



## FRAMEWORK CONTRACT

NUMBER – FCH / contract 204

1. The Fuel Cells and Hydrogen 2 Joint Undertaking (hereafter the FCH 2 JU), and the following contracting authorities:

No.	NAME OF THE INSTITUTION, AGENCY OR BODY	ABBREVIATION	LOCATION
1.	CleanSky 2 Joint Undertaking	CS2 JU	White Atrium Building Avenue de la Toison d'Or 56-60 1060 Brussels Belgium
2.	Innovative Medicines Initiative 2 Joint Undertaking	IMI 2 JU	White Atrium Building Avenue de la Toison d'Or 56-60 1060 Brussels Belgium
3.	Electronic Components and Systems for European Leadership Joint Undertaking	ECSEL JU	White Atrium Building Avenue de la Toison d'Or 56-60 1060 Brussels Belgium
4.	Bio-Based Industries Joint Undertaking	BBI JU	White Atrium Building Avenue de la Toison d'Or 56-60 1060 Brussels Belgium
5.	Shift2Rail Joint Undertaking	S2R JU	White Atrium Building Avenue de la Toison d'Or 56-60 1060 Brussels Belgium

(collectively, ‘the contracting authority’), represented for the purposes of signing this framework contract by Bart Biebuyck, Executive Director of the FCH 2 JU

of the one part and

2.

[Consortium's name or joint tender consisting of]

Company A

[Full official name]

[Official legal form]

[Statutory registration number or ID or passport number]

[Full official address]

[VAT registration number]

Company B

[Full official name]

[Official legal form]

[Statutory registration number or ID or passport number]

[Full official address]

[VAT registration number]

Company C (acting as group leader)

[Full official name]

[Official legal form]

[Statutory registration number or ID or passport number]

[Full official address]

[VAT registration number]

[appointed as the leader of the group by the members of the group that submitted the joint tender]

([collectively] ‘the contractor’), represented for the purposes of the signature of this framework contract by [*forename, surname, function of legal representative and name of company in case of a joint tender*]

on the other part

## HAVE AGREED

to the **special conditions**, the **general conditions for framework contracts**, the **general terms and conditions for information technologies contracts, version 2.1** and the following annexes:

<b>Annex I</b>	<ul style="list-style-type: none"> <li>Contractor's Financial Offer</li> </ul>
<b>Annex II</b>	<ul style="list-style-type: none"> <li>Tender specifications, including any and all of the contracting authority 's replies to objections and questions raised by tenderers during the tendering stage of this Call for tenders</li> </ul>
<b>Annex III</b>	<ul style="list-style-type: none"> <li>Contractor's tender offer registered under No. [complete], submitted on [complete date], including all replies by the Contractor to clarification requests made by the contracting authority during the evaluation stage of Call for tenders</li> </ul>
<b>Annex IV</b>	<ul style="list-style-type: none"> <li>Model Order form and specific contracts for: <ul style="list-style-type: none"> <li>a) times and means and</li> <li>b) fixed price</li> </ul> </li> </ul> <p>Draft Templates (for both: the Contract Body and Data Appendix)<sup>1</sup></p>
<b>Annex V</b>	<ul style="list-style-type: none"> <li>Performance guarantee – Model - <b>Not applicable</b></li> </ul>
<b>Annex VI</b>	<ul style="list-style-type: none"> <li>Service Level Agreement (SLA)</li> </ul>
<b>Annex VII</b>	<ul style="list-style-type: none"> <li>e-Request, e-Ordering, e-Fulfilment and e-Invoicing Interchange Agreement (Web Services &amp; Supplier Portal)</li> </ul> <p>Not applicable for the year 2018. Should this become applicable in the future, the contracting authorities will inform the contractor of such change and in this case this annex shall become applicable.</p>
<b>Annex VIII</b>	<ul style="list-style-type: none"> <li>Declaration on confidentiality – template</li> </ul>
<b>Annex IX</b>	<ul style="list-style-type: none"> <li>EMAS Environmental Policy</li> </ul>

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

This FWC sets out:

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<sup>1</sup> Provided Contract Bodies and Data Appendixes are only templates and actual specific contracts can differ from them to adjust to concrete situations. Updated versions of the Specific contracts used in e-Ordering will be available in the Supplier Portal.

1. the procedure by which the contracting authority may order supplies and/or services from the contractor;
2. the provisions that apply to any order form or specific contract 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.

By submitting a tender, the contractor waives its own terms and conditions. All documents of this nature (end-user agreements, contractor's general conditions, etc.) are 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 prevails, regardless of any provision to the contrary in the contractor's documents.

## TABLE OF CONTENT

Table of content .....	6
PREAMBLE .....	8
I. Special Conditions .....	9
I.1. Order of priority of provisions .....	9
I.2. Subject matter .....	9
I.3. Entry into force and duration of the FWC.....	9
I.4. Appointment of the contractor and implementation of the FWC.....	10
I.5. Prices.....	10
I.6. Payment arrangements .....	11
I.7. Bank account .....	12
I.8. Communication details .....	13
I.9. Data controller .....	13
I.10. Termination by either party .....	13
I.11. Applicable law and settlement of disputes .....	14
I.12. Inter-institutional FWC.....	14
I.13. Exploitation of the results of the FWC .....	14
I.14. Specific derogations to General Conditions and to general terms and conditions for information technologies contracts.....	15
I.15. Specific definitions .....	17
I.16. Specific quality standards .....	17
I.17. Code of Conduct for contractor's staff on the premises of the contracting authority ...	18
I.18. EMAS compliance .....	19
I.19. Equal opportunities .....	20
II. General Conditions for the framework contract.....	21
II.1. Definitions.....	21
II.2. Roles and responsibilities in the event of a joint tender .....	23
II.3. Severability .....	23
II.4. Delivery of supplies / Provision of Services .....	23
II.5. Communication between the parties .....	28
II.6. Liability.....	30
II.7. Professional conflicting interests .....	30
II.8. Confidentiality.....	31
II.9. Processing of personal data .....	32
II.10. Subcontracting.....	33
II.11. Amendments.....	33
II.12. Assignment.....	33
II.13. Force Majeure.....	33
II.14. Liquidated damages .....	34
II.15. Reduction in price.....	35
II.16. Suspension of the implementation of the FWC .....	35
II.17. Termination of the FWC .....	36
II.18. Invoices, value added tax and e-invoicing .....	39
II.19. Price revision.....	39
II.20. Payments and guarantees.....	42

II.21. Recovery .....44  
II.22. Checks and audits .....45  
II.23. Intellectual property rights .....46  
II.24. Reimbursements .....50

## **PREAMBLE**

On .../.../2018, the FCH 2 JU, acting on its own behalf and on behalf of the abovementioned contracting authorities, launched the call for tenders under the reference n° FCH/Contract 204, for ‘Managed IT Services’.

The contractor was selected of Call for tenders No ..... at the conclusion of the evaluation process, on the basis of its tender submitted on .../.../20XX in response to the invitation to tender.

The present FWC is applicable to all the above-mentioned existing contracting authorities.

