



ANNEX 6 to the Tender Specifications

DRAFT FRAMEWORK SUPPLY CONTRACT EEA/ADS/16/001

The European Environment Agency (hereinafter referred to as "the Agency"), which is represented for the purposes of the signature of this contract by Mr Soren Nielsen, Head of administrative services, of the one part,

and

[official name in full]

[official legal form]

[Statutory registration number]

[official address in full]

VAT registration number: **[complete]**

hereinafter referred to as "the Contractor", represented for the purposes of the signature of this contract by [*name in full and function*], of the other part,

HAVE AGREED

to the **Special Conditions**, the **General Conditions** and the following Annexes:

Annex I – Tender specifications No EEA/ADS/16/001

Annex II – Contractor's offer dated **[complete]**

Annex III – Draft order form

which form an integral part of this contract (hereinafter referred to as "the Contract").

The terms set out in the Special Conditions shall take precedence over those in the other parts of the Contract. The terms set out in the General Conditions shall take precedence over those in the Annexes. The terms set out in the order form shall take precedence over those in the Tender specifications (Annex I), the latter taking precedence over the offer (Annex II).

Subject to the above, the several instruments forming part of the Contract are to be taken as mutually explanatory. Ambiguities or discrepancies within or between such parts shall be explained or rectified by a written instruction issued by the Agency, subject to the rights of the Contractor under Article I.8 should he dispute any such instruction.

Each provision of this Contract is severable and distinct from the others. If a provision is or becomes illegal, invalid or unenforceable to any extent, it must be severed from the remainder of the Contract. This does not affect the legality, validity or enforceability of any other provisions of the Contract, which continue in full force and effect. The illegal, invalid or unenforceable provision must be replaced by a legal, valid and enforceable substitute

provision which corresponds as closely as possible to the actual intent of the parties under the illegal, invalid or unenforceable provision. The Contract must be interpreted as if it had contained the substitute provision as from its entry into force.

All documents issued by the contractor (such as end-user agreements, general terms and conditions) except its tender are held inapplicable, unless explicitly mentioned in the special conditions of this Contract. In all circumstances, in the event of contradiction between this Contract and documents issued by the contractor, this Contract prevails, regardless of any provision to the contrary in the Contractor's documents.

I – SPECIAL CONDITIONS

ARTICLE I.1 - SUBJECT

- I.1.1 The subject of the Contract is the provision of office supplies and stationery products.
- I.1.2 Signature of the Contract imposes no obligation on the Agency to purchase. Only implementation of the Contract through order forms is binding on the Agency.

ARTICLE I.2 - DURATION

- I.2.1 The Contract shall enter into force on the date on which it is signed by the Agency.
- I.2.2 Under no circumstances may implementation commence before the date on which the Contract enters into force. Delivery of supplies may under no circumstances begin before the date on which the order form enters into force.
- I.2.3 The Contract is concluded for an initial period of 12 (twelve) months, with effect from the date on which it enters into force. The Contract shall be renewed automatically up to three times for a period of 12 (twelve) months each, unless written notification to the contrary is sent by one of the contracting parties and received by the other 3 (three) months before expiry of the contractual period aforesaid. These contractual periods and all other periods specified in the Contract are calculated in calendar days unless otherwise indicated. Renewal does not imply any modification or deferment of existing obligations.
- I.2.4 The order forms shall be returned signed before the Contract to which they refer expires.

The Contract shall continue to apply to such order forms after its expiry, but no later than 6 (six) months after this date.

ARTICLE I.3 –PRICES

- I.3.1 The maximum budget available for the Contract is EUR [complete in figures and words] over a maximum period of 48 (forty eight) months. However, this does not bind the Agency to purchase for the maximum amount.
- I.3.2 The prices of the supplies shall be as listed in Annex II. Prices shall be expressed in EUR.
- I.3.3 Prices shall be fixed and not subject to revision for implementation during the first year of duration of the Contract.

From the beginning of the second year of performance of the contract, each price may be revised upwards or downwards each year, where such revision is requested by one of the contracting parties by registered letter no later than 31 July in order that the new prices may take effect on 1 January the following year.

The Agency shall purchase on the basis of the price in force on the date on which order forms are signed. Such prices shall not be subject to revision.

The revision shall be determined by the trend in the harmonised indices of consumer price (HICP) published by the European Commission on Eurostat web page at <http://ec.europa.eu/eurostat/data/database> (Theme – Economy and Finance; Prices

(prc); Harmonised indices of consumer prices (HICP) (prc_hicp); HICP (2005=100) – monthly data (index) (prc_hicp_midx); Euro area (EA11-2000, EA12-2006, EA13-2007, EA15-2008, EA-16-2010, EA17-2013, EA18-2014, EA19).

The revision shall be calculated in accordance with the following formula:

$$Pr = Po \times (Ir/Io)$$

Where:

Pr = revised price;

Po = price in the original tender;

Ir = index for the month corresponding to the date of receipt of the letter requesting a revision of prices;

Io = index for the month in which the Contract enters into force.

ARTICLE I.4 – IMPLEMENTATION OF THE CONTRACT

All supplies delivered under this Contract will be the subject of a written order form, which will specify the terms of the performance including in particular the reference of the Contract and the amount up to which supplies may be ordered through separate orders and for the time period indicated in the order form.

