



Council of the European Union
General Secretariat

DRAFT

FRAMEWORK CONTRACT – LOT 1

for the supply and installation of "standard" Public Key Infrastructure (PKI) components for the IT networks of the GSC and for the provision of associated services (maintenance, support, professional services and training)

Contract number: UCA-17/079

THE EUROPEAN UNION, represented by the General Secretariat of the Council, which is represented for the purposes of signing this contract by *[full name]*, Director DG A CIS, Communication and Information Systems, Rue de la Loi 175, B-1048 Brussels, (hereinafter referred to as "the Secretariat"), **on the one part**

AND

[Full official name]
[Official legal form]
[Statutory registration number or ID or passport number]
[Full official address]
[VAT registration number]

represented for the purposes of signing this contract by *[full name and function of the legal representative]*, (hereinafter referred to as "the contractor"), **on the other part**

HAVE AGREED

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

- Annex I** – Tender specifications
- Annex II** – Prices and financial conditions
- Annex III** – Model for purchase orders
- Annex IV** – Security measures
- Annex V** – Technical offer

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

The FWC sets out:

1. the procedure by which the contracting authority may order supplies from the contractor;
2. the provisions that apply to any *purchase order* which the contracting authority and the contractor may conclude under the FWC; and
3. the obligations of the parties during and after the duration of the FWC.

All documents issued by the contractor (end-user agreements, general terms and conditions, etc.), with the exception of its tender, are held inapplicable, unless explicitly mentioned in the special conditions of the FWC. In all circumstances, in the event of contradiction between the FWC and documents issued by the contractor, the FWC prevails, regardless of any provision to the contrary in the contractor's documents.

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I. SPECIAL CONDITIONS

I.1 ORDER OF PRIORITY OF PROVISIONS

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

- (a) the provisions set out in the special conditions take precedence over those in the other parts of the FWC;
- (b) the provisions set out in the general conditions take precedence over those in the *purchase order* (Annex III);
- (c) the provisions set out in the *purchase order* (Annex III) take precedence over those in the other annexes;
- (d) the provisions set out in the tender specifications (Annex I) take precedence over those in the prices and financial conditions (Annex II);
- (e) the provisions set out in the FWC take precedence over those in the purchase orders;
- (f) the provisions set out in the purchase orders take precedence over those in the requests for supplies;
- (g) the provisions set out in the requests for supplies take precedence over those in the specific tenders.

I.2 SUBJECT-MATTER

The FWC is the result of the procurement procedure **UCA-17/079, Lot 1**.

The subject-matter of the FWC is the supply and installation of "standard" Public Key Infrastructure (PKI) components for the IT networks of the GSC and for the provision of associated services (maintenance, support, professional services and training).

I.3 ENTRY INTO FORCE AND DURATION OF THE FWC

I.3.1 The FWC enters into force on *[insert date]* if both parties have already signed it.

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

I.3.3 The FWC is concluded for a period of 2 years with effect from the date of its entry into force.

I.3.4 The parties must sign any *purchase order* before the FWC expires.

The FWC continues to apply to such *purchase orders* after its expiry. The services relating to such purchase orders must be provided no later than 6 months after the expiry of the FWC.

I.3.5 Renewal of the FWC

The FWC is renewed automatically 8 times for 1 year each, unless one of the parties receives *formal notification* to the contrary at least 6 months before the end of the unexpired period of the

FWC. The overall duration of the contract shall not exceed 10 years. Renewal does not change or postpone any existing obligations.

During the first 6 years, acquisitions and provision of services will be covered. In case of extensions, from the 7th year onwards until the expiration of the contract, only services will be required (maintenance and support, professional services, training).

I.4 APPOINTMENT OF THE CONTRACTOR AND PERFORMANCE OF THE FWC

I.4.1 Appointment of the contractor

The contracting authority appoints the contractor for a single FWC.

I.4.2 Period of provision of the supplies

The period for the provision of the supplies starts to run from the date of entry into force of the *purchase order* (unless a different date is indicated in the *purchase order*).

I.4.3 Performance of a single FWC

The contracting authority orders supplies by sending the contractor a *purchase order* in paper format.

Within 5 working days, the contractor must:

- (a) send the *purchase order* back to the contracting authority signed and dated; or
- (b) send an explanation of why it cannot accept the order.

If the contractor repeatedly refuses to sign the *purchase orders* or repeatedly fails to send them back on time, it may be considered in breach of its obligations under the FWC as set out in point (c) of Article II.17.1.

I.4.4 Delivery

I.4.4.1 The requested dates of delivery (and installation) and the site to which the delivery must be made (and installation performed) are specified in the *purchase order*. The contracting authority reserves the right to change the address within a reasonable time before delivery.

