

**LISA/2016/RP/03**  
**Provision of Security services and equipment**  
**Annex IV<sup>1</sup>**  
**Service Requirements**

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<sup>1</sup> Annex 4 to the Framework Contract

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## 1. INTRODUCTION

The present document details the requirements on services, the associated procedures, products and equipment.

## 2. 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 contracting authority under the Framework contract.

**“Commissioning date”:**

Date on which the Contractor notifies the contracting authority 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.

**“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 contracting authority 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 contracting authority, 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 present document for a different period.

**“Constant discount”:**

Fixed percentage of discount on its *Products* and *Services*, awarded by the Contractor to the contracting authority during the entire duration of the Framework contract.

**“Delivery date”:**

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

**“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 contracting authority, 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 contracting authority’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 contracting authority’s decision and may be notified by the contracting authority 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 local, international or foreign trademarks), trade names, designs and models.

**“Internal use”**

Within the contracting authority'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 contracting authority's premises, but within the context of his official work.

**“Intra muros”**

Within the contracting authority's premises.

**“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, except the contracting authority's holidays only. The contracting authority's 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, 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 on-duty days will be regarded as the contracting authority's holidays.

**“Normal working hours”:**

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

**“Order Forms”**

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

**“Payment request”**

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

**“Person-day”:**

Eight (8) hours not including lunch break.

**“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 consequences 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.

### **3. GENERAL PROVISION**

#### **3.1. Formulation of prices**

3.1.1. In general, the Contractor agrees to let the contracting authority, as a most favoured partner, benefit from its most advantageous prices.

##### **3.1.2. *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.



### 3.1.3. 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.

### 3.1.4. 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, local travel and travel to normal place of delivery and office expenses.

## 3.2. Particularities of invoicing

3.2.1. The invoices are to be sent to the address stated in the Specific Contracts. The payment period shall not be binding on the contracting authority if any invoice is sent to a different address. An invoice should be submitted not later than six (6) months after delivery of the product or services and after the acceptance. In accordance with Article II.12 of the General Conditions, the Contractor will be liable to liquidated damages in the case of invoices submitted out of time.

### 3.2.2. *Products*

Purchases shall be invoiced when the relevant after delivery and acceptance.

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 delivery and acceptance of the Products, or, as regards maintenance, from expiry of the guarantee, to the last day of the current calendar quarter.

### 3.2.3. *Software*

One-off licence fees shall be invoiced after the delivery and acceptance.

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 acceptance or, as regards maintenance, from expiry of the guarantee, to the end of the whole period.

In exceptional cases and subject to prior approval of the contracting authority, the license fees, maintenance fees or maintenance related costs may be invoiced for more than one calendar year and in advance for the whole period.

### 3.2.4. *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.

In exceptional cases, on the request by the contractor and subject to prior approval by the contracting authority continuous service fees may be invoiced per calendar year and in advance for the whole period, irrespective of the amount involved.

### 3.3. Insurance of rented or leased equipment

3.3.1. 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 contracting authority 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 contracting authority.

### 3.4. Performing termination

3.4.1. If the contracting authority terminates the Framework contract pursuant to Article II.14 of the General Conditions and the contracting authority 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 contracting authority 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;

3.4.2. If the Framework contract concerns the provision of *Products* as well as maintenance *Services* relating to these *Products*, the contracting authority 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.

3.4.3. 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.

3.4.4. 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.

### 3.5. Quality and standards

3.5.1. The Contractor shall perform the *Services* and provide the *Products* in full knowledge and consideration of the contracting authority'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.

3.5.2. The contracting authority shall supply, without delay, all the assistance, data and information that the Contractor considers necessary or useful for providing its *Products* and *Services*.

3.5.3. The contracting authority 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.

3.5.4. 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 contracting authority. It shall meet the operating requirements, specifications and characteristics specified in the Contractor's documents or laid down in the Framework contract.

3.5.5. 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 Service Requirements, 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.

3.5.6. The Contractor undertakes to comply with those quality standards. Compliance with the standards shall be monitored by the contracting authority. Unless otherwise stated in the Framework contract, in 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.

### 3.6. Security

3.6.1. The contractor and its staff, when performing tasks for the contracting authority in execution of this contract, undertakes to comply with the security requirements laid down within the

Technical Tender Specifications and with the present Service Requirements. As part of those security requirements, the contractor shall comply with:

- The decision C(2006) 3602 of 16 August 2006 of the Commission on protection of information system used by the contracting authority, its subsequent version, its implementing rules and the corresponding security notices, and
- The Commission Decision (EU, Euratom) 2015/444 on the security rules for protecting EU classified information, as well as all its subsequent versions;
- The Baseline Security Controls for the IT infrastructure,

3.6.2. Contractors working in the contracting authority premises must conform to the internal security rules of the contracting authority. If the Contractor's staff are working on the premises of the contracting authority or having access to eu-LISA information or systems, the Contractor is required, at the contracting authority's request, to replace immediately and without compensation any person considered undesirable for security reasons by the contracting authority

3.6.3. The security requirements of the Framework Contract apply to all individual projects pursuant to any subsequent Specific Contracts unless different or complementary specific requirements are defined within the Specific Contracts' requirements.

