

CONTRACT.

THE EUROPEAN SCHOOLS (Office of the Secretary-General), an international organisation established by the Convention of Luxembourg defining the Statute of the European Schools of 21 June 1994, with headquarters at Rue Joseph II, 30 - 1049 Brussels, lawfully represented by its Secretary-General, Mr [Giancarlo Marcheggiano](#)

,
Party of the first part, hereinafter called the "contracting authority";

And:

Party of the second part, hereinafter called the "co-contractor",

WHEREAS:

(Description of the award procedure)

THE PARTIES THEREFORE AGREE AS FOLLOWS:

I. SPECIAL CONDITIONS OF THE CONTRACT.

ARTICLE 1 – OBJECT.

The object of the contract is the supply (including support and maintenance) of an on-line correction tool for European Baccalaureate examination scripts in all teaching languages of the European Schools in accordance with the time periods and under the conditions set out in the appendices. The contract comprises all of the stipulations contained in the tender, the tender specifications, these special and general conditions as well as the following appendices:

Appendix I	Tender Specifications
Appendix II [sic]	Overview of the functionalities
Appendix II	Contractor's Tender
Appendix III	Specific Contract – Draft template
Appendix IV	Performance guarantee - Model
Appendix V	Service Level Agreement
Appendix VI	Change Request Form

Appendix VII Financial Identification and Legal Entities form

The various documents shall be deemed to be mutually explanatory. In cases of ambiguity or discrepancy, they shall prevail in the order in which they appear above and shall, in all cases, prevail over the co-contractor's tender. Ambiguities or discrepancies within or between such part shall be explained or rectified by a written instruction issued by OSGES, subject to the rights of the contractor under Article 8 should it dispute any such instruction. The contractor's general conditions are, in their entirety and without reservation or exception, inapplicable to the contract.

1.3. Any amendment to the contractual documents shall only be valid if it has been formalised in an original document signed by all parties, it being understood that, as far as the contracting authority is concerned, any such document can only be signed by the person acting as representative of the contracting authority that signed this contract.

ARTICLE 2 – ENTRY INTO FORCE AND DURATION

2.1. The online correction system that forms the subject of the contract shall be delivered under the conditions and within the time periods specified in the schedule contained in the Service Legal Agreement, which forms Appendix V to the contract. The co-contractor is bound by an absolute obligation to comply with these conditions and time periods.

Support and maintenance for the tool according to the agreed terms, conditions and time periods will commence on the date on which the tool is delivered, i.e. by no later than [date] and ends after a period of four years, i.e. [date]. The contracting authority shall be obliged to give notification of the expiry of the contract at least six months before the end date.

In the absence of notification, the contract shall be automatically extended for a period of one year. This automatic extension may take place up to three times. At the end of the seventh year (where applicable), the contract shall end without notice or compensation of any kind.

ARTICLE 3 – PRICES

3.1. The maximum total price to be paid by the contracting authority for delivery of the on-line correction tool for European Bacca-laureate examination scripts shall be EUR, covering all tasks executed.

The price shall include free delivery and shall be fixed and final. The co-contractor cannot invoke any unforeseen constraint, force majeure, act of Government or any other circumstance generally of any kind outside of its control in order to seek an amendment of that price. All prices, including prices stated in contracts which are subcontracted under this contract, shall be expressed in euros. They shall not include customs duties or taxes insofar as the European Schools are exempt from all duties and taxes, including value added tax.

3.2. The total annual price for support and maintenance of the tool shall be EUR

Prices shall be fixed and not subject to revision during the first year of performance of the Contract. From the beginning of the second year of performance of the Contract only the following prices may be subject to revision on the basis of indexation:

- (1) annual Software licences;
- (2) prices or fees relating to Services.

Prices may be revised upwards or downwards each year, where such revision is requested by one of the contracting parties by registered letter no later than 31st July in order that the new rates may take effect on 1st January of the following year. Contract shall be placed on the basis of the prices in force on the date on which they are signed. Such prices shall not be subject to revision, unless and only when the duly signed Specific Contract provides that it will be in force after the 1st January of the following year.

This revision shall be determined by the trend in the harmonised consumer price index EU-28 published for the first time by the Office for Official Publications of the European Union in the Eurostat monthly bulletin at <http://www.ec.europa.eu/eurostat/> [HICP - Harmonized Indices of Consumer Prices; DATA; Database, HICP- Monthly Data (2015=100)]. Revision shall be calculated in accordance with the following formula:

$$Ar = Ao \times \frac{Ir}{Io}$$

where
Ar = total revised amount;

A₀ = total amount of the initial tender;
I₀ = index for the month [during which the validity of the tender expires]
[corresponding to the final date for submission of tenders];
I_r = index for the month [corresponding to the date of receipt of the request to
revise prices] [in which the revised prices enter into force].]

ARTICLE 4 – PAYMENT ARRANGEMENTS.

