**SUPPLY Framework contract**

**Information & Communication TECHNOLOGY (ICT) Equipment & Services for Expertise France in Papua New Guinea (PNG)**

**No.:**

|  |
| --- |
| **Award date:** |

This Contract is subject to the French Public Procurement Code (*Code de la commande publique, CCP*) in its latest version in force as enacted by [Ordinance No. 2018-1074 of 26 November 2018](http://www.marche-public.fr/ccp/ccp-plan-legislative.htm) establishing the legislative components of the CCP and of [Decree No. 2018-1075 of 3 December 2018](http://www.marche-public.fr/ccp/ccp-plan-reglementaire.htm) establishing the regulatory components of the CCP.

It is awarded by means of an open tender in application of Articles L. 2124-2, R. 2161-2, R. 2161-3, R. 2161-4 and R. 2161-5 of the CCP.

It is a Purchase Order (PO) based Framework Contract (FWC) as defined within the meaning of Article R. 2162-2 of the CCP.

**EXPERTISE FRANCE SAS**

Address: 40, boulevard de Port-Royal – 75005 PARIS, FRANCE

A simplified joint-stock company with share capital of €828,933 registered under the following numbers:

* Siret no.: RCS 808 734 792 00035
* Intra-community VAT number: FR36 808734792

represented for the signature of this framework contract by Mr Jérémie PELLET, Chief Executive Officer.

**Of the one hand, and**

|  |  |
| --- | --- |
| **Full official name** [[1]](#footnote-1) |  |
| (hereafter referred to as the “Contractor”), | |
| **Official legal form** |  |
| **Full official address** |  |
| **Statutory registration number** |  |
| **Vat registration number** |  |

represented for the signature of this framework contract by:

|  |  |
| --- | --- |
| Person authorised to sign this contract (the “Contract”) on behalf of the Contractor | |
| **Name**[[2]](#footnote-2) | Surname (in capitals): ........................................................................... First name: ........................................................................................ |
| **Function** |  |
| **Contact details** | Telephone (direct line): ....................................................................  E-mail: ............................................................................................... |

|  |  |
| --- | --- |
| **Composition of the consortium[[3]](#footnote-3)** | |
| **Full official name**[[4]](#footnote-4) |  |
| **Official legal form** |  |
| **Full official address** |  |
| **Statutory registration number** |  |
| **VAT registration number** |  |
| **Contact** | Contact person: ..........................................................  Telephone (direct line): ...................................................................  E-mail: ............................................................................................... |

**On the other hand.**

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

**HAVE AGREED**

on the special **conditions** and **general conditions of this framework contract** and its following annexes:

**Annex I** – Technical Specifications

**Annex II** – Unit Price Schedule

**Annex III** – Contractor’s offer

**Annex IV** – Sworn declaration

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 purchase order template.
* The terms set out in the purchase orders shall take precedence over those in the other annexes.
* The terms set out in the Technical Specifications document (Annex I) shall take precedence over those in the contractor’s offer (Annex III).
* The terms set out in the Unit Price Schedule document (Annex II) shall take precedence over those in the contractor’s offer (Annex III).
* The terms set out in the framework contract shall take precedence over those in the purchase orders and specific contracts.

I – SPECIAL CONDITIONS

ARTICLE I.1 – Object

**I.1.1** The object of the FWC is the provision of Information and Communication Technology (ICT) Equipment and Services for Expertise France in Papua New Guinea (PNG).

**I.1.2** The award of the FWC to the Contractor imposes no obligation on Expertise France to issue purchase orders to the Contractor. Only the performance of the FWC through purchase orders is binding on Expertise France.

## Article I.2 – Entry into force and term

**I.2.1** The FWC comes into force on its award date.

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

**I.2.3** The FWC is entered into for a total maximum duration of 48 months from its award date. It is entered into for an initial confirmed 12-month period that can be tacitly renewed at the same conditions up to three times for successive 12-month periods each, unless the contracting authority expressly informs the Contractor of its intention not to renew the Contract and if this notification is done two months prior to the expiration of the first initial confirmed period. Renewal of the contract must not in any way be construed as meaning that the Contractor’s obligations are modified or postponed. Unless provided for otherwise, all periods stipulated in the FWC are calculated in calendar days.

