

# Annexes

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## **Erratum on Annex E Agreement / Power of Attorney (Only for Joint Tenders) :**

The form provided with the Invitation to Tender documents has the following clause: *“The FCH JU has awarded Framework Contract ... (« the Contract ») to Company names (« the Group Members »), based on the joint offer submitted by them on XX/XX/XXXX for the provision of services for financial audits and related services in the field of research grant agreements («the Services »).*

In this standard template, the description of the Services does not match with the work required in the Tender Specifications document. It would be more accurate to replace the description of services “services for financial audits and related services in the field of research grant agreements” by “Commercialisation studies”.

The template has been corrected.

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## Annex A: Model framework contract



### FRAMEWORK SERVICE CONTRACT

CONTRACT NUMBER – [complete]

The Fuel Cells and Hydrogen Joint Undertaking (hereinafter referred to as "the FCH JU"), represented for the purposes of the signature of this contract by Bert De Colvenaer, Executive Director,  
of the one part,

and

[official name in full]  
[official legal form]  
[statutory registration number]  
[official address in full]  
[VAT registration number]

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

of the other part,

HAVE AGREED

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

**Annex I** – Tender Specifications (Invitation to Tender No [complete] of [complete])

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

**Annex III** – Model Specific Contract (In this document: ANNEX B)

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 [orders] [and] [specific contracts] (Annex III), the latter taking precedence over 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 FCH JU, subject to the rights of the Contractor under Article I.8 should he dispute any such instruction.

## **I – SPECIAL CONDITIONS**

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

- I.1.1** The subject of the Contract is [*short description of subject*].
- I.1.2** Signature of the Contract imposes no obligation on the FCH JU to purchase. Only implementation of the Contract through orders and specific contracts is binding on the FCH JU.
- I.1.3** Once implementation of the Contract has been asked or has commenced, the Contractor shall reply and execute the tasks in accordance with all terms and conditions of the Contract.
- I.1.4** The Contract does not confer on the Contractor an exclusive right to provide the services described in Annex I to the FCH JU. *The Contractor is selected as the contractor for a multiple framework contract.*

### **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 part.*
- I.2.2** Under no circumstances may implementation commence before the date on which the Contract enters into force. Execution of the tasks may under no circumstances begin before the date on which the order or specific contract enters into force.
- I.2.3** The Contract is concluded for a period of 3 years with effect from the date on which it enters into force. This contractual period and all other periods specified in the Contract are calculated in calendar days unless otherwise indicated.
- I.2.4** The orders or specific contracts shall be returned signed before the Contract to which they refer expires.  
  
The Contract shall continue to apply to such [orders] [and] [specific contracts] after its expiry, but no later than 9 months after.
- I.2.5** The Contract may be renewed up to one time, for a period of one year only before expiry of the Contract and with the express written agreement of the parties. Renewal does not imply any modification or deferment of existing obligations.

### **ARTICLE I.3 –PRICES**

- I.3.1** The [*indicative*<sup>1</sup>] prices of the services shall be [:] [as listed in Annex II].
- I.3.2** Prices shall be expressed in EUR.
- I.3.3** *Prices shall be fixed and not subject to revision for implementation during the first year of duration of the Contract.*

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<sup>1</sup> Clause to be added in the case of “competitive” multiple framework contracts.

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

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

*Revision shall be calculated in accordance with the following formula:*

$$Pr = Po \left( 0,2 + 0,8 \frac{Ir}{Io} \right)$$

*where:*

*Pr = revised price;*

*Po = price in the original tender;*

*Io = index for the month [in which the validity of the tender expires] [corresponding to the final date for submission of tenders];*

*Ir = index for the month [corresponding to the date of receipt of the letter requesting a revision of prices] [in which the revised prices take effect]<sup>2</sup>].*

**[I.3.4.]** *In addition to the total amount specified in each order or specific contract, travel, subsistence and shipment expenses shall be reimbursed in accordance with Article II.7, as shall other expenses provided for by the Tender Specifications up to a maximum amount of EUR [amount in figures and in words] throughout implementation of the Contract and up to a maximum amount of EUR [amount in figures and in words] for [each order or specific contract/each travel/other sufficient measure<sup>3</sup>]. The daily subsistence allowance referred to in Article II.7.4 (d) shall be [EUR complete] [determined in accordance with Annex complete]<sup>4</sup>].*

## **ARTICLE I.4 – IMPLEMENTATION OF THE CONTRACT**

### **I.4.1 Not applicable**

### **I.4.2 Not applicable**

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<sup>2</sup> This option is not recommended when payments have to be made in the first month, given the availability of the indexes.

<sup>3</sup> As a principle, if reimbursement costs have to be used, they should be defined in the framework contract, not in the order form or specific contract.

<sup>4</sup> The daily subsistence allowance to be indicated may be calculated by addition of the daily allowances' rate and the reimbursable accommodation expenses produced by DG HR ([http://myintracomm.ec.europa.eu/hr\\_admin/en/missions/Documents/guide\\_new\\_en.pdf](http://myintracomm.ec.europa.eu/hr_admin/en/missions/Documents/guide_new_en.pdf)), in particular if more than one country is concerned.

**I.4.3** Within 12 working days of any specific invitation to tender being sent by the FCH JU to the Contractor, the FCH JU shall receive a completed specific tender back, duly signed and dated. In the event of failure to observe these conditions the Contractor shall be considered to waive the participation in the specific competition. The FCH JU may sign a specific contract with the contractor who has submitted the best specific tender on the basis of the award criteria set out in Annex I. The specific contract may precise the terms of the present framework contract or modify them unsubstantially, notably as concerns prices.

## **ARTICLE I.5 – PAYMENT PERIODS**<sup>5</sup>

REMARK: The FCH JU will probably pay the total amount at the end of each study (no prefinancing, no interim payment) and will probably not required a performance guarantee.

