



Tender Specifications

**Open Procedure
No. ECHA/2011/66**

**Title: Provision of Enterprise Content
Management Services and Solutions**

Annex 5.2 Contractual Documentation

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5.2.1 DRAFT FRAMEWORK SERVICE CONTRACT



DRAFT FRAMEWORK SERVICE CONTRACT

CONTRACT NUMBER – ECHA/2011/66

The European Chemicals Agency (hereinafter referred to as "Agency"), represented for the purposes of the signature of this contract by Mr Geert Dancet, 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"¹), [represented for the purposes of the signature of this contract by [name in full and function,]]

of the other part,

HAVE AGREED

¹ In the case of a joint offer and provided the invitation to tender so specifies, the following clause will be added below the identification of the parties: "The parties identified above and hereinafter collectively referred to as 'the Contractor' shall be jointly and severally liable vis-à-vis the Agency for the performance of this contract".

the **Special Conditions (Part I)** and the **General Conditions (Part II)** below and the following Annexes:

- Annex I** Tender Specifications (Invitation to Tender ECHA/2011/66)
- Annex II** Contractor's Tender, Ref xxx of dd/mm/yyyy
- Annex III** Specific Contract and Order Form– Models
- Annex IV** Reimbursement of daily subsistence allowances
- Annex V** Model Contract performance guarantee
- Annex VI** Model Contract pre-financing guarantee

which form an integral part of this Framework 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 Specific Contracts or Order Forms (Annex III), the latter taking precedence over the Tender (Annex II).

Subject to the above, the several instruments forming part of this Contract are to be taken as mutually explanatory. Ambiguities or discrepancies within or between such parts shall be explained or rectified by a written instruction issued by the Agency; subject to the rights of the Contractor under Article 1.9 should he dispute any such instruction.

I – SPECIAL CONDITIONS

ARTICLE I.1 - SUBJECT

- I.1.1** The subject of the Contract is the provision of Enterprise Content Management services and solutions. The scope of services and tasks covered by this Contract is listed in Annex I.
- I.1.2** Signature of the Contract imposes no obligation on the Agency to purchase. Only the implementation of the Contract through specific contracts and order forms is binding on the Agency
- I.1.3** All specific contracts and order forms implementing the Contract shall conform to the terms set out therein.
- I.1.4** Once implementation of the Contract has been requested or has commenced the Contractor shall reply and provide the services in accordance with all the terms and conditions of the Contract.
- I.1.5** The Contract does not confer on the Contractor any exclusive right to supply the goods or to provide services referred to in the above paragraph.

ARTICLE I.2 - DURATION

- I.2.1** The Contract shall enter into force on the date on which it is signed by the last contracting party.
- I.2.2** Under no circumstances 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 form or specific contract enters into force.
- I.2.3** The Contract is concluded for a period of 24 (twenty-four) months with effect from the date on which it enters into force. This contractual period and all other periods specified in the Contract are calculated in calendar days unless otherwise indicated.
- I.2.4** The order forms or specific contracts shall be returned signed before the Contract to which they refer expires. The Contract shall continue to apply to specific contracts executed after the Contract expires. Such specific contracts shall be executed no later than 6 (six) months after expiry of the Contract.
- I.2.5** The Contract may be renewed twice, each time for a period of 12 (twelve) months and on the same conditions, with the express written agreement of the contracting parties and before the end of the period specified in paragraph I.2.3. This renewal shall not give rise to any modification or deferral of the obligations in force. The overall duration of the Framework Contract may in no event exceed 48 (forty-eight) months.

ARTICLE I.3 –PRICES

- I.3.1** The prices of the services shall be in accordance with the maximum prices 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 order forms and specific contracts placed during the first year of duration

of the Contract.

From the beginning of the second year of duration of the Contract, the Prices may be revised, where such revision is requested by one of the contracting Parties by registered letter no later than three (3) months before the anniversary of the date on which it was signed.

The Agency shall request the delivery of services on the basis of the prices in force on the date on which specific contracts or order forms are signed. Such prices shall not be subject to revision.

This revision for services and labour force related costs shall be determined by the trend in the Harmonised Indices of Consumer Prices “HICP” Published by Eurostat

Revision shall be calculated in accordance with the following formula:

$$Pr = Po (I_r / I_o)$$

where:

Pr = revised price;

Po = price in the original tender;

I_o = index for the month corresponding to the final date for submission of tenders or of the last revision;

I_r = index for the month corresponding to the date of receipt of the letter requesting a revision of prices.

- I.3.4.** In addition to the total amount specified in each order form or specific contract, travel and subsistence expenses shall be reimbursed in accordance with Article II.7 up to a maximum amount determined in each order form or specific contract. The daily subsistence allowance referred to in Article II.7.4 (d) shall be determined in accordance with Annex IV.

ARTICLE I.4 – IMPLEMENTATION OF THE CONTRACT

- I.4.1** As and when required, the Agency shall communicate to the Contractor specific orders which shall be covered by this Framework Contract. These specific orders may take the form of an order or a specific contract in accordance with the model forms attached as Annex III.
- I.4.2** Within a maximum of 5 working days of an order form being sent by the Agency, the Contractor shall return it, duly signed and dated. The period allowed for the execution of the tasks shall start to run on the date the Contractor returns the order form, unless a different date is indicated on the form.
- I.4.3.** Within a maximum of ten working days of a request for services being sent by the Agency, the Contractor shall return a quotation or an estimate of the resources to be allocated for its execution, with particulars in support.
- I.4.4.** Within a maximum of five working days of a specific contract being sent by the Agency, the Contractor shall return it, duly signed and dated.

ARTICLE I.5 – PAYMENT PERIODS.

- I.5.1.** Payments under the Contract shall be made in accordance with Article II.4 and II.5. Payments shall be executed only if the Contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted. Within thirty days of the date on which the admissible request for payment is received, the Agency shall make the payment corresponding to the relevant invoices and statements of reimbursable expenses.
- I.5.2.** The terms of payment shall be specified for each specific contract or order form as indicated by the Agency in its request for offer for the respective order form or specific contract.

