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**Mr Tamás Lovas**  
General Manager

**BHG-2006 Ingatlanhasználó Kft.**  
1085 Budapest, Kölcsey u. 2.

## **Request for Proposal**

**STRICTLY PRIVATE AND CONFIDENTIAL**

**Re: Proposal for: House of European Union "EU" in BUDAPEST**

Dear Mr Lovas,

The following Request for Proposal ("RFP") outlines the property requirements **for a new House of the European Union in BUDAPEST**, which we are submitting to you as a guideline for the preparation of a formal, proposal to lease or sell a building or premises. Your attention is drawn to the confidentiality provision set out in the last paragraph below. **If you are not able or willing to be bound by this confidentiality obligation then please immediately return to us this letter together with its enclosures.** We would be grateful for return of this proposal in accordance with the RFP format by 15 April 2009

### **Name of the building**

**Building:** Please indicate the building or project name and mailing address and attach a plan to the Proposal identifying clearly the building or premises and the surrounding land. Please provide background information on the office development project.

**Initial Space:** The initial requirement is estimated to be approximately **1500-1700 square meters (net usable: including meeting rooms, video-conference rooms, a conference room, and a ground-floor Information Point/Public Space; excluding sanitary facilities) of the office area.**

See the space requirement in the attached **Programme of Spaces (Exhibit 1)**.

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## **SELECTION CRITERIA:**

### **A) LEASE PROPOSAL:**

<b>Total Area:</b>	Breakdown by floors
<b>Base Rental:</b>	Please specify rental rates for the entire lease (excluding operating expenses and taxes) in EUR/ HUF - Cost per sq.m/year - Breakdown of this cost per sq.m by floors (ground floor, 1 <sup>st</sup> floor, upper floors, etc) <b>Please note that this is a tender process.</b>
<b>Total number of car parking spaces</b>	Please specify the number and the cost per parking space (either as leased as part of the agreement or costs to municipality or other arrangements)
<b>Lease Term:</b>	Ten <b>(10)-years</b> , commencing upon the Substantial Completion of construction of Additional Fit-out with yearly break option as from the end of the 5 <sup>th</sup> year.
<b>Lease Contract:</b>	Please acquaint yourself with a draft contract (attached in <b>Exhibit 2</b> ) and confirm your approval as this is not negotiable item. If you are not able to accept the attached contract please let us know ASAP.
<b>Indexation:</b>	Please refer to the draft lease contract (art.5) No review!
<b>Rent free period:</b>	Depending on the total duration of the lease – please provide rent-free amounts for 10 year, 15 year and 20 year lease agreements, with break options after each 5-year period.
<b>Rental Concessions:</b>	Please indicate what rental concessions you wish to propose. Specify whether these apply to base rent, parking, operating expenses, taxes, electricity and/or utilities.
<b>State of building:</b>	Category A, B...; new project, etc

### **B) SALES PROPOSAL:**

<b>Total Area:</b>	Breakdown by floors
<b>Price:</b>	Please indicate the asking price for sale of the property or premises in EUR / HUF
<b>Financial lease with purchase option</b>	Please provide annual payments under this option for 15, 20, 25 years.
<b>Total number of car parking spaces</b>	Please specify the number and the cost per parking space (either as leased as part of the agreement or costs to municipality or other arrangements)

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**State of building:** Category A, B.....; new project, etc

**GENERAL INFORMATION:**

**Commencement Date:**

Occupancy is targeted at May-June 2010. However, the term in the case of a lease shall not commence until the Additional Fit-out (as defined below) has been completed. Please provide the date the proposed space will be available for commencement of construction of the Additional Fit-out and the estimated time you require for the construction of the Additional Fit-out, from receipt of EU-approved construction documents.

**Proposed Premises:**

Please attach A3 copies of the floor plan(s) of the proposed space; clearly mark the proposed space and indicate the associated usable and rentable area measurement. Mark plan to orientate building with a north arrow. Identify views from office space.

In the case of a lease proposal, please specify the rentable and usable square meters and any add-on factor on a multi-tenant and full floor basis for the floor(s) proposed.

**Measurement of Space:**

Please identify the code of measurement that is used to measure the building.

**Operating Expense, service charges**

Please provide the operating cost per rentable square meter for your building. Also, please provide a break down of all services. Please indicate whether the operating cost is to be capped as part of your offer. EU requires the gross up clause – base operating expenses and taxes are set to full occupancy of the building.

**Electricity:**

Please specify whether electricity for normal office use is included in the base rental. If not included, describe how the electrical costs are paid and estimate the cost for the first year of occupancy or a cost per m<sup>2</sup>. EU prefers to be charged on a direct-metered basis. Please comment on the quality and reliability of electric power in the building.

**Fit-out:**

EU requests the Landlord to accept the execution of the full fit-out in accordance with the final space plan agreed and **Office Design Guide** attached as **Exhibit 3** (the “**Fit-out**”). Please note that this *Exhibit* will be only sent out at

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the second phase of the tender ie to the shortlisted candidates

Please note that Exhibits 1 and 3 have been developed by EU specifically for this project and should be strictly adhered to. Quantities may be adjusted based on the requirements and dimensions of your particular building.

