



Schola europaea

## ANNEX IV - FRAMEWORK CONTRACT FOR SERVICES

CONTRACT NUMBER – BSGEE 2017/06

**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 de la Science, 23 - 1040 Brussels, lawfully represented by its Deputy Secretary-General, Mr. Andreas Beckmann,

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

And:

\_\_\_\_\_ [full official name of the company], \_\_\_\_\_ [VAT registration number], \_\_\_\_\_ [official address], lawfully represented for the purposes of the signature of this contract by its \_\_\_\_\_ [function of legal representative], Mr/Ms. \_\_\_\_\_ [forename, surname],

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

### WHEREAS:

(Description of the award procedure)

### THE PARTIES THEREFORE AGREE AS FOLLOWS:

The parties enter into this framework contract and agreed to the special conditions, the general conditions and the following annexes:

- Annex I** – Tender specifications reference BSGEE/2016-06
- Annex II** – Contractor's tender
- Annex III** – Specific Contract for Times&Means – Model
- Annex IV** – Price List

## **I. SPECIAL CONDITIONS OF THIS CONTRACT**

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

1.1. If there is any conflict between different provisions in this framework contract, 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 framework contract;
- b) The provisions set out in the general conditions take precedence over those in the other annexes; and,
- c) The provisions set out in the tender specifications (Annex I) take precedence over those in the tender (Annex II).

1.2. Ambiguities or discrepancies within or between such part shall be explained or rectified by a written instruction issued by the contracting authority, subject to the rights of the contractor under Article 8 of the special conditions should it dispute any such instruction.

1.3. 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 contract. In all circumstances, in the event of contradiction between this contract and documents issued by the contractor, this contract prevails, regardless of any provision to the contrary in the contractor's documents.

### **Article I.2 – SUBJECT MATTER**

2.1. The subject matter of the FWC is:

[For lot 1: The provision of accounting advice and assistance to the Contracting Authority, making use of SAP technologies.]

[For lot 2: The provision of consultancy services in financial audits.]

### **Article I.3 – ENTRY INTO FORCE AND DURATION**

3.1. The framework contract enters into force on the date on which the last party signs it.

3.2. The *implementation of the framework contract* cannot start before its entry into force.

3.3. The duration of the framework contract shall not exceed twelve (12) months.

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

3.5. The parties must sign any specific contract before the framework contract 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 twelve (12) months after the expiry of the framework contract

3.6. The framework contract may be renewed up to three (3) times, each time for a period of execution of tasks of twelve (12) months. Renewal does not imply any modification or deferment of existing obligations.

3.7. The contracting authority shall be obliged to give notification of the expiry of the framework contract at least three (3) months before the end date.

3.7.1. In the absence of notification, the framework contract shall be automatically extended for a period of twelve (12) months. This automatic extension may take place up to three (3) times. At the end of this period, the contract shall end without notice or compensation of any kind.

## **ARTICLE I.4 – MAXIMUM PRICE**

4.1. The maximum amount covering all purchases under this FWC, including all renewals is:

**[For lot 1:** EUR [amount in figures and in words]]

**[For lot 2:** EUR [amount in figures and in words]]

4.1.1. However, this does not bind the contracting authority to purchase for the maximum amount. Signature of the framework contract imposes no obligation on the contracting authority to purchase. Only performance of the framework contract through order forms or specific contracts is binding on the contracting authority.

4.1.2. The prices of the services are as listed in Annex IV.

4.1.2. All prices, including prices stated in contracts which are contracted under this framework contract, shall be expressed in euros. They shall not include customs duties or taxes insofar as the contracting authority are exempt from all duties and taxes, including value added tax.

4.1.3. The prices must cover all costs and charges including - but not exclusively – administrative tasks, communications, taxes, social security contributions, insurance and any bank charges.

4.2. Prices shall be fixed and not subject to revision during the first year of performance of the Contract.

4.2.1. Price revision is determined by the formula set out in Article II.19 of the general conditions and using the trend in the harmonised indices of consumer prices (HICP) Monetary Union Index of Consumer Prices (MUICP) published for the first time in

Eurostat's monthly 'Data in Focus' publication available on the website: <http://www.ec.europa.eu/eurostat/>.