ARTICLE I.6 – PERFORMANCE GUARANTEE

The Agency may request a performance guarantee for an amount not exceeding 10% of the total value of a specific contract. The guarantee shall be issued by a bank, an authorised financial institution or a third party in favour of the Agency at the time of signature of the Contract.

In the event of default, defective performance or delay in the execution of the specific contract, the guarantee shall be forfeited in proportion to the extent of the damages caused to the Agency.

The performance guarantee shall be released six months after payment of the balance of the specific contract.

The performance guarantee shall cover performance of the specific contract in accordance with the terms set out in the specific contract, and the Technical Specifications (Annex I) of the Contract.

ARTICLE I.7 – BANK ACCOUNT

Payments shall be made to the Contractor's bank account denominated in Euro, identified² as follows:

Name of bank: [complete]

Address of branch in full: [complete]

Exact designation of account holder: [complete]

Full account number including codes: [complete]

[IBAN³ code: [complete]]

² By a document issued or certified by the bank

³ BIC or SWIFT code for countries with no IBAN code.

ARTICLE I.8 – GENERAL ADMINISTRATIVE PROVISIONS

Any communication relating to the Contract shall be made in writing and shall bear the Contract and order form or Specific Contract numbers. Ordinary mail shall be deemed to have been received by the Agency on the date on which it is registered by the department responsible. Correspondence should be sent to the following addresses:

Agency:

Mr/Mrs/Ms [complete]
European Chemicals Agency (ECHA)
Directorate I – Information Systems
Unit I3 – Management of Information Systems
Annankatu 18
00120 Helsinki
Finland

Contractor :

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

ARTICLE I.9 – APPLICABLE LAW AND SETTLEMENT OF DISPUTES

- I.9.1** The Contract shall be governed by the European Union law complemented, where necessary, by the national substantive law of Finland.
- I.9.2** Any dispute between the parties resulting from the interpretation or application of the Contract which cannot be settled amicably shall be brought before the Helsinki District Court.

ARTICLE I.10 – DATA PROTECTION

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 EU 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 Agency without prejudice to possible transmission to the bodies charged with 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, she/he shall address them to the Data Protection Officer of

ECHA. 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.

ARTICLE I.11 –USE OF PROPRIETARY SOFTWARE

I.11.1. Unless otherwise specified in Annex I or in the specific contracts, the Contractor is responsible for acquiring all software licences needed in connection with the provision of the services.

I.11.2 In order to provide the services, the Contractor may, subject to Annex I, use proprietary software of the Contractor or of a third party provided that software comprises partly proprietary software of the Contractor or of the third party,

I.11.3. In case the deliverables provided under this Contract contain proprietary software, their dissemination and distribution to third parties will be subject to the pertinent licence terms that may apply.

I.11.4 In case of software developed on its behalf under this Contract, the Agency shall become the owner of its specifications, sources, documentation and test results.

ARTICLE I.12 - PATENTS, LICENCES AND INTELLECTUAL PROPERTY

I.12.1 The Contractor undertakes:

- not to copy any software owned by or licensed to the Agency, by other party than the Contractor, without prior written authorisation from the Agency;
- to use such software exclusively in the context of this Contract.
- to protect the Agency against all third-party actions for breach of copyright or other intellectual property rights which might arise out of this Contract, as set out in Article I.12.3.

I.12.2 The Contractor declares that it is the rightful owner of the intellectual rights to all deliverables supplied by virtue of this Contract, and that it is entitled to sell or transfer those rights to the Agency in accordance with the terms of Article II.8 of this Contract.

I.12.3 The Contractor shall at its own cost defend, indemnify and hold the Agency harmless against all claims, suits, actions and proceedings which are attributable to or based on the infringement or alleged infringement of intellectual property right of other right of a third party by the Agency's use of the services or utilization of any license, intellectual property right or other rights realting to the services under the Contract ("Claims"). The Contractor shall pay a) any and all compensation, liabilities, damages, costs and expenses relating to the Claims, as well as b) compensate to the Agency reasonable legal costs and other reasonable out-of-the-pocket expenses incurred by the Agency as a result of such Claims

I.12.4 The Agency and the Contractor shall exchange all information on any industrial property right, copyright or other intellectual property right, that could impede the performance of the Contract.

ARTICLE I.13 - DOCUMENTATION

I.13.1 The Contractor shall provide the Agency with all documentation, including the user manuals and documentation concerning the services and deliverables provided, necessary for the planning and the control by the Agency of the operations connected with the tasks referred to in Article I.1 of the Contract, and for the purpose of fulfilling the Contractor's obligations under Articles I.17.2 and I.18.

I.13.2 Thereafter, the Contractor shall provide to the Agency any update of the documentation provided.

I.13.3 The Contractor shall permit the Agency to reproduce all or part of the documentation provided, for its internal needs, directly connected with use by its personnel. The Agency shall ensure that any indication concerning the intellectual property rights appearing on the original copies is reproduced.

ARTICLE I.14 - QUALITY AND STANDARDS

I.14.1 The Contractor shall provide the services in accordance with technical norms, standards and procedures based on best professional practice in the informatics field. With respect to contract management, the Contractor shall provide the services in accordance with ISO 9001 or equivalent. Quality standards may be revised in line with market developments.

I.14.2 The Contractor warrants that software supplied or developed under the Contract will not fail to execute its programming instructions due to defects in materials and workmanship when properly installed and used on the device designated by the Contractor. It shall be devoid of any deliberate mechanism which leaves it under the Contractor's control after supply to the Agency. It shall meet the operating requirements, specifications and characteristics specified in the Contractor's documents or laid down in the Contract.

I.14.3 The software deliverables will be error free for a period of six (6) months after acceptance and after each installation of an upgrade. The warranty period is extended by the sum of the recovery times for all critical and major issues, where ECHA cannot use the software deliverable during the warranty period. After the warranty period, the Contractor is obliged to provide software maintenance for the period of execution of tasks under the Framework Contract. Such service shall be subject to one or several specific contracts under this Framework Contract;

I.14.4 Any deliverable provided by the Contractor under the Contract will be quality controlled by the Contractor, in its own buildings, before delivery. On the request of the Agency, the Contractor has to be in a position to show that the outcome of the quality control was positive.

