

SERVICE CONTRACT

EGI/2023/OP/0001- Purchase of software services for image analysis in phenological research with implementation, licensing, support, and maintenance

1. ‘EGI FOUNDATION’ (hereinafter referred to as ‘the “EGI FOUNDATION, represented for the purposes of signing this contract by [insert name], [insert title] of EGI FOUNDATION, [Statutory registration number or ID or passport number], [Full official address], [VAT registration number]

on the one part, and

2. [Full official name]

[Official legal form]

[Statutory registration number or ID or passport number]

[Full official address]

[VAT registration number]

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

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

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

on the other part,

HAVE AGREED

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

Annex I – Tender specifications

Annex II – Technical and financial offer + Power of attorney + Commitments letters + CVs

Annex III – Declaration of pre-existing rights

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

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.

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I. SPECIAL CONDITIONS

I.1. ORDER OF PRIORITY OF PROVISIONS

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

- (a) The provisions set out in the special conditions take precedence over those in the other parts of the contract.
- (b) The provisions set out in the general conditions take precedence over those in the other annexes.
- (c) The provisions set out in the tender specifications (Annex I) take precedence over those in the tender (Annex II).

I.2. SUBJECT MATTER

The subject matter of the contract is the purchase of software services for image analysis in phenological research with implementation, licensing, support, and maintenance.

I.3. ENTRY INTO FORCE AND DURATION

The contract enters into force on the date on which the last party signs it¹.

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

The duration of the *performance of the contract* must not exceed 5 months.

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

The period of *performance of the contract* may NOT be extended EVEN with the express written agreement of the parties before the expiration of such period.

I.4. PRICE

Price of the contract and maximum amount

The price payable under this contract excluding renewals, reimbursement of expenses and price revision is EUR XXXXXXXXXX (XXXXXXXXXXXXXXXX XXXXXXXX EUROS).

Price revision index

Price revision is not applicable to this contract.

Reimbursement of expenses

Reimbursement of expenses is not applicable to this contract.

¹ As a rule the EGI FOUNDATION signs last. In this case, the contractor should be duly informed of the date on which the contract enters into force (date of signature by the EGI FOUNDATION).

I.5. PAYMENT ARRANGEMENTS

Pre-financing

Pre-financing is not applicable to this contract.

Interim payments

1(a). The contractor may claim a first interim payment equal to 40% of the price referred to in Article I.4.3 of the tender specifications.

The contractor must send an invoice via business@egi.eu for the interim payment as provided for in the tender specifications, accompanied by the following:

- *the first milestone report at 2,5 months as set out in the tender specifications;*

1(b). The contractor may claim a second interim payment equal to 60% of the price referred to in Article I.4.3 of the tender specifications.

The contractor must send an invoice via business@egi.eu for the interim payment as provided for in the tender specifications, accompanied by the following:

- *the second milestone report and the final report at 5 months as set out in the tender specifications;*

2. The EGI FOUNDATION must approve any submitted documents or deliverables and pay within 30 days from receipt of the invoice.

Invoices submitted by the company winning the tender will have to comply with the rules on VAT on the supply of services, in accordance with Directive 2006/112/EC in its consolidated version.

I.6. GUARANTEES

Guarantees are not applicable to this contract.

Performance guarantee

Performance guarantee is not applicable to this contract.

Retention money guarantee

Retention money guarantee is not applicable to this contract.

I.7. BANK ACCOUNT

Payments must be made to the contractor's bank account, identified as follows:

Name of bank:

Full address of branch:

Exact denomination of account holder: Full account number including bank codes: [IBAN² code:] BIC

I.8. COMMUNICATION DETAILS

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

EGI FOUNDATION:

EGI FOUNDATION (EGI)

Science park 140

198 XG Amsterdam

Netherlands

E-mail: business@egi.eu

Contractor:

[Full name]

[Function]

[Company name]

[Full official address]

E-mail: [complete]

I.9. PROCESSING OF PERSONAL DATA

Processing of personal data by the EGI FOUNDATION

For the purpose of Article II.8,

- (a) the data controller is EGI FOUNDATION;
- (b) the data protection notice is available at the EGI FOUNDATION website:
<https://www.egi.eu/privacy-notice/>

Processing of personal data by the contractor

The parties undertake to respect all the applicable data protection regulations and, specifically the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

I.10. TERMINATION BY EITHER PARTY

Either party may terminate the contract by sending *formal notification* to the other party with one month written notice.

