

Contract
for
Research and Development Services

concluded between

the
Österreichische Forschungsförderungsgesellschaft mbH
(Austrian Research Promotion Agency, FFG)

as Principal

and

Name

Commercial Register Number

Country

and

Name

Commercial Register Number

Country

...

as Contractor.

Präambel

This Contract for Research and Development Services relates to a Call for Proposals entitled CEDR Transnational Road Research Programme Call 2017 launched by the Austrian Research Promotion Agency (FFG, Österreichische Forschungsförderungsgesellschaft mbH) on behalf of the Conference of European Directors of Roads (CEDR). CEDR is an organisation which brings together 27 road directors of European countries. The aim of CEDR is to contribute to the development of road engineering as part of an integrated transport system under the social, economical and environmental aspects of sustainability and to promote co-operation between the national road administrations

A general principle of the CEDR Transnational Road Research Programme is that all research outputs are widely disseminated and implemented. Through a Collaboration Agreement, the funding Parties of CEDR agree that research outputs will be made available to all CEDR members for use in their national standards, codes of practice and specifications as appropriate.

§1 Contract documents, contracting parties

1.1 This Contract is formed by the following documents in the following order:

- the present Contract
- the Guide for Applicants, dated November 2017.
- the submission dated

All annexes to the present Contract shall constitute an integral part hereof.

1.2 In the event of contradictions between the contract documents, the priority of the documents shall be in accordance with the above sequence.

1.3 In the event of contradictions between the contract documents, the Contractor shall immediately notify the Principal thereof in writing.

1.4 The present Contract for Research and Development Services (R&D Services), including the contract documents mentioned herein, contains the entire agreement between the contracting parties; there are no oral collateral agreements.

1.5 The Contractor confirms that it is fully aware of and accepts all the contract documents.

1.6 The Contractor shall name a contact person who has to be provided with the power of attorney. The Contractor shall also designate a representative of the contact person for cases of non-availability (equally provided with full and unrestrictable power of attorney).

1.7 If the Contractor is a consortium, all the members of the consortium shall be jointly liable to the Principal. If one member of the consortium drops out, the Contract with the remaining members of the consortium shall continue to remain valid for the services yet to be rendered; however, the Principal may terminate this Contract prematurely according to § 12.

§ 2 Scope of Services

2.1 The object of this Contract for R&D Services contract is to render the service “.....”. The Contractor undertakes to fulfil the following services in accordance with the Tender.

Project number:

eCall number:

Programme:

Call:

2.2 The following specifications have been defined by the Evaluation Committee:

- specifications

2.3 Subcontractors that have not been disclosed in the Tender may only be used with the consent of the Principal. In any case, the subcontractor in question has to possess the necessary qualifications to fulfil the tasks assigned to it.

2.4 In performing the Contract, the Contractor shall exercise the diligence required for carrying out the development work. The Contractor shall be deemed to comply with these obligations if it uses its best efforts to achieve the best results possible by using the latest technology and scientific findings and by exploiting its own knowledge and experience.

2.5 Contractor's general duties: The Contractor shall

- in the performance of the contract, apply the degree of care required for the development work. The Contractor shall only have satisfied these obligations if he makes every effort to achieve the best possible result, making use of the latest state of science and technology and applying his own knowledge and experience.
- at his own expense procure or ensure all official authorisations and third-party consent needed for the execution of his work, and shall indemnify and hold the Principal harmless in this respect.
- as soon as any circumstances become apparent to him that might endanger the contractual provision of the agreed services, notify the Principal without delay in writing of such circumstances and any measures to be considered by him; by commencing the work, the Contractor confirms his approval of the documentation provided by the Principal.
- provide services not expressly mentioned in the contract to the extent that such are necessary for the contractual performance and functionality of the subject matter according to the conditions laid down in the contract and shall not charge a separate or additional fee for such.
- if he, in the course of the performance of the contract, employs labour or concludes contracts for work and services, act as principal or purchaser of the work and conclude employment contracts or contracts for work and services in his own name and for his own account,
- before concluding subcontracts for work and services for specialist activities within the contract (§ 2) with enterprises not previously mentioned in the tender, obtain the Principal's prior written consent. The Contractor shall be liable for the failings of all persons he uses for the performance of his obligations to the same extent as for his own failings.