I.14.5 The Contractor undertakes to comply with the above quality standards. Compliance with the standards shall be monitored by the Agency. In the event of non compliance with one or more of the standards over a sliding period of three (3) months, the Contractor shall submit an improvement plan. In the event of non compliance with one or more of the standards for six (6) months, consecutive or not, over a sliding period of twelve (12) months, a service whose quality has proved substandard may be withdrawn from the Contract, or the Contract may be terminated where service quality is substandard.

ARTICLE I.15 – CONFIDENTIALITY AND SECURITY

I.15.1 The Contractor may only utilise the information contained in the material encountered during the duration of the Contract and any specific contract (including any data on any Agency network) for the purposes identified in the Contract. The Contractor shall take all practical steps to keep the material confidential and shall restrict access to the material to the Contractor's staff only.

The Contractor shall obtain from each member of his staff, in respect of article II.10, a written undertaking that they will respect the confidentiality of any information brought to their attention in the performance of the tasks referred to in Article I.1. The undertaking shall follow the model in Annex I of the Contract. A copy of the undertaking shall be sent to the Agency.

I.15.2 Without prejudice to Articles I.12 and I.13 the Agency shall respect the confidentiality of documents and data when so requested by the Contractor.

I.15.3 The Contractor shall take all appropriate steps for each product to ensure that the data and the media upon which they are stored are safely preserved. The deliverables provided shall not contain any mechanism (for example viruses) which could compromise their proper operation and that of other products. The cost of repairing the damage caused by such a mechanism shall be borne by the Contractor.

I.15.4 The Contractor undertakes to inform the Agency in writing as soon as he has any knowledge of faults in his products that endanger the security of the configurations of which they form a part. The Contractor shall immediately take any measures necessary to restore the security of the configurations and correct the faults.

I.15.5 The Contractor shall ensure that all security precautions for each product are clearly spelled out in the relevant user manuals and technical documentation supplied to the Agency.

I.15.6 Where required by the nature of the services to be provided under this Contract, the Agency shall require the Contractor to comply with the security provisions governing the electronic communication of sensitive data, as defined in: the Commission's security provisions (See COMMISSION DECISION/2001/844/EC, ECSC, Euratom of 29 November 2001 amending its internal Rules of Procedure (JO L 317,3.12.2001, p.1) as amended by Decision 2005/94/EC,Euratom of 3 February 2005 (JO L 31, 4.2.2005, p. 66) adopting the "Commission Provisions on Security"; and the COUNCIL DECISION/2001/264/EC of 19 March 2001 adopting the Council's Security regulations (OJ L 101, 11.4.2001, p. 1).

I.15.7 All sub-contractors used by the Contractor for the performance of the services are also bound by the confidentiality and security obligations of the Contractor under the Contract.

ARTICLE I.16 – INSURANCE OF CONTRACTOR’S LIABILITY

I.16.1 The Contractor shall be insured against all claims relating to its liabilities and activities under the Contract with a reputable insurance company. This insurance cover should be for a sum not less than 1 million EUR. In accordance with the terms of the insurance policy, compensation shall be paid to the Agency directly or to the Contractor that shall have an obligation to forward the compensation to the Agency in full. The Contractor’s insurance obligations shall in no way limit or diminish its indemnification obligations or liability under the Contract.

I.16.2 The Contractor shall provide the required insurance coverage either by utilising its existing insurance policies or by acquiring new insurance policies for the purposes of this Contract only. The Contractor shall provide proof of insurance cover upon request by the Agency, within thirty (30) days of the signature of the Contract. A copy of the contract of insurance shall be given to the Agency without charge. Should the Contractor fail to provide this proof of insurance, the Agency shall be entitled, in conformity with article II.15.1(k), to terminate the Contract at the Contractor's expense and be entitled to damages and interest thereof.

I.16.3 Before the implementation of any change in the terms of the insurance contract referred to in paragraph 2 of this article, of its termination by the insurer, of its replacement by a new contract, of a change in insurer, or of any other change materially affecting the contract referred to in paragraph 2 of this article, the Contractor shall notify the Agency in advance in writing and request its consent. The Agency may offer its comments and may withhold its consent should it find that the change may result in the absence of the necessary insurance cover. In the event of the Contractor's failing to find insurance cover meeting the criteria of paragraph 1 of this article, the Agency shall be entitled to terminate the Contract, in conformity with Article II.15.1.(k).

I.16.4 In the event of the contract of insurance being terminated by the insurer, or the terms of the insurance being changed, such that the sum of the insurance cover referred to in paragraph 1 of this article is materially affected, the Contractor shall immediately notify the Agency of the fact. The Contractor shall then seek new insurance meeting the requirements of this article. Before accepting the new insurance policy, the Contractor shall advise the Agency and obtain its consent.

I.16.5 Should the Contractor fail to notify the Agency of any change in accordance with paragraphs 3 and 4 of this article, the Agency shall be entitled to terminate the Contract, in conformity with Article II.15.1(k), at the Contractor's expense. The Agency shall also be entitled to seek damages and interest thereof from the Contractor.

ARTICLE I.17 - OBLIGATION OF THE CONTRACTOR IN CASE OF TERMINATION OF THE CONTRACT

In case of termination of the Contract, the Contractor shall hand over the following items:

- (1) Where the Agency is the rightful owner of the developed software, the Contractor shall hand over the specifications, sources and documentation, including access keys.
- (2) Where the Agency has paid for maintenance of developed software, the Contractor shall hand over (immediately and without charge) the specifications, sources and documentation, including access keys, required by the Agency for the proper operation of the software, insofar as the Contractor has a legal right to do so.

ARTICLE I.18 – SPECIFIC PROVISION ON COLLABORATION WITH OTHER PARTIES DURING THE PHASE-OUT

At the end of the contractual period, and as an integral part of the services provision, the contractor shall, actively collaborate, by providing complete information and documentation on the services, with the future service provider and with the Agency, in order to minimise the costs and to guarantee the continuity of the services.