If the contract is terminated:

- (a) neither party is entitled to compensation;
- (b) the contractor is entitled to payment only for the services provided before termination takes effect.

The second, third and fourth paragraphs of Article II.17 apply.

I.11. APPLICABLE LAW AND SETTLEMENT OF DISPUTES

The contract is governed by Union law, complemented, where necessary, by the law of Netherlands.

The courts of Amsterdam have exclusive jurisdiction over any dispute regarding the interpretation, application or validity of the contract.

SIGNATURES

For the contractor,
[Company name/forename/surname/position]

For the EGI FOUNDATION,

Signature: _____

Signature: _____

Done at [place], [date]

Done at Netherlands, [date]

Signed in duplicate in a single original.

II. GENERAL CONDITIONS FOR THE SERVICE CONTRACT

II.1. DEFINITIONS

For the purpose of this contract, the following definitions apply:

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

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

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

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

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

‘Force majeure’: any unforeseeable, exceptional situation or event beyond the control of the parties that prevents either of them from fulfilling any of their obligations under the contract. The situation or event must not be attributable to error or negligence on the part of the parties or on the part of the subcontractors and must prove to be inevitable despite their exercising due diligence. Defaults of service, defects in equipment or material or delays in making them available, labour disputes, strikes and financial difficulties may not be invoked as *force majeure*, unless they stem directly from a relevant case of *force majeure*;

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

‘Fraud’: an act or omission committed in order to make an unlawful gain for the perpetrator or another by causing a loss to the Union's financial interests, and relating to: i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or assets, 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 EGI FOUNDATION's financial interests;

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

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

‘Performance of the contract’: the execution of tasks and delivery of the purchased services by the contractor to the EGI FOUNDATION;

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

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

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

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

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

‘Result’: any intended outcome of the *performance 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 EGI FOUNDATION by the contractor or at its request, also include *pre-existing materials*;

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

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

II.3. SEVERABILITY

Each provision of this contract is severable and distinct from the others. 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.10. The contract must be interpreted as if it had contained the substitute provision as from its entry into force.

II.4. PERFORMANCE OF THE CONTRACT

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

The contractor must comply with the minimum requirements provided for in the tender specifications. This includes compliance with applicable obligations under environmental, social and labour law established by Union law, national law and collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU.

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

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

The contractor must not present itself as a representative of the EGI FOUNDATION and must inform third parties that it is not part of it.

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

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

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

At the EGI FOUNDATION's reasoned request, the contractor must replace any member of *personnel* who:

- (c) does not have the expertise required to provide the services; or
- (d) has caused disruption at the premises of the EGI FOUNDATION.

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

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

II.5. COMMUNICATION BETWEEN THE PARTIES

Form and means of communication

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

- (a) be made in writing in paper or electronic format in the language of the contract;
- (b) bear the contract number;
- (c) be made using the relevant communication details set out in Article I.8; and
- (d) be sent by mail, email or, for the documents specified in the special conditions, via business@egi.eu

If a party requests written confirmation of an e-mail within a reasonable time, the other party must provide an original signed paper version of the communication as soon as possible.

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

Date of communications by mail and email

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

E-mail is deemed to have been received by the receiving party on the day of dispatch of that e-mail, provided that it is sent to the e-mail address indicated in Article I.8. The sending party must be able to prove the date of dispatch. In the event that the sending party receives a non-delivery report, it must make every effort to ensure that the other party actually receives the communication by email or mail. In such a case, the sending party is not held in breach of its obligation to send such communication within a specified deadline.

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

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

II.6. CONFLICT OF INTEREST AND PROFESSIONAL CONFLICTING INTERESTS

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

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

The EGI FUNDATION may do any of the following:

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

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

- a) its *personnel*;

- b) any natural person with the power to represent it or take decisions on its behalf;
- c) third parties involved in the *performance of the contract*.

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

II.7. CONFIDENTIALITY

The EGI FOUNDATION and the contractor must treat with confidentiality any information or documents, in any format, disclosed in writing or orally relating to the *performance of the contract* and identified in writing as confidential.

