



CONTRACT FOR SUPPLIES AND SERVICES

NUMBER — [complete]

1. The **European High Performance Computing Joint Undertaking** ('the EuroHPC Joint Undertaking'), represented for the purposes of signing this contract by Mr Anders Dam JENSEN, Executive Director, Joint Undertaking EuroHPC, and
2. **Fondazione ICSC - Centro Nazionale di Ricerca in High-Performance Computing, Big Data and Quantum Computing**, (hereinafter 'ICSC') representing the consortium of private partners, represented for the purposes of signing this contract by Mr. Antonio ZOCCOLI, President, ICSC

EuroHPC Joint Undertaking and ICSC are hereinafter both referred to collectively as '**the contracting authority**'

on the one part and

[[3] [Contractor's full official name]

[Contractor's official legal form]

[Contractor's statutory registration number]

[Contractor's official address]

[VAT Registration number]:]

[[2] [[Include the name of the group if any -], group of economic operators who submitted a joint tender ('the group') composed of the following members who are jointly and severally liable vis-a-vis the contracting authority for the implementation of this contract:

[Contractor's official legal form]

[Contractor's statutory registration number or ID or passport number]

[Contractor's full official address]

Contract number: [complete]

[VAT registration number]

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

[Contractor's official legal form]

[Contractor's statutory registration number or ID or passport number]

[Contractor's full official address]

[VAT registration number]

([collectively] 'the contractor')

represented for the purposes of signing this contract by the authorised representative indicated in the respective field under "SIGNATURES" below,

HAVE AGREED as follows:

MAIN CONDITIONS

1. Subject matter

The title of this contract is: "Acquisition, delivery, installation and hardware and software maintenance of INNOVATE industrial grade supercomputer – for the European High Performance Computing Joint Undertaking (EuroHPC JU)".

The terms and conditions applying to this contract are laid down hereafter and in the special and general conditions and their annexes. They shall be deemed to form and be read and construed as an integral part of this contract in the order described in the special conditions.

2. Contract value

The maximum amount covering all purchases under this contract is **EUR** [insert amount] [insert amount in words].

3. Entry into force and duration

This contract enters into force on the date on which the last party signs it.

The maximum duration of this contract is **68 months**, from the date this contract enters into force.

Contract number: [complete]

4. Bank account

Payments shall be made in accordance with the special conditions into the following bank account:

Name of bank: [insert bank name]

Exact denomination of account holder: [full name of account holder]

Bank account number: [insert bank account number].

Signatures

For the contractor

[signature contractor]

Done on [date]

For the contracting authority

For EuroHPC JU

Anders Dam Jensen

Executive Director

Done on [date]

For ICSC

Antonio Zoccoli

President

Done on [date]

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I. SPECIAL CONDITIONS

I.1. ORDER OF PRECEDENCE

The following documents shall be deemed to form and be read and construed as part of this contract:

- Main conditions,
- Special conditions
- General conditions for contracts,
- the following Annexes:

Annex I – Tender specifications (call for tenders reference No [insert] of [insert], [including clarifications, answers to questions and corrigenda issued by the contracting authority during the submission phase].

Annex II – Contractor's tender, reference No [complete] of [insert date]), [including clarifications provided by the tenderer, during the tender evaluation phase, at the Contracting authority's request].

Annex III - Acceptance Procedure

Annex IV - Pre-financing guarantee model

Annex V - Performance guarantee model

Annex VI - Declaration on pre-existing rights (if applicable)

[Annex VII - Group members' shares in total contract value for VAT purposes]

Annex VIII - Consortium of private partners

[Annex IX [insert]

If there is any conflict between the provisions of the main conditions, special conditions, general conditions and Annexes I and II of this contract, the following order of precedence shall apply:

- a. Main conditions;
- b. Special conditions;
- c. General conditions;
- d. Tender specifications (Annex I);
- e. Contractor's tender (Annex II).

I.2. SCOPE OF THE CONTRACT

The scope of the contract is (1) the acquisition, delivery, installation of the INNOVATE Industrial-grade Supercomputer for EuroHPC JU and the consortium of private partners represented by ICSC to be hosted by the Hosting Entity, Consorzio Interuniversitario CINECA (hereinafter “CINECA”) and related services, (2) hardware and software maintenance and other support services of the Industrial-grade Supercomputer (“System”) in accordance with the contract and its annexes.

Except for the items specifically agreed to be provided by the Contracting Authority, the Contractor shall be solely responsible for providing any and all hardware, software, tools, equipment, licenses, documentation and know-how that may be required to carry out the delivery and implementation of the System, as specified in the Contract and its Annexes.

The System shall include, without any additional cost to the Contracting Authority, all software and applications and corresponding licenses, excluding any software, applications and corresponding licenses agreed to be supplied by the Contracting Authority, the consortium of private partners and/or the Hosting Entity, necessary for the use of the System as specified in the Tender Specifications and the Contractor’s tender.

The rights granted to the Contracting Authority shall be understood to be granted also to the benefit of the Private Partners listed in Annex VIII and the Hosting Entity in the context of the fulfilment of its mission for the Contracting Authority and as provided for under Council Regulation (EU) 2021/1173 of 13 July 2021 on establishing the European High Performance Computing Joint Undertaking and repealing Regulation (EU) 2018/1488, as last amended by Council Regulation (EU) 2026/150 of 16 January 2026 amending Regulation (EU) 2021/1173 on establishing the European High Performance Computing Joint Undertaking.

By submitting a tender, the contractor waives its own terms and conditions. All documents of this nature issued by the contractor (end-user agreements, general terms and conditions, etc.) are held inapplicable, unless explicitly mentioned in the special conditions of the 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.

I.3. ENTRY INTO FORCE AND DURATION

I.3.1 The entry into force and the maximum duration of the contract are indicated in Article 3 of the Main conditions.

The period of *performance of the contract* may be extended only with the express written agreement of the parties before the expiration of such period.

I.3.2 The *performance of the contract* cannot start before its entry into force.

- I.3.3** The supplies must be delivered DDP (Incoterms® 2020) to the Hosting Sites at the following address: Bologna Tecnopolo, via Stalingrado 86, 40128 Bologna, Italy, using Incoterm 2020 DDP.

The contractor must confirm to the Contracting Authority and the Hosting Entity of the exact date of delivery at least 14 (fourteen) calendar days in advance on the basis of the Contractor's Tender, and in particular the Project Plan included therein, unless otherwise agreed between the parties.

The performance of the contract consists of:

- 1) The delivery and installation of the INNOVATE Industrial-grade Supercomputer (hardware and software) and related support services including knowledge transfer and training ("System supply").
- 2) The maintenance of the system (hardware and software) and related support services both in relation to the system supply ("Maintenance").

The System supply will be executed in [insert number of deliveries] in accordance with Annex II (Contractor's Tender).

The components and partitions to be delivered [with each delivery], the delivery schedule for each delivery as well as the related support services are set out in Annex II (Contractor's Tender).

[The contractor is authorised to continue with the next delivery only with a written consent of the EuroHPC Joint Undertaking following an analysis of the progress of the preceding delivery. In case the final report as referred to in Article I.14.3 (acceptance) for the preceding delivery has not been completed, a progress report of the proceeding delivery may be required. The contracting authority must notify the contractor in writing about its consent at least one month before the start of the next delivery.]

The maintenance of the system and related support services shall start from the acceptance date of the [first] [last] delivery in accordance with Article I.14.3 (Acceptance) and run for 60 months.

- I.3.4** The suspension of the *performance of the contract* due to *force majeure* as provided for in Article II.16 will remain without effect on the duration of the contract.
- I.3.5** If, after the end of the contract, one party continues to perform its obligations without opposition from the other party, such performance is not and cannot be construed as a renewal of the contract.

I.4. PRICES

I.4.1. Amount of the contract and prices

The price payable under this contract (supplies and services) is EUR [insert] [amount in figures and in words].

I.4.1.1. Price for the System supply

The price payable for the System supply is EUR [insert] (*amount in words*), covering all tasks executed.

The System supply will be delivered in [insert number of parts]:

- Part 1: The price payable for the first part shall be EUR [insert] (*amount in words*) covering all components and partitions to be delivered with each part in accordance with the delivery schedule for each part as well as the related support services as defined in the tender specifications and the contractor's tender.
- [Part 2: The price payable for the second part shall be EUR (*amount in words*), covering all components and partitions to be delivered with each part in accordance with the delivery schedule for each part as well as the related support services.]
- [Further parts depending on the proposal]

I.4.1.2. Price for maintenance and support services for the supply of the system

[First option: The price payable amount for "Maintenance" shall be EUR (*amount in words*), covering all tasks executed for the whole duration, whereas:

- the price payable for the 1st year shall be EUR (*amount in words*), covering all tasks executed for that specific year.
- the price payable for the 2nd year shall be EUR (*amount in words*), covering all tasks executed for that specific year.
- the price payable for the 3rd year shall be EUR (*amount in words*), covering all tasks executed for that specific year.
- the price payable for the 4th year shall be EUR (*amount in words*), covering all tasks executed for that specific year.
- the price payable for the 5th year shall be EUR (*amount in words*), covering all tasks executed for that specific year.
- [the price payable for the additional years shall be EUR (*amount in words*), covering all tasks executed for that specific year].]

[Second option: The price payable amount for "Maintenance" shall be EUR (*amount in words*), covering all tasks executed for the whole duration, which will be totally paid [insert number of months] months after the delivery and acceptance of the [last part.]

I.4.2. Price revision index

Price revision is not applicable to this contract.

I.5. PAYMENT ARRANGEMENTS

I.5.1. Bank account conditions

Payments under the contract shall be made to the contractor's (or leader's in the case of joint tender) bank account specified in Article 4 of the Main conditions in accordance with Article II.20, which is complemented by this article and the related provisions of the contract.

The bank account is denominated in euro.

I.5.2. Pre-financing

1. Following signature of the contract by the last party and its receipt by the contracting authority, the contractor may claim a pre-financing payment equal to 30% of the price referred to in Articles I.4.1 of the Main conditions.

The pre-financing must be paid within 30 days of receiving the invoice or, if no invoice is required, within 30 days of the signature of the contract by both parties, provided it has received the guarantee.

The contractor (or leader in the case of a joint tender) must provide a financial guarantee equal to the amount of the pre-financing (pre-financing guarantee) in accordance with Article II.20.5 of the General Conditions and submit the guarantee to the EuroHPC Joint Undertaking. Any payment of pre-financing against the invoices as described below is subject to the condition of receipt and acceptance of the prefinancing guarantee by EuroHPC JU. The EuroHPC Joint Undertaking will inform ICSC about the receipt and acceptance of the guarantee.

[FINAL ARRANGEMENTS GOVERNING THE INVOICES WILL BE ESTABLISHED BASED ON THE SELECTED OFFER]

The contractor (or leader in the case of a joint tender) shall send the invoice[s] to:

- **EuroHPC Joint Undertaking** for the amount of [insert]. For the invoices sent to the EuroHPC JU for its contribution, the contractor must send an invoice in electronic format to invoices@eurohpc-ju.europa.eu for the pre-financing payment. The invoice sent to the EuroHPC Joint Undertaking is VAT exempted in accordance with Article II.18.1.
- **ICSC** for the amount of [insert]. For the invoices sent to ICSC for its contribution, the contractor must send an invoice in electronic format to [insert] for the pre-financing payment.
- **ALMAWAVE** for the amount of [insert]. For the invoices sent to ALMAWAVE for its contribution, the contractor must send an invoice in electronic format to [insert] for the pre-financing payment.
- **UNIPOL** for the amount of [insert]. For the invoices sent to UNIPOL for its contribution, the contractor must send an invoice in electronic format to [insert] for the pre-financing payment.
- **BI-REX** for the amount of [insert]. For the invoices sent to BI-REX for its contribution, the contractor must send an invoice in electronic format to [insert] for the pre-financing payment.
- **SNAM** for the amount of [insert]. For the invoices sent to SNAM for its contribution, the contractor must send an invoice in electronic format to [insert] for the pre-financing payment.
- **AUTOSTRADE** for the amount of [insert]. For the invoices sent to AUTOSTRADE for its contribution, the contractor must send an invoice in electronic format to [insert] for the pre-financing payment.

- **IFAB** or the amount of [insert]. For the invoices sent to IFAB for its contribution, the contractor must send an invoice in electronic format to [insert] for the pre-financing payment.

[Each year, for contracts over EUR 5 million, the contractor (or leader in the case of a joint tender) must inform the EuroHPC Joint Undertaking by 31 December about the cumulative expenditure incurred under this contract. This information is required for the contracting authority's accounting purposes.]

2. The contracting authority may suspend the time limit for payment specified in Point (4) in accordance with Article II.20.7, also if any observation will be raised by the consortium of private partners with regard to the documentation submitted. Once the suspension is lifted, the contracting authority shall give its approval and pay within the remainder of the time-limit indicated in Point (4) unless it rejects partially or fully the submitted documents or deliverables.