ARTICLE I.19 – 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 six months' formal prior notice. Should the Agency terminate the Contract, the Contractor shall only be entitled to payment corresponding to the services ordered and provided 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.20 – CONTRACT CONCLUDED DURING THE STAND-STILL PERIOD

In case this Contract was signed by both the Agency 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.

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.4 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 have the professional qualifications and experience required for the execution of the tasks assigned to him.
- II.1.5** The Contractor shall neither represent the Agency 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 execute the tasks assigned to him.

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

- staff executing the tasks assigned to the Contractor may not be given orders direct by the Agency;
- the Agency 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 Agency any right arising from the contractual relationship between the Agency 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 Agency 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 Agency 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 Agency. 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 Agency 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 Agency may impose penalties or liquidated damages provided for in Article II.16.

ARTICLE II. 2 – LIABILITY

- II.2.1** The Agency 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 Agency.
- 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. Notwithstanding the above, the Contractor shall not be liable for consequential loss and/or indirect damage exceeding the sum as set out for his professional risk insurance provided that this sum is no less than three times the total price/total amount of the specific contract(s)/order form(s) the execution of which is relevant for the loss or damage. The Contractor shall remain liable without any limitation as to the amount if the damage or loss is caused by the gross negligence or wilful conduct of the Contractor or by its employees, and for death caused by negligence or wilful conduct of its employees. The Agency 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 Agency 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 Agency in connection with performance of the Contract, the Contractor shall assist the Agency. Expenditure incurred by the Contractor to this end may be borne by the Agency.

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 Agency 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 Agency in writing without delay. In the event of such conflict, the Contractor shall immediately take all necessary steps to resolve it.

The Agency 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 Agency, 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 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 Agency should it so request.

ARTICLE II. 4 – INVOICING AND PAYMENTS

II.4.1 Pre-financing:

Where required by Article I.5, 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 Agency 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 Commission 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 Agency 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.

II.4.2 Interim payment:

At the end of each of the periods indicated in Annex I the Contractor shall submit to the Agency 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 Agency 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 Agency 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 Agency 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 Agency 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 Agency 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 Agency 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 Agency 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 Agency's account is debited.

II.5.2 The payment periods referred to in Article I.5 may be suspended by the Agency 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 Agency 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 Agency 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.5 shall begin to run again once the suspension has been lifted.

II.5.3 In the event of late payment the Contractor may claim interest within two months of receiving the payment. Interest shall be calculated at the rate applied by the European Central Bank to its most recent main refinancing operations (*“the reference rate”*) plus seven percentage points (*“the margin”*). The reference rate in force on the first day of the month in which the payment is due shall apply. Such interest rate is published in the C series of the Official Journal of the European Union. Interest shall be payable for the period elapsing from the calendar day following expiry of the time limit for payment up to the day of payment. Suspension of payment by the Agency 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 Agency.

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 Agency 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 Agency may also claim against the guarantee, where provided for.

ARTICLE II. 7 - REIMBURSEMENTS

II.7.1 Where provided by the Special Conditions, the Agency 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 Community territory shall be reimbursed under the general conditions stated above provided the Agency 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 Agency has given prior written authorisation.

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

Any results or rights thereon, including copyright and other intellectual or industrial property rights, obtained in performance of the Contract, shall be owned solely by the Agency, 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 Agency 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 Agency 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 Agency.
- II.10.3** Any distribution or publication of information relating to the Contract by the Contractor shall require prior written authorisation from the Agency and shall

mention the amount paid by the Agency. It shall state that the opinions expressed are those of the Contractor only and do not represent the Agency'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 Agency 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 Agency 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.
- 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 Agency nor cause the Contract to be performed in fact by third parties.

II.13.2 Even where the Agency authorises the Contractor to subcontract to third parties, he shall none the less remain bound by his obligations to the Agency 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 Agency 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 Agency.

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 Agency.

ARTICLE II. 15 – TERMINATION BY THE AGENCY

II.15.1 The Agency may terminate the Contract, a pending order or a specific agreement in the following circumstances:

- (a) where the Contractor is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) where the Contractor has been convicted of an offence concerning his professional conduct by a judgment which has the force of *res judicata*;
- (c) where the Contractor has been guilty of grave professional misconduct proven by any means which the Agency 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 Agency seriously suspects the Contractor of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Union's 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 Agency 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 Agency'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 of the date foreseen, and the new date proposed, if any, is considered unacceptable by the Agency;
- (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.16.2 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.16.3 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.16.4 Consequences of termination:

In the event of the Agency 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 Agency may claim compensation for any damage suffered and recover any sums paid to the Contractor under the Contract.

On termination the Agency may engage any other contractor to execute or complete the services. The Commission 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. 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 Agency's right to terminate the Contract, the Agency may decide to impose liquidated damages of 0.2% 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 Agency 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 Agency 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 Union, 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 Union from signature of the Contract up to five years after payment of the balance of the last implementation.

II.17.2 The Agency 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 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.

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 Agency's right to terminate the Contract, the Agency 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 Agency 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,

For the Agency,

[*Company name/forename/surname/function*]

[forename/surname/function]

signature[s]: _____

signature: _____

Done in [place], [date]

Done in Helsinki, [date]

In duplicate in English.

ANNEX I

Tender Specifications

(Invitation to Tender Ref. ECHA/2011/66)

Annex II

Contractor's Tender

5.2.2 SPECIFIC CONTRACT MODEL– FIXED PRICE

FIXED PRICE

SPECIFIC CONTRACT No [complete]⁴

implementing Framework Contract No ECHA/2011/66

The European Chemicals Agency (hereinafter referred to as "the Agency"), which is represented for the purposes of the signature of this contract by [official name in full],

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* [name in full and function,]]

of the other part,

HAVE AGREED

ARTICLE 1: SUBJECT

1.1 This Specific Contract implements Framework Contract No ECHA/2011/66 signed by the Agency and the Contractor on [complete date] [*and renewed on complete date*].

⁴ Options [*in italics*] to be deleted where not applicable.

- 1.2 The subject of this Specific Contract is [short description of subject].
- 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 tasks as specified in Annex A of the Specific Contract.

