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|  | **Council of the European Union**  General Secretariat |
|  | | |

**DRAFT**

**FRAMEWORK CONTRACT FOR SERVICES**B-Brussels:  
 Full-service maintenance, breakdown servicing and repair of equipment used for cleaning the façades of the Justus Lipsius building (Lot 1), the Lex building (Lot 2) and the buildings of the Committees (Economic and Social Committee and Committee of the Regions) (Lot 3)

Contract Number: 028/16  
Internal Number: 1600000XXX

General Secretariat of the Council

1. The European Union ('the Union'), represented by the General Secretariat of the Council ('the Lead Contracting Authority') and the following contracting authorities: the European Economic and Social Committee and the Committee of the Regions (collectively 'the Contracting Authority', represented for the purposes of signing this framework contract by Mrs Kristin VAN HOOLST, Director of DGA 2B,

on the one part and

2. [*Full official name*]

[*Official legal form*]

**[***Statutory registration number or ID or passport number***]**

[*Full official address*]

[*VAT registration number*]

('the Contractor'), represented for the purposes of signing this framework contract by [*forename, surname and position of legal representative and name of company in the case of a joint tender*],

on the other part,

HAVE AGREED

to the **special conditions,** the **general conditions for framework contracts** for services and the following annexes:

**Annex I:** Tender Specifications (Functional and Technical Specifications)

**Annex II:** Prices and Financial Conditions

**Annex III:** Model for Purchase Orders

**Annex IV:** Security Measures

which form an integral part of this framework contract ('the FWC').

This FWC sets out:

1. the procedure by which the Contracting Authority may order services from the Contractor;
2. the provisions that apply to any Purchase Order which the Contracting Authority and the Contractor may conclude under this FWC; and
3. the obligations of the parties during and after the duration of this FWC.

All documents issued by the Contractor (end-user agreements, general terms and conditions, etc.) except his tender shall be held inapplicable, unless explicitly mentioned in the special conditions of this FWC. In all circumstances, in the event of contradiction between this FWC and documents issued by the Contractor, this FWC shall prevail, regardless of any provision to the contrary in the Contractor's documents.

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# Special Conditions

## Order of priority of provisions

If there is any conflict between different provisions in this FWC, the following rules should be applied:

1. The provisions set out in the special conditions shall take precedence over those in the other parts of the FWC.
2. The provisions set out in the general conditions shall take precedence over those in the Purchase Order (Annex III).
3. The provisions set out in the Purchase Order (Annex III) shall take precedence over those in the other annexes.
4. The provisions set out in the tender specifications (Annex I) shall take precedence over those in the Prices and Financial Conditions (Annex II).
5. The provisions set out in the FWC shall take precedence over those in the Purchase Orders.
6. The provisions set out in the Purchase Orders shall take precedence over those in the requests for services.
7. The provisions set out in the requests for services shall take precedence over those in the specific tenders.

## Subject matter

This FCW is the outcome of procurement procedure UCA-16/028. It concerns the full-service maintenance, breakdown servicing and repair of equipment used for cleaning the façades of the two buildings of the General Secretariat of the Council of the European Union ('the GSC') and the buildings of the European Economic and Social Committee and the Committee of the Regions in Brussels ('the Committees'):

* Lot 1: Justus Lipsius building of the GSC – situated at Rue de la Loi 175, 1040 Brussels
* Lot 2: Lex building of the GSC – situated at Rue de la Loi 145, 1040 Brussels
* Lot 3: the buildings of the Committees in Brussels

as defined in Annex I ('the Services') and in accordance with the provisions of this FWC.

## Entry into force and duration of the FWC

**I.3.1** The FWC shall enter into force on **1 November 2016** if both parties have already signed it.

**I.3.2** The *implementation of the FWC* cannot start before its entry into force.

**I.3.3** The FWC shall be concluded for a period of 48 months with effect from the date on which it enters into force.

**I.3.4** The parties must sign all Purchase Orders before the FWC expires.

The FWC shall continue to apply to such Purchase Orders after its expiry. The services relating to such Purchase Orders must be performed no later than six months after the expiry of the FWC.

**I.3.5Renewal of the FWC**

The FWC shall be renewed automatically once for a period of 12 months, unless one of the parties receives *formal notification* to the contrary at least nine months before the end of the unexpired period. Renewal shall not change or postpone any existing obligations.

## Appointment of the Contractor and implementation of the FWC

### **I.4.1 Appointment of the Contractor**

The Contracting Authority shall appoint the Contractor for a single FWC.

### **I.4.2 Period of provision of the services**

The period for the provision of the services shall start to run from the date on which the Purchase Order is signed by the last party, unless a different date is indicated in Annex II or III or in the Purchase Order.

### **I.4.3 Implementation of the single FWC**

The Contracting Authority shall order services by sending the Contractor a Purchase Order.

Within five working days, the Contractor must either:

1. send the Purchase Order back to the Contracting Authority signed and dated; or
2. send an explanation of why he cannot accept the order.

If the Contractor repeatedly refuses to sign Purchase Orders or repeatedly fails to send them back on time, he may be considered in breach of his obligations under this FWC as set out in Article II.18.1(c).

Specifically for the Committees (Lot 3), the FWC shall be implemented on the basis of Purchase Orders as follows:

- Purchase Orders for full-service maintenance and for specific works;

- Purchase Orders implemented by means of 'action request' forms for technical assistance services.

Purchase Orders shall be issued by the Committee of the Regions or the European Economic and Social Committee as appropriate.

## Prices

### **I.5.1 Maximum amount of the FWC and maximum prices**

The maximum amount covering all purchases under this FWC, including all renewals, shall be EUR …. However, this does not bind the Contracting Authority to purchase for the maximum amount.

The prices of the services are listed in Annex II.

### **I.5.2 Price revision**

Prices shall be fixed and not subject to revision during the first year of duration of the FWC.

At the beginning of the second and every following year of the FWC, each price may be revised upwards or downwards, if such revision is requested by one of the parties by formal notification no later than three months before the anniversary of the date on which it was signed. The new prices shall be communicated as soon as the final index is available. The Contracting Authority shall purchase on the basis of the prices in force on the date on which Purchase Orders are signed. Such prices shall not be subject to revision.

This revision shall be determined by the trend in the harmonised indices of consumer prices (HICP) published for the first time by the Eurostat monthly 'Data in Focus' publication, available at

<http://www.ec.europa.eu/eurostat/>[[1]](#footnote-1).

Revision shall be calculated in accordance with the following formula:

Ir

Pr = Po x ( — )

Io

where: Pr = revised price;

Po = price in the original tender;

Io = index for the month in which the FWC enters into force;

Ir = index for the month corresponding to the date of receipt of the request to revise prices.

## Payment arrangements

### **I.6.1 Pre-financing**

Pre-financing is not applicable to this FWC.

### **I.6.2 Interim payment**

Interim payment is not applicable to this FWC.

### **I.6.3 Payment of the balance**

1. The Contractor (or leader in the case of a joint tender) may claim the payment of the balance in accordance with Article II.21.5.

Invoices relating to the fixed-price part of full-service maintenance (Title 1 of Annex II) shall be drawn up monthly, in twelfths and payable in arrears.

Invoices relating to specific works (cost-plus services, Titles 2 and 3 of Annex II) shall be drawn up following the provision of the services. These invoices shall be drawn up for each order and shall include the reference of the Purchase Order issued by the Contracting Authority, the certificate of receipt of the works, details of the hours worked and invoices concerning the supply of materials or sub-contracting.

Requests for payment must be sent to:

Lots 1 and 2: The Contractor must send an invoice via e-*PRIOR* for payment of the balance due under a Purchase Order, as provided for in the functional and technical specifications, accompanied by the documents mentioned therein.

Lot 3 - European Economic and Social Committee: European Economic and Social Committee

For the attention of the Accounts Department

Directorate for Budget and Finance

Rue Belliard/Belliardstraat 99

1040 Bruxelles/Brussel - BELGIUM

Lot 3 - Committee of the Regions: Committee of the Regions

Directorate for Administration and Finance

Budget and Finance Unit

Accounts Department

Rue Belliard/Belliardstraat 101

1040 Bruxelles/Brussel - BELGIUM

2. The Contracting Authority must approve the submitted documents or deliverables and pay within 30 days of receipt of the invoice.

3. If the Contracting Authority has observations to make, it must send them to the Contractor (or leader in the case of a joint tender) and suspend the time limit for payment in accordance with Article II.21.6.

The Contractor (or leader in the case of a joint tender) has seven days to submit additional information or corrections or a new version of the documents if the Contracting Authority so requires.

4. The Contracting Authority must give its approval and pay within the remainder of the period indicated in point 2 unless it rejects partially or fully the submitted documents or deliverables.

### **I.6.4 Performance guarantee**

The performance guarantee is not applicable to this FWC.

### **I.6.5 Retention money guarantee**

The retention money guarantee is not applicable to this FWC.

## Bank account

Payments must be made to the Contractor's (or leader's in the case of a joint tender) bank account denominated in euros, identified as follows:

Name of bank:

Full address of branch:

Exact denomination of account holder:

Full account number including bank codes:

[IBAN code:]

## Communication details

All correspondence relating to this FWC shall be made in writing and shall contain the Contract number. It shall be sent to the following addresses:

GSC:

Council of the European Union

General Secretariat

Directorate A2B - Buildings/Logistics

Buildings Unit

For the attention of the Head of Unit

Rue de la Loi/Wetstraat 175

1048 Bruxelles/Brussel - BELGIUM

Email: [*insert functional mailbox*]

Committees:

Committee of the Regions

Directorate for Logistics (Joint Services)

Infrastructure Unit

For the attention of the Head of Unit

Rue Belliard/Belliardstraat 99-101

1040 Bruxelles/Brussel - BELGIUM

Email: [*insert functional mailbox*]

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

[*Full name*]

[*Position*]

[*Company name*]

[*Full official address*]

Email: [*complete*]

The parties shall inform each other of any changes in these details.

