



European Commission
European Research Council Executive Agency



European Research Council
Executive Agency

Established by the European Commission

EXPERT CONTRACT CONTRACT NUMBER - CT-EX2015D258624-158

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

on the one part,

the **European Research Council Executive Agency (ERCEA)** ('the Agency'), under the power delegated by the European Commission ('the Commission'), represented for the purposes of signing the Contract by [REDACTED]

and

on the other part,

'the expert':

[REDACTED]

[REDACTED]

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

By signing the Contract, the expert confirms that s/he has read, understood and accepted the Contract and all the obligations and conditions it sets out (including in particular the code of conduct set out in Annex 1).

The Contract is composed of:

Terms and conditions

Annex 1 - Code of conduct ('the **Code of Conduct**')

TERMS AND CONDITIONS

TABLE OF CONTENTS

CHAPTER 1 - GENERAL	3
ARTICLE 1 - SUBJECT OF THE CONTRACT	3
CHAPTER 2 - WORK TO BE PROVIDED	3
ARTICLE 2 - TASKS TO BE ACCOMPLISHED — REPORTS AND DELIVERABLES	3
ARTICLE 3 - WORKING ARRANGEMENTS — STARTING DATE — PLANNING AND DEADLINES — MAXIMUM WORKING DAYS	3
CHAPTER 3 - FEES, ALLOWANCES AND REIMBURSEMENT OF EXPENSES	4
ARTICLE 4 - FEES	4
ARTICLE 5 - ALLOWANCES AND REIMBURSEMENT OF EXPENSES	5
CHAPTER 4 - RIGHTS AND OBLIGATIONS OF THE PARTIES	6
ARTICLE 6 - GENERAL OBLIGATION TO IMPLEMENT THE CONTRACT PROPERLY AND TO INFORM THE AGENCY	6
ARTICLE 7 - KEEPING RECORDS — SUPPORTING DOCUMENTATION	6
ARTICLE 8 - REQUEST FOR PAYMENT	7
ARTICLE 9 - PAYMENTS	7
ARTICLE 10 - OWNERSHIP AND USE OF THE RESULTS (INCLUDING INTELLECTUAL PROPERTY RIGHTS)	8
ARTICLE 11 - PROCESSING OF PERSONAL DATA	8
ARTICLE 12 - CHECKS, AUDITS AND INVESTIGATIONS	9
CHAPTER 5 - BREACH OF CONTRACT	10
ARTICLE 13 - SUSPENSION OF THE PAYMENT DEADLINE	10
ARTICLE 14 - REJECTION OF FEES, ALLOWANCES OR EXPENSES	10
ARTICLE 15 - RECOVERY OF UNDUE AMOUNTS	11
ARTICLE 16 - SUSPENSION OF THE CONTRACT	11
ARTICLE 17 - TERMINATION OF THE CONTRACT	12
ARTICLE 18 - ADMINISTRATIVE SANCTIONS	13
ARTICLE 19 - LIABILITY FOR DAMAGES	13
ARTICLE 20 - FORCE MAJEURE	13
CHAPTER 6 - FINAL PROVISIONS	14
ARTICLE 21 - COMMUNICATION BETWEEN THE PARTIES	14
ARTICLE 22 - AMENDMENTS TO THE CONTRACT	14
ARTICLE 23 - APPLICABLE LAW AND DISPUTE SETTLEMENT	15
ARTICLE 24 - ENTRY INTO FORCE OF THE CONTRACT	15

CHAPTER 1 - GENERAL

ARTICLE 1 - SUBJECT OF THE CONTRACT

This Contract sets out the rights and obligations and the terms and conditions that govern the relationship between the **Agency** and the expert appointed to assist with tasks in the context of managing of EU and Euratom research and innovation programmes.

CHAPTER 2 - WORK TO BE PROVIDED

ARTICLE 2 - TASKS TO BE ACCOMPLISHED — REPORTS AND DELIVERABLES

- 2.1. The expert must assist the Agency as peer reviewer with the **evaluation** of the proposal(s) submitted in response to the following call(s) for proposals:

- ERC-2018-STG, ERC-2018-PoC, ERC-2018-COG, ERC-2018-ADG

This involves, in particular, the following tasks:

- **reading and analysing** the background information (especially the proposal and the briefing material)
- participating in the expert **briefing(s)** (meeting(s) or webcast briefing(s))
- participating in evaluation **meeting(s)**, **on-site visit(s)** and **interview(s)** (if any) and
- drafting and submitting the **report(s)** for the evaluated proposal(s) (and other **deliverable(s)**, if any).

The precise scope of the work will be determined by the Agency and may include **other** specific tasks, such as rapporteur tasks or tasks linked to a research integrity (scientific misconduct) analysis.

The work involves remote work and work involving travel.

- 2.2. If the expert breaches any of his/her obligations under this Article, the **Agency** may apply the measures set out in Chapter 5, and in particular terminate the Contract (see Article 17) and reject the fees, allowances and expenses (see Article 14).

