

**Call for Tender EEA/OIPI/99/007  
Annex IV**

**DRAFT FRAMEWORK CONTRACT TO PROVIDE INFORMATION  
TECHNOLOGY SUPPLIES AND SERVICES FOR THE EUROPEAN  
ENVIRONMENT AGENCY**

**CALL FOR TENDER EEA/OIPI/99/007**

The *European Environment Agency*,

represented for the purposes of this contract by *Mr. D. JIMENEZ-BELTRAN, Executive  
Director of the European Environment Agency*,

hereinafter referred to as "the Agency"

of the one part, and XXXXXX

whose registered office is at XXXXXXXXXXXX

VAT no.: XXXXXXXXXXXXX

represented for the purposes of this contract by XXXXXXXX,

hereinafter called the "Contractor"

of the other part,

have agreed as follows:

## **1. PREAMBLE**

On *10 September 1999* the Agency published, in the Official Journal of the European Communities, a call for tenders EEA/OIPI/99/007, *for information technology supplies and services*.

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

This framework contract contains all the conditions for concluding and executing contracts.

## **2. COMMON PROVISIONS**

### **2.1. Object**

This framework contract is concerned with the terms under which the Contractor:

- a. undertakes the sale, rental or leasing of the hardware products listed in annex II to the Agency and the maintenance and provision of documentation,
- b. grants to the Agency a user right of nonexclusive and non-transferable licences to one or more software products as listed in annex III and undertakes to provide maintenance and documentation,
- c. provides the Agency with informatics services related to these products,
- d. assures the coherence and the correct functioning of the system and its integration into the informatics architecture of the Agency.

The products and services under contract are listed in the annexes, as duly completed and signed by both parties.

### ***Pilot projects***

The contract can be terminated *immediately* by the Agency without paying compensation if one or several pilot projects have not been successfully implemented on-site at the Agency within twelve (12) months of the relevant specific agreements. These pilot projects will check the performance, coherence and the openness of a set of products working together and their conformity to the Agency's informatics architecture. These pilot projects will be carried out on the basis of specific agreements.

## 2.2. *Terms employed*

The contract shall comprise :

- a. this framework contract and its annexes;
- b. the bid submitted by the contractor as indicated in the preamble;
- c. specific agreements;
- d. specific bids.

When the term "contract" is used in a generic fashion, it shall be understood to mean one or several such documents.

In the event of conflict between the documents, the specific agreement shall take precedence over the framework contract, and both the latter shall take precedence over the respective bids.

The framework contract lays down the basic conditions for placing orders which shall be executed by way of specific agreement. The Contractor shall be provided with these specific agreements, drawn up by the Agency. Signature of the framework contract does not place the Agency under any obligation whatsoever to place orders.

The Agency and the Contractor shall sign a separate specific agreement in respect of each order. The specific agreement shall be based on the model to be supplied by the Agency. This model may change from time to time.

### *Definitions*

**Acceptance date:** Date on which the acceptance report for a product, a system or an extension thereto is signed by both parties.

**Commissioning date:** Date on which the Contractor notifies the Agency that a product, a system or an extension thereto has been commissioned into service.

**Compatibility:** The ability of a product to function in accordance with the system specifications or type of equipment in which it will be integrated.

**Complex hardware product** Term designating any computer or telecommunications equipment containing hardware and software which requires installation by the Contractor's skilled staff.

**Contract date:** Date on which the Agency signs this contract.

**Delivery date:** Date on which the delivery note for a product, a system or an extension thereto is signed by both parties.

**Documentation:** Term designating all the explanatory documents and notes referring to the use of the delivered product.

<b>Extension:</b>	Set of products to supplement or extend a system.
<b>Extended working hours</b>	Extended working hours are from 6.00 p.m. to 8.00 a.m. on Normal working days and all day and night on other days.
<b>Final acceptance:</b>	Document terminating the pilot on-site phase of running-in a system.
<b>Hardware product</b>	Term designating any computer or telecommunications equipment purchased, rented, leased or maintained under this contract.
<b>Informatics services:</b>	Synonym for services : see "services"
<b>Man-day:</b>	A man-day contains seven-and-a-half (7 1/2) hours.
<b>New release:</b>	A revision to a version of a software product.
<b>New version:</b>	The highest level of a software product.
<b>Note:</b>	Document drawn up and signed by one party.
<b>Normal working days</b>	Normal working days are from Monday to Friday inclusive excepting Agency holidays only.
<b>Normal working hours</b>	Normal working hours are from <i>08.30 a.m. to 16.30 p.m.</i> on normal working days.
<b>Product:</b>	Term designating any software or hardware provided and/or developed by the Contractor and including any combination of these products. Where a distinction between the two types of product is intended, it shall either be explicit, by the use of one or other of the two terms, or it shall be implicit in the context of the article or title concerned.
<b>Report:</b>	Document drawn up and signed by both parties.
<b>Running-In:</b>	Special conditions applicable to the initial acquisition of a new complex hardware product.
<b>Services:</b>	Training, consultancy, technical assistance, drafting of documentation and engineering work.
<b>System:</b>	Combination of products serving a complete set of functions.

### **2.3 Duration**

This contract is concluded for a period of *three* years from the date of signature, with the possibility of *two renewals for a period of one year each*. The renewals will be the subject of an addendum to this contract. Once that period has elapsed:

- a. no new specific agreements may be concluded;
- b. the provisions of the framework contract shall continue to apply to specific agreements still in force until the date of their expiry.

Specific agreements shall enter into force no earlier than the date on which they are signed. Their validity may not extend beyond one year from the date of expiry of the framework contract.

### **2.4. Prices**

Prices are expressed in EUR *and include all costs. However, the Agency is exempt from value-added tax.*

#### ***Price changes***

In case of change in prices the Contractor shall compile a new version of the corresponding annex which will be signed by both parties. The new prices shall be applicable from the date of signature. Any specific agreement shall be signed, and executed, by the two parties on the basis of the prices in force.

#### ***Hardware and maintenance prices***

The price at which hardware products shall be supplied and the charges for maintenance are set out in annex II. Contractual prices for purchase shall be per unit. The prices quoted shall include delivery, and installation where applicable.

Rental shall be distinguished from leasing by the fact that in the former no repurchase value shall be taken into account at the conclusion of the period of contract. The costs of rental and leasing shall be established in each specific agreement, and shall take account inter alia of the purchase price and of maintenance.

Maintenance shall be expressed as a percentage of the purchase price or as an absolute value. It may vary in proportion to the call-out time agreed between the Agency and the Contractor, which shall be specified in each specific agreement.

#### ***Licence fees and maintenance expenses***

The licences fees and the maintenance expenses are set out in annex III. The maintenance fees are expressed either as a percentage of the licence fees or as an absolute value.

### ***Service prices***

The service prices are set out in annex IV. They are defined by man-day and include all general expenses and expenses directly connected with the provision of the services such as management and coordination costs, social security costs, travel and office expenses.

