



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL  
TAXATION AND CUSTOMS UNION

## **DRAFT OF FRAMEWORK CONTRACT TAXUD/200X/CC/XXX**

**FOR**

**INFORMATICS SERVICES AND PRODUCTS –**

[complete]

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

of the first part,

and

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

of the second part,

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

HAVE AGREED

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

- Annex I** – List of *Services and Products*, maintenance and *Documentation* covered by the Contract and schedule of prices
- Annex II** – Identification form and Legal entities form
- Annex III** – Tender Specifications (Invitation to Tender No [complete] of [complete])
- Annex IV** – Contractor's Tender (No [complete] of [complete])
- Annex V** – Specific Contract – Model
- Annex VI** – Performance guarantee - Model
- Annex VII** – Travel and Subsistence Expenses
- Annex VIII** - Technical Annex

[*other Annexes*]

[*Service Level Agreement*]

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

- The terms set out in the Special Conditions shall take precedence over those in the other parts of the Contract.
- The terms set out in the General Conditions shall take precedence over those in the General Terms and Conditions for Information Technologies Contracts.
- The terms set out in the General Terms and Conditions for Information Technologies Contracts shall take precedence over those in the Annexes.
- The terms set out in this Contract shall take precedence over those in the Specific Contracts.
- The terms set out in the Tender Specifications (Annex III) shall take precedence over those in the Tender (Annex IV).

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

## **PREAMBLE**

On .././200., the *Commission* published, in the Official Journal of the European Union, a call for tenders under reference n° TAXUD/....., for .....

The Contractor was selected at the conclusion of the evaluation process, on the basis of his bid submitted on .././200.. in response to the invitation to tender.

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

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

### ***[The following is only applicable for multiple contracts:***

The Contractor was selected, as the first contractor of a multiple contract at the conclusion of the evaluation process, on the basis of his bid submitted on .././200.. in response to the invitation to tender.

The second contractor of the multiple contract is ... with the contract No ...]

This Framework contract contains all the conditions for concluding and executing Specific Contracts.

## **I – SPECIAL CONDITIONS**

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

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

- the sale, rental or leasing to the Commission of complex or other than complex hardware as set out in the Annex, and the provision of maintenance and *Documentation*,
- the user right granted to the Commission of non-exclusive and non-transferable licences of one or more *Software products* as set out in the Annex, and the provision of maintenance and *Documentation*,
- the development and assignment of the rights on the *Software products* as set out in the Annex and the provision of the corresponding maintenance and *Documentation*.
- the provision to the Commission of *Informatics services*, as set out in the Annex, being related/not related<sup>10</sup> to the provision of *Products*,
- the assurance by the Contractor of the coherence and correct functioning of the *System* and its integration into the informatics architecture of the *Commission*.
- The sale, rental or leasing to the Commission of *Telecommunication products* and/or the provision of *Telecommunication services*, as described in Annex and the provision of the corresponding maintenance and *Documentation*.

The *Products* and *Services* covered by this Contract are listed in Annex I

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

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

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

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

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

**I.2.1** The Contract shall enter into force on .... [on the date of signature. [ *on [complete] if it has already been signed by both contracting parties*].

**I.2.2** Under no circumstances may implementation take place before the date on which the Contract enters into force. Specific Contracts may under no circumstances be placed before the date on which the Contract enters into force.

**I.2.3** The Contract is concluded for a period of [*days/months*] with effect from the date on which it enters into force. This contractual period and all other periods specified in the Contract are calculated in calendar days unless otherwise indicated.

**I.2.4** The Specific Contracts pursuant to the Contract shall be returned signed before the Contract to which they refer expires.

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

**[I.2.5 *The Contract may be renewed up to [complete] times, each time for a period of [complete], only before expiry of the Contract and with the express written agreement of the parties. Renewal does not imply any modification or deferment of existing obligations.*]**

### **ARTICLE I.3 - PRICES**

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

**I.3.2** Prices shall be expressed in euro.

**I.3.3** Prices shall be fixed and not subject to revision for Specific Contracts placed during the first year of performance of the Contract or Amendment. Only the following prices may be subject to revision on the basis of indexation:

- (1) annual *Software* licences;
- (2) *Product* maintenance that is calculated at a fixed price;
- (3) prices or fees relating to *Services*.

From the beginning of the second year of performance of the Contract or Amendment, prices may be revised upwards or downwards each year, where such revision is requested by one of the contracting parties by registered letter no later than 31st July in order that the new rates may take effect on 1<sup>st</sup> January of the following year. Specific Contracts shall be placed on the basis of the prices in force on the date on which they are signed. Such prices shall not be subject to revision.