## **ARTICLE I.5 – PAYMENT ARRANGEMENTS**

### 5.1. Payment of the balance

5.1.1. The contractor shall submit a monthly invoice for payment of the balance. The contracting authority shall make the payment within thirty (30) days from receipt of the invoice.

5.1.2. Payments shall be executed only if the contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted.

5.1.3. The invoice shall be sent to the contracting authority the last working day of each month and shall cover the tasks delivered in the previous month, starting from the second month of contract execution. The contractor shall invoice the contracting authority for the services provided during that month.

5.1.4. The contracting authority undertakes to pay sums due pursuant to the contract within a maximum of thirty calendar days running from the date on which it receives the invoice, properly established in accordance with the instructions given in the present Article, to the date on which the contracting authority's account is debited.

5.1.4.1. The contracting authority may suspend this payment period at any time within the thirty-day period following receipt of the invoice by notifying the contractor that his request is not admissible, either because the amount is not due or because the necessary supporting documents have not been produced. The payment period shall continue to run from the date on which the properly established invoice is received.

5.1.5. All payments shall be made upon presentation of an invoice giving, besides the disclosures required by law:

- the breakdown of fees and the amount of VAT applied, if any, or, where appropriate, the indication that the services rendered under the contract are exempt from VAT in conformity with the national tax law by which the Contractor is governed and a reference to that law;
- a reference to the contract number as shown on the first page of this contract;
- full details of the bank account to which payments should be made, as specified in Article I.6 of the special conditions.

5.1.6. Invoices should be sent to the following address:

**Office of the Secretary General of the European Schools**  
Att. **Accountancy Unit**  
Rue de la Science, 23  
1040 – Brussels  
Belgium

5.1.7. 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): "Exemption de la TVA, Article 42, paragraphe 3, alinéa 1<sup>er</sup>, 4<sup>o</sup>, du Code de la TVA" or an equivalent statement in the Dutch or German language.

## **ARTICLE I.6 – BANK ACCOUNT**

6.1. Payments shall be made to the contractor's bank account, denominated in [euros], identified as follows:

- Name of bank:
- Full address of branch:
- Exact designation of account holder:
- Full account number, including [bank] codes:

## **ARTICLE I.7 – DATA CONTROLLER**

7.1. For the purposes of Article 6 of the general conditions, the data controller shall be represented by its Procurement Unit Representative, Ms. Inès Garcia Alonso.

## **ARTICLE I.8 – COMMUNICATION**

8.1. Any communication relating to the conclusion, performance or termination of this 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.

8.2. All communication shall mention the contract number and shall be sent to the person indicated in Article 7 of the special conditions, failing which it shall be considered null and void.

8.3. 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 person indicated in Article 7 of the special conditions, failing which it shall be considered null and void.

8.4. 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 (3) days after being posted at the Post Office, as evidenced by the postal stamp, and, where sent electronically, on the day after sending.

## **ARTICLE I.9 – EXPLOITATION OF THE RESULTS OF THE CONTRACT**

9.1. Detailed list of modes of exploitation of the results

In accordance with Article II.13.1 whereby the contracting authority acquires ownership of the *results* as defined in this contract, including the tender specifications, these *results* may be used for any of the following modes of exploitation:

(a) use for its own purposes:

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

(b) inclusion in widely accessible databases or indexes, such as via 'open access' or 'open data' portals, or similar repositories, whether freely accessible or accessible only upon subscription;]

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

- shortening;
- summarising;
- modifying the content, the dimensions;
- making technical changes to the content (necessary correction of technical errors), adding new parts or functionalities, changing functionalities, providing third parties with additional information concerning the result (e.g. source code) with a view to making modifications;
- addition of new elements, paragraphs, titles, leads, bolds, legend, table of content, summary, graphics, subtitles, sound;
- addition of metadata, for text and data-mining purposes; addition of right-management information; addition of technological protection measures;
- extracting a part or dividing into parts;
- translating, inserting subtitles, dubbing in different language versions:
  - English, French, German;
  - all official languages of EU;

languages used within EU.

