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FRAMEWORK SERVICE CONTRACT

Reference: EEBI/2026/016 server maintenance service contract and assistance, including the supply of spare parts

1. the European School of Brussels I, hereinafter referred to as 'the contracting authority' or 'the Institution', with its principal address at Avenue du Vert Chasseur 46, 1180 Brussels, legally represented for the purposes of signing this framework contract by its authorising officer, Director David TRAN,

of the one part and

2.

Full official name: ....

Official legal form: ....

Statutory registration number: ....

Full official address ....

VAT registration number: ....

(hereinafter referred to as "the Contractor"), represented for the purposes of the signature of this framework contract by [*forename, surname and function of legal representative*], of the other part,

HAVE AGREED

the **special conditions and** general **conditions applicable to framework service contracts**, and the following annexes:

Annex I – Tender Specifications (Reference No EEBI/2026/016)

Appendix II – Contractor's tender (reference No [*complete*] of [insert *date*])

Annex III – [Model order form]

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

This Framework Contract sets out:

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

All documents issued by the contractor (end-user agreements, general terms and conditions, etc.) except its tender 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.

Contents

I. Special conditions

1.1. Order of priority of provisions

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

(a) The provisions set out in the special conditions take precedence over those in the other parts of the FWC.
(b) The provisions set out in the general conditions take precedence over those *in the order form* and specific contract (Annex III).
(c) The provisions set out *in the order form* and specific contract (Annex III) take precedence over those in the other annexes.
(d) The provisions set out in the tender specifications (Annex I) take precedence over those in the tender (Annex II).
(e) The provisions set out in the FWC take precedence over those in the specific contracts.

Any reference to specific contracts applies also to order forms.

1.2. Subject

The subject of the FWC is server maintenance and support services, including the supply of spare parts.

1.3. Entry into force and duration of the FWC

1.3.1 The Framework Contract shall enter into force on the date of its signature by the last party.

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

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

1.3.4 The parties must sign any purchase orders before the FWC expires.

The Framework Contract continues to apply to such specific contracts after its expiry. The services relating to such specific contracts must be performed no later than six months after the expiry of the FWC.

1.3.5 Renewal of the framework contract

The FWC is renewed automatically 3 times, each time for a period of 12 months, unless one of the parties receives *formal notification* to the contrary at least 2 months before the end of the unexpired period. Renewal does not change or postpone any existing obligations.

1.4. Appointment of the contractor and implementation of the FWC

1.4.1 Appointment of contractor

The contracting authority appoints the contractor for a single FWC.

1.4.2 Period for the provision of services

The period of provision of the services starts to run on the date indicated in the order form.

1.4.3 Implementation of the FWC

The contracting authority orders services by sending the contractor a Purchase Order by e-mail.

Within 5 working days, the contractor must either:

- send back to the contracting authority the order form duly signed and dated by email;

or

- send an explanation of why he cannot accept the order.

- The services cover the annual maintenance of the server fleet of the European School in Brussels 1 and those at the two sites.

If the contractor repeatedly refuses to sign the specific contracts or repeatedly fails to send them back on time, the contractor may be considered in breach of its obligations under the FWC within the meaning of Article II.18 of the general conditions.

1.4.4 Flat-rate penalties

Without prejudice to Article II.15, the following conditions apply.

In addition to the flat-rate penalties applied on a case-by-case basis for any failure to meet the response and resolution deadlines, the contracting authority reserves the right to apply the following flat-rate penalties in the event of failure to perform the services:

Reference	**Basis for triggering liquidated damages**	**Value of allowances**
point 1.4.2 (b) Annex 1 to the tender specifications	If a server is not maintained within three months	EUR 100 per day of delay
point 1.4.2 (b) Annex 1 to the tender specifications	Blocking incident: failure to comply with the maximum response time	EUR 200 per infringement and EUR 50 per day of delay
point 1.4.2 (b) Annex 1 to the tender specifications	Blocking incident: failure to comply with the maximum repair time	EUR 200 per infringement and EUR 50 per day of delay

The damages will be the subject of a debit note and will be deducted from the amount of the payment due to the contractor.

1.5. Price

1.5.1 Maximum amount of FWC and maximum prices

The maximum amount covering all services provided under this Framework Contract, including all renewals, is EUR [*amount in figures and in words*]. However, fixing this amount does not represent a commitment on the part of the contracting authority to pay the maximum amount for the performance of the services.

The framework contract shall automatically terminate if this maximum amount is reached, without notice or compensation, unless a supplementary agreement has been signed in advance by both parties.

The [maximum] prices of the services are [*complete*] [those listed in Annex II].

1.5.2 Price revision index

Price revision is determined by the formula set out below and using the trend in the harmonised indices of consumer prices (HICP) published on https://ec.europa.eu/eurostat/web/hicp/database, under HICP (2025 = 100) – monthly data (index) (prc_hicp_minr) – euro area (21 countries).

Prices are fixed and not subject to revision during the first year of the FWC.

At the beginning of the second and every following year of the FWC, each price may be revised upwards or downwards at the request of one of the parties.

A party may request a price revision in writing no later than three months before the anniversary date of entry into force of the FWC. The other party must acknowledge the request within 14 days of receipt.

At the anniversary date, the contracting authority must communicate the final index for the month in which the request was received, or failing that, the last provisional index available for that month. The contractor shall establish the new price on this basis and communicate it as soon as possible to the contracting authority for verification.

The contracting authority shall purchase on the basis of the prices in force on the date on which the order form enters into force.

