

## **CEDR TRANSNATIONAL ROAD RESEARCH PROGRAMME**

**Agreement for:**  
**CEDR Call 2013: Programme name: Project name**  
**(ACRONYM)**

between

- (1) The National Roads Authority**
  
- (2) Name of Consultant**

**Research Services Agreement**

**THIS AGREEMENT** is made on the **day, month year**

**BETWEEN:**

- (1) The National Roads Authority of St Martin's House, Waterloo Road, Dublin 4 (hereafter the "**Authority**") of the first part; and
- (2) **Name of consultant**, having its registered office at **address of consultant** (hereafter the "**Consultant**") of the second part.

hereinafter individually referred to as a "Party", together hereinafter also referred to as the "Parties".

**RECITING:**

- a) The Research provided under this Agreement is procured by the Authority on behalf of a group of European national road administrations who jointly provide the funding for the project. The framework within which the funding is provided is specified in a Collaboration Agreement which provides the principles on which this Agreement is based.
- b) The Collaboration Agreement nominates the Authority as the sole client for this Project, acting at all times within the framework of the Collaboration Agreement.
- c) The Authority wishes to have the Consultant carry out the Research as defined in this Agreement for the Project (as more particularly defined in this Agreement);
- d) The Consultant has provided a Submission Document for the carrying out of the Research in accordance with this Agreement: this Submission Document forms Appendix II of this Agreement;
- e) The Consultant is acting on behalf of all the partners identified in the Submission Document: all rights and obligations bestowed on the Consultant through this Agreement are also bestowed on the partners;
- f) The Consultant confirms to the Authority that it has engaged all such resources, skills and expertise as are necessary to provide the Research in accordance with the time period set out in this Agreement.

**THAT IT IS HEREBY AGREED AS FOLLOWS:**

In consideration of the provision of the funding hereinafter mentioned the Consultant will, subject to and in accordance with the terms of this Agreement, carry out the Research in all respects to the reasonable satisfaction of the Authority and in accordance with the terms of this Agreement.

1. Definitions:

"**Authority**" means the National Roads Authority.

**“Inception Meeting”** means the meeting to be held between the Steering Committee and the Consultant following the start of the project and the meetings in advance of each tranche work as outlined in the Submission Document.

**“Intellectual Property Rights”** or **IPR**, shall mean patents, trademarks, service marks, registered or unregistered designs, applications for any of those rights, copyrights and related rights, database rights, unregistered trademarks and service marks, rights in designs and inventions, know-how and rights in confidential information, all rights of the same or similar effect or nature to any of the foregoing, and the right to sue for infringement (past, existing and future) of any of these rights, in each case in any jurisdiction relating to the deliverables generated under this Agreement.

**“Project”** means the research project entitled **CEDR Call 2013: Programme name: Project name (ACRONYM)**.

**“Research”** means the Research services to be provided by the Consultant as more particularly presented in the Submission Specification as set out in Appendix I and to be carried out in accordance with the Submission Document submitted by the Consultant as set out at Appendix II.

**“Steering Committee”** means the Project Executive Board appointed to manage and review the outcomes of the Research.

**Technical Specification** means the Description of Research Needs attached at Appendix I to this Agreement.

**Submission Document** means the Consultant’s submission provided to the Authority attached at Appendix II to this Agreement.

## 2. **Scope**

- 2.1 The terms and conditions contained in the Technical Specification form part of this Agreement. In the event of any conflict or ambiguity between the Submission Document and this Agreement the terms of this Agreement shall prevail.
- 2.2 The Research shall be carried out by the Consultant with reasonable skill and care and in accordance with this Agreement, the Technical Specification and the Submission Document.
- 2.3 Any proposed variations must be notified in writing at least seven (7) days prior to the proposed variation: the Consultant must obtain Authority’s prior written consent to such variations.
- 2.4 Each work task as outlined by the Consultant must be complete to the satisfaction of the Authority. Any proposed variation must be agreed in advance with the Authority.