## Data controller

For the purpose of Article II.9, the data controller is the data protection officer of the contracting authority.

## Exploitation of the results of the FWC

This clause is not applicable to this FWC.

## Termination by either party

Either party may terminate the FWC and/or the FWC and Purchase Orders by sending *formal notification* to the other party with nine months' written notice.

If the FWC or a Purchase Order is terminated:

(a) neither party shall be entitled to compensation;

(b) the Contractor shall only be entitled to payment for the services provided before the termination takes effect.

The second, third and fourth paragraphs of Article II.18.4 shall apply.

## Interinstitutional FWC

N/A

## Service provided on the premises of the Contracting Authority

Access to the premises of the Contracting Authority is conditional upon the rules set out in Annex IV.

## Protection of classified information

N/A

## Liquidated damages

Notwithstanding Article II.15 of the general conditions:

1. Any delay in relation to the call-out or restart times (see point 4.4 of Annex I) shall automatically incur damages of **€100 per hour** for call-outs and **€100 per calendar day** for restarts. The payment of liquidated damages shall not release the Contractor from his contractual obligations.

2. Should the Contractor fail to comply with the maintenance schedule agreed upon (see point 3.3.3 of Annex I), then, without prejudice to actual or potential liability incurred under this Contract or to the Contracting Authority's right to terminate it, the Contracting Authority may impose a penalty of **€400 per calendar week** of delay in relation to the maintenance schedule. This penalty shall be cumulative and shall not suspend the application of the conditions referred to in paragraph 6 below.

3. Any orders for specific works not completed within the agreed time shall automatically incur damages of **€100 per calendar day**. The payment of these damages shall not release the Contractor from his contractual obligations.

4. The total amount of liquidated damages shall be limited to 10 % of the total annual value of the Contract (all-purpose maintenance part of Annex II). Any deductions applied as fines shall be taken from payments due or from the bank guarantee.

5. In the event of non-provision or insufficient provision of the services, the Contracting Authority reserves the right, after formal notification to the Contractor, to have the services provided by a third party, the Contractor still being responsible for the expenses, risks and quality of the services provided.

6. The Contractor may submit, by formal notification, arguments against the decision within fifteen (15) days of receipt of the formal notification sent by the Contracting Authority. In the absence of a reaction on its part or of written withdrawal of the decision by the Contracting Authority within fifteen days of receipt of such arguments, the decision imposing the payment of liquidated damages shall become enforceable. The amount of the liquidated damages imposed shall be directly deducted by the Contracting Authority from the relevant invoice.

7. The Contracting Authority and the Contractor expressly acknowledge and agree that any sums payable under this Article are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the losses that may be reasonably anticipated from such failure to perform obligations.

## OTHER SPECIAL CONDITIONS

### **I.16.1 Guarantee period for maintenance services**

1. The Contractor shall guarantee, for a period of twelve (12) months commencing on the date of completion of the services, that the services comply with the specifications set out in the Annexes to this Contract.

2. If the Contracting Authority finds that the services do not comply with this Contract, it shall notify the Contractor of that non-compliance. The Contractor shall rectify those services that do not comply with this Contract within fifteen (15) calendar days of the date on which he was notified of the non-compliance by the Contracting Authority. In this case a new guarantee period of twelve (12) months shall apply from the date of such rectification.

3. The Contractor shall be solely responsible for all costs arising from the application of this Article and shall reimburse the Contracting Authority for all the costs incurred. The Contractor shall, at his own expense, rectify those services, as determined by the Contracting Authority, which do not comply with this Contract. If the service is not rectified satisfactorily, the Contracting Authority may reject the service provided.

### **I.16.2 Guarantee period for cost-plus services**

1. The Contractor shall guarantee, for a period of twelve (12) months commencing on the date of provisional acceptance, that the supplies delivered and installed and the works performed in accordance with this Contract are free from any defects in material and workmanship and comply with the specifications set out in the Annexes to this Contract.

2. During the guarantee period, the Contractor shall rectify, at his own risks and costs, any defects that may arise or be observed during use. The Contractor shall repair, replace or rectify defective parts and works. The guarantee covering the corresponding parts or works shall be extended automatically by twelve (12) months from the date of such repair, modification or replacement.

**SIGNATURES**

|  |  |
| --- | --- |
| For the Contractor,  [*Company name/forename/surname/position*]  Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Done at [*place*], [*date*] | For the Contracting Authority,  Kristin VAN HOOLST, Director  Signature:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Done at Brussels, [*date*] |

in duplicate in English.

# GENERAL CONDITIONS FOR THE FRAMEWORK CONTRACT FOR SERVICES

## DEFINITIONS

For the purpose of this FWC, the following definitions (indicated in *italics* in the text) shall apply:

**‘Back office’**: the internal system(s) used by the parties to process electronic invoices;

**‘Confidential information or document’**: any information or document received by either party from the other or accessed by either party in the context of the *implementation of the FWC*, that any of the parties has identified in writing as confidential. It shall not include information that is publicly available;

**‘Conflict of interest’**: a situation where the impartial and objective *implementation of the FWC* by the Contractor is compromised for reasons involving family, emotional life, political or national affinity, economic interest, or any other shared interest with the Contracting Authority or any third party related to the subject matter of the FWC;

**‘Creator’**: means any natural person who contributes to the production of the *result*;

**‘EDI** **message’** (electronic data interchange): a message created and exchanged through the electronic transfer, from computer to computer, of commercial and administrative data using an agreed standard;

**‘e-PRIOR’**: the service-oriented communication platform that provides a series of web services and allows the exchange of standardised electronic messages and documents between the parties. This is done either through web services, with a machine-to-machine connection between the parties’ *back office* systems (*EDI messages*), or through a web application (the *supplier portal*). The platform may be used to exchange electronic documents (e-documents) such as electronic invoices between the parties. Technical specifications (i.e. the *interface control document*), details on access and user manuals are available at the following website: <http://ec.europa.eu/dgs/informatics/supplier_portal/documentation/documentation_en.htm>

**‘Force majeure’**: any unforeseeable, exceptional situation or event beyond the control of the parties that prevents either of them from fulfilling any of their obligations under the FWC. The situation or event must not be attributable to error or negligence on the part of the parties or on the part of the subcontractors and must prove to be inevitable despite their exercising due diligence. Defaults of service, defects in equipment or material or delays in making them available, labour disputes, strikes and financial difficulties may not be invoked as *force majeure*, unless they stem directly from a relevant case of *force majeure*;

**‘Formal notification’** (or ‘formally notify’): form of communication between the parties made in writing by mail or email, which provides the sender with compelling evidence that the message was delivered to the specified recipient;

**‘Fraud’:** any intentional act or omission affecting the Union’s financial interests relating to the use or presentation of false, incorrect or incomplete statements or documents or to non-disclosure of information in violation of a specific obligation;

**‘Implementation of the FWC’**: the purchase of services envisaged in the FWC through the signature and *performance of purchase orders*;

**‘Interface control document’**: the guideline document which lays down the technical specifications, message standards, security standards, checks of syntax and semantics, etc. to facilitate machine-to-machine connection. This document is updated on a regular basis;

**‘Irregularity’**: any infringement of a provision of Union law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the Union’s budget;

**‘Notification’** (or ‘notify’): form of communication between the parties made in writing including by electronic means;

**‘Purchase Order’**: a simplified contract by which the Contracting Authority orders services under this FWC;

**‘Implementation of a Purchase Order’**: the execution of tasks and delivery of the purchased services by the Contractor to the Contracting Authority;

**‘Personnel’**: persons employed directly or indirectly or contracted by the Contractor to implement the FWC;

**‘Pre-existing material’**: any material, document, technology or know-how which exists prior to the Contractor using it for the production of a *result* in the *implementation of the FWC*;

**‘Pre-existing right’**: any industrial and intellectual property right on *pre-existing material*; it may consist in a right of ownership, a licence right and/or right of use belonging to the Contractor, the *creator*, the Contracting Authority as well as to any other third parties;

**‘Professional conflicting interest’**: a situation in which the Contractor’s previous or ongoing professional activities affect his capacity to implement the FWC or a purchase order to an appropriate quality standard;

**‘Related person’**: any person who has the power to represent the Contractor or to take decisions on his behalf;

**‘Request for services’**: a document from the Contracting Authority requesting that the Contractors in a multiple FWC provide a specific tender for services whose terms are not entirely defined under the FWC;

**‘Result’**: any intended outcome of the *implementation of the FWC*, whatever its form or nature, which is delivered and finally or partially approved by the Contracting Authority. A *result* may be further defined in this FWC as a deliverable. A *result* may, in addition to materials produced by the Contractor or at his request, also include *pre-existing materials*;

**‘Substantial error’**: any infringement of a Contract provision resulting from an act or omission, which causes or might cause a loss to the Union’s budget;

**‘Supplier portal’**: the *e-PRIOR* portal, which allows the Contractor to exchange electronic business documents, such as invoices, through a graphical user interface; its main features can be found in the supplier portal overview document available on: <http://ec.europa.eu/dgs/informatics/supplier_portal/doc/um_supplier_portal_overview.pdf>

## ROLES AND RESPONSIBILITIES IN THE EVENT OF A JOINT TENDER

In the event of a joint tender submitted by a group of economic operators and where the group does not have legal personality or legal capacity, one member of the group shall be appointed as leader of the group.