ARTICLE 3 - WORKING ARRANGEMENTS — STARTING DATE — PLANNING AND DEADLINES — MAXIMUM WORKING DAYS

- 3.1. The work set out in Article 2 will **start** at the earliest on the date of entry into force of the Contract (see Article 24) and will finish at the latest on **31/12/2019**.

- 3.2. The **work** set out in Article 2 is **planned** as follows:

- **for call: ERC-2018-STG, ERC-2018-PoC, ERC-2018-COG, ERC-2018-ADG :**

- **meeting(s) and other work involving travel:**

- evaluation meeting(s):

- at **Brussels** , between **28/02/2018** and **31/12/2019** (max. **11** working day(s))

- **remote work:**

- remote evaluation:

- between **28/02/2018** and **31/12/2019** (max. **13** working day(s))

- report(s) and deliverable(s)¹ :

- individual evaluation report(s) (IERs): at the latest by the dates indicated in the Participant Portal electronic exchange system (see Article 21)
- panel report: at the latest by the dates indicated in the Participant Portal electronic exchange system (see Article 21)

The timing and deadlines set out in this Article is subject to confirmation by the responsible **Agency** staff and may be subject to changes.

The **total maximum working days** foreseen is **24**. The number of days actually worked that may be declared by the expert may turn out to be less (see Articles 4 and 8).

3.3. If the expert breaches any of his/her obligations under this Article, the **Agency** may apply the measures set out in Chapter 5, and in particular reject the fees, allowances and expenses (see Article 14).

CHAPTER 3 - FEES, ALLOWANCES AND REIMBURSEMENT OF EXPENSES

ARTICLE 4 - FEES

4.1. The expert is entitled to the following **fee(s)**:

- for meeting(s) and other work involving travel:

- EUR 450/225 for each full/half day worked

- for remote work² :

- for ERC-2018-STG/ERC-2018-STG/ERC-STG/Step1,ERC-2018-PoC/ERC-2018-PoC/ERC-POC/Normal,ERC-2018-COG/ERC-2018-COG/ERC-COG/Step1,ERC-2018-ADG/ERC-2018-ADG/ERC-ADG/Step1
 - for individual evaluation — drafting of individual evaluation report: EUR **45.00** (which equals a fixed number of **0.1** working day(s)) for each evaluated proposal
 - for panel review — preparation — for panel member: EUR 450 (which equals a fixed number of 1 working day) per evaluation session
- for ERC-2018-STG/ERC-2018-STG/ERC-STG/Step2,ERC-2018-COG/ERC-2018-COG/ERC-COG/Step2,ERC-2018-ADG/ERC-2018-ADG/ERC-ADG/Step2
 - for individual evaluation — drafting of individual evaluation report: EUR **135.00** (which equals a fixed number of **0.3** working day(s)) for each evaluated proposal
 - for panel review — preparation — for panel member: EUR 450 (which equals a fixed number of 1 working day) per evaluation session

The **fee(s)** are subject to the following **conditions**:

- for meeting(s) and other work involving travel:

¹ No additional working days for reports and deliverables because this work is already included in meetings and remote work.

² For the correlation between amounts and working days, see Methodology for expert fees for remote evaluation and ethics review (C(2016)5455) available at http://ec.europa.eu/research/participants/data/ref/h2020/other/experts_manual/methodology-for-expert-fees_en.pdf

- the fee can be claimed only for days actually worked (i.e. the meeting day(s) actually attended);
- travelling time cannot be considered as working time;
- attendance must be confirmed in an attendance sheet/list of participants;
- for **remote work**:
 - the fee can be claimed only for proposal(s) actually evaluated;
 - tasks will be paid only if they were accomplished in accordance with the provisions of the Contract, within the given deadlines, to the highest standards of quality and if they were approved by the **Agency**;
 - proposal(s) may be counted for individual evaluation only if the individual evaluation report was submitted in time (i.e. normally before the start of the panel meeting);
 - the fee for preparation of the panel review can be claimed only if the expert actually attended the panel meeting.

The **total amount due** will be calculated:

- for meeting(s) and other work involving travel: on the basis of the number of full/half days worked
- for remote work: on the basis of the number of working days that correspond to the remote tasks carried out as declared by the expert and approved by the **Agency** (see Article 8).

The **total amount requested** may not exceed — and may have to be less than — the fee for the total maximum working days set out in Article 3.2, i.e. EUR **10,800.00**.

The fee(s) must be claimed in a **single payment request** per call and per cut-off date at the end of the evaluation (see Article 8).

- 4.2. If the expert breaches any of his/her obligations under this Article, the **Agency** may apply the measures set out in Chapter 5, and in particular reject the fees (see Article 14).

