



## FRAMEWORK SUPPLY CONTRACT

CONTRACT NUMBER – EEA/ADS/05/002

The European Environment Agency (hereinafter referred to as "the Agency"), which is represented for the purposes of the signature of this contract by Prof. Jacqueline McGlade, Executive Director

of the one part,

and

[official name in full]

[official legal form]<sup>1</sup>

[statutory registration number]<sup>2</sup>

[official address in full]

[VAT registration number]

(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

the **Special Conditions** and the **General Conditions** below and the following Annexes<sup>3</sup>:

**Annex I** Tender Specifications (Invitation to Tender No [complete] of [complete])

**Annex II** Contractor's Tender (No [complete] of [complete])

**Annex III** Order Form

[other Annexes<sup>4</sup>]

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<sup>1</sup> Delete if contractor is a natural person or a body governed by public law.

<sup>2</sup> Delete if contractor is a body governed by public law. For natural persons, indicate the number of their identity card or, failing that, of their passport or equivalent.

<sup>3</sup> Voluminous annexes may be replaced by a reference to the documents concerned, provided the content of such documents is not subject to challenge (by virtue of their public nature).

<sup>4</sup> Specific additional rules resulting from the specific requirements of the contract concerned or imposed by the applicable legislation.

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 Contract shall take precedence over those in the Orders.
- The terms set out in the Tender Specifications (Annex I) shall take precedence over those in the Tender (Annex II).

Subject to the above, the several instruments forming part of this 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.7 should he dispute any such instruction.

## **I – SPECIAL CONDITIONS**

### **ARTICLE I.1 - SUBJECT**

- I.1.1** The subject of the Contract is **Purchase, Installation and service of AV Equipment for the European Environment Agency.**
- I.1.2** When an Order is issued, the Contractor shall supply and assemble the goods and shall provide the services related to them in accordance with the Tender Specifications annexed to the Contract (Annex I).
- I.1.3** The Contract does not confer on the Contractor an exclusive right to supply the goods referred to in the above paragraph.
- I.1.4** Signature of the Contract imposes no obligation on the Agency to purchase.
- I.1.5** All Orders pursuant to the Contract shall conform to the terms set out therein.

### **ARTICLE I.2 - DURATION**

- I.2.1** The Contract shall enter into force on the date on which it is signed by the last contracting party.
- I.2.2** Under no circumstances may Orders be placed before the date on which the Contract enters into force.
- I.2.3** The Contract is concluded for a period of 36 months with effect from the date on which it enters into force. This contractual period and all other periods specified in the Contract are calculated in calendar days unless otherwise indicated.
- I.2.4** The Orders pursuant to the Contract shall be placed by the Agency and the Order Forms returned by the Contractor before the Contract expires.  
  
The Contract shall continue to apply to Orders executed after the Contract expires. Such Orders shall be executed no later than six months.
- I.2.5** The Contract may be renewed once, for a period of 12 months, only before expiry of the Contract and with the express written agreement of the parties. The total duration of the contract may not exceed four consecutive years. Renewal does not imply any modification or deferment of existing obligations.

### **ARTICLE I.3 - PRICES**

- I.3.1** The prices of the goods shall be [:] [as listed in Annex II].
- I.3.2** Prices shall be expressed in EUR.
- I.3.3** Prices shall be fixed and not subject to revision for Orders placed during the first year of performance of the Contract.

From the beginning of the second year of performance of the Contract, prices 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 three months before the anniversary of the date on which it was signed. Orders shall be placed on the

basis of the prices in force on the date on which they are signed. Such prices shall not be subject to revision.

This revision shall be determined by the trend in the harmonised consumer price index Euro 15 published for the first time by the Office for Official Publications of the European Communities in the Eurostat monthly bulletin (Theme 2 - Economy and Finance, Collection Detailed tables, Money, finance and the euro: Statistics).

