



## ANNEX III

### FRAMEWORK SUPPLY CONTRACT – DRAFT

CONTRACT NUMBER – ACER/OP/ADMIN/22/2012

Agency for the Cooperation of Energy Regulators (hereinafter referred to as "the Agency"), represented for the purposes of the signature of this contract by Mr Alberto POTOTSCHNIG, 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 [*forename, surname and function*,]

[The parties identified above and hereinafter collectively referred to as 'the Contractor' shall be jointly and severally liable vis-à-vis the Agency for the performance of this contract.]

of the other part

HAVE AGREED

the **Special Conditions** and the following Annexes:

**Annex I** (a) General Conditions

(b) Model Order Form

**Annex II** Tender Specifications (Invitation to Tender No ACER/OP/ADMIN/22/2012 of 10.10.2012)

**Annex III** Contractor's Tender (No [*complete*] of [*insert date*])

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 model order form (Annex I)

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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.

- The terms set out in the model order form (Annex I) shall take precedence over those in the other Annexes.
- The terms set out in the Tender Specifications (Annex II) shall take precedence over those in the Tender (Annex III).
- The terms set out in the Contract shall take precedence over those in the order forms.

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 software licenses and related services.
- I.1.2** Signature of the Contract imposes no obligation on the Agency to purchase. Only implementation of the Contract through order forms is binding on the Agency.
- I.1.3** Once implementation of the Contract has commenced, the Contractor shall deliver the supplies in accordance with all terms and conditions of the Contract.

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

- I.2.1** The Contract shall enter into force on 01.01.2013 if it has already been signed by both contracting parties.
- I.2.2** Under no circumstances may implementation commence before the date on which the Contract enters into force. Delivery of supplies may under no circumstances begin before the date on which the order form enters into force.
- I.2.3** The Contract is concluded for a period of twenty four (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.2.4** The order forms shall be returned signed by the Contractor before the Contract to which they refer expires.

The Contract shall continue to apply to such order forms after its expiry. They shall be executed no later than three (3) month after the expiry of the Contract.

#### **I.2.5 Contract renewal**

The Contract shall be renewed up to two times under the same conditions, unless written notification to the contrary is sent by one of the contracting parties and received by the other at least one (1) month before the expiry of the period indicated in Article I.2.3. Renewal does not imply any modification or deferment of existing obligations.

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

- I.3.1** The maximum amount of the Contract shall be EUR [*amount in figures and in word*]. The maximum prices of the supplies shall be [:] [as listed in Annex II].
- I.3.2** Prices shall be expressed in EUR.
- I.3.3 Price revision**

Prices shall be fixed and not subject to revision for implementation during the first year of duration of the Contract.

At the beginning of the second and every following year of the Contract, 80% of each price may be revised upwards or downwards if 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 order forms are signed. Such prices shall not be subject to revision.

This revision shall be determined by the trend in the harmonised indices of consumer prices (HICP) for Slovenia<sup>3</sup> published for the first time by the Publications Office of the European Union in the Eurostat monthly 'Data in focus' publication at <http://www.ec.europa.eu/eurostat/>.

Revision shall be calculated in accordance with the following formula:

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

where:

Pr = revised price;

Po = price in the original tender;

Io = index for the month corresponding to the final date for submission of tenders;

Ir = index for the month corresponding to the date of receipt of the letter requesting a revision of prices.

## **ARTICLE I.4 – PAYMENTS AND IMPLEMENTATION OF THE CONTRACT**

### **I.4.1 Single framework contract**

Within one (1) working days of an order form being sent by the Agency to the Contractor, the Agency shall receive it back, duly signed and dated.

The period allowed for the execution of the tasks shall start to run on the date the Contractor signs the order form, unless a different date is indicated on the form.

### **I.4.2 Delivery**

The supplies shall be delivered at the Agency premises, Ljubljana, Slovenia.

The Contractor shall notify the Agency of the exact date of delivery at least two [2] days in advance. All deliveries shall be made between 9:00 hours and 16:00 hours at the agreed place of delivery. Deliveries may be made on any working day during normal working hours, at the agreed place of delivery, in case these are small.

