



SUPPLY CONTRACT EEA/ADS/07/005

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

and

[official name in full]
[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 **I Special Conditions** and the **II General Conditions** below and the following Annexes:

- Annex I** Tender Specifications (Invitation to Tender No **EEA/ADS/07/005**)
- Annex II** Contractor's Tender (No [*complete*] of [*complete*])
- Annex III** Order Form – Model

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 Order Forms. The terms set out in the Tender Specifications shall take precedence over those in the Tender.

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 the **Supply of an Electronic Document and Records Management System (EDRMS) and the provision of related services** in accordance with Annex I.
- I.1.2** The Contractor shall **deliver and install the system (ready-to-use) and provide the services related thereto** in accordance with Annex I (3.9 litt. a-g).
- I.1.3** Once the system is installed and approved, the Agency may request the Contractor by means of order forms, which alone shall be binding, to provide **additional services** in accordance with Annex I (3.9 lit. h).

ARTICLE I.2 – DURATION

- I.2.1** The Contract shall enter into force on the date on which it is signed by the last party.
- I.2.2** Performance of the Contract may under no circumstances begin before the date on which the Contract enters into force.
- I.2.3** Within **two (2) months** from the entry into force of this Contract, the Contractor shall **deliver and install the system** as indicated in **Article I.1.2** and provide **training of five days** duration followed by an **acceptance test of five days duration** carried out by the Agency.
- I.2.4** Order forms requesting **additional services** as indicated in **Article I.1.3** may under no circumstances be placed before the date on which the Contract enters into force.

The Contractor shall return such order forms duly signed and dated **within 10 working days** from dispatch by the Agency and before expiry of the Contract.

The period within which the services shall be provided will run from the date of dispatch by the Contractor of the completed form, unless a different date is indicated on the form.

The Contract shall continue to apply to order forms which have not been executed on the date of its expiry. They shall be executed **no later than six (6) months** from that date.

- I.2.5** The Contract is initially concluded for a period of **24 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.2.7** The Contract may be renewed **up to two times, each time for a period of 12 months** only before expiry of the Contract and with the express written agreement of the parties. Renewal does not imply any modification or deferment of existing obligations.

ARTICLE I.3 - PRICES

- I.3.1** The **total amount** to be paid by the Agency under **Article I.1.2** of the Contract shall be [*amount in figures and in words*] covering **delivery and installation as well as services related thereto**.
- I.3.2** The prices to be paid by the Agency for **additional services** under **Article I.1.3** of the Contract shall be as listed in Annex II.
- I.3.3** All prices shall be expressed in Euro.
- I.3.4** Prices shall be fixed and not subject to revision for order forms 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. The Agency shall purchase on the basis of the prices in force on the date on which orders are signed. Such prices shall not be subject to revision.

This revision shall be determined by the trend in the harmonised consumer price index MUICP published for the first time by the Office for Official Publications of the European Communities in the Eurostat New Cronos Database <http://www.cc.cec./newcronos/> (Theme 2 - Economy and Finance; Price – Prices and Purchasing Power Parities; HICP – Harmonized Indices of Consumer Prices; HMIDX – Monthly data (index) GEO – Eurozone; COICOP cp00). Revision shall be calculated in accordance with the following formula:

$$Pr = Po \left(0.2 + 0.8 \frac{Ir}{Io} \right)$$

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 – PAYMENT CONDITIONS

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 The payment request of the Contractor concerning **delivery and installation as well as services related thereto** as indicated in **Article 1.3.1** shall be admissible if accompanied by:

- a certificate of conformity relating to the components of the system signed by the Agency;
- a certificate of acceptance signed by the Agency, following an acceptance test as indicated in Annex I; and
- the relevant invoice

The Agency shall pay within 30 calendar days upon receipt of the invoice and the above mentioned supporting documents.

I.4.2 Payment requests of the Contractor concerning **additional services** as indicated in **Article 1.3.2** shall be admissible if accompanied by:

- a certificate of conformity and acceptance of the services by the Agency
- the relevant invoice

Invoices shall indicate the reference number of the Contract and Order Form.

The Agency shall pay within 30 calendar days upon receipt of the invoice and the above mentioned supporting documents.

All invoices shall be sent to the Agency at the address and to the contact person referred in the Article I.6. Invoices shall bear the contractor's VAT registration number and shall indicate the bank account numbers.