Revision shall be calculated in accordance with the following formula:

$$Pr = Po \left( \frac{Ir}{Io} \right)^{0,2+0,8}$$

where:

Pr = revised price;  
Po = price in the original tender;  
Io = index for the month in which the validity of the tender expires;  
Ir = index for the month corresponding to the date of receipt of the letter requesting a revision of prices.

#### **ARTICLE I.4 – ORDER AND PAYMENT PERIODS**

Payments under the Contract shall be made in accordance with Article II.5. Payments shall be executed only if the Contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted.

**I.4.1** Orders shall be placed and executed in accordance with Article II.1.1.

Within 15 working days of the Order Form being sent by the Agency, the Contractor shall return it, duly signed and dated. The period allowed for delivery shall start to run on the date the Contractor returns the Order Form, unless a specific date is indicated on the Form. In the event of failure to observe the deadline, Article II.4 shall apply.

**I.4.2** The goods shall be delivered DDP at Copenhagen, Denmark. The Contractor shall notify the Agency of the exact date of delivery at least seven days in advance. All deliveries shall be made between 08:00 hours and 16:00 hours at the agreed place of delivery.

**I.4.3** Invoicing and Payment

The requests for payment shall be admissible if accompanied by

- The Certificate of Conformity
- The relevant invoices, indicating the reference number of the Framework Contract and of the Order to which they refer.

Provided the above certificate has been signed by the Agency.

The Agency shall have forty-five days from delivery of the goods to accept them by signing the Certificate of Conformity and the Contractor shall have thirty days in which to submit additional information.

Within 30 days of the date of receipt of the relevant invoice and the date on which the goods are accepted by the Agency, payment of the balance corresponding to the relevant invoices shall be made.

#### **ARTICLE I.5 – BANK ACCOUNT**

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

Name of bank: [complete]  
Address of branch in full: [complete]  
Exact designation of account holder: [complete]  
Full account number including codes: [complete]  
IBAN code: [complete]  
BIC/Swift code: [complete]

#### **ARTICLE I.6 – GENERAL ADMINISTRATIVE PROVISIONS**

Any communication relating to the Contract shall be made in writing and shall bear the Contract and Order 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. Communications shall be sent to the following addresses:

Agency:  
European Environment Agency  
Attn. Tommi Multala  
Kongens Nytorv 6  
1050 Copenhagen K, Denmark

Contractor:  
Mr/Mrs/Ms [complete]  
[Function]  
[Company name]  
[Official address in full]

#### **ARTICLE I.7 APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

**I.7.1** The Contract shall be governed by the national substantive law Denmark

**I.7.2** Any dispute between the parties resulting from the interpretation or application of the Contract which cannot be settled amicably shall be brought before the courts of 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 the Contract by serving 60 days formal prior notice. Should the Agency terminate the Contract, the Contractor shall only be entitled to payment

corresponding to the goods ordered and delivered before the termination date. 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 commitments. He shall draw up the documents required by the Special Conditions for the goods delivered and services rendered up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

## **II – GENERAL CONDITIONS**

### **ARTICLE II.1 - PROCEDURES FOR PERFORMING THE CONTRACT**

#### **II.1.1 Phases of execution of the Order**

##### **Sending of the Order Form**

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

##### **Acknowledgment of the Order by the Contractor**

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

##### **Delivery**

a) Time allowed for delivery

The time allowed for delivery shall be calculated in accordance with Article I.4.

b) Date, time and place of delivery

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 goods to the place of delivery.

c) Consignment note

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

##### **Certificate of conformity**

Signing of the consignment note by the Agency, as provided for in subparagraph c) above, is simply an acknowledgment of the fact that the goods have been delivered and in no way implies conformity of the goods with the Order.

Conformity of the goods delivered shall be evidenced by the signing of a certificate to this effect by the Agency no later than one month after the date of delivery, unless provision is made for a different period<sup>5</sup> in the Special Conditions or in Annex I.

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<sup>5</sup> Where the goods or equipment supplied are particularly complex, it is preferable for acceptance not to be declared until after a continuous period of satisfactory performance so that reliability and any performance guarantees can be checked.

