



## CONTRACT FOR EXTERNAL INDIVIDUAL EXPERTS

CONTRACT No EEA/CEI/2019/001.xxxx

The European Environment Agency (hereinafter referred to as “the Agency”), represented for the purposes of signature of this service contract by [Complete], Head of programme [Complete], of the one part,

and

[name of the Expert]

[type of identity document]

[identity document number]

[address in full (place of residence)]

[email address]

of the other part, hereinafter referred to as “the Expert”,

### HAVE AGREED

to the terms of the Contract and the following annexes:

- Annex I: Terms of Reference
- Annex II: Declaration of Confidentiality, Independence and Absence of Conflict of Interests
- Annex III: Reimbursement of expenses
- Annex IV: Form for reimbursement of expenses

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

The terms set out in the Contract shall take precedence over those in the Annexes.

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 Expert under Article 18 should he dispute any such instruction.

Furthermore, each provision in the 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 provisions 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 with the actual intent of the parties under the illegal, invalid or unenforceable provision. The replacement of such provision must be made in accordance with Article 23. The Contract must be interpreted as if it had contained the substitute provision as from its entry into force.

## ARTICLE 1 – SUBJECT OF THE CONTRACT

The subject of the Contract is [short description of subject and the title of the programme/project to be assisted]. The Expert shall provide the services assigned to it in accordance with the terms and conditions set in the terms of reference (Annex I).

## **ARTICLE 2 – ENTRY INTO FORCE AND DURATION**

- 2.1** The Contract shall enter into force on the date on which it is signed by the Agency.
- 2.2** The duration of the tasks shall not exceed [working days] (maximum number of working days) and the work shall be completed [within [x] months of contract signature] [before [date]].
- 2.3** The indicative planning and number of working days for accomplishing the tasks are described in Annex I – Terms of Reference.
- 2.4** The Expert may not under any circumstances start work before the date on which this Contract enters into force. The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses.

## **ARTICLE 3 – FEES**

- 3.1** The Expert is entitled to a fee of EUR 450 (four hundred and fifty euro) in the form of a lump sum indemnity (hereinafter referred to as “Fees”) for each full working day<sup>1</sup> actually worked in accordance with Article 2.
- 3.2** The total amount of Fees is calculated to the nearest half day.
- 3.3** The maximum amount of Fees paid under the Contract is limited to the maximum number of working days in accordance with Article 2.2.

## **ARTICLE 4 – ALLOWANCES AND REIMBURSEMENT OF EXPENSES**

- 4.1.** In addition to the Fees specified in Article 3, the Agency will also reimburse travel expenses (hereinafter referred to as “Expenses”) directly connected with execution of the tasks, and where foreseen under Annex I of this Contract either on production of supporting documents (including receipts and used tickets) or on the basis of flat rates.
- 4.2.** Unless otherwise approved by the Agency, the ‘point of departure’ is the Expert’s official address as stated in the Contract. In exceptional and justified cases, the Agency may approve to a different ‘point of departure’. This approval must be given before any travel tickets are purchased. If the Expert changes the point of departure without the Agency’s prior approval, the reimbursement will be limited to the price of one return ticket from the Expert’s official address.
- 4.3.** The Agency shall reimburse travel and subsistence expenses on the basis of the shortest itinerary and the minimum number of nights necessary for overnight stay at the destination.

The Agency shall reimburse travel expenses as follows:

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<sup>1</sup> 1 full working day is defined as 8 hours (excluding breaks and travelling time).

- (a) travel by air shall be reimbursed up to the maximum cost of an economy class ticket at the time of the reservation;
- (b) travel by boat or rail shall be reimbursed up to the maximum cost of a first class ticket;
- (c) travel by car shall be reimbursed at the rate of one first class rail ticket for the same journey and on the same day;
- (d) travel outside Union territory shall be reimbursed under the general conditions stated above provided the Agency has given its prior written agreement.