References to the contracting authority in the FWC shall be understood, as required by the context, as referring to one of the following concepts:

- all the institutions, agencies and bodies covered by the FWC (the participating EUIs/the EUIs), in relation to their collective rights and obligations with the contractor, as one of the parties to the FWC;
- any one of the participating EUIs acting in its own capacity, in particular for matters related to the conclusion, execution or termination of specific contracts between itself and the contractor;
- the FCH 2 JU acting in its capacity as lead contracting authority and agent for the participating EUIs or in its capacity as a contracting authority.

Newly created institutions, agencies, or bodies may join the FWC at any time by way of an amendment. Such amendment shall take the form of a written notification from the contracting authority to the contractor. This written notification shall have full legal effect from the day following the day on which the notification was sent or on the day indicated therein.



## **I. SPECIAL CONDITIONS**

### **I.1. ORDER OF PRIORITY OF PROVISIONS**

If there is any conflict between the provisions of the different parts and annexes of this FWC or the specific contracts signed during its implementation, the following order of precedence shall apply:

- (a) special conditions;
- (b) Service Level Agreement (Annex VI);
- (c) e-Request, e-Ordering, e-Fulfilment and e-Invoicing Interchange Agreement (Annex VII);
- (d) tender specifications (Annex II);
- (e) general conditions;
- (f) general terms and conditions for information technologies contracts;
- (g) Contractor's tender (Annex III);
- (h) Order forms and specific contracts signed during the FWC execution (model in Annex IV);
- (i) Technical annexes to the specific contracts (if applicable);
- (j) Contractor's formal offers for specific contracts (if applicable).

### **I.2. SUBJECT MATTER**

**I.2.1** The subject matter of the FWC is **Managed IT Services**, as described in the Tender Specifications – Annex II to this contract.

- (1) the provision to the contracting authority of informatics and /or telecommunication services, as set out in Annex II, being related to the provision of products.
- (2) the assurance by the contractor of the coherence and correct functioning of the system and its integration into the informatics architecture of the contracting authority.

The services covered by this contract are listed in Annex II.

**I.2.2** The contract does not confer on the contractor any exclusive right to supply the products and to provide the services referred to in the above paragraph.

**I.2.3** All specific contracts shall conform to the provisions set out in the FWC, including its annexes.

Any reference to specific contracts applies also to order forms.

**I.2.4** Upon implementation of the FWC, the contractor shall provide the services in accordance with the provisions of the contract, including its annexes.

### **I.3. ENTRY INTO FORCE AND DURATION OF THE FWC**

**I.3.1** The FWC enters into force on the date on which the last party signs it.

For all contracting authorities, the FWC will only be applicable as of 03/12/2018.

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

**I.3.3** The FWC is concluded for a period of 12 months with effect from the date of its entry into force.

**I.3.4** The parties must sign any specific contract before the FWC expires.

The FWC continues to apply to such specific contracts after its expiry. The services relating to such specific contracts must be delivered/performed no later than six (6) months after its expiry.

### **I.3.5 Renewal of the FWC**

The FWC is renewed automatically three times for 12 months each time, unless one of the parties receives formal notification to the contrary at least three (3) months before the end of the ongoing term. Renewal does not change or postpone any existing obligations.

## **I.4. APPOINTMENT OF THE CONTRACTOR AND IMPLEMENTATION OF THE FWC**

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

The contractor was selected for a single FWC.

### **I.4.2. Period of provision of the supplies and/or services**

The period for the provision of the services starts to run from the date on which the specific contract is signed by the last party.

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

Implementation of the FWC (ordering of supplies and/or services) shall be done according to the workflows defined in the Tender Specifications.

### **I.4.4. Provision of services**

Article II.4.2 (Provision of services) of the General Conditions is applicable to this FWC.

#### **I.4.4.1 Delivery of supplies**

Delivery of supplies is not applicable to this FWC.

## **I.5. PRICES**

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

The maximum awarded amount covering all purchases under this FWC, including all renewals is or will be published in the relevant contract award notice. However, this does not bind the contracting authority to purchase for the maximum amount.

The maximum prices of the services are: as listed in Annex III .

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

Price revision is determined by the formula set out in Article II.19 using the following index or indices (in case of a combination of supplies and services under the same contract):

The trend in the index “Harmonised Indices of Consumer Prices (HICP all items)”, under “First Published Data (prc\_hicp\_fp)”, published on Eurostat’s official website, *the index to be used is the one reflecting the member evolution of the Euro Area overtime or its successor (i.e. EA11-2000, EA12-2006, EA13-2007, EA15-2008, EA16-2010, EA17-2013, EA18-2014, EA19) using the latest base year (currently index, 2015=100).*

### **I.5.3. Reimbursement of expenses**

Reimbursement of expenses is not applicable to this FWC.

## **I.6. PAYMENT ARRANGEMENTS**

1. Payments under the FWC shall be made in accordance with Article II.20, which is complemented by Article III.1.5 and the provisions of the order forms or specific contracts (Annex V).

2. Payments shall be executed only if the contractor has fulfilled all its contractual obligations by the date on which the invoice is submitted. Payments requests may not be made if payments for previous orders or specific contracts have not been executed as a result of default or negligence on the part of the contractor.

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

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

Pre-financing is not applicable to this FWC.

### **I.6.2. Interim payment(s)**

Interim payment(s), if provided for in the order form/specific contract, shall be made in accordance with the provisions of the order form/ specific contract.

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

1. The contractor (or leader in case of a joint tender) may claim the payment of the balance in accordance with Article II.20.6.

The contractor (or leader in case of a joint tender) must send an invoice for payment of the balance due under a specific contract, as provided for in the tender specifications and accompanied by the following (if relevant):

For Services:

- a declaration on the list of all pre-existing as provided for in Article II.23.4;

- the progress report in accordance with the instructions laid down in the relevant annexes;
  - when payment is linked to acceptance of supporting documents and/or deliverables, the relevant documents indicated in the specific contract;
2. The contracting authority must approve any submitted documents or supplies/deliverables and pay within 60 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 case of a joint tender) and suspend the time limit for payment in accordance with Article II.20.7.

The contractor (or leader in case of a joint tender) has 30 days to submit additional information or corrections or new supplies or new version of the documents if the contracting authority requires it.

4. The contracting authority must give its approval and pay within the remainder of the time-limit indicated in point (2.) unless it rejects partially or fully the submitted documents or supplies/deliverables.]

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

Performance guarantee is not applicable to this FWC.

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

Retention money guarantee is not applicable to this FWC.

### **I.7. BANK ACCOUNT**

Payments must be made to the contractor's (or leader's, in case of a joint tender) single bank account denominated in [euro] [*insert local currency where the receiving country does not allow transactions in EUR*], identified as follows:

Name of bank:

Full address of branch:

Exact denomination of account holder:

Full account number including bank codes:

[IBAN<sup>2</sup> code:]

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2 BIC or SWIFT code for countries with no IBAN code.

## **I.8. COMMUNICATION DETAILS**

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

Contracting authority:

FCH 2 JU

Finance and Administration Unit

WA, TO 56-60,

1049 Brussels

Email: *[insert functional mailbox]*

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

*[Full name]*

*[Function]*

*[Company name]*

*[Full official address]*

Email: *[complete]*

By derogation from this Article, different contact details for the contracting authority or the contractor may be provided in specific contracts.

