



The EU Framework Programme
for Research and Innovation

HORIZON 2020



H2020 Model Contract for ERC non-paid Experts

Version 1.0
7 February 2014

*Research and
Innovation*



EUROPEAN COMMISSION
EUROPEAN RESEARCH COUNCIL EXECUTIVE AGENCY

MODEL CONTRACT FOR ERC NON- PAID EXPERTS

- Delete unused options [*in italics in square brackets*]. Change options [*in italics in square brackets*] to a normal font.
- Delete fields in [grey in square brackets] (even if they are part of an option specified in the previous item), or replaced with appropriate data. Do not change any other parts of the text.
- Do NOT delete the model contract date in the header anywhere in the document.

EXPERT CONTRACT

CONTRACT NUMBER – [to be completed]

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

on the one part,

the **European Research Council Executive Agency (ERCEA)** (*'the Agency' or 'the contracting party'*), under the power delegated by the European Commission, represented for the purposes of signing this Contract by [forename, surname, function]

and

on the other part,

[Family name]

[First name]

[Expert candidature number]

[Email address]

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

By signing this Contract, the expert confirms that s/he has read, understood and accepted the Contract and all its obligations and conditions, including the Code of Conduct set out in Annex 1.

The Contract is composed of the terms and conditions and Annex 1- Code of Conduct.

TERMS AND CONDITIONS

TABLE OF CONTENTS

CHAPTER 1 GENERAL 2

ARTICLE 1 — SUBJECT OF THE CONTRACT 2

CHAPTER 2 WORK TO BE PROVIDED 3

ARTICLE 2 — TASKS TO BE ACCOMPLISHED 3

ARTICLE 3 — WORKING ARRANGEMENTS..... 3

CHAPTER 3 RIGHTS AND OBLIGATIONS OF THE PARTIES..... 3

ARTICLE 4 — PERFORMANCE OF THE CONTRACT 3

ARTICLE 5 — OWNERSHIP AND USE OF THE RESULTS (INCLUDING INTELLECTUAL PROPERTY RIGHTS) 4

ARTICLE 6 — PROCESSING OF PERSONAL DATA 4

ARTICLE 7 — CHECKS, AUDITS AND INVESTIGATIONS 6

CHAPTER 4 EFFECTS OF BREACHING CONTRACTUAL OBLIGATIONS 6

ARTICLE 8 — SUSPENSION OF THE CONTRACT 6

ARTICLE 9 — TERMINATION OF THE CONTRACT 7

ARTICLE 10 — LIABILITY FOR DAMAGES 8

ARTICLE 11 — FORCE MAJEURE 8

CHAPTER 5 FINAL PROVISIONS 8

ARTICLE 12 — COMMUNICATION BETWEEN THE PARTIES..... 8

ARTICLE 13 — AMENDMENTS TO THE CONTRACT 10

ARTICLE 14 — APPLICABLE LAW AND DISPUTE SETTLEMENT 10

ARTICLE 15 — ENTRY INTO FORCE..... 10

CHAPTER 1 GENERAL

ARTICLE 1 — SUBJECT OF THE CONTRACT

This Contract sets out the rights and obligations, terms and conditions that apply to the expert contracted by the contracting party to help manage the EU research and innovation programmes.

CHAPTER 2 WORK TO BE PROVIDED

ARTICLE 2 — TASKS TO BE ACCOMPLISHED

During the peer review evaluation, the expert must evaluate the proposals submitted in response to the call for proposals, published by the Agency on the basis of the priority “Excellent science” work programme(s) [*reference to work programme(s)*].

The expert must send to the contracting party a report on each task related to peer review evaluation and include recommendations.

ARTICLE 3 — WORKING ARRANGEMENTS

The expert’s work may **start** on [insert earliest starting date of evaluation] [insert earliest starting date of work].

The expert may not under any circumstances start work before the date on which this Contract enters into force (see Article 15).

The expert must submit the individual evaluation report by the dates indicated in the electronic evaluation system.

CHAPTER 3 RIGHTS AND OBLIGATIONS OF THE PARTIES

ARTICLE 4 — PERFORMANCE OF THE CONTRACT

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

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

The expert must, in particular, ensure compliance with:

- the Code of Conduct (see Annex 1); and
- applicable national tax and social security law.