**I.2.4** Purchase orders must be signed by Expertise France before expiry of the FWC.

After its expiry, the FWC shall remain in force with regard to purchase orders and specific contracts. They must be executed within 6 months of its expiry.

**I.2.5 Similar services**

In application of Article 4.2122-7 of the CCP, the Contracting Authority, without having to open these contracts up to external competition, can directly enter into negotiations with the Contractor to put in place new additional contracts regarding the provision of services that are similar to this present, initial, contract. The period during which such contracts may be entered into may not exceed three years from the award of this present, initial, contract.

## ARTICLE I.3 – Pricing

**I.3.1** This FWC does not specify a minimum amount. Expertise France is therefore not committed to any minimum level of purchase within the scope of the FWC.

**The maximum amount value of the FWC is 3,000,000 PGK.**

The details of the unit prices are set out in the unit price schedule in Annex 2 to this FWC.

### **I.3.2 Price revisions**

Prices are firm and not subject to revision during the first year of the FWC.

At the beginning of the second and every following year of the FWC, a fraction, namely 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. This request shall take the form of a letter referencing the latest PNG Consumer Price Index report available, specify the overall CPI index for PNG at the time of the request as well as the overall CPI index for one year earlier, and the unit price schedule updated according to the price revision formula below.

Approval of the request will be signified by an amendment to the FWC.

Expertise France shall purchase based on the prices in force on the date on which purchase orders 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 Consumer Price Index published by PNG’s National Statistics Office. Revision shall be calculated in accordance with the following formula:

Ir

Pr = Po x (0.2+0.8 — )

Io

where:

Pr = revised price;

Po = initial price;

Io = index for one year before the latest quarter available at the time of the request;

Ir = Index for the latest quarter available at the time of the request;

## Article I.4 – Payment process and execution of the framework contract*[[5]](#footnote-5)*

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

The Contracting Authority shall issue Purchase Orders to the Contractor based on its emerging needs. These Purchase Orders shall be duly dated and signed by the Contracting Authority and forwarded to the Contractor.

The duration for the provision of the equipment and services will start upon issue of the Purchase Order to the Contractor, unless the document mentions another date.

### **I.4.2 Prefinancing**

No pre-financing will be provided.

**I.4.3 Interim payments**

Periodic quarterly interim payments may be made to the Contractor regarding I.T. services only. The amount of interim payments shall not exceed the value of services performed by the Contractor and validated by Expertise France.

The frequency of interim payments may be reduced to 1 month at the request of the Contractor.

The cumulative amount of interim payments shall not exceed 90% of the item in question.

Interim payments do not constitute proof of full or even partial acceptance and do not discharge the Contractor from its obligations under the contract and/or the purchase order.

Invoices for interim payment shall be accompanied by a progress report. Expertise France shall make the payment within 30 days from acceptance of the services.

**I.4.4 Payment of the balance**

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

The invoice shall be accompanied by all relevant supporting justifications (ex: delivery notes, progress report). Expertise France shall make the payment within 30 days following acceptance of the supplies or services.

**I.4.5 Delivery**

Specifications in terms of delivery are indicated in the Technical Specifications document.

## Article I.5 – Bank account

Payments shall be made to the Contractor’s bank account denominated in [euros][*insert local currency where the receiving country does not allow transactions in euros*], identified as follows:

|  |  |  |
| --- | --- | --- |
| Bank code | Sort code | Account no./key |
| To be completed by the tenderer | To be completed by the tenderer | To be completed by the tenderer |

IBAN[[6]](#footnote-6): To be completed by the tenderer

BIC: To be completed by the tenderer

## Article I.6 – Coordination and reporting

**I.6.1 Coordination Meetings**

Within the framework of this FWC, coordination meetings will be put in place between the Contracting Authority and the Contractor.

Start-up meeting

Following the award of the FWC to the Contractor, a start-up meeting will be convened at the request of the Contracting Authority. This meeting can take place physically or electronically.