Please prepare a preliminary space layout plan based on the **Programme of Spaces (exhibit 1)** and attach it to your Proposal. Indicate the m2 per office. Please indicate in your Proposal that you are providing the preliminary space plan at your own cost and expense and will provide the final space plans, including architectural, mechanical, electrical and plumbing (MEP) working drawings on the same basis and that all costs and expenses incurred by landlord in the review and approval of EU's plans will also be born by the landlord.

**End of lease term**

The European Communities will not accept any payment obligations after the end of the lease term except for damages caused to the leased premises by the tenant, subject to normal wear and tear. The Landlord is not entitled to claim restitution of the fit-out works. The landlord accepts normal wear and tear of the leased area.

**Voice & Data:**

Voice & Data specifications will be prepared by the EU (See the EU requirement in the attached **Office Design Guide Exhibit 3**) The contractor to perform the works will be approved by EU and the performance of the contractor's works will be managed by the landlord as part of the Fit-out works

**Floor Loading Bearing Capacity:**

Please provide the weight load bearing capacity per square meter of the proposed floors. Indicate the possibilities for large deliveries in the vicinity, should it be complicated in a proposed building.

**Normal Hours of Operation:**

What are the normal hours of operation for the building? Tenant's normal hours are 7:00 a.m. - 7:00 p.m., Monday to Friday, but requires access, as needed, on a 24 hours a day, 7 days a week basis, including holidays.

**Hazardous Material:**

Is there or was there any asbestos or any other hazardous material in the building or on site? Indicate the previous use of the proposed premises. Please provide a relevant certificate of the absence of the undesirable substances according to the **List of Prohibited materials, Exhibit 6**

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<b>Signage Rights / Flag:</b>	EU requires the right to have the European flag in front of the building. Describe the signage rights that EU will be granted at the building. Describe any signage rights of other tenants on top of the building, or plaques and in lobby areas. Please confirm any payment basis on which the signage rights will be provided.
<b>Roof Rights</b>	EU requires the right to use of the roof space over the demise for the installation of aerials, subject to Landlord's prior written consent, not to be unreasonably withheld and at no extra cost. (i.e. antenna, satellite dish)
<b>Assignment &amp; Subletting:</b>	EU requires the right to assign or sublet to another EU entity without Landlord's consent or other restrictions.
<b>Extension Options:</b>	<p>EU requests a right of first refusal on the vacant space available for letting or subletting within the building, next to the initial office space, that becomes available during the initial term and any renewal of the term (each notice given to have a validity period of 3 months). Additional space should be available on the terms described below:</p> <ul style="list-style-type: none"><li>a. Extension Rental Rates – Additional space to be available for lease at the same terms and conditions as the initial space.</li><li>b. Additional Fit-out – Landlord to provide at its sole cost and expense, a build-to-suit fit-out to the same level of finish as the initial space for any extension taken by EU (optional)</li></ul>
<b>Renewal Option:</b>	EU requests the right to renew its initial lease term, however the lease should not be automatically renewable.
<b>Expiration</b>	Please note that no notice prior to the normal expiration of lease will be provided by EU.
<b>Security Deposit:</b>	Given the financial standing of EU please note that no deposit, or other security payment will be provided by EU.
<b>Cleaning:</b>	Please provide a copy of the building cleaning specifications.
<b>Parking:</b>	A complete description of the parking facilities should be provided. This description should include such information as the total number of spaces available, the number of floors, the location(s), visitor parking arrangements, the hours of operation including holidays, the number of reserved and unreserved parking spaces available to EU for the Initial Space and Expansion Space and the

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proposed parking rates (if any) for the term of the lease.

The preferred number is up to 22 for the Initial Space. Also please confirm that there will be an adequate number of parking spaces available for visitors at the building.

Please specify if the parking is included in the rent.

**Building Management:**

Who currently manages the building? Is the Management Company connected in any way with the building owner? What does the management company charge annually on a square meter basis? What staff is on-site during business hours? After hours? When does the management contract expire? Please provide a copy of the building rules and regulations.

**Security and safety**

**Please provide details of security and safety (fire detection system, evacuation routes, etc) for the building. See the security requirement in the attached Security requirements (Exhibit 4).** Please note that this *Exhibit* will be only sent out at the second phase of the tender ie to the shortlisted candidates

EU requests the Landlord to provide these installations at its own costs.

**Brochure:**

Please include at least 3 copies of any brochure or photographs of the building that are available.

**Building accessibility**

Landlord is responsible for the compliance with legislation regarding the access of public areas for physically handicapped persons.

**Amenities and Services:**

Please include a description of the amenities and services currently located in or planned for the building and the surrounding area to include food service, luncheon clubs, health clubs, hotels and other retail facilities.

Please indicate if there is any conference facility in the building, which can be used by tenants.

Please indicate how many hotels, restaurants and hospitals are in the short distance of the building.

What kind of public transport is available within easy reach? What is the distance to the airport?

**Other Tenants:**

Please include a complete list of the office and retail tenants that will be in the building on the proposed Commencement Date including floors and the approximate areas occupied.