ARTICLE 5 - ALLOWANCES AND REIMBURSEMENT OF EXPENSES

- 5.1. In addition to the **fee(s)** set out in Article 4, the expert is entitled to the following **allowances** and **reimbursement of expenses** :

- for **meeting(s)** and **other work involving travel** :
 - reimbursement of **travel expenses** directly connected with the work set out in Article 2 in accordance with Decision C(2007)5858³ from the experts official address set out in the Preamble (or other point of departure — if explicitly agreed by the **Agency** before the travel arrangements are fixed) to the place of the meeting(s) and back
 - a **daily allowance** in accordance with Decision C(2007)5858
 - an **accommodation allowance** in accordance with Decision C(2007)5858

The expert is also entitled to the reimbursement of the following other expenses:

³ Commission Decision C(2007)5858 of 5 December 2007 establishing rules on the reimbursement of expenses incurred by people from outside the Commission invited to attend meetings in an expert capacity (available at: http://ec.europa.eu/research/participants/data/ref/h2020/other/experts_manual/regl_experts_en.pdf).

- expenses related to the participation in a **videoconference** — if the **Agency** approved these expenses before the videoconference took place and
- expenses incurred as a **result** of **special instructions** — if the instructions were given by the **Agency** in writing, the expenses were approved by the **Agency** in advance and the supporting documents are joined to the payment request.

Other expenses will **not be reimbursed**, in particular:

- (a) expenses incurred for purchasing equipment or other material needed by the expert to accomplish his/her tasks;
- (b) expenses already declared by the expert under another EU or Euratom contract or grant (including grants awarded by a Member State and financed by the EU or Euratom budget and grants awarded by bodies other than the Commission for the purpose of implementing the EU or Euratom budget);
- (c) reckless or excessive expenses;
- (d) deductible VAT;
- (e) currency exchange losses.

5.2. If the expert breaches any of his/her obligations under this Article, the **Agency** may apply the measures set out in Chapter 5, and in particular reject the allowances and expenses (see Article 14).

CHAPTER 4 - RIGHTS AND OBLIGATIONS OF THE PARTIES

ARTICLE 6 - GENERAL OBLIGATION TO IMPLEMENT THE CONTRACT PROPERLY AND TO INFORM THE **AGENCY**

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

The expert must, in particular:

- implement the work properly and in full compliance with the provisions of the Contract and, in particular, with:
 - the Code of Conduct (see Annex 1) and
 - ensure compliance with applicable national tax and social security law.

S/he must implement the Contract fully, timely (i.e. within the deadlines set by the **Agency**) and to the highest professional standards.

The Contract does not constitute an employment agreement with the **Agency**.

- 6.2. The expert must immediately **inform** the **Agency**, if s/he cannot fulfil his/her obligations under the Contract or becomes aware of other circumstances likely to affect the Contract.
- 6.3. If the expert breaches any of his/her obligations under this Article, the **Agency** may apply the measures set out in Chapter 5.

ARTICLE 7 - KEEPING RECORDS — SUPPORTING DOCUMENTATION

7.1. The expert must **keep records** and other **supporting documentation** (original supporting documents) as evidence that the Contract is performed correctly (and, in particular, on the number of days worked, the remote tasks carried out and on travels and other expenses incurred).

S/he must make them available upon request or in the context of checks, audits or investigations (see Article 12).

The expert must keep all records and supporting documentation for **two years** starting from the date of the last payment. If there are on-going checks, audits, investigations, appeals, litigation or pursuit of claims, the expert must keep the records and supporting documents until these procedures end.

- 7.2. If the expert breaches any of his/her obligations under this Article, the **Agency** may apply the measures set out in Chapter 5.

ARTICLE 8 - REQUEST FOR PAYMENT

- 8.1. The expert must submit (via the Participant Portal electronic exchange system; see Article 21) a **request for payment** within **30 days** of receiving notification.

The notification will be sent within 15 days after the end of the evaluation.

The request for payment must contain all the necessary **information** and **supporting documents** for the **Agency** to process the payment (i.e. depending on the type of payment requested: number of days worked, number of working days that correspond to the remote tasks carried out, scanned tickets for travels, scanned invoices for other expenses, etc).

For payments linked to a report or other deliverable, the expert may not submit a payment claim before having submitted the report or deliverable.

Conversions of costs incurred in another currency will be made by the **Agency** according to the monthly accounting rates published on the Commission's website, that applied on the (first) day of the meeting or other work involving travel.

- 8.2. If the expert is considered to supply a taxable service under national tax law, s/he must:

- indicate this in the Participant Portal electronic exchange system;
- register his/her VAT number, and
- if needed, request a VAT exemption certificate from the **Agency** and send an invoice (without VAT).

- 8.3. The expert must specify in the request the **bank account** to be used for making the payment.

This bank account must be one of those listed and validated for the expert in his/her profile in the Participant Portal electronic exchange system (see Article 21).

- 8.4. If the expert breaches any of his/her obligations under this Article, the **Agency** may apply the measures set out in Chapter 5.

ARTICLE 9 - PAYMENTS

- 9.1. Unless Article 13 applies, the **Agency** will make payments within **30 days** from receiving the request for payment (see Article 8).

- 9.2. Payments are subject to the **Agency's approval** of the report(s) and deliverable(s), and of the request(s) for payment.

Approval does not imply recognition of the compliance, authenticity, completeness or correctness of their content.

- 9.3. Payments will be made in **euros**.

- 9.4. Payments will be made to the bank account specified by the expert in the request for payment (see Article 8.3).