Each party must:

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

The confidentiality obligations set out in this Article are binding on the EGI FOUNDATION and the contractor during the *performance of the contract* and for as long as the information or documents remain confidential unless:

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

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

II.8. PROCESSING OF PERSONAL DATA

Processing of personal data by the EGI FOUNDATION

Any personal data included in or relating to the contract, including its implementation, shall be processed in accordance with Regulation (EU) 2016/679. Such data shall be processed solely for the purposes of the implementation, management and monitoring of the contract.

Processing of personal data by the contractor

The processing of personal data by the contractor shall meet the requirements of Regulation (EU) 2016/679 and be processed solely for the purposes set out for the correct execution of

II.9. SUBCONTRACTING

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

Even if the EGI FOUNDATION authorises subcontracting, the contractor remains bound by its contractual obligations and is solely responsible for the *performance of this contract*.

The contractor must ensure that the subcontract does not affect the rights of the EGI FOUNDATION under this contract, particularly those under Articles II.7, II.12 and II.22.

The EGI FOUNDATION may request the contractor to replace a subcontractor found to be in a situation provided for in points (d) and (e) of Article II.17.

II.10. AMENDMENTS

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

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

II.11. ASSIGNMENT

The contractor must not assign the rights and obligations arising from the contract, including claims for payments or factoring, without prior written authorisation from the EGI FOUNDATION. In such cases, the contractor must provide the EGI FOUNDATION with the identity of the intended assignee.

Any right or obligation assigned by the contractor without authorisation is not enforceable against EGI FOUNDATION.

II.12. INTELLECTUAL PROPERTY RIGHTS

Ownership of the rights in the results

Compliance with copyright law and other intellectual property legislation is of utmost importance for the *EGI FOUNDATION*. When providing the services, the contractor has to ensure compliance with the applicable copyright and other intellectual property legislation. The bidder shall develop the software solution specified in the tender documents as an open-source software solution under the Apache License 2.0.

The results of the developments carried out by the winning company during the duration of this 5-month contract will remain the property of the company, which will be free to exploit them commercially and economically in the geographical area it considers. For all non-commercial uses, the company undertakes by the acceptance of this contract to transfer them in OPEN SOURCE to EGI through the EOSC platform with the aim of supporting the European scientific community exclusively in their research for non-commercial purposes. EGI reserves the possibility to transfer the exploitation of these rights to the scientific

communities it supports, especially to PULS. Further developments or improvements by the winning company of the software developed in the framework of this contract will be the exclusive property of the winning company.

Licensing rights on pre-existing materials/Background

If applicable, the contractor licenses the *pre-existing rights* on a royalty-free, non-exclusive and irrevocable basis to EGI FOUNDATION, which may use the *pre-existing materials only* for all the NON-COMMERCIAL modes of exploitation.

(a) the *pre-existing rights* can be sub-licensed by the EGI FOUNDATION to persons and entities working for it or cooperating with it, including contractors and subcontractors, whether legal or natural persons, but only for the purpose of supporting scientific community, especially PULS;

(b) if the *result* is a "document" such as a report or a study, and it is meant to be published, the existence of *pre-existing materials* in the *result* may not prevent the publication of the document, its translation or its "reuse", it being understood however that the "reuse" may only be made of the *result* as a whole and not of the *pre-existing materials* taken separately from the *result*;

‘Background’ means any data, know-how or information — whatever its form or nature (tangible or intangible), including any rights such as intellectual property rights — that is:
- held by the tenderer before it accesses to the Service Contract and - needed to implement the action or exploit the results. If background is subject to rights of a third party, the tenderer must ensure that it is able to comply with its obligations under the Contract.

All requests for Access Rights shall be made in writing. The granting of Access Rights may be made conditional on the acceptance of specific conditions aimed at ensuring that these rights will be used only for the intended purpose and that appropriate confidentiality obligations are in place.

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

II.13. FORCE MAJEURE

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

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

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

II.14. LIQUIDATED DAMAGES

Delay in delivery

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

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

where

V is the price of the relevant purchase or deliverable or *result* or, failing that, the price specified in Article I.4 of tender specifications.

d is the duration specified for delivery of the relevant purchase or deliverable or *result* or, failing that, the duration of *performance of the contract* specified in Article I.4 of tender specifications expressed in days.

