



Schola Europaea

FRAMEWORK CONTRACT FOR SERVICES

REFERENCE: N° BSGEE 2022-017

1. [Name of the school] [{"abbreviation"}] (“the contracting authority”), with its principal address at [Full official address], legally represented by its Authorizing Officer [forename, surname, function, department of authorising officer],

of the one part and

2. [Full official name]

[Official legal form]

[Statutory registration number or ID or passport number]

[Full official address]

[VAT registration number]

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

[For joint tenders, repeat these data as many times as there are contractors and continue numbering]

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

on the other part,

HAVE AGREED

to the **special conditions**, the **general conditions for framework contracts** for services and the following annexes:

Annex I – Tender specifications (reference N° BSGEE 2022-017)

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

ANNEX III - Data protection agreement

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

This FWC sets out:

1. the procedure by which the contracting authority may order services from the contractor;
2. the provisions that apply to any specific contract which the contracting authority and the contractor may conclude under this FWC; and
3. the obligations of the parties during and after the duration of this FWC.

All documents issued by the contractor (end-user agreements, general terms and conditions, etc.) except its tender are held inapplicable, unless explicitly mentioned in the special conditions of this FWC. In all circumstances, in the event of contradiction between this FWC and documents issued by the contractor, this FWC prevails, regardless of any provision to the contrary in the contractor's documents.

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III . ANNEX III: DATA PROTECTION AGREEMENT

I. SPECIAL CONDITIONS

I.1. ORDER OF PRIORITY OF PROVISIONS

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

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

Any reference to specific contracts applies also to order forms.

I.2. SUBJECT MATTER

The subject matter of the FWC is the provision of sustainable school trips' organisation for the different European schools located in the EU while at the same time taking into account sustainable development concerns.

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

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

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

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

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

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

I.3.5 Renewal of the FWC

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

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

I.4.1. Appointment of the contractor

The contracting authority appoints the contractor for a single FWC.

I.4.2. Period of provision of the services

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

I.4.3. Implementation of single FWC

The contracting authority orders services by sending the contractor a specific contract by e-mail.

Within 5 working days, the contractor must either:

- send back to the contracting authority the specific contract duly signed and dated by e-mail; or
- send an explanation of why it cannot accept the order.

If the contractor repeatedly refuses to sign the specific contracts or repeatedly fails to send them back on time, the contractor may be considered in breach of its obligations under this FWC as set out in Article II.18.1 (c).

I.5. PRICES

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

The maximum amount covering all purchases under this FWC, including all renewals is EUR 29.500.000,00 (twenty nine million five hundred thousand). However, this does not bind the contracting authority to purchase for the maximum amount.

I.5.2. Price revision index

Price revision is determined by the formula set out in Article II.20 and using the trend in the harmonised indices of consumer prices (HICP) Euro area published at <http://ec.europa.eu/eurostat/web/hicp/data/database> under HICP (2015 = 100) - monthly data (index) (prc_hicp_midx).]

I.5.3. Reimbursement of expenses

Reimbursement of expenses is not applicable to this FWC.

I.6. PAYMENT ARRANGEMENTS

I.6.1. Pre-financing

Following signature of the specific contract/purchase order by the last party and its receipt by the contracting authority, the contractor (or leader in the case of a joint tender) may claim a pre-financing payment of 100 % of the price referred to in the relevant specific contract/purchase order. The contractor (or leader in the case of a joint tender) must send the contracting authority an invoice by e-mail for the pre-financing payment.

First purchase order and first invoice

The School shall issue a first purchase order for the stay. The agency must confirm the order within 5 days. A first payment of 50% of the sum will be executed upon reception of a first invoice.

Second purchase order and second invoice

The School shall issue a second purchase order for the stay and a second payment of 50% of the sum will be executed upon reception of a second invoice.

I.6.2. Interim payment

Interim payment is not applicable to this contract.

I.6.3. Payment of the balance

N/A

I.6.4. Performance guarantee

Performance guarantee is not applicable to this FWC.

I.6.5. Retention money guarantee

Retention money guarantee is not applicable to this FWC.

I.6.6. Invoicing

VAT application or exemption is subject to national legislation and is different in each Member State.

The contractor (or lead contractor in the case of a joint tender) shall submit invoices by e-mail to the [Functional Mail Box to be indicated], preferably in PDF format.

I.7. BANK ACCOUNT

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

Name of bank:

Full address of branch:

Exact denomination of account holder:

Full account number including bank codes:

IBAN code:

I.8. COMMUNICATION DETAILS

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

Contracting authority:

Contact European Schools

Acronym	Contact	Name and address	Email
ESBerg	Deputy Director for Finance and Administration	European School of Bergen – Netherlands Molenweidjtje 5 – 1862 BC Bergen SH	BER-DEPUTY-DIRECTOR-FINANCE-AND-ADMINISTRATION@eursc.eu
ESB1	Deputy Director for Finance and Administration	European School of Brussels 1 – Uccle & Berkendael - Belgium 2 sites: - 46, avenue du Vert Chasseur - 1180 Brussels - Rue de Berkendael 70 - 1190 Forest	UCC-DEPUTY-DIRECTOR-FINANCE-AND-ADMINISTRATION@eursc.eu
ESB2	Deputy Director for Finance and Administration	European School of Brussels 2 – Woluwe – Belgium	WOL-DEPUTY-DIRECTOR-FINANCE-AND-ADMINISTRATION@eursc.eu