The purpose of this start-up meeting is for each of the parties to be able to present themselves to the other and to determine ways to render the relationship operational and to exchange on any question regarding the implementation of the FWC.

Annual review meeting

Every year following the award of the Contract to the Contractor, an annual review meeting will be convened at the request of the Contracting Authority. This meeting can take place physically or electronically.

The purpose of this annual review meeting is to review the performance of all of the services provided to date.

Other meetings

The Contracting Authority reserves the right to convene any meeting with the Contractor that it would deem necessary for the proper monitoring and oversight of the implementation of the Contract.

In the event of recurrent problems or issues in the execution of the services, the parties may, upon a written motivated request by one party or the other, agree to meet to try to resolve the outstanding difficulties.

Towards the end of the Contract Duration, the Contracting Authority can organise a Lessons Learned meeting, which can take place physically or electronically, to assist in preparing the replacement of the Contract by a new contract, and that would help in identifying the strong points of the execution of the Contract as well as opportunities for improvement.

At the end of each meeting, a Meeting Minute Note is prepared by the Contractor and shared with the Contracting Authority.

The monitoring of the action items identified at these meetings is done by the Contractor.

## Article I.7 – Applicable law and dispute settlement

**I.7.1** The FWC is 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 Paris Administrative Court:

7 rue de Jouy 75004 Paris, France

Tel: +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**

Not applicable.

**I.8.2 Pre-existing rights and transfer of rights**

Not applicable.

## Article I.9 – Termination by the parties

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

## Article I.10 – Other special conditions

**I.10.1 Re-examination clause**

In application of Article R.2194-1 and after of the CCP, Expertise France and the Contractor can agree:

* + to revise the unit pricing schedule if modifications or additions are made to the items;
  + to revise the technical elements (clarification of deliverables, supplier technical definitions, equipment technical documents, updated instructions, etc.).

Such modifications shall be the object of a request from one Party to the other. If approved, Expertise France will notify this to the Contractor by means of an Amendment to Contract.

**I.10.2 Penalties**

Delays in the delivery of equipment requested through a Purchase Order

Penalties are set at the fixed rates of:

* + for an electronic device: PGK 200 per day of delay in excess of the delivery time delays indicated in the Unit Price Schedule;
  + for other items: PGK 50 per day of delay in excess of the delivery time delays indicated in the Unit Price Schedule;

The amount of penalties will be applied within the calculation of the balance due under the relevant specific contract or purchase order.

These penalties can be waived if the Contractor justifies that the delays in question were due to factors that were unpredictable or beyond its control, and Expertise France accepts these justifications.

In all circumstances, the amount of penalties may not exceed 10% of the total value of the purchase order.

**Declarative mentions and signatures**

The Contractor, its affiliates, suppliers, service providers, consultants and subcontractors (including directors, employees and agents of such entities) certify that :

* they do not acquire and don't supply/will not acquire or supply equipment and do not intervene/will not intervene in sectors under embargo by the United Nations, the European Union or France. For information, the list can be found at: <https://www.sanctionsmap.eu> ;
* they not included in the lists of financial sanctions adopted by the United Nations, the European Union, France and/or the United States, notably in the fight against the financing of terrorism and against attacks on national peace and security. For information, the lists can be consulted at the references below:
* for the United Nations, the United Nations Security Council sanctions lists: <https://www.un.org/securitycouncil/content/un-sc-consolidated-list>,
* for the European Union, the lists can be consulted at the following address: <https://www.sanctionsmap.eu>,
* for France, see: <https://gels-avoirs.dgtresor.gouv.fr/List>,
* for the United States, see: <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information>;
* they are not subject to a World Bank exclusion order and are not on the list published by the World Bank. For information, the list can be consulted at the following address: <https://www.worldbank.org/en/projects-operations/procurement/debarred-firms>

*In the hypothesis of such a decision of exclusion, we can join to the present declaration on honor the additional information which would allow to consider that this decision of exclusion is not relevant within the framework of the market).*

Finally, the Contractor, its affiliates, suppliers, service providers, consultants and subcontractors (including directors, employees and agents of such entities) acknowledge and accept that the above-mentioned situations may lead to the automatic termination of the contract.

