CALL FOR TENDER No D/SU/09/01

Provision and installation of sound absorbing equipment for acoustics and lighting system

ANNEX B

DRAFT WORKS CONTRACT

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 Contract by Mr Morten Kjaerum, Director,

and

Contractor's Official name

Contractor's Legal Form

Contractor's Registration Number

Contractor's Address

Contractor's VAT number

(hereinafter referred to as "the Contractor"), represented for the purposes of the signature of this Framework Contract by *Title and Full Name*.

HAVE AGREED

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

Annex I Tender and Technical Specifications (Invitation to Tender No D/SU/09/01 of)

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

Annex III Financial Identification form and Legal entities – Original archived at the Contracting Authority's premises

Annex IV Performance guarantee - Model

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

- The terms set out in the Special Conditions shall take precedence over those in the other parts of the Contract.
- The terms set out in the General Conditions shall take precedence over those in the Annexes.
- The terms set out in the Tender and Technical 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 1.8 should he dispute any such instruction.

PREAMBLE

On , the Contracting Authority published, in the Official Journal of the European Union, an invitation to tender under reference 2009/S XXX-XXXXXX, for the provision and installation of sound absorbing equipment for acoustics and lighting system.

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1 SPECIAL CONDITIONS

1.1 SUBJECT

1.1.1 The subject of the Contract is the provision and installation of sound absorbing equipment for acoustics and lighting system in the premises of the Contracting Authority.

1.1.2 The Contractor shall execute the works assigned to him accordance with the Tender Specifications annexed to the Contract (Annex I) and his specific Tender (Annex II) as well as the site coordination.

1.1.3 The work shall be executed for a lump sum and on a turnkey basis. Accordingly the contractor shall be required in addition to perform tasks which were not expressly prescribed or mentioned, but which are necessary for final completion of the structures in accordance with the operational plans so that they are fully operational in every respect.

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 execution of the tasks commence before the date on which the Contract enters into force.

1.2.3 The duration of the tasks shall not exceed XX months. This contractual period and all other periods specified in the Contract are calculated in calendar days unless otherwise indicated. The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses.

1.3 CONTRACT PRICE

1.3.1 The total amount to be paid by the Contracting Authority under the Contract shall be EUR [amount in figures and in words] covering the execution of the works referred to in Article 1.

The total amount referred to in the above paragraph shall be fixed and not subject to revision.

1.4 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. Payment requests may not be made if payments for previous periods have not been executed as a result of default or negligence on the part of the Contractor.

1.4.1 Pre-financing

Within thirty (30) days of :

- the date on which the Contractor returns the Contract and the relevant invoice, indicating the reference number of the Contract to which it refers,

a pre-financing payment of 30.00% of the total amount referred to Article 1.31 shall be made.

1.4.2 Interim payment: Not applicable.

1.4.3 Payment of the balance

In order for the request for payment of the balance to be valid, the contractor must send the following accompanying documentation:

the "provisional acceptance inspection report", signed by both parties, as referred to in Article 1.12.3, the relevant invoices, provided the above documents have been approved by the Contracting Authority.

Within 30 days of the date of receipt of the relevant invoice, payment of the balance corresponding to the relevant invoices shall be made subject to the performance bank guarantee referred to in Article 1.5

1.5 PERFORMANCE GUARANTEE

The current contract is subject to the submission of a performance guarantee, which corresponds to 10% of the total contract price. The guarantee will enter into force and take effect from the *date of payment of the balance* and shall be valid until the date of issue of the certificate of final acceptance.

The guarantee will be released at the latest within thirty days of the date of issue of this certificate of the final acceptance.

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 III 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 code: *[complete]*

1.7 GENERAL ADMINISTRATIVE PROVISIONS

Any communication relating to the Contract shall be made in writing and shall bear the Contract number. 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. Correspondence should be sent to the following addresses:

Contracting Authority:

European Union Agency for Fundamental Rights
to the attention of Mr Constantinos Manolopoulos
Schwarzenbergplatz 11,
Vienna 1040,
Austria

Contractor:
Mr/Ms Full Name
Function
Company name
Contact address in full

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

…… ……

…… ……

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

…… ……

…… ……

1.8 APPLICABLE LAW AND SETTLEMENT OF DISPUTES

1.8.1 The Contract shall be governed by the national substantive law of Austria.

1.8.2 Any dispute between the parties resulting from the interpretation or application of application of the Contract which cannot be settled amicably shall be brought before the courts of Vienna.