		<ul style="list-style-type: none"> - Avenue Oscar Jespers 75, 1200 Brussels - Avenue du Bourget, 30,1130 Haren 	
ESB3	Deputy Director for Finance and Administration	European School of Brussels 3 – Ixelles - Belgium Boulevard du Triomphe, 135 - 1050 Brussels	IXL-DEPUTY-DIRECTOR-FINANCE-AND-ADMINISTRATION@eursc.eu
ESB4	Deputy Director for Finance and Administration	European School of Brussels 4 – Laeken - Belgium Drève Sainte-Anne 86, 1020 Brussels	LAE-DEPUTY-DIRECTOR-FINANCE-AND-ADMINISTRATION@eursc.eu
ESMol	Deputy Director for Finance and Administration	European School of Mol - Belgium Europawijk 100 - 2400 Mol	MOL-DEPUTY-DIRECTOR-FINANCE-AND-ADMINISTRATION@eursc.eu
ESL1	Deputy Director for Finance and Administration	European School of Luxembourg – Luxembourg 23 Boulevard Konrad Adenauer - L-1115 Luxembourg	LUX-DEPUTY-DIRECTOR-FINANCE-AND-ADMINISTRATION@eursc.eu
ESL2	Deputy Director for Finance and Administration	European School of Mamer – Luxembourg 6, rue Gaston Thorn L-8268 Bertrange	MAM-DEPUTY-DIRECTOR-FINANCE-AND-ADMINISTRATION@eursc.eu
OSGES	Procurement cell	Office of the Secretary-General of the European Schools Rue de la Science, 23 - Brussels	OSG-PROCUREMENT@eursc.eu
ALI	Deputy Director for Finance and Administration	European School of Alicante – Spain Avda. Locutor Vicente Hipólito s/n E-03540 Alicante	ALI-DEPUTY-DIRECTOR-FINANCE-AND-ADMINISTRATION@eursc.eu
FRA	Deputy Director for Finance and Administration	European School of Frankfurt – Germany Praunheimer Weg 126 D-60439 Frankfurt am Main	FRA-DEPUTY-DIRECTOR-FINANCE-AND-ADMINISTRATION@eursc.eu
KAR	Deputy Director for Finance and Administration	European School of Karlsruhe - Germany	KAR-DEPUTY-DIRECTOR-FINANCE-AND-ADMINISTRATION@eursc.eu

		Albert-Schweitzer-Straße 1 76139 KARLSRUHE	
MUN	Deputy Director for Finance and Administration	European School of München – Germany Elise-Aulinger-Straße 21 81739 München	MUN-DEPUTY-DIRECTOR-FINANCE-AND-ADMINISTRATION@eursc.eu
VAR	Deputy Director for Finance and Administration	European School of Varese – Italy Via Montello, 118 21100 Varese	VAR-DEPUTY-DIRECTOR-FINANCE-AND-ADMINISTRATION@eursc.eu

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

[*Full name*]

[*Function*]

[*Company name*]

[*Full official address*]

E-mail: [*complete*]

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

I.9. PROCESSING OF PERSONAL DATA

I.9.1 Processing of personal data by the contracting authority

For the purpose of Article II.9.1, the data controller is the Director of the School for the European Schools

I.9.2 Processing of personal data by the contractor

For the purpose of Article II.9.2,

- (a) the subject matter and purpose of the processing of personal data by the contractor are the provision of sustainable school trips for the European Schools ;

- (b) The localisation of and access to the personal data processed by the contractor shall comply with the following:
- i. the personal data shall only be processed within the territory of the European Union and the European Economic Area and will not leave that territory;
 - ii. the data shall only be held in data centres located within the territory of the European Union and the European Economic Area;
 - iii. no access shall be given to such data outside of the European Union and the European Economic Area
 - iv. the contractor may not change the location of data processing without the prior written authorisation of the contracting authority;
 - v. any transfer of personal data under the FWC to third countries or international organisations shall fully comply with the requirements laid down in Regulation (EU)2016/679¹

I.10. EXPLOITATION OF THE RESULTS OF THE FWC

This clause is not applicable to this FWC.

I.10.1. Detailed list of modes of exploitation of the results

N/A

I.10.2. Licence or transfer of pre-existing rights

N/A

I.10.3. Provision of list of pre-existing rights and documentary evidence

I.11. TERMINATION BY EITHER PARTY

Either party may terminate the FWC and/or the FWC and specific contracts by sending *formal notification* to the other party with six months written notice.

If the FWC or a specific contract is terminated:

- (a) neither party is entitled to compensation;

¹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119, 4.5.2016, p. 1–88 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R0679>

- (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.18.4 apply.

I.12. APPLICABLE LAW AND SETTLEMENT OF DISPUTES

I.12.1 The contract shall be governed by:

- a. The Luxembourg Convention defining 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
- c. The Regulation 2018/1046 of 18 July 2018 applicable to the general budget of the Union

The FWC 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.

I.12.2 The courts of the jurisdiction of the city where the responsible authorising officer is employed have exclusive jurisdiction over any dispute regarding the interpretation, application or validity of the FWC.

I.13. INTER SCHOOL FWC

I.13.1 This FWC is inter school. The lead contracting authority acts on its own behalf and on behalf of the bodies listed in the title of the FWC as the contracting authorities, which provided the lead contracting authority with a power of attorney before FWC signature. The lead contracting authority signs the FWC and any amendments on behalf of itself and of all other contracting authorities.

I.13.2 Each contracting authority is responsible for the particular specific contracts it awards.

I.13.3 If the contractor has a complaint about the conclusion, performance or termination of a specific contract, the contractor remains bound by its obligations under the FWC and other specific contracts.

I.14. OTHER SPECIAL CONDITIONS

N/A

SIGNATURES

For the contractor,

[*Company name/forename/surname/position*]

Signature: _____

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

In duplicate in English.

