

Expert contract number: [insert number] [insert name]



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR ENERGY

Directorate B
Internal Energy Market

EXPERT CONTRACT NUMBER — [to be completed]

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

on the one part,

the European Union ('the EU), represented by the European Commission ('the Commission' or 'the contracting party '),

represented for the purposes of signing this Contract by

and

on the other part,

[Family name]

[First name]

[Expert candidature number]

[Official address]

[Postcode]

[P.O. Box]

[Town/city]

[Country]

[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 and the Terms of Reference set out in Annex 2.

The Contract is composed of:

Terms and conditions

Annex 1: Code of Conduct

Annex 2: Terms of Reference

Annex 3: Legal Entity form

Annex 4: Bank Account form

Annex 5: Cost claim form

Annex 6: Commission Decision

Annex 7: Declaration of no conflict of interest and of confidentiality

TERMS AND CONDITIONS

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CHAPTER 1 GENERAL

1.1 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 European Energy Programme for Recovery (EEPR)

CHAPTER 2 WORK TO BE PROVIDED

2.1 ARTICLE 2 — TASKS TO BE ACCOMPLISHED

The expert must assist the contracting party in monitoring the implementation of actions under the EEPR¹.

This consists of assessing the state and progress of action implementation and constitutes review [number].

The expert's work must be based on the work description(s) and periodic reports of:

grant Commission decision(s):

- [number]
- [number]
- [number]
- [number]

Depending on the action's complexity and progress, the following tasks shall be executed, as specified in the Notice of Call for expressions of interest²:

The remote work to prepare the on-site technical audits; It may include reading and analysis of the grant decision(s) and other background information and deliverables, drafting the report(s)). The expert may also be required to attend intermediate and periodic project meeting(s) and ad-hoc review meeting(s).

The contracting party will require the expert to carry out on-site technical audits to verify whether critical milestones and the objectives of the Action are being met, whether the environmental and procurement procedures were correctly carried out, identify any deviations and assist in obtaining detailed explanations from the beneficiaries of the grant decision.

The expert must send the contracting party a technical report for each grant decision, including the confirmation whether the action has been properly implemented in a cost efficient manner and the expert's recommendations.

¹ Regulation (EC) No 663/2009 of the European Parliament and of the Council of 13 July 2009 establishing a programme to aid economic recovery by granting Community financial assistance to projects in the field of energy as amended by Regulation (EU) No 1233/2010

² 2015/S 177-319870 *Point 7*

2.2 ARTICLE 3 — WORKING ARRANGEMENTS

1. *The expert's work* cannot exceed [number] working day(s)]. The work end date will be [insert date].

This maximum total number of days includes the 'number of working days' set out below.

The expert may not under any circumstances start work before the date on which this Contract enters into force (see Article 24).

2. The **indicative planning** and **number of working days** for accomplishing the tasks are as follows:
 - X Number of working day(s) for remote work (reading and analysis of the grant agreement(s) and project(s), and related background information and deliverables, including writing the report.
 - X Number working day(s) for attending project meeting(s) [on central premises] [taking place at [insert address]] between [insert starting date] and [end date].
 - X Number working day(s) for attending review meeting(s) [on central premises] [taking place at [insert address]] between [insert starting date] and [end date].
 - X Number of working day(s) for attending technical audit meeting(s) [on central premises] [taking place at [insert address]] between [insert starting date] and [end date].]

The expert must submit the report(s) [on insert date] [X days from the start of the work] at the latest].

CHAPTER 3 FEES, ALLOWANCES AND REIMBURSEMENT OF EXPENSES

3.1 ARTICLE 4 — FEES

1. The expert is entitled to a **fee** of **EUR 450 for each full day** actually worked in accordance with Article 3(2) and Annex 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 (see Article 3(2)) and Annex 2.

3.2 ARTICLE 5 — ALLOWANCES AND REIMBURSEMENT OF EXPENSES

1. In addition to the fees specified in Article 4, the contracting party will also reimburse **travel expenses** directly connected with the work specified in the Contract, in accordance with Commission Decision C(2007) 5858³.

The expert is entitled to the reimbursement of their travel expenses **to and from the point of departure and to and from the place of the meeting**.

Unless otherwise agreed by the contracting party, the '**point of departure**' is the expert's official address as stated in the Contract.

³ Commission Decision C(2007)5858 of 5 December 2007 laying down the 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/employment_social/egf/docs/reglementation_experts_2008_enpdf.

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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 contracting party has agreed to a different point of departure, it will reimburse the travel expenses from this point of departure.

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.

2. In addition to the fees specified in Article 4, the contracting party will pay **daily allowances** in accordance with Commission Decision C(2007) 5858.
3. In addition to the fees specified in Article 4, the contracting party will pay **accommodation allowances** in accordance with Commission Decision C(2007) 5858.
4. **Operating costs for participating in a videoconference** will be reimbursed if the contracting party has agreed to the expert's participation before the videoconference takes place.
5. **Expenses** that an invited expert has incurred as a **result of special instructions** received in writing may be reimbursed in justified cases, on presentation of supporting documents.
6. **Other expenses** will not be reimbursed, in particular:
 - (a) costs of purchasing equipment or other material needed by the expert to accomplish their 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.

