



Tender Specifications  
Annex 7: Draft Service Contract

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ANNEX 7

DRAFT SERVICE CONTRACT

CONTRACT NUMBER – GSA/OP/02/09

The European GNSS Supervisory Authority (hereinafter referred to as "the GSA"), represented for the purposes of the signature of this contract by Mr Pedro Pedreira, Executive Director of the GSA

of the one part,

and

[official name in full]

[official legal form (Delete if contractor is a natural person or a body governed by public law.)]

[statutory registration number Delete if contractor is a body governed by public law. For natural persons, indicate the number of their identity card or, failing that, of their passport or equivalent]

[official address in full]

[VAT registration number]

(hereinafter referred to as "the Contractor"), represented for the purposes of the signature of this contract by [name in full and function,]

of the other part,



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HAVE AGREED

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

- Annex I – Tender Specifications for Invitation to Tender No. GSA/OP/02/09
- Annex II – Contractor's Tender (No [ ] of [ ])
- Annex III – Security Aspects Letter
- Annex IV – Daily allowances
- Annex V – Declaration of Foreground

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 GSA, subject to the rights of the Contractor under Article I.7 should he dispute any such instruction.

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## I – SPECIAL CONDITIONS

### ARTICLE I.1 - SUBJECT

I.1.1. The subject of the FORge for Tamper RESpondent Security modules (FORTRESS) Contract is the development of the technological demonstrator of the security technologies applied to the Security Module of Public Regulated Service receivers.

I.1.2. To this aim, the Contractor undertakes to execute the following tasks (hereinafter "Tasks") assigned to him in accordance with the terms set out in the Contract and its Annexes:

- Task 1: Management
- Task 2: Security Module Risk Assessment and Management
- Task 3: Security Functions Specifications
- Task 4: Design, Prototyping and Testing of the Security Chip
- Task 5: Design and Prototyping of the Casing
- Task 6: Functional Test and Evaluation of the Security Chip
- Task 7: Interaction with PROGRESS Programme
- Task 8: Survey of Future Techniques and Technologies
- Task 9: Security Module Export Control Issues

### 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. Execution of the tasks may under no circumstances begin before the date on which the Contract enters into force.

I.2.3. The duration of the tasks shall not exceed 24 months. This period and all other periods specified in the Contract are calculated in calendar days. Execution of the tasks shall start from the day of the Kick-off meeting (T<sub>0</sub>) unless otherwise agreed by the contracting parties in writing. The period of execution of the tasks may be extended only with the express written agreement of the contracting parties before such period elapses.

### ARTICLE I.3 – CONTRACT PRICE

The maximum total amount to be paid by the GSA under the Contract shall be EUR [amount in figures and in words] covering all tasks executed.

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

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

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I.4.1. Pre-financing:<sup>1</sup>

Following signature of the Contract by the last contracting party, within 30 days of:

- the receipt by the GSA of a duly constituted financial guarantee equal to at least EUR [amount in figure] ([amount in words]), and
- the receipt by the GSA of a request for pre-financing with a relevant invoice,

a pre-financing payment of EUR [amount in figure] ([amount in words]) equal to 15% of the total amount referred to in Article I.3. shall be made.

I.4.2 Interim payment 1:

Requests for interim payment 1 by the Contractor shall be admissible at completion of milestone "1<sup>st</sup> interim review" (IR-1) if accompanied by the relevant invoice and all the following deliverables performed in accordance with the instructions laid down under point I.10 in Annex I and approved by the GSA:

Deliverable Reference	Deliverable Name	Related Task
D1-1.1 D1-1.2	Status reports	1
D1-4	Management Plan	1
D2-1	Preliminary Report on SM risk assessment and management	2
D2-2	Final Report on SM risk assessment and management	2
D2-3.1	Draft definition of security requirements of the SM	2
D2-3.2	Final definition of security requirements of the SM	2
D2-4	Updated Protection Profile of the SM	2
D3-1	Report on security functions specifications and definition of building blocks of the security chip	3
D3-2	Recommendation of security functions to be implemented in the demonstrator and development plan of the security chip	3
D4-1.1	Progress report on design, prototyping and testing of security chip	4
D7-1.1 D7-2.2	Progress reports on interaction with PROGRESS	7

The GSA shall have 30 days from receipt of the deliverables to approve or reject them, and the Contractor shall have 15 days in which to submit additional information or a new deliverable.