I.4.4.2 The contractor must notify the contracting authority of the exact date of delivery at least 2 days in advance. Deliveries may be made on any working day during normal working hours, at the agreed place of delivery.

I.5 PRICES

I.5.1 Maximum amount of the FWC and maximum prices

The maximum amount covering all purchases under the FWC, including all renewals, is EUR [amount in figures and in words]. However, this does not bind the contracting authority to purchase for the maximum amount.

The maximum prices of the supplies are as listed in Annex II.

I.5.2 Price revision

I.5.2.1 All prices are fixed and not subject to revision during the first year of the FWC.

I.5.2.2 Professional services and training

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 date of entry into force of the FWC. At the anniversary date, the contracting authority must communicate the final index for the month in which the request was received, or failing that, the last provisional index available for that month. The contractor establishes the new price on this basis and communicates it as soon as possible to the contracting authority for verification. The contracting authority purchases on the basis of the prices in force on the date on which *purchase orders* are signed. Such prices are not subject to revision.

Revisions will be determined by the trend in the harmonised indices of consumer prices (HICP) published by Eurostat at <http://www.ec.europa.eu/eurostat/>¹.

Revision must be calculated in accordance with the following formula:

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

where:

Pr = revised price

Po = price in the tender

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

Ir = last known index for the month in which the request for price revision is received

I.5.2.3 Supplies and maintenance and support services

From the beginning of the second year of performance of the FWC and two months before the anniversary date of the FWC, the manufacturers' reference list of PKI components (including catalogues) and related maintenance and support services (including upgrades) covered by the FWC will be updated on an annual basis to follow the evolution of the market for PKI equipment. The Secretariat checks and approves or not the updated version of the manufacturers' reference list (including catalogues). If approved, an amendment to the Contract shall be made.

I.6 PAYMENT ARRANGEMENTS

I.6.1 Pre-financing

Not applicable

I.6.2 Interim payment

Not applicable

¹ Click on the icon "Economy and Finance", then on "Harmonised Indices of Consumer Prices (HICP)", "Data" at the left border of the screen, "MAIN TABLES", "Main Headings (2015 = 100), 00 All items (global index)", "Euro area (19 countries)".

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.20.5.

The contractor (or leader in the case of a joint tender) must send an invoice via *e-PRIOR* for payment of the balance due under a *purchase order*, as provided for in the tender specifications and accompanied by the following:

- *certificate of conformity of supplies including reference to purchase order*

2. The contracting authority must approve the submitted documents or supplies and pay within 30 days from 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.20.6.

The contractor (or leader in the case of a joint tender) has 15 days to submit additional information or corrections or new supplies if required by the contracting authority.

4. The contracting authority must give its approval and pay within the remainder of the time limit indicated in paragraph 2 unless it rejects, either partially or fully, the submitted documents or supplies.

I.6.4 Performance guarantee

Not applicable

I.6.5 Retention money guarantee

Not applicable

I.7 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 the bank:	[to be completed]
Full address of branch:	[to be completed]
Exact denomination of account holder:	[to be completed]
IBAN:	[to be completed]

I.8 COMMUNICATION DETAILS

For the purpose of this FWC, communications must be sent to the following addresses:

Contracting authority:

Council of the European Union
General Secretariat
[Directorate [complete]]
[Unit and name of the authorising officer responsible [complete]]
Rue de la Loi 175
B-1048 Brussels, Belgium

Email: [insert functional mailbox]

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

[Full name]

[Function]

[Company name]

[Full official address]

Email: [complete]

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

I.9 DATA CONTROLLER

For the purpose of Article II.9, the data controller is the General Secretariat of the Council.

I.10 TERMINATION BY EITHER PARTY

Either party may terminate the FWC or the FWC and *purchase orders* by sending *formal notification* to the other party with 6 months of written notice.

If the FWC or a *purchase order* is terminated:

- (a) neither party is entitled to compensation;
- (b) the contractor is entitled to payment only for the supplies delivered before termination takes effect.

The second, third and fourth paragraph of Article II.17.4 apply.

I.11 INTERINSTITUTIONAL FWC

Not applicable

I.12 SUPPLIES 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.

I.13 PROTECTION OF CLASSIFIED INFORMATION

I.13.1 The contractor or subcontractor, and their *personnel*, must be security cleared to the appropriate level where:

- (a) the FWC or subcontract involves or entails access to or the handling or storage of information classified CONFIDENTIEL UE/EU CONFIDENTIAL or SECRET UE/EU SECRET, for which Facility Security Clearance is required;
- (b) for the performance of a classified FWC, *personnel* of the contractor or subcontractor require access to information classified CONFIDENTIEL UE/EU CONFIDENTIAL or SECRET UE/EU SECRET, for which Personnel Security Clearance is required;

- (c) for the *performance of the FWC*, *personnel* of the contractor or subcontractor are employed in circumstances in which they may potentially have access to information classified CONFIDENTIEL EU/EU CONFIDENTIAL or above, for which Personnel Security Clearance is required, unless *personnel* are appropriately escorted at all times;
- (d) for the *performance of the FWC*, the contractor's or subcontractor's *personnel* have access to secured areas or are involved in the technical operation or maintenance of communications and information systems containing classified information, for which Personnel Security Clearance is required, unless *personnel* are appropriately escorted at all times.

