



EUROPEAN COMMISSION
HEALTH AND FOOD SAFETY DIRECTORATE-GENERAL
Resource management and better regulation
Director

FRAMEWORK CONTRACT

CONTRACT NUMBER – SANTE/2016/G5/040

The European Union (hereinafter referred to as "the Union"), represented by the European Commission (hereinafter referred to as "the Commission"), which is represented for the purposes of the signature of this contract by *[forename, surname, function, department of authorising officer]*,

of the one part,

and

[official name in full]

[official legal form]

[statutory registration number]

[official address in full]

[VAT registration number]

[For joint tenders, repeat these data as many times as there are contractors and continue numbering]

(hereinafter referred to as "the Contractor¹"), represented for the purposes of the signature of this contract by *[name in full and function]*,

of the other part

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

HAVE AGREED

the **I Special Conditions**, the **II General Conditions** and the **III General Terms and Conditions for Information Technologies Contracts, version 2.1** below and the following Annexes:

Annex I	<ul style="list-style-type: none"> • <i>[List of Hardware or Software products, maintenance and Documentation covered by the Contract and schedule of prices - Not applicable]</i>
Annex II	<ul style="list-style-type: none"> • List of Services covered by the Contract and schedule of prices.
Annex III	<ul style="list-style-type: none"> • [Agreement/Power of Attorney²]
Annex IV	<ul style="list-style-type: none"> • Financial Identification and Legal Entities forms³
Annex V	<ul style="list-style-type: none"> • Tender Specifications (enclosed to Invitation to Tender for call for tenders SANTE/XX/XX/[201X/XXX] –[<i>name</i>] of [<i>complete date</i>]), including Commission's replies to objections and questions raised by tenderers during tendering stage of Call for tenders No SANTE/XX/XX/[201X/XXX] – Original archived at the Commission's premises
Annex VI	<ul style="list-style-type: none"> • Contractor's Tender No [<i>complete</i>], submitted on [<i>complete date</i>]),including all replies by the Contractor to clarification requests made by the Commission during the evaluation stage of Call for tenders SANTE/XX/XX/[201X/XXX] – Original archived at The Commission's premises
Annex VII	<ul style="list-style-type: none"> • Specific Contract template
Annex VIII	<ul style="list-style-type: none"> • <i>[Performance guarantee – Not applicable]</i>
Annex IX	<ul style="list-style-type: none"> • Service Level Agreement based on the Service Level Requirements submitted with the tender

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

- The terms set out in the Special Conditions and in the Service Level Agreement shall take precedence over those in the other parts of the Contract.

² Model 1 or Model 2 of the draft Agreement/Power of Attorney will be annexed in case of a joint tender and if, upon the award of the contract, the tendering group takes a form prescribed in one of the two models.

³ The templates for the *Financial Identification* and *Legal Entities* forms can be found on http://ec.europa.eu/budget/contracts_grants/info_contracts/financial_id/financial_id_en.cfm and on http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm respectively.

- The terms set out in the General Conditions and in the Tender Specifications (Annex V) shall take precedence over those in the General Terms and Conditions for Information Technologies Contracts.
- The terms set out in the Contract shall take precedence over those in the Specific Contracts and Order Forms.
- The terms set out in all other parts of the Contract, including the ones in the Tender Specifications (Annex V), shall take precedence over those in the Tender (Annex VI).

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

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

I – SPECIAL CONDITIONS

ARTICLE I.1 - SUBJECT

- I.1.1** The subject of the Contract is the provision of Complete Electronic Signature services (including eSEALs used as digital corporate stamps) for the operations of the TRACES system.
The Services covered by this Contract are listed in Annex II.
- I.1.2** Upon implementation of the Contract, the Contractor shall provide the Services related to them in accordance with the provisions of the Contract, including its Annexes.
- I.1.3** The Contract does not confer on the Contractor any exclusive right to provide Services referred to in the above paragraph.
- I.1.4** Signature of the Contract imposes no obligation on the Commission to purchase. Only the implementation of the Contract through Order Forms and/or Specific Contracts is binding on the Commission.
- I.1.5** All Specific Contracts and/or Order Forms implementing the Contract shall conform to the terms set out therein.

ARTICLE I.2 - DURATION

- I.2.1** The Contract shall enter into force on the date on which it is signed by the last contracting party.
- I.2.2** Under no circumstances may implementation take place before the date on which the Contract enters into force. Specific Contracts may under no circumstances be placed before the date on which the Contract enters into force.
- I.2.3** The Contract is concluded for an initial period of 24 months with effect from the date on which it enters into force. The FWC is renewed automatically two (2) times for 12 months each, unless one of the parties receives formal notification to the contrary at least three months before the end of the ongoing duration. Renewal does not change or postpone any existing obligations.
- I.2.4** The Specific Contracts pursuant to the Contract shall be signed before the Contract which it refers to expires.

