

## ANNEX II

### GENERAL TERMS AND CONDITIONS FOR INFORMATION TECHNOLOGIES CONTRACTS

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## II.1 COMMON ADMINISTRATIVE PROVISIONS

### II.1.1. Definitions

When used in the Framework Contract with a capitalised first letter and in italics, the following terms shall have the following meaning:

**“Benchmarker”:**

The independent third party carrying out a *Benchmarking*.

**“Commissioned Software”:**

*Software* developed by the Contractor for EMSA under the Framework contract.

**“Commissioning date”:**

Date on which the Contractor notifies EMSA that a *Product*, a *System* or an *Extension* thereto has been brought into service.

**“Compatibility”:**

Ability of a *Product* to function in accordance with the *System specifications* or type of equipment into which it will be integrated.

**“Complex hardware product”:**

Any computer equipment, whether or not it contains *Software*, which requires installation by skilled staff and acceptance by both Parties. These *Products* are explicitly described in Annex I to the Framework contract.

**“Consignment note”**

Note in duplicate duly signed and dated by the Contractor or his carrier, giving the Specific Contract number and particulars of the goods delivered to be countersigned by EMSA and returned to the Contractor or his carrier. This note acknowledges the fact that the goods have been delivered and in no way implies conformity of the goods with the Specific Contract.

**“Certificate of conformity”**

Certificate signed by EMSA, evidencing conformity of the goods delivered, no later than one month after the date of delivery, unless provision is made in the Special Conditions for a different period.

**“Constant discount”:**

Fixed percentage of discount on its *Products* and *Services*, awarded by the Contractor to EMSA during the entire duration of the Framework contract, and calculated on the prices as they appear in the *Official Price list*.

**“Delivery date”:**

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

**“Documentation”:**

Instructions and manuals supplied with the *Product(s)* and/or *Service(s)*, whether intended for support/technical staff or for end-users, and whether in printed or in electronic form.

**“Escrow agent”:**

The third party providing the safekeeping facilities specified in the *Escrow rider*.

**“Escrow rider”:**

Agreement between EMSA, the Contractor and a third party, by which such third party provides safekeeping facilities for the source code of the *Software product(s)* covered by the Framework contract and/or for the related Documentation.

**“Extension”:**

Set of *Products* to supplement or extend a *System*.

**“Extended working hours”:**

Any working hours other than *Normal working hours*.

**“Extra muros”:**

Outside EMSA’s premises.

**“Hardware”:**

Any computer equipment purchased, rented, leased or maintained under this Framework contract.

**“Informatics Services”:**

All *Services* related to information technology, such as (but not limited to) training, consultancy, removal, logistics, integration work, engineering, development, *Maintenance* and writing of *Documentation*, as further described in the Framework contract.

**“Installation date”:**

Date notified by the Contractor with a *Means of registered communication* on which the Contractor will perform the assembly, the installation and the bringing into service of a *Hardware Product*. This may not be later than fifteen (15) *Normal working days* after the date of its removal from its place of delivery to its place of installation. This date may be extended upon EMSA’s decision and may be notified by EMSA with a *Means of communication*.

**“Intellectual property rights”:**

All industrial and *intellectual property rights*, such as, but not limited to, copyright, the rights of the producer of a database, rights on semi- conductors, patents, patent applications, utility models, trademarks (whether Benelux, Community, international or foreign trademarks), trade names, designs and models.

**“Internal use”:**

Within EMSA’s premises and the use by an EMSA or agentas defined by the Staff Regulations of the Community, elsewhere than in his normal office located in EMSA’s premises, but within the context of his I work for the Agency.

**“Intra muros”:**

Within EMSA’s premises.

**“Means of communication”:**

Any communication between the Parties relating to the execution of this Framework contract, whether made by letter, facsimile, telegram, e-mail or by any other *Means of communication*, the content of which can be printed on paper. These *Means of communication* also include

communication by telephone, SMS, or any other *Means of communication* whose content cannot be printed on paper, provided such communication is confirmed within two (2) *Normal working days* by a communication by one of the means mentioned in the first sentence.

**“Means of registered communication”:**

Any communication between Parties relating to the execution of this Contract, made by a *Means of communication* the content of which can be printed on paper whereby an independent third party is able to establish that the communication has reached its destination, whether such destination be a postal, an electronic (e-mail) or any other type of address.

**“New release”:**

Revision of an existing version of a *Software* program, usually amending the reference to the *Software’s* version from, for example, version 0.1 to version 0.2.

**“New version”:**

New version of a *Software* program, usually amending the reference to the *Software’s* version from, for example, version 0.1 to version 1.1.

**“Normal working days”:**

From Mondays to Fridays except EMSA holidays. EMSA holidays are usually but not necessarily the same as the national holidays of Portugal. When expressly so provided in the Framework contract or in a Specific Contract, EMSA holidays may be included in the *Normal working days*.

**“Normal working hours”:**

From 9 a.m. to 17.30 p.m. on *Normal working days*.

**“Official price list”:**

Price list, which is

- a constant feature of the Contractor’s sales policy;
- regularly updated by the Contractor;
- addressed to the public, to the Contractor’s customers or to a part of them;
- accessible to the public, to the Contractor’s customers or to a part of them, e.g. on an Internet site.

**“Order Forms”:**

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

**“Payment request”:**

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

**“Person-day”:**

Seven-and-a-half (7½) hours.

**“Products”:**

Any *Software*, *Hardware* or *Telecommunications product*. Where a distinction between the three types of *Products* is intended, it shall either be explicit, by the use of one of the three terms, or it may be implicitly deduced from the context of this Framework contract.

**“Quality indicators”:**

Measurable targets serving as a reference for evaluating the quality of the *Services* to be provided by the Contractor, and determined in the *Service level agreement*.

**“Services”:**

*Informatics and/or Telecommunications Services.*

**“Service level agreement”:**

Document annexed to the Framework contract, which lays down:

- the quality of the *Services* to be provided by the Contractor by reference to the *Quality indicators*;
- the penalties for total or partial non-performance which will apply to the Framework contract if he fails to meet the *Quality indicators*.

**“Software”:**

Any series of instructions constituting a computer-executable program or programs, and being (part of) the object of the Framework contract.

**“System”:**

Combination of *Products* serving a complete set of functions.

**“Telecommunications products”:**

All products and equipment related to the provision of *Telecommunications services*.