## SEVERABILITY

Each provision of this FWC shall be severable and distinct from the others. If a provision is or becomes illegal, invalid or unenforceable to any extent, it must be severed from the remainder of the FWC. This shall not affect the legality, validity or enforceability of any other provisions of the FWC, which continue in full force and effect. The illegal, invalid or unenforceable provision must be replaced by a legal, valid and enforceable substitute provision which corresponds as closely as possible with the actual intent of the parties under the illegal, invalid or unenforceable provision. The replacement of such a provision must be made in accordance with Article II.11. The FWC must be interpreted as if it had contained the substitute provision as from its entry into force.

## PROVISION OF SERVICES

**II.4.1** Signature of the FWC shall not guarantee any actual purchase. The Contracting Authority shall be bound only by purchase orders implementing the FWC.

**II.4.2** The Contractor must provide services of high quality standards, in accordance with the state of the art in the industry and the provisions of this FWC, in particular the tender specifications and the terms of his tender.

**II.4.3.1** The Contractor must comply with the minimum requirements provided for in the tender specifications. This includes compliance with applicable obligations under environmental, social and labour law established by Union law, national law and collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU[[2]](#footnote-2).

**II.4.3.2** The Contractor shall have sole responsibility for complying with any legal obligation incumbent on him, notably those resulting from tax and safety work legislation.

**II.4.3.3** If the Contractor is a natural person, he shall be required to provide proof of his status as a self-employed person. To this end he shall submit supporting documents concerning his social security cover and his VAT status.

**II.4.4** The Contractor shall have sole responsibility for taking the necessary steps to obtain any permit or licence required for performance of the FWC under Belgian laws and regulations.

**II.4.5** All periods specified in the FWC are calculated in calendar days, unless otherwise specified[[3]](#footnote-3).

**II.4.6** The Contractor must not present himself as a representative of the Contracting Authority and must inform third parties that he is not part of the European public service.

**II.4.7.1** The FWC shall be performed in such a way as to exclude the possibility of the Contractor or his *personnel* executing tasks under conditions identical to the working conditions of a person employed by the Contracting Authority. The Contractor or his *personnel* shall not be integrated into the Contracting Authority's administrative organisation.

**II.4.7.2** In the framework of his employment or service relationships with his *personnel* the Contractor shall indicate that:

 *personnel* executing the tasks assigned to the Contractor may not receive orders directly from the Contracting Authority,

 the Contracting Authority may not under any circumstances be considered to be the *personnel's* employer and the said *personnel* shall undertake not to invoke in respect of the Contracting Authority any right arising from the contractual relationship between the Contracting Authority and the Contractor.

**II.4.8** The Contractor must ensure that the personnel implementing the FWC and any future replacement *personnel* possess the professional qualifications and experience required to provide the services, as the case may be on the basis of the selection criteria set out in the tender specifications.

**II.4.9.1** At the Contracting Authority’s reasoned request, the Contractor must replace any member of *personnel* who:

1. does not have the expertise required to provide the services; or
2. has caused disruption at the premises of the Contracting Authority.

The Contractor shall bear the cost of replacing his *personnel* and shall be responsible for any delay in providing the services resulting from the replacement of *personnel*.

**II.4.9.2** If the Contractor's *personnel* is working in the Contracting Authority's buildings, the Contractor shall replace immediately and without compensation, any person considered undesirable by the Contracting Authority. Replacement staff must have the necessary qualifications and be capable of performing the FWC under the same contractual conditions. The Contractor shall be responsible for any delay in the execution of the tasks assigned to him from the replacement of *personnel* in accordance with this paragraph.

**II.4.10** The Contractor undertakes to provide the Contracting Authority with any information it may request for the management of the FWC. Should any unforeseen event, action or omission directly or indirectly hamper execution of the tasks, either partially or totally, the Contractor shall immediately and at his own initiative record it and report it to the Contracting Authority. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with his obligations under the FWC. In such event the Contractor shall give priority to solving the problem rather than determining liability.

## COMMUNICATION BETWEEN THE PARTIES

### **II.5.1 Form and means of communication**

Any communication of information, notices or documents under the FWC must:

1. be made in writing in paper or electronic format in the language of the Contract;
2. bear the FWC number and, if applicable, the purchase order number;
3. be made using the relevant communication details set out in Article I.8; and
4. be sent by mail or email.

If a party requests written confirmation of an email within a reasonable time, the other party must provide an original signed paper version of the communication as soon as possible.

The parties agree that any communication made by email shall have full legal effect and shall be admissible as evidence in judicial proceedings.

### **II.5.2 Date of communications by mail and email**

Any communication shall be deemed to have been made when the receiving party receives it, unless this FWC refers to the date when the communication was sent.

An email shall be deemed to have been received by the receiving party on the day of dispatch of that email, provided that it is sent to the email address indicated in Article I.8. The sending party must be able to prove the date of dispatch. In the event that the sending party receives a non-delivery report, it must make every effort to ensure that the other party actually receives the communication by email or mail. In such a case, the sending party shall not be held in breach of its obligation to send such communication within a specified deadline.

Mail sent to the Contracting Authority shall be deemed to have been received by the Contracting Authority on the date on which the department responsible referred to in Article I.8 registers it.

*Formal notifications* shall be considered to have been received by the receiving party on the date of receipt indicated in the proof received by the sending party that the message was delivered to the specified recipient.

### **II.5.3 Submission of financial documents via e-PRIOR and validity of these documents**

**II.5.3.1** For communication of financial documents the parties agree that the Contractor shall either use the *supplier portal* or undertake the necessary measures to mutually use EDI.

**II.5.3.2** The parties hereby agree that any financial document and related attachments exchanged through the supplier portal or through a direct connection established between the Contractor and the Contracting Authority's back offices shall have the same legal effects as paper invoices and shall be admissible as evidence in legal proceedings.

**II.5.3.3** The Contracting Authority shall undertake the necessary measures to implement and maintain electronic systems that enable the effective use of the *supplier portal*. The electronic systems are specified in the Supplier Portal Overview and e-Invoicing User Manual.

**II.5.3.4** Should a direct connection be established between the Contractor and the Contracting Authority's back offices to allow electronic transfer of financial documents, both parties shall undertake the measures necessary on their side to implement and maintain electronic systems that enable the effective use of EDI. The electronic systems shall be specified in the *interface control document*.

**II.5.3.5** In the cases where communication via the *supplier portal* or the EDI communication, as appropriate, is hindered by factors beyond the powers of the parties, the parties shall undertake to notify each other and to take the necessary measures to restore this communication.

**II.5.3.6** If it is impossible to get the *supplier portal* or the EDI communication restored within a period of two working days, the Contracting Authority will notify the Contractor that an alternative messaging form will be used, i.e. paper messaging or email, until the *supplier portal* or the EDI communication, as appropriate, is restored.

**II.5.3.7** If it is impossible for the Contractor to get the communication restored within a period of two working days, the Contractor will notify the Contracting Authority that an alternative messaging form will be used, i.e. paper messaging or email, until the *supplier portal* or the EDI communication, as appropriate, is restored.

**II.5.3.8** The Contractor shall be notified of changes in the *interface control document*. When such a change requires adaptations from the Contractor, then the Contractor will have a period of 6 months for the implementation of this change. This period can be shortened upon mutual agreement of the parties. This period of 6 months shall not apply to measures which are required by the security policy for the information systems of the Contracting Authority. This covers urgent changes aimed at ensuring integrity of information, confidentiality of information, non-repudiation of information and availability of *e-PRIOR*.

### **II.5.4 Validity and acceptance of electronic invoices**

**II.5.4.1** The parties agree that an invoice, sent via the supplier portal, qualifies as an electronic invoice.

**II.5.4.2** Similarly, should a direct connection be established between the Contractor and the Contracting Authority's back offices to allow electronic transfer of financial documents, the parties agree that a financial document, sent as mentioned in the *interface control document*, qualifies as an EDI message.

**II.5.4.3** In case a financial document is dispatched through the *supplier portal*, the financial document shall be deemed to have been legally issued or sent when the Contractor was able to successfully submit the financial document without any error messages. The generated PDF and XML documents related to the financial document are to be considered as a proof of receipt by the Contracting Authority.

**II.5.4.4** In case a financial document is dispatched using a direct connection established between the Contractor and the Contracting Authority's back offices, the financial document shall be deemed to have been legally issued or sent when its status is 'received' as defined in the *interface control document*.

### **II.5.5 Storage of electronic invoices and safety measures**

**II.5.5.1** When using the *supplier portal*, the Contractor shall for each electronic invoice download the PDF and XML message as applicable for each electronic invoice within one year of submission, and store them securely together with the related attachments, if any, in accordance with the time limits and specifications prescribed by the applicable legislative requirements. After the end of the one-year period copies of the financial documents shall no longer be available for automatic download from the system.

**II.5.5.2** All EDI messages exchanged by the parties shall be stored by each party, unaltered and securely, in accordance with the time limits and specifications prescribed by the applicable legislative requirements.

**II.5.5.3** When using a direct connection for the electronic transfer of financial documents, the parties shall undertake the necessary measures to implement and maintain safety measures and procedures in order to adequately prevent messaging incurring any delays, messages being corrupted as to content or form, or messages being lost.

**II.5.5.4** In all cases the parties shall strive to prevent third parties from obtaining unauthorised access to messages.