## **ARTICLE I.10 – APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

10.1. The contract shall be governed by:

- a) The Luxembourg Convention definite the Statute of the European Schools of 21 June 1994;
- b) 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;
- c) The tender for this contract;
- d) The tender specifications for this contract;
- e) The special conditions for this contract;
- f) The general conditions for this contract; and,
- g) The appendices to the contract.

10.2. 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.

## **ARTICLE I.11 – TERMINATION BY EITHER PARTY**

11.1. Either party may, terminate the contract by sending formal notification to the other party with three (3) months written notice.

11.2. If the contract 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.

The second, third and fourth paragraphs of Article II.16.4 of the general conditions apply.

### **SIGNATURES**

For the contractor

*[company name/forename/surname/function]*

For the contracting authority,

*[forename/surname/function]*

signature[s]: \_\_\_\_\_

signature[s]: \_\_\_\_\_

Done at [place], [date]

Done at [place], [date]

In duplicate in English.

## **II. GENERAL CONDITIONS FOR THIS CONTRACT**

### **ARTICLE II.1 – DEFINITIONS**

1.1. For the purpose of this contract, the following definitions (indicated in *italics* in the text) apply:

**‘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;

**‘Conflict of interest’:** a situation where 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, or any other shared interest with the contracting authority or any third party related to the subject matter of the contract;

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

**‘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*;

**‘Formal notification’** (or ‘formally notify’): form of communication between the parties made in writing by mail or email, which provides the sender with compelling evidence that the message was delivered to the specified recipient;

**‘Fraud’:** any intentional act or omission affecting the Union’s financial interests relating to the use or presentation of false, incorrect or incomplete statements or documents or to non-disclosure of information in violation of a specific obligation;

**‘Irregularity’:** any infringement of a provision of Union law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the Union’s budget.

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

**‘Performance of the contract’:** the execution of tasks and delivery of the purchased services by the contractor to the contracting authority;



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

**‘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*;

**‘Pre-existing right’:** any industrial and intellectual property right on *pre-existing material*; it may consist in a right of ownership, a licence right and/or right of use belonging to the contractor, the *creator*, the contracting authority as well as to any other third parties;

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

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

**‘Result’:** any intended outcome of *the performance of the contract*, whatever its form or nature, which is delivered and finally or partially approved by the contracting authority. A *result* may be further defined in this contract as a deliverable. A *result* may, in addition to materials produced by the contractor or at its request, also include *pre-existing materials*;

**‘Substantial error’:** any infringement of a contract provision resulting from an act or omission, which causes or might cause a loss to the School.

## **ARTICLE II.2 – SEVERABILITY**

2.1. 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.

## **ARTICLE II.3 – PERFORMANCE OF THE CONTRACT**

3.1. The contractor must provide services of high quality standards, in accordance with the state of the art in the industry and the provisions of this contract, in particular the tender specifications and the terms of its tender.

3.2. 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.

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

3.4. All periods specified in the contract are calculated in calendar days, unless otherwise specified.

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

3.6. The contractor is responsible for the personnel who carry out the services and exercises its authority over its personnel without interference by the contracting authority. The contractor must inform its personnel that:

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

3.7. 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.

3.8. 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 at the premises of the contracting authority.

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

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

## **ARTICLE II.4 – COMMUNICATION BETWEEN THE PARTIES**

4.1. Any communication relating to the conclusion, performance or termination of this contract shall be made under the conditions set up in Article 8 of the special conditions and to the head of the department indicated in Article 7 of the special conditions, failing which it shall be considered null and void.

4.2. Form and means of communication

4.2.1. Any communication of information, notices or documents under the contract must:

- (a) be made in writing in paper or electronic format in the language of the contract;
- (b) bear the contract number; and,

(c) be made using the relevant communication details set out in Article I.8. of the special conditions.

4.2.2. 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.

4.2.3. The parties agree that any communication made by email has full legal effect and is admissible as evidence in judicial proceedings.