9.5. The **Agency's** payments are deemed to be carried out on the date on which its account is debited.

9.6. If the **Agency** does not pay within the payment deadlines (see above), the expert is entitled to **late-payment interest** at the rate applied by the European Central Bank for its main refinancing operations in euros ('reference rate'), plus three and a half points. The reference rate is the rate in force on the first day of the month in which the payment deadline expires, as published in the C series of the *Official Journal of the European Union*.

If the late-payment interest is lower than or equal to EUR 200, it will be paid to the expert only upon request submitted within two months of receiving late payment.

Suspension of the payment deadline (see Article 13) will not be considered as late payment.

Late payment interest covers the period running from the day following the due date for payment (see above), up to and including the date of payment.

ARTICLE 10 - OWNERSHIP AND USE OF THE RESULTS (INCLUDING INTELLECTUAL PROPERTY RIGHTS)

The **Agency** obtains **full ownership** of the results produced under the Contract (including copyright and other intellectual or industrial property rights).

The **Agency** obtains these rights for the full term of intellectual property protection, from the moment the results are delivered by the expert and approved by the **Agency**. Such delivery and approval are considered to constitute an effective assignment of rights.

This transfer of rights is free of charge.

ARTICLE 11 - PROCESSING OF PERSONAL DATA

11.1. Processing of personal data by the **Agency**

Any personal data under the Contract will be processed by the **Agency** under Regulation (EC) No 45/2001⁴ and according to the 'notifications of the processing operations' to the Data Protection Officer (DPO) of the **Agency** (publicly accessible in the DPO register).

Such data will be processed by the '**data controller**' of the **Agency** for the purposes of performing, managing and monitoring the Contract or protecting the financial interests of the EU or Euratom (including checks, reviews audits and investigations; see Article 12).

The expert's personal data will not be disclosed to the applicants of the evaluated proposal(s)

The expert's name will however be published, together with his/her area of expertise, at least once a year on the Commission websites, in accordance with Article 40(5) of the Rules for Participation Regulation No 1290/2013⁵

Moreover, the expert's personal data may be given to persons or bodies responsible for monitoring the proper application of EU law (including the EU or Euratom financial interests) and to the ERC Scientific Council.

The expert has the right to access and correct his/her personal data. For this purpose, s/he must send any queries about the processing of his/her personal data to the data controller, via the contact point indicated in the privacy statement(s) that are published on the Commission websites.

⁴ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

⁵ Regulation (EU) No 1290/2013 of 11 December 2013 laying down the rules for the participation and dissemination in "Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020)" (OJ L 347, 20.12.2013, p. 81).

The expert also has the right to have recourse at any time to the European Data Protection Supervisor (EDPS).

11.2. Processing of personal data by the expert

The expert may process personal data under the Contract only under the supervision of and on instructions from the data controller of the **Agency** (see above).

The expert must put in place appropriate technical and organisational security measures to address data processing risks and in particular:

- (a) prevent any unauthorised person from accessing computer systems that process personal data, and especially:
 - unauthorised reading, copying, alteration or removal of storage media;
 - unauthorised data input, disclosure, alteration or deletion of stored personal data;
 - unauthorised use of data-processing systems by means of data transmission facilities;
- (b) ensure that access to personal data is limited to persons with special access rights;
- (c) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or deleted without authorisation;
- (d) design his/her organisational structure in a way that meets data protection requirements.

11.3. If the expert breaches any of his/her obligations under this Article, the **Agency** may apply the measures set out in Chapter 5.

ARTICLE 12 - CHECKS, AUDITS AND INVESTIGATIONS

12.1. The Agency or the Commission may — during the implementation of the Contract or afterwards — carry out **checks and audits** to verify the proper implementation of the work (including reports and deliverables) under the Contract and whether the expert has met all his/her obligations.

Checks and audits may be started **up to two years after the last payment** is made.

The Agency or the Commission may carry out audits directly (using its own staff) or indirectly (using external persons or bodies appointed to do so).

The expert must provide — within the deadline requested — any information (including deliverables and reports already submitted) to verify compliance with the Contract.

For **on-the-spot visits**, the expert must allow access to sites and premises where the work under the Contract is or was performed.

12.2. Under Regulation No 883/2013⁶ and Regulation No 2185/96⁷ (and in accordance with their provisions and procedures), the European Anti-Fraud Office (OLAF) may — at any moment during implementation of the Contract or afterwards — carry out **investigations**, including on the spot checks and inspections, to establish whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the EU.

⁶ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p.1).

⁷ Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

- 12.3. Under Article 287 of the Treaty on the Functioning of the European Union (TFEU) and Article 161 of the Financial Regulation No 966/2012⁸, the **European Court of Auditors** (ECA) may — at any moment during implementation of the Contract or afterwards — carry out audits.

The ECA has the right of access for the purpose of checks and audits.

- 12.4. Findings in checks, audits or investigations may lead to the rejection of **fee(s)**, allowances and expenses (see Article 14) and recovery of undue amounts (see Article 15).

Moreover, findings arising from an OLAF investigation may lead to criminal prosecution under national law.

- 12.5. If the expert breaches any of his/her obligations under this Article, the **Agency** may apply the measures set out in Chapter 5.