I.13.2 If the contractor or its *personnel* and, where applicable, subcontractors fail to comply with Council Decision 2013/488/EU of 23 September 2013 on the security rules for protecting EU classified information² or with instructions from the contracting authority's Security Office, the contracting authority may, without prejudice to any indemnity due by the contractor to the contracting authority, terminate the FWC or *purchase order* with immediate effect by giving notice to the contractor. In these circumstances, no costs or compensation relating to such termination will be due by the contracting authority to the contractor.

I.14 OTHER SPECIAL CONDITIONS

Not applicable

SIGNATURES

For the contractor,

[*Company name/forename/surname/position*]

Signature: _____

Done at [*place*], [*date*]

For the contracting authority,

[*forename/surname/position*]

Signature: _____

Done at [*place*], [*date*]

In duplicate in English.

² OJ L 274, 15.10.2013, p.1.

II. GENERAL CONDITIONS FOR THE FRAMEWORK CONTRACT FOR SUPPLIES

II.1 DEFINITIONS

For the purpose of the FWC, the following definitions (indicated in *italics* in the text) 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 *performance of the FWC*, that any of the parties has identified in writing as confidential. It cannot include information that is publicly available;

'conflict of interest': a situation where the impartial and objective *performance 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 on 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 post 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;

'performance of the FWC': the purchase of supplies envisaged in the FWC through the signature and *implementation 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 supplies under the FWC;

'implementation of a purchase order': the execution of tasks and delivery of the purchased supplies by the contractor to the contracting authority;

'personnel': persons employed directly or indirectly or contracted by the contractor to perform 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 *performance of the FWC*;

'pre-existing right': any industrial and intellectual property right on *pre-existing material*; it may be a right of ownership, a licence right and/or right of use belonging to the contractor, the *creator*, the contracting authority or to any other third parties;

'professional conflicting interest': a situation in which the contractor's previous or ongoing professional activities affect its capacity to perform the FWC or implement the *purchase order* to an appropriate quality standard;

'related person': any person who has the power to represent the contractor or to take decisions on its behalf;

'request for supplies': a document from the contracting authority requesting that the contractors in a multiple FWC provide a specific tender for supplies the terms of which are not fully defined under the FWC;

'result': any intended outcome of the *performance of the FWC*, whatever its form or nature, which is delivered and either finally or partially approved by the contracting authority. A *result* may be further defined in the FWC as a deliverable. A *result* may, in addition to materials produced by the contractor or at its 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 the following website:

http://ec.europa.eu/dgs/informatics/supplier_portal/doc/um_supplier_portal_overview.pdf

II.2 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 is appointed as leader of the group.

II.3 SEVERABILITY

Each provision of the FWC is 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 does 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.

II.4 DELIVERY OF SUPPLIES

II.4.1 Signature of the FWC does not guarantee any actual purchase. The contracting authority is bound only by *purchase orders* performing the FWC.

II.4.2.1 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/EU³.

II.4.2.2 The contractor has sole responsibility for complying with any legal obligations incumbent on it, notably those resulting from tax and workplace safety legislation.

II.4.2.3 Contractors who are natural persons are required to provide proof of their status as a self-employed person. For that purpose they must submit supporting documents concerning their social security cover and value added tax (VAT) status.

II.4.3 The contractor has 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.4.4 All periods specified in the FWC are calculated in calendar days, unless otherwise specified⁴.

II.4.5 The contractor must not present itself as a representative of the contracting authority and must inform third parties that it is not part of the European public service.

II.4.6.1 The FWC must be performed in such a way as to exclude the possibility of the contractor or its *personnel* executing tasks under conditions identical to the working conditions of a person employed by the contracting authority. The contractor or its *personnel* must not be incorporated into the contracting authority's administrative organisation.

³ OJ L 94, 28.3.2014, p. 65.

⁴ If working days are to be used, please be aware of the difference between the European institutions' official calendar and national calendars.

II.4.6.2 In the framework of its employment or service relationships with its *personnel* the contractor must indicate that:

- (a) *personnel* executing the tasks assigned to the contractor may not receive orders directly from the contracting authority;
- (b) the contracting authority may not under any circumstances be considered to be the *personnel's* employer and the said *personnel* must 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.4.7 The contractor must ensure that the *personnel* performing the FWC and any future replacement *personnel* possess the professional qualifications and experience required to execute the tasks, as the case may be on the basis of the selection criteria set out in the tender specifications.