The price revision is calculated using the following formula:

$$PR = Po \times \left(\frac{IR}{IO}\right)$$

where: PR = revised price;
PO = price in the tender;
IO = index for the month in which the FWC enters into force;
IR = index for the month in which the request to revise prices is received.]

1.5.3 Reimbursement of expenses

Reimbursement of expenses is not applicable to this FWC.

1.6. Arrangements for payment[1]

1.6.1 Prefinancing[2]

Pre-financing is not applicable to this FWC.

1.6.2 Interim paymentss

Interim payment is not applicable to this FWC.

1.6.3 Balance payment

The contractor (or leader in the case of a joint tender) may request payment of the balance.

(a) Advance payment for annual maintenance services:

The annual maintenance services shall be paid in advance for 12 months within the contractual period defined in these specifications. The annual amount for maintenance shall be invoiced at the beginning of each contract period and shall be payable within the payment periods laid down in the contract. This advance payment covers all maintenance,

1 The paragraph on interim payment is optional. The paragraph on the payment of the balance is mandatory.
2 In public procurement contracts, pre-financing should be proposed in exceptional circumstances only. If applicable it should not exceed 30 % of the price of the specific contract.

corrective and assistance services, including the Hardware spare parts, described in these specifications, within the agreed limits and conditions.

The advance payment does not constitute final acceptance of the services. The Contractor shall continue to be bound by all his contractual obligations, in particular the response times, availability levels and quality requirements set out in these specifications.

In the event of serious breach, non-performance or early termination of the contract for fault of the Consultant, the Contracting Authority reserves the right to require the pro rata reimbursement of the part of the advance payment corresponding to the period during which the services were not performed, without prejudice to the application of contractual penalties and any claim for additional compensation.

Renewal of the annual maintenance period is subject to renewal of the contract or the issue of a new order form, in accordance with the arrangements laid down in these specifications.

(b) Services not included in the price schedule on the basis of estimates

The contracting authority reserves the right to order services not provided for in the unit price schedule, excluding VAT. The aggregate amount for services not included in the price schedule may not exceed 30 % of the initial amount of the contract, unless there is a contractual amendment formally approved by the parties, in accordance with the applicable provisions. For example, the contracting authority may request the addition of a server during the contract under the same technical and financial conditions as the servers currently inventoried.

All services not included in the price schedule must be subject to:

- a written request from the contracting authority or a reasoned proposal from the service provider where the latter identifies the need for action not provided for in the schedule;
- a detailed estimate drawn up by the service provider, specifying in particular the nature of the services, the quantities, the deadlines for performance and the price, including the discount;
- prior written acceptance of the estimate by the contracting authority.

No services not included on the price schedule may be performed or invoiced without the prior written agreement of the contracting authority.

These services may be invoiced after performance and the contracting authority has a period of 30 days to validate the payment or to object.

The invoice must be accompanied by the order form, the quotation and the service report.

(c) General arrangements

The contractor (or leader in the case of a joint tender) must send an invoice by email to UCC-INVOICES@eursc.eu for payment of the balance due under a purchase order, as provided for in the tender specifications.

2. The contracting authority must approve the services provided and pay within 30 days of receipt of the invoice.

3. The contracting authority may suspend the time limit for payment specified in point 2 in accordance with Article II.21.7 of the General Terms and Conditions. Once the suspension is lifted, 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.

1.6.4 Invoicing:

The contractor (or leader in the case of a joint tender) must submit invoices by email to UCC-INVOICES@eursc.eu, preferably in PDF format.

Invoices shall quote the following references:
purchase order/contract number, description of items/services, dimensions, quantities, price, VAT identification number and the appropriate VAT declaration for the country of delivery: ‘Exemption from VAT, Article 42(3) (1) (4) of the VAT Code’.

1.7. Bank account

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

Name of the Bank: ....

Full branch address: ....

Exact identification of account holder:

Full account number including bank codes:

IBAN code: ....

1.8. Communication details

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

<u>The contracting authority:</u>

Deputy Director for Finance and Administration

European School Brussels I

46 av. of hunter green 1180 Uccle

Email address: UCC-DEPUTY-DIRECTOR-FINANCE-AND — ADMINISTRATION@eursc.eu

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

[*Full name*]

[*Position*]

(*Company name*)

[*Official address in full*]

Email address: [*complete*]

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

1.9. Processing of personal data

1.9.1 Processing of personal data by the contracting authority

For the purposes of the application of Article II.8 of the General Conditions, the data controller shall be: the Director of the European School in Brussels I.

1.9.2 Processing of personal data by the contractor

This clause is not applicable to this FWC.

1.10. Exploitation of the results of the framework contract

This clause is not applicable to this FWC.

1.11. Termination by the parties

Either party may terminate the FWC and/or the FWC and specific contracts by sending *formal notification* to the other party with [one month] written notice.

If the FWC or a purchase order is terminated:

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

Article II.18 of the General Conditions shall apply.

1.12. Applicable law and settlement of dispute

1.12.1 The FWC is governed by:

a. the Luxembourg Convention defining the Statute of the European Schools of 21 June 1994;
b. international treaty law stemming from the Luxembourg Convention defining the Statute of the European Schools of 21 June 1994 and, in particular, the Financial Regulation on the European Schools;
c. the Financial Regulation (EU) 2018/1046 applicable to the general budget of the Union;

The FWC is governed, in the alternative, by European Union law and, in the further alternative, by the law of the Member State in which the contracting authority is established.

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

1.13. Other obligations of the contractor

1. The contractor must perform the contract independently, fairly and in strict compliance with ethical and moral standards and confidentiality, in accordance with his profession.

