

## FRAMEWORK [SERVICE] [SUPPLY] CONTRACT

N°: 201X-AC-XXX-XXXX-XXXXXXXXXX

NOTIFICATION DATE :

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The present procurement procedure is subject to the French Code of public procurement in its latest version in force as enacted by Order No. 2018-1074 issued on 26 November 2018 and its Implementation Decree No. 2018-1075 issued on 3 December 2018.

Expertise France proceeds with

[open tender in application of L. 2124-2, R. 2161-2, R. 2161-3, R. 2161-4 et R. 2161-5 of the above mentioned Code]

[restricted tender in application of articles L. 2124-2 et R. 2161-6 au R2161-11 of the above mentioned Code]

[“adapted procedure” in application of L. 2123-1 and R. 2123-1 au R. 2123-7 of the above mentioned Code]

[procedure with negotiation in application of articles L. 2124-3 and R. 2161-12 to R. 2161-20 of the above mentioned Code]

[negotiation procedure without prior competitive bidding or publication in application of articles L. 2122-1 and R. 2122-1 to R. 2122-9 of the above mentioned Code ].

Purchase order based post/subsequent agreement in application of articles R. 2162-1 toif applicable R.2162-14 of the above mentioned Code

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**EXPERTISE FRANCE** (hereinafter referred to as "the contracting authority"),

Full official name: EPIC- Agence Française d'Expertise Technique Internationale (AFETI)

Statutory registration number: RCS 808 734 792 00027

Full official address: 73, rue de Vaugirard 75006 – PARIS

VAT registration number: FR36 808734792

Represented for the purposes of the signature of this service contract by M. Jérémie PELLET,  
Chief Executive Officer,

on the one part, and

<b>Full official name</b> <sup>1</sup>	
(hereinafter referred to as 'the contractor'),	
<b>Legal form</b>	
<b>Full official address</b>	
<b>Statutory registration number</b>	
<b>VAT registration number</b>	

represented for the purposes of the signature of this framework contract by

Person authorized to sign the contract on behalf of the Contractor	
<b>Name</b> <sup>2</sup>	Surname (in capital letters): ..... Forename: .....
<b>Function</b>	
<b>Contact details</b>	Direct telephone: .....E-mail address: .....

<b>Consortium details</b> <sup>3</sup>	
<b>Full official name</b> <sup>4</sup>	

<sup>1</sup> In the case of a joint consortium, this section must be completed by the consortium leader

<sup>2</sup> In the case of a joint tender, only one person will be authorized to sign (authorised representative of the single tenderer duly authorised by the other tenderers).

<sup>3</sup> This section must be completed in case tenderer presents a joint offer by a group of tenderers in consortium and must be completed for each member of the consortium. (Erase in case of single tenderer)

<sup>4</sup> In the case of a joint consortium, this section must be completed by the consortium leader

<b>Legal form</b>	
<b>Full official address</b>	
<b>Statutory registration number</b>	
<b>VAT registration number</b>	
<b>Contact details</b>	Contact person: ..... Telephone: ..... E-mail address: .....

on the other part,

The parties identified above and hereinafter collectively referred to as 'the contractor' shall be jointly and severally liable vis-à-vis the contracting authority for the performance of this framework contract, in the framework of the [cooperation project] [technical assistance contract] hereinafter referred to as the 'main contract' signed on XXXXX by XXXXX and XXXXX concerning « *indiquer l'objet du contrat principal* ».

**HAVE AGREED**

to the **special conditions**, the **general conditions for [service ref.: M.3.7.2.3ENG-EFjanv2017-Conditions générales CC service] [supply ref.: M.3.7.2.4ENG-EFjanv2017-Conditions générales CC supply] framework contracts**, the [model order form] [and] [model specific contract] and the following annexes:

**Annex I –** Tender specifications (reference No [complete] of [insert date])

**Annex II –** Contractor's tender (reference No [complete] of [insert date])

**Annexe III –** Declaration of honour

[Other annexes]

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

- The terms set out in the special conditions shall take precedence over those in the other parts of the FWC.
- The terms set out in the general conditions shall take precedence over those in the model order form and model specific contract
- The terms set out in the model order form and model specific contract shall take precedence over those in the other annexes.
- The terms set out in the tender specifications (Annex I) shall take precedence over those in the tender (Annex II).
- The terms set out in the framework contract shall take precedence over those in the order forms and specific contracts.
- [The terms set out in the specific contracts shall take precedence over those in the requests for services.
- The terms set out in the requests for services shall take precedence over those in the specific tenders. ]

## **I – SPECIAL CONDITIONS**

### **ARTICLE I.1 – SUBJECT MATTER**

**I.1.1** The subject matter of the FWC is [*short description of subject*].

**I.1.2** Signature of the FWC imposes no obligation on the contracting authority to purchase. Only performance of the FWC through order forms or specific contracts is binding on the contracting authority.

**[I.1.3 Multiple framework contract<sup>5</sup>**

[The contractor is selected for a multiple FWC in cascade in [*complete*] position.]

[The contractor is selected for a multiple FWC with reopening of competition between [*complete*] contractors.]]

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

**I.2.1** The FWC shall enter into force [on its notification date] [on [*insert date*]] if it has already been signed by both parties].

**I.2.2** Under no circumstances may performance commence before the date on which the FWC enters into force. Execution of the tasks and deliveries may under no circumstances begin before the date on which the order form or specific contract enters into force.

**I.2.3** The FWC is concluded for a period of [*insert*] [months] with effect from the date on which it enters into force. Unless otherwise specified, all periods specified in the FWC are calculated in calendar days.

**I.2.4** The order forms or specific contracts shall be concluded before the FWC expires.

The FWC shall continue to apply to such order forms and specific contracts after its expiry. They shall be executed no later than [six] months after its expiry.

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<sup>5</sup> Provision to be deleted when having a single contractor. If multiple contractors, select first option in the case of multiple “cascade” framework contracts, indicating if contractor is first, second... on the list, or second option in the case of multiple framework contracts with reopening of competition, indicating the total number of contractors.

### [I.2.5 FWC renewal<sup>6</sup>

The FWC shall be renewed automatically up to [complete] times under the same conditions, unless written notification to the contrary is sent the contracting authority and received by the contractor three months before expiry of the period indicated in Article I.2.3. Renewal does not imply any modification or deferment of existing obligations.]

## **ARTICLE I.3 –PRICES**

**I.3.1** [The maximum amount of the FWC shall be EUR [amount in figures and in word] However, this must in no way be construed as a commitment on the contracting authority to purchase for the maximum amount.] [The present FWC does not specify either a maximum or minimum amount. Therefore the contracting authority is not committed to any minimum level of purchase within the scope of the present FWC.]

The [unit] [maximum] prices of the [services] [supplies] shall be [as listed in Annex II.] [:

EXPENDITURE ITEMS	UNIT PRICES (IN PRE-TAX EUROS)
ITEM	To be completed by the CONTRACTOR
ITEM	To be completed by the CONTRACTOR
Etc.	To be completed by the CONTRACTOR

]

### **[I.3.2 Price revision**

#### Option 1

Prices shall be fixed and not subjected to revision during the complete duration of the FWC.

#### Option 2

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

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<sup>6</sup> The total duration of the FWC may not exceed four years, save in exceptional cases justified in particular by the subject of the FWC.

At the beginning of the second and every following year of the FWC, [80% of] each price may be revised upwards or downwards, if such revision is requested by one of the parties in writing no later than three months before the anniversary of the date on which it was signed. The other party shall acknowledge receipt within 15 days of reception of the request. The new prices shall be communicated as soon as the final index is available. The contracting authority shall purchase on the basis of the prices in force on the date on which order forms or specific contracts are signed by both parties. Such prices shall not be subject to revision.

This revision shall be determined by the trend in the harmonised indices of consumer prices (HICP) [complete] published for the first time by [the Eurostat monthly 'Data in Focus' publication at <http://www.ec.europa.eu/eurostat/>].

Revision shall be calculated in accordance with the following formula:

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

where:

Pr = revised price;

Po = price in the original tender;

Io = index for the month [in which the validity of the tender expires] [corresponding to the final date for submission of tenders];

Ir = index for the month [corresponding to the date of receipt of the request to revise prices] [in which the revised prices take effect]].

### **[I.3.3. Reimbursement of expenses**

In addition to the maximum total price specified in each order form or specific contract, travel, subsistence, accommodation and shipment expenses shall be reimbursed in accordance with Article II.16, as shall other expenses provided for by the tender specifications up to a maximum amount of EUR [amount in figures and in words] throughout performance of the FWC and up to a maximum amount of EUR [amount in figures and in words] for [each order form or specific contract / each travel / other sufficient measure].

The daily subsistence allowance referred to in Article II.16.4 (d) and the accommodation flat-rate ceiling referred to in Article II.16.4(e) shall be [EUR [complete]] [as listed in Annex [complete]] [as listed below].]

## **ARTICLE I.4 – PAYMENT ARRANGEMENTS AND PERFORMANCE OF THE FRAMEWORK CONTRACT**

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

#### **Option 1 :**

[Following emergence of its needs, the contracting authority shall send purchase orders to the contractor, determining the quantity of purchased items. Purchase orders shall be duly dated and signed by the contracting authority and notified per email to the contractor.]

#### **Option 2 :** [

Within [complete] working days of an order form or a request for services being sent by the contracting authority to the contractor, the contracting authority shall receive the completed order form or a specific tender back, duly signed and dated.

[Within [complete] working days of a specific contract being sent by the contracting authority to the contractor, the contracting authority shall receive it back, duly signed and dated.]

The period allowed [for the execution of the tasks] [for the delivery of supplies] shall start to run on the date [of notification of the [order form] [specific contract] to the contractor, unless a different date is indicated on the form] [indicated in the specific contract].

### **[I.4.2 Pre-financing**

A pre-financing payment of [complete]% of the total price of the order form or specific contract shall be made within 30 days of its entry into force [and the receipt by the contracting authority of a duly constituted financial guarantee equal to at least [complete]% of the total price of the order form or specific contract].