II.4.8.1 At the contracting authority's reasoned request, the contractor must replace any member of *personnel* who:

- (a) does not have the expertise required to provide the supplies; or
- (b) has caused disruption on the premises of the contracting authority.

The contractor bears the cost of replacing its *personnel* and is responsible for any delay in providing the supplies resulting from the replacement of *personnel*.

II.4.8.2 If the contractor's *personnel* are working in the contracting authority's buildings, the contractor must replace, immediately and without compensation, any person considered undesirable by the contracting authority. The contractor will be responsible for any delay in the execution of the tasks assigned to it which results from the replacement of *personnel* in accordance with this paragraph.

II.4.8.3 The contractor must record and report to the contracting authority any problem that affects its ability to deliver the supplies. The report must describe the problem, state when it started and what action the contractor is taking to resolve it.

II.4.9 Delivery

(a) Time allowed for delivery

The time allowed for delivery is calculated in accordance with Article I.4.2.

(b) Date, time and place of delivery

The contracting authority must be notified in writing of the exact date of delivery within the period indicated in Article I.4. All deliveries must be made to the agreed place of delivery during the hours indicated in Article I.4.2.

The contractor must bear all costs and risks involved in delivering the supplies to the place of delivery.

(c) Consignment note

Each delivery must be accompanied by a consignment note in duplicate, duly signed and dated by the contractor or its carrier, stating the *purchase order* number and particulars of the supplies delivered. One copy of the consignment note must be countersigned by the contracting authority and returned to the contractor or to its carrier.

II.4.10 Certificate of conformity

Signature of the consignment note by the contracting authority, as provided for in point (c) of Article II.4.9., is simply an acknowledgment of the fact that the delivery has taken place and in no way implies conformity of the supplies with the *purchase order*.

Conformity of the supplies delivered must be evidenced by the signature of a certificate to that effect by the contracting authority no later than one month after the date of delivery, unless otherwise specified in the special conditions or in the tender specifications.

Conformity must be declared only where the conditions laid down in the FWC and in the *purchase order* are satisfied and the supplies conform to the tender specifications.

If, for reasons attributable to the contractor, the contracting authority is unable to accept the supplies, the contractor must be notified in writing at the latest by the deadline for conformity.

II.4.11 Conformity of the supplies delivered with the FWC

The supplies delivered by the contractor to the contracting authority must be in conformity with the FWC and the relevant *purchase order* in respect of quantity, quality, price and packaging.

The supplies delivered must:

- (a) correspond to the description given in the tender specifications and possess the characteristics of the supplies provided by the contractor to the contracting authority as a sample or model;
- (b) be fit for any specific purpose required of them by the contracting authority and made known to the contractor at the time of conclusion of the FWC and accepted by the contractor;
- (c) be fit for the purposes for which supplies of the same type are normally used;
- (d) demonstrate the high quality standards and performance which are normal in supplies of the same type and which the contracting authority can reasonably expect, given the nature of the supplies and taking into account any public statements on the specific characteristics of the supplies made by the contractor, the producer or its representative, particularly in advertising or on labelling, in accordance with the state of the art in the industry and the provisions of the FWC, in particular the tender specifications and the terms of its tender;
- (e) be packaged according to the usual method for supplies of the same type or, failing this, in a way designed to preserve and protect them.

II.4.12 Remedy

The contractor is liable to the contracting authority for any lack of conformity which exists at the time the supplies are verified.

In the event of lack of conformity, without prejudice to Article II.14 on liquidated damages applicable to the total price of the supplies concerned, the contracting authority is entitled:

- (a) to have the supplies brought into conformity, free of charge, by repair or replacement; or
- (b) to have an appropriate reduction made in the price.

Any repair or replacement must be completed within a reasonable time and without any significant inconvenience to the contracting authority, taking account of the nature of the supplies and the purpose for which they are required by the contracting authority.

The term 'free of charge' in point (a) refers to the costs incurred to bring the supplies into conformity, particularly the cost of postage, labour and materials.

II.4.13 Assembly

If required by the tender specifications (Annex I), the contractor must assemble the supplies delivered within a period of one month unless otherwise specified in the special conditions.

Any lack of conformity resulting from incorrect installation of the supplies must be deemed to be equivalent to lack of conformity of the supplies if installation forms part of the FWC and the supplies were installed by the contractor or under its responsibility. This applies equally if the product was to be installed by the contracting authority and was incorrectly installed owing to a shortcoming in the installation instructions.

II.4.14 Services provided to supplies

If required by the tender specifications, services to supplies must be provided accordingly.