I.4.3 Interim payment[s]

[FINAL PAYMENT ARRANGEMENT WILL BE PROVIDED BASED ON THE SCHEDULE OF DELIVERABLES IN THE OFFER SELECTED BASED ON THE SOLUTION AND TIMELINE PROPOSED]

I.5.3.1. Payment of [first delivery of] Part 1 of the project (Article. I.4.1.1)

1. At the [first] delivery of Part 1 by the contractor [and acceptance by the contracting authority] in accordance with Article II.20.6 of Part 1 of the project, the contractor (or leader in the case of a joint tender) may claim a payment equal to EUR [insert].

2. The contractor (or leader in the case of a joint tender) must send the following documentation for the prior approval of the EuroHPC Joint Undertaking:

- [Delivery note in accordance with Article I.14.1]
- [Documentation as specified in Article I.15]
- [Declaration on the list of all pre-existing rights as provided for in Article I.10.6 if applicable].

3. As soon as the submitted documents described in Point (2) have been approved by the EuroHPC Joint Undertaking, the contractor (or leader in the case of a joint tender) shall send invoices to the following:

- **EuroHPC Joint Undertaking** for the amount of [insert]. For the invoices sent to the EuroHPC JU for its contribution, the contractor must send an invoice in electronic format to invoices@eurohpc-ju.europa.eu for the interim payment. The invoice sent to the EuroHPC Joint Undertaking is VAT exempted in accordance with Article II.18.1.
- **ICSC** for the amount of [insert]. For the invoices sent to ICSC for its contribution, the contractor must send an invoice in electronic format to [insert] for the interim payment.
- **ALMAWAVE** for the amount of [insert]. For the invoices sent to ALMAWAVE for its contribution, the contractor must send an invoice in electronic format to [insert] for the interim payment.
- **UNIPOL** for the amount of [insert]. For the invoices sent to UNIPOL for its contribution, the contractor must send an invoice in electronic format to [insert] for the interim payment.

- **BI-REX** for the amount of [insert]. For the invoices sent to BI-REX for its contribution, the contractor must send an invoice in electronic format to [insert] for the interim payment.
- **SNAM** for the amount of [insert]. For the invoices sent to SNAM for its contribution, the contractor must send an invoice in electronic format to [insert] for the interim payment.
- **AUTOSTRADE** for the amount of [insert]. For the invoices sent to AUTOSTRADE for its contribution, the contractor must send an invoice in electronic format to [insert] for the interim payment.
- **IFAB** or the amount of [insert]. For the invoices sent to IFAB for its contribution, the contractor must send an invoice in electronic format to [insert] for the interim payment.

4. Each invoice shall be paid within 60 days from receipt of the invoice.

5. The contracting authority may suspend the time limit for payment specified in Point (4) in accordance with Article II.20.7, also if any observation will be raised by the consortium of private partners with regard to the documentation submitted. Once the suspension is lifted, the contracting authority shall give its approval and pay within the remainder of the time-limit indicated in Point (4) unless it rejects partially or fully the submitted documents or deliverables.

[I.5.3.2. Payment of [first delivery of] Part 2 of the project (Article I.4.1.1)]

1. At the [first delivery] of Part 2 by the contractor in accordance with Article II.20.6 of Part 2 of the project, the contractor (or leader in the case of a joint tender) may claim a payment equal to EUR [insert].

2. The contractor (or leader in the case of a joint tender) must send the following documentation for the prior approval of the EuroHPC Joint Undertaking:

- [insert]
- [Declaration on the list of all pre-existing rights as provided for in Article I.10.6 if applicable]

3. As soon as the submitted documents described in Point (2) have been approved by the EuroHPC Joint Undertaking, the contractor (or leader in the case of a joint tender) shall send an invoice to the following:

- **EuroHPC Joint Undertaking** for the amount of [insert]. For the invoices sent to the EuroHPC JU for its contribution, the contractor must send an invoice in electronic format to invoices@eurohpc-ju.europa.eu for the interim payment. The invoice sent to the EuroHPC Joint Undertaking is VAT exempted in accordance with Article II.18.1.
- **ICSC** for the amount of [insert]. For the invoices sent to ICSC for its contribution, the contractor must send an invoice in electronic format to [insert] for the interim payment.
- **ALMAWAVE** for the amount of [insert]. For the invoices sent to ALMAWAVE for its contribution, the contractor must send an invoice in electronic format to [insert] for the interim payment.
- **UNIPOL** for the amount of [insert]. For the invoices sent to UNIPOL for its contribution, the contractor must send an invoice in electronic format to [insert] for the interim payment.

- **BI-REX** for the amount of [insert]. For the invoices sent to BI-REX for its contribution, the contractor must send an invoice in electronic format to [insert] for the interim payment.
- **SNAM** for the amount of [insert]. For the invoices sent to SNAM for its contribution, the contractor must send an invoice in electronic format to [insert] for the interim payment.
- **AUTOSTRAD** for the amount of [insert]. For the invoices sent to AUTOSTRAD for its contribution, the contractor must send an invoice in electronic format to [insert] for the interim payment.
- **IFAB** for the amount of [insert]. For the invoices sent to IFAB for its contribution, the contractor must send an invoice in electronic format to [insert] for the interim payment.

4. Each invoice shall be paid within 60 days from receipt of the invoice.

5. The contracting authority may suspend the time limit for payment specified in Point (4) in accordance with Article II.20.7, also if any observation will be raised by the consortium of private partners with regard to the documentation submitted. Once the suspension is lifted, the contracting authority shall give its approval and pay within the remainder of the time-limit indicated in Point (4) unless it rejects partially or fully the submitted documents or deliverables.]

[I.5.3.3. Payment of balance for the System supply (Article I.4.1.1)]

1. After the final acceptance of the System in accordance with Article II.20.6, the contractor (or leader in the case of a joint tender) may claim a payment equal to EUR [insert].

2. The contractor (or leader in the case of a joint tender) must send the following documentation for the prior approval of the contracting authority:

- [Final report as referred to in Article I.14.3 for the delivery of the System]
- [insert]
- [Documentation as specified in Article I.15]
- [Declaration on the list of all pre-existing rights as provided for in Article I.10.6 if applicable]

3. As soon as the submitted documents described in Point (2) have been approved by the EuroHPC Joint Undertaking, the contractor (or leader in the case of a joint tender) shall send an invoice to the following:

- **EuroHPC Joint Undertaking** for the amount of [insert]. For the invoices sent to the EuroHPC JU for its contribution, the contractor must send an invoice in electronic format to invoices@eurohpc-ju.europa.eu for the interim payment. The invoice sent to the EuroHPC Joint Undertaking is VAT exempted in accordance with Article II.18.1.
- **ICSC** for the amount of [insert]. For the invoices sent to ICSC for its contribution, the contractor must send an invoice in electronic format to [insert] for the interim payment.
- **ALMAWAVE** for the amount of [insert]. For the invoices sent to ALMAWAVE for its contribution, the contractor must send an invoice in electronic format to [insert] for the interim payment.

- **UNIPOL** for the amount of [insert]. For the invoices sent to UNIPOL for its contribution, the contractor must send an invoice in electronic format to [insert] for the interim payment.
- **BI-REX** for the amount of [insert]. For the invoices sent to BI-REX for its contribution, the contractor must send an invoice in electronic format to [insert] for the interim payment.
- **SNAM** for the amount of [insert]. For the invoices sent to SNAM for its contribution, the contractor must send an invoice in electronic format to [insert] for the interim payment.
- **AUTOSTRADA** for the amount of [insert]. For the invoices sent to AUTOSTRADA for its contribution, the contractor must send an invoice in electronic format to [insert] for the interim payment.
- **IFAB** for the amount of [insert]. For the invoices sent to IFAB for its contribution, the contractor must send an invoice in electronic format to [insert] for the interim payment.

4. Each invoice shall be paid within 60 days from receipt of the invoice.

5. The contracting authority may suspend the time limit for payment specified in Point (4) in accordance with Article II.20.7, also if any observation will be raised by the consortium of private partners with regard to the documentation submitted. Once the suspension is lifted, the contracting authority shall give its approval and pay within the remainder of the time-limit indicated in Point (4) unless it rejects partially or fully the submitted documents or deliverables.]

I.5.3.3. Subsequent yearly payments for the maintenance

1 The contractor (or leader in the case of a joint tender) may claim [an interim payment per calendar year equal to the price of the maintenance services for that year] [full price of maintenance at the end of the contract] as indicated in Article I.4.1.2 in accordance with Article II.20.6.

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

2. The contractor (or leader in the case of a joint tender) must send the following documentation for the prior approval of the EuroHPC Joint Undertaking:

- *[The annual report summarising the service level achievement and the Contractor's compliance with the Service Levels]*

3. As soon as the submitted documents described in Point (2) have been approved by the EuroHPC Joint Undertaking, the contractor (or leader in the case of a joint tender) shall send an invoice to the following:

- **EuroHPC Joint Undertaking** for the amount of [insert]. For the invoices sent to the EuroHPC JU for its contribution, the contractor must send an invoice in electronic format to invoices@eurohpc-ju.europa.eu for the interim payment. The invoice sent to the EuroHPC Joint Undertaking is VAT exempted in accordance with Article II.18.1.

- **ICSC** for the amount of [insert]. For the invoices sent to ICSC for its contribution, the contractor must send an invoice in electronic format to [insert] for the interim payment.
- **ALMAWAVE** for the amount of [insert]. For the invoices sent to ALMAWAVE for its contribution, the contractor must send an invoice in electronic format to [insert] for the interim payment.
- **UNIPOL** for the amount of [insert]. For the invoices sent to UNIPOL for its contribution, the contractor must send an invoice in electronic format to [insert] for the interim payment.
- **BI-REX** for the amount of [insert]. For the invoices sent to BI-REX for its contribution, the contractor must send an invoice in electronic format to [insert] for the interim payment.
- **SNAM** for the amount of [insert]. For the invoices sent to SNAM for its contribution, the contractor must send an invoice in electronic format to [insert] for the interim payment.
- **AUTOSTRAD** for the amount of [insert]. For the invoices sent to AUTOSTRAD for its contribution, the contractor must send an invoice in electronic format to [insert] for the interim payment.
- **IFAB** for the amount of [insert]. For the invoices sent to IFAB for its contribution, the contractor must send an invoice in electronic format to [insert] for the interim payment.

4. Each invoice shall be paid within 60 days from receipt of the invoice.

5. The contracting authority may suspend the time limit for payment specified in Point (4) in accordance with Article II.20.7, also if any observation will be raised by the consortium of private partners with regard to the documentation submitted. Once the suspension is lifted, the contracting authority shall give its approval and pay within the remainder of the time-limit indicated in Point (4) unless it rejects partially or fully the submitted documents or deliverables.

I.5.3. Performance guarantee

This contract is subject to a performance guarantee of 10 % of the price of the contract specified in Articles I.4.1. A performance guarantee constituted by a bank guarantee in accordance with the conditions laid down in Article II.20.5 is requested for the amount of EUR [amount in figures and in words]. The contractor must send the performance guarantee to the EuroHPC Joint Undertaking upon signature of this contract.

The guarantee must be released by the EuroHPC Joint Undertaking [60 days] after the approval of the final report as referred to Article I.14.3 (Acceptance) for the System.

I.5.4. Retention money guarantee

Retention money guarantee is not applicable to this contract.

I.5.5. VAT and invoices

1. The contractor must send the invoice(s) for the pre-financing, the interim payment(s) and/or the payment of the balance via the electronic exchange system or, if the use of electronic exchange system has not been activated under Article I.6.1, via email at the email address indicated in Article I.6.2.

2. If the transaction is taxable for VAT purposes as a local purchase in Belgium, use of this contract constitutes a request for VAT exemption No 450, Article 42, paragraph 3.3 of the VAT code (circular 2/1978), provided the invoice includes the statement: 'Exonération de la TVA, Article 42, paragraphe 3.3 du code de la TVA (circulaire 2/1978)'.
3. If the transaction is taxable for VAT purposes as a local purchase in Luxembourg, the contractor must include the following statement in the invoices: "Commande destinée à l'usage officiel de l'Union européenne. Exonération de la TVA Article 43 § 1 k 2ème tiret de la loi modifiée du 12.02.79.
4. If the transaction is taxable for VAT purposes as a local purchase in a Member State of the European Union (other than Belgium or Luxembourg) where the fiscal legislation allows direct VAT exemption, the invoice must include a statement referencing the relevant national legislation.
5. If the transaction is taxable for VAT purposes as an intra-community purchase, the invoice must include the following sentence: "VAT exemption / European Union / Article 151 of Council Directive 2006/112/EC".
6. If the transaction is taxable for VAT purposes as an intra-community purchase in a Member State of the European Union, in which the fiscal legislation does not allow direct VAT exemption, at the request of the contracting authority, the contractor shall make available to it all the supporting documents which the contracting authority might need in order to apply to the tax authorities for the reimbursement of any duties and taxes paid in the course of the performance of the contract.

