

**Important: A new Financial Regulation replacing current Regulation 966/2012 is expected to be voted by the European Parliament in July 2018 and is expected to enter into force in January 2019. The FR lays down the principles and procedures governing the establishment, implementation and control of the EU budget, including a specific Title referred to public procurement by the EU Institutions. Therefore existing contract models may be reviewed, in order to ensure compliance with the new rules.**

## MODEL of FRAMEWORK CONTRACT

This model of Framework Contract will be adapted for each lot as appropriate.

NUMBER – [complete]

1. The European Agency for Safety and Health at Work ('the Contracting authority'), represented for the purposes of signing this framework contract by [forename, surname, function, department of authorising officer],

of the one part and

2. *[For joint tenders/consortium, repeat the data below as many times as there are contractors and continue numbering listing the names of the companies making up the consortium/joint tender]*

[Consortium's name or joint tender consisting of]

Company A

[Full official name]

[Official legal form]

[Statutory registration number or ID or passport number]

[Full official address]

[VAT registration number]

Company B

[Full official name]

[Official legal form]

[Statutory registration number or ID or passport number]

[Full official address]

[VAT registration number]

Company C (acting as group leader)

[Full official name]

[Official legal form]

[Statutory registration number or ID or passport number]

[Full official address]

[VAT registration number]

Applicable for the case of consortium without legal personality (e.g. temporary association without legal personality) [In case of consortium/joint tenders, there must be a compulsory single point of contact through the group leader, *therefore insert the following sentence after the identification of the group leader:*]

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

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

on the other part

## HAVE AGREED

to the **special conditions**, the **general conditions for framework contracts**, the **general terms and conditions for information technologies contracts, version 2.1 (EC model)** and the following annexes:

<b>Annex I</b> Not applicable	List of Hardware or Software products, maintenance and Documentation covered by the contract and schedule of prices
<b>Annex II</b>	List of Services covered by the contract and schedule of prices
<b>Annex III</b>	Tender specifications (enclosed to Invitation to Tender for call for tenders EUOSHA/2018/OP/F/SE/0061 of [complete date]) – Original stored by EU-OSHA
<b>Annex IV</b>	Contractor's tender No. [complete], submitted on [complete date] – Original stored by EU-OSHA
<b>Annex V</b>	Order form and specific contract (with their annexes) – Draft Templates
<b>Annex VI</b> Not applicable	Performance guarantee
<b>Annex VII</b>	Service Level Agreement (SLA)
<b>Annex VIII</b> Not applicable	e-Request, e-Ordering, e-Fulfilment and e-Invoicing Interchange Agreement (Web Services & Supplier Portal)
<b>Annex IX</b> Not applicable	Notification document for On-Site Personnel – template
<b>Annex X</b> Not applicable	Personal data form – template
<b>Annex XI</b>	Declaration on confidentiality – template
<b>Annex XII</b> Not applicable	EMAS Environmental Policy

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

This FWC sets out:

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

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

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## **PREAMBLE**

The Contractor was selected at the conclusion of the evaluation process, on the basis of its bid submitted on [.../..20XX] 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 Order Forms.

## **I. SPECIAL CONDITIONS**

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

If there is any conflict between the provisions of the different parts and annexes of this FWC or the specific contracts signed during its implementation, the following order of precedence shall apply:

- (a) special conditions;
- (b) Service Level Agreement (Annex VII);
- (c) e-Request, e-Ordering, e-Fulfilment and e-Invoicing Interchange Agreement (Annex VIII);
- (d) tender specifications (Annex III);
- (e) general conditions;
- (f) general terms and conditions for information technologies contracts;
- (g) Contractor's tender (Annex IV);
- (h) Order forms and specific contracts signed during the FWC execution;
- (i) Technical annexes to the specific contracts (if applicable);
- (j) Contractor's formal offers for specific contracts (if applicable).

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

**I.2.1** The subject matter of the FWC is [short description of subject].

the provision to the contracting authority of informatics services, as set out in Annex II.

the assurance by the contractor of the coherence and correct functioning of the system and its integration into the informatics architecture of the contracting authority.

The products and/or services covered by this contract are listed in Annex II.

**I.2.2** The contract does not confer on the contractor any exclusive right to supply the products and to provide the services referred to in the above paragraph.

**I.2.3** All specific contracts shall conform to the provisions set out in the FWC, including its annexes.

Any reference to specific contracts applies also to order forms.

**I.2.4** Upon implementation of the FWC, the contractor shall supply the products and/or provide the services in accordance with the provisions of the contract, including its annexes.

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

**I.3.1** The FWC enters into force [on the date on which the last party signs it] [on [insert date] if both parties have agreed on a particular date for its entry into force].

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

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

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

The FWC continues to apply to such specific contracts after its expiry. The supplies and/ or services relating to such specific contracts must be delivered/performed no later than six (6) months after its expiry.

### **I.3.5 Renewal of the FWC**

The FWC is renewed automatically [complete] times for [complete] months each time, unless one of the parties receives formal notification to the contrary at least [nine (9)] months before the end of the ongoing term. Renewal does not change or postpone any existing obligations.

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

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

The contractor was selected for a [single FWC] [multiple FWC in cascade in [complete] position].

### **I.4.2 Period of provision of the supplies and/or service**

The period for the provision of the supplies and/or services starts to run from the date [on which the specific contract is signed by the last party] [indicated in the specific contract].

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

#### Option 1: single FWC

When receiving a request for services sent by the contracting authority, the contractor must (within the timing agreed in the SLA) either:

- send a completed formal offer duly signed and dated; or
- send an explanation of why it cannot accept the request for services.

The contracting authority orders services by sending the contractor an order form/ a specific contract by e-mail.

Within the timing agreed in the SLA from the receipt, the contractor must send the specific contract back to the contracting authority duly signed and dated.

If the contractor repeatedly refuses to accept the request for services or sign the specific contracts, or repeatedly fails to send them back on time, the contractor may be considered in breach of its obligations under this FWC as set out in Article II.17.1 (c).

#### Option 2: multiple FWC in cascade

When receiving a request for services sent by the contracting authority, the contractor must (within the timing agreed in the SLA) either:

- send a completed formal offer duly signed and dated; or
- send an explanation of why it cannot accept the request for services.

The contracting authority orders services by sending a specific contract by e-mail to the contractor who is ranked first in the cascade.

Within the timing agreed in the SLA from the receipt, the contractor must either:

- (a) send the specific contract back to the contracting authority, duly signed and dated, specifying the terms of the provision of services, 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 FWC; or
- (b) send an explanation of why it cannot accept the order.

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

If the contractor repeatedly refuses to sign the specific contracts or repeatedly fails to send them back in time, the contractor may be considered in breach of its obligations under this FWC as set out in Article II.17.1 (c).

#### **I.4.4. Delivery of supplies / Provision of services**

Article II.4.1 (Delivery of supplies) of the General Conditions is not applicable to this FWC.

Article II.4.2 (Provision of services) of the General Conditions is applicable/not applicable to this FWC.

### **I.5. PRICES**

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

The maximum awarded amount covering all purchases [under this FWC/under all FWCs in the cascade under this Lot], including all renewals is or will be published in the relevant contract award notice. However, this does not bind the contracting authority to purchase for the maximum amount.

The [maximum] prices of the supplies and/or services are as listed in Annex II.

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

Price revision is not applicable to this FWC.

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

Reimbursement of expenses is not applicable to this FWC.

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

Payments under the FWC shall be made in accordance with Article II.20, which is complemented by Article III.1.5 and the provisions of the order forms or specific contracts (Annex V).

Payments shall be executed only if the contractor has fulfilled all its contractual obligations by the date on which the invoice is submitted. Payments requests may not be made if payments for previous orders or specific contracts have not been executed as a result of default or negligence on the part of the contractor.

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

#### **I.6.1 Pre-financing**

Pre-financing is not applicable to this FWC.

#### **I.6.2 Interim payment[s]**

1. Interim payment(s), if provided for in the order form/specific contract, shall be made in accordance with the provisions of the order form/ specific contract and with the following options:

- a) For specific contract or order forms with an amount below EUR 25,000:



- 100 % of the total price of the specific contract or order form shall be invoiced once the work has been fully provided, based on the Task acceptance form or Time sheets (Annex III to the Specific Contract with Fixed Price or Time and Means), or based on the Certificate of Conformity (Annex III to the Specific Contract with Quoted Time and Means or the Order Form) duly completed and signed by both the Contracting Authority and the Contractor and the Declaration on the list of pre-existing rights (Annex IV to the Specific Contract) completed and signed by the Contractor (Annexes must be attached to the invoice).
  - In case of a contract longer than 6 months, one interim payment could be envisaged.
- b) For specific contract “Fixed Price” for an amount above EUR 25,000:
- In case of single performance:
    - a maximum of 30 % of the total price of the specific contract shall be invoiced on receipt of first deliverable based on the Task acceptance form (Annex III to this SC) duly completed and signed by both the Contracting Authority and the Contractor (Annex must be attached to the invoice);
    - the remaining amount shall be invoiced on completion of the work, based on the Task acceptance form (Annex III to this SC) duly completed and signed by both the Contracting Authority and the Contractor and the Declaration on the list of pre-existing rights (Annex IV to this SC) completed and signed by the Contractor (Annexes must be attached to the invoice).
  - In case of continuous service:
    - invoices shall be submitted periodically - at the end of each calendar quarter, based on the Task acceptance form (Annex III to this SC) duly completed and signed by both the Contracting Authority and the Contractor and the Declaration on the list of pre-existing rights (Annex IV to this SC) only at the last instalment completed and signed by the Contractor (Annex(es) must be attached to the invoice);
    - the first invoice shall cover the period from the start date of this Specific Contract until the end of the current calendar quarter.
- c) For specific contract “Time and Means” for an amount above EUR 25,000:
- invoices shall be submitted periodically - at the end of each calendar quarter, based on the Time sheet form (Annex III to this SC) duly completed and signed by both the Contracting Authority and the Contractor and the Declaration on the list of pre-existing rights (Annex IV to this SC) only at the last instalment completed and signed by the Contractor (Annex(es) must be attached to the invoice);
  - the first invoice shall cover the period from the start date of this Specific Contract until the end of the current calendar quarter.
- d) For specific contract “Quoted Time and Means” for an amount above EUR 25,000:
- invoices shall be submitted periodically - at the end of each calendar quarter, based on the Certificate of conformity (Annex III to this SC) duly completed and signed by both the Contracting Authority and the Contractor and the Declaration on the list of pre-existing rights (Annex IV to this SC) only at the last instalment completed and signed by the Contractor (Annex(es) must be attached to the invoice);
  - the first invoice shall cover the period from the start date of this specific contract until the end of the current calendar quarter.
- e) For order form for an amount above EUR 25,000:
- In case of single performance:

- a maximum of 30 % of the total price of the order form shall be invoiced on receipt of first deliverable based on the Certificate of conformity (Annex III to this OF) duly completed and signed by both the Contracting Authority and the Contractor (Annex must be attached to the invoice);
  - the remaining amount shall be invoiced on completion of the work, based on the Certificate of conformity (Annex III to this OF) duly completed and signed by both the Contracting Authority and the Contractor completed and signed by the Contractor (Annexes must be attached to the invoice).
- In case of continuous service:
    - invoices shall be submitted periodically - at the end of each calendar quarter, based on the Certificate of conformity (Annex III to this OF) duly completed and signed by both the Contracting Authority and the Contractor completed and signed by the Contractor (Annex(es) must be attached to the invoice);
    - the first invoice shall cover the period from the start date of this Order form until the end of the current calendar quarter.

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

3. If the contracting authority has observations to make, it must send them to the contractor (or leader in case of a joint tender) and suspend the time limit for payment in accordance with Article II.20.7. The contractor (or leader in case of a joint tender) has [complete] days to submit additional information or corrections or new supplies or a new version of the document if the contracting authority requires it.

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

### **I.6.3 Payment of the balance**

1. The contractor (or leader in case of a joint tender) may claim the payment of the balance in accordance with Article II.20.6.

The contractor (or leader in case of a joint tender) must send an invoice for payment of the balance due under a specific contract, as provided for in the tender specifications and accompanied by the documents listed in the previous article (I.6.2).

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

3. If the contracting authority has observations to make, it must send them to the contractor (or leader in case of a joint tender) and suspend the time limit for payment in accordance with Article II.20.7.

The contractor (or leader in case of a joint tender) has [complete] days to submit additional information or corrections or new supplies or new version of the documents if the contracting authority requires it.

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

### **I.6.4 Performance guarantee**

Performance guarantee is not applicable to this FWC.

### **I.6.5 Retention money guarantee**

Retention money guarantee is not applicable to this FWC.

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

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

Name of bank:

Full address of branch:

Exact denomination of account holder:

Full account number including bank codes:

IBAN code:

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

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

Contracting authority:

European Agency for Safety and Health at Work

Calle Santiago de Compostela 12 – 5th floor

E-48003 Bilbao - SPAIN

information@osha.europa.eu

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

[Full name]

[Function]

[Company name]

[Full official address]

Email: [complete]

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

### **I.9. DATA CONTROLLER**

For the purpose of Article II.9, the data controller is the Head of Resource and Service Centre of EU-OSHA.

### **I.10. TERMINATION BY EITHER PARTY**

Either party may terminate the FWC and/or the FWC and specific contracts by sending formal notification to the other party with nine (9) months', *to be adjusted in accordance with the nature of the contract and align with the notice term in Section I.3.5* written notice.

If the FWC or a specific contract is terminated:

- (a) neither party is entitled to compensation unless provided otherwise in the SLA;

(b) the contractor is entitled to payment only for the supplies and/or services delivered before termination takes effect, and only subject to their acceptance.

The second, third and fourth paragraphs of Article II.17.4 apply.

## **I.11. APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

**I.11.1** The FWC is governed by Union law, complemented, where necessary, by the law of Spain.

**I.11.2** The courts of Bilbao have exclusive jurisdiction over any dispute regarding the interpretation, application or validity of the FWC.

## **I.12. INTER-INSTITUTIONAL FWC**

Inter-Institutional FWC is not applicable to this FWC.

## **I.13. EXPLOITATION OF THE RESULTS OF THE FWC**

### **I.13.1 Detailed list of modes of exploitation of the results**

In accordance with Article II.23.1 whereby the Union acquires ownership of the results as defined in this FWC, including the tender specifications, these results may be used for any of the following modes of exploitation:

[(a) use for its own purposes:

- making available to the staff of the contracting authority;
- making available to the persons and entities working for the contracting authority or cooperating with it, including contractors, subcontractors whether legal or natural persons, Union institutions, agencies and bodies, Member States' institutions;
- installing, uploading, processing;
- arranging, compiling, combining, retrieving;
- copying, reproducing in whole or in part and in unlimited number of copies.]