2. The contractor must comply with applicable obligations under legislation established by Union, international and national law. In particular, it must ensure compliance with the applicable environmental, social and tax provisions.

3. The contractor must not present itself as a representative of the contracting authority and must inform third parties that it is not a member of the staff of the European Schools.

4. The contractor must notify the contracting authority without delay of any problem affecting its capacity to provide the services.

SIGNATURES

For the Contractor,	For the contracting authority
[*Company name/first name/last name/position*]	David TRAN, Director

Signed: ______________________________

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

in two copies in French.

Signed: ____________________________

Done at Brussels, [*date*]

II. General terms and conditions of the service contract

11.1. Definitions

For the purposes of this contract, the following definitions (of terms indicated in *italics* in the text) apply:

'creator': any natural person who contributes to the production of the *result*;

'back office': the internal system (s) used by the parties to process electronic invoices;

'conflict of interest': a situation in which the impartial and objective *performance of the contract* by the contractor is compromised for reasons involving family, emotional life, political or national affinity, economic interest, any other direct or indirect personal interest, or any other shared interest with the contracting authority or any third party related to the subject matter of the contract;

'pre-existing right': any industrial and intellectual property right on *pre-existing material*; it may consist of 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;

'performance of the contract': the execution of tasks and delivery of the purchased services by the contractor to the contracting authority;

'grave professional misconduct': a violation of applicable laws or regulations or ethical standards of the profession to which a contractor or a related person belongs, including any conduct leading to sexual or other exploitation or abuse, or any wrongful conduct of the contractor or a related person which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence.

"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 contract. The situation or event must not be attributable to error or negligence on the part of the parties or on the part of the subcontractors and must prove to be inevitable despite their exercising due diligence. Defaults of service, defects in equipment or material or delays in making them available, labour disputes, strikes and financial difficulties may not be invoked as *force majeure*, unless they stem directly from a relevant case of *force majeure*;

"fraud": an act or omission intended, for its author or another person, to make an unlawful gain by causing a loss to the financial interests of the European Schools, and relating to: (I) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or assets from the budget of the European Schools, (ii) the non-disclosure of information in violation of a specific obligation, with the same effect, or (iii) the misapplication of such funds or assets for purposes other than those for which they were originally granted, which damages the financial interests of the European Schools;

'confidential information or document': any information or document received by either party from the other or accessed by either party in the context of the *performance of the contract*, that any of the parties has identified in writing as confidential. It may not include information that is publicly available;

'**professional conflicting interest**': a situation in which the contractor's previous or ongoing professional activities affect its capacity to perform the contract to an appropriate quality standard.

'irregularity': any infringement of a legal provision resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the budget of the European Schools;

'pre-existing material': any material, document, technology or know-how which exists prior to the Contractor using it for the production of a *result* in the *performance of the contract*;

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

‘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;

‘related person’: any natural or legal person who is a member of the administrative, management or supervisory body of the contractor, or who has powers of representation, decision or control with regard to the contractor;

‘staff’ means: persons employed directly or indirectly or contracted by the contractor to perform the contract;

‘result’: any intended outcome of the *performance of the contract*, whatever its form or nature. A *result* may also be defined in this contract as a deliverable. A *result* may, in addition to newly created material produced specifically for the contracting authority by the contractor or at its request, also include *pre-existing material*;

‘breach of obligations’: failure by the contractor to fulfil one or more of its contractual obligations;

11.2. 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.

11.3. Severability.

Each provision of this Contract 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 contract. This does not affect the legality, validity or enforceability of any other provisions of the contract, 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 contract must be interpreted as if it had contained the substitute provision as from its entry into force.

11.4. Performance of the contract

11.4.1 The contractor must provide services meeting high quality standards, in accordance with the state of the art in the industry and the provisions of this contract, in particular the tender specification and the terms of its tender. Where the European Schools are entitled to make changes to the *results*, these must be delivered in a format and accompanied by the necessary information that effectively allows such changes to be made in a practical manner.

11.4.2 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[5] , as well as compliance with data protection obligations resulting from Regulations (EU) 2016/679[6].

[5] OJ L 94, 28.3.2014, p. 65.

[6] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p. 1), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.119.01.0001.01.FRA.

11.4.3 The contractor must obtain any permit or licence required in the State where the services are to be provided.

11.4.4 Unless otherwise indicated, all time periods specified in the Contract are calculated in calendar days.

11.4.5 The contractor must not present itself as a representative of the contracting authority and must inform third parties that it is not a member of the staff of the European Schools.

11.4.6 The contractor is responsible for the *personnel* who perform the services 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 services does not lead to any employment or contractual relationship with the contracting authority.

11.4.7 The contractor must ensure that the *personnel* performing the contract 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.

11.4.8 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 services; or
b) has caused disruption on the premises of the contracting authority.

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

I.4.9 The contractor must record and report to the contracting authority any problem affecting its capacity to provide the services. The report must describe the problem, state when it started and what action the contractor has taken to resolve it.
I.4.10 The contractor must inform the contracting authority without delay of any change in the exclusion situation declared, in accordance with Article 137(1) of Regulation (EU) 2018/1046.

11.5. Communication between the parties

11.5.1 Form and means of communication

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

a) be drawn up in writing on paper or electronically in the language of the contract;
b) bear the Contract number;
c) be made using the relevant communication details set out in Article I.8; and
d) be sent by mail or by e-mail.

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 e-mail has full legal effect and is admissible as evidence in judicial proceedings.