### **I.4.3 Payment of the balance**

Within sixty days of receipt of the certificate of conformity of the supplies signed by the Agency, the Contractor shall submit an admissible invoice, indicating the reference number of the Contract and of the order form to which it refers, for payment of the balance.

The invoice shall be admissible if accompanied by the final progress report in accordance with the instructions laid down in the relevant order form.

Payment shall be made within thirty (30) days of the receipt of the invoice.

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[For Contractors established in Belgium, the order form shall include the following provision: "En Belgique, l'utilisation de ce bon de commande vaut présentation d'une demande d'exemption de la TVA n° 450 (circulaire 2/1978)" or an equivalent statement in the Dutch or

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3 Specify the consumer price index, e.g.:

- "MUICP": (euro area) for contracts expressed in euro (as a general rule);
- "EICP": for contracts performed in the European Union (outside the euro area);

German language. The Contractor shall include the following statement in his invoice(s): “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.]

### **ARTICLE I.5 – BANK ACCOUNT**

Payments shall be made to the Contractor’s bank account denominated in euro<sup>4</sup>, identified as follows:

Name of bank:  
Address of branch in full:  
Exact designation of account holder:  
Full account number including codes:  
[IBAN<sup>5</sup> code: ]

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

Any communication relating to the Contract shall be made in writing and shall bear the Contract and order form 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.

Electronic communication must be confirmed by paper communication when requested by any of the parties. The parties agree that paper communication can be replaced by electronic communication with electronic signature.

Communications shall be sent to the following addresses<sup>6</sup>:

Agency:  
Agency for the Cooperation of Energy Regulators  
Trg republike 3, 1000 Ljubljana, Slovenia  
Tel.: ..., Fax: ...

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

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

- 1.7.1 The Contract shall be governed by the European Union law, complemented, where necessary, by the national substantive law of Slovenia.
- 1.7.2 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 Ljubljana.

### **ARTICLE I.8 – DATA PROTECTION**

Any personal data included in the Contract shall be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by

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4 Or local currency where the receiving country does not allow transactions in EUR.

5 BIC or SWIFT code for countries with no IBAN code.

6 Fax number and e-mail accounts may be added. If an e-mail account is given, incoming e-mails should be redirected if the account holder is absent and a clause should be added specifying what is considered to be the reference date of the electronic communication (date of sending, receiving or opening).

the Community institutions and bodies and on the free movement of such data. Such data shall be processed solely for the purposes of the performance, management and monitoring of the Contract by the Administration Department acting as data controller without prejudice to possible transmission to the bodies charged with monitoring or inspection task in application of the European Union law.

#### **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 [*three months*] formal prior notice. Should the Agency terminate the Contract, the Contractor shall only be entitled to payment corresponding to the supplies ordered and delivered before the termination date. Article II.13.4 applies accordingly.

#### **ARTICLE I.10 – CONTRACT CONCLUDED DURING STANDSTILL PERIOD**

If this Contract was signed by both the Agency and the Contractor before the expiry of 14 calendar day period from the day after simultaneous dispatch of information about the award decisions and decisions to reject, this Contract shall be null and void.

#### **SIGNATURES**

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

For the Agency,  
[forename/surname/function]

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

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

Done at [...], [date]

Done at Ljubljana, [date]

In [duplicate] in English.

## **ANNEX I (A)**

### **II – GENERAL CONDITIONS FOR SUPPLY FRAMEWORK CONTRACTS**

#### **ARTICLE II.1 - PERFORMANCE OF THE CONTRACT**

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

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.

##### **II.1.1 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 supplies 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 form number and particulars of the supplies delivered. One copy of the consignment note shall be countersigned by the Agency and returned to the Contractor or to his carrier.

##### **II.1.2 Certificate of conformity**

Signing of the consignment note by the Agency, as provided for in subparagraph II.1.1.c) above, is simply an acknowledgment of the fact that the supplies have been delivered and in no way implies conformity of the supplies with the order form.