They undertake to inform Expertise France without delay of any change in our situation during the execution of the contract with regard to the present declaration.

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| --- |
| **For the Contractor:**  Preceded by the handwritten words “*Read and approved*":  In.....………....….., on...…….....20.... Signature[[7]](#footnote-7):  First name/Surname of signatory:  Role: |
| **For Expertise France:**  In.....………....….., on...…….....20.... Signature[[8]](#footnote-8):  First name/Surname of signatory:  Role: |

**Done in one original copy retained by Expertise France.**

**II – General terms and conditions of supply framework contracts**

## ARTICLE II.1 – Performance of the contract

Each time Expertise France wishes to procure supplies, it shall forward to the Contractor a purchase order specifying the delivery conditions, including quantity, description, quality, price and the place and time of delivery, in accordance with the terms set out in the FWC.

Within the period indicated in Article I.4, the Contractor shall return one original of the purchase order, duly signed and dated, thereby acknowledging receipt of the purchase order and acceptance of the terms.

**II.1.1 Delivery**

1. Delivery leadtime

The delivery leadtime shall be calculated in accordance with Article I.4.

1. Date, time and place of delivery

Expertise France 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.

1. Delivery note

Each delivery shall be accompanied by a delivery note in duplicate, duly signed and dated by the Contractor or its carrier, giving the purchase order number and particulars of the supplies delivered. One copy of the delivery note shall be countersigned by Expertise France and returned to the Contractor or to its carrier.

**II.1.2 Certificate of conformity**

Signature of the delivery note by Expertise France, 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 purchase order.

Conformity of the supplies delivered shall be evidenced by the signature of a certificate to this effect by Expertise France 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 purchase order are satisfied and the supplies conform to the tender specifications (Annex I).

Where, for reasons attributable to the Contractor, Expertise France 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 with the FWC of delivered supplies**

1. The supplies delivered by the Contractor to Expertise France must be in conformity in quantity, quality, price and packaging with the FWC and the relevant purchase order.
2. The supplies delivered must:
3. correspond to the description given in the tender specifications (Annex I) and possess the characteristics of the supplies provided by the Contractor to Expertise France as a sample or model;
4. be fit for any specific purpose required of them by Expertise France and made known to the Contractor at the time of conclusion of this FWC and accepted by the Contractor;
5. be fit for the purposes for which supplies of the same type are normally used;
6. demonstrate the quality and performance which are normal in supplies of the same type and which Expertise France 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;
7. 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**

1. The Contractor shall be liable to Expertise France for any lack of conformity which exists at the time the supplies are verified.
2. In the case of lack of conformity, without prejudice to Article II.11 regarding liquidated damages applicable to the total price of the supplies concerned, Expertise France shall be entitled:
3. either to have the supplies brought into conformity, free of charge, by repair or replacement;
4. or to have an appropriate reduction made in the price.
5. Any repair or replacement shall be completed within a reasonable time and without any significant inconvenience to Expertise France, taking account of the nature of the supplies and the purpose for which they are required by Expertise France.
6. 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 Expertise France and was incorrectly installed owing to a shortcoming in the installation instructions.

**II.1.6 Services relating to supplies**

If required by the tender specifications (Annex I), services relating to supplies shall be provided accordingly.

**II.1.7 General provisions concerning supplies**

1. 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:

1. name of Expertise France and address for delivery;
2. name of Contractor;
3. description of contents;
4. date of delivery;
5. number and date of purchase order;
6. EC code number of article.
7. Warranty

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 any items which become damaged or defective in the course of normal use during the warranty period. Replacement must take place within a reasonable time limit to be determined by agreement between the parties.

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 normal purposes 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**

* 1. The Contractor shall perform the FWC to the highest professional standards.
  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 orders are to be executed.
  3. Any reference made to the Contractor’s personnel in the FWC shall relate exclusively to individuals involved in the performance of the FWC.
  4. The Contractor must ensure that the personnel performing the FWC possesses the professional qualifications and experience required for the execution of the purchase orders it receives.
  5. The Contractor shall neither represent Expertise France nor behave in any way that would give such an impression. The Contractor shall inform third parties that it does not belong to a European civil service.
  6. The Contractor shall be solely responsible for the personnel executing the tasks entrusted to it.