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

2. If the expert cannot fulfil their obligations, s/he must immediately inform the contracting party.

ARTICLE 5 — OWNERSHIP AND USE OF THE RESULTS (INCLUDING INTELLECTUAL PROPERTY RIGHTS)

1. The Agency must fully and irrevocably acquire the ownership of the results under this Contract including any rights in any of the results listed in this Contract, including copyright and other intellectual or industrial property rights, and all technological solutions and information contained therein, produced in performance of the Contract. The Agency must acquire all the rights from the moment the results are delivered by the expert and accepted by the contracting party. Such delivery and acceptance are considered to constitute an effective assignment of rights from the expert to the Agency.
2. The Agency must acquire ownership of each of the results produced as an outcome of this Contract which may be used, for the following purposes of:
 - giving access upon individual requests without the right to reproduce or exploit, as provided for by Regulation 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents;
 - storage of the original and copies made in accordance with this Contract;
 - archiving in line with the document management rules applicable to the contracting authority.

The Agency may use, publish, assign or transfer these results as it sees fit, without any limitations (geographical or other), unless intellectual property rights already exist.

ARTICLE 6 — PROCESSING OF PERSONAL DATA

1. Processing of personal data by the contracting party

The contracting party must process all personal data included in the Contract according to Regulation No 45/2001¹.

Such data must be processed by the Director of the Agency (**‘data controller’**) only to perform, manage and monitor the Contract. The data may also be sent to persons or bodies responsible for monitoring or inspections in application of EU law or to the ERC Scientific Council.

¹ 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).

The expert has the right to access their personal data and to correct it. Any questions about or corrections to the expert's personal data must be sent to the data controller.

The expert has the right of recourse to the European Data Protection Supervisor.

2. Processing of personal data by the expert

If the Contract requires the expert to process personal data, the expert may only act under the supervision of the data controller identified above. This is the case in particular for determining why personal data should be processed, what categories of data may be processed, who will have the right to access the data, and how the data subject may exercise their rights.

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

- (a) prevent unauthorised people from accessing computer systems that process personal data, and especially the:
 - (i) unauthorised reading, copying, alteration or removal of storage media;
 - (ii) unauthorised data input, disclosure, alteration or deletion of stored personal data;
 - (iii) unauthorised use of data-processing systems by means of data transmission facilities;
- (b) ensure that a data-processing system's authorised users can access only the personal data to which their access right refer;
- (c) record which personal data have been communicated by the expert, when and to whom;
- (d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting party;
- (e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or deleted without authorisation;
- (f) design its organisational structure in a way that meets data protection requirements.

ARTICLE 7 — CHECKS, AUDITS AND INVESTIGATIONS

1. The contracting party 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 expert is meeting its obligations.

It may do so throughout the Contract's validity and **up to two years after the last peer review** is made. The expert must provide — within the deadline requested — any information and data in addition to deliverables and reports already submitted. The expert must allow access to sites and premises on which the tasks specified in this Contract are performed.

2. Under Regulation No 2185/96² and Regulation No 883/2013³ (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 under the Contract affecting the financial interests of the EU.
3. Under Article 287 of the Treaty on the Functioning of the EU (TFEU) and Article 161 of the Financial Regulation No 966/2012⁴, 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.

CHAPTER 4 EFFECTS OF BREACHING CONTRACTUAL OBLIGATIONS

ARTICLE 8 — SUSPENSION OF THE CONTRACT

1. The contracting party may suspend implementation of the Contract or any part of it, if the expert is not able to fulfil their obligation to carry out the work required (see Article 4(2)).

² Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspection 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).

³ 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).

⁴ 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 L298, 26.10.2012).

2. The contracting party must formally notify the expert of its intention, include the reasons why and invite him/her to submit any observations within seven days of receiving notification.

If the contracting party does not accept these observations, it will formally notify confirmation of the suspension.

3. The suspension will take effect on the date the notification is sent by the contracting party.
4. 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 expert if the suspension is lifted and the Contract will be amended if necessary (see Article 13), unless it has been terminated (see Article 9).

ARTICLE 9 — TERMINATION OF THE CONTRACT

1. The contracting party may at any moment terminate the Contract if the expert:

(a) is not performing their the tasks or performing them poorly; or

(b) has committed substantial errors, irregularities, or fraud, or is in serious breach of their obligations under the Contract, including false declarations and obligations relating to the Code of Conduct.

2. The contracting party must formally notify the expert of its intention, including the reasons why and invite him/her to submit observations within 30 days of receiving notification.

If the contracting party does not accept these observations, it will formally confirm the termination.

3. The termination will take effect on the date the notification is sent by the contracting party.
4. The expert may at any moment terminate the Contract if s/he is not able to fulfil their obligations in carrying out the work required (see Article 4(2)).
5. The expert must formally notify the contracting party and include the reasons why by giving 15 days' notice.
6. The termination will take effect on the date the contracting party will formally notify confirmation of the termination.

