

GENERAL TERMS & CONDITIONS APPLICABLE TO CONTRACTS (Framework contract-Service contract) AWARDED BY THE EUROPEAN ENVIRONMENT AGENCY (Hereinafter “the Agency”)

Article 1 - Performance of the contract

- (1) The Contractor shall perform the contract according to the highest professional standards and in accordance with the principles of sound financial management. The Contractor shall have sole responsibility for complying with any legal obligations incumbent on him, notably those resulting from employment, tax and social legislation.
- (2) The Contractor must ensure that any staffs performing the Contract have the professional qualifications and experience required for the execution of the tasks assigned to him.
- (3) The contract shall be performed in such a way as to exclude the possibility of the Contractor or his/her staff undertaking tasks under conditions identical to those governing the tasks entrusted to a member of the Agency’s staff.
- (4) If the Contractor’s staffs are working at Agency premises, the Contractor shall replace, immediately, at the Agency’s request and without compensation any person considered undesirable by the latter. The Agency shall state the reasons for doing so. Replacement staff shall 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 tasks assigned to him resulting from the replacement of staff in accordance with this Article.
- (5) If the Contractor is a natural person, he/she shall be required to provide proof of his/her status either as a self-employed person or an employee for the duration of the contract. To this end, he/she shall provide the Agency with information about his/her occupation, in particular with regard to social security and VAT.
- (6) In the event of circumstances that are liable to prejudice or delay the performance of the contract, the Contractor shall forthwith inform the Agency, with the relevant details. The parties shall agree together on the measures to be taken.
- (7) The Contractor undertakes to provide, free of charge, the Agency with any information it may request for the management of the contract.
- (8) Should the Contractor fail to perform his/her obligations under the Contract in accordance with the provisions laid down therein, the Agency may - without prejudice to its right to terminate the Contract - reduce or recover payments in proportion to the scale of the failure.

Article 2 – Conflict of interests

- (1) The Contractor shall take all necessary measures to prevent or end any situation that could compromise the impartial and objective performance of the Contract. Any conflict of interests that could arise during performance of the Contract shall be notified to the Agency in writing without delay. The Contractor shall take all necessary measures to prevent or end such a situation. A 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.
- (2) The Agency reserves the right to verify that such measures are adequate and may require additional measures to be taken if necessary. Without prejudice to Article 1 the Contractor shall replace, immediately and without compensation from the Agency, any member of his/her staff exposed to such a situation.

Article 3 - Confidentiality

- (1) The Contractor undertakes not to make use of and not to divulge to third parties any facts, information, knowledge, documents or other matters communicated to him or brought to his/her attention during the performance of the contract or any matter arising there-from. He/she shall continue to be bound by this undertaking after the expiry of the contract.
- (2) If the Contractor uses his/her own staff in the performance of the contract, he/she shall obtain from each staff member a written undertaking that they will respect the confidentiality of any information brought to their attention during the performance of the work and that they will not divulge to third parties or use for their own benefit or that of any third party any document or information not available publicly, even after completion of their assignment. A copy of the undertaking shall be sent to the Agency.

Article 4 - Permits and licences

The Contractor shall be solely responsible for taking the necessary steps to obtain any permit or licence required for the performance of the contract under the laws and regulations in force at the place where the tasks assigned to the Contractor are to be performed.

Article 5 - Force majeure

- (1) Neither contracting party shall be held in breach of its contractual obligations if it has been prevented from performing them by force majeure. The Contractor shall not be entitled to payment if he/she is prevented by force majeure from performing the tasks assigned to him. Part performance only of any such task shall result in part payment. Provided it is specified in the contract, the above provisions shall not affect the Contractor's entitlement to reimbursement of travel

and subsistence expenses and of costs for the shipment of equipment incurred in the performance of the contract.

- (2) 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, was not due to error or negligence on their part or on the part of a subcontractor, and could not have been avoided by the exercise of due diligence. 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.
- (3) If either of the contracting parties is faced with force majeure, it shall notify the other party without delay by registered letter with acknowledgement of receipt or equivalent, stating the nature, likely duration and foreseeable effects.