3.6.4. The Contractor agrees to impose the security obligations of this Article upon any of its subcontractors and their staff who perform tasks for the contracting authority in execution of this Framework contract. Should the subcontractors refuse throughout the execution of the contract to comply with these obligations, eu-LISA may request the contractor to replace them. In such cases the contractor shall remain responsible and liable for the fulfilment of execution of contracts.

3.6.5. The Contractor recognises that no *Products*, equipment or material whatsoever owned by the contracting authority or present at the contracting authority 's premises, may be moved or removed without the contracting authority'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*, equipment or materials are moved or removed.

3.6.6. 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 contracting authority'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 contracting authority.

3.6.7. All personnel of the contractor working for the contracting authority, including remotely from the contractor's premises, must hold a valid security clearance at EU Secret level issued by a National Security Authority prior to providing services under the Framework Contract. Each staff member of the contractor working under the contract shall sign an individual declaration of confidentiality, protection of the information system and non-conflict of interest following the template provided within the present Service Requirements document (Attachment 1).

Any contractor who fails during the execution of the contract to comply with the eu-LISA security rules or to hold a valid security clearance at EU-Secret level and/or does not sign an

individual declaration of confidentiality will be excluded from accessing the eu-LISA premises, accessing eu-LISA information and/or system, and ultimately delivering the services. This might imply the deduction of the associated payment pro rata temporis.

For each specific contract where the contractor and/or its staff accessing, processing or storing eu-LISA classified or sensitive information, having access on eu-LISA premises or to eu-LISA systems, both the contractor and each of its representatives shall sign the Declaration of Confidentiality, may be subject of specific security awareness sessions, and shall be solidary responsible and liable for implementing all eu-LISA's security rules in regards to execution of the contracts.

### 3.7. Specific Intellectual Property Rights

3.7.1. As regards all *Software* or other protected material for which the *Intellectual property rights* are the property of the contracting authority or which have been licensed to the contracting authority by third Parties, and which the Contractor is likely to use in the execution of its obligations under this Framework contract, the contracting authority 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 contracting authority;
- to use such *Software* or other protected material exclusively in the context of this Framework contract;
- to protect and indemnify the contracting authority 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.

3.7.2. Pursuant to Article II.10 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 contracting authority 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 contracting authority will entitle the contracting authority to seek damages against the Contractor and will not prevent the contracting authority from protecting the rights assigned under the Framework contract.

- 3.7.3. 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*.
- 3.7.4. 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 contracting authority'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.
- 3.7.5. 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 contracting authority's name, at its own and sole expense.

The contracting authority 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 contracting authority 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 contracting authority 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 contracting authority 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 contracting authority 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 contracting authority'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 contracting authority'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.

- 3.7.6. 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 contracting authority of the Product and its Documentation delivered by the Contractor, whichever period ends last.

### 3.8. Cooperation

- 3.8.1. The Contractor undertakes to develop and install the *Products* and provide the *Informatics Services* in accordance with the Framework Contract's provisions. 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 contracting authority.
- 3.8.2. The Contractor shall assist and advise the contracting authority 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 contracting authority's environment and the introduction of new versions.

### **3.9. Product developments**

- 3.9.1. 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.
- 3.9.2. 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 contracting authority, may be added to the relevant Annexes of the Framework contract.
- 3.9.3. 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.
- 3.9.4. Even if a *Product* is approved by the contracting authority, 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 contracting authority.
- 3.9.5. Evaluation procedures and trials of new products before inclusion in the price list may be specifically defined in the Framework contract.

### **3.10. Product life**

- 3.10.1. 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 delivery and acceptance.

### **3.11. Use of Products**

- 3.11.1. From delivery and acceptance the contracting authority may make unrestricted use of the *Products* under normal operating conditions. The contracting authority may use the *Products* for *Services* it is carrying out for other Institutions, Agencies or Bodies or Member States participating in the system. If the *Products* are rented or leased, the

right of use applies for the duration specified in the Specific Contract. If guarantee applies to the product, maintenance may not start until the guarantee expires.

3.11.2. The Contractor must ensure that the contracting authority may add to a *System* or connect to it, either directly or via telecommunications networks, compatible *Products* of any origin.

3.11.3. In view of that the contracting authority' is an EU body, the Contractor shall not exert any right of inspection over the contracting authority's use of the *Products*.

### **3.12. Documentation**

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

### **3.13. Benchmarking**

The contracting authority 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 contracting authority and the Contractor.

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

- the scope of the *Services* and supplies being provided by the Contractor is taken into consideration;
- a significant comparison group shall be taken into account;
- in case no such significant comparison group exists the relevant industry best practices or markets with similar requirements shall be taken into account;
- the relevant comparison data must be guaranteed

The work of the *Benchmarker* should in principle not exceed four (4) months

For the first *Benchmarking* exercise, the comparison group shall be defined in a document entitled “Comparison Group Definition”. The contracting authority 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 contracting authority. The contracting authority shall ensure that no conflict of interest exists on the side of the *Benchmarker*. The contracting authority will pay all of its own costs and the *Benchmarker's* costs during the *Benchmarking*. The Contractor will pay all of its own costs.