ARTICLE I.5 – BANK ACCOUNT

Payments shall be made to the Contractor's bank account, 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 number of the Contract. 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. Philipp Wilhelm
Kongens Nytorv 6
1050 Copenhagen K, Denmark
Tel: +45 33 36 72 87
Fax: +45 33 36 72 74
Email: philipp.wilhelm @eea.europa.eu

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 of 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 Copenhagen.

ARTICLE I.8 – DATA PROTECTION

Any personal data included in or relating to the Contract, including its execution shall be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. It shall be processed solely for the purposes of the performance, management and follow-up of the Contract by the entity acting as data controller without prejudice to possible transmission to the bodies charged with a monitoring or inspection task in conformity with Community law. The Contractor shall have the right of access to his personal data and the right to rectify any such data that is inaccurate or incomplete. Should the Contractor have any queries concerning the processing of his personal data, he shall address them to the entity acting as data controller. The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.

II – GENERAL CONDITIONS

ARTICLE II.1 - PROCEDURES FOR PERFORMING THE CONTRACT

II.1.1 Phases of execution of the order form

Sending of the order form

Whenever the Agency wishes services to be provided or goods to be supplied pursuant to the Contract, it shall send an order form to the Contractor, in triplicate, specifying the terms of the provision of services or 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 Form 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 form 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 note¹:** each delivery shall be accompanied by a *Consignment note* in duplicate, duly signed and dated by the Contractor or his carrier, giving the order form number and particulars of the 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 sub-paragraph 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 form. 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 for a different period is made in the Special Conditions. Conformity shall be declared only where the conditions laid down in the Contract and in the order form are satisfied and the goods conform to Annex I. Where, for reasons attributable to the Contractor, the Agency is unable to accept

¹ Note in duplicate duly signed and dated by the Contractor or his carrier, giving the Order Form number and particulars of the goods delivered to be countersigned by the Agency and returned to the Contractor or his carrier. This note acknowledges the fact that the goods have been delivered and in no way implies conformity of the goods with the Order Form.

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 form.
- 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 the event 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 carriage, 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.

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 the Contract, 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, 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 for a longer period is made 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 Form, 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 tasks assigned to him are to be executed.
- c) Without prejudice to Article II.3 any reference made to the Contractor's staff in the Contract shall relate exclusively to individuals involved in the performance of the Contract.
- d) The Contractor must ensure that any staff performing the Contract has the professional qualifications and experience required for the execution of the tasks assigned to him.
- e) The Contractor shall neither represent the Agency nor behave in any way that would give such an impression. The Contractor shall inform third parties that he does not belong to the European public service.
- f) The Contractor shall have sole responsibility for the staff who executes the tasks assigned to him. The Contractor shall make provision for the following employment or service relationships with his staff:
 - staff executing the tasks assigned to the Contractor may not be given
 - orders direct by the Agency;
 - the Agency may not under any circumstances be considered to be the staff's employer and the said staff shall undertake not to invoke in respect of the Agency any right arising from the contractual relationship between the Agency and the Contractor.
- g) 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 tasks assigned to him resulting from the replacement of staff in accordance with this Article.
- h) Should any unforeseen event, action or omission directly or indirectly hamper execution of the tasks, either partially or totally, the Contractor shall immediately and on 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.
- i) Should the Contractor fail to perform his obligations under the Contract in accordance with the provisions laid down therein, the Agency may – without prejudice to its right to terminate the Contract - reduce or recover payments in

proportion to the scale of the failure. In addition, the Agency may impose penalties or liquidated damages provided for in Article II.16.

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.

II.3.4 The Contractor shall pass on all the relevant obligations in writing to his staff, board, and directors as well as to third parties involved in performance of the Contract. A copy of the instructions given and the undertakings made in this respect shall be sent to the Agency should it so request.

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% of the amount of the relevant Order Form 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

II.5.1 Pre-financing:

Where required by Article I.5, 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 work 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 work. The guarantee shall be retained until the prefinancing has been deducted from interim payments or payment of the balance to the Contractor. It shall be released the following month. The cost of providing such guarantee shall be borne by the Contractor.

II.5.2 Interim payment:

At the end of each of the periods indicated in Annex I the Contractor shall submit to the Agency a formal request for payment accompanied by those of the following documents which are provided for in the Special Conditions:

- an interim technical report in accordance with the instructions laid down in Annex I;
- the relevant invoices indicating the reference number of the Contract and of the order form to which they refer;
- statements of reimbursable expenses in accordance with Article II.7.

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 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.