I.6. COMMUNICATION DETAILS

I.6.1 Communication via electronic exchange system

All communications (except for formal notifications) must be made by electronic means through the EU Funding & Tenders Portal (the Portal), in accordance with the Portal Terms and Conditions and using the forms and templates provided there (except if explicitly instructed otherwise by the contracting authority or if communication via the Portal is hindered by factors beyond the control of the parties). The Portal can be accessed via the following URL: <https://ec.europa.eu/info/funding-tenders/opportunities/portal/>.

Communications by contractors through the Portal must be made by persons authorized according to the Portal Terms and Conditions. For naming the authorised persons to use the Portal, each contractor must have designated — before the signature of this contract — a 'legal entity appointed representative (LEAR)'. The role and tasks of the LEAR are stipulated in their appointment letter (see Portal Terms and Conditions).

If the communication via the Portal is hindered, instructions will be provided by the contracting authority by email and may also be published on the Portal.

During the course of the contract, the contracting authority reserves the right to activate the use of formal notifications through the Portal and/or the use of other electronic exchange systems, at no additional cost for the contracting authority.

In case of discrepancy between the clauses of the Portal Terms and Conditions or Terms and Conditions of other electronic exchange system and the clauses of this contract, the clauses of this contract (including its annexes) shall prevail.

I.6.2 Mail or email communication

For the purpose of this contract, mail or email communications must be sent to the following addresses:

EuroHPC Joint Undertaking:

European High Performance Computing Joint Undertaking
Drosbach Building (DRB) - Wing E – 1st floor,
12E rue Guillaume Kroll, L-1882 Luxembourg
Email: legal-team@eurohpc-ju.europa.eu; contracts@eurohpc-ju.europa.eu
Email for invoices: invoices@eurohpc-ju.europa.eu

With copy at ICSC

ICSC
via Magnanelli 2,
40033 Casalecchio di Reno,
Italy Email: [\[insert\]](#)

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

[Full name]
[Function]
[Company name]
[Full official address]
Email: [complete]

I.7. PROCESSING OF PERSONAL DATA

I.7.1. Processing of personal data by the contracting authority

For the purpose of Article II.9.1,

- (a) for personal data processed in the context of the management of the contract, the data controller is the Executive Director of the EuroHPC Joint Undertaking.
- (b) the data protection notice is available at https://commission.europa.eu/funding-tenders/procedures-guidelines-tenders/data-protection-public-procurement-procedures_en.

I.7.2. 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 data that the contractor needs to process in the context of the implementation of the

present contract that relates to the acquisition, delivery, installation and maintenance of the INNOVATE Industrial-grade supercomputer;

(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 with 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 contract to third countries or international organisations shall fully comply with the requirements laid down in Chapter V of Regulation (EU)2018/1725.

I.8. TERMINATION FOR CONVENIENCE BY EITHER PARTY

Not applicable

I.9. APPLICABLE LAW AND SETTLEMENT OF DISPUTE

I.9.1 The contract is governed by Union law, complemented, where necessary, by the law of Luxembourg.

I.9.2 The courts of Luxembourg shall have exclusive jurisdiction over any dispute regarding the validity, interpretation, performance or termination of the contract.

I.10. INTELLECTUAL PROPERTY RIGHTS

I.10.1. Results

1. A result is defined as 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.
2. Notwithstanding anything to the contrary stipulated in the contract, including the tender specifications, the term Result shall include by default:
 - Commissioned Software and/or any parts thereof: Software developed by the Contractor for the Contracting Authority under the Contract, both in Source Code and object code;
 - Documentation produced by the Contractor at the request of the Contracting Authority;

- Customisations, modifications or improvements brought to Licensed Software Products and any other pre-existing material for the Contracting Authority;
 - Source Code of Licensed Software Products, provided the ownership of such Source Code is assigned to the Contracting Authority under the Contract;
 - Without prejudice to the above, any other intended outcome of the implementation of the Contract, whatever its form or nature;
3. In the event that the Contractor is not and does not include the holder of the intellectual property rights in the Results, the Contractor undertakes that said right holder will abide by this and the provisions on intellectual property rights in the Contract as if that right holder was itself mutatis mutandis a party to the Contract entered into between the Contractor and the Contracting Authority.
4. The term Result shall not include:
- Licensed Software Products, except for modifications brought to Licensed Software Products on request of the Contracting Authority and any Source Code of Licensed Software Products, except where otherwise agreed in the Contract and without prejudice to the rights of the Contracting Authority to have access to the Source Codes in certain circumstances;
 - Standard Documentation;
 - Improvements and customisation.
5. Notwithstanding anything to the contrary stipulated in the contract, including the tender specifications, the Contractor warrants that, for any use that the Contracting Authority may envisage within the limits as set out in the Contract, any protected material delivered under the Contract which is not considered as a Result for the purpose of a contract is free of claims from right holders or in general from any third parties and all the necessary intellectual property rights have been cleared.

I.10.2. Ownership of the rights in the Results

1. Notwithstanding anything to the contrary stipulated in the contract, including the tender specifications, 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 Contract and incorporated in the Results, without prejudice however to the rules applying to Pre-existing Rights on Pre-existing Materials, as per article I.10.5.
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 Personnel in its Performance of the Contract. The Contracting Authority may exploit and use the acquired rights as stipulated in this Contract. The Contracting Authority acquires all the rights as from the moment the Contractor has created the Results.

3. 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 for use of the Results;
4. If the Contractor wishes to use the Results for this own needs or to commercialise them, the provisions of Article I.10.10 will apply.

I.10.3. Ownership of the Contracting Authority's data

The Contractor acknowledges that all data provided by the Contracting Authority to the Contractor or generated through the use by the Contracting Authority of the Services shall remain the ownership of the Contracting Authority. The Contractor shall acquire no right in such data other than the right to use such data for the purpose of and in compliance with this Contract. Personal data may only be processed for the purpose of the fulfilment of the Contract and in accordance with article II.9 (Processing of personal data).

I.10.4. Exclusive rights on the Results

1. In conformity with Article I.10.2.1. whereby the Contracting Authority acquires the ownership of the intellectual property rights on the Results, the Contracting Authority notably acquires the following exclusive rights of exploitation:

(1) 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;
- Making it available to the other EU 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;

(2) Distribution: the right to authorise or prohibit any form of distribution of Results or copies of the Results to the public, by sale or otherwise, distribution to the public in hard copies, in electronic or digital format, on the internet including social networks as a downloadable or non-downloadable file.

(3) 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;

(4) Communication to the public: the 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;

(5) Adaptation: the right to authorise or prohibit any modification of the Results;

(6) 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;

(7) where the Results are or include a database: the 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 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;

(8) 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;

(9) 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 and deemed appropriate by the Contracting Authority;

(10) where the Results are documents:

- 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 them by this Decision;
- 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;

(11) where the Results are or incorporate the software, including Source Code, object code and, where relevant, documentation, preparatory materials and manuals, in addition to the other rights mentioned in this article:

- end-user rights, for all uses by the Contracting Authority or by subcontractors which result from this Contract and from the intention of the parties;
- the rights to receive both the Source Code and the object code;

(12) the right to license to third parties any of the exclusive rights or of the modes of exploitation set out in this Contract; 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 I.10.5;

(13) 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;

2. 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.
3. 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.

I.10.5. Licencing rights on Pre-Existing Materials

1. Unless provided otherwise in the contract, including the Tender Specifications, the Contracting Authority does not acquire ownership of Pre-existing Rights under this Contract.
2. The Contractor licenses the Pre-existing Rights on a royalty-free, non-exclusive and irrevocable basis to the Contracting Authority, which may use the Pre-existing Materials for all the modes of exploitation set out in this Contract. 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, 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; for the sake of this provision, "reuse" and "document" have the meaning given by the Commission Decision of 12 December 2011 on the reuse of Commission documents (2011/833/EU).
3. Without prejudice to anything contrary stipulated in the contract, including the Tender Specifications, all Pre-existing Rights are licensed to the Contracting Authority from the moment the Results are delivered.

4. The licensing of Pre-existing Rights to the Contracting Authority under this Contract covers the European Union, as well as any other sites where the Contracting Authority, its contractors or subcontractors operate and is valid for the duration of intellectual property rights protection.
5. The payment of the price as set out in this Contract 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.
6. 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 license agreement. Such use by the Contractor will not entail any transfer of rights to the Contractor and is limited exclusively to the needs of this Contract.

I.10.6. Identification of Pre-existing Rights

1. When delivering the Results, the Contractor must warrant that, for any use that the Contracting may envisage within the limits set in this Contract, the newly created parts and the Pre-existing Material incorporated in the Results are free of claims from Creators or from any third parties and all the necessary Pre-existing Rights have been obtained or licensed.
2. 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 list or declaration will be annexed to the Contract. The Contractor must update its contents throughout the performance of the contract, and provide this updated list or declaration to the Contracting Authority together with any invoice.

I.10.7. Evidence of granting of Pre-existing Rights

1. Upon request by the Contracting Authority, the Contractor must, in addition to the list mentioned under article I.10.6, provide evidence that it has the ownership or the right to use all the listed Pre-existing Rights, except for the rights owned or licensed by the Contracting Authority. The Contracting Authority may request this evidence even after the end of this Contract.
2. 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.
3. 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 Creator(s);

- 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. the text of the disclaimer notice, if any.
4. Provisions 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;
5. The Contractor also warrants that it possesses the relevant rights or powers to execute the transfer, including the power to sublicense to the Contracting Authority any third party rights in the Pre-existing Rights and that it has paid or has verified payment of all due fees including fees due to collecting societies, related to the final Results.

I.10.8. Commissioned Software

1. The use of pre-existing Software, including free and open source Software, in the development of Commissioned Software shall be subject to the Contracting Authority's prior written consent. Any request to use free and open source Software shall include the terms of all free and open source licences applicable to such Software.
2. The use of free and open source Software as part of Commissioned Software may not limit the use or reuse of the commissioned Software by the Contracting Authority, as described in the Contract.
3. Unless expressly agreed upon by the Contracting Authority, the use of free and open source Software as part of Commissioned Software may not impose any disclosure to third parties of all or part of the Commissioned Software.
4. The Contractor shall include in the technical Documentation a list of all free and open source licences used in the Commissioned Software and the associated licence terms.
5. The Contractor shall be fully responsible and liable for the representations, warranties and other obligations set out in this article I.10.8 with regard to the free and open source Software used.
6. In the event of any dispute relating to the use of free and open source software in the Commissioned Software, the Contractor shall assist the Contracting Authority in its defence and shall demonstrate that it did not use free and open source software in a way that limits the use or reuse of the developed software by the Contracting Authority or, unless expressly agreed upon by the Contracting Authority, in a way that imposes the disclosure to third parties of all or part of the Commissioned Software.

I.10.9. Moral rights of Creators

1. 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.
2. 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.

I.10.10. Licencing of results

1. If the contractor wishes to use the Results either for his own needs or to commercialise them, the contracting authority may, at its discretion, decide to grant the permission to do so.
2. The contracting authority will consider such request in good faith and will respond and, as the case may be, enter into negotiations with the contractor, with no undue delay.
3. If the contracting authority grants its permission, the parties will then conclude a separate written agreement which will detail the fair and reasonable terms and conditions of the licence, including its scope, duration, territory, financial terms, exclusive or non-exclusive character. The terms and conditions of licensing agreements will be adapted on case by case basis depending on the specifics of individual licensees and technologies. The maturity of the technology, the expected size of the market as well as the required investments will be taken into account when determining licensing conditions. In all cases, the contracting authority will aim to provide fair financial conditions reflecting the value of the technology.
4. In taking its decision, the contracting authority will notably consider the impact and added-value for the EU market and the EU citizens.

I.10.11. Indemnification

The Contracting Authority will defend any claims against the Contractor alleging that the Contracting Authority's data infringes the intellectual property rights of a third party.

I.10.12. Third Party Claims relating to the use of Products, Services, Documentation or other protected material delivered under the Contract

1. Each Party shall notify the other Party of the existence or threat of any third party claim or action alleging an infringement of its intellectual property rights and/or a non-authorised access to and/or processing of data by the Contracting Authority's use of any Product, Service, Documentation or other protected material delivered under the Contract.
2. In the event of such a dispute or threat of dispute, the Contractor shall promptly provide the Contracting Authority with all assistance requested to mitigate losses, settle the dispute or threat of dispute, enable, facilitate and/or accelerate the clearance of the disputed third party

rights. Upon first request of the Contracting Authority, the Contractor shall, at its own and sole expense, voluntarily intervene in any pending litigation relating to the third party right.