ARTICLE 2: DURATION

- 2.1 This Specific Contract shall enter into force on the date on which it is signed by the last contracting Party.
- 2.2 The duration of the tasks shall not exceed [*days/months*]. Execution of the tasks shall start from the [*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

- 3.1 The maximum amount to be paid by the Agency under this Specific Contract for the provision of the deliverables specified in Annex A shall be EUR [amount in figures and in words] covering all tasks executed.
- 3.2 The maximum amount will be determined on the basis of the unit price indicated in the catalogue of prices included in the Contractor's Tender (Annex II to the Framework Contract)
- [3.3 *Travel and subsistence expenses shall be reimbursed for a maximum amount of [amount in figures and in words], as specified in Annex I, in line with Art. II.7 of the Framework Contract.*]

ARTICLE 4: PAYMENTS

Payments under this Specific Contract shall be made in accordance with Article II.4 of the Framework Contract, as follows:

- 4.1 Pre-financing:

[If indicated in the request for offer that a pre-financing shall apply, the following clauses are to be inserted, otherwise it will be stated "not applicable".]

Options [in roman] to be completed.

As indicated in the request for offer from the Agency for this Specific Contract, a pre-financing of XX %⁵ equal to the amount of the Specific Contract shall be made.

Within thirty calendar days of the Specific Contract signature by the last contracting Party and the receipt by the Agency of a request for pre-financing with a relevant invoice a pre-financing payment equal to XX% of the total amount referred to in the Specific Contract shall be made.

[In case it has been stated in the request for offer that a pre-financing guarantee is required the above paragraph is to be replaced with

Within thirty calendar days of the latest of the following dates:

- *signature of the Specific Contract by the last contracting part and the receipt by the Agency of a request for pre-financing with a relevant invoice*
- *the receipt by the Agency of a duly constituted financial guarantee equal to at least XX % of the amount of the Specific Contract*

a pre-financing payment of XX% of the total amount referred to in the Specific Contract shall be made.]

4.2 Interim payment:

[If indicated in the request for offer that an interim-payment shall apply, the following clauses are to be inserted, otherwise it will be stated "not applicable".]

Requests for payment shall be admissible only where they are based on an invoice made in good and due form.

Each invoice must be accompanied by a supporting document describing the services that are subject of the invoice. This supporting document, which is subject to acceptance by the Agency, will include:

- (1) the detailed list of services subject of the invoice. For new installations and/or additional services, the supporting document shall describe in detail the invoiced amount on the basis of the request for services and the acceptance date of the services that shall be used as the starting date as from which the service can be invoiced.

⁵ A pre-financing may not exceed 30% of the total amount as specified in Article 3.1.

- (2) the request for services related to new installations and additional services subject of the invoice.
- (3) the acceptance documents related to the services described in the invoice.
- (4) *[Statements of reimbursable expenses in accordance with Article II.7 of the Framework Contract]*.

Services shall only be invoiced after acceptance by the Agency of the abovementioned supporting document. Services must be invoiced in the month following their acceptance. In case of delay, Article II.16 of the Framework Contract will be applied to the contractor.

Invoices in respect of services delivered shall be submitted after the end of each calendar month. The first invoice shall cover the period from the start date indicated in the Specific Contract until the end date of the calendar month during which the services have started.

Within thirty calendar days of the date on which the documents accompanying a request for payment are approved by Agency an interim payment corresponding to the relevant invoice shall be made.

4.3. Final payment

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

- the supporting documents mentioned in Article 4.2;
- a final technical report; and
- a statement of the contractor that all services related to the Specific Contract are included in the final payment request.
- *[Statements of reimbursable expenses, in accordance with Article II.7 of the Framework Contract]*.

provided the above documents have been approved by the Agency

The Agency shall have *[thirty] [forty-five] [sixty]* days to approve or reject the documents, and the Contractor shall have fourteen calendar days in which to submit additional information or a new final report.

Within thirty calendar days of the date on which the documents accompanying a request for payment are approved by the Agency, payment of the balance corresponding to the relevant invoices shall be made.

ARTICLE 5: GENERAL ADMINISTRATIVE PROVISIONS

5.1 Any communication under this Specific Contract shall be made in accordance with Article I.8 of the Framework Contract.

5.2 The persons responsible for the implementation of this Specific Contract are:

For the Agency:

European Chemicals Agency

P.O. Box 400,

00121 HELSINKI, Finland

Fax: +358 9 68618210

[Name & Office address of the contract manager]

Email: [to be completed]

For the Contractor:

Mr/Mrs

[Function]

[Company name]

[Official address in full]

ARTICLE 6: PLACE OF PERFORMANCE

The tasks shall be executed at the premises of *[the Contractor]* or *[the Agency]*.

ARTICLE 7: ANNEXES

The following annexes form an integral part of this Specific Contract:

Annex A: Technical annex

Annex B: Contractor's offer dated and accepted by the Agency

SIGNATURES

For the Contractor,

For the Agency,

[*Company name*/forename/surname/function]

[forename/surname/function]

signature[s]: _____

signature[s]: _____

Done in [place], [date]

Done in [Helsinki], [date]

In duplicate in [English].

Annex A

Technical Annex

1. Tasks

[As outlined in the request for offer by the Agency]

2. Deliverables

The specific deliverables, which are all the subject of acceptance unless specified otherwise, are:

- [list of all requested deliverables as outlined in the request for offer by the Agency]

3. Delivery schedule

The delivery schedule is as follows:

- 3.1 T0 being the date of signature of this agreement;
- 3.2 [list of all requested deliverables with timetable]

4. Quality standards and procedures

5. Security requirements

Annex B

Contractor's Offer

5.2.3 SPECIFIC CONTRACT MODEL– QUOTED TIME & MEANS

QUOTED TIME & MEANS

SPECIFIC CONTRACT No [complete]⁶

implementing Framework Contract No ECHA/2011/66

The European Chemicals Agency (hereinafter referred to as "the Agency"), which is represented for the purposes of the signature of this contract by [official name in full],

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 [name in full and function,]]*

of the other part,

HAVE AGREED

ARTICLE 1: SUBJECT

1.1 This Specific Contract implements Framework Contract No ECHA/2011/66 signed by the Agency and the Contractor on [complete date] *[and renewed on complete date]*.