The Contract shall continue to apply to Specific Contracts executed after the Contract expires. Such Specific Contracts shall be executed no later than six (6) months after expiry of the Contract.

ARTICLE I.3 – CONTRACT PRICES

- I.3.1** The prices of this contract shall be as listed in Annex II.

The price indicated in the specific contract or order form covers any fees payable to the Contractor in relation to the vesting of rights in the Union and where applicable the transfer of rights to the Union and any use of the results by the Commission.
- I.3.2** Prices shall be expressed in euro.
- I.3.3** Prices shall be fixed and not subject to revision for Specific Contracts.

ARTICLE I.4 – IMPLEMENTATION OF THE CONTRACT

[I.4.2] Within five working days of a demand for conclusion of a Specific Contract being sent by the Commission, the Contractor shall return it, duly signed and dated.

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

ARTICLE I.5 – PAYMENT PERIODS

Payments under the Contract shall be made in accordance with Article II.5, which is complemented by Art III.1.5 and the provisions of the Specific Contracts (Annex VII). Payments shall be executed only if the Contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted. Payment requests may not be made if payments for previous orders or Specific Contracts have not been executed as a result of default or negligence on the part of the Contractor.

I.5.1 Pre-financing:

Not applicable

I.5.2 Interim Payment and payment of the balance:

Notwithstanding the provisions of the Specific Contract the request for payment of the Contractor shall be eligible if accompanied by

- *[the progress report in accordance with the instructions laid down in the relevant Annex if applicable;*
- *the relevant invoice(s) , indicating the reference number of the Contract and of the Order Form or Specific Contract to which they refer;*
- *when payment is linked to acceptance of the supporting documents, the relevant documents indicated in the Specific Contract, shall be attached to the invoice.*

The Commission shall have 60 days from receipt to approve or reject the progress report and to pay the balance. The Contractor shall have fifteen days in which to submit additional information or a new final progress report.

[For Contractors established in Belgium, the orders shall include the following provision: “En Belgique, l’utilisation de ce bon de commande vaut présentation d’une demande d’exemption de la TVA n° 450, article 42, paragraphe 3.3 of the Belgian VAT code(circulaire 2/1978)” or an equivalent statement in the Dutch or German language. The Contractor shall include the following statement in his invoice(s): “Exonération de la TVA, article 42, paragraphe 3.3 du code de la TVA (circulaire 2/1978)” or an equivalent statement in the Dutch or German language.]

[For Contractors established in other countries: pursuant to articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union, the Commission is exempt from all taxes, duties and charges, in particular value added tax, on payments made under this order. The contractor receives and keeps in his records the form entitled "VAT and Excise Duty Exemption Certificate" duly completed and signed by the Commission. The invoice must contain the following statement: "VAT Exemption / International Body / Article 151 of Council Directive 2006/112/EC".]

I.5.3 In the event of its budget not being adopted, the Commission may, after giving prior notice, pay invoices by monthly instalments. In such cases, the Commission shall notify the Contractor once it is in a position to resume normal payment arrangements.

I.5.4 Performance guarantee

Performance guarantee is not applicable to this FWC.

I.5.4a Retention money guarantee

Retention money guarantee is not applicable to this FWC.

I.5.5 Bank Account

Payments shall be made to the Contractor's bank account denominated in euro, stated in the Contractor's identification form set out in Annex IV.

ARTICLE I.6 – GENERAL ADMINISTRATIVE PROVISIONS

Any communication relating to the Framework contract shall be made in writing and shall bear the Framework contract reference number. Ordinary mail shall be deemed to have been received by the Commission on the date on which it is registered by the department responsible indicated below. Communications shall be sent to the following addresses:

Contracting authority:

European Commission

Directorate-General [*complete*]

[Directorate [*complete*]]

[Unit [*complete*]]

[*Postcode and city*]

E-mail: [*insert functional mailbox*]

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

[*Full name*]

[*Function*]

[*Company name*]

[*Full official address*]

E-mail: [*complete*]

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

ARTICLE I.7 - APPLICABLE LAW AND SETTLEMENT OF DISPUTES

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

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

ARTICLE I.8 - EXPLOITATION OF THE RESULTS OF THE CONTRACT

I.8.1 Modes of exploitation

In accordance with Article II.17.2 whereby the Union acquires ownership of the results as defined in the tender specifications (Annex V), these results may be used for any of the following purposes:

[(a)] use for its own purposes:

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

[(b)] distribution to the public:

- I. publishing in hard copies
- II. publishing in electronic or digital format
- III. publishing on the internet as a downloadable/non-downloadable file
- IV. broadcasting by any kind of technique of transmission
- V. public presentation or display
- VI. communication through press information services
- VII. inclusion in widely accessible databases or indexes
- VIII. otherwise in any form and by any method]

[(c)] modifications by the Commission or by a third party in the name of the Commission:

- I. shortening
- II. summarizing
- III. modifying of the content
- IV. making technical changes to the content:
 - necessary correction of technical errors
 - adding new parts or functionalities
 - changing functionalities
 - providing third parties with additional information concerning the result (e.g. source code) with a view of making modifications
- V. addition of new elements, paragraphs titles, leads, bolds, legend, table of content, summary, graphics, subtitles, sound, etc.
- VI. preparation in audio form, preparation as a presentation, animation, pictograms story, slide-show, public presentation etc.
- VII. extracting a part or dividing into parts
- VIII. use of a concept or preparation of a derivate work
- IX. digitisation or converting the format for storage or usage purposes
- X. modifying dimensions

- XI. translating, inserting subtitles, dubbing in different language versions (including, but not limited to all official languages of EU and languages of candidate countries)]
- [(d) the modes of exploitation listed in article II.17.4]
- [(e) rights to authorise, license, or sub-license in case of licensed pre-existing rights, the modes of exploitation set out in any of the points (a) to (d) to third parties.]

Where the Commission becomes aware that the scope of modifications exceeds that envisaged in the Contract, Specific Contract or Order Form, the Commission shall consult the Contractor. Where necessary, the Contractor shall in turn seek the agreement of any creator or other right holder. The Contractor shall reply to the Commission within one month and shall provide its agreement, including any suggestions of modifications, free of charge. The creator may refuse the intended modification only when it may harm his honour, reputation or distort integrity of the work.

I.8.2 Pre-existing rights and transmission of rights

The Contractor shall provide to the Commission a list of pre-existing rights and third parties' rights including its personnel, creators or other right holders as provided for in Article II.17.5.

ARTICLE I.9 – TERMINATION BY EITHER CONTRACTING PARTY

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

ARTICLE I.10 – SPECIFIC DEROGATIONS TO II GENERAL CONDITIONS

I.10.1 By way of derogation from II General Condition, in Article II.1.3 a new letter j) is inserted as last paragraph:

- j) The contractor must comply with the minimum requirements provided for in the tender specifications. This includes compliance with applicable obligations under environmental, social and labour law established by Union law, national law and collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU⁴.

ARTICLE II.10 – SUBCONTRACTING

⁴ OJ L 94 of 28.03.2014, p. 65

II.10.1 Rules on subcontracting

The contractor must not subcontract and have the FWC implemented by third parties beyond the third parties already mentioned in its tender without prior written authorisation from the contracting authority. Furthermore, additional levels of subcontracting (e.g. subcontracting by subcontractors) are not allowed during the execution of the contract unless a prior written authorisation has been granted by the Commission.

II.10.2 Liability of the Contractor in case of subcontracting

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

II.10.3 Obligation to ensure effective execution of Commission's rights

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

II.10.4 Replacement of a subcontractor

The contracting authority may request the contractor to replace a subcontractor found to be in a situation provided for in points (a) to (e) of Article II.12.1

II.10.5 Information on subcontractors for services provided at a facility under the oversight of the contracting authority

For services provided at a facility under the oversight of the contracting authority, the Contractor must, at the Commission's request, indicate the names, contacts and authorised representatives of subcontractors involved in the performance of the contract, including any changes of subcontractors.

I.10.5 By way of derogation from II General Conditions, the following text replaces Article II.12.1:

“II.12.1 The Commission may terminate the Contract, a pending order form or a specific contract in the following circumstances:

- (a) where the Contractor is bankrupt, subject to insolvency or winding-up procedures, where its assets are being administered by a liquidator or by a court, where it is in arrangement with creditors, where its business activities are suspended, or where it is in any analogous situation arising from a similar procedure provided for under national laws or regulations;
- (b) where the Contractor is in breach of its obligations relating to the payment of taxes or social security contributions in accordance with the law of the country in which it is established, with those of the country in which the contracting authority is based or those of the country of the performance of the contract;
- (c) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of grave professional misconduct by having violated applicable laws or regulations or ethical standards of the profession to which the economic operator belongs, or by having engaged in any wrongful conduct which has an impact on its professional credibility where such conduct;
 - (i) fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of selection criteria or in the performance of a contract;