3. The Contractor shall proactively notify the Contracting Authority of any relevant element relating to the dispute or threat of dispute. Upon first request of the Contracting Authority, the Contractor shall, at its own and sole expense, provide the Contracting with all useful and/or reasonable information and assistance in connection with the dispute or threat of dispute.
4. The Contracting Authority reserves the right to conduct its own defence or to negotiate its own settlement, at its own discretion. In such case, the Contractor shall be liable for all reasonable legal expenses, including lawyers and experts fees, incurred by the Contracting Authority in conducting its own defence or negotiating its own settlement.
5. The Contractor shall hold the Contracting Authority harmless from and against any damages suffered by such litigation or threat of litigation and the Contractor shall be liable for any claim or payment arising out of any judgment, ruling or settlement relating to the third party claim or action relating to third party rights, except for the payment of a settlement made by the Contracting Authority without the Contractor's written consent. Such consent may not be withheld without reasonable grounds. In case of refusal to give such consent, the Contractor shall be bound to submit an alternative reasonable and feasible solution which duly mitigates the losses incurred by the Contracting Authority.
6. If the infringement of a third party right is declared in a judgment, arbitration sentence or party settlement, or if such an event is likely to happen, the Contractor undertakes, at its own and sole cost, to either:
 - Modify the concerned Products, Services or Documentation in a way that would end the infringement to any third party rights;
 - Replace the concerned Products, Services or Documentation them with substantially equivalent non-infringing Products, Services or Documentation; or
 - Obtain any rights from the third party right holders required to allow the Contracting Authority to continue using the concerned Products, Services or Documentation as described in the Contract.
7. If the Contractor fails to remedy the infringement of the third party rights in application of article I.10.12 par. 5, the Contracting Authority shall be entitled to take all necessary measures to remedy the infringement at the Contractor's expense.
8. Provided it is not possible to remedy the infringement, the contracting authority shall be entitled to terminate the Contract.
9. Without prejudice of article I.10.12 par. 5 and without prejudice to the right of the Contracting Authority to claim additional damages, the Contractor shall reimburse to the Contracting Authority the purchase, rental, leasing or licence price of any infringing Product and/or Documentation. The Contracting Authority may, at its own discretion decide to pursue the Contract limited to the use of the non-infringing parts of the Service or Documentation. In the latter case, the Parties will determine in good faith the amount of the

reimbursement to the Contracting Authority and/or an adapted price for the further deliverables.

10. The guarantee against third party claims is due by the Contractor until five (5) years following the end of the contract, or until five (5) years following the last use by the EuroHPC Joint Undertaking of the Products, Services, Documentation or other protected material delivered under the Contract by the Contractor, whichever period ends last.
11. The Contractor will not be responsible under the present guarantee for any third party claiming an infringement of its intellectual property rights based on:
 - (a) The Contracting Authority's use of any Product or Service in combination with Hardware or Software not delivered by the Contractor, if such combined use is the only cause of the claimed infringement, and provided that the Contractor did not expressly or implicitly agree with such combined use, or
 - (b) Contracting Authority's use of any Product or Documentation in a form other than the one delivered by the Contractor, if such change in form is the only cause of the claimed infringement, and provided that the Contractor did not expressly or implicitly agree with such use in the other form.

I.10.13. Use of EU Protected Material

1. The Contracting Authority may authorise the Contractor to use identified EU Protected Material, which the Contractor is likely to use in the execution of its obligations under the Contract.
2. The Contractor shall use the EU Protected Material only to the extent strictly necessary for the execution of the Contract.
3. The Contractor shall not copy any EU Protected Material without prior written authorisation from the Contracting Authority.

I.10.14. Third Party Claims relating to the use of Protected Material

1. Each Party shall Notify the other Party without undue delay of the existence or threat of any third party claim or action alleging a breach of any third party rights, including intellectual property rights, resulting from the use by the Contractor of EU Protected Material, whether or not in contravention with article I.10.13.
2. In the event of such a dispute or threat of dispute, the Contractor shall proactively Notify the Contracting Authority of any relevant element relating to the dispute or threat. Upon first request of the Contracting Authority, the Contractor shall, at its own and sole expense, provide Contracting Authority with all useful and/or reasonable information and assistance in connection with the dispute or threat of dispute.
3. The Contractor shall protect and indemnify the Contracting Authority against all third party claims or actions alleging a breach of any third party rights, including intellectual property rights, resulting from the use by the Contractor of EU Protected Material in contravention with articles I.10.13. However, the Contracting Authority reserves the right to conduct its

own defence or to negotiate its own settlement, at its own discretion. In such case, the Contractor shall be liable for all reasonable legal expenses, including lawyers and experts fees, incurred by the Contracting Authority in conducting its own defence or negotiating its own settlement. Upon first demand of the Contracting Authority, the Contractor shall, at its own and sole expense, voluntarily intervene in any pending litigation resulting from the use by the Contractor of EU Protected Material in contravention with articles I.10.13.

4. The Contractor shall be liable for any claim or payment arising out of any judgment, ruling or settlement relating to the third party claim or action alleging a breach of any third party rights resulting from the use by the Contractor of EU Protected Material in contravention with articles I.10.13., except for the payment of a settlement made by the Contracting Authority without the Contractor's written consent (not unreasonably withheld).
5. The Contractor shall hold the Contracting Authority harmless from and against any damages suffered by the Contracting Authority caused by a breach of this article I.10.14.

I.10.15. 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.

I.10.16. 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.

I.11. OTHER SPECIFIC SECURITY OBLIGATIONS

1. The Contractor shall take all appropriate steps for each Product to ensure that the data and the magnetic media upon which they are stored are safely preserved. The Products supplied shall not contain any mechanism (e.g. viruses) which could compromise their proper operation or that of other Products. The cost of repairing the damage caused by such a mechanism shall be borne by the Contractor.
2. The Contractor undertakes to inform the EuroHPC Joint Undertaking by a Means of registered communication as soon as it has any knowledge of defaults in its Products that endanger the security of the configurations of which they form a part. It shall immediately take any measures necessary to restore the security of the configurations and correct the defaults
3. The Contractor shall ensure that all security precautions for each Product are clearly spelled out in the relevant Documentation supplied to the EuroHPC Joint Undertaking.

4. Should the Contractor, during the performance of the tasks which are the subject of the contract, need remote access to internal informatics resources from the external domain, he shall be requested to comply with the Hosting Entity's internal rules on practical and technical security for remote intervention. This must be achieved by way of signature of a specific agreement for remote intervention provided by the Hosting Entity.

I.12. SPECIFIC QUALITY REQUIREMENTS

1. The Contractor shall perform the Services and provide the Products in full knowledge and consideration of the Hosting Entity's computing environment. It shall perform it in accordance with technical norms, standards and procedures based on best professional practice in the informatics and/or telecommunications field, for instance the ISO 9000 standards.
2. The Contractor guarantees that Software delivered under this contract, whether or not developed in execution of this contract, will not fail to execute its programming instructions due to defects and workmanship when properly installed and used on the device designated by the Contractor. It shall be devoid of any deliberate mechanism which leaves it under the Contractor's control after supply to the EuroHPC Joint Undertaking. It shall meet the operating requirements, specifications and characteristics specified in the Contractor's documents or laid down in the contract.
3. The quality of the Contractor's Products and Services shall be measured by reference to the definitions, quality standards and procedures defined in the Contract, and by reference to the Quality indicators defined in the Service level agreement as included in the tender.

I.13. MEETINGS

1. The first meeting, ("kick-off meeting") will be held on a mutually agreed date no later than 30 calendar days following the signature of the contract. The main key employees of the Contractor, the EuroHPC Joint Undertaking and the Hosting Entity will participate in this meeting, with the aim of mutual presentation of the teams (technical contacts, security correspondents, etc.).
2. The two Parties will then meet regularly to monitor the progress of operations related to this Contract.
3. Before the installation of each partition, regular planning meetings will be held. At least a technical representative of the Contractor will be available for these meetings. The purpose of these meetings will be to review practical issues related to installation, hand over and acceptance of the supplies covered in the Contract and to monitor the progress of operations related to this Contract.
4. All meetings will be organised at the Hosting Entity's premises unless otherwise agreed.
5. The meetings will continue until the final acceptance, unless otherwise agreed.
6. The minutes of each meeting should be drafted after the meeting by the Contractor and transmitted to the EuroHPC Joint Undertaking with copy to the Hosting Entity within 10 working days for approval unless otherwise agreed in this meeting.

7. The minutes shall be enforceable after approval by the EuroHPC Joint Undertaking and the Hosting Entity. Minutes which are not contested within 10 working days of their transmission shall become final, it being understood that these minutes may not modify, or amend the contract in any way.

I.14. SPECIFIC PROVISIONS RELATING TO THE DELIVERY, INSTALLATION AND ACCEPTANCE

Unless otherwise indicated, the Hosting Entity, will act in the name and on behalf of the EuroHPC Joint Undertaking during the delivery, installation and acceptance, as well as maintenance (technical operations).

I.14.1. Delivery

1. By way of specification of Article II.4. the deliveries shall take place in accordance with the schedule and milestones referred to in the Technical Specifications (Annex I) and Contractor's tender (Annex II).
2. The Contractor shall confirm the exact Delivery date of each delivery at least fourteen (14) calendar days in advance to the EuroHPC Joint Undertaking and the Hosting Entity by a Means of communication.
3. A Delivery may take place on an earlier date with the contracting authority's prior written consent prior to consultation with the Hosting Entity.
4. Failure regarding the Delivery date is considered as damage to the EuroHPC Joint Undertaking as defined in Article II.6 of the General Conditions.
5. The EuroHPC Joint Undertaking shall take all necessary steps to ensure that the Hosting Entity shall, during Normal working days and hours, provide access to its premises for delivery on the notified Delivery date.
6. Delivery and installation costs shall be borne by the Contractor. Deliveries shall be complete.
7. Where the EuroHPC Joint Undertaking has incurred costs vis-a-vis a third party by reason of a delay in delivery or commissioning attributable to the Contractor, then the Contractor shall reimburse those costs upon production of supporting documents, provided that the EuroHPC Joint Undertaking has notified the Contractor by a Means of communication of the risk of incurring damages due to the late delivery soon after having been informed of the Contractor's inability to deliver on time.
8. Receipt of each Delivery shall be recorded in a Delivery note signed by the EuroHPC Joint Undertaking or the Hosting Entity as stated in Article II.4 (c) of the General Conditions.

I.14.2. Installation

1. The EuroHPC Joint Undertaking shall take all necessary measures to ensure that the Hosting Entity grants the Contractor access to premises for the assembly of System on the Installation date, which must be duly notified by the Contractor with a Means of registered communication.
2. The Parties together with the Hosting Entity shall jointly inspect the installation environment before the installation of the System.
3. Installation will be done in conformity with the Contractor's tender and/or Service Level agreement and with the minutes of any relevant meeting and in accordance the methodology agreed if appropriate.

I.14.3. Acceptance

1. Upon the successfully completion of the delivery, installation, configuration and other customary and necessary tests, the Contractor shall hand the Delivery over to the Contracting Authority for acceptance testing. The Contracting Authority and/or the Hosting Entity shall start the acceptance testing within undue delay.
2. The acceptance testing shall be carried out separately for each Delivery, meaning that each Delivery shall be separately accepted, invoiced and paid for, and failure of any subsequent Delivery to achieve acceptance shall have no impact on Deliveries previously accepted. The acceptance of a Delivery does not discharge the Contractor from liability for Errors that may emerge in subsequent acceptance tests.
3. The Contracting Authority shall inspect the Deliverables and run its own acceptance tests for the Deliverables in accordance with the Annex III (Acceptance Procedure). The Contractor shall assist the Contracting Authority with the acceptance testing as defined in Annex III in a manner agreed upon between the Parties.
4. The Contracting Authority or the Hosting Entity as its authorized representative shall inform the Contractor of any Errors found by the Contracting Authority or the Hosting Entity in its acceptance tests in writing. The Contractor shall fix all Errors promptly and free of charge.
5. The acceptance test criteria and procedure is set out further in Annex III (Acceptance procedure).
6. Once each Delivery has been delivered and installed, the Contractor shall provide the Contracting Authority with a final report, which shows, among other things, the System installation configurations and includes comprehensive diagrams of the System structure and cabling. The detailed contents of the final report are set out in Annex II (Contractor's tender and in particular in the project plan included therein). Delivery of the final report with the agreed content is a condition precedent for the acceptance of a Delivery. All material including the final report set out in Annex II= (Contractor's tender and in particular in the Project Plan included therein) must be updated to comply with the changes made during the acceptance tests.
7. A Delivery shall be regarded as accepted ("Acceptance Date") once:

- a) the Delivery has passed the acceptance tests or the Delivery in its entirety or any part of the Delivery has been taken into production use by the Contracting Authority. For the avoidance of doubt, any test or pilot use shall not be considered as production use and does not mean or constitute acceptance of the Delivery; and
 - b) the Contractor has corrected all Errors reported by the Contracting Authority and the Contracting Authority has accepted the Error corrections in writing or has not reported any remark within ten (10) working days after delivery of the Error corrections by the Contractor; and
 - c) the Contractor has delivered all the Documentation (including all updates thereto).
8. Each Party shall be liable and responsible for the costs and expenses arising from its acceptance tests and for cooperating and participating in the other Party's acceptance tests.