#### 4.3. Date of communications by mail and email

4.3.1. 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.

4.3.2. 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. of the special conditions. The sending party must be able to prove the date of dispatch. In the event that the sending party receives a non-delivery report, it must make every effort to ensure that the other party actually receives the communication by email or mail. In such a case, the sending party is not held in breach of its obligation to send such communication within a specified deadline.

4.3.3. 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 of the special conditions registers it.

4.3.4. *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.

## ARTICLE II.5 – LIABILITY

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

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

5.3. 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 up to an amount not exceeding three times the total amount of this contract. However, if the damage or loss is caused by the gross negligence or wilful misconduct of the contractor or of its personnel or subcontractors, the contractor is liable for the whole amount of the damage or loss.

5.4. 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 that such liability is caused by the contractor during or as a consequence of the *performance of the contract*, Article II.4.3 applies.

5.5. If the contractor is composed of two or more economic operators (i.e. who submitted a joint tender), they are all jointly and severally liable to the contracting authority for the *performance of the contract*.

5.6. The contracting authority is not liable for any loss or damage caused to the contractor during or as a consequence of *performance of the contract*, unless the loss or damage was caused by wilful misconduct or gross negligence of the contracting authority.

## **ARTICLE II.6 – CONFLICT OF INTERESTS AND PROFESSIONAL CONFLICTING INTERESTS**

6.1. The contractor must take all the necessary measures to prevent any situation of conflict of interest or *professional conflicting interest*.

6.2. The contractor must notify the contracting authority in writing as soon as possible of any situation that could constitute a *conflict of interest* or a *professional conflicting interest* during the *performance of the contract*. The contractor must immediately take action to rectify the situation.

The contracting authority may do any of the following:

- (a) verify that the contractor's action is appropriate;
- (b) require the contractor to take further action within a specified deadline.

6.3. 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; and,
- (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.

## **ARTICLE II.7 – CONFIDENTIALITY**

7.1. 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.

7.1.1 Each party must:

- a) not use *confidential information* or *documents* for any purpose other than fulfilling its obligations under the contract without prior written agreement of the other party;

- b) ensure the protection of such *confidential information* and documents with the same level of protection it uses to protect its own *confidential information*, and in case with due diligence; and,
- c) not disclose directly or indirectly confidential information and documents to third parties without prior written agreement of the other party.

7.2. These confidentiality obligations 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 party disclosing party agrees to release the receiving 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; and,
- c) the disclosure of the confidential information is required by law.

7.3. 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*, a commitment that they will comply with this Article. At the request of the contracting authority, the contractor must provide a document providing the evidence of this commitment.

## **ARTICLE II.8 – PROCESSING OF PERSONAL DATA**

8.1. The contractor must 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 indicated in Article 7 of the special conditions.

8.2. 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.

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

8.4. The contractor must adopt appropriate technical and organisational security measures giving due regard to the risks inherent in the processing and to the nature of the personal data concerned in order to:

- a) prevent any unauthorised person from gaining access to computer systems processing personal data, and especially:
  - (i) unauthorised reading, copying, alteration or removal of storage media;
  - (ii) unauthorised data inputting, as well as any unauthorised disclosure, alteration or erasure of stored personal data;
  - (iii) unauthorised use of data-processing systems by means of data transmission facilities;
- b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
- c) record which personal data have been communicated, when and to whom;

- d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting authority;
- e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation; and,
- f) design its organisational structure in such a way that it meets data protection requirements.

## **ARTICLE II.9 – SUBCONTRACTING**

9.1. The contractor must not subcontract and have the contract performed by third parties beyond the third parties already mentioned in its tender without prior written authorisation from the contracting authority.

9.2. 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*.

9.3. The contractor must ensure that the subcontract does not affect rights of to the contracting authority under this contract, particularly those under Articles II.7, II.12 and II.21 of the general conditions.

9.4. The contracting authority may request the contractor to replace a subcontractor found to be in a situation provided for in points (d) and (e) of Article II.17.1.

## **ARTICLE II.10 – AMENDMENTS**

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

10.2. 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.

