



## MODEL EXPERT CONTRACT

CONTRACT NUMBER – 2020/EJ/14/CEI/[EXPERT CONTRACT NUMBER]

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

on the one part,

**Eurojust** (hereinafter referred to as "the contracting authority"), represented for the purposes of the signature of this contract by forename and surname of the authorising officer, function of the authorising officer,

on the one part, and on the other part,

Family name

First name

Full official address

Email address

'the expert'.

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 Technical Specifications set in Annex 2 and the Declaration of absence of conflict of interests and of confidentiality set out in Annex 3.

The Contract is composed of:

Terms and conditions

Annex 1 Code of Conduct

Annex 2 Technical specifications

Annex 3 Declaration of absence of conflict of interests and of confidentiality

[Annex 4 Instructions, Terms and Conditions for Experts Performing Services at Eurojust Premises]



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## **CHAPTER I - GENERAL**

### **ARTICLE 1 – SUBJECT OF THE CONTRACT**

The subject of the Contract is the provision of ad personam expertise and advice to the contracting party for [insert short description of the specific assignment], following the selection process of the Call for Expression of Interest for Individual External Experts 2020/EJ/14/CEI.

### **ARTICLE 2 – WORKING ARRANGEMENTS**

1. The expert's work starts on [insert earliest starting date of work] and cannot exceed [insert number] working [days].

The expert may not under any circumstances start work before the date on which this Contract enters into force in accordance with Article 22.

2. The indicative planning and number of working days for accomplishing the tasks are as follows:

- Up to [number] working days to perform the tasks between [insert starting date] and [insert end date], [split as follows: insert]. The expert must perform all tasks in accordance with Annex 2.

3. The time necessary for travel to and from the place of assignment shall not count towards working time for the purpose of determination of the number of working days.

## **CHAPTER II - FEES, ALLOWANCES AND REIMBURSEMENT OF EXPENSES**

### **ARTICLE 3 – FEES**

1. The [senior] expert is entitled to a fee of [EUR 350/EUR 450] for each full day actually worked in accordance with Article 2.

2. The total amount of the fees is calculated to the nearest half day.

3. The maximum amount of fees paid under the Contract is limited to the maximum number of working days in accordance with Article 2.1.

### **ARTICLE 4 – ALLOWANCES AND REIMBURSEMENT OF EXPENSES**

[Not applicable]

1. In addition to the fees specified in Article 3, the contracting party will also:

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a) As far as practically possible, arrange the travel for the expert, by air or by train or by boat, excluding local transportation. Accordingly, the contracting party shall book, pay for and deliver the travel tickets to the expert. The travel shall be booked as follows:

- For travel by air: in economy class or equivalent, at the lowest available rates, on the basis of the shortest itinerary;
- For travel by rail and by boat: in second class, by the shortest and most cost effective route.

The travel shall be arranged to and from the point of departure<sup>1</sup> and to and from the place of assignment.

In cases where the contracting authority is unable to arrange the travel for the expert, reimbursement of the travel expenses directly connected with the work specified in the Contract, will be made on production of copies or scanned original of supporting documents, including receipts and used tickets<sup>2</sup>. The documents supplied may indicate the class of travel used, the dates of the travel, the currency and amount paid<sup>3</sup>. Travel expenses shall be reimbursed, where appropriate, on the basis of the shortest itinerary.

Travel expenses shall be reimbursed as follows:

- travel by air shall be reimbursed up to the maximum cost of an economy class ticket at the time of the reservation;
- travel by boat or rail shall be reimbursed up to the maximum cost of a second class ticket, unless agreed otherwise by Eurojust;
- travel by car shall be reimbursed at a fixed rate of EUR 0,22 km (up to 400 km, one way).

The expert is entitled to the reimbursement of its travel expenses to and from the point of departure and to and from the place of assignment. Booking made by the expert shall be approved in advance by the contracting authority.

Unless otherwise agreed by the contracting party, where the travel is by air, the 'point of departure' is the airport where the travel starts. Where the travel is by train only, the 'point of departure' is the train station where the travel starts. Where the travel is by boat only, the 'point of departure' is the port

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<sup>1</sup> For the purpose of this contract the 'point of departure' shall be understood as the airport of departure indicated in the application form (for travels by plane) or full official address for other types of travel.

<sup>2</sup> The contracting authority reserves the right to request the original receipts/supporting documents prior to the payment of the invoice.

<sup>3</sup> In case that tickets have been purchased in a currency other than the Euro, the conversion would be made at the monthly accounting exchange rate using the exchange rate/ currency conversion from European Commission InforEuro ([https://ec.europa.eu/info/funding-tenders/how-eu-funding-works/information-contractors-and-beneficiaries/exchange-rate-inforeuro\\_en](https://ec.europa.eu/info/funding-tenders/how-eu-funding-works/information-contractors-and-beneficiaries/exchange-rate-inforeuro_en)).