For the contracting authority,

[*forename/surname/position*]

Signature: _____

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

II. GENERAL CONDITIONS FOR THE FRAMEWORK CONTRACT FOR SERVICES

II.1. DEFINITIONS

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

‘Back office’: the internal system(s) used by the parties to process electronic invoices;

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

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

‘Conflict of interest’: a situation where the impartial and objective *implementation of the FWC* by the contractor is compromised for reasons involving family, emotional life, political or national affinity, economic interest, any other direct or indirect personal interest, or any other shared interest with the contracting authority or any third party related to the subject matter of the FWC;

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

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

‘Implementation of the FWC’: the purchase of services envisaged in the FWC through the signature and *performance of specific contracts*;

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

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

‘Order form’: a simplified form of specific contract by which the contracting authority orders services under this FWC;

‘Performance of a specific 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 implement the FWC;

‘Pre-existing material’: any material, document, technology or know-how which exists prior to the contractor using it for the production of a *result* in the *implementation of the FWC*;

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

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

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

‘Request for services’: a document from the contracting authority requesting that the contractors in a multiple FWC with re-opening of competition provide a specific tender for services whose terms are not entirely defined under the FWC;

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

‘Specific contract’: a contract implementing the FWC and specifying details of a service to be provided;

II.2. ROLES AND RESPONSIBILITIES IN THE EVENT OF A JOINT TENDER

In the event of a joint tender submitted by a group of economic operators and where the group does not have legal personality or legal capacity, one member of the group is appointed as leader of the group.

II.3. SEVERABILITY

Each provision of this FWC is severable and distinct from the others. If a provision is or becomes illegal, invalid or unenforceable to any extent, it must be severed from the remainder of the FWC. This does not affect the legality, validity or enforceability of any other provisions of the FWC, which continue in full force and effect. The illegal, invalid or unenforceable provision must be replaced by a legal, valid and enforceable substitute provision which corresponds as closely as possible with the actual intent of the parties under the illegal, invalid or unenforceable provision. The replacement of such a provision must be made in accordance with Article II.11. The FWC must be interpreted as if it had contained the substitute provision as from its entry into force.

II.4. PROVISION OF SERVICES

- II.4.1** Signature of the FWC does not guarantee any actual purchase. The contracting authority is bound only by specific contracts implementing the FWC.
- II.4.2** The contractor must provide services of high quality standards, in accordance with the state of the art in the industry and the provisions of this FWC, in particular the tender specifications and the terms of its tender. Where the European Schools have the right to make modifications to the *results*, they must be delivered in a format and with the necessary information which effectively allow such modifications to be made in a convenient manner.
- II.4.3** The contractor must comply with the minimum requirements provided for in the tender specifications. This includes compliance with applicable obligations under environmental, social and labour law established by Union law, national law and collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU², compliance with data protection obligations resulting from Regulation (EU) 2016/679³.
- II.4.4** The contractor must obtain any permit or licence required in the State where the services are to be provided.
- II.4.5** All periods specified in the FWC are calculated in calendar days, unless otherwise specified.
- II.4.6** The contractor must not present itself as a representative of the contracting authority and must inform third parties that it is not a staff member of the European Schools.

² OJ L 94 of 28.03.2014, p. 65

³ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, OJ L 119, 4.5.2016, p. 1, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.119.01.0001.01.ENG

II.4.7 The contractor is responsible for the *personnel* who carry out the services and exercises its authority over its *personnel* without interference by the contracting authority. The contractor must inform its *personnel* that:

- (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.

II.4.8 The contractor must ensure that the *personnel* implementing the FWC and any future replacement personnel possess the professional qualifications and experience required to provide the services, as the case may be on the basis of the selection criteria set out in the tender specifications.

II.4.9 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*.

II.4.10 The contractor must record and report to the contracting authority any problem that affects its **ability** to provide the services. The report must describe the problem, state when it started and what action the contractor is taking to resolve it.

II.4.11 The contractor must immediately inform the contracting authority of any changes in the exclusion situations as declared, according to Article 137 (1) of Regulation (EU) 2018/1046⁴.

II.5. COMMUNICATION BETWEEN THE PARTIES

II.5.1. Form and means of communication

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

- (a) be made in writing in paper or electronic format in the language of the contract;
- (b) bear the FWC number and, if applicable, the specific contract number;
- (c) be made using the relevant communication details set out in Article I.8; and
- (d) be sent by mail, email.

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

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

II.5.2. Date of communications by mail and email

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

E-mail is deemed to have been received by the receiving party on the day of dispatch of that e-mail, provided that it is sent to the e-mail address indicated in Article I.8. The sending party must be able to prove the date of dispatch. In the event that the sending party receives a non-delivery report, it must make every effort to ensure that the other party actually receives the communication by email or mail.

Mail sent to the contracting authority is deemed to have been received by the contracting authority on the date on which the department responsible referred to in Article I.8 registers it.

Formal notifications are considered to have been received by the receiving party on the date of receipt indicated in the proof received by the sending party that the message was delivered to the specified recipient.

II.6. LIABILITY

- II.6.1** The contracting authority is not liable for any damage or loss caused by the contractor, including any damage or loss to third parties during or as a consequence of *implementation of the FWC*.
- II.6.2** If required by the relevant applicable legislation, the contractor must take out an insurance policy against risks and damage or loss relating to the *implementation of the FWC*. It must also take out supplementary insurance as reasonably required by standard practice in the industry. Upon request, the contractor must provide evidence of insurance coverage to the contracting authority.
- II.6.3** The contractor is liable for any loss or damage caused to the contracting authority during or as a consequence of *implementation of the FWC*, including in the event of subcontracting, but only up to an amount not exceeding three times the total amount of the relevant specific contract. However, if the damage or loss is caused by the gross negligence or wilful misconduct of the contractor or of its *personnel* or subcontractors, as well as in the case of an action brought against the contracting authority by a third party for breach of its intellectual property rights, the contractor is liable for the whole amount of the damage or loss.
- II.6.4** If a third party brings any action against the contracting authority in connection with the *implementation of the FWC*, 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 *implementation of the FWC*, Article II.6.3 applies.

- II.6.5** If the contractor is composed of two or more economic operators (i.e. who submitted a joint tender), they are all jointly and severally liable to the contracting authority for the *implementation of the FWC*.
- II.6.6** The contracting authority is not liable for any loss or damage caused to the contractor during or as a consequence of *implementation of the FWC*, unless the loss or damage was caused by wilful misconduct or gross negligence of the contracting authority.