## **ARTICLE II.11 – ASSIGNMENT**

11.1. 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.

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

## **ARTICLE II.12 – INTELLECTUAL PROPERTY RIGHTS**

12.1. Ownership of the rights in the results

The School acquires irrevocably worldwide ownership of the results and of all intellectual property rights under the contract. The intellectual property rights so acquired include any rights, such as copyright and other intellectual or industrial property rights, to any of the results and to all technological solutions and information created or produced by the contractor or by its subcontractor in performance of the contract. The contracting authority may exploit and use the acquired rights as stipulated in this contract. The Union acquires all the rights from the moment the contracting authority approves the results delivered by the contractor. Such delivery and approval are deemed to constitute an effective assignment of rights from the contractor to the School.

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

#### 12.2. Licensing rights on pre-existing materials

Unless provided otherwise in the special conditions, the Union does 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 Union, which may use the pre-existing materials for all the modes of exploitation set out in this contract. All pre-existing rights are licensed to the Union from the moment the results are delivered and approved by the contracting authority.

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

The payment of the price as set out in the contract is deemed to also include any fees payable to the contractor in relation to the licensing of pre-existing rights to the Union, including for all forms of exploitation and of use of the results.

Where 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 adequate licence agreement. Such use by the contractor will not entail any transfer of rights to the contractor and is limited to the needs of this contract.

#### 12.3. Exclusive rights

The School acquires the following exclusive rights:

- a) reproduction: the right to authorise or prohibit direct or indirect, temporary or permanent reproduction of the results by any means (mechanical, digital or other) and in any form, in whole or in part;
- b) communication to the public: the exclusive right to authorise or prohibit any display, performance or communication to the public, by wire or wireless means, including the making available to the public of the results in such a way that members of the public may access them from a place and at a time individually chosen by them; this right also includes the communication and broadcasting by cable or by satellite;
- c) distribution: the exclusive right to authorise or prohibit any form of distribution of results or copies of the results to the public, by sale or otherwise;
- d) rental: the exclusive right to authorise or prohibit rental or lending of the results or of copies of the results;
- e) adaptation: the exclusive right to authorise or prohibit any modification of the results;
- f) translation: the exclusive right to authorise or prohibit any translation, adaptation, arrangement, creation of derivative works based on the results, and any other alteration of the results, subject to the respect of moral rights of authors, where applicable;
- g) where the results are or include a database: the exclusive right to authorise or prohibit the extraction of all or a substantial part of the contents of the database to another medium by any means or in any form; and the exclusive right to authorise or prohibit

- the re-utilization of all or a substantial part of the contents of the database by the distribution of copies, by renting, by on-line or other forms of transmission;
- h) where the results are or include a patentable subject-matter: the right to register them as a patent and to further exploit such patent to the fullest extent;
  - i) where the results are or include logos or subject-matter which could be registered as a trademark: the right to register such logo or subject-matter as a trademark and to further exploit and use it;
  - j) where the results are or include know-how: the right to use such know-how as is necessary to make use of the results to the full extent provided for by this 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 reuse of the documents in conformity with the Commission Decision of 12 December 2011 on the reuse of Commission documents (2011/833/EU), to the extent it is applicable and the documents fall within its scope and are not excluded by any of its provisions; for the sake of this provision, ‘reuse’ and ‘document’ have the meaning given to it by this Decision;
    - ii. the right to store and archive the results in line with the document management rules applicable to the contracting authority, including digitisation or converting the format for preservation or new use purposes;
  - l) where the results are or incorporate software, including source code, object code and, where relevant, documentation, preparatory materials and manuals, in addition to the other rights mentioned in this Article:
    - i. end-user rights, for all uses by the Union or by subcontractors which result from this contract and from the intention of the parties;
    - ii. the rights to decompile or disassemble the software;
  - m) to the extent that the contractor may invoke moral rights, the right for the contracting authority, except where otherwise provided in this 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 Union on all parts of the results, be they created by the contractor or consisting of pre-existing materials.