The contracting authority 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 contracting authority 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 contracting authority 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 or the level based on the relevant industry best practices or of markets with similar requirements, the Contractor shall immediately prepare an action plan, which 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 contracting authority may claim damages.

If a *Benchmarking* reveals that charges are higher than the comparison group's charges, the reduction of the prices shall be applicable on the 30<sup>th</sup> day from the date on which the results of the *Benchmarking* were delivered to the Parties. The reduction shall not have retroactive effect and shall be only valid for the specific contracts concluded after this date.

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

##### **4.1. Additional specifications for *Hardware Delivery***

###### **4.1.1. 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 contracting authority 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 contracting authority 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.

###### **4.1.2. Dates**

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

Failure regarding the *Delivery date* is considered as damage to the contracting authority as defined in Article II.12 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 contracting authority's prior consent.

Where the contracting authority 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 contracting authority 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 contracting authority is entitled to immediately terminate the Specific Contract in question.

#### 4.1.3. Procedure

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

The contracting authority 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 contracting authority as stated in article II.1.11 of the General Conditions (including the balance to be delivered for each *Product*)

## 4.2. Product installation

### 4.2.1. 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 contracting authority 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 contracting authority 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 contracting authority's notification referred to in the last paragraph of Article 4.2.2.

### 4.2.2. 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 contracting authority'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 contracting authority 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.

### 4.3. Acceptance

#### 4.3.1. Service 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 contracting authority 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 contracting authority by a *Means of communication* of the date on which the *Complex hardware product* or *System* has been brought into service for this particular *Product* or *System*.

#### 4.3.2. The acceptance period

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

During this acceptance period, the contracting authority 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.1.12 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 contracting authority is considered as having accepted the *Complex hardware product*.

#### 4.3.3. 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 *date of Service*, unless a different time limit has been specified by Specific Contract, the contracting authority 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 contracting authority's other rights under Article II.14 and II.12 of the General Conditions.

#### 4.4. **Guarantee specifications for *Complex hardware products***

The Contractor shall guarantee all goods delivered in conformity with article II.1 of the General Conditions. During the two years guarantee period stated in article II.1.7 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 contracting authority 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 contracting authority is entitled to terminate the part of the Specific Contract relating to that *Product*.

#### 4.5. **Leasing and Rental formula**

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

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

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

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

4.5.3. 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.

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

4.5.4. 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.

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

4.5.5. 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:

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

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

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

**4.6. 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.

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

**4.7. 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.

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

### 5.1. Configuration and delivery

#### 5.1.1. 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*.

#### 5.1.2. 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 contracting authority shall be entitled to terminate the Specific Contract in question.

A failure regarding the *Delivery date* is considered as damage to the contracting authority as defined in Article II.12 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 contracting authority within five (5) working days. The receipt of each delivery of *Products* shall be then recorded in a *Consignment note* signed by the contracting authority. Such *Consignment note* will be established as stated in article II.1.11. 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.1.12 and if no notification of faulty operation is pending, the contracting authority is considered as having accepted the other than *Complex hardware product*.

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

### 5.2. Guarantee specifications for other than *Complex hardware products*

The Contractor shall guarantee all goods delivered in accordance with Article II.1.17 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.1.17 of the General Conditions, the Contractor shall provide maintenance at its own and sole expense.

### **5.3. Leasing and Rental formula**

See 3.5 above

### **5.4. 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.

### **5.5. 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.

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

### **6.1. Delivery - installation - *Documentation***

6.1.1. 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 contracting authority, as defined in Article II.12 of the Framework contract. The contracting authority may decide to claim the payment of damages, under the provision stated in the Framework contract.

6.1.2. The contracting authority 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 contracting authority at the prices mentioned in the Framework contract.

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

6.1.4. 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 contracting authority'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 contracting authority at the price shown in the Framework contract.

When it is agreed that the *Software* may be downloaded by the contracting authority,

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/or provide the contracting authority, by a *Means of communication*, with the accurate and complete instructions, including access codes, enabling it to perform such downloads.

- 6.1.5. Delivery of the *Software* shall be recorded in a *Consignment note*, presented by the Contractor for signature by the contracting authority. In the event that the *Software* is downloaded, the contracting authority will issue the *Consignment note* based on the communication of the Contractor with the downloading instructions.
- 6.1.6. If no *Certificate of Conformity* has been issued at the end of the one month acceptance period stated in Article II.1.12 and, if no notification of faulty operation is pending, the contracting authority is considered as having accepted the *Software*.
- 6.1.7. The Contractor authorises the contracting authority to reproduce the *Documentation* for any *Internal use* provided that any copyright indication in the *Documentation* is also reproduced.

## 6.2. Trial - acceptance

- 6.2.1. Upon request of the contracting authority 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.
- 6.2.2. 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 contracting authority does not require installation of the *Software* by the Contractor, fifteen (15) calendar days after signature of the *Consignment note*.
- 6.2.3. 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.1.12 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 contracting authority is considered as having accepted the *Software*.
- 6.2.4. At any moment during the trial period, the contracting authority 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 contracting authority shall be accepted by signature of the *Consignment note*.