**Follow-up Questions:**

Who should be contacted for follow-up questions

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	regarding the building or the proposal? Who should be contacted for follow-up regarding building information?
<b>Timing:</b>	Please prepare a draft schedule of procedures commencing with execution of the lease, design/working drawings, commencement and, completion of Fit-out.
<b>Compliance with Law</b>	The Landlord/Vendor is required to provide a declaration to the effect that the building and the premises proposed are in conformity with national legislation regarding health and safety, as well as environmental matters.
<b>Legal Costs</b>	Each Party to be responsible for their own legal costs incurred in any future contractual agreement.
<b>Landlord's works</b>	Prior to delivering possession to EU, Landlord/Vendor shall prepare the Premises and the Building to conform to mutually acceptable base building conditions. Before accepting the space, a formal 'walk-through' inspection must be done jointly by EU and landlord.
<b>Confidentiality and commitment</b>	This RFP is <b>CONFIDENTIAL</b> and is intended solely for your use in preparing the Proposal for EU. The RFP is not to be construed in any way as a contractual offer and the RFP does not represent a commitment on the part of EU to lease or buy space in the proposed building(s), which can only be accomplished by both parties executing a formal lease agreement or sales contract. However, by your acceptance of this package of documents, you agree that this RFP and its enclosures are confidential in nature; that you will not discuss or disclose, either verbally or in writing, this RFP, its enclosures or your Proposal with or to any other company or individual (with the exception of our appointed agents and professional advisers); nor will you use this RFP or any of its contents in any way that is detrimental to the interests of EU. Any breach of this confidentiality obligation will result in your Proposal being rejected. <b>If you are not able or willing to comply with this confidentiality provision then please immediately return to us this RFP together with its enclosures.</b>
<b>EXCLUSION CRITERIA</b>	The landlord is requested to sign the attached declaration of honour (Exhibit: 5)
<b>AWARD CRITERIA</b>	Based on the best combination of: Location/access/visibility Finances

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## Functionality

We appreciate your cooperation and assistance and we look forward to receiving your proposal, preferably at the latest 15 April 2009. Should you have any questions, please contact us at [comm-rep-bud-communication@ec.europa.eu](mailto:comm-rep-bud-communication@ec.europa.eu).

### Attachments:

Exhibit 1: Programme of spaces

Exhibit 2: Draft contract

Exhibit 3: Office design guide

Exhibit 4: Security requirements

Exhibit 5: Declaration of honour

Exhibit 6: List of prohibited materials

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## **Exhibit 1 of RFP**

### **Location:**

Proximity to the National Parliament and Government offices, public transports; underground in the area preferably between the following reference points: Jászai Mari square- Heroes square- Felvonulási square – Fővám square

- Proximity to main streets, well frequented by public
- Visibility, easy to find
- Modern, very functional and no traditional upper class image
- Easily accessible by car.

### **Shared areas with EC:**

- Public entrance hall/reception with security screening and switch-board
- Library/helpdesk area/Information centre/ Exhibition area (ground floor)
- Conference and meeting rooms: 1 large (divisible) and 2 smaller (all with EBS, video conference facilities and sound/light)
- Kitchen for catering and receptions
- Waiting room at reception (with coffee machine and water)
- Storage room for chairs and tables for conference rooms
- Service entrance for goods
- Storage room for publications and other, package space, archive storage
- Garage space for 22 cars (8 for EP and 14 for EC), cycle rack
- 3 flagpoles or other ways of visibility
- Server room - shared or individual
- Staff room, showers and lockers - shared or individual
- 2 deck-rooms (for office supplies) - shared or individual

### **EP Staff:**

- **6 officials** (including 1 press officer) + **1 official** to be placed in the office from the first half of 2009: **altogether 7 officials**
- 2 trainees
- 2 Bureaux de passage
- 1 kitchen for EP with 1 room off
- 1 room for postage handling (scan, sort, pack, distribute)
- 1 internal meeting room (at least 15 persons)
- 1 videoconference room (with EBS, video conference facilities and sound/light)
- 1 deck-room for office supplies
- 1 staff room, showers and lockers
- 1 Storage room for publications and other, package space, archive storage

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**EC staff:**

- 22 staff (17 at present) + 3 reserve
- 2 DGT translators
- 1 trainees
- 2 Bureau de passage
- 1 kitchen for EC with 1 room off
- 1 room for postage handling
- 1 video conference room
- one internal meeting room

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**EXHIBIT 2**

COMM/2007-EN  
25.11.08  
*version revue suite aux  
recommandations des deux S.J.*

**DRAFT**  
**LEASE CONTRACT**

The undersigned:

1.

represented by (...) entitled to act in the name and on behalf of (...) according to the attached excerpt from the commercial register (**Exhibit 1**)<sup>1</sup>

**"Lessor", of the one part,**

2. The European Communities, represented by the European Commission of the European Communities, here represented by Mr ....., Head of the Representation of the European Commission to ..... (.....),

**"Lessee", of the other part,**

**jointly referred to as "the Parties",**

**HAVE AGREED AS FOLLOWS:**

ARTICLE 1

**PRINCIPAL OBLIGATIONS OF THE PARTIES AND DESCRIPTION OF THE  
PROPERTY**

1.1 The Lessor hereby grants the Lessee, who hereby accepts, a lease in respect of the premises described below (hereinafter referred to as the "Premises"):

..... m<sup>2</sup> ground floor spaces,

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<sup>1</sup> Excerpt of commercial register in order to examine power of representation of signing person.

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..... m<sup>2</sup> office spaces,  
..... m<sup>2</sup> storage spaces,  
..... parking places

The building (hereinafter referred to as the “Property”) is located at the following address: .....