### ***Maximum limit***

This framework contract is effective to a maximum limit of xxxxxx EUR. VAT and a possible extension are not included in this limit. There is no obligation for the Agency to buy products up to this or any other amount.

## **2.5. Indexation of prices**

Only the following prices may be subject to revision on the basis of indexation:

- a. annual software licences;
- b. software and hardware maintenance that are expressed as an absolute value;
- c. services.

The first indexation of the prices may take place once a full calendar year has elapsed after the signature of the contract. If the Contractor wishes to revise the prices by indexation, he shall notify the Agency in writing no later than 30 September in order that the new rates may take effect on 1 January of the following year.

The indexation shall be calculated on the basis of the EUR 15 consumer price index which appears in the monthly publication "EUR EMS INFORMATION" of the Statistical Office of the European Communities.

Prices shall be indexed using the following formula :

$$R_i = \frac{R_o \times I_i}{I_o}$$

- $R_o$  : Price specified in the bid or resulting from the last indexation exercise  
 $R_i$  : New price  
 $I_o$  : EUR 15 index of the month of the bid.  
 $I_i$  : EUR 15 index of the month in which the application for revision was made.

## **2.6. Invoicing**

Irrespective of the quantities of products or services ordered, no invoice shall be submitted until all products or services ordered in an individual specific agreement have been delivered, as provided in that specific agreement, and the relevant acceptance report has been delivered. This paragraph does not apply to rental, leasing or maintenance.

The invoices are to be sent to the address mentioned in the specific agreements. The payment period shall not be binding on the Agency in the case of any invoice sent to a

different address. The invoice shall make reference to this contract, the specific agreement and, if applicable, the supporting documents.

### ***Hardware***

Purchases shall be invoiced in the following manner:

- a. if the cost is less than, or equal to, 200.000 EUR, 100 % when the relevant acceptance report has been delivered,
- b. if the cost is more than 200.000 EUR, 30 % as an advance payment at the signature of the specific agreement and 70 % when the relevant acceptance report has been delivered.

Invoices in respect of rental, leasing and maintenance shall be submitted quarterly in advance. The first invoice of a contract in respect of equipment rented or leased shall cover the period from the date of acceptance of the equipment, or from the expiry of the guarantee, to the last day of the following calendar quarter.

### ***Software***

One time licence fees shall be invoiced in the following manner:

- a. if the cost is less than, or equal to, 200.000 EUR, 100 % when the relevant acceptance report has been delivered,
- b. if the cost is more than 200.000 EUR, 30 % as an advance payment at the signature of the specific agreement and 70 % when the relevant acceptance report has been delivered.

Yearly licence fees and maintenance fees shall be invoiced per calendar year and in advance for the whole year. The first invoice of a contract shall cover the period from the reception of the software, or from the expiry of the guarantee, to the end of the current calendar year.

### ***Services***

Invoices in respect of discrete services, for example a report, a project or a training measure, shall be submitted once acceptance has been effected in accordance with the terms of the contract. However, if the total cost of the services is above 25.000 EUR, an advance invoice may be submitted pursuant to Article 10 of the General Terms and Conditions annexed to this contract. In such cases, the final payment shall not be less than 20% of the total price.

Continuous services shall be invoiced per calendar year in the following manner:

- a. if the annual cost of the specific agreement is less than, or equal to, 25 000 EUR, they shall be invoiced at the end of the half-year;
- b. if the annual cost is more than 25 000 EUR, they shall be invoiced at the end of the quarter.

The first invoice of a contract shall cover the period until the end of the following invoicing period.

## **2.7. Tax provisions**

Pursuant to articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities and to article 15, paragraph 10 of Council Directive 77/388/EEC, as amended by Council Directive 92/111/EEC, the Agency is exempt from all taxes, duties and charges, in particular value added tax, on payments made under this contract. The Contractor will, in particular, obey the following rules in order to allow for the implementation of this privilege.

The Contractor whose registered office is in Denmark shall, concerning goods and services:

- a. receive and keep in his records the form entitled "request for exemption from VAT according to article 15.10 of directive n° 77/388/EEC" (see annex VI) which will be duly completed and signed by the Agency,
- b. ensure that all invoices for goods and services issued to the Agency under this contract are net of VAT and contain the following statement: "For the official use of the European Community. Exempt from VAT according to article 15.10 of directive n° 77/388/EEC".

## **2.8. Payment**

Payment shall be made within 60 calendar days of the date on which the invoice is received. Payment shall be deemed to have been effected on the day on which the Agency's account is debited.

However, the Agency may refuse or defer payment if it contests the invoice or if the supporting documentation supplied with the invoice is incomplete.

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

In the event of non-payment of invoices within the period specified in the contract, the Contractor shall send a reminder by registered post. The Agency shall then be required to explain the nature of the delay to the Contractor and to notify him of the probable date of payment. A delay in payment shall not give rise to the payment of interest.

## **2.9. Penalties**

The Agency shall notify the Contractor by any means, of non-compliance with any substantial provision of the present contract. A period of time allowed for the rectification of the non-compliance will begin to run upon receipt of the notification by the Contractor. The length of this rectification period shall be agreed upon by both parties or failing such agreement, shall be set by the Agency and in this case shall not exceed ten (10) normal working days.

Upon *continued non-compliance* and expiry of the rectification period, the Contractor shall pay to the Agency the sum of 1.000 EUR per normal working day, up to a maximum of 100.000 EUR, up to and including the day preceding the day on which full re-compliance with those contractual provisions is resumed.

Independently of that which is established in Article 9.1, the Agency, at the end of the relevant correction period, and if the respect of the relevant provisions has not been re-established, may apply Article 7(2) of the General Terms and Conditions in Annex I.

## **2.10. Performance bonds for the assurance of the contract**

Upon request of the Agency, the Contractor shall deposit an initial performance bond of the sum of *XXXX EUR* on signature of this contract and a performance bond on signature of each specific agreement of up to 10 (ten) per cent of the value of that specific agreement.

The performance bonds shall as a rule take the form of a deposit in EUR paid to the Agency. They may take the form of a personal and several banker's guarantee issued by a third party approved by the Agency.

The initial performance bond will be repaid to the Contractor at the end of this contract. Other performance bonds shall be repaid at the end of each specific agreement. In all cases repayment is conditional upon the good and complete execution of the contract.

Should the contract or the specific agreement not be fulfilled, or in the event of delays in their fulfilment or failure to meet quality standards, the Agency shall draw on the bonds, regardless of whether it was deposited directly by the Contractor or by a third party, in order to indemnify itself of all damages, interest and costs to make good the failure.

The performance bond also applies to contractual licensing failures described in Article 8(4) of the General terms and conditions applicable to the contracts awarded by the Agency.

## **2.11. Liability**

The Contractor is liable for all damages resulting from any fault in the equipment, software or services delivered under the present contract.

The Contractor shall insure himself against all claims in respect of personal injury or material damages.

Such insurance cover should be for a sum not less than 300.000 EUR per claim for personal injury and 75.000 EUR for material damage. Compensation will be paid directly to the Agency.