Within 5 (five) working days of an order form being sent by the Agency to the Contractor, the Agency shall receive it back, duly signed and dated.

The period allowed for the delivery of the supplies shall start to run on the date an order is confirmed by the Contractor, unless a different date is indicated in the order.

The supplies shall be delivered at the premises of the Agency at the address specified in Article I.7 below. Deliveries may be made on any working day during normal working hours, at the agreed place of delivery.

ARTICLE I.5 – INVOICING AND PAYMENT

Payments under the Contract shall be made in accordance with the provisions in Article II.11. Payments shall be executed only if the Contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted. Payment requests may not be made if payments for previous periods have not been executed as a result of default or negligence of the Contractor.

The contractor shall submit to the Agency an invoice indicating the reference number of the contract and of the order form to which it refers. The invoice shall be sent to the Agency at the address invoices@eea.europa.eu.

Payments shall be made upon delivery of the supplies requested, within 30 (thirty) days from the date of receipt by the Agency of the relevant invoice(s) and supporting documents.

ARTICLE I.6 – BANK ACCOUNT

Payments shall be made to the Contractor's bank account denominated in euro¹, identified as follows:

Bank name: *[complete]*
Branch address: *[complete]*
Account holder: *[complete]*
Account No: *[complete]*
IBAN code: *[complete]*
BIC/Swift Code: *[complete]*

ARTICLE I.7 – GENERAL ADMINISTRATIVE PROVISIONS

Any communication relating to the Contract or to its implementation shall be made in writing and shall bear the Contract and order form numbers. Ordinary mail shall be deemed to have been received by the Agency on the date on which it is registered by the department responsible indicated below.

Electronic communication must be confirmed by paper communication when requested by either of the parties. The parties agree that paper communication can be replaced by electronic communication with electronic signature.

Communications shall be sent to the following addresses:

Agency:

European Environment Agency
Att.: *[title, name, function]*
Kongens Nytorv 6
1050 Copenhagen K
Denmark
Tel: +45 33 36 *[complete]*
Fax: +45 33 36 *[complete]*
E-mail: *[complete]*@eea.europa.eu

Contractor:

[Contractor's name in full]
Att.: *[title, name, function]*
[Contractor's address in full]
Tel: *[complete]*
Fax: *[complete]*
e-mail: *[complete]*

By derogation from this Article, different contact details for the Agency or the Contractor may be provided in order forms.

¹ Or local currency where the receiving country does not allow transactions in EUR

During the performance of the contract and at the request of the Agency, the use of electronic means to exchange ordering and invoicing documents may become mandatory. The electronic documents are exchanged using the e-PRIOR platform, either via a system-to-system connection (web services) or through a web application (the Supplier Portal).

ARTICLE I.8 – APPLICABLE LAW AND SETTLEMENT OF DISPUTES

I.8.1 The Contract shall be governed by Danish law.

I.8.2 Any dispute between the parties resulting from the interpretation, application or validity of the Contract which cannot be settled amicably shall be brought before the courts of Copenhagen, Denmark.

ARTICLE I.9 – TERMINATION BY EITHER CONTRACTING PARTY

Either contracting party may, of its own volition and without being required to pay compensation, terminate either the Contract or the Contract and order forms by serving 60 (sixty) days formal prior notice. Should the Agency terminate the Contract or order forms, the Contractor shall only be entitled to payment corresponding to the supplies ordered and delivered before the termination date. The first paragraph of Article II.9.3 shall apply.

II – GENERAL CONDITIONS

ARTICLE II.1 – PERFORMANCE OF THE CONTRACT

Whenever the Agency wishes products to be supplied, it shall send an order form to the Contractor, in duplicate, specifying the terms of supply of the products, such as quantity, designation, quality, price, place of delivery and time allowed for delivery, in accordance with the conditions laid down in the Contract.

Within the period referred in Article I.4, the Contractor shall return one original of the order form, duly signed and dated, thereby acknowledging receipt of the order form and acceptance of the terms.

II.1.1 Delivery

The time allowed for delivery shall be calculated in accordance with Article I.4. The Agency shall be notified in writing of the exact date of delivery within the period indicated in Article I.4. All deliveries shall be made at the agreed place of delivery during the hours indicated in Article I.4.

The Contractor shall bear all costs and risks involved in delivering the supplies to the place of delivery.

Each delivery shall be accompanied by a consignment note in duplicate, duly signed and dated by the Contractor or his carrier, giving the order form number and particulars of the supplies delivered. One copy of the consignment note shall be countersigned by the Agency and returned to the Contractor or to his carrier.

II.1.2 Certificate of conformity

Signature of the consignment note by the Agency, as provided for in the last paragraph of Article II.1.1 is simply an acknowledgment of the fact that the delivery took place and in no way implies conformity of the supplies with the order form.

Conformity of the supplies delivered shall be evidenced by the signature of a certificate to this effect by the Agency no later than 1 (one) month after the date of delivery, unless otherwise specified in the special conditions or in the tender specifications (Annex I).

Conformity shall be declared only where the conditions laid down in the Contract and in the order form are satisfied and the supplies conform to the tender specifications (Annex I).