7. On termination of the contract, the contracting party may hire another expert to carry out or finish the work. It may claim from the expert all extra costs incurred while doing this, without prejudice to any other rights or guarantees it may have under the Contract.

ARTICLE 10 — LIABILITY FOR DAMAGES

The contracting party cannot be held liable for any damage caused or sustained by the expert or a third party during or as a consequence of performing the Contract, except in the event of the contracting party's wilful misconduct or gross negligence.

ARTICLE 11 — 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 the implementation of the action (see Article 4)); and
- proves to be inevitable in spite of exercising due diligence.

2. A force majeure must be immediately and formally notified to the contracting party.

Notification must include details of the situation's nature, likely duration and expected effects.

3. The party faced with force majeure will not be held in breach of its contractual obligations if the force majeure has prevented it from fulfilling them.

CHAPTER 5 FINAL PROVISIONS

ARTICLE 12 — COMMUNICATION BETWEEN THE PARTIES

1. Communication under the Contract (e.g. information, requests, submissions, formal notifications, etc.) must:
 - be made in writing (in electronic form); and
 - bear the Contract's number;

- be made through the electronic exchange system, or otherwise specified there, via e-mail (see below).

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

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 one of the addressees listed 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 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 all addresses indicated below, the sending party cannot be considered in breach of its obligation to send a communication within a specific deadline.

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

[insert URL]

The [Commission][Agency] will formally notify the coordinator and beneficiaries in advance on any changes to this URL.

Communications to the [Commission][Agency][Joint Undertaking] that are not to be sent through the electronic exchange system must be sent to the following address:

- [insert functional box] or
- other email addresses supplied by the contracting party.

Communications to the expert that are not to be sent through the electronic exchange system (only for the communications not listed above) must be sent to the e-mail address as specified in the preamble of this Contract.

ARTICLE 13 — 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 procedure — any party may request an amendment.

Amendments must be made before new contractual obligations are enforced.

2. The party requesting an amendment must formally notify the other party the requested amendment signed in the electronic exchange system (see Article 11), together with the reasons why.

The party receiving the request must formally notify its agreement or disagreement, within 30 days of receiving notification.

ARTICLE 14 — APPLICABLE LAW AND DISPUTE SETTLEMENT

1. This Contract is governed by EU law and is supplemented, where necessary, by the law of Belgium.
2. Disputes concerning the Contract's interpretation, application or validity that cannot be settled amicably must be brought before Brussels courts.

ARTICLE 15 — ENTRY INTO FORCE

This Contract enters into force on the day on which the last party signs.

Done in two copies in [English]

SIGNATURES

Expert:

For the contracting party:

[electronic signature]

[electronic signature]

[electronic time stamp]

[electronic time stamp]



EUROPEAN COMMISSION
EUROPEAN RESEARCH COUNCIL EXECUTIVE AGENCY

1.

ANNEX 1 - CODE OF CONDUCT FOR ERC EVALUATORS

ARTICLE 1 – PERFORMANCE OF THE CONTRACT

2. The expert works independently, in a personal capacity and not on behalf of any organisation.
3. The expert must:
 - (a) evaluate each proposal in a confidential and fair way, in accordance with the H2020 guidelines for submission of proposals and the related evaluation, selection and award procedures, in particular the ERC Rules of Submission
 - (b) assist the contracting party or relevant service 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 or relevant service and deliver consistently high quality work.
4. The expert may not delegate another person to carry out the work or be replaced by any other person.
5. If a legal entity involved in a proposal approaches the expert during the evaluation of this proposal, s/he must immediately inform the contracting party or relevant service.

ARTICLE 2 – OBLIGATIONS OF IMPARTIALITY

1. The expert must perform their work **impartially**. To this end, the expert is required to:
 - (a) inform the contracting party or relevant service of any conflicts of interest arising in the course of their work including of any proposal competing with the proposal where the expert may have a conflict of interest;
 - (b) confirm there is no conflict of interest for each proposal s/he is evaluating by signing a declaration in the electronic evaluation system.
2. **Definition of the conflict of interest:** For a given proposal, a conflict of interest exists if an expert:

- (a) was involved 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
- (d) is a director, trustee or partner or is in any way involved in the management of an applicant legal entity
- (e) is employed or contracted by one of the applicant legal entities⁵ or any named subcontractors
- (f) 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 for proposals in question
- (g) is a National Contact Point, or is directly working for the Enterprise Europe Network
- (h) is a member of a Programme Committee
- (i) 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 s/he is requested to evaluate as an additional reviewer from another panel (cross-panel or cross-domain proposal)
- (j) has or has had during the last five years, a scientific collaboration with the principal investigator of the proposal
- (k) has or has had a relationship of scientific rivalry or professional hostility with the principal investigator of the proposal
- (l) has or has had in the past, a mentor/mentee relationship with the principal investigator of the proposal
- (m) has submitted a proposal as a principal investigator or a team member, under the same call⁶
- (n) 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 their panel.