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

1. personnel executing the tasks assigned to the Contractor may not be given orders directly by Expertise France;
2. Expertise France 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 Expertise France any right arising from the contractual relationship between Expertise France and the Contractor.
   1. In the event of an incident resulting from the action of any of the Contractor's personnel working on Expertise France'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 said person without delay. Expertise France 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 orders resulting from the replacement of personnel.
   2. 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 on its own initiative record it and report it to Expertise France. 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.
   3. Should the Contractor fail to perform its obligations under the FWC, Expertise France 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, Expertise France may claim compensation or impose liquidated damages in accordance with Article II.11.
   4. Within the framework of the policy to combat imported deforestation and in the hypothesis of the use of raw materials or processed products, the Contractor undertakes to evaluate precisely the quantities really necessary and to study alternatives to the products at risk listed below:

* Meat;
* Eggs ;
* Dairy products ;
* Ready-made meals, margarine, spreads;
* Leather shoes ;
* Automotive upholstery ;
* Household and cleaning products ;
* Agrofuels ;
* Lumber ;
* Solid wood or particle;
* Fuels ;
* Paper ;
* Cardboard ;
* Textiles ;
* Coffee, chocolate ;
* Exotic fruits ;
* Electronics.

For more information, the guide Engaging in Zero Deforestation Public Procurement is available at the following email address :

<https://www.ecologie.gouv.fr/sites/default/files/Guide_politique_achat_public_zero_deforestation.pdf>

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 FWC.

**II.2.2** Electronic communication shall be deemed to have been received by the parties on the day of dispatch of said communication, provided it is sent to the addressees listed in Article I.6. Without prejudice to the foregoing, if the sending party receives a message of non-delivery, or of the 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 undue delay.

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

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

**Article II.3 - Liability**

**II.3.1** The Contractor shall be solely liable for complying with all applicable legal obligations.

**II.3.2** Expertise France 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 Expertise France.

**II.3.3** The Contractor shall be held liable for any loss or damage sustained by Expertise France 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 purchase order. 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 is the only one who is responsible for the safety of the people and property that he mobilizes for the execution of the present Contract and in this respect, takes all necessary measures. He undertakes to ensure that all of his employees and subcontractors comply with the safety instructions that he issues. In the event of an incident and/or direct or indirect attack on the safety of people directly or indirectly mobilised by the contractor or its equipment, Expertise France cannot be held responsible in any way whatsoever..

**II.3.5** The Contractor shall indemnify and hold Expertise France 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 Expertise France 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 Expertise France in connection with the performance of the FWC, the Contractor shall assist Expertise France.

**II.3.6** The Contractor shall take out an insurance policy against risks and damage relating to the performance of the FWC if required under applicable legislation. It shall take out supplementary insurance as reasonably required under standard practices in the industry. A copy of all the relevant insurance policies shall be sent to Expertise France should it so request.

**Article II.4 - Conflicts of interest**

**II.4.1** The Contractor shall take all the necessary measures to prevent any conflict of interest. Such a 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 Expertise France in writing without delay. The Contractor shall immediately take all the necessary steps to rectify the situation. Expertise France 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 notify the pertinent obligations in writing to the members of its personnel and to any natural person authorised to represent it or to take decisions on its behalf, and shall ensure that the interested parties are not placed in a situation which could give rise to a conflict 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.

**II.4.5** The Contractor further undertakes to familiarise itself with the [Expertise France Code of Conduct](https://www.expertisefrance.fr/documents/20182/426622/Expertise+France+%E2%80%93+Code+de+conduite/2408659b-a84e-45ac-a142-47d5dc21faff) and to strictly comply with said code (accessible at the Expertise France website: www.expertisefrance.fr).

**ARTICLE II.5 – Confidentiality**

**II.5.1.** Expertise France 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) refrain from using confidential information and documents for any purpose other than fulfilling its obligations under the FWC or purchase order without prior written agreement of Expertise France;

b) ensure the protection of such confidential information and documents with the same level of protection it uses for its own confidential information, but in no case any less than with reasonable care;

c) not disclose, directly or indirectly, confidential information and documents to third parties without prior written agreement of Expertise France.

