**Energy Efficiency Compliant Products – EEPLIANT3 (EU Grant Agreement N° 832558)**

WP6: Concerted actions on new and arising issues posing challenges to market surveillance and enforcement
WP6, task 6.4 Product testing

**Call for Tender for Test Laboratories**

**Washing machines, wine storage appliances, and televisions**

**March 2022**

# APPENDIX D, Contract template for Laboratory Test Services

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| This contract is part of the EEPLIANT3 concerted action that has received funding from the European Union’s Horizon 2020 research and innovation programme under grant agreement No 832558 |
| Contract between |
| vores bureau |
| Bredbjergvej 445230 Odense M.Denmark(hereinafter called "vb") |
| VAT Identification No: DK 27681859 |

and

Tenderer

[Name

Address]

- hereafter called "XX" –

VAT Identification No: […]

### § 1 Description of Services

This contract regards physical single-product testing for market surveillance of washing machines, wine storage appliances, and televisions and includes options for purchasing add on services such as triple-products testing and carriage in the concerted action ‘*Energy Efficiency Compliant Products - EEPLIANT3 [GA: 832558], WP6*’.

The scope of the work under this contract is reflected in the enclosed documents:

|  |  |
| --- | --- |
| **Document** | **Titel** |
| Main document | Call for tender |
| A | Declaration of Honour |
| B | Technical requirements |
| C | Financial Proposal |
| D | Template contract |
| E | Checklist |
| F | Q&A’s  |

The results from the test performed under the contract might be used to support legal action.

XX shall assure that all the services as per contract are carried out according to the highest professional standards.

### § 2 Duration of Assignment and Termination

1. The assignment is scheduled for the period from June 2022 to the end of May 2023. The contractual relationship ends at the end of this assignment period.
2. XX shall conduct the agreed quantity of single-product (YY products) testing before the end of October 2022.
3. Both parties may terminate the contract at any time with 90 calendar days’ notice. Termination of the contract must be confirmed in writing without delay. If the contract is denounced, no matter who does it, XX shall produce an invoice for the service delivered to vb until termination. If either Party becomes insolvent, bankrupt, or enters receivership, dissolution, or liquidation, the other Party may terminate this agreement with immediate effect.
4. vb has the right to terminate the contractual relationship with XX with immediate effect in case the EEPLIANT3 concerted action implementation agreement on which the assignment of XX is based is terminated or deferred in whole or in part. The same applies in case the assignment may not be carried out due to other reasons, such as requirements/conditions imposed by the institution (European Commission) financing the project. In such cases, XX is not entitled to any contractual claims and/or claims for damages against vb.
5. The contractual relationship may be terminated without prior notice at any given time for a good cause.
6. A good cause exists in particular if the institution financing the project requests vb to immediately dismiss the short-term expert for reasons for which XX is liable.
7. A termination of the contractual relationship by vb without prior notice is inter alia justified if XX does not fulfil the requirements of obligations according to the enclosed documents.
8. In the case of delays

If it is clear that services provided or products supplied cannot be delivered within the agreed delivery time, XX is obliged to inform without delay vb regardless of the cause of the delay.

vb considers repeated or significant delays as substantial non-fulfilment, which justifies vb to cancel the contract with immediate effect.

1. In the case of shortcomings

If shortcomings are found in the provision of a specific service or product supplied by XX, then vb can demand that XX remedies the shortcomings without further payments. In such instances, the parties shall agree on a new time limit that is reasonably in proportion to the time limits that would normally apply to such services.

If this cannot be remedied, vb is entitled to demand a proportionate discount.

1. Due to the COVID-19 situation travel restriction could occur and virtual meetings will be arranged instead.

**§ 3 Subcontracting**

If any part of the work is to be subcontracted, vb must be informed before the subcontract is signed. If the need to subcontract becomes apparent only after the work has been commissioned, the permission/agreement of the person signing the contract on behalf of vb must be obtained before the subcontract is signed or takes effect.

xx is ultimately liable for any services provided by subcontractors engaged by the contractor in accordance with the contract.

### § 4 Payments

1. For the implementation of this assignment, XX receives payment according to Annex C.
2. All invoices shall mention the full name, address, and the DK VAT number of vb and be issued with zero VAT, referring to the reverse charge mechanism according to Articles 44 and 196 of the VAT Directive 112/2006. The invoice must also mention the product model numbers, EEPLIANT3 concerted action, the grant agreement contract number, and WP6.
3. Invoicing will be upon completion of each batch of testing and must be submitted within 30 days after completion of each batch of testing. The invoice must be made out in EUR.

All invoices must be sent via electronic mail, the e-mail address elisabeth@voresbureau.dk must be used at all times.

1. The agreed remuneration must be claimed towards vb in writing within **three months** after the end of the final test, otherwise, it is forfeited.
2. In the setting "currency converter" the Internet bank rate of 0% must be selected.

### § 5 Special Duties, Obligation of Secrecy, Copyright

1. XX is obligated to treat any work, result, or outcome under this contract as confidential. This obligation to secrecy remains effective beyond the termination of the present contract.
2. Materials, results, confidential or sensitive information, and documentation derived from the respective services or products supplied or in connection with the preparation/negotiations of the Agreement should under no circumstance be made available to the public or any other Third Parties unless prior authorisation is given by vb.
3. If a Party is compelled by Law to disclose information, documentation, or other materials attached to this Agreement, it shall provide the other Party with prompt written notice. The Parties continue to be bound by the terms of this non-disclosure clause during the continuance of the Agreement and after its termination.
4. XX undertakes to not make copies of any business documents or information or to remove any business documents from the company premises, without explicit approval unless this is for legitimate business purposes.
5. All work-related and other documents are property of vb. All rights are reserved by vb. vb is entitled to transfer these rights to third parties. Possible monetary claims resulting hereof are compensated for by the agreed remuneration.
6. Publications relating to the project or the activities of the short-term expert in the context of the project require explicit written prior approval by vb - even after termination of the contractual relationship.
7. In case X has been involved in a product design for the manufacturer of the model being tested by the lab, the lab must promptly inform vb and the relevant MSA for them to decide if the test has to finally be done or stopped.

