



**EUROPEAN COMMISSION**  
DIRECTORATE-GENERAL  
TAXATION AND CUSTOMS UNION

## **FRAMEWORK CONTRACT FOR IT SERVICES AND PRODUCTS**

NUMBER — **TAXUD/20xx/CC/xxx**

1. The European Union ('the Union'), represented by the European Commission ('the contracting authority'), represented for the purposes of signing this framework contract by Mr **XXXXX XXXXXXXX**, Director **XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXX XXXXXXXXXXXXXXX XXXX** of the Directorate General Taxation and Customs Union,

of the one part and

2. [*Full official name*]

[*Official legal form* ]

[*Statutory registration number or ID or passport number*]

[*Full official address*]

[*VAT registration number*]

[appointed as the leader of the group by the members of the group that submitted the joint tender]

[*repeat these data as many times as there are contractors in case of joint tender and continue numbering*]

([collectively] 'the contractor'), represented for the purposes of the signature of this framework contract by [*forename, surname, function of legal representative and name of company in the case of a joint tender*],

on the other part,

HAVE AGREED

to the **special conditions**, the **general conditions for framework contracts** for services, the general terms and conditions for Information Technologies contracts and the following annexes:

**Annex I** – Tender specifications (reference No [complete] of [insert date])

**Annex II** – Contractor's tender (reference No [complete] of [insert date])

**Annex III** – Model for specific contracts

**Annex IV** - Reimbursement of expenses

[Insert other annexes]

which form an integral part of this framework contract ('the FWC').

This FWC sets out:

1. the procedure by which the contracting authority may order services from the contractor;
2. the provisions that apply to any specific contract which the contracting authority and the contractor may conclude under this FWC; and
3. the obligations of the parties during and after the duration of this FWC.

All documents issued by the contractor (end-user agreements, general terms and conditions, etc.) except its tender are held inapplicable, unless explicitly mentioned in the special conditions of this FWC. In all circumstances, in the event of contradiction between this FWC and documents issued by the contractor, this FWC prevails, regardless of any provision to the contrary in the contractor's documents.

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## **I. SPECIAL CONDITIONS**

### **I.1. ORDER OF PRIORITY OF PROVISIONS**

If there is any conflict between different provisions in this FWC, the following rules must be applied:

- (a) The provisions set out in the special conditions take precedence over those in the other parts of the FWC.
- (b) The provisions set out in the general conditions take precedence over those in the general terms and conditions for Information Technologies contracts, the *order form* and specific contract (Annex III)
- (c) The provisions set out in the general terms and conditions for Information Technologies contracts shall take precedence over those in the Annexes of the contract except for the Service Level Agreement
- (d) The provisions set out in the *order form* and specific contract (Annex III) take precedence over those in the other annexes.
- (e) The provisions set out in the tender specifications (Annex I) take precedence over those in the tender (Annex II).
- (f) The provisions set out in the FWC take precedence over those in the specific contracts.
- (g) The provisions set out in the specific contracts take precedence over those in the requests for services.
- (h) The provisions set out in the requests for services take precedence over those in the specific tenders.

Any reference to specific contracts applies also to order forms.

### **I.2. SUBJECT MATTER**

The subject matter of the FWC is [*short description of subject*].

### **I.3. ENTRY INTO FORCE AND DURATION OF THE FWC**

**I.3.1** The FWC enters into force on the date on which the last party signs it.

**I.3.2** The *implementation of the FWC* cannot start before its entry into force.

**I.3.3** The FWC is concluded for a period of *insert* months with effect from the date of its entry into force.

**I.3.4** The parties must sign any specific contract before the FWC expires.

The FWC continues to apply to such specific contracts after its expiry. The services relating to such specific contracts must be performed no later than six months after the expiry of the FWC.

**I.3.5 Renewal of the FWC**

The FWC is renewed automatically *complete* times for *complete* months each, unless one of the parties receives *formal notification* to the contrary at least twelve months before the end of the ongoing duration. Renewal does not change or postpone any existing obligations.

## **I.4. APPOINTMENT OF THE CONTRACTOR AND IMPLEMENTATION OF THE FWC**

### *I.4.1. Appointment of the contractor*

The contracting authority appoints the contractor for a [single FWC] [multiple FWC in cascade in [complete] position].

### *I.4.2. Period of provision of the services*

The period for the provision of the services starts to run from the date on which the specific contract is signed by the last party.

### *I.4.3. Implementation of [single] [multiple] FWC [in cascade]*

#### *Option 1: single FWC*

The contracting authority orders services by sending the contractor a specific contract in paper format.

Within 15 working days of a request for offer being sent by the contracting authority, the contractor shall return an offer including an estimate of the resources to be allocated for its execution, with particulars in support.

Within 10 working days, the contractor must either:

- send the specific contract back to the contracting authority signed and dated; or
- send an explanation of why it cannot accept the order.

If the contractor repeatedly refuses to sign the specific contracts or repeatedly fails to send them back on time, the contractor may be considered in breach of its obligations under this FWC as set out in Article II.18.1 (c).

#### *Option 2: multiple FWC in cascade*

The FWC is implemented as follows: the contracting authority orders services by sending a specific contract in paper format to the contractor who is ranked first in the cascade.

Within 15 working days of a request for offer being sent by the contracting authority, the contractor shall return an offer including an estimate of the resources to be allocated for its execution, with particulars in support.

Within 10 working days, the contractor must either:

- (a) send the specific contract back to the contracting authority signed and dated; or



(b) send an explanation of why it cannot accept the order.

If the contractor does not accept the order or fails to observe the deadline or if it is in a situation of conflicting interests that may negatively affect the *performance of the specific contract* (see Article II.7), the contracting authority may place the order with the next contractor on the cascade.

If the contractor repeatedly refuses to sign specific contracts or repeatedly fails to send them back on time, the contractor may be considered in breach of its obligations under this FWC as set out in Article II.18.1 (c).

## **I.5. PRICES**

### *I.5.1. Maximum amount of the FWC and maximum prices*

The maximum amount covering all purchases under this FWC, including all renewals and reimbursement of expenses is EUR [*amount in figures and in words*]. However, this does not bind the contracting authority to purchase for the maximum amount.

The maximum prices of the services are as listed in Annex II.

### *I.5.2. Price revision index*

Price revision is determined by the formula set out in Article II.20 and using the trend in the harmonised indices of consumer prices (HICP), Monetary union index of consumer prices (MUICP), published for the first time in Eurostat's monthly 'Data in Focus' publication available on the website: <http://www.ec.europa.eu/eurostat/>

### *I.5.3. Reimbursement of expenses*

Reimbursement of expenses is not applicable to this FWC

or

The contracting authority must reimburse the following in accordance with Article II.22:

- (a) for journeys of more than 100 km for a return trip : travel, subsistence, accommodation and shipment expenses.

The total value of expenses may not exceed:

- (a) EUR [*amount in figures and in words*] throughout the duration of the FWC including renewals

The daily subsistence allowance referred to in Article II.22.4 (d) and the accommodation flat-rate ceiling referred to in Article II.22.4(e) are as listed in Annex IV.

## **I.6. PAYMENT ARRANGEMENTS**

### *1.6.1. Pre-financing*

Pre-financing is not applicable to this FWC.

### *1.6.2. Payments*

All payments under the Contract shall be made in accordance with Article II.21, which is complemented by Article 1.5 of Part III of the Contract (General Terms and Conditions for Information Technologies Contracts ) and the provisions of the Specific Contracts (Annex III).

By derogation from article 1.5.4 of Part III of the Contract (General Terms and Conditions for Information Technologies Contracts), the following types of remuneration methods shall be available with respect to different products and services:

- **Fixed Price (FP)** (default method):

Invoicing according to the terms of the relevant Specific Contract (SC).

- **On Demand (OD)** (typically to cover **Requests for Action (RfA)** concerning services with unit prices, or products):

Unless otherwise specified in the Request for Action, quarterly invoicing of the Requests for Actions closed during the past quarter.

- **Quoted Time and Means (QTM)** (typically to cover Requests for Action concerning services quoted as man-days)

Unless otherwise specified in the Request for Action, quarterly invoicing of the Requests for Actions closed during the past quarter.

- **Time and Means (T&M):**

Quarterly invoicing of staff time (based on time sheets) and of other resources (based on detailed justifications) during the past quarter.

The T&M method will be used for *Intramuros* services and otherwise in circumstances where agreed in the context of individual Specific Contracts.

- **Travel and Subsistence Costs (T&S):**

Quarterly invoicing, supported by detailed justifications, in accordance with Article II.22.

The remuneration method for other services, deliverables and resources will be defined in the Specific Contracts.

1. The contractor (or leader in the case of a joint tender) must send an invoice [in paper format] [via *e-PRIOR*] as provided for in the tender specifications and accompanied by the following:

- a list of all *pre-existing rights* to the *results* or parts of the *results* or a declaration stating that there are no such *pre-existing rights*, as provided for in Article II.13.4, at the latest together with the last invoice under the specific contract;
- the deliverables as defined in the specific contract;
- statements of reimbursable expenses in accordance with Article II.22.

2. The contracting authority must approve any submitted documents or deliverables and pay within 30 days from receipt of the invoice.

3. If the contracting authority has observations to make, it must send them to the contractor (or leader in the case of a joint tender) and suspend the time limit for payment in accordance with Article II.21.7. The contractor (or leader in case of a joint tender) has 10 days to submit additional information or corrections or a new version of the documents if the contracting authority requires it.

4. The contracting authority must give its approval and pay within the remainder of the time-limit indicated in point (2.) unless it rejects partially or fully the submitted documents or deliverables.

### *I.6.3. Performance guarantee*

Performance guarantee is not applicable to this FWC.

### *I.6.4. Retention money guarantee*

Retention money guarantee is not applicable to this FWC.

## **I.7. BANK ACCOUNT**

Payments must be made to the contractor's (or leader's in the case of a joint tender) bank account denominated in euro, identified as follows:

Name of bank:  
 Full address of branch:  
 Exact denomination of account holder:  
 Full account number including bank codes:  
 [IBAN<sup>1</sup> code:]

## **I.8. COMMUNICATION DETAILS**

For the purpose of this FWC, communications must be sent to the following addresses:

---

<sup>1</sup> BIC or SWIFT code for countries with no IBAN code

Contracting authority

Administrative matters:

Mr. Stéphane Mail Fouilleul  
Head of Unit "Human resources and finances"  
European Commission  
DG Taxation and Customs Union  
Office: J79 06/040  
B-1049 Brussels  
Tel : +32 2 299 50 50  
E-mail : [taxud-unit-r1@ec.europa.eu](mailto:taxud-unit-r1@ec.europa.eu)

Technical matters:

Mr./Ms XYZ  
Head of Unit "XYZ"  
European Commission  
DG Taxation and Customs Union  
Office: XYZ  
B-1049 Brussels  
Tel : +32 2 29x xx xx  
E-mail: [*insert functional mailbox*]

Contractor (or leader in the case of a joint tender)

[Full name]  
[Function]  
[Company name]  
[Full official address]  
E-mail: [complete]

By derogation from this Article, different contact details for the contracting authority or the contractor may be provided in specific contracts.

**I.9. DATA CONTROLLER**

For the purpose of Article II.9, the data controller is Directorate-General Taxation and Customs Union, Human Resources and Finances Unit.

**I.10. EXPLOITATION OF THE RESULTS OF THE FWC**

*I.10.1. Detailed list of modes of exploitation of the results*

In accordance with Article II.13.1 whereby the Union acquires ownership of the *results* as defined in this FWC, including the tender specifications, these *results* may be used for any of the following modes of exploitation:

- (a) use for its own purposes:

- making available to the staff of the contracting authority;
  - making available to the persons and entities working for the contracting authority or cooperating with it, including contractors, subcontractors whether legal or natural persons, Union institutions, agencies and bodies, Member States' institutions;
  - installing, uploading, processing;
  - arranging, compiling, combining, retrieving;
  - copying, reproducing in whole or in part and in unlimited number of copies.
- (b) distribution to the public in hard copies, in electronic or digital format, on the internet including social networks as a downloadable or non-downloadable file;
- (c) communication through press information services;
- (d) inclusion in widely accessible databases or indexes, such as via 'open access' or 'open data' portals, or similar repositories, whether freely accessible or accessible only upon subscription;
- (e) modifications by the contracting authority or by a third party in the name of the contracting authority, including:
- shortening;
  - summarising;
  - modifying the content, the dimensions;
  - making technical changes to the content (necessary correction of technical errors), adding new parts or functionalities, changing functionalities, providing third parties with additional information concerning the *result* (e.g. source code) with a view to making modifications;
  - addition of new elements, paragraphs, titles, leads, bolds, legend, table of content, summary, graphics, subtitles, sound;
  - addition of metadata, for text and data-mining purposes; addition of right-management information; addition of technological protection measures;
  - preparation in audio form, preparation as a presentation, animation, pictograms story, slide-show, public presentation;
  - extracting a part or dividing into parts;
  - translating, inserting subtitles, dubbing in different language versions:
    - all official languages of the EU;
    - languages of (potential) candidate countries;
    - [*list or name other languages*].
- (f) rights to authorise, license, or sub-license in case of licensed *pre-existing rights*, the modes of exploitation set out in any of the points (a) to (e) to third parties.

The modes of exploitation may be defined in more details in the specific contract.

#### *I.10.2. Licence or transfer of pre-existing rights*

All *pre-existing rights* incorporated in the *results*, if any, are licensed to the Union as set out in Article II.13.2.

### *I.10.3. Provision of list of pre-existing rights and documentary evidence*

The contractor must provide the contracting authority with a list of *pre-existing rights* as set out in Article II.13.4 at the latest together with the last invoice under the specific contract.

## **I.11. TERMINATION BY EITHER PARTY**

Either party may terminate the FWC and/or the FWC and specific contracts by sending *formal notification* to the other party with one month written notice.

If the FWC or a specific contract is terminated:

- (a) neither party is entitled to compensation;
- (b) the contractor is entitled to payment only for the services provided before termination takes effect.

The second, third and fourth paragraphs of Article II.18.4 apply.

## **I.12. APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

**I.12.1** The FWC is governed by Union law, complemented, where necessary, by the law of Belgium.

**I.12.2** The courts of Brussels have exclusive jurisdiction over any dispute regarding the interpretation, application or validity of the FWC.

## **I.13. SERVICE PROVIDED ON THE PREMISES OF THE CONTRACTING AUTHORITY**

If necessary for *performance of a specific contract*, the contracting authority may give the *personnel* of the contractor access to its premises by means of an access card. The access card remains the property of the European Commission and must be returned to the Service Card Office (Rue Montoyer 34 — 1049 Brussels – MEZ/120 – Monday to Friday 08:30-16:30) upon request, upon expiry or in cases where the application conditions are no longer met.

If the access card is not returned on the day it expires, the contracting authority may claim liquidated damages of 100 EUR for each day of delay up to a maximum of EUR 1000. This represents a reasonable estimate of fair compensation for the damage incurred.

## **I.14. OTHER SPECIAL CONDITIONS**

By derogation to Article II.15.1, the contracting authority may apply liquidated damages :

- for all activities, in accordance with the terms of the Specific Quality Indicator (SQI) and General Quality Indicator (GQI) defined in Annex I;
- for on-demand activities, in accordance with the terms of the Request For Action drawn up to support the on-demand activity.

Liquidated damages may be imposed together with a reduction in price under the conditions laid down in Article II.16.

## **SIGNATURES**

For the contractor,

For the contracting authority,

[Company name/forename/surname/position]

[forename/surname/position]

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Done at [place], [date]

Done at [place], [date]

In duplicate in English.

## **II. GENERAL CONDITIONS FOR THE FRAMEWORK CONTRACT FOR SERVICES**

### **II.1. DEFINITIONS**

For the purpose of this FWC, the following definitions (indicated in *italics* in the text) apply:

**‘Back office’**: the internal system(s) used by the parties to process electronic invoices;

**‘Confidential information or document’**: any information or document received by either party from the other or accessed by either party in the context of the *implementation of the FWC*, that any of the parties has identified in writing as confidential. It may not include information that is publicly available;

**‘Conflict of interest’**: a situation where the impartial and objective *implementation of the FWC* by the contractor is compromised for reasons involving family, emotional life, political or national affinity, economic interest, or any other shared interest with the contracting authority or any third party related to the subject matter of the FWC;

**‘Creator’**: means any natural person who contributes to the production of the *result*;

**‘EDI message’** (electronic data interchange): a message created and exchanged through the electronic transfer, from computer to computer, of commercial and administrative data using an agreed standard;

**‘e-PRIOR’**: the service-oriented communication platform that provides a series of web services and allows the exchange of standardised electronic messages and documents between the parties. This is done either through web services, with a machine-to-machine connection between the parties’ *back office* systems (*EDI messages*), or through a web application (the *supplier portal*). The Platform may be used to exchange electronic documents (e-documents) such as electronic requests for services, electronic specific contracts, electronic acceptance of services and electronic invoices between the parties. Technical specifications (i.e. the *interface control document*), details on access and user manuals are available at the following website:

[http://ec.europa.eu/dgs/informatics/supplier\\_portal/documentation/documentation\\_en.htm](http://ec.europa.eu/dgs/informatics/supplier_portal/documentation/documentation_en.htm)

**‘Force majeure’**: any unforeseeable, exceptional situation or event beyond the control of the parties that prevents either of them from fulfilling any of their obligations under the FWC. The situation or event must not be attributable to error or negligence on the part of the parties or on the part of the subcontractors and must prove to be inevitable despite their exercising due diligence. Defaults of service, defects in equipment or material or delays in making them available, labour disputes, strikes and financial difficulties may not be invoked as *force majeure*, unless they stem directly from a relevant case of *force majeure*;

**‘Formal notification’** (or ‘formally notify’): form of communication between the parties made in writing by mail or email, which provides the sender with compelling evidence that the message was delivered to the specified recipient;



**‘Fraud’**: any intentional act or omission affecting the Union’s financial interests relating to the use or presentation of false, incorrect or incomplete statements or documents or to non-disclosure of information in violation of a specific obligation;

**‘Implementation of the FWC’**: the purchase of services envisaged in the FWC through the signature and *performance of specific contracts*;

**‘Interface control document’**: the guideline document which lays down the technical specifications, message standards, security standards, checks of syntax and semantics, etc. to facilitate machine-to-machine connection. This document is updated on a regular basis;

**‘Irregularity’**: any infringement of a provision of Union law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the Union’s budget.

**‘Notification’** (or ‘notify’): form of communication between the parties made in writing including by electronic means;

**‘Order form’**: a simplified form of specific contract by which the contracting authority orders services under this FWC;

**‘Performance of a specific contract’**: the execution of tasks and delivery of the purchased services by the contractor to the contracting authority;

**‘Personnel’**: persons employed directly or indirectly or contracted by the contractor to implement the FWC;

**‘Pre-existing material’**: any material, document, technology or know-how which exists prior to the contractor using it for the production of a *result* in the *implementation of the FWC*;

**‘Pre-existing right’**: any industrial and intellectual property right on *pre-existing material*; it may consist in a right of ownership, a licence right and/or right of use belonging to the contractor, the *creator*, the contracting authority as well as to any other third parties;

**‘Professional conflicting interest’**: a situation in which the contractor’s previous or ongoing professional activities affect its capacity to implement the FWC or to perform a specific contract to an appropriate quality standard.

**‘Related person’**: any person who has the power to represent the contractor or to take decisions on its behalf;

**‘Request for services’**: a document from the contracting authority requesting that the contractors in a multiple FWC provide a specific tender for services whose terms are not entirely defined under the FWC;

**‘Result’**: any intended outcome of the *implementation of the FWC*, whatever its form or nature, which is delivered and finally or partially approved by the contracting authority. A *result* may be further defined in this FWC as a deliverable. A *result* may, in addition to materials produced by the contractor or at its request, also include *pre-existing materials*;

**‘Specific contract’**: a contract implementing the FWC and specifying details of a service to be provided;

**‘Substantial error’**: any infringement of a contract provision resulting from an act or omission, which causes or might cause a loss to the Union’s budget.

**‘Supplier portal’**: the *e-PRIOR* portal, which allows the contractor to exchange electronic business documents, such as invoices, through a graphical user interface; its main features can be found in the supplier portal overview document available on: [http://ec.europa.eu/dgs/informatics/supplier\\_portal/doc/um\\_supplier\\_portal\\_overview.pdf](http://ec.europa.eu/dgs/informatics/supplier_portal/doc/um_supplier_portal_overview.pdf)

## **II.2. ROLES AND RESPONSIBILITIES IN THE EVENT OF A JOINT TENDER**

In the event of a joint tender submitted by a group of economic operators and where the group does not have legal personality or legal capacity, one member of the group is appointed as leader of the group.

## **II.3. SEVERABILITY**

Each provision of this FWC is severable and distinct from the others. If a provision is or becomes illegal, invalid or unenforceable to any extent, it must be severed from the remainder of the FWC. This does not affect the legality, validity or enforceability of any other provisions of the FWC, which continue in full force and effect. The illegal, invalid or unenforceable provision must be replaced by a legal, valid and enforceable substitute provision which corresponds as closely as possible with the actual intent of the parties under the illegal, invalid or unenforceable provision. The replacement of such a provision must be made in accordance with Article II.11. The FWC must be interpreted as if it had contained the substitute provision as from its entry into force.

## **II.4. PROVISION OF SERVICES**

**II.4.1** Signature of the FWC does not guarantee any actual purchase. The contracting authority is bound only by specific contracts implementing the FWC.

**II.4.2** The contractor must provide services of high quality standards, in accordance with the state of the art in the industry and the provisions of this FWC, in particular the tender specifications and the terms of its tender.

**II.4.3** The contractor must comply with the minimum requirements provided for in the tender specifications. This includes compliance with applicable obligations under environmental, social and labour law established by Union law, national law and collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU<sup>2</sup>.

**II.4.4** The contractor must obtain any permit or licence required in the State where the services are to be provided.

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<sup>2</sup> OJ L 94 of 28.03.2014, p. 65

**II.4.5** All periods specified in the FWC are calculated in calendar days, unless otherwise specified.

**II.4.6** The contractor must not present itself as a representative of the contracting authority and must inform third parties that it is not part of the European public service.

**II.4.7** The contractor is responsible for the *personnel* who carry out the services and exercises its authority over its *personnel* without interference by the contracting authority. The contractor must inform its *personnel* that:

- (a) they may not accept any direct instructions from the contracting authority; and
- (b) their participation in providing the services does not result in any employment or contractual relationship with the contracting authority.

**II.4.8** The contractor must ensure that the *personnel* implementing the FWC and any future replacement personnel possess the professional qualifications and experience required to provide the services, as the case may be on the basis of the selection criteria set out in the tender specifications.

**II.4.9** At the contracting authority's reasoned request, the contractor must replace any member of *personnel* who:

- (a) does not have the expertise required to provide the services; or
- (b) has caused disruption at the premises of the contracting authority.

The contractor bears the cost of replacing its *personnel* and is responsible for any delay in providing the services resulting from the replacement of *personnel*.

**II.4.10** The contractor must record and report to the contracting authority any problem that affects its ability to provide the services. The report must describe the problem, state when it started and what action the contractor is taking to resolve it.

## **II.5. COMMUNICATION BETWEEN THE PARTIES**

### *II.5.1. Form and means of communication*

Any communication of information, notices or documents under the FWC must:

- (a) be made in writing in paper or electronic format in the language of the contract;
- (b) bear the FWC number and, if applicable, the specific contract number;
- (c) be made using the relevant communication details set out in Article I.8; and
- (d) be sent by mail, email or, for the documents specified in the special conditions, via *e-PRIOR*.