CHAPTER 5 - BREACH OF CONTRACT

ARTICLE 13 - SUSPENSION OF THE PAYMENT DEADLINE

- 13.1. The **Agency** may — at any moment — suspend the payment deadline (see Article 9.1), if a request for payment cannot be approved because:

- (a) it does not comply with the provisions of the Contract (see Article 8);
- (b) the report(s) or deliverable(s) have not been submitted or are not complete or additional work or information is needed, or
- (c) there is doubt about the amounts claimed and additional checks, reviews, audits or investigations are necessary.

- 13.2. In this case, the **Agency** must formally notify the expert (via the Participant Portal electronic exchange system; see Article 21) of the suspension and the reasons why.

The suspension **takes effect** on the day the notification is sent by the **Agency** (see Article 21).

If the conditions for suspending the payment deadline are no longer met, the suspension will be **lifted** and the remaining period will resume.

If the suspension exceeds two months, the expert may ask the **Agency** to take a decision on whether the suspension will continue.

If the payment deadline has been suspended due to missing supporting documents or information (see Article 8) and the requested document or information is not submitted within the deadline set by the **Agency** (despite a reminder), the **Agency** may limit the payment to the part of the claim which complies with the provisions of the Contract (see Article 14).

If the payment deadline has been suspended due to non-compliance of reports or deliverables and the revised report or deliverables or payment request is not submitted within the deadline set by the **Agency** (or was submitted but is also rejected), the **Agency** may also terminate the Contract (see Article 17).

ARTICLE 14 - REJECTION OF FEES, ALLOWANCES OR EXPENSES

- 14.1. The **Agency** may reject (part of) the requested **fee(s)**, allowances or expenses if:

- (a) they do not fulfil the conditions set out in Article 4 or 5
- (b) if the expert has committed:

⁸ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p.1).

- (i) substantial errors, irregularities or fraud or
- (ii) serious breach of obligations under the Contract or during the selection procedure (including improper implementation of the work, false declarations and breach of obligations relating to the Code of Conduct (see Annex 1).

14.2. The **Agency** must formally notify the expert of the rejection, the amounts and the reasons why. The expert may — within 30 days of receiving notification — formally notify the **Agency** of its disagreement and the reasons why.

ARTICLE 15 - RECOVERY OF UNDUE AMOUNTS

15.1. The **Agency** may recover any amount that was paid to the expert but is not due under the Contract.

15.2. The **Agency** will notify the expert (via the Participant Portal electronic exchange system; see Article 21) of its **intention** to recover, the reasons why and invite him/her to submit observations within 30 days of receiving notification.

If no observations are submitted or the **Agency** decides to pursue recovery **in** spite the observations it has received, it will **confirm** the amount to be recovered by formally notifying a **debit note** to the expert. This note will also specify the terms and the date for payment.

If payment is not made by the date specified in the debit note, the **Agency** may recover the amount:

- (a) by **offsetting** it — without the expert's consent — against any amounts owed to the expert by the Agency, the Commission or another executive agency (from the EU or Euratom) budget.

In exceptional circumstances, to safeguard the EU's financial interests, the **Agency** may offset before the payment date specified in the debit note;

or

- (b) by **taking legal action** (see Article 23).

15.3. If payment is not **made** by the date in the debit note, the amount to be recovered will be increased by **late-payment interest** at the rate set out in Article 9.6, from the day following the date for payment in the debit note, up to and including the date the **Agency** receives full payment of the amount.

Partial payments will be first credited against expenses, charges and late-payment interest and then against the principal.

Bank charges incurred in the recovery process will be borne by the expert, unless Directive 2007/64/EC applies.

ARTICLE 16 - SUSPENSION OF THE CONTRACT

16.1. The **Agency** may suspend implementation of the Contract or any part of it, if:

- (a) the expert is not able to fulfil his/her obligations to carry out the work required (see Article 6)
- (b) the expert has committed or is suspected of having committed:
 - (i) substantial errors, irregularities or fraud or
 - (ii) serious breach of obligations under the Contract or during the selection procedure (including improper implementation of the work, false declarations, and breach of obligations relating to the Code of Conduct (see Annex 1).

16.2. The **Agency** will formally **notify** the expert (via the Participant Portal electronic exchange system; see Article 21) of the suspension of the Contract and the reasons why.

The suspension will **take effect** on the date the notification is sent by the **Agency**.

It will be **lifted** if the conditions for resuming implementation of the Contract are met. The expert will be formally notified and, if necessary, the Contract will be **amended** to adapt it to the new situation (see Article 22).

If resuming implementation of the Contract is not possible, the **Agency** may decide to terminate it (see Article 17.1).

Expenses incurred during suspension (including commitments to pay, such as flight or hotel reservations) will not be reimbursed.