- comply with the following employment and social law provisions arising from International Labour Organisation Agreements Nos. 29, 87, 94, 95, 98, 100, 105, 111 and 138, 182 and 183, Federal Gazette No. 228/1950, No. 20/1952, No. 39/1954, No. 81/1958, No. 86/1961, No. 111/1973, Federal Gazette III No. 200/2001, Federal Gazette III No. 41/2002 and Federal Gazette III No. 105/2004,
- if the quotation is prepared and the services provided in Austria, comply with the employment and social law provisions in force in Austria. These provisions are made available for inspection by the relevant competent representative bodies for principals and contractors.
- dispose of the claim under the contract for work and services neither by assignment, transfer, pledging nor in any other manner. Any assignment, transfer, pledging or other disposal of claims under the present contract shall be ineffective as against the Principal.
- ensure that the present project is managed thematically and organisationally by the key personnel designated in the procedure for the conclusion of this contract. The designated key personnel can only be withdrawn or replaced at the Principal's demand or with his consent. Unauthorised withdrawal or replacement of this key personnel shall constitute a ground for extraordinary notice of termination by the Principal.

§ 3 Duration of the Contract

- 3.1 This Contract will commence on and end on The services defined in § 2 shall be provided within this period of time.
- 3.2 If the Contractor becomes aware that it will not be able to adhere to the period specified in the Contract, it shall notify the Principal immediately in writing and give reasons. This shall have no effect on any claim of the Principal arising out of the delay in performance of the Contract.

§ 4 Lump-sum consideration

- 4.1 For all the Contractor's activities within the present contract, a lump-sum consideration of **EUR XXX,XXX.**— plus any value-added tax is agreed.

Hence, the contracting parties agree on a **lump-sum consideration, including value-added tax** (total price), of:

Contractor (for consortia: Consortium Leader):

net amount EUR xxxxx.--

VAT XX % EUR xxxxx.--

Total EUR xxxxx.--

(for consortia:) Contractor 2:

net amount EUR xxxxx.--

VAT XX % EUR xxxxx.--

Total EUR xxxxx.--

...

- 4.2 The lump-sum consideration pursuant to § 4.1 shall cover all works necessary for the provision of the service. Ancillary services and other services, even when they are not mentioned separately in this Contract, but are necessary to perform the contractual services, small-scale supplements, clarifications or the participation in meetings with regard to the scope of services (§ 2) which are requested by the Principal shall also be included in the lump-sum consideration. Small-scale supplements shall mean amendments in total amounting to less than ten percent of the lump-sum consideration defined in § 4.1.
- 4.3 If in the course of the performance of the contract a work becomes necessary that is not provided for in this contract and is not a small-scale supplement (§ 4.2), the Contractor shall obtain the Principal's written approval before carrying out such work. The Contractor shall present to the Principal a supplementary quotation which shall be based on the prices and price basis of the present contract. Additional costs shall be justified such that they can be verified by the Principal with a reasonable effort appropriate in relation to the amount. If it is determined by mutual agreement that this work is necessary or expedient, the corresponding remuneration shall be agreed at the same time. If the Contractor carries out a work not provided for in the contract without a prior written agreement on the remuneration, the Principal shall not be obliged to pay the remuneration.
- 4.4 The Austrian Research Promotion Agency, FFG (Österreichische Forschungsförderungsgesellschaft mbH) is not eligible for input tax deduction and has no VAT Number, so there is no Reverse Charge mechanism in possible. VAT will be payed if it is included in the proposal and invoices.
- 4.5 Each non-Austrian contractor has to provide a „Declaration by legal entities for the purpose of tax treaty relief at source“ according to Sec. 2 of the ordinance on DTC-relief, Federal Gazette III No. 92/2005 as amended in Federal Gazette II, No. 44/2006 and the Double Taxation Convention between Austria and the respective country.