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 orders or specific contracts have not been executed as a result of default or negligence on the part of the Contractor.*]<sup>6</sup>

### **[I.5.1 Pre-financing:**

*Within [complete]<sup>7</sup> days of [the latest of the following dates:]*

- *the date on which the Contractor returns the order form or specific contract and the relevant invoice, indicating the reference number of the Contract and of the order or specific contract to which it refers,*
- *[the receipt by the FCH JU of a duly constituted financial guarantee equal to at least [complete]% of the total value of the order or specific contract]<sup>8</sup>,*

*a pre-financing payment of [complete]% of the total value of the order or specific contract shall be made.]*

### **[I.5.2 Interim payment:**

*Requests for interim payment by the Contractor in accordance with the instructions laid down in Annex I shall be admissible if accompanied by<sup>9</sup>:*

- *an interim technical report*

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<sup>5</sup> The insertion of pre-financing and interim payment clauses is optional but there must always be provision for payment of the balance.

<sup>6</sup> Restrictive clause to be added when judged necessary to establish a link between the various stages of execution.

<sup>7</sup> The maximum payment period allowed is thirty days under the rules for the implementation of the Financial Regulation (Regulation No 2342/2002), (“IR”), unless otherwise provided by the contract.

<sup>8</sup> This guarantee shall be mandatory for pre-financing payments exceeding EUR 150 000 or in the case referred to in Article 135(6), second subparagraph, of the rules for the implementation of the Financial Regulation (Regulation No 2342/2002):if the contracting authority does not require proof of the selection criteria capacity for contracts lower or equal to EUR 60.000, pre-financing must be backed by a financial guarantee of the same amount. However, where the contractor is a public body, the authorising officer responsible may, depending on his risk assessment, waive that obligation.

<sup>9</sup> Delete where not applicable.

- *the relevant invoices, indicating the reference number of the Contract and of the order or specific contract to which they refer.*

*provided the report has been approved by the FCH JU.*

*The FCH JU shall have forty-five days from receipt to approve or reject the report, and the Contractor shall have 15 days in which to submit additional information or a new report.]*

*Within [complete]<sup>10</sup> days of the date on which the report is approved by the FCH JU, an interim payment equal to [complete] % of the total amount referred in the relevant specific contract shall be made.]*

### **I.5.3** Payment of the balance:

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

- the final technical report in accordance with the instructions laid down in Annex I
- *[statements of reimbursable expenses in accordance with Article II.7]*
- the relevant invoices, indicating the reference number of the Contract and of the order or specific contract to which they refer.

provided the report has been approved by the FCH JU.

The FCH JU shall have 45 days from receipt to approve or reject the report and to pay the balance. The Contractor shall have 15 days in which to submit additional information or a new report.

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

### **[I.5.4]** *[Performance guarantee:*

Option 1: Performance guarantee for each order or specific contract issued - discharge after payment of the balance

*[A performance guarantee shall be constituted by deduction[s] of 10% of the total value of the service purchased. It shall be withheld for up to [complete]<sup>11</sup> months*

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<sup>10</sup> The maximum payment period allowed is thirty days under the rules for the implementation of the Financial Regulation (Regulation No 2342/2002), unless otherwise provided by the contract.

*from the date of payment of the balance of the order or specific contract. It shall cover its performance in accordance with the terms set out in Annex I.]*

Option 2: Performance guarantee for each order or specific contract issued - release on payment of the balance

*[A guarantee for an amount of [EUR complete amount in figures and in words] shall be issued by a bank, an authorised financial institution or a third party in favour of the FCH JU. It shall be released on payment of the balance of the order or specific contract. It shall cover its performance in accordance with the terms set out in Annex I.]*

Option 3: Performance guarantee for the whole contractual period - release on payment of the balance of the last order or specific contract

*[A guarantee for an amount of [EUR complete amount in figures and in words] shall be issued by a bank, an authorised financial institution or a third party in favour of the FCH JU. It shall be released on payment of the balance of the last order or specific contract. It shall cover performance of the Contract in accordance with the terms set out in Annex I.]*

Option 4: Performance guarantee for the whole contractual period - release after payment of the balance of the last order or specific contract

*[A guarantee for an amount of [EUR complete amount in figures and in words] shall be issued by a bank, an authorised financial institution or a third party in favour of the FCH JU. It shall be released one month after payment of the balance of the last order or specific contract or three months after the issuance of a corresponding recovery order<sup>12</sup>. It shall cover performance of the Contract in accordance with the terms set out in Annex I.]*

## **ARTICLE I.6 – BANK ACCOUNT**

Payments shall be made to the Contractor's bank account denominated in euro<sup>13</sup>, 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<sup>14</sup> code: [complete]]

## **ARTICLE I.7 – GENERAL ADMINISTRATIVE PROVISIONS**

Any communication relating to the Contract or to its implementation shall be made in writing and shall bear the Contract and order or specific contract numbers. Ordinary mail

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<sup>11</sup> The period for discharge of the performance guarantee is determined by the need to check the execution of complex tasks (due to the particular nature of the service). It may vary from the shortest possible period after payment (where the satisfactory performance of the contract is self-evident) to many months.

<sup>12</sup> The period for release of the performance guarantee can be extended if needed to check the execution of complex tasks but in the case of most services there is no reason to extend it. In any case it should never be reduced.

<sup>13</sup> Or local currency where the receiving country does not allow transactions in EUR.