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

#### 12.4. Identification of pre-existing rights

When delivering the results, the contractor must warrant that, for any use that the contracting authority may envisage within the limits set in this contract, the results and the pre-existing material incorporated in the results are free of claims from creators or from any third parties and all the necessary pre-existing rights have been obtained or licensed.



To that effect, the contractor must establish a list of all pre-existing rights to the results of this 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 together with the invoice for payment of the balance at the latest.

#### 12.5. Evidence of granting of pre-existing rights

Upon request by the contracting authority, the contractor must provide evidence that it has the ownership or the right to use all the listed pre-existing rights, except for the rights owned or licensed by the Union. The contracting authority may request this evidence even after the end of this contract.

This evidence may refer, for example, to rights to: parts of other documents, images, graphs, fonts, tables, data, software, technical inventions, know-how, IT development tools, routines, subroutines or other programs ('background technology'), concepts, designs, installations or pieces of art, data, source or background materials or any other parts of external origin.

This evidence must include, as appropriate:

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

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

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

#### 12.6. Quotation of works in the result

In the result, the contractor must clearly point out all quotations of existing works. The complete reference should include as appropriate, the following: name of the author, title of the work, date and place of publication, date of creation, address of publication on the internet, number, volume and other information that allows the origin to be easily identified.

#### 12.7. Moral rights of creators

By delivering the results, the contractor warrants that the creators will not object to the following on the basis of their moral rights under copyright:

- a) that their names be mentioned or not mentioned when the results are presented to the public;
- b) that the results be divulged or not after they have been delivered in their final version to the contracting authority;
- c) that the results be adapted, provided that this is done in a manner which is not prejudicial to the creator's honour or reputation.

If moral rights on parts of the results protected by copyright may exist, the contractor must obtain the consent of creators regarding the granting or waiver of the relevant moral rights in accordance with the applicable legal provisions and be ready to provide documentary evidence upon request.

#### 12.8. 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.

#### 12.9. 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 Union. All rights reserved. Certain parts are licensed under conditions to the EU’, or with any other equivalent disclaimer as the contracting authority may consider best appropriate, or as the parties may agree on a case-by-case basis. This does not apply where inserting such reference would be impossible, notably for practical reasons.

#### 12.10. Visibility of Union funding and disclaimer

When making use of the results, the contractor must declare that they have been produced under a contract with the Union and that the opinions expressed are those of the contractor only and do not represent the contracting authority’s official position. The contracting authority may waive this obligation in writing or provide the text of the disclaimer.

### **ARTICLE II.13 – FORCE MAJEURE**

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

13.2. 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.

13.3. The parties must take all the necessary measures to limit any damage due to force majeure.

### **ARTICLE II.14 – LIQUIDATED DAMAGES**

#### 14.1. Delay in delivery

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

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

where

V is the price of the relevant purchase or deliverable or result or, failing that, the price specified in Article I.4.1. of the special conditions;  
d is the duration specified for delivery of the relevant purchase or deliverable or result or, failing that, the duration of performance of the contract specified in Article I.3.3. expressed in days.

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

#### 14.2. Procedure

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

The contractor has 30 days following the date of receipt to submit observations. Failing that, the decision becomes enforceable the day after the time limit for submitting observations has elapsed.

If the contractor submits observations, the contracting authority, taking into account the relevant observations, must notify the contractor:

- (a) of the withdrawal of its intention to apply liquidated damages; or
- (b) of its final decision to apply liquidated damages and the corresponding amount.

#### 14.4. Nature of liquidated damages

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

#### 14.5. Claims and liability

Any claim for liquidated damages does not affect the contractor's actual or potential liability or the contracting authority's rights under Article II.14 of the general conditions.

### **ARTICLE II.15 – REDUCTION IN PRICE**

#### 15.1. Quality standards

14.1.1. If the contractor fails to provide the service in accordance with the contract ('unperformed obligations') or if it fails to provide the service 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 of the special conditions after the contractor has submitted the required additional information, correction or new version.

14.1.2. A reduction in price may be imposed together with liquidated damages under the conditions of Article II.13 of the general conditions.