- 1.2 The leased Premises are unfurnished office space, (storage space and parking places) located at the exact address ..... as described above and in the layout plans annexed to this Contract (**Exhibit 2**). The Lessor shall undertake the additional fit-out works described in **Exhibit 3** at its own costs within four (4) months after the Parties have signed this Contract. The Lessee has free access to the Premises and all common areas during seven (7) days a week and twenty four (24) hours per day.
- 1.3 The Lessor warrants and represents that the above Property complies throughout the whole contractual period with the health and safety legislation, environmental and fire protection legislation as well as all other regulations applicable in (**name of the host country**) attested by the relevant certificates (Exhibit 8)
- 1.4 The Lessor warrants and represents that he is the owner of the Property described in Para 1 and 2 of this Article attested by a certificate of ownership (**Exhibit 4**)<sup>2</sup>. The Lessor further warrants and represents that no third parties are entitled to claim the occupation of the Premises.
- 1.5 The Lessee undertakes to occupy the Premises as a prudent person.
- 1.6 Lessee shall have the right to place logos, signboards, flagpoles and labels on the façade of the Property and walls of the Premises at the Lessee's own expense, subject to prior written approval of Lessor, which may not unreasonably be withheld, but without any additional payments to Lessor.

## ARTICLE 2

### **HAND-OVER OF THE PREMISES**

- 2.1 Before the Lessee takes up occupancy, an initial status report shall be drawn up in triplicate by mutual agreement between the Parties and signed by each of them. One copy shall be retained by the Lessor and the other two copies by the Lessee.

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<sup>2</sup> Certified copy of the certificate of ownership issued by the competent authority (land registry, notary public, etc.) or copy of the deeds of ownership or lease.

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- 2.2 The Lessor shall send a notice to the Lessee to announce that the fit-out works (**Exhibit 3**) are nearing completion, such notice also to specify the date on which the Premises may be inspected by the Lessee. Such notice has to be given in writing at least fourteen (14) calendar days before the proposed inspection date together with a draft of the hand-over protocol. The hand-over protocol will be signed by the Lessor and the Lessee on the inspection date recording the state and condition of the Premises and their contents. Any defect existing at the date on which the hand-over protocol is signed, which do not adversely affect the use of the Premises in accordance with this Contract, will be listed (in the following referred to as “Snagging Items”) and the Lessor shall be obliged to complete or repair the snagging items within the following thirty (30) calendar days, or such longer period as may be required due to a delay in the supply of materials or due to the nature of the Snagging Items. Lessee is entitled to reduce the rent according to Article 4.1 of this Contract in proportion to the percentage of the surface area of the Premises which can not be properly used due to Snagging Items as specified in the hand-over protocol. If sixty (60) calendar days after the date of the hand-over protocol, there are still Snagging Items, Lessor shall pay a contractual penalty of ... EUR (...) to the Lessee for each calendar day of delay until all of the Snagging Items have been completed or repaired. If the Lessee fails to sign the hand-over protocol on the date notified in the notice for any reason, except that defects exist in the Premises which adversely affect the use of the Premises in accordance with this Contract, or for a reason contingent on Lessor, the Lessee shall be deemed to have signed the hand-over protocol and to have accept that there are no defects in the Premises. The use of the Premises shall be deemed adversely affected, if more than 15 percent of the surface area of the unfurnished office space of the Premises cannot be used by the Lessee for its purposes. If the Snagging Items are removed, Lessee shall certify such removal in writing on Lessor’s written demand.
- 2.3 The provision of Article 2.1 of this Contract shall apply in respect of the final status report to be drawn up after the Lessee has quit the Premises and immediately before the keys are returned.

### ARTICLE 3

#### COMMENCEMENT AND TERM OF LEASE

- 3.1 This lease is granted and accepted for a term of **ten (10) years**. The term of this lease shall commence upon the day of signature of the hand-over protocol referred to in Article 2 of this Contract and shall commence no later than four (4) months after the Parties have signed this Contract. This lease is renewable for the same term and on the same conditions, save for Article 4 of this Contract, by written agreement of the Parties if the rider is signed by both Parties no later than three months (3) before the initial term of this Contract.
- 3.2 Both Parties shall sign the hand-over protocol referred to in Article 2 of this Contract provided that Lessor’s fit-out works as described in **Exhibit 3** are completed and that the

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Premises are available for delivery to the possession of Lessee for Lessee's peaceful and quiet occupation on that date in accordance with the terms of Article 2.2 of this Contract.

- 3.3 If the availability as set out in Article 3.2 of this Contract is delayed to a date later than four (4) months after the Parties have signed this Contract, the Lessor shall pay a penalty of ..... EUR to the Lessee for each calendar day of delay until the Lessor's fit-out works as described in **Exhibit 3** are completed and the Premises are available to the Lessee for its quiet and peaceful occupation or until the Lessee has terminated this Contract according to Para 4 of this Article. This shall not apply if the Premises are not available due to a fault of the Lessee.
- 3.4 The Lessee shall have the right to terminate this lease, without any obligation to compensate the Lessor, if the Lessor did not terminate the fit-out works described in **Exhibit 3** or if the Premises are not available for his quiet enjoyment one (1) month after the date on which the lease should have taken effect. The Lessor shall be notified of such termination by registered or recorded-delivery letter thirty (30) calendar days at the latest after expiry of the said term. This shall not apply if the Premises are not available due to a fault of the Lessee.