Article 6 - Liability of the contracting parties

- (1) The Agency shall not be held liable for damage sustained by the Contractor himself/herself or by his/her staff during the performance of the contract, except in the event of misconduct or negligence on the part of the Agency.
- (2) Except in case of force majeure, the Contractor shall be required to indemnify the Agency for any damage it may sustain during the performance, poor or otherwise, of the contract, including in the event of subcontracting. The Agency shall not be held liable for any act or default on the part of the Contractor in the performance of the contract.
- (3) The Contractor shall indemnify the Agency in full and undertakes to provide compensation in the event of any action, claim or proceeding brought against it by a third party as a result of damage caused by the Contractor in performance of the Contract.
- (4) 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.
- (5) In the event of any action brought by a third party against the Contractor in connection with performance of the Contract, the Agency may assist the Contractor if a written request is made by the Contractor to this effect. Expenditure incurred by the Agency to this end shall be borne by the Contractor.
- (6) The Contractor shall take out the insurance required by the relevant legislation against risks and damage relating to performance of the Contract. He/she shall take out supplementary insurance if he/she deems it necessary and appropriate in order to perform the Contract. A copy of all insurance contracts shall be sent to the Agency should it so request.

Article 7 - Suspension of the contract

Where the award procedure or performance of the contract may have been vitiated by substantial errors or irregularities or by fraud the Agency shall suspend performance of the contract in order to verify whether they have actually occurred. If they are not confirmed, performance of the contract shall resume as soon as possible.

Article 8- Termination of the contract

- (1) Each contracting party may, of his/her own volition and without being required to pay compensation, terminate the contract by serving formal notice two months in advance. If the contract is terminated by the Agency, the Contractor shall be entitled to payment for the part performance of the contract only.
- (2) In case of force majeure, notified in accordance with article 5, either contracting party may terminate the contract.
- (3) The Agency may terminate the contract at any time by registered letter without formal notice in the following circumstances:
 - a) Where the Contractor is unable, through his/her own fault, to obtain any permit or licence required for performance of the Contract;
 - b) Where the Contractor has been found guilty by the competent bodies of serious professional misconduct;
 - c) Where the Contractor is declared bankrupt, is wound up, has ceased trading, has been wound up by court order or is in composition with his/her creditors entailing suspension of business, is in receivership or is in any other comparable situation provided for by the laws or regulations of his/her country;
 - d) Where the Contractor has made false, incomplete or incorrect statements or has failed to provide information in an attempt to obtain the Contract or any benefit resulting there from, or where this was the effect of his/her action;
 - e) Where the Contractor has, intentionally or by negligence, committed an irregularity in performance of the Contract or in relation to other contracts concluded with an institution, organ or agency of the European Communities and, more generally, in the event of fraud, corruption or any other illegal activity detrimental to the Communities' financial interests on the part of the Contractor.
- (4) Where a change in the Contractor's legal, financial technical or organisational situation could have a significant effect on the contract or where the Contractor has failed to perform the contract, except for reasonable and justifiable technical or economic reasons and after having given notice by registered mail requiring performance of the obligations under the Contract, the Agency may terminate the contract if the Contractor is still in breach of his/her obligations one month after receiving formal notice.

- (5) In the event of the Agency terminating the Contract in accordance with this Article, the Contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his/her commitments. He/she shall draw up the documents required by the Agency for the tasks executed up to the date on which termination takes effect, within a period not exceeding sixty days from that date. He/she shall undertake to send to the Agency all information and documents in his possession concerning the tasks assigned to him.
- (6) In the event of termination of the contract under this article, no payment shall be due except for services actually rendered up to the date of termination and accepted by the Agency. In such an event, the amount due shall be calculated after deducting any payments already made. If the payments made prior to termination exceed the sum finally due, the Contractor shall repay the additional amount to the Agency within 60 days of receipt of a request for repayment. If payment is not made within this period, the sum owed by the Contractor shall start to bear interest as specified at article (12).