[(b) distribution to the public in hard copies, in electronic or digital format, on the internet including social networks as a downloadable or non-downloadable file;]

[(c) communication through press information services;]

[(d) inclusion in widely accessible databases or indexes, such as via 'open access' or 'open data' portals, or similar repositories, whether freely accessible or accessible only upon subscription;]

[(e) modifications by the contracting authority or by a third party in the name of the contracting authority, including:

- shortening;
- summarising;
- modifying the content, the dimensions;

- making technical changes to the content (necessary correction of technical errors), adding new parts or functionalities, changing functionalities, providing third parties with additional information concerning the result (e.g. source code) with a view to making modifications;
- addition of new elements, paragraphs, titles, leads, bolds, legend, table of content, summary, graphics, subtitles, sound;
- addition of metadata, for text and data-mining purposes; addition of right-management information; addition of technological protection measures;
- preparation in audio form, preparation as a presentation, animation, pictograms story, slide-show, public presentation;
- extracting a part or dividing into parts;
- translating, inserting subtitles, dubbing in different language versions:
  - English, French, German;
  - all official languages of EU;
  - languages used within EU;
  - languages of candidate countries;
  - [*list or name other languages*].]

[(f) rights to authorise, license, or sub-license in case of licensed pre-existing rights, the modes of exploitation set out in any of the points (a) to (e) to third parties.]

[(g) other adaptations which the parties may later agree; in such case, the following rules apply: the contracting authority must consult the contractor. If necessary, the contractor must in turn seek the agreement of any creator or other right holder and must reply to the contracting authority within one month by providing its agreement, including any suggestions of modifications, free of charge. The contractor may refuse the intended modification only if a creator can demonstrate that the intended modification may harm his/her honour or reputation, thereby violating his/her moral rights.]

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

### **I.13.2. Licence or transfer of pre-existing rights**

[All pre-existing rights incorporated in the results, if any, are licensed to the Union as set out in Article II.23.2.]

[By derogation to Article II.23.2, the Union acquires fully and irrevocably all pre-existing rights incorporated in the results, if any [except for the following rights [*insert exceptions*] [unless provided otherwise in a specific contract].]

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

The contractor must provide the contracting authority with a declaration on pre-existing rights as set out in Article II.23.4 together with the invoice for payment of the balance at the latest.

In addition, the contractor must provide the contracting authority with relevant and exhaustive evidence of the acquisition of all the necessary pre-existing rights together with a presentation of relevant result. To this effect, the contractor must provide a statement, for which the model is attached as Annex to the Specific Contract .

#### **I.14. SPECIFIC DEROGATIONS TO GENERAL CONDITIONS AND TO GENERAL TERMS AND CONDITIONS FOR INFORMATION TECHNOLOGIES CONTRACTS**

- I.14.1** By way of derogation from the definition laid down in the general terms and conditions for information technologies contracts, **Article III.1.1**, the "Person-Day" is defined as follows:

**"Person-day"**: Eight (8) hours.

- I.14.2** By way of derogation from general terms and conditions for information technology contracts, the following text replaces the last paragraph of **Article III.1.5.3**:

"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 whole period, unless otherwise stated in the FWC."

- I.14.3** By way of derogation from general Terms and conditions for information technology contracts, the following text replaces the last sentence of **Article III.1.5.4**:

"When the total value of a specific contract relates to an amount of less than €25,000 payment shall be made when the supplies and/or service has been fully provided."

- I.14.4** By way of derogation from general terms and conditions for information technology contracts, **Article III. 2.1.6** shall read as follows:

"The Contractor undertakes to comply with those quality standards. Compliance with the standards shall be monitored by the Contracting Authority. Unless otherwise stated in the Framework contract, in the event of non-compliance with certain standards specifically identified in the Service Level Agreement for the purpose of application of this clause, over a sliding period of three (3) months, the Contractor shall submit an improvement plan. In the event of non-compliance with those 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."

- I.14.5** By way of derogation from general terms and conditions for information technology contracts, **Article III.2.2.2** is hereby modified as follows:

"2.2.2 The contractor and its staff, when performing tasks for the contracting authority in execution of this FWC, undertake to comply with:

- Commission Decision (EU, Euratom) 2017/46 of 10 January 2017 on the security of communication and information systems in the European Commission, its subsequent versions, its implementing rules (as adapted from time to time) and the corresponding security notices, and

- Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information, as well as all its subsequent versions;

- Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission, as well as all its subsequent versions, and

- European Commission's security policies and standards that may be relevant and made available for the implementation of specific contracts."

- I.14.6** By way of derogation from general terms and conditions for information technology contracts, **Article III.2.2.6** is hereby modified as follows:

"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.

- I.14.7** By way of derogation from general terms and conditions for information technology contracts, Article **III.2.4.1** is hereby modified as follows:

"2.4.1 The Contractor undertakes to develop and install the *Products* and provide the *Informatics Services* in accordance with the agreed service level agreements and where applicable taking into account the constraints imposed by the existing Commission's IT architecture. 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."

- I.14.8** By way of derogation from general terms and conditions for information technology contracts, **Article III.8.1** is hereby replaced as follows:

"III.8.1 Compliance with technical specifications

When providing services of development or maintenance of commissioned software to the contracting authority, the contractor undertakes, in addition to the general quality requirements as specified in the FWC, to observe inter alia the constraints imposed by the existing Commission's IT architecture"

- I.14.9** By way of derogation from general terms and conditions for information technology contracts, **Annex II: TEMPLATE OF DECLARATION OF CONFIDENTIALITY**, is deleted and replaced by Annex XI to the Framework Contract.

- I.14.10** By way of derogation from general terms and conditions for information technology contracts **Annex III** is deleted.

## **I.15. SPECIFIC DEFINITIONS**

### **I.15.1 Normal Working Days**

For intra muros services the definition of Normal Working Days is replaced by:

"From Mondays to Fridays inclusive, except Contracting Authority public holidays in the place of delivery of the services."

### **I.15.2 Normal Working Hours**

The definition of Normal Working Hours is replaced by: From 7 a.m. to 9 p.m., on Normal Working Days.

### **I.15.3 Work outside normal working days and normal working hours**

The definition of work outside normal working days and hours is defined herein below:

In exceptional cases and only on request of the Contracting Authority, it may be necessary to deliver services outside the normal working days and the normal working hours. For these cases, the following surcharges will be applied:

- Service delivery outside normal working hours (on normal working days and on Agency public holidays not corresponding to a national holiday in the place of delivery of the services): Surcharge of 50% of the applicable daily rate, applied prorata temporis.
- Service delivery outside normal working days: Surcharge of 100% of the applicable daily rate, applied prorata temporis. The surcharge only applies on the condition that service

delivery occurs on Agency public holidays which correspond to a national holiday in the place of delivery of the services; thus, if it is a Contracting Authority public holiday but it is not a national holiday in the place of delivery of the services, no surcharge applies.

On request and with the agreement of the Agency, surcharges may also apply on a pro-rata basis for effective working hours delivered during the travelling time outside normal working hours.

## **I.16. SPECIFIC QUALITY STANDARDS**

Specific quality requirements will be stated in a Service Level Agreement.

In conformity with Article III.2.1.6, the contractor shall undertake a trial period of three (3) months in order to prove full compliance with the quality standards provided in the FWC, and notably in relation with the Service Level Agreement. As provided in Article III.2.1.6, the FWC may be terminated where the overall quality of performance is substandard.

## **I.17. CODE OF CONDUCT FOR CONTRACTOR'S STAFF ON THE PREMISES OF THE CONTRACTING AUTHORITY**

The contractor commits itself, its staff, its subcontractors and freelancers and their respective staff, that are working as external staff for the EU Institutions, to the following behaviour and rules:

1. Making sure that the tools placed under his/her responsibility are in good working order (i.e. work material, software, networks etc.) and reporting any incidents to this effect. Use of this equipment and infrastructure, including software and access to information systems, must be limited to professional purposes related to the performance of contractual obligations;
2. Using standard computer equipment (including e-mail and Internet access) and fixed telephones for private purposes is tolerated under the same conditions as for EU Institution staff, i.e. (in summary) as long as such use (i) is on a purely occasional basis and does not amount to extensive use; and (ii) is not for illegal or irregular purposes, in any way that might disrupt the functioning of the service itself or in any manner contrary to the interests of the EU Institution;
3. Respecting any safety and security requirements and procedures laid down by the EU Institution;
4. Not letting in nor bringing any unauthorised person inside the buildings of the EU Institutions;
5. Willingly complying with the requirements of the EU Institution's security services, including the inspection of the personal goods (by scanner or physical inspection);
6. If, at the EU Institution's discretion, such external staff is entitled to use the parking lots available in EU Institution buildings, they must respect strictly the applicable rules and regulations. Failure to do so will result in the removal of the authorisation;
7. Keeping secret the security procedures as well as protection mechanisms which such external staff may come to gain knowledge about in the process of his/her activities;
8. Never jeopardising the good functioning, the security or the confidentiality of the systems or data which such external staff may have access to within the framework of his/her functions;
9. Never copying illegally, carrying, transmitting nor destroying data, documentation, software or application programs, nor any material (even when obsolete);
10. Never accessing, nor even trying to access data, locations or systems to which such external staff has not been granted access or which he/she does not need to access for the implementation of his/her tasks;
11. Not using software other than that which is usually installed on the desktop/laptop without prior formal approval from the person(s) in charge of one of the domains of this Call for Tenders;
12. If granted with access card(s) - returning the access card(s) before such external staff leaves, at first request by the EU Institution;
13. Showing utmost discretion regarding information which such external staff may come to gain knowledge;



14. Never disclosing information concerning matters dealt with by the EU Institution's services (be it political, judicial, budgetary or financial affairs, or the management of the EU Institution, the personnel or data processing);
15. On EU Institution premises, such external staff may not perform any professional tasks which are not linked to the framework contract
16. Not exerting any pressure on EU Institution officials; in particular, not seeking to obtain any information on on-going or forthcoming procurement procedures which is not already in the public domain and refraining from making any gifts or offers of hospitality to EU Institution officials;
17. Abiding by a very high standard of professional deontology, guided by the principle of fair competition. In particular, such external staff should at all times be courteous, show restraint and avoid any form of competitor-bashing and harassment;
18. Not using the EU Institution premises for marketing or recruitment purposes;
19. Not conveying the impression that such external staff are employed by the EU Institution, or that they are authorised to represent the EU Institution; never writing documents with EU Institution's letterhead paper;
20. Showing EMAS awareness in the daily behaviour - for instance, printing on both sides of the paper, switching off the lights and other equipment, using appropriate bins for waste recycling, etc.

In general, such external staff have to respect the Staff notice on acceptable use of the Contracting Authority's ICT services in force, or similar documents adopted by the other EU Institutions.

When such external staff sends e-mails using the EU Institution e-mail system, he/she has to use an e-mail signature indicating the contract name of the contractor, in addition to his/her own name and the EU Institution unit under which responsibility the contract is performed.

Such external staff must have the necessary competences in order to perform the service in a professional way. An update of the skills should be foreseen in order to cope with the normal evolution of the software products. Those kinds of trainings cannot incur additional costs for the EU Institution.

## **I.18. EMAS COMPLIANCE**

EU-OSHA is not EMAS compliant. Nevertheless, environmental considerations are taken into account throughout the complete life cycle of a product or a service.

## **I.19. EQUAL OPPORTUNITIES**

The contractor shall observe a policy on the promotion of equality and diversity in the implementation of the FWC, by applying the principles of non-discrimination and equality set out in the EU Treaties in full and in their entirety.

In the implementation of the FWC, the contractor shall establish, maintain and promote an open and inclusive working environment which respects human dignity and the principles of equal opportunities, especially through the removal of all obstacles to recruitment and all potential discrimination based on sex, race or ethnic origin, religion or convictions, disability, age or sexual orientation.

## **I.20. SUBCONTRACTING**

### **I.20.1. Definitions**

**Subcontracting** is the situation where a contract has been or is to be established between the contracting authority and the contractor and where the contractor, in order to carry out that contract, enters into legal commitments with other entities for performing part of the contract.

The contracting authority has no direct legal commitment with the subcontractor(s).

**Subcontracting by subcontractors (2<sup>nd</sup> level of subcontracting)** is the situation where a subcontractor enters into legal commitments with other entities (2<sup>nd</sup> level subcontractors) for performing part of the contract.

For this FWC, subcontracting by subcontractors is not authorised.

#### **I.20.2. Types of subcontractors**

Two types of subcontractors are distinguished: freelancers and corporate subcontractors.

The following subcontractors are **freelancers**:

- individuals (self-employed natural persons who do not employ other IT service providers);
- service providers in one of the following situations:
  - sole proprietorships in which only one person (employee or not) is active in providing IT services;
  - companies in which only one person (employee or not) is active in providing IT services;
  - companies in which maximum two persons (employees or not) with family ties are active in providing IT services.

All subcontractors who do not qualify as freelancers are **corporate subcontractors**.

#### **I.20.3. Rules on replacing or adding subcontractors during contract execution**

During contract execution, the contractor may wish to replace a subcontractor or to add a new subcontractor.

The contracting authority may also request the contractor to replace a subcontractor found to be in a situation provided for in points (d) and (e) of Article II.17.1.

In case of multiple FWCs, a contractor may not subcontract to another contractor in the same lot.

Contractor may subcontract without the need to require the prior written authorisation from the contracting authority in the following cases:

- ✓ for subcontractors proposed in the contractor's Tender (Annex IV) that were not excluded, replaced or removed before the contract signature;
- ✓ for freelancers [including in cases of 2<sup>nd</sup> level of subcontracting].

Prior authorisation from the contracting authority is necessary for all cases not covered by the previous paragraph.

The procedures to request authorisation for corporate subcontractors at FWC level and at specific contract level are described below.

#### **I.20.4. Procedure to request authorization of corporate subcontractors at FWC level**

To replace a corporate subcontractor or to add a new corporate subcontractor at FWC level, the contractor shall submit a formal request for authorization by e-mail to contracting authority's e-mail address specified in Article I.8. The authorisation request should contain:

- exact name, official address, registration/VAT number of the new subcontractor and its contact details;
- updated descriptive document on subcontracting, requested at tender submission, containing, among others, a list and clear identification of all corporate subcontractors, reasons to subcontract, roles and activities of each corporate subcontractor and the volume / proportion of the subcontracting.
- all the documents requested at tender submission for the replaced subcontractors (in case of replacement) or for corporate subcontractors on whose capacity the tenderer did not rely to fulfil the selection criteria, if any (in case of adding a new subcontractor).

