



Grant Agreement: 779790

D2.3 Contracts for external evaluators, iteration 1

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CONTRACT FOR EXTERNAL EVALUATORS

EUROPEAN DATA INCUBATOR (EDI)



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Contracting parties

This Contract ('the Contract') is between the following parties:

On the one part,

The UNIVERSITY OF DEUSTO, a private organization organized under the laws of Spain, established in Av. de las Universidades, 24, Bilbao – Spain, duly represented by Mr. Gonzalo Meseguer Tapiz, Economic Director, hereinafter referred as the “Contracting Party”.

On the other part,

[if individual] [NAME_SURNAME], a self-employee/natural person, with ID [ID_NUMBER] established in [ADDRESS and COUNTRY], hereinafter referred as the “Evaluator”.

[if organization] [NAME_ORGANISATION], with VAT Number [VAT_NUMBER] legally established in [ADDRESS and COUNTRY]. [NAME_ORGANISATION] commits that its employee Mr/Mrs/Dr [NAME_SURNAME], with ID [ID_NUMBER] will be the selected person for the evaluation of all proposals according to this contract.

The parties have agreed to enter into this Contract under the terms and conditions below.

By signing this Contract, the Evaluator confirms that she/he has read, understood and accepted the Contract and all its obligations and conditions, including the Code of Conduct set out in Annex 1 and the provisions set out in Annex 2 which form integral part of this Contract.

The Contract is composed by the following documents:

- Annex 1: Code of Conduct
- Annex 2: Declaration of honour on exclusion criteria and absence of conflict of interest.
- Annex 3: Guidelines for Applicants

General Provisions

The European Commission (hereinafter referred as the “EC”) and the Contracting Party on behalf of the EDI consortium have signed the Grant Agreement no. 779790 for the implementation of the EUROPEAN DATA INCUBATOR (“EDI”) within the framework of the European Union’s Horizon 2020 Research and Innovation programme.

The Contracting Party has chosen the Evaluator to be part of the evaluation team of EDI.

This Contract sets out the rights and obligations applying to the Evaluator and the Contracting Party for the purpose of evaluating the proposals submitted to EDI under EDI first open call for proposals launched on 28th March 2018.

The terms and conditions of this Contract do not constitute an employment agreement with the Contracting Party.

Article 1 – Entry into force of the contract and Termination

This Contract shall enter into force on the day of its signature by the Contracting Party. The termination of the Contract will be subject to the terms and conditions set out in Article 10.

Article 2 – Tasks of the Evaluator

The Evaluator must participate in the evaluation of proposals submitted in response to EDI first open call, launched in March 2018.

The details of the work, the number of proposals and the phases in which the Evaluator might be involved (in addition to Phase 0) will be communicated via email (indicated in article 13) by the Contracting Party.

The Evaluator must send the Contracting Party a report per proposal evaluated and include the necessary recommendations.

The Contracting Party will inform the Evaluator, at each stage of the evaluation process, of the relevant documents and criteria to be used for this purpose.

The time periods and deadlines to perform the evaluations will be informed by the Contracting Party according to the schedule defined in the Guidelines for Applicants (Annex 3). An indication of the evaluation periods in which the Evaluator might be involved, as per the needs of the project, is provided below:

Phase	Evaluation period	Place
Phase 0 - Proposals	28 June 2018 to 22 July 2018	Remote evaluation
Phase 1 – Explore	October 2018	Face-to-face evaluation (Datathon, Berlin)
Phase 2 - Experiment	February 2019	Face-to-face evaluation (Bilbao)

Within the framework of this contract, the Evaluator will be attributed a maximum of sixty (60) proposals to be assessed in phase 0.

As an estimation, the number of days needed per evaluation phase is the following:

Evaluation period	Estimated number of days required for evaluation
Phase 0 - Proposals	4 working days
Phase 1 – Explore	1,5 working days
Phase 2 - Experiment	1,5 working days

Article 3 – Performance of the contract

The Evaluator must perform the Contract in compliance with its provisions and all legal obligations under applicable EU, international and national law.

The Evaluator must do so fully, within the set deadlines and to the highest professional standards.

The Evaluator must, in particular, ensure compliance with the Code of Conduct (see Annex 1).

In the event that the Evaluator cannot fulfil their obligations, he/she must immediately inform the Contracting Party in writing. The consequences for non-fulfilment of obligations are foreseen in articles 8-12.

