

DRAFT SERVICE CONTRACT

Open Call for tenders for the management of the investment portfolio of the European University Institute's Pension Reserve Fund

Ref: OP/EUI/BFA/2017/001

The European University Institute (hereinafter referred to as “the Institute,” “the EUI,” “the Contracting Authority,” or “the Client”), established in San Domenico di Fiesole, in Via dei Roccettini 9, Italian Tax Code 80020410488, represented by its President, Renaud Dehousse, or for the purposes of the signature of this Contract by its Secretary General, Vincenzo Grassi, by delegation,

and

[Full official name]

[Legal form of the Company]

[Company's statutory registration number]

[Full official address]

[VAT registration number]

(Hereinafter referred to as “the Contractor” or “the Company” or “Investment firm”), for the purpose of the signature of this Contract represented by Mr/Ms [*name, surname, function*]

on the other part,

HAVE AGREED

To the **special conditions**, the **general conditions for service contracts**, and to the entire content of the following annexes:

Annex I Special Tender Specifications [OP/EUI/BFA/2017/001](#)

Annex II Contractor's Tender which includes:

- Technical Offer;
- Economic Offer;
- Supporting documents:
 - Declaration on honour on exclusion criteria and absence of conflict of interests;
 - Self-Certification form
 - Extract from Chamber of Commerce company registration or equivalent;
 - Certification or self-declaration on honour that Tenderer is in compliance with anti-Mafia provisions;

which are all an integral part of this Contract (hereinafter referred to as “the Contract”).

In the event of any dispute, the Parties agree that:

- the provisions in the Special Conditions and the Annexes shall prevail over the provisions in other parts of the Contract.
- the conditions and the Annexes are the legal and logical foundations on which this Contract is established, and are an integral and substantial part thereof.
- the provisions in the Special Tender Specifications (Annex I) shall prevail over the provisions in the Contractor's Tender (Annex II).

In order to dispel any doubts, the Contractor hereby acknowledges and agrees that the conditions of this Contract shall apply throughout and prevail over the Contractor's standard terms and conditions, and/or any other terms or conditions that are applied in ordinary or commercial practice, or other prior agreements between the Parties.

For further clarification, let it be understood that this Contract is to be considered a first Draft which may be subject to review and amendment by agreement of the Parties,

before the final Contract is signed at the moment the successful Tenderer is awarded the Contract.

In view of the clarifications above, the different sections that are part of this Contract are to be considered mutually self-explanatory. Any ambiguity or discrepancy within a section, or between one section and another, shall be explained or amended in writing by the Institute, without prejudice to the right of the Contractor to challenge the content of said written notification by means of the dispute settlement procedure envisaged in this Contract.

I – SPECIAL CONDITIONS

Before signing this Contract, the Investment firm shall provide the Institute with the following information, drafted in a clearly comprehensible form, as a print-out or any other form of permanent reproduction:

- a) all appropriate information relating to the Investment firm and the services to be provided, to the financial instruments and investment strategies the Investment firm is intending to use, including explanations and warning notices as to the risks associated with said instruments or investments, as well as the premises in which the services will be provided, the costs and overhead expenses related to the service-provision, as envisaged in Article 27, paragraphs 2, 29, 31 and 32 of the Intermediaries' Regulation adopted by CONSOB Resolution no. 16190/07 and modified with CONSOB Resolution 19548/16 (hereinafter referred to as Nuovo Regolamento Intermediari or "NRI"). This information shall be provided to allow the Institute to understand the nature of the portfolio management service and the specific type of financial instruments involved, in relation to the Asset Management Guidelines as laid out in Annex III of this Contract, as well as the associated risks, thereby enabling the Institute to take its investment decisions in a fully informed manner;
- b) all information related to the safeguarding of financial instruments and Institute's funds, as well as investor compensation schemes and/or any relevant deposit guarantee, with a general description of how such guarantee procedure is covered, in compliance with Article ___ paragraph ___ of the NRI;
- c) all appropriate information on the order transmission strategy established by the Investment firm in compliance with Article ___ paragraph ___ of the NRI;
- d) all information necessary in order to classify the Institute as a professional or a retail Client, in compliance with CONSOB Resolution no.

ARTICLE I.1 – SUBJECT MATTER

I.1.1 The Subject matter of this Contract is the management and administration of the Pension Reserve Fund portfolio ("Assets") of the European University Institute ("Institute"), made up of the Institute's liquid assets and financial instruments deposited with the Custodian Bank in compliance with the provisions of this Investment Services and Activities Contract and with the provisions of the Fund's regulation itself.

