant to the Contract shall be placed by the Contracting Authority and the Order Forms returned by the Contractor before the Contract expires.  
  
The Contract shall continue to apply to Orders executed after the Contract expires. Such orders shall be executed no later than six (6) months after expiry of the Contract.
- 1.2.5 The Contract shall be renewed automatically up to three (3) times, under the same conditions, unless written notification to the contrary is sent by one of the contracting parties and received by the other before expiry of the period indicated in Article 1.2.2. Renewal does not imply any modification or deferment of existing obligations.



### **1.3 PRICES**

**1.3.1** The prices of this contract shall be as listed in Annex II and based in the Contractor's official price list.

**1.3.2** Prices shall be expressed in EUR.

**1.3.3** Official Price List

**1.3.3.1** The Contractor awards a discount of [complete]\* to the Contracting Authority in relation to his official price list

**1.3.3.2** The Official price list will be updated every [complete frequency]. Once the update of Official price list is made available to the Contracting Authority, the Contracting Authority must accept or refuse it within one month.

**1.3.3.3** The Official price list will be available at [complete].

### **1.4 ORDER AND PAYMENT PERIODS**

Payments under the Contract shall be made in accordance with Article 2.5. Payments shall be executed only if the Contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted.

**1.4.1** Orders shall be placed and executed in accordance with Article 2.1.1.

Within three (3) working days of the Order Form being sent by the Contracting Authority, the Contractor shall return it, duly signed and dated. The period allowed for delivery shall start to run on the date the Contractor returns the Order Form, unless a specific date is indicated on the Form. In the event of failure to observe the deadline, Article 2.4 shall apply.

**1.4.2** Within three (3) working days of an Order being signed by the Contractor and the Contracting Authority, the Contractor shall deliver the supplies at the Contracting Authority's premises in Vienna.

The Contractor shall agree with the Agency the exact date of delivery at least two (2) working days in advance. All deliveries shall be made between 13:00 and 17:00 hrs at the premises of the Contracting Authority.

**1.4.3** Payment of the balance

The request for payment of the balance shall be admissible is accompanied by

- the relevant invoices, indicating the reference number of the Framework Contract and of the Order to which they refer.

Within thirty (30) days of the date of receipt of the relevant invoice, payment of the balance corresponding to the relevant invoices shall be made.

(\*) As stated in the Contractor's financial offer included in Annex II



#### **1.4 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<sup>2</sup> code: [complete]

#### **1.5 GENERAL ADMINISTRATIVE PROVISIONS**

Any communication relating to the Contract shall be made in writing and shall bear the Framework 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>

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:

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<sup>2</sup> BIC or SWIFT code for countries with no IBAN code.



<Contractor Administration Contact>

<Contractor Technical Contact>

## **1.6 APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

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

**1.7.1a** Without prejudice to Article I.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. I.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.

**1.6.3** 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.

## **1.7 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

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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;
- 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.





## **1.8 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 ordered and delivered 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.

### **1.9a – 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.

## **1.9 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 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.



## **2 – GENERAL CONDITIONS**

### **ARTICLE 2.1 - PROCEDURES FOR PERFORMING THE CONTRACT**

#### **2.1.1 Phases of execution of the Order**

##### **Sending of the Order Form**

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

##### **Acknowledgment of the Order by the Contractor**

Within the period indicated in Article I.4, the Contractor shall return one original of the Order Form, duly signed and dated, thereby acknowledging receipt of the Order and acceptance of the terms.

##### **Delivery**

a) Time allowed for delivery

The time allowed for delivery shall be calculated in accordance with Article I.4.

b) Date, time and place of delivery

The Contracting Authority shall be notified in writing of the exact date of delivery within the period indicated in Article I.4. All deliveries shall be made at the agreed place of delivery during the hours indicated in Article I.4.

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

c) Consignment note

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

##### **Certificate of conformity**

Signing of the consignment note by the Contracting Authority, as provided for in subparagraph c) above, is simply an acknowledgment of the fact that the goods



have been delivered and in no way implies conformity of the goods with the Order.

Conformity of the goods delivered shall be evidenced by the signing of a certificate to this effect by the Contracting Authority no later than one month after the date of delivery, unless provision is made for a different period<sup>3</sup> in the Special Conditions or in Annex I.

