

CONTRACT FOR SERVICES

Open Call for Tender for Provision of Services related to the DSpace infrastructure of the European University Institute Research Repository, Cadmus: Version Update, Content Migration, Maintenance and Cloud Hosting

Ref: **OP/EUI/LIB/2024/002**

1. The European University Institute (“the EUI”, “the contracting authority”), established in San Domenico di Fiesole, via dei Roccettini 9, Firenze, Italy, CF 80020410488, represented by its President, Prof Patrizia Nanz, for the purposes of the signature of this contract or by the Secretary General, Marco Del Panta, by delegation,

on the one part,

and

2. [Full official name]

[Official legal form]¹

[Statutory registration number or ID or passport number]²

[Full official address]

[VAT registration number]

(‘the contractor’), represented for the purposes of the signature of this contract by [forename, surname, function of legal representative]

on the other part,

HAVE AGREED

to the **special conditions**, the **general conditions for service contracts**, as well as to the following Annexes:

Annex I - Tender specifications;

Annex II - Contractor's tender;

which form an integral part of this contract (hereinafter referred to as “the contract”).

In the event of any conflict herein,

- The terms set out in the special conditions shall take precedence over those in the other parts of the contract;

¹ Delete if contractor is a natural person or a body governed by public law.

² Delete if contractor is a body governed by public law. For natural persons, indicate the number of their identity card, or failing that, of their passport or equivalent.

- The terms set out in the general conditions shall take precedence over those in the Annexes;
- The terms set out in the tender specifications (Annex I) shall take precedence over those in the tender (Annex II).

This contract sets out the obligations of the parties during and after the duration of this contract.

All documents issued by the contractor (end-user agreements, general terms and conditions, etc.) except its tender are held inapplicable, unless explicitly mentioned in the special conditions of this 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 - SPECIAL CONDITIONS

Article I.1 - Subject matter

I.1.1 The subject matter of the contract is the provision of services related to the DSpace infrastructure of the European University Institute Research Repository, Cadmus: Version Update, Content Migration, Maintenance and Cloud Hosting.

I.1.2 The place of execution of the contractual services will be the premises of the EUI and the premises of the contractor (on-site and remote).

I.1.3 The contractor shall execute the tasks assigned to it in accordance with the tender specifications annexed to the contract (Annex I).

Article I.2 - Entry into force and duration

I.2.1 The contract enters into force as follows:

1. **Service of update of DSpace and content migration** (please see Article 3 of the TS) from the date on which it is signed by the last party.
2. **Maintenance service** (please see Article 3 of the TS) from 1st January 2025.

I.2.2 The *performance of the contract* cannot start before its entry into force.

I.2.3 The duration of the *performance of the contract* must not exceed 84 (eighty-four) months. Unless otherwise specified, all periods outlined in the contract are calculated in calendar days.

Performance of the contract starts from the date of entry into force of the contract.

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.2.4 The contractor is subject to a probationary period of 6 (six) months. If during this period, the *performance of the contract* does not correspond to the requirements of the tender specifications, or to any improvements offered in the tender by the contractor, the EUI shall be entitled to terminate the contract by serving a notice of 30 (thirty) days by registered mail.

I.2.5 Where at the end of the natural term of the contract, the EUI has not yet awarded a contract for the service covering the immediately following period, the contractor shall be obliged to continue providing the services for a period not exceeding 6 (six) months under the same terms and conditions in force at the expiration date.

Article I.3 – Price

I.3.1 The total amount excluding price revision to be paid by the EUI under the contract shall be as follows:

1. Fixed costs (una tantum) for **Service of update of DSpace and content migration** (please see Article 3 of the TS) € **[amount in figures and in words]**³
2. Variable costs for **Maintenance services** (please see Article 3 of the TS) € **[amount in figures and in words]**⁴

Both prices are intended as VAT excluded and covering all services/tasks executed (including charges).

It is agreed that the charges include all other expenditure that may be incurred by the contractor in *performance of this contract*, including travel, subsistence or any other related expenses.

The EUI is exempt from payment of value added tax for services and purchases under the normal course of business for amounts exceeding €300.00 (pursuant to Article 72- paragraph 1-e) and paragraph 2 of Presidential Decree 633 of 26/10/1972 and subsequent amendments).

The economic offer of the contractor is provided in Annex II B.

I.3.2 Price revision

The total amount referred to in the Article I.3.1 shall be 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 3 (three) months before the anniversary date of entry into force of the contract. The other party must acknowledge the request within 15 (fifteen) days of receipt.

At the anniversary date, the EUI 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 EUI for verification.

Price revision is determined by the formula below and using the trend in the Harmonised Index of Consumer Prices ('HICP') Italy published at <http://ec.europa.eu/eurostat/web/hicp/data/database> under HICP (2015 = 100) - monthly data (index) (prc_hicp_midx).

The price revision is calculated using the following formula:

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

where:

Pr = revised price;

Po = price in the tender;

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

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

³ The total amount will be determined by the offer of the successful tenderer.

⁴ The total amount will be determined by the offer of the successful tenderer.