If a party requests written confirmation of an e-mail within a reasonable time, the other party must provide an original signed paper version of the communication as soon as possible.

The parties agree that any communication made by email has full legal effect and is admissible as evidence in judicial proceedings.

### *II.5.2. Date of communications by mail and email*

Any communication is deemed to have been made when the receiving party receives it, unless this FWC contract refers to the date when the communication was sent.

E-mail is deemed to have been received by the receiving party on the day of dispatch of that e-mail, provided that it is sent to the e-mail address indicated in Article I.8. The sending party must be able to prove the date of dispatch. In the event that the sending party receives a non-delivery report, it must make every effort to ensure that the other party actually receives the communication by email or mail. In such a case, the sending party is not held in breach of its obligation to send such communication within a specified deadline.

Mail sent to the contracting authority is deemed to have been received by the contracting authority on the date on which the department responsible referred to in Article I.8 registers it.

*Formal notifications* are considered to have been received by the receiving party on the date of receipt indicated in the proof received by the sending party that the message was delivered to the specified recipient.

### *II.5.3. Submission of e-documents via e-PRIOR*

1. If provided for in the special conditions, the exchange of electronic documents (e-documents) such as requests for services, specific contracts and invoices between the parties is automated through the use of the *e-PRIOR* platform. This platform provides two possibilities for such exchanges: either through web services (machine-to-machine connection) or through a web application (the *supplier portal*).
2. The contracting authority takes the necessary measures to implement and maintain electronic systems that enable the *supplier portal* to be used effectively.
3. In the case of machine-to-machine connection, a direct connection is established between the parties' *back offices*. In this case, the parties take the measures necessary on their side to implement and maintain electronic systems that enable the machine-to-machine connection to be used effectively. The electronic systems are specified in the *interface control document*. The contractor (or leader in the case of a joint tender) must take the necessary technical measures to set up a machine-to-machine connection and at its own cost.
4. If communication via the *supplier portal* or via the web services (machine-to-machine connection) is hindered by factors beyond the control of one party, it must *notify* the other immediately and the parties must take the necessary measures to restore this communication.
5. If it is impossible to restore the communication within two working days, one party must *notify* the other that alternative means of communication specified in Article II.5.1 will be used until the *supplier portal* or the machine-to-machine connection is restored.
6. When a change in the *interface control document* requires adaptations, the contractor (or leader in the case of a joint tender) has up to six months from receipt of the *notification* to implement this change. This period can be shortened by mutual agreement of the parties. This period does not apply to urgent measures required by the security policy of the contracting authority to ensure integrity, confidentiality and non-repudiation of information and the availability of *e-PRIOR*, which must be applied immediately.

#### II.5.4. Validity and date of e-documents

1. The parties agree that any e-document, including related attachments exchanged via *e-PRIOR*:
  - (a) is considered as equivalent to a paper document;
  - (b) is deemed to be the original of the document;
  - (c) is legally binding on the parties once an *e-PRIOR* authorised person has performed the ‘sign’ action in *e-PRIOR* and has full legal effect; and
  - (d) constitutes evidence of the information contained in it and is admissible as evidence in judicial proceedings.
2. The parties expressly waive any rights to contest the validity of such a document solely on the grounds that communications between the parties occurred through *e-PRIOR* or that the document has been signed through *e-PRIOR*. If a direct connection is established between the parties’ *back offices* to allow electronic transfer of documents, the parties agree that an e-document, sent as mentioned in the *interface control document*, qualifies as an *EDI message*.
3. If the e-document is dispatched through the *supplier portal*, it is deemed to have been legally issued or sent when the contractor (or leader in the case of a joint tender) is able to successfully submit the e-document without any error messages. The generated PDF and XML document for the e-document are considered as a proof of receipt by the contracting authority.
4. In the event that an e-document is dispatched using a direct connection established between the parties’ *back offices*, the e-document is deemed to have been legally issued or sent when its status is ‘received’ as defined in the *interface control document*.
5. When using the *supplier portal*, the contractor (or leader in the case of a joint tender) can download the PDF or XML message for each e-document for one year after submission. After this period, copies of the e-documents are no longer available for automatic download from the *supplier portal*.

#### II.5.5. Authorised persons in e-PRIOR

The contractor submits a request for each person who needs to be assigned the role of ‘user’ in *e-PRIOR*. These persons are identified by means of the European Communication Authentication Service (ECAS) and authorised to access and perform actions in *e-PRIOR* within the permissions of the user roles that the contracting authority has assigned to them.

User roles enabling these *e-PRIOR* authorised persons to sign legally binding documents such as specific tenders or specific contracts are granted only upon submission of supporting documents proving that the authorised person is empowered to act as a legal representative of the contractor.

## II.6. LIABILITY

**II.6.1** The contracting authority is not liable for any damage or loss caused by the contractor, including any damage or loss to third parties during or as a consequence of *implementation of the FWC*.

- II.6.2** If required by the relevant applicable legislation, the contractor must take out an insurance policy against risks and damage or loss relating to the *implementation of the FWC*. It must also take out supplementary insurance as reasonably required by standard practice in the industry. Upon request, the contractor must provide evidence of insurance coverage to the contracting authority.
- II.6.3** The contractor is liable for any loss or damage caused to the contracting authority during or as a consequence of *implementation of the FWC*, including in the event of subcontracting, but only up to an amount not exceeding three times the total amount of the relevant specific contract. However, if the damage or loss is caused by the gross negligence or wilful misconduct of the contractor or of its *personnel* or subcontractors, the contractor is liable for the whole amount of the damage or loss.
- II.6.4** If a third party brings any action against the contracting authority in connection with the *implementation of the FWC*, including any action for alleged breach of intellectual property rights, the contractor must assist the contracting authority in the legal proceedings, including by intervening in support of the contracting authority upon request.  
If the contracting authority's liability towards the third party is established and that such liability is caused by the contractor during or as a consequence of the *implementation of the FWC*, Article II.6.3 applies.
- II.6.5** If the contractor is composed of two or more economic operators (i.e. who submitted a joint tender), they are all jointly and severally liable to the contracting authority for the *implementation of the FWC*.
- II.6.6** The contracting authority is not liable for any loss or damage caused to the contractor during or as a consequence of *implementation of the FWC*, unless the loss or damage was caused by wilful misconduct or gross negligence of the contracting authority.

## **II.7. CONFLICT OF INTEREST AND PROFESSIONAL CONFLICTING INTERESTS**

- II.7.1** The contractor must take all the necessary measures to prevent any situation of *conflict of interest* or *professional conflicting interest*.
- II.7.2** The contractor must *notify* the contracting authority in writing as soon as possible of any situation that could constitute a *conflict of interest* or a *professional conflicting interest* during the *implementation of the FWC*. The contractor must immediately take action to rectify the situation.

The contracting authority may do any of the following:

- (a) verify that the contractor's action is appropriate;
  - (b) require the contractor to take further action within a specified deadline;
  - (c) decide not to award a specific contract to the contractor.
- II.7.3** The contractor must pass on all the relevant obligations in writing to:
- (a) its *personnel*;
  - (b) any natural person with the power to represent it or take decisions on its behalf;

(c) third parties involved in the *implementation of the FWC*, including subcontractors.

The contractor must also ensure that the persons referred to above are not placed in a situation which could give rise to conflicts of interest.

## **II.8. CONFIDENTIALITY**

**II.8.1.** The contracting authority and the contractor must treat with confidentiality any information or documents, in any format, disclosed in writing or orally, relating to the *implementation of the FWC* and identified in writing as confidential.

**II.8.2.** Each party must:

- (a) not use *confidential information or documents* for any purpose other than to perform its obligations under the FWC or a specific contract without the prior written agreement of the other party;
- (b) ensure the protection of such *confidential information or documents* with the same level of protection as its own *confidential information or documents* and in any case with due diligence;
- (c) not disclose, directly or indirectly, *confidential information or documents* to third parties without the prior written agreement of the other party.

**II.8.3** The confidentiality obligations set out in this Article are binding on the contracting authority and the contractor during the *implementation of the FWC* and for as long as the information or documents remain confidential unless:

- (a) the disclosing party agrees to release the receiving party from the confidentiality obligation earlier;
- (b) the *confidential information or documents* become public through other means than a breach of the confidentiality obligation;
- (c) the applicable law requires the disclosure of the *confidential information or documents*.

**II.8.4** The contractor must obtain from any natural person with the power to represent it or take decisions on its behalf, as well as from third parties involved in the *implementation of the FWC* a commitment that they will comply with this Article. At the request of the contracting authority, the contractor must provide a document providing evidence of this commitment.

## **II.9. PROCESSING OF PERSONAL DATA**

**II.9.1** Any personal data included in the FWC must be processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Such data must be processed by the data controller solely for the purposes

of the implementation, management and monitoring of the FWC. This does not affect its possible transmission to bodies entrusted with monitoring or inspection tasks in application of Union law.

- II.9.2** The contractor has the right to access its personal data and the right to rectify any such data. The contractor should address any queries concerning the processing of its personal data to the data controller.
- II.9.3** The contractor has right of recourse at any time to the European Data Protection Supervisor.
- II.9.4** If the FWC requires the contractor to process any 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 that may be processed, the recipients of the data and the means by which the data subject may exercise its rights.
- II.9.5** The contractor must grant *personnel* access to the data to the extent strictly necessary for the implementation, management and monitoring of the FWC.
- II.9.6** The contractor must adopt appropriate technical and organisational security measures, giving due 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 gaining access to computer systems processing personal data, and especially:
    - (i) unauthorised reading, copying, alteration or removal of storage media;
    - (ii) unauthorised data inputting, as well as any unauthorised disclosure, alteration or erasure of stored personal data;
    - (iii) unauthorised use of 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 authority;
  - (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.



## **II.10. SUBCONTRACTING**

- II.10.1** The contractor must not subcontract and have the FWC implemented by third parties beyond the third parties already mentioned in its tender without prior written authorisation from the contracting authority.
- II.10.2** Even if the contracting authority authorises subcontracting, the contractor remains bound by its contractual obligations and is solely responsible for the *implementation of the FWC*.
- II.10.3** The contractor must ensure that the subcontract does not affect the rights of the contracting authority under this FWC, particularly those under Articles II.8, II.13 and II.24.
- II.10.4** The contracting authority may request the contractor to replace a subcontractor found to be in a situation provided for in points (d) and (e) of Article II.18.1.

## **II.11. AMENDMENTS**

- II.11.1** Any amendment to the FWC or a specific contract must be made in writing before all contractual obligations have been fulfilled. A specific contract does not constitute an amendment to the FWC.
- II.11.2** Any amendment must not make changes to the FWC or a specific contract that might alter the initial conditions of the procurement procedure or result in unequal treatment of tenderers or contractors.

## **II.12. ASSIGNMENT**

- II.12.1** The contractor must not assign any of the rights and obligations arising from the FWC, including claims for payments or factoring, without prior written authorisation from the contracting authority. In such cases, the contractor must provide the contracting authority with the identity of the intended assignee.
- II.12.2** Any right or obligation assigned by the contractor without authorisation is not enforceable against the contracting authority.

## **II.13. INTELLECTUAL PROPERTY RIGHTS**

### *II.13.1. Ownership of the rights in the results*

The Union acquires irrevocably worldwide ownership of the *results* and of all intellectual property rights under the FWC. The intellectual property rights so acquired include any rights, such as copyright and other intellectual or industrial property rights, to any of the *results* and to all technological solutions and information created or produced by the contractor or by its subcontractor in *implementation of the FWC*. The contracting authority may exploit and use the acquired rights as stipulated in this FWC. The Union acquires all the rights from the moment the contracting authority approves the *results* delivered by the contractor. Such delivery and approval are deemed to constitute an effective assignment of rights from the contractor to the Union.

The payment of the price includes any fees payable to the contractor about the acquisition of ownership of rights by the Union including for all forms of exploitation and of use of the *results*.

#### *II.13.2. Licensing rights on pre-existing materials*

Unless provided otherwise in the special conditions, the Union does not acquire ownership of *pre-existing rights* under this FWC.

The contractor licenses the *pre-existing rights* on a royalty-free, non-exclusive and irrevocable basis to the Union, which may use the *pre-existing materials* for all the modes of exploitation set out in this FWC or in specific contracts. All *pre-existing rights* are licensed to the Union from the moment the *results* are delivered and approved by the contracting authority.

The licensing of *pre-existing rights* to the Union under this FWC covers all territories worldwide and is valid for the duration of intellectual property rights protection.

The payment of the price as set out in the specific contracts is deemed to also include any fees payable to the contractor in relation to the licensing of *pre-existing rights* to the Union, including for all forms of exploitation and of use of the *results*.

Where *implementation of the FWC* requires that the contractor uses *pre-existing materials* belonging to the contracting authority, the contracting authority may request that the contractor signs an adequate licence agreement. Such use by the contractor will not entail any transfer of rights to the contractor and is limited to the needs of this FWC.

#### *II.13.3. Exclusive rights*

The Union acquires the following exclusive rights:

- (a) reproduction: the right to authorise or prohibit direct or indirect, temporary or permanent reproduction of the *results* by any means (mechanical, digital or other) and in any form, in whole or in part;
- (b) communication to the public: the exclusive right to authorise or prohibit any display, performance or communication to the public, by wire or wireless means, including the making available to the public of the *results* in such a way that members of the public may access them from a place and at a time individually chosen by them; this right also includes the communication and broadcasting by cable or by satellite;
- (c) distribution: the exclusive right to authorise or prohibit any form of distribution of *results* or copies of the *results* to the public, by sale or otherwise;
- (d) rental: the exclusive right to authorise or prohibit rental or lending of the *results* or of copies of the *results*;
- (e) adaptation: the exclusive right to authorise or prohibit any modification of the *results*;
- (f) translation: the exclusive right to authorise or prohibit any translation, adaptation, arrangement, creation of derivative works based on the *results*, and any other alteration of the *results*, subject to the respect of moral rights of authors, where applicable;
- (g) where the *results* are or include a database: the exclusive right to authorise or prohibit the extraction of all or a substantial part of the contents of the database to another medium by any means or in any form; and the exclusive right to authorise or prohibit the re-

- utilization of all or a substantial part of the contents of the database by the distribution of copies, by renting, by on-line or other forms of transmission;
- (h) where the *results* are or include a patentable subject-matter: the right to register them as a patent and to further exploit such patent to the fullest extent;
  - (i) where the *results* are or include logos or subject-matter which could be registered as a trademark: the right to register such logo or subject-matter as a trademark and to further exploit and use it;
  - (j) where the *results* are or include know-how: the right to use such know-how as is necessary to make use of the *results* to the full extent provided for by this FWC, and the right to make it available to contractors or subcontractors acting on behalf of the contracting authority, subject to their signing of adequate confidentiality undertakings where necessary;
  - (k) where the *results* are documents:
    - (i) the right to authorise the reuse of the documents in conformity with the Commission Decision of 12 December 2011 on the reuse of Commission documents (2011/833/EU), to the extent it is applicable and the documents fall within its scope and are not excluded by any of its provisions; for the sake of this provision, ‘reuse’ and ‘document’ have the meaning given to it by this Decision;
    - (ii) the right to store and archive the *results* in line with the document management rules applicable to the contracting authority, including digitisation or converting the format for preservation or new use purposes;
  - (l) where the *results* are or incorporate software, including source code, object code and, where relevant, documentation, preparatory materials and manuals, in addition to the other rights mentioned in this Article:
    - (i) end-user rights, for all uses by the Union or by subcontractors which result from this FWC and from the intention of the parties;
    - (ii) the rights to decompile or disassemble the software;
  - (m) to the extent that the contractor may invoke moral rights, the right for the contracting authority, except where otherwise provided in this FWC, to publish the *results* with or without mentioning the *creator(s)*’ name(s), and the right to decide when and whether the *results* may be disclosed and published.

The contractor warrants that the exclusive rights and the modes of exploitation may be exercised by the Union on all parts of the *results*, be they created by the contractor or consisting of *pre-existing materials*.

Where *pre-existing materials* are inserted in the *results*, the contracting authority may accept reasonable restrictions impacting on the above list, provided that the said materials are easily identifiable and separable from the rest, that they do not correspond to substantial elements of the *results*, and that, should the need arise, satisfactory replacement solutions exist, at no additional costs to the contracting authority. In such case, the contractor will have to clearly inform the contracting authority before making such choice and the contracting authority has the right to refuse it.

#### *II.13.4. Identification of pre-existing rights*

When delivering the *results*, the contractor must warrant that, for any use that the contracting authority may envisage within the limits set in this FWC, the *results* and the *pre-existing material* incorporated in the *results* are free of claims from *creators* or from any third parties and all the necessary *pre-existing rights* have been obtained or licensed.

To that effect, the contractor must establish a list of all *pre-existing rights* to the *results* of this FWC or parts thereof, including identification of the rights' owners. If there are no *pre-existing rights* to the *results*, the contractor must provide a declaration to that effect. The contractor must provide this list or declaration to the contracting authority together with the invoice for payment of the balance at the latest.

#### *II.13.5. Evidence of granting of pre-existing rights*

Upon request by the contracting authority, the contractor must provide evidence that it has the ownership or the right to use all the listed *pre-existing rights*, except for the rights owned or licensed by the Union. The contracting authority may request this evidence even after the end of this FWC.

This evidence may refer, for example, to rights to: parts of other documents, images, graphs, fonts, tables, data, software, technical inventions, know-how, IT development tools, routines, subroutines or other programs ('background technology'), concepts, designs, installations or pieces of art, data, source or background materials or any other parts of external origin.

This evidence must include, as appropriate:

- (a) the name and version number of a software product;
- (b) the full identification of the work and its author, developer, *creator*, translator, data entry person, graphic designer, publisher, editor, photographer, producer;
- (c) a copy of the licence to use the product or of the agreement granting the relevant rights to the contractor or a reference to this licence;
- (d) a copy of the agreement or extract from the employment contract granting the relevant rights to the contractor where parts of the *results* were created by its *personnel*;
- (e) the text of the disclaimer notice if any.

Provision of evidence does not release the contractor from its responsibilities if it is found that it does not hold the necessary rights, regardless of when and by whom this fact is revealed.

The contractor also warrants that it possesses the relevant rights or powers to execute the transfer and that it has paid or has verified payment of all due fees including fees due to collecting societies, related to the final *results*.

#### *II.13.6. Quotation of works in the result*

In the *result*, the contractor must clearly point out all quotations of existing works. The complete reference should include as appropriate, the following: name of the author, title of the work, date and place of publication, date of creation, address of publication on the internet, number, volume and other information that allows the origin to be easily identified.

### *II.13.7. Moral rights of creators*

By delivering the *results*, the contractor warrants that the *creators* will not object to the following on the basis of their moral rights under copyright:

- (a) that their names be mentioned or not mentioned when the *results* are presented to the public;
- (b) that the *results* be divulged or not after they have been delivered in their final version to the contracting authority;
- (c) that the *results* be adapted, provided that this is done in a manner which is not prejudicial to the *creator's* honour or reputation.

If moral rights on parts of the *results* protected by copyright may exist, the contractor must obtain the consent of *creators* regarding the granting or waiver of the relevant moral rights in accordance with the applicable legal provisions and be ready to provide documentary evidence upon request.

### *II.13.8. Image rights and sound recordings*

If natural persons appear in a *result* or their voice or any other private element is recorded in a recognisable manner, the contractor must obtain a statement by these persons (or, in the case of minors, by the persons exercising parental authority) giving their permission for the described use of their image, voice or private element and, on request, submit a copy of the permission to the contracting authority. The contractor must take the necessary measures to obtain such consent in accordance with the applicable legal provisions.

### *II.13.9. Copyright notice for pre-existing rights*

When the contractor retains *pre-existing rights* on parts of the *results*, reference must be inserted to that effect when the *result* is used as set out in Article I.10.1, with the following disclaimer: ‘© — year — European Union. All rights reserved. Certain parts are licensed under conditions to the EU’, or with any other equivalent disclaimer as the contracting authority may consider best appropriate, or as the parties may agree on a case-by-case basis. This does not apply where inserting such reference would be impossible, notably for practical reasons.

### *II.13.10. Visibility of Union funding and disclaimer*

When making use of the *results*, the contractor must declare that they have been produced under a contract with the Union and that the opinions expressed are those of the contractor only and do not represent the contracting authority's official position. The contracting authority may waive this obligation in writing or provide the text of the disclaimer.

## **II.14. FORCE MAJEURE**

**II.14.1** If a party is affected by *force majeure*, it must immediately *notify* the other party, stating the nature of the circumstances, their likely duration and foreseeable effects.

**II.14.2** A party is not liable for any delay or failure to perform its obligations under the FWC if that delay or failure is a *result* of *force majeure*. If the contractor is unable to

fulfil its contractual obligations owing to *force majeure*, it has the right to remuneration only for the services actually provided.

**II.14.3** The parties must take all necessary measures to limit any damage due to *force majeure*.

## **II.15. LIQUIDATED DAMAGES**

### *II.15.1. Delay in delivery*

If the contractor fails to perform its contractual obligations within the applicable time limits set out in this FWC, the contracting authority may claim liquidated damages for each day of delay using the following formula:

$$0.3 \times (V/d)$$

where:

*V* is the price of the relevant purchase or deliverable or *result*;

*d* is the duration specified in the relevant specific contract for delivery of the relevant purchase or deliverable or *result* or, failing that, the period between the date specified in Article I.4.2 and the date of delivery or performance specified in the relevant specific contract, expressed in days.

Liquidated damages may be imposed together with a reduction in price under the conditions laid down in Article II.16.

### *II.15.2. Procedure*

The contracting authority must *formally notify* the contractor of its intention to apply liquidated damages and the corresponding calculated amount.

The contractor has 30 days following the date of receipt to submit observations. Failing that, the decision becomes enforceable the day after the time limit for submitting observations has elapsed.

If the contractor submits observations, the contracting authority, taking into account the relevant observations, must *notify* the contractor:

- (a) of the withdrawal of its intention to apply liquidated damages; or
- (b) of its final decision to apply liquidated damages and the corresponding amount.

### *II.15.3. Nature of liquidated damages*

The parties expressly acknowledge and agree that any amount payable under this Article is not a penalty and represents a reasonable estimate of fair compensation for the damage incurred due to failure to provide the services within the applicable time limits set out in this FWC.

#### *II.15.4. Claims and liability*

Any claim for liquidated damages does not affect the contractor's actual or potential liability or the contracting authority's rights under Article II.18.

### **II.16. REDUCTION IN PRICE**

#### *II.16.1. Quality standards*

If the contractor fails to provide the service in accordance with the FWC or a specific contract ('unperformed obligations') or if it fails to provide the service in accordance with the expected quality levels specified in the tender specifications ('low quality delivery'), the contracting authority may reduce or recover payments proportionally to the seriousness of the unperformed obligations or low quality delivery. This includes in particular cases where the contracting authority cannot approve a *result*, report or deliverable as defined in Article I.6 after the contractor has submitted the required additional information, correction or new version.

A reduction in price may be imposed together with liquidated damages under the conditions of Article II.15.

#### *II.16.2. Procedure*

The contracting authority must *formally notify* the contractor of its intention to reduce payment and the corresponding calculated amount.

The contractor has 30 days following the date of receipt to submit observations. Failing that, the decision becomes enforceable the day after the time limit for submitting observations has elapsed.

If the contractor submits observations, the contracting authority, taking into account the relevant observations, must *notify* the contractor:

- (a) of the withdrawal of its intention to reduce payment; or
- (b) of its final decision to reduce payment and the corresponding amount,.