### 3. **Deliverables**

- 3.1 The Consultant is responsible for the completion of all aspects of this Agreement within the programme to be agreed at the Inception Meeting as well as the overall management of the Research project and all reporting obligations, within the time periods required by this Agreement.
- 3.2 Upon completion of the Research project the Consultant shall provide the Authority with two bound copies of the Consultant's final report and an electronic version in word format which meets the requirements of the Submission Document.

### 4. **Duration**

- 4.1 This Agreement shall be for a period of ? months starting on the ?<sup>st</sup> day of ? 2014, or for such further period as may be agreed by the Authority and the Consultant.
- 4.2 Failure to deliver the final report in accordance with the Technical Specification and the Submission Document may result in termination of this Agreement by the Authority. If the Consultant fails to carry out the Research within the period required by this Agreement and if the Authority is of the opinion, acting reasonably, that there was good and sufficient reason for such failure, the Authority may, in its discretion, instruct the Consultant to proceed with the Research project and the Authority and the Consultant may agree an extended time period for completion of the Research.
- 4.3 In the event of a conflict or ambiguity relating to dates or timescale between the Submission Document, the Technical Specification and the Schedule of Payments set out in Appendix III, then the dates and timescales set out in the Schedule of Payments shall prevail.

### 5. **Project Management**

- 5.1 If it is necessary to replace any of the personnel provided by the Consultant as stated in the Submission Document, the Consultant shall arrange for replacement by a person of comparable competence as soon as reasonably possible. The request shall be in writing stating the reasons for it. The cost of such replacement shall be borne by the Consultant except where the replacement is requested by the Authority.
- 5.2 The Consultant shall not sub-contract the provision of the Agreement to this Agreement, except as previously specified in the Submission Document.

### 6. **Reporting Requirements**

- 6.1 The Consultant shall report verbally or in writing to the Steering Committee on a regular basis as agreed at the Inception Meeting.

## 7. **Funding**

- 7.1 The funding provided for the Research Services is €. VAT is not applicable on this type of research project in Ireland as the results are widely disseminated to the road transport industry as a whole in the public interest. Where local VAT regulations apply, this shall be included in the funding quoted.
- 7.2 The Consultant hereby acknowledges that the funding includes the amount that is necessary to carry out the Research project to satisfy the requirements of the Technical Specification. For the avoidance of doubt the Consultant acknowledges that the funding includes costs of all labour (including secretarial services), handling charges, plant, materials, travel and other expenses, overheads, printing, insurance, permits, licences and liaison with all relevant authorities and further acknowledges that no further or additional funding shall be payable by the Authority and the Authority have no liability for any other costs or expenses incurred by the Consultant in the provisions of the Research project.

## 8. **Accounting and Audit Requirements**

- 8.1 The Consultant shall maintain comprehensive financial records of all expenditure incurred in carrying out the Research for audit and accounting purposes. The Consultant shall provide such records to the Authority's auditors, on request.

## 9. **Payments**

- 9.1 Payment for the Research shall be made by the Authority in instalments as agreed with the Consultant and detailed in Appendix III.
- 9.2 Payment of the funding is conditional upon the achievement of the milestones set out in the Schedule of Payments as set out in Appendix III to this Agreement and on proper management of the provisions of the Research.
- 9.3 Ten percent (10%) of the funding shall be retained pending acceptance by the Authority of the final project report and any associated deliverables. Prior to delivery of the final report, the Consultant shall submit a draft version for comment by the Steering Committee. The draft report shall be deemed acceptable if no comments are made within 30 days of submission. All comments made by the Steering Committee shall be addressed in the final project report.

## 10. **Confidentiality and Freedom of Information**

- 10.1 All documentation and information supplied or received in connection with this Agreement, which has been identified as confidential at the time of its disclosure, shall be treated as private and confidential by the Consultant unless otherwise agreed by the Authority. In circumstances where the Authority consents to the disclosure of such documentation and/or information to a third party, the Consultant shall inform the third party of the confidential nature of the documentation and/or information and shall procure that the third party agrees to

adhere to the terms of this clause as if it were party to this Agreement. The Authority is subject to the Freedom of Information Acts 1997 and 2003.