§ 5 Reporting obligations

- 5.1 In the case of a consortium the individual contractors shall report to the consortium leader, who shall subsequently forward a consolidated report to the Principal.
- 5.2 The Contractor is required to inform the Principal about the implementation of the contractually agreed services via a factual report and statement of accounts in accordance with the relevant reporting provisions specified in the Technical Guidelines for R&D Services. The Contractor has to submit further documents on request by the Principal.
- 5.3 The reports shall be submitted to the Principal via the report function of the eCall system according to the following schedule:
- interim report:
 - Final report:
- 5.4 At the request of the Principal the Contractor must account for and report material and personnel costs separately. Numerical evidence must include a structured breakdown of all incomes and expenditures relating to the services rendered that can be verified through original documents. Such evidence may be provided in the form of copies of invoices or payment receipts subject to subsequent inspection or submission of the original documents. The documents may be transmitted electronically if a complete,

structured, true and verifiable reproduction is guaranteed and subject to subsequent inspection or submission of the original documents.

- 5.5 The Contractor is required to document all work results (including all documented findings, suggestions, ideas, drafts, designs, proposals, samples, experimental setups, models, prototypes, inventions, objects, processes, and computer programs that may arise from the performance of the present Contract or are available to the Contractor in any other customary form). The Contractor shall permit the Principal to examine the work results at any time with prior notice, and the Principal may obtain a copy of this documentation on request.

§ 6 Payment

- 6.1 Payment shall be due according to the following payment plan:

	EUR
First instalment (payment on account incl. VAT) after conclusion of the Contract for R&D Services and submission of first invoice	xxx
Second instalment after approval of the interim report and interim invoice, incl. VAT (on request by FFG)	xxx
Final instalment after approval of the final report and final invoice, incl. VAT (on request by FFG)	xxx

- 6.2 The bank transfer shall be effected to the bank account indicated by the Consortium Leader/Contractor.

Account holder:

Bank:

IBAN:

BIC:

- 6.3 The payment of the first instalment (payment on account) amounting to EUR xxx.-- incl. VAT shall be made after conclusion of the Contract for R&D Services.
- 6.4 The payments of the following instalments shall be effected following approval of specific milestones (e.g. interim reports) and interim invoices inclusive of value-added tax.
- 6.5 The payment of the final instalment shall be effected following the final acceptance and approval of the work, e.g. the final report, a study etc., and after receipt of the invoice of the lump-sum consideration inclusive of value-added tax.
- 6.6 In the case of a consortium the invoice consists of individual invoices issued by the individual contractors. The consortium leader shall collect all the individual invoices and forward them to the Principal including a corresponding list.
- 6.7 In the case of a consortium the payments made by the Principal to the consortium leader shall have a debt-discharging effect with respect to the other partners. The consortium leader is obliged to immediately forward any payments received from the Principal to the individual partners. Each partner shall issue a separate invoice for each instalment.

- 6.8 The Principal shall be granted a review period of 60 days from receipt of the final report. The invoice amount shall be transferred to the account specified by the Contractor within 30 days of acceptance of the work or service, but at the latest 30 days after receipt of the invoice if the invoice is sent after acceptance.
- 6.9 The final invoice shall in any case exclude the assertion of additional claims.
- 6.10 The Principal will notify the Contractor of the invoice address to be used in a separate letter after conclusion of the contract.
- 6.11 The Principal shall be entitled to refuse to take delivery if the work is defective to an extent exceeding minor defects, or if the documentation concerning the work to be delivered at this time according to the contract (e.g. operating instructions, test instructions, plans, drawings and the like) has not been delivered to the Principal. In such event, the consequences of default shall apply until the defects have been remedied or eliminated.
- 6.12 If the Principal accepts the works despite the existence of defects, the provisions concerning warranty shall apply. The Contractor shall remedy the defect within the grace period allowed and shall notify the Principal of such completed remedy in writing.

