



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL  
TAXATION AND CUSTOMS UNION

## FRAMEWORK CONTRACT

TAXUD/201X/CC/XXX

FOR

INFORMATICS SERVICES AND PRODUCTS

[complete]

The European Union (hereinafter referred to as "the Union"), represented by the European Commission (hereinafter referred to as "the Commission"), which is represented for the purposes of the signature of this contract by [name in full, function, department],

of the one part,

and

The company [...] whose registered office is at [...], VAT number [...] (hereinafter referred to as "the Contractor<sup>1</sup>"), [*represented for the purposes of the signature of this contract by [name in full and function,]*]

of the other part,

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

HAVE AGREED

The part **I Special Conditions**, the part **II General Conditions** and the part **III General Terms and Conditions for Information Technologies Contracts** below and the following **Annexes**:

- Annex 1** – Tendering Specifications (Invitation to Tender No [complete] of [complete])
- Annex 2** – Contractor's Tender (No [complete] of [complete])
- Annex 3** – Price Table
- Annex 4** – List of Hardware or Software Products and their Maintenance
- Annex 5** – Travel and Subsistence Expenses
- Annex 6** – Specific Contract – Template
- Annex 7** – Financial Identification Form and Legal Entity Form
- Annex 8** – Power of Attorney

[other Annexes]

which form an integral part of this Framework Contract (hereinafter referred to as “the Contract”).

- The terms set out in the Special Conditions shall take precedence over those in the other parts of the Contract.
- The terms set out in the General Conditions shall take precedence over those in the General Terms and Conditions for Information Technologies Contracts.
- The terms set out in the General Terms and Conditions for Information Technologies Contracts shall take precedence over those in the Annexes.
- The terms set out in the Tendering Specifications shall take precedence over those in the Tender.
- The terms set out in this Contract shall take precedence over those in the specific contracts.
- The terms set out in the Specific Contracts shall take precedence over those in the requests for services.
- The terms set out in the requests for services shall take precedence over those in the specific tenders.

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

## PREAMBLE

On [.../201..], the *Commission* published, in the Official Journal of the European Union, a call for tenders under reference n° TAXUD[...], for [...].

The Contractor was selected at the conclusion of the evaluation process, on the basis of his tender submitted on [.../201..] in response to the invitation to tender.

This Framework Contract contains all the conditions for concluding and executing Specific Contracts. Please note that reference to Specific Contracts in the different parts of the Framework Contract may be understood, where relevant, as references to Requests for Services and Requests for Actions.

For the implementation of this Framework Contract, the Commission accepts that the Contractor may sub-contract to [...] company(ies), under the full responsibility of the Contractor and within the limits defined in the offer of the Contractor, parts of the tasks specified in the Tendering Specifications (Annex 1) subject to the provisions of Article II.10.

## **PART I – SPECIAL CONDITIONS**

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

**I.1.1** The subject of the Contract is:

- the sale, rental or leasing to the Commission of complex or other than complex hardware as set out in Annex 1, and the provision of maintenance and *Documentation*,
- the user right granted to the Commission of non-exclusive and non-transferable licences of one or more *Software Products* as set out in Annex 1, and the provision of maintenance and *Documentation*,
- the development and assignment of the rights on the *Software Products* as set out in Annex 1 and the provision of the corresponding maintenance and *Documentation*,
- the provision to the Commission of *Informatics Services*, as set out in Annex 1, being related/not related to the provision of *Products*,
- the assurance by the Contractor of the coherence and correct functioning of the *System* and its integration into the informatics architecture of the *Commission*,
- the sale, rental or leasing to the Commission of *Telecommunication Products* and/or the provision of *Telecommunication Services*, as described in Annex 1, and the provision of the corresponding maintenance and *Documentation*.

The *Products* and *Services* covered by this Contract are listed in Annexes 3 and 4.

**I.1.2** Upon implementation of the Contract, the Contractor shall [*supply the Products and shall provide the Services related to them*] [*execute the tasks*] in accordance with Annex 1.

**I.1.3** The Contract [*does not*] confer[s] on the Contractor an[y] exclusive right to supply the *Products* or to provide the *Services* referred to in the above paragraph.

**I.1.4** Signature of the Contract imposes no obligation on the Commission to purchase. Only the implementation of the Contract through Specific Contracts is binding on the Commission.

**I.1.5** All Specific Contracts implementing the Framework Contract shall conform to the terms set out therein.

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

- I.2.1** The Contract shall enter into force [*on the date on which it is signed by the last contracting party*]. [*on [complete,] if it has already been signed by both contracting parties*].
- I.2.2** Under no circumstances may implementation take place before the date on which the Contract enters into force. Specific Contracts may under no circumstances be placed before the date on which the Contract enters into force.
- I.2.3** The Contract is concluded for a period of [*days/months/years*] with effect from the date on which it enters into force. This contractual period and all other periods specified in the Contract are calculated in calendar days, unless otherwise indicated.
- I.2.4** The Specific Contracts pursuant to the Contract shall be returned signed before the Contract to which they refer expires.
- I.2.5** The Contract shall continue to apply to Specific Contracts executed after the Contract expires. Such Specific Contracts shall be executed no later than six (6) months after expiry of the Contract.
- I.2.6** The Contract may be renewed up to [*complete*] times, each time for a period of [*complete*], only before expiry of the Contract and with the express written agreement of the parties. Renewal does not imply any modification or deferment of existing obligations.

## **ARTICLE I.3 – CONTRACT PRICES**

- I.3.1** The prices of the services covered by this Contract shall be as listed in Annexes 3 and 4.

The price indicated in the Specific Contract covers any fees payable to the Contractor in relation to the vesting of the rights in the Union and, where applicable, the transfer of rights to the Union and any use of the results by the Commission.

- I.3.2** Prices shall be expressed in euro.
- I.3.3** Prices in Annex 3 shall be fixed and not subject to revision for Specific Contracts placed during the first year of performance of the Contract or Amendment.

From the beginning of the second year of performance of the Contract or Amendment, prices may be revised upwards or downwards each year on the basis of indexation, where such revision is requested by one of the contracting parties by registered letter, no later than 30th September, in order that the new rates may take effect on 1<sup>st</sup> January of the following year.

Specific Contracts shall be placed on the basis of the prices in force on the date on which they are signed. Such prices shall not be subject to revision.