I.1.2 The Institute's liquid assets and financial instruments shall be deposited with the Custodian Bank, on the management accounts to be used exclusively for the execution of this asset management service. To enable the Investment firm to perform the service correctly, the Institute shall delegate to the Investment firm the handling of the management accounts.

I.1.3 The Investment firm shall perform its contractual services in full compliance with the investment criteria as defined in the tender specifications.

I.1.4 In performing its mandate, the Investment firm acts on behalf of the Institute and solely in Institute's interest, as well as being liable to the Institute for its full compliance with the provisions of the mandate. By signing this Contract, the Institute authorizes the Investment firm to execute this mandate in its own name as well, but only ever in the sole interest of the Institute.

ARTICLE I.2 – ENTRY INTO FORCE AND DURATION

I.2.1 The Contract enters into force on the date on which it is signed by the last party.

I.2.2 Under no circumstance shall the execution of the Contract begin before the date of its entry into force.

I.2.3 The Contract shall be renewed automatically up to 6 times, each time for a period of 1 year starting from the date of expiration of the previous period, unless written notification to the contrary is sent by one of the parties and received by the other 3 months before the expiration date of each renewal.

I.2.4 The Asset Management mandate shall not begin before 01.01.2018.

ARTICLE I.3 – REMUNERATION, EXPENSES AND TAXATION

I.3.1 The Parties agree that the Investment firm shall receive from Institute, as payment for the services provided pursuant to this Contract, the remuneration that is clearly and integrally described in the provisions contained in this Contract.

I.3.2 The remuneration mentioned in the previous paragraph shall be calculated by the Investment firm, who will obtain the Institute's approval and subsequently instruct the Custodian Bank to have the sums debited accordingly.

I.3.3 Based on Article 5 of the Protocol on Privileges and Immunities (transposed into Italian Law no.920 dated 23/12/1972) and on Article 12 of the Headquarters Agreement (DPR no. 990 dated 13/10/1976, published in Official Bulletin G.U no. 47 dated 19/02/1977), Institute is exempt from all forms of direct taxation pertaining to the State of Italy for all purchases of goods and services for a value greater than EUR 300.00.

I.3.4 Price variations

Variations in costs and remuneration are not applicable to this Contract.

ARTICLE I.4 – PAYMENT TERMS

I.4.1 General terms

The remunerations that the Institute shall pay to the Investment firm based on the terms of this Contract shall be due only once the Investment firm has fully complied with his contractual and legal obligations.

I.4.2 Payment of commissions

In compliance with and pursuant to this Contract, the Institute shall pay the Investment firm the following commissions as remuneration for the management service provided:

- (a) a fixed ... % commission on a yearly basis, to be calculated and paid quarterly based on the average amount of assets managed during that quarter, excluding those assets invested in funds or SICAVs. In the case of management periods shorter than quarters, the commission shall be calculated pro rata.
- (b) an incentive commission, to be calculated and paid at the end of each calendar year and at the end of the management agreement, amounting to ... % of any net over-performance, above the yield target for that year. Calculation shall be based on the average asset base managed during that year. A commission shall be due only in the event that there is a positive difference between the portfolio's net performance and the target from the last date on which the incentive commission was paid, or, failing that, from the beginning of the management agreement.

In addition to the above items, it is understood that:

- (c)% of any implicit fixed commissions on EU harmonized common funds belonging to the Investment firm's Group, and used in the management process, shall be credited to the Institute, while nothing shall be credited for performance commissions related to products;
- (d) there will be no remittance of implicit commissions relating to third party funds, Hedge Funds or Funds of Hedge Funds;
- (e) - the Custodian Bank's costs shall amount to ... basis points p.a. and the Bank itself shall charge them to the management account;

I.4.3 By underwriting this Contract, the Institute grants explicit authorization to Investment firm to withdraw and/or deduct its commissions (including those relating to items listed above) from the liquid assets and/or the amounts to be reimbursed to Institute.

I.4.4 Accounts of all remunerations accruing to the Investment firm shall be specifically communicated to the Institute at the end of every management year, in a detailed information sheet.