The new corporate subcontractor may not start performing tasks under the contract until the contracting authority provides an explicit written authorisation for subcontracting.

#### **I.20.5. Procedure to request authorization of corporate subcontractors at specific contracts level**

To add a new corporate subcontractor (i.e. corporate subcontractor not already authorised at FWC level) at the level of a given specific contract, the request for authorization shall be included in the proposal/offer for a specific contract (containing the exact name, official address, registration/VAT number of the new subcontractor and contact details) along with reasons to subcontract and explanation for the involvement and type of services the subcontractor will perform.

The authorisation is provided with the acceptance of the offer and signature of the specific contract by the contracting authority.

#### **I.20.6. Obligations of the contractor in case of subcontracting**

In case of subcontracting the contractor remains bound by its contractual obligations and is solely responsible for the implementation of the FWC.

The contractor must ensure that the subcontracting does not affect the rights of the contracting authority under this FWC, particularly those under Articles II.8, II.22 and II.23.

For services provided at a facility that is directly under the oversight of the contracting authority (intra-muros services), the contractor must, at the contracting authority's request, indicate the names, contacts and authorised representatives of subcontractors (including freelancers) involved in the performance of the contract, including any changes of subcontractors.

In case of subcontracting to freelancers, the contractor must ensure they comply with all obligations and administrative requirements linked to performing their tasks that derive from the legislation in force of the country(/ies) in which they will provide their services under the contract. These obligations may include, amongst others, any obligation to be registered for VAT purposes and/or in an enterprise register or database. At the request of the contracting authority, the contractor must submit any relevant information, including evidence for the compliance of freelancers with their aforementioned obligations.

### **I.21. OTHER SPECIAL CONDITIONS**

All references to "Back Office", "EDI message", "e-PRIOR" and "Supplier portal" have been removed from the Special Conditions given that the European Agency for Safety and Health at Work does not yet have a similar system in place and therefore, they are not applicable.

Articles II.5.3 Submission of e-documents via e-PRIOR, II.5.4 Validity and date of e-documents, II.5.5 Authorised persons in e-PRIOR and Article II.18.2 E-invoicing of the General Conditions are not applicable to the European Agency for Safety and Health at Work.

### **SIGNATURES**

For the contractor,

For the contracting authority,

[Company name/forename/surname/position]

[forename/surname/position]

Signature[s]: \_\_\_\_\_

Signature[s]: \_\_\_\_\_

Done at [place], [date]

Done at [place], [date]

In duplicate in English.

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

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

For the purpose of this FWC, the following definitions apply:

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

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

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

**‘EDI message’**: an electronic document structured by using an agreed standard, prepared in a computer readable format and capable of being automatically and unambiguously processed;

**‘e-PRIOR’**: the service-oriented communication platform that provides a series of web services and allows the exchange of standardised electronic messages and documents between the parties. This is done either through web services, with a machine-to-machine connection between the parties’ back office systems (EDI messages), or through a web application (the supplier portal). The Platform may be used to exchange electronic documents (e-documents) such as electronic requests for services/supplies (request for quotation, final offer, etc.) electronic specific contracts and order forms, electronic transmission of timesheets, deliverables and its acceptance (service receipt, dispatch advices and receipt advices) or electronic invoices between the parties. Technical specifications (i.e. the interface control document), details on access and user manuals are available at the following website:  
<https://webgate.ec.europa.eu/fpfis/wikis/display/ePRIOR/The+e-Procurement+suite>;

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

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

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

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

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

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

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

**‘Order form’:** a form by which the contracting authority orders supplies and related maintenance under this FWC;

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

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

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

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

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

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

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

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

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

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

**‘Supplier portal’:** the e-PRIOR portal, which allows the contractor to receive or exchange electronic documents, such as quotations, orders, dispatch and receiving advices or invoices, through a graphical user interface. When necessary, these documents can be signed electronically by the authorised persons. Its main features can be found in the supplier portal overview document available on: <https://webgate.ec.europa.eu/fpfis/wikis/display/ePRIOR/The+e-Procurement+suite>.

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

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

## II.3. SEVERABILITY

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

## II.4. DELIVERY OF SUPPLIES / PROVISION OF SERVICES

### II.4.1. Delivery of Supplies

II.4.1.1 Signature of the FWC does not guarantee any actual purchase. The contracting authority is bound only by specific contracts implementing the FWC.

II.4.1.2 The contractor must comply with the minimum requirements provided for in the tender specifications. This includes compliance by the contractor and its subcontractors with applicable obligations under environmental, social and labour law established by Union law, national law and collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU<sup>1</sup>.

II.4.1.3 All periods specified in the FWC are calculated in calendar days, unless otherwise specified.

II.4.1.4 The contractor must not present itself as a representative of the contracting authority and must inform third parties that it is not part of the European public service.

II.4.1.5 The contractor is responsible for the personnel who perform the contract and exercises its authority over its personnel without interference by the contracting authority. The contractor must inform its personnel that:

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

II.4.1.6 The contractor must ensure that the personnel implementing the FWC and any future replacement personnel possess the professional qualifications and experience required to provide the supplies, as the case may be on the basis of the selection criteria set out in the tender specifications.

II.4.1.7 At the contracting authority's reasoned request, the contractor must replace any member of personnel who:

- (c) does not have the expertise required to provide the supplies; or
- (d) has caused disruption at the premises of the contracting authority.

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

II.4.1.8 The contractor must record and report to the contracting authority any problem that affects its ability to deliver the supplies. The report must describe the problem, state when it started and what action the contractor is taking to resolve it.

#### II.4.1.9 Delivery

- (a) Time allowed for delivery

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

- (b) Date, time and place of delivery

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

The contractor must bear all costs and risks involved in delivering the supplies to the place of delivery.

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<sup>1</sup> OJ L 94 of 28.03.2014, p. 65.

(c) Consignment note

Each delivery must be accompanied by a consignment note in duplicate, duly signed and dated by the contractor or its carrier, giving the specific contract number and particulars of the supplies delivered. One copy of the consignment note must be countersigned by the contracting authority and returned to the contractor or to its carrier.

II.4.1.10 Certificate of conformity

Signature of the consignment note by the contracting authority, as provided for in point (c) of Article II.4.1.9 is simply an acknowledgment of the fact that the delivery took place and in no way implies conformity of the supplies with the order form.

Conformity of the supplies delivered must be evidenced by the signature of a certificate to this effect by the contracting authority no later than one month after the date of delivery, unless otherwise specified in the special conditions, in the general terms and conditions for information technologies contracts or in the tender specifications.

Conformity must be declared only where the conditions laid down in the FWC and in the order form are satisfied and the supplies are in conformity with the tender specifications.

If, for reasons attributable to the contractor, the contracting authority is unable to accept the supplies, the contractor must be notified in writing at the latest by the deadline for conformity.

II.4.1.11 Conformity of the supplies delivered with the FWC

II.4.1.12 The supplies delivered by the contractor to the contracting authority must be in conformity in quantity, quality, price and packaging with the FWC and the relevant order form.

The supplies delivered must:

- (a) correspond to the description given in the tender specifications and possess the characteristics of the supplies provided by the contractor to the contracting authority as a sample or model;
- (b) be fit for any specific purpose required of them by the contracting authority and made known to the contractor at the time of conclusion of this FWC and accepted by the contractor;
- (c) be fit for the purposes for which supplies of the same type are normally used;
- (d) demonstrate the high quality standards and performance which are normal in supplies of the same type and which the contracting authority can reasonably expect, given the nature of the supplies and taking into account any public statements on the specific characteristics of the supplies made by the contractor, the producer or its representative, particularly in advertising or on labelling; in accordance with the state of the art in the industry and the provisions of this FWC, in particular the tender specifications and the terms of its tender.
- (e) be packaged according to the usual method for supplies of the same type or, failing this, in a way designed to preserve and protect them.

II.4.1.13 Remedy

The contractor must be liable to the contracting authority for any lack of conformity which exists at the time the supplies are verified.

In case of lack of conformity, without prejudice to Article II.14 on liquidated damages applicable to the total price of the supplies concerned, the contracting authority is entitled:

- (a) either to have the supplies brought into conformity, free of charge, by repair or replacement;
- (b) or to have an appropriate reduction made in the price.

Any repair or replacement must be completed within a reasonable time and without any significant inconvenience to the contracting authority, taking account of the nature of the supplies and the purpose for which they are required by the contracting authority.

The term 'free of charge' in paragraph (a) refers to the costs incurred to bring the supplies into conformity, particularly the cost of postage, labour and materials.

#### II.4.1.14 Assembly

If required by tender specifications, the contractor must assemble the supplies delivered within a period of one month unless otherwise specified in the special conditions.

Any lack of conformity resulting from incorrect installation of the supplies must be deemed to be equivalent to lack of conformity of the supplies if installation forms part of the FWC and the supplies were installed by the contractor or under its responsibility. This applies equally if the product was to be installed by the contracting authority and was incorrectly installed due to a shortcoming in the installation instructions.

#### II.4.1.15 Services provided to supplies

If required by the tender specifications, services to supplies must be provided accordingly.

#### II.4.1.16 General provisions concerning supplies

##### (a) Packaging

The supplies must 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, must not weigh more than 500 kg.

Unless otherwise specified in the special conditions or in the tender specifications (Annex III), pallets must be considered as one-way packaging and must not be returned. Each box must be clearly labelled with the following information:

- Name of contracting authority and address for delivery;
- name of contractor;
- description of contents;
- date of delivery;
- number and date of order form;
- EC code number of article.

##### (b) Guarantee

The supplies must be guaranteed against all defects in manufacture or materials for two years from the date of delivery, unless provision is made for a longer period in the tender specifications.

The contractor must guarantee that any permits and licences required for manufacturing and selling the supplies have been obtained.

The contractor must replace at its 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 liable 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 liable for any conformity defect which occurs after delivery and is ascribable to non-compliance with its obligations, including failure to provide a guarantee that, for a certain period, supplies 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 must 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 supplies that are part of the order, even though they may not have been the cause of any incident. In this case, the guarantee period must be extended as stated above.



#### **II.4.2. Provision of services**

- II.4.2.1 Signature of the FWC does not guarantee any actual purchase. The contracting authority is bound only by specific contracts implementing the FWC.
- II.4.2.2 The contractor must provide services of high quality standards, in accordance with the state of the art in the industry and the provisions of this FWC, in particular the tender specifications and the terms of its tender.
- II.4.2.3 The contractor must comply with the minimum requirements provided for in the tender specifications. This includes compliance by the contractor and its subcontractors with applicable obligations under environmental, social and labour law established by Union law, national law and collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU<sup>2</sup>.
- II.4.2.4 The contractor must obtain any permit or licence required in the State where the services are to be provided.
- II.4.2.5 All periods specified in the FWC are calculated in calendar days, unless otherwise specified.
- II.4.2.6 The contractor must not present itself as a representative of the contracting authority and must inform third parties that it is not part of the European public service.
- II.4.2.7 The contractor is responsible for the personnel who carry out the services and exercises its authority over its personnel without interference by the contracting authority. The contractor must inform its personnel that:
- (e) they may not accept any direct instructions from the contracting authority; and
  - (f) their participation in providing the services does not result in any employment or contractual relationship with the contracting authority.
- II.4.2.8 The contractor must ensure that the personnel implementing the FWC and any future replacement personnel possess the professional qualifications and experience required to provide the services, as the case may be on the basis of the selection criteria set out in the tender specifications.
- II.4.2.9 At the contracting authority's reasoned request, the contractor must replace any member of personnel who:
- (a) does not have the expertise required to provide the services; or
  - (b) has caused disruption at the premises of the contracting authority.
- The contractor bears the cost of replacing its personnel and is responsible for any delay in providing the services resulting from the replacement of personnel.
- II.4.2.10 The contractor must record and report to the contracting authority any problem that affects its ability to provide the services. The report must describe the problem, state when it started and what action the contractor is taking to resolve it.

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

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

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

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

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

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

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

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

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

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

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

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

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

The exchange of electronic documents (e-documents) such as specific contracts and invoices between the parties is automated through the use of the e-PRIOR platform in accordance with the provisions of Annex VIII. This platform provides two possibilities for such exchanges: either through web services (machine-to-machine connection) or through a web application (the supplier portal).

The contracting authority takes the necessary measures to implement and maintain electronic systems that enable the supplier portal to be used effectively.

In the case of machine-to-machine connection, a direct connection is established between the parties' back offices. In this case, the parties take the measures necessary on their side to implement and maintain electronic systems that enable the machine-to-machine connection to be used effectively. The electronic systems are specified in the interface control document. The contractor (or leader in case of a joint tender) must take the necessary technical measures to set up a machine-to-machine connection and at its own cost.

If communication via the supplier portal or via the web services (machine-to-machine connection) is hindered by factors beyond the control of one party, it must notify the other immediately and the parties must take the necessary measures to restore this communication.

If it is impossible to restore the communication within two working days, one party must notify the other that alternative means of communication specified in Article II.5.1 will be used until the supplier portal or the machine-to-machine connection is restored.

When a change in the interface control document requires adaptations, the contractor (or leader in case of a joint tender) has up to six months from receipt of the notification to implement this change. This period can be shortened by mutual agreement of the parties. This period does not apply to urgent measures required by the security policy of the contracting authority to ensure integrity, confidentiality and non-repudiation of information and the availability of e-PRIOR, which must be applied immediately.

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

The parties agree that any e-document, including related attachments exchanged via e-PRIOR:

- (e) is considered as equivalent to a paper document;
- (f) is deemed to be the original of the document;
- (g) is legally binding on the parties once an e-PRIOR authorised person has performed the 'sign' action in e-PRIOR and has full legal effect; and
- (h) constitutes evidence of the information contained in it and is admissible as evidence in judicial proceedings.

The parties expressly waive any rights to contest the validity of such a document solely on the grounds that communications between the parties occurred through e-PRIOR or that the document has been signed through e-PRIOR. If a direct connection is established between the parties' back offices to allow electronic

transfer of documents, the parties agree that an e-document, sent as mentioned in the interface control document, qualifies as an EDI message.

If the e-document is dispatched through the supplier portal, it is deemed to have been legally issued or sent when the contractor (or leader in case of a joint tender) is able to successfully submit the e-document without any error messages. The generated PDF and XML document for the e-document are considered as a proof of receipt by the contracting authority.

In the event that an e-document is dispatched using a direct connection established between the parties' back offices, the e-document is deemed to have been legally issued or sent when its status is 'received' as defined in the interface control document.

When using the supplier portal, the contractor (or leader in case of a joint tender) can download the PDF or XML message for each e-document for one year after submission. After this period, copies of the e-documents are no longer available for automatic download from the supplier portal.