CHAPTER 4 RIGHTS AND OBLIGATIONS OF THE PARTIES

4.1 ARTICLE 6 — 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);
- 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.

4.2 ARTICLE 7 — 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 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.

4.3 ARTICLE 8 — REQUEST FOR PAYMENT

1. Experts must make a request for payment to obtain their fees, allowances, and reimbursement of expenses.

To do this, experts must submit the request(s) for payment provided in annex 5, and include all the required copies of original supporting documents. The request must be sent **on paper** to the financial Unit:

Mr. J-C Merciol
European Commission
MOVE/ENER SRD3 – Financial Management
DM 24 01/60
1049 Brussels

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 3(2)), or after the last day of the meeting or remote evaluation session, whichever comes latest.

For experts who only carry out remote evaluations, request(s) for payment must be submitted only once, within 30 days after the last report is submitted.

3. Payments will be executed in the bank account as provided by the expert at the time he returns one copy of the original contract signed to EC, provided that the documents required, Legal entity and Bank Account were provided in full.

Should this bank account will not any longer be valid, he shall notify the financial contact as indicated under Article 21.2 before the submission of request for payment with a duly complete new bank account form. Payments will be suspended until this new bank account is validated.

4.4 ARTICLE 9 — PAYMENTS

1. The contracting party will make payments within 30 calendar days of receiving the completed payment request(s) unless Article 13 applies.
2. Payments are subject to the contracting party'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.
3. Payments will be made in euros.

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4. Payments will be made to the bank account specified by the expert in Annex 4.
5. The contracting party's payments are deemed to be carried out on the date on which its account is debited.
6. Conversions between the euro and other currencies will be made according to the monthly accounting rates established by the Commission and published on its website, applicable on the day on which the contracting party draws up the payment order.

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

1. The EU 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 EU 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 EU.
2. The EU 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 party.

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

4.6 ARTICLE 11 — 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 45/2001⁴.

Such data must be processed by the Director General of DG [insert DG] through the Head of Unit [insert unit] ('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.

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.

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.

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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.

4.7 ARTICLE 12 — 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 their obligations.

It may do so throughout the Contract's validity and **up to two 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 expert must allow access to sites and premises on which the tasks specified in this Contract are performed.

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2. Under Regulation No 2185/96⁵ and Regulation No 883/2013⁶ (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 966/2012⁷, 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.

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

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

CHAPTER 5 EFFECTS OF BREACHING CONTRACTUAL OBLIGATIONS

5.1 ARTICLE 13 — SUSPENSION OF THE PAYMENT DEADLINE

1. The contracting party may at any point suspend the payment deadline (see Article 9(1)), if a request for payment cannot be processed because it does not comply with the Contract's provisions.
2. The contracting party must formally notify the expert of the suspension and the reasons for it.
3. The suspension takes effect the day notification is sent by the contracting party.
4. If the condition for suspending the payment deadline 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 deadline has been suspended due to the non-compliance of the reports or deliverables (see Article 3) and the revised report or deliverables or payment request is not submitted or was submitted but is also rejected, the contracting party may also terminate the Contract (see Article 18).

⁵ 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).

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).

⁷ 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).

5.2 ARTICLE 14 — REDUCTION OR REJECTION OF FEES

1. The contracting party may reject (parts of) the fees if they do not fulfil the conditions set out in Article 4.

The contracting party may reduce the fee if the expert is in breach of any of their other obligations under the Contract (including the obligations set out in 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 rejection or reduction.

5.3 ARTICLE 15 — REJECTION OF CLAIMS FOR ALLOWANCES AND EXPENSES

1. The contracting party may reject claims for allowances or expenses if they do not fulfil the conditions set out in Article 5.
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 rejection.

5.4 ARTICLE 16 — 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, 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 confirm recovery by formally notifying a 'debit note' that specifies the payment terms and date.

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 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*.

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.

5.5 ARTICLE 17 — 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 6(2)).
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 22), unless it has been terminated (see Article 18).
5. Expenses incurred while the contract is suspended are not eligible for reimbursement.

5.6 ARTICLE 18 — TERMINATION OF THE CONTRACT

1. The contracting party may at any moment terminate the Contract if the expert:
 - (a) is not performing the tasks or is performing them poorly; or
 - (b) has committed substantial errors, irregularities or fraud, or is in serious breach of their 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 their obligations in carrying out the work required (see Article 6(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. Only fees for days actually worked and expenses for travel actually carried out before termination may be paid. 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.

5.7 ARTICLE 19 — 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.

5.8 ARTICLE 20 — FORCE MAJEURE

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

- prevents either party from fulfilling their obligations under the Contract;
- was unforeseeable, exceptional and beyond the parties' control;
- was not due to error or negligence on their part (or on the part of third parties involved in implementing the action (see Article 6)); 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 a force majeure will not be held in breach of its contractual obligations if the force majeure has prevented it from fulfilling them.