ARTICLE 17 - TERMINATION OF THE CONTRACT

17.1. Termination of the Contract by the **Agency**

17.1.1. The **Agency** may terminate the Contract, if:

- (a) the expert is not performing his/her tasks pursuant to the Contract or is performing them poorly (see Article 6);
- (b) the expert has committed:
 - (i) substantial errors, irregularities or fraud or
 - (ii) serious breach of obligations under the Contract or during the selection procedure (including improper implementation of the work, false declarations and breach of obligations relating to the Code of Conduct (see Annex 1);
- (c) the expert has been found guilty of grave professional misconduct, proven by any means;
- (d) the expert has a conflict of interest or is in breach of an obligation of confidentiality, as defined in the Code of Conduct (see Annex 1); or
- (e) the **Agency** deems that the tasks assigned to the expert under the Contract are no longer needed.

The **Agency** may also terminate the Contract in case of force majeure or suspension of the Contract if resuming is not possible (see Articles 16.2 and 20.2).

17.1.2. The **Agency** must formally notify the expert (via the Participant Portal electronic exchange system; see Article 21) of its **intention** to terminate and the reasons why and invite him/her to submit observations within 30 days of receiving notification.

If no observations are submitted or the **Agency** decides to pursue termination despite the observations it has received, it will formally notify **confirmation** of the termination to the expert. Otherwise, it will formally notify that the procedure is not continued.

The termination will **take effect** on the day after the notification of the confirmation is received by the expert.

17.2. Termination of the Contract by the expert

17.2.1. The expert may terminate the Contract, if s/he is not able to fulfil his/her obligation to implement the work required (see Article 6).

17.2.2. The expert must formally notify termination to the **Agency** (via the Participant Portal electronic exchange system; see Article 21), stating:

- the reasons why and
- the date the termination will take effect. This date must be at least 15 days after the notification.

If no reasons are given or if the **Agency** considers that the reasons do not justify termination, the Contract will be considered to have been ‘**terminated improperly**’ (which may lead to the rejection of fees, allowances or expenses; see Article 14).

The termination will **take effect** on the date specified in the notification.

17.3. Effects

If the Contract is terminated, the expert must — within 30 days from when termination takes effect — submit a payment request (see Article 8).

Only fees for days worked, remote tasks carried out and expenses incurred until termination takes effect (including commitments to pay, such as flight or hotel reservations) may be claimed.

ARTICLE 18 - ADMINISTRATIVE SANCTIONS

In addition to contractual measures, the **Agency or the Commission** may also adopt administrative sanctions under Articles 106 and 204 of the Financial Regulation No 966/2012⁹ (i.e. exclusion from future procurement contracts, grants and expert contracts and/or financial penalties).

ARTICLE 19 - LIABILITY FOR DAMAGES

19.1. Liability of the **Agency**

The **Agency** cannot be held liable for any damage caused to the expert as a consequence of performing the Contract, except in the event of wilful misconduct or gross negligence.

19.2. Liability of the expert

Except in case of force majeure (see Article 20), the expert must compensate the **Agency** for any damage it sustains as a result of the implementation of the Contract or because the work was not implemented in full compliance with the Contract.

Thus, the **Agency** may, for instance, claim damages linked to hiring another expert to replace the expert after termination of the Contract.

ARTICLE 20 - FORCE MAJEURE

20.1. ‘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, and
- proves to be inevitable in spite of exercising due diligence.

The following cannot be invoked as force majeure:

- 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,
- labour disputes or strikes, or
- financial difficulties.

⁹ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 (OJ L 298, 26.10.2012, p.1).

- 20.2. Any situation of force majeure must be formally notified to the other party without delay, stating the nature, likely duration and foreseeable effects.

The parties must immediately take all necessary steps to limit any damage due to force majeure and do their best to resume implementation of the Contract as soon as possible.

The party prevented by force majeure from fulfilling its obligations under the Contract cannot be considered in breach of them.

CHAPTER 6 - FINAL PROVISIONS

ARTICLE 21 - COMMUNICATION BETWEEN THE PARTIES

- 21.1. Communication under the Contract (information, requests, submissions, 'formal notifications' etc.) must:

- be made in writing;
- bear the Contract number;
- be made through the Participant Portal electronic exchange system (unless the system provides for the use of e-mail).

If the electronic exchange system is temporarily unavailable, instructions will be given on the **Agency's** websites.

- 21.2. **Communications through the electronic exchange system** are considered to have been made when they are sent by the sending party (i.e. on the date and time they are sent through the electronic exchange system).

Communications by e-mail are considered to have been made when they are sent by the sending party to the address set out below, unless the sending party receives a message of non-delivery.

Formal notifications through the electronic exchange system are considered to have been made when they are received by the receiving party (i.e. on the date and time of acceptance by the receiving party, as indicated by the time stamp). A formal notification that has not been accepted within 10 days after sending is considered to have been accepted.

If deterred by the electronic exchange system being down or the non-deliverability of e-mails to the address indicated below, the sending party cannot be considered in breach of its obligation to send a communication within a specific deadline.

- 21.3. The electronic exchange system must be accessed via the following URL:

<http://ec.europa.eu/research/participants/portal/desktop/en/experts/index.html>

The **Agency** will formally notify the expert in advance of any changes to this URL.