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where the travel starts. Where the travel is by car, the 'point of departure' is the full official address of the expert.

In exceptional and justified cases, the contracting party may agree to a different point of departure. This agreement must be given before any travel tickets are purchased.

If the expert changes the point of departure without the contracting party's prior agreement, the reimbursement will be limited to the price of one return ticket from the expert's official address.

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Travel from/to the expert's full official address to/from the international airport or train station nearest to the expert's full official address the transportation will be reimbursed by Eurojust on the basis of actual costs up to the maximum of a second class public transport ticket.

Taxi services will be reimbursed if all of the following conditions are met:

- before the assignment, the expert travels by taxi directly from his/her full official address to the nearest located international airport OR after the assignment, the expert travels by taxi directly from the nearest located international airport to his/her Professional address; and
- the travel occurs between 00:00 and 06:00 or when no local public transport is available; and an original receipt of payment of taxi costs, showing the full amount paid and the time of the journey is presented.

In addition, Eurojust will consider duly justified requests for reimbursement of costs for taxi services, when no local public transport was available, e.g. due to public transport company's strike.

b) A daily subsistence allowance will be paid to the expert which shall take the form of a flat-rate payment to cover all expenses at the place of assignment including meals, local transport (such as bus, tram, metro, taxi, parking, motorway tolls, transport to and from the airport or station), insurance and sundries.

The daily subsistence allowance is reimbursed in accordance with the following flat rates:

- If the expert's point of departure is less than 100 km (one way) from the place of assignment, the expert shall be entitled to a fixed daily allowance of 50 Euro for a full day work<sup>45</sup>. 1/2 of this sum will be paid for 1/2 day of work. ;
- If the expert's point of departure is more than 100 km (one way) from the place of assignment, the expert shall be entitled to a fixed daily allowance of 85 Euro for a full day work and 42.5 Euro for a 1/2 day work.

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<sup>4</sup> A full day work is considered to have 8 working hours.

<sup>5</sup> In case of a 2 and a half day meeting the expert would be entitled to EUR 125 (50+50+25).

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The daily subsistence allowance shall be payable only on receipt of supporting documents proving that the person concerned was present at the place of assignment.

The contracting authority may provide different subsistence allowances for specific assignments.

c) Based on a justified request from the expert, the contracting authority will arrange and pay the accommodation on the basis of the minimum number of nights at the place of assignment.

In case Eurojust cannot arrange the accommodation booking, and prior approval, the expert may book accommodation and be entitled to an accommodation subsistence allowance. This allowance shall be 140 euro per night. The number of accommodation allowances may not exceed the numbers of nights that the contracting party would have booked for the expert. The expert shall provide original supporting documents together with the invoice.

d) Reimburse the shipment expenses, as follows:

- The cost of shipment of equipment or unaccompanied luggage shall be reimbursed provided the contracting party has given prior written authorisation.

2. Other expenses will not be reimbursed, in particular:

- (a) costs of purchasing equipment or other material needed by the expert to accomplish its tasks;
- (b) reckless or excessive expenses.

## **CHAPTER III – RIGHTS AND OBLIGATIONS OF THE PARTIES**

### **ARTICLE 5 – 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 (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 its obligations, s/he must immediately inform the contracting party.

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## **ARTICLE 6 – KEEPING RECORDS – SUPPORTING DOCUMENTATION**

The expert must keep records and other supporting documentation (original supporting documents) as evidence that the Contract is performed correctly and the expenses were actually incurred. These must be available for review upon the contracting party's request.

The expert must keep all records and supporting documentation for seven 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.

## **ARTICLE 7 – REQUEST FOR PAYMENT**

1. To obtain their fees, allowances, and reimbursement of expenses the expert must submit a request for payment or invoice via the e-PRIOR tool and include all the required supporting documents. Alternatively, paper invoices may be accepted by the Eurojust prior approval.

2. The request(s) for payment must be submitted within 30 days of the date(s) for submitting the report(s) or deliverable(s) specified in Article 2, or after the last day of the meeting or remote evaluation session, whichever comes latest.

3. For experts considered as supplying a taxable service under the applicable national tax regime, the request for payment must take the form of an invoice.

Invoices must contain the expert's identification data, the amount, invoice number/reference, the currency, the bank account number and the date, as well as the reference to the contract.

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

4. EUROJUST is exempt from all taxes and duties, including VAT, in accordance with Articles 3 and 4 of the Protocol 7 of the Treaty on the Functioning of the European Union on the privileges and immunities of the European Union.

The expert must complete the necessary formalities with the relevant authorities to ensure that the supplies and services required for implementation of the contract are exempt from taxes and duties, including VAT.