#### *II.16.3. Claims and liability*

Any reduction in price does not affect the contractor's actual or potential liability or the contracting authority's rights under Article II.18.

### **II.17. SUSPENSION OF THE IMPLEMENTATION OF THE FWC**

#### *II.17.1. Suspension by the contractor*

If the contractor is affected by *force majeure*, it may suspend the provision of the services under a specific contract.

The contractor must immediately *notify* the contracting authority of the suspension. The *notification* must include a description of the *force majeure* and state when the contractor expects to resume the provision of services.

The contractor must *notify* the contracting authority as soon as it is able to resume *performance of the specific contract*, unless the contracting authority has already terminated the FWC or the specific contract.

#### *II.17.2. Suspension by the contracting authority*

The contracting authority may suspend the *implementation of the FWC* or *performance of a specific contract* or any part of it:

- (a) if the procedure for awarding the FWC or a specific contract or the *implementation of the FWC* proves to have been subject to *substantial errors, irregularities* or *fraud*;
- (b) in order to verify whether the presumed *substantial errors, irregularities* or *fraud* actually occurred.

The contracting authority must *formally notify* the contractor of the suspension. Suspension takes effect on the date of *formal notification*, or at a later date if the *formal notification* so provides.

The contracting authority must *notify* the contractor as soon as possible whether:

- (a) it is lifting the suspension; or
- (b) it intends to terminate the FWC or a specific contract under Article II.18.1(f) or (j).

The contractor is not entitled to compensation for suspension of any part of the FWC or a specific contract.

## **II.18. TERMINATION OF THE FWC**

### *II.18.1. Grounds for termination by the contracting authority*

The contracting authority may terminate the FWC or a specific contract in the following circumstances:

- (a) if provision of the services under a pending specific contract has not actually started within 15 days of the scheduled date and the contracting authority considers the new date proposed, if any, unacceptable, taking into account Article II.11.2;
- (b) if the contractor is unable, through its own fault, to obtain any permit or licence required for *implementation of the FWC*;
- (c) if the contractor does not implement the FWC or perform the specific contract in accordance with the tender specifications or *request for service* or is in breach of another substantial contractual obligation or repeatedly refuses to sign specific contracts. Termination of three or more specific contracts in these circumstances also constitutes grounds for termination of the FWC;



- (d) if the contractor or any person that assumes unlimited liability for the debts of the contractor is in one of the situations provided for in points (a) and (b) of Article 106(1) of the Financial Regulation<sup>3</sup>;
- (e) if the contractor or any *related person* is subject to any of the situations provided for in points (c) to (f) of Article 106(1) or to Article 106(2) of the Financial Regulation.
- (f) if the procedure for awarding the FWC or the *implementation of the FWC* prove to have been subject to *substantial errors, irregularities or fraud*;
- (g) if the contractor does not comply with applicable obligations under environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU;
- (h) if the contractor is in a situation that could constitute a *conflict of interest* or a *professional conflicting interest* as referred to in Article II.7;
- (i) if a change to the contractor's legal, financial, technical, organisational or ownership situation is likely to substantially affect the *implementation of the FWC* or substantially modify the conditions under which the FWC was initially awarded;
- (j) in the event of *force majeure*, where either resuming implementation is impossible or the necessary ensuing amendments to the FWC or a specific contract would mean that the tender specifications are no longer fulfilled or result in unequal treatment of tenderers or contractors;
- (k) if the needs of the contracting authority change and it no longer requires new services under the FWC; in such cases ongoing specific contracts remain unaffected;
- (l) if the termination of the FWC with one or more of the contractors means that the multiple FWC with reopening of competition no longer has the minimum required level of competition.

#### II.18.2. Grounds for termination by the contractor

The contractor may terminate the FWC or a specific contract if:

- (a) it has evidence that the contracting authority has committed *substantial errors, irregularities or fraud* in the procedure for awarding the FWC or the *implementation of the FWC*;
- (b) the contracting authority fails to comply with its obligations, in particular the obligation to provide the information needed for the contractor to implement the FWC or to perform a specific contract as provided for in the tender specifications.

#### II.18.3. Procedure for termination

A party must *formally notify* the other party of its intention to terminate the FWC or a specific contract and the grounds for termination.

The other party has 30 days following the date of receipt to submit observations, including the measures it has taken to continue fulfilling its contractual obligations. Failing that, the decision to terminate becomes enforceable the day after the time limit for submitting observations has elapsed.

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<sup>3</sup> Regulation (EU, EURATOM) No 966/2012 on the financial rules applicable to the general budget of the Union, as amended <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32012R0966>

If the other party submits observations, the party intending to terminate must *formally notify* it either of the withdrawal of its intention to terminate or of its final decision to terminate.

In the cases referred to in points (a) to (d), (g) to (i), (k) and (l) of Article II.18.1 and in Article II.18.2, the date on which the termination takes effect must be specified in the *formal notification*.

In the cases referred to in points (e), (f) and (j) of Article II.18.1, the termination takes effect on the day following the date on which the contractor receives *notification* of termination.

In addition, at the request of the contracting authority and regardless of the grounds for termination, the contractor must provide all necessary assistance, including information, documents and files, to allow the contracting authority to complete, continue or transfer the services to a new contractor or internally, without interruption or adverse effect on the quality or continuity of the services. The parties may agree to draw up a transition plan detailing the contractor's assistance unless such plan is already detailed in other contractual documents or in the tender specifications. The contractor must provide such assistance at no additional cost, except if it can demonstrate that it requires substantial additional resources or means, in which case it must provide an estimate of the costs involved and the parties will negotiate an arrangement in good faith.

#### *II.18.4. Effects of termination*

The contractor is liable for damage incurred by the contracting authority as a result of the termination of the FWC or a specific contract including the cost of appointing another contractor to provide or complete the services, unless the damage was caused by the situation specified in Article II.18.1(j), (k) or (l) or in Article II.18.2. The contracting authority may claim compensation for such damage.

The contractor is not entitled to compensation for any loss resulting from the termination of the FWC or a specific contract, including loss of anticipated profits, unless the loss was caused by the situation specified in Article II.18.2.

The contractor must take all appropriate measures to minimise costs, prevent damage and cancel or reduce its commitments.

Within 60 days of the date of termination, the contractor must submit any report, deliverable or *result* and any invoice required for services that were provided before the date of termination.

In the case of joint tenders, the contracting authority may terminate the FWC or a specific contract with each member of the group separately on the basis of points (d), (e) or (g) of Article II.18.1, under the conditions set out in Article II.11.2

## **II.19. INVOICES, VALUE ADDED TAX AND E-INVOICING**

### *II.19.1. Invoices and value added tax*

Invoices must contain the contractor's (or leader's in the case of a joint tender) identification data, the amount, the currency and the date, as well as the FWC reference and reference to the specific contract.

Invoices must indicate the place of taxation of the contractor (or leader in the case of a joint tender) for value added tax (VAT) purposes and must specify separately amounts not including VAT and amounts including VAT.

The contracting authority is exempt from all taxes and duties, including VAT, in accordance with Articles 3 and 4 of the Protocol on the privileges and immunities of the European Union.

The contractor (or leader in the case of a joint tender) must complete the necessary formalities with the relevant authorities to ensure that the supplies and services required for *implementation of the FWC* are exempt from taxes and duties, including VAT.

### *II.19.2. E-invoicing*

If provided for in the special conditions, the contractor (or leader in the case of a joint tender) submits invoices in electronic format if the conditions regarding electronic signature specified by Directive 2006/112/EC on VAT are fulfilled, i.e. using a qualified electronic signature or through electronic data interchange.

Reception of invoices by standard format (pdf) or email is not accepted.

## **II.20. PRICE REVISION**

If a price revision index is provided in Article I.5.2, this Article applies to it.

Prices are fixed and not subject to revision during the first year of the FWC.

At the beginning of the second and every following year of the FWC, each price may be revised upwards or downwards at the request of one of the parties.

A party may request a price revision in writing no later than three months before the anniversary date of entry into force of the FWC. The other party must acknowledge the request within 14 days of receipt.

At the anniversary date, the contracting authority must communicate the final index for the month in which the request was received, or failing that, the last provisional index available for that month. The contractor establishes the new price on this basis and communicates it as soon as possible to the contracting authority for verification.

The contracting authority purchases on the basis of the prices in force at the date on which the specific contract enters into force.

The price revision is calculated using the following formula:

$$Pr = Po \times \left( \frac{Ir}{Io} \right)$$

where: Pr = revised price;

Po = price in the tender;

Io = index for the month in which the FWC enters into force;

Ir = index for the month in which the request to revise prices is received.

## **II.21. PAYMENTS AND GUARANTEES**

### *II.21.1. Date of payment*

Payments are deemed to be effected on the date when they are debited to the contracting authority's account.

### *II.21.2. Currency*

Payments are made in euros or in the currency provided for in Article I.7.

### *II.21.3. Conversion*

The contracting authority makes any conversion between the euro and another currency at the daily euro exchange rate published in the Official Journal of the European Union, or failing that, at the monthly accounting exchange rate, as established by the European Commission and published on the website indicated below, applicable on the day when it issues the payment order.

The contractor makes any conversion between the euro and another currency at the monthly accounting exchange rate, established by the Commission and published on the website indicated below, applicable on the date of the invoice.

[http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/inforeuro/inforeuro\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm)

### *II.21.4. Costs of transfer*

The costs of the transfer are borne as follows:

- (a) the contracting authority bears the costs of dispatch charged by its bank;
- (b) the contractor bears the costs of receipt charged by its bank;
- (c) the party causing repetition of the transfer bears the costs for repeated transfer.

### *II.21.5. Pre-financing, performance and money retention guarantees*

If, as provided for in Article I.6, a financial guarantee is required for the payment of pre-financing, as performance guarantee or as retention money guarantee, it must fulfil the following conditions:

- (a) the financial guarantee is provided by a bank or a financial institution approved by the contracting authority or, at the request of the contractor and with the agreement of the contracting authority, by a third party;
- (b) the guarantor stands as first-call guarantor and does not require the contracting authority to have recourse against the principal debtor (the contractor).

The contractor bears the cost of providing such guarantee.

Pre-financing guarantees must remain in force until the pre-financing is cleared against interim payments or payment of the balance. Where the payment of the balance takes the form of a debit note, the pre-financing guarantee must remain in force for three months after the debit note is sent to the contractor. The contracting authority must release the guarantee within the following month.

Performance guarantees cover compliance with substantial contractual obligations until the contracting authority has given its final approval for the service. The performance guarantee must not exceed 10 % of the total price of the specific contract. The contracting authority must release the guarantee fully after final approval of the service, as provided for in the specific contract.

Retention money guarantees cover full delivery of the service in accordance with the specific contract including during the contract liability period and until its final approval by the contracting authority. The retention money guarantee must not exceed 10 % of the total price of the specific contract. The contracting authority must release the guarantee after the expiry of the contract liability period as provided for in the specific contract.

The contracting authority must not request a retention money guarantee for a specific contract where it has requested a performance guarantee.

#### *II.21.6. Interim payments and payment of the balance*

The contractor (or leader in the case of a joint tender) must send an invoice for interim payment, as provided for in Article I.6 or in the tender specifications or in the specific contract.

The contractor (or leader in the case of a joint tender) must send an invoice for payment of the balance within 60 days of the end of the period of provision of the services, as provided for in Article I.6, in the tender specifications or in the specific contract.

Payment of the invoice and approval of documents does not imply recognition of the regularity, authenticity, completeness and correctness of the declarations and information they contain.

Payment of the balance may take the form of recovery.

#### *II.21.7. Suspension of the time allowed for payment*

The contracting authority may suspend the payment periods specified in Article I.6 at any time by *notifying* the contractor (or leader in the case of a joint tender) that its invoice cannot

be processed. The reasons the contracting authority may cite for not being able to process an invoice are:

- (a) because it does not comply with the FWC;
- (b) because the contractor has not produced the appropriate documents or deliverables; or
- (c) because the contracting authority has observations on the documents or deliverables submitted with the invoice.

The contracting authority must *notify* the contractor (or leader in the case of joint tender) as soon as possible of any such suspension, giving the reasons for it.

Suspension takes effect on the date the contracting authority sends the *notification*. The remaining payment period resumes from the date on which the requested information or revised documents are received or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension period exceeds two months, the contractor (or leader in the case of a joint tender) may request the contracting authority to justify the continued suspension.

Where the payment periods have been suspended following rejection of a document referred to in the first paragraph of this Article and the new document produced is also rejected, the contracting authority reserves the right to terminate the specific contract in accordance with Article II.18.1(c).

#### *II.21.8. Interest on late payment*

On expiry of the payment periods specified in Article I.6, the contractor (or leader in the case of a joint tender) is entitled to interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in euros (the reference rate) plus eight points. The reference rate is the rate in force, as published in the C series of the *Official Journal of the European Union*, on the first day of the month in which the payment period ends.

Suspension of the payment period as provided for in Article II.21.7 is not considered as giving rise to late payment.

Interest on late payment covers the period running from the day following the due date for payment up to and including the date of payment as defined in Article II.21.1.

However, when the calculated interest is EUR 200 or less, it must be paid to the contractor (or leader in the case of a joint tender) only if it requests it within two months of receiving late payment.

## **II.22. REIMBURSEMENTS**

**II.22.1** If provided for in the special conditions or in the tender specifications, the contracting authority must reimburse expenses directly connected with the provision of the services either when the contractor provides it with supporting documents or on the basis of flat rates.

**II.22.2** The contracting authority reimburses travel and subsistence expenses on the basis of the shortest itinerary and the minimum number of nights necessary for overnight stay at the destination.

**II.22.3** The contracting authority reimburses travel expenses as follows:

- (a) travel by air: up to the maximum cost of an economy class ticket at the time of the reservation;
- (b) travel by boat or rail: up to the maximum cost of a first class ticket;
- (c) travel by car: at the rate of one first class rail ticket for the same journey and on the same day;

In addition, the contracting authority reimburses travel outside Union territory if it has given its prior written approval for the expenses.

**II.22.4** The contracting authority reimburses subsistence expenses on the basis of a daily subsistence allowance as follows:

- (a) for journeys of less than 200 km for a return trip, no subsistence allowance is payable;
- (b) the daily subsistence allowance is payable only on receipt of supporting documents proving that the person concerned was present at the destination;
- (c) the daily subsistence allowance takes the form of a flat-rate payment to cover all subsistence expenses, including meals, local transport including transport to and from the airport or station, insurance and sundries;
- (d) the daily subsistence allowance is reimbursed at the flat rates specified in Article I.5.3;
- (e) accommodation is reimbursed on receipt of supporting documents proving the necessary overnight stay at the destination, up to the flat-rate ceilings specified in Article I.5.3.

**II.22.5** The contracting authority reimburses the cost of shipment of equipment or unaccompanied luggage if it has given its prior written approval for the expense.

## **II.23. RECOVERY**

**II.23.1** If an amount is to be recovered under the terms of the FWC, the contractor must repay the contracting authority the amount in question.

### *II.23.2. Recovery procedure*

Before recovery, the contracting authority must *formally notify* the contractor of its intention to recover the amount it claims, specifying the amount due and the reasons for recovery and inviting the contractor to make any observations within 30 days of receipt.

If no observations have been submitted or if, despite the observations submitted, the contracting authority decides to pursue the recovery procedure, it must confirm recovery by *formally notifying* a debit note to the contractor, specifying the date of payment. The contractor must pay in accordance with the provisions specified in the debit note.

If the contractor does not pay by the due date, the contracting authority may, after informing the contractor in writing, recover the amounts due:

- (a) by offsetting them against any amounts owed to the contractor by the Union or by the European Atomic Energy Community;
- (b) by calling in a financial guarantee if the contractor has submitted one to the contracting authority;
- (c) by taking legal action.

#### *II.23.3. Interest on late payment*

If the contractor does not honour the obligation to pay the amount due by the date set by the contracting authority in the debit note, the amount due bears interest at the rate indicated in Article II.21.8. Interest on late payments will cover the period starting on the day after the due date for payment and ending on the date when the contracting authority receives the full amount owed.

Any partial payment is first entered against charges and interest on late payment and then against the principal amount.

#### *II.23.4. Recovery rules in the case of joint tender*

If the contract is signed by a group (joint tender), the group is jointly and severally liable under the conditions set out in Article II.6 (liability). The contracting authority first claims the full amount to the leader of the group.

If the leader does not pay by the due date and if the amount cannot be offset in accordance with Article II.23.2 (a), the contracting authority may claim the full amount to any other member of the group by *notifying* the debit note already sent to the leader under Article II.23.2.

## **II.24. CHECKS AND AUDITS**

**II.24.1** The contracting authority and the European Anti-Fraud Office may check or require an audit on the *implementation of the FWC*. This may be carried out either by OLAF's own staff or by any outside body authorised to do so on its behalf.

Such checks and audits may be initiated at any moment during the provision of the services and up to five years starting from the payment of the balance of the last specific contract issued under this FWC

The audit procedure is initiated on the date of receipt of the relevant letter sent by the contracting authority. Audits are carried out on a confidential basis.



**II.24.2** The contractor must keep all original documents stored on any appropriate medium, including digitised originals if authorised under national law, for a period of five years starting from the payment of the balance of the last specific contract issued under this FWC.

**II.24.3** The contractor must grant the contracting authority's staff and outside personnel authorised by the contracting authority the appropriate right of access to sites and premises where the FWC is implemented and to all the information, including information in electronic format, needed to conduct such checks and audits. The contractor must ensure that the information is readily available at the moment of the check or audit and, if so requested, that information is handed over in an appropriate format.

**II.24.4** On the basis of the findings made during the audit, a provisional report is drawn up. The contracting authority or its authorised representative must send it to the contractor, who has 30 days following the date of receipt to submit observations. The contractor must receive the final report within 60 days following the expiry of the deadline to submit observations.

On the basis of the final audit findings, the contracting authority may recover all or part of the payments made in accordance with Article II.23 and may take any other measures which it considers necessary.

**II.24.5** In accordance with Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspection carried out by the Commission in order to protect the European Communities' financial interests against *fraud* and other *irregularities* and Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office, the European Anti-Fraud Office may carry out investigations, including on the spot checks and inspections, to establish whether there has been *fraud*, corruption or any other illegal activity under the contract affecting the financial interests of the Union. Findings arising from an investigation may lead to criminal prosecution under national law.

The investigations may be carried out at any moment during the provision of the services and up to five years starting from the payment of the balance of the last specific contract issued under this FWC.

**II.24.6** The Court of Auditors has the same rights as the contracting authority, particularly right of access, for the purpose of checks and audits.

### **III. GENERAL TERMS AND CONDITIONS FOR INFORMATION TECHNOLOGIES CONTRACTS**

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# 1. COMMON ADMINISTRATIVE PROVISIONS

## 1.1. DEFINITIONS

When used in the Framework contract with a capitalised first letter and in italics, the following terms shall have the following meaning:

### **“Benchmarking”:**

Assessment process carried out by a qualified and objective third party which: tests, evaluates and measures the performance of the Contractor by reference to the specific *Quality indicators* defined in the *Service level agreement*, or by comparison with similar *Services* or *Products* provided by other companies; and/or analyses the evolution of the relation between the prices laid down in the Framework contract and the market prices for similar *Products* or *Services*.

### **“Benchmarker”:**

The independent third party carrying out a *Benchmarking*.

### **“Commissioned Software”:**

*Software* developed by the Contractor for the Commission under the Framework contract.

### **“Commissioning date”:**

Date on which the Contractor notifies the Commission that a *Product*, a *System* or an *Extension* thereto has been brought into service.

### **“Compatibility”:**

Ability of a *Product* to function in accordance with the *System* specifications or type of equipment into which it will be integrated.

### **“Complex hardware product”:**

Any computer equipment, whether or not it contains *Software*, which requires installation by skilled staff and acceptance by both Parties. These *Products* are explicitly described in Annex I to the Framework contract.

### **“Consignment note”**

Note in duplicate duly signed and dated by the Contractor or his carrier, giving the Specific Contract number and particulars of the goods delivered to be countersigned by the Commission and returned to the Contractor or his carrier. This note acknowledges the fact that the goods have been delivered and in no way implies conformity of the goods with the Specific Contract.

### **“Certificate of conformity”**

Certificate signed by the Commission, evidencing conformity of the goods delivered, no later than one month after the date of delivery, unless provision is

made in the Special Conditions or General terms and conditions for Information Technologies contracts for a different period.

**“Constant discount”:**

Fixed percentage of discount on its *Products* and *Services*, awarded by the Contractor to the Commission during the entire duration of the Framework contract, and calculated on the prices as they appear in the *Official Price list*.

**“Delivery date”:**

Date, determined in the Framework contract, on which a *Product*, a *System* or an *Extension* thereto is to be delivered to the Commission.

**“Documentation”:**

Instructions and manuals supplied with the *Product(s)* and/or *Service(s)*, whether intended for support/technical staff or for end-users, and whether in printed or in electronic form.

**“Escrow agent”:**

The third party providing the safekeeping facilities specified in the *Escrow rider*.

**“Escrow rider”:**

Agreement between the Commission, the Contractor and a third party, by which such third party provides safekeeping facilities for the source code of the *Software product(s)* covered by the Framework contract and/or for the related *Documentation*.

**“Extension”:**

Set of *Products* to supplement or extend a *System*.

**“Extended working hours”:**

Any working hours other than *Normal working hours*.

**“Extra muros”**

Outside the Commission’s premises.

**“Hardware”:**

Any computer equipment purchased, rented, leased or maintained under this Framework contract.

**“Informatics Services”:**

All *Services* related to information technology, such as (but not limited to) training, consultancy, removal, logistics, integration work, engineering,

development, maintenance and writing of documentation, as further described in the Framework contract.

**“Installation date”:**

Date notified by the Contractor with a *Means of registered communication* on which the Contractor will perform the assembly, the installation and the bringing into service of a *Hardware Product*. This may not be later than fifteen (15) *Normal working days* after the date of its removal from its place of delivery to its place of installation. This date may be extended upon the Commission’s decision and may be notified by the Commission with a *Means of communication*.

**“Intellectual property rights”:**

All industrial and *intellectual property rights*, such as, but not limited to, copyright, the rights of the producer of a database, rights on semi-conductors, patents, patent applications, utility models, trademarks (whether Benelux, Union, international or foreign trademarks), trade names, designs and models.

**“Internal use”**

Within the Commission’s premises and the use by a European Union official as defined by the Staff Regulations of the Union, elsewhere than in his normal office located in the Commission’s premises, but within the context of his official work.

**“Intra muros”**

Within the Commission’s premises.

**“Means of communication”:**

Any communication between the Parties relating to the execution of this Framework contract, whether made by letter, facsimile, telegram, e-mail or by any other *Means of communication*, the content of which can be printed on paper. These *Means of communication* also include communication by telephone, SMS, or any other *Means of communication* whose content cannot be printed on paper, provided such communication is confirmed within two (2) *Normal working days* by a communication by one of the means mentioned in the first sentence.

**“Means of registered communication”:**

Any communication between Parties relating to the execution of this Contract, made by a *Means of communication* the content of which can be printed on paper whereby an independent third party is able to establish that the communication has reached its destination, whether such destination be a postal, an electronic (e-mail) or any other type of address.

**“New release”:**

Revision of an existing version of a *Software* program, usually amending the reference to the *Software*'s version from for example version 0.1 to version 0.2.

**“New version”:**

New version of a *Software* program, usually amending the reference to the *Software*'s version from for example version 0.1 to version 1.1.