Conformity of the supplies 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 in the Special Conditions or in Annex II.

Conformity shall be declared only where the conditions laid down in the Contract and in the order form are satisfied and the supplies conform to Annex II.

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

##### **II.1.3 Conformity of the supplies delivered with the Contract**

- a) The supplies 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 supplies delivered must:
- correspond to the description given in Annex II and possess the characteristics of the supplies provided 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 supplies of the same type are normally used;
  - demonstrate the quality and performance which are normal in supplies of the same type and which the Agency can reasonably expect, given the nature of the supplies and taking into account any public statements on the specific characteristics of the supplies made by the Contractor, the producer or his representative, particularly in advertising or on labelling;
  - be packaged according to the usual method for supplies of the same type or, failing this, in a way designed to preserve and protect them.

#### **II.1.4 Remedy**

- a) The Contractor shall be liable to the Agency for any lack of conformity which exists at the time the supplies are verified.
- b) In case of lack of conformity, without prejudice to Article II.11 regarding liquidated damages applicable to the total price of the supplies concerned, the Agency shall be entitled:
- either to have the supplies 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 supplies 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 supplies into conformity, particularly the cost of postage, labour and materials.

#### **II.1.5 Assembly**

If required by Annex II, the Contractor shall assemble the supplies delivered within a period of one month unless otherwise specified in the Special Conditions or in Annex II.

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

#### **II.1.6 Services provided to supplies**

If required by Annex II, services to supplies shall be provided accordingly.

#### **II.1.7 General provisions concerning supplies**

- a) Packaging



The supplies 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 II, pallets shall be considered as one-way packaging and shall not be returned. Each box shall be clearly labelled with the following information:

- The Agency for the Cooperation of Energy Regulators and address for delivery;
- name of Contractor;
- description of contents;
- date of delivery;
- number and date of order form;
- EC code number of article.

#### b) Guarantee

The supplies 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 II.

The Contractor shall guarantee that any permits and licences required for manufacturing and selling the supplies 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, supplies 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 supplies 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.1.8 General provisions on 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 order forms are to be executed.

c) The Contractor must ensure that any staff performing the Contract has the professional qualifications and experience required for execution of the order forms.

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 order forms resulting from the replacement of staff.

- e) Should any unforeseen event, action or omission directly or indirectly hamper execution of the order forms, 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 claim compensation or impose liquidated damages provided for in Article II.11.

## **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 sustained by the Agency in performance of the Contract, including in the event of subcontracting under Article II.6 but only up to 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 Contractor or by its employees, the Contractor shall remain liable without any limitation as to the amount of the damage or loss.
- 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 by the Contractor 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 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 unjustified 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.

#### **ARTICLE II.4 – CONFIDENTIALITY**

**II.4.1** 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 completion of the tasks.

**II.4.2** 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 completion of the tasks.

#### **ARTICLE II.5 - DATA PROTECTION**

**II.5.1** The Contractor shall have the right of access to his/her personal data and the right to rectify any such data. Should the Contractor have any queries concerning the processing of his/her personal data, s/he shall address them to the entity acting as data controller provided for in Article I.8.

**II.5.2** The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.

**II.5.3** Where the Contract requires the processing of personal data by the Contractor, the Contractor may act only under the supervision of the data controller, in particular with regard to the purposes of the processing, the categories of data which may be processed, the recipients of the data, and the means by which the data subject may exercise his/her rights.

**II.5.4** The Contractor shall limit access to the data to the staff strictly necessary for the performance, management and monitoring of the Contract.

**II.5.5** The Contractor undertakes to adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned in order to:

- a) prevent any unauthorised person from having access to computer systems processing personal data, and especially:
  - aa) unauthorised reading, copying, alteration or removal of storage media;
  - ab) unauthorised data input as well as any unauthorised disclosure, alteration or erasure of stored personal data;
  - ac) unauthorised use of data-processing systems by means of data transmission facilities;
- b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
- c) record which personal data have been communicated, 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 institution or body;
- e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
- f) design its organisational structure in such a way that it meets data protection requirements.