4.1 As regards the price for delivery of the on-line software correction tool, the contractor shall submit invoices mentioning the contract number in order to request an interim payment according to the schedule and for the amounts indicated in the appendices hereto.

Invoices for interim payment shall be accompanied [by a progress report or any other document in accordance with the tender specifications]. The contracting authority shall make the payment within 60 days from receipt of the invoice. The contractor shall have 15 days in which to submit additional information or corrections, a new progress report or other documents if it is required by the contracting authority.

The contractor shall submit an invoice for payment of the balance. The invoice shall be accompanied by the final progress report or any other document in accordance with the tender specifications. The contracting authority shall make the payment within 60 days from receipt of the invoice. The contractor shall have 15 days in which to submit additional information or corrections, a new final progress report or other documents if it is required by the contracting authority.

Where VAT is due in Belgium, the provisions of this contract constitute a request for VAT exemption No 450, Article 42, paragraph 3.3 of the VAT Code (circular 2/1978), provided the contractor includes the following statement in the invoice(s): "Exonération de la TVA, article 42, paragraphe 3.3, du code de la TVA (circulaire 2/1978)" or an equivalent statement in the Dutch or German language.

4.2. As regards the price for maintenance and support, the contractor shall submit monthly invoices.

4.3. Performance guarantee

The contractor shall furnish two first demand bank guarantees issued by a credit institution approved by the contracting authority.

The first, amounting to EUR ..., is designed to guarantee delivery of the online correction tool for European Bacculaureate examination scripts according to the time periods and under the conditions set out in the appendices hereto. It shall be released within 90 days of the final acceptance of the tool minus any damages payable.

The second, amounting to EUR ..., is designed to guarantee support and maintenance of the tool. It shall be released in sevenths within 60 days of the end of each contract anniversary once it has been confirmed that the contractor has satisfactorily fulfilled its obligations, minus any damages payable. It shall be released in full, subject to the same condition, within 60 days of the end of the contract.

ARTICLE 5 – BANK ACCOUNT

Payments shall be made to the contractor's bank account, denominated in [euros] [*local currency where the receiving company does not allow transactions in euros*], identified as follows:

Name of bank:

Full address of branch:

Exact designation of account holder:

Full account number, including [bank] codes:

ARTICLE 6 – DATA CONTROLLER.

For the purposes of Article .6 of the general conditions, the data controller shall be **THE EUROPEAN SCHOOLS** (Office of the Secretary-General) *represented by its Head of Public Procurement, Mrs Inès Garcia Alonso*.

ARTICLE 7 – COMMUNICATION.

7.1. Any communication relating to the conclusion, performance or termination of the contract shall be made in writing and in the language of the contract, failing which it shall be considered null and void. The language of the contract shall be the language in which it is written and has been signed by the

parties. In the event of discrepancy between the original text of the contract and a translation into another language, the original text shall prevail.

7.2. All communication shall mention the contract number and shall be sent to the head of the department indicated in Article 6 of the special conditions, failing which it shall be considered null and void.

7.3. All communication to which the issuer wishes to give legal effect shall be sent by registered letter with acknowledgement of receipt or by equivalent electronic means to the head of the department indicated in Article 6, failing which it shall be considered null and void.

7.4. Where sent by post, all communications shall be deemed to have been received on the date mentioned on the acknowledgement of receipt of the registered letter and by no later than three days after being posted at the Post Office, as evidenced by the postal stamp, and, where sent electronically, on the day after sending.

ARTICLE 8 - APPLICABLE LAW AND SETTLEMENT OF DISPUTES

8.1. The contract shall be governed by:

The Luxembourg Convention definite the Statute of the European Schools of 21 June 1994;

International treaty law derived from the Luxembourg Convention defining the Statute of the European Schools of 21 June 1994 and, in particular, the Financial Regulation of the European Schools and the Implementing Rules of the Financial Regulation;

The tender for this contract;

The tender specifications for this contract;

The special conditions for this contract;

The general conditions for this contract;

The appendices to the contract.

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

8.2. In the event of dispute, the parties will firstly attempt in good faith to reach an amicable settlement. If unsuccessful, the parties agree to submit to mediation in accordance with Article 1725 of the Belgian Judicial Code. Where no agreement is reached on the mediator's identity, the latter shall be appointed

by the Brussels Court of First Instance (French-speaking) on the application of either party.

b) If no amicable settlement is reached following the two stages of the procedure described in section a) above, exclusive jurisdiction to resolve the dispute shall lie with the courts having jurisdiction over the contracting authority's headquarters.

ARTICLE 9 - EXPLOITATION OF THE RESULTS OF THE CONTRACT.