1.2 The subject of this Specific Contract is [short description of subject].

⁶ Options *[in italics]* to be deleted where not applicable.

Options [in roman] to be completed.

- 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 tasks as specified in Annex A of the Specific Contract.

ARTICLE 2: DURATION

- 2.1 This Specific Contract shall enter into force on the date on which it is signed by the last contracting Party.
- 2.2 The duration of the tasks shall not exceed [*days/months*]. Execution of the tasks shall start from the [*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

- 3.1 The Agency undertakes to pay the Contractor in consideration for the services provided in performance of this Specific Contract an amount of EUR [to be completed] per day of actual services rendered, for [to be completed] days, i.e. a total of EUR [to be completed].

Profile of service provider: _____

[profile of the Contractor and daily rate to be specified in accordance with the profiles listed in Annex I of the Framework Contract]

- an amount of EUR [to be completed] per day of actual services rendered, for [to be completed] days, i.e. a total of EUR [to be completed].

[to be repeated for as many profiles as required]

The overall maximum total amount for this Specific Contract is EUR [amount in figures and in words].

- [3.2 *Travel and subsistence expenses shall be reimbursed for a maximum amount of [amount in figures and in words], as specified in Annex I, in line with Art. II.7 of the Framework Contract*]

ARTICLE 4: PAYMENTS

Payments under this Specific Contract shall be made in accordance with Article II.4 of the Framework Contract.

- 4.1 Pre-financing:

[If indicated in the request for offer that a pre-financing shall apply, the following clauses are to be inserted, otherwise it will be stated "not applicable".]

As indicated in the request for offer from the Agency for this Specific Contract, a pre-financing of XX%, equal to the amount of each subtask agreement shall be made.

Within thirty calendar days

- Following acceptance of the work estimate by the Agency and
- The receipt by the Agency of a request for pre-financing with a relevant invoice

a pre-financing payment equal to XX% of the amount of each subtask agreement shall be made.

[In case it has been stated in the request for offer that a pre-financing guarantee is required the above paragraph is to be replaced with

Within thirty calendar days of the latest of the following dates:

- *Following acceptance of the work estimate by the Agency and the receipt by the Agency of a request for pre-financing with a relevant invoice*
- *the receipt by the Agency of a duly constituted financial guarantee equal to at least XX % of the amount of each subtask agreement*

a pre-financing payment equal to XX% of the amount of each subtask agreement shall be made.]

4.2 Interim payment:

[If indicated in the request for offer that an interim-payment shall apply, the following clauses are to be inserted; otherwise it will be stated "not applicable".]

Requests for payment shall be admissible only where they are based on an invoice made in good and due form.

Each invoice must be accompanied by a supporting document describing the services that are subject of the invoice. This supporting document, which is subject to acceptance by the Agency, will include:

- The request for an interim payment of XX % of the total price for each subtask, as agreed by the parties shall be valid if accompanied by:
- the interim technical report and/or deliverable in another format as agreed by the parties (Expected Deliverables);
- *[statements of reimbursable expenses, in accordance with Article II.7 of the Framework Contract].*
- the relevant invoices, indicating the reference number of the Framework Contract and the Specific Contract and subtasks to which they refer

provided the above report and/or deliverable has been approved by the Agency.

The procedure for approval of the report and/or deliverable by the Agency will be specified in Annex A to the Specific Contract. [Depending on the complexity of the project, the Agency may foresee a longer period for approval or rejection of reports and/or deliverables. However, this will be specified in the request for offer].

Within thirty calendar days of the date on which the report and/or deliverable is approved by the Agency, an interim payment corresponding to the relevant invoice shall be made.

4.3. Final payment

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

- the final technical report and/or deliverable in another format in accordance with Annex A of the Specific Contract;
- *[statements of reimbursable expenses, in accordance with Article II.7 of the Framework Contract].*
- the relevant invoices, indicating the reference number of the Framework Contract and the Specific Contract and subtasks to which they refer

provided the above report and/or deliverable has been approved by the Agency.

The procedure for approval of the report and/or deliverable by the Agency will be specified in Annex A to the Specific Contract. [Depending on the complexity of the project, the Agency may foresee a longer period for approval or rejection of reports and/or deliverables. However, this will be specified in the request for offer].

Within thirty calendar days of the date on which the report and/or deliverable is approved by the Agency, an interim payment corresponding to the relevant invoice shall be made.

ARTICLE 5: GENERAL ADMINISTRATIVE PROVISIONS

5.1 Any communication under this Specific Contract shall be made in accordance with Article I.8 of the Framework Contract.

5.2 The persons responsible for the implementation of this Specific Contract are:

For the Agency:

Administrative matters:

European Chemicals Agency

P.O. Box 400,

00121 HELSINKI, Finland

Fax: +358 9 68618210

[Name & Office address]

Email: [to be completed]

Technical questions:

European Chemicals Agency

P.O. Box 400,

00121 HELSINKI, Finland

Fax: +358 9 68618210

[Name & Office address]

Email: [to be completed]

For the Contractor:

Mr/Mrs

[Function]

[Company name]

[Official address in full]

ARTICLE 6: PLACE OF PERFORMANCE

The tasks shall be executed at the premises of *[the Contractor]* or *[the Agency]*.

ARTICLE 7: ANNEXES

The following annexes form an integral part of this Specific Contract:

Annex A: Technical annex

Annex B: Contractor's offer dated and accepted by the Agency

SIGNATURES

For the Contractor,

For the Agency,

[Company name/forename/surname/function]

[forename/surname/function]

signature[s]: _____

signature[s]: _____

Done in [place], [date]

Done in [Helsinki], [date]

In duplicate in [English].