Within 30 days of the date on which the all deliverables are approved by the GSA, an interim payment corresponding to [amount in figures and in words] equal to 20% of the total amount as referred to in Article I.3 shall be made.

<sup>1</sup> The contractor may decide not to claim the prefinancing payment. In that case, he shall inform the GSA as soon as possible. The payment scheme would be modified as followed: the pre-financing would be replaced by an interim payment at step PM-1 (1<sup>st</sup> Progress Meeting) equal at 15% - Other payments: unchanged.

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I.4.3 Interim payment 2:

Requests for interim payment 2 by the Contractor shall be admissible at completion of milestone "Mid-term review" (MTR) if accompanied by the relevant invoice and all the following deliverables performed in accordance with the instructions laid down under point I.10 in Annex I and approved by the GSA:

Deliverable Reference	Deliverable Name	Related Task
D1-1.3 D1-1.4	Status Reports	1
D1-2	MTR Report	1
D4-1.2 D4-1.3	Progress reports on design, prototyping and testing of security chip	4
D4-2.1	Draft report on chip specifications	4
D4-2.2	Final report on chip specifications	4
D4-3.1	Draft report on chip design	4
D4-3.2	Final report on chip design	4
D5-1.1 D5-1.2	Progress reports on casing design and prototyping	5
D5-2	Report on casing specifications	5
D7-1.3	Progress report on interaction with PROGRESS	7

The GSA shall have 30 days from receipt of the deliverables to approve or reject them, and the Contractor shall have 15 days in which to submit additional information or a new deliverable.

Within 30 days of the date on which all the deliverables are approved by the GSA, an interim payment corresponding to [amount in figures and in words] equal to 20% of the total amount as referred to in Article I.3 shall be made.

I.4.4 Interim payment 3:

Requests for interim payment 3 by the Contractor shall be admissible at completion of the milestone "2<sup>nd</sup> interim review" (IR-2) if accompanied by the relevant invoice and all the following deliverables performed in accordance with the instructions laid down under point I.10 in Annex I and approved by the GSA:

Deliverable Reference	Deliverable Name	Related Task
D1-1.5 D1-1.6	Status reports	1
D4-1.4	Progress report on design, prototyping and testing of security chip	4
D4-4	Report on chip test results	4
D5-1.3 D5-1.4	Progress reports on casing design and prototyping	5
D5-3	Report on casing design	5
D5-4	Report on integration of security chip in tamper-responder casing	5
D5-5	Plan of the evaluation phase of the enclosed chip	5

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The GSA shall have 30 days from receipt of the deliverables to approve or reject them, and the Contractor shall have 10 days in which to submit additional information or a new deliverable.

Within 30 days of the date on which all the deliverables are approved by the GSA, an interim payment corresponding to [amount in figures and in words] equal to 20% of the total amount as referred to in Article I.3 shall be made.

**I.4.5 Interim payment 4:**

Requests for payment of the balance shall be admissible at completion of the milestone "Final acceptance review" (FAR) if accompanied by the relevant invoice and all the following deliverables performed in accordance with the instructions laid down under point I.10 in Annex I and approved by the GSA:

Deliverable Reference	Deliverable Name	Related Task
D1-1.7 D1-1.8	Status reports	1
D1-3	FAR Report	1
D6-1.1	Draft report on the functional tests and security evaluation of security chip	6
D6-1.2	Final report on the functional tests and security evaluation of security chip	6
D6-2	Guidelines and Recommendations for Phase 2 – development of the System on Chip	6
D8-1	Progress report on techniques and technologies advancement for SM security chip	8
D8-2	Final report on techniques and technologies advancement for SM security chip	8
D9-1	Report on the applicable Export / Transfer controls and the National Authorities who will need to provide authorizations	9
D9-2	Recommendations for any further export restrictions which should be applied by PRS uses along with a justification for each recommendation	9

Furthermore, the request for payment of the balance shall only be admissible if all deliverables that are not included in the milestone-related payments above have been delivered at the latest by the Contractor's request for payment of the balance.