This revision shall be determined by the trend in the harmonised consumer price index EU27 published for the first time by the Office for Official Publications of the European Union in the *Eurostat Monthly Bulletin* at <http://www.ec.europa.eu/eurostat/> (*HICP – Harmonized Indices of Consumer Prices; DATA; Database, HICP- Monthly Data*).

Revision shall be calculated in accordance with the following formula:

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

where:

Pr = revised price;

Po = price in the original tender;

Io = index for the month corresponding to the date of signature of this Framework Contract;

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

#### **1.3.4 Official Price List**

The updates of the Official Price List, as described in Annex 4, will be made either at the initiative of the Contractor or of the Commission.

The Contractor or the Commission shall accept or refuse the update by a *Means of Communication* within 20 working days.

#### **1.3.5 Travel and Subsistence Expenses**

By derogation from article 1.3.4 of the General Terms and Conditions for Information Technologies Contracts:

Travel and subsistence expenses of the Contractor and his staff, as well as expenses for the shipment of equipment or unaccompanied luggage directly connected with performance of the tasks concerning meetings in other contractors' premises, missions to assist Commission Officials in their tasks or to attend meetings and workshops abroad, shall be reimbursed in accordance with the rules defined either in Annex 1 (Tendering Specifications) or in Annex 5 (Travel and Subsistence Expenses) in the others cases.

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

Within 15 working days of a Request for *Services* or *Products* being sent by the Commission, 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 of a Specific Contract being sent by the Commission to the Contractor for its signature, the Contractor shall return it to the Commission, duly signed.

The conditions of delivery and acceptance of deliverables are defined in the relevant Specific Contracts.

The period allowed for the execution of the tasks shall start to run on the date of the signature of the Specific Contract by the last Contracting Party, unless a different date is indicated in the Specific Contract.

## **ARTICLE I.5 – PAYMENTS**

All payments under the Contract shall be made in accordance with Article II.5, which is complemented by Article 1.5 of Part III of the Contract and the provisions of the Specific Contracts (Annex 6).

Payments shall be executed only if the Contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted.

Payment requests may not be made if payments for previous Specific Contracts have not been executed as a result of default or negligence on the part of the Contractor.

### **I.5.1 Invoicing:**

By derogation from article 1.5 of the 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 on deliverables acceptance, 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 and accepted 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 and accepted 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) accepted 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, split between travel and subsistence, and calculated following the rules specified in Annex 5.

The last payment term of a Specific Contract must be linked to the acceptance of all deliverables and services ordered under the Specific Contract, including all monthly or quarterly reports.

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

The Commission shall have forty-five days from receipt to approve or reject the report, and the Contractor shall have ten days in which to submit additional information or a new report.

Within forty-five days of the date of receipt of the relevant invoice, payment of the amount corresponding to the balance due in the relevant Specific Contract shall be made.

### **I.5.2 General provisions concerning payments**

The payments periods referred to in Article II.5 may be suspended by the Commission at any time if it informs the Contractor that his *payment request* is not admissible, either because the amount is not due or because the necessary supporting documents have not been properly produced.

In case of doubt on the eligibility of the expenditure indicated in the *payment request*, the Commission may suspend the time limit for payment for the purpose of further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the expenditure is eligible.

The Commission shall notify the Contractor accordingly by mail, fax or e-mail. Suspension shall take effect from the date of dispatch of the notification. The remainder of the period referred to in Article I.4 shall begin to run again once the suspension has been lifted.

In the event of its budget not being adopted, the Commission may, after giving prior notice, pay invoices by monthly instalments. In such cases, the Commission shall notify the Contractor once it is in a position to resume normal payment arrangements.



### **I.5.3 Guarantees**

The Commission reserves the right to request a performance guarantee with respect to the Specific Contracts which proportionally represent a relevant value in relation to the Framework Contract.

The Contractor may be requested to provide the Commission with a prefinancing guarantee equal to the amount of any advance obtained.

### **I.5.4 Bank Account**

Payments shall be made to the Contractor's bank account denominated in euro, stated in the Contractor's Financial Identification Form<sup>2</sup> set out in Annex 7.

## **ARTICLE I.6 – GENERAL ADMINISTRATIVE PROVISIONS**

I.6.1 Any communication relating to the Contract shall be made in writing and shall bear the Contract and Specific Contract reference numbers.

I.6.2 Ordinary mail shall be deemed to have been received by the Commission on the date on which it is registered by the department responsible indicated below.

I.6.3 Communications shall be sent to the following addresses:

#### **Commission:**

##### Administrative matters:

European Commission  
Directorate-General [complete]  
[Directorate [complete]]  
[Unit [complete]]  
[B-1049 Brussels]

##### Technical matters:

European Commission  
Directorate-General [complete]  
[Directorate [complete]]  
[Unit [complete]]  
[B-1049 Brussels]

#### **Contractor:**

##### Administrative and technical matters:

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

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<sup>2</sup> Original document certified by the bank.

## **ARTICLE I.7 APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

**I.7.1** The Contract shall be governed by Union law, complemented, where necessary, by the national substantive law of Belgium.

*[I.7.1a Without prejudice to Article I.7.2, in the event that any dispute arises between the parties resulting from the interpretation or application of the Contract and the dispute is not resolved by negotiation, the parties may agree to submit the dispute to mediation.*

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

*The mediator's written proposal or his written conclusion stating that no proposal can be made, shall be produced within two months of the date of the written agreement by the second party to commence mediation. The mediator's proposal or conclusion shall not be binding for the parties, who reserve the right to bring the dispute before the courts, as per Article I.7.2.*

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

*The parties further agree to share equally the costs of mediation by the mediator. These costs shall not include any other costs incurred by a party in connection with the mediation.]<sup>3</sup>*

**I.7.2** Any dispute between the parties resulting from the interpretation or application of the Contract which cannot be settled amicably shall be brought before the courts of Brussels.

## **ARTICLE I.8 - USE OF THE RESULTS**

### **I.8.1 Modes of exploitation**

All studies/analysis/elaborations/thesis/materials, reports, dramatic, musical, architectural, cinematographic or other artistic work, performance, scientific work, broadcasts, designs, drawings, website layout or content, computations, documented data, database format and data, software, methods of creation, industrial design, discoveries produced within this Contract and for which the rights vest in the Union and thereby the Union has acquired the ownership in accordance with Article II.17 may be used in the following way:

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<sup>3</sup> Optional clause.