Where, for reasons attributable to the Contractor, the Agency is unable to accept the supplies, the Contractor shall be notified in writing at the latest by the deadline for conformity.

II.1.3 Conformity of the supplies delivered with the Contract

The supplies delivered by the Contractor to the Agency must be in conformity in quantity, quality, price and packaging with the Contract and the relevant order form.

The supplies delivered must:

- correspond to the description given in the tender specifications (Annex I) and possess the characteristics of the supplies provided by the Contractor to the Agency as sample or model;
- be fit for any specific purpose required of them by the Agency and made known to the contractor at the time of conclusion of this Contract and accepted by the Contractor;
- be fit for the purposes for which supplies of the same type are normally used;
- demonstrate the quality and performance which are normal in supplies of the same type and which the Agency can reasonably expect, given the nature of the supplies and taking into account any public statements on the specific characteristics of the supplies made by the Contractor, the producer or its representative, particularly in advertising or on labelling;
- be packaged according to the usual method for supplies of the same type or, failing this, in a way designed to preserve and protect them.

II.1.4 Remedy

The Contractor shall be liable to the Agency for any lack of conformity which exists at the time the supplies are verified.

In case of lack of conformity, without prejudice to Article II.10 on liquidated damages applicable to the total price of the supplies concerned, the Agency shall be entitled either to have the supplies brought into conformity, free of charge, by repair or replacement, or to have an appropriate reduction made in the price. In this respect, the term 'free of charge' refers to the costs incurred to bring the supplies into conformity, particularly the cost of postage, labour and materials.

Any repair or replacement shall be completed within a reasonable time and without any significant inconvenience to the Agency, taking account of the nature of the supplies and the purpose for which they are required by the Agency.

II.1.5 Assembly

If required by the tender specifications (Annex I), the Contractor shall assemble the supplies delivered within a period of 1 (one) month unless otherwise specified in the special conditions.

Any lack of conformity resulting from incorrect installation of the supplies delivered shall be deemed to be equivalent to lack of conformity of the supplies if installation forms part of the Contract and the supplies were installed by the Contractor or under his responsibility. This shall apply equally if the product was to be installed by the Agency and was incorrectly installed owing to a shortcoming in the installation instructions.

II.1.6 Services provided to supplies

If required by the tender specifications (Annex I), services to supplies shall be provided accordingly.

II.1.7 General provisions concerning supplies

(a) Packaging

The supplies shall be packaged in strong boxes or crates or in any other way that ensures that the contents remain intact and prevents damages or deterioration. Packaging, pallets, etc... including contents, shall not weigh more than 500 (five hundred) kg.

Unless otherwise specified in the special conditions or in the tender specifications (Annex I), pallets, shall be considered as one-way packaging and shall not be returned. Each box shall be clearly labelled with the following information:

- name of the Agency and address for delivery
- name of the Contractor
- description of contents
- date of delivery
- number and date of order form

(b) Guarantee

The supplies shall be guaranteed against all defects in manufacture or materials for 2 (two) years from the date of delivery, unless provision is made for a longer period in the tender specifications (Annex I).

The Contractor shall guarantee that any permits and licences required for manufacturing and selling the supplies have been obtained.

The Contractor shall replace at his own expense, within a reasonable time limit to be determined by agreement between the parties, any items which become damaged or defective in the course of normal use during the guarantee period.

The Contractor is responsible for any conformity defect which exists at the time of delivery, even if this defect does not appear until a later date.

The Contractor is also responsible for any conformity defect which occurs after delivery and is ascribable to non-compliance with his obligations, including failure to provide a guarantee that, for a certain period, supplies used for the purposes for which they are normally used or for a specific purpose will preserve their qualities or characteristics as specified.

If part of an item is replaced, the replacement part shall be guaranteed under the same terms and conditions for a further period of the same duration as that specified above.

If a defect is found to originate in a systematic flaw in design, the Contractor must replace or modify all identical parts incorporated in the other supplies that are part of the order, even though they may not have been the cause of any incident. In this case, the guarantee period shall be extended as stated above.

II.1.8 General provisions on performance of the Contract

The contractor shall perform the Contract to the highest professional standards.

The contractor shall comply with the minimum requirements provided for in the tender specifications. This includes compliance with applicable obligations under environmental,

social and labour law established by Union law, national law and collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC.

The contractor shall be solely responsible for taking the necessary steps to obtain any permit or licence required for performance of the Contract under the laws and regulations in force at the place where the order forms are to be executed.

Any reference made to the Contractor's personnel in the Contract shall relate exclusively to individuals involved in the performance of the Contract.

The Contractor must ensure that any personnel performing the Contract possesses the professional qualifications and experience required for execution of the order forms assigned to it.

The Contractor shall neither represent the contracting authority nor behave in any way that would give such an impression. The Contractor shall inform third parties that it does not belong to the European public service.

The Contractor shall be solely responsible for the personnel who executes the tasks assigned to him.

The Contractor shall stipulate the following employment or service relationships with its personnel:

- (a) personnel executing the tasks assigned to the Contractor may not be given orders directly by the Agency;
- (b) the Agency may not under any circumstances be considered to be the employer of the personnel referred to in point (a) and the personnel shall undertake not to invoke against the Agency any right arising from the contractual relationship between the Agency and the Contractor.