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

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

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

### **II.6. LIABILITY**

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

**II.6.2** If required by the relevant applicable legislation, the contractor must take out an insurance policy against risks and damage or loss relating to the implementation of the FWC. It must also take out supplementary insurance as reasonably required by standard practice in the industry. Upon request, the contractor must provide evidence of insurance coverage to the contracting authority.

**II.6.3** The contractor is liable for any loss or damage caused to the contracting authority during or as a consequence of implementation of the FWC, including in the event of subcontracting, but only to an amount not exceeding three times the total amount of the relevant specific contract. However, if the damage or loss is caused by the gross negligence or wilful misconduct of the contractor or of its personnel or subcontractors, the contractor is liable for the whole amount of the damage or loss.

**II.6.4** If a third party brings any action against the contracting authority in connection with the implementation of the FWC, the contractor must assist the contracting authority in the legal proceedings, including by intervening in support of the contracting authority upon request.

If the contracting authority's liability towards the third party is established and that such liability is caused by the contractor during or as a consequence of the implementation of the FWC, Article II.6.3 applies.

**II.6.5** If the contractor is composed of two or more economic operators (i.e. who submitted a joint tender), they are all jointly and severally liable to the contracting authority for the implementation of the FWC.

**II.6.6** The contracting authority is not liable for any loss or damage caused to the contractor during or as a consequence of implementation of the FWC, unless the loss or damage was caused directly by wilful misconduct or gross negligence of the contracting authority.

### **II.7. PROFESSIONAL CONFLICTING INTERESTS**

**II.7.1** The contractor must take all the necessary measures to prevent any situation of professional conflicting interest.

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

The contracting authority may do any of the following:

- (a) verify that the contractor's action is appropriate;
- (b) require the contractor to take further action within a specified deadline;
- (c) decide not to award a specific contract to the contractor.

**II.7.3** The contractor must pass on all the relevant obligations in writing to:

- (a) its personnel;
- (b) any natural person with the power to represent it or take decisions on its behalf;
- (c) third parties involved in the implementation of the FWC, including subcontractors.

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

**II.7.4** The contractor declares:

- (a) that it has not made, and will not make, any offer of any type whatsoever from which an unlawful advantage can be derived under the FWC;
- (b) that it 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 FWC.

## **II.8. CONFIDENTIALITY**

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

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

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

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

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

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

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

- II.9.1** Any personal data included in the FWC must be processed in accordance with Regulation (EC) No. 45/2001<sup>3</sup> of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Such data must be processed by the data controller solely for the purposes of the implementation, management and monitoring of the FWC. This does not affect its possible transmission to the bodies entrusted with monitoring or inspection tasks in application of Union law.
- II.9.2** The contractor has the right to access its personal data and the right to rectify any such data. The contractor should address any queries concerning the processing of its personal data to the data controller.
- II.9.3** The contractor has right of recourse at any time to the European Data Protection Supervisor.
- II.9.4** If the FWC requires the contractor to process any personal data, the contractor may act only under the supervision of the data controller, in particular with regard to the purposes of the processing, the categories of data that may be processed, the recipients of the data and the means by which the data subject may exercise its rights.
- II.9.5** The contractor must grant personnel access to the data to the extent strictly necessary for the implementation, management and monitoring of the FWC.
- II.9.6** The contractor must adopt appropriate technical and organisational security measures giving due regard to the risks inherent in the processing and to the nature of the personal data concerned, in order to:
- (a) prevent any unauthorised person from gaining access to computer systems processing personal data, and especially:
    - (i) unauthorised reading, copying, alteration or removal of storage media;
    - (ii) unauthorised data inputting, as well as any unauthorised disclosure, alteration or erasure of stored personal data;
    - (iii) unauthorised use of data processing systems by means of data transmission facilities;
  - (b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
  - (c) record which personal data have been communicated, when and to whom;
  - (d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting authority;
  - (e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
  - (f) design its organisational structure in such a way that it meets data protection requirements.

## **II.10. SUBCONTRACTING**

The rules on subcontracting are detailed in Article I.22 of the Special Conditions.

## **II.11. AMENDMENTS**

- II.11.1** Any amendment to the FWC or a specific contract must be made in writing before all contractual obligations have been fulfilled. A specific contract does not constitute an amendment to the FWC.

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<sup>3</sup> A proposal for repealing and replacing existing Regulation (EC) 45/2001 on the protection of personal data by EU institutions and bodies is currently going through the legislative process. The specific data protection clauses contained in this framework contract may need to be amended in order to ensure compliance with this new Regulation

- II.11.2** Any amendment must not make changes to the FWC or a specific contract that might alter the minimum requirements of the initial procurement procedure or result in unequal treatment of tenderers or contractors.

## **II.12. ASSIGNMENT**

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

## **II.13. FORCE MAJEURE**

- II.13.1** If a party is affected by force majeure, it must immediately notify the other party, stating the nature of the circumstances, their likely duration and foreseeable effects.
- II.13.2** A party is not liable for any delay or failure to perform its obligations under the FWC if that delay or failure is a result of force majeure. If the contractor is unable to fulfil its contractual obligations due to force majeure, it has the right to remuneration only for the supplies/services actually delivered and which obtain a certificate of conformity.
- II.13.3** The parties must take all necessary measures to limit any damage due to force majeure.

## **II.14. LIQUIDATED DAMAGES**

### **II.14.1. Liquidated damages for failure of the Contractor to perform obligations within the applicable time limits**

For any issues not explicitly regulated by the Service Level Agreement, should the Contractor fail to perform his obligations under the Contract within the time limits set by the Contract or to deliver a result for which a firm and binding time limit is agreed, and without prejudice to the Contractor's actual or potential liability incurred in relation to the Contract or to the Contracting Authority's right to terminate the Contract, the Contracting Authority may decide to impose liquidated damages of 0.5% of the amount of the relevant Specific Contract(s) or Order Form(s) per calendar day of delay or non-compliance.

- II.14.2.** The total maximum amount of liquidated damages that can be imposed shall be capped to 50% of the value of the relevant Specific Contract(s) or Order Form(s) for which the Contractor is in breach.

- II.14.3.** Precedence of liquidated damages foreseen in the Service Level Agreement

Unless otherwise stipulated in the Service Level Agreement and for the key performance indicators defined therein, the Service Level Agreement liquidated damages prevail over the liquidated damages foreseen above.

### **II.14.4. Procedure**

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

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

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

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

### **II.14.5. Nature of liquidated damages**

The parties expressly acknowledge and agree that any amount payable under this Article is not a penalty and represents a reasonable estimate of fair compensation for the damage incurred due to failure to provide the supplies/services within the applicable time limits or with regard to the required quality and security levels

set out in this FWC (including the ones set out in the Service Level Agreement and in the tender specifications).

#### **II.14.6. Claims and liability**

Any claim for liquidated damages does not affect the contractor's actual or potential liability or the contracting authority's rights under Article II.17.

### **II.15. REDUCTION IN PRICE**

#### **II.15.1. Quality standards**

If the contractor fails to deliver the supply and/or provide the services in accordance with the FWC or a specific contract ('unperformed obligations') or if it fails to deliver the supply and/or provide the services in accordance with the expected quality and security levels specified in the tender specifications ('low quality delivery'), the contracting authority may reduce or recover payments proportionally to the seriousness of the unperformed obligations or low quality delivery. This includes in particular cases where the contracting authority cannot approve a document or deliver a certificate of conformity for supply as defined in Article I.6 after the contractor has submitted the required additional information, correction or new supply.

A reduction in price may be imposed together with liquidated damages under the conditions of Article II.14.

#### **II.15.2. Procedure**

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

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

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

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

#### **II.15.3. Claims and liability**

Any reduction in price does not affect the contractor's actual or potential liability or the contracting authority's rights under Article II.17.

### **II.16. SUSPENSION OF THE IMPLEMENTATION OF THE FWC**

#### **II.16.1. Suspension by the contractor**

If the contractor is affected by force majeure, it may suspend the performance of a specific contract.

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

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

#### **II.16.2. Suspension by the contracting authority**

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

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

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

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

- (a) it is lifting the suspension; or

(b) it intends to terminate the FWC or a specific contract under Article II.17.1(f) or (j).

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

## **II.17. TERMINATION OF THE FWC**

### **II.17.1. Grounds for termination by the contracting authority**

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

- (a) if provision of the supplies and/or services under a pending specific contract has not actually started within 15 days of the scheduled date and the contracting authority considers the new date proposed, if any, unacceptable, taking into account Article II.11.2;
- (b) if the contractor is unable, through its own fault, to obtain any permit or licence required for implementation of the FWC;
- (c) if the contractor does not implement the FWC or perform the specific contract in accordance with the tender specifications or request for supplies/services or is in breach of another substantial contractual obligation or repeatedly refuses to sign specific contracts. Termination of three or more specific contracts in these circumstances also constitutes grounds for termination of the FWC;
- (d) if the contractor or any person that assumes unlimited liability for the debts of the contractor is in one of the situations provided for in points (a) and (b) of Article 106(1) of the Financial Regulation<sup>4</sup>;
- (e) if the contractor or any related person is subject to any of the situations provided for in points (c) to (f) of Article 106(1) or to Article 106(2) of the Financial Regulation;
- (f) if the procedure for awarding the FWC or the implementation of the FWC prove to have been subject to substantial errors, irregularities or fraud;
- (g) if the contractor or its subcontractors do not comply with applicable obligations under environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU;
- (h) if the contractor is in a situation that constitutes a professional conflicting interest as referred to in Article II.7;
- (i) if a change to the contractor's legal, financial, technical, organisational or ownership situation is likely to substantially affect the implementation of the FWC or substantially modify the conditions under which the FWC was initially awarded;
- (j) in the event of force majeure, where either resuming implementation is impossible or the necessary ensuing amendments to the FWC or a specific contract would mean that the tender specifications are no longer fulfilled or result in unequal treatment of tenderers or contractors;
- (k) if the needs of the contracting authority change and it no longer requires new supplies and/or services under the FWC; in such cases ongoing specific contracts remain unaffected;
- (l) if the termination of the FWC with one or more of the contractors means that the multiple FWC with reopening of competition no longer has the minimum required level of competition;
- (m) where the contracting authority has evidence that the contractor or any related entity or person has violated any provisions on security and confidentiality included in the FWC and its annexes;
- (n) For specific services, where the Contracting Authority has evidence or seriously suspects the Contractor of, active or passive, intentional or negligent, disclosure of any data or information issued by the EU institutions and transferred through the network of the contractor during the performance of the current contract, to any authorities, legal or natural persons, with the sole exception of relevant formal requests submitted by EU judicial authorities for the purpose of criminal investigations.

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<sup>4</sup> Regulation (EU, EURATOM) No. 966/2012 on the financial rules applicable to the general budget of the Union, as amended <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32012R0966>



**II.17.2. Grounds for termination by the contractor**

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

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

**II.17.3. Procedure for termination**

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

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

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

In the cases referred to in points (a) to (d), (g) to (i), (k) (l) (m) and (n) of Article II.17.1 and in Article II.17.2, the date on which the termination takes effect must be specified in the formal notification.

In the cases referred to in points (e), (f) and (j) of Article II.17.1, the termination takes effect on the day following the date on which the contractor receives notification of termination.

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

**II.17.4. Effects of termination**

The contractor is liable for damage incurred by the contracting authority as a result of the termination of the FWC or a specific contract including the cost of appointing another contractor to provide or complete the supplies/service, unless the damage was caused by the situation specified in Article II.17.1 (j), (k) or (l) or in Article II.17.2. The contracting authority may claim compensation for such damage.

The contractor is not entitled to compensation for any loss resulting from the termination of the FWC or specific contract, including loss of anticipated profits, unless the loss was caused by the situation specified in Article II.17.2.

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

Within 60 days of the date of termination, the contractor must submit any report and any invoice required for supplies/service that were provided before the date of termination.

In case of joint tenders, the contracting authority may terminate the FWC or a specific contract with each member of the group separately on the basis of points (d), (e) or (g) of Article II.17.1, under the conditions set out in Article II.11.2.

**II.18. INVOICES, VALUE ADDED TAX AND E-INVOICING****II.18.1. Invoices and value added tax**

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

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

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

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

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.

In Belgium, use of this contract constitutes a request for VAT exemption No. 450, Article 42, paragraph 3.3 of the VAT code (circular 2/1978), provided the invoice includes the statement: 'Exonération de la TVA, Article 42, paragraphe 3.3 du code de la TVA (circulaire 2/1978)'.

In Luxembourg, the contractor must include the following statement in the invoices: "Commande destinée à l'usage officiel de l'Union européenne. Exonération de la TVA Article 43 § 1 k 2ème tiret de la loi modifiée du 12.02.79. 'In the case of intra-Community purchases, the statement to be included in the invoices is: "For the official use of the European Union. VAT Exemption / European Union/ Article 151 of Council Directive 2006/112/EC.'"

In other countries, use of this contract constitutes a request for VAT exemption, pursuant to articles 3 and 4 of the Protocol on the privileges and immunities of the European Union. The contractor must receive and keep in his records the form entitled "VAT and Excise Duty Exemption Certificate", duly completed and signed by the contracting authority. The invoice(s) must include the following statement: "VTA Exemption/International Body/Article 151 of Council Directive 2006/112/EC."

#### **II.18.2. E-invoicing**

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

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

### **II.19. PRICE REVISION**

If Article 0 refers to a formula governing price revision, then the provisions set out in this Article apply.

#### **II.19.1. Yearly price revision**

The Parties agree that the prices shall be subject to a yearly price revision according to the provisions set out below.

#### **II.19.2. Date of effect of the yearly price revisions**

Price revisions shall always be applicable on 1st January. For a Framework Contract signed during calendar year N, the first price revision shall be calculated as set out below during year N+1 and become applicable on the 1st January of year N+2.

However, when a product or service was not included in a Framework Contract from the beginning, but introduced through an amendment signed in year O, otherwise than as a result of a Change Request, the first price revision for that product or service shall be calculated during year O+1 and become applicable on the 1st January of year O+2.

As regards Hardware, Complex and Other Than Complex Hardware, and unless otherwise agreed by the Parties, when a product is introduced into the Framework Contract through an amendment signed in year P as a result of a Change Request after the procedure set out in section II.19.3 below has been initiated, the new product shall bear the price of the product it replaces, i.e. the non-revised price for the remainder of year P, and the revised price as from the 1st January of year P+1.

#### **II.19.3. Procedure for calculating the yearly price revision**

Between 1 July and 30 September every year, the Contracting Authority shall send to the Contractor an initial written notification informing the latter about the result of the calculation of the yearly price revision.