I.3.3 Reimbursement of expenses

Reimbursement of expenses is not applicable to this contract.

Article I.4 - Payment arrangements

I.4.1 Payment

Payment of the amounts due and charges under the contract shall be made only if the contractor has fulfilled all its contractual and legal obligations by the date on which the invoice is correctly submitted.

To obtain payment, the contractor will follow the analytical procedures required by the EUI in terms of billing, issuing upon request specific invoices for each cost/activity reported.

The EUI shall make payment within 60 (sixty) days from the correct receipt of invoice.

The specific rules are outlined in Article II.17-Payments and clauses II.17.3-Invoices and VAT of the general conditions.

Deductions resulting from economic penalties for non-compliance referred to in Article 12 of the tender specifications or reimbursement of expenses will be compensated simultaneously with the payment of invoices for the period of reference.

I.4.2 Performance guarantee

Performance guarantee is not applicable to this contract.

I.4.3 Pre-financing

Pre-financing is not applicable to this contract.

I.4.4 Interim payment

Interim payment is not applicable to this contract.

I.4.5 Payment of the balance

The contractor shall submit an invoice for payment of the balance.

The EUI shall make the payment within 60 (sixty) days from the correct receipt of the invoice.

The EUI is, as a rule, exempt from payment of Value Added Tax (VAT) for the purchase of goods imported and services provided for the EUI's official activities for amounts exceeding €300.00 (three hundred/00).

For intra-community purchases, the statement "VAT Exemption / European University Institute / Article 151 para 1 (b) and para 2 of Council Directive 2006/112/EC, as last amended by Council Directive 2009/162/UE" should be added on the invoice.

Where VAT is due in Italy, the statement: "Esenzione IVA - Articolo 72- comma 1 lettera e) e comma 2 del D.P.R. n. 633 del 26/10/1972 e successive modifiche" should be added on the invoice.

Article I.5 - Bank account

Payments shall be made to the contractor's bank account denominated in Euro (€) and identified as follows:

Name of bank:	
Branch address in full:	
Exact designation of account holder:	
IBAN code:	
SWIFT code:	

Article I.6 - Communication details and data controller

For the purposes of Article II.7, the data controller shall be the Director of the Library.

Any notice or other communication relating to the contract shall be made in writing, shall bear the contract number and shall be sent to the appropriate addresses set out below:

EUI:

European University Institute Library Via dei Roccettini, 9 - 50014 San Domenico di Fiesole (FI) E-mail address: LibraryTender@EUI.eu
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Contractor:

Name and surname:	
Function:	
Company name:	
Full official address:	
Email:	

Article I.7 - Applicable law and settlement of disputes

I.7.1 The contract shall be governed by the EUI's relevant regulatory acts (e.g. the EUI's regulation on Public Procurement & the EUI's Financial Rules), complemented, where necessary by the law of Italy.

I.7.2 Any dispute arising in relation to the present contract shall be submitted in good faith by either party to mediation under the [International Mediation Rules of the Milan Chamber of Arbitration](#) by filing a written request with the Secretariat of the Milan Chamber of Arbitration.

I.7.3 If for any reason the dispute remains unsettled 60 (sixty) days after the request for mediation, it shall be subject to arbitration under the [Rules of the Milan Chamber of Arbitration](#).

The seat of the arbitration shall be Milan and the language of the arbitration shall be English.

The award shall be final and binding for both parties.

The arbitral tribunal shall apply the EUI's relevant regulatory acts, including the [EUI's regulation on Public Procurement](#) and the [EUI's Financial Rules](#), complemented, where necessary, by the law of Italy.

Article I.8 - Exploitation of the results of the contract

I.8.1 Detailed list of modes of exploitation of the results

Not Applicable.

I.8.2 Licence or transfer of pre-existing rights

All *pre-existing rights* incorporated in the *results*, if any, are licensed to the EUI as set out in Article II.11.2.

By derogation to Article II.11, the EUI acquires fully and irrevocably all *pre-existing rights* incorporated in the *results*, if any.

Article I.9 - Termination by either party

Either party may, unilaterally and without being required to pay compensation, terminate the contract by formally *notifying* the other party by giving 6 (six) months' notice. Should the EUI terminate the contract, the contractor shall only be entitled to payment corresponding to *part-performance of the contract* before the termination date (e.g. payment corresponding to the services which are the subject of valid purchase orders before the date termination is notified to become effective ("Termination Date"). The first paragraph of Article II.16.3 shall apply.

On receipt of such notice from the EUI, the contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce its commitments in relation to the EUI. It shall draw up any documents required by the contract and its Annexes for the services provided up to the Termination Date, within a period not exceeding 60 (sixty) days from the Termination Date.

Article I.10 - Mechanism of sanctions and penalties

The carrying out of the service by non-regular or unsatisfactory means in the opinion of the EUI, shall incur the application of penalties pursuant to Article 12 of the tender specifications.