## **ARTICLE II.6 – SUBCONTRACTING**

**II.6.1** 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.6.2** 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.6.3** 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.19.

## **ARTICLE II.7 – AMENDMENTS**

Any amendment to the Contract shall be the subject of a written agreement concluded by the contracting parties before fulfilment of all their contractual obligations. An oral agreement shall not be binding on the contracting parties. An order form may not be deemed to constitute an amendment to the Contract.

## **ARTICLE II.8 – ASSIGNMENT**

**II.8.1** 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.8.2** In the absence of such authorisation, 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.9 - USE, DISTRIBUTION AND PUBLICATION OF INFORMATION ABOUT THE CONTRACT**

**II.9.1** 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 the Contract, in particular the identity of the Contractor, the subject

matter, the duration and the amount paid. Where personal data is concerned, Article I.8 and II.5 shall apply.

- II.9.2** 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 distribute or publish the documents or information supplied, the Contractor may not have them distributed or published elsewhere without prior written authorisation from the Agency.
- II.9.3** Any distribution or publication of information relating to the Contract or use of outcome of the implementation of the Contract and provided as such by the Contractor shall require prior written authorisation from the Agency and, if so requested, shall mention that it was produced within a contract with the Agency. It shall state that the opinions expressed are those of the Contractor only and do not represent the Agency's official position.
- II.9.4** 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.10– FORCE MAJEURE**

- II.10.1** 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.10.2** Without prejudice to Article II.1.8(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.10.3** 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 only for the supplies actually delivered and any service provided.
- II.10.4** The contracting parties shall take the necessary measures to reduce damage to a minimum.

## **ARTICLE II.11 - 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 per calendar day of delay according to the following formula:

$$0.3 \times (V/d)$$

V is the amount of the relevant purchase;

d is the duration specified in the relevant order form expressed in days.

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.12 – 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 execution 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 shall as soon as possible give notice to the Contractor to resume the execution suspended or inform that it is proceeding with contract termination. The Contractor shall not be entitled to claim compensation on account of suspension of the Contract or of part thereof.

## **ARTICLE II.13 – TERMINATION BY THE AGENCY**

**II.13.1** 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 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;
- (c) where the Agency has evidence or seriously suspects the Contractor or any related entity or person, of professional misconduct;
- (d) where the Agency has evidence or seriously suspects the Contractor or any related entity or person, of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the European Union's financial interests;
- (e) where the Agency has evidence or seriously suspects the Contractor or any related entity or person, of substantial errors, irregularities or fraud in the award procedure or the performance of the Contract;
- (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 form has not actually commenced within fifteen days of the date foreseen, 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;
- (l) when due to the termination of the contract with one or more of the contractors there is no minimum required competition within the multiple framework contract with reopening of competition.

**II.13.2** In case of force majeure, notified in accordance with Article II.10, either contracting party may terminate the Contract, where performance thereof cannot be ensured for a quantity of supplies corresponding to at least one fifth of the quantity of supplies ordered.

**II.13.3** Prior to termination under point c), d), 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.13.4 Consequences of termination**

In the event of the Agency terminating the Contract or a pending order form 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 delivery or related service. 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 supplies delivered 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 deliver the supplies and execute the related 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.13A – SUBSTANTIAL ERRORS, IRREGULARITIES AND FRAUD ATTRIBUTABLE TO THE CONTRACTOR**

Where, after the award of the Contract, the award procedure or the performance of the Contract prove to have been subject to substantial errors, irregularities or fraud, and where such errors, irregularities or fraud are attributable to the Contractor, the Agency may refuse to make payments, may recover amounts already paid or may terminate all the contracts concluded with the Contractor, in proportion to the seriousness of the errors, irregularities or fraud.

#### **ARTICLE II.14 - CANCELLATION OF ORDERS**

Where execution of the order form 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 form with no

<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.

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.13 with respect to the part still outstanding. The Contractor shall accept, as the aggregate liability of the Agency, payment of the price of the supplies delivered by him as at the effective date of cancellation.