Conformity shall be declared only where the conditions laid down in the Contract and in the Order are satisfied and the goods conform to Annex I.

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

### **Conformity of the goods delivered with the Contract**

- a) The goods delivered by the Contractor to the Agency must be in conformity in quantity, quality, price and packaging with the Contract and the relevant Order.
- b) The goods delivered must:
  - correspond to the description given in Annex I and possess the characteristics of the goods supplied by the Contractor to the Agency as a 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 the Contract and accepted by the Contractor;
  - be fit for the purposes for which goods of the same type are normally used;
  - demonstrate the quality and performance which are normal in goods of the same type and which the Agency can reasonably expect, given the nature of the goods and taking into account any public statements on the specific characteristics of the goods made by the Contractor, the producer or his representative, particularly in advertising or on labelling;
  - be packaged according to the usual method for goods of the same type or, failing this, in a way designed to preserve and protect them.

### **Remedy**

- a) The Contractor shall be liable to the Agency for any lack of conformity which exists at the time the goods are verified.
- b) In case of lack of conformity, without prejudice to Article II.4 regarding liquidated damages applicable to the total price of the goods concerned, the Agency shall be entitled:
  - either to have the goods brought into conformity, free of charge, by repair or replacement;
  - or to have an appropriate reduction made in the price.
- c) 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 goods and the purpose for which they are required by the Agency.
- d) The term 'free of charge' in paragraph b) refers to the costs incurred to bring the goods into conformity, particularly the cost of postage, labour and materials.

### **Assembly**



If required by Article I.1.2 of the Special Conditions, the Contractor shall assemble the goods delivered within a period of one month unless otherwise specified in the Special Conditions or in Annex 1.

Any lack of conformity resulting from incorrect installation of the goods delivered shall be deemed to be equivalent to lack of conformity of the goods if installation forms part of the Contract and the goods 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.

### **Services provided to goods**

If required by Annex I, services to goods shall be provided accordingly.

## **II.1.2 General provisions concerning goods**

### a) Packaging

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

Unless otherwise specified in the Special Conditions or in Annex 1, pallets shall be considered as one-way packaging and shall not be returned. Each box shall be clearly labelled with the following information:

- European Environment Agency and address for delivery;
- name of Contractor;
- description of contents;
- date of delivery;
- number and date of Order Form;

### b) Guarantee

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

The Contractor shall guarantee that any permits and licences required for manufacturing and selling the goods 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, goods

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 goods 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.1.3 Performance of the Contract**

- a) The Contractor shall perform the Contract to the highest professional standards. The Contractor shall have sole responsibility for complying with any legal obligations incumbent on him, notably those resulting from employment, tax and social legislation.
- b) The Contractor shall have sole responsibility 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 Orders are to be executed.
- c) The Contractor must ensure that any staff performing the Contract have the professional qualifications and experience required for execution of the Orders.
- d) In the event of disruption resulting from the action of a member of the Contractor's staff working on Agency premises or in the event of the expertise of a member of the Contractor's staff failing to correspond to the profile required by the Contract, the Contractor shall replace him without delay. The Agency shall have the right to request the replacement of any such member of staff, stating its reasons for so doing. Replacement staff 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 Orders resulting from the replacement of staff in accordance with this Article.
- e) Should any unforeseen event, action or omission directly or indirectly hamper execution of the Orders, either partially or totally, the Contractor shall immediately and at his 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 his obligations under the Contract. In such event the Contractor shall give priority to solving the problem rather than determining liability.
- f) Should the Contractor fail to perform his 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 failure. In addition, the Agency may impose liquidated damages, as provided for in Article II.4.

## **ARTICLE II.2 - LIABILITY**

- II.2.1** The Agency shall not be liable for damage sustained by the Contractor in performance of the Contract except in the event of wilful misconduct or gross negligence on the part of the Agency.
- II.2.2** The Contractor shall be liable for any loss or damage caused by himself in performance of the Contract, including in the event of subcontracting under Article II.10. The Agency shall not be liable for any act or default on the part of the Contractor in performance of the Contract.
- II.2.3** 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.
- II.2.4** 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 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.