ARTICLE I.5 – ADDRESSES FOR NOTIFICATIONS AND DATA PROTECTION OFFICER

In compliance with Article II.6, the responsibility for Data Protection is entrusted to the Accounting Unit, within the EUI's Budget and Financial Affairs Service, represented by its Chief Accountant, Ms Júlia Serrano.

Any notification or other form of communication relating to this Contract shall take place in writing and it shall be sent to the following addresses:

Institute:

Istituto Universitario Europeo
Accounting Unit
Piazza Edison 11, 50133, Firenze(FI)
E-mail address: contabilita@EUI.eu

Contractor:

Name and surname	
Function	
Company's name	
Full official address	
Email	

ARTICLE I.6 – APPLICABLE LAW AND DISPUTE SETTLEMENT

I.6.1 This Contract is governed by the Financial Rules and the Public Procurement Regulatory Framework in force at the Institute; where necessary and in cases that are not specifically covered by the topics addressed in the Contract and in the related legal documents, the provisions envisaged by Italian Law shall prevail, if applicable.

I.6.2 Any dispute arising in relation to this Contract shall be submitted, in good faith, to a Mediation procedure, as governed by the [International Mediation Rules of the Milan Chamber of Arbitration](#), by submitting a written request to the General Secretariat of the Milan Chamber of Arbitration.

I.6.3 If, for whatever reason, after 60 (sixty) days from the request to trigger the Mediation process, no dispute settlement procedure has begun, within the next 30 (thirty) days the dispute may be submitted by the Parties to an arbitration procedure according to the [Regulations of the Milan Chamber of Arbitration](#).

The arbitration shall take place in Milan and English shall be the language used for the procedure.

The decision of the arbitration procedure shall be considered final and binding on both Parties.

The Arbitration Tribunal shall apply the European University Institute's Rules and Regulations, including the Financial Rules and the Public Procurement Regulatory Framework, integrated where necessary by the provisions of Italian law.

ARTICLE I.7 – CONTRACT TERMINATION BY ONE OF THE PARTIES

I.7.1 Each of the Parties may unilaterally, and without being required to indemnify the other, terminate the Contract by serving the other Party with a notice of at least six (6) months from the day on which the Party in question receives notification of termination.

I.7.2 In the event of contract termination the investment firm shall return control over assets to the Institute, having fully discharged all Institute's written instructions and having settled all rights/obligations or credit/debit owing to the investment firm.

ARTICLE I.8 – CONTRACTUAL FEES

All expenses and fees relating to the Contract (including fixed rate registration fee) shall be borne entirely by the Contractor, who shall have no right to claim reimbursement from the Institute.

ARTICLE I.9 – TRANSFER OF ASSETS TO BE MANAGED

I.9.1 The assets entrusted to the Investment firm are made up of financial instruments and liquid assets derived from investment and disinvestment operations, as well as from rights, revenues and returns of any kind.

I.9.2 The Institute shall have the right to transfer assets during performance of the mandate, on condition that said assets are transferred to the Management Accounts (current account and securities portfolios), having notified the Investment firm.

In the event of the transfer of liquid assets they shall be credited to the current account with value date depending on the means of payment; securities shall be credited to the securities portfolio in the Institute's name from the actual moment that they are transferred to the account.

I.9.3 In compliance with paragraph 1 of Article 22 of the TUF (the Italian consolidated Financial Law), the financial instruments and liquid cash of the Institute, held for whatever purpose by the Custodian Bank, shall represent a property separate and distinct from the property of the Investment firm and from that of other clients. The Investment firm is further required to keep clear accounting evidence of any and all asset transfers made by the Institute, in the accounting reports pertaining to the Institute.

ARTICLE I.10 MANAGEMENT GUIDELINES

I.10.1 The Investment firm shall manage the Institute's entrusted assets according to the investment criteria described in the Tender Specifications, which is based on the chosen Management Guidelines, drafted in compliance with the information provided by the Institute.

I.10.2 The main features of the Management strategy are clearly indicated in the Tender Specifications; therefore, the Investment firm shall refer to the financial instrument categories and the types of operations listed therein, in its performance of the mandate and in its investment allocation strategy.

I.10.3 At any time the Institute may notify the Investment firm of its intention to have the Management Guidelines changed. In such an event, the Investment firm shall take note of the Institute's instructions and, in consideration of the Institute's best interests, shall rapidly implement all necessary operations to meet the new requirements expressed by the Institute.