**“Telecommunications services”:**

All *Services* related to the transmission, emission or receipt of signs, signals, writings, images, sounds or data of whichever nature, whether enabled by wire or wireless means or by any other electromagnetic *System*, such as (but not limited to) training, consultancy, removal, installation, administration, management and maintenance, as further described in the Framework contract.

## **II.1.2. Termination of Information Technologies Contracts**

- II.1.2.1. If EMSA terminates the Framework contract pursuant to Article I.13 of the General Conditions and EMSA has been assigned the rights on *Commissioned Software* or has paid for maintenance of *Commissioned Software*, the Contractor shall:
- hand over (immediately and without charge) the source code, build procedures, other *Software* dependencies (e.g. libraries) the *Software* plans, the access keys and the *Documentation* required by EMSA for the proper operation of the *Software*, insofar as the Contractor has a legal right to do so;
  - expressly undertake not to use such developments in the future and to purge any copies of the same from his equipment;
  - undertake to keep every information in relation to the developed *Software* confidential even after the termination of the Framework contract.
- II.1.2.2. If the Framework contract concerns the provision of *Products* as well as maintenance *Services* relating to these *Products*, EMSA has the right, if the circumstances justifying termination only concern the provision of the *Products*, to terminate only the part of the Framework contract which concerns the provision of *Products*, while keeping the part of the Framework contract relating to the maintenance *Services* in force.
- II.1.2.3. In case of rental and leasing the Contractor shall remove the *Products* or *Systems* at its expense within the time agreed upon between the Parties. The withdrawal of a *Product* shall

be recorded in a withdrawal report quoting the Framework contract and Specific Contract concerned.

- II.1.2.4. The Contractor shall not provide any Products or Services if the Framework contract is not in force and if no Specific Contract has been entered into.

### **II.1.3. Formulation of Prices for IT *Products*, *Software* and *Services***

- II.1.3.1. In general, the Contractor agrees to let EMSA, as a most favoured partner, benefit from its most advantageous prices.

#### **II.1.3.2. *Products***

Contractual prices for purchase of *Products* shall be expressed per unit. The prices quoted shall include delivery, installation and assembly where applicable.

Rental of *Products* shall be distinguished from leasing by the fact that, in the former, the Framework contract shall not include any purchase value at the end of the rental period. In the case of leasing, the Framework contract shall lay down the price for the purchase option at the end of the leasing period.

Maintenance of *Products* shall be expressed as a percentage of the purchase price or as an absolute figure. It may vary in proportion to the level of service as defined in the Contract, which shall be specified in each Specific Contract.

#### **II.1.3.3. *Software***

The fees for the maintenance of *Software* are either expressed as a percentage of the licence fees or are calculated at a fixed price. Duration of the maintenance shall be specified in each price.

#### **II.1.3.4. *Services***

*Service* prices shall be defined at a fixed price or by *Person-day*, and shall include all general expenses and expenses directly connected with the provision of the *Services* such as company management costs, social security costs, travel and office expenses.

### **II.1.4. Official price lists**

- II.1.4.1. Upon signature of the Framework contract, the Contractor's *Official price list* is appended to the Contract as an Annex. The Contractor will use its best endeavours to supply an *Official price list* which only includes the Products which form the subject of the Framework contract. If the *Official Price list* also includes items other than such Products, then the Contractor agrees to indicate clearly and accurately, for example by highlighting the relevant items in the electronic version of the document, which subset of items of its *Official price list* correspond to the Products forming the subject of this Framework contract. If the Contractor fails to do so, he agrees that he cannot claim payment for, restitution of, nor damages for items delivered to EMSA outside the scope of the object of this Framework contract.

- II.1.4.2. The Contractor agrees to make an updated version of the *Official price list* available to EMSA at the frequency determined in the Special Conditions of the Framework contract.

- II.1.4.3. The updates of the *Official price list* will be made available to EMSA either, and by order of preference, for download by remote access to a website, to an FTP site, to an intranet site, in electronic format (e.g. by e-mail) or in hard copy (or e.g. on CD-ROM), as specified in the Special Conditions of the Framework contract. When it is therein agreed that such updates may be downloaded, then the Contractor shall precisely indicate the location of the download area (such as from an area on the Contractor's website, from an FTP site, etc.) and provide EMSA, by a *Means of communication*, with full and accurate instructions, including access codes, enabling it to perform such downloads. Should the *Official price list* be made available to EMSA by remote access, the Contractor must inform EMSA in advance by a *Means of communication* of the moment on which it will be made available on line.

- II.1.4.4. When the Official price list is treated as confidential information by the Contractor, the Contractor agrees to make the updates of the Official price list available to EMSA not later than on the day it is for the first time made available to any other customer of the Contractor. If not, EMSA may claim damages for total or partial non-performance.
- II.1.4.5. Once the update of the *Official price list* is made available to EMSA, EMSA must accept or refuse it within the time limit set forth in the Framework contract. Such acceptance or refusal will be communicated to the Contractor by a Means of communication. The Contractor agrees to provide the updates in a manner allowing an easy way of comparing the different versions of the Official price list.
- II.1.4.6. The Contractor agrees to make updates of the *Official price list* available to EMSA only when, considering the volumes of each Product already ordered by EMSA, the global average price for all the Products is lower than the preceding versions of the Official price list. Individual products prices already included in the list shall not be increased, unless otherwise agreed in the Framework contract. If this is not the case, EMSA may refuse to apply the proposed update. EMSA will then continue to benefit from the prices of the last accepted version of the Official price list.
- II.1.4.7. When EMSA's acceptance of the update of the Official price list has been communicated to the Contractor by a Means of communication the new prices will be immediately applicable to all orders placed by EMSA on and from the day following such a communication.
- II.1.4.8. The Constant discount rate(s) must be applied to clearly defined groups of Products and/or Services.
- II.1.4.9. The Constant discount(s) fixed in the Framework contract are applicable to all the accepted updates of the Official price list.
- II.1.4.10. The present Article does not prevent the Parties agreeing on a higher percentage for the Constant discount(s) by Amendment.

## **II.1.5. Particularities for Invoicing of Information Technologies Contracts**

- II.1.5.1. The invoices are to be sent to the address stated in Article 7 of the Special Conditions. The payment period shall not be binding on EMSA if any invoice is sent to a different address. An invoice should be submitted not later than six (6) months after delivery of the Consignment note, or, where applicable, the Certificate of Conformity. In accordance with Article I.5 of the General Conditions, the Contractor will be liable to liquidated damages in the case of invoices submitted out of time.
- II.1.5.2. *Products*

Purchases shall be invoiced when the relevant Consignment note, or, where applicable, the Certificate of Conformity has been signed.