## **I.9. DATA CONTROLLER**

For the purpose of Article II.9, the data controller is the Executive Directors of the contracting authority.

## **I.10. TERMINATION BY EITHER PARTY**

Either party may terminate the FWC and/or the FWC and specific contracts by sending formal notification to the other party with three (3) months' written notice.

If the FWC or a specific contract is terminated:

- (a) neither party is entitled to compensation unless provided otherwise in the SLA;
- (b) the contractor is entitled to payment only for the supplies and/or services delivered before termination takes effect, and only subject to their acceptance.

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

## **I.11. APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

**I.11.1** The FWC is governed by Union law, complemented, where necessary, by the law of Belgium.

**I.11.2** The courts of Brussels have exclusive jurisdiction over any dispute regarding the interpretation, application or validity of the FWC.

## **I.12. INTER-INSTITUTIONAL FWC**

**I.12.1** This FWC is inter-institutional. The FCH 2 JU acts on its own behalf and on behalf of the bodies listed in the title of the FWC as the contracting authorities, which provided the lead contracting authority with a power of attorney before FWC signature. The FCH 2 JU signs the FWC and any amendments on behalf of itself and of all other contracting authorities.

**I.12.2** Each contracting authority is responsible for the particular specific contracts it awards.

**I.12.3** If the contractor has a complaint about the conclusion, performance or termination of a specific contract, the contractor remains bound by its obligations under the FWC and other specific contracts.

## **I.13. EXPLOITATION OF THE RESULTS OF THE FWC**

### **I.13.1. Detailed list of modes of exploitation of the results**

In accordance with Article II.23.1 whereby the contracting authority acquires ownership of the results as defined in this FWC, including the tender specifications, these results may be used for any of the following modes of exploitation:

(a) use for its own purposes:

- making available to the staff of the contracting authority;
- making available to the persons and entities working for the contracting authority or cooperating with it, including contractors, subcontractors whether legal or natural persons, Union institutions, agencies and bodies, Member States' institutions;
- installing, uploading, processing;
- arranging, compiling, combining, retrieving;
- copying, reproducing in whole or in part and in unlimited number of copies.

(b) modifications by the contracting authority or by a third party in the name of the contracting authority, including:

- shortening;
- summarising;

- modifying the content, the dimensions;
- making technical changes to the content (necessary correction of technical errors), adding new parts or functionalities, changing functionalities, providing third parties with additional information concerning the result (e.g. source code) with a view to making modifications;
- addition of new elements, paragraphs, titles, leads, bolds, legend, table of content, summary, graphics, subtitles, sound;
- addition of metadata, for text and data-mining purposes; addition of right-management information; addition of technological protection measures;
- preparation in audio form, preparation as a presentation, animation, pictograms story, slide-show, public presentation;
- extracting a part or dividing into parts;

(c) rights to authorise, license, or sub-license in case of licensed pre-existing rights, the modes of exploitation set out in any of the points (a) to (e) to third parties.

(d) other adaptations which the parties may later agree; in such case, the following rules apply: the contracting authority must consult the contractor. If necessary, the contractor must in turn seek the agreement of any creator or other right holder and must reply to the contracting authority within one month by providing its agreement, including any suggestions of modifications, free of charge. The contractor may refuse the intended modification only if a creator can demonstrate that the intended modification may harm his/her honour or reputation, thereby violating his/her moral rights.

The modes of exploitation may be defined in more details in the specific contract(s).

### **I.13.2. Licence or transfer of pre-existing rights**

All pre-existing rights incorporated in the results, if any, are licensed to the contracting authority as set out in Article II.23.2.

### **I.13.3. Provision of list of pre-existing rights and documentary evidence**

The contractor must provide the contracting authority with a declaration on pre-existing rights as set out in Article II.23.4 together with the invoice for payment of the balance at the latest.

## **I.14. SPECIFIC DEROGATIONS TO GENERAL CONDITIONS AND TO GENERAL TERMS AND CONDITIONS FOR INFORMATION TECHNOLOGIES CONTRACTS**

**I.14.1** By way of derogation from the definition laid down in the general terms and conditions for information technologies contracts, **Article III.1.1**, the "Person-Day" is defined as follows:

**"Person-day":**

Eight (8) hours.

**I.14.4** By way of derogation from general terms and conditions for information technology contracts, Article **III.2.1.6** shall read as follows:

"The Contractor undertakes to comply with those quality standards. Compliance with the standards shall be monitored by the Commission. Unless otherwise stated in the Framework contract, in the event of non-compliance with certain standards specifically identified in the Service Level Agreement for the purpose of application of this clause, over a sliding period of three (3) months, the Contractor shall submit an improvement plan. In the event of non-compliance with those standards for three (3) months, consecutive or not, over a sliding period of six (6) months, a Product whose quality has proved substandard may be withdrawn from the Framework contract, or the Contract may be terminated where the overall quality of the Services is substandard."

**I.14.5** By way of derogation from general terms and conditions for information technology contracts, Article **III.2.2.2** is hereby modified as follows:

"2.2.2 The contractor and its staff, when performing tasks for the contracting authority in execution of this FWC, undertake to comply with:

- COMMISSION DECISION (EU, Euratom) 2017/46 of 10 January 2017 on the security of communication and information systems in the European Commission, its subsequent versions, its implementing rules (as adapted from time to time) and the corresponding security notices, and

- COMMISSION DECISION (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information, as well as all its subsequent versions;

- Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission, as well as all its subsequent versions, and

- European Commission's security policies and standards that may be relevant and made available for the implementation of specific contracts."

**I.14.6** By way of derogation from general terms and conditions for information technology contracts, Article **III.2.2.6** is hereby modified as follows:

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

**I.14.8** By way of derogation from general terms and conditions for information technology contracts, Article **III.8.1** is hereby replaced as follows:

"III.8.1 Compliance with technical specifications

When providing services of development or maintenance of commissioned software to the contracting authority, the contractor undertakes, in addition to the general quality



requirements as specified in the FWC, to observe inter alia the constraints imposed by the existing JUs' IT architecture"

## **I.15. SPECIFIC DEFINITIONS**

### **I.15.1. Normal Working Days**

The definition of Normal Working Days is replaced by:

"From Mondays to Fridays inclusive, except contracting authority's applicable public holidays in the place of delivery of the services."

### **I.15.2. Normal Working Hours**

The definition of Normal Working Hours is replaced by:

From 7 a.m. to 8 p.m., on Normal Working Days.