ARTICLE I.11 PERFORMANCE OF THE CONTRACT AND MANAGEMENT ARRANGEMENTS

I.11.1 The Investment firm shall deposit Client's liquid assets and financial instruments with the Custodian Bank.

In compliance with Article 1717 paragraph 2 of the Italian Civil Code, Client authorizes the Investment firm to use the services of:

- a) sub-custodians or their correspondents, in the case of sub-deposits of securities being managed;
- b) its own correspondents on foreign markets, in the case of operations on those markets.

I.11.2 The Investment firm undertakes to perform its mandate acting in good faith and with due diligence, in compliance with the investment instructions provided by the Institute as the basis for the Management Guidelines.

I.11.3 The Institute shall have the right to issue specific instructions at any time, with reference to specific operations, including those occurring outside regulated markets, provided such instructions are not incompatible with the agreed management strategy, and notify these instructions to the Investment firm. The Investment firm shall implement said instructions within the time technically necessary to do so, without prejudice to the right to terminate the Contract as envisaged in Article 1727 of the Italian Civil Code for cases in which the instructions are incompatible with Management Guidelines.

I.11.4 In transmitting or implementing orders relating to operations, the Investment firm shall take all reasonable measures to achieve the best possible result in the Institute's best interest, considering the price, the liquidity and the volumes, the costs, the speed and probability of execution and regulation, the size and nature of the order or any further consideration relevant to its transmission or execution. In any event, should the Institute's issue specific instructions, the Investment firm shall abide by such instructions as relates to the operations that are the object of the Institute's notification. Without prejudice to what is envisaged above, in transmitting and in executing orders the Investment firm is explicitly authorized to perform operations, or have them performed by others, outside regulated markets.

ARTICLE I.12 TIMELINE AND CONTENT OF DOCUMENTATION TO BE PROVIDED TO CLIENT AS REPORTING ON ACTIVITIES PERFORMED

The Investment firm shall provide the Institute, every three months, not later than 15 days after the end of the period in question, with a hard copy report on the service performed; the report shall contain all the information required by the laws and regulations in force at the time the report is issued.

ARTICLE I.13 SPECIFIC INSTRUCTIONS

In compliance with the provisions envisaged in this Contract, the Institute may issue specific and binding instructions in writing, including by fax or electronic means, referring to the execution of individual operations or in relation to overall investment strategies to be undertaken.

ARTICLE I.14 AUTHORIZED PERSONS

I.4.1 The Parties agree that the Institute shall only communicate with the Investment firm through authorized persons identified in this Contract, which also specifies if any of these persons are limited in their authorization only to communication on certain issues.

I.4.2 The Institute explicitly undertakes to communicate promptly, by registered letter with return receipt, to the Investment firm any change in the identity and/or powers of

the authorized persons, as described above. The content of the registered letter may be communicated to the Investment firm in advance, by electronic means.

I.4.3 Regardless of whether said changes have been deposited and/or published by the Institute as envisaged by law, or whether these changes are considered to be in the public domain due to the time passed since they were first notified, these changes shall have an effect on the Investment firm and shall be considered mandatory starting on the third working day after the date on which the notification described in the previous paragraph is received.

I.4.4 From the European University Institute the persons authorized to communicate with the contractor are: Vincenzo Grassi, Júlia Serrano, Roberto Nocentini and Giosetta Salvini.

SIGNATURES

For the Contractor,
*[name of Company/ name and surname of
representative / function]*

For the European University Institute,
[name/surname/function]

Signature(s):

Signature(s):

Signed _____ in Firenze,

on Signed _____ in Firenze, on

In two copies, in English.

II –GENERAL CONDITIONS

ARTICLE II.1 – PERFORMANCE OF THE CONTRACT

II.1.1 The contractor shall perform the contract according to the highest professional standards.

II.1.2 The contractor shall be solely responsible for taking the necessary steps to obtain any permit or licence required for performance of the contract under the laws and regulations in force at the place where the assigned tasks are to be executed.

II.1.3 Without prejudice to Article II.4, any reference made to the contractor's personnel in the contract shall relate exclusively to individuals involved in the performance of the contract.

II.1.4 The contractor must ensure that the personnel performing the contract possesses the professional qualifications and experience required for the execution of the tasks assigned to it.

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

II.1.6 The contractor shall be solely responsible for the personnel who executes 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 contracting authority;
- b. the contracting authority may not under any circumstances be considered to be the employer of the personnel referred to in point (a) and the personnel shall undertake not to invoke against the contracting authority any right arising from the contractual relationship between the contracting authority and the contractor.

