



**DRAFT SERVICE CONTRACT**

**SATELLITE CAPABILITIES FOR OPTIMI**  
**(SAT OPTIMI)**

CONTRACT NUMBER – SJU/LC/...-CTR
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The **SESAR JOINT UNDERTAKING**,

Hereinafter referred to as "**SJU**", a joint undertaking in the meaning of Article 187 of the Treaty on the functioning of the European Union and set up by Council Regulation (EC) No 219/2007 of 27 February 2007 on the establishment of a Joint Undertaking to develop the new generation European air traffic management system (SESAR) as amended by Council Regulation (EC) No 1361/2008 of 16 December 2008,

Located at Avenue de Cortenbergh, 100  
B-1040 Brussels,  
Belgium

Represented for the purpose of the signature of this Contract by Mr. Patrick KY, its Executive Director,

**OF THE ONE PART,**

**AND**

**[OFFICIAL NAME OF THE CONTRACTOR IN FULL]**

**[OFFICIAL LEGAL FORM]** (delete if contractor is private undertaking or a body governed by public law)]

**[STATUTORY REGISTRATION NUMBER]** (delete if contractor is a body governed by public law)]

**[OFFICIAL ADDRESS IN FULL]**

**[VAT REGISTRATION NUMBER]**

(hereinafter referred to as "the **Contractor**"), represented for the purpose of signing this Contract by **[NAME IN FULL AND TITLE]**.

**Or, in case of Consortium**

**[OFFICIAL NAME OF THE COORDINATOR IN FULL],**

**[OFFICIAL LEGAL FORM OF THE COORDINATOR]** (Delete if contractor is private undertaking or a body governed by public law.))

**[STATUTORY REGISTRATION NUMBER]** (Delete if contractor is a body governed by public law.))

**[OFFICIAL ADDRESS IN FULL]**

**[VAT REGISTRATION NUMBER]**

(hereinafter referred to as the "Coordinator"), represented for the purpose of signing this Contract by **[NAME IN FULL AND TITLE]**, acting in the name and on behalf of the legal entities listed under Article I.1.2 below, which shall accede to this Contract as "Consortium members", assuming the rights and obligations established by this Contract,

The Coordinator and the Consortium Member(s) form together the consortium hereinafter collectively referred to as the "Consortium"

**OF THE OTHER PART.**

hereinafter individually referred to as the “**Party**” and collectively referred to as the “**Parties**”,

## HAVE AGREED

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

**Annex I** – Terms of Reference (Invitation to Tender No.SJU/0043-CFT) attached hereto,

**Annex II** – Contractor's [or, when applicable, Consortium's] Tender (No [complete] dated [complete]), and  
which form an integral part of this contract (hereinafter referred to as “the Contract”).

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

Subject to the above, the several instruments forming part of the Contract are to be taken as mutually explanatory. Ambiguities or discrepancies within or between such parts shall be explained or rectified by a written instruction issued by the SJU, subject to the rights of the Contractor [or, when applicable, the Consortium] under Article I.7, should it dispute any such instruction.

## I – SPECIAL CONDITIONS

### **ARTICLE I.1 - SUBJECT**

**I.1.1** The subject of the Contract is to set forth the terms and conditions according to which the Contractor [or, when applicable, the Consortium] undertakes to perform activities and studies aiming at demonstrating the feasibility and options for the best use of satellite infrastructure and technology to ensure full deployment of oceanic tracking services in the Atlantic resulting for the OPTIMI initiative (hereinafter referred to as the “Services”) in accordance with Annexe I attached hereto.

[In case of an offer submitted by a consortium:

**I.1.2** The implementation of the Contract shall be performed by the Consortium. The Consortium is composed of the Coordinator:

*[Name of the Coordinator]*

and the following legal entities, which shall accede to the contract as “Consortium Member(s)” in accordance with the procedure referred to in Article I.1.3 hereunder, assuming the rights and obligations established by the Contract with effect from the date on which it enters into force:

*[Full name and legal form of the Consortium Member(s), national registration number if any] established in (full address city/state/province/country), represented by (name of legal representative) (function), [and/or (name of legal representative), (function)], or her/his/their authorised representative]*

The Consortium Member(s) and the Coordinator form together the consortium (the “Consortium”). The Coordinator and the Consortium Member(s) are collectively referred to as either the “Consortium”, or the “Consortium members” and individually as the “Consortium member”.