Invoices in respect of rental, leasing and maintenance shall be submitted quarterly unless otherwise provided for in the Framework contract. The first invoice in respect of rented or leased Products shall cover the period from the date of signature of the Consignment note, or, where applicable, the Certificate of Conformity of the Products, or, as regards maintenance, from expiry of the guarantee, to the last day of the current calendar quarter.
- II.1.5.3. *Software*

One-off licence fees shall be invoiced when the relevant Consignment note, or, where applicable, the Certificate of Conformity has been signed.

Yearly licence fees and maintenance fees may be invoiced per calendar year and in advance for the whole year. The first invoice shall cover the period from the date of signature of the



Consignment note, or, where applicable, the Certificate of Conformity of the Software, or, as regards maintenance, from expiry of the guarantee, to the end of the current calendar year.

#### **II.1.5.4. Services**

Invoices in respect of Services consisting in a single performance, for example the provision of a report, a project or a training measure, shall be submitted in accordance with the terms of the Specific Contracts.

Invoices with respect of continuous Services shall be submitted at the end of the calendar quarter. The first invoice shall cover the period from the start date indicated in the Specific Contract until the end of the current calendar quarter. When the invoice relates to an amount of less than €25,000 payment shall be made when the service has been fully provided.

#### **II.1.6. Insurance of rented or leased equipment**

- II.1.6.1. The Contractor shall insure the Products rented or leased under this Framework contract from the Delivery date until the date the rental or lease have expired. EMSA shall in no case be considered responsible for any deterioration, destruction, theft or loss of any Products rented or leased by the Contractor under this Framework contract, unless the damage or loss is caused by a serious fault or serious negligence on the part of EMSA.

#### **II.1.7. Appendixes**

The following documents are attached to the General terms and conditions for Information Technologies Contracts and shall form an integral part of it:

Appendix I EMSA System and Application Technical Landscape

Appendix II Condition of Use for Remote Access

## **II.2. COMMON TECHNICAL PROVISIONS**

### **II.2.1. Quality and standards**

- II.2.1.1. The Contractor shall perform the *Services* and provide the *Products* in full knowledge and consideration of EMSA's computing environment. It shall perform it in accordance with technical norms, standards and procedures based on best professional practice in the informatics and/or telecommunications field, for instance the ISO 9000 standards.
- II.2.1.2. EMSA shall supply, without delay, all the assistance, data and information for providing its *Products* and *Services*.
- II.2.1.3. EMSA and the Contractor shall notify each other by a *Means of communication* of any factor likely to impair or delay the proper execution of the Framework contract.
- II.2.1.4. The Contractor guarantees that *Software* delivered under this Framework contract, whether or not developed in execution of this Framework contract, will not fail to execute its programming instructions due to defects and workmanship when properly installed and used on the device designated by the Contractor. It shall be devoid of any deliberate mechanism which leaves it under the Contractor's control after supply to EMSA. It shall meet the operating requirements, specifications and characteristics specified in the Contractor's documents or laid down in the Framework contract.
- II.2.1.5. The quality of the Contractor's *Products* and *Services* shall be measured by reference to the definitions, quality standards and procedures defined in the present General terms and conditions for Information Technologies Contracts, Framework contract or the Specific Contract, and by reference to the *Quality indicators* defined in the *Service level agreement*. Quality standards may be revised in line with developments on the market.
- II.2.1.6. The Contractor undertakes to comply with those quality standards. Compliance with the standards shall be monitored by EMSA. Unless otherwise stated in the Framework contract, in accordance with Article I.2 of the General Conditions, in the event of non-compliance with one or more of the standards over a sliding period of three (3) months, the Contractor shall submit an improvement plan. In the event of non-compliance with one or more of the standards for three (3) months, consecutive or not, over a sliding period of six (6) months, a Product whose quality has proved substandard may be withdrawn from the Framework contract, or the Contract may be terminated where the overall quality of the *Services* is substandard.
- II.2.1.7. *Stand-by System* (outside the *guarantee* period)  
Unless otherwise stated in the Framework contract, in the event of a complete *System* failure lasting more than twenty-four (24) hours from the time it is notified by a *Means of communication* to the Contractor, or in the event of intermittent failures lasting more than forty-eight (48) hours for any reason whatsoever, the Contractor shall, upon a duly substantiated request, make available to EMSA within twenty-four (24) hours at the most, an equivalent *System* or the necessary *hardware* and *software* enabling EMSA to run its applications in the interim. The cost of such equivalent material shall be charged to the Contractor. If the Contractor can demonstrate that the failure is not attributable to it, it may charge the cost to EMSA at the rates shown in the Annexes.

### **II.2.2. Security**

- II.2.2.1. Contractors working in EMSA premises must conform to any internal EMSA security rules. If the Contractor's staff are working in EMSA buildings, the Contractor is required, at EMSA's request, to replace immediately and without compensation any person considered undesirable by EMSA.

- II.2.2.2. The security requirements for each individual project shall be described in the Specific Contracts.
- II.2.2.3. The Contractor agrees to impose the security obligations of this Article upon any of its subcontractors and their staff who perform tasks for EMSA in execution of this Framework contract.
- II.2.2.4. The Contractor recognises that no *Products*, equipment or material whatsoever owned by EMSA or present at EMSA's premises, may be moved or removed without EMSA's express written approval and the signature of a Specific Contract relating thereto. Each move or removal of a *Product*, equipment or material whatsoever, shall be recorded in a note, as specified in the Specific Contract in execution of which these *Products*, equipment's or materials are moved or removed.
- II.2.2.5. The Contractor shall take all appropriate steps for each *Product* to ensure that the data and the magnetic media upon which they are stored are safely preserved. The *Products* supplied shall not contain any mechanism (e.g. viruses) which could compromise their proper operation or that of other *Products*. The cost of repairing the damage caused by such a mechanism shall be borne by the Contractor.
- II.2.2.6. The Contractor undertakes to inform EMSA by a *Means of registered communication* as soon as it has any knowledge of defaults in its *Products* that endanger the security of the configurations of which they form a part. It shall immediately take any measures necessary to restore the security of the configurations and correct the defaults.
- II.2.2.7. The Contractor shall ensure that all security precautions for each *Product* are clearly spelled out in the relevant *Documentation* supplied to EMSA.
- II.2.2.8. Should the Contractor, during the performance of the tasks which are the subject of the Framework contract, need remote access to internal informatics resources from the external domain, he shall be requested to comply with EMSA's internal rules on practical and technical security for remote intervention. This must be achieved by way of accepting in writing the conditions of use for remote intervention provided by EMSA.