Article 4 – Keeping records. Supporting documentation

The Evaluator must keep records and other supporting documentation (original supporting documents) as evidence that the Contract is performed correctly and the expenses have been actually incurred. These must be available for review upon the Contracting Party's request. The Contracting Party and the EC are entitled to analyse the evidence to determine whether the Contract has been duly performed. The Evaluator must keep all records and supporting documentation until 2026. If there are on-going checks, audits, investigations, appeals, litigation or pursuit of claims, the Evaluator must keep the records and supporting documents until these procedures end completely and the Evaluator receives a writing confirmation of this fact.

Article 5 – Price of the Contract and Payments

5.1. Price

The Evaluator will invoice up to a maximum of **300** Euros (€) per day (*VAT, or other taxes like IRPF in Spain, if apply, excluded).

5.2. Payments schedule

There will be two staged payments:

- The first payment to the amount of **300 Euros (€)** per day for a maximum of 4 days, will be paid after the evaluations in Phase 0.
- The second payment to the amount of **300 Euros (€)** per day for a maximum of 3 days + travel expenses, will be paid after the evaluations in Phase 2 – Experiment *[only when evaluator is involved in phase 1 and/or 2]*

Payments are subject to the Contracting Party's approval of deliverable(s) or report(s), and of the payment request(s).

Approval of the payment does not mean recognition of compliance, authenticity, completeness or correctness of content of the evaluation or of the services performed by the Evaluator.

5.3. Request for payment

The Evaluator must make a request for payment to obtain their fees.

To do this, the Evaluator must submit an invoice with the amount to be paid to the Contracting Party. The Evaluator shall issue the invoice covering the relevant period as per the payment schedule defined in Article 5.2

All Invoices shall be denominated in Euros (EUR). Payments will be made by bank transfer 60 days net from receipt of the invoice, provided that the payment requirements are met.

All invoices shall include:

- Concept: [Name of the evaluator] – Evaluator for EDI
- Recipient: [Deusto invoicing details]
- Date
- Amount invoiced: [with applicable taxes]
- Tax identification number of the legal or natural person
- Name of the account holder to which the transfer is to be made
- IBAN

The Contracting Party accepts no responsibility for delays in payments incurred by failure of the Evaluator to provide any of the above information in the submitted invoice.

The Evaluator will be liable for all bank charges incurred due to incomplete information they might provide.

Article 6 – Confidentiality

6.1. Principles

With respect to all information of whatever nature or form that is disclosed to the Evaluator in the framework of the Contract, the terms of this Article shall apply, unless it is identified expressly in writing as non-confidential.

6.2. Obligations

The Evaluator agrees that such information is communicated on a confidential basis and its disclosure may be prejudicial to the owner of the information, and undertakes that:

i) he/she will not, during the term of the Contract and until the end of the EDI project on 30 June 2021, use any such information for any purpose other than in accordance with the terms of the Contract.

ii) he/she will, during the term of the Contract and until the end of the EDI project on 30 June 2021, treat the same as (and to procure that the same be kept) confidential, provided always that such agreement and undertaking shall not extend to any information which the Evaluator can show that it:

- was, at the time of disclosure to the Evaluator, published or otherwise generally available to the public, or
- has, after disclosure to the Evaluator, been published or become generally available to the public otherwise than through any act or omission on the part of the Evaluator, or
- was already in the possession of the Evaluator, without any restrictions on disclosure, at the time of disclosure to the Evaluator, or
- was rightfully acquired from others without any undertaking of confidentiality; or
- is subsequently independently developed by the Evaluator without use of the information provided by the Contracting Party.

In case of any breach of the confidential rules hereinabove set, the Evaluator will remain solely liable towards possible claims. In any event if the Contracting Party must respond to third parties because of any breach of the confidential rules hereinabove set, the Evaluator will have to compensate the Contracting Party for the damages caused.

Article 7 – Check, Audits and Investigations

The EC may - during the implementation of the action or afterwards - carry out checks and audits to ascertain compliance with the proper implementation of the tasks (including assessment of deliverables and reports) under this Contract and whether the Evaluator is meeting their obligations.

It may do so throughout the Contract's validity and up to five years after the last payment is made within the EDI project in accordance with its Grant Agreement (year 2026). The Evaluator must provide - within the deadline requested - any information and data in addition to deliverables and reports already submitted. The Evaluator must allow access to sites and premises on which the tasks specified in this Contract are performed.

The European Court of Auditors (ECA) has the right of access for the purpose of checks and audits.

Findings in checks, audits or investigations may lead to the reduction or rejection of fees, rejection of claims for allowances and expenses, or recovery of undue amounts

Moreover, findings arising from a European Anti-Fraud Office (OLAF) investigation may lead to criminal prosecution under national law.