**II.5.2** The confidentiality obligation set out in Article II.5.1 shall be binding on Expertise France 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 means other 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 purchase order, 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** Under Article 13 or Regulation (EU) no. 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (GDPR), the Contractor is notified that personal data (notably name, first name and e-mail address) collected under this contract may be processed.

**II.6.2** The legal basis under which such processing is performed are set out in c) and e) of Article 6.1 of the GDPR, namely:

* The processing is necessary in order to comply with a legal obligation by which Expertise France is bound;
* The processing is necessary for performance of a public-interest assignment or one which falls within the scope of the public authority entrusted to Expertise France.

**II.6.3** The purposes of the processing are as follows:

* Management and monitoring of this FWC;
* Management and monitoring of reports forwarded to donors and other supervisory authorities.

**II.6.4** The recipients or category of recipients of the personal data are exclusively authorised personnel of Expertise France, ministries and state operators and donors responsible for awarding and executing this contract, including any service providers assisting them with their activities.

**II.6.5** Retention period: the data will be held throughout the term of the FWC and that of the DUA (duration of administrative usefulness) applicable to the contract.

**II.6.6** Under Articles 15 to 21 of the GDPR, persons whose personal data is collected enjoy a right of access, rectification and deletion with regard to such data. They also enjoy the right to restrict and refuse processing on legitimate grounds. The information and other rights of data subjects may be exercised by contacting the Data Protection Officer of Expertise France ([informatique.libertes@expertisefrance.fr](mailto:informatique.libertes@expertisefrance.fr)).

**II.6.7** Persons whose personal data is collected under this procedure may submit a complaint to CNIL.

**II.6.8** Should this FWC entail any processing of personal data, the parties undertake to comply with regulations on the processing of personal data in accordance with amended law no. 78-17 of 6 January 1978 relating to data processing, files and liberties and regulation (EU) 2016/679, known as the General Data Protection Regulation (GDPR).

The Contractor notably undertakes to:

* Process personal data solely for the purposes of the Contract, as defined in annex hereto covering the collection of personal data (GDPR data processor);
* Ensure that persons authorised to process personal data undertake to maintain its confidentiality or are bound by an appropriate legal obligation of confidentiality;
* Implement appropriate technical and organisational measures to guarantee a level of security commensurate with the risks resulting from the Contract, notably with regard to data encryption, confidentiality and integrity;
* Notify Expertise France, via any means, of any personal data breach within 24 hours of becoming aware of any such event;
* Assist Expertise France in its obligation to respond to requests it may receive from data subjects;
* Delete all personal data or return it to Expertise France on conclusion of the services covered by the Contract, as specified by the latter, unless EU law or that of the member state requires such data to be retained;
* Make available to Expertise France all information it may require to demonstrate compliance with the obligations set out in this article and to enable audits to be conducted by the latter or by any other person of its choice.

**II.6.9** Where the Contractor uses a data processor to process personal data during execution of the FWC, it must obtain prior written authorisation from Expertise France. Similarly, the Contractor shall notify Expertise France of any planned change concerning the addition or replacement of processors, thereby enabling Expertise France to issue any objections it may have in this regard.

**II.6.10** The same obligations concerning data protection as those set out in the FWC are mandatory for processors, notably regarding the provision of adequate guarantees for the implementation of appropriate technical and organisational measures ensuring the protection of personal data. Should any processor fail to meet its obligations, the Contractor shall remain fully responsible vis-à-vis Expertise France for the fulfillment of the processor’s obligations.

**II.6.10** In the event of non-compliance with the aforementioned provisions, the Contractor is reminded that its liability may be invoked. In the event of any breach of professional secrecy or non-compliance with the aforementioned provisions, Expertise France may immediately terminate the FWC without compensation for the Contractor.

## Article II.7 – Subcontracting

**II.7.1** The Contractor shall not subcontract without prior written authorization from Expertise France nor cause the FWC to be de facto performed by third parties.

**II.7.2** Even where Expertise France authorizes 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 Expertise France by virtue of this FWC, notably by Article II.16.