**“Normal working days”:**

From Mondays to Fridays inclusive, excepting Commission holidays only. Commission holidays are usually — but not necessarily — the same as the national holidays of the place of execution of the Framework contract. When expressly so provided in the Framework contract or in a Specific Contract, Commission on-duty days (such as Holy Thursday, Good Friday, the day following Ascension Day and the period between 27 and 31 December) may be included in the *Normal working days*. If nothing is provided in this respect, such Commission on-duty days will be regarded as Commission holidays.

**“Normal working hours”:**

From 8 a.m. to 8 p.m. on *Normal working days*.

**“Official price list”:**

Price list, which is

- a constant feature of the Contractor's sales policy;
- regularly updated by the Contractor;
- addressed to the public, to the Contractor's customers or to a part of them; and
- accessible to the public, to the Contractor's customers or to a part of them, e.g. on an Internet site.

**“Order Forms”**

Document signed by the Commission and the Contractor ordering *Products* or *Services* pursuant to the Framework contract. Please note that reference to Specific Contracts may be understood, where relevant, as references to Orders.

**“Payment request”**

Contractor's request for a payment, by a *Means of communication*, for the execution of any of its obligations under the Framework contract.

**“Person-day”:**

Eight (8) hours.



**“Product”:**

Any *Software, Hardware or Telecommunications product*. Where a distinction between the three types of *Products* is intended, it shall either be explicit, by the use of one of the three terms, or it may be implicitly deduced from the context of this Framework contract.

**“Quality indicators”:**

Measurable targets serving as a reference for evaluating the quality of the *Services* to be provided by the Contractor, and determined in the *Service level agreement*.

**“Services”:**

*Informatics and/or Telecommunications Services*.

**“Service level agreement”:**

Document annexed to the Framework contract, which lays down:

- the quality of the *Services* to be provided by the Contractor by reference to the *Quality indicators*;
- the penalties for total or partial non-performance which will apply to the Framework contract if he fails to meet the *Quality indicators*.

**“Software”:**

Any series of instructions constituting a computer-executable program or programs, and being (part of) the object of the Framework contract.

**“System”:**

Combination of *Products* serving a complete set of functions.

**“Telecommunications products”:**

All products and equipment related to the provision of *Telecommunications services*.

**“Telecommunications services”:**

All *Services* related to the transmission, emission or receipt of signs, signals, writings, images, sounds or data of whichever nature, whether enabled by wire or wireless means or by any other electromagnetic *System*, such as (but not limited to) training, consultancy, removal, installation, administration, management and maintenance, as further described in the Framework contract.

## **1.2. PERFORMING TERMINATION OF INFORMATION TECHNOLOGIES CONTRACTS**

1.2.1. If the Commission terminates the Framework contract pursuant to Article II.12 of the General Conditions and the Commission has been assigned the rights on *Commissioned Software* or has paid for maintenance of *Commissioned Software*, the Contractor shall:

- hand over (immediately and without charge) the source code, the *Software* plans, the access keys and the *Documentation* required by the Commission for the proper operation of the *Software*, insofar as the Contractor has a legal right to do so.
- expressly undertake not to use such developments in the future and to purge any copies of the same from his equipments;
- undertake to keep every information in relation to the developed *Software* confidential even after the termination of the Framework contract;

1.2.2. If the Framework contract concerns the provision of *Products* as well as maintenance *Services* relating to these *Products*, the Commission has the right, if the circumstances justifying termination only concern the provision of the *Products*, to terminate only the part of the Framework contract which concerns the provision of *Products*, while keeping the part of the Framework contract relating to the maintenance *Services* in force.

1.2.3. In case of rental and leasing the Contractor shall remove the *Products* or *Systems* at its expense within the time agreed upon between the Parties. The withdrawal of a *Product* shall be recorded in a withdrawal report quoting the Framework contract and Specific Contract concerned.

1.2.4. The Contractor shall not provide any *Products* or *Services* if the Framework contract is not in force and if no Specific Contract has been entered into.

## **1.3. FORMULATION OF PRICES FOR IT PRODUCTS, SOFTWARE AND SERVICES**

1.3.1. In general, the Contractor agrees to let the Commission, as a most favoured partner, benefit from its most advantageous prices.

1.3.2. *Products*

Contractual prices for purchase of *Products* shall be expressed per unit. The prices quoted shall include delivery, installation and assembly where applicable.

Rental of *Products* shall be distinguished from leasing by the fact that, in the former, the Framework contract shall not include any purchase value at the end of the rental period. In the case of leasing, the Framework contract shall lay down the price for the purchase option at the end of the leasing period.

Maintenance of *Products* shall be expressed as a percentage of the purchase price or as an absolute figure. It may vary in proportion to the level of service as defined in the Contract, which shall be specified in each Specific Contract.

#### 1.3.3. *Software*

The fees for the maintenance of *Software* are either expressed as a percentage of the licence fees or are calculated at a fixed price. Duration of the maintenance shall be specified in each price.

#### 1.3.4. *Services*

*Service* prices shall be defined at a fixed price or by *Person-day*, and shall include all general expenses and expenses directly connected with the provision of the *Services* such as company management costs, social security costs, travel and office expenses.

### 1.4. OFFICIAL PRICE LISTS

1.4.1. Upon signature of the Framework contract, the Contractor's *Official price list* is appended to the Contract as an Annex. The Contractor will use its best endeavours to supply an *Official price list* which only includes the *Products* which form the subject of the Framework contract. If the *Official Price list* also includes items other than such *Products*, then the Contractor agrees to indicate clearly and accurately, for example by highlighting the relevant items in the electronic version of the document, which subset of items of its *Official price list* correspond to the *Products* forming the subject of this Framework contract. If the Contractor fails to do so, he agrees that he cannot claim payment for, restitution of, nor damages for items delivered to the Commission outside the scope of the object of this Framework contract.

1.4.2. The Contractor agrees to make an updated version of the *Official price list* available to the Commission at the frequency determined in the Special Conditions of the Framework contract.

1.4.3. The updates of the *Official price list* will be made available to the Commission either, and by order of preference, for download by remote access to a website, to an FTP site, to an intranet site, in electronic format (e.g. by e-mail) or in hard copy (or e.g. on CD-ROM), as specified in the Special Conditions of the Framework contract. When it is therein agreed that such updates may be downloaded, then the Contractor shall precisely indicate the location of the download area (such as from an area on the Contractor's website, from an FTP site, etc.) and provide the Commission, by a *Means of communication*, with full and accurate instructions, including access codes, enabling it to perform such downloads. Should the *Official price list* be made available to the Commission by remote access, the Contractor must inform the Commission in advance by a *Means of communication* of the moment on which it will be made available on line.

1.4.4. When the *Official price list* is treated as confidential information by the Contractor, the Contractor agrees to make the updates of the *Official price list* available to the Commission not later than on the day it is for the first time

made available to any other customer of the Contractor. If not, the Commission may claim damages for total or partial non-performance.

- 1.4.5. Once the update of the *Official price list* is made available to the Commission, the Commission must accept or refuse it within the time limit set forth in the Framework contract. Such acceptance or refusal will be communicated to the Contractor by a *Means of communication*. The Contractor agrees to provide the updates in a manner allowing an easy way of comparing the different versions of the *Official price list*.
- 1.4.6. The Contractor agrees to make updates of the *Official price list* available to the Commission only when, considering the volumes of each *Product* already ordered by the Commission, the global average price for all the *Products* is lower than the preceding versions of the *Official price list*. Individual products prices already included in the list shall not be increased, unless otherwise agreed in the Framework contract. If this is not the case, the Commission may refuse to apply the proposed update. The Commission will then continue to benefit from the prices of the last accepted version of the *Official price list*.
- 1.4.7. When the Commission's acceptance of the update of the *Official price list* has been communicated to the Contractor by a *Means of communication*, the new prices will be immediately applicable to all orders placed by the Commission on and from the day following such a communication.
- 1.4.8. The *Constant discount* rate(s) must be applied to clearly defined groups of *Products* and/or *Services*.
- 1.4.9. The *Constant discount*(s) fixed in the Framework contract are applicable to all the accepted updates of the *Official price list*.
- 1.4.10. The present Article does not prevent the Parties agreeing on a higher percentage for the *Constant discount*(s) by Amendment.

## **1.5. PARTICULARITIES FOR INVOICING OF INFORMATION TECHNOLOGIES CONTRACTS**

- 1.5.1. The invoices are to be sent to the address stated in the Specific Contracts. The payment period shall not be binding on the Commission if any invoice is sent to a different address. An invoice should be submitted not later than six (6) months after delivery of the *Consignment note*, or, where applicable, the *Certificate of Conformity*. In accordance with Article II.4 of the General Conditions, the Contractor will be liable to liquidated damages in the case of invoices submitted out of time.

### *1.5.2. Products*

Purchases shall be invoiced when the relevant *Consignment note*, or, where applicable, the *Certificate of Conformity* has been signed.

Invoices in respect of rental, leasing and maintenance shall be submitted quarterly unless otherwise provided for in the Framework contract. The first invoice in respect of rented or leased *Products* shall cover the period from the

date of signature of the Consignment note, or, where applicable, the Certificate of Conformity of the Products, or, as regards maintenance, from expiry of the guarantee, to the last day of the current calendar quarter.

### 1.5.3. *Software*

One-off licence fees shall be invoiced when the relevant *Consignment note*, or, where applicable, the *Certificate of Conformity* has been signed.

Yearly licence fees and maintenance fees may be invoiced per calendar year and in advance for the whole year. The first invoice shall cover the period from the date of signature of the Consignment note, or, where applicable, the Certificate of Conformity of the Software, or, as regards maintenance, from expiry of the guarantee, to the end of the current calendar year.

### 1.5.4. *Services*

Invoices in respect of *Services* consisting in a single performance, for example the provision of a report, a project or a training measure, shall be submitted in accordance with the terms of the Specific Contracts.

Invoices with respect of continuous *Services* shall be submitted at the end of the calendar quarter. The first invoice shall cover the period from the start date indicated in the Specific Contract until the end of the current calendar quarter. When the invoice relates to an amount of less than €25,000 payment shall be made when the service has been fully provided.

## **1.6. INSURANCE OF RENTED OR LEASED EQUIPMENT**

1.6.1. The Contractor shall insure the *Products* rented or leased under this Framework contract from the *Delivery date* until the date the rental or lease have expired. The Commission shall in no case be considered responsible for any deterioration, destruction, theft or loss of any *Products* rented or leased by the Contractor under this Framework contract, unless the damage or loss is caused by a serious fault or serious negligence on the part of the Commission.

## **1.7. APPLICABILITY OF THE FRAMEWORK CONTRACT TO SEVERAL EUROPEAN UNION INSTITUTIONS, BODIES AND AGENCIES**

1.7.1. Unless otherwise stated in the Preamble of the Framework contract, the Framework contract covers the provision of *Products* and *Services* to the Commission alone.

1.7.2. If the Framework contract stipulates that it is applicable to the Commission and to one or more of the other European Union Institutions, Bodies and Agencies, the Commission shall sign the Framework contract acting as agent for the Institutions, Bodies and Agencies to which it is applicable.

1.7.3. In so doing, should one or more of the other Institutions, Bodies and Agencies have their own legal personality separate from that of the European Union, the

Commission guarantees the Contractor that it has received any mandates required to that effect.

1.7.4. Once the Framework contract is signed by the Commission acting as an agent for the Institutions, Bodies and Agencies to which it is applicable, each of them shall sign with the Contractor their own Specific Contracts governing the provision of *Products* and *Services* to it.

1.7.5. References to the Commission in the Framework contract shall be understood, as required by the context, as referring to one of the following concepts:

- all the Institutions, Bodies and Agencies covered by the Framework contract, in relation to their collective rights and obligations with the Contractor, as one of the Parties to the Framework contract ;
- any one of the Institutions, Bodies and Agencies acting in its own capacity, in particular for matters related to the conclusion, execution or termination of Specific Contracts between itself and the Contractor ;
- the Commission acting in its capacity as agent for the Institutions, Bodies and Agencies to which the Framework contract is applicable.

The Commission shall as far as possible make clear to the Contractor whether it is acting in its own capacity or as agent for the Institutions, Bodies and Agencies to which the Framework contract is applicable.

1.7.6. In the event of the Contractor having a complaint against an Institution, Body or Agency in relation to the conclusion, execution or termination of Specific Contracts, the Contractor remains bound to his obligations under the Framework contract and Specific Contracts concluded with the other Institutions, Bodies or Agencies. Without prejudice to Article I.7 of the Special Conditions, the Contractor expressly renounces hereby to compensate or suspend the execution of Specific Contracts related to the other Institutions, Bodies or Agencies.

## **1.8. ANNEXES**

The following documents are annexed to the General terms and conditions for Information Technologies Contracts and shall form an integral part of it:

- Annex I : Central service desk action procedure.
- Annex II : Confidentiality Agreement
- Annex III : Commission decision on protection of information Systems [C(2006)3602 16/08/2006]

## **2. COMMON TECHNICAL PROVISIONS**

### **2.1. QUALITY AND STANDARDS**

- 2.1.1. The Contractor shall perform the *Services* and provide the *Products* in full knowledge and consideration of the Commission's computing environment. It shall perform it in accordance with technical norms, standards and procedures based on best professional practice in the informatics and/or telecommunications field, and in particular with the ISO 9000 standards.
- 2.1.2. The Commission shall supply, without delay, all the assistance, data and information that the Contractor considers necessary or useful for providing its *Products* and *Services*.
- 2.1.3. The Commission and the Contractor shall notify each other by a *Means of communication* of any factor likely to impair or delay the proper execution of the Framework contract.
- 2.1.4. The Contractor guarantees that *Software* delivered under this Framework contract, whether or not developed in execution of this Framework contract, will not fail to execute its programming instructions due to defects 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 Commission. It shall meet the operating requirements, specifications and characteristics specified in the Contractor's documents or laid down in the Framework contract.
- 2.1.5. The quality of the Contractor's *Products* and *Services* shall be measured by reference to the definitions, quality standards and procedures defined in the present General terms and conditions for Information Technologies Contracts, Framework contract or the Specific Contract, and by reference to the *Quality indicators* defined in the *Service level agreement*. Quality standards may be revised in line with developments on the market.
- 2.1.6. The Contractor undertakes to comply with those quality standards. Compliance with the standards shall be monitored by the Commission. Unless otherwise stated in the Framework contract, in accordance with article II.1 of the General Conditions, 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 three (3) months, consecutive or not, over a sliding period of six (6) months, a *Product* whose quality has proved substandard may be withdrawn from the Framework contract, or the Contract may be terminated where the overall quality of the *Services* is substandard.
- 2.1.7. Stand-by *System* (outside the guarantee period)
- Unless otherwise stated in the Framework contract, in the event of a complete *System* failure lasting more than twenty-four (24) hours from the time it is notified by a *Means of communication* to the Contractor, or in the event of intermittent failures lasting more than forty-eight (48) hours for any reason whatsoever, the Contractor shall, upon a duly substantiated request, make

available to the Commission within twenty-four (24) hours at the most, an equivalent *System* or the necessary hardware and software enabling the Commission to run its applications in the interim. The cost of such equivalent material shall be charged to the Contractor.

If the Contractor can demonstrate that the failure is not attributable to it, it may charge the cost to the Commission at the rates shown in the Annexes.

## 2.2. SECURITY

2.2.1. Contractors working in the Commission premises must conform to any internal Commission security rules, including the Commission's Information Systems Security Policy. If the Contractor's staff are working in Commission buildings, the Contractor is required, at the Commission's request, to replace immediately and without compensation any person considered undesirable by the Commission

2.2.2. The Contractor undertakes to comply with :

- Commission decision on protection of information Systems [C(2006)3602 16/08/2006] and any subsequent versions. (See Annex III);
- Commission decision (EU, Euratom) 2015/443<sup>4</sup> of 13 March 2015 on Security in the Commission, as well as all its subsequent versions;
- Commission decision (EU, Euratom) 2015/444<sup>5</sup> of 13 March 2015 on the security rules for protecting EU classified information, as well as all its subsequent versions;
- European Commission's security policies and standards that may be relevant and made available for the implementation of specific contracts.

2.2.3. The security requirements for each individual project shall be described in the Specific Contracts.

2.2.4. The Contractor agrees to impose the security obligations of this Article upon any of its subcontractors and their staff who perform tasks for the Commission in execution of this Framework contract.

2.2.5. The Contractor recognises that no *Products*, equipment or material whatsoever owned by the Commission or present at the Commission's premises, may be moved or removed without the Commission's express written approval and the signature of a Specific Contract relating thereto. Each move or removal of a *Product*, equipment or material whatsoever, shall be recorded in a note, as specified in the Specific Contract in execution of which these *Products*, equipments or materials are moved or removed.

2.2.6. The Contractor shall take all appropriate steps for each *Product* to ensure that the data and the magnetic media upon which they are stored are safely

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<sup>4</sup> [OJ L72, 13/03/2015](#)

<sup>5</sup> [OJ L 72, 13/03/2015](#)



preserved. The *Products* supplied shall not contain any mechanism (e.g. viruses) which could compromise their proper operation or that of other *Products*. The cost of repairing the damage caused by such a mechanism shall be borne by the Contractor.

- 2.2.7. The Contractor undertakes to inform the Commission by a *Means of registered communication* as soon as it has any knowledge of defaults in its *Products* that endanger the security of the configurations of which they form a part. It shall immediately take any measures necessary to restore the security of the configurations and correct the defaults.
- 2.2.8. The Contractor shall ensure that all security precautions for each *Product* are clearly spelled out in the relevant *Documentation* supplied to the Commission.
- 2.2.9. Should the Contractor, during the performance of the tasks which are the subject of the Framework contract, need remote access to internal informatics resources from the external domain, he shall be requested to comply with the Commission's internal rules on practical and technical security for remote intervention. This must be achieved by way of signature of a specific agreement for remote intervention provided by the Commission.

### **2.3. SPECIFIC *INTELLECTUAL PROPERTY RIGHTS***

- 2.3.1. As regards all *Software* or other protected material for which the *Intellectual property rights* are the property of the Commission or which have been licensed to the Commission by third Parties, and which the Contractor is likely to use in the execution of its obligations under this Framework contract, the Commission expressly authorises the Contractor to use such *Software* or other protected material, within the limits strictly necessary for the execution of this Framework contract.

In view of the preceding, the Contractor undertakes:

- not to copy any such *Software* or other protected material without prior written authorisation from the Commission;
  - to use such *Software* or other protected material exclusively in the context of this Framework contract;
  - to protect and indemnify the Commission against all third-party claims or actions alleging a breach of their *Intellectual property rights*, or a use of such *Software* or other protected material in contravention with the present Article.
- 2.3.2. Pursuant to Article II.17 of the General Conditions and as regards the results or rights obtained in performance of the Framework contract, the Contractor undertakes to obtain written consent from the Commission prior to:
- filing a trademark, patent or design application in relation with any of the results or rights obtained in performance of the Framework contract in his own name or that of a third party.

- claiming a copyright over the results or rights obtained in performance of the Framework contract in his own name or of that of a third party.
- allowing a third party to do such filings or claims.

Failure to obtain permission from the Commission will entitle the Commission to seek damages against the Contractor and will not prevent the Commission from protecting the rights assigned under the Framework contract.

- 2.3.3. The Contractor declares that it is the rightful owner of the *Intellectual property rights* to all *Products* and/or their components delivered under this Framework contract, and that it is entitled to assign or licence those rights in accordance with the terms of this Framework contract. If those *Intellectual property rights* are the property of third Parties, the Contractor guarantees that it has requested and obtained those third Parties' written authorisation to grant to the Commission the assignment or licence of their *Intellectual property rights* to the extent as provided under this Framework contract. The Contractor shall be solely responsible for taking the necessary steps, under the laws and regulations in force at the place where the tasks assigned to the Contractor are to be performed, to ensure the opposability to third Parties of the assignments or licences granted to the Commission by the Contractor or by such third Parties.
- 2.3.4. The Contractor guarantees that none of the *Products*, *Documentation* or other protected material delivered, whether or not developed in execution of this Framework contract, infringes any third party's *Intellectual property rights*.
- 2.3.5. Each party shall inform the other party of the existence or threat of any third party's action or claim alleging an infringement of its *Intellectual property rights* by the Commission's use of any *Products*, *Documentation* or other protected material delivered under this Framework contract, provided such use is made in conformity with the terms of this Framework contract.
- 2.3.6. In the event of such a dispute or threat thereof, the Contractor undertakes to conduct all litigation, arbitration or negotiations for settlement, in its own name as well as in the Commission's name, at its own and sole expense.

The Commission agrees to provide the Contractor with all information and assistance that may reasonably be required, at the Contractor's own and sole expense.

However, the Commission reserves the right to decide to conduct its own defence or to negotiate its own settlement, at its own discretion. The Contractor will be responsible for any payment arising out of any settlement or judgement following such a dispute or threat, except for the payment of a settlement made by the Commission without the Contractor's written consent. Such consent may not be withheld without reasonable grounds.

If the infringement of a third party's *Intellectual property right* on a *Product* and its *Documentation* is declared in a judgement, arbitration sentence or party settlement, or if such is likely to happen, the Contractor agrees to (1) either procure for the Commission the right to continue using the *Product* and its

*Documentation*, (2) either replace them with substantially equivalent non-infringing *Products*, or, if none of the foregoing is available, (3) grant to the Commission a credit in the amount corresponding to the purchase price of the proportion of the *Product* which can no longer be used.

The Contractor will not be responsible under the present guarantee for any third party claiming an infringement of its *Intellectual property rights* based on (1) the Commission's use of *Products* in combination with equipment not delivered by the Contractor, if such combined use is the cause of the claimed infringement, or (2) the Commission's use of any *Product* and *Documentation* delivered hereunder in a form other than the one delivered by the Contractor, if such change in form is the cause of the claimed infringement.

- 2.3.7. The guarantee against third party claims is due by the Contractor until five (5) years following the end of the Framework contract, or until five (5) years following the last use by the Commission of the *Product* and its *Documentation* delivered by the Contractor, whichever period ends last.

## **2.4. CO-OPERATION**

- 2.4.1. The Contractor undertakes to develop and install the *Products* and provide the *Informatics Services* in accordance with the document "Informatics Architecture", as updated from time to time. On the day of completion of this version of the General terms and conditions, the latest version of that document is available at the URL [http://ec.europa.eu/dgs/informatics/procurement/useful\\_documents/index\\_en.htm](http://ec.europa.eu/dgs/informatics/procurement/useful_documents/index_en.htm) which the Contractor agrees to visit regularly for updating purposes. The Contractor agrees to co-operate with other suppliers to make the *Products* work with those of these other suppliers. It agrees to attend meetings called for that purpose by the Commission.

- 2.4.2. The Contractor shall assist and advise the Commission on the use of its *Products* and *Services*. It shall be responsible for *Product* integration as regards its inclusion in the Framework contract, its operation in the Commission's environment and the introduction of *New versions*.

## **2.5.            *PRODUCT DEVELOPMENTS***

- 2.5.1.        Any *Product* delivered under this Framework contract shall have been demonstrated by the Contractor, at its expense, to conform to the technical specifications sent to the Contractor as part of the invitation to tender or the negotiation pursuant to which the present Framework contract has been drawn up.
- 2.5.2.        Any *Product* capable of replacing a previously approved *Product* in the same operational environment, with no loss of performance and at no extra cost to the Commission, may be added to the relevant Annexes of the Framework contract.
- 2.5.3.        Proposals to include new *Products* involving new features or functions not previously available amongst the *Product* listed in the Framework contract's Annexes, shall only be considered in the context of the principal *Product* classifications and specifications covered by the call for tenders referred to in the preamble of the Framework contract.
- 2.5.4.        Even if a *Product* is approved by the Commission, any incompatibility with previous *Products* that becomes apparent in the course of its use shall be resolved by the Contractor as swiftly as possible and at no cost to the Commission.
- 2.5.5.        Evaluation procedures and trials of new products before inclusion in the price list may be specifically defined in the Framework contract.