The non-regular and unsatisfactory provision of the service will be *notified* in writing to the contractor who shall respond in any case with its comments in writing within 5 (five) days from the dispute. If said response is not acceptable according to the appreciation of the EUI or if there is no answer or the same is not received within the time specified, the EUI will apply the penalties referred to in Article 12 of the tender specifications, from the date of the commencement of the poor performance.

The request and/or payment of penalties shall not discharge the contractor under any circumstances from performance of the obligations for which they are currently responsible.

Article I.11 - Provisions relating to safety

Provisions relating to safety is not applicable to this contract.

Article I.12 - Contractual fees

If applicable, any consequential contract costs (fixed-fee registration), will be paid by the contractor without the right of recourse against the EUI.

Article I.13 - Other special conditions

The following general conditions do not apply to the present contract:

- Article II.13 – Liquidated damages;
- Article II.14 – Reduction in price;
- Article II.17.5 – Performance guarantees
- Article II.18 – Reimbursements

SIGNATURES:

For the contractor,

[name and surname, function of the legal
representative]

Signature: _____

Signed in _____, on _____

For the EUI,

Marco Del Panta,
Secretary General

Signature: _____

Signed in Florence, on _____

In duplicate in English, if not signed by certified digital signature.

II - GENERAL CONDITIONS FOR SERVICE CONTRACTS

Article II.1 - Definitions

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

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

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

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

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

‘Force majeure’: any unforeseeable, exceptional situation or event beyond the control of the parties that prevents either of them from fulfilling any of their obligations under the contract. The situation or event must not be attributable to error or negligence on the part of the parties or on the part of the subcontractors and must prove to be inevitable despite their exercising due diligence. Defaults of

service, defects in equipment or material or delays in making them available, labour disputes, strikes and financial difficulties may not be invoked as *force majeure*, unless they stem directly from a relevant case of *force majeure*;

‘Formal notification (or ‘formally notified’)’: 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 EUI'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 EUI budget, ii) the non-disclosure of information in violation of a specific obligation, with the same effect or iii) the misapplication of such funds or assets for purposes other than those for which they were originally granted, which damages the EUI's financial interests;

‘Implementation/performance of the contract’: the execution of tasks and delivery of the purchased services by the contractor to the EUI;

‘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 EUI's budget.

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

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

‘Pre-existing material’: any material, document, technology or know-how which exists prior to the contractor using it for the production of a *result* in the *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 EUI as well as to any other third parties;

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

‘Serious 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;

Article II.2 - Performance of the contract

II.2.1 The contractor shall perform the contract according to the highest professional standards.

II.2.2 The contractor shall be solely responsible for taking the necessary steps to obtain any permit or licence required for *performance of the contract* under the laws and regulations in force at the place where the assigned tasks are to be executed.

II.2.3 Without prejudice to Article II.5, any reference made to the contractor's *personnel* in the contract shall relate exclusively to individuals involved in the *performance of the contract*.

II.2.4 The contractor must ensure that the *personnel* performing the contract possess the professional qualifications and experience required for the execution of the tasks assigned to it.

II.2.5 The contractor shall neither represent the EUI nor behave in any way that would give such an impression.

II.2.6 The contractor shall be solely responsible for the *personnel* who execute the tasks assigned to the contractor. The contractor shall stipulate the following employment or service relationships with its *personnel*:

- a. *personnel* executing the tasks assigned to the contractor may not be given orders directly by the EUI;
- b. the EUI may not under any circumstances be considered to be the employer of the *personnel* referred to in point (a) and the *personnel* shall undertake not to invoke against the EUI any right arising from the contractual relationship between the EUI and the contractor.

II.2.7 In the event of disruption resulting from the action of one of the contractor's *personnel* working on the EUI's premises or in the event that the expertise of a member of the contractor's *personnel* fails to correspond to the profile required by the contract, the contractor shall replace him without delay. The EUI shall have the right to make a reasoned request for the replacement of any such *personnel*. The replacement *personnel* must have the necessary qualifications and be capable of performing the contract under the same contractual conditions. The contractor shall be responsible for any delay in the execution of the tasks assigned to it resulting from the replacement of *personnel*.

II.2.8 Should the execution of the tasks be directly or indirectly hampered, either partially or totally, by any unforeseen event, action or omission, the contractor shall immediately and on its own initiative record it and report it to the EUI. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the contractor to ensure full compliance with its obligations under this contract. In such an event the contractor shall give priority to solving the problem rather than determining liability.

II.2.9 Should the contractor fail to perform its obligations under the contract, the EUI may -without prejudice to its right to terminate the contract - reduce or recover payments in proportion to the scale of the unperformed obligations. In addition, the EUI may claim compensation or impose liquidated damages in accordance with Article II.13 and/or any penalties indicated in the tender specifications.

Article II.3 - Means of communication

II.3.1 Any communication relating to the contract or to its *performance* shall be made in writing and shall bear the contract number. Any communication is deemed to have been made when it is received by the receiving party unless otherwise provided for in this contract.

II.3.2 Electronic communication shall be deemed to have been received by the parties on the day of dispatch of that communication provided it is sent to the addressees listed in article I.6. Without prejudice to the preceding, if the sending party receives a message of non-delivery to or of absence of the addressee, it shall make every effort to ensure the actual receipt of such communication by the other party.