The Agency shall reimburse subsistence expenses on the basis of a daily subsistence allowance as follows:

- (a) for journeys of less than 200 km for a return trip no subsistence allowance shall be payable;
- (b) the daily subsistence allowance shall be payable only on receipt of supporting documents proving that the person concerned was present at the place of destination;
- (c) the daily subsistence allowance shall take the form of a flat-rate payment to cover all subsistence expenses, including meals, local transport including transport from the airport or station, insurance and sundries;
- (d) the daily subsistence allowance, where applicable, shall be reimbursed at the rate specified in Annex III to the Contract;
- (e) accommodation shall be reimbursed on receipt of supporting documents proving the necessary overnight stay at the destination, up to the flat-rate ceilings specified in Annex III to the Contract.

Other expenses will not be reimbursed, in particular:

- (a) costs of purchasing equipment or other material needed by the Expert to accomplish its tasks;
- (b) expenses already declared by the Expert under another EU or Euratom contract or grant (including grants awarded by a Member State and financed by the EU or Euratom budget and grants awarded by bodies other than the Commission for the purpose of implementing the EU or Euratom budget);
- (c) reckless or excessive expenses.

## **ARTICLE 5 – PERFORMANCE OF THE CONTRACT**

**5.1.** The Expert works independently, in a personal capacity and not on behalf of any organisation.

**5.2** The Expert must:

- (a) Carry out its work in a confidential and fair way;
- (b) Assist the Agency or relevant service to the best of its abilities, professional skills, knowledge and applying the highest ethical and moral standards;
- (c) Follow any instructions and time-schedules given by the Agency or relevant service and deliver consistently high quality work.

**5.3** The Expert may not delegate another person to carry out the work or be replaced by any other person. The Expert must perform the Contract in compliance with its provisions and all legal obligations under applicable EU, international and national law. The Expert must do so fully,

within the set deadlines and to the highest professional standards. The Expert must, in particular, ensure compliance with applicable national tax and social security law.

- 5.4. The terms and conditions of this Contract do not constitute an employment agreement between the Expert and the contracting authority.
- 5.5 If the Expert cannot fulfil its obligations, s/he must immediately inform the Agency.

## ARTICLE 6 – KEEPING RECORDS

The expert must keep records and other supporting documentation (original supporting documents) as evidence that the Contract is performed correctly and the expenses were actually incurred. These must be available for review upon the Agency's request.

The expert must keep all records and supporting documentation for five years starting from the date of the last payment. If there are on-going checks, audits, investigations, appeals, litigation or pursuit of claims, the expert must keep the records and supporting documents until these procedures end.

## ARTICLE 7 – REQUEST FOR PAYMENT

- 7.1 To obtain the payment of the Fees and/or the reimbursement of the Expenses (if applicable), the Expert will be required to send the following documents in pdf format to [invoices@eea.europa.eu](mailto:invoices@eea.europa.eu):

- (a) timesheets and any other supporting documents required, within 30 days from completion of the tasks
- (b) Payment of Expenses: all required supporting documents as defined in the Contract
- (c) the form for reimbursement of expenses, duly filled in and signed, in accordance with Annex IV to the contract.

The request for payment must be submitted within 30 days of the completion of performance of the services as specified in Annex I.

*[In Belgium, use of this Contract constitutes a request for VAT exemption No 450, Article 42, paragraph 3.3 of the VAT code (circular 2/1978), provided the invoice includes: "Exonération de la TVA, Article 42, paragraphe 3.3 du code de la TVA (circulaire 2/1978)" or an equivalent statement in the Dutch or German language.]*

*[In Denmark, the contractor must include on the invoice the payment amount due as well as the respective VAT. Please note that although the Agency is exempt from all taxes and duties, including VAT, in accordance with Articles 3 and 4 of the Protocol on the privileges and immunities of the European Union, in Denmark VAT exemption by refund is applied to national transactions and therefore is payable at the time of the invoice to the supplier and claimed to the VAT authorities after payment.]*

- 7.2. Arrangements as regards payment are between the Expert and the Agency, even if the Expert is employed by any organisation. It will be for the Expert and his/her employer to come to any particular agreement concerning the final destination of any payments and reimbursement; the Agency will not intervene in this agreement.