Annex A

Technical Annex

1. Tasks

[As outlined in the request for offer by the Agency]

2. Deliverables

The specific deliverables, which are all the subject of acceptance unless specified otherwise, are:

-
- [list of all requested deliverables as outlined in the request for offer by the Agency]

3. Delivery schedule

The delivery schedule is as follows:

- 3.1 T0 being the date of signature of this agreement;
- 3.2 [list of all requested deliverables with timetable]

4. Quality standards and procedures

-

5. Security requirements

-

Annex B

Contractor's Offer

5.2.4 SPECIFIC CONTRACT MODEL– TIME & MEANS

TIME & MEANS

SPECIFIC CONTRACT No [complete]⁷

implementing Framework Contract No ECHA/2011/66

The European Chemicals Agency (hereinafter referred to as "the Agency"), which is represented for the purposes of the signature of this contract by [official name in full], 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 [name in full and function,]*]

of the other part,

HAVE AGREED

ARTICLE 1: SUBJECT

1.1 This Specific Contract implements Framework Contract No ECHA/2011/66 signed by the Agency and the Contractor on [complete date] [*and renewed on complete date*].

⁷ Options [*in italics*] to be deleted where not applicable.

Options [in roman] to be completed.

- 1.2 The subject of this Specific Contract is [short description of subject].
- 1.3 The consultant (s) shall be [name of consultant(s)].
- 1.4 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 tasks as specified in Annex A of the Specific Contract.

ARTICLE 2: DURATION

- 2.1 This Specific Contract shall enter into force on the date on which it is signed by the last contracting party.
- 2.2 Implementation of the tasks may under no circumstances begin before the date on which the Contract enters into force.
- 2.3 The duration of the tasks shall not exceed [*days/months*]. Implementation of the tasks shall start from the [*date of entry into force of this Specific Contract*] or [*indicate date*]. The number of man days may be extended only with the express written agreement of the parties before the original amount is consumed.
- 2.4 If the number of days agreed has not been fully taken up, the Agency shall not be obliged either to use or to pay for the days not worked and the Contractor shall not be entitled to claim damages.

ARTICLE 3: PRICE

- 3.1 The Agency undertakes to pay the Contractor, in consideration for the services rendered under this Specific Contract.

- an amount of EUR XXX per day of actual services rendered, for XX days for

(name of service provider), i.e. a total of EUR XXXXX

Profile of service provider:

(specify the profile of the service provider in accordance with the profiles listed in the Catalogue of Prices in Annex II to the Framework Contract)

- an amount of EUR XXX per day of actual services rendered, for XX days for

(name of service provider), i.e. a total of EUR XXXXX

Profile of service provider:

(specify the profile of the service provider in accordance with the profiles listed in the Catalogue of Prices in Annex II to the Framework Contract)

The total amount to be paid by the Agency under this Specific Contract shall be EUR **XXX** [amount in figures] covering all tasks executed.

[3.2.] *This amount shall cover all expenditure incurred by the Contractor in performing this Specific Contract]*

[3.3] *Travel and subsistence expenses shall be reimbursed for a maximum amount of [amount in figures and in words], as specified in Annex I, in line with Art. II.7 of the Framework Contract]*

ARTICLE 4: PAYMENTS

Payments under the Contract shall be made in accordance with Article II.4. of the Framework Contract. Payments shall be executed only if the Contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted.

4.1. Pre-financing:

Not applicable

4.2. Interim payments:

- Payments shall be carried out monthly.
- The request for payment shall be valid if accompanied by:
 - Timesheets signed by the service provider
 - *[Statements of reimbursable expenses, in accordance with Article II.7 of the Framework Contract].*
 - The relevant invoices, indicating the reference number of the Framework Contract and the Specific Contract to which they refer

Provided the above time sheet has been countersigned by the Agency for approval, following verification against its flexitime system at the end of each calendar month.

4.3 Payment of the balance:

The request for payment of the balance shall be valid if accompanied by:

- Timesheets signed by the service provider

- *[Statements of reimbursable expenses, in accordance with Article II.7 of the Framework Contract].*

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

Provided the above time sheet has been countersigned by the Agency for approval, following verification against its flexitime system at the end of the last calendar month, during which services have been provided.

ARTICLE 5: GENERAL ADMINISTRATIVE PROVISIONS

5.1 Any communication under this Specific Contract shall be made in accordance with Article I.8 of the Framework Contract.

5.2 The persons responsible for the implementation of this Specific Contract are:

For the Agency:

Administrative matters:

European Chemicals Agency

P.O. Box 400,

00121 HELSINKI, Finland

Fax: +358 9 68618210

[Name & Office address]

Email: [to be completed]

Technical questions:

European Chemicals Agency

P.O. Box 400,

00121 HELSINKI, Finland

Fax: +358 9 68618210

[Name & Office address]

Email: [to be completed]

For the Contractor:

Mr/Mrs

[Function]

[Company name]

[Official address in full]

ARTICLE 6: PLACE OF PERFORMANCE

The tasks shall be executed at the premises of [the Contractor] or [the Agency].

ARTICLE 7: ANNEXES

The following annexes form an integral part of this Specific Contract:

Annex A: Technical annex

Annex B: Contractor's offer dated and accepted by the Agency

SIGNATURES

For the Contractor,

For the Agency,

[Company name/forename/surname/function]

[forename/surname/function]

signature[s]: _____

signature[s]: _____

Done in [place], [date]

Done in [Helsinki], [date]

In duplicate in [English].

Annex A

Technical Annex

The European Chemicals Agency wishes to procure the services of IT consultant (s) with the profile described below:

1. Description of required IT resources:

X man days – profile of consultant– preferred start date:

Weekly availability: X days/week

Location:

Requisites

2. Tasks

[As outlined in the request for offer by the Agency]

3. Deliverables (if requested):

The specific deliverables, which are all the subject of acceptance unless specified otherwise, are:

- [list of all requested deliverables as outlined in the request for offer by the Agency]

4. Delivery schedule

The delivery schedule is as follows:


- 3.1 T0 being the date of signature of this agreement;
- 3.2 [list of all requested deliverables with timetable]

5. **Quality standards and procedures**
- 6 **Security requirements**
7. **Reporting:**