- i) distribution:
  - publishing in paper copies
  - publishing in electronic form as downloadable/non-downloadable file
  - making available on internet
  - broadcasting
  - public presentation or display
  - communication through a press information services
  - inclusion in widely accessible databases or indexes
  - in any form and by any method existing at this date and in the future
  - giving access on individual requests without right to reproduce or exploit, as provided for by Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents
  
- ii) storage:
  - in paper format
  - in electronic format
  - in original format (sculpture, maquette etc.)
  
- iii) archiving in line with the applicable document management rules<sup>4</sup>
  
- iv) modifications
  - shortening
  - making a summary
  - modification of the content
  - technical changes to the content
    - necessary correction of technical errors
    - adding new parts or functionalities
    - changing functionalities
    - made directly by the Commission / by a third party (external contractor)
    - providing third parties with additional information concerning the result (e.g. source code)
  - addition of new elements, paragraphs titles, leads, bolds, legend, table of content, summary, graphics, subtitles, sound, etc.
  - preparation in audio form, preparation as a presentation, animation, pictograms story, slide-show, public presentation etc.
  - extracting a part or dividing into parts
  - use of a concept or preparation of a derivate work
  - digitisation or converting the format for storage or usage purposes
  - translate, subtitle, dub
  
- v) language versions:
  - working languages of EC
  - official languages of EU
  - languages used within EU
  - languages of candidate countries

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<sup>4</sup> See Decision 2002/47/EC on document management, Decision 2004/563/EC on electronic and digitised documents and the Implementing Rules SEC(2009) 1643:  
[http://ec.europa.eu/transparency/archival\\_policy/legal\\_basis\\_en.htm](http://ec.europa.eu/transparency/archival_policy/legal_basis_en.htm).

- other languages
- vi) use for own purposes:
- making available to the staff of the Commission
  - making available to the persons and entities working for the Commission or cooperating with it, including: contractors, subcontractors whether legal or natural persons, EU-institutions, agencies and bodies, Member States institutions
  - installing, uploading, processing
  - arranging, compiling, combining, retrieving
  - making a copy, reproducing
- vii) allow use of results by third parties:
- for commercial or non commercial purposes,
  - against payment, without payment or against fulfilment of other conditions
  - assignment in full or in part
  - giving a licence
  - for a particular period or unlimited in time

This list may be further specified in the Specific Contract.

Where the Commission becomes aware that scope of modifications exceeds the scope envisaged in the Contract the creator shall be consulted. The creator will be obliged to provide his response within two weeks. He shall provide his agreement including any suggestions of modifications free of charge. The creator may refuse the intended modification only when it may harm his honour, reputation or distort integrity of the work.

### **I.8.2 Pre-existing rights, intermediaries, creators' rights**

Where industrial and intellectual property rights, including rights of ownership and use of the Contractor and third parties, exist prior to the Contract being entered into, ("pre-existing rights") the Contractor shall establish a list which shall specify all pre-existing rights and disclose it to the Commission at the latest when delivering a final result.

All pre-existing rights to delivered results shall vest in the Commission and thereby under the terms of the Contract be effectively transferred to the Commission, as provided for in Article I.8.1.

The Contractor shall present relevant and exhaustive proofs of acquiring necessary rights together with presentation of relevant result. The latter should be fulfilled by presentation of the contractors', all subcontractors' intermediating in the transfer of rights and creators' statements prepared in accordance with the relevant annexes to the specific contract and the following information and documents:

- Name and version number of the software product
- Title of the work, date of publishing, date of creation, place of publication, address of publication on internet, number, volume and other information allowing to identify origin easily

- Full identity of the author, developer, creator, translator, data entry person, graphic designer, publisher, editor, photographer
- Copy of the licence to use the product or reference to it
- Agreement transferring the right to the product to the Contractor
- Text of the disclaimer notice]

In case parts of the results were created by employees of the Contractor, documentary evidence shall be provided as to how the creators' or authors' rights were transferred to the Contractor, i.e. a copy of the relevant agreement or extract from the employment contract should be provided<sup>5</sup>.

### **I.8.3 Partial vesting of rights (pre-existing or not pre-existing)**

In case the partial vesting of particular rights to the results was envisaged in the technical specification and the offer, the Contractor shall list precisely at the moment of delivery of the final result at the latest all materials, information, IT tools, methodology and any other results or parts of the result to which third persons have rights, even if originally owned by the Contractor, or for which the right is not to be unconditionally given to the Union. For every listed item the Contractor shall describe precisely the scope of pre-existing rights and not pre-existing rights and the scope and the way, direct or indirect, of the partial vesting and thereby the effective transfer of rights to the Union.

The information obligation refers also to the intention of using materials for which the rights are already entirely or partially owned by the Union.<sup>6</sup> This obligation is in addition to the duty to disclose pre-existing rights referred in Article I.8.2.

### **I.8.4 Persons depicted in photographs**

In case natural, recognisable person(s) are depicted in a photograph the Contractor shall submit a statement of these depicted persons giving their permissions for the described use of their images. The above does not refer to photographs taken in public places where random members of the public are identifiable only hypothetically and to public persons acting in their public activities.

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<sup>5</sup> All free-lance, self-employed individuals are to be treated as subcontractors and should fill in annex A2 individually, contrary to employees for whom extract from standard work contract can be presented in general.

<sup>6</sup> This right may refer to databases (structure, software or data), extensive quote of other texts, data to be used for analysis, tables, graphs, photographs, sound or music, working methods, software (module programmes, operating platforms, programming languages, system architectures, web pages, graphics of the web pages, portal systems).

If the partial transfer of rights is allowed, your technical specification should provide also an information what minimum level of use of result you wish to get right to (use of the software/including possibility of making modifications; possibility of consulting database by all persons working in xx selected units, possibility of transferring software to other institutions, agencies or bodies, e.g. JTI, etc.).

## **ARTICLE I.9 – TERMINATION BY EITHER CONTRACTING PARTY**

- I.9.1 Either contracting party may, of its own volition and without being required to pay compensation, terminate the Contract by serving six (6) months formal prior notice. Should the Commission terminate the Contract, the Contractor shall only be entitled to payment corresponding to the products ordered and the services delivered before the termination date, provided that they have been duly delivered in conformity with the Contract and Specific Contract(s).
- I.9.2 On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required by the Special Conditions for the products delivered and services rendered up to the date on which termination takes effect, within a period not exceeding sixty (60) days from that date.