II.7. CONFLICT OF INTEREST AND PROFESSIONAL CONFLICTING INTERESTS

- II.7.1** The contractor must take all the necessary measures to prevent any situation of *conflict of interest* or *professional conflicting interest*.
- II.7.2** The contractor must *notify* the contracting authority in writing as soon as possible of any situation that could constitute a *conflict of interest* or a *professional conflicting interest* during the *implementation of the FWC*. The contractor must immediately take action to rectify the situation.

The contracting authority may do any of the following:

- (a) verify that the contractor's action is appropriate;
- (b) require the contractor to take further action within a specified deadline;
- (c) decide not to award a specific contract to the contractor.

- II.7.3** The contractor must pass on all the relevant obligations in writing to:

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

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

II.8. CONFIDENTIALITY

- II.8.1.** The contracting authority and the contractor must treat with confidentiality any information or documents, in any format, disclosed in writing or orally, relating to the *implementation of the FWC* and identified in writing as confidential.

- II.8.2.** Each party must:

- (a) not use *confidential information or documents* for any purpose other than to perform its obligations under the FWC or a specific contract without the prior written agreement of the other party;
- (b) ensure the protection of such *confidential information or documents* with the same level of protection as its own *confidential information or documents* and in any case with due diligence;

- (c) not disclose, directly or indirectly, *confidential information or documents* to third parties without the prior written agreement of the other party.

II.8.3 The confidentiality obligations set out in this Article are binding on the contracting authority and the contractor during the *implementation of the FWC* and for as long as the information or documents remain confidential unless:

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

II.8.4 The contractor must obtain from any natural person with the power to represent it or take decisions on its behalf, as well as from third parties involved in the *implementation of the FWC* a commitment that they will comply with this Article. At the request of the contracting authority, the contractor must provide a document providing evidence of this commitment.

II.9. PROCESSING OF PERSONAL DATA

Please refer to ANNEX III - data protection agreement

II.10. SUBCONTRACTING

II.10.1 The contractor must not subcontract and have the FWC implemented by third parties beyond the third parties already mentioned in its tender without prior written authorisation from the contracting authority.

II.10.2 Even if the contracting authority authorises subcontracting, the contractor remains bound by its contractual obligations and is solely responsible for the *implementation of the FWC*.

II.10.3 The contractor must ensure that the subcontract does not affect the rights of the contracting authority under this FWC, particularly those under Articles II.8, II.13 and II.24.

II.10.4 The contracting authority may request the contractor to replace a subcontractor found to be in a situation provided for in points (d) and (e) of Article II.18.1.

II.11. AMENDMENTS

II.11.1 Any amendment to the FWC or a specific contract must be made in writing before all contractual obligations have been fulfilled. A specific contract does not constitute an amendment to the FWC.

II.11.2 Any amendment must not make changes to the FWC or a specific contract that might alter the initial conditions of the procurement procedure or result in unequal treatment of tenderers or contractors.

II.12. ASSIGNMENT

- II.12.1** The contractor must not assign any of the rights and obligations arising from the FWC, including claims for payments or factoring, without prior written authorisation from the contracting authority. In such cases, the contractor must provide the contracting authority with the identity of the intended assignee.
- II.12.2** Any right or obligation assigned by the contractor without authorisation is not enforceable against the contracting authority.

II.13. INTELLECTUAL PROPERTY RIGHTS

II.13.1. Ownership of the rights in the results

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

The intellectual property rights so acquired include any rights, such as copyright and other intellectual or industrial property rights, to any of the *results* and in all technological solutions and information created or produced by the contractor or by its subcontractor in *implementation of the FWC*. The contracting authority may exploit and use the acquired rights as stipulated in this FWC. The contracting authority acquires all the rights as from the moment the contractor has created the *results*.

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

II.13.2. Licensing rights on pre-existing materials

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

The contractor licenses the *pre-existing rights* on a royalty-free, non-exclusive and irrevocable basis to the contracting authority, which may use the *pre-existing materials* for all the modes of exploitation set out in this FWC or in specific contracts. Unless otherwise agreed, the licence is non-transferable and cannot be sub-licensed, except as provided hereafter:

- (a) the *pre-existing rights* can be sub-licensed by the contracting authority to persons and entities working for it or cooperating with it, including contractors and subcontractors, whether legal or natural persons, but only for the purpose of their mission for the contracting authority;
- (b) if the *result* is a "document" such as a report or a study, and it is meant to be published, the existence of *pre-existing materials* in the *result* may not prevent the publication of the document, its translation or its "reuse", it being understood however that the "reuse" may only be made of the *result* as a whole and not of the *pre-existing materials* taken separately from the *result*.

All *pre-existing rights* are licensed to the contracting authority from the moment the *results* are delivered and approved by the contracting authority.

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

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

Where *implementation of the FWC* requires that the contractor uses *pre-existing materials* belonging to the contracting authority, the contracting authority may request that the contractor signs an adequate licence agreement. Such use by the contractor will not entail any transfer of rights to the contractor and is limited to the needs of this FWC.

II.13.3. Exclusive rights

The contracting authority acquires the following exclusive rights:

- (a) reproduction: the right to authorise or prohibit direct or indirect, temporary or permanent reproduction of the *results* by any means (mechanical, digital or other) and in any form, in whole or in part;
- (b) communication to the public: the exclusive right to authorise or prohibit any display, performance or communication to the public, by wire or wireless means, including the making available to the public of the *results* in such a way that members of the public may access them from a place and at a time individually chosen by them; this also includes the communication on Internet and broadcasting by cable or by satellite;
- (c) distribution: the exclusive right to authorise or prohibit any form of distribution of *results* or copies of the *results* to the public, by sale or otherwise;
- (d) rental: the exclusive right to authorise or prohibit rental or lending of the *results* or of copies of the *results*;
- (e) adaptation: the exclusive right to authorise or prohibit any modification of the *results*;
- (f) translation: the exclusive right to authorise or prohibit any translation, adaptation, arrangement, creation of derivative works based on the *results*, and any other alteration of the *results*, subject to the respect of moral rights of authors, where applicable;
- (g) where the *results* are or include a database: the exclusive right to authorise or prohibit the extraction of all or a substantial part of the contents of the database to another medium by any means or in any form; and the exclusive right to authorise or prohibit the re-utilization of all or a substantial part of the contents of the database by the distribution of copies, by renting, by on-line or other forms of transmission;
- (h) where the *results* are or include a patentable subject-matter: the right to register them as a patent and to further exploit such patent to the fullest extent;
- (i) where the *results* are or include logos or subject-matter which could be registered as a trademark: the right to register such logo or subject-matter as a trademark and to further exploit and use it;
- (j) where the *results* are or include know-how: the right to use such know-how as is necessary to make use of the *results* to the full extent provided for by this FWC, and the right to make it available to contractors or subcontractors acting on behalf of the contracting authority, subject to their signing of adequate confidentiality undertakings where necessary;
- (k) where the *results* are documents:
 - (i) the right to authorise the reuse of the documents according to the conditions that it has defined;