Annex B

Contractor's Offer

5.2.5 ORDER FORM - MODEL

 European Chemicals Agency	ORDER FORM		Number of sheets	Sheet No	Date and reference of your quote
	ECA.XXX		X	1	yy/yy/yyyy
Name of Authorising Officer Director Annankatu 18 FI-00121 Helsinki	Country of origin:		Company name Contact Person Address		
	Currency of payment: EUR				
This order is governed by the terms and conditions of Framework Contract ECHA/2011/66					
This order constitutes acceptance of the Contractor's quote submitted on yy/yy/yyyy					
DESCRIPTION OF THE GOODS OR SERVICES		UNIT	QUANTITY	PRICE in €	
				UNIT PRICE	TOTAL
item 1					0,00
item 2					0,00
item 3					0,00
					0,00
					0,00
					0,00
					0,00
					0,00
					0,00
					0,00
					0,00
TOTAL					0,00
Exemption from VAT pursuant to Art. 151 of Directive 2006/112/EC		VAT 0%			0,00
		TOTAL :			0,00
Place of delivery/performance:		Contractor's signature			
ECHA; Annankatu 18; FI-00120 Helsinki		Name:			
Delivery: XX.XX.XXXX		Position:			
Payment: 30 days from receipt of the invoice		Date:			
Contractor's bank account:					
IBAN code:					
Acceptance of the quote by the ECHA:					
Date of issue :					
Signature: Name of Authorising Officer					
The request for payment shall be admissible only if the Contractor returns a signed copy of this purchase order.					
This Contract shall be governed by Union law, complemented where necessary, by the national substantive law of Finland.					
Any dispute shall be brought before the Courts of Helsinki.					

5.2.6 CONTRACT PERFORMANCE GUARANTEE – MODEL

PERFORMANCE GUARANTEE

<To be completed on paper bearing the letterhead of the financial institution >

[
[Place/Date]

European Chemicals Agency
Annankatu 18
00120 Helsinki
Finland

Contract performance guarantee No ECHA/2011/66

We hereby confirm that we give the European Chemicals Agency an unconditional and irrevocable joint and several guarantee for an unlimited period to the value of EUR [...] (in words: ... Euro) for performance of the Contract concluded between the European Chemicals Agency and [Firm/Name/Address – as given in the Contract (No/exact title – hereinafter “the Contract”)] (hereinafter “the Contractor”).

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

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

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

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

This guarantee shall take immediate effect. It shall expire on return of this document, which must occur within 12 months after the final payment under the Contract has been made.

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

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

[Place/Date]

[Signature/Function]

[Signature/Function]

5.2.7 CONTRACT PRE-FINANCING GUARANTEE – MODEL

PRE-FINANCING GUARANTEE

<To be completed on paper bearing the letterhead of the financial institution >

For the attention of
European Chemicals Agency (ECHA)
Financial Unit
referred to below as the “Contracting Authority”

Subject: Guarantee No...
Financing Guarantee for the repayment of pre-financing payable under Specific Agreement ECHA/2010/95/SC[...] (please quote number and title in all correspondence)

We, the undersigned, <name, and address of financial institution>, hereby irrevocably declare that we guarantee as primary obligor, and not merely as surety on behalf of <Contractor's name and address>, hereinafter referred to as “the Contractor”, the payment to the Contracting Authority of EUR [...] ([...]), corresponding to the pre-financing as mentioned in Article 4.1 of the Specific Agreement ECHA/2011/66/SC[...] concluded between the Contractor and the Contracting Authority, hereinafter referred to as “the Contract”.

Payment shall be made without objection or legal proceedings of any kind, upon receipt of your first written claim (sent by registered letter with confirmation or receipt) stating that the Contractor has not repaid the pre-financing on request or that the Contract has been terminated.

We shall not delay the payment, nor shall we oppose it for any reason whatsoever. We shall inform you in writing as soon as payment has been made.
We accept notably that no amendment to the terms of the Contract can release us from our obligation under this guarantee. We waive the right to be informed of any change, addition or amendment of the Contract.

We note that the guarantee will be released in accordance with Article II.4.1 of the General Conditions of the Framework Contract [and in any case at the latest on (at the expiry of 18 months after the implementation period of the Contract)]⁸.

The law applicable to this guarantee shall be that of the Contract. Any dispute arising out of or in connection with this guarantee shall be referred to the courts of Finland.

The guarantee will enter into force and take effect on receipt of the pre-financing payment in the account designated by the Contractor to receive payments.

Name: Position:
Signature⁹: Date: <Date>

⁸ This mention can be inserted only where the law applicable to the guarantee imposes a precise expiry date

⁹ The name(s) and position(s) of the persons signing on behalf of the guarantor must be shown in printed characters.

5.2.8 REIMBURSEMENT OF DAILY SUBSISTENCE ALLOWANCE

Subsistence expenses incurred in connection with meetings which the Contractor is required to attend by the Agency or in connection with events organised by the Contractor, as provided for in a specific contract or order form, shall be reimbursed in Euro at the Euro accounting rates in force during the month of travel in line with the requirements laid down in Article II.7 of the Framework Contract.

The daily subsistence allowance is deemed to cover all expenses incurred during one day of travel, such as hotel, meals and local transport expenses (e.g. taxis and transport from the airport/station to the hotel) and are reimbursed on the basis of the following table:

Travel location	Daily allowance	Travel location	Daily allowance
Austria	225	Latvia	211
Belgium	232	Lithuania	183
Bulgaria	227	Luxembourg	237
Czech Republic	230	Malta	205
Cyprus	238	Netherlands	263
Denmark	270	Poland	217
Estonia	181	Portugal	204
Finland	244	Romania	222
France	245	Slovak Republic	205
Germany	208	Slovenia	180
Greece	222	Spain	212
Hungary	222	Sweden	257
Ireland	254	United Kingdom	276
Italy	230		

For travels outside the European territory, the Agency will inform the contractor, upon his request, of the applicable rates.

CALCULATION

Daily subsistence allowances are calculated according to the length of the trip:

- six hours or less: reimbursement of actual expenses (on production of supporting documents)
- more than six hours but not more than twelve hours: half the daily allowance;

- more than twelve hours, but not more than twenty-four hours: full daily allowance;
- each successive 12-hour period: half the daily allowance.