10.2 The restrictions concerning confidential information in this clause do not apply to information that:

- was in the public domain or is generally available at the time it was disclosed or falls within the public domain or becomes generally available, except through a breach of this Agreement; or
- is or becomes known by the receiving party from a source other than the Authority without breach of this Agreement by the receiving party; or
- was furnished to a third party by the Authority without similar restriction on the third party's rights; or
- to the extent that such disclosure shall be required by law, or by order of a court of competent jurisdiction or that of a competent regulatory authority but only after the Authority has been notified in writing and has been provided a reasonable opportunity to take appropriate action to protect its legal interest in the confidential information.

10.3 Any confidentiality obligations of the parties shall expire when five (5) years have lapsed since the date of expiration or, if relevant, termination of the Agreement

## 11. **Insurance**

11.1 During the currency of this Agreement and for a period of five (5) years [from the date of completion or termination of the Agreement] the Consultant shall keep in force a Professional Indemnity Policy, covering all matters for which it is legally liable arising out of or in relation to this Agreement. Such policy shall have an indemnity limit of not less than €1 million.

11.2 The Consultant shall maintain at its own cost:

- (i) its current Employer's liability insurance; and
- (ii) its current Public liability insurance.

11.3 As and when requested, the Consultant shall produce to the Authority documentary evidence that the insurances specified in this clause are being maintained and the Consultant shall immediately notify the Authority if for any reason the Consultant is unable to maintain the insurance in force during the currency of this Agreement so that the Authority can discuss the means of best protecting the parties respective positions, at the Consultant's cost, in the absence of such insurance.

## 12. **Limit of liability**

- 12.1 The Consultant's aggregate liability for all claims of any kind, whether based on contract, warranty, tort (including negligence), strict liability or otherwise, for all losses or damages arising out of, connected with or resulting from the performance of the Research project, its performance or breach shall not exceed an amount equal to the total agreed price.
- 12.2 The Consultant shall not be liable for any indirect and/or consequential damages such as (but not limited to) loss of use, loss of profit, loss of turnover or loss of data.
- 12.3 Any liability of the Consultant shall expire when five (5) years have lapsed since the date of expiration or, if relevant, termination of the Agreement.
- 12.4 The Consultant shall not be liable for damages incurred by the Authority or third parties arising out of the application and/or use of (or part of) the results of the Research, unless such damages are caused by an intentional act or wilful recklessness of the Consultant.
- 12.5 The Authority shall indemnify the Consultant for any third party claim in respect of damages incurred by those third parties arising from the application and/or the use of (or part of) the results of the Research by the Authority and/or third parties provided with those results by the Authority or (otherwise) informed thereof, unless such damages are caused by an intentional act or wilful recklessness of the Consultant.

## 13. **Termination of the Agreement**

- 13.1 Either party may, by written notice served on the other party, immediately terminate this Agreement if the other party is in breach of any material term(s) of this Agreement and in the case of a breach capable of remedy such breach has not been remedied by the party in default within thirty (30) days of receipt of written notice from the other party specifying the breach and requiring its remedy. The terms of Clauses 10.3, 11.1 and 12 for the periods referred to therein, 13.2, 14, 15, 16 and 18 shall survive the termination or expiration of this Agreement.
- 13.2 In the event of such termination by the Authority, the Authority shall pay the Consultant for the part of the Research project satisfactorily completed up to the effective date of such termination in accordance with this agreement. In such event the Authority shall have no liability for any losses including consequential losses that may be suffered by the Consultant.

## 14. **General Law**

- 14.1 This Agreement shall be governed by and construed in accordance with the laws of Ireland.