Article 9 - Assignment and subcontracting

- (1) The Contractor shall not, without the prior and written approval of the Agency, assign the rights and obligations arising out of the contract in whole or in part or sub-contract any part of the contract to third parties. He/she shall not cause the contract to be performed in fact by third parties.
- (2) Even where the Agency authorises the Contractor to sub-contract part or all of the work to third parties, he/she shall nonetheless remain bound by his/her obligations to the Agency under the contract.
- (3) Save where the Agency expressly authorises an exception, the Contractor shall be required to include in any sub-contracts for all or part of the work such provisions as enable the Agency to enjoy the same rights and guarantees in relation to the sub-Contractor(s) as it enjoys in relation to the Contractor him/herself.
- (4) In the absence of the prior approval referred to in (1) above or in the event of failure to observe the terms thereof, assignment by the Contractor shall not be enforceable against and shall have no effect on the Agency.

Article 10 - Ownership

- (1) Any result or patent obtained by the Contractor in the performance of the contract shall belong to the Agency, which may use them as it sees fit.

- (2) Copyright and any other rights of ownership in respect of manuscripts or parts thereof shall belong exclusively to the Agency except where copyright or other property rights already exist.
- (3) On the date of acceptance of the manuscripts and subject solely to the exception referred to in paragraph (2) above, all rights in respect of manuscripts, including amongst others the right to use, print, publish and sell all or part thereof in any manner and in any language whatsoever, shall be acquired by the Agency which may transfer all or part of such rights to third parties on its own terms.
- (4) The Contractor shall specify any parts of manuscripts, including illustrations, maps and graphs, in which copyright or any other right of ownership already exists and hereby affirms that he/she has obtained permission to use such parts from the titular holder(s) of such rights or from his/her or their legal representatives. He/she shall pay any cost for which the Contractor may become liable for such permission. Save as otherwise provided for in paragraph (2), the Contractor hereby affirms that he/she is entitled to transfer the copyright or other rights of ownership in respect of the subject matter of the manuscript.
- (5) The Agency shall not be required to publish manuscripts or documents supplied in the performance of the contract. If it is decided not to publish the manuscripts or documents supplied, the Contractor shall not have them published elsewhere without the written approval of the Agency.

Article 11 - Payments

- (1) Payments shall be made in euros (€).
- (2) At the request of the Contractor, the Agency may pay him a pre-financing payment equal to a maximum of 40% of the amount due on completion of the contract. The pre-financing payment shall be deducted from subsequent payments in such a manner that it is fully recovered on exhaustion of the funds provided for such payments.

Pre-financing may be made conditional upon the providing by the Contractor of proof that he/she has lodged a guarantee in the form of a financial guarantee or equivalent supplied by a bank or an authorised financial institution (the guarantor) equal to the amount of the pre-financing payment and denominated in euros.

The guarantor shall pay to the Agency at its request an amount corresponding to payments made by it to the Contractor that have not yet been covered by equivalent work on his/her part.

The guarantor shall stand as first call guarantor and shall not require the Agency to have recourse against the Contractor.

The guarantee shall specify that it enters into force on the date on which the Contractor receives the pre-financing. The Agency shall release the guarantor from its obligations as soon as the Contractor has demonstrated that any pre-

financing has been covered by equivalent work evidenced by acceptance of the services or approval of the interim report(s). The guarantee shall be retained until the pre-financing has been deducted from interim payments or payment of the balance to the Contractor. It shall be discharged the following month. The cost of providing such guarantee shall be borne by the Contractor.