In the event of disruption resulting from the action of the Contractor's personnel working on the Agency's premises or in the event that the expertise of a member of the Contractor's personnel fails to correspond to the profile required by the Contract, the Contractor shall replace him without delay. The Agency shall have the right to make a reasoned request for the replacement of such personnel. The replacement personnel must have the necessary qualifications and be capable of performing the Contract under the same contractual conditions. The Contractor shall be responsible for any delay in the execution of the order forms resulting from the replacement of personnel.

Should the execution of the Contract be directly or indirectly hampered, either partially or totally, by any unforeseen event, action or omission, the Contractor shall immediately and at its own initiative record it and report it to the Agency. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with its obligations under this Contract. In such an event the Contractor shall give priority to solving the problem rather than determining liability.

Should the Contractor fail to perform its obligations under the Contract, the Agency may - without prejudice to its right to terminate the Contract - reduce or recover payments in proportion to the scale of the unperformed obligations. The Agency shall formally notify the contractor of its intention to reduce payment and the corresponding calculated amount. The contractor shall have 30 days following the date of receipt to submit observations. Failing that, the decision shall become enforceable the day after the time limit for submitting observations has elapsed. Should the contractor submit observations, the Agency, taking into account the relevant observations, shall notify the contractor:

- (a) of the withdrawal of its intention to reduce payment; or
- (b) of its final decision to reduce payment and the corresponding amount.

In addition, the Agency may claim compensation or impose liquidated damages in accordance with Article II.10.

ARTICLE II.2 – LIABILITY

- II.2.1** The Contractor shall be solely responsible for complying with any legal obligations incumbent on him.
- II.2.2** The Agency shall not be held liable for any damage caused or sustained by the Contractor, including any damage caused by the Contractor to third parties during or as a consequence of performance of the Contract, except in the event of wilful misconduct or gross negligence on the part of the contracting authority.
- II.2.3** The Contractor shall be liable for any loss or damage sustained by the Agency in performance of the Contract, including in the event of subcontracting and for any claim by a third party, but only up to 3 (three) times the total amount of the relevant order form. Nevertheless, if the damage or loss is caused by the gross negligence or wilful misconduct of the Contractor or by its employees or subcontractors, the Contractor shall remain liable without any limitation as to the amount of the damage or loss.
- II.2.4** The Contractor shall indemnify and hold the Agency harmless for all damages and costs incurred due to any claim. The Contractor shall provide compensation in the event of any action, claim or proceeding brought against the Agency by a third party as a result of damage caused by the Contractor in performance of the Contract. In the event of any action brought by a third party against the Agency in connection with performance of the Contract, the Contractor shall assist the Agency. Expenditure incurred by the Contractor to this end may be borne by the Agency.
- II.2.5** The Contractor shall take out insurance against risks and damage relating to performance of the Contract if required by the relevant applicable legislation. He shall take out supplementary insurance as reasonably required by standard practice in the industry. A copy of all the relevant insurance contracts shall be sent to the Agency should it so request.
- II.2.6** If the Contractor is a consortium, they are all jointly and severally liable to the contracting authority for the implementation of the Contract.

ARTICLE II.3 - CONFLICT OF INTERESTS AND PROFESSIONAL CONFLICTING INTERESTS

The Contractor shall take all necessary measures to prevent any situation that could compromise the impartial and objective performance of the Contract or any situation in which the Contractor's previous or ongoing professional activities could affect its capacity to implement the Contract or to perform an order form to an appropriate quality standard. Such conflict of interests could arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest.

Any situation constituting or likely to lead to a conflict of interests or professional conflicting interests which could arise during performance of the Contract must be notified to the Agency in writing without delay. In the event of such conflict, the Contractor shall immediately take all necessary steps to resolve it.

The Agency reserves the right to verify that such measures are adequate, to require additional measures to be taken, if necessary, within a time limit which it shall set, or to decide not to place an order form. The Contractor shall pass on all the relevant obligations in writing to its personnel, any natural person with the power to represent it or take decisions on its behalf, third parties involved in the implementation of the Contract, including subcontractors. The contractor must also ensure that the persons referred to above are not placed in a situation which could give rise to conflicts of interest.

ARTICLE II.4 – CONFIDENTIALITY

II.4.1 The Agency and the Contractor shall treat with confidentiality any information or documents, in any form, disclosed in writing or orally in relation to the performance of the Contract and identified in writing as confidential.

Each party shall:

- (a) not use confidential information or documents for any purpose other than fulfilling its obligations under the Contract or order form without prior written agreement of the other party;
- (b) ensure the protection of such confidential information and documents with the same level of protection it uses to protect its own confidential information, and in any case with due diligence;
- (c) not disclose directly or indirectly confidential information and documents to third parties without prior written agreement of the other party.

II.4.2 The confidentiality obligation set out in Article II.4.1 shall be binding on the Agency and the Contractor during the performance of the Contract and for 5 (five) years starting from the date of the payment of the balance unless:

- (a) the disclosing party agrees to release the other party from the confidentiality obligation earlier;

(b) the confidential information becomes public through other means than in breach of the confidentiality obligation, through disclosure by the party bound by that obligation;

(c) the disclosure of the confidential information or documents is required by law.