§ 7 Written form and amendments

- 7.1 Supplementary agreements, amendments and modifications of this Contract, including this clause, shall only be effective if they have been agreed in writing.
- 7.2 Subsequent changes to the conditions and covenants agreed may be made unanimously and incorporated in supplementary agreements between the Principal and the Contractor, if required by special circumstances.

§ 8 Intellectual Property Rights

- 8.1 New intellectual property rights: The Principal shall be granted comprehensive (i.e. unrestricted in terms of content, space and time) and non-exclusive rights to use the project results. Project results shall be all knowledge, statutory intellectual property rights (including but not limited to trademark rights, patents, utility models, protection certificates, semiconductor rights, copyrights and related rights, business and trade secrets), suggestions, ideas, drafts, arrangements, proposals, designs, test set-ups, models, prototypes, inventions, objects, processes, computer programs and other creations of the human intellect that are created in the performance of the present contract. All project results shall be documented by the Contractor.
- 8.2 Existing intellectual property rights: The Contractor grants the Principal an irrevocable and non-exclusive right to use all existing intellectual property rights and work results which are necessary for exercising the right granted in § 8.1. This shall not apply if the Principal's rights would contravene Contractor's obligations to third parties that already existed at the time of conclusion of the contract and were disclosed to the Principal prior to conclusion of the contract.
- 8.3 All Principals shall be entitled independently of each other to sub-licence the new property rights granted to them (see § 8.1) to third parties on a non-transferable and non-exclusive basis for their own requirements, for public contracts, governmental measures for the promotion of science and technology or joint programmes with other public institutions in Austria or abroad, to develop all project results themselves or to commission third parties with the further development (for instance in follow-up invitations to tender for the

development of a prototype). The licence granted to the Principals shall also include the rights of adaption and modification, dissemination, presentation, reproduction and provision.

- 8.4 Upon request, the Contractor shall grant third parties a non-exclusive and non-transferable licence subject to non-discriminatory and customary terms to all existing property rights within the meaning of § 8.2 to be used for the purposes specified in § 8.3.
- 8.5 If the provision of the contractual works or services by the Contractor leads to project results eligible for registration (e.g. a technical invention that can be patented or registered as a utility model, or a semiconductor product, a design or a trademark that is capable of protection) within the meaning of § 8.1, the Principals shall be informed thereof without delay and – subject to the Principals’ agreement – the patent, utility model, semiconductor, trademark or registered design shall be filed.
- 8.6 The Contractor shall be obliged to effect all measures to ensure the assertion of the intellectual property rights in accordance with the statutory provisions and requirements.
- 8.7 The Principals shall be at liberty to make all project results within the meaning of § 8.1 accessible to third parties by means of publications. This shall not require prior consultation with the contractors.
- 8.8 The contractors shall also be entitled to comprehensive (i.e. unrestricted in content, place and time) and non-exclusive rights to use and exploit all project results within the meaning of § 8.1.
- 8.9 The Contractor shall determine the property rights and applications for property rights that prevent the use and exploitation of the work results and (if not already done in the quotation) notify the Principals thereof without delay, stating the conditions under which he thinks that such use nevertheless seems possible.
- 8.10 The Contractor shall ensure via contractual agreements with third parties (e.g. with employees, subcontractors, suppliers etc.) that he can dispose of all project results of third parties arising from the performance of this Contract that are necessary to fulfil his contractual obligations.
- 8.11 Intellectual property law matters between the contractors are not the subject matter of this agreement and shall be clarified internally between the consortium partners. Any liability on the part of the Principals in this respect is excluded.

§ 9 Liability and Warranties

- 9.1 The Contractor shall be liable to the Principal without restriction for compliance with all the provisions of the contract. The Contractor shall be liable for the failings of all persons he uses for the performance of his contractual obligations to the same extent as for his own failings (subcontractors, sub-suppliers) and for the conduct of third parties attributable to him (e.g. owners, corporate bodies, etc.). Throughout the entire limitation period, the Contractor shall bear the burden of proof that he has not been at fault with respect to any damage. For the rest, the statutory provisions shall apply.
- 9.2 In this context the Contractor shall indemnify and hold harmless the Principal against any claims by third parties that may arise out of the performance of the contractual services and/or that are asserted against the Principal.