11.5.2 Date of communications by mail and e-mail

Any communication is deemed to have been made when the receiving party receives it, unless this contract 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.
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.

11.6. Responsibility

11.6.1 The contracting authority shall not be liable for any damage or loss caused by the contractor, including any damage or loss to third parties during or as a consequence of *performance of the contract*.

11.6.2 If required by the applicable legislation, the contractor must take out an insurance policy against risks and damage or loss relating to *performance of the contract*. It must also take out supplementary insurance as reasonably required by standard practice in the industry. Upon request, the contractor must provide the contracting authority with evidence of insurance cover.

11.6.3 The contractor is liable for any loss or damage caused to the contracting authority during or as a consequence *of performance of the contract*, including in the event of subcontracting, but only to an amount not exceeding three times the total amount of the contract. However, if the damage or loss is attributable to the gross negligence or wilful misconduct of the contractor, its *personnel* or its subcontractors, and in the case of an action brought against the contracting power by a third party for the breach of its intellectual property rights, the contractor is liable for the total amount of the damage or loss.

11.6.4 If a third party brings any action against the contracting authority in connection with *the performance of the contract*, including any action for alleged breach of intellectual property rights, the contractor must assist the contracting authority in the legal proceedings, including by intervening in support of the contracting authority upon request.

If the contracting authority's liability towards the third party is established and such liability is caused by the contractor during or as a consequence of the *performance of the contract*, Article II.6.3 applies.

11.6.5 If the contractor is composed of two or more economic operators (who submitted a joint tender), they shall be jointly and severally liable vis-à-vis *the contracting authority for the performance of the contract*.

11.6.6 The contracting authority shall not be liable for any loss or damage sustained by the contractor during or as a consequence *of performance of the contract*, unless the loss or damage was caused by wilful misconduct or gross negligence on the part of the contracting authority.

11.7. Conflict of interest and professional interest CONTRACTING

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

11.7.2 The contractor must *notify* the contracting authority in writing as soon as possible of any situation which could constitute *a conflict of interest or a professional conflicting* interest during the *performance of the contract*. The contractor must immediately take the necessary measures 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.

11.7.3 The contractor must pass on all the relevant obligations in writing to:

a) its *personnel*;
b) any natural person with the power to represent it or take decisions on its behalf;
c) third parties involved in the *performance of the contract*, including subcontractors.

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

11.8. Confidentiality

11.8.1 The contracting authority and the contractor must treat with confidentiality any information or documents, in any form, disclosed in writing or orally in relation to the *performance of the contract* and identified in writing as confidential.

11.8.2 Each party must:

a) not use *confidential information or documents for* any purpose other than to perform its obligations under the 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* 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.

11.8.3 The confidentiality obligations set out in this Article shall be binding on the contracting authority and the contractor during the *performance of the contract* and for as long as the information or documents remain confidential unless:

a) the disclosing party agrees to release the receiving party from the confidentiality obligation earlier;
b) the *confidential information or documents* become public through means other than a breach of the confidentiality obligation;
c) the applicable legislation requires the disclosure of the *confidential information or documents*.

11.8.4 The contractor must obtain from any natural person with the power to represent it or take decisions on its behalf, as well as from third parties involved in the *performance of the contract*, an undertaking 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.

11.9. Processing of personal data

11.9.1 Processing of personal data by the contracting authority

Any personal data included in or relating to the contract, including its performance, must be processed in accordance with Regulation (EU) 2016/679. Such data shall be processed solely for the purposes of the implementation, management and monitoring of the contract by the data controller.

The contractor or any other person whose personal data is processed by the data controller in relation to this contract has specific rights as a data subject under Regulation (EU) 2016/679, in particular the right to access, rectify or erase their personal data and the right to restrict or, where applicable, the right to object to processing or the right to data portability.

Should the contractor or any other person whose personal data is processed in relation to the contract have any queries concerning the processing of their personal data, they should contact the data controller. They may also address them to the Data Protection Officer under the authority of the data controller. Data subjects have the right to lodge a complaint with the National Data Protection Supervisor at any time.

Detailed information concerning the processing of personal data may also be requested from the data controller referred to in Article I.9.

11.9.2 Processing of personal data by the contractor

The processing of personal data by the contractor shall meet the requirements of Regulation (EU) 2016/679 and be processed solely for the purposes set out by the controller.

The contractor shall assist the controller for the fulfilment of the controller's obligation to respond to requests to exercise their rights from persons whose personal data are processed in relation to this contract, as provided for in Regulation (EU) 2016/679.

The contractor shall inform without delay the controller about such requests.

The contractor may act only on documented written instructions and under the supervision of the 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.

The contractor shall grant personnel access to the data to the extent strictly necessary for the implementation, management and monitoring of the contract. The contractor must ensure that the personnel authorised to process personal data undertakes to respect confidentiality or is made subject to a legal obligation of confidentiality in accordance with the provisions of Article II.8.

The contractor shall adopt appropriate technical and organisational security measures, giving due regard to the risks inherent in the processing and to the nature, scope, context and purposes of processing, in order to ensure, in particular, as appropriate:

a) pseudonymisation and encryption of personal data;
b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
c) the ability to restore the availability of and access to personal data in a timely manner in the event of a physical or technical incident;
d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing;
e) measures to protect personal data from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed.