No pre-financing will be granted to the contractor for order forms or specific contract whose price is less than 50 000 € PRE TAXE.

### **[I.4. [complete] Interim payment**

[Quarterly interim payments may be paid to the Contractor. The amount of interim payments shall not exceed the value of services performed by the Contractor and validated by contracting authority. The cumulative amount of interim payments shall not exceed 90% of the concerned amount.]

The contractor shall submit an invoice for an interim payment equal to [complete] % of the total price referred to in the relevant order form or specific contract.



Interim payment do not constitute proof of full or either partial acceptance and do not discharge the contractor of its obligations under the contract.

[Option 1 - No report]

[The contacting authority shall make the payment within 30 days from receipt of the invoice.]

[Option 2 – With report]

[Invoices for interim payment shall be accompanied by [a progress report or any other document in accordance with the relevant specific contract] [and] [statements of reimbursable expenses in accordance with Article II.16]. The contracting authority shall make the payment within 30 days from receipt of the invoice. The contractor shall have 15 days in which to submit additional information or corrections, a new progress report or other documents if it is required by the contracting authority.]

#### I.4.**[complete]** Payment of the balance

The contractor shall submit an invoice for payment of the balance.

[Option 1 - No report]

[The contacting authority shall make the payment within 30 days from receipt of the invoice.]

[Option 2 – With report]

[The invoice shall be accompanied by [the final progress report or any other document in accordance with the relevant specific contract] [and] [statements of reimbursable expenses in accordance with Article II.16]. The contracting authority shall make the payment within 30 days from receipt of the invoice. The contractor shall have 15 days in which to submit additional information or corrections, a new final progress report or other documents if it is required by the contracting authority.]

#### I.4.**[complete]** Delivery

The supplies shall be delivered at **[place and Incoterm]**<sup>7</sup>.

[The contractor shall notify the contracting authority of the exact date of delivery at least **[complete]** days in advance. All deliveries shall be made between **[complete]** hours and

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<sup>7</sup> Incoterms 2010 of the International Chamber of Commerce are legal clauses on delivery of supplies, transfer of risk and insurances. These terms are for sale to tenderers on the website <http://www.iccwbo.org/incoterms/>.

[complete] 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.]

### **ARTICLE I.5 – BANK ACCOUNT**

Payments shall be made to the contractor's bank account denominated in [euro][insert local currency where the receiving country does not allow transactions in EUR], identified as follows:

Bank Code	Sort Code	Account number
A renseigner par le soumissionnaire	A renseigner par le soumissionnaire	A renseigner par le soumissionnaire

IBAN (or BIC Code or SWIFT) : A renseigner par le soumissionnaire

BIC : A renseigner par le soumissionnaire

### **ARTICLE I.6 – COMMUNICATION DETAILS AND DATA CONTROLLER**

For the purpose of Article II.6, the data controller shall be [insert name of entity]

Communications shall be sent to the following addresses:

Contracting authority:

Expertise France  
Département [compléter]  
73, rue de Vaugirard  
75006 PARIS  
E-mail: [boîte fonctionnelle]

Contractor:

[Full name]

[Function]

[Company name]

[Full official address]

Email: [complete]

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

**I.7.1** The FWC shall be governed by French law.

**I.7.2** Any dispute between the parties in relation to the interpretation, application or validity of the FWC which cannot be settled amicably shall be brought before the Administrative courts of Paris.

7 rue de Jouy  
PARIS 75004  
Téléphone : +33 1 44 59 44 00  
Fax : +33 1 44 59 46 46  
E-mail : [greff.ta-paris@juradm.fr](mailto:greff.ta-paris@juradm.fr)

## **ARTICLE I.8 - EXPLOITATION OF THE RESULTS OF THE FWC**

### **I.8.1 Modes of exploitation**

The contracting authority acquires ownership of the results as defined in the tender specifications (Annex I), and can freely transfer or use them for any of the purposes defined in article II.10.2.

### **I.8.2 Pre-existing rights and transmission of rights**

[All pre-existing rights shall be [licensed to the contracting authority in accordance with Article II.10.3.] [fully and irrevocably acquired by the contracting authority as provided for in Article II.10.2 and by derogation to Article II.10.3.]]

[All pre-existing rights incorporated in the results and directly related to the uses foreseen in Article I.8.1 shall be fully and irrevocably acquired by the contracting authority as provided for in Article II.10.2 and by derogation to Article II.10.3.]

## **ARTICLE I.9 – TERMINATION BY EITHER PARTY**

Termination conditions of the FWC are defined in its general conditions.

## **[ARTICLE I.10 – OTHER SPECIAL CONDITIONS]**

### **[I.10.1 Liquidated damages]**

Liquidated damages in the amount of 150 € per days will be applied on the payment of balance whenever delay liable to the contractor, occurs on the final delivery of the services expected under the contract.

However the total amount of the liquidated damages shall not exceed 5 % of the value of the concerned item of the contract.]

### **[I.10.X A compléter]**

[ ...]

## **SIGNATURES**

**FOR THE CONTRACTOR :**

Handwritten words « read and approved » :

Done at ....., the .....20....

Signature<sup>8</sup> : \_\_\_\_\_

Name, Forename, :

Function :

**FOR THE CONTRACTING AUTHORITY :**

Done at ....., the .....20....

Signature<sup>9</sup> : \_\_\_\_\_

Name, Forename, :

Function :

**Done in one original**

**Avis CGEFI :**

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<sup>8</sup> Signed in original by the person authorized to enter into legally binding commitments on behalf of the contractor.

<sup>9</sup> Signed in original by the person authorized to enter into legally binding commitments on behalf of the contracting authority.

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

### **ARTICLE II. 1 – PERFORMANCE OF THE FWC**

- II.1.1** The contractor shall perform the FWC to the highest professional standards.
- II.1.2** The contractor shall be solely responsible for taking the necessary steps to obtain any permit or licence required for performance of the FWC under the laws and regulations in force at the place where the tasks assigned to him are to be executed.
- II.1.3** Without prejudice to Article II.4 any reference made to the contractor's personnel in the FWC shall relate exclusively to individuals involved in the performance of the FWC.
- II.1.4** The contractor must ensure that the personnel performing the FWC possesses the professional qualifications and experience required for the execution of the tasks assigned to it.
- II.1.5** The contractor shall neither represent the contracting authority nor behave in any way that would give such an impression. The contractor shall inform third parties that it does not belong to the European public service.
- II.1.6** The contractor shall be solely responsible for the personnel who executes the tasks assigned to him.

The contractor shall stipulate the following employment or service relationships with its personnel:

- (a) personnel executing the tasks assigned to the contractor may not be given orders directly by the contracting authority;
  - (b) the contracting authority may not under any circumstances be considered to be the employer of the personnel referred to in point (a) and the personnel shall undertake not to invoke against the contracting authority any right arising from the contractual relationship between the contracting authority and the contractor.
- II.1.7** In the event of disruption resulting from the action of one of the contractor's personnel working on the contracting authority's premises or in the event that the expertise of one of the contractor's personnel fails to correspond to the profile required by the FWC, the contractor shall replace him without delay. The

contracting authority shall have the right to make a reasoned request for the replacement of any such personnel. The replacement personnel must have the necessary qualifications and be capable of performing the FWC 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 personnel.

- II.1.8** Should the execution of the tasks be directly or indirectly hampered, either partially or totally, by any unforeseen event, action or omission, the contractor shall immediately and on its own initiative record it and report it to the contracting authority. 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 its obligations under this FWC. In such an event the contractor shall give priority to solving the problem rather than determining liability.
- II.1.9** Should the contractor fail to perform its obligations under the FWC or order form or specific contract, the contracting authority may - without prejudice to its right to terminate the FWC order form or specific contract or - reduce or recover payments in proportion to the scale of the unperformed obligations. In addition, the contracting authority may claim compensation or impose liquidated damages in accordance with Article II.12.

## **ARTICLE II.2 – MEANS OF COMMUNICATION**

- II.2.1** Any communication relating to the FWC or to its performance shall be made in writing and shall bear the FWC number, and if applicable the order form or specific contract number. Any communication is deemed to have been made when it is received by the receiving party unless otherwise provided for in this FWC.
- II.2.2** Electronic communication shall be deemed to have been received by the parties on the day of dispatch of that communication provided it is sent to the addressees listed in Article I.6. Without prejudice to the preceding, if the sending party receives a message of non-delivery to or of absence of the addressee, it shall make every effort to ensure the actual receipt of such communication by the other party.

Electronic communication shall be confirmed by an original signed paper version of that communication if requested by any of the parties provided that this request is submitted without unjustified delay. The sender shall send the original signed paper version without unjustified delay.

**II.2.3** Mail sent using the postal services is deemed to have been received by the contracting authority on the date on which it is registered by the department responsible referred to in Article I.6.

Any formal notification shall be made by registered mail with return receipt or equivalent, or by equivalent electronic means.

### **ARTICLE II. 3 – LIABILITY**

**II.3.1** The contractor shall be solely responsible for complying with any legal obligations incumbent on it.

**II.3.2** The contracting authority shall not be held liable for any damage caused or sustained by the contractor, including any damage caused by the contractor to third parties during or as a consequence of performance of the FWC, except in the event of wilful misconduct or gross negligence on the part of the contracting authority.

**II.3.3** The contractor shall be held liable for any loss or damage sustained by the contracting authority in performance of the FWC, including in the event of subcontracting, and for any claim by a third party, but only to an amount not exceeding three times the total amount of the relevant order form or specific contract. Nevertheless, if the damage or loss is caused by the gross negligence or wilful misconduct of the contractor or of its personnel or subcontractors, the contractor shall have unlimited liability for the amount of the damage or loss.

**II.3.4** The contractor shall indemnify and hold the contracting authority harmless for all damages and costs incurred due to any claim. The contractor shall provide compensation in the event of any action, claim or proceeding brought against the contracting authority by a third party as a result of damage caused by the contractor during the performance of the FWC. In the event of any action brought by a third party against the contracting authority in connection with the performance of the FWC including any alleged breach of intellectual property rights, the contractor shall assist the contracting authority. Such expenditure incurred by the contractor may be borne by the contracting authority.