- (ii) the right to store and archive the *results* in line with the document management rules applicable to the contracting authority, including digitisation or converting the format for preservation or new use purposes;
- (l) where the *results* are or incorporate software, including source code, object code and, where relevant, documentation, preparatory materials and manuals, in addition to the other rights mentioned in this Article:
 - (i) end-user rights, for all uses by the contracting authority or by subcontractors which result from this FWC and from the intention of the parties;
 - (ii) the rights to receive both the source code and the object code;
- (m) the right to license to third parties any of the exclusive rights or of the modes of exploitation set out in this FWC; however, for *pre-existing materials* which are only licensed to the contracting authority, the right to sub-license does not apply, except in the two cases foreseen by Article II.13.2.;
- (n) to the extent that the contractor may invoke moral rights, the right for the contracting authority, except where otherwise provided in this FWC, to publish the *results* with or without mentioning the *creator(s)*' name(s), and the right to decide when and whether the *results* may be disclosed and published.

The contractor warrants that the exclusive rights and the modes of exploitation may be exercised by the contracting authority on all parts of the *results*, be it via a transfer of ownership of the rights, on those parts which were specifically created by the contractor, or via a licence of the pre-existing rights, on those parts consisting of *pre-existing materials*.

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

II.13.4. Identification of pre-existing rights

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

To that effect, the contractor must establish a list of all *pre-existing rights* to the *results* of this FWC or parts thereof, including identification of the rights' owners. If there are no *pre-existing rights* to the *results*, the contractor must provide a declaration to that effect. The contractor must provide this list or declaration to the contracting authority together with the invoice for payment of the balance at the latest.

II.13.5. Evidence of granting of pre-existing rights

Upon request by the contracting authority, the contractor must, in addition to the list mentioned under Article II.13.4., provide evidence that it has the ownership or the right to use all the listed *pre-existing rights*, except for the rights owned or licensed by the contracting authority. The contracting authority may request this evidence even after the end of this FWC.

This provision also applies to image rights and sound recordings.

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

This evidence must include, as appropriate:

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

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

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

II.13.6. Quotation of works in the result

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

II.13.7. Moral rights of creators

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

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

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

II.13.8. Image rights and sound recordings

If natural persons appear in a *result* or their voice or any other private element is recorded in a recognisable manner, the contractor must obtain a statement by these persons (or, in the case of

minors, by the persons exercising parental authority) giving their permission for the described use of their image, voice or private element and, on request, submit a copy of the permission to the contracting authority. The contractor must take the necessary measures to obtain such consent in accordance with the applicable legal provisions.

II.13.9. Copyright notice for pre-existing rights

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

II.13.10. 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 contracting authority and that the opinions expressed are those of the contractor only and do not represent the contracting authority’s official position. The contracting authority may waive this obligation in writing or provide the text of the disclaimer.

II.14. FORCE MAJEURE

II.14.1 If a party is affected by *force majeure*, it must immediately *notify* the other party, stating the nature of the circumstances, their likely duration and foreseeable effects.

II.14.2 A party is not liable for any delay or failure to perform its obligations under the FWC if that delay or failure is a *result* of *force majeure*. If the contractor is unable to fulfil its contractual obligations owing to *force majeure*, it has the right to remuneration only for the services actually provided.

II.14.3 The parties must take all necessary measures to limit any damage due to *force majeure*.

II.15. LIQUIDATED DAMAGES

II.15.1. Delay in delivery

If the contractor fails to perform its contractual obligations within the applicable time limits set out in this FWC, 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*;

d is the duration specified in the relevant specific contract for delivery of the relevant purchase or deliverable or *result* or, failing that, the period between the date specified in Article I.4.2 and the date of delivery or performance specified in the relevant specific contract, expressed in days.

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

II.15.2. Procedure

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

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

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

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

II.15.3. Nature of liquidated damages

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

II.15.4. Claims and liability

Any claim for liquidated damages does not affect the contractor's actual or potential liability or the contracting authority's rights under Article II.18.

II.16. REDUCTION IN PRICE

II.16.1. Quality standards

If the contractor fails to provide the service in accordance with the FWC or a specific 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.6 after the contractor has submitted the required additional information, correction or new version.

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

II.16.2. Procedure

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

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

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

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

II.16.3. Claims and liability

Any reduction in price does not affect the contractor's actual or potential liability or the contracting authority's rights under Article II.18.

II.17. SUSPENSION OF THE IMPLEMENTATION OF THE FWC

II.17.1. Suspension by the contractor

If the contractor is affected by *force majeure*, it may suspend the provision of the services under a specific contract.

The contractor must immediately *notify* the contracting authority of the suspension. The *notification* must include a description of the *force majeure* and state when the contractor expects to resume the provision of services.