Communications and formal notifications to the **Agency** that cannot be sent through the electronic exchange system must be sent to the following address:

ERC-EXPERTS@ec.europa.eu

Communications and formal notifications to the **expert** that cannot be sent through the electronic exchange system will be sent to the e-mail address set out in the Preamble.

ARTICLE 22 - AMENDMENTS TO THE CONTRACT

- 22.1. The Agreement may be amended in justified cases unless the amendment entails changes to the Contract which would call into question the procedure to select the expert.

Amendments may be requested by any of the parties.

The expert may not start any new work before the amendment takes effect.

22.2. The party requesting an amendment must submit to the other party (via the Participant Portal electronic exchange system; see Article 21) the requested amendment (together with the reasons why).

If the party receiving the request agrees, it must sign the amendment, within 30 days of receiving notification. The amendment will be signed by both parties via the Participant Portal electronic exchange system. If it does not agree, it must formally notify its disagreement within the same deadline.

An amendment **enters into force** on the day of the last signature.

The amendment **takes effect** on the date of entry into force or a future date agreed by the parties.

ARTICLE 23 - APPLICABLE LAW AND DISPUTE SETTLEMENT

23.1. The Contract is governed by EU law and is supplemented, where necessary, by the law of Belgium.

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

ARTICLE 24 - ENTRY INTO FORCE OF THE CONTRACT

The Contract will enter into force on the day on which the last party signs.

SIGNATURES

Expert:

For the Agency:

Done in English on electronic timestamp.

Done in English on electronic timestamp.

ANNEX 1 - CODE OF CONDUCT

1. PERFORMING THE WORK

- 1.1. The expert must work independently, in a personal capacity and not on behalf of any organisation.
- 1.2. The expert must:
 - (a) evaluate each proposal in a confidential and fair way, in accordance with the Horizon 2020 Rules for Participation Regulation No 1290/2013¹⁰ and, in particular, with the ERC Rules for Submission and Evaluation¹¹;
 - (b) perform his/her work to the best of his/her abilities, professional skills, knowledge and applying the highest ethical and moral standards;
 - (c) follow the instructions and time-schedule given by the **Agency**.
- 1.3. The expert may not delegate the work to another person or be replaced by another person.
- 1.4. If a person or entity involved in a proposal(s) approaches the expert before or during the evaluation, s/he must immediately inform the **Agency**.
- 1.5. The expert may not be (or become) involved in any of the actions resulting from the proposal(s) that s/he evaluated (at any stage of the procedure, including for two-stage calls).

2. IMPARTIALITY

- 2.1. The expert must perform his/her work **impartially** and take all measures to prevent any situation where the impartial and objective implementation of the work is compromised for reasons involving economic interest, political or national affinity, family or emotional ties or any other shared interest ('**conflict of interests**').

The following situations will **automatically** be considered as **conflict of interest**:

- (a) **for a proposal(s) s/he is requested to evaluate**, if s/he:
 - (i) was involved in the preparation of the proposal(s);
 - (ii) is a director, trustee or partner or is in any way involved in the management of an applicant (or linked third party or other third party involved in the action);
 - (iii) is employed or contracted by one of the applicants (or linked third parties, named subcontractors or other third parties involved in the action) ;
 - (iv) has close family ties (spouse, domestic or non-domestic partner, child, sibling, parent etc.) or other close personal relationship with the principal investigator of the proposal s/he is requested to evaluate as an additional reviewer from another panel (cross-panel or cross-domain proposal);
 - (v) has (or has had during the last five years) a scientific collaboration with the principal investigator of the proposal;
 - (vi) has (or has had) a relationship of scientific rivalry or professional hostility with the principal investigator of the proposal;

¹⁰ Regulation (EU) No 1290/2013 of 11 December 2013 laying down the rules for the participation and dissemination in "Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020)" (OJ L 347, 20.12.2013, p. 81).

¹¹ Available at http://ec.europa.eu/research/participants/portal/desktop/en/funding/reference_docs.html

(vii) has (or has had), a mentor/mentee relationship with the principal investigator of the proposal.

In this case, the expert must be excluded from the evaluation of the proposal(s) concerned (and may not take part in any discussion or scoring of the proposal and must leave the room or the electronic forum when it is discussed ('out of the room' rule). Part(s) of an evaluation to which the expert already participated must be declared void. Comments and scores already given must be discounted. If necessary, the expert must be replaced and the proposal(s) concerned must be re-evaluated.

However, in exceptional and duly justified cases, the responsible **Agency** staff may decide to nevertheless invite the expert to take part in the evaluation, if:

- the expert works in a different department/laboratory/institute from the one where the action is to be carried out and
- the departments/laboratories/institutes within the organisation concerned operate with a high degree of autonomy and
- the participation is justified by the requirement to appoint the best available experts and by the limited size of the pool of qualified experts.

In this case, the other experts in the group of evaluators will be informed about the situation of the expert.