**II.3.5** The contractor shall take out an insurance policy against risks and damage relating to the performance of the FWC if required by the relevant applicable legislation. It 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 contracting authority should it so request.



## **ARTICLE II. 4 - CONFLICT OF INTERESTS**

- II.4.1** The contractor shall take all the necessary measures to prevent any situation of conflict of interest. Such situation arises where the impartial and objective performance of the FWC is compromised for reasons involving economic interest, political or national affinity, family or emotional ties, or any other shared interest.
- II.4.2** Any situation constituting or likely to lead to a conflict of interest during the performance of the FWC shall be notified to the contracting authority in writing without delay. The contractor shall immediately take all the necessary steps to rectify the situation. The contracting authority reserves the right to verify that the steps taken are appropriate and may require that additional steps be taken within a specified deadline.
- II.4.3** The contractor declares that it 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, when such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, in so far as it serves as an incentive or reward relating to the performance of the FWC.
- II.4.4** The contractor shall pass on all the relevant obligations in writing to its personnel and to any natural person with the power to represent it or take decisions on its behalf and ensure that it is not placed in a situation which could give rise to conflicts of interest. The contractor shall also pass on all the relevant obligations in writing to third parties involved in the performance of the FWC including subcontractors.

## **ARTICLE II.5 – CONFIDENTIALITY**

- II.5.1.** The contracting authority and the contractor shall treat with confidentiality any information and documents, in any form, disclosed in writing or orally in relation to the performance of the FWC and identified in writing as confidential.

The contractor shall:

- (a) not use confidential information and documents for any purpose other than fulfilling its obligations under the FWC, order form or specific contract without prior written agreement of the contracting authority;
- (b) ensure the protection of such confidential information and documents with the same level of protection it uses to protect its own confidential information, but in no case any less than reasonable care;

- (c) not disclose directly or indirectly confidential information and documents to third parties without prior written agreement of the contracting authority.

**II.5.2** The confidentiality obligation set out in Article II.5.1 shall be binding on the contracting authority and the contractor during the performance of the FWC and for five years starting from the date of the payment of the balance unless:

- (a) the disclosing party agrees to release the other party from the confidentiality obligation earlier;
- (b) the confidential information becomes public through other means than in breach of the confidentiality obligation, through disclosure by the party bound by that obligation;
- (c) the disclosure of the confidential information is required by law.

**II.5.3** The contractor shall obtain from any natural person with the power to represent it or take decisions on its behalf, as well as from third parties involved in the performance of the FWC, order form or specific contract an undertaking that they will comply with the confidentiality obligation set out in Article II.5.1.

## **ARTICLE II.6– PROCESSING OF PERSONAL DATA**

**II.6.1** Any personal data included in the FWC shall be processed pursuant to the French law « Informatique et Libertés » issued the 6<sup>th</sup> January 1978, modified by the law issued the 6<sup>th</sup> august 2004 and to the article of the French Penal code (art. 226-16 à 17, art. 226-20 à 22) and by regulation 2016/679 of 27 April 2016 on the protection of individuals with regard to the processing of personal data by the French State and bodies and on the free movement of such data. Such data shall be processed by the data controller solely for the purposes of the performance, management and monitoring of the FWC without prejudice to its possible transmission to the bodies charged with monitoring or inspection tasks in application of French law.

**II.6.2** The contractor shall have the right to access its personal data and the right to rectify any such data. The contractor should address any queries concerning the processing of its personal data to the data controller.

**II.6.3** The contractor shall have right of recourse at any time to the French Data Protection Supervisor (CNIL [www.cnil.fr](http://www.cnil.fr)).

**II.6.4** Where the FWC 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 rights.

**II.6.5** The contractor shall grant personnel access to the data to the extent strictly necessary for the performance, management and monitoring of the FWC.

**II.6.6** 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 gaining access to computer systems processing personal data, and especially:
  - unauthorised reading, copying, alteration or removal of storage media;
  - unauthorised data input, as well as any unauthorised disclosure, alteration or erasure of stored personal data;
  - 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 authority;
- (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. 7 – SUBCONTRACTING**

**II.7.1** The contractor shall not subcontract without prior written authorisation from the contracting authority nor cause the FWC to be de facto performed by third parties.

**II.7.2** Even where the contracting authority authorises the contractor to subcontract to third parties, it shall nevertheless remain bound by its contractual obligations and shall be solely responsible for the proper performance of this FWC.

- II.7.3** The contractor shall make sure that the subcontract does not affect rights and guarantees granted to the contracting authority by virtue of this FWC, notably by Article II.18.

## **ARTICLE II. 8 – AMENDMENTS**

- II.8.1** Any amendment to the FWC or order form or specific contract shall be made in writing before fulfilment of all contractual obligations. An order form or a specific contract may not be deemed to constitute an amendment to the FWC.
- II.8.2** The amendment may not have the purpose or the effect of making changes to the FWC or to order forms or specific contracts which might call into question the decision awarding the FWC, order form or specific contract or result in unequal treatment of tenderers or contractors.

## **ARTICLE II. 9 – ASSIGNMENT**

- II.9.1** The contractor shall not assign the rights, including claims for payments, and obligations arising from the FWC, in whole or in part, without prior written authorisation from the contracting authority.
- II.9.2** In the absence of such authorisation, or in the event of failure to observe the terms thereof, the assignment of rights or obligations by the contractor shall not be enforceable against the contracting authority and shall have no effect on it.

## **ARTICLE II. 10 – OWNERSHIP OF THE RESULTS - INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS**

### **II.10.1 Definitions**

In this FWC the following definitions apply:

- (1) 'results' means any intended outcome of the performance of the FWC which is delivered and finally accepted by the contracting authority.
- (2) 'creator' means any natural person who contributed to the production of the result and includes personnel of the contracting authority or a third party.
- (3) 'pre-existing rights' means any industrial and intellectual property rights, including background technology, which exist prior to the contracting authority or the contractor ordering them for the purpose of the FWC performance and include rights of ownership and use by the contractor, the creator, the contracting authority and any other third parties.

### **II.10.2 Ownership of the results**

The ownership of the results shall be fully and irrevocably acquired by Expertise France under the FWC including any rights in any of the results listed in the FWC and order forms or specific contracts, including copyright and other intellectual or industrial property rights, and all technological solutions and information contained therein, produced in performance of the FWC. Expertise France may exploit them as stipulated in this FWC or order forms or specific contracts. All the rights shall be acquired by Expertise France from the moment the results are delivered by the contractor and accepted by the contracting authority. Such delivery and acceptance are deemed to constitute an effective assignment of rights from the contractor to the Expertise France.

The payment of the price as set out in the order forms or specific contracts is deemed to include any fees payable to the contractor in relation to the acquisition of ownership of rights by Expertise France including all forms of use of the results.

The acquisition of ownership of rights by Expertise France under this FWC covers all territories worldwide.

Any intermediary sub-result, raw data, intermediary analysis made available by the contractor cannot be used by the contracting authority without the written consent of the contractor, unless the FWC or specific contract or order form explicitly provides for it to be treated as a self-contained result.

### **II.10.3 Licensing of pre-existing rights**

Expertise France shall not acquire ownership of the pre-existing rights.

The contractor shall license the pre-existing rights on a royalty-free, non-exclusive and irrevocable basis to Expertise France which may use the pre-existing right as foreseen in Article II.10.4 or in order forms or specific contracts. All the pre-existing rights shall be licensed to Expertise France from the moment the latter accept the results delivered by the contractor.

The contractor shall provide to the contracting authority a list of pre-existing rights and third parties' rights including its personnel, creators or other right holders as provided for in Article II.10.5.

The contractor shall present relevant and exhaustive evidence about the acquisition of all the necessary pre-existing rights and third parties' rights together with presentation of relevant result.

The licensing of pre-existing rights to Expertise France under this FWC covers all territories worldwide and is valid for the whole duration of intellectual property rights protection.

#### **II.10.4 Modes of exploitation**

Expertise France shall acquire ownership of each of the results produced as an outcome of the FWC which may be used for any of the following purposes:

- a. use for its own purposes:
  - (i) making available to the staff of the contracting authority
  - (ii) making available to the persons and entities working for the contracting authority or cooperating with it, including contractors, subcontractors whether legal or natural persons, Union institutions, agencies and bodies, Member States' institutions
  - (iii) installing, uploading, processing
  - (iv) arranging, compiling, combining, retrieving
  - (v) copying, reproducing in whole or in part and in unlimited number of copies
- b. distribution to the public:
  - (i) publishing in hard copies
  - (ii) publishing in electronic or digital format
  - (iii) publishing on the internet as a downloadable/non-downloadable file
  - (iv) broadcasting by any kind of technique of transmission
  - (v) public presentation or display
  - (vi) communication through press information services
  - (vii) inclusion in widely accessible databases or indexes
  - (viii) otherwise in any form and by any method
- c. modifications by the contracting authority or by a third party in the name of the contracting authority:
  - (i) shortening
  - (ii) summarizing
  - (iii) modifying of the content
  - (iv) making technical changes to the content:
    - necessary correction of technical errors
    - adding new parts or functionalities
    - changing functionalities
    - providing third parties with additional information concerning the result (e.g. source code) with a view of making modifications

- (v) addition of new elements, paragraphs titles, leads, bolds, legend, table of content, summary, graphics, subtitles, sound, etc.
- (vi) preparation in audio form, preparation as a presentation, animation, pictograms story, slide-show, public presentation etc.
- (vii) extracting a part or dividing into parts
- (viii) use of a concept or preparation of a derivative work
- (ix) digitisation or converting the format for storage or usage purposes
- (x) modifying dimensions
- (xi) translating, inserting subtitles, dubbing in different language versions:
  - English, French
  - all official languages of EU
  - all official languages of the country of implementation of the FWC

d. the following modes of exploitation :

- giving access upon individual requests without the right to reproduce or exploit, as provided for by the French law 78-753 issued the 17<sup>th</sup> July 1978 regarding public access to French State and administration documents;
- storage of the original and copies made in accordance with this FWC or specific contract or order form;
- archiving in line with the document management rules applicable to the contracting authority.

e. rights to authorise, license, or sub-license in case of licensed pre-existing rights, the modes of exploitation set out in any of the points (a) to (d) to third parties.