Electronic communication shall be confirmed by an original signed paper version of that communication if requested by any of the parties provided that this request is submitted without unjustified delay. The sender shall send the original signed paper version without unjustified delay.

II.3.3 Mail sent using the postal services is deemed to have been received by the EUI on the date on which it is registered by the responsible service referred to in article I.6.

Any formal *notification* shall be made by registered mail with return receipt or equivalent, or by equivalent electronic means.

II.3.4 The parties agree that any communication made by emails has full legal effect and is admissible as evidence in judicial proceeding.

Article II.4 – Liability

II.4.1 The contractor shall be solely responsible for complying with any legal obligations incumbent to it.

II.4.2 The EUI shall not be held liable for any damage or loss caused or sustained by the contractor, including any damage caused by the contractor to third parties during or as a consequence of *performance of the contract*, except in the event of wilful misconduct or gross negligence on the part of the EUI.

II.4.3 The contractor shall be held liable for any loss or damage, cost (including legal and other professional fees) or expenses sustained by the EUI but caused by the contractor in *performance of the contract*, including in the event of subcontracting and for any claim by a third party but only to an amount not exceeding three times the total amount of the contract. The contractor shall remain liable without any limitation as to the amount if the damage or loss is caused by the gross negligence or wilful conduct of the contractor or by its *personnel*, and for death caused by negligence or wilful conduct of its *personnel*.

II.4.4 In addition, the contractor shall, in the execution of service, comply with all procedures and precautions that apply to prevent the possibility of damage to property of the EUI and third parties, and especially of injury to persons engaged in the service and third parties, in compliance with the provisions of applicable law. Any liability, in the event of accidents, for damages caused by the contractor's staff will fall, therefore, upon the contractor, thus relieving the EUI.

II.4.5 The contractor shall indemnify and hold the EUI harmless for all damages and costs incurred due to any claim. The contractor shall provide compensation in the event of any action, claim or proceeding brought against the EUI by a third party as a result of damage caused by the contractor during the *performance of the contract*. In the event of any action brought by a third party against the EUI in connection with the *performance of the contract*, the contractor shall assist the EUI.

II.4.6 The contractor shall take out an insurance policy against risks and damage relating to the *performance of the contract*, if required by the relevant applicable legislation. It shall take out supplementary insurance as reasonably required by standard practice in the industry. A copy of all the relevant insurance contracts shall be sent to the EUI should it so request.

II.4.7 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 EUI for the *implementation of the contract*.

Article II.5 – Conflict of interest

II.5.1 The contractor shall take all the necessary measures to prevent any situation of *conflict of interest*. Such situation arises where the impartial and objective *performance of the contract* is compromised for reasons involving economic interest, political or national affinity, family or emotional ties, or any other shared interest.

II.5.2 Any situation constituting or likely to lead to a *conflict of interest* during the *performance of the contract* shall be *notified* to the EUI in writing without delay. In the event of any such conflict, the contractor shall immediately take all the necessary steps to rectify the situation. The EUI reserves the right to verify that the steps taken are appropriate and may require that additional steps be taken within a specified deadline.

II.5.3 The contractor declares that it has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, when such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, in so far as it serves as an incentive or reward relating to the *performance of the contract*.

II.5.4 In compliance with the EUI's Staff Regulations, in particular Art. 11, EUI's staff members shall not, without the permission of the Appointing Authority, accept any gift, directly or indirectly connected with their own work activities. The contractor confirms acknowledgement of this rule and the consequent termination of the contract in case of non-conformity.

II.5.5 The contractor shall pass on all the relevant obligations in writing to its *personnel* and to any natural person with the power to represent it or take decisions on its behalf and ensure that it is not placed in a situation which could give rise to conflicts of interest. The contractor shall also pass on all the relevant obligations in writing to third parties involved in the *performance of the contract* including subcontractors.

Without prejudice to Article II.2 the contractor shall replace, immediately and without compensation from the EUI, any member of the contractor's *personnel* faced with or brought into such a situation.

Article II.6 – Confidentiality

II.6.1 The EUI and the contractor shall treat with confidentiality any information and documents, in any form, disclosed in writing or orally in relation to the *performance of the contract* and identified in writing as confidential.

II.6.2 The contractor shall:

- a. not use *confidential information* and documentation for any purpose other than fulfilling its obligations under the contract without prior written agreement of the EUI;
- b. ensure the protection of such *confidential information* and *documentation* with the same level of protection it uses to protect its own confidential information, but in no case any less than reasonable care;
- c. not disclose directly or indirectly *confidential information* and *documentation* to third parties without prior written agreement of the EUI.

II.6.3 The confidentiality obligation set out in Article II.6.1 shall be binding on the EUI and the contractor during the *performance of the contract* and for 5 (five) years starting from the date of the payment of the balance unless:

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

II.6.4 The contractor shall obtain from any person with the power to represent it or take decisions on its behalf, as well as from third parties involved in the *performance of the contract*, an undertaking that they will comply with the confidentiality obligations set out in Article II.6.1.