## **ARTICLE 8 - OBLIGATIONS OF IMPARTIALITY**

- 8.1** The Expert must perform its work impartially. To this end, the Expert is required to:
- (a) Inform the Agency or relevant service of any conflicts of interest arising in the course of its work;
  - (b) Confirm there is no conflict of interest for the work s/he is carrying out by signing a declaration as per Annex III.
- 8.2** Definition of the conflict of interest: a conflict of interest exists if the Expert:
- (a) Has any vested interests in relation to the questions upon which s/he is asked to give advice;
  - (b) Or its organisation stands to benefit directly or indirectly, or be disadvantaged, as a direct result of the work carried out;
  - (c) Is in any other situation that compromises its ability to carry out its work impartially. The Agency will decide whether a conflict of interest exists, taking account of the objective circumstances, available information and related risks when the Expert is in any other situation that could cast doubt on its ability to carry out its work, or that could reasonably appear to do so in the eyes of an external third party.
- 8.3** Consequences of a situation of conflict of interest:
- (a) If a conflict of interest is reported by the Expert or established by the Agency, the Expert must not carry out the work;
  - (b) If a conflict becomes apparent in the course of its work, the Expert must inform immediately the Agency. If a conflict is confirmed, the Expert must stop carrying out its work. If necessary, the Expert will be replaced.

## **ARTICLE 9 - OBLIGATIONS OF CONFIDENTIALITY**

- 9.1** The Agency and the Expert must treat confidentially any information and documents, in any form (i.e. paper or electronic), disclosed in writing or orally in relation to the performance of the Contract, if they are labelled as confidential.
- 9.2** The Expert undertakes to observe strict confidentiality in relation to its work. To this end, the Expert must not use or disclose, directly or indirectly confidential information or confidential documents for any purpose other than fulfilling its obligations under the Contract without prior written approval of the Agency.
- 9.3** If material/documents/reports/deliverables that are labelled as confidential are made available either on paper or electronically to the Expert who then works from its own or other suitable premises, he/she will be held personally responsible for maintaining the confidentiality of any documents or electronic files sent and for returning, erasing or destroying all confidential documents or files upon completing its work as instructed.
- 9.4** These confidentiality obligations are binding on:

- (a) the Agency
- (b) the Expert during the performance of the Contract and for five years starting from the date of the last payment made to the Expert unless:
  - (i) the Agency agrees to release the Expert from the confidentiality obligations earlier;
  - (ii) the confidential information becomes public through other channels;
  - (iii) disclosure of the confidential information is required by law.

## **ARTICLE 10 – PAYMENT ARRANGEMENTS**

**10.1** The Agency will make payments within 30 (thirty) calendar days of receiving the invoice and supporting documents, subject to the approval of deliverable(s) or report(s), and of the invoice. Approval does not constitute recognition of compliance, authenticity, completeness or correctness of content.

**10.2** Payments shall be deemed to have been made on the date when the Agency's account is debited. Payments shall be made in EUR.

**10.3** The Agency makes any conversion between the euro and another currency at the daily euro exchange rate published in the Official Journal of the European Union, or failing that, at the monthly accounting exchange rate, as established by the European Commission and published on its website<sup>2</sup>, applicable on the day when it issues the payment order.

The Expert makes any conversion between the euro and another currency at the monthly accounting exchange rate, established by the European Commission and published on its website<sup>3</sup>, applicable on the date of the invoice.

**10.4** The costs of transfer are borne as follows:

- The Agency bears the costs of dispatched charged by its bank;
- The Expert bears the costs of receipt charged by its bank;
- The party causing repetition of transfer bears the costs for repeated transfer.