Where the contracting authority becomes aware that the scope of modifications exceeds that envisaged in the contract, the contracting authority shall consult the contractor. Where necessary, the contractor shall in turn seek the agreement of any creator or other right holder. The contractor shall reply to the contracting authority within one month and shall provide its agreement, including any suggestions of modifications, free of charge. The creator may refuse the intended modification only when it may harm his honour, reputation or distort integrity of the work.

#### **II.10.5 Identification and evidence of granting of pre-existing rights and rights of third parties**

When delivering the results, the contractor shall warrant that they are free of rights or claims from creators and third parties including in relation to pre-existing rights, for any use envisaged by the contracting authority. This does not concern the moral rights of natural persons.

The contractor shall establish to that effect a list of all pre-existing rights and rights of creators and third parties on the results of this FWC or parts thereof. This list shall be provided no later than the date of delivery of the final results.

In the result the contractor shall clearly point out all quotations of existing textual works. The complete reference should include as appropriate: name of the author, title of the work, date and place of publication, date of creation, address of publication on internet, number, volume and other information which allows the origin to be easily identified.

Upon request by the contracting authority, the contractor shall provide evidence of ownership or rights to use all the listed pre-existing rights and rights of third parties except for the rights owned by Expertise France.

This evidence may refer, inter alia, to rights to: parts of other documents, images, graphs, tables, data, software, technical inventions, know-how etc. (delivered in paper, electronic or other form), IT development tools, routines, subroutines and/or other programs ("background technology"), concepts, designs, installations or pieces of art, data, source or background materials or any other parts of external origin.

The evidence shall include, as appropriate:

- (a) the name and version number of a software product;
- (b) the full identification of the work and its author, developer, creator, translator, data entry person, graphic designer, publisher, editor, photographer, producer;
- (c) a copy of the licence to use the product or of the agreement granting the relevant rights to the contractor or a reference to this licence;
- (d) a copy of the agreement or extract from the employment contract granting the relevant rights to the contractor where parts of the results were created by its personnel;
- (e) the text of the disclaimer notice if any.

Provision of evidence does not release the contractor from its responsibilities in case it is found that it does not hold the necessary rights, regardless of when and by whom this fact was revealed.

The contractor also warrants that it possesses the relevant rights or powers to execute the transfer and that it has paid or has verified payment of all due fees including fees due to collecting societies, related to the final results.

## **II.10.6 Creators**

By delivering the results the contractor warrants that the creators undertake not to oppose that their names be recalled when the results are presented to the public and confirms



that the results can be divulged. Names of authors shall be recalled on request in the manner communicated by the contractor to the contracting authority.

The contractor shall obtain the consent of creators regarding the granting of the relevant rights and be ready to provide documentary evidence upon request.

#### **II.10.7 Persons appearing in photographs or films**

If natural, recognisable persons appear in a result or their voice is recorded the contractor shall submit a statement of these persons (or of the persons exercising parental authority in case of minors) where they give their permission for the described use of their image or voice on request by the contracting authority. This does not apply to persons whose permission is not required in line with the law of the country where photographs were taken, films shot or audio records made.

#### **II.10.8 Copyright for pre-existing rights**

When the contractor retains pre-existing rights on parts of the results, reference shall be inserted to that effect when the result is used as set out in Article I.8.1 with the following disclaimer: © - year – Expertise France. All rights reserved. Certain parts are licensed under conditions to Expertise France.

#### **II.10.9 Visibility of Expertise France, European Union, French State funding and disclaimer**

When making use of the results, the contractor shall declare that they have been produced within a contract with Expertise France, and from case to case financed by Expertise France, the European Union, the French State or any other relevant funder, and that the opinions expressed are those of the contractor only and do not represent the contracting authority's official position. The contracting authority may waive this obligation in writing.

### **ARTICLE II. 11 – FORCE MAJEURE**

**II.11.1** 'Force majeure' means any unforeseeable and exceptional situation or event beyond the parties' control which prevents either of them from fulfilling any of their obligations under the FWC, which was not attributable to error or negligence on their part or on the part of subcontractors and which proves to be inevitable in spite of exercising due diligence. Any default of a service, defect in equipment or material or delays in making them available, unless they stem directly from a relevant case of force majeure, as well as labour disputes, strikes or financial difficulties, cannot be invoked as force majeure.

- II.11.2** A party faced with force majeure shall formally notify the other party without delay, stating the nature, likely duration and foreseeable effects.
- II.11.3** The party faced with force majeure shall not be held in breach of its contractual obligations if it has been prevented from fulfilling them by force majeure. Where the contractor is unable to fulfil its contractual obligations owing to force majeure, it shall have the right to remuneration only for the tasks actually executed.
- II.11.4** The parties shall take all the necessary measures to limit any damage due to force majeure.

## **ARTICLE II. 12 – LIQUIDATED DAMAGES**

The contracting authority may impose liquidated damages should the contractor fail to complete its contractual obligations, also with regard to the required quality level, according to the tender specifications.

Should the contractor fail to perform its contractual obligations within the time limits set by the FWC or the relevant order form or specific contract, then, without prejudice to the contractor's actual or potential liability or to the contracting authority's right to terminate the FWC or the relevant order form or specific contract, the contracting authority may impose liquidated damages for each and every calendar day of delay according to the following formula:

$$V \times d / 500$$

$V$  is the price of the relevant purchase;

$d$  is number of days of delay (expressed in working days)

The contractor may submit arguments against this decision within 30 days of receipt of the formal notification. In the absence of a reaction on its part or of written withdrawal by the contracting authority within 30 days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable.

The parties 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 incurred due to failure to fulfil obligations which may be reasonably anticipated.

## **ARTICLE II. 13 – SUSPENSION OF THE PERFORMANCE OF THE FWC**

### **II.13.1 Suspension by the contractor**

The contractor may suspend the performance of the FWC or order form or specific contract or any part thereof if a case of force majeure makes such performance impossible or excessively difficult. The contractor shall inform the contracting authority about the suspension without delay, giving all the necessary reasons and details and the envisaged date for resuming the performance of the FWC, order form or specific contract.

Once the circumstances allow resuming performance, the contractor shall inform the contracting authority immediately, unless the contracting authority has already terminated the FWC, order form or specific contract.

### **II.13.2 Suspension by the contracting authority**

The contracting authority may suspend the performance of the FWC or order form or specific contract or any part thereof:

- (a) if the FWC or order form or specific contract award procedure or the performance of the FWC prove to have been subject to substantial errors, irregularities or fraud;
- (b) in order to verify whether presumed substantial errors, irregularities or fraud have actually occurred.

Suspension shall take effect on the day the contractor receives formal notification, or at a later date where the notification so provides. The contracting authority shall as soon as possible give notice to the contractor to resume the service suspended or inform the contractor that it is proceeding with termination of the FWC or order form or specific contract. The contractor shall not be entitled to claim compensation on account of suspension of the FWC or order form or specific contract or of part thereof.

## **ARTICLE II. 14 – TERMINATION OF THE FWC**

### **II.14.1 Grounds for termination**

The contracting authority may terminate the FWC, an order form or a specific contract respectively in the following circumstances:

- (a) if a change to the contractor's legal, financial, technical or organisational or ownership situation is likely to affect the performance of the FWC or order form or specific contract substantially or call into question the decision to award the FWC;

- (b) if execution of the tasks under a pending order form or a specific contract has not actually commenced within 15 days of the date foreseen, and the new date proposed, if any, is considered unacceptable by the contracting authority, taking into account article II.8.2;
- (c) if the contractor does not perform the FWC or an order form or specific contract as established in the tender specifications or request for service or fails to fulfil another substantial contractual obligation; termination of three or more order forms or specific contracts on this ground shall constitute ground for termination of the FWC;
- (d) in the event of force majeure notified in accordance with article II.11 or if the performance of the FWC or order form or specific contract has been suspended by the contractor as a result of force majeure, notified in accordance with article II.13, where either resuming performance is impossible or the modifications to the FWC or order form or specific contract might call into question the decision awarding the FWC or order form or specific contract, or result in unequal treatment of tenderers or contractors;
- (e) if the contractor is declared bankrupt, is being wound up, is having its 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;
- (f) if the contractor or any natural person with the power to represent it or take decisions on its behalf has been found guilty of professional misconduct proven by any means;
- (g) if the contractor is not in compliance with its 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 it is established or with those of the country of the applicable law of this FWC or those of the country where the FWC is to be performed;
- (h) if the contracting authority has evidence that the contractor or any natural persons with the power to represent it or take decisions on its behalf have committed fraud, corruption, or are involved in a criminal organisation, money laundering or any other illegal activity detrimental to the Expertise France's, French State's, or the European Union's financial interests;
- (i) if the contracting authority has evidence that the contractor or any natural persons with the power to represent it or take decisions on its behalf have

- committed substantial errors, irregularities or fraud in the award procedure or the performance of the FWC, including in the event of submission of false information;
- (j) if the contractor is unable, through its own fault, to obtain any permit or licence required for performance of the FWC or order form or specific contract;
  - (k) if the needs of the contracting authority change and it no longer requires new services under the FWC;
  - (l) when due to the termination of the FWC with one or more of the contractors there is no minimum required competition within the multiple framework contract with reopening of competition.

#### **II.14.2 Procedure for termination**

When the contracting authority intends to terminate the FWC or order form or specific contract it shall formally notify the contractor of its intention specifying the grounds thereof. The contracting authority shall invite the contractor to make any observations and, in the case of point (c) of Article II.14.1, to inform the contracting authority about the measures taken to continue the fulfilment of its contractual obligations, within 30 days from receipt of the notification.