The Contractor shall provide proof of insurance cover within thirty days of the signature of the framework contract. A copy of the contract of insurance shall be made available to the Agency without charge. Should the Contractor fail to provide this proof of insurance, the Agency shall be entitled to terminate the contract at the Contractor's expense, and shall be entitled to damages and interest thereof.

Before the implementation of any change in the terms of the insurance contract, of its termination by the insurer, of its replacement by a new contract, of a change in insurer, or of any other change materially affecting the contractual guarantee referred to in this article, the

Contractor shall in advance duly notify the Agency of the fact, in writing and request its consent. The Agency may offer its comments and may withhold its consent should it find that the change may result in the absence of the necessary insurance cover during the period of the Contractor's civil liability. In the event of the Contractor's failing to find insurance cover meeting the criteria fixed above, the Agency shall be entitled to terminate the contract.

In the event of the contract of insurance being terminated by the insurer, or the terms of the insurance being changed such that the contractual guarantee is materially affected, the Contractor shall immediately notify the Agency of the fact. The Contractor shall then seek new insurance meeting the requirements of this Article. Before accepting the new insurance policy, the Contractor shall advise the Agency and obtain its consent.

Should the Contractor fail to notify the Agency of any change in accordance with this Article, the Agency shall be entitled to terminate the contract at the Contractor's expense. The Agency shall also be entitled to seek damages and interest thereof from the Contractor. Termination of the contract shall not signify that the Contractor is relieved of his civil liability under the terms of this Article.

The Contractor shall insure the equipment rented by him under this contract from the delivery date until the rental expires. The Agency shall in no case be considered as responsible for any deterioration, destruction, theft or loss of any equipment rented by the Contractor under this contract, unless the damage or loss has for origin a serious fault or a serious negligence of the Agency, or the non-respect of a security measure which has been explicitly prescribed by the Agency.

Nevertheless, in such a case, the equipment will be replaced, at no additional cost to the Agency, by equipment which is at least equivalent. Invoicing in respect of the replacement equipment will carry on from the point previously invoiced in respect of the lost or damaged equipment. Where the installation date of the replacement equipment is not the same as the date of loss of or damage to the original equipment, the Agency shall not be invoiced for the period between the loss of or damage to the original equipment and the installation of the replacement equipment. Instead the Agency may choose either:

- a. to reduce the remaining invoicing period for the replacement equipment so that this period expires at the same date at which the period of the original equipment would have expired were it not for its loss or damage;
- b. to apply the entire remaining invoicing period to the replacement equipment.

## **2.12. Co-operation**

### ***Assistance***

The Contractor shall assist and advise the Agency on the use of his products.

### ***Multivendor cooperation***

The Contractor undertakes to obey the document "Informatics Architecture"<sup>1</sup> as updated from time to time. The Contractor agrees to cooperate with other suppliers to make the products compatible with others. He agrees to attend any meeting called for that purpose by the Agency.

### ***Product integration***

The Contractor shall be responsible for product integration as regards its inclusion in the contract, its running-in, the updating of the tendering specifications, operation in the Agency's environment and the introduction of new versions.

### ***Financial contribution by the Agency***

Where the Agency agrees to contribute financially to the development or modification of a product, it is entitled to a share in the Contractor's profits from the product up to the total of its investment. The Agency will not make any financial contribution for the integration of products.

## **2.13. Product developments**

Any product supplied under this contract shall have been demonstrated by the Contractor and at his expense to conform with the technical specifications sent to the Contractor as part of the invitation to tender pursuant to which the present contract has been drawn up.

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 Agency, may be added to the relevant annexes on a proposal from the Contractor and after testing by, and with the written approval of, the Agency.

For new products involving new features or functionalities not previously available amongst the products listed in Annexes II and III, proposals to include such products shall only be considered in the context of the principal product classifications covered by the call for tenders referred to in the preamble of this contract.

The Contractor shall ensure the stability and perenity of the products in Annexes II and III. They shall be available and maintained for the duration of this contract or, if not, shall be replaced by successor products in the same product range which are at least analogous to the original products.

Even if a product is approved, any in compatibility with previous products that becomes apparent in the course of its use shall be resolved by the Contractor as swiftly as possible at no cost to the Agency.

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<sup>1</sup> Such a document is not available as of contract signature. This clause will become effective after the Agency has produced the document.

## **2.14. Quality requirements**

The Contractor shall perform the services and provide the products in full knowledge and consideration of the Agency's computing environment. He shall perform it in accordance with technical norms, standards and procedures based on best professional practice in the informatics field.

Unless it provides a refusal on valid grounds, the Agency shall supply, without delay, all the assistance, data and information that the Contractor considers necessary or useful for providing his services.

The Agency and the Contractor shall notify each other in writing of any factor likely to compromise or delay the proper execution of the contract.

The products and services shall be produced in accordance with normal professional practice and shall perform in accordance with the functions specified in the documentation and in the specific agreement. It shall be devoid of any deliberate mechanism which leaves it under the Contractor's control after supply to the Agency. It shall meet the operating requirements, specifications and characteristics specified in the Contractor's documents or laid down in the contract.

The quality requirements for each individual project or products shall be laid down in the specific agreements.

## **2.15. Product and service standards**

The quality of the Contractor's products and service will be measured by reference to the definitions, quality standards and procedures defined in annex VII. A specific agreement may define them in more detail for a particular type of use. Quality standards may be revised in line with developments on the market.

The Contractor undertakes to comply with those quality standards. Compliance with the standards will be monitored by the Agency. In the event of non-compliance with one or more of the standards over a period of three (3) months, the Contractor must submit an improvement plan. In the event of non-compliance with one or more of the standards for six (6) months, consecutive or not, over a sliding period of twelve (12) months, a Product whose quality has proved substandard may be withdrawn from the contract *and any payments made in respect of it reimbursed*, or the contract may be terminated where service quality is substandard.

The quality measurements carried out on the Contractor's products and services will be made known to all suppliers who have signed a general contract with the Agency, in respect of their respective product families.

## **2.16. Product life**

The Contractor guarantees that the software and hardware products, or replacement parts, will be marketed and available for at least five (5) years from the date of their acceptance unless they have been superseded by other products in accordance with the contract.

If requested to do so by the Agency, the Contractor shall undertake to provide maintenance of the product for a period of five (5) years. The terms of such maintenance shall be stated in the specific agreement.

### **2.17. Maintenance**

Contractual maintenance shall commence on the expiry of the guarantee period applying to the last item of equipment delivered by virtue of the specific agreement in question.

The Contractor shall at all times comply with the quality standards contained in Annex VII and the maintenance security rules contained in Annex VIII.

### **2.18. Security and confidentiality**

The Agency shall respect the confidentiality of documents and data when so requested by the Contractor.

The Contractor shall take all appropriate steps for each product to ensure that the data and the magnetic media upon which they are stored are safely preserved. The products supplied shall not contain any mechanism (e.g. viruses) which could compromise their proper operation and that of other products. The cost of repairing the damage caused by such a mechanism shall be borne by the Contractor.