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

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

#### **Conformity of the goods delivered with the Contract**

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

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<sup>3</sup> Where the goods or equipment supplied are particularly complex, it is preferable for acceptance not to be declared until after a continuous period of satisfactory performance so that reliability and any performance guarantees can be checked.



## **Remedy**

- a) The Contractor shall be liable to the Contracting Authority for any lack of conformity which exists at the time the goods are verified.
- b) In case of lack of conformity, without prejudice to Article 2.4 regarding liquidated damages applicable to the total price of the goods concerned, the Contracting Authority shall be entitled:
  - either to have the goods brought into conformity, free of charge, by repair or replacement;
  - or to have an appropriate reduction made in the price.
- c) Any repair or replacement shall be completed within a reasonable time and without any significant inconvenience to the Contracting Authority, taking account of the nature of the goods and the purpose for which they are required by the Contracting Authority.
- d) The term 'free of charge' in paragraph b) refers to the costs incurred to bring the goods into conformity, particularly the cost of postage, labour and materials.

## **Assembly**

If required by Article 1.1.2 of the Special Conditions, the Contractor shall assemble the goods delivered within a period of one month unless otherwise specified in the Special Conditions or in Annex 1.

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

## **Services provided to goods**

If required by Annex I, services to goods shall be provided accordingly.

### **2.1.2 General provisions concerning goods**

#### a) Packaging

The goods shall be packaged in strong boxes or crates or in any other way that ensures that the contents remain intact and prevents damage or deterioration. Packaging, pallets, etc., including contents, shall not weigh more than 500 kg.

Unless otherwise specified in the Special Conditions or in Annex 1, pallets shall be considered as one-way packaging and shall not be returned. Each box shall be clearly labelled with the following information:



- European Contracting Authority and address for delivery;
- name of Contractor;
- description of contents;
- date of delivery;
- number and date of Order Form;
- EC code number of article.

b) Guarantee

The goods shall be guaranteed against all defects in manufacture or materials for two years from the date of delivery, unless provision is made for a longer period in Annex I.

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

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

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

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

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

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

### **2.1.3 Performance of the Contract**

- a) 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.

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- b) 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 Orders are to be executed.
- c) The Contractor must ensure that any staff performing the Contract have the professional qualifications and experience required for execution of the Orders.
- d) 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 Orders resulting from the replacement of staff in accordance with this Article.
- e) Should any unforeseen event, action or omission directly or indirectly hamper execution of the Orders, either partially or totally, the Contractor shall immediately and at 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.
- f) Should the Contractor fail to perform his obligations under the Contract, 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 liquidated damages, as provided for in Article 2.4.

## **ARTICLE 2.2 - LIABILITY**

- 2.2.1** 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.
- 2.2.2** 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 2.10. The Contracting Authority shall not be liable for any act or default on the part of the Contractor in performance of the Contract.
- 2.2.3** 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.



**2.2.4** 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 to this end may be borne by the Contracting Authority.

**2.2.5** 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 2.3 - CONFLICT OF INTERESTS**

**2.3.1** The Contractor shall take all necessary measures in order 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 that additional measures 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 interest. Without prejudice to Article 2.1 the Contractor shall replace, immediately and without compensation from the Contracting Authority, any member of his staff exposed to such a situation.

**2.3.2** The Contractor shall abstain from any contact likely to compromise his independence.

**2.3.3** 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 the performance of the Contract.

### **ARTICLE 2.4 - 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

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terminate the Contract, the Contracting Authority may decide to impose liquidated damages of 0.2%<sup>4</sup> of the amount of the relevant Order per calendar day of delay. The Contractor may submit arguments against this decision within thirty days of notification by registered letter with acknowledgment 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 2.5 – INVOICING AND PAYMENTS**

a) Pre-financing:

Where required by Article 1.4.1 or by the Order issued, 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 delivery of goods or execution of related services 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 delivery of goods or execution of related services. The guarantee shall be retained until the pre-financing has been deducted from payment of the balance. 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.

b) Payment of the balance:

Within sixty days of receipt by the Contractor of the certificate of conformity of the goods signed by the Contracting Authority, he shall submit the relevant invoice, drawn

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<sup>4</sup> The daily rate for liquidated damages may be modified in the Special Conditions where the subject of the contract so justifies.





up in duplicate and bearing the Order number, to the Contracting Authority for approval.