#### 15.2. Procedure

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

15.2.2. The contractor has 30 (thirty) 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.

15.2.3. If the contractor submits observations, the contracting authority, taking into account the relevant observations, must notify the contractor:

- (a) of the withdrawal of its intention to reduce payment; or
- (b) of its final decision to reduce payment and the corresponding amount.

### 15.3. Claims and liability

15.3.1. Any reduction in price does not affect the contractor's actual or potential liability or the contracting authority's rights under Article II.13 of the general conditions.

## **ARTICLE II.16 – SUSPENSION OF THE PERFORMANCE OF THE CONTRACT**

### 16.1. Suspension by the contractor

16.1.1. If the contractor is affected by force majeure, it may suspend the performance of the contract. The contractor must immediately notify the contracting authority of the suspension. The notification must include a description of the force majeure and state when the contractor expects to resume the performance of the contract.

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

### 16.2. Suspension by the contracting authority

16.2.1. The contracting authority may suspend the performance of the contract or any part of it:

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

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

The contracting authority must notify the contractor as soon as possible whether:

- a) it is lifting the suspension; or
- b) it intends to terminate the contract under Article II.16.1(f) or (j).

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

## **ARTICLE II.17 – TERMINATION OF THE CONTRACT**

17.1. 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 15 (fifteen) days of the scheduled date and the contracting authority considers the new date proposed, if any, unacceptable;
- b) if the contractor is unable, through its own fault, to obtain any permit or licence required for *performance of the contract*;
- c) if the contractor does not perform the contract in accordance with the tender specifications or is in breach of 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 106(1) of the Financial Regulation;
- e) if the contractor or any *related person* is subject to any of the situations provided for in points (c) to (f) of Article 106(1) or to Article 106(2) of the Financial Regulation;
- f) if the procedure for awarding the contract or the *performance of the contract* prove to have been subject to *substantial errors, irregularities or fraud*;
- g) if the contractor does not comply with applicable obligations under environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU;
- h) if the contractor is in a situation that could constitute a *conflict of interest* or a *professional conflicting interest* as referred to in Article II.5 of the general conditions;
- 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; and,
- 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.

## 17.2. Grounds for termination by the contractor

The contractor may terminate the contract if:

- a) it has evidence that the contracting authority has committed *substantial errors, irregularities or fraud* in the procedure for awarding the contract or the *performance of the contract*; and,
- b) the contracting authority fails to comply with its obligations, in particular the obligation to provide the information needed for the contractor to perform the contract as provided for in the tender specifications.

## 17.3. Procedure for termination

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

17.3.2. The other party has 30 (thirty) days following the date of receipt to submit observations, including the measures it has taken to continue fulfilling its contractual obligations. Failing that, the decision to terminate becomes enforceable the day after the time limit for submitting observations has elapsed.

17.3.3. If the other party submits observations, the party intending to terminate must *formally notify* it either of the withdrawal of its intention to terminate or of its final decision to terminate.

17.3.4. In the cases referred to in points (a) to (d) and (g) to (i) of Article II.16.1 and in Article II.16.2 of the general conditions, the date on which the termination takes effect must be specified in the *formal notification*.

17.3.5. In the cases referred to in points (e), (f) and (j) of Article II.16.1, the termination takes effect on the day following the date on which the contractor receives *notification* of termination.

17.3.6. 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 plan is already detailed in other contractual documents or in the tender specifications. The contractor must provide such assistance at no additional cost, except if it can demonstrate that it requires substantial additional resources or means, in which case it must provide an estimate of the costs involved and the parties will negotiate an arrangement in good faith.

#### 17.4. Effects of termination

17.4.1. The contractor is liable for damage incurred by the contracting authority as a result of the termination of the contract including the cost of appointing another contractor to provide or complete the services, unless the damage was caused by the situation specified in Article II.16.1 (j) or in Article II.16.2 of the general conditions. The contracting authority may claim compensation for such damage.

17.4.2. 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.16.2 of the general conditions.

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

17.4.4. Within 60 (sixty) 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.

17.4.5. 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) or (g) of Article II.17.1, under the conditions set out in Article II.9 of the general conditions.