The GSA shall have 30 days from receipt of the deliverables to approve or reject them, and the Contractor shall have 10 days in which to submit additional information or a new deliverable.

Within 30 days of the date on which the deliverables are approved by the GSA, payment of the balance corresponding to EUR [amount in figures and in words] equal to 25% of the total amount as referred to in Article I.3 shall be made.

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

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For Contractors established in Italy, the provisions of the Contract constitute a request for VAT exemption, provided the Contractor includes the following statement in his invoice(s): "Operazione non imponibile ai sensi dell'articolo 72, comma 3) paragrafo 3 del D.P.R. n. 633 del 26/10/1972 come modificato da ultimo dal D.L. n. 323 del 20/06/1996 convertito in Legge n. 425 dell'8/8/1996".]

ARTICLE I.5 – BANK ACCOUNT

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

Name of bank: [complete]  
Address of branch in full: [complete]  
Exact designation of account holder: [complete]  
Full account number including codes: [complete]  
IBAN 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 GSA on the date on which it is registered by the department responsible indicated below. Communications shall be sent to the following addresses:

European GNSS Supervisory Authority  
[Project Officer]  
[Unit]  
Rue de la Loi, 56  
B-1049 Bruxelles

Contractor:

Mr/Mrs/Ms [complete]  
[Function]  
[Company name]  
[Official address in full]

ARTICLE I.7– APPLICABLE LAW AND SETTLEMENT OF DISPUTES

- I.7.1. The Contract shall be governed by the national substantive law of Belgium.
- I.7.2. Any dispute between the contracting 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.8 – DATA PROTECTION

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Any personal data included in the Contract shall be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. It shall be processed solely for the purposes of the performance, management and follow-up of the Contract by the entity acting as data controller within the GSA without prejudice to possible transmission to the bodies charged with a monitoring or inspection task in conformity with Community law. The Contractor shall have the right of access to his personal data and the right to rectify any such data that is inaccurate or incomplete. Should the Contractor have any queries concerning the processing of his personal data, he shall address them to the entity acting as data controller within the GSA. The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.

**ARTICLE I.9 – 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 2 months formal prior notice, except for the specific case of termination stated in Article I.1.3. Should the GSA terminate the Contract, the Contractor shall only be entitled to payment corresponding to part-performance of the Contract. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required by the Special Conditions for the tasks executed up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

**ARTICLE I.10 – TREATMENT OF CONFIDENTIAL, CLASSIFIED DATA OR INFORMATION**

The Contractor shall comply with the security requirements prescribed by the Security Aspects Letters attached as Annex III to this Contract. The GSA may terminate the Contract, in accordance with Articles I.9 and II.15 in case of non-compliance with this obligation. Such action shall be without prejudice to any further legal action.

The Security Aspects Letter shall be valid throughout the duration of the Contract.

The Contractor shall inform the GSA of any change of security requirements during the performance of the Contract. Any such change shall be introduced in the Security Aspects Letter by means of an amendment following the rules on amendments of Annex III.

If the Contractor cannot comply with increased security requirements, the Contract shall be terminated.

The Contractor shall ensure that any subcontractor or other third party complies with the security requirements set out in the Security Aspects Letter.

**ARTICLE I.11 – LIMITED DISSEMINATION OF FOREGROUND OUTSIDE THE CONSORTIUM FOR SECURITY REASONS**

Any foreground generated in the course of the Contract shall not be disseminated to any legal entity outside the existing consortium unless agreed otherwise with the GSA. This rule also applies to affiliates or parent companies.





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ARTICLE 1.12 – DECLARATION OF FOREGROUND AND FILING OF INTELLECTUAL PROPERTY RIGHTS

The Contractor shall declare any foreground generated in the course of the Contract by completing the form in Annex V.

The Contractor shall provide the GSA with all the information the latter requests to file an intellectual property right.