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

Procedure

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

The contractor has 7 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 EGI FOUNDATION, 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.

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.

Claims and liability

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

II.15. REDUCTION IN PRICE

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 EGI FOUNDATION may reduce or recover payments proportionally to the seriousness of the unperformed obligations or low quality delivery. This includes in particular cases where the EGI FOUNDATION cannot approve a *result*, report or deliverable 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.14.

Procedure

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

The contractor has 7 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 EGI FOUNDATION, 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.

Claims and liability

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

II.16. SUSPENSION OF THE PERFORMANCE OF THE CONTRACT

Suspension by the contractor

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

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

Suspension by the EGI FOUNDATION

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

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

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

The EGI FOUNDATION must *notify* the contractor as soon as the verification is completed whether:

- (a) it is lifting the suspension; or
- (b) it intends to terminate the contract under Article II.17. (f) or (j).

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

The EGI FOUNDATION may in addition suspend the time allowed for payments in accordance with Article II.20.

II.17. TERMINATION OF THE CONTRACT

Grounds for termination by the EGI FOUNDATION

The EGI FOUNDATION may terminate the contract in the following circumstances:

- (a) if provision of the services under the contract has not actually started within 7 days of the scheduled date and the EGI FOUNDATION considers that the new date proposed, if any, unacceptable;
- (b) if the contractor is unable, through its own fault, to obtain any permit or licence required for *performance of the contract*;
- (c) if the contractor does not perform the contract in accordance with the tender specifications or is in breach of another substantial contractual obligation.
- (d) if the contractor or any person that assumes unlimited liability for the debts of the contractor is in one of the situations provided in Exclusion Criteria;
- (e) if the contractor or any *related person* is in one of the situations provided in Exclusion Criteria.
- (f) if the procedure for awarding the contract or the *performance of the contract* prove to have been subject to *irregularities, fraud or breach of obligations*;
- (g) if the contractor does not comply with applicable obligations under environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU;
- (h) if the contractor is in a situation that could constitute a *conflict of interest* or a *professional conflicting interest*;
- (i) if a change to the contractor's legal, financial, technical, organisational or ownership situation is likely to substantially affect the *performance of the contract* or substantially modify the conditions under which the contract was initially awarded, or a change regarding the exclusion situations listed in Exclusion Criteria;
- (j) in the event of *force majeure*, where either resuming implementation is impossible or the necessary ensuing amendments to the contract would mean that the tender specifications are no longer fulfilled or result in unequal treatment of tenderers or

- contractors;
- (k) if the contractor is in breach of the data protection obligations resulting from Article II.8;
 - (l) if the contractor does not comply with the applicable data protection obligations resulting from Regulation (EU) 2016/679.

Grounds for termination by the contractor

The contractor may terminate the contract if the EGI FOUNDATION fails to comply with its obligations, in particular the obligation to provide the information needed for the contractor to perform the contract as provided for in the tender specifications.

Procedure for termination

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

The other party has 7 days following the date of receipt to submit observations, including the measures it has taken or will take to continue fulfilling its contractual obligations. Failing that, the decision to terminate becomes enforceable the day after the time limit for submitting observations has elapsed.

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

In the cases referred to in points (a) to (d), (g) to (i), (k) and (l) of Article II.17. and in Article II.17., the date on which the termination takes effect must be specified in the *formal notification*.

In the cases referred to in points (e), (f) and (j) of Article II.17., the termination takes effect on the day following the date on which the contractor receives *notification* of termination.

In addition, at the request of the EGI FOUNDATION and regardless of the grounds for termination, the contractor must provide all necessary assistance, including information, documents and files, to allow the EGI FOUNDATION to complete, continue or transfer the services to a new contractor or internally, without interruption or adverse effect on the quality or continuity of the services. The parties may agree to draw up a transition plan detailing the contractor's assistance. The contractor must provide such assistance at no additional cost.

Effects of termination

The EGI FOUNDATION may claim compensation for such damage. The contractor is liable for damage incurred by the EGI FOUNDATION as a result of the termination of the contract, including the additional cost of appointing and contracting another contractor to provide or complete the services, except if the damage is a result of a termination in accordance with Article II.17. (j) or Article II.17. The EGI FOUNDATION may claim compensation for such damage.