II.4.3 The Contractor shall obtain from any natural person with the power to represent it or take decisions on its behalf, as well as from third parties involved in the performance of the Contract or order form an undertaking that they will comply with the confidentiality obligation set out in Article II.4.1.

ARTICLE II.5 – SUBCONTRACTING

II.5.1 The Contractor shall not subcontract without prior written authorisation from the Agency nor cause the Contract to be performed in fact by third parties.

II.5.2 Even where the Agency authorises the Contractor to subcontract to third parties, he shall nonetheless remain bound by his obligations to the Agency under the Contract and shall bear exclusive liability for proper performance of the Contract.

II.5.3 The Contractor shall make sure that the subcontract does not affect rights and guarantees to which the Agency is entitled by virtue of the Contract, notably Article II.4 and II.13.

II.5.4 The Agency may request the Contractor to replace a subcontractor found to be in a situation provided for in points (e) to (h), (k) and (l) of Article II.9.1.

ARTICLE II.6 – ASSIGNMENT

II.6.1 The Contractor shall not assign the rights, including claims for payments, and obligations arising from the Contract, in whole or in part, without prior written authorisation from the Agency. In such cases, the Contractor shall provide the Agency with the identity of the intended assignee.

II.6.2 In the absence of the authorisation referred to in Article II.6.1, or in the event of failure to observe the terms thereof, assignment by the Contractor shall not be enforceable against the Agency and shall have no effect on the latter.

ARTICLE II.7 – FORCE MAJEURE

II.7.1 Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the contracting parties which prevents either of them from performing any of their obligations under the Contract, and which was not due to error or negligence on their part or on the part of a subcontractor, and which proves to be inevitable in spite of exercising due diligence. Any default of a service, defects in equipment or material or delays in making them available, labour disputes, strikes or financial problems cannot be invoked as force majeure unless they stem directly from a relevant case of force majeure.

- II.7.2** Without prejudice to the provisions of Article II.1.8, if either contracting party is faced with force majeure, it shall notify the other party without delay, stating the nature, likely duration and foreseeable effects.
- II.7.3** Neither contracting party shall be held in breach of its contractual obligations if it has been prevented from performing them by force majeure. Where the Contractor is unable to fulfil his contractual obligations owing to force majeure, he shall have the right to remuneration only for the supplies actually delivered and which obtain a certificate of conformity.
- II.7.4** The contracting parties shall take the necessary measures to limit any damage due to force majeure.

ARTICLE II.8 – SUSPENSION OF THE PERFORMANCE OF THE CONTRACT

II.8.1 Suspension by the Contractor

The Contractor may suspend the performance of the Contract or order form or any part thereof if a case of force majeure makes such performance impossible or excessively difficult. The Contractor shall inform the Agency about the suspension without delay, giving all the necessary reasons and details and the envisaged date for resuming the performance of the Contract or order form.

Once the circumstances allow resuming performance, the Contractor shall inform the Agency immediately, unless the Agency has already terminated the Contract or order form.

II.8.2 Suspension by the Agency

The Agency may suspend the performance of the Contract or order form or any part thereof:

- (a) if the contract or order form award procedure or the performance of the Contract prove to have been subject to substantial errors, irregularities or fraud;
- (b) in order to verify whether presumed substantial errors, irregularities or fraud have actually occurred.

Suspension shall take effect on the day the Contractor receives formal notification, or at a later date where the notification so provides. The Agency shall as soon as possible give notice to the Contractor to resume the service suspended or inform the Contractor that it is proceeding with termination of the Contract or order form. The Contractor shall not be entitled to claim compensation on account of suspension of the Contract or order form or of part thereof.

ARTICLE II.9 – TERMINATION OF THE CONTRACT

II.9.1 Grounds for termination

The Agency may terminate the Contract or a pending order respectively in the following circumstances:

- (a) if a change to the Contractor's legal, financial, technical or organisational or ownership situation is likely to substantially affect the performance of the Contract or order form or substantially modify the conditions under which the Contract was initially awarded;
- (b) if execution of the tasks under a pending order form has not actually commenced within 15 (fifteen) days of the date foreseen, and the new date proposed, if any, is considered unacceptable by the Agency, taking into account Article II.14.2;
- (c) if the Contractor does not perform the Contract or an order form as established in the tender specifications (Annex I), fails to fulfil another substantial contractual obligation, repeatedly refuses to sign order forms, or fails to send them back on time; termination of three or more order forms on these grounds shall constitute ground for termination of the Contract;
- (d) in the event of force majeure notified in accordance with Article II.7 or if the performance of the Contract or order form has been suspended by the Contractor as a result of force majeure, notified in accordance with Article II.8.1, where either resuming performance is impossible or the modifications to the Contract or order form might call into question the decision awarding the Contract or order form, or result in unequal treatment of tenderers or contractors;
- (e) if the Contractor or any person that assumes unlimited liability for the debts of the Contractor is bankrupt, subject to insolvency or winding-up procedures, is having its assets administered by a liquidator or by a court, is in an arrangement with creditors, has suspended business activities, or is in any analogous situation arising from a similar procedure provided for under national laws or regulations;
- (f) it has been established by a final judgment or a final administrative decision that the Contractor or any person who has the power to represent the contractor or to take decisions on its behalf is guilty of grave professional misconduct by having violated applicable laws or regulations or ethical standards of the profession to which he belongs, or by having engaged in any wrongful conduct which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence, including, in particular, any of the following:
 - (i) fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of selection criteria or in the performance of a contract;
 - (ii) entering into agreement with other economic operators with the aim of distorting competition;
 - (iii) violating intellectual property rights;
 - (iv) attempting to influence the decision-making process of the contracting authority during the procurement procedure;
 - (v) attempting to obtain confidential information that may confer upon it undue advantages in the procurement procedure;