<sup>14</sup> BIC or SWIFT code for countries with no IBAN code.

shall be deemed to have been received by the FCH JU on the date on which it is registered by the department responsible indicated below. Communications shall be sent to the following addresses<sup>15</sup>:

FCH JU:

FCH JU  
TO 56 Office 4/21  
1049 Brussels  
Belgium

Contractor:

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

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

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

*[I.8.1a Without prejudice to Article I.8.2, in the event that any dispute arises between the parties resulting from the interpretation or application of the Contract and the dispute is not resolved by negotiation, the parties may agree to submit the dispute to mediation.*

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

*The mediator's written proposal or his written conclusion stating that no proposal can be made, shall be produced within two months of the date of the written agreement by the second party to commence mediation. The mediator's proposal or conclusion shall not be binding for the parties, who reserve the right to bring the dispute before the courts, as per Art. I.8.2.*

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

*The parties further agree to share equally the costs of mediation by the mediator, which costs will not include any other costs incurred by a party in connection with the mediation.]<sup>16</sup>*

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<sup>15</sup> Fax number and e-mail accounts may be added. If an e-mail account is given, incoming e-mails should be redirected if the account holder is absent and a clause should be added specifying what is considered to be the reference date of the electronic communication (date of sending, receiving or opening).

**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.

## **ARTICLE I.9 – DATA PROTECTION**

Any personal data included in or relating to the Contract, including its execution shall be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. The data shall be processed solely for the purposes of the performance, management and monitoring of the Contract by the FCH JU *acting as data controller* without prejudice to possible transmission to the bodies charged with a monitoring or inspection task in application of Union law. The Contractor shall have the right of access to his/her personal data and the right to rectify any such data. Should the Contractor have any queries concerning the processing of his/her personal data, s/he shall address them to the FCH JU *as data controller*. The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.

Where the Contract requires the processing of personal data, the Contractor may act only under the supervision of the data controller, in particular with regard to the purposes of the processing, the categories of data which may be processed, the recipients of the data, and the means by which the data subject may exercise his/her rights.

The data shall be confidential within the meaning of Regulation (EC) No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by Community institutions and bodies and on the free movement of such data. The Contractor shall limit access to the data to the staff strictly necessary for the performance, management and monitoring of the Contract.

The Contractor undertakes to adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned in order to:

- a) prevent any unauthorised person from having access to computer systems processing personal data, and especially:
  - aa) unauthorised reading, copying, alteration or removal of storage media;
  - ab) unauthorised data input as well as any unauthorised disclosure, alteration or erasure of stored personal data;
  - ac) unauthorised persons from using data-processing systems by means of data transmission facilities;
- b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
- c) record which personal data have been communicated, when and to whom;
- d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting institution or body;
- e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
- f) design its organisational structure in such a way that it meets data protection requirements.

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<sup>16</sup> Optional clause.

## **ARTICLE I.10 – TERMINATION BY EITHER CONTRACTING PARTY**

Either contracting party may, of its own volition and without being required to pay compensation, terminate the Contract by serving one month formal prior notice. Should the FCH JU terminate the Contract, the Contractor shall only be entitled to payment corresponding to the services ordered before the termination date. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required by the Special Conditions for the services rendered up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

### **ARTICLE I.10a – CONTRACT CONCLUDED DURING STANDSTILL PERIOD**

In case this Contract was signed by both the FCH JU and the Contractor before the expiry of 14 calendar days from the day after simultaneous dispatch of information about the award decisions and decisions to reject, this Contract shall be null and void.

### **ARTICLE I.11 – CONFIDENTIALITY AGREEMENT**

In addition to the general confidentiality obligations indicated in Article II.9, the FCH JU may subject the signature or the implementation of a specific contract to the fact that the contractor sign with the members of the coalition supporting the study a confidentiality agreement based on the template annexed to the tender specifications.

## **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 FCH JU 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 FCH JU;
  - the FCH JU 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 FCH JU any right arising from the contractual relationship between the FCH JU 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 FCH JU 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 FCH JU 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 FCH JU. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with his obligations under the Contract. In such event the Contractor shall give priority to solving the problem rather than determining liability.
- II.1.9** Should the Contractor fail to perform his obligations under the Contract in accordance with the provisions laid down therein, the FCH JU 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 FCH JU may impose penalties or liquidated damages provided for in Article II.16.

## **ARTICLE II. 2 – LIABILITY**

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

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

**II.3.2** The Contractor shall abstain from any contact likely to compromise his independence.

**II.3.3** The Contractor declares:

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

**II.3.4** The Contractor shall pass on all the relevant obligations in writing to his staff, board, and directors as well as to third parties involved in performance of the Contract. A copy of the instructions given and the undertakings made in this respect shall be sent to the FCH JU should it so request.

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

**II.4.1** Pre-financing:

Where required by Article I.5.1, the Contractor shall provide a financial guarantee in the form of a bank guarantee or equivalent supplied by a bank or an authorised financial institution (guarantor) equal to the amount indicated in the same Article to cover pre-financing under the Contract. Such guarantee may be replaced by a joint and several guarantee by a third party.

The guarantor shall pay to the FCH JU 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 FCH JU 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 FCH JU shall release the guarantor from its obligations as soon as the Contractor has demonstrated that any pre-financing has been covered by equivalent work. The guarantee shall be retained until the pre-financing has been deducted from interim payments or payment of the balance to the Contractor. It shall be released the following month or, at the latest, three months after the issuance of a recovery order. The cost of providing such guarantee shall be borne by the Contractor.

#### **II.4.2 Interim payment:**

At the end of each of the periods indicated in Annex I the Contractor shall submit to the FCH JU a formal request for payment accompanied by those of the following documents which are provided for in the Special Conditions:

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

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

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

Within sixty days of completion of the tasks referred to in each order or specific contract, the Contractor shall submit to the FCH JU a formal request for payment accompanied by those of the following documents, which are provided for in the Special Conditions:

- a final technical report in accordance with the instructions laid down in Annex I;
- the relevant invoices indicating the reference number of the Contract and of the order or specific contract to which they refer;

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

If the report is a condition for payment, on receipt the FCH JU 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 FCH JU 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 FCH JU 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 FCH JU's account is debited.