9.1 Modes of exploitation

In accordance with Article 10.2 of the general conditions whereby the contracting authority acquires ownership of the results as defined in the tender specifications (Appendix I), these results may be used for any of the following purposes:

- [a] use for its own purposes:
 - (i) making available to the staff of the contracting authority
 - (ii) making available to the persons and entities working for the contracting authority or cooperating with it, including contractors, subcontractors whether legal or natural persons, Union institutions, agencies and bodies, Member States' institutions
 - (iii) installing, uploading, processing
 - (iv) arranging, compiling, combining, retrieving
 - (v) copying, reproducing in whole or in part and in unlimited number of copies
 - (vi) making available of data concerning them to Baccalaureate candidates or to their legal representatives
- b) distribution to the public:
 - (i) publishing in hard copies
 - (ii) publishing in electronic or digital format
 - (iii) publishing on the internet as a downloadable/non-downloadable file
 - (iv) broadcasting by any kind of technique of transmission
 - (v) public presentation or display
 - (vi) communication through press information services
 - (vii) inclusion in widely accessible databases or indexes

- (viii) otherwise in any form and by any method
- (c) modifications by the contracting authority or by a third party in the name of the contracting authority:
 - (i) shortening
 - (ii) summarising
 - (iii) modifying of the content
 - (iv) making technical changes to the content:
 - necessary correction of technical errors
 - adding new parts or functionalities
 - changing functionalities
 - providing third parties with additional information concerning the result (e.g. source code) with a view to making modifications
 - (v) addition of new elements, paragraphs titles, leads, bolds, legend, table of content, summary, graphics, subtitles, sound, etc.
 - (vi) preparation in audio form, preparation as a presentation, animation, pictograms story, slide-show, public presentation etc.
 - (vii) extracting a part or dividing into parts
 - (viii) use of a concept or preparation of a derivate work
 - (ix) digitisation or converting the format for storage or usage purposes
 - (x) modifying dimensions
 - (xi) translating, inserting subtitles, dubbing in different language versions:
 - English, French, German
 - all official languages of EU
 - languages used within EU
 - languages of candidate countries
 - [list of other languages]
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- (d) the modes of exploitation listed in article II.10.4
- [e) rights to authorise, license, or sub-license in case of licensed pre-existing rights, the modes of exploitation set out in any of the points (a) to (c) to third parties.]

Where the contracting authority becomes aware that the scope of modifications exceeds that envisaged in the contract, the contracting authority shall consult the contractor. Where necessary, the contractor shall in turn seek the agreement of any creator or other right holder. The contractor shall reply to the contracting authority within one month and shall provide its agreement, including any suggestions of modifications, free of charge. The creator may refuse the intended modification only when it may harm his honour, reputation or distort integrity of the work.

9.2 Pre-existing rights and transmission of rights

All pre-existing rights shall be licensed to the contracting authority in accordance with Article .10.3 of the general terms and conditions.

The contractor shall provide to the contracting authority a list of pre-existing rights and third parties' rights including its personnel, creators or other right holders as provided for in Article .10.5 of the general conditions.

The contractor shall present relevant and exhaustive evidence about the acquisition of all the necessary pre-existing rights and third parties' rights at the latest This obligation should be fulfilled by presentation of the contractor's statement prepared in accordance with Appendix A and third parties' statements prepared in accordance with Appendix B and the relevant evidence listed in Article .10.5 of the general conditions as appropriate.

ARTICLE 10. – TERMINATION

10.1. In the event of non-performance of the contract by the contractor, the contracting authority shall, within ten days of the breaches being observed, send the contractor a report stating precisely the nature of the breaches and when these must be corrected by. The contractor shall have ten days in which to express its objections. If it fails to object within that period, it shall be automatically and irrefutably deemed to accept the breaches observed.

If the co-contractor has not expressed any observation within the time period specified in Article 10.1, the contracting authority may terminate the contract without notice or compensation of any kind and without prejudice to any additional damages that it may claim in order to make good the harm caused by the breaches observed.

If the breaches occur during the period when the Bacca-laureate examination scripts are being corrected and obstruct in whole or in part the normal marking process, the contractor shall be required to remedy the problems within 24 hours of their being reported. Failing this, and without prejudice to the right of termination provided for herein, the contracting authority shall have the right to call on any third parties to remedy those problems at the contractor's expenses, without prejudice to any other damages. In this case, the contracting authority shall inform the contractor about the identity of that third party and the contractor shall immediately provide the latter with all information necessary or useful to take over responsibility for support and maintenance of the tool, including source codes, under penalty of a fine of EUR ... per day of delay.