(b) **for a proposal(s) s/he is requested to evaluate AND for all proposal(s) competing for the same call budget-split**, if s/he:

- (i) was involved in the preparation of any proposal(s) assigned to the same panel within the same call budget-split;
- (ii) would benefit if any proposal(s) assigned to the same panel within the same call budget-split is accepted or rejected;
- (iii) has close family ties (spouse, domestic or non-domestic partner, child, sibling, parent etc.) or other close personal relationship with a person (including linked third parties or other third parties) involved in the preparation of any proposal(s) assigned to the same panel within the same call budget-split, or with a person which would benefit if such a proposal(s) is accepted or rejected.

In this case, the expert may not evaluate any proposal in the call concerned ('out of the call' rule). Part(s) of an evaluation to which the expert already participated must be declared void. Comments and scores already given must be discounted. If necessary, the expert must be replaced and the proposal(s) concerned must be re-evaluated.

(c) **for ALL proposal(s) under the call in question**, if s/he:

- (i) is a member of an advisory group set up by the Commission to advise on the preparation of EU or Euratom Horizon 2020 work programmes or work programmes in an area related to the call in question;
- (ii) is a National Contact Point (NCP) or is working for the Enterprise Europe Network (EEN);
- (iii) is a member of a programme committee;
- (iv) has submitted a proposal as a principal investigator or a team member, under the same call;
- (v) has close family ties (spouse, domestic or non-domestic partner, child, sibling, parent etc.) or other close personal relationship with the principal investigator of any proposal submitted to his/her panel.

In this case, the expert may not evaluate any proposal in the call concerned ('out of the call' rule). Part(s) of an evaluation to which the expert already participated must be declared void. Comments and scores

already given must be discounted. If necessary, the expert must be replaced and the proposal(s) concerned must be re-evaluated.

The following situations **may be** considered as **conflict of interest** if the responsible **Agency** staff so decides (in consultation with the ERC Scientific Council) , in view of the objective circumstances, the available information and the potential risks:

- (a) employment of the expert by one of the applicants (or linked third parties or other third parties involved in the action) in the last three years;
- (b) involvement of the expert in a contract, grant, prize or membership of management structures (e.g. member of management or advisory board etc.) or research collaboration with an applicant, a linked third party or another third party involved in the action in the last three years;
- (c) any other situation that could cast doubt on his/her ability to participate in the evaluation impartially, or that could reasonably appear to do so in the eyes of an outside third party.

In this case, the responsible **Agency** staff may decide (in consultation with the ERC Scientific Council) to exclude the expert from the evaluation (and on the scope, i.e. only for the proposal(s) concerned or also for competing proposal(s) or the entire call) and, if necessary, to replace him/her and organise a re-evaluation.

- 2.2. The expert will be required to **confirm** — for each proposal(s) s/he is evaluating — that there is no conflict of interest, by signing a declaration in the Participant Portal electronic exchange system (see Article 21).

If the expert is (or becomes) aware of a conflict of interest, s/he must immediately **inform** the responsible **Agency** staff and stop working until further instructions.

- 2.3. If the expert breaches any of his/her obligations under Points 2.1 and 2.2, the **Agency** may apply the measures set out in Chapter 5, and in particular terminate the Contract (see Article 17).

3. CONFIDENTIALITY

- 3.1. During implementation of the Contract and for five years after the date of the last payment, the expert must keep confidential all data, documents or other material (in any form) that is disclosed (in writing or orally) and that concerns the work under the Contract ('**confidential information**').

Unless otherwise agreed with the responsible **Agency** staff, s/he may use confidential information only to implement the Contract.

The expert must keep his/her work under the Contract strictly confidential, and in particular:

- (a) not disclose (directly or indirectly) any confidential information relating to proposal(s) or applicants, without prior written approval by **Agency**;
- (b) not discuss **proposal(s)** with others (including other experts or **Agency** staff that are not directly involved in the evaluation of the proposal(s)), except during evaluation meetings and with prior approval by the responsible **Agency** staff;
- (c) not disclose:
 - details on the evaluation process or its outcome, without prior written approval by **Agency**;
 - details on his/her position/advice;
 - the names of other experts participating in the evaluation.
- (d) not communicate with applicants (including linked third parties or other third parties involved in the actions) nor with the principal investigators or potential team members or persons linked to them during the evaluation or afterwards — except in panel hearings, interviews or on-site visits.

If the **Agency** makes documents or information available electronically for remote work, the expert is responsible for ensuring adequate protection and for returning, erasing or destroying all confidential information after the end of the evaluation (if so instructed).

If the expert works on **Agency** premises, the expert:

- (a) may not remove from the premises any documents, material or information on the **proposal(s)** or on the evaluation;
- (b) is responsible for ensuring adequate protection of electronic documents and information and for returning, erasing or destroying all confidential information after the end of the evaluation (if so instructed).

If the expert uses outside sources (for example internet, specialised databases, third party expertise etc.) for his/her evaluation, s/he:

- (a) must respect the general rules for using such sources;
- (b) may not contact third parties, without prior written approval by the **Agency**.

The confidentiality obligations no longer apply if:

- the **Agency** agrees to release the expert from the confidentiality obligations;
- the confidential information becomes public through other channels;
- disclosure of the confidential information is required by law.

- 3.2. If the expert breaches any of his/her obligations under Point 3.1, the **Agency** may apply the measures set out in Chapter 5.