- (ii) entering into agreement with other economic operators with the aim of distorting competition;
 - (iii) violating intellectual property rights;
 - (iv) attempting to influence the decision-making process of the contracting authority during the procurement procedure;
 - (v) attempting to obtain confidential information that may confer upon it undue advantages in the procurement procedure;
- (d) where the Commission has evidence or seriously suspects the Contractor or any related entity or person is guilty of fraud, corruption, involvement in a criminal organisation, money laundering or terrorist financing, terrorist-related offences or other offences linked to terrorist activities, child labour or other forms of trafficking in human beings or any irregularity detrimental to the Union's financial interests;
- (e) where the Contractor has shown significant deficiencies in complying with main obligations in the performance of a contract financed by the budget, which has led to its early termination or to the application of liquidated damages or other contractual penalties, or which has been discovered following checks, audits or investigations by an authorising officer, OLAF or the Court of Auditors;
- (f) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of substantial errors, irregularities or fraud in the award procedure or the performance of the Contract;
- (g) where the Contractor is in breach of his obligations under Article II.3;
- (h) where a change in the Contractor's legal, financial, technical or organisational situation could, in the Commission's opinion, have a significant effect on the performance of the Contract;
- (i) where execution of the tasks under a pending order or a Specific Contract has not actually commenced within fifteen (15) days of the date provided for, and the new date proposed, if any, is considered unacceptable by the Commission;
- (j) where the Contractor is unable, through his own fault, to obtain any permit or licence required for performance of the Contract;
- (k) where the Contractor, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period following receipt of the formal notice, remains in serious breach of his contractual obligations;
- (l) if the contractor does not comply with applicable obligations under environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex XX to Directive 2014/24/EU;
- (m) where the Commission has evidence that the Contractor or any related entity or person has violated any provisions on security and confidentiality included in the Contract and its annexes "

I.10.6. By way of derogation from II General Conditions, the following text replaces the first paragraph of Article **II.12.3**:

"Prior to termination under point c), d), f), h), k) or m), the Contractor shall be given the opportunity to submit his observations."

I.10.7. By way of derogation from II General Conditions, the following paragraph is inserted as a second paragraph to Article **II.15**:

"Any amendment must not make changes to the Contract or a specific contract that might alter the initial conditions of the procurement procedure or result in unequal treatment of tenderers or contactors."

ARTICLE I.11 – SPECIFIC DEROGATIONS TO III GENERAL TERMS AND CONDITIONS FOR INFORMATION TECHNOLOGIES CONTRACTS

I.11.4 By way of derogation from III General Terms and Conditions for Information Technology Contracts, Article **III.2.2.2** is hereby modified as follows:

"2.2.2 The contractor and its staff, when performing tasks for the Commission in execution of this Framework contract, undertake to comply with:

- *COMMISSION DECISION of 16 August 2006 C(2006)3602 concerning the security of information systems used by the European Commission*, its subsequent version, its implementing rules (as updated from time to time) and the corresponding security notices, and
- *COMMISSION DECISION (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information*, as well as all its subsequent versions
- European Commission's security policies and standards that may be relevant and made available for the implementation of specific contracts."

I.11.5 By way of derogation from III General Terms and Conditions for Information Technology Contracts, Article **III.2.2.6** is hereby modified as follows:

"2.2.6 The Contractor shall take all appropriate steps for each Product to ensure that the data and the magnetic media upon which they are stored are safely preserved. The Products supplied shall not contain any mechanism (e.g. viruses) which could compromise their availability, integrity or confidentiality or that of other Products. The cost of repairing the damage caused by such a mechanism shall be borne by the Contractor.

I.11.6. By way of derogation from III General Terms and Conditions for Information Technology Contracts, Article **III.2.4.1** is hereby replaced in its entirety by the following text

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

I.11.8. By way of derogation from III General Terms and Conditions for Information Technology Contracts, Article **III.8.1** is hereby replaced as follows:

"III.8.1 Compliance with technical specifications

When providing Services of development or maintenance of Commissioned software to the 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 Enterprise IT Architecture Framework. (The current version is available at:

http://ec.europa.eu/dgs/informatics/ecom/dg/ceaf_guide_v1_1.pdf)”

I.11.9. By way of derogation from III General Terms and Conditions for Information Technology Contracts, **Annex II: TEMPLATE OF DECLARATION OF CONFIDENTIALITY**, second bullet is amended to read as follows:

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

I.11.10. By way of derogation from III General Terms and Conditions for Information Technology Contracts, **Annex III**, heading, is amended to be read as follows:

COMMISSION DECISION on the security of information systems used by the European Commission C(2006) 3602 16/08/2006, IMPLEMENTING RULES FOR COMMISSION DECISION C(2006) 3602 of 16/8/2006 concerning the security of information systems used by the European Commission and COMMISSION DECISION (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information

ARTICLE I.13 – SPECIFIC QUALITY STANDARDS

I.12.1 Specific quality requirements will be stated in a Service Level Agreement which will form integral part of the Framework contract.