The payments shall be made by Eurojust net of VAT. The expert shall request an exemption certificate together with the contract.

Notwithstanding the above, as direct exemption is not applicable to Eurojust for experts subject to Dutch tax legislation, invoices including VAT will be accepted by Eurojust. Such exemption shall fall under the tax refund method.

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## **ARTICLE 8 – BANK ACCOUNT**

Payments shall be made to the expert's bank account denominated in Euro indicated in the expert's invoice provided that a valid Financial Identification Form for this account has been received by the contracting authority.

## **ARTICLE 9– PAYMENTS**

1. A single payment will be made upon completion of the services and under the conditions laid down in article 7 unless otherwise specified in the request for services.
2. The contracting authority will make payments within 30 calendar days of receiving the completed payment request(s) unless Article 13 applies.
3. Payments are subject to the contracting authority's approval of deliverable(s) or report(s), and of the payment request(s). Approval does not mean recognition of compliance, authenticity, completeness or correctness of content.
4. Payments will be made in euros.
5. Payments will be made to the bank account specified by the expert in the payment request referred in Article 7.
6. The contracting authority's payments are deemed to be carried out on the date on which its account is debited.
7. On expiry of the payment period specified in paragraph 1 and without prejudice to Article 13, the expert is entitled to interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in Euros (the reference rate), plus 3.5 points. The reference rate is the rate in force on the first day of the month in which the payment period ends, as published in the C series of the Official Journal of the European Union.

The suspension of the payment periods in accordance with Article 13 may not be considered as a late payment.

Interest on late payment covers the period running from the day following the due date for payment up to and including the date of actual payment as defined in paragraph 5.

However, when the calculated interest is lower than or equal to EUR 200, it must be paid to the expert only upon request submitted within two months of receiving late payment.

Payments will be made in euro unless the contracting authority agrees otherwise. In case of conversion, the contracting authority makes any conversion between the euro and another currency at the daily euro exchange rate published in the Official Journal of the European Union, or failing that, at the monthly accounting exchange rate, as established by the European Commission and published on the website indicated below, applicable on the day when it issues the payment order.

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The expert makes any conversion between the euro and another currency at the monthly accounting exchange rate, established by the Commission and published on the website indicated below, applicable on the date of the invoice.

[http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/inforeuro/inforeuro\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm)

## 8. Costs of a transfer

The costs of the transfer are borne as follows:

- (a) the contracting authority bears the costs of dispatch charged by its bank;
- (b) the expert bears the costs of receipt charged by its bank;
- (c) the party causing repetition of the transfer bears the costs for repeated

## **ARTICLE 10 – OWNERSHIP AND USE OF RESULTS (INCLUDING INTELLECTUAL PROPERTY RIGHTS)**

1. The contracting authority acquires worldwide 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, as well as all technological solutions and information contained within these technological solutions, produced in performance of the Contract. The contracting authority may exploit them as stipulated in this Contract. The contracting authority 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 deemed to constitute an effective assignment of rights from the expert to the contracting authority.

2. The contracting authority must acquire ownership of each of the results produced as an outcome of this Contract which may be used, for the following purposes of:

- (a) storage of the original and copies made in accordance with this Contract;
- (b) archiving in line with the document management rules applicable to the contracting party.

3. The contracting authority 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 11 – PROCESSING OF PERSONAL DATA**

### **1. Processing of personal data by the contracting party**

Any personal data included in or relating to the contract, including its implementation, shall be processed in accordance with Regulation (EU) 2018/1725. Such data shall be processed solely for the

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purposes of the implementation, management and monitoring of the contract by the data controller. The data controller is the person signing this contract.

The expert has specific rights as a data subject under Chapter III (Articles 14-25) of Regulation (EU) 2018/1725, in particular the right to access, rectify or erase their personal data and the right to restrict or, where applicable, the right to object to processing or the right to data portability.

Should the expert or any other person whose personal data is processed in relation to this contract have any queries concerning the processing of its personal data, it shall address itself to the data controller. They may also address themselves to the Data Protection Officer of the data controller. They have the right to lodge a complaint at any time to the European Data Protection Supervisor.

Details concerning the processing of personal data are available in the data protection notice available at: <http://www.eurojust.europa.eu/procurement/Pages/procurement-policy-procedure.aspx#dataprotection>.

## **2. Processing of personal data by the expert**

The processing of personal data by the expert, if required by the contract, shall meet the requirements of Regulation (EU) 2018/1725 and be processed solely for the purposes set out by the controller.

The expert shall assist the controller for the fulfilment of the controller's obligation to respond to requests for exercising rights of person whose personal data is processed in relation to this contract as laid down in Chapter III (Articles 14-25) of Regulation (EU) 2018/1725. The expert shall inform without delay the controller about such requests.