The contractor shall notify relevant personal data breaches to the controller without undue delay and at the latest within 48 hours after the contractor becomes aware of the breach. In such cases, the contractor must provide the data controller with the following information as a minimum:

a) the nature of the personal data breach including, where possible, the categories and approximate number of individuals concerned and the categories and approximate number of personal data records concerned;
b) the likely consequences of the breach;
c) the measures taken or proposed to address the breach, including, where appropriate, the measures to mitigate any adverse effects.

The contractor shall immediately inform the data controller if, in its opinion, an instruction infringes Regulation (EU) 2016/679 or other Union or Member State data protection provisions as provided for in the tender specifications.

The contractor must assist the data controller in fulfilling its obligations pursuant to Articles 31 to 39 of Regulation (EU) 2016/679, namely:

a) ensuring compliance with its data-protection obligations regarding the security of data processing and the confidentiality of electronic communications and user directories;
b) notify the European Data Protection Supervisor of any personal data breaches;
c) where applicable, informing the person concerned as quickly as possible of a breach of their personal data;
d) carry out data protection impact assessments and prior consultations as necessary.

The contractor shall maintain a record of all data processing operations carried on behalf of the controller, transfers of personal data, security breaches, responses to requests for exercising rights of people whose personal data is processed and requests for access to personal data by third parties.

The contractor shall notify the contracting authority without delay of any legally binding request for disclosure of the personal data processed on behalf of the contracting authority made by any national public authority, including an authority from a third country. The contractor may not give such access without the prior written authorisation of the contracting authority.

The duration of the processing of personal data by the contractor must not exceed the period referred to in Article II.24.2. Upon expiry of this period, the contractor shall, at the choice of the controller, return, without any undue delay in a commonly agreed format, all personal data processed on behalf of the controller and the copies thereof or shall effectively delete all personal data unless Union or national law requires a longer storage of personal data.

For the purpose of Article II.10, if part or all of the processing of personal data is subcontracted to a third party, the contractor shall pass on the obligations referred to in Articles I.9.2 and II.9.2 in writing to those parties, including subcontractors. At the request of the contracting authority, the contractor must provide a document providing evidence of this commitment.

11.10. Subcontract

11.10.1 The contractor must not subcontract nor have the contract performed by third parties other than those already mentioned in its tender without prior written authorisation from the contracting authority.

11.10.2 Even if the contracting authority authorises subcontracting, the contractor remains bound by its contractual obligations and is solely responsible for the *performance of this contract*.

11.10.3 The contractor must ensure that the subcontract does not affect the rights of the contracting authority under this contract, particularly those under Articles II.8, II.13 and II.24.

11.10.4 The contracting authority may request the contractor to replace a subcontractor found to be in one of the situations provided for in points (d) and (e) of Article II.18.1.

11.11. Additional agreements

11.11.1 Any amendment to the contract must be made in writing before all contractual obligations have been fulfilled.

11.11.2 Any amendment must not make changes to the contract that might alter the initial conditions of the procurement procedure or result in unequal treatment of tenderers.

11.12. Divestment

11.12.1 The contractor must not assign the rights and obligations arising from the contract, 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.

11.12.2 Any right or obligation assigned by the contractor without authorisation is not enforceable against the contracting authority.

11.13. Right of intellectual property

11.13.1 Ownership of the rights to the results

The contracting authority acquires irrevocably worldwide ownership of the *results* and of all intellectual property rights on the newly created material produced specifically for the contracting authority under the contract and incorporated in the *results*, without prejudice, however, to the rules applicable to *pre-existing rights* on *pre-existing material* as set out in Article II.13.2.

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 in all technological solutions and information created or produced by the Contractor or by his subcontractor in *performance of the Contract*. The contracting authority may exploit and use the acquired rights as stipulated in this contract. The contracting authority acquires all the rights from the moment the contractor has created the *results*.

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

11.13.2 Licensing rights on pre-existing material

Unless otherwise provided for in the Special Conditions, the contracting authority shall not acquire ownership of *pre-existing rights* under this contract.

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 contract or in specific contracts. Unless otherwise agreed, the licence is non-transferable and may not be sub-licensed, except as provided below:
a) *pre-existing rights* may be sub-licensed by the contracting authority to persons and entities working for it or cooperating with it, including contractors and subcontractors (legal or natural persons), but only for the purpose of their assignment for the contracting authority;
b) if the *result* is a ‘document’, such as a report or a study, which is intended for publication, the existence of *pre-existing material* in the *result* may not prevent the publication, translation or ‘reuse’ of the document, it being understood, however, that ‘reuse’ may be made only of the *result* as a whole and not of the *pre-existing material* taken separately from the *result*.

All *pre-existing rights* shall be licensed to the contracting authority as soon as the *results are delivered* and approved by the contracting authority.

The licensing of *pre-existing rights* to the contracting authority under this contract is valid worldwide and 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 contracting authority, including for all forms of exploitation and of use of the *results*.

Where *performance of the contract* requires that the contractor uses *pre-existing materials* belonging to the contracting authority, the contracting authority may request that the contractor signs an appropriate 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 contract.

11.13.3 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 also includes the communication on Internet 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 translation, adaptation, arrangement and the creation of derivative works on the basis of 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-utilisation of all or a substantial part of the contents of the database by the distribution of copies, by renting, by on-line or other forms of transmission;
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 Contract, 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 re-use of documents under the conditions specified therein;
   (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 contract and from the intention of the parties;
   (ii) the right to receive both the source code and the object code;

m) the right to license to third parties any of the exclusive rights or modes of exploitation set out in this Contract; however, for *pre-existing materials* licensed only to the contracting authority, the right to sub-license does not apply, except in the two cases provided for in Article II.13.2.;
n) to the extent that the contractor may invoke moral rights, the right for the contracting authority, except where otherwise provided in this contract, 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*, either through a transfer of ownership of the rights, for the parts specifically created by the contractor, or through a licence of the pre-existing rights, for the parts consisting of *pre-existing materials*.