### **II.2.3. Specific *Intellectual property rights***

- II.2.3.1. As regards all *Software* or other protected material for which the *Intellectual property rights* are the property of EMSA or which have been licensed to EMSA by third Parties, and which the Contractor is likely to use in the execution of its obligations under this Framework contract, EMSA expressly authorises the Contractor to use such *Software* or other protected material, within the limits strictly necessary for the execution of this Framework contract.

In view of the preceding paragraph, the Contractor undertakes:

- not to copy any such *Software* or other protected material without prior written authorisation from EMSA;
  - to use such *Software* or other protected material exclusively in the context of this Framework contract;
  - to protect and indemnify EMSA against all third-party claims or actions alleging a breach of their *Intellectual property rights*, or a use of such *Software* or other protected material in contravention with the present Article.
- II.2.3.2. Pursuant to Article I.18 of the General Conditions and as regards the results or rights obtained in performance of the Framework contract, the Contractor undertakes to obtain written consent from EMSA prior to:
- filing a trademark, patent or design application in relation with any of the results or rights obtained in performance of the Framework contract in his own name or that of a third party;
  - claiming a copyright over the results or rights obtained in performance of the Framework contract in his own name or of that of a third party;
  - allowing a third party to do such filings or claims.

Failure to obtain permission from EMSA will entitle EMSA to seek damages against the Contractor and will not prevent EMSA from protecting the rights assigned under the Framework contract.

- II.2.3.3. The Contractor declares that it is the rightful owner of the *Intellectual property rights* to all *Products* and/or their components delivered under this Framework contract, and that it is entitled to assign or licence those rights in accordance with the terms of this Framework contract. If those *Intellectual property rights* are the property of third Parties, the Contractor guarantees that it has requested and obtained those third Parties' written authorisation to grant to EMSA the assignment or licence of their *Intellectual property rights* to the extent as provided under this Framework contract. The Contractor shall be solely responsible for taking the necessary steps, under the laws and regulations in force to ensure the opposability to third Parties of the assignments or licences granted to EMSA by the Contractor or by such third Parties.
- II.2.3.4. The Contractor guarantees that none of the *Products*, *Documentation* or other protected material delivered, whether or not developed in execution of this Framework contract, infringes any third party's *Intellectual property rights*.
- II.2.3.5. Each party shall inform the other party of the existence or threat of any third party's action or claim alleging an infringement of its *Intellectual property rights* by EMSA's use of any *Products*, *Documentation* or other protected material delivered under this Framework contract, provided such use is made in conformity with the terms of this Framework contract.
- II.2.3.6. In the event of such a dispute or threat thereof, the Contractor undertakes to conduct all litigation, arbitration or negotiations for settlement, in its own name as well as in EMSA's name, at its own and sole expense.

EMSA agrees to provide the Contractor with all information and assistance that may reasonably be required, at the Contractor's own and sole expense.

However, EMSA reserves the right to decide to conduct its own defence or to negotiate its own settlement, at its own discretion. The Contractor will be responsible for any payment arising out of any settlement or judgement following such a dispute or threat, except for the payment of a settlement made by EMSA without the Contractor's written consent. Such consent may not be withheld without reasonable grounds.

If the infringement of a third party's *Intellectual property right* on a *Product* and its *Documentation* is declared in a judgement, arbitration sentence or party settlement, or if such is likely to happen, the Contractor agrees to (1) or procure for EMSA the right to continue using the *Product* and its *Documentation*, (2) either replace them with substantially equivalent non-infringing *Products*, or, if none of the foregoing is available, (3) grant to EMSA a credit in the amount corresponding to the purchase price of the proportion of the *Product* which can no longer be used.

The Contractor will not be responsible under the present guarantee for any third party claiming an infringement of its *Intellectual property rights* based on (1) EMSA's use of *Products* in combination with equipment not delivered by the Contractor, if such combined use is the cause of the claimed infringement, or (2) EMSA's use of any *Product* and *Documentation* delivered hereunder in a form other than the one delivered by the Contractor, if such change in form is the cause of the claimed infringement.

- II.2.3.7. The guarantee against third party claims is due by the Contractor until five (5) years following the end of the Framework contract, or until five (5) years following the last use by EMSA of the *Product* and its *Documentation* delivered by the Contractor, whichever period ends last.

#### **II.2.4. Co-operation**

- II.2.4.1. The Contractor undertakes to develop and install the *Products* and provide the *Informatics Services* in accordance with the document: EMSA System and Application Technical Landscape. The Contractor agrees to co-operate with other suppliers to make the *Products* work with those of these other suppliers. It agrees to attend meetings called for that purpose by EMSA.
- II.2.4.2. The Contractor shall assist and advise EMSA on the use of its *Products* and *Services*. It shall be responsible for *Product* integration as regards its inclusion in the Framework contract, its operation in EMSA's environment and the introduction of *New versions*.

#### **II.2.5. Product developments**

- II.2.5.1. Any *Product* delivered under this Framework contract shall have been demonstrated by the Contractor, at its expense, to conform to the technical specifications sent to the Contractor as part of the invitation to tender or the negotiation pursuant to which the present Framework contract has been drawn up.
- II.2.5.2. Any *Product* capable of replacing a previously approved *Product* in the same operational environment, with no loss of performance and at no extra cost to EMSA, may be added to the relevant Annexes of the Framework contract.
- II.2.5.3. Proposals to include new *Products* involving new features or functions not previously available amongst the *Product* listed in the Framework contract's Annexes, shall only be considered in the context of the principal *Product* classifications and specifications covered by the call for tenders referred to in the preamble of the Framework contract.
- II.2.5.4. Even if a *Product* is approved by EMSA, any incompatibility with Tender Specifications and/or Service Level Agreement that becomes apparent in the course of its use shall be resolved by the Contractor as swiftly as possible and at no cost to EMSA.
- II.2.5.5. Evaluation procedures and trials of new products before inclusion in the price list may be specifically defined in the Framework contract.

#### **II.2.6. Product life**

- II.2.6.1. The Contractor shall ensure that the *Product*, or replacing *Product*, are marketed or available during the lifetime of the Framework contract from the date of their inclusion in the relevant Annex of the Framework contract.
- II.2.6.2. The Contractor shall ensure that maintenance of the *Product* delivered under this Framework contract may be requested and provided for a period of at least five (5) years from the date of signature of their *Consignment note*, or, where applicable, of their *Certificate of Conformity*, whichever is the latest.