## 6.3. Guarantee specifications for *Software*

- 6.3.1. The Contractor shall guarantee all goods delivered in conformity with Article II.1.17 of the General Conditions.
- 6.3.2. The Contractor warrants that:
  - (3) the *Software* is in conformity with the *Documentation* supplied;



(4) 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.

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

6.3.4. Guarantee period

During the two-year guarantee period stated in Article II.1.17 of the General Conditions, the Contractor shall provide maintenance at its own and sole expense.

#### 6.4. Use

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

6.4.2. The contracting authority may use the *Software* for its *Internal use*.

6.4.3. The contracting authority may acquire "**floating licences**" for use by external, service-providing companies working under contract on projects for the contracting authority.

At the end of the project, the contracting authority shall reclaim these licences and may either add them to the existing licence scheme or reallocate them to another company.

6.4.4. The contracting authority 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.

6.4.5. The Parties may by Framework contract agree that the licence be an exclusive licence for the contracting authority to use the *Software*.

6.4.6. For the purpose of this Article 6.4., the *Software* shall be read as including its *Documentation*.

### **6.5. Compatibility**

The Contractor guarantees to the contracting authority 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.

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

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

6.6.2. The contracting authority 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 6.4;
- (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*.

6.6.3. 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.

## 7. SPECIFIC PROVISIONS RELATING TO HARDWARE AND SOFTWARE MAINTENANCE

### 7.1. Common provisions

- 7.1.1. 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.
- 7.1.2. The Contractor shall at all times comply with the quality standards and the maintenance security rules contained in the Framework contract.
- 7.1.3. The maintenance shall be provided during *Normal working hours* on *Normal working days*. The contracting authority 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.
- 7.1.4. 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.
- 7.1.5. The provisions on *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.

### 7.2. 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 contracting authority'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 contracting authority, regardless of whether or not the repair is executed. If the contracting authority 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 contracting authority. It is explicitly agreed that all other conditions of the Framework contract shall also apply to a one-shot repair.

### 7.3. Maintenance

#### 7.3.1. 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 contracting authority'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 7.1.3.

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 contracting authority 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 contracting authority and the Contractor.

The Contractor shall carry out corrective maintenance involving debugging, repair or replacement of faulty *Products* at the contracting authority's request. The Contractor undertakes, during these operations, to comply with the contracting authority'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 contracting authority to enable it to produce an internal audit report.

### 7.3.2. Hardware

On the part of the contracting authority, 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 "hotline" 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 contracting authority decides not to carry out the restoration proposed by the Contractor, the *Hardware products* in question will be withdrawn from the Framework contract.

### 7.3.3. *Software*

On the part of the contracting authority, 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 contracting authority 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 contracting authority provides the Contractor with sufficient information from which the error can be diagnosed;
- (2) providing the contracting authority 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 contracting authority'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 contracting authority 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 contracting authority during *Normal working hours* to advise it on the use of *Software*;
- (6) providing "hotline" support to resolve urgent problems and *System* failures.

7.3.4. The Contractor undertakes to provide the contracting authority, 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.

#### 7.3.5. 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 contracting authority as a result of needless corrective action carried out by another supplier.

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

#### 7.3.7. Technical modifications by the Contractor

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

#### 7.3.8. Equipment

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

## 8. SPECIFIC PROVISIONS RELATING TO ALL INFORMATICS SERVICES

### 8.1. Type of *Services*

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

#### 8.1.2. Training relating to the use of the *Products*

Training shall be provided at the sites of the contracting authority. Training shall be addressed to users of the *Product* and to the technicians responsible for support within the contracting authority. 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 at the contracting authority's 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 contracting authority.

#### 8.1.3. 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 Tallinn, Brussels and Strasbourg.

#### 8.1.4. 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.

Technical *Documentation* shall be available in, at least, English unless otherwise specified. It shall be intended for users, both experienced and inexperienced, and for the contracting authority'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 contracting authority. Reproduction of *Documentation* shall not form part of the service.

#### 8.1.5. 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 contracting authority. They may be provided on site in Tallinn, Sankt Johann in Pongau and Strasbourg.

#### 8.1.6. 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 contracting authority. Work may be provided on site in Tallinn, Sankt Johann in Pongau and Strasbourg.

#### 8.1.7. *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 contracting

authority. Details of work to be carried out will form part of the Specific Contract. Work may be provided on site in Tallinn and Strasbourg.

#### 8.1.8. 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*.

#### 8.1.9. 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.

## 8.2. Service Modes

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

Services shall be provided on the basis of three different kinds of orders:

- Time & Means orders, which correspond to the order of a number of days of defined profiles performed at the contracting authority's premises.
- Fixed-price orders, which correspond to the order of a defined work.
- Quoted Time & Means which correspond to the order of a number of days for defined subtasks.