**II.5.2** The payment periods referred to in Article I.5 may be suspended by the FCH JU 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 FCH JU 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 FCH JU shall notify the Contractor accordingly and set out the reasons for the suspension by registered letter with acknowledgment of receipt or equivalent. Suspension shall take effect from the date of dispatch of the letter. The remainder of the period referred to in Article I.5 shall begin to run again once the suspension has been lifted.

**II.5.3** In the event of late payment the Contractor shall be entitled to interest, provided the calculated interest exceeds EUR 200. In case interest does not exceed EUR 200, the Contractor may claim interest within two months of receiving the payment. Interest shall be calculated at the rate applied by the European Central Bank to its most recent main refinancing operations ("*the reference rate*") plus seven percentage points ("*the margin*"). The reference rate in force on the first day of the month in which the payment is due shall apply. Such interest rate is published in the C series of the Official Journal of the FCH JU. 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 FCH JU may not be deemed to constitute late payment.

## **ARTICLE II. 6 – RECOVERY**

- II.6.1** If total payments made exceed the amount actually due or if recovery is justified in accordance with the terms of the Contract, the Contractor shall reimburse the appropriate amount in euro on receipt of the debit note, in the manner and within the time limits set by the FCH JU.
- 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 FCH JU may, after informing the Contractor, recover amounts established as certain, of a fixed amount and due by offsetting, in cases where the Contractor also has a claim on the Union or the European Atomic Energy Community that is certain, of a fixed amount and due. The FCH JU 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 FCH JU 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 FCH JU 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 FCH JU 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, including the ‘sanitized data’ as defined in the tender specifications and the study results, shall be owned solely by the FCH JU, which may use, publish, assign or transfer them as it sees fit, without geographical or other limitation, except where industrial or intellectual property rights exist prior to the Contract being entered into.

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

**II.9.1.** The Contractor undertakes to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to performance of the Contract. The Contractor shall continue to be bound by this undertaking after completion of the tasks.

**II.9.2.** The Contractor shall obtain from each member of his staff, board and directors an undertaking that they will respect the confidentiality of any information which is linked, directly or indirectly, to execution of the tasks and that they will not divulge to third parties or use for their own benefit or that of any third party any document or information not available publicly, even after completion of the tasks.

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

- II.10.1** The Contractor shall authorise the FCH JU to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, any data contained in or relating to the Contract, in particular the identity of the Contractor, the subject matter, the duration, the amount paid and the reports. Where personal data is concerned, Article I.9 shall apply.
- II.10.2** Unless otherwise provided by the Special Conditions, the FCH JU 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 FCH JU.
- II.10.3** Any distribution or publication of information relating to the Contract by the Contractor shall require prior written authorisation from the FCH JU and shall mention the amount paid by the FCH JU. It shall state that the opinions expressed are those of the Contractor only and do not represent the FCH JU'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 FCH JU 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 FCH JU is, as a rule, exempt from all taxes and duties, including value added tax (VAT), pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union.
- II.11.3** The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the goods and services required for performance of the Contract are exempt from taxes and duties, including VAT.
- II.11.4** Invoices presented by the Contractor shall indicate his place of taxation for VAT purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

## **ARTICLE II. 12 – FORCE MAJEURE**

- II.12.1** Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the contracting parties which prevents either of them from performing any of their obligations under the Contract, was not due to error or negligence on their part or on the part of a subcontractor, and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making it available, labour disputes, strikes or financial problems cannot be invoked as force majeure unless they stem directly from a relevant case of force majeure.
- II.12.2** Without prejudice to the provisions of Article II.1.8, if either contracting party is faced with force majeure, it shall notify the other party without delay by registered letter with acknowledgment of receipt or equivalent, stating the nature, likely duration and foreseeable effects.
- II.12.3** Neither contracting party shall be held in breach of its contractual obligations if it has been prevented from performing them by force majeure. Where the Contractor is unable to perform his contractual obligations owing to force majeure, he shall have the right to remuneration only for tasks actually executed.
- II.12.4** The contracting parties shall take the necessary measures to reduce damage to a minimum.

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

- II.13.1** The Contractor shall not subcontract without prior written authorisation from the FCH JU nor cause the Contract to be performed in fact by third parties.
- II.13.2** Even where the FCH JU authorises the Contractor to subcontract to third parties, he shall none the less remain bound by his obligations to the FCH JU 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 FCH JU 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 FCH JU.
- 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 FCH JU.

## **ARTICLE II. 15 – TERMINATION BY THE FCH JU**

**II.15.1** The FCH JU may terminate the Contract, a pending order or a specific 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 not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;
- (c) where the FCH JU has evidence or seriously suspects the Contractor or any related entity or person, of professional misconduct;
- (d) where the FCH JU has evidence or seriously suspects the Contractor or any related entity or person, of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the FCH JU's or the Union's financial interests;
- (e) where the FCH JU has evidence or seriously suspects the Contractor or any related entity or person, of substantial errors, irregularities or fraud in the award procedure or the performance of the Contract;
- (f) where the Contractor is in breach of his obligations under Article II.3;
- (g) where the Contractor was guilty of misrepresentation in supplying the information required by the FCH JU 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 FCH JU's opinion, have a significant effect on the performance of the Contract;
- (i) where execution of the tasks under a pending order or a specific contract has not actually commenced within fifteen days<sup>17</sup> of the date foreseen, and the new date proposed, if any, is considered unacceptable by the FCH JU;
- (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

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<sup>17</sup> This period can be modified in the Special Conditions depending on the nature of the contract.

to remedy the failure within a reasonable period following receipt of the formal notice, remains in serious breach of his contractual obligations;

- (l) when due to the termination of the contract with one or more of the contractors there is no minimum required competition within the multiple framework contract with reopening of competition.