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

II.17.2. Suspension by the contracting authority

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

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

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

The contracting authority must *notify* the contractor as soon as the verification is completed whether:

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

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

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

II.18. TERMINATION OF THE FWC

II.18.1. Grounds for termination by the contracting authority

The contracting authority may terminate the FWC or any on-going specific contract in the following circumstances:

- (a) if provision of the services under an on-going specific contract has not actually started within 15 days of the scheduled date and the contracting authority considers that the new date proposed, if any, is unacceptable, taking into account Article II.11.2;
- (b) if the contractor is unable, through its own fault, to obtain any permit or licence required for *implementation of the FWC*;
- (c) if the contractor does not implement the FWC or perform the specific contract in accordance with the tender specifications or *request for service* or is in breach of another substantial contractual obligation or repeatedly refuses to sign specific contracts. Termination of three or more specific contracts in these circumstances also constitutes grounds for termination of the FWC;
- (d) if the contractor or any person that assumes unlimited liability for the debts of the contractor is in one of the situations provided for in points (a) and (b) of Article 136(1) of the Financial Regulation⁵;
- (e) if the contractor or any *related person* is in one of the situations provided for in points (c) to (h) of Article 136(1) or to Article 136(2) of the Financial Regulation;
- (f) if the procedure for awarding the FWC or the *implementation of the FWC* prove to have been subject to *irregularities, fraud or breach of obligations*;
- (g) if the contractor does not comply with applicable obligations under environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU;
- (h) if the contractor is in a situation that could constitute a *conflict of interest* or a *professional conflicting interest* as referred to in Article II.7;
- (i) if a change to the contractor's legal, financial, technical, organisational or ownership situation is likely to substantially affect the *implementation of the FWC* or substantially modify the conditions under which the FWC was initially awarded or a change regarding the exclusion situations listed in Article 136 of Regulation (EU) 2018/1046 that calls into question the decision to award the contract;
- (j) in the event of *force majeure*, where either resuming implementation is impossible or the necessary ensuing amendments to the FWC or a specific contract would mean that the tender specifications are no longer fulfilled or result in unequal treatment of tenderers or contractors;
- (k) if the needs of the contracting authority change and it no longer requires new services under the FWC; in such cases ongoing specific contracts remain unaffected;

⁵ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, OJ L 193 of 30.7.2018, p.1 <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1544791836334&uri=CELEX:32018R1046>

- (l) if the termination of the FWC with one or more of the contractors means that the multiple FWC with reopening of competition no longer has the minimum required level of competition;
- (m) if the contractor is in breach of the data protection obligations resulting from Article II.9.2;
- (n) if the contractor does not comply with the applicable data protection obligations resulting from Regulation (EU) 2016/679.

II.18.2. Grounds for termination by the contractor

The contractor may terminate the FWC or any on-going specific contract if the contracting authority fails to comply with its obligations, in particular the obligation to provide the information needed for the contractor to implement the FWC or to perform a specific contract as provided for in the tender specifications.

II.18.3. Procedure for termination

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

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

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

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

In the cases referred to in points (e), (f) and (j) of Article II.18.1, the termination takes effect on the day following the date on which the contractor receives *notification* of termination.

In addition, at the request of the contracting authority and regardless of the grounds for termination, the contractor must provide all necessary assistance, including information, documents and files, to allow the contracting authority to complete, continue or transfer the services to a new contractor or internally, without interruption or adverse effect on the quality or continuity of the services. The parties may agree to draw up a transition plan detailing the contractor's assistance unless such plan is already detailed in other contractual documents or in the tender specifications. The contractor must provide such assistance at no additional cost, except if it can demonstrate that it requires substantial additional resources or means, in which case it must provide an estimate of the costs involved and the parties will negotiate an arrangement in good faith.

II.18.4. Effects of termination

The contractor is liable for damage incurred by the contracting authority as a result of the termination of the FWC or a specific contract, including the additional cost of appointing and contracting another contractor to provide or complete the services, except if the damage is a result of a termination in accordance with Article II.18.1(j), (k) or (l) or Article II.18.2. The contracting authority may claim compensation for such damage.

The contractor is not entitled to compensation for any loss resulting from the termination of the FWC or a specific contract, including loss of anticipated profits, unless the loss was caused by the situation specified in Article II.18.2.

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

Within 60 days of the date of termination, the contractor must submit any report, deliverable or *result* and any invoice required for services that were provided before the date of termination.

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

II.19. INVOICES, VALUE ADDED TAX

II.19.1. Invoices and value added tax

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

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

VAT application or exemption is subject to national legislation and is different in each Member State.

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

II.20. PRICE REVISION

If a price revision index is provided in Article I.5.2, this Article applies to it.

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

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

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

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

The contracting authority purchases on the basis of the prices in force at the date on which the specific contract enters into force.

The price revision is calculated using the following formula:

$$Pr = Po \times \left(\frac{Ir}{Io} \right)$$

where: Pr = revised price;

Po = price in the tender;

Io = index for the month in which the FWC enters into force;

Ir = index for the month in which the request to revise prices is received.

II.21. PAYMENTS AND GUARANTEES

II.21.1. Date of payment

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

II.21.2. Currency

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

II.21.3. Conversion

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

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

http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm

II.21.4. Costs of transfer

The costs of the transfer are borne as follows:

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

II.21.5. Pre-financing, performance and money retention guarantees

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

- (a) the financial guarantee is provided by a bank or a financial institution approved by the contracting authority or, at the request of the contractor and with the agreement of the contracting authority, by a third party; and
- (b) the guarantee shall have the effect of making the bank or financial institution or the third party provide irrevocable collateral security, or stand as first-call guarantor of the contractor's obligations without requiring that the contracting authority has recourse against the principal debtor (the contractor).

The contractor bears the cost of providing such guarantee.

Pre-financing guarantees must remain in force until the pre-financing is cleared against interim payments or payment of the balance. Where the payment of the balance takes the form of a debit note, the pre-financing guarantee must remain in force for three months after the debit note is sent to the contractor. The contracting authority must release the guarantee within the following month.

Performance guarantees cover compliance with substantial contractual obligations until the contracting authority has given its final approval for the service. The performance guarantee must not exceed 10 % of the total price of the specific contract. The contracting authority must release the guarantee fully after final approval of the service, as provided for in the specific contract.