II.4.15 General provisions concerning supplies

(a) Packaging

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

Unless otherwise specified in the special conditions or in the tender specifications (Annex I), pallets must be considered as one-way packaging and do not need to be returned. Each box must be clearly labelled with the following information:

- name of contracting authority and address for delivery;
- name of contractor;
- description of contents;
- date of delivery;
- number and date of *purchase order*.

(b) Guarantee

The supplies must be guaranteed against all defects in manufacture or materials for two years from the date of delivery, unless provision is made for a longer period in the tender specifications.

The contractor must guarantee that any permits and licences required for manufacturing and selling the supplies have been obtained.

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

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

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

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

II.5 COMMUNICATION BETWEEN THE PARTIES

II.5.1 Form and means of communication

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

- (a) be made in writing in paper or electronic format in the language of the contract;
- (b) bear the FWC number and, if applicable, the *purchase order* number;
- (c) be made using the relevant communication details set out in Article I.8; and
- (d) be sent by post 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 has full legal effect and is admissible as evidence in judicial proceedings.

II.5.2 Date of communications by post and email

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

An email is 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 post. In such a case, the sending party is not held in breach of its obligation to send such communication within a specified deadline.

Post sent to the contracting authority is 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 are 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 has been 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 will either use the *supplier portal* or take 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* will have the same legal effects as paper invoices and will be admissible as evidence in legal proceedings.
- II.5.3.3** The contracting authority must take the necessary measures to implement and maintain electronic systems that enable the *supplier portal* to be used effectively. The electronic systems are specified in the Supplier Portal Overview⁵ and e-Invoicing User Manual⁶.
- 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 must take the measures necessary on their side to implement and maintain electronic systems that enable EDI to be used effectively. The electronic systems are specified in the *interface control document*⁷.
- II.5.3.5** If communication via the *supplier portal* or EDI communication, as appropriate, is hindered by factors beyond the control of one party, it must notify the other immediately and the parties must take the necessary measures to restore this communication.
- II.5.3.6** If it is impossible to have the *supplier portal* or 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 EDI communication, as appropriate, is restored.
- II.5.3.7** If it is impossible for the contractor to have 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 EDI communication, as appropriate, is restored.
- II.5.3.8** The contractor must be notified of changes in the *interface control document*. When such a change requires adaptations by the contractor, then the contractor will have a period of six months to implement this change. This period can be shortened upon mutual agreement of the parties. This period of six months does not apply to urgent measures required by the security policy for the information systems of the contracting authority to ensure the integrity, confidentiality and non-repudiation of information and the availability of *e-PRIOR*.

⁵ Please see http://ec.europa.eu/dgs/informatics/supplier_portal/doc/um_supplier_portal_overview.pdf

⁶ Please see http://ec.europa.eu/dgs/informatics/supplier_portal/doc/um_sp_e-invoicing.pdf

⁷ The document is available for consultation at <https://circabc.europa.eu/w/browse/5290b7b0-8ca8-454b-87eb-0ac990362861>

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** Where a financial document is dispatched through the *supplier portal*, it is deemed to have been legally issued or sent when the contractor is able to successfully submit the financial document without any error messages. The PDF and XML documents generated in relation to the financial document are to be considered as proof of receipt by the contracting authority.
- II.5.4.4** Where a financial document is dispatched using a direct connection established between the contractor and the contracting authority's *back offices*, the financial document is 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 must, for each electronic invoice, download the PDF and XML message as applicable 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 will no longer be available for automatic download from the system.
- II.5.5.2** All *EDI messages* exchanged by the parties must 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 must take the necessary measures to implement and maintain safety measures and procedures in order to adequately prevent messages from incurring any delays, being corrupted as to content or form, or being lost.
- II.5.5.4** In all cases the parties must 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 of or detection of one or more errors in an *EDI message*, the receiver must inform the sender thereof as soon as possible, but at the latest within two calendar days.

II.6 LIABILITY

- II.6.1** The contracting authority is not liable for any damage or loss caused by the contractor, including any damage or loss to third parties during or as a consequence of *performance 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 *performance of the FWC*. It must also take out supplementary insurance as reasonably required by standard practice in the industry. Upon request, the contractor must provide the contracting authority with evidence of insurance cover.
- II.6.3** The contractor is liable for any loss or damage caused to the contracting authority during or as a consequence of *performance 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 its *personnel* or subcontractors, the contractor is 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 *performance 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 the contracting authority's liability towards the third party is established and if such liability is caused by the contractor during or as a consequence of the *performance of the FWC*, Article II.6.3 applies.
- II.6.5** If the contractor is composed of two or more economic operators (i.e. which submitted a joint tender), they are all jointly and severally liable to the contracting authority for the *performance of the FWC*.
- II.6.6** The contracting authority is not liable for any loss or damage caused to the contractor during or as a consequence of *performance of the FWC*, unless the loss or damage was caused by wilful misconduct or gross negligence of the contracting authority.