## 15. **Title, Ownership and Licensing**

- 15.1 The Research provided under this Agreement is procured by the Authority under the general principle that all outputs shall be widely disseminated to the road transport industry as a whole for the benefit of European national road administrations. As such, all IPR generated in this Project (including reports, patents, software, procedures, toolkits, etc) shall be owned by the Consultant on a non-exclusive basis. This Agreement will not constitute a transfer of any pre-existing Intellectual Property Rights. The Consultant grants the Authority, on behalf of European road administrations, a non-exclusive, irrevocable, perpetual, royalty-free right and license to use all Intellectual Property Rights generated under this Agreement.
- 15.2 All publications and presentations derived from the Research project carried out under this Agreement must acknowledge the collaborative nature of the Project and must include a clear statement of their links with the CEDR Transnational Research Programme. The Authority shall be entitled to review any publications which incorporate deliverables generated under this Agreement. The Authority shall be deemed to have approved publication unless it notifies in writing to the contrary latest within thirty (30) calendar days of having received a written request for publication.
- 15.3 The Consultant acknowledges that all Intellectual Property Rights in any materials provided by the Authority to the Consultant (the “**Authority Materials**”) shall at all times vest in and be the absolute property of the Authority.
- 15.4 The Authority acknowledges that all Intellectual Property Rights in any material created independently of the Authority and of this Agreement by the Consultant and prior to its involvement with the Authority (the “**Consultant Materials**”), shall remain the property of the Consultant. The Consultant grants the Authority a non-exclusive, non-transferable perpetual licence to use the Consultant Materials for the purposes of this Agreement, including the use of the Research and any materials created thereunder.

## 16. **Return of materials**

The Consultant agrees that it shall return to the Authority upon request and, in any event, at the Termination Date all documents, computer disks and tapes and other tangible items in its possession or under its control which belong to or were provided to it by the Authority or which contain any Intellectual Property or confidential information of the Authority.

## 17. **Dispute resolution**

- 17.1 If a dispute or difference arises between the parties with regard to any provisions of this Agreement, such dispute or difference shall be referred to conciliation in accordance with the Conciliation Procedures published by Engineers Ireland.



17.2 If a settlement of the dispute or difference is not reached under the conciliation procedures either party may refer the dispute to arbitration in accordance with Clause 17.3.

17.3 If any dispute, difference or question shall at any time hereafter arise between the parties to this Agreement or their respective assigns in respect of the construction of this Agreement, as to the rights, liabilities or duties of the said parties hereunder the same shall be and is hereby referred to the arbitration of a person to be agreed between the said parties or, failing agreement between the said parties within fourteen days of either party having made a request in writing to the other party to concur in the appointment of an arbitrator, a person to be nominated by the President for the time being of Engineers Ireland upon the application of either party. Every or any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Acts 1954 to 1998 or any Act amending the same.

**18. Severability**

18.1 If any of the provisions of this Agreement or the application of such provision to any person or circumstances shall be held invalid, this Agreement shall be inapplicable to the extent of such invalidity, and the remainder of this Agreement, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

**19. Amendments**

19.1 This Agreement may only be amended in writing by the signatures of the duly authorized representatives of the parties.

**Signed on behalf of the Parties**

Place, date

Place, date

\_\_\_\_\_

\_\_\_\_\_

Pat Maher

Name

Head of Network Operations  
National Roads Authority

Role  
Company

## INDEX TO APPENDICES

**Appendix I:** Authority's Technical Specification for the research

**Appendix II:** Consultant's Submission Document

**Appendix III:** Schedule of Payments

**Appendix I: Authority's Technical Specification for  
the Research**

(To be attached)

## **Appendix II: Consultant's Submission Document**

(To be attached)

## Appendix III: Schedule of Payments

Subject to satisfactory performance payment shall be made on the basis of the following:

	<b>Date</b>	<b>Amount</b>
1.	Date 1	€x
2.	Date 2	€x
3.	Date 3	€x
etc....		
	<b>TOTAL</b>	<b>€x</b>

Payment is conditional upon the achievement of the milestones set out in the Proposal (Appendix II to this Agreement) and on proper management of the provisions of this Agreement. Once approved by the Steering Committee, payment shall be made within 30 days.