This revision shall be determined by the trend in the harmonised consumer price index EICP (EU25) published for the first time by the Office for Official Publications of the European Union in the Eurostat New Cronos Database: <http://epp.eurostat.ec.europa.eu/> (Theme 2 - Economy and Finance; Price – Prices and Purchasing Power Parities; HICP – Harmonized Indices of Consumer Prices; HMIDX – Monthly data (index).

Revision shall be calculated in accordance with the following formula:

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

where:

- Pr = revised price;
- Po = price in the original tender;
- Io = index for the month [in which the validity of the tender expires] [corresponding to the final date for submission of tenders];
- Ir = index for the month [corresponding to the date of receipt of the letter requesting a revision of prices] [in which the revised prices take effect]

### **I.3.4 Official price list**

The contractor's official price list is used in relation to this Contract. The updates of the official price list will be made either at the initiative of the Contractor or of the Commission. The Commission shall accept or refuse the update by a *Means of Communication* within 15 working days.

### **1.3.5 Travel Expenses**

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

Travel and subsistence expenses of the Contractor and his staff, as well as expenses for the shipment of equipment or unaccompanied luggage directly connected with performance of the tasks concerning meetings in other contractors' premises, missions to assist Commission Officials in their tasks or to attend meetings and workshops abroad, shall be reimbursed in accordance with Annex VII.

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

**I.4.1** Within 15 working days of a request for *Services* being sent by the Commission, the Contractor shall return an offer including an estimate of the resources to be allocated for its execution, with particulars in support.

Within 10 working days of a Specific Contract being sent by the Commission, the Contractor shall return it, duly signed but not dated.

## **ARTICLE I.5 – PAYMENTS**

All payments under the Contract shall be made in accordance with Article II.5. Payments shall be executed only if the Contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted. Payment requests may not be made if payments for previous orders or specific contracts have not been executed as a result of default or negligence on the part of the Contractor.

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

By derogation from article 1.5 of the General Terms and Conditions for Information Technologies Contracts:

The following types of remuneration methods will be available with respect to different deliverables and services:

Fixed Price (FP) (default method):

invoicing on deliverables acceptance according the terms of the Specific Contract (SC);

On Demand (OD) (typically to cover Requests for Action) :

quarterly invoicing of the Requests for Actions closed and accepted during the past quarter. The price and time schedule of each of the “On Demand” activities must be defined in the corresponding requests for action;

Time and Means (T&M):

quarterly invoicing of staff time (based on time sheets) and of other resources (based on detailed justifications) accepted during the past quarter.

The T&M method will be used for Intra Muros services (work package TBP/xx/IM in Annex I if specified) and otherwise in circumstances where agreed in the context of individual Specific Contracts.

Travel and subsistence costs (T&S) :

The expenses of missions and of meetings will be invoiced quarterly, supported by detailed justifications, split between travel and subsistence and calculated following the rules specified in Annex VII

The last payment term of a SC must not be less than 30% and it must be linked to the acceptance of all deliverables and reports of the SC.

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

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

Within forty-five days (of the date of receipt of the relevant invoice(s)) (of the date on which the report is approved by the Commission) payment of the balance corresponding to (the relevant invoices) equal to (complete) % of the total amount referred to in the relevant Specific Contract shall be made.

### **I.5.2 Performance guarantee:**

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

If that is the case, a guarantee for an amount equal to at least 5 % of the total value of the Specific Contract shall be issued by a bank, an authorised financial institution or a third party in favour of the Commission. It shall cover performance of the Contract in accordance with the terms set out in the Contract and notably with the terms set out in Annex III.

The performance guarantee may take the form of a personal and jointly liable guarantee issued by a financial institution approved by the Commission according to the model in Annex VI.

The performance guarantee shall be repaid, or the guarantee released, upon acceptance by the Commission of all the reports or any other kind of deliverables foreseen in the work programme. Should the contract not be fulfilled, or in the event of delays in its fulfilment or failure to meet quality standards, the Commission shall draw on the guarantee, regardless of whether it was deposited directly by the Contractor or by a third party, in order to indemnify itself for all damages, interest and costs to make good the failure.