## **2.6.            *PRODUCT LIFE***

- 2.6.1.        The Contractor shall ensure that the *Product*, or replacing *Product*, are marketed or available during the lifetime of the Framework contract from the date of their inclusion in the relevant Annex of the Framework contract.
- The Contractor shall ensure that maintenance of the *Product* delivered under this Framework contract may be requested and provided for a period of at least five (5) years from the date of signature of their *Consignment note*, or, where applicable, of their *Certificate of Conformity*, whichever is the latest.

## **2.7. USE OF PRODUCTS**

- 2.7.1. From the date of signature of the *Consignment note*, or, if applicable, of the *Certificate of Conformity*, whichever is the latest, the Commission may make unrestricted use of the *Products* under normal operating conditions. The Commission may use the *Products* for *Services* it is carrying out for other Institutions, Agencies or Bodies. If the *Products* are rented or leased, the right of use applies for the duration specified in the Specific Contract. If a guarantee applies, maintenance may not start until the guarantee has expired.
- 2.7.2. The Contractor must ensure that the Commission may add to a *System* or connect to it, either directly or via telecommunications networks, compatible *Products* of any origin.
- 2.7.3. In view of the Commission's supranational nature, the Contractor shall not exert any right of inspection over the Commission's use of the *Products*.

## **2.8. DOCUMENTATION**

The Contractor shall provide the Commission with its *Documentation* and updates, as soon as they become available to its customers, in as many copies, whether in machine-readable form or on paper, as are stated in the Framework contract or a Specific Contract.

The Commission may reproduce this *Documentation* in full or in part for any *Internal use* by its staff. The Commission shall reproduce all references to *Intellectual property rights* appearing on the originals.

## **2.9. IDENTIFIERS**

The Commission may decide to assign an identifier to a unit of a delivered *Product*. In such case, the Contractor commits itself to using an identifier for every unit of a *Hardware* or *Telecommunications Product* delivered to the Commission. This identifier is communicated to the Contractor by the Commission when the *Consignment note*, or, if applicable, the *Certificate of Conformity* for such unit has been signed. The identifier(s) shall be given in electronic file(s) in such manner as shall have been agreed by both Parties. The Contractor's original identifier mentioned in its delivery documents is associated with the Commission's identifier. After that, only the Commission's identifier is to be used in all instances when the Contractor refers to the unit in question (for example in all operations relating to the service desk, invoicing of maintenance, technical intervention, etc.).

The identifier is an alphanumeric code of 15 characters. The format of the identifier may be changed by the Commission at any moment. In that case, the Contractor will be notified by a *Means of communication*.

Examples of correctly formulated identifiers are:

02DI20030764930  
02BX19954381081  
02LX19926036740

02XXXXXXX0572190  
 02YYYYYYY0032078  
 04DI99996134114

## **2.10. *BENCHMARKING***

The Commission may undertake a *Benchmarking* of the levels and the charges of the *Services* and supplies provided under this Framework contract by comparison with similar *Services* and supplies provided by outsourcing vendors and/or in-house IT service providers and suppliers. The results of such *Benchmarking* shall be available in identical form to both the Commission and the Contractor.

In order to guarantee that a valid comparison is made, the Commission will ensure that:

- the scope of the *Services* and supplies being provided by the Contractor is taken into consideration;
- the comparison group consists of at least four enterprises to ensure statistical significance;
- the relevant comparison data must be guarantee

The *Benchmarking* shall not exceed four (4) months

For the first *Benchmarking* exercise, the comparison group shall be defined in a document entitled “Comparison Group Definition”. The Commission reserves the right to change the comparison group algorithm to reflect any changes in its business from time to time.

The *Benchmarking* shall be a qualified and objective third party selected by the Commission through an appropriate market procedure. The Commission will pay all of its own costs and the *Benchmarking*'s costs during the *Benchmarking*. The Contractor will pay all of its own costs. Interpretation of the results of the *Benchmarking* shall be the sole prerogative of the *Benchmarking*.

The Commission and the Contractor shall set aside sufficient time and resources for each stage of the *Benchmarking*, such as:

- identification and location of *Benchmarking* data,
- performing the *Benchmarking*, and
- implementation of the conclusions of the *Benchmarking*.

The Commission and the Contractor will be free to suggest changes in *Benchmarking* parameters as the *Services* and supplies evolve over the term of this Framework contract.

The *Benchmarking* shall treat as confidential, in accordance with Article II. 16 of the General Conditions, all data provided by the Commission and the

Contractor, and will return all material and media once the *Benchmarking* is completed.

If a *Benchmarking* reveals that the level of a *Service* does not reach the comparison group's service levels, the Contractor shall immediately prepare an action plan, which will specify all actions necessary to rectify the deviations. The full and measurable implementation of the action plan shall in no circumstances exceed one (1) year. If the Contractor fails to fully implement the action plan, the Commission may claim damages.

If a *Benchmarking* reveals that charges are higher than the comparison group's charges, the Contractor shall immediately reduce its charges to the comparison group level, with effect from the date on which the results of the *Benchmarking* were delivered to the Parties.

### **3. SPECIFIC PROVISIONS RELATING TO THE PURCHASE, RENTAL AND LEASING OF COMPLEX HARDWARE PRODUCTS**

#### **3.1. ADDITIONAL SPECIFICATIONS FOR *HARDWARE DELIVERY***

##### **3.1.1. Terms**

All *Complex hardware products* shall be tested by the Contractor before their delivery. The Contractor shall be able to demonstrate that the pre-delivery test was satisfactory if the Commission so requests.

The number of copies of *Documentation* to be supplied shall be specified in the Specific Contract, but must be at least equal to one (1) copy per unit of *Complex hardware product*.

The Contractor shall notify the Commission by a *Means of communication* of its packaging terms at least two (2) weeks prior to the *Delivery date*. The Contractor shall remove all packaging material used during delivery.

The height of the Contractor's delivery vans may not exceed 4.5 m and only "EURO"-type pallets shall be used.

##### **3.1.2. Dates**

The *Delivery date* shall be indicated in each Specific Contract.

Failure regarding the *Delivery date* is considered as damage to the Commission as defined in Article II.4 of the General Conditions.

Should the Contractor be unable to deliver on the specified *Delivery date*, it must then supply an equivalent *Complex hardware product* or *System* with the Commission's prior consent.

Where the Commission has incurred costs vis-a-vis a third party by reason of a delay in delivery or commissioning attributable to the Contractor, then the Contractor shall reimburse those costs upon production of supporting documents, provided that the Commission has notified the Contractor by a *Means of communication* of the risk of incurring damages due to the late delivery soon after having been informed of the Contractor's inability to deliver on time.

If a *Delivery date* is overrun by more than forty-five (45) calendar days, the Commission is entitled to immediately terminate the Specific Contract in question.



### 3.1.3. Procedure

The Contractor shall confirm the exact *Delivery date* of each *Complex hardware product* at least eight (8) calendar days in advance to the Commission by a *Means of communication*.

The Commission shall, during *Normal working days and hours*, provide access to its premises for delivery on the notified *Delivery date*. Delivery and installation costs shall be borne by the Contractor. Deliveries shall be complete.

Receipt of each delivery of *Products* shall be recorded in a *Consignment note* signed by the Commission as stated in article II.1.1 of the General Conditions (including the balance to be delivered for each *Product*)

## 3.2. **PRODUCT INSTALLATION**

### 3.2.1. Installation requirements

For each *Product* listed in the Annexes of the Framework contract, the Contractor shall specify by a *Means of communication* the technical installation requirements and any refurbishment necessary for the premises intended to house the *Products*.

The Commission shall ensure that from then onwards the premises where the *Products* are installed satisfy the conditions set out by the Contractor regarding access, air-conditioning and electric power supplies and are equipped with the necessary data transmission lines.

The Commission shall grant the Contractor access to its premises for the assembly of *Complex hardware products* on the *Installation date*, which must be duly notified by the Contractor with a *Means of registered communication* within five (5) *Normal working days* upon the Commission's notification referred to in the last paragraph of Article III.3.2.2.

### 3.2.2. Procedure

#### Pre-installation meeting

– A pre-installation meeting may be organised. A technical representative of the Contractor will be available for each *Specific Contract* for a pre-installation meeting organised on the Commission's premises. The purpose of this meeting is to review practical issues related to installation of the *Products* covered in the relevant *Specific Contract*. The minutes of each pre-installation meeting should be drafted after the pre-installation meeting by the Contractor, unless otherwise agreed in this meeting.

#### Installation

– Installation will be done in conformity with the relative *Specific Contract* and/or *Service Level agreement* and with the minutes of the pre-

installation meeting and in accordance the methodology agreed in the pre-installation meeting if appropriate.

– If the place of delivery is not the place of installation, the Commission shall arrange for *Products* to be moved at its own risk from the place of delivery to the place of installation within fifteen (15) *Normal working days* from the day of signature of the *Consignment note* and undertakes to notify the Contractor of the place of the move by a *Means of communication* within five (5) *Normal working days* upon successful move of the *Products* to the installation site.

### 3.3. ACCEPTANCE

#### 3.3.1. The *Commissioning date*

The assembly of *Complex hardware products* and the bringing into service of a *System* shall be executed by the Contractor at its own expense, unless otherwise agreed in the Framework contract.

A *Complex hardware product* or *System* shall be assembled, installed, and brought into service no later than fifteen (15) *Normal working days* after the date of notification by the Commission of its removal to the installation site unless another time limit is laid down in the Specific Contract.

Upon successful installation, the Contractor shall notify the Commission by a *Means of communication* of the date on which the *Complex hardware product* or *System* has been brought into service, which date will be the *Commissioning date* for this particular *Product* or *System*.

#### 3.3.2. The acceptance period

The acceptance period will run up to seventy-five (75) *Normal working days* from the *Commissioning date*.

During this acceptance period, the Commission shall notify any defaults in the *Complex hardware product* or *System* to the Contractor by a *Means of communication*. As from the date of such notification, the running of the acceptance period will be suspended up to the date on which the Contractor notifies by a *Means of communication* that it has remedied the notified default, this date will reinitiate the acceptance period for the rest of the seventy-five (75) *Normal working days* period, with a guaranteed minimum period of twenty-five (25) *Normal working days* after the last notification by the Contractor that it has remedied a default.

Upon the expiry of the acceptance period, acceptance of a *Product* will be recorded in a *Certificate of Conformity*, as stated in article II.1.1 of the General Conditions that shall indicate inter alia the detailed nature of the accepted *Complex hardware products* and the reference number of this Framework contract and of the Specific Contract concerned.

If no *Certificate of Conformity* has been issued at the end of the acceptance period and if no notification of faulty operation is pending, the Commission is considered as having accepted the *Complex hardware product*.

### 3.3.3. Termination

If, due to faulty operation by the Contractor, acceptance cannot be completed within a maximal time limit of hundred and fifty (150) calendar days from the *Commissioning date*, unless a different time limit has been specified by Specific Contract, the Commission shall be entitled to terminate the Specific Contract after giving the Contractor a thirty (30) calendar days' notice by a *Means of communication* to meet its obligations. This provision is without prejudice to the Commission's other rights under Article II.12.4 of the General Conditions.

## 3.4. GUARANTEE SPECIFICATIONS FOR *COMPLEX HARDWARE PRODUCTS*

The Contractor shall guarantee all goods delivered in conformity with article II.1.2 of the General Conditions. During the two years guarantee period stated in article II.1.2 of the General Conditions the Contractor shall provide maintenance at its own and sole expenses.

The guarantee period shall be automatically extended by the total duration of stoppages attributable to the Contractor during that period, as recorded under the maintenance procedures. For this purpose only stoppages lasting eight (8) consecutive *Normal working hours* or more shall be counted. One day's extension therefore corresponds to a stoppage of eight (8) consecutive *Normal working hours*, which may be interrupted by a period of hours not defined as *Normal working hours*.

If failures during the guarantee period are such as to make a *Product* unusable for an uninterrupted period of more than one (1) calendar week, the Commission shall be entitled to have the *Complex hardware product* immediately replaced free of charge by the Contractor.

If the aggregate unavailability of a *Product* during *Normal working hours* exceeds forty-eight (48) hours, the Commission is entitled to terminate the part of the Specific Contract relating to that *Product*.

## 3.5. LEASING AND RENTAL FORMULA

3.5.1. Determination of the periodic rental/leasing to be paid  $n$  times at the beginning of each period for an investment of  $PV$  with no residual value  $FV$  at the end of the  $n$  periods.

$$PMT = PV \frac{i}{\left(1 - \frac{1}{(1+i)^n}\right)} \frac{1}{1+i}$$

3.5.2. Determination of the periodic rental/leasing to be paid n times at the beginning of each period for an investment of PV with a residual value FV at the end of the n periods.

$$PMT = (PV - FV) \frac{i}{\left(1 - \frac{1}{(1+i)^n}\right)} + FV \frac{i}{1+i}$$

3.5.3. Determination of the periodic rental to be paid n times at the end of each period for an investment of PV with no residual value FV at the end of the n periods.

$$PMT = PV \frac{i}{\left(1 - \frac{1}{(1+i)^n}\right)}$$

3.5.4. Determination of the periodic rental to be paid n times at the end of each period for an investment of PV with a residual value FV at the end of the n periods.

$$PMT = (PV - FV) \frac{i}{\left(1 - \frac{1}{(1+i)^n}\right)} + FV.i$$

<b>Abbreviation</b>	<b>Description</b>
PMT	Periodic payment
Ni	Nominal annual interest rate at order time
Mi	Margin on annual basis as defined in the Framework contract
i	Interest rate per period as defined in the Framework contract
NY	Number of payments per year
N	Total number of payments
PV	Investment amount = Present Value
FV	Residual Value = Future Value as defined in the Framework contract
P-P <sup>3</sup>	Percentages as defined in the Framework contract

3.5.5. Determination of the interest rate applicable for a term smaller than one year. For the calculation of the periodic interest rate applicable for a term smaller than one year, the formula is as follows:

$$1 + Ni = (1 + i)^{NY} \text{ or } i = (1 + Ni)^{\frac{1}{NY}} - 1$$

3.5.6. Determination of the residual value. The residual value to be used for the sole purpose of computing a rental is given for the different horizons:

<b>Rental horizons</b>	<b>Residual value</b>
4 years	P % of PV
3 years	P <sup>1</sup> % of PV
2 years	P <sup>2</sup> % of PV
1 year	P <sup>3</sup> % of PV

**3.6.           TERMINATION OF THE CONTRACT FOR RENTAL AND LEASING OF  
                  COMPLEX HARDWARE PRODUCTS**

If one of the Parties terminate the Framework contract or Specific Contract on its own volition, the other party shall be compensated in accordance with the relative formula stated in 3.5 above.

**3.7.           WITHDRAWAL OF RENTED OR LEASED COMPLEX HARDWARE  
                  PRODUCT**

Upon termination of a rental or leasing Specific Contract or Framework contract, the *Product* will be withdrawn by the Contractor at its own expense.

## **4. SPECIFIC PROVISIONS RELATING TO THE PURCHASE, RENTAL AND LEASING OF OTHER THAN COMPLEX HARDWARE PRODUCTS**

### **4.1. CONFIGURATION AND DELIVERY**

#### 4.1.1. Configuration

In respect of each order:

- (1) the other than *Complex hardware products* shall be specified in the Specific Contract and its Annexes;
- (2) installation of other than *Complex hardware products*, including *Software*, shall be carried out in accordance with the specifications annexed to the Specific Contract or the relevant *Service level agreement*.

#### 4.1.2. Delivery

The *Delivery date* shall be set at maximum thirty (30) calendar days from the date of signature of the Specific Contract, unless a different term has been specified in the Special Conditions of the Framework contract or in the Specific Contract.

If the *Delivery date* is overrun by more than twenty-one (21) calendar days, the Commission shall be entitled to terminate the Specific Contract in question.

A failure regarding the *Delivery date* is considered as damage to the Commission as defined in Article II.4 of the General Conditions.

The place of delivery shall be specified in each Specific Contract. There may be more than one place of delivery in a Specific Contract.

At the time of delivery, the incoming *Products* may be subject to quantitative and qualitative checks by the Commission within five (5) working days. The receipt of each delivery of *Products* shall be then recorded in a *Consignment note* signed by the Commission. Such *Consignment note* will be established as stated in article II.1.1. of the general Conditions.

If no *Certificate of Conformity* has been issued at the end of the one month acceptance period stated in Article II.1.1 and if no notification of faulty operation is pending, the Commission is considered as having accepted the other than *Complex hardware product*.

Unless expressly requested by the Commission, partial delivery of an item of a Specific Contract is not allowed.

**4.2. GUARANTEE SPECIFICATIONS FOR OTHER THAN *COMPLEX HARDWARE PRODUCTS***

The Contractor shall guarantee all goods delivered in accordance with Article II.1.2 of the General Conditions.

When, under the terms of a Specific Contract, other than *Complex hardware products* are delivered on several dates, the guarantee period shall for all the components of the other than *Complex hardware products* expire with the end of the guarantee period of the final component of the other than *Complex hardware product* delivered in accordance with the Specific Contract.

During the two year guarantee period stated in Article II.1.2 of the General Conditions, the Contractor shall provide maintenance at its own and sole expense.

**4.3. LEASING AND RENTAL FORMULA**

See 3.5 above

**4.4. TERMINATION OF THE CONTRACT FOR RENTAL AND LEASING OF OTHER THAN *COMPLEX HARDWARE PRODUCTS*.**

If one of the Parties terminates the Framework contract or Specific Contract on its own volition, the other *Party* will be compensated in accordance with the formula stated in the Framework contract.

**4.5. WITHDRAWAL OF RENTED OR LEASED OTHER THAN *COMPLEX HARDWARE PRODUCT***

Upon termination of a rental or leasing Specific Contract or Framework contract, the *Products* will be withdrawn by the Contractor at its own expenses.

## **5. SPECIFIC PROVISIONS RELATING TO LICENSED SOFTWARE**

### **5.1. DELIVERY - INSTALLATION - DOCUMENTATION**

5.1.1. The *Delivery date* of the *Software* shall be set at maximum ten (10) working days from the date of signature of the Specific Contract, unless a different term has been specified in the Framework contract or Specific Contract.

A failure concerning the *Delivery date* is considered as a damage to the Commission, as defined in Article II.4 of the Framework contract. The Commission may decide to claim the payment of damages, under the provision stated in the Framework contract.

5.1.2. The Commission shall be permitted to request additional assistance from the Contractor to install the *Software* on the adequate hardware equipment and for training of its personnel at the time of production start-up. Those additional expenses shall be charged to the Commission at the prices mentioned in the Framework contract.

5.1.3. The Commission and the Contractor shall each designate in due time one person each in charge of decisions regarding the delivery and installation of the *Software*.

5.1.4. The manner in which the *Software* shall be delivered shall be agreed upon in the Framework contract or Specific Contract.

When it is agreed that the *Software* shall be delivered as material support, the *Software* shall be delivered on a machine-readable medium (diskette or other) reproducing the original *Software* kept in the Contractor's or the Commission's archives. It shall be sent with one copy of the *Documentation* per licensed copy unless agreed otherwise between the Parties. Any additional copy of the *Documentation* shall be invoiced to the Commission at the price shown in the Framework contract.

When it is agreed that the *Software* may be downloaded by the Commission, then the Specific Contract shall precisely indicate the location of the download area (such as from an area on the Contractor's website, from an FTP site, etc.) and provide the Commission, by a *Means of communication*, with the accurate and complete instructions, including access codes, enabling it to perform such downloads.

5.1.5. Delivery of the *Software* shall be recorded in a *Consignment note*, presented by the Contractor for signature by the Commission. In the event that the *Software* is downloaded, the Commission will issue the *Consignment note* based on the communication of the Contractor with the downloading instructions.

5.1.6. If no *Certificate of Conformity* has been issued at the end of the one month acceptance period stated in Article II.1.1 and, if no notification of faulty operation is pending, the Commission is considered as having accepted the *Software*.



- 5.1.7. The Contractor authorises the Commission to reproduce the *Documentation* for any *Internal use* provided that any copyright indication in the *Documentation* is also reproduced.

## **5.2. TRIAL - ACCEPTANCE**

- 5.2.1. Upon request of the Commission the Contractor shall grant for each new licensed *Software* or each *New version* of the *Software* a one (1)-month trial period during which the *Software* shall be available for non-productive use. Longer test periods and their conditions may be convened in the Framework contract or by Specific Contract.
- 5.2.2. The trial period shall begin on the day of the installation of the *Software* by the Contractor on the appropriate hardware equipment, or if the Commission does not require installation of the *Software* by the Contractor, fifteen (15) calendar days after signature of the *Consignment note*.
- 5.2.3. At the end of the trial period, acceptance of the *Software* shall only result from the signature, by both Parties, of the *Certificate of Conformity* as stated in Article II.1.1 of the General Conditions. If no *Certificate of Conformity* has been issued at the end of the trial period and, if no notification of faulty operation is pending, the Commission is considered as having accepted the *Software*.
- 5.2.4. At any moment during the trial period, the Commission may terminate the testing licence upon notification by a *Means of communication* with immediate effect if the *Software* does not perform and conform to its description, its specifications or its *Documentation*. Additional acquisitions of *Software* already tested by the Commission shall be accepted by signature of the *Consignment note*.

## **5.3. GUARANTEE SPECIFICATIONS FOR SOFTWARE**

- 5.3.1. The Contractor shall guarantee all goods delivered in conformity with Article II.1.2 of the General Conditions.
- 5.3.2. The Contractor warrants that:
- (1) the *Software* is in conformity with the *Documentation* supplied;
  - (2) the *Software* is capable of performing the functions described in the aforementioned *Documentation* and conform to the specifications described in the Framework contract or Specific Contract under consideration.

5.3.3. The Contractor does not warrant that the *Software* will enable the Commission to achieve its target aims, productivity levels or time savings.

5.3.4. Guarantee period

During the two-year guarantee period stated in Article II.1.2 of the General Conditions, the Contractor shall provide maintenance at its own and sole expense.

## **5.4. USE**

5.4.1. The Contractor hereby grants, and the Commission accepts, a non-exclusive licence to use the *Software*, under the conditions set hereunder.

5.4.2. The Commission may use the *Software* for its *Internal use*.

5.4.3. The Commission may acquire "floating licences" for use by external, service-providing companies working under contract on projects for the Commission. At the end of the project, the Commission shall reclaim these licences and may either add them to the existing licence scheme or reallocate them to another company.

5.4.4. The Commission undertakes not to reproduce the *Software* in part or in whole, except for the purposes of back-ups and archives, and after taking all the necessary precautions. Such copies shall remain the Contractor's property.

5.4.5. The Parties may by Framework contract agree that the licence be an exclusive licence for the Commission to use the *Software*.

5.4.6. For the purpose of this Article III. 5.4., the *Software* shall be read as including its *Documentation*.

## **5.5. COMPATIBILITY**

The Contractor guarantees to the Commission that at the date of signature of each Specific Contract the *Software* is compatible with all hardware or software described in the Specific Contract under consideration.

## **5.6. INTELLECTUAL PROPERTY RIGHTS CONCERNING SOFTWARE — CONFIDENTIALITY**

5.6.1. The *Intellectual property rights* attached to the *Software* and its *Documentation* shall remain the Contractor's exclusive property.