1.9 DATA PROTECTION

1.9.1 Any personal data included in or relating to the Contract will be processed in accordance with the requirements of Regulation (EC) 45/2001 of the European Parliament and the Council of 18 December 2000 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 (OJ No L8, 12.1.2001, p. 1). The data will only be processed for the purposes of the performance, management and follow up of the Contract by the contracting authority without prejudice to a possible transmission to the bodies in charge of a monitoring or inspection task in conformity with Community law. The Contractor may, upon request, obtain the communication of his personal data and rectify any inaccurate or incomplete personal data. Should the Contractor have any queries concerning the processing of his personal data, he shall address them to the FRA's Data Protection Officer. As regards the processing of his personal data, the Contractor has a right of recourse at any time to the European Data Protection Supervisor.

1.9.2 When processing personal data on behalf of the Contracting authority in the performance of the Contract the Contractor:

(a) shall act only on instructions from the contracting authority;

(b) shall comply with the obligations set out in Articles 21 and 22 of Regulation (EC) 45/2001 on the confidentiality and the security of processing unless, by virtue of Article 16 or Article 17(3), second indent, of Directive 95/46/EC, the Contractor is already subject to obligations with regard to confidentiality and security laid down in the national law of one of the Member States.

Appropriate technical and organisational measures will be taken by the Contractor for the security of the processing in accordance with Article 22 of Regulation (EC) 45/2001 and will have to be agreed between the Contractor and the Contracting authority in writing or in another equivalent form.

1.9.3 The Contractor shall comply with Council regulation (Euratom, EEC) N° 1588/90 of 11 June 1990 on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities (OJ No L151, 15.6.1990, p. 1).

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.

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: ……

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.

1.12 ACCEPTANCE OF WORKS AND ACCEPTANCE INSPECTIONS

1.12.1 When the contractor considers that he has completed the works, he shall request an on-site inspection together with representatives of the Contracting Authority. At that time a "**provisional works completion report**" shall be signed, including:

a) confirmation that the works have been carried out in accordance with the description in Annex I, with the possible exception of work which is incomplete or has visible faults;

b) a description of the incomplete work or faults.

1.12.2 The problems described in the provisional works completion report will be remedied within no more than 15 days of signature of that report, either directly by the contractor or by the Contracting Authority with the contractor bearing the costs.

When the period of 7 days after signature of that report has elapsed, if the contractor has fulfilled the above obligations, the contractor - or failing that, the Contracting Authority - shall request an on-site inspection to be carried out jointly with the Contracting Authority's representatives. The parties will then carry out a provisional acceptance inspection to check that the contractor has executed all the works according to the terms of the Annexes.

If the works fail the provisional acceptance inspection, the Contracting Authority will be free to apply the terms of Article 2.17 and to proceed to terminate the contract in accordance with the terms of Article 2.15.

1.12.3 If the works pass the provisional acceptance inspection, a "**provisional acceptance inspection report**" will be signed.

The guarantee period referred to in Article 2.1, during which all the checks preceding final acceptance must be carried out (as appropriate to the summer or winter season), will start to run from the date of the "**provisional acceptance inspection report**", which will be the date of provisional acceptance of the works carried out.

1.12.4 In the period between signature of the provisional acceptance inspection report and the final acceptance inspection report, the Contracting Authority will request all the evidence it deems necessary and appropriate.

1.12.5 Final acceptance will take place upon expiry of the guarantee period.

1.12.6 The Contracting Authority shall have to bear the costs of the final acceptance inspection. For its part, the contractor will provide the assistance necessary at its own expense.

1.12.7 When the results of the final acceptance inspection are fully satisfactory to the Contracting Authority, a report will be drawn up and signed by both parties (the

final acceptance inspection report), which will be the effective acceptance document.

All the technical authorisation documentation, certificates and conformity certificates needed for the works to be used will be annexed to this report.

The Contracting Authority will effect final acceptance of the works carried out by signing the final acceptance inspection report.