**I.1.3** The Coordinator shall send to the SJU one duly completed and signed Annex III per Consortium Member at the latest 45 calendar days after the entry into force of the Contract.

**I.1.4** Should any legal entity identified above, fail or refuse to accede to the Contract within the deadline established in the previous paragraph, the SJU is no longer bound by its offer to the said legal entity(ies). The Consortium may propose to the SJU, within the time-limit to be fixed by the latter, appropriate solutions to ensure the provision of the Services.

**I.1.5** The Coordinator and the Consortium Member(s) are deemed to have concluded a consortium agreement (the “Consortium Agreement”) regarding the internal organisation of the Consortium.]

### **ARTICLE I.2 - DURATION**

**I.2.1** The Contract shall enter into force on the date on which it is signed by the last contracting Party.

**I.2.2** Under no circumstances execution of the Services may begin before the date on which the Contract enters into force. In case Services are launched before the date of entry into force of the Contract, the costs incurred by the

Contractor [or, where applicable, the Consortium] for these services will not be reimbursed by the SJU.

- I.2.3** The Contract is concluded for a period of five (5) months with effect from the date of the kick-off meeting following contract signature (T0). This contractual period and all other periods specified in the Contract are calculated in calendar days unless otherwise indicated.

### **ARTICLE I.3 –PRICES**

- I.3.1** The cost of the Services is [ ] EURO [amount in figures and in words].

The fixed and firm price to be paid by the SJU under the Contract shall be [ ] EURO [amount in figures and in words].

- I.3.2** Prices shall be expressed in EURO, include all direct as well as indirect charges, general administrative overhead and profit as well as travel and subsistence expenses.

- I.3.3** The amount referred to in Article I.3.1 hereabove is a **fixed and firm price** and therefore shall not be subject to any adjustment or revision by reason of the actual costs incurred by the Contractor [or, when applicable, by the Consortium] in the performance of the Contract for the overall duration of the Contract.

### **ARTICLE I.4 – PAYMENT PERIODS AND FORMALITIES**

Payments under the Contract shall be made in accordance with Article II.4.

#### **I.4.2 Final payment**

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

- the final version of the deliverable items described in Annex I and Article II.4 below, and
- the relevant invoices,

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

The SJU shall have fifteen (15) calendar days from receipt to approve or reject the deliverable items due under this Contract, and the Contractor [or, where applicable the Consortium] shall have ten (10) calendar days in which to submit additional information or a new deliverable item in accordance with the SJU's requirements.

Within thirty (30) calendar days of the date on which the documents accompanying a request for payment are approved by the SJU and upon fulfilment of all contractual obligations under this Contract by the Contractor [or, where applicable, the Consortium], the final payment corresponding to the relevant invoices shall be made.

#### **I.4.3 Milestone Payment Plan**

The SJU shall make all payments to the Contractor [or, when applicable, to the Coordinator who receives it on behalf of the Consortium Member(s)]. Arrangements as regards payments are exclusively between the SJU and the Coordinator. It will be for the Coordinator and the Consortium Member(s) to come to any particular agreement concerning the final destination of any payment made by the SJU; the SJU will not intervene in this agreement].

The SJU payments shall be made to the Contractor [or, where applicable to the Coordinator] by bank transfer and according to the following Milestone Payment Plan:

Milestone Description	Estimated Schedule Date	Amount (in €)
Final payment upon acceptance by the SJU of all deliverables due under the Contract and Contractor's [or, where applicable, Consortium's] fulfilment of all its obligations	TBD	TBD

#### **ARTICLE I.5 – BANK ACCOUNT**

Payments shall be made to the Contractor's [or, where applicable, to the Coordinator's] bank account denominated in EURO, identified as follows:

**Name of bank:** [complete]

**Address of branch in full:** [complete]

**Exact designation of account holder:** [complete]

**Full account number including codes:** [complete]

**IBAN code:** [complete]

**BIC code:** [complete]

#### **ARTICLE I.6 – 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 SJU on the date on which it is registered by the department responsible indicated below.