## **ARTICLE I.10 – SPECIFIC LIQUIDATED DAMAGES**

By derogation to the possibilities foreseen in Article II.4.1 of this Contract, specific liquidated damages may be applied:

- For all activities, in accordance with the terms of the Specific Quality Indicator (SQI) and General Quality Indicator (GQI) defined in Annex 1.
- For On-Demand activities, in accordance with the terms of the specific Request for Action drawn up to support any on-demand activity.

Further specific provisions in this connection may be laid down in the Specific Contracts.

The total applicable liquidated damage shall not exceed 20% of the total value of the Specific Contract to which it relates. Should this limit be exceeded, the Commission can terminate the Specific Contract in accordance with the procedures laid down in Article II.12, notwithstanding the right of the Commission to terminate the contract for other reasons provided for in this Contract.

## **ARTICLE I.11 – SPECIFIC DEFINITIONS**

By derogation from Article III.5.7 of the General Terms and Conditions for Information Technology Contracts, the provisions relating to an escrow rider are not applied.

[Should you wish to lay down specific definitions in addition to those in Article III.1.1 of the General terms and Conditions for Information Technologies Contracts, add them here]

## **OTHER SPECIAL CONDITIONS:**

### **ARTICLE I.12– SPECIFIC DEROGATIONS TO III – GENERAL TERMS AND CONDITIONS FOR INFORMATION TECHNOLOGIES CONTRACTS**

By way of derogation from Part III – General Terms and Conditions for Information Technology Contracts, the following articles are hereby modified as follows:

#### **III.2.2 Security:**

2.2.2 The Contractor and its staff, when performing tasks for the Commission in execution of this Contract, undertakes to comply with

- the Decision C(2006)3602 of 16 August 2006 of the Commission on protection of information systems used by the Commission, its subsequent version, its implementing rules and the corresponding security notices, and
- the Commission Decision on security annexed to the Decision 2001/844/EC, CECA, Euratom of the Commission of 29 November 2001 amending its internal rules of procedure, as well as all its subsequent versions.

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

#### **III. Annex II, second hyphen:**

Annex III of the Decision C(2006)3602 of 16 August 2006 concerning the security of information systems used by the European Commission.

#### **III. Annex III**

Commission Decision on the security of information systems used by the European Commission [C( 2006 )3602 16/08/2006].

#### **III.2.4 Co-operation**

2.4.1 The Contractor agrees to co-operate with other suppliers to make the *Products* work with those of these other suppliers. It also agrees to attend meetings called for that purpose by the Commission.

### **III.2.10 Benchmarking**

The Commission may undertake a Benchmarking of the levels and the charges of the Services and Products provided under this Contract by comparison with similar Services and Products 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 Products being provided by the Contractor is taken into consideration;
- a significant comparison group shall be taken into account;
- in case no such significant comparison group exists, the relevant industry best practices or markets with similar requirements shall be taken into account;
- the relevant comparison data must be guaranteed

The work of the Benchmarking should in principle 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. The Commission shall ensure that no conflict of interest exists on the side of the Benchmarking.

The Commission shall pay all of its own costs and the Benchmarking's costs during the Benchmarking. The Contractor will pay all of its own costs.

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 shall be free to suggest changes in Benchmarking parameters as the Services and Products evolve over the term of this 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 shall return all material and media once the Benchmarking is completed.



If a Benchmarking reveals that the level of a Service or a Product does not reach the comparison group's service levels or the level based on the relevant industry best practices or of markets with similar requirements, the Contractor shall immediately prepare an action plan, which shall 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 reduction of the prices shall be applicable on the 30<sup>th</sup> day from the date on which the results of the Benchmarking were delivered to the Parties. The reduction shall not have retroactive effect and shall be only valid for the specific contracts concluded after this date.

### **III.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 Contract, to observe inter alia the latest version of the Commission Enterprise IT Architecture Framework. (The current version is available at: [http://ec.europa.eu/dgs/informatics/ecom/doc/ceaf\\_guide\\_v1\\_1.pdf](http://ec.europa.eu/dgs/informatics/ecom/doc/ceaf_guide_v1_1.pdf))

## **PART II – GENERAL CONDITIONS**

### **ARTICLE II.1 - PROCEDURES FOR PERFORMING THE CONTRACT**

#### **II.1.1 Phases of execution of a Specific Contract**

##### **Sending of a Specific Contract**

Whenever the Commission wishes services to be provided or goods to be supplied pursuant to the Contract, it shall send a Specific Contract to the Contractor for its signature.

##### **Acknowledgment of the Specific Contract by the Contractor**

Within the period indicated in Article I.4, the Contractor shall return at least two originals of the Specific Contract, duly signed, specifying the terms of the provision of services or supply of the goods, such as quantity, designation, quality, price, place of delivery and time allowed for delivery, guarantee, and maintenance period in accordance with the conditions laid down in the Contract.

##### **Delivery**

**a) Time allowed for delivery**

The time allowed for delivery shall be calculated in accordance with Article I.4.

**b) Date, time and place of delivery**

The Commission shall be notified in writing of the exact date of delivery within the period indicated in Article I.4. All deliveries shall be made at the agreed place of delivery during the hours indicated in Article I.4.

The Contractor shall bear all costs and risks involved in delivering the goods to the place of delivery.

**c) Consignment note**

Each delivery shall be accompanied by a *Consignment note* in duplicate, duly signed and dated by the Contractor or his carrier, giving the Specific Contract number and particulars of the goods delivered. One copy of the *Consignment note* shall be countersigned by the Commission and returned to the Contractor or to his carrier.

##### **Certificate of conformity**

Signing of the *Consignment note* by the Commission, as provided for in subparagraph c) above, is simply an acknowledgment of the fact that the goods have been delivered and in no way implies conformity of the goods with the Specific Contract.

Conformity of the goods delivered shall be evidenced by the signing of a certificate to this effect by the Commission no later than one month after the date of delivery, unless provision for a different period is made in the Special Conditions or in the General Terms and Conditions for Information Technologies Contracts.

Conformity shall be declared only where the conditions laid down in the Contract and in the Specific Contract are satisfied and the goods conform to the Annexes 1 and 4.

Where, for reasons attributable to the Contractor, the Commission is unable to accept the goods, the Contractor shall be notified in writing at the latest by the deadline for conformity.