Where required, it shall be accompanied by a final technical report in accordance with the instructions laid down in Annex I.

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.

## **ARTICLE 2.6 – GENERAL PROVISIONS CONCERNING PAYMENTS**

**2.6.1** Payments shall be deemed to have been made on the date on which the Contracting Authority's account is debited.

**2.6.2** The payment periods referred to in Article 1.4 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 1.4 shall begin to run again once the suspension has been lifted.

**2.6.3** 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

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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 2.7 –RECOVERY**

- 2.7.1** If total payments made exceed the amount actually due under the Order 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.
- 2.7.2** 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 2.6.3. Interest shall be payable from the calendar day following the expiry of the due date up to the calendar day on which the debt is repaid in full.
- 2.7.3** 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.

#### **ARTICLE 2.8 –TAXATION**

- 2.8.1** 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.
- 2.8.2** 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.
- 2.8.3** 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.
- 2.8.4** 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 2.9– FORCE MAJEURE AFFECTING THE CONTRACT OR THE ORDER(S)**

- 2.9.1** 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

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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.

- 2.9.2** Without prejudice to the provisions of Article 2.1.3(e), 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.
- 2.9.3** 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 for the goods actually delivered and any service provided.
- 2.9.4** The contracting parties shall take the necessary measures to reduce damage to a minimum.

#### **ARTICLE 2.10 – SUBCONTRACTING**

- 2.10.1** 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.
- 2.10.2** 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.
- 2.10.3** 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 2.14.

#### **ARTICLE 2.11 – ASSIGNMENT**

- 2.11.1** 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.
- 2.11.2** 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 2.12 – TERMINATION BY THE CONTRACTING AUTHORITY**

- 2.12.1** The Contracting Authority may terminate the 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 2.3;
- (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 the Contractor is unable, through his own fault, to obtain any permit or licence required for performance of the Contract;
- (j) 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.
- (k) 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.



**2.12.2** In case of force majeure, notified in accordance with Article 2.9, either contracting party may terminate the Contract, where performance thereof cannot be ensured for a quantity of goods corresponding to at least one fifth of the quantity of goods ordered.

**2.12.3** Prior to termination under point c), d), e), h) or j), 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.

**2.12.4** Consequences of termination:

In the event of the Contracting Authority terminating the 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 goods supplied and related services rendered 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 supply the goods and execute the related services. The Contracting Authority shall be entitled to claim from the Contractor all extra costs incurred in making good and completing execution, without prejudice to any other rights or guarantees it has under the Contract.

#### **ARTICLE 2.12a – 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 or fraud.

#### **ARTICLE 2.13 - CANCELLATION OF ORDERS**



Where execution of the Order has not actually commenced within fifteen days<sup>5</sup> of the date foreseen for the commencement of execution and the new date proposed, if any, is considered unacceptable by the Contracting Authority, the Contracting Authority may cancel such Order with no prior notice. Cancellation shall take effect from the day after the day on which the Contractor receives a registered letter with acknowledgment of receipt or equivalent.

The Contracting Authority may cancel an Order at any time during execution thereof on the grounds and under the conditions set out in Article 2.12 with respect to the part still outstanding. The Contractor shall accept, as the aggregate liability of the Contracting Authority, payment of the price of the goods delivered by him as at the effective date of cancellation.

#### **ARTICLE 2.14 – CHECKS AND AUDITS**

**2.14.1** Pursuant to Article 142 of the Financial Regulation applicable to the general budget of the European Communities, the Court of Auditors is 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 Order.

**2.14.2** 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 Order.

**2.14.3** 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 Order.

#### **ARTICLE 2.15 - AMENDMENTS**

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

#### **ARTICLE 2.16 – CONFIDENTIALITY**

**2.16.1** 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

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<sup>5</sup> This period may be modified in the Special Conditions depending on the nature of the contract. If the date or time of delivery is essential for the Contracting Authority, this should be clearly indicated in the invitation to tender and a clause in the Special Conditions should modify Article II.13 accordingly.



performance of the Contract. The Contractor shall continue to be bound by this undertaking after execution of the Orders.