ARTICLE I.14 – SPECIFIC MAINTENANCE SECURITY RULES

[Should you wish to lay down specific maintenance security rules add them here]

ARTICLE I.15– SPECIFIC HELPDESK ACTION PROCEDURES

By way of derogation from Annex I of the General Terms and Conditions for the Information Technology Contracts it is hereby agreed as follows:

The contact points are:

For the Commission:

For the Contractor:

(name or function and contract information for both parties)]

SIGNATURES

For the contractor,

For the contracting authority,

[Company name/forename/surname/position] [forename/surname/position]

Signature: _____

Done at [*place*], [*date*]

In duplicate in English.

Signature:_____

Done at [*place*], [*date*]

II – GENERAL CONDITIONS

ARTICLE II.1 - PROCEDURES FOR PERFORMING THE CONTRACT

II.1.1 Phases of execution of the Specific Contract

Sending of a Specific Contract request

Whenever the Commission wishes services to be provided or goods to be supplied pursuant to the Contract, it shall send a request for a formal offer for services and request for an Order Form for goods to the Contractor

Sending of the Specific Contract by the Contractor

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

Delivery

a) Time allowed for delivery

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

b) Date, time and place of delivery

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

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

c) Consignment note

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

Certificate of conformity

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

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

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

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

Conformity of the goods delivered with the Contract

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

Remedy

- a) The Contractor shall be liable to the Commission for any lack of conformity which exists at the time the goods are verified.
- b) In the event of lack of conformity, without prejudice to Article II.4 regarding liquidated damages applicable to the total price of the goods concerned, the Commission shall be entitled:
 - either to have the goods brought into conformity, free of charge, by repair or replacement;
 - or to have an appropriate reduction made in the price.
- c) Any repair or replacement shall be completed within a reasonable time and without any significant inconvenience to the Commission, taking account of the nature of the goods and the purpose for which they are required by the Commission.
- d) The term 'free of charge' in paragraph b) refers to the costs incurred to bring the goods into conformity, particularly the cost of carriage, labour and materials.

Assembly and installation

If required by Article I.1.2 of the Special Conditions, the Contractor shall assemble and install the goods delivered within a period of one month unless otherwise

specified in the Special Conditions or in the General Terms and Conditions for Information Technologies Contracts.

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

Services provided to goods

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

II.1.2 General provisions concerning goods

a) Packaging

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

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

- European Commission and address for delivery;
- name of Contractor;
- description of contents;
- date of delivery;
- number and date of Specific Contract;
- number of Framework contract;
- EC code number of article.

b) Guarantee

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

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

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

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

The Contractor is also responsible for any conformity defect which occurs after delivery and is ascribable to non-compliance with his obligations, including failure to provide a guarantee that, for a certain period, goods used for the

purposes for which they are normally used or for a specific purpose will preserve their qualities or characteristics as specified.

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

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

II.1.3 Performance of the Contract

- a) The Contractor shall perform the Contract to the highest professional standards. The Contractor shall have sole responsibility for complying with any legal obligations incumbent on him, notably those resulting from employment, tax and social legislation.
- b) The Contractor shall have sole responsibility for taking the necessary steps to obtain any permit or licence required for performance of the Contract under the laws and regulations in force at the place where the tasks assigned to him are to be executed.
- c) Without prejudice to Article II.3 any reference made to the Contractor's staff in the Contract shall relate exclusively to individuals involved in the performance of the Contract.
- d) The Contractor must ensure that any staff performing the Contract have the professional qualifications and experience required for the execution of the tasks assigned to him.
- e) The Contractor shall neither represent the Commission nor behave in any way that would give such an impression. The Contractor shall inform third parties that he does not belong to the European public service.
- f) The Contractor shall have sole responsibility for the staff who execute the tasks assigned to him.

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

- staff executing the tasks assigned to the Contractor may not be given orders direct by the Commission;
 - the Commission may not under any circumstances be considered to be the staff's employer and the said staff shall undertake not to invoke in respect of the Commission any right arising from the contractual relationship between the Commission and the Contractor.
- g) In the event of disruption resulting from the action of a member of the Contractor's staff working on Commission premises or in the event of the expertise of a member of the Contractor's staff failing to correspond to the profile required by the Contract, the Contractor shall replace him without delay. The Commission shall have the right to request the replacement of any such member of staff, stating its reasons for so doing. Replacement staff must have the necessary qualifications and be capable of performing the Contract under the same contractual conditions. The Contractor shall

be responsible for any delay in the execution of the tasks assigned to him resulting from the replacement of staff.