### **I.15.3. Work outside normal working days and normal working hours**

The definition of work outside normal working days and hours is defined herein below:

In exceptional cases and only on request of the contracting authority, it may be necessary to deliver services outside the normal working days and the normal working hours. For these cases, the following surcharges will be applied:

- Service delivery outside normal working hours (on normal working days and on contracting authority's applicable public holidays not corresponding to a national holiday in the place of delivery of the services): Surcharge of 50% *[or x% if the tenderer can quote a different % in the financial offer]* of the applicable daily rate, applied prorata temporis.
- Service delivery outside normal working days: Surcharge of 100% *[or x% if the tenderer can quote a different % in the financial offer]* of the applicable daily rate, applied prorata temporis. The surcharge only applies on the condition that service delivery occurs on contracting authority's applicable public holidays which correspond to a national holiday in the place of delivery of the services; thus, if it is a Commission public holiday but it is not a national holiday in the place of delivery of the services, no surcharge applies.

On request and with the agreement of the Commission, surcharges may also apply on a pro-rata basis for effective working hours delivered during the travelling time outside normal working hours

## **I.16. SPECIFIC QUALITY STANDARDS**

Specific quality requirements will be stated in a Service Level Agreement.

In conformity with Article III.2.1.6, the contractor shall undertake a trial period of three (3) months in order to prove full compliance with the quality standards provided in the FWC, and

notably in relation with the Service Level Agreement. As provided in Article III.2.1.6, the FWC may be terminated where the overall quality of performance is substandard.

### **I.17. CODE OF CONDUCT FOR CONTRACTOR'S STAFF ON THE PREMISES OF THE CONTRACTING AUTHORITY**

The contractor commits itself, its staff, its subcontractors and freelancers and their respective staff, that are working as external staff for the EU Institutions, to the following behaviour and rules:

- Making sure that the tools placed under his/her responsibility are in good working order (i.e. work material, software, networks etc.) and reporting any incidents to this effect. Use of this equipment and infrastructure, including software and access to information systems, must be limited to professional purposes related to the performance of contractual obligations;
- Using standard computer equipment (including e-mail and Internet access) and fixed telephones for private purposes is tolerated under the same conditions as for EU Institution staff, i.e. (in summary) as long as such use (i) is on a purely occasional basis and does not amount to extensive use; and (ii) is not for illegal or irregular purposes, in any way that might disrupt the functioning of the service itself or in any manner contrary to the interests of the EU Institution;
- Respecting any safety and security requirements and procedures laid down by the EU Institution;
- Not letting in nor bringing any unauthorised person inside the buildings of the EU Institutions;
- Willingly complying with the requirements of the EU Institution's security services, including the inspection of the personal goods (by scanner or physical inspection);
- If, at the EU Institution's discretion, such external staff is entitled to use the parking lots available in EU Institution buildings, they must respect strictly the applicable rules and regulations. Failure to do so will result in the removal of the authorisation;
- Keeping secret the security procedures as well as protection mechanisms which such external staff may come to gain knowledge about in the process of his/her activities;
- Never jeopardising the good functioning, the security or the confidentiality of the systems or data which such external staff may have access to within the framework of his/her functions;
- Never copying illegally, carrying, transmitting nor destroying data, documentation, software or application programs, nor any material (even when obsolete);
- Never accessing, nor even trying to access data, locations or systems to which such external staff has not been granted access or which he/she does not need to access for the implementation of his/her tasks;
- Not using software other than that which is usually installed on the desktop/laptop without prior formal approval from the person(s) in charge of one of the domains of this Call for Tenders;
- If granted with access card(s) - returning the access card(s) before such external staff leaves, at first request by the EU Institution;

- Showing utmost discretion regarding information which such external staff may come to gain knowledge;
- Never disclosing information concerning matters dealt with by the EU Institution's services (be it political, judicial, budgetary or financial affairs, or the management of the EU Institution, the personnel or data processing);
- On EU Institution premises, such external staff may not perform any professional tasks which are not linked to the framework contract
- Not exerting any pressure on EU Institution officials; in particular, not seeking to obtain any information on on-going or forthcoming procurement procedures which is not already in the public domain and refraining from making any gifts or offers of hospitality to EU Institution officials;
- Abiding by a very high standard of professional deontology, guided by the principle of fair competition. In particular, such external staff should at all times be courteous, show restraint and avoid any form of competitor-bashing and harassment;
- Not using the EU Institution premises for marketing or recruitment purposes;
- Not conveying the impression that such external staff are employed by the EU Institution, or that they are authorised to represent the EU Institution; never writing documents with EU Institution's letterhead paper;
- Showing EMAS awareness in the daily behaviour - for instance, printing on both sides of the paper, switching off the lights and other equipment, using appropriate bins for waste recycling, etc.

In general, such external staff have to respect the Staff notice on acceptable use of the contracting authority's ICT services in force, or similar documents adopted by the other EU Institutions.

When such external staff sends e-mails using the EU Institution e-mail system, he/she has to use an e-mail signature indicating the contract name of the contractor, in addition to his/her own name and the EU Institution unit under which responsibility the contract is performed.

Such external staff must have the necessary competences in order to perform the service in a professional way. An update of the skills should be foreseen in order to cope with the normal evolution of the software products. Those kinds of trainings cannot incur additional costs for the EU Institution.

## **I.18. EMAS COMPLIANCE**

The contractor shall assist the Commission to perform its commitments as set in the EMAS EC Environmental Policy and shall follow EMAS best practices. The Commission's EMAS Environmental Policy is contained in Annex XII.

Environmental considerations are taken into account throughout the complete life cycle of a product or a service.

## I.19. EQUAL OPPORTUNITIES

The contractor shall observe a policy on the promotion of equality and diversity in the implementation of the FWC, by applying the principles of non-discrimination and equality set out in the EU Treaties in full and in their entirety.

In the implementation of the FWC, the contractor shall establish, maintain and promote an open and inclusive working environment which respects human dignity and the principles of equal opportunities, especially through the removal of all obstacles to recruitment and all potential discrimination based on sex, race or ethnic origin, religion or convictions, disability, age or sexual orientation.

### SIGNATURES

For the contractor,

For the contracting authority,

[Company name/forename/surname/position]

[forename/surname/position]

Signature[s]: \_\_\_\_\_

Signature[s]: \_\_\_\_\_

Done at [place], [date]

Done at [place], [date]

In duplicate in English.

## **II. GENERAL CONDITIONS FOR THE FRAMEWORK CONTRACT**

### **II.1. DEFINITIONS**

For the purpose of this FWC, the following definitions apply:

**‘Back office’**: the internal system(s) used by the parties to process electronic documents such as orders and 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 may not include information that is publicly available;

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

**‘EDI message’**: an electronic document structured by using an agreed standard, prepared in a computer readable format and capable of being automatically and unambiguously processed;

**‘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 requests for services/supplies (request for quotation, final offer, etc.) electronic specific contracts and order forms, electronic transmission of timesheets, deliverables and its acceptance (service receipt, dispatch advices and receipt advices) or 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: <https://webgate.ec.europa.eu/fpfis/wikis/display/ePRIOR/The+e-Procurement+suite>;

**‘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 may 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, 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 supplies and/or services envisaged in the FWC through the signature and performance of specific contracts;

**‘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 and is available on the e-PRIOR website;

**‘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;

**‘Order form’**: a form by which the contracting authority orders supplies and related maintenance under this FWC;

**‘Performance of a specific contract’**: the performance of tasks and delivery of the purchased supplies/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 its capacity to implement the FWC or to perform a specific contract to an appropriate quality standard;

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

**‘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 its request, also include pre-existing materials;

**‘Request for supplies/services’**: a document from the contracting authority requesting that the contractors provide a specific offer for supplies/services whose terms are not entirely defined under the FWC;

**‘Specific contract’**: a contract implementing the FWC and specifying details of a service to be provided, other than maintenance service;

**‘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 receive or exchange electronic documents, such as quotations, orders, dispatch and receiving advices or invoices, through a graphical user interface. When necessary, these documents can be signed electronically by the authorised

persons. Its main features can be found in the supplier portal overview document available on: <https://webgate.ec.europa.eu/fpfis/wikis/display/ePRIOR/The+e-Procurement+suite>.