Article II.7 – Processing of personal data

II.7.1 Any personal data included in the contract shall be processed by the EUI in accordance with the EUI's Data Protection Policy pursuant to the EUI rules on Data Protection (available at: <https://www.eui.eu/About/DataProtection>).

Such data shall be processed by the data controller solely for the purposes of the *performance*, management and monitoring of the contract without prejudice to its possible transmission to the bodies charged with monitoring or inspection tasks in application of relevant EU and national law.

II.7.2 The contractor shall have the right of access to its personal data and the right to rectify any such data. The contractor should address any queries related to the processing of its personal data to the Data Controller indicated in Art. I.6.

II.7.3 The contractor shall have the right of recourse at any time to the Director of Unit in charge of the procedure by simultaneous *notification* to the Data Protection Officer (data_protection_officer@eui.eu).

II.7.4 Where the contract requires the processing of personal data by the contractor or any of its subcontractors, the contractor may act only under the supervision of the data controller, in particular with regard to the purposes of the processing, the categories of data which may be processed, the recipients of the data and the means by which the data subject may exercise its rights. In that respect, the contractor shall be bound by the relevant provisions of the EUI's President's Decision No. 10/2019 as well as by the General Data Protection Regulation (GDPR) Regulation (EU) 2016/679 and all applicable national laws and regulations of the country where it is established regarding to the processing of personal data and privacy.

II.7.5 The contractor shall grant its *personnel* access to the data only to the extent strictly necessary for the *performance*, management and monitoring of the contract.

II.7.6 The contractor undertakes to adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned in order to:

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

Article II.8 – Subcontracting

II.8.1 The contractor shall not subcontract without prior written authorisation from the EUI nor cause the contract to be *de facto* performed by third parties.

II.8.2 The request for subcontracting must be accompanied by a clear indication of the activities that will be subcontracted and must necessarily satisfy the requirements of the current contract and any applicable Italian regulations. In the case of subcontracting occurring during the period of validity of

the contract resulting from this procedure, the contractor must submit all required documentation to the EUI and await its prior authorisation before making it indispensable, effective and operational.

II.8.3 Even where the EUI authorises the contractor to subcontract to third parties, the contractor shall remain bound by its obligations to the EUI under this contract and shall guarantee the provision of the services and be solely liable for the proper *performance of the contract* as if it was performing the services itself.

II.8.4 The contractor shall ensure that the subcontract does not affect rights and guarantees which the EUI has by virtue of this contract and agrees to indemnify the EUI against any claim, loss, cost or expenses awarded against, suffered, incurred, or agreed to be paid by the EUI as a consequence thereof.

Article II.9 – Amendments

II.9.1 Any amendment to the contract shall be made in writing before fulfilment of any new contractual obligations and in any case before the date of payment of the balance.

II.9.2 The amendment may not have the purpose or the effect of making changes to the contract which might call into question the decision awarding the contract or result in unequal treatment of tenderers.

Article II.10 – Assignment

II.10.1 The contractor shall not assign the rights, including claims for payments, and obligations arising from the contract, in whole or in part, without prior written authorisation from the EUI. In such cases, the contractor must provide the EUI with the identity of the intended assignee.

II.10.2 In the absence of such authorisation, or in the event of failure to observe the terms thereof, the assignment of rights or obligations by the contractor shall not be enforceable against the EUI and shall have no effect on it.

Article II.11 – Ownership of the results - intellectual and industrial property rights

II.11.1 Ownership of the rights in the results

The EUI acquires irrevocably worldwide ownership of the *results* and of all intellectual property rights under the contract, excluding anything developed in and made available in open source. The intellectual property rights so acquired include any rights, such as copyright and other intellectual or industrial property rights, to any of the *results* and to all technological solutions and information created or produced by the contractor or by any of its subcontractors in *performance of the contract*. The EUI may exploit and use the acquired rights as stipulated in this contract. The EUI acquires all the rights from the moment the EUI approves the *results* delivered by the contractor. Such delivery and approval are deemed to constitute an effective assignment of rights from the contractor to the EUI.

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

II.11.2 Licensing rights on pre-existing materials

Not Applicable.

II.11.3 Exclusive rights

The EUI acquires the following exclusive rights:

- (a) reproduction: the right to authorise or prohibit direct or indirect, temporary or permanent reproduction of the *results* by any means (mechanical, digital or other) and in any form, in whole or in part;
- (b) distribution: the exclusive right to authorise or prohibit any form of distribution of *results* or copies of the *results* to the public;
- (c) adaptation: the exclusive right to authorise or prohibit any modification of the *results*;
- (d) where the *results* are or incorporate software, including source code, object code and, where relevant, documentation, preparatory materials and manuals, in addition to the other rights mentioned in this Article:
 - (i) end-user rights, for all uses by the EUI or by subcontractors which result from this contract and from the intention of the parties;
 - (ii) the rights to decompile or disassemble the software;
- (e) 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/solutions* which are only licensed to the EUI, the right to sub-license does not apply;

The contractor warrants that the exclusive rights and the modes of exploitation may be exercised by the EUI on all parts of the *results*, be they created by the contractor or consisting of *pre-existing materials/solutions*.