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II – GENERAL CONDITIONS

ARTICLE II.1 – PERFORMANCE OF THE CONTRACT

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

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

- staff executing the tasks assigned to the Contractor may not be given orders direct by the GSA;
  - the GSA 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 GSA any right arising from the contractual relationship between the GSA and the Contractor.
- II.1.7. In the event of disruption resulting from the action of a member of the Contractor's staff working on the GSA's 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 GSA shall have the right to request the replacement of any such member of staff, stating its reasons for so doing. Replacement staff must have the necessary qualifications and be capable of performing the Contract under the same contractual conditions. The Contractor shall be responsible for any delay in the execution of the tasks assigned to him resulting from the replacement of staff in accordance with this Article.
- II.1.8. Should any unforeseen event, action or omission directly or indirectly hamper execution of the tasks, either partially or totally, the Contractor shall immediately and on his own initiative record it and report it to the GSA. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action

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taken by the Contractor to ensure full compliance with his obligations under the Contract. In such event the Contractor shall give priority to solving the problem rather than determining liability.

II.1.9. Should the Contractor fail to perform his obligations under the Contract in accordance with the provisions laid down therein, the GSA 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 GSA may impose penalties or liquidated damages provided for in Article II.16.

ARTICLE II.2 – LIABILITY

II.2.1. The GSA 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 GSA.

II.2.2. The Contractor shall be liable for any loss or damage caused by himself in performance of the Contract, including in the event of subcontracting under Article II.13. The GSA shall not be liable for any act or default on the part of the Contractor in performance of the Contract.

II.2.3. The Contractor shall provide compensation in the event of any action, claim or proceeding brought against the GSA by a third party as a result of damage caused by the Contractor in performance of the Contract.

II.2.4. In the event of any action brought by a third party against the GSA in connection with performance of the Contract, the Contractor shall assist the GSA. Expenditure incurred by the Contractor to this end may be borne by the GSA.

II.2.5. The Contractor shall take out insurance against risks and damage relating to performance of the Contract if required by the relevant applicable legislation. He shall take out supplementary insurance as reasonably required by standard practice in the industry. A copy of all the relevant insurance contracts shall be sent to the GSA should it so request.

ARTICLE II.3 - CONFLICT OF INTERESTS

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

The GSA reserves the right to verify that such measures are adequate and may require additional measures to be taken, if necessary, within a time limit which it shall set. The Contractor shall ensure that his staff, board and directors are not placed in a situation which could give rise to conflict of interests. Without prejudice to Article II.1 the

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

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

11.3.3. The Contractor declares:

- 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,
- that he has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, where such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, inasmuch as it is an incentive or reward relating to performance of the Contract.

11.3.4. The Contractor shall pass on all the relevant obligations in writing to his staff, board, and directors as well as to third parties involved in performance of the Contract. A copy of the instructions given and the undertakings made in this respect shall be sent to the GSA should it so request.

#### ARTICLE 11.4 – PAYMENTS

11.4.1. Pre-financing:

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. Such guarantee may be replaced by a joint and several guarantee by a third party.

The guarantor shall pay to the GSA 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 GSA to have recourse against the principal debtor (the Contractor).

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

11.4.2. Interim payment:

At the end of each of the periods indicated in Annex I the Contractor shall submit to the GSA 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;

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- statements of reimbursable expenses in accordance with Article II.7.

If the report is a condition for payment, on receipt the GSA 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 GSA 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 GSA requests a new report because the one previously submitted has been rejected, this shall be submitted within the period of time indicated in the Special Conditions. The new report shall likewise be subject to the above provisions.

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

Within sixty days of completion of the tasks referred to in Annex I the Contractor shall submit to the GSA 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 GSA 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 GSA 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 GSA 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 GSA's account is debited.

II.5.2. The payment periods referred to in Article I.4 may be suspended by the GSA at any time if it informs the Contractor that his payment request is not admissible, either because the amount is not due or because the necessary supporting documents have not been properly produced. In case of doubt on the eligibility of the expenditure indicated in the payment request, the GSA 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.