## **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 this 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 / PROVISION OF SERVICES**

### **II.4.1. Delivery of Supplies**

II.4.1.1 Signature of the FWC does not guarantee any actual purchase. The contracting authority is bound only by specific contracts implementing the FWC.

II.4.1.2 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<sup>3</sup>.

II.4.1.3 All periods specified in the FWC are calculated in calendar days, unless otherwise specified.

II.4.1.4 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.4.1.5 The contractor is responsible for the personnel who perform the contract and exercises its authority over its personnel without interference by the contracting authority. The contractor must inform its personnel that:

- (a) they may not accept any direct instructions from the contracting authority; and
- (b) their participation in providing the supplies does not result in any employment or contractual relationship with the contracting authority.

II.4.1.6 The contractor must ensure that the personnel implementing the FWC and any future replacement personnel possess the professional qualifications and experience required to

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<sup>3</sup> OJ L 94 of 28.03.2014, p. 65.

provide the supplies, as the case may be on the basis of the selection criteria set out in the tender specifications.

II.4.1.7 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 at 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.4.1.8 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.4.1.9 Delivery**

- (a) Time allowed for delivery

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

- (b) Date, time and place of delivery

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

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, giving the specific contract 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.4.1.10 Certificate of conformity**

Signature of the consignment note by the contracting authority, as provided for in point (c) of Article II.4.1.9 is simply an acknowledgment of the fact that that the delivery took place and in no way implies conformity of the supplies with the order form.

Conformity of the supplies delivered must be evidenced by the signature of a certificate to this effect by the contracting authority no later than one month after the date of delivery, unless otherwise specified in the special conditions, in the general terms and conditions for information technologies contracts or in the tender specifications.

Conformity must be declared only where the conditions laid down in the FWC and in the order form are satisfied and the supplies are in conformity with 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.4.1.11 Conformity of the supplies delivered with the FWC**

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

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 this 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 this 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.4.1.12 Remedy**

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

In case 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) either to have the supplies brought into conformity, free of charge, by repair or replacement;
- (b) or 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 paragraph (a) refers to the costs incurred to bring the supplies into conformity, particularly the cost of postage, labour and materials.

#### **II.4.1.13 Assembly**

If required by tender specifications, 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 due to a shortcoming in the installation instructions.

#### **II.4.1.14 Services provided to supplies**

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

#### **II.4.1.15 General provisions concerning supplies**

##### **(a) Packaging**

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

Unless otherwise specified in the special conditions or in the tender specifications (Annex III), pallets must be considered as one-way packaging and must not 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 order form;
- EC code number of article.

##### **(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, 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 liable for any conformity defect which exists at the time of delivery, even if this defect does not appear until a later date.

The contractor is also liable 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.4.2. Provision of services**

- II.4.2.1 Signature of the FWC does not guarantee any actual purchase. The contracting authority is bound only by specific contracts implementing the FWC.
- II.4.2.2 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 its tender.
- II.4.2.3 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<sup>4</sup>.
- II.4.2.4 The contractor must obtain any permit or licence required in the State where the services are to be provided.
- II.4.2.5 All periods specified in the FWC are calculated in calendar days, unless otherwise specified.
- II.4.2.6 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.4.2.7 The contractor is responsible for the personnel who carry out the services and exercises its authority over its personnel without interference by the contracting authority. The contractor must inform its personnel that:
- (c) they may not accept any direct instructions from the contracting authority; and
  - (d) their participation in providing the services does not result in any employment or contractual relationship with the contracting authority.
- II.4.2.8 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.4.2.9 At the contracting authority's reasoned request, the contractor must replace any member of personnel who:
- (c) does not have the expertise required to provide the services; or
  - (d) has caused disruption at the premises of the contracting authority.

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

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<sup>4</sup> OJ L 94 of 28.03.2014, p. 65

II.4.2.10 The contractor must record and report to the contracting authority any problem that affects its ability to provide the services. The report must describe the problem, state when it started and what action the contractor is taking to resolve it.

## **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 FWC;
- (b) bear the FWC number and, if applicable, the specific contract number;
- (c) be made using the relevant communication details set out in Article I.8; and
- (d) be sent by mail, email or, for the documents specified in Annex VIII and under the conditions specified therein, via e-PRIOR.

If a party requests written confirmation of an e-mail 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 mail and email**

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

E-mail is deemed to have been received by the receiving party on the day of dispatch of that e-mail, provided that it is sent to the e-mail 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 is not held in breach of its obligation to send such communication within a specified deadline.

Mail 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 was delivered to the specified recipient.

### **II.5.3. Submission of e-documents via e-PRIOR**

The exchange of electronic documents (e-documents) such as specific contracts and invoices between the parties is automated through the use of the e-PRIOR platform in accordance with the provisions of Annex VIII. This platform provides two possibilities for such exchanges: either through web services (machine-to-machine connection) or through a web application (the supplier portal).

The contracting authority takes the necessary measures to implement and maintain electronic systems that enable the supplier portal to be used effectively.

In the case of machine-to-machine connection, a direct connection is established between the parties' back offices. In this case, the parties take the measures necessary on their side to implement and maintain electronic systems that enable the machine-to-machine connection to be used effectively. The electronic systems are specified in the interface control document. The contractor (or leader in case of a joint tender) must take the necessary technical measures to set up a machine-to-machine connection and at its own cost.

If communication via the supplier portal or via the web services (machine-to-machine connection) 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.

If it is impossible to restore the communication within two working days, one party must notify the other that alternative means of communication specified in Article II.5.1 will be used until the supplier portal or the machine-to-machine connection is restored.

When a change in the interface control document requires adaptations, the contractor (or leader in case of a joint tender) has up to six months from receipt of the notification to implement this change. This period can be shortened by mutual agreement of the parties. This period does not apply to urgent measures required by the security policy of the contracting authority to ensure integrity, confidentiality and non-repudiation of information and the availability of e-PRIOR, which must be applied immediately.

#### **II.5.4. Validity and date of e-documents**

The parties agree that any e-document, including related attachments exchanged via e-PRIOR:

- (a) is considered as equivalent to a paper document;
- (b) is deemed to be the original of the document;
- (c) is legally binding on the parties once an e-PRIOR authorised person has performed the 'sign' action in e-PRIOR and has full legal effect; and
- (d) constitutes evidence of the information contained in it and is admissible as evidence in judicial proceedings.