#### ARTICLE 4<sup>3</sup>

##### RENT

- 4.1 The monthly rent (in the following referred to as the "Rent") shall be fixed at ..... EUR (in words .....), payable **quarterly** in advance, and for the first time on the date on which the lease takes effect according to Article 3.1 of this Contract, to account No ..... at the .....
- The Rent shall be paid by the Lessee within thirty (30) calendar days after having received an invoice duly issued by the Lessor.
- 4.2 The Lessee shall also pay in the same way, a provisional amount of ..... EUR in monthly charges for the services (in the following referred to as the "Service Charges") as listed in **Exhibit 5**.
- 4.3 The Lessor, once a year, and not later than ..... each year, will provide a final account for the Service Charges based on real costs incurred, as evidenced by bills received. The provisional amount for the following year will then be adapted accordingly, to take account of the excess or shortfall.

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<sup>3</sup> If the rent is paid in local currency but fixed in respect of any other currency, the exchange rate shall be fixed by the official rate as established by the European Commission (InforEuro) for the day in which the payment shall occur and, in the case that it is not available, by means of the exchange rate published by the Financial Times.

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- 4.4 If the lease is terminated under Article 14 of this Contract, the Lessor shall reimburse within 30 calendar days of the end of the lease any Rent paid in advance for periods after the effective end of the lease.
- 4.5 If the budget of the European Union has not been adopted on 1 January of the budget year and the Commission's monthly resources are therefore confined to a twelfth of the previous year's budget, the Rent shall provisionally be payable monthly on the basis of the annual Rent paid the previous year
- 4.6 Such payments shall be made on the first day of each month until the budget of the European Union is definitively adopted. As of that day, the rent due under this lease and as yet unpaid shall be payable immediately. It shall be paid together with lawful interest at the rate applicable in **(name of the host country)** on the difference between the rent due and that already paid since 1 January of the current year, such interest not exceeding the equivalent of one month's rent.

## ARTICLE 5

### **INDEX-LINKING**

The Rent shall be adjusted annually on the anniversary of the lease's effective entry into force to the cost-of-living index according to the formula:

$$\text{New rent} = \text{Old rent} \times \frac{\text{New index}}{\text{Old index}}$$

Where:

"New rent" is the new amount of rent payable at the term following the adjustment (and every month thereafter until the next adjustment or the expiry of the lease).

"Old rent" is the initial rent as stipulated in Article 4.1 of this Contract;

"New index" is the latest European Index of Consumer Prices (EICP) published at the date of adjustment by the Office for Official Publications of the European Communities in the Eurostat Database <http://epp.eurostat.ec.europa.eu> (HICP-All items index- EU 27 countries).

"Old index" is the European Index of Consumer Prices published at the date of this Contract's entry into force.

## ARTICLE 6

### **ALTERATIONS, SECURITY AND TELECOMMUNICATIONS INSTALLATIONS**

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- 6.1 Notwithstanding Article 1.2 of this Contract, the Lessor hereby grants the Lessee the right to install in the Premises, without any increase in the Rent but at the Lessee's own expense and in conformity with the technical specifications of the equipment and the technical capacities of the property, any security and telecommunications equipment considered necessary by the Lessee, including, but not limited to, double entrance doors, Secure Access System and Secure Reception, a satellite dish or a radio mast.
- 6.2 The Lessee shall not carry out any other alterations, modifications or improvements to the Premises without the prior written approval of the Lessor, such approval shall not unreasonably be withheld.
- 6.3 The Lessee undertakes to obtain any prior authorisation that may be necessary for the installation and use of the equipment installed and to pay any administrative charges and licence fees required by the authorities of **(name of the host country)**.

## ARTICLE 7

### **MAJOR REPAIRS**

- 7.1 Lessor shall during the term of the lease be responsible for all major repairs to the structure of the Property (walls, roof, ceiling) including repairs and maintenance of the Property's common drains, sewerage pipes, water tanks, pumps, pipes, electrical wiring, replacement of obsolete equipment belonging to Lessor, and all painting of the exterior. The Lessor shall throughout the whole contractual period maintain the Property in a condition appropriate for an A class office building. Lessor shall give reasonable notice to Lessee of repairs, which may cause inconvenience or disruption to Lessee. Such works shall not affect the amount of the Rent or other charges. If the Premises or some part of it can not be used by the Lessee due to such repairs, the Lessee shall be entitled to reduce the Rent by the proportion of the ratio of the value of defective performance to the value of conforming performance, determined based on the proportion to the percentage of the surface area of the Premises which can not be properly used due to such repairs. If the Premises or some part of it can not be properly used by the Lessee for more than thirty (30) calendar days due to such repairs, the Lessor shall pay a contractual penalty of .... EUR (...) to the Lessee for each calendar day of delay until all repairs have been completed.
- 7.2 Lessor does not bear responsibility to repair or maintain furniture, equipment, fixtures or other installations installed or owned by Lessee.

## ARTICLE 8

### **RIGHT OF SUBSTITUTION**

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The Lessee shall inform the Lessor of all repairs, maintenance or replacements incumbent on the latter. The Lessee shall allow the Lessor to perform these obligations provided he does so with due care, with the least possible inconvenience to the Lessee, as soon as possible and, in any case, within a month of being notified by the Lessee by registered or recorded-delivery letter. Once this deadline has expired, the Lessee may have these obligations performed at the expense of the Lessor, based on an estimate drawn up by a reputable local contractor, chosen by the Lessee, and conveyed to the Lessor for his information, and deduct the costs from outstanding rent. In emergency situations the Lessee is entitled to have performed these obligations by a reputable local contractor without prior estimate.