**II.5.5.5** If the use of safety measures and procedures leads to the rejection or detection of one or more errors in an EDI message, the receiver shall inform the sender thereof as soon as possible, but at the latest within two calendar days.

## LIABILITY

**II.6.1** The Contracting Authority shall not be liable for any damage or loss caused by the Contractor, including any damage or loss to third parties during or as a consequence of *implementation of the FWC*.

**II.6.2**If required by the relevant applicable legislation, the Contractor must take out an insurance policy against risks and damage or loss relating to the *implementation of the FWC*. He must also take out supplementary insurance as reasonably required by standard practice in the industry. Upon request, the Contractor must provide evidence of insurance coverage to the Contracting Authority.

**II.6.3** The Contractor shall be liable for any loss or damage caused to the Contracting Authority during or as a consequence of *implementation of the FWC*, including in the event of subcontracting, but only up to an amount not exceeding three times the total amount of the relevant purchase order. However, if the damage or loss is caused by the gross negligence or wilful misconduct of the Contractor or of his *personnel* or subcontractors, the Contractor shall be liable for the whole amount of the damage or loss.

**II.6.4** If a third party brings any action against the Contracting Authority in connection with the *implementation of the FWC*, including any action for alleged breach of intellectual property rights, the Contractor must assist the Contracting Authority in the legal proceedings, including by intervening in support of the Contracting Authority upon request.

If it is established that the Contracting Authority is liable towards the third party and that such liability is caused by the Contractor during or as a consequence of the *implementation of the FWC*, Article II.6.3 shall apply.

**II.6.5** If the Contractor is composed of two or more economic operators (i.e. who submitted a joint tender), they shall all be jointly and severally liable to the Contracting Authority for the *implementation of the FWC*.

**II.6.6** The Contracting Authority shall not be liable for any loss or damage caused to the Contractor during or as a consequence of *implementation of the FWC*, unless the loss or damage was caused by wilful misconduct or gross negligence of the Contracting Authority.

## CONFLICT OF INTEREST AND PROFESSIONAL CONFLICTING INTERESTS

**II.7.1** The Contractor must take all the necessary measures to prevent any situation of *conflict of interest* or *professional conflicting interest*.

**II.7.2** The Contractor must *notify* the Contracting Authority in writing as soon as possible of any situation that could constitute a *conflict of interest* or a *professional conflicting interest* during the *implementation of the FWC*. The Contractor must immediately take action to rectify the situation.

The Contracting Authority may do any of the following:

1. verify that the Contractor’s action is appropriate;
2. require the Contractor to take further action within a specified deadline;
3. decide not to award a purchase order to the Contractor.

**II.7.3** The Contractor must pass on all the relevant obligations in writing to:

1. its *personnel*;
2. any natural person with the power to represent it or take decisions on its behalf;
3. third parties involved in the *implementation of the FWC*, including subcontractors.

The Contractor must also ensure that the persons referred to above are not placed in a situation which could give rise to conflicts of interest.

## CONFIDENTIALITY

**II.8.1** The Contracting Authority and the Contractor must treat with confidentiality any information or documents, in any format, disclosed in writing or orally, relating to the *implementation of the FWC* and identified in writing as confidential.

**II.8.2** Each party must:

(a) not use *confidential information or documents* for any purpose other than to perform its obligations under the FWC or a purchase order without the prior written agreement of the other party;

(b) ensure the protection of such *confidential information or documents* with the same level of protection as its own *confidential information or documents* and in any case with due diligence;

(c) not disclose, directly or indirectly, *confidential information or documents* to third parties without the prior written agreement of the other party.

**II.8.3** The confidentiality obligations set out in this Article are binding on the Contracting Authority and the Contractor during the *implementation of the FWC* and for as long as the information or documents remain confidential unless:

(a) the disclosing party agrees to release the receiving party from the confidentiality obligation earlier;

(b) the *confidential information or documents* become public through other means than a breach of the confidentiality obligation;

(c) the applicable law requires the disclosure of the *confidential information or documents*.

**II.8.4** The Contractor must obtain from any natural person with the power to represent him or take decisions on his behalf, as well as from third parties involved in the *implementation of the FWC*, a commitment that they will comply with this Article. At the request of the Contracting Authority, the Contractor must provide documentary evidence of this commitment.

## PROCESSING OF PERSONAL DATA

**II.9.1** Any personal data included in the FWC must be processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Such data must be processed by the data controller solely for the purposes of the implementation, management and monitoring of the FWC. This shall not affect its possible transmission to bodies entrusted with monitoring or inspection tasks in application of Union law.

**II.9.2** The Contractor shall have the right to access his personal data and the right to rectify any such data. The Contractor should address any queries concerning the processing of his personal data to the data controller.

**II.9.3** The Contractor has right of recourse at any time to the European Data Protection Supervisor.

**II.9.4** If the FWC requires the Contractor to process any personal data, the Contractor may act only under the supervision of the data controller, in particular with regard to the purposes of the processing, the categories of data that may be processed, the recipients of the data and the means by which the data subject may exercise its rights.

**II.9.5** The Contractor must grant *personnel* access to the data to the extent strictly necessary for the implementation, management and monitoring of the FWC.

**II.9.6** The Contractor must adopt appropriate technical and organisational security measures, giving due regard to the risks inherent in the processing and to the nature of the personal data concerned, in order to:

(a) prevent any unauthorised person from gaining access to computer systems processing personal data, and especially:

(i) unauthorised reading, copying, alteration or removal of storage media;

(ii) unauthorised data inputting, as well as any unauthorised disclosure, alteration or erasure of stored personal data;

(iii) unauthorised use of data processing systems by means of data transmission facilities;

(b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;

(c) record which personal data have been communicated, when and to whom;

(d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the Contracting Authority;

(e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;

(f) design its organisational structure in such a way that it meets data protection requirements.

**II.9.7** Any request from a third party to this FWC [be it a private person or any public authority] to disclose personal data held by the Contractor or to which the Contractor has access shall be immediately communicated to the Contracting Authority.

**II.9.8** An infringement by the Contractor or his *personnel* of the provisions defined in this Article shall constitute a breach of the FWC entitling the Contracting Authority to terminate the FWC with immediate effect at the Contractor’s expense and shall make the latter liable for damages, with interest, for any resulting loss.

## SUBCONTRACTING

**II.10.1**The Contractor must not subcontract and have the FWC implemented by third parties beyond the third parties already mentioned in his tender without prior written authorisation from the Contracting Authority.

**II.10.2**Even if the Contracting Authority authorises subcontracting, the Contractor shall remain bound by his contractual obligations and is solely responsible for the *implementation of the FWC*.

**II.10.3** The Contractor must ensure that the subcontract does not affect the rights of the Contracting Authority under this FWC, particularly those under Articles II.8, II.13 and II.24.

**II.10.4**The Contracting Authority may request the Contractor to replace a subcontractor found to be in a situation provided for in points (d) and (e) of Article II.18.1.

## AMENDMENTS

**II.11.1** Any amendment to the FWC or to a purchase order must be made in writing before all contractual obligations have been fulfilled. A purchase order does not constitute an amendment to the FWC.

**II.11.2**Amendments must not make changes to the FWC or to a purchase order that might alter the initial conditions of the procurement procedure or result in unequal treatment of tenderers or Contractors.

## ASSIGNMENT

**II.12.1**The Contractor must not assign any of the rights and obligations arising from the FWC, including claims for payments or factoring, without prior written authorisation from the Contracting Authority. In such cases, the Contractor must provide the Contracting Authority with the identity of the intended assignee.

**II.12.2** Any right or obligation assigned by the Contractor without authorisation is not enforceable against the Contracting Authority.

## INTELLECTUAL PROPERTY RIGHTS

### **II.13.1 Ownership of the rights in the results**

The Union shall irrevocably acquire worldwide ownership of the *results* and of all intellectual property rights under the FWC. The intellectual property rights so acquired include any rights, such as copyright and other intellectual or industrial property rights, to the *results* and to all technological solutions and information created or produced by the Contractor or by his subcontractor in *implementation of the FWC*. The Contracting Authority may exploit and use the acquired rights as stipulated in this FWC. The Union shall acquire all the rights from the moment the Contracting Authority approves the *results* delivered by the Contractor. Such delivery and approval are deemed to constitute an effective assignment of rights from the Contractor to the Union.

The payment of the price shall include any fees payable to the Contractor about the acquisition of ownership of rights by the Union including for all forms of exploitation and of use of the *results*.

### **II.13.2 Licensing rights on pre-existing materials**

Unless provided otherwise in the special conditions, the Union shall not acquire ownership of *pre-existing rights* under this FWC.

The Contractor shall license the *pre-existing rights* on a royalty-free, non-exclusive and irrevocable basis to the Union, which may use the *pre-existing materials* for all the modes of exploitation set out in this FWC or in purchase orders. All *pre-existing rights* shall be licensed to the Union from the moment the *results* are delivered and approved by the Contracting Authority.

The licensing of *pre-existing rights* to the Union under this FWC shall cover all territories worldwide and shall be valid for the duration of intellectual property rights protection.

The payment of the price as set out in the purchase orders shall be deemed to also include any fees payable to the Contractor in relation to the licensing of *pre-existing rights* by the Union, including for all forms of exploitation and of use of the *results*.

Where *implementation of the FWC* requires that the Contractor uses *pre-existing materials* belonging to the Contracting Authority, the Contracting Authority may request that the Contractor sign an adequate licence agreement. Such use by the Contractor will not entail any transfer of rights to the Contractor and is limited to the needs of this FWC.

