



EUROPEAN COMMISSION
DIRECTORATE-GENERAL INFORMATICS
Directorate Resources and Logistics

Finance and Contracts

III. GENERAL TERMS AND CONDITIONS FOR INFORMATION TECHNOLOGIES CONTRACTS

TABLE OF CONTENTS

1.	COMMON ADMINISTRATIVE PROVISIONS	5
1.1.	Definitions	5
1.2.	Performing Termination of Information Technologies Contracts.....	10
1.3.	Formulation of Prices for IT <i>Products, Software</i> and <i>Services</i>	11
1.4.	<i>Official price lists</i>	11
1.5.	Particularities for Invoicing of Information Technologies Contracts.....	13
1.6.	Insurance of rented or leased equipment	14
1.7.	Applicability of the Framework contract to several Institutions, Bodies and Agencies	14
1.8.	Annexes	15
2.	COMMON TECHNICAL PROVISIONS	16
2.1.	Quality and standards	16
2.2.	Security	17
2.3.	Specific <i>Intellectual property rights</i>	18
2.4.	Co-operation	20
2.5.	<i>Product</i> developments	21
2.6.	<i>Product</i> life	21
2.7.	Use of <i>Products</i>	21
2.8.	<i>Documentation</i>	22
2.9.	Identifiers.....	22
2.10.	<i>Benchmarking</i>	23
3.	SPECIFIC PROVISIONS RELATING TO THE PURCHASE, RENTAL AND LEASING OF <i>COMPLEX HARDWARE PRODUCTS</i>	25
3.1.	Additional specifications for <i>Hardware</i> Delivery	25
3.2.	<i>Product</i> installation	26
3.3.	Acceptance	27
3.4.	Guarantee specifications for <i>Complex hardware products</i>	28
3.5.	Leasing and Rental formula	29
3.6.	Termination of the Contract for rental and leasing of <i>Complex Hardware products</i>	30
3.7.	Withdrawal of rented or leased <i>Complex hardware product</i>	30

4.	SPECIFIC PROVISIONS RELATING TO THE PURCHASE, RENTAL AND LEASING OF OTHER THAN <i>COMPLEX HARDWARE PRODUCTS</i>	31
4.1.	Configuration and delivery	31
4.2.	Guarantee specifications for other than <i>Complex hardware products</i>	32
4.3.	Leasing and Rental formula	32
4.4.	Termination of the Contract for rental and leasing of other than <i>Complex hardware products</i>	32
4.5.	Withdrawal of rented or leased other than <i>Complex hardware product</i>	32
5.	SPECIFIC PROVISIONS RELATING TO LICENSED <i>SOFTWARE</i>	33
5.1.	Delivery - installation - <i>Documentation</i>	33
5.2.	Trial - acceptance	34
5.3.	Guarantee specifications for <i>Software</i>	34
5.4.	Use.....	35
5.5.	<i>Compatibility</i>	35
5.6.	<i>Intellectual property rights</i> concerning <i>Software</i> - confidentiality	35
5.7.	<i>Escrow rider</i>	36
6.	SPECIFIC PROVISIONS RELATING TO <i>HARDWARE AND SOFTWARE MAINTENANCE</i>	38
6.1.	Common provisions.....	38
6.2.	One –shot repair of <i>Hardware</i>	38
6.3.	Maintenance	39
7.	SPECIFIC PROVISIONS RELATING TO ALL <i>INFORMATICS SERVICES</i>	43
7.1.	Types of <i>Services</i>	43
7.2.	Time-and-means Contracts.....	44
7.3.	Quoted times-and-means Contracts.....	45
7.4.	Fixed-price Contracts	45
7.5.	Stability of <i>Services</i>	46
7.6.	Timetable.....	47
8.	SPECIFIC PROVISIONS RELATING TO DEVELOPMENT AND MAINTENANCE OF <i>COMMISSIONED SOFTWARE</i>	48

8.1.	Compliance with technical specifications	48
8.2.	Acceptance	48
8.3.	Guarantee of proper operation of <i>Commissioned software</i>	50
8.4.	<i>Intellectual property rights</i> and ownership of source code.....	50
8.5.	User manuals and <i>Documentation</i>	50
8.6.	Interfaces and <i>compatibility</i>	51
9.	SPECIFIC PROVISIONS RELATING TO TRAINING ORGANISED FOR THE COMMISSION	52
9.1.	Instructors	52
9.2.	Organisation of courses	52
9.3.	Instructor's manual	52
9.4.	Provision of training <i>Software</i>	52
10.	SPECIFIC PROVISIONS RELATING TO <i>DOCUMENTATION</i> PRODUCED FOR THE COMMISSION	53
ANNEX I :	CENTRAL SERVICE DESK ACTION PROCEDURE.....	54
ANNEX II:	TEMPLATE OF DECLARATION OF CONFIDENTIALITY	56
ANNEX III:	COMMISSION DECISION ON PROTECTION OF INFORMATION SYSTEMS	58

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 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 ³	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 ¹ % of PV
2 years	P ² % of PV
1 year	P ³ % of PV

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

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

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

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

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

4.1. Configuration and delivery

4.1.1. Configuration

In respect of each order:

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

4.1.2. Delivery

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

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

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

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

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

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

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

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

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

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

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

4.3. Leasing and Rental formula

See 3.5 above

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

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

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

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

5. SPECIFIC PROVISIONS RELATING TO LICENSED SOFTWARE

5.1. Delivery - installation - Documentation

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

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

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

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

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

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

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

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

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

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

5.2. Trial - acceptance

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

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

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

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

5.3. Guarantee specifications for Software

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

5.3.2. The Contractor warrants that:

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

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

5.3.4. Guarantee period

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

5.4. Use

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

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

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

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

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

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

5.5. Compatibility

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

5.6. Intellectual property rights concerning Software — confidentiality

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

5.6.2. The Commission undertakes:

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

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

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

5.7. *Escrow rider*

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

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

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

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

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

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

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

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

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

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

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

6. SPECIFIC PROVISIONS RELATING TO HARDWARE AND SOFTWARE MAINTENANCE

6.1. Common provisions

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

6.2. One –shot repair of *Hardware*

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

6.3. Maintenance

6.3.1. Terms

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

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

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

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

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

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

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

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

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

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

6.3.2. *Hardware*

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

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

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

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

6.3.3. *Software*

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

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

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

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

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

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

6.3.5. Responsibility for diagnosis

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

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

6.3.7. Technical modifications by the Contractor

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

6.3.8. Equipment

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

7. SPECIFIC PROVISIONS RELATING TO ALL INFORMATICS SERVICES

7.1. Types of *Services*

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

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

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

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

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

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

7.1.4. Technical *Documentation* of the *Products*

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

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

7.1.5. Integration work

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

7.1.6. Informatics engineering and maintenance

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

7.1.7. *Software* development, maintenance and related activities

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

7.1.8. Removals

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

7.1.9. Logistics

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

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

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

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

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

7.3. Quoted time-and-means Contracts.

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

7.4. Fixed-price Contracts

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

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

7.5. Stability of Services

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

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

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

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

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

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

7.6. Timetable

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

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

8.1. Compliance with technical specifications

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

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

8.2. Acceptance

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

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

8.2.3. Acceptance period

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

8.2.4. The Certificate of Conformity

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

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

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

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

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

8.3. Guarantee of proper operation of *Commissioned software*

- 8.3.1. Except in the case of hidden defects, for which its liability shall be of unlimited duration, the Contractor shall guarantee the proper operation of *Commissioned software* in conformity with Article II.1.2 of the General Conditions. It shall be held responsible for the immediate repair, at its own expense, of any breakdowns that occur during the guarantee period, unless it can prove that such breakdowns have occurred for reasons other than mistakes made in performance of the service, or other than manufacturing or design errors in that portion of the work for which it was responsible.
- 8.3.2. The Commission shall notify by a *Means of communication* the Contractor of the type and scale of any failure as soon as it occurs. If the Contractor does not repair the *Commissioned software* without delay, the Commission may have it repaired by a third party, on the responsibility and at the own and sole expense of the Contractor.
- 8.3.3. The Parties shall jointly define and duly record in minutes the major problems that might affect the *Commissioned software*.
- 8.3.4. The duration of the guarantee shall be extended by the period which elapses between the notification of a major problem to the Contractor duly sent by the Commission during the stated guarantee period and the date at which the Commission accepts the corrected work.

8.4. Intellectual property rights and ownership of source code

- 8.4.1. Pursuant to the relevant article of the General Conditions, the Contractor hereby assigns to the Commission, which accepts, all *Intellectual property rights* on the *Commissioned software*, for the entire world, for the entire duration of the *Intellectual property rights* involved, and on an exclusive and definite manner.
- 8.4.2. The Commission shall become the owner of source code, results, *Documentation* and sets of tests that correspond to payments already made, except when the same relate to pre-existing *Software*. Further to Article III.2.3.4 of the General Terms and Conditions, the use of pre-existing *Software* shall be subject to the Commission's prior written consent.
- 8.4.3. The Commission shall have the right to disseminate and distribute a *Commissioned software* to third Parties, even if it contains pre-existing *Software*, subject to observance of any licence terms in respect of third party *Software*.

8.5. User manuals and *Documentation*

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

8.6. Interfaces and Compatibility

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

9. SPECIFIC PROVISIONS RELATING TO TRAINING ORGANISED FOR THE COMMISSION

9.1. Instructors

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

9.2. Organisation of courses

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

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

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

9.3. Instructor's manual

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

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

9.4. Provision of training *Software*

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

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

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

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

ANNEX I:

CENTRAL SERVICE DESK ACTION PROCEDURE

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

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

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

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

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

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

Response time shall be defined as the period between:

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

Resolution time shall be defined as the time between:

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

The clock stops running:

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

ANNEX II: TEMPLATE OF DECLARATION OF CONFIDENTIALITY



EUROPEAN COMMISSION

DECLARATION OF CONFIDENTIALITY

The Commission and the Contractor

having signed a Framework contract, number _____ on ...

and a Specific Contract, number _____ on ...

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

- Articles I.8 of the Special Conditions, II.16 of the General Conditions and III.2.2 of the General terms and conditions for Information Technologies contracts
- Article 5 of the Commission decision on protection of information systems [C(95) 1510 23/11/95].
- Article 23 of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the 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]**