#### ARTICLE 9

#### **MINOR REPAIRS**

The Lessee shall be responsible for the maintenance, care and cleanliness of the Premises, save in the event of normal wear and tear.

#### ARTICLE 10

#### **ASSIGNMENT OF LEASE - SUB-LETTING**

- 10.1 The Lessee may assign or sublet the Premises to another Institution of the European Union, advising the Lessor in writing of such action.
- 10.2 The Lessee may not assign or sublet the leased Premises to any other party, (i.e. other than Institutions of the European Union), without the specific consent of the Lessor, which may not be withheld unreasonably.

#### ARTICLE 11

#### **REGISTRATION FEES - TAXES**

- 11.1 The Lessor shall have sole responsibility for compliance with the tax laws which apply to him. Failure to comply shall make the relevant invoices invalid.
- 11.2 The Lessor recognises that the Lessee is, as a rule, exempt from all taxes and duties, including value added tax (VAT), pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities.
- 11.3 The Lessor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the Rent is exempted from taxes and duties, including VAT.

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- 11.4 Invoices presented by the Lessor shall indicate his place of taxation for VAT purposes and shall specify separately the amounts not including VAT and the amounts including VAT.
- 11.5 Without prejudice to Para 1-4 of this Article the Lessee shall pay all taxes and registration fees pertaining to its occupation of the Premises.
- 11.6 In no circumstances shall the Lessee directly bear the cost of levies, taxes, charges or sums deemed similar by national law and payable by the Lessor on the lease amount received.

## ARTICLE 12

### **WATER – GAS – ELECTRICITY - TELEPHONE**

The Lessee shall conclude any agreement necessary for the operation of the Premises (e.g. water, oil, electricity, gas and telephone) directly with the utility suppliers or the service providers. The Lessee shall pay all sums due in respect of such services directly to the utility supplier or the service providers.

## ARTICLE 13

### **INSPECTIONS**

- 13.1 The Lessee may authorise the Lessor to inspect the Premises leased in the company of an official of the Lessee whenever the Lessor justifies his request by letter to the Lessee at least forty-eight hours beforehand.
- 13.2 Lessee shall immediately notify Lessor's representative in the event of an emergency involving the Premises.
- 13.3 The Lessor shall have the right to enter the Premises during closed hours in case of an emergency, if it is necessary, to fix it or perform preventive works subject to the prior consent of the Lessee. In such a case, the Lessor shall inform the Lessee about the emergency as soon as possible and must be accompanied by a representative of the Lessee.
- 13.4 Pursuant to Article 142 of the Financial Regulation (Council Regulation (EC) No 1605/2002), applicable to the general budget of the European Communities, the European Court of Auditors shall be empowered to audit the documents related to this Contract held by the Lessor from signature of this Contract up to five years after its termination including all renewals under Article 3.1 of this Contract.

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- 13.5 The Lessee or an outside body appointed by the Lessee in writing shall have the same rights as the European Court of Auditors for the purpose of checks and audits limited to compliance with contractual obligations from signature of this Contract up to five years after its termination including all renewals under Article 3.1 of this Contract.
- 13.6 In addition, the European Anti Fraud Office may carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 and Parliament and Council Regulation (EC) No 1073/1999 from signature of this Contract up to five years after its termination including all renewals under Article 3.1 of this Contract.

#### ARTICLE 14

#### TERMINATION

- 14.1 (After a first period of 5 years), the Lessee shall be entitled to terminate the lease at any time, without compensation or penalty, by giving three months' notice by registered or recorded-delivery letter.
- 14.2 The Lessee shall be entitled to terminate this Contract, at any time, in the event of the closure of the Representation of the European Commission in the country or town in where the Premises described in Article 1 of this Contract are located (hereinafter referred to as "Representation"), the transfer of the Representation's activities to another town or any substantial reduction or increase in the number of officials in the Representation, without compensation or penalty, by giving one month notice by registered or recorded-delivery letter.

#### ARTICLE 15

#### EQUIPMENT and FIT-OUT WORKS

- 15.1 The Lessor hereby undertakes to allow the Lessee to dispose freely of any equipment (air-conditioners, refrigerators, pumps, generators, satellite dishes, radio masts, double entrance doors, etc.), even if it is fixed to the ground or built into the Property covered by this lease, which the Lessee may have installed and wishes to take with him when he leaves or at any other moment during the contractual period. In that event the Lessee undertakes, after removing equipment, to restore the places in which it was installed to their original condition.
- 15.2 Upon termination, the Lessee is free to leave the fit-out works described in **Exhibit 3** and **Exhibit 6** in the Premises when vacating the Premises. The Lessor is not entitled to claim restitution of the fit-out works described in **Exhibit 3** and **Exhibit 6**.