The parties expressly waive any rights to contest the validity of such a document solely on the grounds that communications between the parties occurred through e-PRIOR or that the document has been signed through e-PRIOR. If a direct connection is established between the parties' back offices to allow electronic transfer of documents, the parties agree that an e-document, sent as mentioned in the interface control document, qualifies as an EDI message.

If the e-document is dispatched through the supplier portal, it is deemed to have been legally issued or sent when the contractor (or leader in case of a joint tender) is able to successfully submit the e-document without any error messages. The generated PDF and XML document for the e-document are considered as a proof of receipt by the contracting authority.

In the event that an e-document is dispatched using a direct connection established between the parties' back offices, the e-document is deemed to have been legally issued or sent when its status is 'received' as defined in the interface control document.

When using the supplier portal, the contractor (or leader in case of a joint tender) can download the PDF or XML message for each e-document for one year after submission. After this period, copies of the e-documents are no longer available for automatic download from the supplier portal.

## **II.5.5. Authorised persons in e-PRIOR**

The contractor submits a request for each person who needs to be assigned the role of ‘user’ in e-PRIOR. These persons are identified by means of EU Login (formerly known as the European Communication Authentication Service (ECAS)) and authorised to access and perform actions in e-PRIOR within the permissions of the user roles that the contracting authority has assigned to them.

User roles enabling these e-PRIOR authorised persons to sign legally binding documents such as specific offers or specific contracts are granted only upon submission of supporting documents proving that the authorised person is empowered to act as a legal representative of the contractor.

## **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 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. It 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 is 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 to an amount not exceeding three times the total amount of the relevant specific contract. 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 implementation of the FWC, 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 that such liability is caused by the contractor during or as a consequence of the implementation of the FWC, Article II.6.3 applies.

**II.6.5** If the contractor is composed of two or more economic operators (i.e. who submitted a joint tender), they are all jointly and severally liable to the contracting authority for the implementation 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 implementation of the FWC, unless the loss or damage was caused directly by wilful misconduct or gross negligence of the contracting authority.

## **II.7. PROFESSIONAL CONFLICTING INTERESTS**

**II.7.1** The contractor must take all the necessary measures to prevent any situation of 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 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:

- (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 specific contract 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 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 professional conflicts of interest.

**II.7.4** The contractor declares:

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

## **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 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 specific contract 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 obligation set out in this Article is binding upon 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 it or take decisions on its 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 a document providing 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 implementation, management and monitoring of the FWC. This does not affect its possible transmission to the 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 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.10. SUBCONTRACTING**

- II.10.1** The contractor must not subcontract and have the FWC implemented 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 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 and II.22.
- 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.17.1.
- II.10.5** For services provided at a facility directly under the oversight of the contracting authority, the Contractor must, at the contracting authority's request, indicate the names, contacts and authorised representatives of subcontractors involved in the performance of the contract, including any changes of subcontractors.

## **II.11. AMENDMENTS**

- II.11.1** Any amendment to the FWC or a specific contract must be made in writing before all contractual obligations have been fulfilled. A specific contract does not constitute an amendment to the FWC.
- II.11.2** Any amendment must not make changes to the FWC or a specific contract that might alter the minimum requirements of the initial procurement procedure or result in unequal treatment of tenderers or contractors.

## **II.12. ASSIGNMENT**

- II.12.1** The contractor may 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 due to force majeure, it has the right to remuneration only for the supplies/services actually delivered and which obtain a certificate of conformity.

**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. Liquidated damages for failure of the Contractor to perform obligations within the applicable time limits**

For any issues not explicitly regulated by the Service Level Agreement, should the Contractor fail to perform his obligations under the Contract within the time limits set by the Contract or to deliver a result for which a firm and binding time limit is agreed, and without prejudice to the Contractor's actual or potential liability incurred in relation to the Contract or to the Commission's right to terminate the Contract, the Commission may decide to impose liquidated damages of 0.5% of the amount of the relevant Specific Contract(s) or Order Form(s) per calendar day of delay or non-compliance.

The total maximum amount of liquidated damages that can be imposed shall be capped to 50% of the value of the relevant Specific Contract(s) or Order Form(s) for which the Contractor is in breach.

### **II.14.2. Precedence of liquidated damages foreseen in the Service Level Agreement**

Unless otherwise stipulated in the Service Level Agreement and for the key performance indicators defined therein, the Service Level Agreement liquidated damages prevail over the liquidated damages foreseen above.

### **II.14.3. 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.14.4. 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 supplies/services within the applicable time limits or with regard to the required

quality and security levels set out in this FWC (including the ones set out in the Service Level Agreement and in the tender specifications).

#### **II.14.5. 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 supply and/or provide the services in accordance with the FWC or a specific contract ('unperformed obligations') or if it fails to deliver the supply and/or provide the services in accordance with the expected quality and security 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 supply as defined in Article I.6 after the contractor has submitted the required additional information, correction or new supply.

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 IMPLEMENTATION OF THE FWC**

#### **II.16.1. Suspension by the contractor**

If the contractor is affected by force majeure, it may suspend the performance of a specific contract.

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 performance of the contract.

The contractor must notify the contracting authority as soon as it is able to resume performance of the specific contract, unless the contracting authority has already terminated the FWC or the specific contract.

### **II.16.2. Suspension by the contracting authority**

The contracting authority may suspend the implementation of the FWC or performance of a specific contract or any part of it:

- (a) if the procedure for awarding the FWC or a specific contract 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 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 specific contract under Article II.17.1(f) or (j).

The contractor is not entitled to compensation for suspension of any part of the FWC or a specific contract.

## **II.17. TERMINATION OF THE FWC**

### **II.17.1. Grounds for termination by the contracting authority**

The contracting authority may terminate the FWC and/or a specific contract in the following circumstances:

- (a) if provision of the supplies and/or services under a pending specific contract 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 implementation of the FWC;
- (c) if the contractor does not implement the FWC or perform the specific contract in accordance with the tender specifications or request for supplies/services or is in breach of another substantial contractual obligation or repeatedly refuses to sign specific contracts. Termination of three or more specific contracts 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 Regulation<sup>5</sup>;
- (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 prove 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 constitutes 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 specific contract 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 supplies and/or services under the FWC; in such cases ongoing specific contracts 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;
- (m) where the contracting authority has evidence that the contractor or any related entity or person has violated any provisions on security and confidentiality included in the FWC and its annexes;
- (n) For specific services, where the Commission has evidence or seriously suspects the Contractor of, active or passive, intentional or negligent, disclosure of any data or information issued by the EU institutions and transferred through the network of the contractor during the performance of the current contract, to any authorities, legal or natural persons, with the sole exception of relevant formal requests submitted by EU judicial authorities for the purpose of criminal investigations.

### **II.17.2. Grounds for termination by the contractor**

The contractor may terminate the FWC and/or a specific contract 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 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 specific contract as provided for in the tender specifications.

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<sup>5</sup> 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>

### **II.17.3. Procedure for termination**

A party must formally notify the other party of its intention to terminate the FWC or a specific contract 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) (l) (m) and (n) 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 service or delivery of the supplies to a new contractor or internally, without interruption or adverse effect on the quality or continuity of the service or delivery of the supplies. 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 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 specific contract including the cost of appointing another contractor to provide or complete the supplies/service, unless the damage was caused by the situation specified in Article II.17.1 (j), (k) or (l) 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 specific contract, 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/service that were provided before the date of termination.