⁵ However, the contracting party or relevant service may decide to invite an expert who is employed or contracted by one of the applicant legal entities or any named subcontractors to take part in the panel review session, if the expert works in a different department/laboratory/institute from the one where the work is to be carried out, and if the constituent bodies operate with a high degree of autonomy, and if such a role is justified by the requirement to appoint the best available experts and by the limited size of the pool of qualified experts.

⁶ In addition, the expert must not subsequently be engaged professionally in any of the projects of the proposals that s/he has evaluated.

In the following situations the contracting party or relevant service in consultation with the ERC Scientific Council will decide whether a conflict of interest exists, taking account of the objective circumstances, available information and related risks. The contracting party or relevant service may decide that the expert takes part or not in the evaluation of the given proposal or of the call.

when an expert:

- 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 fellow researcher, or had been so in the last three years
- iii. 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 referred to in points (m) and (n) of paragraph 2 is reported by the expert or established by the contracting party or relevant service, or becomes apparent at any stage of the evaluation, the expert must not evaluate any proposal in the call (“out of the call” rule). Any comments and scores already given by the expert will be discounted. If necessary, the expert will be replaced
 - (b) If a conflict of interest referred to in points (a) to (l) of paragraph 2 is reported by the expert or established by the contracting party or relevant service, the expert must not evaluate the given proposal or take part in any discussion or scoring of it. The expert must leave the room or the electronic forum when the proposal is discussed (“out of the room” rule)
4. If it is revealed during an evaluation that an expert has knowingly concealed a conflict of interest, the expert will be immediately excluded, and sanctions will apply (see Article 9 of the Contract or in the Financial Regulation and its implementing rules). Any panel meeting in which s/he has participated will be declared null. The panel meeting will be reconvened and the proposal(s) concerned will be re-evaluated.

ARTICLE 3 – OBLIGATIONS OF CONFIDENTIALITY

1. The contracting party or relevant service and the expert must treat confidentially⁷ 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 expert undertakes to observe strict **confidentiality** in relation to their work. To this end, the expert:
 - (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 expert:

- i. must not discuss any proposal with others, including other experts or contracting party or relevant service staff 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 responsible contracting party or relevant service staff
- 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 experts participating in the evaluation.
- iii. must not communicate with principal investigators, potential team members involved in the proposal or any person linked to the applicant legal entity on any proposal:
 - during the evaluation or on-site visits, except in panel hearings, interviews or on-site visits between experts and the principal investigators and the applicant legal entity organised by the contracting party or relevant service as part of the evaluation process;
 - after the evaluation.

⁷ In this context, the term “confidentiality” does not refer to the security classification “EU CONFIDENTIAL”. The procedures related to “EU CONFIDENTIAL” documents apply only to information and material the unauthorised disclosure of which would harm the essential interests of the EU or one of its Member States (Commission provisions on security (Commission Decision 2001/844/EC, ECSC, Euratom of 29 November 2001 amending its internal rules of procedure (OJ L 317, 3.12.2001, p. 1))).

3. If the proposals are made available electronically to the expert who then works from their own or other suitable premises, s/he 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.
4. If the evaluation takes place in premises controlled by the contracting party or relevant service, the expert:
 - (a) must not remove from the premises proposals, copies or notes on evaluation, either on paper or in electronic form
 - (b) 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 on completing the evaluation as instructed.
5. If the expert seeks further information (for example through the internet, specialised databases, etc.) to complete their examination of the proposals, s/he:
 - (a) must respect the overall rules for confidentiality for obtaining such information
 - (b) must not contact principal investigators, potential team members involved in the proposal or any person linked to the applicant legal entity
 - (c) must not contact third parties without prior written approval of the contracting party.
6. These confidentiality obligations are binding on:
 - (a) the contracting party (see Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community⁸)
 - (b) the expert during performance of the Contract and for five years starting from the date of the last approved report to the expert unless:
 - i. the contracting party agrees to release the expert from the confidentiality obligations earlier
 - ii. the confidential information becomes public through other channels
 - iii. disclosure of the confidential information is required by law.

⁸ OJ 45, 14.6.1962, p. 1385.