### **Conformity of the goods delivered with the Contract**

- a) The goods delivered by the Contractor to the Commission must be in conformity in quantity, quality, price and packaging with the Contract and the relevant Specific Contract.
- b) The goods delivered must:
  - correspond to the description given in Annexes 1 and 4 and possess the characteristics of the goods supplied by the Contractor to the Commission as a sample or model;
  - be fit for any specific purpose required of them by the Commission and made known to the Contractor at the time of conclusion of the Contract and accepted by the Contractor;
  - be fit for the purposes for which goods of the same type are normally used;
  - demonstrate the quality and performance which are normal in goods of the same type and which the Commission can reasonably expect, given the nature of the goods and taking into account any public statements on the specific characteristics of the goods made by the Contractor, the producer or his representative, particularly in advertising or on labelling;
  - be packaged according to the usual method for goods of the same type or, failing this, in a way designed to preserve and protect them.

### **Remedy**

- a) The Contractor shall be liable to the Commission for any lack of conformity which exists at the time the goods are verified.
- b) In the event of lack of conformity, without prejudice to Article II.4 regarding liquidated damages applicable to the total price of the goods concerned, the Commission shall be entitled:

- either to have the goods brought into conformity, free of charge, by repair or replacement;
  - or to have an appropriate reduction made in the price.
- c) Any repair or replacement shall be completed within a reasonable time and without any significant inconvenience to the Commission, taking account of the nature of the goods and the purpose for which they are required by the Commission.
- d) The term 'free of charge' in paragraph b) refers to the costs incurred to bring the goods into conformity, particularly the cost of carriage, labour and materials.

### **Assembly and installation**

If required by Article I.1.2 of the Special Conditions, the Contractor shall assemble the goods delivered within a period of one month unless otherwise specified in the Special Conditions or in the General Terms and Conditions for Information Technologies Contracts.

Any lack of conformity resulting from incorrect installation of the goods delivered shall be deemed to be equivalent to lack of conformity of the goods if installation forms part of the Contract and the goods were installed by the Contractor or under his responsibility. This shall apply equally if the product was to be installed by the Commission and was incorrectly installed owing to a shortcoming in the installation instructions.

### **Services provided to goods**

If required by the Contract, services to goods shall be provided accordingly.

## **II.1.2 General provisions concerning goods**

### **a) Packaging**

The goods shall be packaged in strong boxes or crates or in any other way that ensures that the contents remain intact and prevents damage or deterioration. Packaging, pallets, etc., including contents, shall not weigh more than 500 kg, unless otherwise defined in the Specific Contract.

Unless otherwise specified in the Special Conditions, pallets shall be considered as one-way packaging and shall not be returned. Each box shall be clearly labelled with the following information:

- European Commission and address for delivery;
- name of Contractor;
- description of contents;
- date of delivery;
- number and date of Specific Contract;

- number of Framework Contract;
- EC code number of article.

**b) Guarantee of the goods delivered**

The goods shall be guaranteed against all defects in manufacture or materials for two years from the date of delivery, unless provision for a longer period is made in Annexes 1 and 4.

The Contractor shall guarantee that any permits and licences required for manufacturing and selling the goods have been obtained.

The Contractor shall replace at his own expense, within a reasonable time limit to be determined by agreement between the parties, any items which become damaged or defective in the course of normal use during the guarantee period.

The Contractor is responsible for any conformity defect which exists at the time of delivery, even if this defect does not appear until a later date.

The Contractor is also responsible for any conformity defect which occurs after delivery and is ascribable to non-compliance with his obligations, including failure to provide a guarantee that, for a certain period, goods used for the purposes for which they are normally used or for a specific purpose will preserve their qualities or characteristics as specified.

If part of an item is replaced, the replacement part shall be guaranteed under the same terms and conditions for a further period of the same duration as that specified above.

If a defect is found to originate in a systematic flaw in design, the Contractor must replace or modify all identical parts incorporated in the other goods that are part of the Specific Contract, even though they may not have been the cause of any incident. In this case, the guarantee period shall be extended as stated above.

**II.1.3 Performance of the Contract**

- a) The Contractor shall perform the Contract to the highest professional standards. The Contractor shall have sole responsibility for complying with any legal obligations incumbent on him, notably those resulting from employment, tax and social legislation.
- b) The Contractor shall have sole responsibility for taking the necessary steps to obtain any permit or licence required for performance of the Contract under the laws and regulations in force at the place where the tasks assigned to him are to be executed.
- c) Without prejudice to Article II.3, any reference made to the Contractor's staff in the Contract shall relate exclusively to individuals involved in the performance of the Contract.

- d)** The Contractor must ensure that any staff performing the Contract have the professional qualifications and experience required for the execution of the tasks assigned to him.
- e)** The Contractor shall neither represent the Commission nor behave in any way that would give such an impression. The Contractor shall inform third parties that he does not belong to the European public service.
- f)** The Contractor shall have sole responsibility for the staff who execute the tasks assigned to him.

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

- staff executing the tasks assigned to the Contractor may not be given orders direct by the Commission;
  - the Commission may not under any circumstances be considered to be the staff's employer and the said staff shall undertake not to invoke in respect of the Commission any right arising from the contractual relationship between the Commission and the Contractor.
- g)** In the event of disruption resulting from the action of a member of the Contractor's staff working on Commission premises or in the event of the expertise of a member of the Contractor's staff failing to correspond to the profile required by the Contract, the Contractor shall replace him without delay. The Commission shall have the right to request the replacement of any such member of staff, stating its reasons for so doing. Replacement staff must have the necessary qualifications and be capable of performing the Contract under the same contractual conditions. The Contractor shall be responsible for any delay in the execution of the tasks assigned to him resulting from the replacement of staff.
  - h)** Should any unforeseen event, action or omission directly or indirectly hamper execution of the tasks, either partially or totally, the Contractor shall immediately and on his own initiative record it and report it to the Commission. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with his obligations under the Contract. In such event, the Contractor shall give priority to solving the problem rather than determining liability.
  - i)** Should the Contractor fail to perform his obligations under the Contract, the Commission may, without prejudice to its right to terminate the Contract, reduce or recover payments in proportion to the scale of the failure. In addition, the Commission may decide to impose liquidated damages, as provided for in Article II.4.