2 GENERAL CONDITIONS

2.1 PROCEDURES FOR PERFORMING THE CONTRACT

Delivery

a) Date, time and place of delivery

The Contracting Authority shall be notified in writing of the exact date of delivery. All deliveries shall be made at the agreed place of delivery during the Contracting Authority's working days and hours. That is to say from Monday to Friday, from 09:00 to 12:00 and from 14:00 to 16:00.

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

b) Consignment note

Each delivery shall be accompanied by a consignment note in duplicate, duly signed and dated by the Contractor or his carrier, giving the Contract 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 b) above, is simply an acknowledgment of the fact that the goods have been delivered and in no way implies conformity of the goods with the Contract.

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 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 or services, 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.

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.

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 the event of lack of conformity, without prejudice to Article 2.17 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 carriage, labour and materials.

Assembly

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

2.1.1 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 Monitoring Centre on Racism and Xenophobia and address for delivery;
- name of Contractor;
- description of contents;
- date of delivery;
- number and date of Contract;

b) Guarantee

The goods shall be guaranteed against all defects in manufacture or materials for two years from the date of delivery, unless provision for a longer period is made 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 Contract, even though they may not have been the cause of any incident. In this case, the guarantee period shall be extended as stated above.

2.2 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.

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 tasks assigned to him are to be executed.

c) Without prejudice to Article 2.4 any reference made to the Contractor's staff in the Contract shall relate exclusively to individuals involved in the performance of the Contract.

d) 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.

e) 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.

f) 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 directly 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.

g) 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.

h) 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.

i) 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 liquidated damages, as provided for in Article 2.17.

2.3 LIABILITY

2.3.1 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.

2.3.2 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 2.13. The Contracting Authority shall not be liable for any act or default on the part of the Contractor in performance of the Contract.

2.3.3 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.

2.3.4 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.

2.3.5 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.

2.4 CONFLICT OF INTERESTS

2.4.1 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 2.2 the Contractor shall replace, immediately and without compensation from the Contracting Authority, any member of his staff exposed to such a situation.

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

2.4.3 The Contractor declares:

a) that he has not made, and will not make, any offer of any type whatsoever, from which an advantage can be derived under the Contract,

b) 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.

2.4.4 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**.**

2.5 INVOICING AND PAYMENTS

2.5.1 Definitions

Itemised works: works which are carried out on the basis of conventional units of measurement (m, m^2, m^3, kg, t, unit, etc.) as given in Annex I.

Works on a flat-rate basis: works not carried out on the basis of conventional units of measurement (m, m2, m3, kg, t, unit, etc.) but instead considered on a flat-rate basis and, if necessary, dependent on expected performance.

Works on a rolling basis: works deemed necessary by the Contracting Authority that are of a scope and value which cannot be determined individually in advance.

2.5.2 Charging for works

The different types of works are charged differently, as follows:

- **Itemised works** are charged at each stage of progress of the works, by applying the listed prices to the quantities of the items concerned.

- **Works on a flat-rate basis** are charged at each stage of progress according to the percentage of work performed out of the quota for that type of work as shown in the table in Annex I to the contract, with reference to individual flat-rate tasks.

- **Social security** charges will be paid in proportion to the state of progress of the works in relation to the contractual amount.

- **Works on a rolling basis** carried out by the contractor on the Contracting Authority's orders will be paid according to the relevant daily reports countersigned by the Contracting Authority, represented by the Head of Department, to be included in the works' accounts, applying the prices given in Annex I, if applicable, or failing that, the prices will be obtained in accordance with the provisions of the Article I.4.

No payment will be made for works on a rolling basis performed by the contractor without the written authorisation of the Contracting Authority, as represented by the Head of Department.

2.5.3 Works charging procedure

The contractor must cooperate fully to assist the charging for works and must in each case notify the Contracting Authority, represented by the Head of Department, in writing by registered letter with acknowledgement of receipt, or equivalent, that the period mentioned in Annex I and/or the Special Conditions which gives entitlement to payment for the amounts due has elapsed, attaching to the notification a detailed bill of quantities and drawings showing the works as built, which the Contracting Authority, represented by the directorate of work, will use for the necessary checks and for calculating the charges for the works.

The drawings must give a faithful representation of the works performed which are to be charged. The Contracting Authority, represented by the Head of Department, shall have the option of refusing to countersign them if they are not accurate.