Where *pre-existing material* is inserted into the *results*, the contracting authority may accept reasonable restrictions impacting on the above list, provided that the said material is easily identifiable and separable from the rest, that it does not correspond to substantial elements of the *results*, and that, should the need arise, satisfactory replacement solutions exist, at no additional cost to the contracting authority. In such cases, the contractor will have to clearly inform the contracting authority before making such choice and the contracting authority has the right to refuse it.

11.13.4 Identification of pre-existing rights

When delivering the *results*, the contractor must guarantee that, for any use that the contracting authority may envisage within the limits set in this contract, the newly-created parts *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 contract 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 at the latest with the invoice for payment of the balance.

11.13.5 Evidence of granting of pre-existing rights

Upon request by the contracting authority, the contractor must, in addition to the list referred to in Article II.13.4, 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 contract.

This provision shall also apply to image rights and sound recordings.

This evidence may refer, for example, to rights to: parts of other documents, images, graphs, sounds, music, 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 the software;
b) full identification of the work and the *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 *result* were created by its *personnel*;
e) the text of the disclaimer notice where appropriate.

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

The contractor shall also guarantee that it possesses the rights or powers necessary to carry out the transfer and that it has paid or has verified payment of all fees due including fees due to collecting societies, in relation to the final *results*.

11.13.6 Quotation of works in the results

In the *results*, 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.

11.13.7 Moral rights of authors

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) adaptation of the *results*, provided that such adaptation is made in a manner which is not prejudicial to the *author* '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.

11.13.8 Image rights and sound recordings

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

11.13.9 Copyright notice for pre-existing rights

When the contractor retains *pre-existing rights* on parts of the *results*, reference must be inserted to that effect when the *result* is used as set out in Article I.10.1, with the following disclaimer: "© – year – European Schools. All rights reserved. Certain parts are licensed under conditions to the European Schools (ES)', or with any other equivalent disclaimer as the contracting authority may consider appropriate, or as the parties may agree on a case-by-case basis. This does not apply where inserting such a reference would be impossible, notably for practical reasons.

11.13.10 Visibility of the financing of the European Schools and disclaimer of responsibility

When making use of the *results*, the contractor must declare that they have been produced under a contract with the European Schools 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.

11.14. Force majeure

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

11.14.2 A party is not liable for any delay or failure to perform its obligations under the contract if that delay or failure is a *result* of *force majeure*. If the contractor is unable to fulfil its contractual obligations owing to *force majeure*, it has the right to remuneration only for the services actually provided.

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

11.15. Liquidated damages

11.15.1 Delay in delivery

If the contractor fails to perform its contractual obligations within the time limits set out in point 1.4 of the tender specifications and in this contract, the contracting authority may, without first having to give the contractor formal notice or take legal action, impose liquidated damages for each day of delay, calculated according to the following formula:

0,3 X (*V/d*)

where

V is the price of the relevant order of services or deliverable or *result*;

d is the duration specified in point 1.4.2 of the specification, expressed in days.

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

11.15.2 Procedure

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

The contractor 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 such 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.

11.15.3 Nature of liquidated damages

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

11.15.4 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.18.

11.16. Reduction in price

11.16.1 Standards of quality

If the contractor fails to provide the services in accordance with the contract (‘unperformed obligations’) or if it fails to provide the services in accordance with the expected quality levels specified in the tender specifications (‘low-quality delivery'), the contracting authority may reduce or recover payments proportionally to the seriousness of the unperformed obligations or low-quality delivery. This includes in particular cases where the contracting authority cannot approve a *result*, report or deliverable as defined in Article I.5 after the contractor has submitted the required additional information, correction or new version.

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

11.16.2 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 such 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.

11.16.3 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.18.

11.17. Suspension of performance of the contract

11.17.1 Suspension by the contractor

If the contractor is faced with *force majeure*, it may suspend *performance of the contract*. The contractor must immediately *notify* the contracting authority of the suspension. The *notification* must include a description of the case of *force majeure* and indicate when the contractor is expected to resume *performance of the contract*.
The contractor must *notify* the contracting authority that it is able to resume *performance of the contract*, unless the contracting authority has already terminated the contract.

11.17.2 Suspension by the contracting authority

The contracting authority may suspend *performance* of the *contract or any part thereof*:

a) if the procedure for awarding the contract or the *performance of the contract* proves to have been subject to *irregularities*, *fraud* or a *breach of obligations*;
b) in order to verify whether the presumed irregularities, fraud or breach of obligations actually occurred.

The contracting authority must *formally notify* the contractor of the suspension and the reasons for it. Suspension takes effect on the date of *formal notification*, or at a later date if the *formal notification so provides*.

Once the verification has been completed, the contracting authority must *notify* the contractor whether it:

a) it is lifting the suspension; or
b) it intends to terminate the contract under Article II.18.1 (f) or (j).

The contractor is not entitled to compensation for suspension of any part of the contract.

The contracting authority may in addition suspend the time allowed for payments in accordance with Article II.21.7.