II.1.7 In the event of disruption resulting from the action of one of the contractor's personnel working on the contracting authority's premises or in the event that the expertise of 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 contracting authority shall have the right to make a reasoned request for the replacement of any such personnel. The replacement personnel must have the necessary qualifications and be capable of performing the contract under the same contractual conditions. The contractor shall be responsible for any delay in the execution of the tasks assigned to it resulting from the replacement of personnel.

II.1.8 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 contracting authority. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the contractor to ensure full compliance with its obligations under this contract. In such an event the contractor shall give priority to solving the problem rather than determining liability.

II.1.9 Should the contractor fail to perform its obligations under the contract, the contracting authority may -without prejudice to its right to terminate the contract- reduce or recover payments in proportion to the scale of the unperformed obligations. In addition, the contracting authority may claim compensation or impose liquidated damages in accordance with art. II.12 and/or any penalties indicated in the tender specifications.

ARTICLE II.2 – MEANS OF COMMUNICATION

II.2.1 Any communication relating to the contract or to its performance shall be made in writing. Any communication is deemed to have been made when it is received by the receiving party unless otherwise provided for in this contract.

II.2.2 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.2.3 Mail sent using the postal services is deemed to have been received by the contracting authority 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.

ARTICLE II.3 - LIABILITY

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

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

II.3.3 The contractor shall be held liable for any loss or damage, cost (including legal and other professional fees) or expenses sustained by the contracting authority 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 employees, and for death caused by negligence or wilful conduct of its employees.

II.3.4 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 contracting authority 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 contracting authority.

ARTICLE II. 4 - CONFLICT OF INTEREST

II.4.1 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.4.2 Any situation constituting or likely to lead to a conflict of interest during the performance of the contract shall be notified to the contracting authority in writing without delay. In the event of any such conflict, the contractor shall immediately take all the necessary steps to rectify the situation. The contracting authority reserves the right to verify that the steps taken are appropriate and may require that additional steps be taken within a specified deadline.

II.4.3 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.4.4 In compliance with the EUI's Staff Regulations, in particular Article 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.4.5 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.1 the contractor shall replace, immediately and without compensation from the Institute, any member of the contractor's staff faced with or brought into such a situation.

ARTICLE II. 5 - CONFIDENTIALITY

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

II.5.2 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 contracting authority;
- 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 contracting authority.

II.5.3 The confidentiality obligation set out in Article II.5.1 shall be binding on the contracting authority and the contractor during the performance of the contract and for five years starting from the date of the payment of the balance unless:

- a. the 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.5.4 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.5.1.

ARTICLE II. 6 - PROCESSING OF PERSONAL DATA

II.6.1 Any personal data included in the contract shall be processed by the Institute in accordance with the EUJ's Data Protection Policy pursuant to the EUI President's Decision No.40/2013 regarding Data Protection at the EUI. 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.6.2 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 Article I.5.

II.6.3 The contractor shall have the right of recourse at any time to the Chief Accountant, Júlia Serrano, by simultaneous notification to the Data Protection Officer (dpo@eui.eu).

II.6.4 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. 40/2013 as well as by the Data Protection Directive (95/46/EC) and all applicable national laws and regulations of the country where it is established regarding to the processing of personal data and privacy.

II.6.5 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.6.6 The contractor undertakes to adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned in order to:

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

ARTICLE II.7 - AMENDMENTS

II.7.1 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.7.2 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.8 – ASSIGNMENT

II.8.1 The contractor shall not assign the rights, including claims for payments, and obligations arising from the contract, in whole or in part, without prior written authorisation from the contracting authority.

II.8.2 In the absence of such authorisation, or in the event of failure to observe the terms thereof, the assignment of rights or obligations by the contractor shall not be enforceable against the contracting authority and shall have no effect on it.

ARTICLE II.9 - FORCE MAJEURE

II.9.1 'Force majeure' means any unforeseeable and exceptional situation or event beyond the parties' control which prevents either of them from fulfilling any of their obligations under the contract, which was not attributable to error or negligence on their part or on the part of subcontractors and which proves to be inevitable in spite of exercising due diligence. Any default of a service, defect in equipment or material or delays in making them available, unless they stem directly from a relevant case of force majeure, as well as labour disputes, strikes or financial difficulties, cannot be invoked as force majeure.