- h)** Should any unforeseen event, action or omission directly or indirectly hamper execution of the tasks, either partially or totally, the Contractor shall immediately and on his own initiative record it and report it to the Commission. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with his obligations under the Contract. In such event the Contractor shall give priority to solving the problem rather than determining liability.
- i)** Should the Contractor fail to perform his obligations under the Contract, the Commission may - without prejudice to its right to terminate the Contract - reduce or recover payments in proportion to the scale of the failure. In addition, the Commission may impose penalties or liquidated damages provided for in Article II.4.

ARTICLE II.2 - LIABILITY

- II.2.1** The Commission shall not be liable for damage sustained by the Contractor in performance of the Contract except in the event of wilful misconduct or gross negligence on the part of the Commission.
- II.2.2** The Contractor shall be liable for any loss or damage sustained by the Commission in performance of the Contract, including in the event of subcontracting under Article II.6 but only up to three times the total amount of the Framework Contract. Nevertheless, if the damage or loss is caused by the gross negligence or wilful misconduct of the Contractor or by its employees, the Contractor shall remain liable without any limitation as to the amount of the damage or loss.
- II.2.3** Subject to the maximum amount provided in II.2.2, the Contractor shall provide compensation in the event of any action, claim or proceeding brought against the Commission by a third party as a result of damage caused by the Contractor in performance of the Contract.
- II.2.4** In the event of any action brought by a third party against the Commission in connection with performance of the Contract, the Contractor shall assist the Commission. Expenditure incurred to this end may be borne by the Commission.
- II.2.5** The Contractor shall take out insurance against risks and damage relating to performance of the Contract if required by the relevant applicable legislation. He shall take out supplementary insurance as reasonably required by standard practice in the industry. A copy of all the relevant insurance contracts shall be sent to the Commission should it so request.

ARTICLE II.3 - CONFLICT OF INTERESTS

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

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

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

II.3.3 The Contractor declares:

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

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

ARTICLE II.4 - LIQUIDATED DAMAGES

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

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

V is the price of the relevant purchase;

d is the duration specified in the relevant order form or specific contract expressed in days.

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

ARTICLE II.5 – INVOICING AND PAYMENTS

II.5.1 Pre-financing guarantee:

Where required by Article I.5.1a, the Contractor shall provide a financial guarantee in the form of a bank guarantee or equivalent supplied by a bank or an authorised financial institution (guarantor) to cover pre-financing under the Contract. Such guarantee may be replaced by a joint and several guarantee by a third party.

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

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

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

II.5.2 Interim payments and payment of the balance

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

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

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

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

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

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

II.5.3. Payment currency and costs

Payments are executed in the currency of the contract.

Costs of the transfer are borne in the following way:

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

ARTICLE II.6 – GENERAL PROVISIONS CONCERNING PAYMENTS

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

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

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

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

ARTICLE II.7 –RECOVERY

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

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

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

ARTICLE II.8 –TAXATION

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

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

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

ARTICLE II.10 – SUBCONTRACTING

- II.10.1** The Contractor shall not subcontract without prior written authorisation from the Commission nor cause the Contract to be performed in fact by third parties.
- II.10.2** Even where the Commission authorises the Contractor to subcontract to third parties, he shall none the less remain bound by his obligations to the Commission under the Contract and shall bear exclusive liability for proper performance of the Contract.
- II.10.3** The Contractor shall make sure that the subcontract does not affect rights and guarantees to which the Commission is entitled by virtue of the Contract, notably Article II.14.

ARTICLE II.11 – ASSIGNMENT

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

II.11.2 In the absence of the authorisation referred to in 1 above, or in the event of failure to observe the terms thereof, assignment by the Contractor shall not be enforceable against and shall have no effect on the Commission.

ARTICLE II.12 – TERMINATION BY THE COMMISSION

II.12.1 The Commission may terminate the Contract, a pending order form or a specific contract in the following circumstances:

- (a) where the Contractor is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) where the Contractor has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;
- (c) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of professional misconduct;
- (d) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Union's financial interests;
- (e) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of substantial errors, irregularities or fraud in the award procedure or the performance of the Contract;
- (f) where the Contractor is in breach of his obligations under Article II.3;
- (g) where the Contractor was guilty of misrepresentation in supplying the information required by the Commission as a condition of participation in the Contract procedure or failed to supply this information;
- (h) where a change in the Contractor's legal, financial, technical or organisational situation could, in the Commission's opinion, have a significant effect on the performance of the Contract;
- (i) where execution of the tasks under a pending order or a Specific Contract has not actually commenced within fifteen (15) days of the date provided for, and the new date proposed, if any, is considered unacceptable by the Commission;
- (j) where the Contractor is unable, through his own fault, to obtain any permit or licence required for performance of the Contract;
- (k) where the Contractor, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period following receipt of the formal notice, remains in serious breach of his contractual obligations.