The contractor has 30 days following the date of receipt to submit observations against the result of the calculation made by the Contracting Authority. In absence thereof, the initial written notification sent by the

Contracting Authority shall acquire the status of an amendment with full legal effect and enters into force the day after the time limit for submitting observations has elapsed.

Should the Contractor formulate any observations on the correctness of the calculation made pursuant to paragraph 1 above within the deadline set out in paragraph 2 above, the Contracting Authority shall carefully and expediently consider them.

Following this assessment, the Contracting Authority shall send to the Contractor, within one month from the receipt of Contractor's letter, a final written notification including the result of the calculation of the yearly price revision. If applicable, this letter should state the reasons having led to the rejection of the observations put forward by the Contractor.

The final written notification sent by the Contracting Authority shall immediately enter into force and acquire the status of an amendment with full legal effect, but the Contractor shall be free to seek appropriate remedies.

Should, exceptionally, the Contracting Authority fail to initiate the procedure as set out above, the Contractor may, until 15 October, give formal notice to the Contracting Authority requiring the latter to send the initial written notification. The Contracting Authority shall comply with this requirement within 15 calendar days from receipt of the contractor's letter. Paragraphs 2, 3, 4 and 5 above shall apply thereafter.

Should the Contracting Authority not act as provided for in paragraph 1 above, nor the Contractor as provided for in paragraph 6, the yearly price revision shall not apply for the relevant yearly period.

#### **II.19.4. Formula for the yearly price revisions**

The yearly price revisions shall be calculated using the following formula:

$$Pr = Po \times \frac{Ir}{Io}$$

where:

Pr = Revised price

Po = Original price in the tender (or, if applicable, in the amendment introducing the price for the service or product for the first time)

Ir = Index for the month of May of the year in which the yearly price revision is calculated

Io = Index for the month in which the Framework Contract (or, if applicable, the amendment introducing the price for the service or product for the first time) entered into force

the quotient of  $\frac{Ir}{Io}$  is rounded to the fourth decimal.

#### **II.19.5. Indices to be used for the yearly price revisions**

For services: As regards Services, the revision shall be based on the trend in the index "Harmonised Indices of Consumer Prices (HICP all items)", under "First Published Data (prc\_hicp\_fp)", published on Eurostat's official website.

For supplies: As regards Hardware, Complex and Other Than Complex Hardware, the revision shall be based on the trend in the index "Producer prices in industry, domestic market - monthly data [sts\_inppd\_m]" (PPI NACE C262), published on Eurostat's official website.

The precise index to be used is indicated in Article 0.

In case of a change in the base year of an index, the values of Io and Ir shall be adapted accordingly on the basis of the official figures published by Eurostat using the latest base year.

Should Eurostat cease to publish any of the indices referred to above, the Contracting Authority shall —as part of the procedure set out in paragraph II.19.3 above— base the calculation of the revised price on the most similar index which is available, providing reasons for its choice.

#### **II.19.6. Prices applicable for supply and service purchases**

The Contracting Authority shall purchase Hardware, Complex and Other Than Complex Hardware on the basis of the prices applicable on the date of signature of the Specific Contract by the last contracting party.

The Contracting Authority shall purchase Services on the basis of the prices applicable on the date which is indicated as start date (start of the tasks) of the Specific Contract.

## **II.20. PAYMENTS AND GUARANTEES**

### **II.20.1. Date of payment**

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

### **II.20.2. Currency**

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

### **II.20.3. Conversion**

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

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

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

### **II.20.4. Costs of transfer**

The costs of the transfer are borne as follows:

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

### **II.20.5. Pre-financing, performance and retention money guarantees**

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

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

The contractor bears the cost of providing such guarantee.

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

Performance guarantees cover compliance with substantial contractual obligations until the contracting authority has given its final approval for the supply/service. The performance guarantee must not exceed 10 % of the total price of the specific contract. The contracting authority must release the guarantee fully after final certificate of conformity of the supply has been delivered and/or the services were approved, as provided for in the specific contract.

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

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

**II.20.6. Interim payments and payment of the balance**

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

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

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

Payment of the balance may take the form of recovery.

**II.20.7. Suspension of the time allowed for payment**

The contracting authority may suspend the payment periods specified in Article I.6 at any time by notifying the contractor (or leader in case of a joint tender) that its invoice cannot be processed. The reasons the contracting authority may cite for not being able to process an invoice are:

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

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

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

Where the payment periods have been suspended following rejection of a document referred to in the first paragraph of this Article and the new document produced is also rejected, the contracting authority reserves the right to terminate the specific contract in accordance with Article II.17.1(c).

**II.20.8. Interest on late payment**

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

Suspension of the payment period as provided for in Article II.20.7 is not considered as giving rise to late payment.

Interest on late payment covers the period running from the day following the due date for payment up to and including the date of payment as defined in Article II.20.1.

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

**II.21. RECOVERY****II.21.1. Principle**

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

**II.21.2. Recovery procedure**

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

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

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

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

### **II.21.3. Interest on late payment**

If the contractor does not honour the obligation to pay the amount due by the date set by the contracting authority in the debit note, the amount due bears interest at the rate indicated in Article II.20.8. Interest on late payments will cover the period starting on the day after the due date for payment and ending on the date when the contracting authority receives the full amount owed.

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

### **II.21.4. Recovery rules in case of joint tender**

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

If the leader does not pay by the due date and if the amount cannot be offset in accordance with Article II.21.2 (a), the contracting authority may claim the full amount to any other member of the group by notifying the debit note already sent to the leader under Article II.21.2.

## **II.22. CHECKS AND AUDITS**

- II.22.1** The contracting authority and the European Anti-Fraud Office may check or require an audit on the implementation of the FWC. This may be carried out either by OLAF's own staff or by any outside body authorised to do so on its behalf.

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

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

- II.22.2** The contractor must keep all original documents stored on any appropriate medium, including digitised originals if authorised under national law, for a period of five years starting from the payment of the balance of the last specific contract issued under this FWC.

- II.22.3** The contractor must grant the contracting authority's staff and outside personnel authorised by the contracting authority the appropriate right of access to sites and premises where the FWC is implemented and to all the information, including information in electronic format, needed to conduct such checks and audits. The contractor must ensure that the information is readily available at the moment of the check or audit and, if so requested, that information is handed over in an appropriate format.

- II.22.4** On the basis of the findings made during the audit, a provisional report is drawn up. The contracting authority or its authorised representative must send it to the contractor, who has 30 days following the date of receipt to submit observations. The contractor must receive the final report within 60 days following the expiry of the deadline to submit observations.

On the basis of the final audit findings, the contracting authority may recover all or part of the payments made in accordance with Article II.21 and may take any other measures which it considers necessary.

**II.22.5** In accordance with Council Regulation (Euratom, EC) No. 2185/96 of 11 November 1996 concerning on-the-spot checks and inspection carried out by the Contracting Authority in order to protect the European Communities' financial interests against fraud and other irregularities and Regulation (EU, Euratom) No. 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office, the European Anti-Fraud Office may carry out investigations, including on the spot checks and inspections, to establish whether there has been fraud, corruption or any other illegal activity under the contract affecting the financial interests of the Union. Findings arising from an investigation may lead to criminal prosecution under national law.

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

**II.22.6** The Court of Auditors has the same rights as the contracting authority, particularly right of access, for the purpose of checks and audits.

## **II.23. INTELLECTUAL PROPERTY RIGHTS**

### **II.23.1. Ownership of the rights in the results**

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

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

### **II.23.2. Licensing rights on pre-existing materials**

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

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

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

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

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

### **II.23.3. Exclusive rights**

The Union acquires the following exclusive rights:

- (a) reproduction: the right to authorise or prohibit direct or indirect, temporary or permanent reproduction of the results by any means (mechanical, digital or other) and in any form, in whole or in part;
- (b) communication to the public: the exclusive right to authorise or prohibit any display, performance or communication to the public, by wire or wireless means, including the making available to the public of the results in such a way that members of the public may access them from a place and at a time individually chosen by them; this right also includes the communication and broadcasting by cable or by satellite;

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

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

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

#### **II.23.4. Identification of pre-existing rights**

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



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

#### **II.23.5. Evidence of granting of pre-existing rights**

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

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

This evidence must include, as appropriate:

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

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

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

#### **II.23.6. Quotation of works in the result**

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

#### **II.23.7. Moral rights of creators**

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

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

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

#### **II.23.8. Image rights and sound recordings**

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

**II.23.9. Copyright notice for pre-existing rights**

When the contractor retains pre-existing rights on parts of the results, reference must be inserted to that effect when the result is used as set out in Article 0, with the following disclaimer: '© — year — European Union. All rights reserved. Certain parts are licensed under conditions to the EU', or with any other equivalent disclaimer as the contracting authority may consider best appropriate, or as the parties may agree on a case-by-case basis. This does not apply where inserting such reference would be impossible, notably for practical reasons.

**II.23.10. Visibility of Union funding and disclaimer**

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

**II.24. REIMBURSEMENTS**

**II.24.1** If provided for in the special conditions or in the tender specifications, the contracting authority must reimburse expenses directly connected with the delivery of supplies or provision of the services either when the contractor provides it with supporting documents or on the basis of flat rates.

**II.24.2** The contracting authority reimburses travel and subsistence expenses on the basis of the shortest itinerary and the minimum number of nights necessary for overnight stay at the destination.

**II.24.3** The contracting authority reimburses travel expenses as follows:

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

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

**II.24.4** The contracting authority reimburses subsistence expenses on the basis of a daily subsistence allowance as follows:

- (a) for journeys of less than 200 km for a return trip, no subsistence allowance is payable;
- (b) the daily subsistence allowance is payable only on receipt of supporting documents proving that the person concerned was present at the destination;
- (c) the daily subsistence allowance takes the form of a flat-rate payment to cover all subsistence expenses, including meals, local transport including transport to and from the airport or station, insurance and sundries;
- (d) the daily subsistence allowance is reimbursed at the flat rates specified in Article 0;
- (e) accommodation is reimbursed on receipt of supporting documents proving the necessary overnight stay at the destination, up to the flat-rate ceilings specified in Article 0.

**II.24.5** The contracting authority reimburses the cost of shipment of equipment or unaccompanied luggage if it has given its prior written approval for the expense.



**EUROPEAN COMMISSION**  
DIRECTORATE-GENERAL INFORMATICS  
Directorate Resources and Logistics

**Finance and Contracts**

### **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, Community, international or foreign trademarks), trade names, designs and models.

**“Internal use”**

Within the Commission’s premises and the use by a European Community official as defined by the Staff Regulations of the Community, 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 Community, 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, for instance 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  
02XXXXXX0572190  
02YYYYYY0032078  
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 *Benchmarker* 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 *Benchmarker'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 *Benchmarker*.

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 *Benchmarker*.

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 *Benchmarker* 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-à-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.

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

- 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.

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

- 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.

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

- 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.

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

Abbreviation	Description
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:

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

**3.6. Termination of the Contract for rental and leasing of *Complex Hardware products***

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

**3.7. Withdrawal of rented or leased *Complex hardware product***

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



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

##### **4.1. Configuration and delivery**

###### **4.1.1. Configuration**

In respect of each order:

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

###### **4.1.2. Delivery**

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

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

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

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

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

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

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

**4.2. Guarantee specifications for other than *Complex hardware products***

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

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

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

**4.3. Leasing and Rental formula**

See 3.5 above

**4.4. Termination of the Contract for rental and leasing of other than *Complex hardware products*.**

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

**4.5. Withdrawal of rented or leased other than *Complex hardware product***

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

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

### **5.1. Delivery - installation - Documentation**

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

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

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

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

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

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

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

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

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

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

## **5.2. Trial - acceptance**

5.2.1. Upon request of the Commission the Contractor shall grant for each new licensed *Software* or each *New version* of the *Software* a one (1)-month trial period during which the *Software* shall be available for non-productive use. Longer test periods and their conditions may be convened in the Framework contract or by Specific Contract.

5.2.2. The trial period shall begin on the day of the installation of the *Software* by the Contractor on the appropriate hardware equipment, or if the Commission does not require installation of the *Software* by the Contractor, fifteen (15) calendar days after signature of the *Consignment note*.

5.2.3. At the end of the trial period, acceptance of the *Software* shall only result from the signature, by both Parties, of the *Certificate of Conformity* as stated in Article II.1.1 of the General Conditions. If no *Certificate of Conformity* has been issued at the end of the trial period and, if no notification of faulty operation is pending, the Commission is considered as having accepted the *Software*.

5.2.4. At any moment during the trial period, the Commission may terminate the testing licence upon notification by a *Means of communication* with immediate effect if the *Software* does not perform and conform to its description, its specifications or its *Documentation*. Additional acquisitions of *Software* already tested by the Commission shall be accepted by signature of the *Consignment note*.

## **5.3. Guarantee specifications for Software**

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

5.3.2. The Contractor warrants that:

- (1) the *Software* is in conformity with the *Documentation* supplied;
- (2) the *Software* is capable of performing the functions described in the aforementioned *Documentation* and conform to the specifications described in the Framework contract or Specific Contract under consideration.

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

5.3.4. Guarantee period

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

#### **5.4. Use**

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

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

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

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

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

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

#### **5.5. Compatibility**

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

#### **5.6. Intellectual property rights concerning Software — confidentiality**

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

5.6.2. The Commission undertakes:

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

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

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

## **5.7. Escrow rider**

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

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

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

5.7.4. The Contractor may propose to apply or to enter into a two-party escrow agreement with a third party escrow. In this case, the Contractor shall

provide, prior to applying or entering into such agreement, a copy of the proposed agreement to the Commission without charge and all fees in relation to it will be afforded by the Contractor. Should the Contractor fail to provide this copy, the Commission shall be entitled to claim execution of Article III.5.7.1.

5.7.5. When the Commission considers that the terms of the proposed escrow agreement offer sufficient guarantees to it, it will authorise the Contractor to apply or enter into such agreement with this third party escrow. If the Commission is not entirely satisfied, it may request additional guarantees before authorising the Contractor to enter into the agreement.

5.7.6. After having applied or entered into the authorised agreement, the Contractor shall notify the Commission in advance by a *Means of registered communication* and request its consent for the following:

- the implementation of any change in the terms of this agreement,
- its termination by the third party escrow,
- its replacement by a new Contract,
- a change in third party escrow, or any other change materially affecting the contractual guarantee offered to the Commission,

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

5.7.7. In the event of the escrow agreement being terminated by the third party escrow, or its terms being changed such that the contractual guarantee is materially affected, the Contractor shall immediately notify the Commission of such fact by a *Means of registered communication*. The Contractor shall then seek a new escrow agreement meeting the requirements of this Article, subject to the Commission's consent prior to the signature of such agreement.