#### **II.2.7. Use of Products**

- II.2.7.1. From the date of signature of the *Consignment note*, or, if applicable, of the *Certificate of Conformity*, whichever is the latest, EMSA may make unrestricted use of the *Products* under normal operating conditions. EMSA may use the *Products* for *Services* it is carrying out for other Institutions, Agencies or Bodies. If the *Products* are rented or leased, the right of use applies for the duration specified in the Specific Contract. If a guarantee applies, maintenance may not start until the guarantee has expired.
- II.2.7.2. The Contractor must ensure that EMSA may add to a *System* or connect to it, either directly or via telecommunications networks, compatible *Products* of any origin.

II.2.7.3. The Contractor shall not exert any right of inspection over EMSA's use of the *Products*.

#### **II.2.8. Documentation**

*The Contractor shall provide EMSA with its Documentation and updates, in as many copies, whether in machine-readable form or on paper, as are stated in the Framework contract or a Specific Contract.*

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

#### **II.2.9. Identifiers**

EMSA may decide to assign an identifier to a unit of a delivered *Product*. In such case, the Contractor commits itself to using an identifier for every unit of a *Hardware* or *Telecommunications Product* delivered to EMSA. This identifier is communicated to the Contractor by EMSA when the *Consignment note*, or, if applicable, the *Certificate of Conformity* for such unit has been signed. The identifier(s) shall be given in electronic file(s) in such manner as shall have been agreed by both Parties. The Contractor's original identifier mentioned in its delivery documents is associated with EMSA's identifier. After that, only EMSA's identifier is to be used in all instances when the Contractor refers to the unit in question (for example in all operations relating to the service desk, invoicing of maintenance, technical intervention, etc.).

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

### **II.3.1. Additional specifications for *Hardware Delivery***

#### **II.3.1.1. Terms**

All *Complex hardware products* shall be tested by the Contractor before their delivery. The Contractor shall be able to demonstrate that the pre-delivery test was satisfactory if EMSA so requests.

The number of copies of *Documentation* to be supplied shall be specified in the Specific Contract, but must be at least equal to one (1) copy per unit of *Complex hardware product*.

The Contractor shall notify EMSA by a *Means of communication* of its packaging terms at least two (2) weeks prior to the *Delivery date*. The Contractor shall remove all packaging material used during delivery.

The height of the Contractor's delivery vans may not exceed 2m and only "EURO"-type pallets shall be used. If the product is to be placed on pallets different than "EURO" type, or be delivered by a higher vehicle it has to be agreed with EMSA in advance.

#### **II.3.1.2. Dates**

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

Failure regarding the *Delivery date* is considered as damage to EMSA as defined in Article I.5 of the General Conditions.

Should the Contractor be unable to deliver on the specified *Delivery date*, it must then supply an equivalent *Complex hardware product* or *System* with EMSA's prior consent.

Where EMSA has incurred costs vis-à-vis a third party by reason of a delay in delivery or commissioning attributable to the Contractor, then the Contractor shall reimburse those costs upon production of supporting documents, provided that EMSA has notified the Contractor by a *Means of communication* of the risk of incurring damages due to the late delivery soon after having been informed of the Contractor's inability to deliver on time.

If a *Delivery date* is overrun by more than forty-five (45) calendar days, EMSA is entitled to immediately terminate the Specific Contract in question.

#### **II.3.1.3. Procedure**

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

EMSA shall, during *Normal working days* and *hours*, provide access to its premises for delivery on the notified *Delivery date*. Delivery and installation costs shall be borne by the Contractor. Deliveries shall be complete.

Receipt of each delivery of *Products* shall be recorded in a *Consignment note* signed by EMSA as stated in Article I.1. of the General Conditions (including the balance to be delivered for each *Product*)

## **II.3.2. Product installation**

### **II.3.2.1. Installation requirements**

For each *Product* listed in the Annexes of the Framework contract, the Contractor shall specify by a *Means of communication* the technical installation requirements and any refurbishment necessary for the premises intended to house the *Products*.

EMSA shall ensure that from then onwards the premises where the *Products* are installed satisfy the conditions set out by the Contractor regarding access, air-conditioning and electric power supplies and are equipped with the necessary data transmission lines.

EMSA shall grant the Contractor access to its premises for the assembly of *Complex hardware products* on the *Installation date*, which must be duly notified by the Contractor with a *Means of registered communication* within five (5) *Normal working days* upon EMSA's notification referred to in the last paragraph of Article II.3.2.2.

### **II.3.2.2. Procedure**

#### **– Pre-installation meeting**

A pre-installation meeting may be organised. A technical representative of the Contractor will be available for each *Specific Contract* for a pre-installation meeting organised on EMSA's premises. The purpose of this meeting is to review practical issues related to installation of the *Products* covered in the relevant *Specific Contract*. The minutes of each pre-installation meeting should be drafted after the pre-installation meeting by the Contractor, unless otherwise agreed in this meeting.

#### **– Installation**

Installation will be done in conformity with the relative *Specific Contract* and/or *Service Level agreement* and with the minutes of the pre-installation meeting and in accordance the methodology agreed in the pre-installation meeting if appropriate.

If the place of delivery is not the place of installation, EMSA shall arrange for *Products* to be moved at its own risk from the place of delivery to the place of installation within fifteen (15) *Normal working days* from the day of signature of the *Consignment note* and undertakes to notify the Contractor of the place of the move by a *Means of communication* within five (5) *Normal working days* upon successful move of the *Products* to the installation site.

## **II.3.3. Acceptance**

### **II.3.3.1. The Commissioning date**

The assembly of *Complex hardware products* and the bringing into service of a *System* shall be executed by the Contractor at its own expense, unless otherwise agreed in the Framework contract.

A *Complex hardware product* or *System* shall be assembled, installed, and brought into service no later than fifteen (15) *Normal working days* after the date of notification by EMSA of its removal to the installation site unless another time limit is laid down in the *Specific Contract*.

Upon successful installation, the Contractor shall notify EMSA by a *Means of communication* of the date on which the *Complex hardware product* or *System* has been brought into service, which date will be the *Commissioning date* for this particular *Product* or *System*.