Communications shall be sent to the following addresses:

##### **SJU:**

**SESAR JOINT UNDERTAKING**  
**100, Avenue de Cortenbergh**  
**B-1000 Brussels**  
**Belgium**

Any technical matters shall be addressed to:

Mr ..... Tel.: +.....  
Fax: +.....  
E-mail: .....@sesarju.eu

with copy to the Legal Affairs and Contract Unit representative nominated hereunder.

Any financial, contractual and administrative matters shall be addressed to:

Mr ..... Tel.: +.....  
Fax: +.....  
E-mail: .....@sesarju.eu

with copy to the Technical representative nominated hereabove.

**Contractor [or, where applicable, Coordinator]:**

.....  
.....  
.....  
.....

Any technical matters shall be addressed to:

Mr ..... Tel.: +.....  
..... Fax: +.....  
..... E-mail: .....@.....

with copy to the representative for financial, contractual and administrative matters nominated hereunder.

Any financial, contractual and administrative matters shall be addressed to:

Mr ..... Tel.: +.....  
..... Fax: +.....  
..... E-mail: .....@.....

with copy to the Technical representative nominated hereabove.

**ARTICLE I.7 – INTELLECTUAL AND PROPERTY RIGHTS (ACCESS RIGHTS)**

I.7.1 Each Party shall remain the owner of the intellectual property rights held by that Party prior to the effective date of this Contract (hereinafter referred to as “Background”).

Each Party shall identify and indicate the Background it owns and/or needs for the performance of the Contract.

I.7.2 The SJU shall be granted access rights to the Contractors [or, where applicable the Consortium] Background on a fair, reasonable and royalty-free basis if the Background is needed by the SJU to use the results and/or rights obtained by the Contractor [or, where applicable the Consortium] in the performance of this Contract, which shall - in accordance with article II.8 - be solely owned by the SJU (hereinafter referred to as (“Foreground”).

The SJU may grant the Contractor [or, where applicable the Consortium] access right to the Foreground obtained under the performance of this Contract on a fair, reasonable, royalty-free, non-transferable and non-exclusive basis.

**ARTICLE I. 8– APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

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

**I.8.2** Any dispute between the Parties resulting from the interpretation or application of the Contract which cannot be settled amicably shall be brought before the courts of Brussels (Belgium).

**ARTICLE I.9 – TERMINATION AND TRANSITION**



At the end of this Contract and irrespective of the cause of termination, the current Contractor [or, where applicable, Consortium] shall exercise its best efforts and cooperation to allow an orderly and efficient phase-in of its successor. The phase-out of the current Contractor [or, where applicable, Consortium] shall be included in the Contractor's [or, where applicable, Consortium's] price and shall have a maximum duration of one (1) month.

Any access rights granted to the SJU and its successor in right by the Contractor [or, where applicable, Consortium] according to Article I.7 shall remain in full force and effect upon termination of this contract.

Any access rights granted to the Contractor [or, where applicable, Consortium] by the SJU shall cease upon the effective date of termination, unless differently agreed in writing between the parties.