The expert may act only on documented written instructions and under the supervision of the controller, in particular with regard to the purposes of the processing, the categories of data that may be processed, the recipients of the data and the means by which the data subject may exercise its rights.

The expert shall grant personnel access to the data to the extent strictly necessary for the implementation, management and monitoring of the contract. The expert must ensure that personnel authorised to process personal data has committed itself to confidentiality or is under appropriate statutory obligation of confidentiality as indicated in this contract.

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 to the nature, scope, context and purposes of processing, in order to ensure, in particular, as appropriate:

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- (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 its 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.

The expert shall notify relevant personal data breaches to the controller without undue delay and at the latest within 48 hours after the expert becomes aware of the breach. In such cases, the expert shall provide the controller with at least the following information:

- (a) nature of the personal data breach including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;
- (b) likely consequences of the breach;
- (c) measures taken or proposed to be taken to address the breach, including, where appropriate, measures to mitigate its possible adverse effects.

The expert shall immediately inform the data controller if, in its opinion, an instruction infringes Regulation (EU) 2018/1725, Regulation (EU) 2016/679, or other Union or Member State data protection provisions as referred to in the tender specifications.

The expert shall assist the controller for the fulfilment of its obligations pursuant to Article 33 to 41 under Regulation (EU) 2018/1725 to:

- (a) ensure compliance with its data protection obligations regarding the security of the processing, and the confidentiality of electronic communications and directories of users;
  - (b) notify a personal data breach to the European Data Protection Supervisor;
-



- (c) communicate a personal data breach without undue delay to the data subject, where applicable;
- (d) carry out data protection impact assessments and prior consultations as necessary.

The expert shall maintain a record of all data processing operations carried on behalf of the controller, transfers of personal data, security breaches, responses to requests for exercising rights of people whose personal data is processed and requests for access to personal data by third parties.

The contracting authority is subject to Protocol 7 of the Treaty on the Functioning of the European Union on the privileges and immunities of the European Union, particularly as regards the inviolability of archives (including the physical location of data and services as set out in Article I.9.2) and data security, which includes personal data held on behalf of the contracting authority in the premises of the expert.

The expert shall notify the contracting authority without delay of any legally binding request for disclosure of the personal data processed on behalf of the contracting authority made by any national public authority, including an authority from a third country. The expert may not give such access without the prior written authorisation of the contracting authority.

The duration of processing of personal data by the expert will not exceed the period of seven years starting from the payment of the balance. Upon expiry of this period, the expert shall, at the choice of the controller, return, without any undue delay in a commonly agreed format, all personal data processed on behalf of the controller and the copies thereof or shall effectively delete all personal data unless Union or national law requires a longer storage of personal data.

For this purposes of this article:

- (a) the subject matter and purpose of the processing of personal data by the expert is strictly restricted to the implementation of this contract.
  - (b) The localisation of and access to the personal data processed by the expert shall comply with the following :
    - i. the personal data shall only be processed within the territory of the European Union and the European Economic Area and will not leave that territory;
    - ii. the data shall only be held in data centres located with the territory of the European Union and the European Economic Area;
    - iii. no access shall be given to such data outside of the European Union and the European Economic Area;
    - iv. the expert may not change the location of data processing without the prior written authorisation of the contracting authority;
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v. any transfer of personal data under the contract to third countries or international organisations shall fully comply with the requirements laid down in Chapter V of Regulation (EU) 2018/1725 .

## **ARTICLE 12 – CHECKS, AUDITS AND INVESTIGATIONS**

1. The contracting party and the European Anti-Fraud Office may 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. This may be carried out either by OLAF’s own staff or by any outside body authorised to do so on its behalf.

It may do so throughout the Contract’s validity and up to five years after the last payment is made. The expert must provide — within the deadline requested — any information and data in addition to deliverables and reports already submitted.

The audit procedure is initiated on the date of receipt of the relevant letter sent by the contracting authority. Audits are carried out on a confidential basis.

The expert must allow access to sites and premises on which the tasks specified in this Contract are performed.

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

3. The expert must grant the contracting authority’s staff and outside personnel authorised by the contracting authority the appropriate right of access to all the information, including information in electronic format, needed to conduct such checks and audits. The expert must ensure that the information is readily available at the moment of the check or audit and, if so requested, that information is handed over in an appropriate format.

4. On the basis of the findings made during the audit, a provisional report is drawn up. The contracting authority or its authorised representative must send it to the expert, who has 30 days following the date of receipt to submit observations. The expert must receive the final report within 60 days following the expiry of that deadline to submit observations.

4. Findings in checks, audits or investigations may lead to the reduction or rejection of fees, rejection of claims for allowances and expenses in accordance with Articles 14 and 15, or recovery of undue amounts in accordance with Article 16.