10.2. The contracting authority may also terminate the contract without notice or compensation for the following reasons:

- (a) if a change to the contractor's legal, financial, technical or organisational or ownership situation is likely to affect the performance of the contract substantially or call into question the decision to award the contract.
- (b) in the event of force majeure notified in accordance with article 11 of the general conditions or if the performance of the contract has been suspended by the contractor as a result of force majeure, notified in accordance with article 13 of the general conditions, where either resuming performance is impossible or the modifications to the contract might call into question the decision awarding the contract, or result in unequal treatment of tenderers;

- (c) if the contractor is declared bankrupt, is being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (d) if the contractor or any natural person with the power to represent it or take decisions on its behalf has been found guilty of professional misconduct proven by any means;
- (e) if the contractor is not in compliance with 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 applicable law of this contract or those of the country where the contract is to be performed;
- (f) if the contracting authority has evidence that the contractor or any natural persons with the power to represent it or take decisions on its behalf have committed fraud, corruption, or are involved in a criminal organisation, money laundering or any other illegal activity detrimental to the contracting authority's financial interests;
- (g) if the contracting authority has evidence that the contractor or any natural persons with the power to represent it or take decisions on its behalf have committed substantial errors, irregularities or fraud in the award procedure or the performance of the contract, including in the event of submission of false information;
- (h) if the contractor is unable, through its own fault, to obtain any permit or licence required for performance of the contract.

II. GENERAL CONDITIONS FOR THIS CONTRACT.

ARTICLE 1 – PERFORMANCE OF THE CONTRACT.

- 1.1 The contractor shall perform the contract to the highest professional standards.
- 1.2 The contractor shall be solely responsible for taking the necessary steps to obtain any permit or licence required for performance of the contract under the laws and regulations in force at the place where the tasks assigned to it are to be executed.
- 1.3 Without prejudice to Article 4 of the general conditions, any reference made to the contractor's personnel in the contract shall relate exclusively to individuals involved in the performance of the contract.

The contractor must ensure that the personnel performing the contract possess the professional qualifications and experience required for the execution of the tasks assigned to them.

1.5. The contractor shall neither represent the contracting authority nor behave in any way that would give such an impression.

1.6. The contractor shall be solely responsible for the personnel who execute the tasks assigned to them.

The contractor shall stipulate the following employment or service relationships with its personnel:

(a) personnel executing the tasks assigned to the contractor may not be given orders directly by the contracting authority;

(b) the contracting authority may not under any circumstances be considered to be the employer of the personnel referred to in point (a) and the personnel shall undertake not to invoke against the contracting authority any right arising from the contractual relationship between the contracting authority and the contractor.

1.7. In the event of disruption resulting from the action of one of the contractor's personnel working on the contracting authority's premises or in the event that the expertise of one of the contractor's personnel fails to correspond to the profile required by the contract, the contractor shall replace such personnel without delay. The contracting authority shall have the right to make a reasoned request for the replacement of any such personnel. The replacement personnel must have the necessary qualifications and be capable of performing the contract under the same contractual conditions. The contractor shall be responsible for any delay in the execution of the tasks concerned resulting from the replacement of personnel.

1.8. Should the execution of the tasks be directly or indirectly hampered, either partially or totally, by any force majeure situation, the contractor shall immediately and on its own initiative record it and report it to the contracting authority. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the contractor to ensure full compliance with its contractual obligations. In such an event the contractor shall give priority to solving the problem rather than determining liability.

1.9. Should the contractor fail to perform its contractual obligations, the contracting authority may - without prejudice to its right to terminate the contract - reduce or recover payments in proportion to the scale of the unperformed obligations. In addition, the contracting authority may claim compensation or impose liquidated damages in accordance with Article .12 of the general conditions.

ARTICLE 2. – MEANS OF COMMUNICATION.

Any communication relating to the conclusion, performance or termination of this contract shall be made under the conditions and subject to the sanctions laid down in Article 7 of the special conditions.

ARTICLE 3 – LIABILITY.

3.1 The contractor shall be solely responsible for complying with any legal obligations incumbent on it.

3.2 The contracting authority shall not be held liable for any damage caused or sustained by the contractor, including any damage caused by the contractor to third parties during or as a consequence of performance of the contract, except in the event of wilful misconduct or gross negligence on the part of the contracting authority.

3.3 The contractor shall be held liable for any loss or damage sustained by the contracting authority in performance of the contract, including in the event of subcontracting, and for any claim by a third party, but only to an amount not exceeding three times the total amount of this contract. Nevertheless, if the damage or loss is caused by the gross negligence or wilful misconduct of the contractor or of its personnel or subcontractors, the contractor shall have unlimited liability for the amount of the damage or loss.

3.4 The contractor shall indemnify and hold the contracting authority harmless from all damages and costs incurred due to any claim. The contractor shall provide compensation in the event of any action, claim or proceeding brought against the contracting authority by a third party as a result of damage caused by the contractor during the performance of the contract. In the event of any action brought by a third party against the contracting authority in connection with the performance of the contract including any alleged breach of intellectual property rights, the contractor shall assist the contracting authority. Such expenditure incurred by the contractor may be borne by the contracting authority.

3.5 The contractor shall take out an insurance policy against risks and damage relating to the performance of the contract if required by the relevant applicable legislation. It shall take out supplementary insurance as reasonably required by standard practice in the industry. A copy of all the relevant insurance contracts shall be sent to the contracting authority should it so request.