11.18. Termination of contract

11.18.1. Grounds for termination by the contracting authority

The contracting authority may terminate the contract in the following circumstances:

a) if provision of the services under the contract has not actually started within fifteen days of the scheduled date and the contracting authority considers the new date proposed, if any, unacceptable, considering Article II.11.2;
b) where the Contractor is unable, through his own fault, to obtain any permit or licence required for *performance of the Contract*;
c) if the Contractor does not perform the Contract as established in the tender specifications or fails to fulfil another substantial contractual obligation;

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 136(1) of the Financial Regulation[7];
e) if the contractor or any *related person* is in one of the situations provided for in points (c) to (h) of Article 136(1) or in Article 136(2) of the Financial Regulation;
f) if the procedure for awarding the contract or the *performance of the contract* proves to have been subject to *irregularities*, *fraud* or a *breach of obligations*;
g) if the contractor does not comply with applicable obligations under environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU;
h) if the contractor is in a situation that could constitute a *conflict of interest* or a *professional conflicting interest* as referred to in Article II.7;
i) if a change to the contractor's legal, financial, technical, organisational or ownership situation is likely to substantially affect the *performance of the contract* or substantially modify the conditions under which the contract was initially awarded, or if a change regarding the exclusion situations listed in Article 136 of Regulation (EU) 2018/1046 calls into question the decision to award the contract;
j) in the event of *force majeure*, where either resuming implementation is impossible or the necessary ensuing amendments to the contract would mean that the tender specifications are no longer fulfilled or result in unequal treatment of tenderers or contractors.
k) if the contractor is in breach of the data protection obligations resulting from Article II.9.2;
l) if the contractor does not comply with the applicable data protection obligations resulting from Regulation (EU) 2016/679.

11.18.2. Grounds for termination by the contractor

The contractor may terminate the Contract if the contracting authority fails to comply with its obligations, in particular the obligation to provide the information needed for the contractor to perform the Contract as provided for in the tender specification.

11.18.3. Termination Procedure

A party must *formally notify* the other party of its intention to terminate the contract and the grounds for termination.

The other party will have 30 days following the date of receipt to submit observations, including the measures it has

[7] Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1) https://eur-lex.europa.eu/legal-content/FR/TXT/?qid=1544791836334&uri=CELEX:32018R1046.

taken or will take 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 the contract must *formally notify it either* of the withdrawal of its intention to terminate or of its final decision to terminate.

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

In the cases referred to in points (e), (f) and (j) of Article II.18.1, the termination 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 services to a new contractor or internally, without interruption or adverse effect on the quality or continuity of the services. The parties may agree to draw up a transition plan detailing the contractor's assistance unless such a plan is already detailed in other contractual documents or in the tender specifications. The contractor must provide such assistance at no additional cost, unless it can demonstrate that it requires substantial additional resources or means, in which case it must provide an estimate of the costs involved and the parties will negotiate an arrangement in good faith.

11.18.4. Effects of termination

The contracting authority may claim compensation for such damage. The contractor will be liable for damage incurred by the contracting authority as a result of the termination of the contract, including the extra cost involved in appointing and concluding a contract with another contractor to provide or complete the services, except if the damage is a result of termination in accordance with point (j) of Article II.18.1 or with Article II.18.2. 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 contract, including loss of anticipated profits, unless the loss was caused by the situation specified in Article II.18.2.

The contractor must take all necessary 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, deliverable or *result and any* invoice required for services that were provided before the date of termination.

In the case of joint tenders, the contracting authority may terminate the contract with each member of the group separately on the basis of points (d), (e), (g), (k) and (l) of Article II.18.1, under the conditions set out in Article II.11.2.

11.19. Invoices, value added tax

11.19.1. Invoices and Value-Added Tax

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

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

The contracting authority is exempt from all taxes and duties, including VAT, in accordance with the exemption granted by the national authority of the country where the taxes and duties should have been paid. The contractor (or leader in the case of a joint tender) must complete the necessary formalities with the relevant authorities to ensure that the supplies and services required for *performance of the contract* are exempt from taxes and duties, including VAT.

If provided for in the special conditions, the contractor (or leader in the case of a joint tender) must submit invoices by email to the address specified, preferably in PDF format.

11.20. Price revision

If a price revision index is provided in Article I.5.2, this Article applies to it.
Prices are fixed and not subject to revision during the first year of the contract.
At the beginning of the second and every following year of the contract, each price may be revised upwards or downwards at the request of one of the parties.

A party may request a price revision in writing no later than three months before the anniversary of the date on which the contract entered into force. The other party must acknowledge the request within 14 days of receipt.

At the anniversary date, the contracting authority must communicate the final index for the month in which the request was received, or failing that, the last provisional index available for that month. The contractor shall establish the new price on this basis and communicate it as soon as possible to the contracting authority for verification.

The price revision is calculated using the following formula:

$$PR = Po \times \left(\frac{IR}{IO}\right)$$

where: PR = revised price;
PO = price in the tender;
IO = index for the month in which the contract enters into force;
IR = index for the month in which the request to revise prices is received.

11.21. Payments and guarantees

11.21.1. Date of the payment

The date of payment is deemed to be the date on which the contracting authority's account is debited.

11.21.2. Currency

Payments are made in euros, unless another currency is provided for in Article I.7.

11.21.3. 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_fr.cfm

11.21.4. Transfer costs

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.

11.21.5. Pre-financing, performance and money retention guarantees

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

a) the financial guarantee shall be 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; and
b) the guarantee has the effect of making the bank, financial institution or third party provide irrevocable collateral security, or stand as first-call guarantor of the contractor's obligations, without the contracting authority being obliged to sue the principal debtor (the contractor).

The cost of providing this guarantee shall be borne by the contractor.