If the contracting authority does not confirm acceptance of these observations by giving written approval within 30 days of receipt, the termination procedure shall proceed. In any case of termination the contracting authority shall formally notify the contractor about its decision to terminate the FWC or order form or specific contract. In the cases referred to in points (a), (b), (c), (e), (g), (j), (k) and (l) of Article II.14.1 the formal notification shall specify the date on which the termination takes effect. In the cases referred to in points (d), (f), (h), and (i) of Article II.14.1 the termination shall take effect on the day following the date on which notification of termination is received by the contractor.

#### **II.14.3 Effects of termination**

In the event of termination, the contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work. On receipt of the notification of termination, the contractor shall take all the appropriate measures to minimise costs, prevent damages, and cancel or reduce its commitments. The contractor shall have 30 days from the date of termination to draw up the documents required by the special conditions or order forms or specific contracts for the tasks already executed on the date of termination and produce an invoice if necessary. The contracting authority may recover any amounts paid under the FWC.

The contracting authority may claim compensation for any damage suffered in the event of termination.

On termination the contracting authority may engage any other contractor to execute or complete the services. The contracting authority shall be entitled to claim from the contractor all extra costs incurred in this regard, without prejudice to any other rights or guarantees it may have under the FWC.

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

### **II.15.1 Date of payment**

Payments shall be deemed to be effected on the date when they are debited to the contracting authority's account.

### **II.15.2 Currency**

The FWC shall be in euros.

Payments shall be executed in euros or in the local currency as provided for in Article I.5.

Conversion between the euro and another currency shall be made according to the daily euro exchange rate published in the *Official Journal of the European Union* or, failing that, at the monthly accounting exchange rate established by the European Commission and published on its website, applicable on the day on which the payment order is issued by the contracting authority.

### **II.15.3 Costs of transfer**

The costs of the transfer shall be borne in the following way:

- (a) costs of dispatch charged by the bank of the contracting authority shall be borne by the contracting authority,
- (b) cost of receipt charged by the bank of the contractor shall be borne by the contractor,
- (c) costs for repeated transfer caused by one of the parties shall be borne by the party causing repetition of the transfer.

### **II.15.4 Invoices and Value Added Tax**

Invoices shall contain the contractor's identification, the amount, the currency and the date, as well as the FWC reference and reference to the order form or specific contract.

Invoices shall indicate the place of taxation of the contractor for value added tax (VAT) purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

In the framework of cooperation project financed by public development aid, the contracting authority is, as a rule, exempt from all taxes and duties, including VAT.

The contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the supplies and services required for performance of the FWC are exempt from taxes and duties, including VAT exemption.

#### **II.15.5 Pre-financing and performance guarantees**

Pre-financing guarantees shall remain in force until the pre-financing is cleared against interim payments or payment of the balance and, in case the latter takes the form of a debit note, three months after the debit note is notified to the contractor. The contracting authority shall release the guarantee within the following month.

Performance guarantees shall cover performance of the service in accordance with the terms set out in the request for services until its final acceptance by the contracting authority. The amount of the performance guarantee shall not exceed the total price of the order form or specific contract. The guarantee shall provide that it remains in force until final acceptance. The contracting authority shall release the guarantee within a month following the date of final acceptance.

Where, in accordance with Article I.4, a financial guarantee is required for the payment of pre-financing, or as performance guarantee, it shall fulfil the following conditions:

- (a) the financial guarantee is provided by a bank or an approved financial institution or, at the request of the contractor and agreement by the contracting authority, by a third party;
- (b) the guarantor stands as first-call guarantor and does not require the contracting authority to have recourse against the principal debtor (the contractor).

The cost of providing such guarantee shall be borne by the contractor.

#### **II.15.6 Interim payments and payment of the balance**

The contractor shall submit an invoice for interim payment upon delivery of intermediary results, accompanied by a progress report or any other documents, as provided for in Article I.4 or in the tender specifications or in the order form or specific contract.

The contractor shall submit an invoice for payment of the balance within 60 days following the end of the period referred to in Article III.2.2, accompanied by a final progress report or any other documents provided for in Article I.4 or in the tender specifications or in the order form or specific contract.

Upon receipt, the contracting authority shall pay the amount due as interim or final payment, within the periods specified in Article I.4, provided the invoice and documents have been approved and without prejudice to Article II.15.7. Approval of the invoice and documents shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information they contain.

Payment of the balance may take the form of recovery.

#### **II.15.7 Suspension of the time allowed for payment**

The contracting authority may suspend the payment periods specified in Article I.4 at any time by notifying the contractor that its invoice cannot be processed, either because it does not comply with the provisions of the FWC, or because the appropriate documents have not been produced.

The contracting authority shall inform the contractor in writing as soon as possible of any such suspension, giving the reasons for it.

Suspension shall take effect on the date the notification is sent by the contracting authority. The remaining payment period shall start to run again from the date on which the requested information or revised documents are received or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension period exceeds two months, the contractor may request the contracting authority to justify the continued suspension.

Where the payment periods have been suspended following rejection of a document referred to in the first paragraph and the new document produced is also rejected, the contracting authority reserves the right to terminate the order form or specific contract in accordance with Article II.14.1(c).

#### **II.15.8 Interest on late payment**

On expiry of the payment periods specified in Article I.4, and without prejudice to Article II.15.7, the contractor is entitled to interest on late payment pursuant to the French Decree 2016-269 issued on 29<sup>th</sup> march 2013, at the rate applied by the European Central Bank for its main refinancing operations in Euros (the reference rate) plus eight points. The reference rate shall be the rate in force on the first day of the semester in which the



payment period ends, as published in the C series of the *Official Journal of the European Union*.

The suspension of the payment period in accordance with Article II.15.7 may not be considered as a late payment.

Interest on late payment shall cover the period running from the day following the due date for payment up to and including the date of actual payment as defined in Article II.15.1.

However, when the calculated interest is lower than or equal to EUR 200, it shall be paid to the contractor only upon request submitted within two months of receiving late payment.

## **ARTICLE II. 16 - REIMBURSEMENTS**

**II.16.1** Where provided by the special conditions or by the tender specifications, the contracting authority shall reimburse the expenses that are directly connected with execution of the tasks on production of original supporting documents, including receipts and used tickets, or failing that, on production of copies or scanned originals, or on the basis of flat rates.

**II.16.2** Travel and subsistence expenses shall be reimbursed, where appropriate, on the basis of the shortest itinerary and the minimum number of nights necessary for overnight stay at the destination.

**II.16.3** Travel expenses shall be reimbursed as follows:

- (a) travel by air shall be reimbursed up to the maximum cost of an economy class ticket at the time of the reservation;
- (b) travel by boat or rail shall be reimbursed up to the maximum cost of a first class ticket;
- (c) travel by car shall be reimbursed at the rate of one first class rail ticket for the same journey and on the same day;

In addition, travel outside European Union territory shall be reimbursed provided the contracting authority has given its prior written consent.

**II.16.4** Subsistence expenses shall be reimbursed on the basis of a daily subsistence allowance as follows:

- (a) for journeys of less than 200 km for a return trip, no subsistence allowance shall be payable;
- (b) daily subsistence allowance shall be payable only on receipt of supporting documents proving that the person concerned was present at the destination;
- (c) daily subsistence allowance shall take the form of a flat-rate payment to cover all subsistence expenses, including meals, local transport which includes transport to and from the airport or station, insurance and sundries;
- (d) daily subsistence allowance shall be reimbursed at the flat rates specified in Article I.3;
- (e) accommodation shall be reimbursed on receipt of supporting documents proving the necessary overnight stay at the destination, up to the flat-rate ceilings specified in Article I.3.

**II.16.5** The cost of shipment of equipment or unaccompanied luggage shall be reimbursed provided the contracting authority has given prior written authorisation.

**II.16.6.** Conversion between the euro and another currency shall be made as specified in Article II.15.2.

## **ARTICLE II. 17 – RECOVERY**

**II.17.1** If an amount is to be recovered under the terms of the FWC, the contractor shall repay the contracting authority the amount in question according to the terms and by the date specified in the debit note.

**II.17.2** If the obligation to pay the amount due is not honoured by the date set by the contracting authority in the debit note, the amount due shall bear interest at the rate indicated in Article II.15.8. Interest on late payments shall cover the period from the day following the due date for payment up to and including the date when the contracting authority receives the full amount owed.

Any partial payment shall first be entered against charges and interest on late payment and then against the principal amount.

**II.17.3** If payment has not been made by the due date, the contracting authority may, after informing the contractor in writing, recover the amounts due by offsetting them against any amounts owed to the contractor by the contracting authority or

by calling in the financial guarantee, where provided for in Article I.4 or in the specific contract.

## **ARTICLE II. 18 – CHECKS AND AUDITS**

**II.18.1** The contracting authority and the European Anti-Fraud Office may check or have an audit on the performance of the FWC. It may be carried out either directly by its own staff or by any other outside body authorised to do so on its behalf.

Such checks and audits may be initiated during the performance of the FWC and during a period of five years which starts running from the date of expiry of the FWC.

The audit procedure shall be deemed to be initiated on the date of receipt of the relevant letter sent by the contracting authority. Audits shall be carried out on a confidential basis.

**II.18.2** The contractor shall keep all original documents stored on any appropriate medium, including digitised originals when they are authorised by national law and under the conditions laid down therein, for a period of five years which starts running from the date of expiry of the FWC.

**II.18.3** The contractor shall allow the contracting authority's staff and outside personnel authorised by the contracting authority the appropriate right of access to sites and premises where the FWC is performed and to all the information, including information in electronic format, needed in order to conduct such checks and audits. The contractor shall ensure that the information is readily available at the moment of the check or audit and, if so requested, that information be handed over in an appropriate form.

**II.18.4** On the basis of the findings made during the audit, a provisional report shall be drawn up. It shall be sent to the contractor, which shall have 30 days following the date of receipt to submit observations. The final report shall be sent to the contractor within 60 days following the expiry of that deadline.

On the basis of the final audit findings, the contracting authority may recover all or part of the payments made and may take any other measures which it considers necessary.