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

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

II.21.6. Interim payments and payment of the balance

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

The contractor (or leader in the case of a joint tender) must send an invoice for payment of the balance within 60 days of the end of the period of provision of the services, as provided for in Article I.6, in the tender specifications or in the specific contract.

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

Payment of the balance may take the form of recovery.

II.21.7. Suspension of the time allowed for payment

The contracting authority may suspend the payment periods specified in Article I.6 at any time by *notifying* the contractor (or leader in the case of a joint tender) that its invoice cannot be processed. The reasons the contracting authority may cite for not being able to process an invoice are:

- (a) because it does not comply with the FWC;
- (b) because the contractor has not produced the appropriate documents or deliverables; or
- (c) because the contracting authority has observations on the documents or deliverables submitted with the invoice.

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

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

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

II.21.8. Interest on late payment

On expiry of the payment periods specified in Article I.6, the contractor (or leader in the case of a joint tender) is entitled to interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in euros (the reference rate) plus eight points. The reference rate is the rate in force, as published in the C series of the *Official Journal of the European Union*, on the first day of the month in which the payment period ends.

Suspension of the payment period as provided for in Article II.21.7 is not considered as giving rise to late payment.

Interest on late payment covers the period running from the day following the due date for payment up to and including the date of payment as defined in Article II.21.1.

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

II.22. REIMBURSEMENTS

II.22.1 If provided for in the special conditions or in the tender specifications, the contracting authority must reimburse expenses directly connected with the provision of the services either when the contractor provides it with supporting documents or on the basis of flat rates.

II.22.2 The contracting authority reimburses travel and subsistence expenses on the basis of the shortest itinerary and the minimum number of nights necessary for overnight stay at the destination.

II.22.3 The contracting authority reimburses travel expenses as follows:

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

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

II.22.4 The contracting authority reimburses subsistence expenses on the basis of a daily subsistence allowance as follows:

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

II.22.5 The contracting authority reimburses the cost of shipment of equipment or unaccompanied luggage if it has given its prior written approval for the expense.

II.23. RECOVERY

II.23.1 If an amount is to be recovered under the terms of the FWC, the contractor must repay the contracting authority the amount in question.

II.23.2. Recovery procedure

Before recovery, the contracting authority must *formally notify* the contractor of its intention to recover the amount it claims, specifying the amount due and the reasons for recovery and inviting the contractor to make any observations within 30 days of receipt.

If no observations have been submitted or if, despite the observations submitted, the contracting authority decides to pursue the recovery procedure, it must confirm recovery by *formally notifying* a

debit note to the contractor, specifying the date of payment. The contractor must pay in accordance with the provisions specified in the debit note.

If the contractor does not pay by the due date, the contracting authority may, after informing the contractor in writing, recover the amounts due:

- (a) by offsetting them against any amounts owed to the contractor by the contracting authority;
- (b) by calling in a financial guarantee if the contractor has submitted one to the contracting authority;
- (c) by taking legal action.

II.23.3. Interest on late payment

If the contractor does not honour the obligation to pay the amount due by the date set by the contracting authority in the debit note, the amount due bears interest at the rate indicated in Article II.21.8. Interest on late payments will cover the period starting on the day after the due date for payment and ending on the date when the contracting authority receives the full amount owed.

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

II.23.4. Recovery rules in the case of joint tender

If the contract is signed by a group (joint tender), the group is jointly and severally liable under the conditions set out in Article II.6 (liability). The contracting authority shall send the debit note first to the leader of the group.

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

II.24. CHECKS AND AUDITS

II.24.1 The European Commission and the European Anti-Fraud Office (OLAF) may check or require an audit on the *implementation of the FWC*. This may be carried out either by OLAF's own staff or by any outside body authorised to do so on its behalf.

Such checks and audits may be initiated at any moment during the provision of the services and up to five years starting from the payment of the balance of the last specific contract issued under this FWC

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

II.24.2 The contractor must keep all original documents stored on any appropriate medium, including digitised originals if authorised under national law, for a period of five years starting from the payment of the balance of the last specific contract issued under this FWC.

II.24.3 The contractor must grant the European Commission’s staff and outside personnel authorised by the European Commission the appropriate right of access to sites and premises where the FWC is implemented and to all the information, including information in electronic format, needed to conduct such checks and audits. The contractor must ensure that the information is readily available at the moment of the check or audit and, if so requested, that information is handed over in an appropriate format.

II.24.4 On the basis of the findings made during the audit, a provisional report is drawn up. The European Commission or its authorised representative must send it to the contractor, who has 30 days following the date of receipt to submit observations. The contractor must receive the final report within 60 days following the expiry of the deadline to submit observations.

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

II.24.5 In accordance with Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspection carried out by the Commission in order to protect the European Communities’ financial interests against *fraud* and other *irregularities* and Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office, the European Anti-Fraud Office may carry out investigations, including on the spot checks and inspections, to establish whether there has been *fraud*, corruption or any other illegal activity under the contract affecting the financial interests of the Union. Findings arising from an investigation may lead to criminal prosecution under national law.

The investigations may be carried out at any moment during the provision of the services and up to five years starting from the payment of the balance of the last specific contract issued under this FWC.

II.24.6 The Court of Auditors and the European Public Prosecutor’s Office established by Council Regulation (EU) 2017/1939⁶ (“the EPPO”) have the same rights as the contracting authority, particularly right of access, for the purpose of checks, audits and investigations.

⁶ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor’s Office

ANNEX III - Data protection agreement

THE PARTIES

ON THE ONE HAND, XXXXXX, acting in the name of and on behalf of XXXX (hereinafter referred to as the 'CONTROLLER'), holder of tax identification number XXXXX and whose address for identification purposes is

XXXXXX –
XXXXX
XXX

And,

ON THE OTHER HAND, XXXXX, holder of identity card number _____, acting in the name of and on behalf of XXXX (hereinafter referred to as the 'PROCESSOR'), with the business identity XXXXX, registered for VAT, and whose address for identification purposes is

XXXXXX –
XXXXX
XXX

The two parties, recognising mutually and reciprocally that they have sufficient legal capacity for this act,

I. Object

The object of these clauses is to define the conditions in which the processor shall undertake to carry out, on behalf of the controller, the personal data processing operations defined below.