The Contractor undertakes to inform the Agency in writing as soon as he has any knowledge of faults in his products that endanger the security of the configurations of which they form a part. He shall immediately take any measures necessary to restore the security of the configurations and correct the faults.

The Contractor shall ensure that all security precautions for each product are clearly spelled out in the relevant user manuals and technical documentation supplied to the Agency.

The security and confidentiality requirements for each individual project shall be described in the specific agreements. 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.

### **2.19. Patents, certificate of utility (utility models), trademarks, industrial drawings and models, intellectual rights**

When the provision of hardware, software or services involves the use of a patent, certificate of utility (utility model), trademark, industrial drawing or model belonging to a third party, the Contractor shall indemnify the Agency against infringement proceedings.

The Agency and the Contractor shall exchange all information on any industrial property right that could impede the performance of the contract.

At the first sign of proceedings by a third party, in particular of a claim, even after completion of the contract, the party involved shall notify the other party as soon as

possible and the two parties shall then act in unison and provide each other with all the information and evidence that they possess or obtain.

The Contractor declares that he is the rightful owner of the intellectual rights to all products supplied by virtue of the present contract, and that he is entitled to sell or dispose of those rights in accordance with the terms of the present contract. If intellectual rights are the property of third parties, the Contractor shall request those third parties to confirm to the Agency, in writing and within two weeks following signature of the contract, that he the Contractor is indeed entitled to sell or dispose of those rights in accordance with the terms of the present contract.

## **2.20. Advertising**

The Contractor shall not publicly announce this contract, or parts hereof, without the Agency's written agreement. However, the Contractor has the right to mention the Agency's name in response to a question to that effect from potential clients.

## **2.21. Termination**

Notice of termination must be given by registered letter in case of rental and leasing. The Contractor must remove the products or systems at his expense within the time settled between the parties.

In derogation to article 7.1 of the general conditions in annex I, the two contracting parties may, of their own volition and without being required to pay compensation, terminate the contract by giving six months prior notice and cancel the rent, lease or maintenance of products specified in a specific agreement by giving three months' prior notice.

In addition to the other cases specified in this contract, the Agency is fully entitled to terminate this contract and any specific agreements concluded under it, with immediate effect and without being required to pay compensation, in the following circumstances:

- a. in the event of a judicial settlement order, bankruptcy or liquidation;
- b. where the Agency has serious grounds to believe fraud (as defined in *Danish* penal code) has been committed, whether or not committed in *Denmark* and whether or not committed against the Agency.

If the contract is terminated, the contractor shall hand over the following items:

- a. where the Agency has paid for development of software, the contractor shall hand over the source code and documentation;
- b. where the Agency has paid for maintenance of developed software, the contractor shall hand over (immediately and without charge) the source programs, software plans, access keys and documentation required by the Agency for the proper operation of the software, insofar as the contractor has a legal right to do so.
- c. where the Agency has paid for maintenance by 3<sup>rd</sup> party vendors of specific software or hardware or services, the contractor shall hand over all necessary contract details with 3<sup>rd</sup> parties so that the Agency can take over such contracts.

## **2.22. General terms and conditions and law applicable**

This contract shall be governed by the General Terms and Conditions applicable to contracts awarded by the *European Environment Agency* (Annex I), which the Contractor declares he has noted and accepted.

In the event of a conflict between the General Terms and Conditions set out in Annex I and the provisions of this framework contract and specific agreements, this framework contract and specific agreements shall prevail over the General Terms and Conditions.

Danish law shall apply to this contract.

## **2.23. Jurisdiction clause**

Any dispute between the Agency and the Contractor or any claim by one party against the other based on this framework contract and its specific agreements which cannot be settled amicably by the two parties shall be brought before the courts of *Copenhagen*.

## **2.24. Annexes**

The following documents are annexed to this contract and form an integral part of it :

- Annex I: General Terms and Conditions applicable to contracts awarded by *the European Environment Agency*.
- Annex II: List of hardware products, maintenance and documentation covered by the contract and schedule of prices.
- Annex III: List of software products, maintenance and documentation covered by the contract and schedule of prices.
- Annex IV: List of services covered by the contract and schedule of prices.
- Annex V: Model guarantee.
- Annex VI: Tax exemption forms
- Annex VII: Quality standards for hardware products and maintenance.
- Annex VIII: Maintenance security rules.
- Annex IX: Central help desk action procedure.

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

#### **3.1. Running-in of products**

##### *Purpose*

The purpose of the running-in is to demonstrate the proper operation of the Contractor's product in the Agency's operational environment.

##### *Terms*

Running-in will be governed by a specific agreement. That agreement will define the operational environment and the tests required to demonstrate proper operation and the system's performance.

The Contractor will bear the cost of adapting the product to the Agency's operational environment and of adapting or porting the Contractor's, the Agency's or a third-party's software defined in that environment.

The Agency will order the product or the system in a configuration defined in the specific agreement.

Upon signature of the specific agreement, the Agency will provide the Contractor with the source and object code of any software it has developed itself, together with the relevant documentation. This software remains the sole property of the Agency.

The Contractor undertakes not to transfer or communicate this software to a third party in any way whatsoever without the prior written consent of the Agency.

The contracting parties will organize regular monitoring of the Running-In by appointing representatives and organizing regular meetings on the Agency's premises.

Running-in comprises three phases: technical debugging; delivery and commissioning; pilot on-site production.

##### *Technical debugging*

Technical debugging will be carried out on the Contractor's premises, in a simulation of the Agency's environment.

The Contractor will provide free training for the number of Agency technicians indicated in the specific agreement. Product demonstration will be updated by the Contractor as and when necessary.

The Contractor must demonstrate the proper operation of the product in the simulated environment; this is recorded in a report. He must give the Agency fifteen (15) days' notice

in writing of the date and practical arrangements for the demonstration, submitting the test reports in advance.

Technical debugging for a system may not exceed four (4) months from the date on which the Agency signs the specific agreement. If this time limit is exceeded, the Agency will notify the Contractor that he is obliged to give a demonstration of proper operation as quickly as possible.

If proper operation cannot be demonstrated within one (1) month following receipt of the notification, the Agency is entitled to terminate the specific agreement.

### ***Pilot on-site production***

The pilot on-site production phase takes place on the Agency's premises. It begins on the date of technical acceptance, lasts for sixty (60) days and ends with final acceptance. During this phase, the Contractor will place a technician qualified to provide user support for the products at the Agency's disposal on its premises, or alternatively guarantees that a technician can be on hand within two (2) hours.

If final acceptance cannot be completed within the time limit, the Agency will notify the Contractor in writing that he is obliged to correct the faults identified.

If final acceptance cannot be completed within two (2) months of the date of that notification, the Agency is entitled to terminate the specific agreement.

## **3.2. Delivery**

### ***Terms***

All products must be tested by the Contractor before delivery. The Contractor must be able to demonstrate that the pre-delivery test was satisfactory if the Agency so requests.