## **ARTICLE II.3 - CONFLICT OF INTERESTS**

- II.3.1** The Contractor shall take all necessary measures in order to prevent any situation that could compromise the impartial and objective performance of the Contract. 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 conflict of 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 and may require that additional measures be taken, if necessary, within a time limit which it shall set. The Contractor shall ensure that his staff, board and directors are not placed in a situation which could give rise to conflict of interest. Without prejudice to Article II.1 the Contractor shall replace, immediately and without compensation from the Agency, any member of his staff exposed to such a situation.

- II.3.2** The Contractor shall abstain from any contact likely to compromise his independence.
- II.3.3** The Contractor declares:

- that he has not made, and will not make, any offer of any type whatsoever, from which an advantage can be derived under the Contract,

- that he has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, where such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, inasmuch as it is an incentive or reward relating to the performance of the Contract.

#### **ARTICLE II.4 - LIQUIDATED DAMAGES**

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 of 0.2%<sup>6</sup> of the amount of the relevant Order per calendar day of delay. The Contractor may submit arguments against this decision within thirty days of notification by registered letter with acknowledgment of receipt or equivalent. In the absence of reaction on his part or of written withdrawal by the Agency within 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 that may be reasonably anticipated from such failure to perform obligations.

#### **ARTICLE II.5 – INVOICING AND PAYMENTS**

a) Pre-financing:

Where required by Article I.4.1 or by the Order issued, the Contractor shall provide a financial guarantee in the form of a bank guarantee or equivalent supplied by a bank or an authorised financial institution (guarantor) equal to the amount indicated in the same Article to cover pre-financing under the Contract. Such guarantee may be replaced by a joint and several guarantee by a third party.

The guarantor shall pay to the Agency at its request an amount corresponding to payments made by it to the Contractor which have not yet been covered by equivalent delivery of goods or execution of related services on his part.

The guarantor shall stand as first-call guarantor and shall not require the Agency to have recourse against the principal debtor (the Contractor).

The guarantee shall specify that it enters into force at the latest 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 delivery of goods or execution of related services. The guarantee shall be retained until the pre-financing has been deducted from payment of the balance. It shall be released the following month. The cost of providing such guarantee shall be borne by the Contractor.

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<sup>6</sup> The daily rate for liquidated damages may be modified in the Special Conditions where the subject of the contract so justifies.

b) Payment of the balance:

Within sixty days of receipt by the Contractor of the certificate of conformity of the goods signed by the Agency, he shall submit the relevant invoice, drawn up in duplicate and bearing the Order number, to the Agency for approval.

Where required, it shall be accompanied by a final technical report in accordance with the instructions laid down in Annex I.

If the report is a condition for payment, on receipt the Agency shall have the period of time indicated in the Special Conditions in which:

- to approve it, with or without comments or reservations, or suspend such period and request additional information; or
- to reject it and request a new report.

If the Agency does not react within this period, the report shall be deemed to have been approved. Approval of the report does not imply recognition either of its regularity, or of the authenticity, completeness or correctness of the declarations or information enclosed.

Where the Agency requests a new report, because the one previously submitted has been rejected, this shall be submitted within the period of time indicated in the Special Conditions. The new report shall likewise be subject to the above provisions.

## **ARTICLE II.6 – GENERAL PROVISIONS CONCERNING PAYMENTS**

**II.6.1** Payments shall be deemed to have been made on the date on which the Agency's account is debited.

**II.6.2** The payment periods referred to in Article I.4 may be suspended by the Agency at any time if it informs the Contractor that his payment request is not admissible, either because the amount is not due or because the necessary supporting documents have not been properly produced. In case of doubt on the eligibility of the expenditure indicated in the payment request, the Agency may suspend the time limit for payment for the purpose of further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the expenditure is eligible.