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

5. In accordance with 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 and Regulation (EU, Euratom) No 883/2013 of the European Parliament and the Council of 11 September 2013 concerning investigation conducted by the European Anti-Fraud Office, the European Anti-Fraud Office may 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 Union. Findings arising from an investigation may lead to criminal prosecution under national law.

The investigations may be carried out at any moment during the provision of the services and up to five years starting from the payment of the balance.

6. The Court of Auditors and the European Public Prosecutor's Office established by Council Regulation (EU) 2017/1939 ('the EPPO') have the same rights as the contracting authority, particularly right of access, for the purpose of checks, audits and investigations.

## **CHAPTER 4- EFFECTS OF BREACHING CONTRACTUAL OBLIGATIONS**

### **ARTICLE 13- SUSPENSION OF THE PAYMENT TIME-LIMIT**

1. The contracting party may at any point suspend the payment time limit if a request for payment cannot be processed because it does not comply with the Contract's provisions.
2. The contracting party must notify the expert, as soon as possible, of the suspension and the reasons for it.
3. The suspension takes effect on the day notification is sent by the contracting party.
4. If the condition for suspending the payment time limit as referred to in paragraph 1 is 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 contracting party if the suspension will continue.

5. If the payment time limit has been suspended due to the non-compliance of the reports or deliverables in accordance with Article 2 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 as referred to in Article 16.

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## **ARTICLE 14 – REDUCTION OF FEES OR REJECTION OF FEES, CLAIMS AND ALLOWANCES AND EXPENSES**

1. The contracting party may reject:

- (a) (parts of) the fees if the expert does not fulfil the tasks set out in Article 2;
- (b) claims for allowances or expenses if they do not fulfil the conditions set out in Article 4.

2. The contracting party may reduce the fee if the expert is in breach of any of its other obligations under the Contract (including the obligations set out in the Code of Conduct) or if it fails to provide the service in accordance with the expected quality levels specified in the tender specifications ('low quality delivery').

3. The contracting party must formally notify the expert of its intention, include the reasons why, and invite him/her to submit any observations within 30 days of receiving notification. Failing that, the decision becomes enforceable the day after the time limit for submitting observations has elapsed.

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

4. A reduction in the fee may be imposed together with liquidated damages.

## **ARTICLE 15 - RECOVERY OF UNDUE AMOUNTS**

1. The contracting party may recover any amount that was paid but was not due under the Contract.

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

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

3. The expert must repay the amount specified in the debit note to the contracting party.

4. If the expert does not repay the requested amount by the date specified in the debit note, late-payment interest will be added to the amount to be recovered.

The interest rate used will be the same as the rate applied by the European Central Bank (ECB) for its main refinancing operations in euros ('reference rate'), plus three and a half points. The reference rate

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is the rate in force on the first day of the month in which the payment deadline specified in the debit note expires, as published in the C series of the *Official Journal of the European Union*.

Interest on late payments will cover the period starting on the day after the due date for payment and ending on the date when the contracting authority receives the full amount owed.

Any partial payment is first entered against charges and interest on late payment and then against the principal amount.

When the calculated interest is EUR 200 or less, it must be paid to the expert (or leader in the case of a joint tender) only if it requests it within two months of receiving late payment.

5. If the expert does not repay the requested amount by the date specified in the debit note, the contracting party may recover the amounts due by offsetting them against any amounts owed to the expert by the EU institutions or an executive agency (from the EU or Euratom) budget without the expert's consent or by taking legal action.

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

## **ARTICLE 16 - TERMINATION OF THE CONTRACT**

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

(a) is not performing its tasks or is performing them poorly; or

(b) has committed substantial errors, irregularities or fraud, or is in serious breach of its obligations under the selection procedure or 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, include the reasons why and invite him/her to submit any observations within 30 days of receiving notification.

If the contracting party does not accept these observations, it will formally notify confirmation of 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 its obligations in carrying out the work required as referred to in Article 5.

5. The expert must formally notify the contracting party and include the reasons why by giving 15 calendar days' notice.

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6. The termination will take effect on the date the contracting party will formally notify confirmation of the termination.

7. Only fees for days actually worked and expenses for travel actually carried out before termination may be paid subject to Article 14. The expert must submit the payment request for the tasks already executed on the date of termination within 30 days from the date of termination.

8. 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 17 - LIABILITY FOR DAMAGES**

1. 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.

2. If required by the relevant applicable legislation, the expert must take out an insurance policy against risks and damage or loss relating to the performance of the contract. It must also take out supplementary insurance as reasonably required by standard practice in the industry. Upon request, the expert must provide evidence of insurance coverage to the contracting authority.

3. The expert is liable for any loss or damage caused to the contracting authority during or as a consequence of performance of the contract but only up to an amount not exceeding three times the total amount of the contract. However, if the damage or loss is caused by the gross negligence or wilful misconduct of the expert, as well as in the case of an action brought against the contracting authority by a third party for breach of its intellectual property rights, the expert is liable for the whole amount of the damage or loss.