II.7 CONFLICTS 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 *performance of the FWC*. The contractor must immediately take action to rectify the situation.
- The contracting authority may do any of the following:
- (a) verify that the contractor's action is appropriate;
 - (b) require the contractor to take further action within a specified deadline;
 - (c) 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:
- (a) its *personnel*;
 - (b) any natural person with the power to represent it or take decisions on its behalf;

- (c) third parties involved in the *performance 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*.

II.8 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 *performance 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 *performance 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 means other 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 it or take decisions on its behalf, as well as from third parties involved in the *performance 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.

II.9 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 performance, management and monitoring of the FWC. This does not affect its possible transmission to bodies entrusted with monitoring or inspection tasks in application of Union law.

- II.9.2** The contractor has the right to access its personal data and the right to rectify any such data. The contractor should address any queries concerning the processing of its 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 data subjects may exercise their rights.
- II.9.5** The contractor must grant *personnel* access to the data to the extent strictly necessary for the performance, 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 contract (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 its *personnel* of the provisions defined in this Article constitutes a breach of contract entitling the contracting authority to terminate the FWC with immediate effect at the contractor's expense and will render the latter liable for damages, with interest, for any resulting loss.

II.10 SUBCONTRACTING

- II.10.1** The contractor must not subcontract and have the FWC performed by third parties beyond the third parties already mentioned in its tender without prior written authorisation from the contracting authority.
- II.10.2** Even if the contracting authority authorises subcontracting, the contractor remains bound by its contractual obligations and is solely responsible for the *performance of the FWC*.
- II.10.3** The contractor must ensure that the subcontract does not affect the rights of the contracting authority under the FWC, particularly those under Articles II.8 and II.22.
- II.10.4** The contracting authority may request that the contractor replace a subcontractor found to be in a situation provided for in points (d) and (e) of Article II.17.1.

II.11 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** An amendment 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.

II.12 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.

II.13 FORCE MAJEURE

- II.13.1** 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.13.2** A party is not 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 its contractual obligations owing to *force majeure*, it has the right to remuneration only for the supplies actually delivered.
- II.13.3** The parties must take all necessary measures to limit any damage due to *force majeure*.

II.14 LIQUIDATED DAMAGES

II.14.1 Delay in delivery

If the contractor fails to perform its contractual obligations within the applicable time limits set out in the FWC, the contracting authority may claim liquidated damages for each day of delay using the following formula:

$0.3 \times (V/d)$

where:

V is the price of the relevant supplies;

d is the duration specified in the relevant *purchase order* for delivery of the relevant supplies 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.15.

II.14.2 Procedure

The contracting authority must *formally notify* the contractor of its intention to apply liquidated damages and the corresponding calculated amount.

The contractor has 30 days following the date of receipt to submit observations. Failing that, the decision becomes 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.14.3 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 deliver the supplies within the applicable time limits set out in the FWC.

II.14.3 Claims and liability

Any claim for liquidated damages does not affect the contractor's actual or potential liability or the contracting authority's rights under Article II.17.

II.15 REDUCTION IN PRICE

II.15.1 Quality standards

If the contractor fails to deliver the supplies in accordance with the FWC or a *purchase order* ('unperformed obligations') or if it fails to deliver the supplies 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 includes in particular cases where the contracting authority cannot approve a document or deliver a certificate of conformity for supplies as defined in Article II.4.10 after the contractor has submitted the required additional information, correction or new supplies.

A reduction in price may be imposed, together with liquidated damages under the conditions of Article II.14.

II.15.2 Procedure

The contracting authority must *formally notify* the contractor of its intention to reduce payment and the corresponding calculated amount.

The contractor has 30 days following the date of receipt to submit observations. Failing that, the decision becomes 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.15.3 Claims and liability

Any reduction in price does not affect the contractor's actual or potential liability or the contracting authority's rights under Article II.17.

II.16 SUSPENSION OF THE PERFORMANCE OF THE FWC

II.16.1 Suspension by the contractor

If the contractor is affected by *force majeure*, it may suspend the *implementation of 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 *implementation of the purchase order*.

The contractor must *notify* the contracting authority as soon as it is able to resume *implementation of the purchase order*, unless the contracting authority has already terminated the FWC or the *purchase order*.

II.16.2 Suspension by the contracting authority

The contracting authority may suspend the *performance of the FWC* or *implementation of a purchase order* or any part of them:

- (a) if the procedure for awarding the FWC or a *purchase order* or the *performance 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 takes 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 points (f) or (j) of Article II.17.1.