5.7.8. Should the Contractor fail to notify the Commission of any change in accordance with the present Article, the Commission shall be entitled to terminate the Framework contract at the Contractor's expense. The Commission shall also be entitled to seek damages and interest from the Contractor resulting from the Contractor's failure to fulfil its obligations under this Article.

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

### **6.1. Common provisions**

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

### **6.2. One –shot repair of *Hardware***

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



## 6.3. Maintenance

### 6.3.1. Terms

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

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

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

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

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

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

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

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

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

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

### 6.3.2. *Hardware*

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

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

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

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

### 6.3.3. *Software*

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

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

- (3) installing any preventive corrections provided by the Contractor as long as it is agreed that such corrections are necessary.

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

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

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

#### 6.3.5. Responsibility for diagnosis

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

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

6.3.7. Technical modifications by the Contractor

The Contractor may propose modifications on its own initiative. It will implement them, with the Commission's consent, at times agreed by both Parties. These modifications may not entail any additional cost to the Commission or cause any deterioration in performance or loss of function.

6.3.8. Equipment

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

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

### **7.1. Types of *Services***

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

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

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

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

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

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

7.1.4. Technical *Documentation* of the *Products*

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

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

#### 7.1.5. Integration work

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

#### 7.1.6. Informatics engineering and maintenance

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

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

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

#### 7.1.8. Removals

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

#### 7.1.9. Logistics

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

### 7.2. **Time-and-means Contracts**

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

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

- 7.2.3. Every day during which *Services* are provided, the Contractor or its staff shall record the time worked. The records shall be set up in the manner defined by the Commission's technical representative named in the Specific Contract. At the end of each month, the Contractor or its staff shall complete and sign the attendance sheet proposed by the Commission and forward it to the Commission's technical representative who shall be in charge of checking the consistency between the daily records and the monthly attendance sheet.

### **7.3. Quoted time-and-means Contracts.**

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

### **7.4. Fixed-price Contracts**

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

will be suspended up to the date on which the Contractor notifies by a *Means of communication* that it has remedied the notified default, which date will reinitiate the acceptance period for the rest of the seventy-five (75) *Normal working days* period, with a guaranteed minimum period of twenty-five (25) *Normal working days* after the last notification by the Contractor that it has remedied a default. Upon successful expiration of the acceptance period, the Commission will sign a *Certificate of Conformity* as stated in Article II.1.1 for each delivered result or deliverable. If no *Certificate of Conformity* has been issued at the end of the acceptance period and no default is pending, the Commission is considered as having accepted.

## **7.5. Stability of Services**

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

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

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

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

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

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



## **7.6. Timetable**

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

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

### **8.1. Compliance with technical specifications**

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

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

### **8.2. Acceptance**

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

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

#### **8.2.3. Acceptance period**

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

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

Upon the expiry of the acceptance period, acceptance of the *Commissioned software* will be recorded in a *Certificate of Conformity*, as stated in Article II.1.1 of the General Conditions, which shall indicate inter alia any reservations the Commission may have regarding the *Commissioned software*. If no *Certificate of Conformity* has been issued at

the end of the acceptance period and, if no notification of faulty operation is pending, the Commission is considered as having accepted the *Software*.

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

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

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

### **8.3. Guarantee of proper operation of *Commissioned software***

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

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

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

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

### **8.4. Intellectual property rights and ownership of source code**

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

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

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

### **8.5. User manuals and *Documentation***

- 8.5.1. The Contractor shall prepare the manuals and Documentation needed for the appropriate and proper operation of the Commissioned software and shall make them available to the Commission. It shall comply with the provisions under Article III.10 in preparing such manuals and Documentation.
- 8.5.2. The material shall as a rule comprise:
- (1) an installation manual;
  - (2) a “Getting Started” manual;
  - (3) an administration manual;
  - (4) a user manual;
  - (5) implementation *Documentation*.
- 8.5.3. The manuals and the *Documentation* shall be in the file format of a word processing *Software* used by the Commission and prepared so that they may be published on the Commission's intranet.
- 8.5.4. The user manuals and the *Documentation* shall be supplied in at least English and French, unless otherwise agreed.
- 8.5.5. The Contractor shall update and, if necessary, replace at a reasonable cost the user manuals and *Documentation* files for the maximum length of the Framework contract.

## **8.6. Interfaces and Compatibility**

- 8.6.1. Where the Specific Contract mentions interfaces that need to be observed, the Contractor shall not modify such interfaces without the Commission's written agreement. Such agreement shall not be unreasonably withheld.
- 8.6.2. Where the *Commissioned software* supplied utilises *Software* from a third party and where that *Software* is updated, the Contractor shall adapt the *Commissioned software* in accordance with terms jointly agreed.
- 8.6.3. The Contractor shall ensure that all the *Commissioned software* supplied under the Framework contract is compatible and operates by means of interfaces with all other *Software* specified in the Framework contract.

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

### **9.1. Instructors**

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

### **9.2. Organisation of courses**

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

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

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

### **9.3. Instructor's manual**

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

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

### **9.4. Provision of training *Software***

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

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

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

- 10.1.1. The *Intellectual property rights* in the *Documentation* that has been developed specifically for the Commission shall rest exclusively with the Commission.
- 10.1.2. The provision of reference *Documentation* shall be covered by a site licence, the terms of which shall be consistent with the nature and subject of the *Documentation*.

## ANNEX I:

### CENTRAL SERVICE DESK ACTION PROCEDURE

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

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

- (1) Requests shall be notified by the SDC to the Contractor's Service Desk (CSD) by telephone or any other agreed means immediately after assignment of the request.
- (2) The SDC always confirms in writing each request addressed to the CSD, giving all relevant details.
- (3) The CSD shall confirm receipt of a request to the SDC by returning its own reference number.
- (4) Each telephone communication between the SDC and the CSD shall be confirmed immediately by fax, email or, where the CSD has access, by direct entry into the Commission's SDC database.
- (5) The CSD shall deal only with requests that have been sent by the SDC. The Contractor shall immediately provide to the SDC full details of any request received from any other source within the Commission.
- (6) Each action on a request shall be notified to the SDC. A report shall be sent immediately by the CSD indicating the action's nature, starting date and time and probable duration. If the request has not been resolved, the reasons shall be given, along with an estimated date and time for resolution.
- (7) Should an action require contact within a DG and the responsible person at the DG be unavailable, the Contractor shall report this to the SDC as soon as possible.
- (8) Completion of a request that has been satisfied shall be notified as soon as possible by the CSD to the SDC. Mention shall be made of the cause, the date and time the action started, its duration in minutes, and any other relevant details. The



Contractor shall be responsible for the accuracy of the information he supplies. The reporting user shall be notified immediately by the person carrying out the action.

- (9) The resolution time given by the Contractor shall be accepted by the SDC if it is no more than 24 hours prior to receipt of the complete closure by fax or email. Otherwise its arrival time at the SDC will be taken as resolution time.
- (10) A request shall be closed by the SDC if the DG concerned explicitly accepts the results of the action. If it does not, the request shall remain open for one week. If the DG does not indicate its rejection during this period, the request shall automatically be closed definitively.
- (11) Where a Framework contract defines service quality requirements for incident handling and/or service requests performance, the Contractor's performance with respect to these requirements shall be calculated on the basis of the information recorded in the Commission's SDC database.

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

Response time shall be defined as the period between:

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

Resolution time shall be defined as the time between:

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

The clock stops running:

- outside the defined hours of cover
  - if access to the contact person or equipment cannot be effected. In this case the SDC shall be notified immediately and the grounds for the delay explained
  - if by agreement with the reporting user, an appointment is made for the beginning of the action. The clock shall restart at the time of the appointment.
- (12) On request, the Contractor shall be sent a daily or weekly summary of all open requests by the SDC.

## ANNEX II: TEMPLATE OF DECLARATION OF CONFIDENTIALITY



EUROPEAN COMMISSION

### DECLARATION OF CONFIDENTIALITY

The Commission and the Contractor

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

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

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

- Articles I.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 Community 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]**

## **ANNEX V**

### **DRAFT SPECIFIC CONTRACTS AND ORDER FORM (WITH THEIR ANNEXES)**

---  
**FIXED PRICE**

THE EUROPEAN AGENCY FOR SAFETY AND HEALTH AT WORK (hereinafter referred to as "the contracting authority"), which is represented for the purposes of the signature of this contract by [forename, surname, function, department],

of the one part,

and

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

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

of the other part,

**HAVE AGREED**

for the implementation of Framework Contract No [XX/00000] signed by the Contracting Authority and the Contractor on [DD/MM/YYYY] [last amended by amendment No XX, signed on DD/MM/YYYY] for the provision of IT services as follows: [description of the Framework Contract]

**Article 1. PREAMBLE**

1.1 This Specific Contract is based on the Contractor's formal offer (Annex II to this SC) under Request number [XX] dated [DD/MM/YYYY], (Annex I to this SC). Once signed by the parties, the Specific Contract shall be governed by the Framework Contract. This Specific Contract does not amend the provisions of the afore-mentioned Framework Contract.

The terms of this Specific Contract and the Technical Annex (Annex I to this SC) shall take precedence over the terms of the Contractor's formal offer (Annex II to this SC).

**Article 2. SUBJECT MATTER**

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

2.2 The Contractor undertakes, subject to the terms set out in the Framework Contract and in this Specific Contract and its Annexes, which form an integral part of it, to perform the tasks specified in the Technical Annex (Annex I to this SC) and the Contractor's formal offer (Annex II to this SC).

**Article 3. DURATION AND LOCATION**

3.1 This Specific Contract shall enter into force at the earliest [on the date it is signed], [on DD/MM/YYYY].

3.2 The execution of the tasks shall end on or before [DD/MM/YYYY]. [Nevertheless, the execution may continue beyond this date during an additional period of four months, unless one of the Contracting Authority's responsible persons indicated in Article 8 "Administrative Provisions", or other authorised Contracting Authority representative, sends a written notification by mail, fax or e-mail stating that the tasks cannot be executed beyond the above mentioned initial date or fixing a new final execution date within the additional four month period. The period of execution of the tasks may be extended beyond the four month additional period only with the express written

agreement of the parties before such period elapses by means of an amendment to this specific contract.] In no case shall the tasks be executed later than six (6) months after expiry of the Framework Contract.

- 3.3 The tasks shall be performed [on the premises of [the Contractor] , [on the premises of the Contracting Authority], [on both Contractor's and Contracting Authority's premises]. [If the services are to be performed at both Bilbao and contractor premises specify, as precisely as possible, how the services are to be divided between these two locations]

#### **Article 4. PERFORMANCE**

- 4.1 The tasks performed by the Contractor under this Specific Contract shall result in "**deliverables**", defined according to the provisions of the Technical Annex (Annex I to this SC) and the Contractor's formal offer (Annex II to this SC).

Signature by the Contracting Authority of the Task Acceptance Form (Annex III of this SC) provides evidence of work performed.

- 4.2 The Contractor undertakes to comply with requirements identified in the Service Level Agreement signed with the Framework Contract.
- 4.3 At the end of every month, the contractor shall complete the Monthly consumption report (Annex V to this SC) and send it to the technical person of the Contracting Authority for the monitoring of the consumption. As this is a fixed price contract the Monthly consumption report (Annex V to this SC) shall contain only estimates of the consumption.

#### **Article 5. PRICES AND PAYMENTS**

- 5.1 The Contracting Authority undertakes to pay the Contractor, in consideration for the services rendered under the Specific Contract.
- 5.2 The **total fixed price** to be paid by the Contracting Authority under this Specific Contract shall be **[EUR XXX]** [amount in figures] covering all tasks executed. This amount shall cover all expenditure incurred by the Contractor in performing this Specific Contract.
- 5.3 In conformity with Article I.14.16 of the special conditions of the Framework Contract and Article III.1.5.4 of the General terms and conditions for Information Technologies contracts, the invoicing procedures for the services, once accepted by the Contracting Authority, are as follows:

[Specify one of the two possibilities]

##### **When the Specific Contract relates to an amount *below* EUR 25 000:**

- 100 % of the total price of the specific contract shall be invoiced once the work has been fully provided, based on the Task acceptance form (Annex III to this SC) duly completed and signed by both the Contracting Authority and the Contractor and the Declaration on the list of pre-existing rights (Annex IV to this SC) completed and signed by the Contractor (Annexes must be attached to the invoice).
- [In the case of a contract longer than 6 months, one interim payment could be envisaged.]

##### **When the Specific Contract relates to an amount above EUR 25 000 and the service consists in a single performance:**

- Maximum of 30 % of the total price of the Specific Contract shall be invoices on receipt of first deliverable based on the Task acceptance form (Annex III to this SC) duly completed and signed by both the Contracting Authority and the Contractor (Annexes must be attached to the invoice).
- The remaining amount shall be invoiced on completion of the work, based on the Task acceptance form (Annex III to this SC) duly completed and signed by both the Contracting Authority and the Contractor and the Declaration on the list of pre-existing rights (Annex IV to this SC) completed and signed by the Contractor (Annexes must be attached to the invoice).

##### **When the Specific Contract relates to an amount above EUR 25 000 and the service is continuous (including services performed in periodic *instalments*):**

- Invoices shall be submitted periodically - at the end of each calendar quarter, based on the Task acceptance form (Annex III to this SC) duly completed and signed by both the Contracting Authority and the Contractor and the Declaration on the list of pre-existing rights (Annex IV to this SC) at the last instalment completed and signed by the Contractor (Annexes must be attached to the invoice).
  - The first invoice shall cover the period from the start date of this Specific Contract until the end of the current calendar quarter.
- 5.4 Payments shall be made to account No [XXXXXX] held with [XXXXXX] on production of the invoice showing separately the amount of the fees and the VAT applied and within no more than 30 calendar days from the date the invoice is received by the Unit indicated in article 5.5 below. Invoices presented by the Contractor shall indicate his place of taxation for VAT purposes and shall specify separately the amounts not including VAT and those including VAT. The payment shall be deemed to have been effected on the day the Contracting Authority's financial account is debited.

**Pursuant to articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities, the Contracting Authority is exempt from all taxes, duties and charges, in particular value added tax, on payments made under this order.**

**The contractor receives and keeps in his records the form entitled "VAT and Excise Duty Exemption Certificate" duly completed and signed by the Contracting Authority. The invoice must contain the following statement: "VAT Exemption / International Body / Article 151 of Council Directive 2006/112/EC"**

- 5.5 The address for invoices is:

EU-OSHA  
Communication and Promotion Unit  
Santiago de Compostela 12, 5<sup>th</sup> floor  
E-48003 Bilbao

## **Article 6. SUBCONTRACTING**

[Not applicable] or

- 6.1 In conformity with Article II.10 of the General Conditions, the Contractor has been permitted to subcontract:
- to subcontractors already permitted at the time of signature of the Framework Contract – without need of prior written authorisation from the Commission;
  - to other subcontractors – after receiving prior written authorisation from the Agency.
- 6.2 Tasks stated in the Technical Annex (Annex I to this SC) may be performed by the subcontractor(s) [*Name and address of subcontractor(s)*], entirely at the risk of the Contractor.
- 6.3 Without prejudice to the Contracting Authority's other rights under Article II.17 of the General Conditions, including derogations thereto, if the Contractor fails to meet his obligations, the Specific Contract with the Contracting Authority may be terminated in accordance with Article II.17 (f) of the General Conditions. This clause applies throughout the term of the Specific Contract.