### **II.13.3 Exclusive rights**

The Union shall acquire the following exclusive rights:

1. reproduction: the right to authorise or prohibit direct or indirect, temporary or permanent reproduction of the *results* by any means (mechanical, digital or other) and in any form, in whole or in part;
2. communication to the public: the exclusive right to authorise or prohibit any display, performance or communication to the public, by wire or wireless means, including the making available to the public of the *results* in such a way that members of the public may access them from a place and at a time individually chosen by them; this right also includes the communication and broadcasting by cable or by satellite;
3. distribution: the exclusive right to authorise or prohibit any form of distribution of *results* or copies of the *results* to the public, by sale or otherwise;
4. rental: the exclusive right to authorise or prohibit rental or lending of the *results* or of copies of the *results*;
5. adaptation: the exclusive right to authorise or prohibit any modification of the *results*;
6. translation: the exclusive right to authorise or prohibit any translation, adaptation, arrangement, creation of derivative works based on the *results*, and any other alteration of the *results*, subject to the respect of moral rights of authors, where applicable;
7. where the *results* are or include a database: the exclusive right to authorise or prohibit the extraction of all or a substantial part of the contents of the database to another medium by any means or in any form; and the exclusive right to authorise or prohibit the re-utilisation of all or a substantial part of the contents of the database by the distribution of copies, by renting, by on-line or other forms of transmission;
8. where the *results* are or include a patentable subject-matter: the right to register them as a patent and to further exploit such patent to the fullest extent;
9. where the *results* are or include logos or subject-matter which could be registered as a trademark: the right to register such logo or subject-matter as a trademark and to further exploit and use it;
10. where the *results* are or include know-how: the right to use such know-how as is necessary to make use of the *results* to the full extent provided for by this FWC, and the right to make it available to Contractors or subcontractors acting on behalf of the Contracting Authority, subject to their signing of adequate confidentiality undertakings where necessary;
11. where the *results* are documents:

the right to authorise the reuse of the documents in conformity with the Commission Decision of 12 December 2011 on the reuse of Commission documents (2011/833/EU), to the extent it is applicable and the documents fall within its scope and are not excluded by any of its provisions; for the sake of this provision, ‘reuse’ and ‘document’ shall have the meaning given to them by this Decision;

the right to store and archive the *results* in line with the document management rules applicable to the Contracting Authority, including digitisation or converting the format for preservation or new use purposes;

1. where the *results* are or incorporate software, concerning source code, object code and, where relevant, documentation, preparatory materials and manuals, in addition to the other rights mentioned in this Article:

end-user rights, for all uses *resulting* from this FWC and the intention of the parties, by the Union or by subcontractors;

the rights to decompile or disassemble the software;

1. to the extent that the Contractor may invoke moral rights, the right for the Contracting Authority, except where otherwise provided in this FWC, to publish the *results* with or without mentioning the *creator*(s)’ name(s), and the right to decide when and whether the *results* may be disclosed and published.

The Contractor warrants that the exclusive rights and the modes of exploitation may be exercised by the Union on all parts of the *results*, be they created by the Contractor or consisting of *pre-existing materials*.

Where *pre-existing materials* are inserted in the *results*, the Contracting Authority may accept reasonable restrictions impacting on the above list, provided that the said materials are easily identifiable and separable from the rest, that they do not correspond to substantial elements of the *results*, and that, should the need arise, satisfactory replacement solutions exist, at no additional costs to the Contracting Authority. In such a case, the Contractor will have to clearly inform the Contracting Authority before making such a choice and the Contracting Authority has the right to refuse it.

### **II.13.4 Identification of pre-existing rights**

When delivering the *results*, the Contractor must warrant that, for any use that the Contracting Authority may envisage within the limits set in this FWC, the *results* and the *pre-existing material* incorporated in the *results* are free of claims from *creators* or from any third parties and all the necessary *pre-existing rights* have been obtained or licensed.

To that effect, the Contractor must establish a list of all *pre-existing rights* to the *results* of this FWC or parts thereof, including identification of the rights’ owners. If there are no *pre-existing rights* to the *results*, the Contractor must provide a declaration to that effect. The Contractor must provide this list or declaration to the Contracting Authority together with the invoice for payment of the balance at the latest.

### **II.13.5 Evidence of granting of pre-existing rights**

Upon request by the Contracting Authority, the Contractor must provide evidence that he has the ownership or the right to use all the listed *pre-existing rights*, except for the rights owned or licensed by the Union. The Contracting Authority may request this evidence even after the end of this FWC.

This evidence may refer, for example, to rights to: parts of other documents, images, graphs, fonts, tables, data, software, technical inventions, know-how, IT development tools, routines, subroutines or other programs (‘background technology’), concepts, designs, installations or pieces of art, data, source or background materials or any other parts of external origin.

This evidence must include, as appropriate:

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

Provision of evidence shall not release the Contractor from his responsibilities if it is found that he does not hold the necessary rights, regardless of when and by whom this fact is revealed.

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

### **II.13.6 Quotation of works in the result**

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

### **II.13.7 Moral rights of creators**

By delivering the *results*, the Contractor warrants that the *creators* will not object to the following on the basis of their moral rights under copyright:

1. that their names be mentioned or not mentioned when the *results* are presented to the public;
2. that the *results* be divulged or not after they have been delivered in their final version to the Contracting Authority;
3. that the *results* be adapted, provided that this is done in a manner which is not prejudicial to the *creator*’s honour or reputation.

If moral rights on parts of the *results* protected by copyright may exist, the Contractor must obtain the consent of *creators* regarding the granting or waiver of the relevant moral rights in accordance with the applicable legal provisions and be ready to provide documentary evidence upon request.

### **II.13.8 Image rights and sound recordings**

If natural persons appear in a *result* or their voice or any other private element is recorded in a recognisable manner, the Contractor must obtain a statement by these persons (or, in the case of minors, by the persons exercising parental authority) giving their permission for the described use of their image, voice or private element and, on request, submit a copy of the permission to the Contracting Authority. The Contractor must take the necessary measures to obtain such consent in accordance with the applicable legal provisions.

### **II.13.9 Copyright notice for pre-existing rights**

When the Contractor retains *pre-existing rights* on parts of the *results*, reference must be inserted to that effect when the *result* is used as set out in Article I.10.1, with the following disclaimer: ‘© — year — European Union. All rights reserved. Certain parts are licensed under conditions to the EU’, or with any other equivalent disclaimer as the Contracting Authority may consider best appropriate, or as the parties may agree on a case-by-case basis. This shall not apply where inserting such reference would be impossible, notably for practical reasons.

### **II.13.10 Visibility of Union funding and disclaimer**

When making use of the *results*, the Contractor must declare that they have been produced under a Contract with the Union and that the opinions expressed are those of the Contractor only and do not represent the Contracting Authority’s official position. The Contracting Authority may waive this obligation in writing or provide the text of the disclaimer.

## FORCE MAJEURE

**II.14.1** If a party is affected by *force majeure*, it must immediately *notify* the other party, stating the nature of the circumstances, their likely duration and foreseeable effects.

**II.14.2**A party shall not be liable for any delay or failure to perform its obligations under the FWC if that delay or failure is a *result* of *force majeure*. If the Contractor is unable to fulfil his contractual obligations owing to *force majeure*, he shall have the right to remuneration only for the services actually provided.

**II.14.3**The parties must take all necessary measures to limit any damage due to *force majeure*.

## LIQUIDATED DAMAGES

### **II.15.1 Delay in delivery**

If the Contractor fails to perform his contractual obligations within the applicable time limits set out in this FWC, the Contracting Authority may claim liquidated damages for each day of delay using the following formula:

0.3 x (*V/d*)

where:

V is the price of the relevant purchase or deliverable or *result*;

*d* is the duration specified in the relevant purchase order for delivery of the relevant purchase or deliverable or *result* or, failing that, the period between the date specified in Article I.4.2 and the date of delivery or performance specified in the relevant purchase order, expressed in days.

Liquidated damages may be imposed together with a reduction in price under the conditions laid down in Article II.16.

### **II.15.2 Procedure**

The Contracting Authority must *formally notify* the Contractor of its intention to apply liquidated damages and the corresponding calculated amount.

The Contractor shall have 30 days following the date of receipt to submit observations. Failing that, the decision shall become enforceable the day after the time limit for submitting observations has elapsed.

If the Contractor submits observations, the Contracting Authority, taking into account the relevant observations, must *notify* the Contractor:

(a) of the withdrawal of its intention to apply liquidated damages; or

(b) of its final decision to apply liquidated damages and the corresponding amount.

### **II.15.3 Nature of liquidated damages**

The parties expressly acknowledge and agree that any amount payable under this Article is not a penalty and represents a reasonable estimate of fair compensation for the damage incurred due to failure to provide the services within the applicable time limits set out in this FWC.

### **II.15.4 Claims and liability**

Any claim for liquidated damages shall not affect the Contractor’s actual or potential liability or the Contracting Authority’s rights under Article II.18.

## REDUCTION IN PRICE

### **II.16.1 Quality standards**

If the Contractor fails to provide the service in accordance with the FWC or a purchase order (‘unperformed obligations’) or if he fails to provide the service in accordance with the expected quality levels specified in the tender specifications (‘low quality delivery’), the Contracting Authority may reduce or recover payments proportionally to the seriousness of the unperformed obligations or low quality delivery. This shall include, in particular, cases where the Contracting Authority cannot approve a *result*, report or deliverable as defined in Article I.6 after the Contractor has submitted the required additional information, correction or new version.