2.5.4 Prefinancing

Where required by Article 1.4.1, 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. This guarantee may be replaced by a guarantee provided 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 prefinancing. The Contracting Authority shall release the guarantor from its obligations as soon as the contractor has demonstrated that any prefinancing has been covered by equivalent execution of services. The guarantee shall be retained until the prefinancing has been deducted in proportion from interim payments and/or in full from payment of the balance to the contractor. It shall be discharged the following month. The cost of providing the guarantee shall be borne by the contractor.

2.5.5 Interim payments

At the end of each of the periods indicated in Annex I and/or in the Special Conditions, the contractor shall submit to the Contracting Authority for approval a formal request for payment accompanied by those of the following documents which are provided for in the Special Conditions and/or in Annex I:

- the documents concerning the state of progress of the works corresponding to the instructions given in Annex I and/or in the Special Conditions, signed for acceptance by the Contracting Authority, represented by the Head of Department,
- the provisional works completion report,
- the provisional acceptance inspection report,
- the relevant invoices indicating the reference number of the contract to which they refer;

Where such documents are considered necessary to payments, after receiving them, the Contracting Authority shall have the period given in the Special Conditions to:

- either approve them, with or without comments, reservations or suspend the period and request additional information;
- or reject them and request new documents.

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

Where the Contracting Authority requests new documents, having rejected previous documents, they shall be submitted within the period of time indicated in the Special Conditions. The new documents shall likewise be subject to the above provisions.

2.5.6 Payment of the balance

Within sixty days of completion of the tasks referred to 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:

- the final test report complying with the instructions given in the provisions of the Special Conditions;
- the relevant invoices indicating the reference number of the contract to which they refer;

Where such documents are considered necessary to payments, after receiving them, the Contracting Authority shall have the period given in the Special Conditions to:

- either approve them, with or without comments, reservations or suspend the period and request additional information;
- or reject them and request new documents.

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

Where the Contracting Authority requests new documents, having rejected previous documents, they shall be submitted within the period of time indicated in the Special Conditions. The new documents shall likewise be subject to the above provisions.

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 about 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. Suspension shall take effect from the date of dispatch of the notification. 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 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.

2.7 RECOVERY

2.7.1 If total payments made exceed the amount actually due under the Contract 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 Communities that is certain, of a fixed amount and due. The Contracting Authority may also claim against the guarantee, where provided for.

2.8 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 Contracting Authority, 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.

2.9 CONFIDENTIALITY

2.9.1 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.

2.9.2 The Contractor shall obtain from all the members of its staff and its administrative and management bodies a written undertaking to respect the

confidential nature of any information connected, directly or indirectly, with the execution of the contract and not to divulge to third parties or to use for their personal benefit or that of third parties any document or information which has not been made public, even after the contract has been completed. A copy of these written undertakings shall be communicated to the Contracting Authority, where it so requests.

2.9.3 In the event that the Contractor's staff work in the Contracting Authority's buildings, the Contractor is required, at the Contracting Authority's request, to replace immediately and without compensation any person considered by the Contracting Authority to be 'persona non grata'.

2.10 USE, DISTRIBUTION AND PUBLICATION OF INFORMATION

2.10.1 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 1.9 shall apply.

2.10.2 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 Contractor only and do not represent the Contracting Authority's official position.

2.10.3 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.Contracting Authority.

2.10.4 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 Community. It shall state that the opinions expressed are those of the

2.11 TAXATION

2.11.1 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.

2.11.2 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 Communities.

2.11.3 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.

2.11.4 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.

2.12 FORCE MAJEURE AFFECTING THE CONTRACT

2.12.1 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, and which was not due to error or negligence on their part or on the part of a subcontractor and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making it available, labour disputes, strikes or financial problems cannot be invoked as force majeure unless they stem directly from a relevant case of force majeure.

2.12.2 Without prejudice to the provisions of Article 2.2h), 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.

2.12.3 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 for the goods actually delivered and any service provided.

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

2.13 SUBCONTRACTING

2.13.1 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.

2.13.2 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.

2.13.3 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 2.18**.**

2.14 ASSIGNMENT

2.14.1 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.

2.14.2 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.