## **ARTICLE II.18 – REPORTING AND PAYMENTS**

### 18.1. Date of payment

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

### 18.2. Currency

17.2.1. The contract shall be in euros.

17.2.2. Payments shall be executed in euros.

### 18.3. Costs of transfer

18.3.1. 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, and,
- c) costs for repeated transfer caused by one of the parties shall be borne by the party causing repetition of the transfer.

### 18.4. Invoices and Value Added Tax

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

18.4.2. 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.

18.4.3. 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.

18.4.4. 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.

### 18.5. Performance guarantee

18.5.1. Performance guarantee 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.

17.5.2. Where, in accordance with Article 5 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; and,
- b) the guarantor stands as first-call guarantor and does not require the contracting authority to have recourse against the principal debtor (the contractor).

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

#### 18.6. Interim payments and payment of the balance

18.6.1. 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 5 of the special conditions or in the tender specifications.

18.6.2. The contractor shall submit an invoice for payment of the balance within 60 (sixty) days following the end of the period referred to in Article 3 of the special conditions, accompanied by a final progress report or any other documents provided for in Article 5 of the special conditions or in the tender specifications.

18.6.3. Upon receipt, the contracting authority shall pay the amount due as interim or final payment, within the periods specified in Article II.4 of the general conditions, provided the invoice and documents have been approved. 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.

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

#### 18.7. Suspension of the time allowed for payment

18.7.1. The contracting authority may suspend the payment periods specified in Article 5 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.

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

18.7.3. 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 (2) months, the contractor may request the contracting authority to justify the continued suspension.

18.7.4. 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 II.16.3. of the general conditions.

#### 18.8. Interest on late payment

18.8.1. On expiry of the payment periods specified in Article 5 of the special conditions, and without prejudice to Article II.15.2 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*.

18.8.2. The suspension of the payment period in accordance with Article II.15.2 of the general conditions may not be considered as a late payment.

18.8.3. 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.

18.8.4. 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 (2) months of receiving late payment.

### **ARTICLE II.19 – PRICE REVISION**

19.1. If a price revision index is provided in Article I.4 of the special conditions, this Article applies to it.

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

19.3. 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.

19.4. A party may request a price revision in writing no later than three (3) months before the anniversary date of entry into force of the contract. The other party must acknowledge the request within fourteen (14) days of receipt.

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

19.6. The price revision is calculated using the following formula:

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

Where:

*Ar* = total revised amount;

*A<sub>0</sub>* = total amount of the initial tender;  
*I<sub>0</sub>* = index for the month in which the contract enters into force;  
*I<sub>r</sub>* = index for the month in which the request to revise prices is received

## **ARTICLE II.20 – RECOVERY**

20.1 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.

20.2 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 II.17.8 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.

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

## **ARTICLE II.21 – CHECKS AND AUDITS**

21.1 The contracting authority and the European Anti-Fraud Office 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 other outside body authorised to do so on their behalf.

21.1.1. Such checks and audits may be initiated at any moment during the performance of the contract and up to five years starting from the payment of the balance.

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

21.2. 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 (5) years starting from the payment of the balance.

21.3. The contractor must grant the contracting authority's staff and outside personnel authorised by the contracting authority the appropriate right of access to sites and premises where the contract is performed and to all the information, including information in electronic format, needed to conduct such checks and audits. The contractor must ensure that the information is readily available at the moment of the check or audit and, if so requested, that information is handed over in an appropriate form.

21.4. On the basis of the findings made during the audit, a provisional report is drawn up. The contracting authority or its authorised representative must send it to the contractor, who has thirty (30) days following the date of receipt to submit observations. The contractor must receive the final report within sixty (60) days following the expiry of that deadline to submit observations.

21.4.1. On the basis of the final audit findings, the contracting authority may recover all or part of the payments made in accordance with Article II.23 and may take any other measure which it considers necessary.

21.5. 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 (EC) No 883/2013 of the European Parliament and the Council of 11 September 2013 concerning investigation 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.

21.5.1. The investigations may be carried out at any moment during the provision of the services and up to five (5) years starting from the payment of the balance.

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