A reduction in price may be imposed together with liquidated damages under the conditions of Article II.15.

### **II.16.2 Procedure**

The Contracting Authority must *formally notify* the Contractor of its intention to reduce payment and the corresponding calculated amount.

The Contractor shall have 30 days following the date of receipt to submit observations. Failing that, the decision shall become enforceable the day after the time limit for submitting observations has elapsed.

If the Contractor submits observations, the Contracting Authority, taking into account the relevant observations, must *notify* the Contractor:

(a) of the withdrawal of its intention to reduce payment; or

(b) of its final decision to reduce payment and the corresponding amount.

### **II.16.3 Claims and liability**

Reductions in price shall not affect the Contractor’s actual or potential liability or the Contracting Authority’s rights under Article II.18.

## SUSPENSION OF THE IMPLEMENTATION OF THE FWC

### **II.17.1 Suspension by the contractor**

If the Contractor is affected by *force majeure*, he may suspend the provision of the services under a purchase order.

The Contractor must immediately *notify* the Contracting Authority of the suspension. The *notification* must include a description of the *force majeure* and state when the Contractor expects to resume the provision of services.

The Contractor must *notify* the Contracting Authority as soon as he is able to resume *performance of the purchase order*, unless the Contracting Authority has already terminated the FWC or the purchase order.

### **II.17.2 Suspension by the Contracting Authority**

The Contracting Authority may suspend the *implementation of the FWC* or *performance of a purchase order* or any part of it:

(a) if the procedure for awarding the FWC or a purchase order or the *implementation of the FWC* proves to have been subject to *substantial errors, irregularities or fraud*;

(b) in order to verify whether the presumed *substantial errors*, *irregularities* or *fraud* actually occurred.

The Contracting Authority must *formally notify* the Contractor of the suspension. Suspension shall take effect on the date of *formal notification*, or at a later date if the *formal notification* so provides.

The Contracting Authority must *notify* the Contractor as soon as possible whether:

(a) it is lifting the suspension; or

(b) it intends to terminate the FWC or a purchase order under Article II.18.1(f) or (j).

The Contractor is not entitled to compensation for suspension of any part of the FWC or a purchase order.

## TERMINATION OF THE FWC

### **II.18.1 Grounds for termination by the Contracting Authority**

The Contracting Authority may terminate the FWC or a purchase order in the following circumstances:

(a) if provision of the services under a pending purchase order has not actually started within 15 days of the scheduled date and the Contracting Authority considers the new date proposed, if any, unacceptable, taking into account Article II.11.2;

(b) if the Contractor is unable, through his own fault, to obtain any permit or licence required for *implementation of the FWC*;

(c) if the Contractor does not implement the FWC or implement the purchase order in accordance with the tender specifications or *request for service* or is in breach of another substantial contractual obligation or repeatedly refuses to sign purchase orders. Termination of three or more purchase orders in these circumstances shall also constitute grounds for termination of the FWC;

(d) if the Contractor or any person that assumes unlimited liability for the debts of the Contractor is in one of the situations provided for in points (a) and (b) of Article 106(1) of the Financial Regulation[[4]](#footnote-4);

(e) if the Contractor or any *related person* is subject to any of the situations provided for in points (c) to (f) of Article 106(1) or to Article 106(2) of the Financial Regulation;

(f) if the procedure for awarding the FWC or the *implementation of the FWC* proves to have been subject to *substantial errors*, *irregularities* or *fraud*;

(g) if the Contractor does not comply with applicable obligations under environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU;

(h) if the Contractor is in a situation that could constitute a *conflict of interest* or a *professional conflicting interest* as referred to in Article II.7;

(i) if a change to the Contractor’s legal, financial, technical, organisational or ownership situation is likely to substantially affect the *implementation of the FWC* or substantially modify the conditions under which the FWC was initially awarded;

(j) in the event of *force majeure*, where either resuming implementation is impossible or the necessary ensuing amendments to the FWC or a purchase order would mean that the tender specifications are no longer fulfilled or result in unequal treatment of tenderers or Contractors;

(k) if the needs of the Contracting Authority change and it no longer requires new services under the FWC; in such cases ongoing purchase orders shall remain unaffected;

(l) if the termination of the FWC with one or more of the Contractors means that the multiple FWC with reopening of competition shall no longer have the minimum required level of competition.

### **II.18.2 Grounds for termination by the Contractor**

The Contractor may terminate the FWC or a purchase order if:

(a) he has evidence that the Contracting Authority has committed *substantial errors*, *irregularities* or *fraud* in the procedure for awarding the FWC or the *implementation of the FWC*;

(b) the Contracting Authority fails to comply with its obligations, in particular the obligation to provide the information needed for the Contractor to implement the FWC or to perform a purchase order as provided for in the tender specifications.

### **II.18.3 Procedure for termination**

A party must *formally notify* the other party of its intention to terminate the FWC or a purchase order and the grounds for termination.

The other party shall have 30 days following the date of receipt to submit observations, including the measures it has taken to continue fulfilling its contractual obligations. Failing that, the decision to terminate shall become enforceable the day after the time limit for submitting observations has elapsed.

If the other party submits observations, the party intending to terminate must *formally notify* it either of the withdrawal of its intention to terminate or of its final decision to terminate.

In the cases referred to in points (a) to (d), (g) to (i), (k) and (l) of Article II.18.1 and in Article II.18.2, the date on which the termination takes effect must be specified in the *formal notification*.

In the cases referred to in points (e), (f) and (j) of Article II.18.1, the termination shall take effect on the day following the date on which the Contractor receives *notification* of termination.

In addition, at the request of the Contracting Authority and regardless of the grounds for termination, the Contractor must provide all necessary assistance, including information, documents and files, to allow the Contracting Authority to complete, continue or transfer the services to a new Contractor or internally, without interruption or adverse effect on the quality or continuity of the services. The parties may agree to draw up a transition plan detailing the Contractor’s assistance unless such plan is already detailed in other contractual documents or in the tender specifications. The Contractor must provide such assistance at no additional cost, except if he can demonstrate that he requires substantial additional resources or means, in which case he must provide an estimate of the costs involved and the parties will negotiate an arrangement in good faith.

### **II.18.4 Effects of termination**

The Contractor shall be liable for damage incurred by the Contracting Authority as a result of the termination of the FWC or a purchase order including the cost of appointing another Contractor to provide or complete the services, unless the damage was caused by the situation specified in Article II.18.1(j), (k) or (l) or in Article II.18.2. The Contracting Authority may claim compensation for such damage.

The Contractor shall not be entitled to compensation for any loss resulting from the termination of the FWC or a purchase order, including loss of anticipated profits, unless the loss was caused by the situation specified in Article II.18.2.

The Contractor must take all appropriate measures to minimise costs, prevent damage and cancel or reduce his commitments.

Within 60 days of the date of termination, the Contractor must submit any report, deliverable or *result* and any invoice required for services that were provided before the date of termination.

In the case of joint tenders, the Contracting Authority may terminate the FWC or a purchase order with each member of the group separately on the basis of points (d), (e) or (g) of Article II.18.1, under the conditions set out in Article II.11.2.

## INVOICES, VALUE ADDED TAX AND E-INVOICING

### **II.19.1 Invoices and value added tax**

Invoices must contain the Contractor’s (or leader’s in the case of a joint tender) identification data, the amount and the date, as well as the FWC reference and reference to the purchase order.

Invoices must indicate the place of taxation of the Contractor (or leader in the case of a joint tender) for value added tax (VAT) purposes and must specify separately amounts not including VAT and amounts including VAT.

The Contracting Authority shall be exempt from all taxes and duties, including VAT, in accordance with Articles 3 and 4 of the Protocol on the privileges and immunities of the European Union.

The Contractor (or leader in the case of a joint tender) must complete the necessary formalities with the relevant authorities to ensure that the supplies and services required for *implementation of the FWC* are exempt from taxes and duties, including VAT.

## APPLICABLE LAW AND SETTLEMENT OF DISPUTES

**II.20.1** The FWC shall be governed by Union law, complemented, where necessary, by the civil law of Belgium.

**II.20.2 Mediation**

Without prejudice to Article II.20.3, in the event that any dispute arises between the parties resulting from the interpretation or application of the FWC and the dispute is not resolved by negotiation, the parties may agree to submit the dispute to mediation.

If a party to the dispute gives written notice to the other party of its desire to commence mediation, and the other party agrees in writing, the parties shall jointly appoint a mutually acceptable mediator within two weeks of the date of the said written agreement. If the parties are unable to agree upon the appointment of a mediator within that time period, either party may apply to the President of the Court of First Instance of Brussels, for the appointment of a mediator.

The mediator's written proposal or his written conclusion stating that no proposal can be made shall be produced within two months of the date of the written agreement by the other party to commence mediation. The mediator's proposal or conclusion shall not be binding for the parties, who reserve the right to bring the dispute before the courts, as per Article II.20.3.

Within two weeks of the date of notification of the proposal by the mediator, the parties can conclude a written agreement, duly signed by both parties, based on the proposal.

The parties further agree to share equally the costs of mediation by the mediator; such costs shall not include any other costs incurred by a party in connection with the mediation.

**II.20.3Settlement of disputes**

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

## PAYMENTS AND GUARANTEES

### **II.21.1 Date of payment**

Payments are deemed to be effected on the date when they are debited to the Contracting Authority’s account.

### **II.21.2 Currency**

Payments are made in euros.