ARTICLE .4 - CONFLICT OF INTERESTS

4.1 The contractor shall take all the necessary measures to prevent any situation of conflict of interest. Such situations arise where the impartial and objective performance of the contract is compromised for reasons involving economic interest, political or national affinity, family or emotional ties, or any other shared interest.

4.2 Any situation constituting or likely to lead to a conflict of interest during the performance of the contract shall be notified to the contracting authority in writing without delay. The contractor shall immediately take all the necessary steps to rectify the situation. The contracting authority reserves the right to verify that the steps taken are appropriate and may require that additional steps be taken within a specified deadline.

The contractor declares that it has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, when such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, in so far as it serves as an incentive or reward relating to the performance of the contract.

4.4 The contractor shall pass on all the relevant obligations in writing to its personnel and to any natural person with the power to represent it or take decisions on its behalf and ensure that it is not placed in a situation which could give rise to conflicts of interest. The contractor shall also pass on all the relevant obligations in writing to third parties involved in the performance of the contract including subcontractors.

ARTICLE .5 – CONFIDENTIALITY.

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

The contractor shall:

- (a) not use confidential information and documents for any purpose other than fulfilling its obligations under the contract without prior written agreement of the contracting authority;
- (b) ensure the protection of such confidential information and documents with the same level of protection it uses to protect its own confidential information, but in no case any less than reasonable care;

(c) not disclose directly or indirectly confidential information and documents to third parties without prior written agreement of the contracting authority.

5.2 This confidentiality obligation shall be binding on the contracting authority and the contractor during the performance of the contract and for five years starting from the date of the payment of the balance unless:

- (a) the party concerned agrees to release the other party from the confidentiality obligation earlier;
- (b) the confidential information becomes public through other means than in breach of the confidentiality obligation, through disclosure by the party bound by that obligation;
- (c) the disclosure of the confidential information is required by law.

5.3 The contractor shall 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 the confidentiality obligation set out in Article .5.1 of the general conditions.

ARTICLE .6 – PROCESSING OF PERSONAL DATA

6.1 The contractor shall have the right to access its personal data and the right to rectify any such data. The contractor should address any queries concerning the processing of its personal data to the data controller.

6.3 Where this contract requires the processing of personal data by the contractor, the contractor may act only under the supervision of the data controller, in particular with regard to the purposes of the processing, the categories of data which may be processed, the recipients of the data and the means by which the data subject may exercise his rights.

6.5 The contractor shall grant personnel access to the data to the extent strictly necessary for the performance, management and monitoring of the contract.

6.6 The contractor undertakes to adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned in order to:

- (a) prevent any unauthorised person from gaining access to computer systems processing personal data, and especially:
 - (i) unauthorised reading, copying, alteration or removal of storage media;
 - (ii) unauthorised data input, as well as any unauthorised disclosure, alteration or erasure of stored personal data;
 - (iii) unauthorised use of data-processing systems by means of data transmission facilities;
- (b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
- (c) record which personal data have been communicated, when and to whom;
- (d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting authority;
- (e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
- (f) design its organisational structure in such a way that it meets data protection requirements.

ARTICLE 7 – SUBCONTRACTING

7.1 The contractor shall not subcontract without prior written authorisation from the contracting authority nor cause the contract to be de facto performed by third parties.

7.2 Even where the contracting authority authorises the contractor to subcontract to third parties, the contractor shall nevertheless remain bound by its contractual obligations and shall be solely responsible for the proper performance of this contract.

7.3 The contractor shall make sure that the subcontract does not affect rights and guarantees granted to the contracting authority by virtue of this contract.

ARTICLE .8 – AMENDMENTS

8.1 Any amendment to the contract shall be made in writing before fulfilment of all new contractual obligations and, in any case, before the date of payment of the balance.

8.2 The amendment may not have the purpose or the effect of making changes to the contract which might call into question the decision awarding the contract or result in unequal treatment of tenderers.

ARTICLE .9 – ASSIGNMENT

9.1 The contractor shall not assign the rights, including claims for payments, and obligations arising from the contract, in whole or in part, without prior written authorisation from the contracting authority.

9.2 In the absence of such authorisation, or in the event of failure to observe the terms thereof, the assignment of rights or obligations by the contractor shall not be enforceable against the contracting authority and shall have no effect on it.

ARTICLE 10 – OWNERSHIP OF THE RESULTS – INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS

10.1 Definitions

In this contract the following definitions apply:

- (1) "results" means any intended outcome of the performance of the contract which is delivered and finally accepted by the contracting authority;
- (2) "creator" means any natural person who contributed to the production of the result and includes personnel of the contracting authority or a third party;
- (3) "pre-existing rights" means any industrial and intellectual property rights, including background technology, which exist prior to the contracting authority or the contractor ordering them for the purpose of the contract performance and include rights of ownership and use by the contractor, the creator, the contracting authority and any other third parties.