In case of joint tenders, the contracting authority may terminate the FWC or a specific contract 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, VALUE ADDED TAX AND E-INVOICING**

### **II.18.1. Invoices and value added tax**

Invoices must contain the contractor's (or leader's in case of a joint tender) identification data, the amount, the currency and the date, as well as the FWC reference and reference to the specific contract.

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

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

In Belgium, use of this contract constitutes a request for VAT exemption No. 450, Article 42, paragraph 3.3 of the VAT code (circular 2/1978), provided the invoice includes the statement: 'Exonération de la TVA, Article 42, paragraphe 3.3 du code de la TVA (circulaire 2/1978)'.

In Luxembourg, the contractor must include the following statement in the invoices: "Commande destinée à l'usage officiel de l'Union européenne. Exonération de la TVA Article 43 § 1 k 2ème tiret de la loi modifiée du 12.02.79. 'In the case of intra-Community purchases, the statement to be included in the invoices is: "For the official use of the European Union. VAT Exemption / European Union/ Article 151 of Council Directive 2006/112/EC.'"

In other countries, use of this contract constitutes a request for VAT exemption, pursuant to articles 3 and 4 of the Protocol on the privileges and immunities of the European Union. The contractor must receive and keep in his records the form entitled "VAT and Excise Duty Exemption Certificate", duly completed and signed by the contracting authority. The invoice(s) must include the following statement: "VTA Exemption/International Body/Article 151 of Council Directive 2006/112/EC."

### **II.18.2. E-invoicing**

In accordance with the provisions of Annex VIII, the contractor (or leader in case of a joint tender) submits invoices in electronic format if the conditions regarding electronic signature specified by Directive 2006/112/EC on VAT are fulfilled, i.e. using a qualified electronic signature or through electronic data interchange.

Reception of invoices by standard format (pdf) or email is not accepted.

## **II.19. PRICE REVISION**

If Article I.5.2 refers to a formula governing price revision, then the provisions set out in this Article apply.

### **II.19.1. Yearly price revision**

The Parties agree that the prices shall be subject to a yearly price revision according to the provisions set out below.

### **II.19.2. Date of effect of the yearly price revisions**

Price revisions shall always be applicable on 1st January. For a Framework Contract signed during calendar year N, the first price revision shall be calculated as set out below during year N+1 and become applicable on the 1st January of year N+2.

However, when a product or service was not included in a Framework Contract from the beginning, but introduced through an amendment signed in year O, otherwise than as a result of a Change Request, the first price revision for that product or service shall be calculated during year O+1 and become applicable on the 1st January of year O+2.

As regards Hardware, Complex and Other Than Complex Hardware, and unless otherwise agreed by the Parties, when a product is introduced into the Framework Contract through an amendment signed in year P as a result of a Change Request after the procedure set out in section II.19.3 below has been initiated, the new product shall bear the price of the product it replaces, i.e. the non-revised price for the remainder of year P, and the revised price as from the 1<sup>st</sup> January of year P+1.

### **II.19.3. Procedure for calculating the yearly price revision**

Between 1 July and 30 September every year, the Commission shall send to the Contractor an initial written notification informing the latter about the result of the calculation of the yearly price revision.

The contractor has 30 days following the date of receipt to submit observations against the result of the calculation made by the Commission. In absence thereof, the initial written notification sent by the Commission shall acquire the status of an amendment with full legal effect and enters into force the day after the time limit for submitting observations has elapsed.

Should the Contractor formulate any observations on the correctness of the calculation made pursuant to paragraph 1 above within the deadline set out in paragraph 2 above, the Commission shall carefully and expediently consider them.

Following this assessment, the Commission shall send to the Contractor, within one month from the receipt of Contractor's letter, a final written notification including the result of the calculation of the yearly price revision. If applicable, this letter should state the reasons having led to the rejection of the observations put forward by the Contractor.

The final written notification sent by the Commission shall immediately enter into force and acquire the status of an amendment with full legal effect, but the Contractor shall be free to seek appropriate remedies.

Should, exceptionally, the Commission fail to initiate the procedure as set out above, the Contractor may, until 15 October, give formal notice to the Commission requiring the latter to send the initial written notification. The Commission shall comply with this requirement within 15 calendar days from receipt of the contractor's letter. Paragraphs 2, 3, 4 and 5 above shall apply thereafter.



Should the Commission not act as provided for in paragraph 1 above, nor the Contractor as provided for in paragraph 6, the yearly price revision shall not apply for the relevant yearly period.

#### **II.19.4. Formula for the yearly price revisions**

The yearly price revisions shall be calculated using the following formula:

$$Pr = Po \times \frac{Ir}{Io}$$

where:

Pr = Revised price

Po = Original price in the tender (or, if applicable, in the amendment introducing the price for the service or product for the first time)

Ir = Index for the month of May of the year in which the yearly price revision is calculated

Io = Index for the month in which the Framework Contract (or, if applicable, the amendment introducing the price for the service or product for the first time) entered into force

the quotient of  $\frac{Ir}{Io}$  is rounded to the fourth decimal.

Following the price revision, the prices shall be rounded to the closest euro cent, with the exception of the daily prices for provision of services, which shall be rounded to the closest even number of euro cents.

#### **II.19.5. Indices to be used for the yearly price revisions**

For services: As regards Services, the revision shall be based on the trend in the index “Harmonised Indices of Consumer Prices (HICP all items)”, under “First Published Data (prc\_hicp\_fp)”, published on Eurostat’s official website.

For supplies: As regards Hardware, Complex and Other Than Complex Hardware, the revision shall be based on the trend in the index “Producer prices in industry, domestic market - monthly data [sts\_inppd\_m]” (PPI NACE C262), published on Eurostat’s official website.

The precise index to be used is indicated in Article I.5.2.

In case of a change in the base year of an index, the values of Io and Ir shall be adapted accordingly on the basis of the official figures published by Eurostat using the latest base year.

Should Eurostat cease to publish any of the indices referred to above, the Commission shall —as part of the procedure set out in paragraph II.19.3 above— base the calculation of the revised price on the most similar index which is available, providing reasons for its choice.

### **II.19.6. Prices applicable for supply and service purchases**

The Commission shall purchase Hardware, Complex and Other Than Complex Hardware on the basis of the prices applicable on the date of signature of the Specific Contract by the last contracting party.

The Commission shall purchase Services on the basis of the prices applicable on the date which is indicated as start date (start of the tasks) of the Specific Contract.

## **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 or in the currency provided for in Article I.7.

### **II.20.3. Conversion**

The contracting authority makes any conversion between the euro and another currency at the daily euro exchange rate published in the Official Journal of the European Union, or failing that, at the monthly accounting exchange rate, as established by the European Commission and published on the website indicated below, applicable on the day when it issues the payment order.