### **II.21.3 Costs of transfer**

### not applicable

### **II.21.4 Pre-financing, performance and money retention guarantees**

If, as provided for in Article I.6, a financial guarantee is required for the payment of pre-financing, as performance guarantee or as retention money guarantee, it must fulfil the following conditions:

(a) the financial guarantee is provided by a bank or a financial institution approved by the Contracting Authority or, at the request of the Contractor and with the agreement of the Contracting Authority, by a third party;

(b) the guarantor stands as first-call guarantor and does not require the Contracting Authority to have recourse against the principal debtor (the Contractor).

The Contractor shall bear the cost of providing such guarantee.

Pre-financing guarantees must remain in force until the pre-financing is cleared against interim payments or payment of the balance. Where the payment of the balance takes the form of a debit note, the pre-financing guarantee must remain in force for three months after the debit note is sent to the Contractor. The Contracting Authority must release the guarantee within the following month.

Performance guarantees shall cover compliance with substantial contractual obligations until the Contracting Authority has given its final approval for the service. The performance guarantee must not exceed 10 % of the total price of the purchase order. The Contracting Authority must release the guarantee fully after final approval of the service, as provided for in the purchase order.

Retention money guarantees shall cover full delivery of the service in accordance with the purchase order including during the contract liability period and until its final approval by the Contracting Authority. The retention money guarantee must not exceed 10 % of the total price of the purchase order. The Contracting Authority must release the guarantee after the expiry of the contract liability period as provided for in the purchase order.

The Contracting Authority must not request a retention money guarantee for a purchase order where it has requested a performance guarantee.

### **II.21.5 Interim payments and payment of the balance**

The Contractor (or leader in the case of a joint tender) must send an invoice for interim payment, as provided for in Article I.6 or in the tender specifications or in the purchase order.

The Contractor (or leader in the case of a joint tender) must send an invoice for payment of the balance within 60 days of the end of the period of provision of the services, as provided for in Article I.6, in the tender specifications or in the purchase order.

Payment of the invoice and approval of documents shall not imply recognition of the regularity, authenticity, completeness and correctness of the declarations and information they contain.

Payment of the balance may take the form of recovery.

### **II.21.6 Suspension of the time allowed for payment**

The Contracting Authority may suspend the payment periods specified in Article I.6 at any time by *notifying* the Contractor (or leader in the case of a joint tender) that his invoice cannot be processed. The reasons the Contracting Authority may cite for not being able to process an invoice are:

(a) because it does not comply with the FWC;

(b) because the Contractor has not produced the appropriate documents or deliverables; or

(c) because the Contracting Authority has observations on the documents or deliverables submitted with the invoice.

The Contracting Authority must *notify* the Contractor (or leader in the case of joint tender) as soon as possible of any such suspension, giving the reasons for it.

Suspension takes effect on the date the Contracting Authority sends the *notification*. The remaining payment period shall resume from the date on which the requested information or revised documents are received or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension period exceeds two months, the Contractor (or leader in the case of a joint tender) may request the Contracting Authority to justify the continued suspension.

Where the payment periods have been suspended following rejection of a document referred to in the first paragraph of this Article and the new document produced is also rejected, the Contracting Authority reserves the right to terminate the purchase order in accordance with Article II.18.1(c).

### **II.21.7 Interest on late payment**

On expiry of the payment periods specified in Article I.6, the Contractor (or leader in the case of a joint tender) is entitled to interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in euros (the reference rate) plus eight points. The reference rate shall be the rate in force, as published in the C series of the *Official Journal of the European Union*, on the first day of the month in which the payment period ends.

Suspension of the payment period as provided for in Article II.21.6 is not considered as giving rise to late payment.

Interest on late payment covers the period running from the day following the due date for payment up to and including the date of payment as defined in Article II.21.1.

However, when the calculated interest is EUR 200 or less, it must be paid to the Contractor (or leader in the case of a joint tender) only if he requests it within two months of receiving late payment.

## RECOVERY

**II.22.1**If an amount is to be recovered under the terms of the FWC, the Contractor must repay the Contracting Authority the amount in question.

### **II.22.2 Recovery procedure**

Before recovery, the Contracting Authority must *formally notify* the Contractor of its intention to recover the amount it claims, specifying the amount due and the reasons for recovery and inviting the Contractor to make any observations within 30 days of receipt.

If no observations have been submitted or if, despite the observations submitted, the Contracting Authority decides to pursue the recovery procedure, it must confirm recovery by *formally notifying* a debit note to the Contractor, specifying the date of payment. The Contractor must pay in accordance with the provisions specified in the debit note.

If the Contractor does not pay by the due date, the Contracting Authority may, after informing the Contractor in writing, recover the amounts due:

(a) by offsetting them against any amounts owed to the Contractor by the Union;

(b) by calling in a financial guarantee if the Contractor has submitted one to the Contracting Authority;

(c) by taking legal action.

### **II.22.3 Interest on late payment**

If the Contractor does not honour the obligation to pay the amount due by the date set by the Contracting Authority in the debit note, the amount due shall bear interest at the rate indicated in Article II.21.7. Interest on late payments will cover the period starting on the day after the due date for payment and ending on the date when the Contracting Authority receives the full amount owed.

Any partial payment shall first be entered against charges and interest on late payment and then against the principal amount.

### **II.22.4 Recovery rules in the case of joint tender**

If the contract is signed by a group (joint tender), the group is jointly and severally liable under the conditions set out in Article II.6 (liability). The Contracting Authority first claims the full amount from the leader of the group.

If the leader does not pay by the due date and if the amount cannot be offset in accordance with Article II.22.2 (a), the Contracting Authority may claim the full amount from any other member of the group by *notifying* the debit note already sent to the leader under Article II.22.2.

## CHECKS AND AUDITS

**II.23.1** The Contracting Authority and the European Anti-Fraud Office may check or require an audit on the *implementation of the FWC*. This may be carried out either by OLAF’s own staff or by any other outside body authorised to do so on its behalf.

Such checks and audits may be initiated at any moment during the provision of the services and up to five years starting from the payment of the balance of the last purchase order issued under this FWC.

The audit procedure shall be initiated on the date of receipt of the relevant letter sent by the Contracting Authority. Audits shall be carried out on a confidential basis.

**II.23.2** The Contractor must keep all original documents stored on any appropriate medium, including digitised originals if authorised under national law, for a period of five years starting from the payment of the balance of the last purchase order issued under this FWC.

**II.23.3** The Contractor must grant the Contracting Authority’s staff and outside personnel authorised by the Contracting Authority the appropriate right of access to sites and premises where the FWC is implemented and to all the information, including information in electronic format, needed to conduct such checks and audits. The Contractor must ensure that the information is readily available at the moment of the check or audit and, if so requested, that this information is handed over in an appropriate format.

**II.23.4** On the basis of the findings made during the audit, a provisional report shall be drawn up. The Contracting Authority or its authorised representative must send it to the Contractor, who has 30 days following the date of receipt to submit observations. The Contractor must receive the final report within 60 days following the expiry of the deadline to submit observations.

On the basis of the final audit findings, the Contracting Authority may recover all or part of the payments made in accordance with Article II.23 and may take any other measures which it considers necessary.

**II.23.5** In accordance with Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities’ financial interests against *fraud* and other *irregularities* and Regulation No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF), the European Anti-Fraud Office may carry out investigations, including on-the-spot checks and inspections, to establish whether there has been *fraud*, corruption or any other illegal activity under the Contract affecting the financial interests of the Union. Findings arising from an investigation may lead to criminal prosecution under national law.

The investigations may be carried out at any moment during the provision of the services and up to five years starting from the payment of the balance of the last purchase order issued under this FWC.

**II.23.6** The Court of Auditors shall have the same rights as the Contracting Authority, particularly right of access, for the purpose of checks and audits.

## Applicability of internal rules to the Contractor’s personnel

**II.24.1** The internal rules applying to the staff of the Contracting Authority (including, amongst others, those concerning hygiene, security, safety and emergencies, tobacco and alcohol use, access to the Contracting Authority's buildings, and driving in the parking areas) shall also apply to the *personnel* of the Contractor and, where applicable, of the sub-contractor, if they are working on the Contracting Authority's premises.

**II.24.2** The Contracting Authority's code of conduct as regards sexual harassment shall also apply to *personnel* of the Contractor and, where applicable of the sub-contractor, if they are working on the Contracting Authority's premises. Such persons shall be entitled to address themselves to a person of trust appointed within the Contracting Authority.

## Environmental policy

The Contractor shall respect the Contracting Authority's environmental policy as laid down in the tendering specifications and inform his *personnel* accordingly.

## Security

If the Contractor or his *personnel* fail to comply with the rules set out in Annex IV the Contracting Authority may, without prejudice to any indemnity due by the Contractor to the Contracting Authority, terminate the pending purchase order in question with immediate effect by *formal notification* to the Contractor. In these circumstances, no costs or compensation relating to such termination shall be due by the Contracting Authority to the Contractor.

**ANNEX I**

Tender Specifications (FUNCTIONAL AND TECHNICAL SPECIFICATIONS)

Shall be established on the basis of the functional and technical specifications in the call for tenders (Annex 2 to the Tender Specifications) and the successful tender.

**ANNEX II**

Prices and Financial Conditions

Shall be established on the basis of the financial tender form in the call for tenders (Annex 3 to the Tender Specifications) and the successful tender.