Within the framework of their contractual relations, the parties shall undertake to comply with the regulations in force applicable to personal data processing and, in particular, with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 applicable with effect from 25 May 2018 (hereinafter referred to as 'the European Data Protection Regulation').

II. Description of the processing that is involved

The processor is hereby authorised to process on behalf of the controller the personal data required to provide the following service or services: School trips services

The nature of the operations carried out on the data is the use of data in order to organise school trips for the European Schools

The purpose or purposes of the processing is/are the most effective organisation of school trips for the European Schools

The personal data processed are the name, surname, allergies of the pupils, teachers and accompanying persons

The categories of data subjects are pupils, teachers and accompanying persons

For performance of the service that is the subject matter of this contract, the controller shall make available to the processor the following necessary information name, surname, allergies of the pupils, teachers and accompanying persons

III. Duration of the contract

This contract shall enter into force with effect from [...] for a period of [...].

IV. Obligations of the processor vis-à-vis the controller

The processor shall undertake to:

- process the data solely for the purpose or purposes alone that is/are the object of the processing,
- process the data in accordance with the controller's instructions appearing in (...) of this contract,
- inform the controller immediately if it is considered that an instruction constitutes an infringement of the European Data Protection Regulation or of any other provision of Union law or the law of the Member States on data protection,
- inform the controller if the processor is required to transfer data to a third country or to an international organisation, pursuant to the law of the Union or to the law of the Member State to which the processor is subject, unless the law concerned prohibits such information on important public interest grounds,
- guarantee the confidentiality of the personal data processed under this contract,
- ensure that the persons authorised to process personal data pursuant to this contract:
 - have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality,
 - receive appropriate personal data protection training,
 - take into account, in the case of the processor's tools, products, applications or services, the principles of data protection by design and data protection by default.

The processor may not use the services of another processor to conduct specific processing activities without the prior written authorisation of the controller.

In the event of authorisation, the other processor shall be required to fulfil the obligations of this contract on behalf of and in accordance with the instructions of the controller. It is the responsibility of the initial processor to ensure that the other processor provides the same sufficient guarantees to implement appropriate technical and organisational measures in such a manner that processing will meet the requirements of the European Data Protection Regulation. Where the other processor fails to fulfil its data protection obligations, the initial

processor shall remain fully liable to the controller for the performance of that other processor's obligations.

V. Rights of data subjects

- Obligations of the controller vis-à-vis the processor:

The processor or any other person whose personal data are processed by the controller under these specifications shall have specific rights as a data subject pursuant to Regulation (EU) 2016/679, and in particular the right to access to and rectification or erasure of personal data, the right to restrict processing of those data or, where applicable, to object to it, or the right to data portability.

For all issues concerning the processing of his or her personal data, the contractor or any other data subject whose personal data are processed under these specifications shall approach the controller. He or she may also approach the data protection officer reporting to the controller. Data subjects shall have the right to lodge a complaint at any time with the Belgian Data Protection Authority.

Detailed information about personal data processing may be requested of the controller.

- Obligations of the processor vis-à-vis the controller

The processor shall assist the controller in fulfilment of the controller's obligation to respond to requests for exercising their rights from data subjects whose personal data are processed under these specifications, as provided for in Regulation (EU) 2016/679. The processor must inform the controller of such requests without delay.

VI. Notification of personal data breaches

The processor shall notify the controller of any personal data breach without undue delay and not later than 48 hours after having become aware of it. In this case, the processor shall communicate at least the following information to the controller:

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

Where, and in so far as, it is not possible to provide all this information at the same time, the information may be provided in phases without undue further delay.

After the controller's agreement has been sought and given, the processor shall, in the name of and on behalf of the controller, communicate the personal data breach to the data subject without undue delay, when this breach is likely to result in a high risk to the rights and freedoms of a natural person.

The processor shall assist the controller in complying with the latter's obligations pursuant to Articles 31 to 39 of Regulation (EU) 2016/679, namely:

- a) to ensure compliance with the latter's data protection obligations with respect to the security of processing and the confidentiality of personal data;
- b) to notify the Belgian Data Protection Authority of any personal data breach;
- c) to carry out impact assessments relating to data protection and prior consultations to the extent necessary.

VII. Security measures

The processor must take appropriate technical and organisational measures, having regard to the risks inherent in processing and to the nature, scope, context and purposes of the processing, offering, in particular, as required:

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

VIII. Storage of data

The duration of processing of personal data by the processor will not exceed the period indicated in Article II.24.2.

At the end of that period, the contractor must, according to the controller's choice, return, without undue delay and in a jointly agreed format, all the personal data processed on behalf of the controller and copies of those data, or destroy effectively all the personal data, unless Union law or national law requires them to be retained for longer.

IX. Register of categories of processing activities

The processor shall maintain a record of all the data processing activities carried out on behalf of the controller, of personal data transfers, of security breaches and of the action taken on requests submitted by data subjects whose personal data have been processed, with a view to exercising their rights, and of requests for access to personal data submitted by third parties.

X. Disclosure of data by the processor pursuant to a legal obligation

The processor shall inform the controller without delay of any legally binding request for disclosure of personal data processed on behalf of the controller that is sent to the processor by a national public authority, including an authority in a third country.

The processor shall not be authorised to grant such access without the prior written authorisation of the controller.

XI. Documentation

The processor shall make available to the controller all information necessary to demonstrate compliance with all the processor's obligations and to allow for and contribute to audits, including inspections, conducted by the controller or another auditor mandated by the controller.

SIGNATURES

For the contractor,

[Company name/forename/surname/position]

Signature: _____

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

For the contracting authority,

[forename/surname/position]

Signature: _____

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

In duplicate in English.