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

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

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

**II.15.4** Consequences of termination:

In the event of the FCH JU terminating the Contract or a pending order or specific contract in accordance with this Article and without prejudice to any other measures provided for in the Contract, the Contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required by the Special Conditions for the tasks executed up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

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

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

#### **ARTICLE II.15a – SUBSTANTIAL ERRORS, IRREGULARITIES AND FRAUD ATTRIBUTABLE TO THE CONTRACTOR**

Where, after the award of the Contract, the award procedure or the performance of the Contract prove to have been subject to substantial errors, irregularities or fraud, and where such errors, irregularities or fraud are attributable to the Contractor, the FCH JU may refuse to make payments, may recover amounts already paid or may terminate all the contracts concluded with the Contractor, in proportion to the seriousness of the errors, irregularities or fraud.

## **ARTICLE 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 FCH JU's right to terminate the Contract, the FCH JU may decide to impose liquidated damages of 0.2%<sup>18</sup> of the amount of the relevant purchase per calendar day of delay. The Contractor may submit arguments against this decision within thirty days of notification by registered letter with acknowledgement of receipt or equivalent. In the absence of reaction on his part or of written withdrawal by the FCH JU 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 FCH JU 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 126 of the FCH JU Financial Rules and Article 142 of the Financial Regulation applicable to the general budget of the European Communities, the Court of Auditors shall be empowered to audit the documents held by the natural or legal persons receiving payments from the budget of the FCH JU from signature of the Contract up to five years after payment of the balance of the last implementation.
- II.17.2** The FCH JU or an outside body of its choice shall have the same rights as the Court of Auditors for the purpose of checks and audits limited to compliance with contractual obligations from signature of the Contract up to five years after payment of the balance of the last implementation.
- II.17.3** In addition, the European Anti-Fraud Office may carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 and Parliament and Council Regulation (EC) No 1073/1999 from signature of the Contract up to five years after payment of the balance of the last implementation.

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<sup>18</sup> The daily rate for liquidated damages may be modified in the Special Conditions where the subject of the contract so justifies.

**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. An order or a specific contract may not be deemed to constitute an amendment to the Contract.

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

Without prejudice to the FCH JU's right to terminate the Contract, the FCH JU may at any time and for any reason suspend execution of the Contract, pending orders or specific contracts or any part thereof. Suspension shall take effect on the day the Contractor receives notification by registered letter with acknowledgment of receipt or equivalent, or at a later date where the notification so provides. The FCH JU may at any time following suspension give notice to the Contractor to resume the work suspended. The Contractor shall not be entitled to claim compensation on account of suspension of the Contract, of the orders or specific contracts, or of part thereof.

**SIGNATURES**

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

For the FCH JU,  
[forename/surname/function]

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

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

Done at [Brussels], [date]

Done at [Brussels], [date]

In duplicate in English.

**SPECIFIC CONTRACT No [complete]<sup>19</sup>  
implementing Framework Contract No ...**

The Fuel Cells and Hydrogen Joint Undertaking (hereinafter referred to as "the FCH JU"), which is represented for the purposes of the signature of this contract by Bert DE Colvenaer Executive Director,

of the one part,

and

official name in full  
*official legal form*  
*statutory registration number*  
official address in full  
*VAT registration number*

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

of the other part,

HAVE AGREED

**ARTICLE 1: SUBJECT**

**III.1.1** This specific contract implements Framework Contract No [complete] signed by the FCH JU and the Contractor on [complete date] [*and renewed on complete date*].

**III.1.2** The subject of this specific contract is [short description of subject]. [*This specific contract relates to lot [complete] of the Framework Contract.*]

**III.1.3** The Contractor undertakes, on the terms set out in the Framework Contract and in this specific contract and the annex[es] thereto, which form an integral part thereof, to perform the following tasks [:] [*specified in Annex [complete].*]

**ARTICLE 2: DURATION**

**III.2.1** This specific contract shall enter into force [*on the date on which it is signed by the last contracting party*]<sup>20</sup> [*on complete if it has already been signed by both contracting parties*].

**III.2.2** The duration of the tasks shall not exceed [*days/months*]. Execution of the tasks shall start from [*date of entry into force of this specific contract*] or [indicate date]. The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses.

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<sup>19</sup> Options [*in italics*] to be deleted where not applicable.

Options [in roman] to be completed.

<sup>20</sup> As a rule the Commission signs last. In this case, the Contractor should be duly informed of the date on which the specific contract enters into force.

**ARTICLE 3: PRICE**

**III.3.1** The total amount to be paid by the FCH JU under this specific contract shall be EUR [amount in figures and in words] covering all tasks executed.

**III.3.2** In addition to the price [*no reimbursable costs are foreseen*] [*costs up the an amount of EUR ... will be reimbursed according to the provisions of the Framework contract*]

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

**ARTICLE 4: CONFIDENTIALITY**

The Contractor shall sign with the members of the coalition supporting the study a confidentiality agreement based on the template annexed to the Framework agreement tender specifications.

**ARTICLE 5 : ANNEXE[S]**

- Annex I** – Tender Specifications for the specific contract. (Invitation to Tender No [complete] of [complete])
- Annex II** – Contractor’s specific Tender (No [complete] of [complete])
- Annex III-** Confidentiality agreement (In this document: ANNEX L)

**SIGNATURES**

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

For the FCH JU,  
[forename/surname/function]

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

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

Done at [Brussels], [date]

Done at [Brussels], [date]

In duplicate in English.

## **Annex B: Model specific contract**

### **SPECIFIC CONTRACT No [complete]<sup>21</sup> implementing Framework Contract No ...**

The Fuel Cells and Hydrogen Joint Undertaking (hereinafter referred to as "the FCH JU"), which is represented for the purposes of the signature of this contract by Bert DE Colvenaer Executive Director,

of the one part,

and

official name in full  
*official legal form*  
*statutory registration number*  
official address in full  
*VAT registration number*

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

of the other part,

HAVE AGREED

#### **ARTICLE 1: SUBJECT**

**III.1.1** This specific contract implements Framework Contract No [complete] signed by the FCH JU and the Contractor on [complete date] [*and renewed on complete date*].