### **I.5.3 Bank Account**

Payments shall be made to the Contractor's bank account denominated in euro, stated in the Contractor's identification form set out in Annex II. [IBAN code: [complete]]

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

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

Commission:

European Commission  
Directorate-General [complete]  
[Directorate [complete]]  
[Unit [complete]]  
[Postcode and city]

Contractor:

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

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

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

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

## **ARTICLE I.8 – DATA PROTECTION**

**I.8.1** Any personal data included in or relating to the Contract will be processed in accordance with the requirements of Regulation (EC) 45/2001 of the European Parliament and the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Union institutions and bodies and on the free movements of such data (OJ No L8, 12.1.2001, p. 1). The data will only be processed for the purposes of the performance, management and follow up of the Contract by the Contracting authority(ies) without prejudice to a possible transmission to the bodies in charge of a monitoring or inspection task in conformity with Union law. The Contractor may, upon request, obtain the communication of his personal data and rectify any inaccurate or incomplete personal data. Should the Contractor have any queries concerning the processing of his personal data, he shall address them to the Contracting authority(ies). As regards the processing of his personal data, the Contractor has a right of recourse at any time to the European Data Protection Supervisor.

**I.8.2** When processing personal data on behalf of the Contracting authority(ies) in the performance of the Contract the Contractor:

(a) shall act only on instructions from the Contracting authority(ies);

(b) shall comply with the obligations set out in Articles 21 and 22 of Regulation (EC) 45/2001 on the confidentiality and the security of processing unless, by virtue of Article 16 or Article 17(3), second indent, of Directive 95/46/EC, the Contractor is already subject to obligations with regard to confidentiality and security laid down in the national law of one of the Member States.

Appropriate technical and organisational measures will be taken by the Contractor for the security of the processing in accordance with Article 22 of Regulation (EC) 45/2001 and will have to be agreed between the Contractor and the Contracting authority(ies) in writing or in another equivalent form.

**I.8.3** The Contractor shall comply with Council regulation (Euratom, EEC) N° 1588/90 of 11 June 1990 on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Union (OJ No L151, 15.6.1990, p. 1).

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

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

## **ARTICLE I.10 SPECIFIC LIQUIDATED PENALTIES**

In addition to the possibilities foreseen in Article II.4 (Liquidated Damages) of this Contract, penalties may be applied:

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

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

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

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

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

## **II – GENERAL CONDITIONS**

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

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

##### **Sending of the Specific Contract**

Whenever the Commission wishes services to be provided or goods to be supplied pursuant to the Contract, it shall send a Specific Contract to the Contractor, in duplicate, specifying the terms of the provision of services or supply of the goods, such as quantity, designation, quality, price, place of delivery and time allowed for delivery, in accordance with the conditions laid down in the Contract.

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

Within the period indicated in Article I.4, the Contractor shall return one original of the Specific Contract, duly signed and dated, thereby acknowledging receipt of the Specific Contract and acceptance of the terms.

##### **Delivery**

a) Time allowed for delivery

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

b) Date, time and place of delivery

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

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

c) *Consignment note*

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

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

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

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

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

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

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

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

### **Remedy**

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

## **Assembly**

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

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

## **Services provided to goods**

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

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

#### **a) Packaging**

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

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

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

#### **b) Guarantee**

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

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

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

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

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

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

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

### **II.1.3 Performance of the Contract**

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

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

- staff executing the tasks assigned to the Contractor may not be given orders direct by the Commission;

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

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

- II.2.1** The Commission shall not be liable for damage sustained by the Contractor in performance of the Contract except in the event of wilful misconduct or gross negligence on the part of the Commission.
- II.2.2** The Contractor shall be liable for any loss or damage caused by himself in performance of the Contract, including in the event of subcontracting under Article II.10. The Commission shall not be liable for any act or default on the part of the Contractor in performance of the Contract. Notwithstanding the above, the Contractor shall not be liable for consequential loss and/or indirect damage exceeding the sum as set out for his professional risk insurance provided that this sum is no less than three times the total price/total amount of the Specific Contract(s)/Order Form(s) the execution of which is relevant for the loss or damage. The Contractor shall remain liable without any limitation as to the amount if the damage or loss is caused by the gross negligence or wilful conduct of the Contractor or by its employees, and for death caused by negligence or wilful conduct of its employees.
- II.2.3** Subject to the maximum amount provided in II.2.2, the Contractor shall provide compensation in the event of any action, claim or proceeding brought against the

Commission by a third party as a result of damage caused by the Contractor in performance of the Contract.