I.15. DOCUMENTATION

1. The Contractor shall provide the Contracting Authority with the relevant Documentation required for the appropriate and proper operation of the Products and Services, as well as with any update to such Documentation as soon as it becomes available to other customers.
2. The Contractor shall diligently document all technical and practical information and instructions relating to the provision of the System and update them from time to time to reflect any changes in order for the Contracting Authority or a third party to be able to configure the System instead of the Contractor.
3. The Contractor shall provide the Contracting Authority with its Documentation and updates, as soon as they become available, in as many copies, whether in machine-readable form or on paper. In any case, the Contracting Authority shall have a right to obtain an electronic version of the Documentation upon request with five (5) calendar days prior notice.
4. If requested before Delivery Date the Contractor shall provide Documentation at its current state.
5. The Documentation and the updates thereto shall be available at least in English and, if provided in the Contract, in other EU official language(s).
6. The Contracting Authority shall be entitled to reproduce this Documentation in full or in part, in electronic form or on paper, for any Internal use by its staff. The Contracting Authority shall reproduce all references to Intellectual property rights appearing on the originals.
7. The Contracting Authority shall be entitled to modify the Documentation or to translate it to any official language of the European Union in which such Documentation is not made available by the Contractor. The Contractor warrants that the creators of the Documentation will not object to such modification or translation of the Documentation on the basis of their moral rights under copyright. The modified or translated Documentation may only be used by the Contracting Authority for Internal Use.
8. Upon termination of the Contract for any reason, the Contractor shall promptly provide the Contracting Authority with the current and updated Documentation.

9. The Contracting Authority shall be entitled to utilize such Documentation according to the provisions of this Article, and all Articles under I.10 (Intellectual Property Rights) of the Contract after the expiry or termination of this Agreement.
10. The Intellectual property rights in the Documentation that has been developed specifically for the EuroHPC JU shall rest exclusively with the EuroHPC JU.
11. The provision of reference Documentation shall be covered by a site licence, the terms of which shall be consistent with the nature and subject of the Documentation.

I.16. ADDITIONAL DEFINITIONS

In addition to the definitions of Article II.1, for the purpose of the present contract, the following terms shall have the following meaning:

‘Acceptance Date’ shall have the meaning set out in Article I.14.3.

‘Certificate of conformity’: Certificate signed by the EuroHPC Joint Undertaking (or the Hosting Entity if so agreed between the parties), evidencing conformity of the goods delivered, no later than one month after the date of delivery, unless provision is made in the Special Conditions or General terms and conditions for Information Technologies contracts for a different period.

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

‘Documentation’: technical and operating documentation of the System, Instructions and manuals relating to the Product(s) and/or Service(s), whether intended for support/technical staff or for end-user, as well as any other documentation agreed to be supplied to the Customer or necessary for the proper use of the System, and whether in printed or in electronic form.

‘Deliverables’ means the specific Deliveries of the System, the results of the Services, such as but not limited to Documentation and training, as well as any other results of the Services agreed to be or otherwise supplied by the Contractor under the Contract;

‘Phase’: a specific Phase of the System/partition as defined in the Annex III Contractor’s Tender and in particular in the Project Plan in terms of time schedule, the tasks and work to be done by each Party within each Phase and the Deliverables to be delivered by the Contractor during or at the end of each Phase that have been mutually agreed in writing between the Parties;

‘Delivery date’ system is handed over and is ready for the acceptance testing.

‘Delivery note’: Document listing the details of the delivery, acknowledging the fact that the delivery has taken place but in no way implying conformity with the specifications. It is compulsory for all deliverables.

‘Error’ means an error, problem, mistake, malfunction, omission, defect, failure or deficiency that causes an incorrect or inadequate functioning or non-functioning of the System and/or Service as well as a deviation from the Specifications, Documentation or other requirements set out in this Contract.

‘EU Protected Material’: Software or other protected material for which the intellectual property rights are the property of the Contracting Authority, or which have been licensed to the Contracting Authority by third parties. EU Protected Material also includes data for which the Contracting Authority or another EU institution, body or agency determines the purposes and means of the processing.

‘Hosting entity’: Legal entity which includes facilities to host and operate a EuroHPC JU supercomputer as defined in and in accordance with Council Regulation (EU) 2021/1173 of 13 July 2021 on establishing the European High Performance Computing Joint Undertaking¹ and repealing Regulation (EU) 2018/1488 as amended by Council (EU) Regulation 2024/1732 of 17 June 2024.

‘Hosting site’: the physical facilities at which Hosting Entity shall host and operate the EuroHPC JU supercomputer and which is established in a Participating State to the EuroHPC JU that is a Member State.

‘Installation date’: Date notified by the Contractor with a Means of registered communication on which the Contractor will perform the assembly, the installation and the bringing into service of a Hardware and or Software Product. This may not be later than fifteen (15) Normal working days after the date of its removal from its place of delivery to its place of installation. This date may be extended upon decision of the Joint Undertaking and may be notified by the Joint Undertaking with a Means of communication.

‘Internal Use’ :Use, including via on-line remote access from outside the premises of the Contracting Authority, by Contracting Authority's Staff or by other persons acting in fulfilment of a direct or indirect contractual obligation towards the Contracting Authority, be it as a contractor, a subcontractor or personnel of such (sub)contractor, within the context of the fulfilment of their mission for the Contracting Authority.

‘Licensed Software Product’: Software of which intellectual property rights are held by the Contractor or a third party, whether customised or not to meet the Contracting Authority's specific requirements, and licensed to the Contracting Authority under the Contract.

‘(Support) Services’: All standalone or ancillary support, assistance, planning, maintenance, training, consulting, managing, auditing and/or integration Services related to information technology, as further described in the Contract, including the Tender Specifications.

‘Product’: Any Software, including Licensed Software Product and Commissioned Software, Hardware or Telecommunications product. Where a distinction between the three types of Products is intended, it shall either be explicit, by the use of one of the three terms, or it may be implicitly deduced from the context of this 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 implementation 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;

¹ OJ L 256, 19.7.2021, p. 3–51

‘Regulation’: Council Regulation (EU) 2021/1173 of 13 July 2021 on establishing the European High Performance Computing Joint Undertaking² and repealing Regulation (EU) 2018/1488, as amended by Council Regulation (EU) 2024/1732 of 17 June 2024.

‘Software’: Any series of instructions constituting a computer-executable program or programs, and being (part of) the object of the contract.

‘System’: Combination of Products/ Partitions serving a complete set of functions, administration, management and maintenance, as further described in the Contract.

‘Working Days’: Monday to Friday, excluding 1st January, Easter Monday, Ascension Thursday, Whit Monday, 1st November and 25 December including additional legal holidays applicable to the Hosting Entity.

I.17. SERVICE PROVIDED ON THE PREMISES OF THE HOSTING ENTITY

When working within the Hosting Entity’s premises, the contractor’s employees shall comply with all applicable organizational, safety, security, confidentiality and operating instructions and rules. The Hosting Entity shall give such instructions and rules in writing.

I.18. SPECIFIC DEROGATION FROM THE GENERAL CONDITIONS

Article II.15 on reduction in price is not applicable to the contract, as well as any relevant reference.

I.19. OTHER SPECIAL CONDITIONS

Liquidated damages imposed in accordance to Article II.14 can, upon a mutual agreement of the Parties, take the form of further hardware, software or services that have become necessary and that were not included in the initial procurement.

² OJ L 256, 19.7.2021, p. 3–51

II. GENERAL CONDITIONS FOR THE SUPPLIES CONTRACT

II.1. DEFINITIONS

For the purpose of this contract, 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 a party 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 *performance of the contract*. 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 or negatively affected for reasons involving family, emotional life, political or national affinity, economic interest, any other direct or indirect personal interest, of the contractor, its *related persons or personnel*, or any third party related to the subject matter of the contract;

‘EDI message’ (electronic data interchange): a message created and exchanged through the electronic transfer, from computer to computer, of commercial and administrative data using an agreed standard;

‘Electronic exchange system’: is an electronic exchange system meeting the requirements of Article 151 of Financial Regulation³;

‘EUI’: European Union institution;

‘Force majeure’: any unforeseeable and unavoidable 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 the negligence of the debtor. Breaches or negligence of subcontractors, defaults, 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 Union's 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 Union budget, ii) the non-disclosure of information in violation of a specific obligation, with the same effect or iii)

³ Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (recast) (OJ L, 2024/2509, 26.09.2024, ELI: <http://data.europa.eu/eli/reg/2024/2509/oj>)

the misapplication of such funds or assets for purposes other than those for which they were originally granted, which damages the Union's 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;

‘Interoperability network’: independent third party platforms enforcing the European standards and Directives on cross-border interoperability in a certain domain;

‘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 or a budget managed by the Union;

‘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 supplies by the contractor to the contracting authority;

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

‘Portal’: EU Funding & Tenders Portal; electronic exchange system managed by the European Commission and used by itself and other EU institutions, bodies, offices or agencies for the management of their funding, prizes and procurement;

‘Professional conflicting interest’: a situation in which the contractor’s previous or ongoing professional activities affect or risk affecting its capacity to perform the contract in an independent, impartial and objective manner;

‘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;

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 contract is severable and distinct from the others, unless it is essential to the agreement of the parties. 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.

II.4. DELIVERY OF SUPPLIES

II.4.1 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/EU⁴, compliance with data protection obligations resulting from Regulation (EU) 2016/679⁵ and Regulation (EU) 2018/1725⁶.

II.4.2 All periods specified in the contract are calculated in calendar days, unless otherwise specified.

II.4.3 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.

II.4.4 The contractor is responsible for the *personnel* who perform the contract 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 supplies does not result in any employment or contractual relationship with the contracting authority.

II.4.5 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 supplies, as the case may be on the basis of the selection criteria set out in the tender specifications.

II.4.6 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 supplies; 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 supplies resulting from the replacement of *personnel*. Before deciding

⁴ OJ L 94 of 28.03.2014, p. 65

⁵ 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

⁶ Regulation (EU) 2018/1725 of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295/39, 21.11.2018, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1725&from=EN>

to replace a member of *personnel*, the contractor should first give him the opportunity to present observations.

II.4.7 The contractor must record and report to the contracting authority any problem that affects its ability to deliver the supplies. The report must describe the problem, state when it started and what action the contractor is taking to resolve it.

II.4.8 The contractor must immediately inform the contracting authority of any changes in the exclusion situations as declared, according to Article 139(1) of the *Financial Regulation*.

II.4.9 Delivery

(a) Time allowed for delivery

The time allowed for delivery is calculated in accordance with Article I.3.

(b) Date, time and place of delivery

The contracting authority must be notified in writing of the exact date of delivery within the period indicated in Article I.3. All deliveries must be made at the agreed place of delivery during the hours indicated in Article I.3.

The contractor must bear all costs and risks involved in delivering the supplies to the place of delivery.

(c) Delivery note

Each delivery must be accompanied by a delivery note in duplicate, duly signed and dated by the contractor or its carrier, giving the *contract* number and particulars of the supplies delivered. One copy of the delivery note must be countersigned by the contracting authority or the Hosting Entity and returned to the contractor or to its carrier.

II.4.10 Certificate of conformity

Signature of the consignment note by the contracting authority, as provided for in point (c) of Article II.4.9 is simply an acknowledgment of the fact that the delivery took place and in no way implies conformity of the supplies with the contract.

Conformity of the supplies delivered must be evidenced by the signature of a certificate to this effect by the contracting authority no later than one month after the date of delivery, unless otherwise specified in the special conditions or in the tender specifications.

Conformity must be declared only where the conditions laid down in the contract are satisfied and the supplies conform to the tender specifications.

If, for reasons attributable to the contractor, the contracting authority is unable to accept the supplies, the contractor must be formally notified at the latest by the deadline for conformity.

II.4.11 Conformity of the supplies delivered with the contract

The supplies delivered by the contractor to the contracting authority must be in conformity in quantity, quality, price and packaging with the *contract*.

To be in conformity, the supplies delivered must:

- (a) correspond to the description given in the tender specifications and possess the characteristics of the supplies provided by the contractor to the contracting authority as a sample or model;
- (b) be fit for any specific purpose required of them by the contracting authority and made known to the contractor at the time of conclusion of this contract and accepted by the contractor;
- (c) be fit for the purposes for which supplies of the same type are normally used;
- (d) demonstrate the high quality standards and performance which are normal in supplies of the same type and which the contracting authority can reasonably expect, given the nature of the supplies and taking into account any public statements on the specific characteristics of the supplies made by the contractor, the producer or its representative, particularly in advertising or on labelling; 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.
- (e) be packaged according to the usual method for supplies of the same type or, failing this, in a way designed to preserve and protect them.