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ARTICLE 16

**INSURANCE - LIABILITY**

- 16.1 The Lessor has concluded with a first rank reputable insurance company and will keep in force at all time during the term of the lease and during any extension thereof, an insurance to cover the following risks:
- (a) third party (civil) liability for personal injury or damage to third parties which are the legal responsibility of Lessor or Lessor's agents and are directly caused by their activities;
  - (b) damage to the leased Premises or the Property due to fire, explosive materials, water or other such hazards.
- 16.2 The Lessee shall at all times during the term of the lease and during any extension thereof, keep in force insurance to cover the following risks:
- (a) third party (civil) liability for personal injury or damage to third parties arising from the Lessee's occupation of the Premises or the Lessee's activities;
  - (b) damage to the Premises or the Property due to fire, explosion, water or other such hazards which are deemed to have been caused directly by the Lessee's occupation of the Premises, or his activities.
- 16.3 The Lessee shall not be liable for damage sustained by the Lessor in performance of this Contract except in the event of wilful misconduct or gross negligence on the part of the Lessee.
- 16.4 The Lessor shall provide compensation in the event of any action, claim or proceeding brought against the Lessee by a third party as a result of damage caused by the Lessor in performance of this Contract.

ARTICLE 17

**RETURN OF KEYS**

On the date on which this Contract expires, the Lessee shall return to the Lessor all keys and magnetic cards to the Premises. It shall return the Premises in a good state of repair, taking due account of normal wear and tear.

ARTICLE 18

**LAW APPLICABLE AND SETTLEMENT OF DISPUTES**

- 18.1 This Contract shall be governed by the substantive law of **(name of the host country)**.

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18.2 Any dispute between the Parties resulting from the interpretation or application of this Contract which cannot be settled amicably shall be brought before the courts of (**place and country where premises are located**).

## ARTICLE 19

### MODIFICATIONS - ANNEXES

19.1 Any amendment to this Contract shall be subject of a written agreement concluded by the Parties. An oral agreement shall not be binding on the Parties. Any termination notice under this Contract shall be given in writing and has to be sent to the other Party by registered or recorded-delivery letter.

19.2 The following documents are annexed to this Contract and form an integral part hereof:

Exhibit 1 – Excerpt from the commercial register certifying power of representation of the signing person(s)

Exhibit 2 – Plans (layout)

Exhibit 3 – Lessor's works – Drawings and Specifications

Exhibit 4 – Certified copy of the certificate of ownership issued by the competent authority (land registry, notary public, etc.) or copy of the deeds of ownership or lease

Exhibit 5 – List of services and charges

Exhibit 6 – Lessee's works – Description

Exhibit 7 – Translation of the Contract

Exhibit 8 – Certified copy of analyses for hazardous materials

## ARTICLE 20

### ADDRESS FOR SERVICE

Any communication relating to this Contract or to its implementation shall be made in writing and shall bear the Contract number. Ordinary mail shall be deemed to have been received by the Commission on the date on which it is registered by the department responsible indicated below. Communications shall be sent to the following addresses<sup>4</sup>:

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<sup>4</sup> Fax number and e-mail accounts may be added. If an e-mail account is given, incoming e-mails should be redirected if the account holder is absent and a clause should be added specifying what is considered to be the reference date of the electronic communication (date of sending, receiving or opening).

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The Lessor:

The Lessee: European Commission  
Representation of the European Commission in **(town and country of  
Representation)**

ARTICLE 21

**MISCELLANEOUS**

21.1 This Contract shall come into force on the date of signature stated below. When this Contract comes into force, all prior agreements between the Parties regarding the use of the Premises will be deemed null and void.

21.2 The language of this Contract is French.

21.3 If any provision of this Contract is invalid or unenforceable, its invalidity or unenforceability shall not affect the remaining provisions of this Contract. Such invalid or unenforceable provision shall be replaced by a valid provision coming closest to the initial economic intention of the Parties. The same applies in cases of omissions.

21.4 This Contract has been executed in **(number of copies)** copies.

For and on behalf of the LESSOR:

For and on behalf of the LESSEE:

\_\_\_\_\_  
Name, Position

\_\_\_\_\_  
Name, Position

\_\_\_\_\_  
Place, Date

\_\_\_\_\_  
Place, Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

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**Exhibits 1-4 of the Lease agreement** will be provided by the contractor

**Exhibit 5:**

Common charges for the services:

- water consumption
- communal scrap liquidation,
- electricity consumption
- dangerous scrap disposal
- lift services
- auxiliary technical equipment
- measuring and regulating technology
- VZT and ventilation,
- burners
- heating,
- cooling,
- chimney,
- gas scanners,
- fire flaps,
- gas equipment,
- pressure equipment,
- electrical equipment,
- electronic security system,
- industrial television,
- electronic fire signalization,
- administrative activity,
- common premises cleaning,
- security service,
- fire alarm system,
- maintenance service,
- cleaning of leased Premises.

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**EXHIBITS 3-4 of RFP** will be sent only to the final 3-5 candidates.

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**EXHIBIT 5 of RFP**

**Declaration on honour relating to the exclusion criteria**

(REQUEST FOR PROPOSALS: \_\_\_\_\_ )

The undersigned:.....

Name of the company/organisation: .....

Name of the signatory of this form (representative legally authorised to represent the tenderer *vis à vis* third parties and acting on behalf of the aforementioned company or organisation):

.....

declares on his or her honour that the company or organisation that he or she represents:

- a) is not bankrupt or being wound up, is not having its affairs administered by the courts, has not entered into an arrangement with creditors, has not suspended business activities, is not the subject of proceedings concerning those matters, and is not in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- b) has not been convicted of an offence concerning professional conduct by a judgment which has the force of *res judicata*;
- c) has not been guilty of grave professional misconduct proven by any means which the contracting authorities can justify;
- d) has fulfilled its obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which it is established, or with those of the country of the contracting authority or those of the country where the contract is to be carried out;
- e) has not been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- f) has not been declared, following another procurement procedure or grant award procedure financed by the Community budget, to be in serious breach of contract for failure to comply with its contractual obligations.
- g) that on the date of submission of the tender, the company or organisation he or she represents does not have any conflict of interest in connection with this call for tenders (a conflict of interest possibly arising in particular as a result of economic interests, political or national affinities, family or emotional ties, or any other relevant connection or shared interest) and that, in particular:<sup>5</sup>
  - it does not include, among its staff (employees, trainees etc.) or its shareholders,

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<sup>5</sup> Tick one of the two alternatives. In the case of the second alternative, please indicate the number of persons concerned for each category.