**II.18.5** The French Court of auditors and the European Court of auditors may also carry out on-the-spot checks and inspections in accordance with the procedures laid down by the French and the Union law for the protection of the financial interests

of the Union against fraud and other irregularities. Where appropriate, the findings may lead to recovery by the contracting authority.

- II.18.6** The French and European Courts of Auditors shall have the same rights as the contracting authority, notably right of access, for the purpose of checks and audits.

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

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

Whenever the contracting authority wishes products to be supplied, it shall send an order form to the contractor, 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 FWC.

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 Commission 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 contracting authority and returned to the contractor or to his carrier.

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

Signature of the consignment note by the contracting authority, as provided for in point (c) of Article II.1.1 is simply an acknowledgment of the fact that the delivery took place and in no way implies conformity of the supplies with the order form.

Conformity of the supplies delivered shall be evidenced by the signature of a certificate to this effect by the contracting authority no later than one month after the date of delivery, unless otherwise specified in the special conditions or in the tender specifications (Annex I).

Conformity shall be declared only where the conditions laid down in the FWC and in the order form are satisfied and the supplies conform to the tender specifications (Annex I).

Where, for reasons attributable to the contractor, the contracting authority 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 FWC**

- (a) The supplies delivered by the contractor to the contracting authority must be in conformity in quantity, quality, price and packaging with the FWC and the relevant order form.
- (b) The supplies delivered must:
  - (i) correspond to the description given in the tender specifications (Annex I) and possess the characteristics of the supplies provided by the contractor to the contracting authority as a sample or model;
  - (ii) be fit for any specific purpose required of them by the contracting authority and made known to the contractor at the time of conclusion of this FWC and accepted by the contractor;
  - (iii) be fit for the purposes for which supplies of the same type are normally used;
  - (iv) demonstrate the quality and performance which are normal in supplies of the same type and which the contracting authority 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 its representative, particularly in advertising or on labelling;
  - (v) 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 contracting authority 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 contracting authority shall be entitled:
  - (i) either to have the supplies brought into conformity, free of charge, by repair or replacement;

- (ii) 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 contracting authority, taking account of the nature of the supplies and the purpose for which they are required by the contracting authority.
- (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 the tender specifications (Annex I), the contractor shall assemble the supplies delivered within a period of one month unless otherwise specified in the special conditions.

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 FWC 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 contracting authority and was incorrectly installed owing to a shortcoming in the installation instructions.

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

If required by the tender specifications (Annex I), 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 the tender specifications (Annex I), pallets shall be considered as one-way packaging and shall not be returned. Each box shall be clearly labelled with the following information:

- (i) Name of contracting authority and address for delivery;
- (ii) name of contractor;
- (iii) description of contents;
- (iv) date of delivery;
- (v) number and date of order form;
- (vi) 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 the tender specifications (Annex I).

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 FWC**

- (a) The contractor shall perform the FWC to the highest professional standards.
- (b) The contractor shall be solely responsible for taking the necessary steps to obtain any permit or licence required for performance of the FWC under the laws and regulations in force at the place where the order forms are to be executed.
- (c) Any reference made to the contractor's personnel in the contract shall relate exclusively to individuals involved in the performance of the FWC.
- (d) The contractor must ensure that any personnel performing the FWC possesses the professional qualifications and experience required for execution of the order forms assigned to it.



- (e) The contractor shall neither represent the contracting authority nor behave in any way that would give such an impression. The contractor shall inform third parties that it does not belong to the European public service.
- (f) The contractor shall be solely responsible for the personnel who executes the tasks assigned to the contractor.

The contractor shall stipulate the following employment or service relationships with its personnel:

- (i) personnel executing the tasks assigned to the contractor may not be given orders directly by the contracting authority;
  - (ii) the contracting authority may not under any circumstances be considered to be the employer of the personnel referred to in point (i) and the personnel shall undertake not to invoke against the contracting authority any right arising from the contractual relationship between the contracting authority and the contractor.
- (g) In the event of disruption resulting from the action of a one of the contractor's personnel working on the contracting authority's premises or in the event that the expertise of a member of the contractor's personnel fails to correspond to the profile required by the FWC, the contractor shall replace him without delay. The contracting authority shall have the right to make a reasoned request for the replacement of such personnel. The replacement personnel must have the necessary qualifications and be capable of performing the FWC 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 personnel.
- (h) Should the execution of the FWC be directly or indirectly hampered, either partially or totally, by any unforeseen event, action or omission, the contractor shall immediately and at its own initiative record it and report it to the contracting authority. 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 its obligations under this FWC. In such an event the contractor shall give priority to solving the problem rather than determining liability.
- (i) Should the contractor fail to perform its obligations under the FWC, the contracting authority may - without prejudice to its right to terminate the FWC - reduce or recover payments in proportion to the scale of the unperformed obligations. In addition, the contracting authority may claim compensation or impose liquidated damages in accordance with Article II.11.

## **ARTICLE II.2 – MEANS OF COMMUNICATION**

**II.2.1** Any communication relating to the FWC or to its performance shall be made in writing and shall bear the FWC number. Any communication is deemed to have been made when it is received by the receiving party unless otherwise provided for in this contract.

**II.2.2** Electronic communication shall be deemed to have been received by the parties on the day of dispatch of that communication provided it is sent to the addressees listed in Article I.6. Without prejudice to the preceding, if the sending party receives a message of non-delivery to or of absence of the addressee, it shall make every effort to ensure the actual receipt of such communication by the other party.

Electronic communication shall be confirmed by an original signed paper version of that communication if requested by any of the parties provided that this request is submitted without unjustified delay. The sender shall send the original signed paper version without unjustified delay.

**II.2.3** Mail sent using the postal services is deemed to have been received by the contracting authority on the date on which it is registered by the department responsible referred to in Article I.6.

Any formal notification shall be made by registered mail with return receipt or equivalent, or by equivalent electronic means.

## **ARTICLE II.3 - LIABILITY**

**II.3.1** The contractor shall be solely responsible for complying with any legal obligations incumbent on it.

**II.3.2** The contracting authority shall not be held liable for any damage caused or sustained by the contractor, including any damage caused by the contractor to third parties during or as a consequence of performance of the FWC, except in the event of wilful misconduct or gross negligence on the part of the contracting authority.

**II.3.3** The contractor shall be held liable for any loss or damage sustained by the contracting authority in performance of the FWC, including in the event of subcontracting, and for any claim by a third party, but only to an amount not exceeding three times the total amount of the relevant order form. Nevertheless, if the damage or loss is caused by the gross negligence or wilful misconduct of the contractor or of its personnel or subcontractors, the contractor shall have unlimited liability for the amount of the damage or loss.

- II.3.4** The contractor shall indemnify and hold the contracting authority harmless for all damages and costs incurred due to any claim. The contractor shall provide compensation in the event of any action, claim or proceeding brought against the contracting authority by a third party as a result of damage caused by the contractor during the performance of the FWC. In the event of any action brought by a third party against the contracting authority in connection with the performance of the FWC, the contractor shall assist the contracting authority. Such expenditure incurred by the contractor may be borne by the contracting authority.
- II.3.5** The contractor shall take out an insurance policy against risks and damage relating to the performance of the FWC, if required by the relevant applicable legislation. It 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 contracting authority should it so request.

#### **ARTICLE II.4 - CONFLICT OF INTERESTS**

- II.4.1** The contractor shall take all the necessary measures to prevent any situation of conflict of interest. Such situation arises where the impartial and objective performance of the FWC is compromised for reasons involving economic interest, political or national affinity, family or emotional ties, or any other shared interest.
- II.4.2** Any situation constituting or likely to lead to a conflict of interest during the performance of the FWC shall be notified to the contracting authority in writing without delay. The contractor shall immediately take all the necessary steps to rectify the situation. The contracting authority reserves the right to verify that the steps taken are appropriate and may require that additional steps be taken within a specified deadline.
- II.4.3** The contractor declares that it 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, when such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, in so far as it serves as an incentive or reward relating to the performance of the FWC.
- II.4.4** The contractor shall pass on all the relevant obligations in writing to its personnel and to any natural person with the power to represent it or take decisions on its behalf and ensure that it is not placed in a situation which could give rise to conflicts of interest. The contractor shall also pass on all the relevant obligations in writing to third parties involved in the performance of the FWC including subcontractors.

#### **ARTICLE II.5 – CONFIDENTIALITY**

**II.5.1.** The contracting authority and the contractor shall treat with confidentiality any information and documents, in any form, disclosed in writing or orally in relation to the performance of the FWC and identified in writing as confidential.

The contractor shall:

- (a) not use confidential information and documents for any purpose other than fulfilling its obligations under the FWC or order form without prior written agreement of the contracting authority;
- (b) ensure the protection of such confidential information and documents with the same level of protection it uses to protect its own confidential information, but in no case any less than reasonable care;
- (c) not disclose directly or indirectly confidential information and documents to third parties without prior written agreement of the contracting authority.

**II.5.2** The confidentiality obligation set out in Article II.5.1 shall be binding on the contracting authority and the contractor during the performance of the FWC and for five years starting from the date of the payment of the balance unless:

- (a) the disclosing party agrees to release the other party from the confidentiality obligation earlier;
- (b) the confidential information becomes public through other means than in breach of the confidentiality obligation, through disclosure by the party bound by that obligation;
- (c) the disclosure of the confidential information is required by law.

**II.5.3** The contractor shall obtain from any natural person with the power to represent it or take decisions on its behalf, as well as from third parties involved in the performance of the FWC or order form an undertaking that they will comply with the confidentiality obligation set out in Article II.5.1.

## **ARTICLE II.6 – PROCESSING OF PERSONAL DATA**

**II.6.1** Any personal data included in the contract shall be processed pursuant to the French penal code (articles 226-16 to 17, art. 226-20 to 22), modified by Decree 2005-1309 issued on 20<sup>th</sup> October 2005, on the protection of individuals with regard to the processing of personal data by the French State and public bodies and on the free movement of such data. Such data shall be processed by the data controller solely for the purposes of the performance, management and

monitoring of this FWC without prejudice to its possible transmission to the bodies charged with monitoring or inspection tasks in application of French law.