The Agency shall notify the Contractor accordingly by registered letter with acknowledgment of receipt or equivalent. Suspension shall take effect from the date of dispatch of the letter. The remainder of the period referred to in Article I.4 shall begin to run again once the suspension has been lifted.

**II.6.3** In the event of late payment the Contractor may claim interest within two months of receiving the 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 Union. Interest shall be payable for the period elapsing from the calendar day following expiry of the time limit for payment up to the day of

payment. Suspension of payment by the Agency may not be deemed to constitute late payment.

#### **ARTICLE II.7 –RECOVERY**

- II.7.1** If total payments made exceed the amount actually due under the Order 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.7.2** 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.6.3. Interest shall be payable from the calendar day following the expiry of the due date up to the calendar day on which the debt is repaid in full.
- II.7.3** 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 Communities that is certain, of a fixed amount and due. The Agency may also claim against the guarantee.

#### **ARTICLE II.8 –TAXATION**

- II.8.1** The Contractor shall have sole responsibility for compliance with the tax laws which apply to him. Failure to comply shall make the relevant invoices invalid.
- II.8.2** The Contractor recognises that the Agency is, as a rule, exempt from all taxes and duties, including value added tax (VAT), pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities.
- II.8.3** The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the goods and services required for performance of the Contract are exempt from taxes and duties, including VAT.
- II.8.4** Invoices presented by the Contractor shall indicate his place of taxation for VAT purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

#### **ARTICLE II.9– FORCE MAJEURE AFFECTING THE CONTRACT OR THE ORDER(S)**

- II.9.1** 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, 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 it 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.9.2** Without prejudice to the provisions of Article II.1.3(e), if either contracting party is faced with force majeure, it shall notify the other party without delay by registered letter with acknowledgment of receipt or equivalent, stating the nature, likely duration and foreseeable effects.

**II.9.3** 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 perform his contractual obligations owing to force majeure, he shall have the right to remuneration for the goods actually delivered and any service provided.

**II.9.4** The contracting parties shall take the necessary measures to reduce damage to a minimum.

#### **ARTICLE II.10 – SUBCONTRACTING**

**II.10.1** 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.10.2** Even where the Agency authorises the Contractor to subcontract to third parties, he shall none the less remain bound by his obligations to the Agency under the Contract and shall bear exclusive liability for proper performance of the Contract.

**II.10.3** 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.14.

#### **ARTICLE II.11 – ASSIGNMENT**

**II.11.1** The Contractor shall not assign the rights and obligations arising from the Contract, in whole or in part, without prior written authorisation from the Agency.

**II.11.2** In the absence of the authorisation 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 II.12 – TERMINATION BY THE AGENCY**

**II.12.1** The Agency may terminate the Contract in the following circumstances:

- (a) where the Contractor is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any

analogous situation arising from a similar procedure provided for in national legislation or regulations;

- (b) where the Contractor has been convicted of an offence concerning his professional conduct by a judgment which has the force of *res judicata*;
- (c) where the Contractor has been guilty of grave professional misconduct proven by any means which the contracting authority can justify;
- (d) where the Contractor has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;
- (e) where the Agency seriously suspects the Contractor of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- (f) where the Contractor is in breach of his obligations under Article II.3;
- (g) where the Contractor was guilty of misrepresentation in supplying the information required by the Agency as a condition of participation in the Contract procedure or failed to supply this information;
- (h) where a change in the Contractor's legal, financial, technical or organisational situation could, in the Agency's opinion, have a significant effect on the performance of the Contract;
- (i) where the Contractor is unable, through his own fault, to obtain any permit or licence required for performance of the Contract;
- (j) where the Contractor, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period following receipt of the formal notice, remains in serious breach of his contractual obligations.

**II.12.2** In case of force majeure, notified in accordance with Article II.9, either contracting party may terminate the Contract, where performance thereof cannot be ensured for a quantity of goods corresponding to at least one fifth of the quantity of goods ordered.