10.2 Ownership of the results

The ownership of the results shall be fully and irrevocably acquired by the contracting authority under the contract including any rights in any of the results listed in the contract. Rights in the results may include copyright and other intellectual or industrial property rights, and all technological solutions and information contained therein, produced in performance of the contract. The contracting authority may exploit them as stipulated in this contract. All rights shall be acquired by the contracting authority from the moment the results are delivered by the contractor and accepted by the contracting authority. Such delivery and acceptance are deemed to constitute an effective assignment of rights from the contractor to the contracting authority.

The payment of the price as set out in the contract is deemed to include any fees payable to the contractor in relation to the acquisition of rights by the contracting authority, including all forms of use of the results.

The acquisition of rights by the contracting authority under this contract covers all territories worldwide.

Any intermediary sub-result, raw data, intermediary analysis made available by the contractor cannot be used by the contracting authority without the written consent of the contractor, unless the contract explicitly provides for it to be treated as a self-contained result.

10.3 Licensing of pre-existing rights

The contracting authority shall not acquire ownership of the pre-existing rights.

The contractor shall license the pre-existing rights on a royalty-free, non-exclusive and irrevocable basis to the contracting authority which may use the pre-existing right as provided for in Article I.8.1. All the pre-existing rights shall be licensed to the contracting authority from the moment the results were delivered and accepted by the contracting authority.

The licensing of pre-existing rights to the contracting authority under this contract covers all territories worldwide and is valid for the whole duration of intellectual property rights protection.

10.4 Modes of exploitation

The contracting authority shall acquire ownership of each of the results produced as an outcome of the contract which may be used for any of the following purposes:

- (a) giving access upon individual requests without the right to reproduce or exploit, as provided for in the contracting authority's administrative transparency policy;
- (b) storage of the original and copies made in accordance with this contract;
- (c) archiving in line with the document management rules applicable to the contracting authority.

10.5 Identification and evidence of granting of pre-existing rights and rights of third parties

When delivering results, the contractor shall warrant that they are free of rights or claims from creators and third parties including in relation to pre-existing rights, for any use envisaged by the contracting authority. This does not concern the moral rights of natural persons.

The contractor shall establish to that effect a list of all pre-existing rights and rights of creators and third parties on the results of this contract or parts

thereof. This list shall be provided no later than the date of delivery of the final results.

In the result the contractor shall clearly point out all quotations of existing textual works. The complete reference should include as appropriate: 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 which allows the origin to be easily identified.

Upon request by the contracting authority, the contractor shall provide evidence of ownership or rights to use all the listed pre-existing rights and rights of third parties except for the rights owned by the Union.

This evidence may refer, inter alia, to rights to: parts of other documents, images, graphs, tables, data, software, technical inventions, know-how etc. (delivered in paper, electronic or other form), IT development tools, routines, subroutines and/or other programs ("background technology"), concepts, designs, installations or pieces of art, data, source or background materials or any other parts of external origin.

The evidence shall include, as appropriate:

- (a) the name and version number of a software product;
- (b) the full identification of the work and its author, developer, creator, translator, data entry person, graphic designer, publisher, editor, photographer, producer;
- (c) a copy of the licence to use the product or of the agreement granting the relevant rights to the contractor or a reference to this licence;
- (d) a copy of the agreement or extract from the employment contract granting the relevant rights to the contractor where parts of the results were created by its personnel;
- (e) the text of the disclaimer notice if any.

Provision of evidence does not release the contractor from its responsibilities 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 also warrants that it possesses the relevant rights or powers to execute the transfer and that it has paid or has verified payment of all due fees including fees due to collecting societies, related to the final results.

10.6 Creators

By delivering the results the contractor warrants that the creators undertake not to object to mention being made of their names when the results are presented to the public and confirms that the results can be divulged. Names of authors shall be recalled on request in the manner communicated by the contractor to the contracting authority.

The contractor shall obtain the consent of creators regarding the granting of the relevant rights and be ready to provide documentary evidence upon request.

10.7 Persons appearing in photographs or films

If natural, recognisable persons appear in a result or their voice is recorded the contractor shall submit a statement by these persons (or by the persons exercising parental authority in the case of minors) where they give their permission for the described use of their image or voice. This does not apply to persons whose permission is not required in line with the law of the country where photographs were taken, films shot or audio records made.

10.8 Contracting authority's copyright for pre-existing rights

When the contractor retains pre-existing rights on parts of the results, reference shall be inserted to that effect when the result is used as set out in Article I.8.1 with the following disclaimer: © - year – European Union. All rights reserved. Certain parts are licensed under conditions to the EU.

10.9. On the expiry of the contract, howsoever arising, and notwithstanding any dispute between parties, the contractor shall supply all source codes to the contracting authority. It is therefore expressly agreed that the transfer of source codes cannot under any circumstances entitle the contractor to refuse to perform its obligations or withhold anything of any kind, which would have the object or effect of depriving the contracting authority of the possession of the source codes at the end of the contractual relationship.