- II.6.2** The contractor shall have the right to access its personal data and the right to rectify any such data. The contractor should address any queries concerning the processing of its personal data to the data controller.
- II.6.3** The contractor shall have right of recourse at any time to the French Data Protection Supervisor (CNIL [www.cnil.fr](http://www.cnil.fr)).
- II.6.4** Where the FWC 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 rights.
- II.6.5** The contractor shall grant personnel access to the data to the extent strictly necessary for the performance, management and monitoring of the FWC.
- II.6.6** 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 gaining access to computer systems processing personal data, and especially:
    - unauthorised reading, copying, alteration or removal of storage media;
    - unauthorised data input, as well as any unauthorised disclosure, alteration or erasure of stored personal data;
    - 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 authority;
  - (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.7 – SUBCONTRACTING**

- II.7.1** The contractor shall not subcontract without prior written authorisation from the contracting authority nor cause the FWC to be de facto performed by third parties.
- II.7.2** Even where the contracting authority authorises the contractor to subcontract to third parties, it shall nevertheless remain bound by its contractual obligations and shall be solely responsible for the proper performance of this FWC.
- II.7.3** The contractor shall make sure that the subcontract does not affect rights and guarantees granted to the contracting authority by virtue of this FWC, notably by Article II.16.

## **ARTICLE II.8 - AMENDMENTS**

- II.8.1** Any amendment to the FWC or order form shall be made in writing before fulfilment of all contractual obligations. An order form may not be deemed to constitute an amendment to the FWC.
- II.8.2** The amendment may not have the purpose or the effect of making changes to the FWC or to order forms which might call into question the decision awarding the FWC or order form or result in unequal treatment of tenderers or contractors.

## **ARTICLE II.9 – ASSIGNMENT**

- II.9.1** The contractor shall not assign the rights, including claims for payments, and obligations arising from the FWC, in whole or in part, without prior written authorisation from the contracting authority.
- II.9.2** In the absence of such authorisation, or in the event of failure to observe the terms thereof, the assignment of rights or obligations by the contractor shall not be enforceable against the contracting authority and shall have no effect on it.

## **ARTICLE II.10– FORCE MAJEURE**

- II.10.1** 'Force majeure' means any unforeseeable and exceptional situation or event beyond the parties' control which prevents either of them from fulfilling any of their obligations under the FWC, which was not attributable to error or negligence

on their part or on the part of subcontractors and which proves to be inevitable in spite of exercising due diligence. Any default of a service, defect in equipment or material or delays in making them available, unless they stem directly from a relevant case of force majeure, as well as labour disputes, strikes or financial difficulties, cannot be invoked as force majeure.

**II.10.2** A party faced with force majeure shall formally notify the other party without delay, stating the nature, likely duration and foreseeable effects.

**II.10.3** The party faced with force majeure shall not be held in breach of its contractual obligations if it has been prevented from fulfilling them by force majeure. Where the contractor is unable to fulfil its contractual obligations owing to force majeure, it shall have the right to remuneration only for the tasks actually executed.

**II.10.4** The parties shall take all the necessary measures to limit any damage due to force majeure.

#### **ARTICLE II.11 – LIQUIDATED DAMAGES**

The contracting authority may impose liquidated damages should the contractor fail to complete its contractual obligations, also with regard to the required quality level, according to the tender specifications.

Should the contractor fail to perform its contractual obligations within the time limits set by the FWC or the relevant order form or specific contract, then, without prejudice to the contractor's actual or potential liability or to the contracting authority's right to terminate the FWC or the relevant order form or specific contract, the contracting authority may impose liquidated damages for each and every calendar day of delay according to the following formula:

$$V \times d / 1000$$

$V$  is the price of the relevant purchase;

$d$  is number of days of delay (expressed in working days)

The contractor may submit arguments against this decision within 30 days of receipt of the formal notification. In the absence of a reaction on its part or of written withdrawal by the contracting authority within 30 days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable.

The parties 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 incurred due to failure to fulfil obligations which may be reasonably anticipated.

## **ARTICLE II.12 – SUSPENSION OF THE PERFORMANCE OF THE FWC**

### **II.12.1 Suspension by the contractor**

The contractor may suspend the performance of the FWC or order form or any part thereof if a case of force majeure makes such performance impossible or excessively difficult. The contractor shall inform the contracting authority about the suspension without delay, giving all the necessary reasons and details and the envisaged date for resuming the performance of the FWC or order form.

Once the circumstances allow resuming performance, the contractor shall inform the contracting authority immediately, unless the contracting authority has already terminated the FWC or order form.

### **II.12.2 Suspension by the contracting authority**

The contracting authority may suspend the performance of the FWC or order form or any part thereof:

- (a) if the FWC or order form award procedure or the performance of the FWC prove to have been subject to substantial errors, irregularities or fraud;
- (b) in order to verify whether presumed substantial errors, irregularities or fraud have actually occurred.

Suspension shall take effect on the day the contractor receives formal notification, or at a later date where the notification so provides. The contracting authority shall as soon as possible give notice to the contractor to resume the service suspended or inform the contractor that it is proceeding with termination of the FWC or order form. The contractor shall not be entitled to claim compensation on account of suspension of the FWC or order form or of part thereof.

## **ARTICLE II.13 – TERMINATION OF THE FWC**

### **II.13.1 Grounds for termination**

The contracting authority may terminate the FWC or an order form respectively in the following circumstances:



- (a) if a change to the contractor's legal, financial, technical or organisational or ownership situation is likely to affect the performance of the FWC or order form substantially or call into question the decision to award the FWC;
- (b) if execution of the tasks under a pending order form has not actually commenced within 15 days of the date foreseen, and the new date proposed, if any, is considered unacceptable by the contracting authority, taking into account article II.8.2;
- (c) if the contractor does not perform the FWC or an order form as established in the tender specifications or fails to fulfil another substantial contractual obligation; termination of three or more order forms on this ground shall constitute ground for termination of the FWC;
- (d) in the event of force majeure notified in accordance with article II.10 or if the performance of the FWC or order form has been suspended by the contractor as a result of force majeure, notified in accordance with article II.12, where either resuming performance is impossible or the modifications to the FWC or order form might call into question the decision awarding the FWC or order form, or result in unequal treatment of tenderers or contractors;
- (e) if the contractor is declared bankrupt, is being wound up, is having its 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;
- (f) if the contractor or any natural person with the power to represent it or take decisions on its behalf has been found guilty of professional misconduct proven by any means;
- (g) if the contractor is not in compliance with its 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 it is established or with those of the country of the applicable law of this FWC or those of the country where the FWC is to be performed;
- (h) if the contracting authority has evidence that the contractor or any natural persons with the power to represent it or take decisions on its behalf have committed fraud, corruption, or are involved in a criminal organisation, money laundering or any other illegal activity detrimental to the Union's financial interests;

- (i) if the contracting authority has evidence that the contractor or any natural persons with the power to represent it or take decisions on its behalf have committed substantial errors, irregularities or fraud in the award procedure or the performance of the FWC, including in the event of submission of false information;
- (j) if the contractor is unable, through its own fault, to obtain any permit or licence required for performance of the FWC or order form;
- (k) if the needs of the contracting authority change and it no longer requires new supplies under the FWC.

### **II.13.2 Procedure for termination**

When the contracting authority intends to terminate the FWC or order form it shall formally notify the contractor of its intention specifying the grounds thereof. The contracting authority shall invite the contractor to make any observations and, in the case of point (c) of Article II.13.1, to inform the contracting authority about the measures taken to continue the fulfilment of its contractual obligations, within 30 days from receipt of the notification.

If the contracting authority does not confirm acceptance of these observations by giving written approval within 30 days of receipt, the termination procedure shall proceed. In any case of termination the contracting authority shall formally notify the contractor about its decision to terminate the FWC or order form. In the cases referred to in points (a), (b), (c), (e), (g), (j), (k) and (l) of Article II.13.1 the formal notification shall specify the date on which the termination takes effect. In the cases referred to in points (d), (f), (h), and (i) of Article II.13.1 the termination shall take effect on the day following the date on which notification of termination is received by the contractor.

### **II.13.3 Effects of termination**

In the event of termination, the contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work. On receipt of the notification of termination, the contractor shall take all the appropriate measures to minimise costs, prevent damages, and cancel or reduce its commitments. The contractor shall have 60 days from the date of termination to draw up the documents required by the special conditions or order forms for the tasks already executed on the date of termination and produce an invoice if necessary. The contracting authority may recover any amounts paid under the FWC.

The contracting authority may claim compensation for any damage suffered in the event of termination.

On termination the contracting authority may engage any other contractor to deliver the supplies or provide or complete the related services. The contracting authority shall be entitled to claim from the contractor all extra costs incurred in this regard, without prejudice to any other rights or guarantees it may have under the FWC.

## **ARTICLE II.14 – REPORTING AND PAYMENTS**

### **II.14.1 Date of payment**

Payments shall be deemed to be effected on the date when they are debited to the contracting authority's account.

### **II.14.2 Currency**

The FWC shall be in euros.

Payments shall be executed in euros or in the local currency as provided for in Article I.5.

Conversion between the euro and another currency shall be made according to the daily euro exchange rate published in the *Official Journal of the European Union* or, failing that, at the monthly accounting exchange rate established by the European Commission and published on its website, applicable on the day on which the payment order is issued by the contracting authority.

### **II.14.3 Costs of transfer**

The costs of the transfer shall be borne in the following way:

- (d) costs of dispatch charged by the bank of the contracting authority shall be borne by the contracting authority,
- (e) cost of receipt charged by the bank of the contractor shall be borne by the contractor,
- (f) costs for repeated transfer caused by one of the parties shall be borne by the party causing repetition of the transfer.

### **II.14.4 Invoices and Value Added Tax**

Invoices shall contain the contractor's identification, the amount, the currency and the date, as well as the FWC reference and reference to the order form or specific contract.

Invoices shall indicate the place of taxation of the contractor for value added tax (VAT) purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

In the framework of cooperation project financed by public development aid, the contracting authority is, as a rule, exempt from all taxes and duties, including VAT.

The contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the supplies and services required for performance of the FWC are exempt from taxes and duties, including VAT exemption.

#### **II.14.5 Pre-financing and performance guarantees**

Pre-financing guarantees shall remain in force until the pre-financing is cleared against payment of the balance and, in case the latter takes the form of a debit note, three months after the debit note is notified to the contractor. The contracting authority shall release the guarantee within the following month.

Performance guarantees shall cover delivery of supplies and performance of the related services in accordance with the terms set out in the tender specifications until their final acceptance by the contracting authority. The amount of the performance guarantee shall not exceed the total price of the order form. The guarantee shall provide that it remains in force until final acceptance. The contracting authority shall release the guarantee within a month following the date of final acceptance.

Where, in accordance with Article I.4, a financial guarantee is required for the payment of pre-financing, or as performance guarantee, it shall fulfil the following conditions:

- (c) the financial guarantee is provided by a bank or an approved financial institution or, at the request of the contractor and agreement by the contracting authority, by a third party;
- (d) the guarantor stands as first-call guarantor and does not require the contracting authority to have recourse against the principal debtor (the contractor).

The cost of providing such guarantee shall be borne by the contractor.

#### **II.14.6 Payment of the balance**

The contractor shall submit an invoice within 60 days following receipt of the certificate of conformity of the supplies signed by the contracting authority, accompanied by a final progress report or any other documents provided for in the FWC or order form.

Upon receipt, the contracting authority shall pay the amount due as final payment, within the period specified in Article I.4, provided the invoice and documents have been approved and without prejudice to Article II.14.7. Approval of the invoice and documents shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information they contain.

Payment of the balance may take the form of recovery.

#### **II.14.7 Suspension of the time allowed for payment**

The contracting authority may suspend the payment periods specified in Article I.4 at any time by notifying the contractor that its invoice cannot be processed, either because it does not comply with the provisions of the FWC, or because the appropriate documents have not been produced.

The contracting authority shall inform the contractor in writing as soon as possible of any such suspension, giving the reasons for it.

Suspension shall take effect on the date the notification is sent by the contracting authority. The remaining payment period shall start to run again from the date on which the requested information or revised documents are received or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension period exceeds two months, the contractor may request the contracting authority to justify the continued suspension.

Where the payment periods have been suspended following rejection of a document referred to in the first paragraph and the new document produced is also rejected, the contracting authority reserves the right to terminate the order form in accordance with Article II.13.1(c).

#### **II.14.8 Interest on late payment**

On expiry of the payment periods specified in Article I.4, and without prejudice to Article **R. 2192-10 et seq** the contractor is entitled to interest on late payment pursuant to the French Code of public procurement, at the rate applied by the European Central Bank for its main refinancing operations in Euros (the reference rate) plus eight points. The reference rate shall be the rate in force on the first day of the semester in which the payment period ends, as published in the C series of the *Official Journal of the European Union*.

The suspension of the payment period in accordance with Article II.15.7 may not be considered as a late payment.

Interest on late payment shall cover the period running from the day following the due date for payment up to and including the date of actual payment as defined in Article II.15.1.

However, when the calculated interest is lower than or equal to EUR 200, it shall be paid to the contractor only upon request submitted within two months of receiving late payment.

## **ARTICLE II. 15 – RECOVERY**

**II.15.1** If an amount is to be recovered under the terms of the FWC, the contractor shall repay the contracting authority the amount in question according to the terms and by the date specified in the debit note.

**II.15.2** If the obligation to pay the amount due is not honoured by the date set by the contracting authority in the debit note, the amount due shall bear interest at the rate indicated in Article II.14.8. Interest on late payments shall cover the period from the day following the due date for payment up to and including the date when the contracting authority receives the full amount owed.

Any partial payment shall first be entered against charges and interest on late payment and then against the principal amount.

**II.15.3** If payment has not been made by the due date, the contracting authority may, after informing the contractor in writing, recover the amounts due by offsetting them against any amounts owed to the contractor by the the contracting authority or by calling in the financial guarantee, where provided for in Article I.4 or in the order form.

## **ARTICLE II. 16 – CHECKS AND AUDITS**

**II.16.1** The contracting authority and the European Anti-Fraud Office may check or have an audit on the performance of the FWC. It may be carried out either directly by its own staff or by any other outside body authorised to do so on its behalf.

Such checks and audits may be initiated during the performance of the FWC and during a period of five years which starts running from the date of expiry of the FWC.

The audit procedure shall be deemed to be initiated on the date of receipt of the relevant letter sent by the contracting authority. Audits shall be carried out on a confidential basis.

**II.16.2** The contractor shall keep all original documents stored on any appropriate medium, including digitised originals when they are authorised by national law and under the conditions laid down therein, for a period of five years which starts running from the date of expiry of the FWC.

**II.16.3** The contractor shall allow the contracting authority's staff and outside personnel authorised by the contracting authority the appropriate right of access to sites

and premises where the FWC is performed and to all the information, including information in electronic format, needed in order to conduct such checks and audits. The contractor shall ensure that the information is readily available at the moment of the check or audit and, if so requested, that information be handed over in an appropriate form.

- II.16.4** On the basis of the findings made during the audit, a provisional report shall be drawn up. It shall be sent to the contractor, which shall have 30 days following the date of receipt to submit observations. The final report shall be sent to the contractor within 60 days following the expiry of that deadline.

On the basis of the final audit findings, the contracting authority may recover all or part of the payments made and may take any other measures which it considers necessary.

- II.16.5** The French Court of auditors and the European Court of auditors may also carry out on-the-spot checks and inspections in accordance with the procedures laid down by the French and the Union law for the protection of the financial interests of the Union against fraud and other irregularities. Where appropriate, the findings may lead to recovery by the contracting authority.

- II.16.6** The French and European Courts of Auditors shall have the same rights as the contracting authority, notably right of access, for the purpose of checks and audits.

## **SPECIFIC CONTRACT**

**N°:**

**IMPLEMENTING FRAMEWORK CONTRACT NO [COMPLETE]**

Expertise France (hereinafter referred to as "the contracting authority"), represented for the purposes of the signature of this specific contract by [*forename, surname, function, department*],

on the one part,

and

[*full official name*]

[*official legal form*]

[*statutory registration number*]

[*full official address*]

[*VAT registration number*]

(hereinafter referred to as "the contractor"), [represented for the purposes of the signature of this specific 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 contracting authority for the performance of this specific contract.]

on the other part,



HAVE AGREED

**ARTICLE III.1: SUBJECT MATTER**

- III.1.1** This specific contract implements Framework Contract (FWC) No [complete] signed by the contracting authority and the contractor on [complete date].
- III.1.2** The subject matter of this specific contract is [short description of subject]. [This specific contract relates to lot [complete] of the FWC.]
- III.1.3** The contractor undertakes, in accordance with the terms set out in the FWC and in this specific contract and the annex[es] thereto, which form an integral part thereof, to perform the [following tasks:] [tasks specified in Annex [complete].]

**ARTICLE III.2: ENTRY INTO FORCE AND DURATION**

- III.2.1** This specific contract shall enter into force [on the date on which it is signed by the last party] [on [insert date] if it has already been signed by both parties].
- III.2.2** The duration of the execution of the tasks shall not exceed [complete] [days][months]. Execution of the tasks shall start from [the date of entry into force of this specific contract] [insert date].

The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses.

**ARTICLE III.3: PRICE**

- III.3.1** The maximum total price to be paid under this specific contract shall be EUR [amount in figures and in words] covering all tasks executed.
- III.3.2** In addition to the maximum total price [no reimbursable expenses are foreseen.] [expenses up to the amount of EUR [amount in figures and in words] shall be reimbursed according to the provisions of the FWC].

**ARTICLE III.4: PERFORMANCE GUARANTEE**

[Not applicable]

[Option 1 - Performance guarantee by deduction from payment of balance]

[A performance guarantee shall be constituted by deduction of 10% of the total value of the specific contract on the payment of the balance. It shall be withheld for up to [complete] months from the date of payment of the balance. ]

[Option 2 - Performance guarantee by financial guarantee]

[A performance guarantee for an amount of EUR *[amount in figures and in words]* shall be issued no later than *[insert date]* [the date of dispatch of the invoice for payment of the balance]<sup>10</sup> according to the conditions laid down in Article II.15.5. ]

**ARTICLE III.5: EXPLOITATION OF THE RESULTS**

[Not applicable]

*[Insert details on the intended use of results linked to the specific request for service supplementing or replacing clause I.8 of the special conditions]*

**ANNEXES**

Request for service

Contractor's specific tender (No *[complete]*<sup>11</sup> of *[insert date]*)

**SIGNATURES**

For the contractor,

*[Company  
name/forename/surname/function]*

For the contracting authority,

*[forename/surname/function]*

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

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

Done at [place], [date]

Done at [place], [date]

In duplicate in English.

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<sup>10</sup> This bank guarantee can be requested later in the execution of the contract, not necessarily at the beginning, since it covers ex-post performance and the longer a guarantee is, the more expensive it is.

<sup>11</sup> Number to be inserted in case of competitive multiple framework contract.

## PURCHASE ORDER

**DATE OF NOTIFICATION :**

### OVERVIEW OF CONTRACT IDENTIFICATION

Subject of the contract	
Identification number	
Contractor	
Date of notification	

### PURCHASE ORDER

Purchase order number	
Subject of the purchase order	
Interim deliverables	
Final deliverables	
Time limit for completion or delivery time	
Special conditions of performance	

Description of item ordered <i>in accordance with contract's unit price list</i>	Quantity	Unit price (in € excluding VAT)	Amount (in € excluding VAT)
			- €
			- €
etc.			- €

<b>Total amount</b>	- €
VAT rate	0%
VAT amount	- €
<b>Total amount including VAT</b>	- €

SIGNATORY EMPOWERED TO ENTER INTO LEGALLY BINDING COMMITMENTS ON BEHALF OF EXPERTISE FRANCE:

Name and position	Date and place	Signature