**III.1.2** The subject of this specific contract is [short description of subject]. [*This specific contract relates to lot [complete] of the Framework Contract.*]

**III.1.3** The Contractor undertakes, on the terms set out in the Framework Contract and in this specific contract and the annex[es] thereto, which form an integral part thereof, to perform the following tasks [:] [*specified in Annex [complete].*]

#### **ARTICLE 2: DURATION**

**III.2.1** This specific contract shall enter into force [*on the date on which it is signed by the last contracting party*]<sup>22</sup> [*on complete if it has already been signed by both contracting parties*].

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<sup>21</sup> Options [*in italics*] to be deleted where not applicable.

Options [in roman] to be completed.

<sup>22</sup> As a rule the Commission signs last. In this case, the Contractor should be duly informed of the date on which the specific contract enters into force.

**III.2.2** The duration of the tasks shall not exceed [*days/months*]. Execution of the tasks shall start from [*date of entry into force of this specific contract*] or [*indicate date*]. The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses.

### **ARTICLE 3: PRICE**

**III.3.1** The total amount to be paid by the FCH JU under this specific contract shall be EUR [amount in figures and in words] covering all tasks executed.

**III.3.2** In addition to the price [*no reimbursable costs are foreseen*] [*costs up the an amount of EUR ... will be reimbursed according to the provisions of the Framework contract*]

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

### **ARTICLE 4: CONFIDENTIALITY**

The Contractor shall sign with the members of the coalition supporting the study a confidentiality agreement based on the template annexed to the Framework agreement tender specifications.

### **ARTICLE 5 : ANNEXE[S]**

**Annex I –** Tender Specifications for the specific contract. (Invitation to Tender No [*complete*] of [*complete*])

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

**Annex III-** Confidentiality agreement (In this document: ANNEX L)

### **SIGNATURES**

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

For the FCH JU,  
[*forename/surname/function*]

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

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

Done at [Brussels], [date]

Done at [Brussels], [date]

In duplicate in English.

## Annex C: Price Tables

### *1. Table for the Financial evaluation for the award of the framework contracts*

Categories of costs	Unit price	Quantity	Total
Man/day of Partner/Director		30	
Man/day of Project manager		70	
Man/day of senior analyst/associate		200	
Man/day of junior analyst/associate		200	
Total			

If some travel and subsistence expenses cannot be determined beforehand. Travel and subsistence expenses will be reimbursed on the basis of the provisions of Article II.7 of the Framework Service Contract

### *2. Financial evaluation for award of the first specific contract*

Tenderers shall indicate the total price they propose for carrying out the first study.

The total price must be detailed in such a way that it is possible (1) to identify the price of the distinct deliverables and (2) to verify the correlation of the man-day price quotation proposed for the whole duration of the framework contracts.

## **Annex D: Daily subsistence allowances**

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Please refer to the following address:

[http://ec.europa.eu/europeaid/work/procedures/implementation/per\\_diems/index\\_en.htm](http://ec.europa.eu/europeaid/work/procedures/implementation/per_diems/index_en.htm); the same *per diem* rates will be used for the purpose of this framework contract.

## **Annex E: Agreement / Power of Attorney (Only for Joint Tenders)**

We the undersigned:

- Mr/Ms XXX, function, company name, address, VAT number

- Mr/Ms XXX, function, company name, address, VAT number

- Mr/Ms XXX, function, company name, address, VAT number

....

Each of them having the legal capacity required to act on behalf of his/her company,

HEREBY AGREE AS FOLLOWS:

The FCH JU has awarded Framework Contract .... (« **the Contract** ») to *Company names* (« **the Group Members** »), based on the joint offer submitted by them on XX/XX/XXXX for the provision of services for ~~financial audits and related services in the field of research grant agreements~~ commercialisation studies («**the Services** »).

As participants of the Contract, all the Group Members :

- Shall be jointly and severally liable towards the FCH JU for the performance of the Contract, even when subcontractors, mentioned in the tender, are performing the work.
- Shall comply with the terms and conditions of the Contract and ensure the proper execution of their respective share of the Services.

To this effect, the Group Members designate, *Company Name* and address as **Group Leader**.

The Group Members shall bear exclusive liability for proper performance of the Contract when subcontractors, mentioned in the tender, are acting.

Payments by the FCH JU related to the Services shall be made through the Group Leader's bank account (*name of the bank, address and account number*).

The Group Members grant to the Group Leader all the necessary powers to act on their behalf in connection with the Services. This mandate involves in particular the following tasks :

- The Group Leader shall sign any contractual documents—including the Framework Contract, Specific Contract and Amendments thereto—and issue any invoices related to the Services on behalf of the Group Members.
- The Group Leader shall act as single point of contact for the FCH JU in connection with the Services to be provided under the Contract. It shall coordinate the provision of the Services by the Group Members to the FCH JU, and shall see to a proper administration of the Contract.

Any modification to the present agreement / power of attorney shall be subject to the FCH JU's express approval.

This agreement / power of attorney shall expire when all the contractual obligations of the Group Members towards the JUs in connection with the Services to be provided under the Contract have ceased to exist. The parties cannot terminate it before that date without the FCH JU's consent.

Signed in \_\_\_\_\_ on \_\_\_\_\_

Name  
Function  
Company

Name  
Function  
Company

Name  
Function  
Company

Name  
Function  
Company

...