ARTICLE .11 – FORCE MAJEURE

11. "Force majeure" means any unforeseeable and exceptional situation or event beyond the parties' control which prevents either of them from fulfilling any of their contractual obligations, which was not attributable to error or negligence on their part or on the part of subcontractors and which proves to be inevitable in spite of exercising due diligence. Any default of a service, defect in equipment or material or delays in making them available, unless they stem directly from a relevant case of force majeure, as well as labour disputes, strikes or financial difficulties, cannot be invoked as force majeure.

11.2 A party faced with force majeure shall formally notify the other party without delay, stating the nature, likely duration and foreseeable effects.

11.3 The party faced with force majeure shall not be held in breach of its contractual obligations if it has been prevented from fulfilling them by force majeure. Where the contractor is unable to fulfil its contractual obligations owing to force majeure, it shall have the right to remuneration only for the tasks actually executed.

11.4 The parties shall take all the necessary measures to limit any damage due to force majeure.

ARTICLE 12 – LIQUIDATED DAMAGES

The contracting authority may impose liquidated damages should the contractor fail to complete its contractual obligations, also with regard to the required quality level, according to the tender specifications.

Should the contractor fail to perform its contractual obligations within the time limits set by the contract, then, without prejudice to the contractor's actual or potential liability or to the contracting authority's right to terminate the contract, the contracting authority may impose liquidated damages for each and every calendar day of delay according to the following formula:

$$0.3 \times (V/d)$$

V is the amount specified in Article 3.1 of the special conditions,

d is the duration, expressed in calendar days, specified in Article 2.3 of the special conditions.

The contractor may submit arguments against this decision within 30 days of receipt of the formal notification. In the absence of a reaction on its part or of written withdrawal by the contracting authority within 30 days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable.

The parties expressly acknowledge and agree that any sums payable under this article are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the losses incurred due to failure to fulfil obligations which may be reasonably anticipated.

ARTICLE 13 – SUSPENSION OF THE PERFORMANCE OF THE CONTRACT

13.1 Suspension by the contractor

The contractor may suspend the performance of the contract or any part thereof if a case of force majeure makes such performance impossible. The contractor shall inform the contracting authority about the suspension without delay, giving all the necessary reasons and details and the envisaged date for resuming the performance of the contract.

Once the circumstances allow resuming performance, the contractor shall inform the contracting authority immediately, unless the contracting authority has already terminated the contract.

13.2 Suspension by the contracting authority

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

- (a) if the contract award procedure or the performance of the contract prove to have been subject to substantial errors, irregularities or fraud;
- (b) in order to verify whether presumed substantial errors, irregularities or fraud have actually occurred.

Suspension shall take effect on the day the contractor receives formal notification, or at a later date where the notification so provides. The contracting authority shall as soon as possible give notice to the contractor to resume the service suspended or inform the contractor that it is proceeding with termination of the contract. The contractor shall not be entitled to claim compensation on account of suspension of the contract or of part thereof.

ARTICLE 14 – PROCEDURE FOR TERMINATION.

Without prejudice to the termination procedure described in Article 10 of the special conditions, the contracting authority may also terminate the contract, by written notification of its non-performance, in the event of force majeure notified in accordance with article 11 of the general conditions or if the performance of the contract has been suspended by the contractor as a result of force majeure, notified in accordance with article 13 of the general conditions, where either resuming performance is impossible or the modifications to the contract might call into question the decision awarding the contract, or result in unequal treatment of tenderers.

. Except in the case of force majeure, if the contracting authority terminates all or part of the contract in the manner provided for in article 14.2.1 above, and acquires supplies or services identical to those forming the object of the contract terminated according to the rules and procedures established by the European Schools, the latter shall be entitled to ask the contractor to reimburse any additional costs incurred on account of these acquisitions. In this case, the contracting authority shall pay the contractor for the supplies delivered or services performed and accepted at the contractual price minus any additional costs.

14.3. In the event of termination through its own fault, the contractor cannot claim damages for any harm or loss, including any loss of anticipated profits for uncompleted works.

In any event, on receipt of the notification of termination, the contractor shall take all the appropriate measures to minimise costs, prevent damages, and cancel or reduce its commitments. The contracting authority may claim compensation for any damage suffered in the event of termination. On termination, the contracting authority may engage any other contractor to execute or complete the tasks and shall be entitled to claim from the contractor all extra costs incurred in this regard, without prejudice to any other rights or guarantees it may have under the contract.

In the event of termination, the contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work. On receipt of the notification of termination, the contractor shall take all the appropriate measures to minimise costs, prevent damages, and cancel or reduce its commitments. The contractor shall have 60 days from the date of the termination to draw up the documents required by the special conditions for the tasks already executed on the date of termination and produce an invoice if necessary. The contracting authority may recover any amounts paid under the contract.

The contracting authority may claim compensation for any damage suffered in the event of termination.

On termination the contracting authority may engage any other contractor to execute or complete the services. The contracting authority shall be entitled to claim from the contractor all extra costs incurred in this regard, without prejudice to any other rights or guarantees it may have under the contract.