**2.16.2** 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 execution of the Orders.

### **ARTICLE 2.17 – 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 performance of the Contract or pending Orders or any part thereof. Suspension shall take effect on the day the Contractor receives notification by registered letter with acknowledgment of receipt or equivalent, or at a later date where the notification so provides. The Contracting Authority may at any time following suspension give notice to the Contractor to resume performance of the Contract or pending Orders. The Contractor shall not be entitled to claim compensation on account of suspension of the Contract 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 and Technical Specifications**





**ANNEX II**

**Contractor's Tender**

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**ANNEX III**

**ORDER FORM No [complete]**

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

 <p>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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<b>TOTAL PRICE</b>		_____
<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>Other details:</i>	
	<i>[Execution of the tasks shall start from [the date of Contractor's signature of this order form] [complete date].]</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.

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### ANNEX III

#### **SPECIFIC CONTRACT No [complete]<sup>6</sup>**

implementing Framework Contract No ...

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 Specific Contract by [forename, surname, function, department],

of the one part,

and

[official name in full]

[*official legal form*]<sup>7</sup>

[*statutory registration number*]<sup>8</sup>

[official address in full]

[*VAT registration number*]

(hereinafter referred to as "the Contractor"<sup>9</sup>), [*represented for the purposes of the signature of this contract by [forename, surname and function,]*]

of the other part,

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<sup>6</sup> Options [*in italics*] to be deleted where not applicable.

Options [in roman] to be completed.

<sup>7</sup> Delete if contractor is a natural person or a body governed by public law.

<sup>8</sup> Delete if contractor is a body governed by public law. For natural persons, indicate the number of their identity card or, failing that, of their passport or equivalent.

<sup>9</sup> 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

### **ARTICLE 1.1: SUBJECT**

- 1.1.1** This specific contract implements Framework Contract No [complete] signed by the Contracting Authority and the Contractor on [complete date] *[and renewed on complete date]*.
- 1.1.2** The subject of this specific contract is [short description of subject]. *[This specific contract relates to lot [complete] of the Framework Contract.]*
- 1.1.3** The Contractor undertakes, on the terms set out in the Framework Contract and in this specific contract and the annex[es] thereto, which form an integral part thereof, to perform the following tasks [:] *[specified in Annex [complete].]*

### **ARTICLE 1.2: DURATION**

- 1.2.1** This specific contract shall enter into force *[[on the date on which it is signed by the last contracting party]<sup>10</sup> [on complete if it has already been signed by both contracting parties]]*.
- 1.2.2** The duration of the tasks shall not exceed *[days/months]*. Execution of the tasks shall start from *[date of entry into force of this specific contract]* 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 1.3: PRICE**

- 1.3.1** The total amount to be paid by the Contracting Authority under this specific contract shall be EUR [amount in figures and in words] covering all tasks executed.
- 1.3.2** In addition to the price *[no reimbursable costs are foreseen]* *[costs up the an amount of EUR ... will be reimbursed according to the provisions of the Framework contract]*

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

### **ARTICLE 1.4: ANNEXE[S]**

**Annex A** - Resources allocated<sup>11</sup>

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<sup>10</sup> As a rule the Contracting Authority signs last. In this case, the Contractor should be duly informed of the date on which the specific contract enters into force.

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**Annex B** – Contractor’s specific Tender<sup>12</sup> (no [complete] of [complete])

**SIGNATURES**

For the Contractor,

<Contractor Company Name>

<Contractor Contact Full Name>

<Contractor Contact Function>

For the Contracting Authority,

<Authorising Officer Full Name>

<Authorising Officer Function>

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

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

Done at \_\_\_\_\_ date: \_\_\_\_\_

Done at Vienna date: \_\_\_\_\_

In duplicate in English.

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<sup>11</sup> Only if it has not been possible to include the resources allocated in the body of the specific contract.

<sup>12</sup> Annex to be completed and inserted in case of “competitive” multiple framework contracts.

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**ANNEX IV**

**Financial Identification Form and Legal Entities**