### **II.3.3.2. The acceptance period**

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



During this acceptance period, EMSA shall notify any defaults in the *Complex hardware product* or *System* to the Contractor by a *Means of communication*. As from the date of such notification, the running of the acceptance period will be suspended up to the date on which the Contractor notifies by a *Means of communication* that it has remedied the notified default, this date will reinitiate the acceptance period for the rest of the seventy-five (75) *Normal working days* period, with a guaranteed minimum period of twenty-five (25) *Normal working days* after the last notification by the Contractor that it has remedied a default.

Upon the expiry of the acceptance period, acceptance of a *Product* will be recorded in a *Certificate of Conformity*, as stated in Article I.1 of the General Conditions that shall indicate inter alia the detailed nature of the accepted *Complex hardware products* and the reference number of this Framework contract and of the Specific Contract concerned.

If no *Certificate of Conformity* has been issued at the end of the acceptance period and if no notification of faulty operation is pending, EMSA is considered as having accepted the *Complex hardware product*.

#### II.3.3.3. Termination

If, due to faulty operation by the Contractor, acceptance cannot be completed within a maximal time limit of hundred and fifty (150) calendar days from the *Commissioning date*, unless a different time limit has been specified by Specific Contract, EMSA shall be entitled to terminate the Specific Contract after giving the Contractor a thirty (30) calendar days' notice by a *Means of communication* to meet its obligations. This provision is without prejudice to EMSA's other rights under Article I.13.4 of the General Conditions.

#### II.3.4. Guarantee specifications for *Complex hardware products*

The Contractor shall guarantee all goods delivered in conformity with Article I.1 of the General Conditions. During the two years guarantee period stated in Article I.1 of the General Conditions the Contractor shall provide *maintenance* at its own and sole expense.

The guarantee period shall be automatically extended by the total duration of stoppages attributable to the Contractor during that period, as recorded under the maintenance procedures. For this purpose only stoppages lasting eight (8) consecutive *Normal working hours* or more shall be counted. One day's extension therefore corresponds to a stoppage of eight (8) consecutive *Normal working hours*, which may be interrupted by a period of hours not defined as *Normal working hours*.

If failures during the guarantee period are such as to make a *Product* unusable for an uninterrupted period of more than one (1) calendar week, EMSA shall be entitled to have the *Complex hardware product* replaced free of charge by the Contractor.

If the aggregate unavailability of a *Product* during *Normal working hours* exceeds forty-eight (48) hours, EMSA is entitled to terminate the part of the Specific Contract relating to that *Product*.

#### II.3.5. Leasing and Rental formula

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

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

- 3.5.2. Determination of the periodic rental/leasing to be paid  $n$  times at the

beginning of each period for an investment of PV with a residual value FV at the end of the n periods.

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

- 3.5.3. Determination of the periodic rental to be paid n times at the end of each period for an investment of PV with no residual value FV at the end of the n periods.

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

- 3.5.4. Determination of the periodic rental to be paid n times at the end of each period for an investment of PV with a residual value FV at the end of the n periods.

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

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

- II.3.5.5. Determination of the interest rate applicable for a term smaller than one year. For the calculation of the periodic interest rate applicable for a term smaller than one year, the formula is as follows:
- II.3.5.6. Determination of the residual value. The residual value to be used for the sole purpose of computing a rental is given for the different horizons:

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

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

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

**II.3.7. Withdrawal of rented or leased *Complex hardware products***

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

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

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

#### **II.4.1.1 Configuration**

In respect of each order

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

#### **II.4.1.2. Delivery**

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

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

A failure regarding the *Delivery date* is considered as damage to EMSA as defined in Article I.5 of the General Conditions.

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

At the time of delivery, the incoming *Products* may be subject to quantitative and qualitative checks by EMSA within five (5) working days. The receipt of each delivery of *Products* shall be then recorded in a *Consignment note* signed by EMSA. Such *Consignment note* will be established as stated in Article I.1 of the General Conditions.

If no *Certificate of Conformity* has been issued at the end of the one month acceptance period stated in Article I.1 of the General Conditions and if no notification of faulty operation is pending, EMSA is considered as having accepted the other than *Complex hardware product*. Unless expressly requested by EMSA, partial delivery of an item of a Specific Contract is not allowed.

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

The Contractor shall guarantee all goods delivered in accordance with Article I.1 of the General Conditions.

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

During the two year guarantee period stated in Article I.1 of the General Conditions, the Contractor shall provide maintenance at its own and sole expense.

**II.4.3. Leasing and Rental formula**

See II.3.5 above

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

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

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

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

## **II.5. SPECIFIC PROVISIONS RELATING TO LICENSED SOFTWARE**

### **II.5.1. Delivery - installation - *Documentation***

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

A failure concerning the *Delivery date* is considered as a damage to EMSA, as defined in Article I.5 of the General Conditions. EMSA may decide to claim the payment of damages, under the provision stated in the Framework contract.

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

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

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

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

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

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

- II.5.1.6. If no *Certificate of Conformity* has been issued at the end of the one month acceptance period stated in Article I.1 of the General Conditions and, if no notification of faulty operation is pending, EMSA is considered as having accepted the *Software*.

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

### **II. 5.2. Trial - acceptance**

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

Framework contract or by Specific Contract.

- II.5.2.2. The trial period shall begin on the day of the installation of the *Software* by the Contractor on the appropriate *hardware* equipment, or if EMSA does not require installation of the *Software* by the Contractor, fifteen (15) calendar days after signature of the *Consignment note*.
- II.5.2.3. At the end of the trial period, acceptance of the *Software* shall only result from the signature, by both Parties, of the *Certificate of Conformity* as stated in Article I.1. of the General Conditions.
- II.5.2.4. At any moment during the trial period, EMSA may terminate the testing licence upon notification by a *Means of communication* with immediate effect if the *Software* does not perform and conform to its description, its specifications or its *Documentation*. Additional acquisitions of *Software* already tested by EMSA shall be accepted by signature of the *Consignment note*.

### **II.5.3. Guarantee specifications for *Software***

- II.5.3.1. The Contractor shall guarantee all goods delivered in conformity with Article I.1. of the General Conditions.
- II.5.3.2. The Contractor warrants that:
  - (1) the *Software* is in conformity with the *Documentation* supplied;
  - (2) the *Software* is capable of performing the functions described in the aforementioned *Documentation* and conform to the specifications described in the Framework contract or Specific Contract under consideration.
- II.5.3.3. The Contractor does not warrant that the *Software* will enable EMSA to achieve its target aims, productivity levels or time savings.
- II.5.3.4. Guarantee period

During the two-year guarantee period stated in Article I.1. of the General Conditions, the Contractor shall provide maintenance at its own and sole expense.