**II.2.4** In the event of any action brought by a third party against the Commission in connection with performance of the Contract, the Contractor shall assist the Commission. Expenditure incurred to this end may be borne by the Commission.

**II.2.5** The Contractor shall take out insurance against risks and damage relating to performance of the Contract if required by the relevant applicable legislation. He shall take out supplementary insurance as reasonably required by standard practice in the industry. A copy of all the relevant insurance contracts shall be sent to the Commission should it so request.

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

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

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

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

**II.3.3** The Contractor declares:

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

**II.3.4** The Contractor shall pass on all the relevant obligations in writing to his staff, board, and directors as well as to third parties involved in performance of the Contract. A copy of the instructions given and the undertakings made in this respect shall be sent to the Commission should it so request.

## **ARTICLE II.4 - LIQUIDATED DAMAGES**

Should the Contractor fail to perform his obligations under the Contract within the time limits set by the Contract, then, without prejudice to the Contractor's actual or potential liability incurred in relation to the Contract or to the Commission's right to terminate the Contract, the Commission may decide to impose liquidated damages of 0.2% of the amount of the relevant Specific Contract per calendar day of delay. The Contractor may submit arguments against this decision within thirty days of notification by registered letter with acknowledgment of receipt or equivalent. In the absence of reaction on his part or of written withdrawal by the Commission within thirty days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable. These liquidated damages shall not be imposed where there is provision for interest for late completion. The Commission and the Contractor expressly acknowledge and agree that any sums payable under this Article are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the losses that may be reasonably anticipated from such failure to perform obligations.

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

### **II.5.1 Pre-financing:**

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

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

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

The guarantee shall specify that it enters into force at the latest on the date on which the Contractor receives the pre-financing. The Commission shall release the guarantor from its obligations as soon as the Contractor has demonstrated that any pre-financing has been covered by equivalent work. The guarantee shall be retained until the pre-financing has been deducted from interim payments or payment of the balance to the Contractor. It shall be released the following month. The cost of providing such guarantee shall be borne by the Contractor.

### **II.5.2 Interim payment:**

At the end of each of the periods indicated in Annex I the Contractor shall submit to the Commission a formal request for payment accompanied by those of the following documents which are provided for in the Special Conditions:

- an interim technical report in accordance with the instructions laid down in Annex I;

- the relevant invoices indicating the reference number of the Contract and of the order or specific contract to which they refer;
- statements of reimbursable expenses in accordance with Article II.7.

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

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

If the Commission does not react within this period, the report shall be deemed to have been approved. Approval of the report does not imply recognition either of its regularity or of the authenticity, completeness or correctness of the declarations or information enclosed.

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

### **II.5.3 Payment of the balance:**

Within sixty days of completion of each order or specific contract, the Contractor shall submit to the Commission a formal request for payment accompanied by those of the following documents, which are provided for in the Special Conditions:

- a final technical report in accordance with the instructions laid down in Annex I;
- the relevant invoices indicating the reference number of the Contract and of the order or specific contract to which they refer;

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

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

If the Commission does not react within this period, the report shall be deemed to have been approved. Approval of the report does not imply recognition either of its regularity or of the authenticity, completeness or correctness of the declarations and information enclosed.

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

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

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

**II.6.2** The payment periods referred to in Article I.5 may be suspended by the Commission at any time if it informs the Contractor that his *payment request* is not admissible, either because the amount is not due or because the necessary

supporting documents have not been properly produced. In case of doubt on the eligibility of the expenditure indicated in the *payment request*, the Commission may suspend the time limit for payment for the purpose of further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the expenditure is eligible.

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

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

## **ARTICLE II.7 –RECOVERY**

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

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

**II.7.3** In the event of failure to pay by the deadline specified in the request for reimbursement, the Commission may, after informing the Contractor, recover amounts established as certain, of a fixed amount and due by offsetting, in cases where the Contractor also has a claim on the Union that is certain, of a fixed amount and due. The Commission may also claim against the guarantee, where provided for.

## **ARTICLE II.8 –TAXATION**

**II.8.1** The Contractor shall have sole responsibility for compliance with the tax laws which apply to him. Failure to comply shall make the relevant invoices invalid.

**II.8.2** The Contractor recognises that the Commission is, as a rule, exempt from all taxes and duties, including value added tax (VAT), pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union.

**II.8.3** The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the goods and services required for performance of the Contract are exempt from taxes and duties, including VAT.