**ANNEX III**

**Model for Purchase Order**

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| |  |  | | --- | --- | |  | **Council of the European Union**  General Secretariat |   **EUROPEAN UNION**  **General Secretariat of the Council**  **Rue de la Loi/Wetstraat 175**  **1048 Bruxelles/Brussel**  **REQUESTING DG / Unit**  Contact:  Tel.:  Fax:  Email: | **PURCHASE ORDER No** | | | |  | | |
| **CONTRACTOR**  **Sales person/Contact:** | | | | | | |
| **Date:** | | | | | | |
| **DESCRIPTION OF THE SUPPLIES OR SERVICES** | | | | | | | **Total (EUR)** |
| Reference of the Contractor's tender:  Date of the Contractor's tender: | | | | | | | |
| REFERENCE TO FRAMEWORK CONTRACT (IF ANY) : | | | | | | | |
| **DESCRIPTION OF THE SUPPLIES OR SERVICES** | | | **Unit** | **Quantity** | | **Price (EUR)** | **Total (EUR)** |
|  | | |  |  | |  |  |
|  | | |  |  | |  |  |
|  | | |  |  | |  |  |
|  | | |  |  | |  |  |
| **TOTAL** | | |  |  | |  |  |
| Annexes (if any) by order of priority: | | | | | | | |
| Additional information (if any): | | | | | | | |
| Delivery location (if any): | | | | | | | |
| Delivery date (if any): | | | | | | | |
| Start date and end date (if any): | | | | | | | |
| Unless otherwise specified in the special conditions this purchase order shall be governed by the General Conditions of the Contract (as published on the internet at: https://tendering.consilium.europa.eu/termsandconditions.aspx).  This purchase order shall be governed by Union law, complemented where necessary by Belgian civil law. Any dispute between the parties resulting from the interpretation or application of the purchase order which cannot be settled amicably shall be brought before the courts of Brussels, Belgium. | | | | | | | |
| Invoices shall mention the no of this purchase order and should be sent to:  Council of the European Union, Accounting Department, Rue de la Loi 175, 1048 Brussels, by means of the e-Invoicing module of the e-PRIOR platform.  Unless otherwise specified, the invoice shall be admissible only if the Contractor returns a signed copy of this purchase order. | | | | | | | |
| **Value added tax:** the supply of goods and the provision of services to the European Union for its official use are exempt from value added tax (VAT). The following statement must be mentioned on the invoice which the supplier sends to the European Union:  **For Belgium:** ''Exonération de la TVA-Article 42,§3, 3° du Code de la TVA (when the amount reaches 124 Euro per operation not including value added tax). In Belgium use of this purchase order constitutes a request for VAT exemption no 450.  **For other countries:** ''VAT exemption - European Union - Article 151 of the VAT Directive 2006/112/EC . | | | | | | | |
| **By signing below both parties declare that they accept this purchase order in its entirety as well as the content and order of priority of the annexes listed above which shall constitute an integral part of this purchase order.** | | | | | | | |
| Signature of the General Secretariat  Name: | | Signature of the Contractor  Name: | | | | | |
| Purchase order number: 1/1 | | | | | | | |

**ANNEX IV**

SECURITY MEASURES

**Section 1 – ACCESS TO THE CONTRACTING AUTHORITY’S PREMISES**

**A. Access passes**

Anyone requiring access to the Contracting Authority's premises must first be accredited by the Accreditation service (lots 1 & 2) or the Security service (lot 3). Accreditation is the process of granting the appropriate access pass for access to certain parts of the building once it has been ascertained that the person in question is entitled to enter.

The competent official from the requesting department concerned within the Contracting Authority will request access passes for *personnel* contracted by the Contracting Authority.

In respect of lot 3 only: the Contractor shall complete the access request form, to be provided to him by the manager responsible, annexing all of the required documents to it.

To this end, the Contractor must:

1) at least 5 working days before the scheduled start of the FWC, send the designated department of the Contracting Authority a list of the names and full identities of members of the Contractor's *personnel* who will work on the Contracting Authority's premises, together with the registration numbers of the vehicles which must have access to the site in order to perform the FWC. Any communication relating to access to the Contracting Authority's premises and access passes should be sent to the following office:

[insert email address of the department requesting the works/service etc.];

2) notify the designated department of the Contracting Authority, at least 3 working days in advance, of any projected changes to the team(s) working at the Contracting Authority;

3) notify the members of the Contractor's *personnel* that: security staff at the Contracting Authority are authorised to check the identity of any person wishing to gain entrance to the premises of the Contracting Authority and, if need be, deny that person access; that the Contractor's *personnel*, and the vehicles which they use, may be subject to security checks on entering or leaving the Contracting Authority's premises; and that security staff are entitled to temporarily confiscate prohibited objects that pose a risk to security;

4) take all necessary measures to protect people and property from any risks arising from performance of the FWC.

Should the Contractor's *personnel* need to enter secured areas they must have the prior authorisation of the service in charge of the secured area concerned. Details are laid down in Council Decision 2013/488/EU of 23 September 2013 on the security rules for protecting EU classified information (OJ L 274, 15.10.2013, p.1).

Access passes are issued to the holder in person on production of:

1) proof of identity, i.e. a document bearing a photograph, such as a national identity card or passport. Other documents, such as a credit card or a driving licence, will not be accepted as proof of identity.

2) an extract from police records certifying good conduct (*extrait de casier judiciaire/uittreksel strafregister*) obtained from the holder's local police station within the last two months.

Access passes are strictly personal and are the individual responsibility of their holder. Passes may not be given to other members of the Contract team or other third parties. Breaches may lead to measures such as refusal of entry or withdrawal of certain access rights.

*Access passes must be worn visibly at all times on the Contracting Authority's premises.*

If an access pass is lost or stolen it must be reported to the Security Office immediately, and in the case of a permanent pass also to the police. The holder must apply for a new access pass. Permanent access passes must be returned to the Accreditation Service even when they have expired.

**B. Vehicles**

Contractors' vehicles may only use the entrance at Chaussée d'Etterbeek 70 for the Justus Lipsius (JL) building, and Chaussée d'Etterbeek 52 for the Lex building. In respect of lot 3: the Jacques Delors building must be used, by the rue Belliard entrance.

Holders of a permanent pass may park their vehicles in the JL service car park (lots 1 & 2) and at level -3 of the Jacques Delors car park (lot 3), provided that:

 the vehicle in question is registered with the Accreditation Service;

 the pass is programmed to allow automatic access to the service car park

(lots 1 & 2);

 the sticker issued by the Accreditation Service is placed on the inside of the vehicle's windscreen, on the left-hand side (lots 1 & 2).

All occupants of a vehicle must present their individual permanent access passes to the security guard, not just the driver. Passengers without a permanent pass will be refused access at the car park entrance and will be required to enter the building by a pedestrian entrance, where they will have to undergo an electronic security check.

In respect of lot 3: each day, before accessing the site and/or the car park with their vehicle, members of the Contractor's *personnel* and/or sub-contractors must proceed on foot to the loading bay of the Jacques Delors building (ground floor) to collect their personal access pass. The holder shall return the access pass to the same location upon departure from the site.

In respect of lots 1 and 2: drivers with *ad hoc* authorisation may park their vehicles on the access ramp to the loading bay at JL but must put the cone issued at the guard's lodge on the roof of the vehicle.

Parking spaces are available on a 'first come, first served' basis.

Additional security checks are made on all vehicles and passengers at the JL car park entrance during summit arrangements.

Belgium's highway code applies to driving on the internal access-ways of the site and in the car park. Vehicles driving in the car parks must have their headlights on. Parked vehicles must be locked and engines must be switched off.

Headroom in the car parks is generally limited to 2.05 m. Drivers wishing to enter the car park with a higher vehicle must first consult the Secretariat's Accreditation Service.

Persons with reduced mobility may request a reserved parking space via the Health and Safety Department (service.prevention@consilium.europa.eu). This option is also open to people with temporarily reduced mobility.

Please inform the Health and Safety Department should you wish to park an LPG vehicle.

In the event of an accident, an accident report form ("incident report" available from the Security Office) must be completed by the parties involved. Anyone whose vehicle causes damage to Secretariat property will be held liable for repair costs. The Security Office must be notified (tel. 7851 or 8909) and an accident report form completed for the insurance companies. The Secretariat declines liability for any loss resulting in particular from accidents, theft or damage, whatever the reason or cause, occurring in the car park.

**C. Sub-Contractors**

Where the Contractor has concluded sub-contracting arrangements in accordance with this FWC, the provisions of this Annex shall apply mutatis mutandis to the sub-contractor(s) and their *personnel*.

**Section 2 – CCTV**

For the safety and security of its staff, visitors, buildings, property and information, and for logistical reasons, the Contracting Authority operates a video protection system on parts of its premises. Further details on the Contracting Authority's video systems are available in "The General Secretariat of the Council's Policy on Use of Video Systems", approved by the Secretary-General on 16 June 2011, which is available on the Council web site under [www.consilium.europa.eu/media/1330003/video-en.pdf](http://www.consilium.europa.eu/media/1330006/video-fr.pdf) (lots 1 & 2) or from the Security service (lot 3).

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1. *See publication 'Data in focus', Harmonised indices of consumer prices, table 1 - Index levels (2005=100) - HICP all items, line Euro area (click on the 'Publications' tab, then on 'data in focus' at the left border of the screen).* [↑](#footnote-ref-1)
2. OJ L 94, 28.3.2014, p. 65. [↑](#footnote-ref-2)
3. If working days are to be used, please be aware of the difference between the European Institutions' official calendar and national calendars. [↑](#footnote-ref-3)
4. Regulation (EU, EURATOM) No 966/2012 on the financial rules applicable to the general budget of the Union, as amended [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32012R0966](http://eur-lex.europa.eu/legal-content/FR/TXT/?uri=celex:32012R0966) [↑](#footnote-ref-4)