II.4.12 Remedy

The contractor is liable to the contracting authority for any lack of conformity which exists at the time the supplies are verified.

In case of a lack of conformity, without prejudice to Article II.15 on liquidated damages applicable to the total price of the supplies concerned, the contracting authority is entitled:

- (a) to have the supplies brought into conformity, free of charge, by repair or replacement.

Any repair or replacement must be completed within a reasonable time and without any significant inconvenience to the contracting authority, taking account of the nature of the supplies and the purpose for which they are required by the contracting authority.

The term ‘free of charge’ in paragraph (a) refers to the costs incurred to bring the supplies into conformity, particularly the cost of postage, labour and materials.

II.4.13 Assembly

If required by the tender specifications (Annex I), the contractor must assemble the supplies delivered within a period of one month unless otherwise specified in the special conditions.

Any lack of conformity resulting from incorrect installation of the supplies must be deemed to be equivalent to lack of conformity of the supplies if installation forms part of the contract and the supplies were installed by the contractor or under its responsibility. This applies equally if the product was to be installed by the contracting authority and was incorrectly installed owing to a shortcoming in the installation instructions.

II.4.14 Services provided to supplies

If required by the tender specifications, services to supplies must be provided accordingly.

II.4.15 General provisions concerning supplies

(a) Packaging

The supplies must be packaged in strong boxes or crates or in any other way that ensures that the contents remain intact and prevents damage or deterioration. Packaging, pallets, etc., including contents, must not weigh more than 500 kg.

Unless otherwise specified in the special conditions or in the tender specifications (Annex I), pallets must be considered as one-way packaging and must not be returned. Each box must be clearly labelled with the following information:

- Name of contracting authority and address for delivery;
- name of contractor;
- description of contents;
- date of delivery;
- number and date of *contract*;
- EC code number of article.

(b) Guarantee

The supplies must be guaranteed by the contractor against all defects in manufacture or materials for two years from the date of delivery, unless provision is made for a longer period in the tender specifications.

The contractor must guarantee that any permits and licences required for manufacturing and selling the supplies have been obtained.

The contractor must replace at its own expense, within a reasonable time limit to be determined by agreement between the parties, any items which become damaged or defective in the course of normal use during the guarantee period.

The contractor is responsible for any conformity defect which exists at the time of delivery, even if this defect does not appear until a later date.

The contractor is also responsible for any conformity defect which occurs after delivery and is ascribable to non-compliance with its obligations, including failure to provide a guarantee that, for a certain period, supplies used for the purposes for which they are normally used or for a specific purpose will preserve their qualities or characteristics as specified.

If part of an item is replaced, the replacement part must be guaranteed under the same terms and conditions for a further period of the same duration as that specified above.

If a defect is found to originate in a systematic flaw in design, the contractor must replace or modify all identical parts incorporated in the other supplies that are part of the order, even though they may not have been the cause of any incident. In this case, the guarantee period must be extended as stated above.

II.4.16. Provisions of services

II.4.16.1. 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. Where the Union has 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.4.16.2. The contractor must comply with the minimum requirements provided for in the tender specifications. This includes compliance by the contractor and its subcontractors 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, compliance with data protection obligations resulting from Regulation (EU) 2016/679 and Regulation (EU) 2018/1725.

II.4.16.3. The contractor must obtain any permit or licence required in the State where the services are to be provided.

II.4.16.4. All periods specified in the contract are calculated in calendar days, unless otherwise specified.

II.4.16.5. 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.

II.4.16.6. 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.

II.4.16.7. The contractor must ensure that the personnel implementing 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.

II.4.16.8. 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.

II.4.16.9. 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.

II.5. COMMUNICATION BETWEEN THE PARTIES

II.5.1. Form and means of communication

Any notifications, communication of information or exchange of documents under the contract must be made in writing, in the language of the contract and must clearly identify the contract number, if applicable.

Communication between the parties can take place:

- by electronic means, via electronic exchange system, in accordance with the provisions of Article II.5.2.;
- by electronic means, via email, in accordance with the provisions of Article II.5.3.;
- on paper, via mail - by courier service with proof of delivery or by registered post with proof of delivery, in accordance with the provisions of Article II.5.4.

The specific rules when formal notifications are considered to have been received are provided in Sections II.5.2.2, II.5.3.2 and II.5.4.2 below.

Communication details to be used for all communication between the parties are indicated in Article I.6.

II.5.2. Communication via electronic exchange system (EES)

The contracting authority may use an EES for all exchanges with the contractor during the implementation of the contract.

If communication via the EES is hindered by factors beyond the control of one party, including technical problems, the party who first discovers the hinderance must *notify* the other party immediately and the parties must take the necessary measures to restore this communication via the EES. Upon such *notification*, the parties shall use alternative means of communication until communication via electronic exchange system is restored. The provisions applicable to alternative means of communication are described in Articles II.5.3 and II.5.4 below.

If the EES is temporarily unavailable, the sending party cannot be considered in *breach of its obligation* to send a communication within a specified deadline. In any event, for reasons linked to business continuity, the contracting authority reserves the right to use alternative means of communication at any moment.

II.5.2.1 Date of communication via electronic exchange system for other than formal notifications

Notifications through the EES are generally considered to have been made when they are sent by the sending party (i.e. on the date and time they are sent through the EES) as indicated by the time logs.

II.5.2.2 Date of communication via electronic exchange system for formal notifications

The receiving date for *formal notifications* made through the EES will be the date and time the communication is accessed, as indicated by the time logs. *Formal notifications* that have not been accessed within 10 days after sending, will be considered to have been accessed.

II.5.3. Communication via email

When communicating via e-mail, the parties shall send their messages to the email addresses indicated in Article I.6.

II.5.3.1 Date of communications via email for other than formal notifications

Without prejudice to Article II.18. below and Point 31.3 of Annex I to the FR, *notifications* via email are considered to have been made and the email is deemed to have been received by the receiving party on the date of dispatch of that e-mail, if it is sent to the email address indicated in Article I.6 and does not have characteristics that could reasonably prevent its proper delivery (such as sending extremely voluminous e-mails that can be blocked for their size or emails containing elements that the majority of the spam filters would block). The sending party must be able to prove the date of dispatch. If the sending party sends the email to the email address indicated in Article I.6 and receives a non-delivery report, it must make every reasonable effort to ensure that the other party receives the communication.

II.5.3.2 Date of communications via email for formal notifications

Formal notifications by email are considered to have been received on the date of dispatch of a return email expressly or impliedly acknowledging receipt. In case no such email is received by the party who sent the *formal notification* within 10 days, the *formal notification* should be re-sent via courier service with proof of delivery or registered post (see Article II.5.4.2 below).

II.5.4. Communication via mail

As a rule, mail is used by way of exception for *formal notifications* and as alternative means of communication when the other means are not available.

When communicating via mail, the parties should send their letters to the postal addresses indicated in Article I.6.

II.5.4.1. Date of communications via mail for other than formal notifications

Without prejudice to Article 116 of the *Financial Regulation*, *notifications* via mail are considered to have been made at the date of receipt by the receiving party.

A receiving party cannot make use of its own refusal to be informed of the communication in order to render it ineffective.

Invoices sent to the contracting authority via mail are deemed to be received on the date when they are registered by the authorised department of the authorizing officer responsible.

II.5.4.2. Date of communications via mail for formal notifications

Formal notifications by courier service with proof of delivery are considered to have been received on the date indicated in the proof of delivery. *Formal notifications* by registered post with proof of delivery are considered to have been received either on the delivery date registered by the postal service or the deadline for collection at the post office.

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 performance of the contract.
- 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 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.
- II.6.3** Except in case of *force majeure*, the contractor is liable for any loss or damage caused to the contracting authority during or as a consequence of performance of the contract, resulting from a breach attributable to the contractor, including in the event of subcontracting, but only up to an amount not exceeding three times the total amount of the *contract*. However, if the damage or loss is caused by the gross negligence or wilful misconduct of the contractor, a *related person*, its *personnel* or its subcontractors, or if an injury has been caused to the life or the physical integrity of a person, 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 *performance of the contract*, 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.6.3 do not apply.
- 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 *performance of the contract*.
- II.6.6** Without prejudice of article II.6.3, the contractor shall not be liable to the contracting authority for any indirect, incidental, consequential or punitive damages or for any loss of profits, whether based upon contract, tort or any other legal basis resulting from or in any way connected with the performance of the contract. The Contractor shall not be liable to the contracting authority for the excluded damages or losses, whether foreseeable or not, and even if the Contracting Authority has been advised of the possibility of their occurrence. This exclusion shall not apply to confidentiality obligations, warranty obligations, or indemnification obligations under this contract.
- II.6.7.** 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.

II.7. CONFLICT OF INTERESTS 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 *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 to rectify this situation.

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

- (a) its *personnel*;
- (b) any *related person*;
- (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.

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 *performance of the contract* 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 *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 performance of the contract and for as long as the information or documents remain confidential unless:

- (a) the disclosing party agrees to release the receiving party from the confidentiality obligation earlier;
- (b) the *confidential information or documents* become public through 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 *related person* and its *personnel*, as well as from third parties involved in the performance of the contract, a written 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.8.5** The contracting authority is entitled to make available (any part of) the *confidential information or documents* to its staff and the staff of other Union institutions, agencies and bodies, as well to other persons and entities working for the contracting authority or cooperating with it. This includes other contractors or subcontractors and their personnel, who need to know the same for the performance of a contract, who know they must treat it confidentially and who are bound by confidentiality obligations that are no less restrictive than the contracting authority's confidentiality obligations set out in this section.
- II.8.6** The receiving party will, on request from the other party, return all copies and records of the *confidential information or documents* of the other party and will not retain any copies or records of the *confidential information or documents* of the other party.
- II.8.7** The contractor must not grant access to any equipment provided by or delivered to the contracting authority during the implementation of the contract to any third parties, unless priorly authorised by the contracting authority in writing.

II.9. PROCESSING OF PERSONAL DATA

II.9.1 Processing of personal data by the contracting authority

Any personal data included in or relating to the contract, including its implementation, shall be processed in accordance with Regulation (EU) 2018/1725⁷. Such data shall be processed solely for the purposes of the implementation, management and monitoring of the contract by the data controller.

The contractor or any other person whose personal data is processed by the data controller in relation to this contract has specific rights as a data subject under Chapter III (Articles 14-25) of Regulation (EU) 2018/1725, in particular the right to access, rectify or erase their personal data and the right to restrict or, where applicable, the right to object to processing or the right to data portability.

Should the contractor or any other person whose personal data is processed in relation to this contract have any queries concerning the processing of its personal data, it shall address itself to the data controller. They may also address themselves to the Data Protection Officer of the data controller. They have the right to lodge a complaint at any time to the European Data Protection Supervisor.

Details concerning the processing of personal data are available in the data protection notice referred to in Article I.7.

⁷ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32018R1725>

II.9.2 Processing of personal data by the contractor

The processing of personal data by the contractor shall meet the requirements of Regulation (EU) 2018/1725 and be processed solely for the purposes set out by the controller.

The contractor shall assist the controller for the fulfilment of the controller's obligation to respond to requests for exercising rights of person whose personal data is processed in relation to this contract as laid down in Chapter III (Articles 14-25) of Regulation (EU) 2018/1725. The contractor shall inform without delay the controller about such requests.

The contractor may act only on documented written instructions and under the supervision of the controller, in particular with regard to the purposes of the processing, the categories of data that may be processed, the recipients of the data and the means by which the data subject may exercise its rights.

The contractor shall grant *personnel* access to the data to the extent strictly necessary for the *implementation*, management and monitoring of the contract. The contractor must ensure that *personnel* authorised to process personal data has committed itself to confidentiality or is under appropriate statutory obligation of confidentiality in accordance with the provisions of Article II.8.

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

- (a) the 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 to protect personal data from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed.

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

- (a) 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) likely consequences of the breach;
- (c) measures taken or proposed to be taken to address the breach, including, where appropriate, measures to mitigate its possible adverse effects.

The contractor shall immediately inform the data controller if, in its opinion, an instruction infringes Regulation (EU) 2018/1725, Regulation (EU) 2016/679, or other Union or Member State data protection provisions as referred to in the tender specifications.

The contractor shall assist the controller for the fulfilment of its obligations pursuant to Article 33 to 41 under Regulation (EU) 2018/1725 to:

- (a) ensure compliance with its data protection obligations regarding the security of the processing, and the confidentiality of electronic communications and directories of users;
- (b) *notify* a personal data breach to the European Data Protection Supervisor;
- (c) communicate a personal data breach without undue delay to the data subject, where applicable;
- (d) carry out data protection impact assessments and prior consultations as necessary.