Where *pre-existing materials/solutions* are inserted in the *results*, the EUI 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 EUI. In such case, the contractor will have to clearly inform the EUI before making such choice and the EUI has the right to refuse it.

II.11.4 Identification of pre-existing rights

Not Applicable.

II.11.5 Evidence of granting of pre-existing rights

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

This evidence may refer, for example, to rights to: documents, images, tables, data, software, technical inventions, or other programs ('background technology'), concepts, designs, installations, data, source or background materials/solutions.

This evidence must include, as appropriate:

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

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

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

II.11.6 Quotation of works in the result

Not Applicable.

II.11.7 Moral rights of creators

Not Applicable.

II.11.8 Image rights and sound recordings

Not Applicable.

II.11.9 Copyright notice for pre-existing rights

Not Applicable.

II.11.10 Visibility of EUI funding and disclaimer

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

Article II.12 – Force majeure

II.12.1 A party faced with force majeure shall formally and immediately *notify* the other party, stating the nature of the circumstances, their likely duration and foreseeable effects.

II.12.2 The party faced with force majeure shall not be held liable for any delay or failure to perform its contractual obligations under the contract, if that delay or failure is a result of force majeure. Where the contractor is unable to fulfil its contractual obligations owing to force majeure, it has the right to remuneration only for the services actually provided.

II.12.3 The parties shall take all the necessary measures to limit any damage due to force majeure.

Article II.13 – Liquidated damages

II.13.1 Delay in delivery

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

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

where:

V is the price of the relevant purchase or *deliverable* or *result* or, failing that, the price specified in Article I.3.1;

d is the duration specified in the relevant contract for delivery of the relevant purchase or *deliverable* or *result* or, failing that, the duration of *performance of the contract* specified in Article I.2.3 expressed in days.

Liquidated damages may be imposed together with a reduction in price under the conditions laid down in Article II.14.

II.13.2 Procedure

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

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

If the contractor submits observations, the EUI, 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.13.3 Nature of liquidated damages

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

II.13.4 Claims and liability

Any claim for liquidated damages does not affect the contractor's actual or potential liability or EUI's rights under Article II.16 (termination of the contract).

Article II.14 – Reduction in price

II.14.1 Quality standards

If the contractor fails to provide the service in accordance with the contract ('unperformed obligations') or if it fails to provide the service in accordance with the expected quality levels specified in the tender specifications ('low quality delivery'), the EUI may reduce or recover payments proportionally to the seriousness of the unperformed obligations or low quality delivery. This includes in particular cases where the EUI cannot approve a result, report or deliverable as defined in Article I.4 after the contractor has submitted the required additional information, correction or new version.

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

II.14.2 Procedure

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

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

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

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

II.14.3 Claims and liability

Any reduction in price does not affect the contractor's actual or potential liability or the EUI's rights under Article II.16 (termination of the contract).

Article II.15 – Suspension of the performance of the contract

II.15.1 Suspension by the contractor

The contractor may suspend the *performance of the contract* under the contract if the contractor is affected by a case of force majeure which makes such *performance* impossible or excessively difficult.

The contractor shall inform the EUI about the suspension without delay. The *notification* must include a description of the force majeure and the envisaged date for resuming the *performance of the contract*.

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

II.15.2 Suspension by the EUI

The EUI may suspend the *performance of the contract* or any part of it:

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

Suspension shall take effect on the day the contractor receives formal notification, or at a later date provided in the *notification*.

The EUI shall give notice as soon as possible to the contractor to resume the *performance of the contract* suspended or it shall inform the contractor that it intends to terminate the contract under Article II.16.1 (d) or (i).

The contractor shall not be entitled to claim compensation on account of suspension of the contract or of part thereof.

The EUI may in addition suspend the time allowed for payments in accordance with Art. II.17.4.

Article II.16 – Termination of the contract

II.16.1 Grounds for termination

The present contract shall be terminated automatically as soon as prohibitory sanctions or *informativa antimafia interdittiva* (antimafia prohibitory notice) are issued by the competent Prefecture towards the contractor, in accordance with D. Lgs. N. 159 of 9th September 2011 and its subsequent modifications. In that case, the contract shall be automatically terminated and the EUI has the right to keep the performance guarantee submitted by the contractor and to submit any further claims against the contractor. The contractor may only be entitled to payment corresponding to *part-performance of the contract* before the termination date, without any further obligations for the EUI.