The ordering process is initiated by the contracting authority via request sent to the contractor describing the required service. On receipt, the contractor must, within a given time period, either decline the request or make a proposal to the contracting authority for the execution of the request. The process culminates in the signature of a Specific Contract (i.e. an order), or in the withdrawal of the request. The templates for the Specific Contracts are included within the Draft Framework Contract (Annex 6).

The chosen contractor must have the capacity to carry out in parallel several individual orders. The contractor must be capable of providing the services ordered rapidly and with a high degree of quality.

## 8.3. Time and means orders

Time & Means orders are executed on the contracting authority's premises (i.e. on-site or intra-muros).

In a Time & Means order the contracting authority specifies the workload (e.g. person-days) and its specific needs for requested profiles.

*The following conditions relating to Time & Means (TM) orders apply:*

- The contractor must present proposals meeting the requirements as specified in the Request Forms and associated documents. Contractor's proposed staff must match the requested profile description and the specific needs indicated in the request form.
- The contractor must be able to propose per requested profile at least three qualified persons to choose from.
- Pre-defined CV forms must be used. All information indicated in the CV has to be correct and validated by the contractor.



- Persons proposed must be available for interviews.
- Persons proposed must be available at the start of the project.
- Work is normally performed at the contracting authority's premises.
- In some cases, on the contracting authority's request, travels outside the normal location can be required.
- On the contracting authority's demand, the contractor must replace personnel who prove incapable of carrying out the specified tasks to the required standards. The replacement candidate will be given sufficient training during an adequate handover period, so that he/she may be immediately operational when the original candidate is withdrawn. Any such replacement and training, if required, will be carried out at no additional cost to the contracting authority.
- The contractor shall give a month's notice to the contracting authority if any personnel leave before the end of a specific contract.
- If the original person is no longer able to carry out the work, the contractor is obliged to inform the contracting authority, provide a competent replacement person and arrange sufficient training (during an adequate handover period where possible) to guarantee continuity of the service provided to the contracting authority. Any such replacement will be effected at no additional cost to the contracting authority.
- In case of replacement, the handover period must normally be at least 10 working days, free of charge to the contracting authority. If no handover is possible and additional training is needed for the replacement person, at least 15 working days (free of charge for the contracting authority) must be performed by the replacement person. The days free of charge will be the first working days of the replacement person.
- In case of replacement, the contractor should propose a minimum of two replacement persons with the required qualifications and experience for the profile. If the contractor does not propose suitable replacement staff, the contracting authority may immediately terminate the Specific Contract with a penalty of 10 days free of charge.
- Only in case of "force majeure" (like an accident or a serious illness) or if the replacement is on the contracting authority's demand, the penalty may not apply. However the necessary training and information to guarantee the continuity of service have to be carried out at the Contractor's expense.
- On the contracting authority's demand, during holidays or other periods of planned absence by the person in charge, the contractor may be required to provide an adequate replacement. The replacement person will be given sufficient training and provided with all information necessary to guarantee continuity of the service provided to the contracting authority. All such training and handover work will be carried out at the contractor's expense.
- When a person is no more available before the start of a new contract, the contractor is obliged to inform the contracting authority immediately. If the specific contract is not yet signed by both parties, the contractor is not authorized to propose new candidates. If the specific contract is signed, the contracting authority can either cancel the contract or ask for a replacement with the performance of 10 first working days free of charge.
- The invoicing is based on the number of days performed. The minimum unit is a half-day.
- When a replacement procedure is on-going the Contractor cannot invoice 10 days on the specific contract until the replacement is effectively done.

Remarks:

- One full year corresponds in principle to an effective workload of 220 days.

- The request form can combine different profiles, with the requested quantity and workload for each profile.

#### **8.4. Fixed price orders (FP)**

Fixed Price orders are executed usually outside the contracting authority's premises (i.e. off-site or extra-muros) and/or at the contracting authority's premises (i.e. on-site or intra-muros).

In a Fixed Price order the contracting authority specifies the deliverables corresponding to the work to be delivered with expected delays.

*The following conditions relating to fixed price orders apply:*

- The contractor must present proposals meeting the requirements as specified in the requests and associated annexes (specifications, work packages, deliverables, deadlines etc.).
- The offer must include a technical analysis based on the requirements.
- The offer must include a project plan. It has to indicate the proposed activities, the team structure, profiles, roles, responsibilities and workload (person-days) of the different team members.
- The Contractor shall provide also the CVs of the team members. The contractor must be able to propose per requested profile at least three qualified persons to choose from. Persons proposed must be available for interviews and must be available at the start of the project.
- A methodology agreed by the contracting authority has to be used for the calculation of the workload of the different tasks. Based on this, the financial offer must be based on the estimation of the number of days for each activity and include a budget breakdown per item.
- Services are normally performed mainly off-site, typically on the contractor's premises. The contractor shall provide all necessary infrastructure on his premises for the successful execution of the work (except for material, licenses or products not available on the market but that can be provided by the contracting authority during the time of the execution). The services can be provided also at the contracting authority's premises. In this case the contracting authority has to provide the necessary infrastructure for the successful execution of the work.
- The deliverables must be on time, and conform to the specifications as described in the Specific Contract.
- The invoicing is based on the acceptance of the deliverables by the contracting authority (and not on the effective workload).
- Technical interventions can be foreseen on the contracting authority's premises for specific tasks like installations, configurations, acceptance tests, technical analysis or maintenance tasks.
- Meetings at the location of delivery with members of the team can be required by the contracting authority without any additional cost to the contracting authority.
- A warranty applies to the deliverables accepted by the contracting authority
- In case of replacement is necessary in the contractor's staff, the contractor shall immediately inform the contracting authority and provide qualified replacement.
- The contracting authority may ask for replacement of team members based on underperformance.