Article 8 – Effects of Breaching Contractual Obligations

8.1. Suspension of the Payment Deadline

1. The Contracting Party may at any point suspend the payment deadline if a request for payment cannot be processed because it does not comply with the Contract's provisions.
2. The Contracting Party must formally notify the Evaluator of the suspension and the reasons for it.
3. The suspension takes effect on the date the notification is sent by the Contracting Party.
4. If the condition for suspending the payment deadline as referred to above is no longer met, the suspension will be lifted - and the remaining period will resume.
5. If the suspension exceeds two months, the Evaluator may ask the Contracting Party if the suspension will continue.
6. If the payment deadline has been suspended due to the non-compliance of the reports or deliverables (see Article 3) and the revised report or deliverables or payment request is not submitted or was submitted but is also rejected, the Contracting Party may also terminate the Contract according to Article 10.

8.2. Reduction or rejection of fees

1. The Contracting Party may reject the fees and/or parts of these and/or reduce the fees if the Evaluator does not fulfil the conditions set out in Article 3.
2. The Contracting Party may too reject the fees and/or parts of these and/or reduce the fees if the Evaluator is in breach of any of her/his other obligations under the Contract (including the obligations set out in the Code of Conduct).
3. The Contracting Party must formally notify the Evaluator of its intention, include the reasons why, and invite the Evaluator to submit any observations within 30 days of receiving notification.
4. If the Contracting Party does not receive or accept these observations, it will formally notify confirmation of the rejection or reduction to the Evaluator.

Article 9 – Suspension of the Contract

1. The Contracting Party may suspend the implementation of the Contract or any part of it, if the Evaluator is not able to fulfil her/his obligations to carry out the work required. In any case the Evaluator has to communicate the Contracting Party immediately if he/she is not able to fulfil his/her obligations.
2. The Contracting Party must formally notify the Evaluator of its intention, include the reasons why and invite him/her to submit any observations within 7 days of receiving notification.
3. If the Contracting Party does not accept these observations, it will formally notify confirmation of the suspension to the Evaluator.
4. The suspension will take effect on the date the notification is sent by the Contracting Party.
5. If the reasons for suspending implementation of the Contract are no longer valid, the suspension may be lifted, and implementation may be resumed. The Contracting Party will formally notify the Evaluator if the suspension is lifted and the Contract will be amended if necessary according to article 14, unless it has been terminated according to article 10.

Article 10 – Termination of the Contract

10.1. Termination of the Contract by the Contracting Party

1. The Contracting Party may at any moment terminate the Contract:
 - a) if the Evaluator is not performing their tasks according to the Contract or is performing them poorly; or
 - b) if the Evaluator has committed substantial errors, irregularities, fraud, serious delay in evaluations, or is in serious breach of their obligations under the Contract, including false declarations and obligations relating to the Code of Conduct.
 - c) if the Contracting Party notifies the Evaluator its intention to terminate the Contract by giving 30 days' notice.
2. The Contracting Party must formally notify the Evaluator of its intention, include the reasons why and invite him/her to submit any observations within 30 days of receiving notification. If the Contracting Party does not receive or accept these observations, it will formally notify confirmation of the termination to the Evaluator.
3. The termination will take effect on the date the notification is sent by the Contracting Party.

10.2. Termination of the Contract by the Evaluator

1. The Evaluator may at any moment terminate the Contract if s/he is not able to fulfil their obligations in carrying out the work required.
2. The Evaluator must formally notify the Contracting Party and include the reasons why by giving 15 days' notice.
3. The termination will take effect on the date the Contracting Party formally receives the confirmation of the termination.
4. Only fees for days actually worked before termination may be paid.
5. The Evaluator must submit the payment request for the tasks already executed on the date of termination within 30 days from the date of termination.
6. On termination of the Contract, the Contracting Party may hire another Evaluator to carry out or finish the work. It may claim from the Evaluator undue fees and all extra costs incurred while doing this, without prejudice to any other rights or guarantees it may have under the Contract. And the Evaluator must send the Contracting Party all the documents and information regarding the performance of this Contract.

Article 11 – Liability for damages

The Contracting Party cannot be held liable for any damage caused or sustained by the Evaluator during or as a consequence of performing the Contract, except in the event of the Contracting Party's willful misconduct or gross negligence. And in case the Contracting Party has to respond to a third party for any damage caused or sustained by the Evaluator during or as a consequence of performing the Contract, the Contracting Party has the right to claim to the Evaluator for the damages caused.