The contractor makes any conversion between the euro and another currency at the monthly accounting exchange rate, established by the Commission and published on the website indicated below, applicable on the date of the invoice.

[http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/inforeuro/inforeuro\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm)

### **II.20.4. Costs of transfer**

The costs of the transfer are borne as follows:

- (a) the contracting authority bears the costs of dispatch charged by its bank;
- (b) the contractor bears the costs of receipt charged by its bank;
- (c) the party causing repetition of the transfer bears the costs for repeated transfer.

### **II.20.5. 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 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 bears 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 cover compliance with substantial contractual obligations until the contracting authority has given its final approval for the supply/service. The performance guarantee must not exceed 10 % of the total price of the specific contract. The contracting authority must release the guarantee fully after final certificate of conformity of the supply has been delivered and/or the services were approved, as provided for in the specific contract.

Retention money guarantees cover full delivery of the supplies/service in accordance with the specific contract including during the contract liability period and until their final certificate of conformity has been delivered by the contracting authority. The retention money guarantee must not exceed 10 % of the total price of the specific contract. The contracting authority must release the guarantee after the expiry of the contract liability period as provided for in the specific contract.

The contracting authority must not request a retention money guarantee for a specific contract where it has requested a performance guarantee.

#### **II.20.6. Interim payments and payment of the balance**

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

The contractor (or leader in 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/service, as provided for in Article I.6, in the tender specifications or in the specific contract.

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.20.7. 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 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/deliverables or documents;  
or
- (c) because the contracting authority has observations on the supplies/deliverables or documents submitted with the invoice.

The contracting authority must notify the contractor (or leader in case of a 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 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 specific contract in accordance with Article II.17.1(c).

### **II.20.8. Interest on late payment**

On expiry of the payment periods specified in Article I.6, the contractor (or leader in 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.20.7 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 case of a joint tender) only if it requests it within two months of receiving late payment.

## **II.21. RECOVERY**

### **II.21.1. Principle**

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 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 contracting authority or by the European Atomic Energy Community;
- (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.20.8. 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 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 to 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.21.2 (a), the contracting authority may claim the full amount to any other member of the group by notifying 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 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 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/services and up to five years starting from the payment of the balance of the last specific contract issued under this 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 specific contract issued under this 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 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 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, 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.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 inspection 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, 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 performance of the contract and up to five years starting from the payment of the balance of the last specific contract issued under this 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. INTELLECTUAL PROPERTY RIGHTS**

### **II.23.1. Ownership of the rights in the results**

The contracting authority acquires irrevocably 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 any of the results and to all technological solutions and information created or produced by the contractor or by its subcontractor in implementation of the FWC. The contracting authority may exploit and use the acquired rights as stipulated in this FWC. The contracting authority acquires 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 contracting authority.

The payment of the price includes any fees payable to the contractor about the acquisition of ownership of rights by the contracting authority including for all forms of exploitation and of use of the results.

### **II.23.2. Licensing rights on pre-existing materials**

Unless provided otherwise in the special conditions, the contracting authority does not acquire ownership of pre-existing rights under this FWC.

The contractor licenses the pre-existing rights on a royalty-free, non-exclusive and irrevocable basis to the contracting authority, which may use the pre-existing materials for all the modes of exploitation

set out in this FWC or in specific contracts. All pre-existing rights are licensed to the contracting authority 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 covers all territories worldwide and is valid for the duration of intellectual property rights protection.

The payment of the price as set out in the specific contracts is deemed to also include any fees payable to the contractor in relation to the licensing of pre-existing rights to 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 signs 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.23.3. Exclusive rights**

The contracting authority acquires the following exclusive rights:

- (a) 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;
- (b) 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;
- (c) 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;
- (d) rental: the exclusive right to authorise or prohibit rental or lending of the results or of copies of the results;
- (e) adaptation: the exclusive right to authorise or prohibit any modification of the results;
- (f) 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;
- (g) 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-utilization 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;
- (h) 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;
- (i) 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;
- (j) 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;
- (k) where the results are documents:

- (i) 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’ have the meaning given to it by this Decision;
  - (ii) 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;
- (l) where the results are or incorporate software, including source code, object code and, where relevant, documentation, preparatory materials and manuals, in addition to the other rights mentioned in this Article:
- (i) end-user rights, for all uses by the contracting authority or by subcontractors which result from this FWC and from the intention of the parties;
  - (ii) the rights to decompile or disassemble the software;
- (m) 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 contracting authority 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 case, the contractor will have to clearly inform the contracting authority before making such choice and the contracting authority has the right to refuse it.

#### **II.23.4. 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.23.5. Evidence of granting of pre-existing rights**

Upon request by the contracting authority, the contractor must provide evidence that it has the ownership or the right to use all the listed pre-existing rights, except for the rights owned or licensed



by the contracting authority. 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:

- (a) the name and version number of a software product;
- (b) the full identification of the work and its author, developer, creator, translator, data entry person, graphic designer, publisher, editor, photographer, producer;
- (c) 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;
- (d) 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 its personnel;
- (e) the text of the disclaimer notice if any.

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

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

#### **II.23.6. 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.23.7. 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:

- (a) that their names be mentioned or not mentioned when the results are presented to the public;
- (b) that the results be divulged or not after they have been delivered in their final version to the contracting authority;
- (c) 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.23.8. 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 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.23.9. 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.13.1, with the following disclaimer: ‘© — year — [name of contracting authority]. 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 does not apply where inserting such reference would be impossible, notably for practical reasons.

### **II.23.10. 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.

## **II.24. REIMBURSEMENTS**

**II.24.1** If provided for in the special conditions or in the tender specifications, the contracting authority must reimburse expenses directly connected with the delivery of supplies or provision of the services either when the contractor provides it with supporting documents or on the basis of flat rates.

**II.24.2** The contracting authority reimburses travel and subsistence expenses on the basis of the shortest itinerary and the minimum number of nights necessary for overnight stay at the destination.

**II.24.3** The contracting authority reimburses travel expenses as follows:

- (a) travel by air: up to the maximum cost of an economy class ticket at the time of the reservation;
- (b) travel by boat or rail: up to the maximum cost of a first class ticket;
- (c) travel by car: at the rate of one first class rail ticket for the same journey and on the same day;

In addition, the contracting authority reimburses travel outside Union territory if it has given its prior written approval for the expenses.

**II.24.4** The contracting authority reimburses subsistence expenses on the basis of a daily subsistence allowance as follows:

- (a) for journeys of less than 200 km for a return trip, no subsistence allowance is payable;
- (b) the daily subsistence allowance is payable only on receipt of supporting documents proving that the person concerned was present at the destination;
- (c) the daily subsistence allowance takes the form of a flat-rate payment to cover all subsistence expenses, including meals, local transport including transport to and from the airport or station, insurance and sundries;
- (d) the daily subsistence allowance is reimbursed at the flat rates specified in Article I.5.3;
- (e) accommodation is reimbursed on receipt of supporting documents proving the necessary overnight stay at the destination, up to the flat-rate ceilings specified in Article I.5.3.

**II.24.5** The contracting authority reimburses the cost of shipment of equipment or unaccompanied luggage if it has given its prior written approval for the expense.