II.9.2 A party faced with force majeure shall formally notify the other party without delay, stating the nature, likely duration and foreseeable effects.

II.9.3 The party faced with force majeure shall not be held in breach of its contractual obligations if it has been prevented from fulfilling them by force majeure. Where the contractor is unable to fulfil its contractual obligations owing to force majeure, it shall have the right to remuneration only for the tasks actually executed.

II.9.4 The parties shall take all the necessary measures to limit any damage due to force majeure.

ARTICLE II.10 – SUSPENSION OF THE PERFORMANCE OF THE CONTRACT

II.10.1 Suspension by the contractor

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

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

II.10.2 Suspension by the contracting authority

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

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

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

ARTICLE II. 11 - TERMINATION OF THE CONTRACT

II.11.1 Grounds for termination

The present contract is subject to express termination clause whether prohibitory sanctions or *informativa antimafia interdittiva* (antimafia prohibitory notice) are issued by the competent Prefecture towards the Company, in accordance with D. Lgs. N. 159 of 9th September 2011 and its latest amendments and additions. In that case, the contract shall be terminated automatically and the Contracting authority shall have the right to keep the performance guarantee submitted by the Company, without prejudice to compensation. The contractor shall only be entitled to payment corresponding to part-performance of the contract before the termination date, without any further obligations for the Institute.

Notwithstanding any other term of this contract, the contracting authority may terminate the contract, a purchase order or specific 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 or a purchase order or a specific contract has not actually commenced within three months of the date foreseen, and the new date proposed, if any, is considered unacceptable by the contracting authority;
- c. if the contractor does not perform the contract or a purchase order or specific contract as established in the tender specifications, the request for services or fails to fulfill any other substantial contractual obligation;
- d. in the event of force majeure notified in accordance with Article II.11 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.11, 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 contracting authority 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 contracting authority 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, purchase orders or specific contracts;
- k. in the presence of serious misconduct by employees, duly reported in writing by the contracting authority and which are not promptly handled by replacement of personnel in question.

II.11.2 Procedure for termination

Whereby the contracting authority intends to terminate the contract, a purchase order or specific contract, it shall formally notify the contractor of its intention, specifying the grounds thereof. The contracting authority shall invite the contractor to make any observations and, in the case of point II.11.1, point c) to inform the contracting authority about the measures taken to continue the fulfilment of its contractual obligations, within 30 days from receipt of the notification.

If the contracting authority does not confirm acceptance of these observations by giving written approval within 30 days of receipt, the termination procedure shall proceed. In any case of termination, the contracting authority 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) and j) of Article II.11.1, 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) and k) of Article II.11.1 the termination shall take effect on the day following the date on which notification is received by the contractor.

ARTICLE II. 12 – PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN UNIVERSITY INSTITUTE

II.12.1 Invoices and VAT

The Institute 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 Institute, 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, purchase order or specific contract.

The EUI is, as a rule, exempt from payment of Value Added Tax (VAT) pursuant to Article 151, para 1 (b) and para 2 of Council Directive 2006/112/EC, as last amended by Council Directive 2009/162/UE.

This exemption applies to goods imported and services provided for the Institute's official activities for amounts exceeding €300.00 (three hundred/00).

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".

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.12.2 Suspension of the time allowed for payment

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

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

Where the payment periods have been suspended following rejection of a document and the new document produced is also rejected, the contracting authority reserves the right to terminate the contract in accordance with Article II.11.1 (c).

ARTICLE II.13- RECOVERY

II.13.1 If an amount is to be recovered under the terms of the contract, the contractor shall repay the contracting authority the amount in question according to the terms and by the date specified in the debit note.

II.13.2 If the obligation to pay the amount due is not honoured by the date set by the contracting authority in the debit note, the amount due shall bear interest at the rate 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 contracting authority receives the 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.13.3 If payment has not been made by the due date, the contracting authority may, after informing the contractor in writing, recover the amounts due by offsetting them against any amounts owed to the contractor by the Institute.

ARTICLE II.14 – CHECKS AND AUDITS

II.14.1 The contracting authority 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 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 contracting authority. Audits shall be carried out on a confidential basis.

II.14.2 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 five years which starts running from the date of payment of the balance.

II.14.3 The contractor shall allow 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 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.14.4 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 days following the date of receipt to submit observations. The final report shall be sent to the contractor within 60 days following the expiry of that deadline.

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