## II – GENERAL CONDITIONS

### **ARTICLE II. 1 – PERFORMANCE OF THE CONTRACT**

- II.1.1** The Contractor [or, where applicable, the Consortium] shall perform the Contract to the highest professional standards. The Contractor [or, where applicable, the Consortium] shall have sole responsibility for complying with any legal obligations incumbent on it, notably those resulting from employment, tax and social legislation.
- II.1.2** The Contractor [or, where applicable, the Consortium] 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 it are to be executed.
- II.1.3** Without prejudice to Article II.3 any reference made to the Contractor's [or, where applicable, the Consortium's] in the Contract shall relate exclusively to individuals involved in the performance of the Contract.
- II.1.4** The Contractor [or, where applicable, the Consortium] must ensure that any staff performing the Contract have the professional qualifications and experience required for the execution of the tasks assigned to it.
- II.1.5** The Contractor [or, where applicable, the Consortium] shall neither represent the SJU nor behave in any way that would give such an impression. The Contractor [or, where applicable, the Consortium] shall inform third parties that it does not belong to the European public service.
- II.1.6** The Contractor [or, where applicable, the Consortium] shall have sole responsibility for the staff who execute the tasks assigned to it. The Contractor [or, where applicable, the Consortium] shall make provision for the following employment or service relationships with its staff:
- staff executing the tasks assigned to the Contractor [or, where applicable, the Consortium] may not be given direct orders by the SJU;
  - the SJU may not under any circumstances be considered to be the staff's employer and the said staff shall undertake not to invoke in respect of the SJU any right arising from the contractual relationship between the SJU and the Contractor [or, where applicable, the Consortium].
- II.1.7** In the event of disruption resulting from the action of a member of the Contractor's [or, where applicable, the Consortium's] staff working on the SJU premises or in the event of the expertise of a member of the Contractor's [or, where applicable, the Consortium's] staff failing to correspond to the profile required by the Contract, the Contractor [or, where applicable, the Consortium] shall replace him/her without delay. The SJU shall have the right to request the replacement of any such member of staff, stating its reasons for so doing. Replacement staff must have the necessary qualifications and be capable of performing the Contract under the same contractual conditions. The Contractor [or, where applicable, the Consortium] shall be responsible for any delay in the execution of the tasks assigned to it resulting from the replacement of staff in accordance with this Article.
- II.1.8** Should any unforeseen event, action or omission directly or indirectly hamper execution of the tasks, either partially or totally, the Contractor [or, where applicable, the Consortium] shall immediately and on its own initiative record

it and report it to the SJU. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor [or, where applicable, the Consortium] to ensure full compliance with his obligations under the Contract. In such event the Contractor [or, where applicable the Consortium] shall give priority to solving the problem rather than determining liability.

- II.1.9** Should the Contractor [or, where applicable, the Consortium] fail to perform its obligations under the Contract in accordance with the provisions laid down therein, the SJU may - without prejudice to its right to terminate the Contract - reduce or recover payments in proportion to the scale of the failure. In addition, the SJU may impose penalties or liquidated damages provided for in Article II.16.

## **ARTICLE II. 2 – LIABILITY**

- II.2.1** The SJU shall not be liable for damage sustained by the Contractor [or, where applicable, the Consortium] in performance of the Contract except in the event of wilful misconduct or gross negligence on the part of the SJU.
- II.2.2** The Contractor [or, where applicable, the Consortium] shall be liable for any loss or damage caused by itself in performance of the Contract, including in the event of subcontracting under Article II.13. The SJU shall not be liable for any act or default on the part of the Contractor [or, where applicable, the Consortium] in performance of the Contract.
- II.2.3** The Contractor [or, where applicable, the Consortium] shall provide compensation in the event of any action, claim or proceeding brought against the SJU by a third party as a result of damage caused by the Contractor [or, where applicable, the Consortium] in performance of the Contract.
- II.2.4** In the event of any action brought by a third party against the SJU in connection with performance of the Contract, the Contractor [or, where applicable, the Consortium] shall assist the SJU.
- II.2.5** The Contractor [or, where applicable, the Consortium] shall take out insurance against risks and damage relating to performance of the Contract if required by the relevant applicable legislation. It shall take out supplementary insurance as reasonably required by standard practice in the industry. A copy of all the relevant insurance contracts shall be sent to the SJU should it so request.

## **ARTICLE II. 3 - CONFLICT OF INTERESTS**

- II.3.1** The Contractor [or, where applicable, the Consortium] shall take all necessary measures to prevent any situation that could compromise the impartial and objective performance of the Contract. Such conflict of interests could arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest. Any conflict of interests which could arise during performance of the Contract must be notified to the SJU in writing without delay. In the event of such conflict, the Contractor [or, where applicable, the Consortium] shall immediately take all necessary steps to resolve it.