The number of copies of documentation to be supplied is specified in the specific agreement.

The Contractor must notify the Agency of his packaging terms.

The height of the Contractor's delivery vans may not exceed 4.5m and only "EURO"-type pallets may be used.

### ***Dates***

The delivery date will be indicated in each specific agreement. Delivery dates are reckoned from the date when the Agency signs a specific agreement.

Should the Contractor be unable to deliver by the specified date, he may supply an equivalent product or system with the Agency's prior assent.

Where the Agency has incurred costs vis-a-vis a third party by reason of a delay in delivery or commissioning that is attributable to the Contractor, then the Contractor shall reimburse them upon production of supporting documents, provided the Agency has given prior formal notice.

If a delivery deadline is overrun by more than forty-five (45) days, the Agency is entitled to terminate the specific agreement in question.

### ***Procedure***

The Contractor must notify the Agency of the exact date of delivery of a product eight (8) days in advance. The Agency must provide access to its premises for delivery from the date notified. Delivery and installation costs will be borne by the Contractor. Deliveries must be complete.

Receipt of each delivery of products will be recorded in a delivery note. The note is established by the Contractor and must give the particulars of the products, as set out in the specific agreement, the number of the specific agreement in question and the balance to be delivered for each product.

### **3.3. Product installation**

#### ***Installation requirements***

When a product is included in the annexes, the Contractor must specify in writing the technical installation requirements and any refurbishment necessary for the premises intended to house the products. These requirements and refurbishment may also, if necessary, be set out in technical annexes to the specific agreement.

#### ***Procedure***

The Agency will arrange for products to be moved at its own risk from the place of delivery to the place of installation within fifteen (15) days from the date of delivery and undertakes to notify the Contractor of the date and place of the move.

The Agency must ensure that from then onwards the premises where the system is 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 Agency must provide access to its premises for the assembly of hardware from the date notified.

### **3.4. Acceptance**

#### ***Terms***

The Contractor shall notify the Agency in writing when a product or system is Agencyed into service. The product or system is then subject to the *following* acceptance procedure.

### ***Procedure***

Hardware assembly and commissioning a System into service shall be effected by the Contractor at his expense. A product or system must be commissioned into service no later than fifteen (15) days after the notified date of its removal to the installation site unless another time limit for acceptance is laid down in the specific agreement. Acceptance of a product will be recorded in a product acceptance report that shall indicate inter alia the detailed nature of the items, and the reference number of the present contract and of the specific agreement concerned.

If acceptance cannot be completed within the agreed time limit owing to faulty operation, the Agency is entitled to terminate the specific agreement after giving the Contractor thirty (30) days' notice in writing to meet his obligations.

During the acceptance period the Contractor may replace all or part of a faulty system or product. This will not affect the acceptance time limits, which continue to run from the initial commissioning date.

Failing notification of faulty operation within seventy-five (75) days from the commissioning date, the product or system shall be deemed to have been accepted.

### **3.5. Guarantee**

The guarantee will run from the acceptance date for no less than twelve (12) months unless a different guarantee period is indicated in the specific agreement. During the guarantee period the Contractor will provide maintenance at his expense.

The guarantee period is 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 working hours or more shall be counted. One day's extension therefore corresponds to a stoppage of eight (8) consecutive 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) week, the Agency is entitled to have the product immediately replaced free of charge by the Contractor.

If the aggregate unavailability of a product during working hours exceeds forty-eight (48) hours, the Agency is entitled to terminate the part of the specific agreement relating to that product.

### **3.6. Products**

#### ***Right of use***

From the date of acceptance the Agency may make unrestricted use of the product under normal operating conditions. If the product is leased, the right of use applies for the duration of the specific agreement.

***Stand-by system*** (outside the guarantee period)

In the event of a complete system failure lasting more than twenty-four (24) hours from the time it is notified to the Contractor, or in the event of intermittent failures over forty-eight (48) hours for any reason whatsoever, the Contractor shall, upon a duly substantiated request, make available to the Agency at twenty-four (24) hours' notice an equivalent system or the necessary machine time for it to run its applications in the interim. The cost of such machine time will be charged to the Contractor.

***System additions***

The Agency may add to the system or connect to it, either directly or via telecommunications networks, compatible products of any origin, providing it notifies the Contractor in advance.

The Contractor will co-operate fully with the Agency and other suppliers to ensure the satisfactory operation of such products in combination with his systems.

The Contractor will advise the Agency of any problems, particularly affecting system performance, which its planned additions are likely to cause.

If the Agency, duly advised, still intends to proceed, the Contractor takes no responsibility for the operation of the additions or for any adverse effects on the rest of the system.

The Contractor shall not be responsible for the maintenance of such additions.

The Contractor reserves the right to charge all costs caused directly or indirectly by such additions, particularly for maintenance, to the Agency on production of supporting documents.

***Documentation***

The Contractor will provide the Agency with three (3) free copies of any new edition of his documentation and of any new documentation and updates, as soon as they become available to his clients.

The Agency may reproduce this documentation in full or in part for purely internal use by its staff. The Agency will reproduce all references to intellectual property rights appearing on the originals.

***Return of leased products to the Contractor***

If the Agency does not exercise any purchase option, it will return leased products in good working order at the end of the lease. The withdrawal of a product must be recorded in a withdrawal report quoting the contract and specific agreement concerned. The costs of disconnection and removal will be borne by the Contractor.

### **3.7. Maintenance**

#### ***Terms***

The Contractor undertakes to maintain the products covered by this 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 his own expense.

The Contractor shall provide maintenance service on site within four (4) hours at the Agency's request. This time limit is reduced to two (2) hours in the case of a blocked server.

Repairs, extensions and modifications to the system may be carried out only by the Contractor or the firms authorized by him.

The period of maintenance against payment starts to run on the day after expiry of the guarantee.

Preventive maintenance operations will be scheduled periodically, by agreement between the Agency's authorized representative and the Contractor.

The Contractor will carry out corrective maintenance involving debugging, repair or replacement of faulty products at the Agency's request. The Contractor undertakes, during these operations, to comply with the Agency's current central help desk action procedure when the failure occurs, as described in Annex IX.

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

The Contractor will compile a monthly management report giving the following particulars of corrective maintenance carried out:

- a. a list of outstanding problems, with the cause and the expected date of resolution;
- b. an analysis of problems encountered by type of failure and product;
- c. various statistics as requested by the Agency to enable it to produce an internal audit report.

#### ***Hardware***

On the part of the Agency, hardware maintenance involves 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, corrective hardware maintenance involves:

- a. diagnosing the cause of failures affecting products or systems, whether they are due to his products or not;
- b. correcting faults as rapidly as possible;
- c. replacing components, printed circuits and electronic units that prove defective in the course of normal use, and effecting any alterations deemed necessary by him to improve operation of the systems;
- d. acting as the link with his own central maintenance departments;
- e. reprogramming or replacing firmware in the event of error;
- f. providing "hot-line" support to resolve urgent problems and system failures.