## **ARTICLE II.2 - LIABILITY**

- II.2.1** The Commission shall not be liable for damage sustained by the Contractor in performance of the Contract except in the event of wilful misconduct or gross negligence on the part of the Commission.
- II.2.2** The Contractor shall be liable for any loss or damage sustained by the Commission in performance of the Contract, including in the event of subcontracting under Article II.10 but only up to three times the total amount of the Framework Contract. Nevertheless, if the damage or loss is caused by the gross negligence or wilful misconduct of the Contractor or by its employees, the Contractor shall remain liable without any limitation as to the amount of the damage or loss.
- II.2.3** Subject to the maximum amount provided in II.2.2, the Contractor shall provide compensation in the event of any action, claim or proceeding brought against the Commission by a third party as a result of damage caused by the Contractor in performance of the Contract.
- II.2.4** In the event of any action brought by a third party against the Commission in connection with performance of the Contract, the Contractor shall assist the Commission. Expenditure incurred to this end may be borne by the Commission.
- II.2.5** The Contractor shall take out insurance against risks and damage relating to performance of the Contract if required by the relevant applicable legislation. He shall take out supplementary insurance as reasonably required by standard practice in the industry. A copy of all the relevant insurance contracts shall be sent to the Commission should it so request.

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

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

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

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

**II.3.3** The Contractor declares:

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

**II.3.4** The Contractor shall pass on all the relevant obligations in writing to his staff, board, and directors as well as to third parties involved in performance of the Contract.

**ARTICLE II.4 - LIQUIDATED DAMAGES**

II.4.1 Should the Contractor fail to perform his obligations under the Contract within the time limits set by the Contract, then, without prejudice to the Contractor's actual or potential liability incurred in relation to the Contract or to the Commission's right to terminate the Contract, the Commission may decide to impose liquidated damages per calendar day of delay according to the following formula:

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

- $V$  is the price of the relevant purchase;
- $d$  is the duration specified in the relevant order form or specific contract expressed in days

II.4.2 The Contractor may submit arguments against this decision within thirty days of notification by registered letter with acknowledgement of receipt or equivalent. In the absence of reaction on his part or of written withdrawal by the Commission within thirty days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable. These liquidated damages shall not be imposed where there is provision for interest for late completion. The Commission and the Contractor expressly acknowledge and agree that any sums payable under this article are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the losses that may be reasonably anticipated from such failure to perform obligations.

**ARTICLE II.5 – INVOICING AND PAYMENTS**

**II.5.1 Pre-financing:**

Where required by Article I.5.3, the Contractor shall provide a financial guarantee in the form of a bank guarantee or equivalent supplied by a bank or an authorised financial institution (guarantor) to cover pre-financing under the Contract. Such guarantee may be replaced by a joint and several guarantee by a third party.



The guarantor shall pay to the Commission at its request an amount corresponding to payments made by it to the Contractor which have not yet been covered by equivalent service or delivery on his part.

The guarantor shall stand as first-call guarantor and shall not require the Commission to have recourse against the principal debtor (the Contractor).

The guarantee shall specify that it enters into force at the latest on the date on which the Contractor receives the pre-financing. The guarantee shall be retained until the pre-financing has been cleared against interim payments or payment of the balance to the Contractor. It shall be released the following month or, in the absence of such clearing, four months after the issuance of a corresponding debit note.

### **II.5.2 Interim payments and payment of the balance**

Payments shall be executed only if the Contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted.

At the end of each of the periods indicated in the Contract the Contractor shall submit to the Commission an invoice accompanied by the documents provided for in the Special Conditions.

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

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

Approval of the progress report shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information it contains.

Where the Commission requests a new progress report because the one previously submitted has been rejected, this shall be submitted within the period of time indicated in the Special Conditions. The new progress report shall likewise be subject to the above provisions.

### **II.5.3. Payment currency and costs**

Payments are executed in the currency of the contract.

Costs of the transfer are borne in the following way:

- costs of dispatch charged by the bank of the Commission are borne by the Commission,
- cost of receipt charged by the bank of the Contractor are borne by the Contractor,
- all costs of repeated transfer caused by one of the parties are borne by the party who caused repetition of the transfer.

## **ARTICLE II.6 – GENERAL PROVISIONS ON PAYMENTS**

**II.6.1** Payments shall be deemed to have been made on the date on which the Commission's account is debited.

**II.6.2** The payment periods referred to in Article I.5 may be suspended by the Commission at any time if it informs the Contractor that his *payment request* is not eligible, either because the amount is not due or because the necessary supporting documents have not been properly produced. The Commission may proceed with further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the invoice is eligible.

The Commission shall notify the Contractor accordingly by registered letter, fax or e-mail, with acknowledgment of receipt or equivalent. Suspension shall take effect from the date of dispatch of the letter. The remainder of the period referred to in Article I.4 shall begin to run again once the suspension has been lifted.

**II.6.3** In the event of late payment the Contractor shall be entitled to claim interest, provided the calculated interest exceeds EUR 200. In case interest does not exceed EUR 200, the Contractor may claim interest within two months of receiving the payment. Interest shall be calculated at the rate applied by the European Central Bank to its most recent main refinancing operations (“*the reference rate*”) plus seven percentage points (“*the margin*”). The reference rate in force on the first day of the month in which the payment is due shall apply. Such interest rate is published in the C series of the Official Journal of the European Union. Interest shall be payable for the period elapsing from the calendar day following expiry of the time limit for payment up to the day of payment. Suspension of payment by the Commission may not be deemed to constitute late payment.

## **ARTICLE II.7 –RECOVERY**

**II.7.1** If total payments made exceed the amount actually due under the Specific Contract or if recovery is justified in accordance with the terms of the Contract, the Contractor shall reimburse the appropriate amount in euro on receipt of the debit note, in the manner and within the time limits set by the Commission.

**II.7.2** In the event of failure to pay by the deadline specified in the debit note, the sum due shall bear interest at the rate indicated in Article II.6.3. Interest shall be payable from the calendar day following the expiry of the due date up to the calendar day on which the debt is repaid in full.

**II.7.3** The Commission may, after informing the Contractor, recover amounts established as certain, of a fixed amount and due by offsetting, in cases where the Contractor also has a claim on the Union or the European Atomic Energy Community that is certain, of a fixed amount and due. The Commission may also claim against the guarantee, where provided for.