## **Article 7. PERFORMANCE GUARANTEES**

Not applicable.

## **Article 8. ADMINISTRATIVE PROVISIONS**

- 8.1 The persons responsible for implementing this Specific Contract are:

**For the Contracting Authority:**

- Administrative matters:

SURNAME/First name: [To be filled]

E-mail: [To be filled]

- Technical matters:

SURNAME/First name: [To be filled]

E-mail: [To be filled]

**For the Contractor:**

- Administrative matters:

SURNAME/First name: [To be filled]

E-mail: [To be filled]

- Technical matters:

SURNAME/First name: [To be filled]

E-mail: [To be filled]

- 8.2 All communication relating to the implementation of this Specific Contract must be in the form of written correspondence and be sent to the appropriate responsible persons.

**Article 9. EXPLOITATION OF THE RESULTS**

In accordance with Article I.13 of the Framework Contract.

**Article 10. ADDITIONAL PROVISIONS**

[Not applicable], [to be specified]

**ANNEXES**

The following documents are annexed to the Specific Contract and form an integral part of it:

Annex I: Technical annex

Annex II: Contractor's formal offer

Annex III: Task acceptance form

Annex IV: Declaration on the list of pre-existing rights

Annex V: Monthly consumption report

**SIGNATURES**

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

For the contracting authority,  
[forename/surname/function]

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

Done at [place], [date]

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

Done at Bilbao, [date]

In duplicate in English.



## ANNEX III

### Task acceptance form (Fixed Price)

**RECEIPT ADVICE SLIP FOR “DELIVERABLES”**

**FOR SPECIFIC CONTRACT No** [EUOSHA/2018/0060/LXX/XX](#)

**SUBJECT OF THE SPECIFIC CONTRACT: XXX**

**UNDER FRAMEWORK CONTRACT No** [EUOSHA/2018/0060/LXX](#)

<b>Original document - duly signed - to be attached to the invoice</b>
<b>Invoicing period: from</b> ____/____/____ <b>till</b> ____/____/____

**RECEIPT OF WORK** (To be filled in by the Contractor and EU-OSHA)

	Contractor	EU-OSHA OIA
<b>Date of last delivery of invoicing period</b>		
<b>Person responsible for checking</b>		
<b>Comments</b>		
<b>Task acceptance form (TAF) Date and signature</b>	TAF sent on: ____/____/____	TAF received on ____/____/____

**ACCEPTANCE AND VALIDATION OF WORK** (To be filled in by EU-OSHA)

<b>Person responsible for acceptance (OIA)</b>	
<b>Date and signature</b>	
<b>Person responsible for final validation (ICT Manager or Activity Coordinator)</b>	
<b>Date and signature</b>	

**TIME & MEANS  
INTRA MUROS**

THE EUROPEAN AGENCY FOR SAFETY AND HEALTH AT WORK (hereinafter referred to as "the contracting authority"), which is represented for the purposes of the signature of this contract by [forename, surname, function, department],

of the one part,

and

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

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

of the other part,

**HAVE AGREED**

for the implementation of Framework Contract No [XX/00000] signed by the Contracting Authority and the Contractor on [DD/MM/YYYY] [last amended by amendment No XX, signed on DD/MM/YYYY] for the provision of IT services as follows: [description of the Framework Contract]

**Article 1. PREAMBLE**

1.1 This Specific Contract is based on the Contractor's formal offer (Annex II to this SC) under Request number [XX] dated [DD/MM/YYYY], (Annex I to this SC). Once signed by the parties, the Specific Contract shall be governed by the Framework Contract. This Specific Contract does not amend the provisions of the afore-mentioned Framework Contract.

The terms of this Specific Contract and the Technical Annex (Annex I to this SC) shall take precedence over the terms of the Contractor's formal offer (Annex II to this SC).

**Article 2. SUBJECT**

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

2.2 The Contractor undertakes, subject to the terms set out in the Framework Contract and in this Specific Contract and its Annexes, which form an integral part of it, to perform the tasks specified in the Technical Annex (Annex I to this SC) and the Contractor's formal offer (Annex II to this SC).

**Article 3. DURATION AND LOCATION**

3.1 This Specific Contract shall enter into force at the earliest [on the date it is signed], [on DD/MM/YYYY].

3.2 The execution of the tasks shall end on or before [DD/MM/YYYY]. [Nevertheless, the execution may continue beyond this date during an additional period of four months, unless one of the Contracting Authority's responsible persons indicated in Article 8 "Administrative Provisions", or other authorised Contracting Authority representative, sends a written notification by mail, fax or e-mail stating that the tasks cannot be executed beyond the above mentioned initial date or fixing a new final execution date within the additional four month period. The period of execution of the

tasks may be extended beyond the four month additional period only with the express written agreement of the parties before such period elapses by means of an amendment to this specific contract.] In no case shall the tasks be executed later than six (6) months after expiry of the Framework Contract.

- 3.3 The tasks shall be performed on the premises of the Contracting Authority.
- 3.4 If the number of days agreed has not been fully taken up, the Contracting Authority shall not be obliged either to use or to pay for the days not worked and the Contractor shall not be entitled to claim damages for them.

#### **Article 4. PERFORMANCE**

- 4.1 Every day the service provider shall - according to procedures laid down by the competent technical person in the Contracting Authority as specified in the Specific Contract in Article 8 "Administrative Provisions"- notify the Contracting Authority of the time spent working under the Specific Contract.

Signature by the Contracting Authority of the Time sheet (Annex III of this SC) provides evidence of work performed.

- 4.2 The Contractor undertakes to comply with requirements identified in the Service Level Agreement signed with the Framework Contract.
- 4.3 At the end of every month, the contractor shall complete the Monthly consumption report (Annex V to this SC) and send it to the technical person of the Contracting Authority for the monitoring of the consumption.

#### **Article 5. PRICES AND PAYMENTS**

- 5.1 The Contracting Authority undertakes to pay the Contractor, in consideration for the services rendered under this Specific Contract:

- an amount of [EUR XXX] per day for [XX] days for [Junior Consultant], [Senior Consultant], [Project Manager], i.e. a total of [EUR XXX].

The rate per day of actual services rendered and number of days per profile are specified in the Contractor's formal offer (Annex II to this SC).

The total number of days executed by each profile can be modified, provided that the total amount of the Specific Contract does not exceeded the amount defined in article 5.2 and following a written agreement by one of the Contracting Authority's responsible persons indicated in Article 8 "Administrative Provisions", or other authorised Contracting Authority representative.

- 5.2 The **total maximum amount** to be paid by the Contracting Authority under this Specific Contract shall be [EUR XXX] [amount in figures] covering all tasks executed. This amount shall cover all expenditure incurred by the Contractor in performing this Specific Contract.
- 5.3 In conformity with Article I.14.16 of the special conditions of the Framework Contract and Article III.1.5.4 of the General terms and conditions for Information Technologies contracts, the invoicing procedures for the services, once accepted by the Contracting Authority, are as follows:

[Specify one of the two possibilities]

##### **When the Specific Contract relates to an amount below EUR 25 000:**

- 100 % of the total price of the specific contract shall be invoiced once the work has been fully provided, based on the Time sheet (Annex III to this SC) duly completed and signed by both the Contracting Authority and the Contractor and the Declaration on the list of pre-existing rights (Annex IV to this SC) completed and signed by the Contractor (Annexes must be attached to the invoice).
- [In the case of a contract longer than 6 months, one interim payment could be envisaged.]

##### **When the Specific Contract relates to an amount above EUR 25 000:**

- Invoices shall be submitted periodically - at the end of each calendar quarter, based on the Time sheet (Annex III to this SC) duly completed and signed by both the Contracting Authority

and the Contractor and the Declaration on the list of pre-existing rights (Annex IV to this SC) at the last instalment completed and signed by the Contractor (Annexes must be attached to the invoice).

- The first invoice shall cover the period from the start date of this Specific Contract until the end of the current calendar quarter.

- 5.4 Payments shall be made to account No [XXXXXX] held with [XXXXXX] on production of the invoice showing separately the amount of the fees and the VAT applied and within no more than 30 calendar days from the date the invoice is received by the Unit indicated in Article 5.5 below. Invoices presented by the Contractor shall indicate his place of taxation for VAT purposes and shall specify separately the amounts not including VAT and those including VAT. The payment shall be deemed to have been effected on the day the Contracting Authority's financial account is debited.

**Pursuant to articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities, the Contracting Authority is exempt from all taxes, duties and charges, in particular value added tax, on payments made under this order.**

**The contractor receives and keeps in his records the form entitled "VAT and Excise Duty Exemption Certificate" duly completed and signed by the Contracting Authority. The invoice must contain the following statement: "VAT Exemption / International Body / Article 151 of Council Directive 2006/112/EC"**

- 5.5 The address for invoices is:

EU-OSHA  
Communication and Promotion Unit  
Santiago de Compostela 12, 5<sup>th</sup> floor  
E-48003 Bilbao

## **Article 6. SUB-CONTRACTING**

[Not applicable] or

- 6.1 In conformity with Article II.10 of the General Conditions, the Contractor has been permitted to subcontract:
- to subcontractors already permitted at the time of signature of the Framework Contract – without need of prior written authorisation from the Commission;
  - to other subcontractors – after receiving prior written authorisation from the Agency.
- 6.2 Tasks stated in the Technical Annex (Annex I to this SC) may be performed by the subcontractor(s) [Name and address of subcontractor(s)], entirely at the risk of the Contractor.
- 6.3 Without prejudice to the Contracting Authority's other rights under Article II.17 of the General Conditions, including derogations thereto, if the Contractor fails to meet his obligations, the Specific Contract with the Contracting Authority may be terminated in accordance with Article II.17 (f) of the General Conditions. This clause applies throughout the term of the Specific Contract.

## **Article 7. PERFORMANCE BONDS AND GUARANTEES**

Not applicable.

## **Article 8. ADMINISTRATIVE PROVISIONS**

- 8.1 The persons responsible for implementing this Specific Contract are:

**For the Contracting Authority:**

- Administrative matters:

SURNAME/First name: [To be filled]

E-mail: [To be filled]

- Technical matters:

SURNAME/First name: [To be filled]

E-mail: [To be filled]

**For the Contractor:**

- Administrative matters:

SURNAME/First name: [To be filled]

E-mail: [To be filled]

- Technical matters:

SURNAME/First name: [To be filled]

E-mail: [To be filled]

- 8.2 All communications relating to the implementation of the Specific Contract must be in the form of written correspondence and be sent to the appropriate responsible persons.

**Article 9. EXPLOITATION OF RESULTS**

In accordance with Art. I.13 of the Framework Contract.

**Article 10. ADDITIONAL PROVISIONS**

[Not applicable], [to be specified]

**ANNEXES**

The following documents are annexed to the Specific Contract and form an integral part of it:

- Annex I: Technical Annex
- Annex II: Contractor's formal offer
- Annex III: Time sheet
- Annex IV: Declaration of pre-existing rights
- Annex V: Monthly consumption report

**SIGNATURES**

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

For the contracting authority,  
[forename/surname/function]

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

Done at [place], [date]

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


Done at Bilbao, [date]

In duplicate in English.

# ANNEX III - Time Sheet (Time & Means)

January 2019

SERVICE PROVIDER				Name of contractor		Program / Project		Institution / DG / Unit	
First Name & LAST NAME	Signature	Administration address	Tel.					EU-OSHA	
0		0	0						
Date :									

	Number and dates of FRAMEWORK CONTRACT		Number and dates of SPECIFIC CONTRACT		Number of days to be worked (as indicated in the specific contract)	
	<b>EUOSHA/2018/0060/LX</b> from dd/mm/yyyy to dd/mm/yyyy		<b>SC xxx</b> from dd/mm/yyyy to dd/mm/yyyy		<b>0</b>	

MONTH	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
JANUARY																															
FEBRUARY																															
MARCH																															
APRIL																															
MAY																															
JUNE																															
JULY																															
AUGUST																															
SEPTEMBER																															
OCTOBER																															
NOVEMBER																															
DECEMBER																															

Total days	Remaining Days
(Beginning of Month -->)	<b>0.00</b>
<b>0</b>	<b>0.00</b>

1 day = **W** : Worked full day      **C** : Holiday  
 1/2 day = **V** : Worked half day

**H** : Hand-Over day  
**O** : Other charge-free services

REMARKS :	EU-OSHA APPROVAL -- CERTIFIED CORRECT	
	OIA (Operational Initiating Agent)	OVA (Operational Verifying Agent)
	NAME :	NAME :
	DATE :	DATE :
	SIGNATURE :	SIGNATURE :

On-duty days as normal working days (based on FWC): Yes

On call possible (based on FWC): Yes

Extended Working hours possible (based on FWC): Yes

## QUOTED TIME & MEANS

THE EUROPEAN AGENCY FOR SAFETY AND HEALTH AT WORK (hereinafter referred to as "the contracting authority"), which is represented for the purposes of the signature of this contract by [forename, surname, function, department],

of the one part,

and

[official name in full]

[official legal form]

[statutory registration number]

[official address in full]

[VAT registration number]

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

of the other part,

### HAVE AGREED

for the implementation of Framework Contract No [XX/00000] signed by the Contracting Authority and the Contractor on [DD/MM/YYYY] [last amended by amendment No XX, signed on DD/MM/YYYY] for the provision of IT services as follows: [description of the Framework Contract]

## Article 1. PREAMBLE

1.1 This Specific Contract is based on the Contractor's formal offer (Annex II to this SC) under Request number [XX] dated [DD/MM/YYYY], (Annex I to this SC). Once signed by the parties, the Specific Contract shall be governed by the Framework Contract. This Specific Contract does not amend the provisions of the afore-mentioned Framework Contract.

The terms of this Specific Contract and the Technical Annex (Annex I to this SC) shall take precedence over the terms of the Contractor's formal offer (Annex II to this SC).

## Article 2. SUBJECT

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

2.2 The Contractor undertakes, subject to the terms set out in the Framework Contract and in this Specific Contract and its Annexes, which form an integral part of it, to perform the tasks specified in the Technical Annex (Annex I to this SC) and the Contractor's formal offer (Annex II to this SC).