Notwithstanding any other term of this contract, the EUI may terminate the contract in the following circumstances:

- a. if a change to the contractor's legal, financial, technical or organisational or ownership situation is likely to affect the *performance of the contract* substantially or calls into question the decision to award the contract;
- b. if the execution of the tasks of the contract has not actually commenced within 3 (three) months of the date foreseen, and the new date proposed, if any, is considered unacceptable by the EUI;

- c. if the contractor does not perform the contract as established in the tender specifications or fails to fulfil any other substantial contractual obligation;
- d. in the event of force majeure *notified* in accordance with Article II.12 or if the *performance of the contract* has been suspended by the contractor as a result of force majeure, *notified* in accordance with Article II.12, where either resuming *performance* is impossible or the modifications to the contract might call into question the decision awarding the contract or result in unequal treatment of tenderers;
- e. if the contractor is declared bankrupt, is being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- f. if the contractor or any natural person with the power to represent it or take decisions on its behalf has been found guilty of professional misconduct proven by any means;
- g. if the contractor is not in compliance with its obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which it is established or with those of the country of the applicable law of this contract or those of the country where the contract is to be performed;
- h. if the EUI has evidence that the contractor or natural persons with the power to represent it or take decisions on its behalf have committed *fraud*, corruption or any other illegal activity detrimental to the financial interests of the EUI, or has evidence or seriously suspects that they are involved in a criminal organisation or money laundering;
- i. if the EUI has evidence that the contractor or natural persons with power to represent or take decisions on its behalf have committed substantial errors, *irregularities* or *fraud* in the award procedure or the *performance of the contract*, including the case of submission of false information;
- j. if the contractor is unable, through its own fault, to obtain any permit or license required for the *performance of the contract*;
- k. in the presence of *serious misconduct* by *personnel*, duly reported in writing by the EUI and which are not promptly handled by replacement of *personnel* in question.
- l. if the contractor is in a situation that could constitute *conflict of interest* as referred to Article II.5.

II.16.2 Procedure for termination

Whereby the EUI intends to terminate the contract, it shall *formally notify* the contractor of its intention, specifying the grounds thereof.

The EUI shall invite the contractor to make any observations and, in the case of point II.16.1, point c) to inform the EUI about the measures taken to continue the fulfilment of its contractual obligations, within 30 (thirty) days from receipt of the *notification*.

If the EUI does not confirm acceptance of these observations by giving written approval within 30 (thirty) days of receipt, the termination procedure shall proceed. In any case of termination, the EUI shall *formally notify* the contractor about its decision to terminate the contract.

In the cases referred to in points in letter a), b), c), e), g), k), l), m), n) and j) of Article II.16.1, the formal *notification* shall specify the date on which the termination takes effect.

In the cases referred to in points d), f), h) and i) of Article II.16.1, the termination shall take effect on the day following the date on which *notification* is received by the contractor.

II.16.3 Effects of termination

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

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

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

Article II.17 – Reporting and payments

II.17.1 Date of payment

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

II.17.2 Currency

The contract shall be in Euro.

Payments shall be executed in Euro (€) [or in the local currency, if the receiving party has its legal seat outside Euro-area].

II.17.3 Invoices and VAT

The EUI is a teaching and research centre which uses a decentralised administrative structure and which manages, in addition to the different internal projects, several activities which are externally financed by both public and private sponsors. The contractor undertakes to follow the analytical invoicing procedures requested by the EUI, issuing on demand specific invoices for each cost centre/activity identified.

Invoices shall show the identification details of the contractor, the amount, currency and date, as well as the reference to the contract.

The EUI is as a rule, exempt from payment of Value Added Tax (VAT) on goods imported and services provided for the EUI's official activities for amounts exceeding Euro 300.00 (three hundred/00), pursuant to art. 151, para 1 (b) and para 2 of Council Directive 2006/112/EC, as last amended by Council Directive 2009/162/UE.

Where VAT is due in Italy, the above exemption applies to goods imported and services provided for the EUI's official activities for amounts exceeding Euro 300.00 (three hundred/00), provided the invoice includes the statement: "Esenzione IVA - Articolo 72-comma 1 lettera e) e comma 2 del D.P.R. n. 633 del 26/10/1972 e successive modifiche."

The EUI is exempt from customs duties and direct taxes within the terms of Articles 4 and 5 of the "Protocol on the Privileges and Immunities of the European University Institute" (Legge 181 del 21 Novembre 2014).

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

II.17.4 Suspension of the time allowed for payment

The EUI may suspend the payment periods at any time by *notifying* the contractor that its invoice cannot be processed, either because it does not comply with the provisions of the contract, or because the appropriate documents have not been produced.

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

Suspension shall take effect on the date the *notification* is sent by the EUI. The remaining payment period shall start to run again from the date on which the requested information or revised documents are received or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension period exceeds 2 (two) months, the contractor may request the EUI to justify the continued suspension.

Where the payment periods have been suspended following rejection of a document, as indicated in the first paragraph of this Article, and the new document produced is also rejected, the EUI reserves the right to terminate the contract in accordance with Article II.16.1 (c).

II.17.5 Performance guarantees

Performance guarantees cover compliance with substantial contractual obligations until the EUI has given its final approval for the service. The performance guarantee must not exceed 10% of the total price of the contract.

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

- a. the financial guarantee is provided by a bank or an approved financial institution or, at the request of the contractor and agreement by the EUI, by a third party;
- b. the guarantor stands as first-call guarantor and does not require the EUI to have recourse against the principal debtor (the contractor).