On expiry of the payment period specified in paragraph 1, Article 10, and without prejudice to Article 15, the Expert is entitled to interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in Euro (the reference rate), plus eight basis points. The reference rate is the rate in force on the first 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 periods in accordance with Article 15 may not be considered as giving rise to a late payment. Interest on late payment covers the period running from the day following the due date for payment up to and including the date of actual payment as defined in paragraph 2, Article 10. However, when the calculated interest is lower than or equal to EUR 200, it must be paid to the Expert only upon request submitted within two months of receiving late payment.

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<sup>2</sup> [http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/infoeuro/infoeuro\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/infoeuro/infoeuro_en.cfm)

<sup>3</sup> [http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/infoeuro/infoeuro\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/infoeuro/infoeuro_en.cfm)

## ARTICLE 11 – BANK ACCOUNT

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

Bank name: [complete]

Branch address: [complete]

Account holder: [complete]

IBAN code: [complete]

BIC/Swift Code: [complete]

## ARTICLE 12 – OWNERSHIP AND USE OF THE RESULTS (INCLUDING INTELLECTUAL PROPERTY RIGHTS)

### 12.1 Definitions

In this Contract the following definitions apply:

(a) *'results'* means any intended outcome of the performance of the Contract, whatever its form or nature, which is delivered and finally or partially approved by the Agency; a result may be further defined in this Contract as a deliverable; a result may, in addition to materials produced by the Expert or at its request, also include pre-existing materials;

(b) *'creator'* means any natural person who contributed to the production of the result and includes personnel of the Agency or a third party;

(c) *'pre-existing material'* means any material, document, technology or know-how which exists prior to the Expert using it for the production of the result in the performance of the Contract;

(d) *'pre-existing right'* means any industrial or intellectual property right on pre-existing material; it may consist in a right of ownership, a license right and/or right of use belonging to the Expert, the creator, the Agency as well as to any other third parties.

**12.2** The Agency acquires irrevocably worldwide ownership of the results and of all intellectual property rights under the Contract. The intellectual property rights so acquired include any rights, such as copyright and other intellectual or industrial property rights, to any of the results and in all technological solutions and information created or produced by the Expert in performance of the Contract. The Agency may exploit and use the acquired rights as stipulated in this Contract. The Agency acquires all the rights from the moment it approves the results delivered by the Expert. Such delivery and approval are deemed to constitute an effective assignment of rights from the Expert to the Agency. The Union may use, publish, assign or transfer these results as it sees fit, without any limitations (geographical or other), unless intellectual property rights already exist.

### 12.3 Modes of exploitation

In accordance with paragraph 1, 2 and 3, Article 12, the Agency shall acquire ownership of each of the results produced as an outcome of this contract which may be used for any of the following purposes:

(a) use for its own purposes:

- (i) making available to the staff of the Agency;
- (ii) making available to the persons and entities working for the Agency or cooperating with it, including contractors, subcontractors whether legal or natural persons, Union institutions, agencies and bodies, Member States' institutions;
- (iii) installing, uploading, processing;
- (iv) arranging, compiling, combining, retrieving;
- (v) copying, reproducing in whole or in part and in unlimited number of copies.

(b) distribution to the public:

- (i) publishing in hard copies;
- (ii) publishing in electronic or digital format;
- (iii) publishing on the internet as a downloadable/non-downloadable file;
- (iv) broadcasting by any kind of technique of transmission;
- (v) public presentation or display;
- (vi) communication through press information services;
- (vii) inclusion in widely accessible databases or indexes;
- (viii) otherwise in any form and by any method.