Maintenance does not include the complete repair of all or part of any hardware where it is too worn to operate properly any longer. If the Agency decides not to effect the reconditioning proposed by the Contractor, the hardware in question will be withdrawn from the contract.

### *Software*

On the part of the Agency, software maintenance involves:

- a. 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;
- b. testing and accepting when it is reasonable to do so, new versions or releases of software, as proposed by the Contractor; after one (1) year from 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;
- c. installing any preventive corrections provided by the Contractor provided it is agreed that such corrections are necessary.

On the part of the Contractor, software maintenance involves:

- a. diagnosing errors or faults encountered by the Contractor or the Agency in the content of the software and making any necessary corrections; the Contractor will effect corrections only if the error can be reproduced or if the Agency provides the Contractor with a memory dump from which the error can be diagnosed;
- b. indicating and providing the Agency with preventive corrections;
- c. providing the Agency with successive software versions and releases and the relevant reference documentation; installing new versions or editions free of charge on the existing hardware at the Agency's request; where necessary, adapting products and/or information systems that were using the previous version of the software free of charge;
- d. effecting all the software corrections (including patches) needed to ensure that the systems operate as specified in the documentation within thirty (30) working days of receipt of written notification from the Agency giving details of a problem;
- e. rewriting the software where necessary to correct all known problems or faults diagnosed by the Contractor;
- f. providing telephone support for the Agency during maintenance hours to advise it on the use of software;
- g. providing "hot-line" support to resolve urgent problems and system failures.

### ***Remote maintenance***

The Contractor undertakes to provide the Agency, upon request, with any remote maintenance service which he operates or intends to set up. The remote maintenance service must comply with the rules set out in Annex VIII to this contract. All terminal connection, utilization and communication charges will be borne by the Contractor.

### ***Responsibility for diagnosis***

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

### ***Technical modifications by the Contractor***

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

### ***Equipment***

Test equipment, tools, documents, programs and files kept at the Agency for maintenance purposes remain the property of the Contractor and will be insured by the Contractor.

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

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

#### ***Configuration***

In respect of each order:

- a. the products shall be specified in the specific agreement;
- b. installation of products, including software, shall be carried out in accordance with the specifications annexed to the specific agreement.

#### ***Delivery***

Delivery shall be completed within no more than thirty days from the date of signature of the specific agreement unless a different deadline has been specified in the specific agreement.

If a delivery deadline is overrun by more than twenty-one days, the Agency is entitled to terminate the specific agreement in question.

The place of delivery will be specified in each specific agreement.

At the time of delivery, the Contractor will establish a delivery note, subject to checking of the nature and quantity of the products within three working days following delivery.

#### **4.2. Guarantee**

The Contractor shall guarantee all goods delivered for a period of either one or three years from the date of the delivery note, as specified in the specific agreement.

When, under the terms of the specific agreement, products are delivered on several dates, the period of guarantee shall for all products expire with the end of the period of guarantee of the final item of equipment delivered in accordance with the specific agreement.

During the period of guarantee, the Contractor shall provide maintenance at his own expense.

#### **4.3. Maintenance**

##### ***Maintenance option***

The Agency shall for each product ordered specify on completion of the period of guarantee whether it wishes to subscribe to a maintenance agreement.

##### ***Content of maintenance agreement***

Maintenance is deemed to comprise all operations necessary to maintain an item in perfect working order, or to restore a defective item to perfect working order, inclusive of the costs of travelling, parts and labour.

The Contractor shall provide maintenance service on site within four hours at the Agency's request. This time limit is reduced to two (2) hours in the case of a blocked server. If the Contractor is of the opinion that a repair will not be possible within a period of two hours from his arrival, he shall make a substitute product available to the Agency for the duration of the repair.

The maintenance shall be provided in normal working hours on normal working days. The Agency may require the Contractor to offer maintenance outside these times (extended working hours).

##### ***Maintenance security***

The Contractor undertakes to ensure that maintenance is carried out only by authorized staff, i.e. staff specifically designated for the purpose by him, to comply with the Agency's quality standards and rules, and to use the resources provided by the Agency for no other purpose than to effect maintenance.

## **5. SPECIFIC PROVISIONS RELATING TO SOFTWARE USER RIGHT AND MAINTENANCE**

### **5.1. Delivery - installation - documentation**

The Contractor shall deliver the product under licence at his own expense within two weeks following the signature date of considered specific agreement.

The Contractor shall offer to the Agency for each delivery of a new product, *separately invoiced training of agreed number of instructor-days, in the Agency's premises in Copenhagen or in other sites together with technical assistance on the use of the products. Such training shall be offered in the English language.*

The Agency shall be able to request additional assistance from the Contractor to install the product on the equipment and for training of its personnel at the time of production start-up. Those additional expenses shall be charged to the Agency at the prices shown in annex IV to this framework contract.

The Agency and the Contractor shall each designate in due time one person in charge of decisions regarding the delivery and installation of the product. The product shall be delivered on a machine-readable medium (diskette or other) reproducing the original product kept in the Contractor's or the Agency's archives. It shall be sent with one copy of technical documentation per licence copy unless agreed otherwise between the parties. Any additional copy of documentation shall be invoiced to the Agency at the price shown in Annex III.

The Contractor shall authorise the Agency to reproduce documentation for its internal needs provided that any copyright indication in the documentation is also reproduced.

### **5.2. Test - trial - acceptance**

The Contractor shall grant *for each new version of a product that the Agency has earlier purchased through this framework contract* a one-month trial period during which the product shall be available for non-productive use.

The trial period shall begin from installation of the product on the equipment.

At the end of the trial period, product acceptance shall be declared by the signature of the certificate of acceptance signed by both parties.

At any moment during the trial period, the Agency may terminate the licence by written notification with immediate effect. Additional acquisitions of products already tested by the Agency shall be accepted on delivery by means of the certificate of acceptance.

### **5.3. Guarantee**

The Contractor guarantees that:

- a. the product under licence is in conformity with the documentation supplied;
- b. the product is capable of performing the functions described in the aforementioned documentation with the configuration described in the specific agreement under consideration.

The Contractor does not guarantee that the product will enable the Agency to achieve its target aims, productivity levels or time savings, or the implementation of any specified work.

#### ***Warranty period***

The Contractor grants a twelve months warranty period starting from date of signature of the certificate of acceptance relating to the product. During this period maintenance of the product shall be provided free of charge by the Contractor.

### **5.4. Use**

The Agency may use the product exclusively for its own internal purposes.

A European official, as defined by the Staff Regulations of the Agency and other European Community bodies, using the products temporarily at home within the context of his official work is considered to be covered by the licence scheme for the Agency.

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

The Agency undertakes not to reproduce the product in part or in full, except for the purposes of back-ups and archives taking all the necessary precautions. Such copies shall remain the Contractor's property.