4. If a third party brings any action against the contracting authority in connection with the performance of the contract, including any action for alleged breach of intellectual property rights, the expert must assist the contracting authority in the legal proceedings, including by intervening in support of the contracting authority upon request. If the contracting authority's liability towards the third party is established and that such liability is caused by the expert during or as a consequence of the performance of the contract, paragraph 3 applies.

If the contracting authority's liability towards the third party is established and that such liability is caused by the expert during or as a consequence of the performance of the contract, Article II.6.3 applies.

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## **ARTICLE 18 - FORCE MAJEURE**

1. 'Force majeure' means any situation or event that:

- prevents either party from fulfilling its obligations under the Contract;
- was unforeseeable, exceptional and beyond the parties' control;
- was not due to error or negligence on its part and
- proves to be inevitable in spite of exercising due diligence.

Defaults of service, labour disputes, strikes and financial difficulties may not be invoked as force majeure, unless they stem directly from a relevant case of force majeure

2. A force majeure 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 will not be held in breach of its contractual obligations if the force majeure has prevented it from fulfilling them. If the expert is unable to fulfil its contractual obligations owing to force majeure, it has the right to remuneration only for the services actually provided.

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

## **CHAPTER 5 - FINAL PROVISIONS**

### **ARTICLE 19 - COMMUNICATION BETWEEN THE PARTIES**

1. Communication under the Contract must:

- be made in writing (in electronic form via e-mail is as well accepted);
- bear the Contract's number;
- be made using the relevant communication details set out in paragraph 2.

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

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

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

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2. Communications shall be sent to the following addresses:

**For the contracting authority (technical matters):**

Correspondence (other than invoices) shall be sent to:

Eurojust  
Attn: Department and function, name  
P.O. Box 16183  
2500 BD, The Hague  
The Netherlands  
E-mail: complete  
Functional e-mail: complete  
Tel: complete

**Administrative matters:**

Invoices shall be sent via e-Prior<sup>6</sup> (or paper format if agreed by Eurojust). In case of unavailability of the system paper invoices may be sent to:

Eurojust  
Attn: Budget, Finance & Planning Unit  
P.O. Box 16183  
2500 BD , The Hague  
The Netherlands

**Expert**

Full name  
Function  
Full official address  
E-mail: complete  
Functional email: complete  
Tel: complete

Parties shall inform each other in writing of any changes in the communication details.

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<sup>6</sup> Unless agreed otherwise with Eurojust.



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

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

5. Mail sent using the postal services is deemed to have been received by the contracting party on the date on which it is registered by the department responsible.

## **ARTICLE 20 – 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.

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

3. The party requesting an amendment must formally notify the other party the requested amendment together with the reasons why the amendment is necessary.

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

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 21 APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

1. The contract shall be governed by Union law, complemented, where necessary, by the law of the Kingdom of the Netherlands.

2. The courts of The Hague, Kingdom of the Netherlands have exclusive jurisdiction over any dispute regarding the interpretation, application or validity of the contract.

## **ARTICLE 22 – ENTRY INTO FORCE**

1. The contract enters into force [on the date on which the last party signs it] [on [insert date] if both parties have already signed it].

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

## **SIGNATURES**

The expert,

**insert full name**

Signature(s):

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Done at \_\_\_\_\_, on \_\_\_\_\_

For the contracting authority,

**forename, surname of the authorising  
officer,**

**function of the authorising officer**

Signature:

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Done at The Hague, on \_\_\_\_\_

In duplicate in English.

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## **ANNEX I - CODE OF CONDUCT FOR EXPERTS**

### **ARTICLE 1 - PERFORMANCE OF THE CONTRACT**

1. The expert works independently, in a personal capacity and not on behalf of any organisation.
2. The expert must:
  - (a) carry out its work in a confidential and fair way
  - (b) assist the contracting party or relevant service to the best of its 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.
3. The expert may not delegate the work to another person or be replaced by another person.

### **ARTICLE 2 - OBLIGATIONS OF IMPARTIALITY**

1. The expert must perform its work **impartially**. To this end, the expert is required to:
    - (a) take all the necessary measures to prevent any situation of conflict of interest
    - (b) inform the contracting party or relevant service of any conflicts of interest arising in the course of its work
    - (c) confirm there is no conflict of interest for the work s/he is carrying out by signing a declaration (Annex 3).
  2. **Definition of the conflict of interest:** a conflict of interest exists if an expert:

a situation where the impartial and objective performance of the contract by the expert is compromised for reasons involving family, emotional life, political or national affinity, economic interest, any other direct or indirect personal interest, or any other shared interest with the contracting authority or any third party related to the subject matter of the contract;

    - (a) has any vested interests in relation to the questions upon which s/he is asked to give advice
    - (b) or its organisation stands to benefit directly or indirectly, or be disadvantaged, as a direct result of the work carried out
    - (c) is in any other situation that compromises its ability to carry out its work impartially.
-

The contracting party or relevant service will decide whether a conflict of interest exists, taking account of the objective circumstances, available information and related risks when an expert is in any other situation that could cast doubt on its ability to carry out its work, or that could reasonably appear to do so in the eyes of an external third party.