The SJU reserves the right to verify that such measures are adequate and may require additional measures to be taken, if necessary, within a time limit which it shall set. The Contractor [or, where applicable, the Consortium] shall

ensure that its staff, board and directors are not placed in a situation which could give rise to conflict of interests. Without prejudice to Article II.1 the Contractor [or, where applicable, the Consortium] shall replace, immediately and without compensation from the SJU, any member of its staff exposed to such a situation.

**II.3.2** The Contractor [or, where applicable, the Consortium] shall abstain from any contact likely to compromise its independence.

**II.3.3** The Contractor [or, where applicable, the Consortium] declares:

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

that it/they has not granted and will not grant, has/have not sought and will not seek, has/have 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, in as much as it is an incentive or reward relating to performance of the Contract.

**II.3.4** The Contractor [or, where applicable, the Consortium] shall pass on all the relevant obligations in writing to its staff, board, and directors as well as to third parties involved in performance of the Contract. A copy of the instructions given and the undertakings made in this respect shall be sent to the SJU should it so request.

## **ARTICLE II. 4 – INVOICING AND PAYMENTS**

**II.4.1** Pre-financing:

Where required by Article I.4, the Contractor [or, where applicable the Coordinator] shall provide a financial guarantee in the form of a bank guarantee or equivalent supplied by a bank or an authorised financial institution (guarantor) equal to the amount indicated in the same Article to cover pre-financing under the Contract. Such guarantee may be replaced by a joint and several guarantee by a third Party.

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

The guarantor shall stand as first-call guarantor and shall not require the SJU to have recourse against the principal debtor (the Contractor [or, where applicable the Coordinator]).

The guarantee shall specify that it enters into force at the latest on the date on which the Contractor [or, where applicable the Coordinator] receives the pre-financing. The SJU shall release the guarantor from its obligations as soon as the Contractor [or, where applicable the Coordinator] has demonstrated that any pre-financing has been covered by equivalent work. The guarantee shall be retained until the pre-financing has been deducted from interim payments or payment of the balance to the Contractor [or, where applicable the Coordinator]. It shall be released the following month. The cost of providing such guarantee shall be borne by the Contractor [or, where applicable the Coordinator].

**II.4.2** Interim payment:

At the end of each of the periods indicated in Annex I the Contractor [or, where applicable the Coordinator] shall submit to the SJU a formal request for

payment accompanied by those of the following documents which are provided for in the Special Conditions:

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

If the report is a condition for payment, on receipt the SJU shall have the period of time indicated in the Special Conditions in which:

- to approve it, with or without comments or reservations, or suspend such period and request additional information; or
- to reject it and request a new report.

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

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

The new report shall likewise be subject to the above provisions.

#### **II.4.3 Payment of the balance:**

Within sixty (60) days of completion of the Activities referred to in Annex I, the Contractor [or, where applicable the Coordinator] shall submit to the SJU a formal request for payment accompanied by those of the following documents, which are provided for in the Special Conditions:

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

If the report is a condition for payment, on receipt the SJU shall have the period of time indicated in the Special Conditions in which:

- to approve it, with or without comments or reservations, or suspend such period and request additional information; or
- to reject it and request a new report.

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

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

The new report shall likewise be subject to the above provisions.

### **ARTICLE II. 5 – GENERAL PROVISIONS CONCERNING PAYMENTS**

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

**II.5.2** The payment periods referred to in Article I.4 may be suspended by the SJU at any time if it informs the Contractor [or, where applicable the Coordinator]

that its payment request is not admissible, either because the amount is not due or because the necessary supporting documents have not been properly produced. In case of doubt on the eligibility of the expenditure indicated in the payment request, the SJU may suspend the time limit for payment for the purpose of further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the expenditure is eligible.

The SJU shall notify the Contractor [or, where applicable the Coordinator] accordingly by registered letter with acknowledgment of receipt or equivalent. Suspension shall take effect from the date of dispatch of the letter. The remainder of the period referred to in Article I.4 shall begin to run again once the suspension has been lifted.