## **Annex F: General Information Sheet**

### **GENERAL INFORMATION SHEET – Selection criterion (Part Three, Section 1.2)**

<b>FULL LEGAL NAME OF THE TENDERING ORGANISATION</b>	
<b>OFFICIAL LEGAL FORM</b>	
<b>VAT STATUS AND REGISTRATION NUMBER (OR IF EXEMPT FROM VAT, PLEASE ADD COPY OF OFFICIAL EVIDENCE DELIVERED BY THE TAX AUTHORITIES)</b>	
<b>FULL ADDRESS OF THE REGISTERED OFFICE</b>	
<b>TELEPHONE AND FAX NUMBERS</b>	
<b>TENDERER'S BANK DETAILS (NAME, ADDRESS AND ACCOUNT NUMBER)</b>	

<p align="center"><b>PERSON RESPONSIBLE FOR THE TENDER (NAME, ADDRESS, TELEPHONE, FAX AND E- MAIL ADDRESS)</b></p>	
<p align="center"><b>PERSON AUTHORISED TO SIGN ON BEHALF OF THE ORGANISATION (NAME, ADDRESS, TELEPHONE, FAX AND E-MAIL ADDRESS)</b></p>	

Signature of the tenderer or his authorised representative  
Date:

## **Annex G: Declaration in Relation to Exclusion Criteria and Conflict of Interest**

### **LETTER HEAD OF THE TENDERER**

### **SUBJECT: DECLARATION IN RELATION TO EXCLUSION CRITERIA AND CONFLICT OF INTEREST.**

#### **Reference: Call for tenders JTI/EPAS/2010/02**

I the undersigned ... [representing *full name of tenderer*] being a tenderer of the contract referred to above hereby certify that the firm is not in any one of the situations listed below

- is bankrupt or being wound up, is having their 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;
- has been convicted of an offence concerning professional conduct by a judgement which has the force of *res judicata*;
- has been guilty of grave professional misconduct proven by any means which the contracting authority can justify;
- 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 of the contracting authority or those of the country where the contract is to be performed;
- has been the subject of a judgement which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- are currently subject to an administrative penalty imposed by the European Union Institutions as referred to in the general Financial regulation;

Furthermore I am aware that I shall be excluded from the award of the contract if

- I am subject to a conflict of interest;
- I am guilty of false declaration in providing the information required for participation in this procedure or have not provided this information.

I declare

- that I have no conflict of interest in connection with the contract. A conflict of interest 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;
- that I will inform the awarding authority, without delay, of any situation constituting a conflict of interest or liable to result in a conflict of interest;
- that I have not made and will not make any offer of any type whatsoever from which an advantage can be derived under this contract;

- that I have not granted, sought, attempted to obtain or accepted any advantage, financial or other, to or from any party whatsoever constituting an illegal practice or involving corruption, either directly or indirectly, as an incentive or reward relating to performance of the contract;
- that I am aware that the JUs reserve the right to check this information, and that I realise the possible consequences that may arise from any false declaration in providing the information required by the awarding authority in order to take part in the contract.

Signed by the tenderer of his duly authorised representative

Date

## **Annex H: Check-list of documents to enclose in the tender – Minimal content**

**In the outer envelope**, you may enclose if needed an acknowledgment of receipt form on which you must indicate the address to which it should be returned in addition of the inner envelope.

**Inner envelopes:** Administrative, technical and financial parts of the tender (each in one separate sealed envelope)

**Electronic documents:** in addition to the paper documents to requested below, the tenderers are invited to join one electronic version of the whole set of documents (in CD, DVD or USB Key).

### **Part A (sealed envelope A) - Administrative part:**

1. A cover letter for the submission of the offer signed by the tenderer or his duly authorised representative confirming the validity of his offer during 12 months from the deadline for the submission of the offer;
2. The completed and signed general information sheet (see Annex F);
3. Declaration (see Annex G) concerning the exclusion criteria (see Part three, section 1.1 6 of the Tender Specifications);
4. Documents needed to prove that the tenderer meets the selection criteria:
  - a. Economic & financial capacity:
    - i. the balance sheets or extracts from balance sheets for the last three financial years
    - ii. a statement of overall turnover for last three financial years;
    - iii. a statement of turnover relating to the relevant services for the last three financial years.
  - b. Technical & professional capacity:
    - i. A list of the principal services provided during the last three years (detailed description of work), with the values, dates and recipients, of the services provided. The services which are directly relevant to the tender being made should be listed separately.
    - ii. CV of the staff proposed for this contract with particular reference to the principal person proposed by the tenderer to liaise with FCH JU in the performance of the contract.
    - iii. A comprehensive company profile including a list of its offices
5. Commitment to undertake the described tasks if the framework contract is awarded to the tenderer, signed by the tenderer or his authorised representative and a copy of the notice of appointment of this authorised representative.
6. The completed and signed Legal Entity File (see Annex I)

7. The completed and signed Bank Account File (see Annex J)

**Part B (sealed envelope B) - Technical part:**

The technical part should at least enclose:

An offer in compliance with the Tender Specifications for the framework contract and the terms of reference for the first study;

**Part C (sealed envelope C) - Financial Offer**

The signed and completed form supplied in Annex C: table 1 and 2

**Remark:** Please note that if a joint tender or/and subcontractors is submitted, the declaration relating to the exclusion criteria and the documents relating to the selection criteria must be provided by each of the (joint) partner(s)/subcontractors.

## **Annex I : Legal entity file**

*Please complete and join the model found at the following address:*

[http://ec.europa.eu/budget/execution/legal\\_entities\\_en.htm](http://ec.europa.eu/budget/execution/legal_entities_en.htm)

## **Annex J**

### **Bank account file**

*Please complete and join the model found at the following address:*  
[http://ec.europa.eu/budget/execution/ftiers\\_en.htm](http://ec.europa.eu/budget/execution/ftiers_en.htm)

**Annex K Confidentiality agreement**

<INSERT NAME OF CONTRACTOR HERE>\_\_\_\_\_ ("Contractor") is being commissioned to conduct a study for the FCH JU to \_\_\_\_\_[Insert scope of Study]\_\_\_\_\_ ("the Study").