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

The contracting authority is subject to Protocol 7 of the Treaty on the Functioning of the European Union on the privileges and immunities of the European Union, particularly as regards the inviolability of archives (including the physical location of data and services as set out in Article I.7.2) and data security, which includes personal data held on behalf of the contracting authority in the premises of the contractor or subcontractor.

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

The duration of processing of personal data by the contractor will not exceed the period referred to in Article II.22.2. Upon expiry of this period, the contractor shall, at the choice of the controller, return, without any undue delay in a commonly agreed format, all personal data processed on behalf of the controller and the copies thereof or shall effectively delete all personal data unless Union or national law requires a longer storage of personal data.

For the purpose of Article II.10, if part or all of the processing of personal data is subcontracted to a third party, the contractor shall pass on the obligations referred to in Articles I.7.2 and II.9.2 in writing to those parties, including subcontractors. At the request of the contracting authority, the contractor shall provide a document providing evidence of this commitment.

II.10. SUBCONTRACTING

II.10.1 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.

II.10.2 Even if the contracting authority authorises subcontracting, the contractor remains bound by its contractual obligations and remains entirely responsible for the *performance of this contract* vis-à-vis the contracting authority.

II.10.3 The contractor must ensure that the subcontract does not affect the rights of the contracting authority under this contract, particularly those under Article II.8 and II.22.

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.17.1. The contractor bears the costs of such replacement.

II.11. AMENDMENTS

II.11.1 Any amendment to the contract must be made in writing before all contractual obligations have been fulfilled.

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

II.12. ASSIGNMENT OF THE CONTRACT TO A THIRD-PARTY

II.12.1 The contractor must not assign any of 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.

II.12.2 Any right or obligation assigned by the contractor without authorisation is not enforceable against the contracting authority.

II.13. FORCE MAJEURE

II.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.

II.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 supplies actually delivered and which obtain a certificate of conformity.

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

II.14. LIQUIDATED DAMAGES FOR DELAY IN DELIVERY

II.14.1. Delay in delivery

(a) Acquisition, delivery, installation of the Supercomputer and related services

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 amounting to 0.1% the total value of the products or services to be delivered. The total maximum amount of liquidated damages that can be imposed shall be capped to 10 % of the total value of the relevant delivery of product/ service for which the Contractor is in breach.

(b) Maintenance and other support services

If the contractor fails to perform its contractual obligations within the applicable time limits set out in this contract, and in particular does not achieve the support service levels, namely:

- not meeting the committed Reaction Times within the committed Service Hours
- failing to take the appropriate action required by the severity of the incident

the contracting authority may claim liquidated damages depending on the severity of the failure defined as follows:

- (a) For Critical Priority Incidents: 0.1% of the value of the maintenance for that year for each full hour of service level failure
- (b) For High Priority Incidents: 0.1% of the value of the maintenance for that year for each full 4 hours of service level failure
- (c) For Normal Priority Incidents: 0.1% of the value of the value of the maintenance for that year for each full business day of service level failure.

The definition of Critical, High and Normal Priority Incidents shall be made in accordance with the relevant identification in the Technical Specifications (Annex I). The issued liquidated damages claim will be proportional to the deviation from the committed service levels and to the acquisition value of Supercomputer where the incident has occurred.

The total maximum amount of liquidated damages that can be imposed shall be capped to 10% of the value of the maintenance for that year.

II.14.2. Procedure

The contracting authority must *formally notify* the contractor of its intention to apply liquidated damages for delay in delivery 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.14.3. 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 supplies within the applicable time limits set out in this contract.

II.14.4. Claims and liabilities

Any claim for liquidated damages does not affect the contractor's actual or potential liability or the contracting authority's rights under Article II.17.

II.15. REDUCTION IN PRICE

II.15.1. Quality standards

Without prior notice of default to the contractor or prior judicial intervention being required, if the contractor fails to deliver the supply in accordance with the contract ('unperformed obligations') or if it fails to deliver the supply in accordance with the expected quality levels specified in the tender specifications ('low quality delivery'), the contracting authority may, even if these failings constitute a breach that could trigger Article II.17.1, reduce the price. The price reduction will be directly proportional to the difference, upon the time of the signature of the contract, between the value of the unperformed obligations or low quality delivery and the value of the agreed supply. This includes in particular cases where the contracting authority cannot approve a *result*, report or deliverable as defined in Article I.5 after the contractor has submitted the required additional information, correction or new supply.

II.15.2. Procedure

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

The contractor has 30 days following the date of receipt to submit observations. After having received any observations submitted or, failing that, following the expiry of the time limit for submitting observations, the contracting authority must *notify* the contractor:

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

II.15.3. Claims and liabilities

Any reduction in price does not affect the contractor's actual or potential liability or the contracting authority's rights under Article II.17.

II.16. SUSPENSION OF THE PERFORMANCE OF THE CONTRACT

II.16.1. Suspension by the contractor

If the *performance of the contract* is affected by *force majeure*, the contractor may suspend the *performance of that contract*.

The contractor must immediately formally notify the contracting authority about 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*.

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.

The contracting authority is not entitled to compensation for suspension of any part of the *contract*, in the event of *force majeure*.

II.16.2. Suspension by the contracting authority

The contracting authority may suspend the *performance of the contract* or any part of it; including but not limited to payments:

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

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 contract under Article II.17.1(f) or (j).

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

The contracting authority may in addition suspend the time allowed for payments in accordance with Article II.20.7.

II.17. TERMINATION OF THE CONTRACT

II.17.1. Grounds for termination by the contracting authority

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

- (a) if provision of the supplies under the contract has not actually started within 15 days of the scheduled date and the contracting authority considers the new date proposed, if any, unacceptable, taking into account Article II.11.2;
- (b) if the contractor is unable to obtain any permit or licence required for *performance of the contract*;
- (c) if the contractor fails to perform the contract in accordance with the tender specifications or is materially in breach of another 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 138(1) of the *Financial Regulation*;
- (e) if the contractor or any *related person* is in one of the situations provided for in points (c) to (i) of Article 138(1) or in Article 138(2) or in Article 138(3) of the *Financial Regulation*;
- (f) if the procedure for awarding the contract or the performance of the contract prove to have been subject to errors, *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, and does not rectify the situation;
- (i) if a change to the contractor's legal, financial, technical, organisational or ownership situation is likely to substantially affect the performance of the contract or substantially modify the conditions under which the contract was initially awarded or a change regarding the exclusion situations listed in Art 138 of the *Financial Regulation* that calls into question the decision to award the contract or the contractor becomes subject to restrictive measures hindering the performance of the contract;
- (j) in the event of *force majeure*, where either resuming implementation is impossible or the necessary ensuing amendments to the contract would mean that the tender specifications are no longer fulfilled or result in unequal treatment of tenderers or contractors;
- (k) if the contractor is in breach of the data protection obligations resulting from Article II.9.2;
- (l) if the contractor does not comply with the applicable data protection obligations resulting from Regulation (EU) 2016/679⁸;
- (m) if it is manifest that, at a later date and before such breach becomes effective, the contractor will materially fail to perform the contract in accordance with the tender specifications or will be materially in breach of another contractual obligation unless the contractor provides the contracting authority with sufficient assurances of its future performance;
- (n) where the contractor or any related entity or person has violated any provisions on security and confidentiality included in Articles I.10 and II.8.

II.17.2. Grounds for termination by the contractor

The contractor may terminate the contract if the contracting authority materially 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.

The contractor may also terminate the *contract* in the event of *force majeure*, where resuming *performance* is impossible.

⁸ 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, <http://data.europa.eu/eli/reg/2016/679/2016-05-04>

II.17.3. Procedure for termination

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

The other party has 15 days following the date of receipt to submit observations, including the measures it has taken or will take to continue fulfilling its contractual obligations, or, in the case of Article II.17.1(m), the assurances it gives to fulfil its contractual obligations in the future.

After having received any observations submitted or, failing that, following the expiry of the time limit for submitting observations, the party intending to terminate must *formally notify* the other party 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.17.1 and in Article II.17.2, 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.17.1, 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 delivery of the supplies to a new contractor or internally, without interruption or adverse effect on the quality or continuity of delivery of the supplies. 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.17.4. Effects of termination

The contractor is liable for damage incurred by the contracting authority as a result of the termination of the contract including the additional cost of appointing and contracting another contractor to provide or complete the supplies and/or to provide or complete the services except if the damage is a result of a termination in accordance with Article II.17.1 (j) or Article II.17.2. The contracting authority may claim compensation for such damage.

The contractor is not entitled to compensation for any loss resulting from the termination of the contract, including loss of anticipated profits, unless the loss was caused by the situation specified in the first subparagraph of Article II.17.2.

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 and any invoice required for supplies that were provided before the date of termination and any report, deliverable or result and any invoice required for services that were provided before the date of termination.

In the case of joint tenders, the contracting authority may terminate the *contract* with each member of the group separately on the basis of points (d), (e), (g), (k) or (l) of Article II.17.1, under the conditions set out in Article II.11.2.

II.18. INVOICES, VALUE ADDED TAX AND E-INVOCING

II.18.1. Invoices and value added tax

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

Invoices must indicate the place of taxation of the contractor for value added tax (VAT) purposes and must specify separately the taxable amount per rate or exemption, the VAT rate applied and the VAT amount payable.

The contracting authority is exempt from all taxes and duties, including VAT, in accordance with Articles 3 and 4 of the Protocol 7 of the Treaty on the Functioning of the European Union on the privileges and immunities of the European Union and Article 151, §1 of the Directive 2006/112/CE.

The contractor must complete the necessary formalities with the relevant authorities to ensure that the supplies and services required for *performance of the contract* are exempt from taxes and duties, including VAT.

In case of joint tenders from a group of economic operators without separate legal personality, in order to allow the members of the group to complete the formalities with the relevant authorities to ensure the tax exemption, the contracting authority shall issue a VAT exemption certificate for each respective group member of the joint tender, if the transaction is taxable for VAT purposes as an intra-community purchase. Each certificate shall cover only the member's part of the supplies provided and shall include a description of it and its value.

The contracting authority shall attach to each contract an annex if part of the transaction is taxable for VAT purposes as a local purchase in Belgium. The leader shall include in the annex a description of the supply provided by each member of the group, specify its value and sign it. If the repartition of the tasks is not known at the moment of the contract signature, the group leader shall fill in the annex with the relevant information as soon as the repartition of the tasks is known and submit it to the Contracting Authority at the latest together with the invoices issued by each member of the group. The leader shall also send one copy of the annex to each member whose part of the supplies is taxable for VAT purposes as a local purchase in Belgium.

Each member of the group shall issue an invoice to the Contracting Authority on its share/part of the supplies, as outlined in the above mentioned annex(es).

The Contracting Authority shall pay the amounts corresponding to these invoices to the leader on its bank account.

Payments to the leader will discharge the Contracting Authority from its payment obligation vis à vis the other members of the group.

For the group members (including leaders), if the transaction is taxable for VAT purpose as a local purchase in another Member State, local exemption rules apply.

For invoices sent to the contracting authority via email, the reception date must be considered as the date on which the request for payment is registered after reception in the functional mailbox of the contracting authority. The functional mailbox in which the payments requests are to be sent, should be provided in the contract.

II.18.2. E-invoicing

If the use of electronic exchange system has been activated under Article I.6.1, the contractor submits invoices in electronic format in compliance with Directive 2006/112/EC on VAT, through the *Portal*, in accordance with the *Portal* Terms and Conditions and using the forms and templates provided there, or through means of supported *interoperability networks* compliant with the Directive 2014/55/EU on electronic invoicing in public procurement.

For avoidance of doubt, the e-invoices must be issued in conformity with the repartition of tasks as per the annex mentioned in Article II.18.1 and the payment conditions described in the same article fully apply.

II.19. PRICE REVISION

If a price revision index is provided in Article I.4.2, this Article applies to it.

In that case, prices are fixed and not subject to revision during the first year of the contract.

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

A party may request a price revision in writing no later than three months before the anniversary date of entry into force of the contract. 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 price revision is calculated using the following formula:

$$Pr = 0,8 \times Po \times \left(\frac{Ir}{Io} \right) + 0,2 \times Po$$

where: Pr = revised price;

Po = price in the tender;

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

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

II.20. PAYMENTS AND GUARANTEES

II.20.1. Date of payment

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

II.20.2. Currency

Payments are made in euros, unless another currency is provided for in Article I.5.1.

II.20.3. 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.

[Exchange rate \(InforEuro\) | European Commission \(europa.eu\)](https://commission.europa.eu/funding-tenders/procedures-guidelines-tenders/information-contractors-and-beneficiaries/exchange-rate-infoeuro_en)⁹

II.20.4. 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.20.5. Pre-financing, performance and money retention guarantees

If, as provided for in Articles I.5 and 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).

⁹ https://commission.europa.eu/funding-tenders/procedures-guidelines-tenders/information-contractors-and-beneficiaries/exchange-rate-infoeuro_en

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 contractual obligations until the contracting authority has given its final approval for the supply. The performance guarantee must not exceed 10 % of the total price of the *contract*. The contracting authority must release the guarantee fully after final certificate of conformity of the supply has been delivered, as provided for in the *contract*.