II.12.2 In the event of force majeure, notified in accordance with Article II.9, either contracting party may terminate the Contract, where performance thereof cannot be

ensured for a quantity of goods corresponding to at least one fifth of the quantity of goods ordered or where performance thereof cannot be ensured for a period corresponding to at least to one fifth of the period laid down in Article I.2.3.

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

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

II.12.4 Consequences of termination:

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

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

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

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

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

ARTICLE II.13 – DATA PROTECTION

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

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

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

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

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

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

ARTICLE II.14 – CHECKS AND AUDITS

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

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

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

ARTICLE II.15 - AMENDMENTS

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

ARTICLE II.16 – CONFIDENTIALITY

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

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

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

II.17.1 Definitions

In this Contract the following definitions apply:

- (1) 'results' means any intended outcome of the performance of the Contract which is delivered and finally accepted by the Commission;
- (2) 'creator' means any natural person who contributed to the production of the result and includes personnel of the Commission or a third party;
- (3) 'pre-existing rights' means any industrial and intellectual property rights, including background technology, which exist prior to the Commission or the Contractor ordering them for the purpose of the Contract performance and include rights of ownership and use by the Contractor, the creator, the Commission and any third parties.

II.17.2 Ownership of the results

The ownership of the results shall be fully and irrevocably acquired by the Union under the Contract including any rights in any of the results listed in the Contract and Order Forms or Specific Contracts. Those rights in the results may include copyright and other intellectual or industrial property rights, as well as all technological solutions and information contained within these technological solutions, produced in performance of the Contract. The Commission may exploit them as stipulated in this Contract or Order Forms or Specific Contracts. All the rights shall be acquired by the Union from the moment the results are delivered by the Contractor and accepted by the Commission. Such delivery and acceptance are deemed to constitute an effective assignment of rights from the Contractor to the Union.

The payment of the price as set out in the Order Forms or Specific Contracts is deemed to include any fees payable to the Contractor in relation to the acquisition of rights by the Union including all forms of use of the results.

The acquisition of rights by the Union under this Contract covers all territories worldwide.

Any intermediary sub-result, raw data, intermediary analysis made available by the contractor cannot be used by the Commission without the written consent of the Contractor, unless the Contract or Order Form or Specific Contract explicitly provides for it to be treated as a self-contained result.

II.17.3 Licensing of pre-existing rights

The Union shall not acquire ownership of the pre-existing rights.

The contractor shall license the pre-existing rights on a royalty-free, non-exclusive and irrevocable basis to the Union which may use the pre-existing right as foreseen in Article I.8.1 or in order forms or specific contracts. All the pre-existing rights shall be licensed to the Union from the moment the results were delivered and accepted by the Commission.

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

II.17.4 Modes of exploitation

The Union shall acquire ownership of each of the results produced as an outcome of the Contract which may be used for any of the following purposes:

- (a) giving access upon individual requests without the right to reproduce or exploit, as provided for by Regulation 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents;
- (b) storage of the original and copies made in accordance with this Contract or order form or specific contract;
- (c) archiving in line with the document management rules applicable to the Commission.

II.17.5 Identification and evidence of granting of pre-existing rights and rights of third parties

When delivering the results, the Contractor shall warrant that they are free of rights or claims from creators and third parties including in relation to pre-existing rights, for any use envisaged by the Commission. This does not concern the moral rights of natural persons.

The Contractor shall establish to that effect a list of all pre-existing rights and rights of creators and third parties on the results of this Contract or parts thereof. This list shall be provided no later than the date of delivery of the final results.

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

Upon request by the Commission, the Contractor shall provide evidence of ownership of or rights to use all the listed pre-existing rights and rights of third parties except for the rights owned by the Union.

This evidence may refer, inter alia, to rights to: parts of other documents, images, graphs, tables, data, software, technical inventions, know-how etc. (delivered in paper, electronic or other form), IT development tools, routines, subroutines and/or other programs ("background technology"), concepts, designs, installations or pieces of art, data, source or background materials or any other parts of external origin.

The evidence shall include, as appropriate:

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

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

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

II.17.6 Creators

By delivering the results the Contractor warrants that the creators undertake not to oppose that their names be recalled when the results are presented to the public and confirms that the results can be divulged. Names of authors shall be recalled on request in the manner communicated by the Contractor to the Commission.

The Contractor shall obtain the consent of creators regarding the granting of the relevant rights and be ready to provide documentary evidence upon request.

II.17.7 Persons appearing in photographs or films

If natural, recognisable persons appear in a result or their voice is recorded the contractor shall submit a statement of these persons (or of the persons exercising parental authority in case of minors) where they give their permission for the described use of their image or voice on request by the Commission. This does not apply to persons whose permission is not required in line with the law of the country where photographs were taken, films shot or audio records made.