- (3) Where appropriate, invoices shall be supported by original documents justifying the time spent by the Contractor to perform the tasks under the contract.
- (4) Reimbursable travel and subsistence expenses shall be paid, where appropriate, on production of original supporting documents including receipts, used tickets and boarding pass.
- (5) Payments shall be made within the time limits as specified in article 3-3 of the contract and shall be deemed to have been made on the date on which the Agency's account is debited.
- (6) Where payments depend on approval of a report, the time limit for the payment shall not begin to run until the report has been approved. This report shall be deemed to have been approved implicitly once the time allowed for approval has expired without being suspended by means of a formal document sent by the Agency to the contractor.
- (7) On expiry of the time limit for payment the Contractor may claim interest within two months of receiving the late payment. Interest shall be calculated at the rate applied by the European Central Bank to its most recent main refinancing operations ("*the reference rate*") plus seven percentage points ("*the margin*"). The reference rate in force on the first day of the month in which the payment is due shall apply. Such interest rate is published in the C series of the Official Journal of the European Communities. Interest shall be payable for the time elapsed between expiry of the payment deadline and the date of payment. Suspension of payment by the Agency may not be deemed to constitute late payment.
- (8) However, the Agency may suspend the time limit for payment by informing the Contractor, at any time during the period referred to under (5), that the payment request cannot be met, either because the amount is not due or because the appropriate supporting documents have not been produced. The Agency shall notify the Contractor accordingly by registered letter with acknowledgement of receipt or equivalent. Suspension shall take effect from the date of dispatch of the letter. The remainder of the payment period shall begin to run again from the date when the properly formulated payment request is first registered.
- (9) The Contractor, whose registered office or residence is situated within the territory of one of the Member countries of the Agency, shall indicate a banking institution on the territory of the country where his/her registered office or residence is situated for the payment of the sums due to him under the contract.

Article 12 – Recovery

- (1) If total payments made exceed the amount actually due under the Contract 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.
- (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 11.7. Such interest rate is published in the C series of the Official Journal of the European Communities. Interest shall be payable for the time elapsed between expiry of the payment deadline and the date of payment.
- (3) The Agency may, after informing the Contractor, recover amounts established as receivable by offsetting, in cases where the Contractor also has a claim on the Communities that is certain, of a fixed amount and due. The Agency may also claim against the guarantee, where provided for. The agreement of the Contractor is not required.

Article 13 – Audits and controls

- (1) The Agency and such persons who are authorised for this purpose by the Executive Director may carry out audits and controls and have access to all books, papers, records and files kept by the Contractor relating to the performance of the contract and to the expenditure incurred in its performance during the contractual period and for a period of five years after such period. The Contractor shall provide free of charge all the information thus requested.
- (2) In order to carry out audits, the Agency and such persons who are authorised for this purpose by the Executive Director shall have total on-the-spot access, notably to the Contractor's offices, at all times and to all the information needed to check that the Contractor has complied with the Contract, including information in electronic format.
- (3) The European Court of Auditors and the European Anti-Fraud Office may carry out audits and controls in accordance with relevant Community laws, especially the Financial Regulation applicable to the general budget of the European Communities¹.

Article 14 - Provisions relating to taxation

- (1) The Agency is exempt from duties, levies and taxes, including value added tax, pursuant to Article 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities and the Headquarters Agreement between the Agency and the Government of Denmark of 17 August 1995. The contractor shall accordingly complete the necessary formalities with the relevant authorities to

¹ Council Regulation No 1605/2002 of 25 June 2002

ensure that the goods and services required for the performance of the contract are exempt from tax and customs charges, including VAT.

- (2) The VAT number of the Agency is: DK 18 13 98 39.
- (3) The amount of VAT shall not be included in the sums due to the Contractor except when the tasks envisaged with the present contract are not directly exonerated from VAT under the terms of the tax laws applicable to the Contractor.
- (4) The Contractor shall, at the request of the Agency, make available to the latter all vouchers which it might require in order, where necessary, to apply for reimbursement by the fiscal authorities of levies and taxes which have been paid in execution of this contract, pursuant to Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities.

Article 15 – Applicable Law and Jurisdiction

- (1) The contract shall be subject to Danish law.
- (2) Any dispute between the Agency and the Contractor or any claim by one party against the other which cannot be settled amicably shall be brought before the Copenhagen courts exclusively, at the initiative of either party.

Article 16 – Amendments

Any amendment to the contract shall be the subject of an additional written agreement. Oral agreements shall not be binding on the contracting parties.