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

Article II.18 – Reimbursements

II.18.1 Where provided by the special conditions or by the tender specifications, the EUI shall reimburse the expenses which are directly connected with execution of the tasks on production of original supporting documents, including receipts and used tickets, or failing that, on production of copies or scanned originals, or on the basis of flat rates.

II.18.2 Travel and subsistence expenses shall be reimbursed, where appropriate, on the basis of the shortest itinerary and the minimum number of nights necessary for overnight stay at the destination.

II.18.3 Travel expenses shall be reimbursed as follows:

- a. travel by air shall be reimbursed up to the maximum cost of an economy class ticket at the time of the reservation;
- b. travel by boat or rail shall be reimbursed up to the maximum cost of a first class ticket;
- c. travel by car must be authorized by the EUI and shall be reimbursed on the basis of a Kilometre allowance, currently fixed at Euro 0,22 per kilometre. Other expenses (motorway tolls, ferry crossings, etc.) can also be reimbursed on presentation of the corresponding supporting documents.

II.18.4 Subsistence expenses shall be reimbursed up to Euro 175 per day as follows:

- a. for journeys of less than 80 km for a return trip, no subsistence allowance shall be payable;

- b. daily subsistence allowance shall be payable only on receipt of supporting documents proving that the person concerned was present at the destination;
- c. daily subsistence allowance is paid as a flat-rate and is considered to cover the hotel or other related cost (if applicable) breakfast and the two main meals, local travel, the cost of telecommunications, including fax and internet, and all other sundries;
- d. taxi expenses are reimbursed up to a maximum of Euro 70 per visit.

Parking expenses (airports only) are reimbursed up to a maximum of 4 (four) days per visit.

All supporting documents (duly completed) must always be attached to the statement of expenses.

II.18.5 Conversion between the Euro and another currency shall be made monthly applying the market rates for the penultimate day of the previous month quoted by the European Central Bank or, depending on availability, provided by the delegations or other appropriate sources close to that date.

Article II.19 – Recovery

II.19.1 If an amount is to be recovered under the terms of the contract, the contractor shall repay the EUI the amount in question according to the terms and by the date specified in the debit note.

II.19.2 If the obligation to pay the amount due is not honoured by the date set by the EUI in the debit note, the amount due shall bear interest at the rate applied by the European Central Bank for its main refinancing operations in Euros (the reference rate) plus 3,5%. The reference rate shall be the rate in force on the first day of the month in which the payment period ends, as published in the C series of the Official Journal of the European Union. Interest on late payments shall cover the period from the day following the due date for payment, up to and including the date when the EUI receives full payment of the amount owed.

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

II.19.3 If payment has not been made by the due date, the EUI may, after informing the contractor in writing, recover the amounts due by offsetting them against any amounts owed to the contractor by the EUI.

Article II.20 – Checks and audits

II.20.1 The EUI may check or have an audit on the *performance of the contract*. It may be carried out either directly by its own staff or by any other outside body authorised to do so on its behalf.

Such checks and audits may be initiated during the *performance of the contract* and during a period of 5 (five) years which starts running from the date of the payment of the balance.

The audit procedure shall be deemed to be initiated on the date of receipt of the relevant letter sent by the EUI. Audits shall be carried out on a confidential basis.

II.20.2 The contractor, during the lifetime of the contract shall, or shall procure that its subcontractors shall gather, compile, correlate, collect and otherwise maintain all relevant accounts, records, books and other information in documentary form or on easily accessible electronic media ("Records"), arising in connection with the *performance of the contract*.

The contractor shall keep all original documents stored on any appropriate medium, including digitised originals when they are authorised by national law and under the conditions laid down therein, for a period of 5 (five) years which starts running from the date of payment of the balance.

II.20.3 The contractor shall allow the EUI's staff and outside *personnel* authorised by the EUI the appropriate right of access to sites and premises where the contract is performed and to all the information, including information in electronic format, needed in order to conduct such checks and

audits. The contractor shall ensure that the information is readily available at the moment of the check or audit and, if so requested, that information be handed over in an appropriate form.

II.20.4 On the basis of the findings made during the audit, a provisional report shall be drawn up. It shall be sent to the contractor, which shall have 30 (thirty) days following the date of receipt to submit observations. The final report shall be sent to the contractor within 60 (sixty) days following the expiry of that deadline.

On the basis of the final audit findings, the EUI may recover all or part of the payments made and may take any other measure which it considers necessary.

Article II.21 – Severability

Each provision of this contract is severable and distinct from the others. If a provision is or becomes illegal, invalid or unenforceable to any extent, it must be severed from the remainder of the contract. This does not affect the legality, validity or enforceability of any other provisions of the contract, which continue in full force and effect. The illegal, invalid or unenforceable provision must be replaced by a legal, valid and enforceable substitute provision which corresponds as closely as possible with the actual intent of the parties under the illegal, invalid or unenforceable provision. The replacement of such a provision must be made in accordance with Article II.9 (amendment). The contract must be interpreted as if it had contained the substitute provision as from its entry into force.