II.5.3 Payment of the balance:

Within sixty days of completion of each order, the Contractor shall submit to the Agency a formal request for payment accompanied by those of the following documents, which are provided for in the Special Conditions:

- a final technical report in accordance with the instructions laid down in Annex I;
- the relevant invoices indicating the reference number of the Contract and of the order to which they refer;

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 and 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.5 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 form 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, where provided for.

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 and the Headquarters Agreement between the Agency and the Government of Denmark of 17 August 1995.

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 FORMS

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(h), 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 or a pending order 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 Agency 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 execution of the tasks under a pending order has not actually commenced within fifteen days of the date provided for, and the new date proposed, if any, is considered unacceptable by the Agency;
- j) where the Contractor is unable, through his own fault, to obtain any permit or licence required for performance of the Contract;
- k) 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 the event 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 or where performance thereof cannot be ensured for a period corresponding to at least to one fifth of the period laid down in Article I.2.3.

II.12.3 Prior to termination under point e), h) or k), 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/or 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/or to execute or complete the services. The Agency shall be entitled

to claim from the Contractor all extra costs incurred in doing so, without prejudice to any other rights or guarantees it has under the Contract.

ARTICLE II.13 - CANCELLATION OF ORDER FORMS

Where execution of the order form has not actually commenced within fifteen days 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 form 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 form 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 or services provided 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 Form.

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 Form.

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 Form.

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 Form shall 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 order forms.

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 order forms.

ARTICLE II.17 – OWNERSHIP OF THE RESULTS - INTELLECTUAL AND INDUSTRIAL PROPERTY

Any results or rights thereon, including copyright and other intellectual or industrial property rights, obtained in performance of the Contract, shall be owned solely by the Agency, which may use, publish, assign or transfer them as it sees fit, without geographical or other limitation, except where industrial or intellectual property rights exist prior to the Contract being entered into.

ARTICLE II.18 - USE, DISTRIBUTION AND PUBLICATION OF INFORMATION

II.18.1 The Contractor shall authorise the Agency to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, any data contained in or relating to the Contract, in particular the identity of the Contractor, the subject matter, the duration, the amount paid and the reports. Where personal data is concerned, Article I.8 shall apply.

II.18.2 Unless otherwise provided by the Special Conditions, the Agency shall not be required to distribute or publish documents or information supplied in performance of the Contract. If it decides not to publish the documents or information supplied, the Contractor may not have them distributed or published elsewhere without prior written authorisation from the Agency.

II.18.3 Any distribution or publication of information relating to the Contract by the Contractor shall require prior written authorisation from the Agency and shall mention the amount paid by the Community. It shall state that the opinions expressed are those of the Contractor only and do not represent the Agency's official position.

II.18.4 The use of information obtained by the Contractor in the course of the Contract for purposes other than its performance shall be forbidden, unless the Agency has specifically given prior written authorisation to the contrary.

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 Order Forms 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 Order Forms. The Contractor shall not be entitled to claim compensation on account of suspension of the Contract, the Order Forms or of part thereof.

SIGNATURES

For the Contractor,
[*Companyname*/forename/surname
function]

For the Agency
Prof. Jacqueline McGlade
Executive Director

Signature[s]: _____

Signature: _____

Done at _____ on,

Done at Copenhagen, on

In duplicate in English.

Annex III

ORDER FORM No ____
BudgLine/BYYYY/EEA.xxxxx
governed by the provisions of Framework Contract No. EEA/ADS/07/005
signed on _____

Mr/Ms [complete] European Environment Agency Kongens Nytorv 6 1050 Copenhagen K Denmark	Mr/Ms [complete] Function [complete] Company Name [complete] Address [complete]	
Pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities and the Headquarters Agreement between the Agency and the Government of Denmark of 17 August 1995, the Agency is exempt from all taxes and dues, including value added tax, on payments due in respect of this order form.		
Description of the services	Quantity	Price
VAT 25%		
TOTAL PRICE		
The duration of the tasks shall not exceed ____ from the date of signature of this order form Execution of the tasks shall start from the date of Contractor's signature of this order form.	<i>Other details:</i> Payment Conditions: 30 days after the receipt of the invoice at the Agency Bank Name: [complete] Bank Address: [complete] Bank Account: [complete] IBAN code: [complete] BIC/Swift Code: [complete]	

Acceptance of this order implies that the Contractor waives all other terms of business or of execution of the services.

For the Agency,
 Mr/Ms[complete]

For the Contractor,
 Mr/Ms [complete]

signature: _____

signature: _____

Done at Copenhagen, on

Done at _____, on