### 3. Consequences of a situation of conflict of interest:

(a) If a conflict of interest is reported by the expert or established by the contracting party or relevant service, the expert must not carry out the work;

(b) If a conflict becomes apparent in the course of its work, the expert must inform immediately the contracting party or relevant service. If a conflict is confirmed, the expert must stop carrying out its work. If necessary, the expert will be replaced.

## ARTICLE 3 - OBLIGATIONS OF CONFIDENTIALITY

1. The contracting party and the expert 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 expert undertakes to observe strict **confidentiality** in relation to its work.

To this end, the expert must not use or disclose, directly or indirectly confidential information or documents for any purpose other than fulfilling its obligations under the Contract without prior written approval of the contracting party.

In particular, the expert:

i. must not discuss its work with others, including other experts or contracting party or relevant service staff not directly involved in its work.

ii. must not disclose, directly or indirectly:

- any detail of its work and its outcomes for any purpose other than fulfilling its obligations under the Contract without prior written approval of the contracting party

- its advice to the contracting party or relevant service on its work to any other person (including colleagues, students, etc.)

3. If material/documents/reports/deliverables are made available either on paper or electronically to the expert who then works from its own or other suitable premises, he/she 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 its work as instructed.

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4. If its work takes place in premises controlled by the contracting party or relevant service, the expert:

- (a) must not remove from the premises any copies or notes, 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 its work as instructed.

5. If the expert seeks further information (for example through the internet, specialised databases, etc.) to complete its work, he/she:

- (a) must respect the overall rules for confidentiality for obtaining such information
- (b) must not contact third parties without prior written approval of the contracting party.

6. These confidentiality obligations are binding on:

- (a) the contracting party
  - (b) the expert during the performance of the Contract and for five years starting from the date of the last payment made 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.
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## **ANNEX II- TECHNICAL SPECIFICATIONS**





## ANNEX III - DECLARATION OF ABSENCE OF CONFLICT OF INTERESTS AND OF CONFIDENTIALITY

### I. Conflict of interests

I, the undersigned [FAMILY NAME, first name], having been appointed as an expert for the abovementioned call, declare that I am aware of Article 61 of the Financial Regulation, which states that:

*"1. Financial actors and other persons involved in budget implementation and management, including acts preparatory thereto, audit or control shall not take any action which may bring its own interests into conflict with those of the Union.*

*Where such a risk exists, the person in question shall refrain from such action and shall refer the matter to the authorising officer by delegation who shall confirm in writing whether a conflict of interests exists. The person in question shall also inform his or her hierarchical superior. Where a conflict of interests is found to exist, the person in question shall cease all activities in the matter. The authorising officer by delegation shall personally take any further appropriate action.*

*2. For the purposes of paragraph 1, a conflict of interests exists where the impartial and objective exercise of the functions of a financial actor or other person, as referred to in paragraph 1, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with a recipient."*

I hereby declare that I do not fall under any of the following circumstances in which a conflict of interests might exist. I confirm that, if I discover before or during the performance of my tasks that a conflict of interests exists, I will declare it immediately to the contracting party.

#### 1. Disqualifying conflict of interests:

- Direct benefit in case of advice on development of a new policy;
  - Involvement in the preparation of the [proposal] [tender];
  - Direct benefit in case of acceptance of the [proposal] [tender];
  - Close family relationship with any person representing a participating organisation in the [proposal] [tender];
  - Director, trustee or partner of a participating organisation;
  - Current employment by a participating organisation;
  - Current involvement in a contract or collaboration with a participating organisation;
  - Any other situation that compromises my ability to evaluate the [proposal] [tender] impartially.
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## 2. Potential conflict of interests:

- Employment by one of the participating organisations within the previous three years;
- Involvement in a contract or collaboration with a participating organisation within the previous three years;
- Any other situation that could cast doubt on my ability to evaluate the [proposal] [tender] impartially, or that could reasonably appear to do so in the eyes of a third party (*Ex. Past or current personal relationships, nationality, political affinity, etc.*).

I hereby declare that I fall under one or more of the above circumstances (please specify which and explain)\*:

*\*Ex. In case of employment by a structure including different departments or institutes, please specify the degree of autonomy between them.*

I hereby declare on my honour that the disclosed information is true and complete to the best of my knowledge.