Article 12 – Force Majeure

1. 'Force majeure' means any situation or event that:
 - prevents either party from fulfilling their obligations under the Contract;
 - was unforeseeable, exceptional and beyond the parties' control;
 - was not due to error or negligence on their part (or on the part of third parties) involved in implementing the action and
 - proves to be inevitable despite exercising due diligence.
2. A force majeure circumstance must be immediately and formally notified to the other Party. Notification must include details of the situation's nature, likely duration and expected effects.

3. The Party faced with a force majeure circumstance will not be held in breach of its contractual obligations if the force majeure has prevented it from fulfilling them and the conduct of the Party has been diligent.

Article 13 – Communication between the Parties

Communication under the Contract (e.g. information, requests, submissions, formal notifications, etc.) must be made in writing using the English language to the following email addresses:

- Contracting Party: Dr. Diego López-de-Ipiña, info@edincubator.eu
- Evaluator: [Add name and surname], [Add email address]

Article 14 – Amendments to the Contract

1. In justified cases - and provided that the amendment does not entail changes to the Contract which would call into question the selection of the Evaluator - any party may request an amendment.
2. Amendments must be made before new contractual obligations are enforced.
3. The party requesting an amendment must formally notify the other party the requested amendment in writing with the reasons why.
4. Any amendment to this Contract shall be done in writing and shall be duly signed by both Contracting parties.

Article 15 – Applicable Law

This Contract shall be construed in accordance with and governed by the laws of Belgium.

Article 16 – Dispute of settlements

Disputes concerning the Contract's interpretation, application or validity that cannot be settled amicably must be brought before the courts of Brussels.

AS WITNESS:

The Contracting Parties have caused this Contract to be duly signed by the undersigned authorized representatives in two (2) copies the day and year first above written:

For [ORGANISATION_NAME]
Mr/Ms [NAME SURNAME]
[POSITION_IN_ORGANISATION] (if organisation)

Signature

Done at [Place] on [Date]

For [ORGANISATION_NAME]
Mr/Ms [NAME SURNAME]
[POSITION_IN_ORGANISATION] (if organisation)

Signature

Done at [Place] on [Date]

ANNEX 1 - CODE OF CONDUCT FOR EVALUATORS

A. Performance of the Contract

1. The Evaluator works independently, in a personal capacity and not on behalf of any organization or institution.
2. The Evaluator must:
 - a) Evaluate each proposal in a confidential and fair way, in accordance with the EDI Guidelines for Applicants and the evaluation documents provided by the Contracting Party in each of the evaluation periods.
 - b) Assist the Contracting Party to the best of their abilities, professional skills, knowledge and applying the highest ethical and moral standards.
 - c) Follow any instructions and time-schedules given by the Contracting Party and deliver consistently high quality work.
3. The Evaluator may not delegate another person to carry out the work or be replaced by any other person without previous formal authorization in writing by the Contracting Party.
4. If a legal entity or a person or a group of persons involved in a proposal approaches the Evaluator during the evaluation of this proposal, the Evaluator must immediately inform formally and in writing the Contracting Party.

B. Obligations of impartiality

1. The Evaluator must perform their work impartially. To this end, the Evaluator is required to:
 - a) Inform the Contracting Party of any conflicts of interest arising in the course of their work including of any proposal competing with the proposal where the Evaluator may have a conflict of interest;
 - b) Confirm there is no conflict of interest for each proposal the Evaluator is evaluating by signing a declaration of honour included in Annex II.
2. For a given proposal, a conflict of interest exists if an Evaluator:
 - a) was involved directly or indirectly in the preparation of the proposal.
 - b) stands to benefit directly or indirectly if the proposal is accepted.
 - c) has a close family or personal relationship with any person representing an applicant legal entity or an applicant natural person or group of natural persons.

- d) is a director, trustee or partner or is in any way involved in fact in the management of an applicant legal entity.
- e) is employed or contracted by one of the applicant legal entities or natural persons or any named subcontractors.
- f) is a member of an Advisory Group set up by the EDI Consortium in an area related to the call for proposals in question.
- g) is a member of any of the Beneficiaries of EDI Consortium or Third Parties linked to them.

In the following situations the Contracting Party will decide whether a conflict of interest exists, taking account of the objective circumstances, available information and related risks when an Evaluator:

- I. was employed by one of the applicant legal entities in the last three years
- II. is involved in a contract or grant agreement, grant decision or membership of management structures (e.g. member of management or advisory board etc.) or research collaboration with an applicant legal entity or the fellow researcher, or had been so in the last three years.
- III. has a patrimonial interest in an applicant legal entity especially because of having the property or part of it or a credit.
- IV. is in any other situation that could cast doubt on their ability to participate in the evaluation of the proposal impartially, or that could reasonably appear to do so in the eyes of an external third party.