- 9.3 The Contractor assumes liability that his works shall have the qualities expressly or tacitly agreed in the contract, and shall satisfy the recognised state of the art in science and technology. This warranty for material and legal defects shall cover both the works and deliveries provided as a whole and the material processed (Sec. 922, General Civil Code, ABGB). The Contractor's liability shall not be limited by the Principal's right to inspect or by the provision or approval of documentation by the Principal.
- 9.4 Warranty defects shall be notified to the Contractor in writing upon discovery thereof. Acknowledgement of a deficiency by the Contractor (e.g. by undertaking to remedy, etc.) shall interrupt the warranty period; it shall recommence from the time of the remedy.
- 9.5 The warranty period shall be two years in all cases, and shall commence on the day on which delivery or (if agreed) partial delivery is taken of the work or services duly performed or, in the event of delivery being taken despite the existence of defects (see § 6.8), upon successful remedy of the defects. In the event of legal defects, the warranty period shall commence on the day on which the defect becomes known to the Principal. For defects notified within the warranty period, it shall be presumed that they existed at the time when delivery or partial delivery was duly taken. At its discretion, the Principal can demand remedy, replacement of the item, price reduction or – with the exception of minor defects – rescission of the contract.

§ 10 Use of Data by the Principal

- 10.1 The Contractor acknowledges that all the personal data provided in the course of development and implementation of this Contract – if the use of such data constitutes a vital prerequisite for the performance of the tasks entrusted to the Principal by law or is otherwise permitted according to Sections 7 to 9 of the Austrian Data Protection Act (DSG 2000, Federal Gazette No I 165/1999 as amended) – will be used by the Principal for the conclusion and implementation of this Contract, for the fulfilment of the tasks entrusted to it by law and for control purposes.
- 10.2 In this context, the Principal may have to forward or disclose such data to bodies and official representatives of the Court of Audit (including but not limited to Secs. 3.2, 4.1 and 13.3 of the Austrian Court of Audit Act (RHG, Federal Gazette No 144/1948 as amended), the Federal Ministry of Finance (including but not limited to Secs. 43 to 47 of the Austrian Federal Budget Law (BHG, Federal Gazette No 213/1986 as amended) and the European Union according to statutory provisions at EU level.
- 10.3 The Contractor undertakes to comply with all statutory non-disclosure obligations, and in particular to maintain confidentiality with respect to all knowledge acquired in the execution of the present Contract, unless the Principal releases him in writing from such obligation in a specific case. If the Contractor makes use of other persons to provide the contractual services, he undertakes with strict liability to impose this non-disclosure obligation on all other persons used by him to provide the service, and only to deploy such staff and agents that have expressly undertaken in writing to maintain secrecy pursuant to Sec. 11 para 1.2 of the Data Protection Act (DSG 2000, Federal Law Gazette BGBl. I No. 165/1999 as amended).
- 10.4 The Contractor acknowledges that the Principal is obliged to disclose media collaborations and media subsidies in accordance with the Media Transparency Act (Federal Law Gazette BGBl. I No. 125/2011, as amended).

§ 11 Affidavit

11.1 The Contractor hereby declares that no insolvency proceedings have been initiated / no petition in bankruptcy has been dismissed due to insufficient assets to cover the costs and that the Contractor is not subject to liquidation proceedings. The Contractor has the necessary official licences and permissions to be able to fulfil the services specified in the Tender and in the Contract in due form.