### **II.5.4. Use**

- II.5.4.1. The Contractor hereby grants, and EMSA accepts, a non- exclusive licence to use the *Software*, under the conditions set hereunder.
- II.5.4.2. EMSA may acquire "floating licences" for use by external, service-providing companies working under contract on projects for EMSA. At the end of the project, EMSA shall reclaim these licences and may either add them to the existing licence scheme or reallocate them to another company.
- II.5.4.3. EMSA undertakes not to reproduce the *Software* in part or in whole, except for the purposes of back-ups and archives, and after taking all the necessary precautions.
- II.5.4.4. The Parties may by Framework contract agree that the licence be an exclusive licence for EMSA to use the *Software*.
- II.5.4.5. For the purpose of this Article II.5.4., the *Software* shall be read as including its *Documentation*.

#### **II.5.5.      *Compatibility***

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

#### **II.5.6.      *Intellectual property rights concerning Software — confidentiality***

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

II.5.6.2.      EMSA undertakes:

- (1) to take all measures necessary vis-à-vis its end user personnel and persons having access to the *Software* and its *Documentation*, to ensure that the confidentiality of the *Software* is observed;
- (2) not to pledge, assign, sub-license, transfer or lend, for payment or otherwise, the *Software* and its *Documentation* except in the manner set out under Article II.5.4;
- (3) to inform the Contractor immediately in the event of seizure, to protest against it and to take all necessary steps in order to safeguard the integrity of the Contractor's *Intellectual property rights*.

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

#### **II.5.7.      *Escrow rider***

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

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

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

II.5.7.4.      The Contractor may propose to apply or to enter into a two-party escrow agreement with a third



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

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

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

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

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

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

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

## **II.6 SPECIFIC PROVISIONS RELATING TO *HARDWARE* AND *SOFTWARE* MAINTENANCE**

### **II.6.1. Common provisions**

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

### **II.6.2. One –shot repair of *Hardware***

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

### **II.6.3. Maintenance**

#### **II.6.3.1. Terms**

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

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

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

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

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

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

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

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

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

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

#### II.6.3.2. *Hardware*

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

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

- (1) diagnosing the cause of failures affecting *Products* or *Systems*, whether they are due to its *Products* or not;
- (2) correcting faults as rapidly as possible;
- (3) replacing components, printed circuits and electronic units that prove defective in the course of normal use, and effecting any alterations deemed necessary by it to improve operation of the *Systems*;
- (4) acting as the link with its own central maintenance departments;
- (5) reprogramming or replacing *Software* in the event of error;
- (6) providing "hot-line" support to resolve urgent problems and *System* failures;
- (7) providing drivers for correct function of *Hardware products*. Maintenance shall not include the complete repair of all or part of any *Hardware products* that are no longer functional as a result of everyday wear and tear. If EMSA decides not to carry out the restoration proposed by the Contractor, the *Hardware products* in question will be withdrawn from the Framework contract.

#### II.6.3.3. *Software*

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

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

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

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

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

II.6.3.5. Responsibility for diagnosis

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

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

II.6.3.7. Technical modifications by the Contractor

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

II.6.3.8. Equipment

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

## **II.7. SPECIFIC PROVISIONS RELATING TO ALL *INFORMATICS SERVICES***

### **II.7.1. Types of *Services***

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

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

Training shall be provided at the sites of EMSA in Lisbon, unless otherwise specified. Training shall be addressed to users of the *Product* and to the technicians responsible for support within EMSA. The number of participants for each course shall be determined by mutual agreement between the Parties at the time of signature of the Specific Contract. Training and course materials must be available English.

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

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

Consultancy *Informatics Services* consist of transmitting know-how for the use of the *Products* covered by the Framework contract. They shall be provided in Lisbon unless otherwise specified.

II.7.1.4. Technical *Documentation* of the *Products*

These *Informatics Services* shall relate to the drafting of any technical *Documentation* in relation to the *Products* covered by the Framework contract.

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

II.7.1.5. Integration work

This type of service not being covered by maintenance Specific Contract aims at ensuring the correct operation of the Contractor's *Products* in an evolving multi-manufacturer environment. *Informatics Services* are performed on the basis of integration specifications communicated by EMSA. They may be provided on site in Lisbon unless otherwise specified.

II.7.1.6. Informatics engineering and maintenance

Informatics engineering consists of building and implementing projects of data-processing infrastructure (*system software*, telecommunications networks etc.) and maintenance on the basis of specifications provided by EMSA. Work shall be provided on site in Lisbon unless otherwise specified.

II.7.1.7. *Software* development, maintenance and related activities

This consists of *Software* development, maintenance and related activities (e.g. studies, consultancy, *Documentation*, quality assurance etc.) using the standard EMSA System and Application Technical Landscape, on the basis of specifications provided by EMSA. Details of work to be carried out will form part of the Specific Contract. Work shall be provided on site in Lisbon unless otherwise specified.

#### II.7.1.8. Removals

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

### II.7.2. Time-and-means Contracts

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

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

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

### II.7.3. Quoted time-and-means Contracts

II.7.3.1. The "Quoted Time & Means" method may be used for service providers outside EMSA premises.

II.7.3.2. For Quoted Time & Means projects, the work will be ordered for a total number of days and will be divided into various sub-tasks (or "quoted time & means").

II.7.3.3. EMSA will provide the Contractor with a detailed description of each sub-task. The Contractor will then send EMSA an estimate of the number of days needed to carry out the sub-task and the expected *Delivery date*.

II.7.3.4. Once the estimate has been accepted by EMSA, only the number of days indicated in the estimate will be chargeable.

II.7.3.5. The invoicing, approved by EMSA, will be carried out on the basis of each sub-task accepted and signed for by EMSA using a specific form.

### II.7.4. Fixed-price Contracts

II.7.4.1. *Informatics Services* shall be provided at a fixed price when the Parties agree in the Specific

Contract that an overall sum, which must be justified using the agreed daily rates in the Framework contract, is to be paid following express acceptance of the work by EMSA.

II.7.4.2. The work shall be undertaken by the Contractor in accordance with the specifications set out in the Specific Contract. The specifications shall comprise in particular a description of the work, the timetable, reports, standards, reference manuals and details of the results and deliverables required.