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

II.17 TERMINATION OF THE FWC

II.17.1 Grounds for termination by the contracting authority

The contracting authority may terminate the FWC or a *purchase order* in the following circumstances:

- (a) if provisions of the supplies 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 its own fault, to obtain any permit or licence required for *performance of the FWC*;
- (c) if the contractor does not perform the FWC or implement the *purchase order* in accordance with the tender specifications or *request for supplies* 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 also constitutes 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 Regulation⁸;
- (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 *performance 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 *performance 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 performance is impossible or the necessary ensuing amendments to the FWC or to a *purchase order* would mean that the tender specifications are no longer fulfilled or result in unequal treatment of tenderers or contractors;

⁸ 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>

- (k) if the needs of the contracting authority change and it no longer requires new supplies under the FWC; in such cases ongoing *purchase orders* 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 no longer has the minimum required level of competition.

II.17.2 Grounds for termination by the contractor

The contractor may terminate the FWC or a *purchase order* if:

- (a) it has evidence that the contracting authority has committed *substantial errors*, *irregularities* or *fraud* in the procedure for awarding the FWC or the *performance 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 perform the FWC or to implement a *purchase order* as provided for in the tender specifications.

II.17.3 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 has 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 becomes 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.17.1 and in Article II.17.2, 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.17.1, the termination takes 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 supplies to a new contractor or internally, without interruption or adverse effect on the quality or continuity of the delivery of the supplies. The parties may agree to draw up a transition plan detailing the contractor's assistance unless such a plan is already detailed in other contractual documents or in the tender specifications. The contractor must provide such assistance at no additional cost, unless it can demonstrate that it requires substantial additional resources or means, in which case it must provide an estimate of the costs involved and the parties will negotiate an arrangement in good faith.

II.17.4 Effects of termination

The contractor is 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 supplies, unless the damage was caused by the situation specified in points (j), (k) or (l) of Article II.17.1 or in Article II.17.2. The contracting authority may claim compensation for such damage.

The contractor is not 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.17.2.

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

Within 60 days of the date of termination, the contractor must submit any report and any invoice required for supplies 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.17.1, under the conditions set out in Article II.11.2.

II.18 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 VAT purposes and must specify separately amounts not including VAT and amounts including VAT.

The contracting authority is 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 *performance of the FWC* are exempt from taxes and duties, including VAT.

II.19 APPLICABLE LAW AND SETTLEMENT OF DISPUTES

II.19.1 The FWC is governed by Union law, complemented, where necessary, by the civil law of Belgium.

II.19.2 Mediation

Without prejudice to Article II.19.3, 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 must 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 or her written conclusion stating that no proposal can be made must 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 will not be binding on the parties, which reserve the right to bring the dispute before the courts, in accordance with Article II.19.3.

Within two weeks of the date of notification of the proposal by the mediator, the parties may 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. Those costs must not include any other costs incurred by a party in connection with the mediation.

II.19.3 Settlement of disputes

Any dispute between the parties resulting from the interpretation or application of the FWC or any *purchase order* covered by the FWC, which cannot be settled amicably, will be brought before the courts of Brussels, Belgium.

II.20 PAYMENTS AND GUARANTEES

II.20.1 Date of payment

Payments are deemed to be effected on the date when they are debited to the contracting authority's account.

II.20.2 Currency

Payments are made in euros.

II.20.3 Costs of transfer

Not applicable

II.20.4 Pre-financing, performance and retention money guarantees

If, as provided for in Article I.6, a financial guarantee is required for the payment of pre-financing, as a performance guarantee or as a 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 must bear the cost of providing such a 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 cover compliance with substantial contractual obligations until the contracting authority has given its final approval of the supplies. The performance guarantee must not exceed 10 % of the total price of the *purchase order*. The contracting authority must release the guarantee in full after final approval of the supplies, as provided for in the *purchase order*.

Retention money guarantees cover full delivery of the supplies 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.20.5 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.6.2 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 supplies, as provided for in Article I.6, in the tender specifications or in the *purchase order*.

Payment of the invoice and approval of documents does 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.20.6 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 its 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 supplies or documents; or
- (c) because the contracting authority has observations on the supplies or documents 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 resumes 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 that the contracting authority 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 point (c) of Article II.17.1.

II.20.7 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 is 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.20.6 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.20.1.

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 it requests it within two months of receiving late payment.

II.21 RECOVERY

II.21.1 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.21.2 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 via a debit note, which is sent to the contractor by *formal notification* and which specifies 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.21.3 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 bears interest at the rate indicated in Article II.20.7. 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 is first entered against charges and interest on late payment and then against the principal amount.

II.21.4 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 point (a) of Article II.21.2, the contracting authority may claim the full amount from any other member of the group by *notifying* it of the debit note already sent to the leader under Article II.21.2.