**II.8.4** Invoices presented by the Contractor shall indicate his place of taxation for VAT purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

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

**II.9.1** Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the contracting parties which prevents either of them from performing any of their obligations under the Contract, was not due to error or negligence on their part or on the part of a subcontractor and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making it available, labour disputes, strikes or financial problems cannot be invoked as force majeure unless they stem directly from a relevant case of force majeure.

**II.9.2** Without prejudice to the provisions of Article II.1.3(h), if either contracting party is faced with force majeure, it shall notify the other party without delay by registered letter with acknowledgment of receipt or equivalent, stating the nature, likely duration and foreseeable effects.

**II.9.3** Neither contracting party shall be held in breach of its contractual obligations if it has been prevented from performing them by force majeure. Where the Contractor is unable to perform his contractual obligations owing to force majeure, he shall have the right to remuneration for the goods actually delivered and any service provided.

**II.9.4** The contracting parties shall take the necessary measures to reduce damage to a minimum.

#### **ARTICLE II.10 – SUBCONTRACTING**

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

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

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

## **ARTICLE II.11 – ASSIGNMENT**

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

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

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

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

- (a) where the Contractor is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) where the Contractor has been convicted of an offence concerning his professional conduct by a judgment which has the force of *res judicata*;
- (c) where the Contractor has been guilty of grave professional misconduct proven by any means which the Commission can justify;
- (d) where the Contractor has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;
- (e) where the Commission seriously suspects the Contractor of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Union's financial interests;
- (f) where the Contractor is in breach of his obligations under Article II.3;
- (g) where the Contractor was guilty of misrepresentation in supplying the information required by the Commission as a condition of participation in the Contract procedure or failed to supply this information;
- (h) where a change in the Contractor's legal, financial, technical or organisational situation could, in the Commission's opinion, have a significant effect on the performance of the Contract;

- (i) where execution of the tasks under a pending order or a specific contract has not actually commenced within fifteen days of the date provided for, and the new date proposed, if any, is considered unacceptable by the Commission;
- (j) where the Contractor is unable, through his own fault, to obtain any permit or licence required for performance of the Contract;
- (k) where the Contractor, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period following receipt of the formal notice, remains in serious breach of his contractual obligations.

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

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

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

**II.12.4** Consequences of termination:

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

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

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

## **ARTICLE II.13 - CANCELLATION OF SPECIFIC CONTRACTS**

Where execution of the Specific Contract has not actually commenced within fifteen days of the date foreseen for the commencement of execution and the new date proposed, if any, is considered unacceptable by the Commission, the Commission may cancel such Specific Contract with no prior notice. Cancellation shall take effect from the day after the day on which the Contractor receives a registered letter with acknowledgment of receipt or equivalent.

The Commission may cancel a Specific Contract at any time during execution thereof on the grounds and under the conditions set out in Article II.12 with respect to the part still outstanding. The Contractor shall accept, as the aggregate liability of the Commission, payment of the price of the goods delivered or services provided by him as at the effective date of cancellation.

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

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

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

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

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

Any amendment to the Contract shall be the subject of a written agreement concluded by the contracting parties. An oral agreement shall not be binding on the contracting parties. A Specific Contract shall not be deemed to constitute an amendment to the Contract.

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

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

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

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

Any results or rights thereon, including copyright and other intellectual or industrial property rights, obtained in performance of the Contract, shall be owned solely by the Commission, which may use, publish, assign or transfer them as it sees fit, without geographical or other limitation, except where industrial or intellectual property rights exist prior to the Contract being entered into.

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

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

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

**II.18.3** Any distribution or publication of information relating to the Contract by the Contractor shall require prior written authorisation from the Commission and shall mention the amount paid by the Union. It shall state that the opinions expressed are those of the Contractor only and do not represent the Commission's official position.

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

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

Without prejudice to the Commission's right to terminate the Contract, the Commission reserves the right to suspend performance of the Contract or pending Specific Contracts or any part thereof at any time and as preliminary means to the potential application of Article II.12 – Termination by the Commission. Suspension shall take effect on the day the Contractor receives notification by registered letter with acknowledgment of receipt

or equivalent, or at a later date where the notification so provides. The Commission may at any time following suspension give notice to the Contractor to resume performance of the Contract or pending Specific Contracts. The Contractor shall not be entitled to claim compensation on account of suspension of the Contract, the specific contracts, the orders or of part thereof.

## **SIGNATURES**

For the Contractor,

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

For the Commission,

[name/surname/function]

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

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

Done at [Brussels], [date]

Done at [Brussels], [date]

in triplicate in English.