ARTICLE 15 – REPORTING AND PAYMENTS

15.1 Date of payment

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

15.2 Currency

The contract shall be in euros.

Payments shall be executed in euros.

15.3 Costs of transfer

The costs of the transfer shall be borne as follows:

- (a) costs of dispatch charged by the bank of the contracting authority shall be borne by the contracting authority;
- (b) costs of receipt charged by the bank of the contractor shall be borne by the contractor,
- (c) costs for repeated transfer caused by one of the parties shall be borne by the party causing repetition of the transfer.

15.4 Invoices and Value Added Tax

Invoices shall contain the contractor's identification, the amount, the currency and the date, as well as the contract reference.

Invoices shall indicate the place of taxation of the contractor for value added tax (VAT) purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

The contracting authority is, as a rule, exempt from all taxes and duties, including VAT, pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union.

The contractor shall accordingly 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 exemption.

15.5 Pre-financing and performance guarantees

Performance guarantees shall cover performance of the service in accordance with the terms set out in the tender specifications until its final acceptance by the contracting authority. The amount of the performance guarantee shall not exceed the total price of the contract. The guarantee shall provide that it remains in force until final acceptance. The contracting authority shall release the guarantee within a month following the date of final acceptance.

Where, in accordance with Article 4 of the special conditions, a financial guarantee is required for the payment of pre-financing, or as performance guarantee, it shall fulfil the following conditions:

(a) the financial guarantee is provided by a bank or an approved financial institution or, at the request of the contractor and agreement by the contracting authority, by a third party;

(b) the guarantor stands as first-call guarantor and does not require the contracting authority to have recourse against the principal debtor (the contractor).

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

15.6 Interim payments and payment of the balance

The contractor shall submit an invoice for interim payment upon delivery of intermediary results, accompanied by a progress report or any other documents, as provided for in Article 4 of the special conditions or in the tender specifications.

The contractor shall submit an invoice for payment of the balance within 60 days following the end of the period referred to in Article 2.3 of the special conditions, accompanied by a final progress report or any other documents provided for in Article 4 of the special conditions or in the tender specifications.

Upon receipt, the contracting authority shall pay the amount due as interim or final payment, within the periods specified in Article 4 of the general conditions, provided the invoice and documents have been approved and without prejudice to Article 15.7 of the general conditions. Approval of the invoice and documents shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information they contain.

Payment of the balance may take the form of recovery.

15.7 Suspension of the time allowed for payment

The contracting authority may suspend the payment periods specified in Article 4 of the special conditions at any time by notifying the contractor that its invoice cannot be processed, either because it does not comply with the provisions of the contract, or because the appropriate documents have not been produced.

The contracting authority shall inform the contractor in writing as soon as possible of any such suspension, giving the reasons for it.

Suspension shall take effect on the date the notification is sent by the contracting authority. The remaining payment period shall start to run again 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 may request the contracting authority to justify the continued suspension.

Where the payment periods have been suspended following rejection of a document referred to in the first paragraph and the new document produced is also rejected, the contracting authority reserves the right to terminate the contract in accordance with Article 14.1(c) of the general conditions.

15.8. Interest on late payment

On expiry of the payment periods specified in Article 4 of the special conditions, and without prejudice to Article 15.7 of the general conditions, the contractor is entitled to interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in Euro (the reference rate) plus eight points. The reference rate shall be the rate in force on the first day of the month in which the payment period ends, as published in the C series of the *Official Journal of the European Union*.

The suspension of the payment period in accordance with Article 15.7 may not be considered as a late payment.

Interest on late payment shall cover the period running from the day following the due date for payment up to and including the date of actual payment as defined in Article 15.1 of the general conditions.

However, when the calculated interest is lower than or equal to EUR 200, it shall be paid to the contractor only upon request submitted within two months of receiving late payment.

ARTICLE II.17 – RECOVERY

17.1 If an amount is to be recovered under the terms of the contract, the contractor shall repay the contracting authority the amount in question according to the terms and by the date specified in the debit note.

17.2 If the obligation to pay the amount due is not honoured by the date set by the contracting authority in the debit note, the amount due shall bear interest at the rate indicated in Article 15.8 of the general conditions. Interest on late payments shall cover the period from the day following the due date for payment up to and including the date when the contracting authority receives the full amount owed.

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

SIGNATURES

For the contractor

[company name/forename/surname/function]

For the contracting authority,

[forename/surname/function]

signature[s]: _____

signature[s]: _____

Done at [Brussels], [date]
in duplicate (originally) in French.

Done at [Brussels], [date]

List of appendices, marked, initialled and signed.

Appendix I	Tender Specifications
Appendix II [sic]	Overview of the functionalities
Appendix II	Contractor's Tender
Appendix III	Specific Contract – Draft template
Appendix IV	Performance guarantee - Model
Appendix V	Service Level Agreement
Appendix VI	Change Request Form