**§ 6 Checks, reviews, audits, and investigations by the European Commission**

The Executive Agency or the European Commission will – during the implementation of the action or afterward – check the proper implementation of the action and compliance with the obligation of the respective associated Grant Agreement and carry out reviews/audits that can start up to two years after the payment of the balance. They will be formally notified to vb, who will notify in their turn XX.

The reviews/audits may be carried out directly by the European Commission staff or by a Third Party appointed by the European Commission. vb and the agency must provide – within the deadline requested – any information and data that might be requested to carry out the audit. For any reviews/audits, after prior communication from the side of vb, provide a minimum of 5 days’ notice. XX must allow access to their sites and premises, including to external persons or bodies, and must ensure that information requested is readily available. The information must be accurate, precise, complete, and in the format requested, including electronic format.

Based on the review/audit findings, a draft report will be drawn up. The Executive Agency or the European Commission will formally notify the draft report to vb who will notify the agency, who has 30 days to formally notify observations. The final report will take into account the observations made by the agency. The report will be formally notified to XX.

The Parties cannot seek a protective order or other remedy and/or waive compliance with the provisions of this Article.

**§ 7 Investigations by the European anti-fraud office (OLAF)**

Under Regulations No.883/2013 and No. 2185/96 (and in accordance with their provisions and procedures), the European Anti-Fraud Office (OLAF) may – at any moment during the implementation of the action or afterward – carry out investigations, including on-the-spot checks and inspections, to establish whether there has been a fraud, corruption or any other illegal activity affecting the financial interest of the EU.

The Parties cannot seek a protective order or other remedy and/or waive compliance with the provisions of this Article.

**§ 8 Check and audits by the European Court Of Auditors (ECA)**

Under Article 287 of the Treaty on the Functioning of the European Union (TFEU) and Article 161 of the Financial Regulation No. 966/2012, the European Court of Auditors (ECA) may - at any moment during the implementation of the action or afterward – carry out audits. The ECA has the right of access for the purpose of checks and audits.

The Parties cannot seek a protective order or other remedy and/or waive compliance with the provisions of this Article.

**§ 9 Information on EU funding**

Any documents produced by XX that have been approved by vb during the term or after the termination of the contract must display the appropriate EU emblem and include the disclaimer provided by vb in accordance with the stipulations of the underlying Grant Agreement.

**§ 10 Obligation to keep records and other supporting documentation**

XX must keep records and documentation supporting the services or products supplied and the costs declared and invoiced to vb for a period of at least 10 years after the termination of the contract.

### § 11 Data Privacy Consent

XX consents to the storage, processing and use of personal data by vb. vb shall only process or use personal data to the extent required in the context of the project to which xx is assigned and/or of future possibilities of collaboration. Personal data include in particular name, address, scope of work, qualification, region and type of assignment, assessment of results, as well as all contracts and contract conditions concluded with xx.

**§ 12 Force Majeure**

Both parties are released from liability in the event that their performance of this contract or part thereof is prevented, rendered more difficult, or delayed as a consequence of circumstances beyond that Party’s reasonable control (force majeure), including but not limited to war and military conscription, acts of terrorism, national or international health crisis, pandemics, natural disasters, fire, key personnel’s death or serious illness, regulation of import and export.

vb or XX can only invoke force majeure if the Party concerned has informed the other Party in writing immediately after the circumstances causing force majeure has come into force.

**§ 13 Liability and Renouncement**

The Agreement will be governed by Danish law.

vb shall not be in any way liable, regardless of the cause or duration, for any unauthorised disclosure or transfer of data provided by XX, including, but not limited to, cybercrime, malware, internet fraud, phishing, failure in IT systems/servers, etc. Within three working days of vb becoming aware of any unauthorised use or disclosure of, or access to data, vb shall promptly report the event to XX and take all possible available remedy measures.

**§ 14 Disputes**

All disputes shall be finally settled according to Danish law.

Before bringing a claim for indemnification, the indemnified Party will notify the indemnifying Party of the indemnifiable proceeding and deliver to the indemnifying Party all legal pleadings and other documents reasonably necessary to indemnify or defend the indemnifiable proceeding.

All disputes arising after the contract is signed by both vb and XX shall be finally settled at the “Det Danske Voldgiftsinstitut” (The Danish Arbitration Institute) according to the institute’s procedure.

All proceedings of the arbitration shall be conducted in the English language.

### § 15 Final Provisions

1. This contract contains all agreements between the parties and, with its entry into force, super- sedes all previous agreements.
2. No amendment or modification of this agreement shall be valid unless made in writing. This also applies to modifications of this clause. Individual agreements remain unaffected by the above.
3. If any provision contained in the present contract is or becomes invalid, the validity of this contract shall not be affected.

Denmark, date, 2022

CEO, Elisabeth Dreier ZZ
vores bureau XX

**DISCLAIMER**

This document is part of the EEPLIANT3 concerted action that has received funding from the European Union’s Horizon 2020 research and innovation programme under grant agreement No 832558.

This document represents the views of the author, and it is his sole responsibility; it can in no way be taken to reflect the views of the European Climate, Infrastructure and Environment Executive Agency (CINEA), the European Commission or any other body of the European Union, who are not responsible for any use that may be made of the information it contains.