## **ARTICLE II.8 – TAXATION**

- II.8.1** The Contractor shall have sole responsibility for compliance with the tax laws which apply to him. Failure to comply shall make the relevant invoices invalid.
- II.8.2** The Contractor recognises that the Commission is, as a rule, exempt from all taxes and duties, including value added tax (VAT), pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union.
- II.8.3** The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the goods and services required for performance of the Contract are exempt from taxes and duties, including VAT.
- II.8.4** Invoices presented by the Contractor shall indicate his place of taxation for VAT purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

## **ARTICLE II.9– FORCE MAJEURE AFFECTING THE CONTRACT OR THE SPECIFIC CONTRACT(S)**

- II.9.1** Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the contracting parties which prevents either of them from performing any of their obligations under the Contract, was not due to error or negligence on their part or on the part of a subcontractor and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making it available, labour disputes, strikes or financial problems cannot be invoked as force majeure unless they stem directly from a relevant case of force majeure.
- II.9.2** Without prejudice to the provisions of Article II.1.3(h), if either contracting party is faced with force majeure, it shall notify the other party without delay by registered letter with acknowledgment of receipt or equivalent, stating the nature, likely duration and foreseeable effects.
- II.9.3** Neither contracting party shall be held in breach of its contractual obligations, if it has been prevented from performing them by force majeure. Where the Contractor is unable to perform his contractual obligations owing to force majeure, he shall have the right to remuneration for the goods actually delivered and any service provided.
- II.9.4** The contracting parties shall take the necessary measures to reduce damage to a minimum.

## **ARTICLE II.10 – SUBCONTRACTING**

- II.10.1** The Contractor shall not subcontract without prior written authorisation from the Commission nor cause the Contract to be performed in fact by third parties.

**II.10.2** Even where the Commission authorises the Contractor to subcontract to third parties, he shall none the less remain bound by his obligations to the Commission under the Contract and shall bear exclusive liability for proper performance of the Contract.

**II.10.3** The Contractor shall make sure that the subcontract does not affect rights and guarantees to which the Commission is entitled by virtue of the Contract, notably Article II.14.

### **ARTICLE II.11 – ASSIGNMENT**

**II.11.1** The Contractor shall not assign the rights and obligations arising from the Contract, in whole or in part, without prior written authorisation from the Commission.

**II.11.2** In the absence of the authorisation referred to in the previous paragraph, or in the event of failure to observe the terms thereof, assignment by the Contractor shall not be enforceable against and shall have no effect on the Commission.

### **ARTICLE II.12 – TERMINATION BY THE COMMISSION**

**II.12.1** The Commission may terminate the Contract, a pending Specific Contract or an Order Form in the following circumstances:

- (a) where the Contractor is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) where the Contractor has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;
- (c) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of professional misconduct;
- (d) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Union's financial interests;
- (e) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of substantial errors, irregularities or fraud in the award procedure or the performance of the Contract;
- (f) where the Contractor is in breach of his obligations under Article II.3;

- (g) where the Contractor was guilty of misrepresentation in supplying the information required by the Commission as a condition of participation in the Contract procedure or failed to supply this information;
- (h) where a change in the Contractor's legal, financial, technical or organisational situation could, in the Commission's opinion, have a significant effect on the performance of the Contract;
- (i) where execution of the tasks under a pending order or a specific contract has not actually commenced within fifteen days<sup>7</sup> of the date foreseen, and the new date proposed, if any, is considered unacceptable by the Commission;
- (j) where the Contractor is unable, through his own fault, to obtain any permit or licence required for performance of the Contract;
- (k) where the Contractor, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period following receipt of the formal notice, remains in serious breach of his contractual obligations;

**II.12.2** In the event of force majeure, notified in accordance with Article II.9, either contracting party may terminate the Contract, where performance thereof cannot be ensured for a quantity of goods corresponding to at least one fifth of the quantity of goods ordered or where performance thereof cannot be ensured for a period corresponding to at least to one fifth of the period laid down in Article I.2.3.

**II.12.3** Prior to termination under point c), d), e), h) or k), the Contractor shall be given the opportunity to submit his observations.

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

**II.12.4 Consequences of termination:**

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

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

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<sup>7</sup> This period can be modified in the Special Conditions depending on the nature of the contract.

On termination, the Commission may engage any other contractor to supply the goods and/ or to execute or complete the services. The Commission shall be entitled to claim from the Contractor all extra costs incurred in doing so, without prejudice to any other rights or guarantees it has under the Contract.

#### **ARTICLE II.12a – SUBSTANTIAL ERRORS, IRREGULARITIES AND FRAUD ATTRIBUTABLE TO THE CONTRACTOR**

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

#### **ARTICLE II.13 – DATA PROTECTION<sup>8</sup>**

Any personal data included in or relating to the Contract shall be processed in accordance with Regulation (EC) No. 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. The data shall be processed solely for the purposes of the performance, management and monitoring of the Contract by the Contracting authority(ies), without prejudice to possible transmission to the bodies charged with a monitoring or inspection task in application of Union law. The Contractor shall have the right of access to his/her personal data and the right to rectify any such data. Should the Contractor have any queries concerning the processing of his/her personal data, he/she shall contact the Contracting authority(ies).

The Contractor shall have a right of recourse at any time to the European Data Protection Supervisor.

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

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

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

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<sup>8</sup> Article to be used where the processing of personal data falls within the scope of Regulation (EC) No 45/2001.

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

#### **ARTICLE II.14 – CHECKS AND AUDITS**

**II.14.1** Pursuant to Article 142 of the Financial Regulation applicable to the General Budget of the European Union, the European Court of Auditors is empowered to audit the documents held by the natural or legal persons receiving payments from the budget of the European Union from signature of the Contract up to five years after payment of the balance of the last Specific Contract.

**II.14.2** The Commission or an outside body of its choice shall have the same rights as the European Court of Auditors for the purpose of checks and audits limited to compliance with contractual obligations from signature of the Contract up to five years after payment of the balance of the last Specific Contract.

**II.14.3** In addition, the European Anti-Fraud Office may carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 and Parliament and Council Regulation (EC) No 1073/1999 from signature of the Contract up to five years after payment of the balance of the last Specific Contract.

#### **ARTICLE II.15 - AMENDMENTS**

Any amendment to the Contract shall be the subject of a written agreement concluded by the contracting parties before fulfilment of all their contractual obligations. An oral agreement shall not be binding on the contracting parties. An Order Form or a Specific Contract may not be deemed to constitute an amendment to the Contract.

## **ARTICLE II.16 – CONFIDENTIALITY**

**II.16.1** The Contractor undertakes to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to performance of the Contract. The Contractor shall continue to be bound by this undertaking after execution of the Specific Contracts.