- II.5.3** In the event of late payment the Contractor [or, where applicable the Coordinator] may claim interest within two (2) 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 (7) percentage points (*“the margin”*). The reference rate in force on the first day of the month in which the payment is due shall apply. Such interest rate is published in the C series of the Official Journal of the European Union. Interest shall be payable for the period elapsing from the calendar day following expiry of the time limit for payment up to the day of payment. Suspension of payment by the SJU may not be deemed to constitute late payment.

## **ARTICLE II. 6 – RECOVERY**

- II.6.1** If total payments made exceed the amount actually due or if recovery is justified in accordance with the terms of the Contract, the Contractor [or, where applicable the Coordinator] shall reimburse the appropriate amount in EURO on receipt of the debit note, in the manner and within the time limits set by the SJU.
- II.6.2** In the event of failure to pay by the deadline specified in the request for reimbursement, the sum due shall bear interest at the rate indicated in Article II.5.3. Interest shall be payable from the calendar day following the due date up to the calendar day on which the debt is repaid in full.
- II.6.3** In the event of failure to pay by the deadline specified in the request for reimbursement, the SJU may, after informing the Contractor [or, where applicable the Coordinator], recover amounts established as certain, of a fixed amount and due by offsetting, in cases where the Contractor [or, where applicable, the Consortium] also has a claim on the Union that is certain, of a fixed amount and due. The SJU may also claim against the guarantee, where provided for.

## **ARTICLE II. 7 - REIMBURSEMENTS**

- II.7.1** Where provided by the Special Conditions or by Annex I, the SJU shall reimburse the expenses that are directly connected with execution of the tasks on production of original supporting documents, including receipts and used tickets.
- II.7.2** Travel and subsistence expenses shall be reimbursed, where appropriate, on the basis of the shortest itinerary.
- II.7.3** Travel expenses shall be reimbursed as follows:
- a)** travel by air shall be reimbursed up to the maximum cost of an economy class ticket at the time of the reservation;

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

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

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

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

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

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

## **ARTICLE II. 9 – CONFIDENTIALITY**

**II.9.1.** The Contractor [or, where applicable, the Consortium] 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 [or, where applicable, the Consortium] shall continue to be bound by this undertaking after completion of the Activities.

**II.9.2.** The Contractor [or, where applicable, the Consortium] shall obtain from each member of its 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 Activities and that they will not divulge to third parties or use for their own benefit or that of any third party any document or information not available publicly, even after completion of the Activities.

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

**II.10.1** The Contractor [or, where applicable, the Consortium] shall authorise the SJU to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, any data contained in or relating to the Contract, in particular the identity of the Contractor [or, where applicable, the Consortium], the subject matter, the duration, the amount paid and the reports. Where personal data is concerned, Article II.9 shall apply.

**II.10.2** Unless otherwise provided by the Special Conditions, the SJU shall not be required to distribute or publish documents or information supplied in

performance of the Contract. If it decides not to publish the documents or information supplied, the Contractor [or, where applicable, the Consortium] may not have them distributed or published elsewhere without prior written authorisation from the SJU.

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

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

## **ARTICLE II. 11 – TAXATION**

**II.11.1** The Contractor [or, where applicable, the Consortium] shall have sole responsibility for compliance with the tax laws which apply to him. Failure to comply shall make the relevant invoices invalid.

**II.11.2** The Contractor [or, where applicable, the Consortium] recognises that the SJU is, as a rule, exempt from all taxes and duties, including value added tax (VAT), pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union.

**II.11.3** The Contractor [or, where applicable, the Consortium] shall accordingly complete the necessary formalities with the relevant authorities to ensure that the goods and services required for performance of the Contract are exempt from taxes and duties, including VAT.