## 8.5. Quoted time and means orders (QTM)

Quoted Time & Means orders are generally executed outside the contracting authority's premises (i.e. off-site or extra-muros) or at the contracting authority's premises (i.e.: on-site or intra-muros)

In a quoted Time & Means order the contracting authority specifies the different tasks to be executed.

*The following conditions relating to Quoted Time & Means (QTM) orders apply:*

- The contracting authority specifies the different tasks and sub-tasks to be executed and a total number of days for activities or profiles. When the request corresponds to activities, the contracting authority indicates the required activities with (or without) individual numbers of days. When the request corresponds to profiles, the contracting authority can specify (or not) the required profiles and their workload.
- The contractor must present proposals meeting the requirements as specified in the Requests and associated documents (e.g. technical annex with description of tasks, sub-tasks, etc...).
- The offer must include a technical proposal based on the requirements.
- The offer should detail the profiles, roles, activities, responsibilities and workload (activity-days or person-days).
- The Contractor shall provide also the CVs of the team members. The contractor must be able to propose per requested profile at least three qualified persons to choose from. Persons proposed must be available for interviews and must be available at the start of the project.
- The financial proposal has to be based on activities or profiles and their total workload.
- Contractor's staff must match the requested profile description.
- The work is may be performed off-site, typically on contractor's premises. The contractor shall provide all necessary infrastructure on his premises for the successful execution of the work (except for material, licenses or products not available on the market, but that can be provided by the contracting authority during the time of the execution). The services can be provided also at the contracting authority's premises. In this case the contracting authority has to provide the necessary infrastructure for the successful execution of the work.
- The work is divided into various sub-tasks performed during the execution of the specific contract. The contracting authority will provide the contractor with a detailed description of each sub-task. The contractor will send the contracting authority a proposal for the execution of each sub-task (including the workload and time schedule) on the basis of a number of activity-days or person-days for the corresponding activities or profiles. When agreement with the contracting authority has been reached, a form is signed by both parties. Only agreed costs for the specified sub-tasks are chargeable, after acceptance by the contracting authority.
- Technical interventions can be foreseen on the contracting authority's premises for specific tasks like installations, configurations, acceptance tests, technical analysis or maintenance tasks.
- Meetings at the location of delivery with members of the team can be required by the contracting authority without any additional cost to the contracting authority
- The warranty applies to the sub-tasks accepted by the contracting authority
- In case of replacement is necessary in the contractor's staff, the contractor shall immediately inform the contracting authority and provide qualified replacement.
- The contracting authority may ask for replacement of team members based on underperformance.

## **9. DELIVERY FOR ALL TYPES OF ORDERS**

### **9.1. Languages**

The required services must be provided in the following language(s) in each location of delivery: English.

When necessary, additional language requirements may be made.

### **9.2. Place of service provision**

Depending on the framework contract and the request, service can be provided on the contracting authority's premises (so-called "on-site" or "intra muros" work) or can be executed on the contractor's premises (so-called "off-site" or "extra muros" work). The contracting authority indicates in the Request where the work has to be delivered.

In the case of "intra muros" work, the execution of the contract must normally be performed at the contracting authority premises as required in:

Lot 1 : Strasbourg, France

Lot 2: Tallinn, Estonia

Lot 3: Strasbourg, France and Brussels, Belgium

Lot 4: Tallinn, Estonia

The infrastructure will be provided by the contracting authority.

The personnel providing the service will use only the standard software packages in use at the contracting authority or the department concerned, and no other software may be installed or used without the written authorisation of the contracting authority.

In the case of "extra muros" work, the execution of the contract will be performed primarily at the contractor's usual workplace. Project meetings are typically held in the locations of delivery mentioned above. Deliverables have to be formally remitted at these locations. Travel costs to the place of delivery are not reimbursed.

The contractor shall provide all deliverables in the form and format specified in the order and shall guarantee their integration into the target informatics environment.

### **9.3. Travels outside normal locations of deliveries**

Travel expenses conducted on request of the contracting authority for locations other than the normal locations of delivery (See under Section 9.2), shall only be reimbursed for journeys exceeding 200 km (return trip), where appropriate, on the basis of the shortest itinerary on production of original supporting documents, including receipts and used tickets.

The reimbursement will be handled as follows:

- (a) if the journey exceeds 400 km (single trip) or the destination is separated by sea, travel by air shall be reimbursed up to a maximum cost of economy class ticket at the time of the reservation;
- (b) travel by boat or rail shall be reimbursed up to a maximum cost of a first class ticket;
- (c) travel by car shall be reimbursed at the rate of one first class railway ticket for the same journey on the same day.