CHAPTER 6 FINAL PROVISIONS

6.1 ARTICLE 21 — COMMUNICATION BETWEEN THE PARTIES

1. Communication under the Contract (e.g. information, requests, submissions, formal notifications, etc.) must:

- be made in writing; and
- bear the Contract's number;

2. **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.

If deterred by the non-deliverability of emails to all addresses indicated below, the sending party cannot be considered in breach of its obligation to send a communication within a specific deadline.

Communications referring to **technical matters** to the Commission must be sent to the following address:

- email addresses of the desk officer.

Communications referring to **financial or administrative matters** to the Commission must be sent to the following address:

- jean-claude.merciol@ec. Europa.eu

Communications to the expert must be sent to the e-mail address as specified in the preamble of this Contract.

6.2 ARTICLE 22 — 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 (see Article 21), together with the reasons why.

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

6.3 ARTICLE 23 — 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.

6.4 ARTICLE 24 — ENTRY INTO FORCE

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

Expert contract number: [insert number] [insert name]

Done in two copies in English

SIGNATURES

Expert:

[Expert's name]

[signature]

Date:

For the contracting party:

[Director's name]

[signature]

Date



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR ENERGY
Directorate B

ANNEX 1 - CODE OF CONDUCT FOR MONITORS

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) monitor in a confidential and fair way the implementation of actions according to the procedures of the concerned programme(s)
 - (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.
3. The expert may not delegate another person to carry out the work or be replaced by any other person.
4. If a legal entity participating in an action approaches the expert during the monitoring of this action, 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
 - (b) confirm there is no conflict of interest for each action s/he is monitoring by signing a declaration of no conflict of interest as per Annex 7 of the expert contract.
2. **Definition of the conflict of interest:** for a given action, a conflict of interest exists if an expert:
 - (a) was involved in the preparation of the action
 - (b) or their organisation stands to benefit directly or indirectly, or be disadvantaged,

as a direct result of the monitoring of the action

- (c) has a close family or personal relationship with any person representing a legal entity participating in the action
- (d) is a director, trustee or partner or subcontractor or third party or is in any way involved in the management of a legal entity participating in the action
- (e) is employed or contracted by one of the participating legal entities⁸ or any named subcontractors.

In the following situations 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:

- i. was employed by one of the participating legal entities in the action 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 a participating 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 monitor the action impartially, 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 monitor the action
 - (b) If a conflict becomes apparent during the monitoring of the action, the expert must inform immediately the contracting party or relevant service. If a conflict is confirmed, the expert must stop monitoring the action. If necessary, the expert will be replaced
4. If it is revealed during the monitoring of the action that an expert has knowingly concealed a conflict of interest, the expert will be immediately excluded, and sanctions will apply (see Articles 14, 15, 16 and 18 of the Contract or in the Financial Regulation and its implementing rules). Any monitoring of the action already carried out by the expert will be declared null.

⁸ 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. In this case, the expert must not take part in any detailed panel discussion (or electronic forum) of the proposal involving the legal entity concerned or in any hearings concerning the proposal.

In exceptional duly justified cases, experts in the circumstances described above may also participate in the consensus group for the proposal in question, provided valid reasons are given. The contracting party or relevant service will inform the other experts in the group of the affiliation of the expert concerned.

ARTICLE 3 - OBLIGATIONS OF CONFIDENTIALITY

1. The contracting party or relevant service the expert must treat confidentially⁹ 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 action with others, including other experts or contracting party or relevant service staff not directly involved in the monitoring of the action
 - ii. must not disclose:
 - any detail of the monitoring of the action and its outcomes 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 the monitoring of the action to participating legal entity or to any other person (including colleagues, students, etc.)
 - iii. must not communicate with any participating legal entity on any action after the end of the monitoring of the action.
3. If the documents/reports/deliverables of an action are made available either on paper or electronically to the expert who then works from their 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 the monitoring of the action as instructed.
 4. If the monitoring takes place in premises controlled by the contracting party or relevant service, the expert:
 - (a) must not remove from the premises the documents/reports/deliverables of an action, 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 upon completing the monitoring of the action, as instructed.

⁹ 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))).

5. If the expert seeks further information (for example through the internet, specialised databases, etc.) to complete their monitoring of the action, 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 (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 Community¹⁰)
 - (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.

¹⁰ OJ 45, 14.6.1962, p. 1385.

Expert contract number: [insert number] [insert name]



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR ENERGY
Directorate C

ANNEX 2 - TERMS OF REFERENCE

- 1. *[Name of the experts group: [insert name]]***
- 2. Context and background information**
- 3. Purpose, objectives and scope**
- 4. Working approach and methodology**
- 5. *[Distribution of the work among the experts]***
- 6. Meetings, reporting and deadlines**
- 7. Expert(s) profile(s)**
- 8. Expert(s) short biographies**