The contractor is not entitled to compensation for any loss resulting from the termination of the contract, including loss of anticipated profits, unless the loss was caused by the situation specified in Article II.17.

The contractor must take all appropriate measures to minimise costs, prevent damage and

cancel or reduce its commitments.

Within 10 days of the date of termination, the contractor must submit any report, deliverable or *result* and any invoice required for services that were provided before the date of termination.

In the case of joint tenders, the EGI FOUNDATION may terminate the contract with each member of the group separately on the basis of points (d), (e), (g), (k) and (l) of Article II.17. , under the conditions set out in Article II.10.

II.18. INVOICES AND VALUE ADDED TAX

Invoices and value added tax

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

Invoices must indicate the place of taxation of the contractor for value added tax (VAT) purposes and must specify separately amounts not including VAT and amounts including VAT.

Invoices submitted by the contractor has to comply with the rules on VAT, in accordance with Directive 2006/112/EC in its updated version.

Reception of invoices by standard format (pdf) or email is accepted.

II.19. PRICE REVISION

Prices are fixed and not subject to revision during the whole execution of the contract.

II.20. PAYMENTS AND GUARANTEES

Date of payment

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

Currency

Payments are made in euros

Costs of transfer

The costs of the transfer are borne as follows:

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

Suspension of the time allowed for payment

The EGI FOUNDATION may suspend the payment periods specified in Article I.5 at any time by *notifying* the contractor that its invoice cannot be processed. The reasons the EGI FOUNDATION may cite for not being able to process an invoice are:

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

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

Suspension takes effect on the date the EGI FOUNDATION sends the *notification*. The remaining payment period resumes from the date on which the requested information or revised documents are received or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension period exceeds two months, the contractor may request the EGI FOUNDATION to justify the continued suspension.

Where the payment periods have been suspended following rejection of a document referred to in the first paragraph of this Article and the new document produced is also rejected, the EGI FOUNDATION reserves the right to terminate the contract in accordance with Article II.17. (c).

II.21. RECOVERY

Recovery procedure

If an amount is to be recovered under the terms of the contract, the contractor must repay the EGI FOUNDATION the amount in question.

Before recovery, the EGI FOUNDATION must *formally notify* the contractor of its intention to recover the amount it claims, specifying the amount due and the reasons for recovery and inviting the contractor to make any observations within 7 days of receipt.

If no observations have been submitted or if, despite the observations submitted, the EGI FOUNDATION decides to pursue the recovery procedure, it must confirm recovery by *formally notifying* a debit note to the contractor, specifying the date of payment. The contractor must pay in accordance with the provisions specified in the debit note.

If the contractor does not pay by the due date, the EGI FOUNDATION may, after informing the contractor in writing, recover the amounts due by taking legal action.

Recovery rules in the case of joint tender

If the contract is signed by a group (joint tender), the group is jointly and severally liable under the conditions set out in Article II.2. (liability). The EGI FOUNDATION shall send the debit note first to the leader of the group.

If the leader does not pay by the due date the whole amount, and if the amount due cannot be offset or can only be offset partially in accordance with Article II.21., then the EGI FOUNDATION may claim the amount still due to any other member or members of the group by respectively *notifying* them with a debit note in conformity with the provisions laid down in Article II.21.

II.22. CHECKS

The contractor must keep all original documents stored on any appropriate medium, including digitised originals if authorised under national law, for a period of four years starting from the payment of the balance.

SIGNATURES

For the contractor,

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

Signature: _____

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

For the EGI FOUNDATION,

Signature: _____

Done at Netherlands, [*date*]

Signed in duplicate in a single original

ANNEX III (OF THE CONTRACT) – LIST OF PRE-EXISTING RIGHTS/BACKGROUND

EGI/2023/OP/0001

Please, note that the definition of “background” is as follows:

‘Background’ means any data, know-how or information — whatever its form or nature (tangible or intangible), including any rights such as intellectual property rights — that: (a) is held by the tenderer before it accesses to the service contract, and (b) is needed to implement this contract.

- The tenderer does not have any background. If it is the case, please, add the word “none” to the table.
- The tenderer has any type of background. Please list them to the following table.

List of pre-existing background

Place and date:

Name (in capital letters), function, company and signature