§ 12 Premature termination

12.1 The Principal shall be entitled to request termination of the Contract and to terminate the contractual relationship immediately

- if circumstances arise that make the proper performance of this Contract evidently impossible;
- if a fundamental breach of contract occurs;
- if administrative provisions, trade laws or other legal provisions or requirements in connection with the delivery of the service are not observed;
- if the Contractor acts in a way to intentionally cause damage to the Principal, especially when the Contractor has entered into agreements with third parties that are unfavourable to the Principal, contrary to public policy or violate the principles of competition;
- if the Contractor has directly or indirectly offered or allocated benefits contrary to public policy or has threatened or caused detriment to members of the Principal entrusted with the conclusion or enforcement of this Contract;
- if the Contractor itself or any person entrusted with the performance of the Contract by the Contractor has violated provisions of secrecy or data protection.

12.2 If the Principal declares the immediate termination of this Contract according to the above terms, the Contractor shall lose any entitlement to the lump-sum consideration, unless it has provided a partial service of use for the Principal. Payments that have already been made shall immediately be refunded accordingly. If the Contractor is responsible for the cause of termination, it shall compensate the Principal for any additional expenses that may arise out of the transfer of the Contract to a third party (irrespective of any further claim for damages).

§ 13 Retention of documents

13.1 The Contractor shall retain the documents for the period specified by law.

§ 14 Jurisdiction

14.1. Disputes about the service shall not entitle the Contractor to discontinue or suspend the services.

14.2. The contracting parties agree according to Section 104 of the Austrian Law on Jurisdiction (Jurisdiktionsnorm) that the Commercial Court of Vienna shall have jurisdiction to settle any disputes arising out of this Contract.

14.3. Any disputes arising out of or in connection with this Contract for R&D Services, including all disputes concerning the effective conclusion of this Contract, shall be governed by and construed exclusively in accordance with the laws of Austria

explicitly excluding general conflict of law rules and the UN Convention on Contracts for the International Sale of Goods.

- 14.4 The Contractor shall not be entitled to assign any rights and obligations under this Contract.

§ 15 Severability

- 15.1 If at any time individual provisions of this Contract for R&D Services are or become ineffective and/or void in whole or in part, the validity of the remainder of the Contract shall remain unaffected. The ineffective/void provision shall be replaced in accordance with the meaning and purpose of the provision.

§ 16 Original copies

- 16.1 This Contract shall be executed in two original copies, one for the Principal and one for the Contractor (consortium leader).

§ 17 Concluding provision

- 17.1 The consortium partners have received this Contract as a pdf file via eCall. The partners are requested to print out the signature sheets and return the duly executed sheets to the consortium leader. The consortium leader shall collect the signature sheets and forward them to the Principal together with the original of the signed Contract.

For the Principal:

Österreichische Forschungsförderungsgesellschaft mbH (FFG)

Vienna, on _____

Dr. Henrietta EGERTH-STADLHUBER
Managing Director

Dr. Klaus PSEINER
Managing Director

Signature sheets of the consortium:

Consortium Leader:

Contractor 2:

draft

Contract for R&D Services – Signature sheet 1

Object of the Contract:

Project number:

Programme:

Call:

Contracting party:

Name:

Address:

Commercial register number:

The Contractor hereby confirms that it is fully aware of and accepts all the contract documents.

Consortium leader

_____, on _____

(Corporate signature, please insert name and function in block capitals, company's stamp)

The partners have received this Contract as a pdf file via eCall.

The partners are requested to print out the signature sheets and return the duly executed sheets to the consortium leader. The consortium leader shall collect the signature sheets and forward them to the Research Promotion Agency (FFG) together with the original of the signed Contract for R&D Services.

Contract for R&D Services – Signature sheet 2

Object of the Contract:

Project number:

Programme:

Call:

Contracting party:

Name:

Address:

Commercial register number:

The Contractor hereby confirms that it is fully aware of and accepts all the contract documents.

Contractor

_____, on _____

(Corporate signature, please insert name and function in block capitals, company's stamp)

Please print out this signature sheet.

Return the duly executed signature sheet as soon as possible to the consortium leader named in the Contract for R&D Services.

Comments by the Evaluation Committee (not part of the Contract)

The Evaluation Committee has made the following comments on your project:

Contact person for your project:

.....

Written communication via eCall:

draft