(c) modifications by the Agency or by a third party in the name of the Agency

- (i) shortening;
- (ii) summarising;
- (iii) modifying of the content;
- (iv) making technical changes to the content:
- (v) necessary correction of technical errors;
- (vi) adding new parts or functionalities;
- (vii) changing functionalities;
- (ix) addition of new elements, paragraphs titles, leads, bolds, legend, table of content, summary, graphics, subtitles, sound, etc.;
- (x) addition of metadata, for text and data-mining purposes; addition of right-management information; addition of technological protection measures;
- (xi) preparation in audio form, preparation as a presentation, animation, pictograms story, slide-show, public presentation etc.;
- (xii) extracting a part or dividing into parts;
- (xiii) use of a concept or preparation of a derivate work;



- (xiv) digitisation or converting the format for storage or usage purposes;
- (xv) modifying dimensions;
- (xvi) translating, inserting subtitles, dubbing in different language versions:
  - all official languages of EU;
  - languages used within EU;
  - languages of EU candidate and neighbouring countries;
  - any other languages.
- (d) giving access upon individual requests without the right to reproduce or exploit, as provided for by Regulation 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.
- (e) storage of the original and copies made in accordance with this Contract.
- (f) archiving in line with the document management rules applicable to the Agency.
- (g) rights to authorise, license, or sub-license in case of licensed pre-existing rights, the modes of exploitation set out in any of the points (a) to (c) to third parties.

#### **12.4 Pre-existing rights and transmission of rights**

The Expert shall be solely responsible to ensure that he/she is legally allowed to use any pre-existing rights in developing the results and for the purpose of the exploitation by the Agency in accordance with Article 12.3. When delivering the results, the Expert shall warrant that they are free of rights or claims from creators and third parties including in relation to pre-existing rights, for any use envisaged by the Agency and hold the Agency (or the relevant Agency's assignee) harmless of any claims in connection with such use. Upon request by the Agency, the Expert shall provide evidence of ownership or rights to use all the listed pre-existing rights and rights of third parties except for the rights owned by the Agency.

### **ARTICLE 13 – PROCESSING OF PERSONAL DATA**

#### **13.1 Processing of personal data by the Agency**

Any personal data included in or relating to the Contract, including its implementation, shall be processed in accordance with Regulation (EU) No 2018/1725. Such data shall be processed solely for the purposes of the implementation, management and monitoring of the Contract by the data controller, i.e. the Agency.

The Expert or any other person whose personal data is processed by the data controller in relation to this Contract has specific rights as a data subject under Chapter III (Articles 14-25) of Regulation (EU) No 2018/1725, in particular the right to access, rectify or erase their personal data and the right to restrict or, where applicable, the right to object to processing or the right to data portability.

Should the Expert or any other person whose personal data is processed in relation to this Contract have any queries concerning the processing of its personal data, it shall address itself

to the data controller. They may also address themselves to the Data Protection Officer of the data controller. They have the right to lodge a complaint at any time to the European Data Protection Supervisor.

### **13.2 Processing of personal data by the Expert**

If the Contract requires the Expert to process personal data, the Expert may only act under the supervision of the data controller identified above. This is the case in particular for determining why personal data should be processed, what categories of data may be processed, who will have the right to access the data, and how the data subject may exercise its rights.

The processing of personal data by the Expert shall meet the requirements of Regulation (EU) No 2018/1725 and be processed solely for the purposes set out by the controller.

The Expert must put in place appropriate technical and organisational security measures to address the risks inherent to data processing and:

- (a) prevent unauthorised people from accessing computer systems that process personal data, and especially the:
  - (i) unauthorised reading, copying, alteration or removal of storage media;
  - (ii) unauthorised data input, disclosure, alteration or deletion of stored personal data;
  - (iii) unauthorised use of data-processing systems by means of data transmission facilities;
- (b) ensure that a data-processing system's authorised users can access only the personal data to which its access right refer;
- (c) record which personal data have been communicated by the Expert, 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 deleted without authorisation;
- (f) design its organisational structure in a way that meets data protection requirements.

## **ARTICLE 14 – CHECKS AND AUDITS**

- 14.1** The Agency may carry out checks and audits to ascertain compliance with the proper implementation of the tasks (including assessment of deliverables and reports) under this Contract and whether the expert is meeting its obligations.