**II.11.4** Invoices presented by the Contractor [or, where applicable, the Coordinator] shall indicate his place of taxation for VAT purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

## **ARTICLE II. 12 – FORCE MAJEURE**

**II.12.1** Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the Parties which prevents either of them from performing any of their obligations under the Contract, was not due to error or negligence on their part or on the part of a subcontractor, and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making it available, labour disputes, strikes or financial problems cannot be invoked as force majeure unless they stem directly from a relevant case of force majeure.

**II.12.2** Without prejudice to the provisions of Article II.1.8, if either Party is faced with force majeure, it shall notify the other Party without delay by registered letter with acknowledgment of receipt or equivalent, stating the nature, likely duration and foreseeable effects.

**II.12.3** Neither Party shall be held in breach of its contractual obligations if it has been prevented from performing them by force majeure. Where the Contractor [or, where applicable, the Consortium] is unable to perform its contractual obligations owing to force majeure, it shall have the right to remuneration only for tasks actually executed.



**II.12.4** The Parties shall take the necessary measures to reduce damage to a minimum.

#### **ARTICLE II. 13 – SUBCONTRACTING**

**II.13.1** The Contractor [or, where applicable, the Consortium] shall not subcontract without prior written authorisation from the SJU nor cause the Contract to be performed in fact by third parties.

**II.13.2** Even where the SJU authorises the Contractor [or, where applicable, the Consortium] to subcontract to third parties, it shall none the less remain bound by his obligations to the SJU under the Contract and shall bear exclusive liability for proper performance of the Contract.

**II.13.3** The Contractor [or, where applicable, the Consortium] shall make sure that the subcontract does not affect rights and guarantees to which the SJU is entitled by virtue of the Contract, notably Article II.16.

#### **ARTICLE II. 14 – ASSIGNMENT**

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

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

#### **ARTICLE II. 15 – TERMINATION BY THE SJU**

**II.15.1** The SJU may terminate the Contract in the following circumstances:

- (a) where the Contractor [or, where applicable, Consortium Member(s)] is being wound up, is having its 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 [or, where applicable, Consortium Member(s)] has been convicted of an offence concerning its professional conduct by a judgment which has the force of *res judicata*;
- (c) where the Contractor [or, where applicable, Consortium Member(s)] has been guilty of grave professional misconduct proven by any means which the SJU can justify;
- (d) where the Contractor [or, where applicable, Consortium Member(s)] 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 it 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 SJU seriously suspects the Contractor [or, where applicable, Consortium Member(s)] of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- (f) where the Contractor [or, where applicable, Consortium Member(s)] is in breach of its obligations under Article II.3;
- (g) where the Contractor [or, where applicable, Consortium Member(s)] was guilty of misrepresentation in supplying the information required by the

SJU as a condition of participation in the Contract procedure or failed to supply this information;

- (h) where a change in the Contractor's [or, where applicable, Consortium Member's/Members'] legal, financial, technical or organisational situation could, in the SJU's opinion, have a significant effect on the performance of the Contract;
- (i) where execution of the Activities has not actually commenced within fifteen (15) days of the date foreseen, and the new date proposed, if any, is considered unacceptable by the SJU;
- (j) where the Contractor [or, where applicable, Consortium Member(s)] is unable, through its own fault, to obtain any permit or licence required for performance of the Contract;
- (k) where the Contractor [or, where applicable, Consortium Member(s)], 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 its contractual obligations.

**II.15.2** In case of force majeure, notified in accordance with Article II.12, either Party may terminate the Contract, where performance thereof cannot be ensured for a period corresponding to at least to one fifth of the period laid down in Article I.2.3.

**II.15.3** Prior to termination under point e), h) or k), the Contractor [or, where applicable, the Consortium] shall be given the opportunity to submit its 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, where applicable, the Coordinator], or on any other date indicated in the letter of termination.

**II.15.4** Consequences of termination:

In the event of the SJU terminating the Contract in accordance with this Article and without prejudice to any other measures provided for in the Contract, the Contractor [or, where applicable, the Consortium] 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 [or, where applicable, the Consortium] shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce its commitments. It shall draw up the documents required by the Special Conditions for the Activities executed up to the date on which termination takes effect, within a period not exceeding sixty (60) days from that date.