II.7.4.3. Each result and deliverable shall be subject to acceptance by EMSA, in order to ensure conformity with the specifications. The acceptance period will run up to a maximum of seventy-five (75) *Normal working days* from the day of signature of a *Consignment note*. During this acceptance period, EMSA may notify any defaults in the result or deliverable to the Contractor by a *Means of communication*. As from the date of such notification, the running of the acceptance period will be suspended up to the date on which the Contractor notifies by a *Means of communication* that it has remedied the notified default, which date will reinitiate the acceptance period for the rest of the seventy-five (75) *Normal working days* period, with a guaranteed minimum period of twenty-five (25) *Normal working days* after the last notification by the Contractor that it has remedied a default. Upon successful expiration of the acceptance period, EMSA will sign a *Certificate of Conformity* as stated in Article I.1 of the General Conditions for each delivered result or deliverable. If no *Certificate of Conformity* has been issued at the end of the acceptance period and no default is pending, EMSA is considered as having accepted.

#### **II.7.5. Stability of Services**

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

II.7.5.2. In accordance with Article I.2 of the General Conditions, throughout the term of the Framework contract the Contractor shall ensure that a stable service is maintained as required for the proper implementation of the Specific Contracts.

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

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

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

#### **II.7.6. Timetable**

II.7.6.1. The timetable for the performance of the *Informatics Services* shall be laid down in each Specific Contract.

II.7.6.2. The Contractor shall propose a full and detailed timetable for *Software* development or

related tasks. If such a timetable cannot be prepared for projects of longer duration, the Parties shall first fix a provisional timetable. The final timetable shall be fixed at a date stated in the Specific Contract.

- II.7.6.3. The time needed by the Contractor to install and prepare *Software* or a *System* for operation shall be stated in the Specific Contract. If no time is specified, the period shall be fifteen (15) calendar days.

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

### **II.8.1. Compliance with technical specifications**

When providing *Services* of development or maintenance of *Commissioned software* to EMSA, the Contractor undertakes, in addition to the general quality requirements as specified in the Framework contract, to observe inter alia the latest version of EMSA's document: EMSA System and Application Technical Landscape.

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



## **II.8.2. Acceptance**

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

II.8.2.2. Delivery of the *Commissioned software*, or as the case may be, its different versions, shall be recorded in a *Consignment note* in accordance with Article I.1 of the General Conditions, presented by the Contractor for signature by EMSA.

II.8.2.3. Acceptance period

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

II.8.2.4. The *Certificate of Conformity*

Upon the expiry of the acceptance period, acceptance of the *Commissioned software* will be recorded in a *Certificate of Conformity*, as stated in Article I.1 of the General Conditions, which shall indicate inter alia any reservations EMSA may have regarding the *Commissioned software*. If no *Certificate of Conformity* has been issued at the end of the acceptance period and, if no notification of faulty operation is pending, EMSA is considered as having accepted the *Software*.

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

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

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

## **II.8.3. Guarantee of proper operation of *Commissioned software***

II.8.3.1. Except in the case of hidden defects, for which its liability shall be of unlimited duration, the Contractor shall guarantee the proper operation of *Commissioned software* in conformity with Article I.1 of the General Conditions. It shall be held responsible for the immediate repair, at its own expense, of any breakdowns that occur during the guarantee period, unless it can prove that such breakdowns have occurred for reasons other than mistakes made in performance of

the service, or other than manufacturing or design errors in that portion of the work for which it was responsible.

- II.8.3.2. EMSA shall notify by a *Means of communication* the Contractor of the type and scale of any failure as soon as it occurs. If the Contractor does not repair the *Commissioned software* without delay, EMSA may have it repaired by a third party, on the responsibility and at the own and sole expense of the Contractor.
- II.8.3.3. The Parties shall jointly define and duly record in minutes the major problems that might affect the *Commissioned software*.
- II.8.3.4. The duration of the guarantee shall be extended by the period which elapses between the notification of a major problem to the Contractor duly sent by EMSA during the stated guarantee period and the date at which EMSA accepts the corrected work.

#### **II.8.4. *Intellectual property rights and ownership of source code***

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

#### **II.8.5. *User manuals and Documentation***

- II.8.5.1. The Contractor shall prepare the manuals and *Documentation* needed for the appropriate and proper operation of the *Commissioned software* and shall make them available to EMSA. It shall comply with the provisions under Article II.10 in preparing such manuals and *Documentation*.
- II.8.5.2. The material shall as a rule comprise:
  - (1) an installation manual;
  - (2) a "Getting Started" manual;
  - (3) an administration, operation and maintenance manual;
  - (4) a user manual;
  - (5) implementation *Documentation*.
- II.8.5.3. The manuals and the *Documentation* shall be in the file format of a word processing *Software* used by EMSA and prepared so that they may be published on EMSA's intranet.
- II.8.5.4. The user manuals and the *Documentation* shall be supplied in English, unless otherwise agreed.

- II.8.5.5. The Contractor shall update and, if necessary, replace the user manuals and *Documentation* files for the maximum length of the Framework contract.

**II.8.6. Interfaces and *Compatibility***

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

## **II.9. SPECIFIC PROVISIONS RELATING TO TRAINING ORGANISED FOR EMSA**

### **II.9.1. Instructors**

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

### **II.9.2. Organisation of courses**

- II.9.2.1. The Parties shall draw up a schedule of courses and preparatory measures for a period of several months, normally six (6) months. The schedule shall outline the content of the courses and measures their duration, the dates on which they are to take place, the intended instructors, the number of participants, and the cost.
- II.9.2.2. The Parties shall make a final decision on all the data no later than four (4) weeks prior to the date on which training is to take place. The Contractor shall then specify, at the latest, the timetables for the courses and undertakes to adhere to it. If the schedule is disrupted by one or other party, that party shall endeavour to find an equivalent solution.
- II.9.2.3. When an instructor is not available, a course may be cancelled or postponed no later than ten working days prior to its commencement. If three courses have been cancelled or postponed without meeting these conditions, EMSA shall be entitled to terminate the Framework contract pursuant to the provisions under Article I.13 of the General Conditions

### **II.9.3. Instructor's manual Article**

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

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

### **II.9.4. Provision of training Software**

- II.9.4.1. Training *Software* that has been developed specifically for EMSA shall be owned in full by EMSA.
- II.9.4.2. The provision of training software shall be covered by a site licence, whose terms shall be consistent with the nature and subject of the training.

**II.10. SPECIFIC PROVISIONS RELATING TO *DOCUMENTATION* PRODUCED FOR EMSA**

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