II.17.8 Contractor's copyright for pre-existing rights

When the contractor retains pre-existing rights on parts of the results, reference shall be inserted to that effect when the result is used as set out in Article I.8.1 with the following disclaimer: © - year – European Union. All rights reserved. Certain parts are licensed under conditions to the EU.

II.17.9 Visibility of Union funding and disclaimer

When making use of the results, the contractor shall declare that they have been produced within a framework contract with the Union and that the opinions expressed are those of the contractor only and do not represent the Commission's official position. The Commission may waive this obligation in writing.

ARTICLE II.19 – SUSPENSION OF THE CONTRACT

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

SPECIFIC CONTRACT

No *[complete]*

implementing framework contract No *[complete]*

1. The European Union ('the Union'), represented by the [European Commission] ('the contracting authority'), represented for the purposes of signing this specific contract by *[forename, surname, function, department of authorising officer]*,

and

2. *[Full official name]*

[Official legal form]

[Statutory registration number or ID or passport number]

[Full official address]

[VAT registration number]

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

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

([collectively] "the contractor"), represented for the purposes of signing this specific contract by *[forename, surname and function of legal representative,]*

HAVE AGREED

Article 1 Subject matter

- 1.1** This specific contract implements framework contract (FWC) No *[complete]*, signed by the parties on *[complete date]*.
- 1.2** In accordance with the provisions set out in the FWC and in this specific contract and *[its][their] annex[es]*, which form an integral part of it, the contractor must provide the *[following services:] [services specified in Annex [complete].]*

Article 2 Entry into force and duration

- 2.1** This specific contract enters into force *[on the date on which the last party signs it] [on [insert date] if both parties have already signed it]*.
- 2.2** The provision of the services starts from *[the date of entry into force of this specific contract] [insert date]*.
- 2.3** The provision of the services must not exceed *[complete] [days] [months]*. The parties may extend the duration by written agreement before it elapses and before expiry of the FWC.

Article 3 Price

- 3.1** The price payable under this specific contract excluding reimbursement of expenses is EUR *[amount in figures and in words]*.

[The maximum amount covering all services to be provided under this specific contract including reimbursement of expenses and excluding price revision is EUR [amount in figures and in words].]
- 3.2** *[Reimbursement of expenses is not applicable to this specific contract.]*

[Option: for contractors for which VAT is due in Belgium]

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

[Option: for contractors for which VAT is due in Luxembourg]

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

Article 4 communication details

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

Contracting authority:

European Commission

Directorate-General [*complete*]

[Directorate [*complete*]]

[Unit [*complete*]]

[*Postcode and city*]

E-mail: [*insert functional mailbox*]

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

[*Full name*]

[*Function*]

[*Company name*]

[*Full official address*]

E-mail: [*complete*]

Article 5 Performance guarantee

Performance guarantee is not applicable to this specific contract.

Article 6 Retention money guarantee

Retention money guarantee is not applicable to this specific contract.

Annexes

Request for service

Contractor's specific tender of [*insert date*]

Signatures

For the contractor,

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

signature:

Done at [*place*], [*date*]


In duplicate in English.

For the contracting authority,

[*forename/surname/function*]

signature:

Done at [*place*], [*date*]

		FRAMEWORK CONTRACT ORDER FORM			
EUROPEAN COMMISSION DG and unit: Tel.: E-mail:		Order number: <hr/> Currency of payment: EUR <hr/> Tender (date and reference):	(Name and address of contractor)		
This order is governed by Framework Contract No _____ in force from _____ to _____					
LISTING OF THE SUPPLIES / SERVICES and code		UNIT	QUANTITY	PRICE in €	
				UNIT PRICE	TOTAL
- -					
In accordance with Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union, the Commission is exempt from all taxes and dues, including value added tax, on payments due under this contract. For intra-community purchases, the statement 'VAT Exemption / European Union / Article 151 of Council Directive 2006/112/EC' should be added on the invoice. [In Belgium, use of this contract constitutes a request for VAT exemption No. 450, Article 42, paragraph 3.3 of the VAT code (circular 2/1978), provided the invoice includes the statement: 'Exonération de la TVA; art. 42 § 3.3 du code TVA (circulaire n° 2/1978)'.]		Packaging Insurance Transport Assembly VAT			
		TOTAL :			
Place of delivery or performance and/or Incoterm: Final date of delivery or performance: Payment provisions: Guarantee:		Contractor's signature Name: Position: Date:			
Date of issue: Signature [name and position] [and for Belgium, Commission stamp]: [Pour la Belgique, numéro de dossier auprès du Protocole du SPF Affaires Etrangères] The invoice will be paid only if the contractor has returned the signed order form.					