- 
- any former European officials, contract staff, temporary staff or auxiliary staff who have worked for the European Communities in the last three years;
  - any European officials on leave;
  - Any former agents on secondment within the European institutions having worked to the European Communities during three years preceding this call for tender
  - any former trainees who have completed a placement at the EC during the year preceding this call for tenders.
- or it does include, among its staff or shareholders:
- ... former European officials, ... former contract staff, ... former temporary staff, ... former auxiliary staff who have worked for the European Communities in the last three years;
  - ... European officials on leave;
  - ... former agents on secondment within the European institutions having worked to the European Communities during three years preceding this call for tender
  - ... former trainees who have completed a placement at the European Communities during the year preceding this call for tenders.

The Commission reserves the right to assess whether a conflict of interest exists. For that purpose, the tenderer is required to annex to this declaration a CV of the person(s) concerned.

- it has not made and will not make any offer of any type whatsoever from which an advantage can be derived under the contract;
  - 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, constituting an illegal practice or involving corruption, either directly or indirectly, as an incentive or reward relating to the award of the contract.
  - it will inform the contracting authority, without delay, of any situation constituting a conflict of interest or which could give rise to a conflict of interest.
- h) that it is not guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the contract procedure or has supplied this information.

By signing this form, the undersigned acknowledges that he or she has been acquainted with the administrative and financial penalties specified in Article 96 of the Financial Regulation<sup>6</sup> and Articles 133bis and 134ter of the Implementing Rules,<sup>7</sup> which may be applied if one of the situations described in points a) to h) above arises.

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<sup>6</sup> Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities, OJEU L 248, 16 September 2002, p. 1., as amended by the Regulation (EC, EURATOM) No 1995/2006 of 13 December 2006, OJEU L 390, 30 December 2006, p. 1).

<sup>7</sup> Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, OJEU L 248, 16 September 2002, p. 1, as amended *inter alia* by Commission Regulation (EC, EURATOM) No 1261/2005 of 20 July 2005, OJEU L 201, 2 August 2005; by the Commission Regulation (EC, EURATOM) N°

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Full name

Date

Signature

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1248/2006 of 7 August 2006, OJEU L 227, 19 August 2006, p. 3) and by the Commission Regulation (EC, EURATOM) n° 478/2007 of 23 April 2007, OJEU L 111, 28 April 2007, p.13).

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## **Exhibit 6**

### **LIST OF PROHIBITED MATERIALS**

The list of prohibited materials is set out below. This list is constantly updated in line with the latest findings. At the date of drafting this document, the list of prohibited materials was as follows:

- asbestos, in accordance with Council Directive 76/769/EEC, as amended by Directives 83/478/EEC, 85/610/EEC and 91/659/EEC,
- arsenic compounds, for the uses described in Council Directive 76/769/EEC, as amended by Directive 89/677/EEC,
- benzene, in accordance with Council Directive 89/677/EEC,
- chlorinated solvents, in accordance with European Parliament and Council Directive 94/60/EC,
- heavy carbonates and sulphates, in accordance with Council Directive 89/677/EEC,
- mercury compounds, in accordance with Council Directive 89/677/EEC,
- polychlorinated biphenyls and terphenyls, in accordance with Council Directive 89/677/EEC,
- methanes (Ugilec 141, Ugilec 121 and DBBT), in accordance with Council Directive 91/339/EEC,
- carcinogens, mutagens and toxic substances, in accordance with Council Directive 76/769/EEC, as amended by European Parliament and Council Directive 94/60/EC,
- phenolic salts, benzenoid salts and 2-naphtylamine and its salts, in accordance with Council Directive 76/769/EEC, as amended by Directive 89/677/EEC,
- cadmium and its compounds, for the uses listed in Council Directive 91/338/EEC,
- creosote, in accordance with European Parliament and Council Directive 94/60/EC,
- pentachlorophenol, in accordance with Council Directive 91/173/EEC,
- substances liable to cause ozone depletion,
- ceramic fibres and all fibres less than 3 µm in diameter,
- non-encapsulated mineral fibres,
- formaldehydes,
- urea-formaldehyde foams,
- polyurethane and polystyrene foams in areas of the building occupied by staff,
- all substances whose radioactivity levels exceed the maximum permitted by Belgian and/or European standards, where these exist. Where no standard is laid down, the material must meet the “activity concentration index” criterion described in the document “Radiological Protection Principles concerning the Natural Radioactivity of Building Materials” published by DG Environment in 1999 (ISBN 9282883790, internet link: [http://europa.eu.int/comm/energy/nuclear/radioprotection/publication/doc/112\\_en.pdf](http://europa.eu.int/comm/energy/nuclear/radioprotection/publication/doc/112_en.pdf)). A European Directive exists in draft form.