- (g) it has been established by a final judgment or a final administrative decision that the Contractor or any person that assumes unlimited liability for the debts of the Contractor is in breach of its obligations relating to the payment of taxes or social security contributions in accordance with the law of the country in which it is established, with those of the country in which the contracting authority is located or those of the country of the performance of the contract;
- (h) it has been established by a final judgment that the Contractor or any person who has the power to represent the Contractor or to take decisions on its behalf is guilty of any of the following:
 - (i) fraud, within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests, drawn up by the Council Act of 26 July 1995;
 - (ii) corruption, as defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, drawn up by the Council Act of 26 May 1997, and in Article 2(1) of Council Framework Decision 2003/568/JHA, as well as corruption as defined in the law of the country where the contracting authority is located, the country in which the economic operator is established or the country of the performance of the contract;
 - (iii) participation in a criminal organisation, as defined in Article 2 of Council Framework Decision 2008/841/JHA;
 - (iv) money laundering or terrorist financing, as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council;
 - (v) terrorist-related offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA, respectively, or inciting, aiding, abetting or attempting to commit such offences, as referred to in Article 4 of that Decision;
 - (vi) child labour or other forms of trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council;
- (j) if the needs of the Agency change and it no longer requires new supplies under the Contract;
- (k) the Contractor or any person who has the power to represent the Contractor or to take decisions on its behalf has shown significant deficiencies in complying with main obligations in the performance of a contract financed by the budget, which has led to its early termination or to the application of liquidated damages or other contractual penalties, or which has been discovered following checks, audits or investigations by an authorising officer, OLAF or the Court of Auditors;
- (l) it has been established by a final judgment or final administrative decision that the Contractor or any person who has the power to represent the Contractor or to take decisions on its behalf has committed an irregularity within the meaning of Article

1(2) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Union financial interests;

- (m) if the procedure for awarding the Contract or the implementation of the Contract prove to have been subject to substantial errors, irregularities or fraud;
- (n) if the contractor does not comply with applicable obligations under environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU;
- (o) if the contractor is in a situation that could constitute a conflict of interest or a professional conflicting interest as referred to in Article II.3.

II.9.2. Grounds for termination by the contractor

The contractor may terminate the Contract or an order form if:

- (a) it has evidence that the Agency has committed substantial errors, irregularities or fraud in the procedure for awarding the Contract or the implementation of the Contract;
- (b) the Agency fails to comply with its obligations, in particular the obligation to provide the information needed for the contractor to implement the Contract or to perform an order form as provided for in the tender specifications.

II.9.3 Procedure for termination

A party must formally notify the other party of its intention to terminate the Contract or an order form and the grounds for termination.

The other party has 30 days following the date of receipt to submit observations, including the measures it has taken to continue fulfilling its contractual obligations. Failing that, the decision to terminate becomes enforceable the day after the time limit for submitting observations has elapsed.

If the other party submits observations, the party intending to terminate must formally notify it either of the withdrawal of its intention to terminate or of its final decision to terminate.

In the cases referred to in points (a) to (c), (e), (g), (i), (j), (n) and (o) of Article II.9.1 and in Article II.9.2, the date on which the termination takes effect must be specified in the formal notification.

In the cases referred to in points (d), (f), (h) and (k) to (m) and of Article II.9.1, the termination takes effect on the day following the date on which the contractor receives notification of termination.

II.9.4 Effects of termination

In the event of termination, the Contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work. On receipt of the notification

of termination, the Contractor shall take all the appropriate measures to minimise costs, prevent damages, and cancel or reduce its commitments. The Contractor shall have 30 (thirty) days from the date of termination to draw up the documents required by the special conditions or order forms for the supplies already delivered on the date of termination and produce an invoice if necessary. The Agency may recover any amounts paid under the Contract.

The Agency may claim compensation for any damage suffered in the event of termination.

On termination the Agency may engage any other contractor to deliver the supplies or provide or complete the related services. The Agency shall be entitled to claim from the Contractor all additional costs incurred in this regard, without prejudice to any other rights or guarantees it may have under the Contract.

ARTICLE II.10 LIQUIDATED DAMAGES

The Agency may impose liquidated damages if the Contractor fails to complete his contractual obligations, also with regard to the required quality level, according to the tender specifications (Annex I).

Should the Contractor fail to perform his obligations under the Contract within the time limits set by the Contract, then, without prejudice to the Contractor's actual or potential liability incurred in relation to the Contract or to the Agency's right to terminate the Contract, the Agency may decide to impose liquidated damages per calendar day of delay according to the formula $0.3 \times (V/d)$, where V is the price of the relevant purchase or supply and d is the duration specified in the relevant order form or, failing that, the period between the date specified in Article I.4 and the date of delivery or performance specified in the relevant order form, expressed in days.