II.22 CHECKS AND AUDITS

- II.22.1** The contracting authority and the European Anti-Fraud Office (OLAF) may check or require an audit on the *performance 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 supplies and up to five years starting from the payment of the balance of the last *purchase order* issued under the FWC.

The audit procedure is initiated on the date of receipt of the relevant letter sent by the contracting authority. Audits are carried out on a confidential basis.

- II.22.2** 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 the FWC.
- II.22.3** 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 performed 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 information is handed over in an appropriate format.
- II.22.4** On the basis of the findings made during the audit, a provisional report is drawn up. The contracting authority or its authorised representative must send it to the contractor, which 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.21 and may take any other measures which it considers necessary.

- II.22.5** 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 (EU, Euratom) 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 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 *performance of the FWC* and up to five years starting from the payment of the balance of the last *purchase order* issued under the FWC.

- II.22.6** The Court of Auditors has the same rights as the contracting authority, particularly right of access, for the purpose of checks and audits.

II.23 APPLICABILITY OF INTERNAL RULES OF THE CONTRACTING AUTHORITY TO THE CONTRACTOR'S PERSONNEL

- II.23.1** The internal rules applicable to the staff of the contracting authority (including those concerning hygiene, security, safety and emergencies, tobacco and alcohol use, access to the contracting authority's buildings, and driving in the parking areas) also apply to the *personnel* of the contractor and, where applicable, of the subcontractor, if they are working on the contracting authority's premises.
- II.23.2** The contracting authority's code of conduct as regards sexual harassment also applies to *personnel* of the contractor and, where applicable, of the subcontractor, if they are working on the contracting authority's premises. They will be entitled to consult a person of trust appointed within the contracting authority.

II.24 ENVIRONMENTAL POLICY

The contractor must respect the contracting authority's environmental policy as laid down in the tendering specifications and inform its *personnel* and subcontractors accordingly.

II.25 SECURITY

If the contractor or its *personnel* or subcontractors 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 will be due by the contracting authority to the contractor.

ANNEX I
TENDER SPECIFICATIONS

[to be completed]

ANNEX II
PRICES AND FINANCIAL CONDITIONS

[to be completed]

ANNEX III

MODEL OF A PURCHASE ORDER

 <p>EUROPEAN UNION General Secretariat of the Council rue de la Loi 175 B-1048 Bruxelles</p> <p>REQUESTING DG / Unit</p> <p>Contact: Tel.: Fax: Email:</p>	PURCHASE ORDER N°			
	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 is 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 n° 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) (when the amount reaches 124 EUR per operation not including value added tax). 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 n°450. For other countries: "VAT exemption - European Union - Article 151 of 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 constitute an integral part of this Purchase Order.				
Signature of the General Secretariat		Signature of the Contractor		
Name:		Name:		

ANNEX IV

SECURITY MEASURES

Section 1 – ACCESS TO SECRETARIAT PREMISES

A. Access passes

Anyone requiring access to Secretariat premises must first be accredited by the Accreditation Service. 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 Secretariat will request access passes for the Contractor's staff.

To this end, the Contractor must:

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

[insert email address of the department requesting the services]

- 2) notify the designated department of the Secretariat, at least 3 working days in advance, of any projected changes to the team(s) working at the Secretariat;
- 3) notify the members of the Contractor's staff that: security staff at the Secretariat are authorised to check the identity of any person wishing to gain entrance to the premises of the Secretariat and, if need be, deny that person access; that the Contractor's staff, and the vehicles which they use, may be subject to security checks on entering or leaving the Secretariat 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 Contract.

Should the Contractor's staff 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 No 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:

- a) 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;
- b) 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 2 months.

Access passes are strictly personal and are the individual responsibility of its 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 Secretariat 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 52 Chaussée d'Etterbeek for the Lex building.

Holders of a permanent access pass may park their vehicles in the JL service car park provided:

- the vehicle in question is registered with the Accreditation Service;
- the pass is programmed to allow automatic access to the service car park;
- the sticker issued by the Accreditation Service is placed on the inside of the vehicle's windscreen, on the left-hand side.

All occupants of a vehicle must present their individual permanent access passes to the security guard, not just the driver. Passengers without a permanent access 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.

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. 02.281.7851 or 02.281.8909) 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. Subcontractors

Where the Contractor has concluded subcontracting arrangements in accordance with this Contract, the provisions of this Annex will apply mutatis mutandis to the subcontractor(s) and their personnel.

Section 2 – CCTV

For the safety and security of its staff, visitors, buildings, assets and information, and for logistical reasons, the Secretariat operates a video protection system on parts of its premises. Further details on the Secretariat'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.

ANNEX V
TECHNICAL OFFER

[to be completed]