5.6.2. The Commission undertakes:

- (1) to take all measures necessary vis-à-vis its end user personnel and persons having access to the *Software* and its *Documentation*, to ensure that the confidentiality of the *Software* is observed;

- (2) not to pledge, assign, sub-license, transfer or lend, for payment or otherwise, the *Software* and its *Documentation* except in the manner set out under Article III.5.4;
- (3) to inform the Contractor immediately in the event of seizure, to protest against it and to take all necessary steps in order to safeguard the integrity of the Contractor's *Intellectual property rights*.

5.6.3. In the event of unauthorised disclosure of confidential information by either party, the other party shall address it a warning by a *Means of Registered communication*, requesting the first party to confirm that it will no longer disclose the said information. If no satisfactory response is obtained within the requested time limit, the other party is entitled to terminate this Framework contract. The parties recognise that damages may not constitute sufficient compensation for the other party, who may require reparation by injunction or other relief judged appropriate or necessary by the appropriate court of law.

## **5.7. ESCROW RIDER**

5.7.1. Except as set forth in Article III.5.7.4., the Commission and the Contractor shall appoint by mutual agreement an *Escrow agent* who will provide appropriate safekeeping facilities for the *Product* and its *Documentation*. The *Escrow rider* shall be concluded between the Contractor, the *Escrow agent* and the Commission. The *Escrow rider* shall provide that the Contractor must deposit with the *Escrow agent* a copy of all necessary *Software* and *Documentation*, source code and that the Commission shall have access to this copy as provided under Article III.5.7.2.

5.7.2. The *Escrow rider* shall provide that if the Contractor discontinues the maintenance of the *Product*, the Commission may instruct the *Escrow agent* to deliver a copy of the actual source code for the *Products* involved, including associated control statements required for operation, maintenance and use of the source code, each in programmer-readable form (collectively: "the Source code"), along with any associated *Documentation* including updates, to the relevant installation site. If the Commission receives the Source code in the manner provided hereunder, no additional fees shall be charged. Title to the Source code shall remain with the Contractor.

5.7.3. The Commission shall have the right at any time to contact the *Escrow agent* for the purpose of confirming the existence of the Source code and associated *Documentation* including updates thereto and for verification of the instructions to the *Escrow agent* to release the Source code under the circumstances specified under this Article.

5.7.4. The Contractor may propose to apply or to enter into a two-party escrow agreement with a third party escrow. In this case, the Contractor shall provide, prior to applying or entering into such agreement, a copy of the proposed agreement to the Commission without charge and all fees in relation to it will be afforded by the Contractor. Should the Contractor fail to provide this copy, the Commission shall be entitled to claim execution of Article III.5.7.1.

- 5.7.5. When the Commission considers that the terms of the proposed escrow agreement offer sufficient guarantees to it, it will authorise the Contractor to apply or enter into such agreement with this third party escrow. If the Commission is not entirely satisfied, it may request additional guarantees before authorising the Contractor to enter into the agreement.
- 5.7.6. After having applied or entered into the authorised agreement, the Contractor shall notify the Commission in advance by a *Means of registered communication* and request its consent for the following:
- the implementation of any change in the terms of this agreement,
  - its termination by the third party escrow,
  - its replacement by a new Contract,
  - a change in third party escrow, or any other change materially affecting the contractual guarantee offered to the Commission,

The Commission may offer its comments and may withhold its consent should it find that the change may result in the absence of the necessary guarantees of access to the Source code within the duration of the Framework contract.

- 5.7.7. In the event of the escrow agreement being terminated by the third party escrow, or its terms being changed such that the contractual guarantee is materially affected, the Contractor shall immediately notify the Commission of such fact by a *Means of registered communication*. The Contractor shall then seek a new escrow agreement meeting the requirements of this Article, subject to the Commission's consent prior to the signature of such agreement.
- 5.7.8. Should the Contractor fail to notify the Commission of any change in accordance with the present Article, the Commission shall be entitled to terminate the Framework contract at the Contractor's expense. The Commission shall also be entitled to seek damages and interest from the Contractor resulting from the Contractor's failure to fulfil its obligations under this Article.

## **6. SPECIFIC PROVISIONS RELATING TO HARDWARE AND SOFTWARE MAINTENANCE**

### **6.1. COMMON PROVISIONS**

- 6.1.1. Contractual maintenance shall commence on the day after expiry of the guarantee period applying to the *Products* delivered, unless another date is specified in the Framework contract or Specific Contract.
- 6.1.2. The Contractor shall at all times comply with the quality standards and the maintenance security rules contained in the Framework contract.
- 6.1.3. The maintenance shall be provided during *Normal working hours* on *Normal working days*. The Commission may require the Contractor to offer maintenance outside these times (*Extended working hours*), provided that there is an explicit provision in the Framework contract or Specific Contract stating the applicable rates in this case.
- 6.1.4. Maintenance is deemed to comprise all operations necessary to maintain a *Product* in perfect working order, or to restore a defective *Product* or one of its components to perfect working order, inclusive of the costs of travelling, parts and labour.
- 6.1.5. The provisions on *Informatics Services* consisting of maintenance apply to maintenance of both *Software* and *Hardware*, except where it is apparent from the provision that only one type of *Product* is concerned.

### **6.2. ONE –SHOT REPAIR OF *HARDWARE***

Where the Framework contract does not explicitly cover maintenance of *Hardware*, the Contractor agrees to perform one-shot repairs to *Hardware* at the Commission's request. In response to such a request, the Contractor shall prepare without delay an estimate of the price of the repair and a timetable for its execution. The estimate and the timetable shall be provided free of charge to the Commission, regardless of whether or not the repair is executed. If the Commission accepts the estimate and timetable, an order shall be signed between the Parties. The Contractor shall not start to repair until it has received the relevant order signed by the Commission. It is explicitly agreed that all other conditions of the Framework contract shall also apply to a one-shot repair.

## 6.3. MAINTENANCE

### 6.3.1. Terms

The Contractor undertakes to maintain the *Products* covered by this Framework contract in perfect working order.

In order to do this, the Contractor shall at all times have a stock of spare parts or shall obtain the necessary parts at its own and sole expense.

The Contractor shall provide maintenance service on site within four (4) hours at the Commission's request. This time limit is reduced to two (2) hours in the case of a blocked server. These time limits may be within either *Normal* or *Extended working hours*, depending on the choice made in accordance with Article III.6.1.3.

If the Contractor is of the opinion that a repair will not be possible within the maximum repair time from its arrival, it shall make a substitute *Product* available to the Commission for the duration of the repair.

Repairs, *Extensions* and modifications to the *System* shall be carried out only by the Contractor or the firms authorised by it.

Preventive maintenance operations shall be scheduled periodically, by agreement between the Commission and the Contractor.

The Contractor shall carry out corrective maintenance involving debugging, repair or replacement of faulty *Products* at the Commission's request. The Contractor undertakes, during these operations, to comply with the Commission's current central service desk action procedure when the failure occurs, as is described in Annex I.

The Contractor will formally close each maintenance operation. At the same time it will supply the information needed to measure the quality of the service and the *Products* against the standards laid down in the Framework contract. Where computer security has been affected it will submit a report.

The Contractor shall compile a monthly management report giving the following particulars of corrective maintenance carried out, without prejudice to the relative *Service Level Agreement*:

- (1) a list of outstanding problems, with the cause and the expected date of resolution;
- (2) an analysis of problems encountered by type of failure and *Product*;
- (3) various statistics as requested by the Commission to enable it to produce an internal audit report.

### 6.3.2. *Hardware*

On the part of the Commission, hardware maintenance shall involve the obligation to use the *Products* as specified in the *Documentation* and the installation requirements, and not to alter or repair them itself.

On the part of the Contractor, without prejudice to the relative *Service level agreement*, corrective hardware maintenance shall involve:

- (1) diagnosing the cause of failures affecting *Products* or *Systems*, whether they are due to its *Products* or not;
- (2) correcting faults as rapidly as possible;
- (3) replacing components, printed circuits and electronic units that prove defective in the course of normal use, and effecting any alterations deemed necessary by it to improve operation of the *Systems*;
- (4) acting as the link with its own central maintenance departments;
- (5) reprogramming or replacing *Software* in the event of error;
- (6) providing "hot-line" support to resolve urgent problems and *System* failures;
- (7) providing drivers for correct function of *Hardware products*.

Maintenance shall not include the complete repair of all or part of any *Hardware products* that are no longer functional as a result of everyday wear and tear. If the Commission decides not to carry out the restoration proposed by the Contractor, the *Hardware products* in question will be withdrawn from the Framework contract.

### 6.3.3. *Software*

On the part of the Commission, without prejudice to the relative *Service level agreement*, *Software* maintenance shall involve:

- (1) preparing and sending the Contractor all documents and additional information at its disposal which the Contractor might reasonably request in order to detect and correct errors;
- (2) testing and accepting, when it is reasonable to do so, *New versions* or *New releases* of *Software*, as proposed by the Contractor. One year after the date of such an acceptance, the Contractor is no longer required to provide maintenance for previous versions or releases of *Software* and any dependent *Products*;
- (3) installing any preventive corrections provided by the Contractor as long as it is agreed that such corrections are necessary.

On the part of the Contractor, without prejudice to the relative *Service level agreement* *Software* maintenance shall involve:

- (1) diagnosing errors or faults encountered by the Contractor or the Commission in the content of the *Software* and making any necessary corrections; the Contractor shall effect corrections only if the error can be reproduced or if the Commission provides the Contractor with sufficient information from which the error can be diagnosed;
- (2) providing the Commission with successive *Software* versions and releases and the relevant reference *Documentation*; installing *New releases and New versions* free of charge on the existing hardware at the Commission's request; where necessary, adapting *Products* and/or information *Systems* that were using the previous version of the *Software*, free of charge;
- (3) effecting all the *Software* corrections (including patches) needed to ensure that the *Systems* operate as specified in the *Documentation* within thirty (30) *Normal working days* of receipt of a notification by a *Means of communication* from the Commission giving details of a problem;
- (4) rewriting the *Software* where necessary so as to correct all known problems or faults diagnosed by the Contractor;
- (5) providing telephone support for the Commission during *Normal working hours* to advise it on the use of *Software*;
- (6) providing "hot-line" support to resolve urgent problems and *System* failures.

6.3.4. The Contractor undertakes to provide the Commission, upon request, with any remote maintenance service, which it operates or intends to set up. The remote maintenance service must comply with the rules set out in the Framework contract. All terminal connection, utilisation and communication charges shall be borne by the Contractor.

#### 6.3.5. Responsibility for diagnosis

The Contractor has sole responsibility for diagnosing and determining the origin of failures affecting all or part of the *System* or *Products*. As part of this obligation, the Contractor shall, in the event of a diagnosis error, reimburse any costs incurred by the Commission as a result of needless corrective action carried out by another supplier.

6.3.6. The expenses due to an intervention of the Contractor necessitated by a serious error of the Commission, recognised as such by the Commission, shall be borne by the Commission, according to the conditions and prices in the Framework contract.

#### 6.3.7. Technical modifications by the Contractor

The Contractor may propose modifications on its own initiative. It will implement them, with the Commission's consent, at times agreed by both



Parties. These modifications may not entail any additional cost to the Commission or cause any deterioration in performance or loss of function.

6.3.8. Equipment

Test equipment, tools, documents, programs and files kept on the Commission's premises for maintenance purposes shall remain the property of the Contractor and shall be insured by the Contractor.

## **7. SPECIFIC PROVISIONS RELATING TO ALL INFORMATICS SERVICES**

### **7.1. TYPES OF SERVICES**

7.1.1. Unless the Framework contract specifies to the contrary, *Informatics services* shall be provided, both *Intra muros* and *Extra muros*, during the Commission's *Normal working hours on Normal working days*.

7.1.2. Training relating to the use of the *Products*

Training shall be provided at the sites of the Commission in Brussels or Luxembourg. Training shall be addressed to users of the *Product* and to the technicians responsible for support within the Commission. The number of participants for each course shall be determined by mutual agreement between the Parties at the time of signature of the Specific Contract. Training and course materials must be available in at least English and French.

When training is provided on Commission premises, the infrastructure necessary to the courses (buildings, data-processing equipment, video equipment etc.), the administrative organisation of the courses (planning, notifications, and evaluation) and the reproduction of course documentation shall be provided by the Commission.

7.1.3. Consultancy relating to the use of the *Products*

Consultancy *Informatics Services* consist of transmitting know-how for the use of the *Products* covered by the Framework contract. They may be provided in Brussels and Luxembourg.

7.1.4. Technical *Documentation* of the *Products*

These *Informatics Services* shall relate to the drafting of any technical *Documentation* in relation to the *Products* covered by the Framework contract. They may be provided in Brussels and Luxembourg.

Technical *Documentation* shall be available in, at least, English and French. It shall be intended for users, both experienced and inexperienced, and for the Commission's technicians responsible for support or maintenance. The Contractor shall produce the *Documentation* on the basis of the content and structure specifications notified to it by the Commission. Reproduction of *Documentation* shall not form part of the service.

#### 7.1.5. Integration work

This type of service not being covered by a maintenance Specific Contract aims at ensuring the correct operation of the Contractor's Products in an evolving multi-manufacturer environment. Informatics Services are performed on the basis of integration specifications communicated by the Commission. They may be provided on site in Brussels, Luxembourg, Dublin and Strasbourg.

#### 7.1.6. Informatics engineering and maintenance

Informatics engineering consists of building and implementing projects of data-processing infrastructure (system software, telecommunications networks etc.) and maintenance on the basis of specifications provided by the Commission. Work may be provided on site in Brussels, Luxembourg, Dublin and Strasbourg.

#### 7.1.7. *Software* development, maintenance and related activities

This consists of Software development, maintenance and related activities (e.g. studies, consultancy, documentation, quality assurance etc.) using the standard Commission Informatics Architecture, on the basis of specifications provided by the Commission. Details of work to be carried out will form part of the Specific Contract. Work may be provided on site in Brussels and Luxembourg.

#### 7.1.8. Removals

Removals consist of transferring any *Products* from one specified place to the other, whether or not within the same building or city; they can take place during *Normal* or *Extended working hours*.

#### 7.1.9. Logistics

Logistics includes but is not limited to, inventory, counting, equipment tagging, security labelling, just-in-time delivery, unpacking and installation in end-user's office.

### **7.2. TIME-AND-MEANS CONTRACTS**

7.2.1. *Informatics Services* shall be provided on a time-and-means basis when the Parties agree in the Specific Contract that a specified daily sum is to be paid for a given number of days in return for the provision of the means to perform the *Informatics Services*. In all cases, the Specific Contract shall state the purpose of the provision of the *Services*; this may involve an obligation for the Contractor to achieve a specific result.

7.2.2. At the request of the Commission, the Contractor shall supply all the necessary personal information regarding the staff providing the service

7.2.3. Every day during which *Services* are provided, the Contractor or its staff shall record the time worked. The records shall be set up in the manner defined by

the Commission's technical representative named in the Specific Contract. At the end of each month, the Contractor or its staff shall complete and sign the attendance sheet proposed by the Commission and forward it to the Commission's technical representative who shall be in charge of checking the consistency between the daily records and the monthly attendance sheet.

### **7.3. QUOTED TIME-AND-MEANS CONTRACTS.**

- 7.3.1. The "Quoted Time & Means" method may be used for service providers outside the Commission premises.
- 7.3.2. For Quoted Time & Means projects, the work will be ordered for a total number of days and will be divided into various sub-tasks (or "quoted time & means").
- 7.3.3. The Commission will provide the Contractor with a detailed description of each sub-task. The Contractor will then send the Commission an estimate of the number of days needed to carry out the sub-task and the expected Delivery date.
- 7.3.4. Once the estimate has been accepted by the Commission, only the number of days indicated in the estimate will be chargeable.
- 7.3.5. The invoicing, approved by the Commission, will be carried out on the basis of each sub-task accepted and signed for by the Commission using a specific form.

### **7.4. FIXED-PRICE CONTRACTS**

- 7.4.1. *Informatics Services* shall be provided at a fixed price when the Parties agree in the Specific Contract that an overall sum, which must be justified using the agreed daily rates in the Framework contract, is to be paid following express acceptance of the work by the Commission.
- 7.4.2. The work shall be undertaken by the Contractor in accordance with the specifications set out in the Specific Contract. The specifications shall comprise in particular a description of the work, the timetable, reports, standards, reference manuals and details of the results and deliverables required.
- 7.4.3. Each result and deliverable shall be subject to acceptance by the Commission, in order to ensure conformity with the specifications. The acceptance period will run up to a maximum of seventy-five (75) *Normal working days* from the day of signature of a *Consignment note*. During this acceptance period, the Commission may notify any defaults in the result or deliverable to the Contractor by a *Means of communication*. As from the date of such notification, the running of the acceptance period will be suspended up to the date on which the Contractor notifies by a *Means of communication* that it has remedied the notified default, which date will reinitiate the acceptance period for the rest of the seventy-five (75) *Normal working days* period, with a guaranteed minimum period of twenty-five (25) *Normal working days* after the last notification by the Contractor that it has remedied a default. Upon

successful expiration of the acceptance period, the Commission will sign a *Certificate of Conformity* as stated in Article II.1.1 for each delivered result or deliverable. If no *Certificate of Conformity* has been issued at the end of the acceptance period and no default is pending, the Commission is considered as having accepted.

## **7.5. STABILITY OF SERVICES**

7.5.1. Prior to any Specific Contract, the Commission and the Contractor shall exchange the information needed for the *Informatics Services* to be provided. Throughout the term of the Framework contract they shall maintain the required level of information and make it available to the other party for the purpose of providing the *Informatics Services*. The updating of information shall not give rise to any payment.

7.5.2. In accordance with Article II.1.3 of the General Conditions, throughout the term of the Framework contract the Contractor shall ensure that a stable service is maintained as required for the proper implementation of the Specific Contracts.

7.5.3. When a change of staff or *Informatics Services* is unavoidable there should be a ten-day period of adjustment when both the replacement and original personnel should work side by side for training and transfer of relevant information. The costs of this period of adjustment shall be borne by the Contractor.

In no event shall the Contractor be able to plead a change of staff as a reason for not meeting any of its obligations, in particular with regard to deadlines and quality.

For all tasks with a low degree of substitutability, for example project co-ordination, studies and development, the Contractor shall ensure that staff are changed only in the event of "force majeure". The Commission must be notified in advance of any staff changes and reserves the right to refuse them.

7.5.4. In the case of a time-and-means Framework contract, the Commission must be notified in advance of staff changes and reserves the right to refuse them. The Contractor agrees to organise these changes at no extra cost for the Commission and to provide for a transition period necessary for the outgoing staff to duly instruct and train the incoming staff.

## **7.6. TIMETABLE**

- 7.6.1. The timetable for the performance of the *Informatics Services* shall be laid down in each Specific Contract.
- 7.6.2. The Contractor shall propose a full and detailed timetable for *Software* development or related tasks. If such a timetable cannot be prepared for projects of longer duration, the Parties shall first fix a provisional timetable. The final timetable shall be fixed at a date stated in the Specific Contract.
- 7.6.3. The time needed by the Contractor to install and prepare *Software* or a *System* for operation shall be stated in the Specific Contract. If no time is specified, the period shall be fifteen (15) calendar days.

## **8. SPECIFIC PROVISIONS RELATING TO DEVELOPMENT AND MAINTENANCE OF COMMISSIONED SOFTWARE**

### **8.1. COMPLIANCE WITH TECHNICAL SPECIFICATIONS**

When providing *Services* of development or maintenance of *Commissioned software* to the Commission, the Contractor undertakes, in addition to the general quality requirements as specified in the Framework contract, to observe inter alia the latest version of the Commission's document "Informatics Architecture".

Except where expressly stated, the present Article III.8 shall also apply to the development and maintenance of a *System* commissioned by the Commission.

### **8.2. ACCEPTANCE**

8.2.1. The *Commissioned software* shall be developed in accordance with its specifications as agreed upon under the Specific Contract, and the maintenance *Services* shall be provided in accordance with the conditions specified in the Specific Contract.

8.2.2. Delivery of the *Commissioned software*, or as the case may be, its different versions, shall be recorded in a *Consignment note* in accordance with Article II.1.1, presented by the Contractor for signature by the Commission.

8.2.3. Acceptance period

The acceptance period will run up to a maximum of seventy-five (75) *Normal working days* from the day of signature of the *Consignment note*. During this acceptance period, the Commission shall notify any defaults in the *Commissioned software* to the Contractor by a *Means of registered communication*. As from the date of such notification, the running of the acceptance period will be suspended up to the date on which the Contractor notifies by a *Means of registered communication* that it has remedied the notified default, which date will reinstate the acceptance period for the rest of the seventy-five (75) *Normal working days* period, with a guaranteed minimum period of twenty-five (25) *Normal working days* after the last notification by the Contractor that it has remedied a default.

#### 8.2.4. The *Certificate of Conformity*

Upon the expiry of the acceptance period, acceptance of the *Commissioned software* will be recorded in a *Certificate of Conformity*, as stated in Article II.1.1 of the General Conditions, which shall indicate inter alia any reservations the Commission may have regarding the *Commissioned software*. If no *Certificate of Conformity* has been issued at the end of the acceptance period and, if no notification of faulty operation is pending, the Commission is considered as having accepted the *Software*.

#### 8.2.5. If, after three (3) attempts at acceptance, the *Commissioned software* still fails to meet the terms of the Framework contract, the Commission shall have the following options:

- (1) to require the Contractor to supply, without charge, a replacement or additional set of *Software*;
- (2) to accept and retain part of the *Commissioned software*, at a reduced price agreed between the Commission and the Contractor;
- (3) to refuse the *Commissioned software* and cancel the Framework contract or Specific Contract on reimbursement of any sums unduly paid.



8.2.6. The *Certificates of conformity* shall be annexed to the corresponding Specific Contract.

### **8.3. GUARANTEE OF PROPER OPERATION OF *COMMISSIONED SOFTWARE***

8.3.1. Except in the case of hidden defects, for which its liability shall be of unlimited duration, the Contractor shall guarantee the proper operation of *Commissioned software* in conformity with Article II.1.2 of the General Conditions. It shall be held responsible for the immediate repair, at its own expense, of any breakdowns that occur during the guarantee period, unless it can prove that such breakdowns have occurred for reasons other than mistakes made in performance of the service, or other than manufacturing or design errors in that portion of the work for which it was responsible.

8.3.2. The Commission shall notify by a *Means of communication* the Contractor of the type and scale of any failure as soon as it occurs. If the Contractor does not repair the *Commissioned software* without delay, the Commission may have it repaired by a third party, on the responsibility and at the own and sole expense of the Contractor.

8.3.3. The Parties shall jointly define and duly record in minutes the major problems that might affect the *Commissioned software*.

8.3.4. The duration of the guarantee shall be extended by the period which elapses between the notification of a major problem to the Contractor duly sent by the Commission during the stated guarantee period and the date at which the Commission accepts the corrected work.

### **8.4. INTELLECTUAL PROPERTY RIGHTS AND OWNERSHIP OF SOURCE CODE**

8.4.1. Pursuant to the relevant article of the General Conditions, the Contractor hereby assigns to the Commission, which accepts, all *Intellectual property rights* on the *Commissioned software*, for the entire world, for the entire duration of the *Intellectual property rights* involved, and on an exclusive and definite manner.

8.4.2. The Commission shall become the owner of source code, results, *Documentation* and sets of tests that correspond to payments already made, except when the same relate to pre-existing *Software*. Further to Article III.2.3.4 of the General Terms and Conditions, the use of pre-existing *Software* shall be subject to the Commission's prior written consent.