Retention money guarantees cover full delivery of the supplies in accordance with the *contract* including during the contract liability period and until their final certificate of conformity has been delivered by the contracting authority. The retention money guarantee must not exceed 10 % of the total price of the *contract*. The contracting authority must release the guarantee after the expiry of the contract liability period as provided for in the *contract*.

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

II.20.6. Interim payments and payment of the balance

The contractor must send an invoice for interim payment, as provided for in Article I.5 or in the tender specifications.

The contractor must send an invoice for payment of the balance within 60 days of the end of the period of provision of the supplies, as provided for in Article I.5 or in the tender specifications.

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

Payment of the balance may take the form of recovery as provided for in Article II.21.

II.20.7. Suspension of the time allowed for payment

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

- (a) because it does not comply with the contract;
- (b) because the contractor has not produced the appropriate supplies or documents; or
- (c) because the contracting authority has observations on the supplies or documents submitted with the invoice;
- (d) because it is manifest that, at a later date and before such breach becomes effective, the contractor will materially fail to perform the *contract* in accordance with the tender specifications or will be in material breach of another contractual obligation, unless the contractor provides the contracting authority with sufficient assurances of its future performance.

The contracting authority must *notify* the contractor (or leader in the case of 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, sufficient assurances 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 contract in accordance with Article II.17.1(c).

II.20.8. Interest on late payment

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

Suspension of the payment period as provided for in Article II.20.7 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.20.1.

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.21. RECOVERY

II.21.1 If an amount is to be recovered under the terms of the contract, the contractor must repay the contracting authority the amount in question.

II.21.2 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 Union or by the European Atomic Energy Community or by an executive agency when it implements the Union budget;
- (b) by calling in a financial guarantee if the contractor has submitted one to the contracting authority;
- (c) by taking legal action.

II.21.3 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.20.8. 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.21.4 Recovery rules in the case of joint tender

If the contract is signed by a group (joint tender), the members of the group are 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.21.2 (a), the contracting authority may claim the amount still due from 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.21.2.

II.22. CHECKS AND AUDITS

II.22.1 The contracting authority may check or require an audit on the *performance of the contract*. This may be carried out 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 supplies and up to five years starting from the payment of the balance.

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.

II.22.2 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.

II.22.3 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 format.

II.22.4 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, which 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 contracting authority may recover all or part of the payments made in accordance with Article II.21 and may take any other measures which it considers necessary.

II.22.5 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, *irregularities* 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 performance of the contract and up to five years starting from the payment of the balance.

II.22.6 The Court of Auditors and the European Public Prosecutor's Office established by Council Regulation (EU) 2017/1939¹⁰ ('the EPPO') and, for the processing of personal data, the European Data Protection Supervisor have the same rights as the contracting authority, particularly right of access, for the purpose of checks, audits and investigations.

¹⁰ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office

Contract number: [complete]

ANNEX I. TENDER SPECIFICATIONS

[insert reference]

Contract number: [complete]

ANNEX II. CONTRACTOR'S TENDER

[to be inserted]

ANNEX III. ACCEPTANCE PROCEDURE

The acceptance will be carried out in accordance with Section [insert] of the Tender Specifications – Technical Part.

ANNEX IV. PRE-FINANCING GUARANTEE MODEL

[MODEL] LETTER FOR PRE-FINANCING FIRST DEMAND GUARANTEE

[Insert name and address of financial institution or bank (Letterhead)]

[Insert place and date]

European High Performance Computer Joint Undertaking
Executive Director, Anders Dan Jensen
Technopolis - Wing E – 1st floor
12E rue Guillaume Kroll
L-1882 Luxembourg

Reference: Contract [Insert number and exact title]

Article 1 – Declaration on guarantee, amount and purpose

We, the undersigned [insert name and address of the financial institution or bank] ('the Guarantor') hereby confirm that we give the European High Performance Computing Joint Undertaking (hereinafter "EuroHPC JU"), represented by its Executive Director, Anders Dam Jensen, an unconditional, irrevocable and independent first-demand guarantee consisting in the undertaking to pay to the EuroHPC JU a sum equivalent to the amount of:

EUR [insert amount in figures and in words]

upon simple demand, for guarantee of the pre-financing(s) stipulated in the contract [insert number and exact title] ('the contract') concluded between the EuroHPC JU and [insert name and address], ('the Contractor').

Article 2 – Execution of Guarantee

If the EuroHPC JU gives notice that the Contractor has for any reason failed to reimburse pre-financings paid by the EuroHPC JU, we, acting for account of the Contractor, shall pay immediately up to the above amount, in EUR, without exception or objection, into the following bank account: [insert number], on receipt of the first written request from the EuroHPC JU. We shall inform the EuroHPC JU in writing as soon as the payment has been made.

Article 3 – Obligations of the Guarantor

1. We waive the right to require exhaustion of remedies against the Contractor, any right to withhold performance, any right of retention, any right of avoidance, any right to offset, and the right to assert any other claims which the Contractor may have against the EuroHPC JU under the contract or in connection with it or on any other grounds.
2. Our obligations under this guarantee shall not be affected by any arrangements or agreements made by the EuroHPC JU with the Contractor which may concern its obligations under the contract.

3. We shall inform immediately the EuroHPC JU in writing, by registered letter or by courier with written receipt or equivalent, in the event of a change of our legal status, ownership or address.

Article 4 – Date of Entry into force

This guarantee shall come into force upon its signature. If, on the date of its signature, the pre-financing has not been paid to the Contractor, this guarantee shall enter into force on the date on which the Contractor receives the pre-financing.

Article 5 – End Date and Conditions of Release

1. We may be released from this guarantee only with the EuroHPC JU's written consent.
2. This guarantee shall expire on return of this original document by the EuroHPC JU to our offices.
3. This must occur at the latest 30 days after the pre-financing under the Contract has been cleared through interim payment[s].
4. After expiry, this guarantee shall become automatically null and no claim relating thereto shall be receivable for any reason whatsoever.

Article 6 – Applicable Law and Competent Jurisdiction

Any dispute concerning this guarantee shall be governed by and construed in accordance with the law applicable to the contract and shall fall within the sole competence of the Courts of Luxembourg.

Article 7 - Assignment

The rights arising from this guarantee may not be assigned.

Done at [insert place], on [insert date]

[Signature]

[Signature]

[Function at the Financial Institution/Bank]

[Function at the Financial Institution/Bank]

ANNEX V. MODEL PERFORMANCE GUARANTEE

LETTER FOR PERFORMANCE FIRST DEMAND GUARANTEE

[Insert name and address of financial institution or bank (Letterhead)]

[Insert place and date]

European High Performance Computer Joint Undertaking
Executive Director, Anders Dan Jensen
Technopolis - Wing E – 1st floor
12E rue Guillaume Kroll
L-1882 Luxembourg

Reference: Contract [Insert number] The acquisition, delivery, installation and hardware and software maintenance of the INNOVATE Industrial-grade Supercomputer – for the EuroHPC Joint Undertaking

Article 1 – Declaration on guarantee, amount and purpose

We, the undersigned [insert name and address of the financial institution or bank] ('the Guarantor') hereby confirm that we give the EuroHPC JU an unconditional, irrevocable and independent first-demand guarantee consisting in the undertaking to pay to EuroHPC JU a sum equivalent to the amount of:

EUR [insert amount in figures and in words]

upon simple demand, for guarantee of the compliance with the contractual obligations under the contract [insert number] The acquisition, delivery, installation and hardware and software maintenance of the INNOVATE Industrial-grade Supercomputer ('the contract') concluded between EuroHPC JU and [insert name and address], ('the Contractor').

Article 2 – Execution of Guarantee

If the EuroHPC JU gives notice that the Contractor has for any reason failed to comply with the contractual obligations under the contract by the due date, we, acting for account of the Contractor, shall pay immediately up to the above amount, in EUR, without exception or objection, into a bank account designated by EuroHPC JU, on receipt of the first written request from the EuroHPC JU. We shall inform the EuroHPC JU in writing as soon as the payment has been made.

Article 3 – Obligations of the Guarantor

1. We waive the right to require exhaustion of remedies against the Contractor, any right to withhold performance, any right of retention, any right of avoidance, any right to offset, and the right to assert any other claims which the Contractor may have against EuroHPC Joint Undertaking under the contract or in connection with it or on any other grounds.

Contract number: [complete]

2. Our obligations under this guarantee shall not be affected by any arrangements or agreements made by EuroHPC JU with the Contractor which may concern its obligations under the contract.
3. We shall inform immediately EuroHPC JU in writing, by registered letter or by courier with written receipt or equivalent, in the event of a change of our legal status, ownership or address.

Article 4 – Date of Entry into force

This guarantee shall come into force upon its signature.

Article 5 – End Date and Conditions of Release

1. We may be released from this guarantee only with EuroHPC JU's written consent.
2. This guarantee shall expire on return of this original document by EuroHPC JU to our offices.
3. This must occur at the latest 60 days after the payment of the balance under the contract has been made or four months after the notification of the corresponding debit note.
4. After expiry, this guarantee shall become automatically null and no claim relating thereto shall be receivable for any reason whatsoever.

Article 6 – Applicable Law and Competent Jurisdiction

Any dispute concerning this guarantee shall be governed by and construed in accordance with the law applicable to the Contract and shall fall within the sole competence of the courts having jurisdiction over matters relating to the Contract.

Article 7 - Assignment

The rights arising from this guarantee may not be assigned.

Done at [insert place], on [insert date]

[Signature]

[Signature]

[Function at the Financial Institution/Bank]/

[Function at the Financial Institution/Bank]

ANNEX VI. DECLARATION ON PRE-EXISTING RIGHTS

Declaration on the list of pre-existing rights

I, [insert name of the authorised representative of the contractor] representing [insert name of the contractor] ('the contractor'), party to the contract [insert title and number] [option 1: warrant that the results are free of rights or claims from creators or from any third parties for any use the contracting authority may envisage and declare that the results do not contain any pre-existing rights to the results or parts of the results or to pre-existing materials as defined in the above-mentioned contract.] [option 2: warrant that the results and the pre-existing material incorporated in the results are free of rights or claims from creators or from any third parties for any use the contracting authority may envisage and declare that the results contain the following pre-existing rights:]

Please fill in the table – one line per pre-existing right

Result concerned	Pre-existing material concerned	Rights to pre-existing material	Identification of rights' holder

[ANNEX VII. GROUP MEMBERS' SHARES IN TOTAL CONTRACT VALUE FOR VAT PURPOSES (IF APPLICABLE)]

Direct Contract [insert reference of the direct contract]

Contractor (Member of the group)	Description of the supplies/services provided by the member	Total value of the supplies/services provided by the member

The members of the group are jointly and severally liable to the contracting authority under the conditions set out in the relevant provisions of the contract.

Signature of the Leader of the Group

[Name of Leader]
Done on [date]

ANNEX VIII. CONSORTIUM OF PRIVATE PARTNERS

In accordance with Article 13 of Regulation (EU) 2021/1173 on establishing the European High Performance Computing Joint Undertaking, as last amended by Regulation (EU) 2026/150 of 16 January 2026, (hereinafter “the Regulation”), the EuroHPC Joint Undertaking shall acquire, together with a consortium of private partners at least mid-range supercomputers, or partitions of EuroHPC supercomputers, primarily destined for use by industry, and shall co-own them with a consortium of private partners.

The EuroHPC Joint Undertaking and ICSC agreed to launch a joint procurement to acquire an Industrial-grade Supercomputer, with the EuroHPC Joint Undertaking, acting as leading contracting authority, and the representative of the consortium of private partners as co-contracting authority. The Parties agreed that ICSC will represent the consortium of private partners in the procurement having regard to the terms and conditions set out in this agreement.

The consortium of private partners consists of the following partners:

- FONDAZIONE ICSC – CENTRO NAZIONALE DI RICERCA IN HIGH PERFORMANCE COMPUTING, BIG DATA AND QUANTUM COMPUTING (“**ICSC**”)
- ALMAWAVE S.P.A (“**ALMAWAVE**”)
- UNIPOLSAI ASSICURAZIONI S.P.A. (“**UNIPOL**”)
- BIG DATA INNOVATION & RESEARCH EXCELLENCE (“**BI-REX**”)
- SNAM S.P.A. (“**SNAM**”)
- AUTOSTRADE PER ITALIA S.P.A. (“**AUTOSTRADE**”)
- INTERNATIONAL FOUNDATION BIG DATA AND ARTIFICIAL INTELLIGENCE FOR HUMAN DEVELOPMENT (“**IFAB**”)

The Industrial-grade Supercomputer will be hosted by CINECA Consorzio Interuniversitario. The Hosting Entity does not contribute financially to the acquisition costs of the Industrial-grade Supercomputer nor does it co-own the Supercomputer.