### **5.5. Use transfer**

The rights of the Agency to the product under the terms of the present contract may not be licensed or transferred, voluntarily or otherwise, by the Agency without the prior consent of the Contractor. Such transfer may only be made to a European Community Institution or body endorsing all or part of the prerogatives of the European Community further to a decision taken by the appropriate authority, pursuant to the treaties.

The document transferring responsibility to such a body shall constitute official endorsement specifying that it considers itself bound to all the clauses and conditions of the present contract.

## **5.6. Maintenance**

As from signature of the certificate of acceptance of the product, the Contractor shall provide maintenance free of charge for the warranty period, then at a cost determined in the annex. The following conditions shall apply to maintenance :

- a. the Contractor shall provide error diagnosis for defects in the contents of the product as well as services for fixing any breakdowns;
- b. the Contractor shall provide hot-line telephone assistance to advise the Agency on the use and maintenance of the product; this assistance shall be available during the normal working hours on normal working days.
- c. the Contractor shall provide the Agency with new releases or versions of the product in the same operating environment as licensed as well as related documentation and shall inform the Agency of the existence of such updates.

These new releases or versions shall include :

- a. corrections of errors discovered in the programmes or documentation;
- b. changes necessary to accommodate any evolution in basic software (operating system) provided the successive releases or versions of this basic software are compatible between themselves and adopted by the Agency.
- c. improvements decided by the Contractor and accepted by the Agency, provided they are compatible with existing applications.

These new releases or versions exclude all extensions or product complements which may be installed on the equipment only after signature of an update to Annex III to the present contract.

The expenses caused by an intervention of the Contractor having as their origin an error of the Agency shall be borne by the Agency, according to the conditions and prices in the annex.

## **5.7. Compatibility**

The Contractor guarantees to the Agency that at the date of signature of each specific agreement the product is compatible with the equipment described in the specific agreement under consideration.

## **5.8. Property - protection - confidentiality**

The proprietary rights attached to the product and its documentation remain the Contractor's exclusive property. Article 9.1 of the General Terms and Conditions annexed to this contract does not apply.

The Agency undertakes:

- a. to take all measures necessary vis-a-vis its end user personnel and persons having access to the product and documentation, to ensure that the confidentiality of the product is ensured;

- b. not to pledge, assign, sub-license, transfer or lend, for payment or otherwise, the product and documentation;
- c. to inform immediately the Contractor in the event of seizure, to protest against it and to take all necessary steps regarding the ownership right of the Contractor.

In the event of unauthorized disclosure of confidential information by either party, the other party shall be entitled to terminate the present contract. The party of the first part recognizes 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.

The Contractor guarantees that the product neither violates nor counterfeits any copyright or patent of a third party. If an infringement of this nature is notified immediately by registered letter with acknowledgement, the Contractor shall take the responsibility of his own defence and shall protect the Agency from all legal proceedings in infringement or counterfeit of a copyright or patent based on the use of the system by the Agency, except in the case of consequences of changes made by the Agency to the product. The Contractor may lead by himself the defence in these proceedings and shall bear all the costs of the legal proceedings.

#### **5.9. Inspection rights**

In view of the Agency's supranational nature, the Contractor will not exert any right of inspection over the Agency's use of the software. However, the Agency shall maintain adequate records evidencing the use of the software during the term of this contract and until two years after termination.

#### **5.10. Escrow rider**

*None applied.*

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

#### **6.1. Types of services**

Unless specified to the contrary, services shall be provided during the Agency's normal working hours and normal working days.

Training relating to the use of the products

Training is provided at the sites of the Agency in *Copenhagen unless agreed otherwise*. Training is addressed to users of the product and to the technicians responsible for support within the Agency. The number of participants for each course shall be determined by mutual agreement between parties at the time of signature of the specific agreement. Training and course materials must be *available in English*.

The infrastructure necessary to the courses (buildings, data-processing equipment, video equipment etc.), the administrative organization of the courses (planning, notifications, evaluation) and the Production of course documentation shall be provided by the Agency.

### ***Consultancy***

Consultancy services consist of transmitting know-how for the use of the products covered by the contract. They may include missions on site in *Copenhagen* for examination of specifications and evaluation of the result of projects.

### ***Technical documentation***

These services relate to the drafting of any technical documentation in relation to the products covered by the contract. They may include missions on site in *Copenhagen* for examination of specifications and evaluation of the result of projects.

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

### ***Integration work***

This type of service, not covered by the maintenance contract, aims at ensuring the correct operation of the Contractor's products in an evolutionary multi-manufacturer environment. Services are performed on the basis of integration specifications communicated by the Agency. They may include missions on site in *Copenhagen* for examination of specifications and evaluation of the result of projects.

### ***Informatics engineering***

Informatics engineering consists of building and implementing projects of data-processing infrastructure (system software, telecommunications networks etc.) on the basis of specifications, pursuant to the computer architecture plan adopted by the Agency. Work may include missions on site in *Copenhagen* for examination of specifications and evaluation of the result of projects.

## **6.2. Time-and-means contracts**

Services shall be provided on a time-and-means basis when the parties agree in the specific agreement that a specified sum is to be paid *per* day for a given number of days in return for the provision of the means to perform the services. In all cases, the Contractor shall be under an obligation to achieve a specific result defined in the specific agreement.

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

The Contractor or his staff shall each day record the time worked. The records will be set up in the way defined by the Agency's *responsible technical officer* named in the specific agreement. At the end of each month, the Contractor or his staff shall complete and sign the attendance sheet proposed by the Agency and forward it to the Agency's *responsible technical officer* who will be in charge of the consistency between the daily records and the monthly attendance sheet.

### **6.3. Fixed-price contracts**

Services shall be provided at a fixed price when the parties agree in the specific agreement that an overall sum will be paid following express acceptance of the work by the Agency.

The work shall be undertaken by the Contractor in accordance with the specifications set out in the specific agreement. The specifications shall comprise in particular the description of the work, the timetable, reports, standards, reference manuals and details of the results required. Each result shall be subject to acceptance by the Agency in order to ensure conformity with the specifications.

### **6.4. Stability of Services**

Prior to any specific agreement, the Agency and the Contractor shall transfer to each other the information needed for the services to be provided. Throughout the term of the contract they shall maintain the required level of information and make it available to the other party for the purpose of providing the services. The updating of information shall not give rise to any payment.

Throughout the term of the contract the Contractor shall ensure that a stable service is maintained as required for the proper implementation of the specific agreements.

To that end, the Contractor shall gradually replace staff and shall organise the transfer of information for the services to be provided, the cost of which shall be borne by him. In no event shall the Contractor be able to invoke a change of staff as a reason for not meeting one of his obligations, in particular with regard to deadlines and quality.

For all tasks with a low degree of substitutability, for example project coordination, studies and development, the Contractor shall ensure that staff are changed only in the event of force majeure or with the written consent of the Agency.

In the case of a time-and-means contract, staff changes shall be subject to the Agency's written agreement. Such agreement shall not be unreasonably withheld. The services provided on the Agency's premises shall not be supplied by the same persons for more than 660 days.

