

**ANNEX V**  
**(Annex II for the Draft Framework Contract)**

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

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**Article 1 - Performance of the contract**

- (1) The contract shall be performed in such a way as to exclude the possibility of the Contractor or his staff undertaking tasks under conditions identical to those governing the tasks entrusted to a member of the Agency’s staff. The Contractor and his staff may not be members of the Agency’s administrative structure.
- (2) If the Contractor is a natural person, he shall be required to provide proof of his status either as a self-employed person or an employee for the duration of the contract. To this end, he shall provide the Agency with information about his occupation, in particular with regard to social security and VAT.

**Article 2 - Secondary obligations of the Contractor**

- (1) The Contractor shall perform the contract according to the highest professional standards and in accordance with the principles of sound financial management. In performance of the contract, the Contractor is required, depending on the circumstances, to use only his own highly qualified, professional staff
- (2) The Contractor shall not be in one of the following situations:
  - Being bankrupt, wound up or have his/her business activities suspended;
  - Have his/her affairs being administered by the court; have entered into an arrangement or similar measures with creditors or be the subject of any proceedings of that nature;
  - Having been convicted of an offence with regard to his/her professional conduct by a judgement which is not open to appeal;
  - Be guilty of grave professional misconduct;
  - Having been subject of a judgment which has the force of “res judicata” for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities’ financial interests;
  - Having not fulfilled his/her obligations relating to the payment of social security contributions or taxes in accordance with the legal provisions of the country in which he/she is established or those of the country of the contracting authority or those where the contract is to be performed;
  - Following another procurement procedure or grant award procedure financed by the Community budget, having been declared to be in serious breach of contract for failure to comply with their contractual obligations.
- (3) The Contractor undertakes to provide the Agency with any information it may request for the management of the contract.
- (4) In the event of termination of the contract for one of the reasons referred to in Article 7 of these terms and conditions, the Contractor shall undertake to send the Agency all information and documents in his possession concerning the tasks assigned to him.

### **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 attention during the performance of the contract or any matter arising there-from. He shall continue to be bound by this undertaking after the expiry of the contract.
- (2) If the Contractor uses his own staff in the performance of the contract, he 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.
- (3) If the Contractor's staff 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.

### **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 - Spread of risk**

The Contractor shall not be entitled to payment if he 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.

### **Article 6 - Liability of the contracting parties**

- (1) The Agency may not under any circumstances or for any reason whatsoever be held liable for damage sustained by the Contractor himself or by his staff during the performance of the contract. The Agency shall not accept any claim for compensation or repairs in respect of such damage.
- (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.

### **Article 7 - Termination of contract**

- (1) Each contracting party may, of his 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 the event of a serious failure by the Contractor to the Agency, duly noted by the Agency, to fulfil his obligations under the contract, the contract may be terminated at any time by registered letter without formal notice or payment of any compensation

whatsoever by the Agency. This provision shall not affect the application of Article 6(2) of these General Terms & Conditions.

- (3) In the event of non performance of the contract by the Contractor, except for reasonable and justifiable technical or economic reasons, of any of his obligations, and after having given notice by registered mail requiring performance of the obligations concerned, the Agency may terminate the contract if the Contractor is still in breach of his obligations one month after receiving formal notice.
- (4) In the event of circumstances, which 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. If no agreement can be reached, the Agency may terminate the contract without recourse to any legal proceedings, where no action is taken by the Contractor within one month of receiving formal notice by registered mail.
- (5) The Agency may terminate the contract without notice if the Contractor is unable, through his own fault, to obtain any permit or licence required for the performance of the contract as referred to in Article 4 above.
- (6) Without prejudice to the termination referred to in paragraphs 3 and 4 above, the Agency may require reimbursement of all or part of the amounts paid, having regard to the nature and the scale of the work carried out, before the date of termination of the contract.

#### **Article 8 - Assignment and services to third parties**

- (1) The Contractor shall not 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 without the prior and written approval of the Agency.
- (2) Even where the Agency authorises the Contractor to sub-contract part or all of the work to third parties, he shall nonetheless remain bound by his 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-Contractors as it enjoys in relation to the Contractor himself.

#### **Article 9 - 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, of which copyright or any other right of ownership already exists and hereby affirm that he has obtained permission to use such parts from the titular holder(s) of such rights or from his or their legal representatives. Any cost for which the Contractor may become liable for such permission shall be paid by him. Save as otherwise provided for in paragraph (2), the Contractor hereby affirms that he 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 prior written approval of the Agency.

### **Article 10 – Payments**

- (1) Payments shall be made in euros (€).
- (2) At the request of the Contractor, the Agency may pay him an advance of up to a maximum of 40% of the amount due on completion of the contract. Payment of the advance may be made conditional upon the furnishing by the Contractor of proof that he has lodged a deposit with his bank equal to the amount of the advance. The advance shall be deducted from subsequent payments in such a manner that it is fully recovered on exhaustion of the funds provided for such payments.
- (3) In the event of termination of the contract under Article 7 of these General Terms & Conditions, no payment shall be due except for services actually rendered up to the date of termination. 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 at the euro rate applied by the European Central Bank on the last day of the period allowed for repayment, as published in the C series of the Official Journal.
- (4) Where appropriate, invoices shall be supported by original documents justifying the time spent by the Contractor to perform the tasks under the contract.
- (5) Reimbursable travel and subsistence expenses shall be paid, where appropriate, on production of original supporting documents including receipts, used tickets and boarding pass.
- (6) Payments shall be made within the time limit as specified in Article 3 of the contract and shall be deemed to have been made on the date on which the Agency's account is debited
- (7) 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. The 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.
- (8) 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.

- (9) However, the Agency may suspend the time limit for payment by informing the Contractor, at any time during the period referred to under (6), 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.
- (10) 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 registered office or residence is situated for the payment of the sums due to him under the contract.

#### **Article 11 – Audits and controls**

The Agency and such persons who are authorised for this purpose by the Executive Director shall be entitled to carry out audits and controls, have access to all books, papers, records and files kept by the Contractor relating to expenditure incurred in performing the contract during the contractual period and for a period of five years after such period.

#### **Article 12 - Provisions relating to taxation**

- (1) 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.
- (2) The Contractor shall be responsible for complying with the national tax laws applicable to him in respect of revenue received under the contract with the Agency.
- (3) 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 13 – 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 14 – 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.