Accommodation costs, including local taxes, and daily allowances shall be reimbursed up to a maximum fixed for each country (see Article 13 of the Staff Regulations Annex VII).

As a general rule, travel costs to the normal places of delivery set out in the requests will not be reimbursed.

#### **9.4. Normal working hours**

For on-site delivery, a normal working day corresponds to 8 hours per day (40 hours per week). The daily working time frame is between 8 am and 8 pm and the presence is normally required between 9:30 and 12:00 and between 3:00 pm and 4:30 pm (4:00 pm on Friday), unless otherwise communicated by eu-LISA in the Technical Specifications and related documents.

The periods of service provider's on-site presence have to be agreed by the services of the contracting authority. No recuperation is possible.

In exceptional cases (e.g. continuous support service between 8:00 am. and 8:00 pm), specific time frames can be requested by the contracting authority (e.g. from 8:00 am to 4 pm and from 12:00 to 8 pm with a pause of 30 minutes).

#### **9.5. Work outside of Normal Working Hours**

The contracting authority may request delivery of services in extended working hours from profiles working in Time & Means mode or on-site. For these situations, the tenderer will apply surcharges in addition to the applicable day rates.

The surcharges will be calculated as follows:

- on normal working days before 8.a.m. and after 8 p.m, during weekends and holidays.: 50%-100 % of the corresponding normal working day rates,

#### **9.6. Acceptance of services**

For orders, official acceptance of the services carried out will take place at milestones during and at the end of each order execution using a procedure agreed to at the beginning of the order.

#### **9.7. Training**

As a rule, the contracting authority will not take charge of the training of the contractor's staff.

When needed, general training courses must be followed outside the contracting authority premises.

In exceptional cases (e.g. if the training course is not provided externally) and on special request of the contracting authority, the service provider may follow a training course organised by the contracting authority. However, in general the training days are not paid to the contractor by the contracting authority.

The contractor is required to plan at least 5 days training course per year for its personnel working in the contracting authority's premises.

If the contracting authority asks the contractor's staff to follow specific trainings necessary for the delivery of the services, it is considered as a normal working day paid by the contracting authority.

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

### 10.1. Compliance with technical specifications

When providing *Services* of development or maintenance of *Commissioned software* to the contracting authority, the Contractor undertakes to observe to the general quality requirements as specified in the Framework contract. Except where expressly stated, the present Article 10 shall also apply to the development and maintenance of a *System* commissioned by the contracting authority.

### 10.2. Acceptance

10.2.1. 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.

10.2.2. 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 contracting authority.

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

#### 10.2.4. 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.1.2 of the General Conditions, which shall indicate inter alia any reservations the contracting authority 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 contracting authority is considered as having accepted the *Software*.

10.2.5. If, after three (3) attempts at acceptance, the *Commissioned software* still fails to meet the terms of the Framework contract, the contracting authority 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 contracting authority and the Contractor;

- (3) to refuse *the* Commissioned software and cancel the Framework contract or Specific Contract on reimbursement of any sums unduly paid.

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

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

10.3.1. 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.1.17 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.

10.3.2. The contracting authority 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 contracting authority may have it repaired by a third party, on the responsibility and at the own and sole expense of the Contractor.

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

10.3.4. 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 contracting authority during the stated guarantee period and the date at which the contracting authority accepts the corrected work.

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

10.4.1. Pursuant to the relevant article of the General Conditions, the Contractor hereby assigns to the contracting authority, 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.

10.4.2. The contracting authority 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 3.7.3, the use of pre-existing *Software* shall be subject to the contracting authority's prior written consent.

10.4.3. The contracting authority 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*.

### **10.5. User manuals and *Documentation***

10.5.1. 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 contracting authority. It shall comply with the provisions under Article 12 in preparing such manuals and Documentation.

10.5.2. The material shall as a rule comprise:

- (4) an installation manual;
- (5) a “Getting Started” manual;
- (6) an administration manual;
- (7) a user manual;
- (8) implementation *Documentation*.

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

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

10.5.5. 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.

## **10.6. Interfaces and *Compatibility***

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

10.6.2. 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.

10.6.3. 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.

## **11. SPECIFIC PROVISIONS RELATING TO TRAINING ORGANISED FOR THE CONTRACTING AUTHORITY**

### **11.1. Instructors**

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



## **11.2. Organisation of courses**

- 11.2.1. The Parties shall draw up a schedule of courses and preparatory measures. 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.
- 11.2.2. The Parties shall make a final decision on all the data no later than two (2) 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.
- 11.2.3. When an instructor is not available, a course may be cancelled or postponed no later than five working days prior to its commencement. If three courses have been cancelled or postponed without meeting these conditions, the contracting authority shall be entitled to terminate the Framework contract pursuant to the provisions under Article II.14.

## **11.3. Instructor's manual**

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

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

## **11.4. Provision of training *Software***

- 11.4.1. Training *Software* that has been developed specifically for the contracting authority shall be owned in full by the contracting authority.
- 11.4.2. 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.