8.4.3. The Commission shall have the right to disseminate and distribute a *Commissioned software* to third Parties, even if it contains pre-existing *Software*, subject to observance of any licence terms in respect of third party *Software*.

### **8.5. USER MANUALS AND *DOCUMENTATION***

8.5.1. The Contractor shall prepare the manuals and *Documentation* needed for the appropriate and proper operation of the *Commissioned software* and shall

make them available to the Commission. It shall comply with the provisions under Article III.10 in preparing such manuals and Documentation.

8.5.2. The material shall as a rule comprise:

- (1) an installation manual;
- (2) a “Getting Started” manual;
- (3) an administration manual;
- (4) a user manual;
- (5) implementation *Documentation*.

8.5.3. The manuals and the *Documentation* shall be in the file format of a word processing *Software* used by the Commission and prepared so that they may be published on the Commission's intranet.

8.5.4. The user manuals and the *Documentation* shall be supplied in at least English and French, unless otherwise agreed.

8.5.5. The Contractor shall update and, if necessary, replace at a reasonable cost the user manuals and *Documentation* files for the maximum length of the Framework contract.

## **8.6. INTERFACES AND *COMPATIBILITY***

8.6.1. Where the Specific Contract mentions interfaces that need to be observed, the Contractor shall not modify such interfaces without the Commission's written agreement. Such agreement shall not be unreasonably withheld.

8.6.2. Where the *Commissioned software* supplied utilises *Software* from a third party and where that *Software* is updated, the Contractor shall adapt the *Commissioned software* in accordance with terms jointly agreed.

8.6.3. The Contractor shall ensure that all the *Commissioned software* supplied under the Framework contract is compatible and operates by means of interfaces with all other *Software* specified in the Framework contract.

## **9. SPECIFIC PROVISIONS RELATING TO TRAINING ORGANISED FOR THE COMMISSION**

### **9.1. INSTRUCTORS**

Instructors shall be proposed to the Commission on the basis of their professional experience and their ability to provide the *Services*. Instructors accepted shall appear on the Commission's authorised list. The Commission must be notified in advance of staff changes and reserves the right to refuse them.

### **9.2. ORGANISATION OF COURSES**

9.2.1. The Parties shall draw up a schedule of courses and preparatory measures for a period of several months, normally six (6) months. The schedule shall outline the content of the courses and measures their duration, the dates on which they are to take place, the intended instructors, the number of participants, and the cost.

9.2.2. The Parties shall make a final decision on all the data no later than four (4) weeks prior to the date on which training is to take place. The Contractor shall then specify, at the latest, the timetables for the courses and undertakes to adhere to it. If the schedule is disrupted by one or other party, that party shall endeavour to find an equivalent solution.

9.2.3. When an instructor is not available, a course may be cancelled or postponed no later than ten working days prior to its commencement. If three courses have been cancelled or postponed without meeting these conditions, the Commission shall be entitled to terminate the Framework contract pursuant to the provisions under Article II.12.

### **9.3. INSTRUCTOR'S MANUAL**

The Contractor shall comply with the Commission's standard practice as regards:

- (1) the preparation and holding of courses;
- (2) administrative regulations;
- (3) health and safety regulations.

**9.4. PROVISION OF TRAINING SOFTWARE**

9.4.1. Training *Software* that has been developed specifically for the Commission shall be owned in full by the Commission.

9.4.2. The provision of training software shall be covered by a site licence, whose terms shall be consistent with the nature and subject of the training.

**10. SPECIFIC PROVISIONS RELATING TO DOCUMENTATION PRODUCED FOR THE COMMISSION**

10.1.1. The *Intellectual property rights* in the *Documentation* that has been developed specifically for the Commission shall rest exclusively with the Commission.

10.1.2. The provision of reference *Documentation* shall be covered by a site licence, the terms of which shall be consistent with the nature and subject of the *Documentation*.

## **ANNEX I: CENTRAL SERVICE DESK ACTION PROCEDURE**

The Commission's Central Service Desk (SDC) also known as Central Call Dispatch, is responsible for handling and dispatching all service requests relating to office equipment and computers and telecommunications services. The SDC does not itself resolve problems: it is a central point for their receipt, registration and onward transmission to the appropriate internal or external support unit. It is also responsible for monitoring and follow-up of the service supplied.

The term *Service requests* covers both request for assistance and requests for corrective action: requests of the latter kind are denominated *incidents*. An incident may later be re-classified as a *problem*, indicating that resolution requires some long-term action (e.g. a *Software* bug or hardware design problem) or as a *known error*, meaning that a solution is available and awaiting implementation by agreement.

- (1) Requests shall be notified by the SDC to the Contractor's Service Desk (CSD) by telephone or any other agreed means immediately after assignment of the request.
- (2) The SDC always confirms in writing each request addressed to the CSD, giving all relevant details.
- (3) The CSD shall confirm receipt of a request to the SDC by returning its own reference number.
- (4) Each telephone communication between the SDC and the CSD shall be confirmed immediately by fax, email or, where the CSD has access, by direct entry into the Commission's SDC database.
- (5) The CSD shall deal only with requests that have been sent by the SDC. The Contractor shall immediately provide to the SDC full details of any request received from any other source within the Commission.
- (6) Each action on a request shall be notified to the SDC. A report shall be sent immediately by the CSD indicating the action's nature, starting date and time and probable duration. If the request has not been resolved, the reasons shall be given, along with an estimated date and time for resolution.
- (7) Should an action require contact within a DG and the responsible person at the DG be unavailable, the Contractor shall report this to the SDC as soon as possible.
- (8) Completion of a request that has been satisfied shall be notified as soon as possible by the CSD to the SDC. Mention shall be made of the cause, the date and time the action started, its duration in minutes, and any other relevant details. The Contractor shall be responsible for the accuracy of the information he supplies. The reporting user shall be notified immediately by the person carrying out the action.
- (9) The resolution time given by the Contractor shall be accepted by the SDC if it is no more than 24 hours prior to receipt of the complete closure by fax or email. Otherwise its arrival time at the SDC will be taken as resolution time.

- (10) A request shall be closed by the SDC if the DG concerned explicitly accepts the results of the action. If it does not, the request shall remain open for one week. If the DG does not indicate its rejection during this period, the request shall automatically be closed definitively.
- (11) Where a Framework contract defines service quality requirements for incident handling and/or service requests performance, the Contractor's performance with respect to these requirements shall be calculated on the basis of the information recorded in the Commission's SDC database.

Unless otherwise specified in the Framework contract, quality requirements shall in general be based on two elements: 'response time' and 'resolution time'

Response time shall be defined as the period between:

- the time of assignment of a service request by the SDC to the CSD, and
- the commencement of the diagnostic or repair work by the Contractor's qualified representative at the location indicated in the report or, if attendance at the incident location is not required, the commencement of by telephone or other agreed means.

Resolution time shall be defined as the time between:

- the time of assignment of a service request by the SDC to the CSD, and the notification of completion of the action to the SDC (see paragraphs 8 and 9 above), or the re-classification or re-assignment of the incident.
- repeated incidents of the same type applying to the same item over a short period may be cumulated for purposes of calculating the resolution time.

The clock stops running:

- outside the defined hours of cover
- if access to the contact person or equipment cannot be effected. In this case the SDC shall be notified immediately and the grounds for the delay explained
- if by agreement with the reporting user, an appointment is made for the beginning of the action. The clock shall restart at the time of the appointment.

- (12) On request, the Contractor shall be sent a daily or weekly summary of all open requests by the SDC.

## **ANNEX II: TEMPLATE OF DECLARATION OF CONFIDENTIALITY**



EUROPEAN COMMISSION

### **DECLARATION OF CONFIDENTIALITY**

The Commission and the Contractor

having signed a Framework contract, number \_\_\_\_\_ on ...

and a Specific Contract, number \_\_\_\_\_ on ...

For carrying out work governed by these agreements I, the undersigned, declare that I have read and shall comply with the security and confidentiality rules laid down in:

- Articles I.10 of the Special Conditions, II.8 of the General Conditions and III.2.2 of the General terms and conditions for Information Technologies contracts
- Article 5 of the Commission decision on protection of information systems [C(2006)3602 16/08/2006]
- Article 23 of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Union institutions and bodies and on the free movement of such data (OJ L8, 12.1.2001, p. 1).

Date and place:

*[signature]*

NAME

**ANNEX III: Commission decision on protection of information Systems**  
**[C(2006)3602 16/08/2006]**

**COMMISSION DECISION**  
**of 16 August 2006 C( 2006 ) 3602**  
**concerning the security of information systems used by the European Commission**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 218(2) thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 131 thereof,

Having regard to the Treaty on European Union, and in particular Articles 28(1) and 41(1) thereof,

Whereas:

- (1) Information systems play an essential role in the compilation, input, processing, storage and distribution of information.
- (2) Information systems can be open to accidental and wilful, tangible and intangible threats.
- (3) There ought to be a frame of reference to allow the definition of common principles, procedures, priorities and responsibilities, and a framework for the expression of security needs, so that each information system can be protected in a way appropriate to the actual degree of risk to which it is exposed.
- (4) The security of information systems must include measures relating to technical and physical security, procedural measures and organisational measures.
- (5) The generally horizontal nature of information systems means that security measures involve, at various levels, a number of departments, including the Commission's horizontal departments.
- (6) The management and implementation of measures aimed at ensuring the security of information systems are the responsibility of each Directorate-General and department, and of each body using the Commission's information systems.
- (7) The Commission has particular responsibility for, on the one hand, protecting the information and information systems held by its Directorates-General and, on the other, for fulfilling its obligation to provide information to the other Institutions, to the Member States, to citizens and to its numerous partners.
- (8) There should be uniform rules to ensure that all of the Commission's information systems are equally protected against threats, regardless of the Directorate-General or department that holds them and independent of the place of work where they are located.



- (9) With regard to the systems management of the security of information systems, the Commission may apply internationally recognised standards such as the ISO/IEC 27001 standard. The Commission may also take into account the results of research it carries out direct or funds under its framework programmes for research and development, and also work carried out by the European Network and Security Information Agency established by Regulation (EC) No 460/2004 of the European Parliament and of the Council<sup>6</sup>.
- (10) Management of risks linked to the security of information systems is complementary to the management of risks linked to the Commission's internal control systems and procedures. It also complements the specific risk management procedure made up of impact and ex ante assessments of the Commission's legislative proposals and main programmes which have an impact on the budget<sup>7</sup>.
- (11) This Decision applies without prejudice to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents<sup>8</sup>, Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>9</sup>, and Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications)<sup>10</sup>.
- (12) Section 25 of the Commission's provisions on security, annexed to Decision 2001/844/EC, ECSC, Euratom<sup>11</sup>, contains rules relating to the security of information systems, particularly those relating to EU classified information. These rules must be extended to cover all information systems so as to protect the integrity, availability and confidentiality of these systems and the information they process.
- (13) It is necessary to update Decision No C(95) 1510 on the security of information systems in the light of technological developments and changes in the Commission's organisation. For the sake of clarity, it should be replaced by this Decision,

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<sup>6</sup> OJ L 77, 13.3.2004, p. 1.

<sup>7</sup> SEC (2005) 1327/4 of 25 October 2005: "Communication to the Commission of Ms Grybauskaitė in agreement with the President and Vice-President Kallas - Towards an effective and coherent risk management in the Commission services"

<sup>8</sup> OJ L 145, 31.5.2001, p. 43.

<sup>9</sup> OJ L 8, 12.1.2001, p. 1.

<sup>10</sup> OJ L 201, 31.7.2002, p. 37.

<sup>11</sup> OJ L 317, 3.12.2001, p. 1.

## HAS DECIDED AS FOLLOWS:

*Article 1**Subject matter*

1. This Decision provides for security measures for the protection of the Commission's information systems and the information processed therein against threats to the availability, integrity and confidentiality of these systems and information.
2. The measures taken may be technical, physical, procedural or organisational. They must serve to diminish the likelihood of threats, to diminish their impact when they do materialise, to identify all security incidents as quickly as possible and to restore the situation to normal within the required time limit.
3. They must be proportionate to the danger in terms of costs and functional or technical restrictions.

*Article 2**Scope*

The security measures provided for by this Decision shall apply to the Commission's information systems and concern all of its Directorates-General and departments in all places of work, including the Joint Research Centre and the delegations in third countries, offices linked administratively to the Commission<sup>12</sup> and all Executive Agencies or other bodies using the Commission's information systems. They shall also apply to any form of teleworking. They shall be applicable to officials and other servants of the Communities, persons under contract to the Commission and subcontractors who have access to and use the Commission's information systems.

*Article 3**Definitions*

For the purposes of this Decision the following definition shall apply:

- 1) "Information" means data in a form that allows it to be communicated, recorded or processed.
- 2) "EU classified information" means all information classified EU RESTRICTED, EU CONFIDENTIAL, EU SECRET or EU TOP SECRET under point 4.2a of the provisions on security annexed to Decision 2001/844/EC, ECSC, Euratom.

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<sup>12</sup> OLAF, EPSO, OPOCE, OIL, OIB and PMO.

- 3) “Information system” means a set of equipment, methods and procedures, and where relevant also persons, personnel, organised to perform information processing functions.
- 4) “Threat” means a potential for the accidental or deliberate compromise of security involving loss of one or more of the properties of confidentiality, integrity and availability of information systems or the information contained therein.
- 5) “Vulnerability” means a weakness or lack of safeguards that might facilitate or permit the materialisation of a threat to an information system or the information contained therein.
- 6) “Risk” means the degree of danger that a threat might materialise if one or more vulnerabilities in an information system were to be exploited.
- 7) “Availability” means the capacity of an information system to perform a task under defined conditions as regards schedules, deadlines and performance.
- 8) “Integrity” means the guarantee that the information system and processed information can be altered only by deliberate and legitimate action and that the system will produce the expected result accurately and in full.
- 9) “Confidentiality” means the reserved character of information or of all or part of an information system (such as algorithms, programmes and documentation) to which access is limited to authorised persons, bodies and procedures.
- 10) “Non-repudiation” means the possibility of determining with certainty that an action or event is attributable to a process or person.
- 11) “Security need” means a precise and unambiguous definition of the levels of confidentiality, integrity and availability associated with a piece of information or an information system with a view to determining the level of protection required.
- 12) “Security requirement” means the specifications in terms of functions or level of assurance relating to the security measures to be implemented in an information system to ensure that it meets the security needs.
- 13) “Information systems security policy” means the current provisions governing information security and their detailed implementing rules.
- 14) “Security plan” means a document describing the measures required to meet the security requirements of an information system.
- 15) “Security incident” means an event identified as having a prejudicial effect on the security of an information system.
- 16) “Personal data” means personal data as defined in Article 2(a) of Regulation (EC) No 45/2001.
- 17) “Processing of personal data” means the processing of personal data as defined in Article 2(b) of Regulation (EC) No 45/2001.
- 17) “User” means any person to whom this Decision applies.

- 18) “Directorate-General” means any Directorate-General or departments or any other administrative body to which Article 2 refers.
- 19) “Data owner” means any user who as owner of the information ensures the consistency and validity of the data.
- 20) “System security officer” (SSO) means an officer designated by the information system owner to advise the owner on the security of the information system.

#### *Article 4*

##### *Compliance of users with the information systems security policy*

1. The Directorates-General shall take the necessary steps, with the aid of the Security Directorate, to ensure that their staff, including subcontractors and contractors, are made aware of the information systems security policy.
2. Each new user must be informed of the information systems security policy.
3. By accessing the Commission’s IT resources for the first time users are deemed to undertake to comply with the information systems security policy.
4. Use of the Commission’s information systems in breach of the information systems security policy or for illegal purposes may give rise to disciplinary proceedings.
5. The rules on use and access by users are described in Annex III.

#### *Article 5*

##### *Protection of personal data*

1. The information systems security policy must guarantee a high level of protection of personal data and the processing thereof in accordance with Regulation (EC) No 45/2001, particularly Articles 21 to 23 and 35 to 37.

#### *Article 6*

##### *Use of encrypting technologies*

1. The use of encrypting technologies by Directorates-General must be approved in advance by the Security Directorate.
2. Directorates-General shall put in place means of recovering stored data where the necessary decryption key is not available.
3. Where need is duly established, the recovery of encrypted data shall be carried out by officials of the Security Directorate with the authorisation of its Director or by the Local Information Security Officer (LISO), following procedures that protect classified information and personal data.

*Article 7**Security incidents*

1. When a security incident covered by this Decision is detected in a Directorate-General, the Local Information Security Officer (LISO) shall be informed. LISOs shall at once inform their superiors and the Security Directorate.
2. Solely for the purposes of verifying and investigating security incidents in information systems in order to determine their causes, impact and remedies, the Director of the Security Directorate shall authorise officials of the Directorate to access all necessary information, where necessary using the appropriate means and in proportion to the seriousness of the event, after obtaining the specific agreement of the Director-General of the Directorate-General for Personnel and Administration, and after consulting the Data Protection Officer. Access to classified information shall be given in accordance with the rules governing such information.

*Article 8**Security needs of information and information systems*

1. The security needs of the information systems and the information processed therein shall be expressed in terms of their level of confidentiality, integrity and availability. The security requirements shall be determined on the basis of these needs.
2. The levels of confidentiality, integrity and availability are defined in Annex I.

*Article 9**Responsibilities and organisation*

1. Responsibility for the security of information systems shall lie with different parties, particularly the following:
  - a) the Directorate-General for Informatics, in respect of its management and coordination of IT and telecommunications technology intended for the use of the other Directorates-General;
  - b) the Security Directorate, in respect of the drawing up and updating of the detailed rules for implementing this Decision, in respect of support and monitoring of the implementation of the information systems security policy, and in respect of advice given to other Directorates-General and departments;
  - c) all Directorates-General and departments, in respect of the implementation of security measures for the information systems for which they are responsible.
2. The responsibilities of the different parties for the security of information systems and the organisation to be put in place at the Commission are defined in Annex II.

*Article 10**Detailed implementing rules*

1. The detailed rules for implementing this Decision shall be decided and updated by the Director-General of the Directorate-General for Personnel and Administration, acting on proposals from the Security Directorate, after consulting the Directorates-General in accordance with Article 23 of the Commission's Rules of Procedure, and after informing the European Data Protection Supervisor in accordance with Article 28(1) of Regulation (EC) No 45/2001.
2. The drafting and updating of the detailed implementing rules shall take account of the following:
  - a) new obligations by which the Commission may be bound,
  - b) developments in IT and electronic communications technology, particularly the results of research work carried out or financed by the Commission,
  - c) the experience accumulated in the application of the information systems security policy,
  - d) specific situations in Directorates-General and departments such as the European Anti-Fraud Office, delegations, representations and external offices,
  - e) internationally recognised norms and standards applicable in the field of information systems security,
  - f) work carried out by the European Network and Information Security Agency.
3. The detailed implementing rules may be supplemented by measures of a technical, physical, procedural or organisational nature adopted by the Director-General of the Directorate-General for Personnel and Administration in consultation with departments having a legitimate interest.

*Article 11**Transitional provisions*

1. Any new information system must from the design stage take account of the information systems security policy.
2. The information systems security policy shall be incorporated into operational information systems within a time limit agreed jointly by the Directorate-General concerned and the Security Directorate.

*Article 12**Repeal*

Decision C (95) 1510 of 23 November 1995 is hereby  
repealed. Done at Brussels, 16 August 2006

*For the Commission Member of  
the Commission*

**ANNEX I****Confidentiality, integrity and availability****A. IDENTIFICATION OF THE LEVEL OF CONFIDENTIALITY OF INFORMATION AND INFORMATION SYSTEMS**

1. Without prejudice to the gradings provided for by the provisions on security, information systems and the information processed therein shall be protected to ensure that only authorised persons or those with a need to know may access them or receive information from them.
2. In order to define appropriate security measures, information systems and the information processed therein shall be identified according to their level of confidentiality on the basis of the likely consequences that unauthorised disclosure might have for the interests of the Commission, the other Institutions, the Member States or other parties.
3. The levels referred to in point 2 are as follows:
  - “PUBLIC”: information system or information whose public disclosure would not damage the interests of the Commission, the other Institutions, the Member States or other parties;
  - “LIMITED”: information system or information reserved for a limited number of persons on a need to know basis and whose disclosure to unauthorised persons would be prejudicial to the Commission, other Institutions, Member States or other parties, but not to an extent serious enough to merit classification as laid down in paragraph 16.1 of the provisions on security. An additional marking may be attached for information at this level of security identifying the categories of persons or bodies who are the recipients of the information or authorised to access it.

**B. IDENTIFICATION OF THE LEVELS OF INTEGRITY AND AVAILABILITY OF INFORMATION AND INFORMATION SYSTEMS**

1. Information systems and the information processed therein shall also be identified according to their level of integrity and availability on the basis of the likely consequences that a loss of integrity or availability might have for the interests of the Commission, other Institutions, Member States or other parties.
2. The levels referred to in point 1 are as follows:
  - “MODERATE” shall apply to information or information systems the loss of whose integrity or availability might threaten the internal working of the Commission; cases would include the non-application of the Commission’s Rules of Procedure without any outside impact or with limited outside impact, a threat to the achievement of the objectives of an action plan, or the appearance of significant organisational and operational problems within the Commission without any outside impact;
  - “CRITICAL” shall apply to information or information systems the loss of



whose integrity or availability might threaten the position of the Commission with regard to other Institutions, Member States or other parties; cases would include damage to the image of the Commission or of other Institutions in the eyes of the Member States or the public, a very serious prejudice to legal or natural persons, a budget overrun or a substantial financial loss with very serious adverse consequences for the Commission's finances;

- “STRATEGIC” shall apply to information or information systems the loss of whose integrity or availability would be unacceptable to the Commission, to other Institutions, to Member States to other parties because it might, for example, lead to the halting of the Commission's decision-making process, an adverse effect on important negotiations involving catastrophic political damage or financial losses, or the undermining of the Treaties or their application.

### **C. SECURITY REQUIREMENTS OF INFORMATION SYSTEMS**

1. The security requirements of information systems shall be determined on the basis of their security needs and the security needs of the information they process. The rules and recommendations governing such determination shall be defined in the detailed implementing rules.
2. For inventory and reporting purposes, information systems shall be classified in terms of their security requirements as defined in the preceding paragraph as follows:
  - “STANDARD”: where the security requirements are met by the security measures provided by the basic infrastructure of the Commission’s information systems, which infrastructure shall be defined in the detailed implementing rules;
  - “SPECIFIC”: where the security requirements make it necessary for measures to be put in place that complement or replace the security measures provided by the infrastructure of the Commission’s information systems.
3. Accreditation of information systems processing classified information shall be governed by Section 25 of the provisions on security annexed to Decision No 2001/844/EC, ECSC, Euratom.

**ANNEX II****Responsibilities of the different parties for the security of information systems****A. THE DIRECTORATES-GENERAL**

1. Les directions générales sont responsables de la mise en œuvre de la politique de sécurité des systèmes d'information pour les systèmes d'information qui sont sous leur responsabilité. Elles sont responsables des activités liées à la gestion de cette mise en œuvre.
2. The Directorates-General shall draw up, implement and manage the security plans for their information systems. These plans shall be recorded in a register.
3. They shall define and plan guidelines, human resources, budgetary resources and IT resources for the activities associated with their responsibilities for the security of information systems.
4. The Directorates-General may delegate all or part of the implementation and management of their security plans to horizontal departments such as the Directorate- General for Informatics. In such cases, the Directorates-General shall ensure that the department in question applies the necessary security measures. In order to record the terms of the delegation, a Service Level Agreement shall be drawn up between the parties defining in particular measures for monitoring implementation.
5. The Directorates-General shall inform in good time the Directorate-General for Informatics, the Local Informatics Security Officers, the Local Informatics Security Officers of the other Directorates-General and the Security Directorate of any alteration to the architecture of their systems that is likely to affect information systems that are not under their responsibility.
6. They shall periodically carry out a review of the security requirements of their information systems on the basis of security needs.
7. They shall draw up, implement and develop the relevant measures for their information systems in accordance with their security requirements in order to give them appropriate protection.
8. They shall establish, maintain and test contingency and back-up plans tailored to security needs.
9. They shall ensure that the obligation to comply with the Commission's information systems security policy is clearly mentioned in each contract they conclude with contractors.