It may do so throughout the Contract's validity and up to five years after the last payment is made. The expert must provide — within the deadline requested — any information and data in addition to deliverables and reports already submitted. The expert must allow access to sites and premises on which the tasks specified in this Contract are performed.

- 14.2** Under Regulation No 2185/965 and Regulation No 883/20136 (and in accordance with its provisions and procedures), the European Anti-Fraud Office (hereinafter referred to as "OLAF") may — at any moment during implementation of the Contract or afterwards — carry out investigations, including 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 EU.

- 14.3** Under Article 287 of the Treaty on the Functioning of the EU (hereinafter referred to as “TFEU”) and Article 257 of the Financial Regulation, the European Court of Auditors (hereinafter referred to as “ECA”) may — at any moment during implementation of the Contract or afterwards — carry out audits. The ECA has the right of access for the purpose of checks and audits.
- 14.4** Findings in checks, audits or investigations may lead to the reduction or rejection of Fees, rejection of claims for allowances and expenses in accordance with Article 14, or recovery of undue amounts in accordance with Article 17. Moreover, findings arising from an OLAF investigation may lead to criminal prosecution under national law.

#### **ARTICLE 15 – SUSPENSION OF THE PAYMENT TIME LIMIT**

- 15.1** The Agency may at any point suspend the payment time limit if a request for payment cannot be processed because it does not comply with the Contract’s provisions.
- 15.2** The Agency must notify the Expert of the suspension and the reasons for it.
- 15.3** The suspension takes effect on the day notification is sent by the Agency.
- 15.4** If the condition for suspending the payment time limit as referred to in paragraph 1, Article 15, is no longer met, the suspension will be lifted — and the remaining period will resume. If the suspension exceeds two months, the Expert may ask the Agency if the suspension will continue.
- 15.5** If the payment time limit has been suspended due to the non-compliance of the reports or deliverables in accordance with Article 5 and the revised report or deliverables or payment request is not submitted or was submitted but is also rejected, the Agency may also terminate the Contract as referred to in Article 18.

#### **ARTICLE 16 – REDUCTION OF FEES OR REJECTION OF FEES, CLAIMS FOR ALLOWANCES AND EXPENSES**

- 16.1** The Agency may reject:
- (a) (parts of) the Fees if the Expert does not fulfil the tasks set out in Article 2;
  - (b) claims for allowances or expenses if they do not fulfil the conditions set out in Article 4.
- 16.2** The Agency may reduce the fee if the Expert is in breach of any of its other obligations under the Contract.
- 16.3** The Agency must formally notify the Expert of its intention, include the reasons why, and invite him/her to submit any observations within 30 (thirty) days of receiving notification. If the Agency does not accept these observations, it will formally notify confirmation of the rejection or reduction.

#### **ARTICLE 17 – RECOVERY OF UNDUE AMOUNTS**

- 17.1** The Agency may recover any amount that was paid but was not due under the Contract.

- 17.2** The Agency must formally notify the Expert of its intention, include the reasons why and invite him/her to submit any observations within 30 (thirty) days of receiving notification. If the Agency does not accept these observations, it will confirm recovery by formally notifying a 'debit note' that specifies the payment terms and date.
- 17.3** The Expert must repay the amount specified in the debit note to the Agency.
- 17.4** If the Expert does not repay the requested amount by the date specified in the debit note, late-payment interest will be added to the amount to be recovered. The interest rate used will be the same as the rate applied by the European Central Bank (ECB) for its main refinancing operations in euro ('reference rate'), plus eight basis points. The reference rate is the rate in force on the first day of the month in which the payment deadline specified in the debit note expires, as published in the C series of the Official Journal of the European Union.
- 17.5** If the Expert does not repay the requested amount by the date specified in the debit note, the Agency may recover the amounts due by offsetting them against any amounts owed to the Expert by the EU institutions or an executive agency (from the EU or Euratom) budget without the Expert's consent.