## Article 3. DURATION AND LOCATION

3.1 This Specific Contract shall enter into force at the earliest [on the date it is signed], [on DD/MM/YYYY].

3.2 The execution of the tasks shall end on or before [DD/MM/YYYY]. [Nevertheless, the execution may continue beyond this date during an additional period of four months, unless one of the Contracting Authority's responsible persons indicated in Article 8 "Administrative Provisions", or other authorised Contracting Authority representative, sends a written notification by mail, fax or e-mail stating that the tasks cannot be executed beyond the above mentioned initial date or fixing a new final execution date within the additional four month period. The period of execution of the tasks may be extended beyond the four month additional period only with the express written

agreement of the parties before such period elapses by means of an amendment to this specific contract.] In no case shall the tasks be executed later than six (6) months after expiry of the Framework Contract.

- 3.3 The tasks shall be performed [on the premises of [the Contractor] , [on the premises of the Contracting Authority], [on both Contractor's and Contracting Authority's premises]. [If the services are to be performed at both Bilbao and contractor premises specify, as precisely as possible, how the services are to be divided between these two locations].
- 3.4 If the number of days agreed has not been fully taken up, the Contracting Authority shall not be obliged either to use or to pay for the days not worked and the Contractor shall not be entitled to claim damages for them.

#### **Article 4. PERFORMANCE**

- 4.1 The tasks to be performed by the Contractor under this Specific Contract are described in detail in the Technical Annex (Annex I to this SC) and the Contractor's formal offer (Annex II to this SC). These tasks shall be executed on the basis of 'tickets' drawn up using EU-OSHA ticketing system (<http://jira.osha.europa.eu>).

When a ticket is created in the ticketing system the Contractor will estimate the workload of the ticket. This workload shall be approved by the Contracting Authority before the Contractor could start its execution.

Signature by the Contracting Authority of the Certificate of conformity (Annex III of this SC) provides evidence of work performed.

- 4.2 The Contractor undertakes to comply with requirements identified in the Service Level Agreement signed with the Framework Contract.
- 4.3 At the end of every month, the contractor shall complete the Monthly consumption report (Annex V to this SC) and send it to the technical person of the Contracting Authority for the monitoring of the consumption.

#### **Article 5. PRICES AND PAYMENTS**

- 5.1 The Contracting Authority undertakes to pay the Contractor, in consideration for the services rendered under this Specific Contract:

- an amount of [EUR XXX] per day for [XX] days for [Junior Consultant], [Senior Consultant], [Project Manager], i.e. a total of [EUR XXX].

The rate per day of actual services rendered and number of days per profile are specified in the Contractor's formal offer (Annex II to this SC).

The total number of days executed by each profile can be modified, provided that the total amount of the Specific Contract does not exceed the amount defined in article 5.2 and following a written agreement by one of the Contracting Authority's responsible persons indicated in Article 8 "Administrative Provisions", or other authorised Contracting Authority representative.

- 5.2 The **total maximum amount** to be paid by the Contracting Authority under this Specific Contract shall be [EUR XXX] [amount in figures] covering all tasks executed. This amount shall cover all expenditure incurred by the Contractor in performing this Specific Contract.
- 5.3 In conformity with Article I.14.16 of the special conditions of the Framework Contract and Article III.1.5.4 of the General terms and conditions for Information Technologies contracts, the invoicing procedures for the services, once accepted by the Contracting Authority, are as follows:

[Specify one of the two possibilities]

##### **When the Specific Contract relates to an amount below EUR 25 000:**

- 100 % of the total price of the specific contract shall be invoiced once the work has been fully provided, based on the Certificate of conformity (Annex III to this SC) duly completed and signed by both the Contracting Authority and the Contractor and the Declaration on the list of pre-existing rights (Annex IV to this SC) completed and signed by the Contractor (Annexes must be attached to the invoice).



- [In the case of a contract longer than 6 months, one interim payment could be envisaged.]

**When the Specific Contract relates to an amount above EUR 25 000:**

- Invoices shall be submitted periodically - at the end of each calendar quarter, based on the Certificate of conformity (Annex III to this SC) duly completed and signed by both the Contracting Authority and the Contractor and the Declaration on the list of pre-existing rights (Annex IV to this SC) at the last instalment completed and signed by the Contractor (Annexes must be attached to the invoice).
- The first invoice shall cover the period from the start date of this Specific Contract until the end of the current calendar quarter.

- 5.4 Payments shall be made to account No [XXXXXX] held with [XXXXXX] on production of the invoice showing separately the amount of the fees and the VAT applied and within no more than 30 calendar days from the date the invoice is received by the Unit indicated in Article 5.5 below. Invoices presented by the Contractor shall indicate his place of taxation for VAT purposes and shall specify separately the amounts not including VAT and those including VAT. The payment shall be deemed to have been effected on the day the Contracting Authority's financial account is debited.

**Pursuant to articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities, the Contracting Authority is exempt from all taxes, duties and charges, in particular value added tax, on payments made under this order.**

**The contractor receives and keeps in his records the form entitled "VAT and Excise Duty Exemption Certificate" duly completed and signed by the Contracting Authority. The invoice must contain the following statement: "VAT Exemption / International Body / Article 151 of Council Directive 2006/112/EC"**

- 5.5 The address for invoices is:

EU-OSHA  
Communication and Promotion Unit  
Santiago de Compostela 12, 5<sup>th</sup> floor  
E-48003 Bilbao

**Article 6. SUB-CONTRACTING**

[Not applicable] or

- 6.1 In conformity with Article II.10 of the General Conditions, the Contractor has been permitted to subcontract:
- to subcontractors already permitted at the time of signature of the Framework Contract – without need of prior written authorisation from the Commission;
  - to other subcontractors – after receiving prior written authorisation from the Agency.
- 6.2 Tasks stated in the Technical Annex (Annex I to this SC) may be performed by the subcontractor(s) *[Name and address of subcontractor(s)]*, entirely at the risk of the Contractor.
- 6.3 Without prejudice to the Contracting Authority's other rights under Article II.17 of the General Conditions, including derogations thereto, if the Contractor fails to meet his obligations, the Specific Contract with the Contracting Authority may be terminated in accordance with Article II.17 (f) of the General Conditions. This clause applies throughout the term of the Specific Contract.

**Article 7. PERFORMANCE BONDS AND GUARANTEES**

Not applicable.

**Article 8. ADMINISTRATIVE PROVISIONS**

- 8.1 The persons responsible for implementing this Specific Contract are:

**For the Contracting Authority:**

- Administrative matters:

SURNAME/First name: [To be filled]

E-mail: [To be filled]

- Technical matters:

SURNAME/First name: [To be filled]

E-mail: [To be filled]

**For the Contractor:**

- Administrative matters:

SURNAME/First name: [To be filled]

E-mail: [To be filled]

- Technical matters:

SURNAME/First name: [To be filled]

E-mail: [To be filled]

- 8.2 All communications relating to the implementation of the Specific Contract must be in the form of written correspondence and be sent to the appropriate responsible persons.

**Article 9. EXPLOITATION OF THE RESULTS**

In accordance with Article I.13 of the Framework Contract.

**Article 10. ADDITIONAL PROVISIONS**

[Not applicable], [to be specified]

**ANNEXES**

The following documents are annexed to the Specific Contract and form an integral part of it:

- |            |  |
|------------|--|
| Annex I:   | Technical annex                                |
| Annex II:  | Contractor's formal offer                      |
| Annex III: | Certificate of conformity                      |
| Annex IV:  | Declaration on the list of pre-existing rights |
| Annex V:   | Monthly consumption report                     |

**SIGNATURES**

For the contractor,

[Company name/forename/surname/function]

For the contracting authority,

[forename/surname/function]

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

Done at [place], [date]

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

Done at Bilbao, [date]

In duplicate in English.

## ANNEX III

### Certificate of Conformity (Quoted Time & Means)

**RECEIPT ADVICE SLIP FOR "DELIVERABLES"**

**FOR SPECIFIC CONTRACT No** [EUOSHA/2018/0060/LXX/XX](#)

**SUBJECT OF THE SPECIFIC CONTRACT:** [XXX](#)

**UNDER FRAMEWORK CONTRACT No** [EUOSHA/2018/0060/LXX](#)

<i>Original document - duly signed - to be attached to the invoice</i>
<i>Invoicing period: from ____/____/____ till ____/____/____</i>


**RECEIPT OF WORK** (To be filled in by the Contractor)

An attachment with similar information could replace the following table:

Work Reference (Jira Number)	Delivery Date	PM On-site	PM Off-site	SC On-site	SC Off-site	JC On-site	JC Off-site

**ACCEPTANCE AND VALIDATION OF WORK** (To be filled in by EU-OSHA)

<b>Person responsible for acceptance (OIA)</b>	
<b>Date and signature</b>	
<b>Person responsible for final validation (ICT Manager or Activity Coordinator)</b>	
<b>Date and signature</b>	

	<b>ORDER FORM N°</b> <b>EUOSHA/2018/0060/Lxx/xx</b> <b>under FWC</b>				<b>INTERNAL USE ONLY</b>		
					Budget line		
					Commitment No		
<b>Santiago de Compostela, 12 - 5th floor</b> <b>E-48003 Bilbao, Spain</b> <b>Tel: +34 944 358 400</b> <b>information@osha.europa.eu</b>				(Name and address of contractor)			
Implementation of the Framework Contract:				EUOSHA/2018/0060/LXX			
In force from	DD/MM/YYYY	To	DD/MM/YYYY	For the provision of:	IT services		
The following documents are annexed to the Order Form and form an integral part of it:							
Annex I: Technical annex				Annex II: Contractor formal offer			
Annex III: Certificate of Conformity							
<b>LISTING OF THE SERVICES</b>				<b>QUANTITY</b>	<b>UNIT PRICE</b>	<b>TOTAL</b>	
					- €	- €	
					- €	- €	
					- €	- €	
					- €	- €	
					- €	- €	
					- €	- €	
					- €	- €	
					- €	- €	
					- €	- €	
					- €	- €	
					- €	- €	
					- €	- €	
					- €	- €	
					- €	- €	
					- €	- €	
					- €	- €	
					- €	- €	
<b>Final date of performance:</b>		DD/MM/YYYY	<b>Account:</b>	XXXXXXXXXXXXXX		<b>VAT:</b>	- €
<b>Payment provisions:</b>						<b>TOTAL:</b>	- €
In accordance with Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union, the Agency is exempt from all taxes and dues, including value added tax, on payments due under this contract. For intra-community purchases, the statement "VAT Exemption / European Union / Article 151 of Council Directive 2006/112/EC" should be added on the invoice. [In Spain, use of this Contract constitutes a request for VAT exemption. The invoice must include: "Direct VAT exoneration (BOE) 07/02/1997, n°33 pages 3917 to 3919 and Article 4 of the Seat Agreement between the Kingdom of Spain and the European Agency for Safety and Health at Work (BOE) 16/05/2014, n°119 pages 38049 to 38055".]							
<b>EU-OSHA</b>				<b>Contractor</b>			
<b>Technical contact name:</b>				<b>Technical contact name:</b>			
<b>Technical contact email:</b>				<b>Technical contact email:</b>			
<b>Financial contact name:</b>				<b>Financial contact name:</b>			
<b>Financial contact email:</b>				<b>Financial contact email:</b>			
<b>Date:</b>				<b>Date:</b>			
<b>Signature [name and position]:</b>				<b>Signature [name and position]:</b>			
The invoice will be paid only if the contractor has returned the signed order form.							

## ANNEX III

### Certificate of Conformity (Order Form)

**RECEIPT ADVICE SLIP FOR "DELIVERABLES"**

**FOR ORDER FORM No** [EUOSHA/2018/0060/LXX/XX](#)

**SUBJECT OF THE ORDER FORM:** [XXX](#)

**UNDER FRAMEWORK CONTRACT No** [EUOSHA/2018/0060/LXX](#)

<i>Original document - duly signed - to be attached to the invoice</i>
<i>Invoicing period: from</i> ____/____/____ <i>till</i> ____/____/____

**RECEIPT OF WORK** (To be filled in by the Contractor and EU-OSHA)

	Contractor	EU-OSHA OIA
Date of last delivery of invoicing period		
Person responsible for checking		
Comments		
Certificate of Conformity (CC) Date and signature	CC sent on: ____/____/____	CC received on ____/____/____

**ACCEPTANCE AND VALIDATION OF WORK** (To be filled in by EU-OSHA)

Person responsible for acceptance (OIA)	
Date and signature	
Person responsible for final validation (ICT Manager or Activity Coordinator)	
Date and signature	

## ANNEX IV

### Declaration of pre-existing rights

I, *[insert name of the authorised representative of the contractor]* representing *[insert name of the contractor]* ('the contractor'), party to the specific contract or order form *[insert title and number]*,

Please select one of the following options:

*[option 1: warrant that the results are free of rights or claims from creators or from any third parties for any use the contracting authority may envisage and declare that the results do not contain any pre-existing rights to the results or parts of the results or to pre-existing materials as defined in the above-mentioned contract.]*

*[option 2: warrant that the results and the pre-existing material incorporated in the results are free of rights or claims from creators or from any third parties for any use the contracting authority may envisage and declare that the results contain the following pre-existing rights:]*


**Please fill in the table – one line per pre-existing right**

Result concerned	Pre-existing material concerned	Rights to pre-existing material	Identification of rights' holder

I

[DD/MM/YYYY], [Place],  
Signature

## ANNEX V - Monthly Consumption Report

	<b>Framework Contract</b>			<b>Specific Contract</b>			<b>Project</b>			<b>Contractor</b>			<b>Starting (1)</b>		12	2018
	EUOSHA/2018/0060/Lx/xx			SC xxx			Project Name			Contractor Name			<b>Reporting (2)</b>		3	2019
<b>Month</b>	12	1	2	3	4	5	6	7	8	9	10	11	12	1	2	<b>TOTAL</b>
<b>Year</b>	2018	2019	2019	2019	2019	2019	2019	2019	2019	2019	2019	2019	2019	2020	2020	
<b>Baseline (3)</b>																0 WD
<b>Spent (4)</b>																0 WD
<b>Forecast (5)</b>																0 WD

(1) Please indicate the first month of the contract.

(2) Please indicate the reporting month.

(3) The baseline should be completed with the planned dedication when delivering the first monthly report and not been modified later.

(4) Please indicate the real dedication (or an estimate in case of a fixed price contract).

(5) Please indicate the forecast for the coming months (for the past month it should be the real spent working days).

The figures are given in Working Days (WD).

For all the figures no difference between profiles and 'onsite'/'offsite' should be made.