**II.12.3** Prior to termination under point e), h) or j), the Contractor shall be given the opportunity to submit his observations.

Termination shall take effect on the date on which a registered letter with acknowledgment of receipt terminating the Contract is received by the Contractor, or on any other date indicated in the letter of termination.

**II.12.4** Consequences of termination:



In the event of the Agency terminating the Contract in accordance with this Article and without prejudice to any other measures provided for in the Contract, 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 commitments. He shall draw up the documents required by the Special Conditions for the goods supplied and related services rendered up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

The Agency may claim compensation for any damage suffered and recover any sums paid to the Contractor under the Contract.

On termination the Agency may engage any other contractor to supply the goods and execute the related services. The Agency shall be entitled to claim from the Contractor all extra costs incurred in making good and completing execution, without prejudice to any other rights or guarantees it has under the Contract.

### **ARTICLE II.13 - CANCELLATION OF ORDERS**

Where execution of the Order has not actually commenced within fifteen days<sup>7</sup> of the date foreseen for the commencement of execution and the new date proposed, if any, is considered unacceptable by the Agency, the Agency may cancel such Order with no prior notice. Cancellation shall take effect from the day after the day on which the Contractor receives a registered letter with acknowledgment of receipt or equivalent.

The Agency may cancel an Order at any time during execution thereof on the grounds and under the conditions set out in Article II.12 with respect to the part still outstanding. The Contractor shall accept, as the aggregate liability of the Agency, payment of the price of the goods delivered by him as at the effective date of cancellation.

### **ARTICLE II.14 – CHECKS AND AUDITS**

**II.14.1** Pursuant to Article 142 of the Financial Regulation applicable to the general budget of the European Communities, the European Court of Auditors is empowered to audit the documents held by the natural or legal persons receiving payments from the budget of the European Communities from signature of the Contract up to five years after payment of the balance of the last Order.

**II.14.2** The Agency or an outside body of its choice shall have the same rights as the European Court of Auditors for the purpose of checks and audits limited to compliance with contractual obligations from signature of the Contract up to five years after payment of the balance of the last Order.

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<sup>7</sup> This period may be modified in the Special Conditions depending on the nature of the contract. If the date or time of delivery is essential for the Agency, this should be clearly indicated in the invitation to tender and a clause in the Special Conditions should modify Article II.13 accordingly.

**II.14.3** In addition, the European Anti-Fraud Office may carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 and Parliament and Council Regulation (EC) No 1073/1999 from signature of the Contract up to five years after payment of the balance of the last Order.

### **ARTICLE II.15 - AMENDMENTS**

Any amendment to the Contract shall be the subject of a written agreement concluded by the contracting parties. An oral agreement shall not be binding on the contracting parties. An Order may not be deemed to constitute an amendment to the Contract.

### **ARTICLE II.16 – CONFIDENTIALITY**

**II.16.1** The Contractor undertakes to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to performance of the Contract. The Contractor shall continue to be bound by this undertaking after execution of the Orders.

**II.16.2** The Contractor shall obtain from each member of his staff, board and directors an undertaking that they will respect the confidentiality of any information which is linked, directly or indirectly, to execution of the tasks 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 execution of the Orders.

### **ARTICLE II.19 – SUSPENSION OF THE CONTRACT**

Without prejudice to the Agency's right to terminate the Contract, the Agency may at any time and for any reason suspend performance of the Contract or pending Orders or any part thereof. Suspension shall take effect on the day the Contractor receives notification by registered letter with acknowledgment of receipt or equivalent, or at a later date where the notification so provides. The Agency may at any time following suspension give notice to the Contractor to resume performance of the Contract or pending Orders. The Contractor shall not be entitled to claim compensation on account of suspension of the Contract or of part thereof.

### **SIGNATURES**

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

For the Agency,  
Jacqueline McGlade  
Executive Director

signature[s]: \_\_\_\_\_

signature: \_\_\_\_\_

Done at [\_\_\_], [date]  
In duplicate in English.

Done at Copenhagen, on