## **12. SPECIFIC PROVISIONS RELATING TO THE DOCUMENTATION PRODUCED FOR THE CONTRACTING AUTHORITY**

- 12.1.1. The *Intellectual property rights* in the *Documentation* that has been developed specifically for the contracting authority shall rest exclusively with the contracting authority.
- 12.1.2. 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*.

# **Attachment 1 – DECLARATION OF CONFIDENTIALITY, PROTECTION OF THE INFORMATION SYSTEM AND NON- CONFLICT OF INTEREST**

## DECLARATION OF CONFIDENTIALITY, PROTECTION OF THE INFORMATION SYSTEM AND OF NON-CONFLICT OF INTEREST

The contracting authority and the following Contractor:

Name, address

have signed Framework Contract number **LISA/2016/RP/03** on.

Was chosen as service provider under Specific Contract XX/201X.

For carrying out services governed by these agreements I, the undersigned XXXXX, as employee {of the subcontractor xxx} of the above-mentioned Contractor, declare that I have read and shall comply with the security and confidentiality rules laid down in:

- Articles II.4, II.5 and II.6 of the General Conditions and Section 3.6 of Annex 4 Service Requirements of the Framework Contract
- Annex III of the Decision C(2006) 3602 of 16 August 2006 concerning the security of information systems used by the European Commission
- the Commission decision on security 2005/443 /EC, Euratom of the Commission of 13 March 2015, as well as all its subsequent versions
- Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information: this text lays down the basic principles and minimum rules, standards and procedures for protecting EU Classified Information (EUCI), aligning the Commission's rules with the ones of the Council and the EEAS, as well as all its subsequent versions
- 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).

“Confidential Information” shall mean all information disclosed to the Employee/Agent or obtained by him/her in connection with the Contract and having been marked confidential or equivalent, as well as any document, material, idea, data, drawing or information related to the project in which the Contractor is involved, the Commission, the Agency or the Member States, the nature of which is such that the Employee/Agent can reasonably be expected to believe it to have a strategic, security, political, diplomatic or economic importance, even if it has not been explicitly so identified.

The confidentiality obligation is binding during the performance of the contract and for five years starting from the date of the payment of the balance

I agree to use the Confidential Information only for the strict purpose of the performance of the Contract and shall not reproduce, publish or otherwise disclose such Confidential Information to any third party.

Confidential Information may only be disclosed to the extent required by law or by any regulatory authority; in those circumstances prompt written notice must be given to the Agency.

Upon request of the Agency or end of assignment I will return the Confidential Information, both originals and copies to the Agency.

I undertake to follow any additional instructions issued by the Agency regarding Confidential Information.

The duty of confidentiality extends beyond my work for and with the Agency.

I confirm that I will respect all the internal rules, procedures and data protection, security and safety requirements of the Agency, together with its ethics and standards of professional conduct and I understand that, in case I am not compliant with all of these rules, procedures, standards and/or security requirements, I might get denied, without prior notice or justification, further access to eu-LISA premises, information or information systems, and that eu-LISA might ask the competent national authorities to take the appropriate legal measures.

In addition to the confidentiality obligation set out above, I shall

- not access services for which they have not been explicitly granted authorisation, whether or not the services in question belong to the Agency;
- not disclose authentication procedures or share them with third parties unless required to do so by the needs of the performance of the Contract; authorised users shall be responsible for action taken in their name; any action constituting a breach of security may be recorded;
- not install or use on computers supplied by the Agency for the execution of the Assignment (work stations, local or central servers, etc.) any equipment or programmes developed outside the Agency, whether free of charge or not, from portable storage media (diskettes, optical disks, etc.) or downloaded from electronic bulletin boards, e-mail systems or telecommunications networks belonging to third parties, unless as part of the performance of the Contract;
- not to install or have installed connections on computers supplied by the Agency with networks outside the Agency without explicit authorisation;
- not to set up electronic bulletin boards, e-mail systems, modem connections or any other type of information communication system that could enable unauthorised persons to gain access to Agency information or systems;
- not to bring into the Agency sites any unauthorised hardware/software and any own equipment /software without prior authorisation from the Programme Officer;
- notify the Programme Officer and the security staff of the Agency as soon as I spot any failure or incident affecting the security of their own environment or of other systems;

- not to investigate the security of the information systems themselves, unless authorised and supervised by the Programme Officer and the security staff of the Agency;
- if one becomes aware of a vulnerability or event affecting one or several of the Agency's information systems, he/she shall immediately inform the Programme Officer and the security staff of the Agency.
- take all possible steps in respect of availability, confidentiality and integrity to safeguard the security of the working environment, particularly as regards working methods I have introduced or developed myself;

Furthermore I confirm that I have no conflict of interest regarding the performance of the contract. I will notify to the contracting authority and the contractor in writing without delay of any situation constituting or likely to lead to a conflict of interest during the performance of the contract.

A conflict of interest could arise in particular as a result of economic interests, political or national affinity, family, emotional life or any other shared interest.

Date and place:

Signature

Having read, understood and acknowledged the contents of the declaration.