### **6.5. Timetable**

The timetable for the performance of the services shall be laid down in each specific agreement.

The Contractor shall propose a full and detailed timetable for software development or related tasks. If such a timetable cannot be prepared for projects of longer duration, the parties shall first fix a provisional timetable. The final timetable shall be fixed at a date stated in the specific agreement.

The time needed by the Contractor to install and prepare software or a system for operation shall be stated in the specific agreement. If no time is specified, the period shall be 15 calendar days.

## **7. SPECIFIC PROVISIONS RELATING TO FIXED-PRICE DEVELOPMENT AND MAINTENANCE OF DEVELOPED SOFTWARE**

### **7.1. Amendment of a specific agreement**

The Agency shall have the right to make unilateral amendments to a signed specific agreement provided that it does not change the purpose of the agreement, it provides appropriate compensation and, if necessary, it extends the completion period. The Agency may exercise this right up to the final acceptance of work.

In such cases, the Contractor must prove that changes in cost and duration are the result of the amendment. Amendments shall be agreed by both parties. If no agreement can be reached, the Agency shall be able to choose between having the initial specific agreement executed or cancelling it.

### **7.2. Compliance with technical specifications**

In addition to the general quality requirements as specified in *the* contract, the Contractor undertakes to respect inter alia:

- a. the Agency's document "informatics architecture" *when available*;
- b. the Agency's document "Guidelines on Project Management", in its latest version as updated from time to time, *when available*.

### **7.3. Acceptance**

Once the services have been performed in accordance with the contract and the specific agreements and, if provision has been made for tests, the tests have been satisfactory, the Agency shall deliver an acceptance report that shows the acceptance date and mentions any reservations it may have regarding the services.

If the software tests prove unsatisfactory, in whole or in part, the Agency shall notify the Contractor in writing of the problems discovered and ask him to supply a new corrected release or version of the software.

If, after three attempts at acceptance, the software still fails to meet the terms of the contract, the Agency shall have the following options :

- a. to require the Contractor to supply, without charge, a replacement or additional set of software;
- b. to accept and retain part of the software, at a reduced price agreed between the Agency and the Contractor;

- c. to refuse the software and cancel the specific agreement on reimbursement of any sums unduly paid.

The acceptance reports shall be annexed to the corresponding specific agreement. When acceptance is linked with a payment, a copy of the report shall be attached to the invoice.

#### **7.4. Guarantee of proper operation of developed software**

Except in the case of hidden defects, for which responsibility shall be of unlimited duration, the Contractor shall guarantee the proper operation of software for a period of twelve months from the date of acceptance. *The contractor* shall be held responsible for the immediate repair, at his own expense, of any breakdowns that occur during the guarantee period, unless he 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 he was responsible.

The Agency shall notify the Contractor of the type and scale of any failure as soon as it occurs. If the Contractor does not repair the system without delay, the Agency may have it repaired by a third party, on the responsibility and at the expense of the Contractor.

The parties shall jointly define the major problems that might affect the software or the system.

The duration of the guarantee shall be extended by the time which elapses between the notification of a major problem to the Contractor and the point at which the Agency accepts the corrected work.

#### **7.5. Use of existing software**

When, for the purposes of the services the Contractor uses his own proprietary software or software belonging to a third party, or where the software supplied comprises part of the Contractor's proprietary software or software belonging to a third party, the Contractor shall:

- a. make specific mention of such software in *the* bid at the time of tendering;
- b. state whether the use of such software by the Agency will involve development or utilization licence payments and provide an estimate of those payments;
- c. state whether use of such software by third parties (for example the Member States and other Institutions) will involve development or utilization licence payments.

The use of such software shall be subject to the Agency's written assent in the specific development agreement.

The Agency shall have the right to disseminate and distribute a developed product to third parties, even if it contains existing software, subject to the observation of any licence terms in respect of proprietary or third party software declared in the bid at the time of tendering.

## **7.6. Ownership of source codes**

In the case of developed products, the Agency shall become the owner of sources, results, documentation and sets of tests that correspond to payments already made.

## **7.7. User manuals and documentation**

The Contractor shall prepare the manuals and documentation needed for the appropriate and proper operation of the software and shall make them available to the Agency. He shall comply as defined in article 9.1 in preparing such manuals and documentation.

The material shall generally comprise :

- a. an installation manual;
- b. an administration manual;
- c. a user manual;
- d. implementation documentation.

The user manuals and the documentation shall be supplied in *English*, unless agreed otherwise.

The Contractor shall update and, if necessary, replace at a reasonable cost the user manuals and documentation for a period of five years from the date of acceptance.

## **7.8. Interfaces and compatibility**

Where the specific agreement mentions interfaces that need to be observed, the Contractor shall not modify such interfaces without the Agency's written agreement. Such agreement shall not be unreasonably withheld.

Where the software supplied utilizes software from a third party and where that software is updated, the Contractor shall adapt the software supplied in accordance with terms jointly agreed.

The Contractor shall ensure that all the software supplied under the contract is compatible and operates by means of interfaces with all other software specified in the contract.

## **8. SPECIFIC PROVISIONS RELATING TO TRAINING ORGANISED FOR THE AGENCY**

### **8.1. Instructors**

Instructors shall be proposed to the Agency on the basis of their professional experience and the quality of their services. Instructors accepted shall appear on the Agency's authorised list. The Contractor shall not replace instructors who have been accepted without the Agency's written agreement.

## **8.2. Organisation of courses**

The parties shall draw up a schedule of courses and preparatory measures for a period of several months, normally six. 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.

The parties shall make a final decision on all the data no later than four 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.

When an instructor is not available, a course may be cancelled or postponed no later than ten days prior to its commencement. If three courses have been cancelled or postponed without meeting these conditions, the Agency shall be entitled to cancel a contract on the basis of article 7.2 of the general terms and conditions.

## **8.3. Insurance**

If the Contractor gives courses on premises other than those of the Agency, he shall insure the participants against all accidents caused by any act or omission of the Contractor or his staff. The cost of the insurance shall be included in the price stated in the specific agreement, even if it is not expressly mentioned in the contract documents.

## **8.4. Instructors manual**

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

- a. the preparation and holding of courses;
- b. administrative regulations;
- c. health and safety regulations.

## **8.5. Provision of training software**

Software that has been developed specifically for the Agency shall be owned in full by the Agency pursuant to article 9 of the general terms and conditions.

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

## **9. SPECIFIC PROVISIONS RELATING TO DOCUMENTATION PRODUCED FOR THE AGENCY**

### **9.1. Provision of reference documentation**

Documentation that has been developed specifically for the Agency shall be owned in full by the Agency pursuant to article 9 of the general terms and conditions.

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.

**10. SIGNATURES**

Done at *Copenhagen* in duplicate in English on *XXXXXXX*  
each party hereby acknowledging receipt of that party's copy.

For the Contractor

For the Agency

*XXXXXXXXXXXXXXXXXX*

*Domingo JIMENEZ-BELTRAN*