The Contractor may submit arguments against this decision within 30 (thirty) days of receipt of the formal notification. In the absence of reaction on his part or of written withdrawal by the Agency within 30 (thirty) days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable. These liquidated damages shall not be imposed where there is provision for interest for late completion. The Agency and the Contractor expressly acknowledge and agree that any sums payable under this Article are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the losses incurred due to failure to fulfil obligations which may be reasonably anticipated.

ARTICLE II.11 – GENERAL PROVISIONS CONCERNING PAYMENTS

II.11.1 Payments shall be deemed to have been made on the date on which the Agency's account is debited.

II.11.2 Payments shall be executed in euro or in the local currency as provided in Article I.3.2.

Conversion between the euro and another currency shall be made according to the daily euro exchange rate published in the Official Journal of the European Union or, failing that, at the monthly accounting exchange rate established by the European Commission and published on its website, applicable on the day on which the payment order is issued by the Agency.

II.11.3 Costs of the transfer are borne in the following way:

- cost of dispatch charged by the bank of the Agency shall be borne by the Agency,
- cost of receipt charged by the bank of the Contractor shall be borne by the Contractor,
- costs of repeated transfer caused by one of the parties shall be borne by the party who caused repetition of the transfer.

II.11.4 Invoices shall contain the Contractor's identification, the amount, the currency and the date, as well as the Contract reference and reference to the order form.

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

The Agency is, as a rule, exempt from all taxes and duties, including VAT, pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union.

The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the supplies and services required for performance of the Contract are exempt from taxes and duties, including VAT exemption.

II.11.5 The Contractor shall submit an invoice within 60 (sixty) days following receipt of the certificate of conformity of the supplies signed by the Agency, accompanied by a final progress report or any other documents provided for in the Contract or order form.

Upon receipt, the Agency shall pay the amount due within the period specified in Article I.5, provided the invoice and documents have been approved and without prejudice to Article II.11.6. Approval of the invoice and documents shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information they contain.

Payment may take the form of recovery as specified in Article II.12.

II.11.6 The Agency may suspend the payment period specified in Article I.5 at any time by notifying the Contractor that his invoice cannot be processed, either because it does not comply with the provisions of the Contract, or because the appropriate documents have not been produced.

The Agency shall inform the contractor in writing without delay of any such suspension giving the reasons for it.

Suspension shall take effect on the date the notification is sent by the Agency. The remaining payment period shall start to run again from the date on which the requested information or revised documents are received or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension period exceeds 2 (two) months, the Contractor may request the Agency to justified the continued suspension.

Where the payment period has been suspended following rejection of a document referred to in the first paragraph of Article II.11.6 and the new document produced is also rejected, the Agency reserves the right to terminate the order form in accordance with Article II.9.1 (c).

II.11.7 On expiry of the payment period specified in Article I.5, and without prejudice to Article II.11.6, the Contractor 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 8 (eight) points. The reference rate shall be the rate in force on the first calendar 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 period in accordance with Article II.11.6 may not be considered as a late payment.

Interest on late payment shall cover the period running from the day following the due date for payment up to and including the date of the actual payment as defined in Article II.11.1. However, when the calculated interest is lower than or equal to EUR 200 (two hundred euro), it shall be paid to the Contractor only upon request submitted within 2 (two) months of receiving the payment.

ARTICLE II.12 – RECOVERY

II.12.1 If a payment made exceeds the amount actually due or if recovery is justified in accordance with the terms of the Contract, the Contractor shall reimburse the appropriate amount in euro on receipt of the debit note, in the manner and within the time limits set by the Agency.

II.12.2 In the event of failure to pay by the deadline specified in the request for reimbursement, the sum due shall bear interest at the rate indicated in Article II.11.7. Interest shall be payable from the calendar day following the due date up to and including the calendar day on which the debt is repaid in full.

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

II.12.3 In the event of failure to pay by the deadline specified in the request for reimbursement, the Agency may, after informing the Contractor, recover amounts established as certain, of a fixed amount and due by offsetting, in cases where the Contractor also has a claim on the Agency that is certain, of a fixed amount and due. Without prejudice to any legal action which the Agency is entitled to take, it may also claim against the guarantee, where provided for in the Contract or an order form,

II.12.4 If the contract is signed by a consortium, it shall be jointly and severally liable under the conditions set out in Article II.2 (liability). The Agency shall first claim the full amount to the coordinator of the consortium. If the coordinator does not pay by the due date and if the amount cannot be offset in accordance with Article II.12.3, the Agency may claim the full amount to any other member of the consortium by notifying the debit note already sent to the coordinator under Article II.12.1.

ARTICLE II.13 – CHECKS AND AUDITS

- II.13.1** The Agency and the European Anti-Fraud Office may check or require an audit on the performance of the Contract. It may be carried out either directly by OLAF's own staff or by any other outside body authorised to do so on its behalf.

Such checks and audits may be initiated during the performance of the Contract and during a period of 5 (five) years which starts running on the day of the payment of the balance of the last order form issued under this Contract.

The audit procedure shall be deemed to be initiated on the date of receipt of the relevant letter sent by the Agency. Audits shall be carried out on a confidential basis.