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 service. The performance guarantee must not exceed 10 % of the total price of the contract. The contracting authority must release the guarantee in full after final approval of the service, as provided for in the contract.

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

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

11.21.6. Interim and balance payments

The contractor (or leader in the case of a joint tender) must send an invoice for interim payment, as provided for in Article I.5 or in the tender specifications.

The contractor (or leader in the case of a joint tender) must send an invoice for payment of the balance within 60 days of the end of the period of provision of the services, as provided for in Article I.5 or in the tender specifications.

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

Payment of the balance may take the form of a recovery.

11.21.7. Suspension of the deadline for payment

The contracting authority may suspend the payment periods specified in Article I.5 at any time by *notifying* the contractor (or leader in the case of a joint tender) that its invoice cannot be processed. The reasons that the contracting authority may invoke to justify its inability to process an invoice are the following:

a) because it does not comply with the contract;
b) because the contractor has not produced the appropriate documents or deliverables; or
c) because the contracting authority has observations to make on the documents or deliverables submitted with the invoice.
d) it is clear that, at a later date and before such a breach actually occurs, the contractor will materially fail to implement the Framework Contract or to perform a specific contract in accordance with the tender specification or the request for a specific contract, will materially fail to fulfil another contractual obligation, or will repeatedly refuse to sign specific contracts, unless the contractor provides the contracting authority with sufficient assurances of its future performance.

The contracting authority must *notify* the contractor (or leader in the case of a joint tender) as soon as possible of any such suspension, giving the reasons for it. In cases b) and c) referred above, the contracting authority shall notify the contractor (or leader in case of a joint tender) the time limits to submit additional information or corrections or a new version of the documents or deliverables if the contracting authority requires it.

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

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

11.21.8. Interest

On expiry of the payment periods specified in Article I.5, the contractor (or leader in the case of a joint tender) is entitled to interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in euros (the reference rate), plus eight points. The reference rate is the rate in force, as published in the C series of the Official *Journal of the European Union, on the first day of the month in which the* payment period ends.

Suspension of the payment period as provided for in Article II.21.7 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.21.1.

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

11.22. Recovery

11.22.1. If an amount is to be recovered under the terms of the contract, the contractor must repay the contracting authority the amount in question.

11.22.2. Procedure for recovery

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;
b) by calling in a financial guarantee if the contractor has submitted one to the contracting authority;
c) by taking legal action.

11.22.3. Interest

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.21.8. 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.

11.22.4. Recovery rules in the case of a 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 sends the debit note to the leader first.

If the leader does not pay by the due date the whole amount, and if the amount due cannot be offset or can only be offset partially in accordance with Article II.23.2 (a), then the contracting authority may claim the amount still due to any other member or members of the group by respectively *notifying* them with a debit note in conformity with the provisions laid down in Article II.23.2.

11.23. Checks and audits

11.23.1. The European Commission and the European Anti-Fraud Office (OLAF) may check or require an audit on the *performance of the contract*. 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 time during the *performance of the contract* and up to five years starting from the payment of the balance.

The audit procedure will be initiated on the date of receipt of the relevant letter sent by the contracting authority. Audits are conducted on a confidential basis.

11.23.2. The contractor must keep all original documents stored on any appropriate medium, including digitised originals if authorised under national law, for a period of five years starting from the payment of the balance.

11.23.3. The Contractor must grant European Commission staff and *outside* personnel authorised by the European Commission the appropriate right of access to sites and premises where the Contract is performed and to all the information, including information in electronic format, needed in order 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.

11.23.4. On the basis of the findings made during the audit, a provisional report is drawn up. The European Commission 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 European Commission may recover all or part of the payments made in accordance with Article II.23 and may take any other measures which it considers necessary.

11.23.5. 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 provision of the services and up to five years starting from the payment of the balance.

11.23.6. The Court of Auditors and the European Public Prosecutor's Office established by Council Regulation (EU) 2017/19398 have the same rights as the contracting authority, particularly right of access, for the purpose of checks, audits and investigations.

Council 8 Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office.

III ANNEXES

- Model order form

Schola Europeae

PURCHASE ORDER

European Schools of …. / OSGES Contact person : Tel.: E-mail:	Purchase ref: Currency of payment: EUR Tender (date and reference):	Name and address of contractor:

This purchase order constitutes acceptance of the above contractor's tender (quote).
By agreeing to this order (contract), the contractor [accepts the specification sent on [date] attached to this document, and] waives all other terms of sale or performance of services and accepts the general conditions of the European Schools

Please send your invoice(s) to : [Functionnal Mail Box]

DESCRIPTION OF THE SUPPLIES OR SERVICES	UNIT	QUANTITY	PRICE in €	
			UNIT PRICE	TOTAL

[In Belgium, use of this contract constitutes a request for VAT exemption. Please add the following mention on your invoice(s) : « Exemption de la TVA. Art.42, §3, alinéa 1er, 4° du Code de la TVA. Décision ministérielle ET 121.600/A29/L92 du 19/12/2017 »]	Packaging: Insurance: Transport: Assembly: VAT: **TOTAL :**
Place of delivery/performance and/or Incoterms: Delivery/performance dates and hours: [from ... to ...] [date] Payment: 30 days from receipt of the invoice. Contractor's bank account:	**Contractor's signature** Name: Position: Date:

Acceptance of the tender by the European Schools :

Date of issue :

Signature [name and position] :

The invoice will be paid only if the contractor has returned the signed purchase order.

This contract is governed by Union law, complemented, where necessary, by [Belgian] law and the courts of [**Brussels**] have exclusive jurisdiction over any dispute.