## **ARTICLE II.15 – INVOICING AND PAYMENTS**

### **II.15.1 Pre-financing guarantee**

Where required by Article I.4. or if the pre-financing is over €150 000, 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 (*“the guarantor”*) 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 supplies 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 guarantee shall be retained until the pre-financing has been cleared against payment of the balance to the Contractor. It shall be released the following month or, in the absence of such clearing, four months after the issuance of a corresponding debit note. The cost of providing such guarantee shall be borne by the Contractor.

### **II.15.2 Payment of the balance**

Payments shall be executed only if the Contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted.

If providing a final progress 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 final progress report.

Approval of the final progress report does not imply recognition either of the regularity or of the authenticity, completeness and correctness of the declarations and information it contains.

Where the Agency requests a new final progress 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 final progress report shall likewise be subject to the above provisions.

### **II.15.3 Payment currency and costs**

Payments are executed in the currency of the contract.



Costs of the transfer are borne in the following way:

- costs of dispatch charged by the bank of the Agency are borne by the Agency,
- cost of receipt charged by the bank of the Contractor are borne by the Contractor,
- all costs of repeated transfer caused by one of the parties are borne by the party who caused repetition of the transfer.

## **ARTICLE II.16 – GENERAL PROVISIONS CONCERNING PAYMENTS**

**II.16.1** Payments shall be deemed to have been made on the date on which the Agency's account is debited.

**II.16.2** 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 invoice is not admissible, either because the amount is not due or because the necessary supporting documents have not been properly produced. The Agency may proceed with further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the invoice is admissible.

The Agency shall notify the Contractor accordingly and set out the reasons for the suspension 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.16.3** In the event of late payment the Contractor shall be entitled to interest, provided the calculated interest exceeds EUR 200. In case interest does not exceed EUR 200, 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.17 – TAXATION**

**II.17.1** 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.17.2** 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 Union.

**II.17.3** The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the supplies and services required for performance of the Contract are exempt from taxes and duties, including VAT.

**II.17.4** 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.18 – RECOVERY**

- II.18.1** If total payments made exceed the amount actually due 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.18.2** In the event of failure to pay by the deadline specified in the debit note, the sum due shall bear interest at the rate indicated in Article II.16.3. Interest shall be payable from the calendar day following the due date up to the calendar day on which the debt is repaid in full.
- II.18.3** 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 European Union or the European Atomic Energy Community that is certain, of a fixed amount and due. The Agency may also claim against the guarantee, where provided for.

#### **ARTICLE II.19 – CHECKS AND AUDITS**

- II.19.1** Pursuant to Article 142 of the Financial Regulation applicable to the general budget of the European Communities, the Court of Auditors shall be empowered to audit the documents held by the natural or legal persons receiving payments from the budget of the European Union from signature of the Contract up to five years after payment of the balance of the last implementation.
- II.19.2** The Agency or an outside body of its choice shall have the same rights as the 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 implementation.
- II.19.3** 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 implementation.

## ANNEX I (B) – DRAFT ORDER FORM



Order number must appear on all communication with ACER.

Order number: ...

# FRAMEWORK CONTRACT ORDER FORM - DRAFT

This order is governed by the provisions of Framework Contract No  
ACER/OP/ADMIN/22/2012 in force from \_\_\_\_\_ to \_\_\_\_\_

Unit: ...

E-mail: ...

Fax: ...

Total pages: ...

Name and address of the contractor:

...

...

E-mail: ...

TRR: ...

VAT no.:...

Place of delivery:

...

...

DESCRIPTION	QTY	UNIT PRICE in EUR	TOTAL in EUR
TOTAL excl. VAT			0.00

Pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union, the Agency is exempt from all taxes and dues, including value added tax, on payments due in respect of this Contract. For intra-community purchases, the mention "VAT Exemption / European Union / Article 151 of Council Directive 2006/112/EC" should be added on the invoice.

The request for payment shall be admissible only on the basis of a signed order form by both parties.

Delivery/performance dates: ...

Terms of payment: 30 days from receipt of the invoice.

Contractor's signature:

Acceptance by the Agency:

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_