- II.13.2** The Contractor shall keep all original documents stored on any appropriate medium, including digitised originals when they are authorised by national law and under the conditions laid down therein, for a period of 5 (five) years which starts running on the day of the payment of the balance of the last order form issued under this Contract.

- II.13.3** The Contractor shall allow the Agency's staff and outside personnel authorised by it the appropriate right of access to sites and premises where the Contract is performed and to all the information, including information in electronic format, needed in order to conduct such checks and audits. The Contractor shall ensure that the information is readily available at the moment of the check or audit and, if so requested, that information be handed over in an appropriate form.

- II.13.4** On the basis of the findings made during the audit, a provisional report shall be drawn up. It shall be sent to the Contractor, which shall have 30 (thirty) calendar days following the date of receipt to submit observations. The final report shall be sent to the Contractor within 60 (sixty) calendar days following the expiry of that deadline.

On the basis of the final audit findings, the Agency may recover all or part of the payments made and may take any other measures which it considers necessary.

- II.13.5** By virtue of 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 (EC) 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), OLAF may also carry out 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. Where appropriate, the findings may lead to recovery by the Agency and criminal prosecution under national law.

- II.13.6** The Court of Auditors shall have the same rights as the Agency, notably right of access, for the purpose of checks and audits.

ARTICLE II.14 – AMENDMENTS

- II.14.1** Any amendment to the Contract or to an order form shall be the subject of a written agreement concluded by the contracting parties before fulfilment of all their contractual obligations. An oral agreement shall not be binding on the contracting parties. An order form may not be deemed to constitute an amendment to the Contract.

II.14.2 The amendment may not have the purpose or the effect of making changes to the Contract or to order forms which might call into question the decision awarding the Contract or order form or result in unequal treatment of tenderers or contractors.

II.15 PROCESSING OF PERSONAL DATA

II.15.1 Any personal data included in the Contract must be processed in accordance with 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. Such data must be processed by the data controller solely for the purposes of the implementation, management and monitoring of the Contract. This does not affect its possible transmission to the bodies entrusted with monitoring or inspection tasks in application of Union law.

II.15.2 The contractor has the right to access its personal data and the right to rectify any such data. The contractor should address any queries concerning the processing of its personal data to the data controller.

II.15.3 The contractor has right of recourse at any time to the European Data Protection Supervisor.

II.15.4 If the Contract requires the contractor to process any personal data, the contractor may act only under the supervision of the data 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.

II.15.5 The contractor must grant personnel access to the data to the extent strictly necessary for the implementation, management and monitoring of the Contract.

II.15.6 The contractor must adopt appropriate technical and organisational security measures giving due regard to the risks inherent in the processing and to the nature of the personal data concerned, in order to:

- (a) prevent any unauthorised person from gaining access to computer systems processing personal data, and especially:
 - (i) unauthorised reading, copying, alteration or removal of storage media;
 - (ii) unauthorised data inputting, as well as any unauthorised disclosure, alteration or erasure of stored personal data;
 - (iii) unauthorised use of data processing systems by means of data transmission facilities;
- (b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
- (c) record which personal data have been communicated, 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 authority;
- (e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
- (f) design its organisational structure in such a way that it meets data protection requirements.

SIGNATURES

For the Contractor,
[Company name/forename/surname/function]

For the Agency,
Mr Soren Nielsen,
Head of Programme

Signature[s]: _____

Signature: _____

Done at _____, on _____

Done at Copenhagen, on _____

In duplicate in English

ANNEX III

DRAFT ORDER FORM
Implementing Framework supply contract No EEA/ADS/16/001

| | | | | |
|--|----------------------------------|--------------|--|-------|
|  European Environment Agency Administrative Services (ADS) Kongens Nytorv 6 1050 Copenhagen K Tel.: +45 33 36 71 00 Fax: +45 33 36 71 99 | FRAMEWORK CONTRACT ORDER FORM | | | |
| | Order number | | <i>(Name and address of the service provider / supplier)</i> | |
| | Currency of payment | | | |
| | Date and reference of the offer: | | | |
| This order form is governed by the provisions of Framework contract No EEA/ADS/16/001 in force from xx.xx.2016 to xx.xx.2017 | | | | |
| LISTING OF GOODS | UNIT | QUANTITY | PRICE IN EUR | |
| | | | UNIT PRICE | TOTAL |
| Pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union, the Agency is exempt from all taxes and dues, including value added tax, on payments due in respect of this Contract. For purchases within the Union, the mention "VAT exemption / European Union / Article 151 of Council Directive 2006/112/EC" should be added on the invoice. | | Sub-total | | |
| | | VAT | | |
| | | TOTAL | | |
| Place of delivery: EEA premises at Kongens Nytorv 6 and 8, DK 1050 Copenhagen K | | | | |
| Delivery of the supplies shall take place immediately after signature by both parties. | | | | |
| Terms of payment: Within maximum 30 days in accordance with the provisions of Articles I.5 and II.11 of Framework Contract No EEA/ADS/16/001 | | | Contractor's signature | |
| Date of issue | xx.xx.201x | Date | xx.xx.201x | |
| Signature: Mr Soren Nielsen Head of Programme | | | Signature: [Title] [First name and surname] [Function] | |