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The GSA shall notify the Contractor 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 shall be entitled to interest provided the calculated interest exceeds 200 EUR. In case interest does not exceed 200 EUR, 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 GSA may not be deemed to constitute late payment.

#### ARTICLE II.6 – RECOVERY

- II.6.1. 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 GSA.
- 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. The GSA 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 GSA 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 GSA shall reimburse the expenses which 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;

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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 Community territory shall be reimbursed under the general conditions stated above provided the GSA has given its prior written agreement.

11.7.4. 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 1.3.3.

11.7.5. The cost of shipment of equipment or unaccompanied luggage shall be reimbursed provided the GSA has given prior written authorisation.

**ARTICLE 11.8 – OWNERSHIP OF THE RESULTS - INTELLECTUAL AND INDUSTRIAL PROPERTY**

Unless otherwise stated, 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 GSA, 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 11.9 – CONFIDENTIALITY**

11.9.1. 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.

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

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

- II.10.1. The Contractor shall authorise the GSA to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, any data contained in or relating to the Contract, in particular the identity of the Contractor, the subject matter, the duration, the amount paid and the reports. Where personal data is concerned, Article I.8 shall apply.
- II.10.2. Unless otherwise provided by the Special Conditions, the GSA 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 GSA.
- II.10.3. Any distribution or publication of information relating to the Contract by the Contractor shall require prior written authorisation from the GSA and shall mention the amount paid by the GSA. It shall state that the opinions expressed are those of the Contractor only and do not represent the GSA's official position.
- II.10.4. The use of information obtained by the Contractor in the course of the Contract for purposes other than its performance shall be forbidden, unless the GSA has specifically given prior written authorisation to the contrary.

ARTICLE II.11 – TAXATION

- II.11.1. The Contractor shall have sole responsibility for compliance with the tax laws which apply to him. Failure to comply shall make the relevant invoices invalid.
- II.11.2. The Contractor recognises that the GSA 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.
- II.11.3. The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the goods and services required for performance of the Contract are exempt from taxes and duties, including VAT.
- II.11.4. Invoices presented by the Contractor shall indicate his place of taxation for VAT purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

ARTICLE II.12 – FORCE MAJEURE

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



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- II.12.2. Without prejudice to the provisions of Article II.1.8, if either contracting party is faced with force majeure, it shall notify the other party without delay by registered letter with acknowledgment of receipt or equivalent, stating the nature, likely duration and foreseeable effects.
- II.12.3. Neither contracting party shall be held in breach of its contractual obligations if it has been prevented from performing them by force majeure. Where the Contractor is unable to perform his contractual obligations owing to force majeure, he shall have the right to remuneration only for tasks actually executed.
- II.12.4. The contracting parties shall take the necessary measures to reduce damage to a minimum.

ARTICLE II.13 – SUBCONTRACTING

- II.13.1. The Contractor shall not subcontract without prior written authorisation from the GSA nor cause the Contract to be performed in fact by third parties.
- II.13.2. Even where the GSA authorises the Contractor to subcontract to third parties, he shall none the less remain bound by his obligations to the GSA under the Contract and shall bear exclusive liability for proper performance of the Contract.
- II.13.3. The Contractor shall make sure that the subcontract does not affect rights and guarantees to which the GSA is entitled by virtue of the Contract, notably Article II.17.

ARTICLE II.14 – ASSIGNMENT

- II.14.1. The Contractor shall not assign the rights and obligations arising from the Contract, in whole or in part, without prior written authorisation from the GSA.
- II.14.2. In the absence of the authorisation referred to in 1 above, or in the event of failure to observe the terms thereof, assignment by the Contractor shall not be enforceable against and shall have no effect on the GSA.

ARTICLE II.15 – TERMINATION BY THE GSA

- II.15.1. the GSA 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;

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- (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 GSA seriously suspects the Contractor 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 II.3;
- (g) where the Contractor was guilty of misrepresentation in supplying the information required by the GSA 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 GSA's opinion, have a significant effect on the performance of the Contract;
- (i) where execution of the tasks has not actually commenced within three months of the date foreseen, and the new date proposed, if any, is considered unacceptable by the GSA;
- (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.