<INSERT NAME OF COMPANY HERE> (the "Coalition Member") is participating in the Study. Various other companies as listed in annex of the tender specification have agreed to participate in the Study and are willing to provide the Contractor with certain information and data. For purposes of this agreement ("Agreement"), all companies listed in annex of the tender specifications (as well as companies that would later join the coalition) are referred to individually as a "Coalition Member" and collectively as the "Coalition Members".

For purposes of this Agreement, the term "affiliates" of the Coalition Member means any entities that directly or indirectly control, are controlled by, or are under the same control as the Coalition Member or any other entities affiliated with the Coalition Member or entities.

The Coalition Member and Contractor recognize that it is mutually beneficial to confirm certain understandings and business arrangements and hereby agree to the following terms and conditions in connection with the Study.

**1. STAFFING ARRANGEMENTS**

Given the requirements for confidentiality as set out in Section 4, below, two separate teams of Contractor consultants will be established, the "Clean Team" and the "Technical Team".

- a) The *Clean Team* will consist of one or more Contractor consultant(s). As and when Coalition Members or any of its affiliates provide confidential or commercially sensitive data in whatever form (hereafter "*Confidential Information*"), it will be sent to the *Clean Team* only. The *Clean Team* will ensure that the data is aggregated and disguised, i.e. data cannot be identified or traced back to a specific Coalition Member or the relevant affiliate thereof before sharing this data with another Coalition Member or the *Technical Team* (hereinafter "*Sanitized Data*"). In addition, the Clean Team will ensure that data is comparable on a "like-for-like unit of measurement" basis.
- b) The *Technical Team* consisting of the remaining Contractor consultants and the "*Working Groups*", comprising the Contractor's *Technical Team* and staff of the Coalition Members, will have access only to *Sanitized Data* coming from the *Clean Team* and any other data that is publically available.

Each of the Contractor's consultants whether part of the *Clean Team* or the *Technical Team* will at all times adhere to Contractor's policies and practices for safeguarding confidentiality.

**2. CONFIDENTIALITY AND CLEAN TEAM SET UP**

- a) Contractor agrees that the Confidential Information shall only be used for the Study and, except as provided in this Agreement, it will not disclose any *Confidential Information* to any person who is not a member of the Clean Team or legal counsel (Member of a Bar) to Contractor without the prior written consent of the Coalition

Member(s). The *Sanitized Data* and the results of the Study will belong to the FCH-JU, which will grant to the Coalition Members and their affiliates a free, non-exclusive and non-transferable licence.

- b) The Coalition Member and Contractor each agrees to the following arrangements with respect to the sharing of Confidential Information:
- 1) The Coalition Member and its affiliates may provide *Confidential Information* to the Clean Team;
  - 2) The Clean Team will not share the *Confidential Information* of the Coalition Member or its affiliates in its possession with any other person (i.e. other Coalition Members, FCH JU or any third party) except in aggregate and disguised form;
  - 3) Any other disclosure by Contractor of *Confidential Information* of a Coalition Member or its affiliates may be made only with the prior written consent or at the written request of the Coalition Member or its affiliates whose *Confidential Information* is being disclosed;
  - 4) A Coalition Member providing *Confidential Information* (input data) shall remain vested holder of such information. Nothing contained in this Agreement shall be construed as granting or conferring to the Contractor or the other Coalition Members any right or licence, on the Coalition member's *confidential information* or any other intellectual property as a result of entering into this agreement or participating in the study.
  - 5) No warranty is given by the Coalition Member as to the accuracy or completeness of any information provided;
  - 6) The Coalition Member is not obliged to disclose any, or any particular information to the Contractor, and the information to be disclosed is at the absolute discretion of the Coalition Member.
- c) *Confidential Information* shall not include information that (i) has come into the possession of Contractor prior to its receipt of such information from the Coalition Member or its affiliates without breach of any confidentiality, (ii) is or becomes publicly available other than as a result of a breach of this Agreement by Contractor, or (iii) is or can be independently acquired or developed by Contractor without reference to the *Confidential Information* and without violating any of its obligations under this or prior agreements with the Coalition Member or its affiliates.
- d) In the event that Contractor receives a request to disclose all or any part of any *Confidential Information* under the terms of a valid and effective subpoena or order issued by a court of competent jurisdiction or by a judicial or administrative agency or by a legislative body or committee, such disclosure by Contractor shall not constitute a violation of this Agreement provided that Contractor (a) promptly notifies the Coalition Member, as the case may be, of the existence, terms and circumstances surrounding such request, (b) consults with the Coalition Member, as the case may be, on the advisability of taking legal available steps to resist or narrow such request, and

(c) if disclosure of such *Confidential Information* is required, exercises its best efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to such portion of the *Confidential Information* to be disclosed which the Coalition Member, as the case may be, designates.

- e) All records, notes, documents and other information supplied by the Coalition Member to Contractor in connection with the Study and all copies, reprints, reproductions or translations thereof made and retained by Contractor, will upon request, be returned by Contractor to the Coalition Member, as the case may be, or destroyed.
- f) The obligations provided in this Section 2 shall remain in force for a ten-year period from the signature of this Agreement by the Contractor.

Given the importance of keeping the information that is sent by the Coalition Member to the Clean Team strictly confidential, Contractor shall require from each person prior to being staffed on the Clean Team to sign a Non-Disclosure Agreement which includes the obligations listed under this section reminding such person of the obligations of confidentiality he/she subscribed to when joining Contractor and to uphold those obligations for a ten-year period from the signature of this Agreement by the Contractor.

### **3. Applicable law and settlement of disputes**

This Agreement is non-assignable.  
No modification to this Agreement will be binding unless in writing signed by both parties.  
The applicable law and the mechanism for settling disputes will be as those indicated in the framework contract signed between Contractor and the FCH JU (Article I.8).

**INSERT NAME OF COMPANY HERE:**

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**INSERT NAME OF CONTRACTOR HERE:**

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_