## **ARTICLE 18 – TERMINATION OF THE CONTRACT**

- 18.1** The Agency may at any moment terminate the Contract if the Expert:
- (a) is not performing its tasks or is performing them poorly; or
  - (b) has committed substantial errors, irregularities or fraud, or is in serious breach of its obligations under the selection procedure or under the Contract, including false declarations and obligations.
- 18.2** The Agency must formally notify the Expert of its intention, include the reasons why and invite him/her to submit any observations within 30 (thirty) days of receiving notification. If the Agency does not accept these observations, it will formally notify confirmation of the termination.
- 18.3** The termination will take effect on the date the notification is sent by the Agency.
- 18.4** The Expert may at any moment terminate the Contract if s/he is not able to fulfil its obligations in carrying out the work required as referred to in Article 5.
- 18.5.** The Expert must formally notify the Agency and include the reasons why by giving 30 (thirty) days' notice.
- 18.6** The termination will take effect on the date the Agency will formally notify confirmation of the termination.
- 18.7** Only Fees for days actually worked and Expenses for travel actually carried out (and where reimbursement of Expenses is foreseen by the Contract) before termination may be paid subject to Article 14. The Expert must submit the payment request for the tasks already executed on the date of termination within 30 days from the date of termination.
- 18.8** On termination of the Contract, the Agency may hire another expert to carry out or finish the work. It may claim from the Expert all extra costs incurred while doing this, without prejudice to any other rights or guarantees it may have under the Contract.

## **ARTICLE 19 – LIABILITY**

- 19.1** The Agency shall not be liable for any damage or loss caused or sustained by the Expert, including any damage or loss caused by the Expert 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 Agency.
- 19.2** The Expert shall be liable for any loss or damage caused to or sustained by the Agency during or as a consequence of performance of the Contract, but only up to 3 (three) times the total amount of the Contract. Nevertheless, if the damage or loss is caused by the gross negligence or wilful misconduct of the Expert, the Expert shall remain liable without any limitation as to the amount of the damage or loss.
- 19.3** In the event of any action brought by a third party against the Agency in connection with performance of the Contract, including any action for alleged breach of intellectual property rights, the Expert shall assist the Agency in the legal proceedings, including by intervening in support of the Agency upon request. Expenditure incurred by the Expert to this end may be borne by the Agency. If the Agency's liability towards the third party is established and that such liability is caused by the Expert during or as a consequence of the performance of the Contract, the provisions of Article 19.2 shall apply.
- 19.4** Neither party shall be liable to the other party for loss or use of any results, loss for any indirect or consequential loss of damage, howsoever arising, which may be suffered by the other party in connection with the performance of the contract.

## **ARTICLE 20 – FORCE MAJEURE**

- 20.1** 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, 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.
- 20.2** If either contracting party is faced with force majeure, it shall notify the other party without delay in writing stating the nature of the circumstances, their likely duration and foreseeable effects.
- 20.3** Neither contracting party shall be held liable for any delay or failure to perform its obligations under the Contract if that delay or failure is a result of force majeure. Where the Expert is unable to perform its contractual obligations owing to force majeure, it shall have the right to remuneration only for tasks actually executed or services actually provided.
- 20.4** The contracting parties shall take all necessary measures to reduce any damage due to force majeure to a minimum.

## **ARTICLE 21 – COMMUNICATION BETWEEN THE PARTIES**

- 21.1** Any communication relating to the Contract or its implementation shall be made in writing, in paper or electronic format in the language of the Contract and shall bear the Contract reference.
- 21.2** Electronic communication must be confirmed by paper communication when requested by either contracting party. The contracting parties agree that electronic communication has full legal effect and is admissible as evidence in judicial proceedings.
- 21.3** Any communication is deemed to have been made when the receiving party receives it, unless this Contract refers to the date when the communication was sent.

Electronic communication is deemed to have been received by the receiving party on the date of dispatch of that communication, provided that it is sent to the e-mail address indicated in Article 21.4 below. The sending party must be able to prove the date of dispatch. In the event that the sending party receives a non-delivery report, it must take every effort to ensure that the other party actually receives the communication by electronic or normal mail. In such a case, the sending party is not held in breach of its obligation to send such communication within a specified deadline.