**B. LOCAL INFORMATICS SECURITY OFFICERS (LISOs)**

1. Each Director-General or Head of Service shall appoint at least one Local Informatics Security Officer (LISO). LISOs should not be members of the IRM team and should report directly to the Director-General, Head of Service or Director of

Resources. There shall consequently be no hierarchical link between LISOs and the Security Directorate.

2. LISOs must be sufficiently available, have appropriate experience in the security of information systems and have the management skills necessary to carry out their role efficiently.
3. Within their Directorate-General, LISOs
  - shall oversee the development of the security plans approved by the Director-General and monitor their implementation,
  - shall contribute to the dissemination of the information systems security policy within their Directorate-General by proposing specific awareness-raising and training programmes,
  - shall ensure that an inventory of all information systems is kept and updated, with a description of the security needs and a grading of the requirements,
  - shall advise and report to their superiors, the system owners, IT service providers and project leaders on information systems security matters,
  - shall ensure that IT service providers and system suppliers put in place in the information infrastructures or systems the security measures required under security plans.
  - shall collaborate with the Local Security Officer (LSO) defined in the provisions on security annexed to Decision No 2001/844/EC, ECSC, Euratom,
  - shall collaborate with the Data Protection Coordinator (DPC) defined in SEC (2002) 1043,
  - shall be the main contacts of the Security Directorate concerning the security of information systems and take part in this capacity in meetings organised by it.
4. Without prejudice to the provisions on security annexed to Decision No 2001/844/EC, ECSC, Euratom, LISOs may take part in the checks carried out whenever a security incident occurs that may threaten one or several information systems used by their Directorate-General in order to determine its causes and impact and to identify containing and corrective measures.

### **C. SYSTEM OWNERS**

1. System owners shall bear responsibility for the security of their information system. They shall define the security needs of the information system and the information processed therein. To this end, they shall take note of the needs expressed by data owners and users.
2. In matters of information systems security, they shall consult the Local Informatics Security Officer of their Directorate-General or the Systems Security Officer (SSO) that they may have appointed for this purpose.

3. They shall approve the identification of the security requirements and security measures.
4. They shall request accreditation from the Security Accreditation Authority (SAA) for any information system that requires accreditation in order to apply the provisions on security<sup>13</sup>. They shall ensure that their information system complies with the decisions of the Security Accreditation Authority.

**C.A DATA OWNERS**

5. Data owners shall ensure the consistency and validity of the information in the local domain in which the information system is used. They shall define the security needs of the data for which they are responsible and inform system owners of these needs.

**C.B SYSTEM SECURITY OFFICERS (SSOs)**

6. They shall ensure that the security of the system is consistent with the principles of this Decision and implement the necessary security policies in this respect.
7. They shall coordinate their activities with those of the LISOs.
8. They shall elaborate the definition, implementation and verification of the security needs of the system for which they are responsible.
9. They shall report to the information system owner on all security matters.

**D. PROJECT LEADERS**

1. Project leaders shall bear responsibility for the installation and hand-over of the information system to the system owner. They shall specify the security requirements on the basis of the security needs defined by the latter, in the light of a risk assessment if necessary. They shall define the architecture, apply the Commission's ordinary security measures and define and implement specific security measures. They shall ensure that those measures are put in place in the information system or in the infrastructures that support it, whether local or centralised.
2. They shall cooperate with the INFOSEC, Crypto and TEMPEST authorities defined in the provisions on security annexed to Decision 2001/844/EC, ECSC, Euratom in the drafting of the documents required for the accreditation procedure and the compliance of the system with the decisions of the Security Accreditation Authority.
3. They shall ensure that the design, installation and implementation of the project are in accordance with the security requirements of the information system and the information systems security policy.

**E. SYSTEM SUPPLIERS**

1. System suppliers shall construct and ensure the maintenance and development of the

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<sup>13</sup> Accreditation is defined in point 25.2 of the provisions on security annexed to Decision 2001/844/EC, ECSC, Euratom.

information system in accordance with the security requirements drawn up by the project leader and approved by the system owner.

2. They shall define the technical architecture in collaboration with the Directorate-General for Informatics, and draw up technical specifications for the implementation of the security requirements as defined by the project leader.
3. They shall provide operating manuals and instructions.

**F. SYSTEM MANAGERS**

1. System managers shall manage the operation of the information system on behalf of the system owner. They may manage the specific security measures direct, or subcontract their management to IT service providers. In the latter case, they shall conclude a Service Level Agreement with the IT service providers to ensure that the security measures for which they are responsible are implemented.
2. They shall ensure that the information necessary to meet the need for nonrepudiation and to monitor the proper performance of the Service Level Agreement are preserved and accessible.

**G. IT SERVICE PROVIDERS**

1. IT service providers shall provide system owners with a range of structured and managed IT resources such as electronic communications networks, equipment and software.
2. The functions of IT service providers shall be carried out in particular by units at the Directorate-General for Informatics, some Commission departments, information resource managers (IRMs) or by subcontracted external services.
3. IT service providers shall be responsible for the security management of the resources they provide.
4. They shall implement the security measures specified in Service Level Agreements concluded with system managers, the security plans and the agreements reached with other service providers.
5. They shall keep an exhaustive inventory of the IT resources they manage. For each such resource the inventory must state the security requirements that are to be met.
6. They shall inform the relevant system managers and LISOs of any security incidents that occur.
7. They shall implement the necessary containment and corrective security measures when a security incident occurs, in collaboration with the Security Directorate and the LISO.
8. They shall maintain the level of security of their IT resources by applying the information systems security policy.
9. They shall evaluate the impact on security of changes made to IT resources. They

shall inform the relevant LISOs of changes to the level of security. They shall also inform the Commission's IT community and the Security Directorate if the change is likely to have an impact on Commission information systems that are outside their control.

10. They shall ensure that any new software or equipment to be installed is safe for the information systems and information processed therein.
11. They shall monitor the availability of IT resources.
12. They shall put in place contingency and back-up plans for the IT resources they manage.
13. They shall install, or cause to be installed, physical security measures to protect the equipment for which they are responsible, the choice of measure being based on the security requirements that the equipment must meet.
14. They shall ensure that the information necessary to meet the need for nonrepudiation is preserved and accessible.
15. They may appoint a security manager, whose task shall be to coordinate activities associated with the operational management of the security of the services provided.

#### **H. LOCAL INFORMATION RESOURCE MANAGERS (IRMs)**

1. Local information resource managers (IRMs) shall be responsible for the provision of IT resources in their Directorate-General. They may also carry out certain of the security functions mentioned in this Annex, depending on the Directorate-General in question. In general, they shall be the IT service provider for their Directorate-General as regards local resources and their staff shall manage the security of those resources accordingly.

#### **I. THE SECURITY DIRECTORATE**

2. The Security Directorate shall be responsible for coordinating all activities relating to the implementation of this Decision. It shall ensure that the activities are consistent and that this Decision is implemented in accordance with the provisions on security.
3. It shall draw up in collaboration with the LISOs the detailed implementing rules for this Decision, to be adopted in accordance with the procedure indicated in Article 10.
4. In accordance with the provisions on security, it shall act as the Security Accreditation Authority (SAA), the INFOSEC Authority (IA), the Crypto Authority (CrA) and the TEMPEST Authority (TA).
5. It shall organise training, awareness-raising and support activities in cooperation with the units in charge of general and IT training at the Commission in order to ensure the implementation and application of this Decision.
6. It shall ensure that the information systems security policy is taken into account when the Directorate-General for Informatics and the other Directorates-General draw up IT strategy.

7. It shall advise and assist Directorates-General in the implementation of the information systems security policy and during the drawing up, implementation and monitoring of the security plans.
8. It may ensure that the security plans comply with the information systems security policy.
9. It shall advise and assist system owners and project leaders during the drafting of the documents necessary for accreditation and during the process of bringing information systems into line with the decisions taken by the Security Accreditation Authority.
10. It shall maintain close cooperation with LISOs. It shall assist and support them in the performance of their tasks. It shall organise a meeting with them at least once a year.
11. It shall maintain cooperation with the national security authorities of the Member States and with the security authorities of the other European Institutions concerning the implementation of this Decision.
12. For invitations to tender, the Security Directorate may take part, either at its own request or at the request of the Directorate-General, in the drawing up of technical specifications and selection and award criteria with regard to the security of information systems.
13. It shall monitor the implementation of the information systems security policy. It shall report on the question to the competent authorities at the Commission. In the event of serious infringements, it shall notify the matter as soon as possible to those authorities and, where appropriate, to the Member of the Commission responsible for security matters.
14. Its authorisation shall be required for the connection of electronic communications networks to the Commission's private electronic communication networks.

#### **I. THE DIRECTORATE-GENERAL FOR INFORMATICS**

1. The rules and responsibilities laid down for the Directorates-General shall apply mutatis mutandis to the Directorate-General for Informatics.
2. The Directorate-General for Informatics shall set up and maintain an IT infrastructure, including a methodology and dedicated resources for the development of information systems, in accordance with the information systems security policy.
3. It shall ensure the security of the Commission's private electronic communications network and provide secure connections to the network for the Commission's external sites, contractors and all authorised partners, in cooperation with the Directorates-General concerned.
4. It shall make available architecture, reference configurations and IT software and equipment satisfying the needs of the implementation of the security policy.
5. It shall draw up and implement within the Commission a programme of measures to prevent the exploitation of vulnerabilities in systems, such as measures to combat malicious code. It shall set up corrective measures to prevent the exploitation of

vulnerabilities in the software and equipment for which it provides central support.

6. It shall manage the general security mechanisms, such as firewalls, intrusion detection programs, antivirus programs and authentication systems.
7. It shall manage security incidents in cooperation with the Security Directorate.
8. In cooperation with the Security Directorate, the Directorate-General shall keep abreast of the latest technological developments as regards security for all the IT software and equipment for which it provides central support.
9. It may delegate certain tasks and responsibilities to other departments. In such cases, a Service Level Agreement shall be concluded between the Directorate-General for Informatics, the Directorate-General concerned and the Security Directorate in order to define the conditions of the delegation, particularly in terms of the connection of electronic communications networks.



**ANNEX III****Rules on the use of and access to the Commission's information systems****A. GENERAL RULES**

1. Users shall comply with the information systems security policy and the security plans applicable to them in carrying out their duties.
2. Without prejudice to other obligations resulting from provisions that may apply to them, users shall seek to ensure that the information and IT resources placed at their disposal by the Commission are protected.
3. These rules shall also apply to teleworking.

**B. SPECIFIC RULES**

1. Without prejudice to Article 17 of the Staff Regulations or other provisions that may apply, users shall seek to ensure that information that is the property of the Commission is not disclosed to unauthorised persons.
2. They shall use all the means for controlling access with which they are provided to prevent the use by unauthorised persons of the resources placed at their disposal or under their control. Among other things, they shall ensure that the information systems placed at their disposal are not accessible during their absence, even when this is for a short time only.
3. With the exception of public access information systems, they shall access only those information systems for which they have been granted explicit authorisation, whether or not the systems are the property of the Commission.
4. They shall not reveal their authentication mechanisms or share them with other persons.
5. They shall use the information systems placed at their disposal or under their control in the way they are intended to be used.
6. They shall not install equipment or software on the IT resources placed at their disposal or under their control.
7. They shall not install equipment or software enabling connections to be made with other electronic communications networks.
8. They shall neither install nor use their own equipment or software to access the information systems covered by this Decision.
9. If users become aware of a vulnerability or event affecting one or several of the Commission's information systems, they shall immediately inform the local information resource manager (IRM) of their Directorate-General or a person appointed by the latter for this function.
10. They shall not seek to test any vulnerabilities in the systems and shall not seek to circumvent the security measures put in place.

11. They shall ensure that visitors under their responsibility do not by their conduct endanger the security of the Commission's information systems, and in particular that they do not connect their own equipment to the Commission's private electronic communications network.
12. Any derogation from these rules must be justified by the needs of the service and explicitly authorised by the LISO and the IT service provider concerned, after informing the Security Directorate, which reserves the right to establish the framework for such derogation.

## **ANNEX I - TENDER SPECIFICATIONS**

## **ANNEX II - CONTRACTOR'S TENDER**

## **ANNEX III - MODEL FOR SPECIFIC CONTRACTS**

## SPECIFIC CONTRACT

No [complete]

implementing framework contract No [complete]

1. The European Union ('the Union'), represented by the [European Commission] ('the contracting authority'), represented for the purposes of signing this specific contract by [forename, surname, function, department of authorising officer],

and

2. [Full official name]

[Official legal form]

[Statutory registration number or ID or passport number]

[Full official address]

[VAT registration number]

[appointed as leader of the group by the members of the group that submitted the joint tender]

*[repeat these data as many times as there are contractors in case of joint tender and continue numbering]*

([collectively] "the contractor"), represented for the purposes of signing this specific contract by [forename, surname and function of legal representative,]

## HAVE AGREED

### **ARTICLE 1 SUBJECT MATTER**

- 1.1** This specific contract implements framework contract (FWC) No [complete], [lot [complete]] signed by the parties on [complete date].
- 1.2** In accordance with the provisions set out in the FWC and in this specific contract and their annexes, which form an integral part of it, the contractor must provide the services specified in Annex [complete]

### **ARTICLE 2 ENTRY INTO FORCE AND DURATION**

- 2.1** This specific contract enters into force on the date on which the last party signs it.
- 2.2** The provision of the services starts from [the date of entry into force of this specific contract] [insert date].
- 2.3** The provision of the services must not exceed [complete] [days] [months]. The parties may extend the duration by written agreement before it elapses and before expiry of the FWC.

### **ARTICLE 3 PRICE**

- 3.1** The price payable under this specific contract excluding reimbursement of expenses is EUR [amount in figures and in words].

[The maximum amount covering all services to be provided under this specific contract including reimbursement of expenses and excluding price revision is EUR [amount in figures and in words].]

- 3.2** [Reimbursement of expenses is not applicable to this specific contract.] [Within the maximum price payable, up to EUR [amount in figures and in words] is earmarked for expenses, which must be reimbursed in accordance with the FWC].

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*[Option: for contractors for which VAT is due in Belgium]*

[In Belgium, use of this contract constitutes a request for VAT exemption No 450, Article 42, paragraph 3.3 of the VAT code (circular 2/1978), provided the invoice includes the statement: 'Exonération de la TVA, Article 42, paragraphe 3.3 du code de la TVA (circulaire 2/1978)' or an equivalent statement in the Dutch or German language.]

*[Option: for contractors for which VAT is due in Luxembourg]*

[In Luxembourg, the contractor must include the following statement in the invoices: "Commande destinée à l'usage officiel de l'Union européenne. Exonération de la TVA Article 43 § 1 k 2ième tiret de la loi modifiée du 12.02.79. 'In the case of intra-Community purchases, the statement to be included in the invoices is: "For the official use of the

European Union. VAT Exemption / European Union/ Article 151 of Council Directive 2006/112/EC.']

#### **ARTICLE 4 COMMUNICATION DETAILS**

For the purpose of this specific contract, communications must be sent to the following addresses:

##### Contracting authority

Administrative matters:

Mr. Stéphane Mail Fouilleul  
Head of Unit "Human resources and finances"  
European Commission  
DG Taxation and Customs Union  
Office: J79 6/040  
B-1049 Brussels  
Tel : +32 2 299 50 50  
E-mail : [tauxd-unit-r1@ec.europa.eu](mailto:tauxd-unit-r1@ec.europa.eu)

Technical matters:

Mr./Ms XYZ  
Head of Unit "XYZ"  
European Commission  
DG Taxation and Customs Union  
Office: XYZ  
B-1049 Brussels  
Tel : +32 2 29x xx xx  
E-mail: [insert functional mailbox]

##### Contractor (or leader in the case of a joint tender)

[Full name]  
[Function]  
[Company name]  
[Full official address]  
E-mail: [complete]

#### **ARTICLE 5 PERFORMANCE GUARANTEE**

Performance guarantee is not applicable to this specific contract.

#### **ARTICLE 6 RETENTION MONEY GUARANTEE**

Retention money guarantee is not applicable to this specific contract.

#### **Annexes**

*Request for service*



Contractor's specific tender of [insert date]

**Signatures**

For the contractor,

For the contracting authority,

[Company name/forename/surname/function]

[forename/surname/function]

signature:

Done at [place], [date]

signature:

Done at [place], [date]

In duplicate in English.

**ANNEX IV - REIMBURSEMENT OF EXPENSES**Member States :

<b>Destination</b>	<b>Daily allowance in euros</b>	<b>Hotel ceiling in euros</b>
Austria	132	102
Belgium	148	102
Bulgaria	135	57
Croatia	110	75
Cyprus	140	88
Czech Republic	124	70
Denmark	173	124
Estonia	105	80
Finland	142	113
France	180	102
Germany	128	97
Greece	112	82
Hungary	120	64
Ireland	159	108
Italy	148	98
Latvia	116	73
Lithuania	117	69
Luxembourg	148	98
Malta	138	88
Netherlands	166	103
Poland	116	67
Portugal	101	83
Romania	136	62
Slovak Republic	100	74
Slovenia	117	84
Spain	128	88
Sweden	187	117
United Kingdom	209	125

Countries outside the EU

<b>Destination</b>	<b>Daily allowance in euros</b>	<b>Hotel ceiling in euros</b>
Afghanistan	50	75
Albania	50	160
Algeria	85	85
American Samoa	70	135
Andorra*	68.89	126.57
Angola	105	175
Anguilla	75	140
Antigua and Barbuda	85	140
Argentina	75	210
Armenia	70	210

<b>Destination</b>	<b>Daily allowance in euros</b>	<b>Hotel ceiling in euros</b>
Aruba	80	185
Australia	75	135
Azerbaijan	70	200
Bahamas	75	115
Bahrain	80	195
Bangladesh	50	140
Barbados	75	140
Belarus	90	135
Belize	50	135
Benin	50	100
Bermuda	70	140
Bhutan	50	130
Bolivia	50	100
Bonaire	90	185
Bosnia-Herzegovina	65	135
Botswana	50	135
Brazil	65	180
British Virgin Islands	75	140
Brunei	60	165
Burkina Faso	55	90
Burundi	50	115
Cambodia	50	115
Cameroon	55	105
Canada	65	165
Cape Verde	50	75
Cayman Islands	60	135
Central African Republic	60	80
Chad	65	145
Chile	70	175
China	55	155
Columbia	50	120
Comoros	50	85
Congo (Democratic Republic)	105	140
Congo (Republic)	70	115
Cooks Island	50	135
Costa Rica	50	140
Côte d'Ivoire	60	130
Croatia	60	120
Cuba	75	150
Djibouti	65	170
Dominica	75	140
Dominican Republic	60	170
East Timor	50	110
East Timor	50	110
Ecuador	50	140
Egypt	65	140
El Salvador	55	125

<b>Destination</b>	<b>Daily allowance in euros</b>	<b>Hotel ceiling in euros</b>
Equatorial Guinea	60	85
Eritrea	50	80
Ethiopia	50	145
former Republic of Yugoslavia (Serbia and Montenegro)	80	140
Fiji	50	120
French Guyana	55	140
French Polynesia	60	135
Gabon	75	115
Gambia	50	120
Georgia	80	215
Ghana	70	140
Grenada	75	140
Guadeloupe	65	115
Guam	60	135
Guatemala	50	125
Guinea Bissau	50	90
Guyana	50	160
Haiti	65	125
Honduras	50	125
Hong Kong	60	205
Iceland	85	160
India	50	195
Indonesia	50	145
Iran	55	145
Iraq	60	85
Israel	105	210
Jamaica	60	170
Japan	130	275
Jordan	60	135
Kazakhstan	70	175
Kenya	60	165
Kiribati	60	145
Kuwait	85	195
Kyrgyzstan	75	180
Laos	50	145
Lebanon	70	190
Lesotho	50	100
Liberia	85	150
Libya	50	175
Liechtenstein	80	95
Macao	55	95
Macedonia	50	160
Madagascar	50	105
Malaysia	50	160
Malawi	50	165
Maldives	50	135

<b>Destination</b>	<b>Daily allowance in euros</b>	<b>Hotel ceiling in euros</b>
Mali	60	95
Marshall Islands	50	135
Martinique	70	110
Mauritania	50	75
Mauritius	60	140
Mayotte	50	110
Mexico	70	185
Micronesia	55	135
Moldova	80	170
Monaco*	72.58	97.27
Mongolia	70	90
Montserrat	55	140
Morocco	75	130
Mozambique	60	140
Myanmar	50	75
Namibia	50	85
Nauru	50	135
Nepal	50	135
Netherlands Antilles	90	185
New Caledonia	55	135
New Zealand	60	125
Nicaragua	50	135
Niger	50	75
Nigeria	50	185
Niue	50	135
North Korea (P.D.R)	50	180
Northern Marianas	70	135
Norway	80	140
Oman	70	135
Pakistan	50	130
Palau	50	135
Panama	50	160
Papua New Guinea	55	135
Paraguay	50	140
Peru	75	135
Philippines	60	150
Puerto Rico	65	140
Qatar	65	135
Republic of Guinea	50	135
Réunion	60	90
Russia	90	275
Rwanda	65	160
Saint Lucia	75	140
Saint Vincent and the Grenadines	75	190
Samoa	50	135
San Marino*	60.34	114.33
São Tomé and Príncipe	60	95

<b>Destination</b>	<b>Daily allowance in euros</b>	<b>Hotel ceiling in euros</b>
Saudi Arabia	85	195
Senegal	65	135
Seychelles	85	140
Sierra Leone	55	135
Singapore	75	150
Solomon Islands	50	120
Somalia	50	125
South Africa	50	145
South Korea	100	200
Sri Lanka	50	105
St Kitts and Nevis	85	185
St Marteen	90	185
Sudan	55	215
Suriname	55	125
Swaziland	50	90
Switzerland	80	140
Syria	80	145
Taiwan	55	200
Tajikistan	75	110
Tanzania	50	200
Thailand	60	145
The Vatican*	60.34	114.33
Togo	60	95
Tokelau Islands	50	135
Tonga	50	105
Trinidad and Tobago	60	115
Tunisia	60	85
Turkey	55	165
Turkmenistan	80	150
Turks and Caicos Islands	55	135
Tuvalu	50	135
Uganda	55	180
Ukraine	80	190
United Arab Emirates	70	195
United States of America (except New York)	80	200
United States of America (New York)	100	275
Uruguay	55	160
US Virgin Islands	55	140
Uzbekistan	75	155
Vanuatu	60	110
Venezuela	85	125
Vietnam	50	205
Wallis and Futuna Islands	50	135
West Bank and Gaza	60	110
Yemen	60	165
Zambia	50	135

<b>Destination</b>	<b>Daily allowance in euros</b>	<b>Hotel ceiling in euros</b>
Zimbabwe	50	115
Other countries	60	145

\* considered to be geographically part of :

- France : Monaco
- Italy : San Marino
- Italy : The Vatican
- Spain : Andorra