## Article II.8 – Amendments

**II.8.1** Any amendment to the FWC or purchase order shall be made in writing before fulfilment of all contractual obligations. A purchase order 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 purchase orders which might call into question the decision awarding the FWC or purchase order, or result in unequal treatment of bidders 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 authorization from Expertise France.

**II.9.2** In the absence of such authorization, 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 Expertise France 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 – Penalties

Expertise France 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 purchase order or specific contract, then, without prejudice to the Contractor's actual or potential liability or to Expertise France's right to terminate the FWC or the relevant purchase order or specific contract, Expertise France may impose liquidated damages for each and every calendar day of delay according to the following formula:

*V x d / 500, where:*

*V* is the price of the relevant purchase;

*d* is the number of days of delay

The Contractor may submit arguments against this decision within thirty days of receipt of the formal notification. In the absence of a reaction on its part or of written withdrawal by Expertise France within thirty 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 performance of the FWC

II.12.1 Suspension by the Contractor

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

Once the circumstances allow resuming performance, the Contractor shall inform Expertise France immediately, unless Expertise France has already terminated the FWC or purchase order.

II.12.2 Suspension by Expertise France

Expertise France may suspend the performance of the FWC or purchase order, or any part thereof:

a) if the FWC or purchase order 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. Expertise France shall as soon as possible give notice to the Contractor to resume the delivery or service suspended, or terminate the FWC or purchase order. The Contractor shall not be entitled to claim compensation on account of suspension of the FWC or purchase order, or part thereof.

## Article II.13 – Termination of the FWC

II.13.1 Grounds for termination

Expertise France may terminate the FWC or purchase order 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 purchase order substantially or call into question the decision to award the FWC;

b) if execution of the tasks under a pending purchase order has not actually commenced within fifteen days of the date foreseen, and the new date proposed, if any, is considered unacceptable by Expertise France, taking into account article II.8.2;

c) if the Contractor does not perform the FWC or a purchase order as established in the tender specifications or request for service or fails to fulfil another substantial contractual obligation; termination of three of more purchase orders on this ground shall constitute grounds 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 purchase order 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 purchase order might call into question the decision awarding the FWC or purchase order, or result in unequal treatment of bidders 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 Expertise France 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 financial interests of the Union;

i) if Expertise France 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 purchase order;

k) if the needs of Expertise France change and it no longer requires new supplies under the FWC;

l) if the Contractor has deliberately breached any of the safety and security rules or the Code of Conduct, this may lead to termination of the Contract and invoke the liability of the Contractor.

II.13.2 Termination procedure

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

If Expertise France 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, Expertise France shall formally notify the Contractor about its decision to terminate the FWC or purchase order. 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 sixty days from the date of termination to draw up the documents required by the special conditions or purchase orders for the tasks already executed on the date of termination and produce an invoice if necessary. Expertise France may recover any monies paid under the FWC.

Expertise France may claim compensation for any damage suffered in the event of termination.

On termination, Expertise France may engage any other contractor to deliver the supplies or to provide or complete the related services. Expertise France 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 – Reports and payments

II.14.1 Payment date

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

II.14.2 Currency

The FWC is denominated in euros.

Payments shall be made 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 Expertise France.

II.14.3 Bank transfer costs

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

1. costs of dispatch charged by the bank of Expertise France shall be borne by Expertise France,
2. costs of receipt charged by the bank of the Contractor shall be borne by the Contractor,
3. costs for additional transfer caused by one of the parties shall be borne by the party necessitating the additional transfer.

II.14.4 Invoices and Value Added Tax

Invoices shall include, in addition to the legal information (company registration number, intra-Community VAT), the identity of the contractor, the amount, the currency, the date, the FWC reference and the reference of the purchase order or contract and, where appropriate, the reference and title of the cooperation project.