3. Consequences of conflicts of interest:

- a) If a conflict of interest is reported by the Evaluator or established by the Contracting Party, the Evaluator must not evaluate the proposal concerned and shall immediately inform formally the Contracting Party about the situation.
- b) If a conflict becomes apparent at any stage of the evaluation, the Evaluator must immediately inform the Contracting Party. If a conflict is confirmed, the Evaluator must stop evaluating the proposal concerned. Any comments and scores already given by the Evaluator will be discounted. If necessary in order to assure the independence of the evaluation, the Evaluator will be replaced.

If it is revealed during an evaluation that an Evaluator has knowingly concealed a conflict of interest, the Evaluator will be immediately excluded, and sanctions will apply (Article 10).

C. Obligations of Confidentiality

1. The Contracting Party and the Evaluator must treat confidentially any information and documents, in any form (i.e. paper or electronic), disclosed in writing or orally in relation to the performance of the Contract.

2. The Evaluator undertakes to observe strict confidentiality in relation to their work. To this end, the Evaluator:

a) must not use confidential information or documents for any purpose other than fulfilling their obligations under the Contract without prior written approval of the Contracting Party;

b) must not disclose, directly or indirectly, confidential information or documents relating to proposals or applicants, without prior written approval of the Contracting Party.

In particular, the Evaluator:

I. must not discuss any proposal with others, including other Evaluators, the Contracting Party or any other entity involved in any form on the Project, not directly involved in evaluating the proposal, except during the formal discussion at the meetings moderated by or with the knowledge and approval of the Contracting Party to this purpose.

II. must not disclose:

- any detail of the evaluation process and its outcomes or of any proposal submitted for evaluation for any purpose other than fulfilling their obligations under the Contract without prior written approval of the Contracting Party;
- their advice to the Contracting Party or relevant service on any proposal to the applicants or to any other person (including colleagues, students, etc.);
- the names of other Evaluators participating in the evaluation.

III. must not communicate with applicants on any proposal during the evaluation.

3. The Evaluator will be held personally responsible for maintaining the confidentiality of any documents or electronic files sent, and for returning, erasing or destroying all confidential documents or files upon completing the evaluation as instructed and the for all the time is established in Article 4.

4. If the Evaluator seeks further information (for example through the internet, specialized databases, etc.) to complete their examination of the proposals, s/he:

a) must respect the overall rules for confidentiality for obtaining such information as set out in Article 6.

b) must not contact applicants.

c) must not contact third parties without prior written approval of the Contracting Party.

ANNEX 2 – DECLARATION OF HONOUR ON EXCLUSION CRITERIA AND ABSENCE OF CONFLICT OF INTEREST

An original fulfilled copy of this annex will be sent to the following address:

University of Deusto – Deusto Tech (4th floor)
Av. De las Universidades, 24
48007 Bilbao - Spain
Att: Laia Tarragona

The undersigned (insert name of the signatory of this form) in [his][her] own name:

1. Declares that [he][she] is not in one of the following situations:

a) it is bankrupt or 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;

b) it or persons having powers of representation, decision making or control over it have been convicted of an offence concerning their professional conduct by a judgment which has the force of res judicata;

c) it has been guilty of grave professional misconduct proven by any means which the contracting authority can justify including by decisions of the European Investment Bank and other international organisations

d) it 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 contracting authority or those of the country where the contract is to be performed;

e) it or persons having powers of representation, decision making or control over it have been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity, where such illegal activity is detrimental to the European Union's financial interests;

2. Declares that the natural persons with power of representation, decision-making or control over the above-mentioned legal entity are not in the situations referred to in b) and e) above;

3. Declares that [he][she]:

a) to the best of his/her knowledge, is not subject to a conflict of interest as per Annex I of the Contract for External Evaluators (Code of Conduct for Evaluators)

b) has not made false declarations in supplying the information required by the Contracting Party as a condition of being eligible as Evaluator for the assessment of the proposals received under EDI Open calls or does fail to supply this information;

c) is not in one of the situations of exclusion, referred to in the abovementioned point a).

Full name: _____

ID-Number: _____ Signature

Done at (PLACE), DD/MM/YYYY

ANNEX 3 – GUIDELINES FOR APPLICANTS