The SJU may claim compensation for any damage suffered and recover any sums paid to the Contractor [or, where applicable, the Coordinator] under the Contract.

On termination, the SJU may engage any other contractor to execute or complete the services. The SJU shall be entitled to claim from the Contractor [or, where applicable, the Coordinator] all extra costs incurred in doing so, without prejudice to any other rights or guarantees enforceable under the Contract.

## **ARTICLE II. 16 – LIQUIDATED DAMAGES**

Should the Contractor [or, where applicable, the Consortium] fail to perform its obligations under the Contract within the time limits set by the Contract, then, without

prejudice to the Contractor's [or, where applicable, the Consortium] actual or potential liability incurred in relation to the Contract or to the SJU's right to terminate the Contract, the SJU may decide to impose liquidated damages of 0.2% of the amount of the relevant purchase per calendar day of delay.

The Contractor [or, where applicable, the Coordinator] may submit arguments against this decision within thirty (30) days of notification by registered letter with acknowledgement of receipt or equivalent. In the absence of reaction on its part or of written withdrawal by the SJU within thirty (30) days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable. These liquidated damages shall not be imposed where there is provision for interest for late completion.

The SJU and the Contractor [or, where applicable, the Consortium] expressly acknowledge and agree that any sums payable under this Article are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the losses that may be reasonably anticipated from such failure to perform obligations.

## **ARTICLE II. 17 – CHECKS AND AUDITS**

**II.17.1.** The Contractor [or, where applicable, the Consortium] shall provide free of charge all the detailed information requested by the SJU or by an outside body of the SJU's choice with a view to checking that the Contract is being properly performed.

**II.17.2.** The Contractor [or, where applicable, the Consortium] shall keep at the SJU's disposal the original or, in exceptional cases, duly authenticated copies of all documents relating to the Contract for a period of five (5) years from payment of the balance.

**II.17.3.** The SJU may, at any time within the period specified in the paragraph above, arrange for an audit to be carried out either by an outside body of its choice or by the SJU itself. The object of such an audit shall be limited to checking that the Contractor [or, where applicable, the Consortium] has complied with the Contract. The cost shall be borne by the SJU.

**II.17.4.** In order to carry out these audits, the SJU and the outside bodies concerned shall have the total on-the-spot access at all times to all the information needed to check that the Contractor [or, where applicable, the Consortium] has complied with the Contract, including information in electronic format.

**II. 17.5.** The Court of Auditors and the European Anti-Fraud Office may carry out on-the-spot checks and inspections of the documents of the Contractor [or, where applicable, the Consortium] and its sub-contractors which have received Union funds, including inspections at the premises of the final beneficiaries, from the date of signature of this Contract up to five (5) years after final payment of the balance.

## **ARTICLE II. 18 – AMENDMENTS**

Any amendment to the Contract shall be the subject of a written agreement concluded by the Parties. An oral agreement shall not be binding on the Parties.

## **ARTICLE II. 19 – SUSPENSION OF THE CONTRACT**

Without prejudice to the SJU's right to terminate the Contract, the SJU may at any time and for any reason suspend execution of the Contract or any part thereof.

Suspension shall take effect on the day the Contractor [or, where applicable, the Coordinator] receives notification by registered letter with acknowledgment of receipt or equivalent, or at a later date where the notification so provides. The SJU may at any time following suspension give notice to the Contractor [or, where applicable, the Coordinator] to resume the work suspended. The Contractor [or, where applicable, the Consortium] shall not be entitled to claim compensation on account of suspension of the Contract, or any part thereof.

### **SIGNATURES**

For the Contractor [or, where applicable, the  
Coordinator of the Consortium]  
[Company name/forename/surname/function]

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

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

signature: \_\_\_\_\_

Done in....., on ...

Done in Brussels, on.....



**ANNEX I to contract number SJU/LC/00..-CTR**

**Terms of reference**



**Annex II to contract number SJU/LC/...-CTR**

**Contractor's/Consortium's Tender Ref. [complete] of [complete date]**