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 context of cooperation projects financed by public development aid, Expertise France 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. Expertise France 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 specifications until their final acceptance by Expertise France. The amount of the performance guarantee shall not exceed the total price of the purchase order. The guarantee shall provide that it remains in force until final acceptance. Expertise France 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:

1. the financial guarantee is provided by a bank or an approved financial institution or, at the request of the Contractor and agreement by Expertise France, by a third party;
2. the guarantor stands as first-call guarantor and does not require Expertise France 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 sixty days following receipt of the certificate of conformity of the supplies signed by Expertise France, accompanied by a final report or any other documents provided for in the FWC or purchase order.

Upon receipt, Expertise France shall pay the amount due as payment of the balance, within the periods 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 collection.

II.14.7 Suspension of payment terms

Expertise France 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.

Expertise France 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 Expertise France. 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 Expertise France 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, Expertise France reserves the right to terminate the purchase order in accordance with point c) of Article II.13.1.

II.14.8 Late payment interest

On expiry of the payment periods specified in Article I.4, and without prejudice to Article II.14.7, the Contractor is entitled to interest on late payment pursuant to the French Decree 2013-269 issued 29 March 2013 on the fight against late payment in public procurement contracts. The rate applied shall be the interest rate of the European Central Bank for its main and most recent refinancing operations, as applicable on the first day of the semester of the calendar year during which late payment interest started to accrue, plus 8 percentage points. However, when the calculated interest is lower than or equal to 200 euros, it shall be paid to the Contractor only upon request, submitted within two months of receiving late payment. The amount of the fixed indemnity to cover collection costs is set at forty (40) euros and will be systematically paid in addition to late payment interest. Interest below €40 shall not be mandated.

Suspension in accordance with Article II.14.7 may not be treated as late payment.

Late payment interest covers the period between the day following the due date and, at the very latest, the date of actual payment as defined in Article II.14.1.

## ARTICLE II.15 – Recovery

**II.15.1** If an amount is to be recovered under the terms of the FWC, the Contractor shall repay Expertise France 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 Expertise France 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 Expertise France 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, Expertise France may, after informing the Contractor in writing, recover the amounts due by offsetting them against any amounts owed to the Contractor by Expertise France or by calling in the financial guarantee, where provided for in Article I.4 or in the purchase order.

## Article II.16 – Checks and audit

**II.16.1** Expertise France 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 Expertise France. 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 Expertise France's staff and outside personnel authorised by Expertise France 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 thirty days following the date of receipt to submit observations. The final report shall be sent to the Contractor within sixty days following the expiry of that deadline.

On the basis of the final audit findings, Expertise France 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 Expertise France.

**II.16.6** The French and European courts of auditors shall have the same rights as Expertise France, notably right of access, for the purpose of checks and audits.

**purchase order**  
**2X-BCXXXX**

**concluded under the framework contract no.2X-ACXXXX**

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| **Award date:** |

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| Reference of the Framework contract | | | | |
| Object of the framework contract |  | | |
| Framework agreement number |  | | |
| Contractor |  | | |
| Award date |  | | |
| Purchase order | | | |
| PO number |  | | |
| Object of the purchase order |  | | |
| Interim deliverables |  | | |
| End deliverables |  | | |
| Execution/delivery duration |  | | |
| Special conditions |  | | |
| Signature of the person authorised to commit Expertise France; | | | | |
|  | | | | |
| Function and name | | Date and place | Signature | |
|  | |  |  | |

1. In the case of a consortium operating under joint and several liability, this section must be completed by the group’s representative [↑](#footnote-ref-1)
2. In the case of a joint offer, only one person is authorised to sign (representative duly designated by all of the bidders they represent). [↑](#footnote-ref-2)
3. This section is to be completed if the candidate is submitting a joint bid on behalf of a consortium (delete if the bid is submitted by a single candidate). [↑](#footnote-ref-3)
4. In the case of a consortium, this section must be completed by the lead firm. [↑](#footnote-ref-4)
5. The clauses covering prefinancing and interim payments are optional; however, a clause covering payment of the balance must always be provided. [↑](#footnote-ref-5)
6. BIC or SWIFT code for countries without an IBAN. [↑](#footnote-ref-6)
7. Date and original signature of the person authorised to enter into legally binding commitments on behalf of the Contractor. [↑](#footnote-ref-7)
8. Date and original signature of the CEO of Expertise France or his delegated signatory. [↑](#footnote-ref-8)