## II. Confidentiality and personal data protection

I confirm that I have read, understood and accepted the code of conduct for experts established in Annex 1 to the contract sent by the contracting party.

I also confirm that I will keep all matters entrusted to me confidential and will process the personal data I receive only for the purposes of the performance of the present contract. If unnecessary or excessive personal data are contained in the documents submitted during the implementation of the contract I will not process them further or take them into account for the implementation of the contract. I will not communicate outside [the panel] [the expert's group] any confidential information that is revealed to me or that I have discovered. I will not make any adverse use of information given to me.

Expert: [insert full name]

Date:

Signature:



## **ANNEX IV -INSTRUCTIONS, TERMS AND CONDITIONS FOR EXPERTS PERFORMING SERVICES AT EUROJUST PREMISES**

### **Article 1. General conditions**

1.1. These instructions comprise part of the contractual agreement between the contracting authority, on the one hand, and the expert on the other hand.

1.2. Before performing services, the expert shall ensure that:

- a) it sends to the contracting authority, prior engagement and start of any assignment, a written notification that shall include their name, and be accompanied by a photocopy of their valid photographic identity document (i.e. passport or national ID) and a statement of good conduct (in original) not older than three months;

1.3. The expert shall not be permitted to receive/invite visitors at the premises of the contracting authority.

1.4. A breach of these instructions may lead to the immediate termination of the contract with no resulting entitlement to compensation for the expert.

### **Article 2. Security requirements**

2.1. The expert shall follow the instructions and guidelines of the contracting authority's Security.

2.2. Until such time that the expert has received Eurojust contractor badge, they will be subject to physical security screening.

2.3. Eurojust reserves the right to security screen and/or retain any item brought by the expert at the contracting authority's premises. Any retained item will be returned upon leaving the premises.

2.4. Non-compliance with this Annex may result in denial of access to contracting authority's premises.

### **Article 3. Safety measures**

3.1. The expert must comply with relevant Dutch safety regulations and when requested, shall provide all relevant documents.

3.2. If deemed necessary by the contracting authority, the expert must attend safety briefing organised by the contacting authority.

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3.3. Eurojust reserves the right to introduce additional safety measures for the expert at any point during the execution of the contract.

#### **Article 4. Confidentiality measures**

4.1. The expert involved in organizing or performing the services rendered under this contract, shall be barred from divulging to third parties any information acquired during the course of their tasks.

4.2. Information about services rendered and the working location shall not be collected recorder or distributed by the expert without prior authorisation of the contracting authority.

4.3. Audio and video recording are strictly forbidden within the contracting authority's premises, without its prior approval. Non-compliance may result in the expert being expelled from the contracting authority's premises.

4.4. The expert shall be liable for all damage suffered by the contracting authority due to a breach of the confidentiality requirements or the disappearance/loss of documents issued to it as referred to above.

#### **Article 5. Access Control**

5.1. Access to the building and premises of the contracting authority shall be granted only to the expert who is involved in performing the services of the contract, who were reported in accordance with Article 1.3 of these instructions and whose identity has been confirmed by means of an official valid photographic identity document (i.e. passport or national ID). Failure to present such identification may result in the denial of access to the contracting authority's premises. Photocopies will not be accepted.

5.2. The expert visiting the Eurojust premises (i.e. not being provided with a contractor badge) will submit to Eurojust Security their identity document and receive visitor badge. The identity document will be retained until the visitor badge is returned. The visitor badge must be worn visibly at all times. The loss of the visitor badge must be reported immediately to Eurojust Security.

5.3. The arrival and departure times of all experts involved in organizing or performing the services rendered will be registered.

#### **Article 6. Dangerous Substances**

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6.1. The use of dangerous substances, explosive gases, or substances toxic to humans and animals that are needed for the performance of the services rendered shall be permitted only after the contracting authority has received written notification of such action and only if it is compliant with relevant legal regulations.

6.2. The contracting authority reserves the right to issue further instructions in such cases.

6.3. Removal of non-usable and/or contaminated materials, such as oil, cooling substances, filters, packaging etc., shall take place according to environmental friendly and legally compliant methods. These materials shall be disposed of or destroyed at dump sites in a legally compliant manner or by waste processing companies approved by the Dutch Government. The contracting parties shall submit a disposal certificate on request of the Facility Management Sector of contracting authority.

6.4. Open fires and welding activities are strictly forbidden unless approved by the contracting authority, carried out in accordance with the contracting authority's fire and safety regulations and unless the contracting authority has taken special safety measures (such as provided fire extinguishing materials).

## **Article 7. Unforeseen Circumstances**

7.1. Should unforeseen circumstances arise, depending on their nature, appropriate decisions will be taken by the relevant staff of the contracting authority. The expert is obliged to follow such decisions and any instructions communicated to them in such circumstances.

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