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 in Article 21.4. Formal notifications are considered to have been received by the receiving party on the date of receipt indicated in the proof received by the sending party that the communication was delivered to the specified recipient.

- 21.4** Communications shall be sent to the following addresses:

For the Agency:

European Environment Agency  
Att.: Luis Pinto  
Kongens Nytorv 6  
1050 Copenhagen K  
Denmark  
Tel.: +45 3336 7157  
E-mail: [luis.pinto@eea.europa.eu](mailto:luis.pinto@eea.europa.eu)

For the Expert:

[Complete Expert's name in full]  
Att.: [Title] [Name in full]  
[Complete address in full]  
Tel.: [Complete]  
E-mail: [Complete]

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

## ARTICLE 22 – APPLICABLE LAW AND SETTLEMENT OF DISPUTES

**22.1** The Contract is governed by the national substantive law of Denmark.

**22.2** 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 23 – AMENDMENTS**

**23.1** Any amendment to the Contract shall be the subject of a written agreement concluded between the contracting parties before fulfilment of all their contractual obligations. An oral amendment shall not be binding on the contracting parties.

**23.2** Any amendment may not have the purpose of the effect of making changes to the Contract which might alter the initial conditions of the procurement procedure or result in unequal treatment of tenderers or Experts.

#### **SIGNATURES**

For [insert Expert's official name],

For the European Environment Agency,

[Name of the authorising officer responsible]

Head of Programme [Complete]

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Done at [complete], on [date]

Done at Copenhagen, on [date]

In duplicate, in English

## ANNEX II – DECLARATION OF CONFIDENTIALITY, INDEPENDENCE AND ABSENCE OF CONFLICT OF INTERESTS

Contract Nr. EEA/CEI/2019/001/xxxx

Expert Name: [Complete]

I, the undersigned:

- confirm that I have read, understood and accepted the Terms of reference established in Annex I to the Contract referred to above;
- declare that I understand my obligations with regard to confidentiality:
  - I confirm that I will keep all matters entrusted to me confidential and will not communicate to any third party any confidential information disclosed to me or discovered by me or drafted by me in the course of or as a result of my assignment and will not make any adverse use of information given to me.
  - I understand that I am responsible for maintaining the confidentiality of any documents or electronic files sent to me and for returning, erasing or destroying all confidential documents or files upon completing the assignment, unless otherwise instructed by the Agency.
  - I am aware that I continue to be bound by this undertaking even after the completion of the tasks entrusted to me by the Agency.
- declare that I understand my obligations with regard to independence:
  - I confirm that I am an independent person working in my own personal capacity and in performing the work shall not represent any organisation.
  - I confirm that I am not paid – or in any other way receive financial compensation – by any other organisation or person for the work I perform for the Agency under this contract. - I undertake to abstain from any contact with third parties which could compromise, or appear to compromise, my independence as an Expert.
  - I undertake to perform my duties honestly and fairly. My contribution will be objective and will fully respect the principles of fair competition and impartiality.
- declare that I am not and shall not be in any situation which could give rise to a conflict of interests<sup>4</sup> in what concerns the performance and/or implementation of the Contract. I hereby undertake to act with complete impartiality and in good faith in what concerns its performance and outcome and to immediately declare to the Agency any situation that might raise concerns with respect to conflict of interest, impartiality or otherwise affect my position/ability to duly and appropriately perform the Contract.

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<sup>4</sup> A conflict of interests exists where the impartial and objective exercise of the functions of a person is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with a recipient. Where such a risk exists, the person in question shall refrain from such action and shall declare the matter immediately. Where a conflict of interests is found to exist, the person in question shall cease all activities in the matter.



- hereby declare on my honour that the disclosed information is true and complete to the best of my knowledge.

\_\_\_\_\_  
Date and signature