**II.16.2** The Contractor shall obtain from each member of his staff, board and directors an undertaking that they will respect the confidentiality of any information which is linked, directly or indirectly, to execution of the tasks and that they will not divulge to third parties or use for their own benefit or that of any third party any document or information not available publicly, even after execution of the Specific Contracts.

## **ARTICLE II.17 – OWNERSHIP OF THE RESULTS - INTELLECTUAL AND INDUSTRIAL PROPERTY**

**II.17.1** A result shall be any outcome of the implementation of the Contract and provided as such by the Contractor.

A creator shall be any person who contributed to production of the result.

Pre-existing intellectual property rights, sometimes referred to as background technology, are any industrial and intellectual property rights which exist prior to the contract being entered into and include rights of ownership and use of the Contractor, the Commission and any third parties ("pre-existing rights").

It shall be a material term of the Contract and of the essence of the Contract that Contractors shall be under a duty to provide a list of pre-existing rights at the date of delivery of the final result the latest.

**II.17.2** The ownership of all the results or rights thereon as listed in the tender specification and the tender attached to the contract, including copyright and other intellectual or industrial property rights, and all technological solutions and information embodied therein, obtained in performance of the Contract, shall be irrevocably and fully vested to the Union, which may use them as described in the Contract. All the rights shall be vested on the Union from the moment it was delivered and accepted by the Commission.

For the avoidance of doubt and where applicable, any such vesting of rights is also deemed to constitute an effective transfer of the rights from the Contractor to the Union.

The payment of the fee under Article I.3 is deemed to include all forms of use by the Commission in the results as set out in Article I.8.

The above vesting of rights in the Commission under this Contract covers all territories worldwide and is valid for the whole duration of intellectual property rights protection.



- II.17.3** Any intermediary sub-result, raw data, intermediary analysis made available to the Commission by the Contractor cannot be used by the Commission without written consent of the Contractor, unless the tender specification explicitly provides for it to be treated as self-contained result.
- II.17.4** The Contractor retains all right, title and interest in its pre-existing rights not fully vested into the Union in line with Article I.8.2, and hereby grants the Commission, upon its request and for the requested period a licence to use the pre-existing rights to the extent necessary to use the delivered results.
- II.17.5** The Contractor shall ensure that delivered results are free of rights or claims from third parties including in relation to pre-existing rights, for any use envisaged by the Commission. The above does not concern the moral rights of natural persons and rights referred to in Article II.17.4.
- II.17.6** The Contractor shall clearly point out all quotations of existing textual works made by the Contractor. The complete reference should include as appropriate: name of the author, title of the work, date of publishing, date of creation, place of publication, address of publication on internet, number, volume and other information allowing to identify the origin easily.
- II.17.7** The Contractor shall clearly indicate all parts of the result originating from external sources: parts of other documents, images, graphs, tables, data, software, technical inventions, know-how etc. (delivered in paper, electronic or other form).

For non-textual results or results provided in electronic form only, the description, instruction or information document shall list all coming from external sources: IT development tools, routines, subroutines and/or other programs ("background technology"), concepts, designs, installations or pieces of art, data, source or background materials or any other parts of external origin.

- II.17.8** If the Commission so requires, the Contractor shall provide proof of ownership or rights to use all necessary rights to the materials referred to in Article II.17.6.
- II.17.9.** By delivering the results the Contractor confirms that the creators undertake not to oppose their names being recalled when the results are presented to the public and confirms that the results can be divulged.

The Contractor shall possess all relevant agreements of the creator and provide proof by way of documentary evidence.

- II.17.10.** By delivering the results the Contractor warrants that the above transfer of rights does not violate any law or infringe any rights of others and that he disposes relevant rights or powers to execute the transfer. He also warrants that he has paid or verified being paid all fees and payments, including fees to collecting societies, related to the final results.

**II.17.11.**The Contractor shall indemnify and hold the Commission harmless for all damages and cost incurred due to any claim brought by any third party including creators and intermediaries for any alleged breach of any intellectual, industrial or other property right based on the Commission's use of the works and in relation to which the Contractor has granted the Commission user rights.

## **ARTICLE II.18 - USE, DISTRIBUTION AND PUBLICATION OF INFORMATION ABOUT THE CONTRACT**

**II.18.1** The Contractor shall authorise the Commission to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, any data contained in or relating to the Contract, in particular the identity of the Contractor, the subject matter, the duration and the amount paid. Where personal data is concerned, Article I.8 shall apply.

**II.18.2** Unless otherwise provided by the Special Conditions, the Commission shall not be required to distribute or publish documents or information supplied in performance of the Contract. If it decides not to publish the documents or information supplied, the Contractor may not have them distributed or published elsewhere without prior written authorisation from the Commission.

**II.18.3** Any distribution or publication of information relating to the Contract or use of outcome of the implementation of the Contract and provided as such by the Contractor shall require prior written authorisation from the Commission and, if so requested, shall mention that it was produced within a contract with the Commission. It shall state that the opinions expressed are those of the Contractor only and do not represent the Commission's official position.

**II.18.4** The use of information obtained by the Contractor in the course of the Contract for purposes other than its performance shall be forbidden, unless the Commission has specifically given prior written authorisation to the contrary.

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

Without prejudice to the Commission's right to terminate the Contract, where the Contract is subject to substantial error, irregularity or fraud the Commission may suspend execution of the Contract, pending order forms or specific contracts or any part thereof. Suspension shall take effect on the day the Contractor receives notification by registered letter with acknowledgment of receipt or equivalent, or at a later date where the notification so provides. The Commission shall as soon as possible give notice to the Contractor to resume the service suspended or inform that it is proceeding with contract termination. The Contractor shall not be entitled to claim compensation on account of suspension of the Contract, of the order forms or specific contracts, or of part thereof.

## **PART 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”:**

Seven-and-a-half (7½) 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(95) 1510 23/11/95]

## 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 Article 5 of the Commission decision on protection of information Systems [C(95) 1510 23/11/95] and any subsequent versions. (See Annex III)
- 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 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://europa.eu.int/comm/dgs/informatics/publications/index\\_en.htm](http://europa.eu.int/comm/dgs/informatics/publications/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.

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

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 coordination, 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 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.

#### 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.8 of the Special Conditions, II.16 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(95) 1510 23/11/95].

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(95) 1510 23/11/95]**



## SIGNATURES

For the Contractor,

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

For the Commission,

[name/surname/function]

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

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

Done at [Brussels], [date]

Done at [Brussels], [date]

in duplicate in English.