2.15 TERMINATION BY THE CONTRACTING AUTHORITY

2.15.1 The Contracting Authority may terminate the Contract in the following circumstances:

a) where the Contractor is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;

b) where the Contractor has been convicted of an offence concerning his professional conduct by a judgment which has the force of *res judicata*;

c) where the Contractor has been guilty of grave professional misconduct proven by any means which the Contracting Authority can justify;

d) 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;

e) where the Contracting Authority seriously suspects that the Contractor is guilty of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;

f) where the Contractor is in breach of his obligations under Article 2.4;

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 has not actually commenced within fifteen days of the date provided for, 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 the failure within a reasonable period following receipt of the formal notice, remains in serious breach of his contractual obligations.

2.15.2 In the event of force majeure, notified in accordance with Article 2.12, 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.

2.15.3 Prior to termination under point 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.

2.16 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/or 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 it has under the Contract.

2.17 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% of the amount specified in article 1.3.1 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.

2.18 CHECKS AND AUDITS

2.18.1 Pursuant to Article 142 of the Financial Regulation applicable to the general budget of the European Communities, the European Court of Auditors is empowered to audit the documents held by the natural or legal persons receiving payments from the budget of the European Communities from signature of the Contract up to five years after payment of the balance.

2.18.2 The Contracting Authority or an outside body of its choice shall have the same rights as the European 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.

2.18.3 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.

2.19 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.

2.20 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 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. The Contractor shall not be entitled to claim compensation on account of suspension of the Contract or of part thereof.

SIGNATURES

For the Contractor,	For the Contracting Authority,
[Company Name]	Morten Kjaerum
[Company Contact Full Name]	Director
[Company Contact Function]	
signature[s]: _____	signature[s]:_____
Done at _____ date:_____	Done at Vienna date:_____

In duplicate in English.

TASK ACCEPTANCE FORM

(FOR SERVICE CONTRACT No D/SU/09/01

One document - duly signed - to be attached to the invoice.

RECEIPT OF WORK (Provisional acceptance)

To be filled by the Contractor and the Contracting Authority.

	Contractor	**FRA**
Date of delivery/signing:		
Person responsible for checking (in block capitals):		
Comments:		
Date and signature:		

ACCEPTANCE AND VALIDATION OF WORK

To be filled by the Contracting Authority.

Official responsible for acceptance (in block capitals)*:		
Date and signature:		
Official responsible for the final validation (in block capitals):**		
Date and signature:		

* The Contracting Authority's responsible in charge of the reception of the work is obliged to act as Operational Initiating Agent for his Unit.

** The Contracting Authority's responsible in charge of the reception of the final validation of the work is obliged to act as Operational Verifying Agent for his Unit.

Annex IV

Contract performance guarantee

Bank (Letterhead)

[Place/Date]

European Union Agency for Fundamental Rights

Administration Department

Schwarzenbergplatz 11

A-1070 Vienna – Austria

Contract performance guarantee No …

[Subject/Brief description of the Contract]

We hereby confirm that we give the European Union Agency for Fundamental Rights an unconditional and irrevocable joint and several guarantee for an unlimited period to the value of

EUR XXX,XXX.XX

(in words: …… euro)

for performance of the Contract concluded between the European Union Agency for Fundamental Rights (hereinafter "the Agency") and

[Firm/Name/Address – as given in the Contract (No/exact title – hereinafter "the Contract")] (hereinafter "the Contractor").

If the Agency gives notice that the Contractor has for any reason failed to fulfil his obligations under the Contract by the due date, the Bank, acting on behalf of the Contractor, undertakes to pay up to the above amount into a bank account designated by the Agency immediately on receipt of a first written request from the Agency (sent by registered post, with acknowledgement of receipt).

The Bank waives the right to require exhaustion of remedies against the principal, any right to withhold performance, any right of retention, any right of avoidance, any right to offset, and the right to assert any other claims which the Contractor may have against the Agency under the Contract or in connection with it or on any other grounds.

The Bank may be released from this guarantee only with the Agency's written consent and does not have the right of deposit without its consent.

The Bank's obligations under this guarantee are not affected by any arrangements or agreements made by the Agency with the Contractor which may concern his obligations under the Contract.

This guarantee shall take immediate effect. It shall expire on return of this document, which must occur within six (6) months after the final payment under the Contract has been made.

This guarantee is governed by the law applicable to the Contract.

The courts having jurisdiction for matters relating to the Contract shall have sole jurisdiction in respect of matters relating to this guarantee.

[Place/Date]

_____ _____

[Signature/Function] [Signature/Function]