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

II.15.3. Prior to termination under point e), h) or k), the Contractor shall be given the opportunity to submit his observations.

Termination shall take effect on the date on which a registered letter with acknowledgment of receipt terminating the Contract is received by the Contractor, or on any other date indicated in the letter of termination.

II.15.4. Consequences of termination:

In the event of the GSA 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

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the Special Conditions for the tasks executed up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

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

On termination the GSA may engage any other contractor to complete the services. The GSA shall be entitled to claim from the Contractor all extra costs incurred in making good and completing the services, without prejudice to any other rights or guarantees it has under the Contract.

#### ARTICLE II.16 – LIQUIDATED DAMAGES

Should the Contractor fail to perform his obligations under the Contract within the time limits set by the Contract, then, without prejudice to the Contractor's actual or potential liability incurred in relation to the Contract or to the GSA's right to terminate the Contract, the GSA may decide to impose liquidated damages of 0.2% of the amount specified in Article I.3.1 per calendar day of delay. The Contractor may submit arguments against this decision within thirty days of notification by registered letter with acknowledgement of receipt or equivalent. In the absence of reaction on his part or of written withdrawal by the GSA 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 GSA and the Contractor expressly acknowledge and agree that any sums payable under this Article are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the losses that may be reasonably anticipated from such failure to perform obligations.

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

- II.17.1. Pursuant to Article 142 of the Financial Regulation applicable to the general budget of the European Communities, the European Court of Auditors shall be 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.
- II.17.2. the GSA 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.
- II.17.3. In addition, the European Anti Fraud Office may carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 and Parliament and Council Regulation (EC) No 1073/1999 from signature of the Contract up to five years after payment of the balance.

#### ARTICLE II.18 – AMENDMENTS

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



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ARTICLE II.19 – SUSPENSION OF THE CONTRACT

Without prejudice to the GSA's right to terminate the Contract, the GSA may at any time and for any reason suspend execution of the tasks under 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 GSA may at any time following suspension give notice to the Contractor to resume the work suspended. The Contractor shall not be entitled to claim compensation on account of suspension of the Contract or of part thereof.

SIGNATURES

For the Contractor,  
[Company  
name/forename/surname/function]

For the GSA,  
[forename/surname/function]

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

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

Done at [Brussels], [date]

Done at [Brussels], [date]

In duplicate in English.



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ANNEX I

TENDER SPECIFICATIONS

[To be attached]



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ANNEX II

CONTRACTOR'S TENDER

[To be attached]



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ANNEX III

SECURITY ASPECTS LETTER

[Please refer to separate document (PDF).]



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ANNEX IV

DAILY ALLOWANCES

For the rates, please refer to separate document (PDF).

**Form to be used for reimbursement of travel and subsistence costs**

Contract N°					
<b>Name of the traveller :</b>					
Destination & Reason :					
Departure*	Date :		Distance Km: (return trip)		
Return*	Date :		Number of days:		
*: from/to the principal place of performance of the contract					
<b>Daily subsistence allowances</b> (please include original hotel bills)					
Length of the mission :			Days		
Allowance per full day :			€	<b>a</b>	
Rate of allowances due :			Number of days	<b>b</b>	
Total allowances due :			€	<b>c=axb</b>	
<b>Transport costs</b>					
<i>Please include the original transport tickets (airplane tickets &amp; boarding cards, train tickets, ...), invoices paid to the travel agencies or airline companies, etc.</i>					
N°	Date	Currency	Amount	Exchange-rate (To be completed by GSA)	Amount in € (To be completed by GSA)
1					
2					
3					
4					
5					
Total transport costs :				<b>d</b>	
<b>Other costs</b>					
<i>Please specify and include the original invoices.</i>					
N°	Date	Currency	Amount	Exchange-rate	Amount in €





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1					
2					
3					
4					
5					
Total other costs :				e	
	<b>TOTAL:</b>			<b>= c +d+e</b>	

For journeys of less than 200 km (return trip) no subsistence allowance is payable.



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ANNEX V

DECLARATION OF FOREGROUND

[Please refer to separate document (Excel).]