**PUBLIC WORKS CONTRACT**

**No.: 25-MR1186**

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| --- |
| **Notification date:** |

This contract is subject to the French Code of Public Procurement (CPP) in its latest version in force as enacted by Order No. 2018-1074 of 26 November 2018 (legislative section) and Decree No. 2018-1075 of 3 December 2018 (regulatory section) of the CPP.

It is pursuant to adapted procedure (MAPA) in application of Articles L. 2124-2, R. 2161-2, R. 2161-3, R. 2161-4 and R. 2161-5 of the CCP.

This Contract is part of the cooperation project hereinafter referred to as the “main contract”, whose code is *23SSE0C054* signed on *06/06/2023* by *the French Ministry of Europe and Foreign Affairs* and *Expertise France*, concerning “*Abala and Adwa Hospitals Rehabilitation Project”* for the benefit of “*Ethiopia’s Ministry of Health*”, implemented by Expertise France.

**EXPERTISE FRANCE (SAS)**

Address: 40 Boulevard de Port Royal, 75005 Paris, France

A French simplified joint stock company (*société par actions simplifiée* - SAS) with share capital of €828,933 registered under the following numbers:

* Siret: TRADE AND COMPANIES REGISTER (RCS): 808 734 792 00035
* EU VAT no.: FR36 808734792

represented for the purpose of signing of this contract by Mr Jérémie PELLET, Chief Executive Officer.

**Of the first part, and**

|  |  |
| --- | --- |
| **Full official name** |  |
| (hereinafter referred to as the “Contractor”), | |
| **Official legal form** |  |
| **Full official address** |  |
| **Legal registration number** |  |
| **VAT registration number** |  |

represented for the purpose of signing this contract by:

|  |  |
| --- | --- |
| Person authorised to sign the contract on behalf of the contractor | |
| **Name** | Name (in capitals):  First name: |
| **Position** |  |
| **Contact details** | Telephone (direct line):  Email: |

**Of the other part.**

**IT IS HEREBY AGREED**

for the implementation by the contractor of the following works:

**Construction of reservoirs and related water supply works for Adwa General Hospital, Tigray, Ethiopia, as part of Abala and Adwa Hospitals rehabilitation and re-equipment project.**

Expertise France has accepted the bid submitted by the contractor for the performance and completion of these works, as well as the repair of any defects related thereto.

**The following has been agreed:**

**(1)** The following documents shall be considered, read and interpreted as an integral part of this contract, in the following order of precedence:

1. This contract agreement;
2. The special conditions;
3. The general conditions;
4. The schedule filled out (after correction of arithmetical errors) and the bill of quantities
5. The technical specifications;
6. The design documents (drawings);
7. The contractor’s tender: version dated / /2025;
8. Solemn declaration;
9. Any other document forming part of the contract.

The various documents constituting the contract must be considered as mutually explicit. In the event of ambiguity or differences, these documents will be applied in accordance with the aforementioned hierarchical order. Amendments follow the hierarchical order of the document they modify.

**(2)** In return for the payments made by Expertise France to the contractor as mentioned below, the contractor undertakes to perform and complete the works and to repair any related defects in full compliance with the provisions of the contract.

**(3)** Expertise France hereby undertakes to pay to the contractor by way of remuneration for the performance and completion of the works, and the repair of the related defects, an amount of:

- Maximum lump-sum price € incl. VAT (*in letters* EUR)

- Or € excl. VAT + % VAT

This amount shall be considered as the maximum payable amount, subject to adjustments in accordance with article 37 of the general terms and conditions. The actual payment will be calculated based on measured quantities of work executed, verified in accordance with contract terms, and adjustments will be made accordingly. The contractor shall be responsible for ensuring that all executed work meets the quality standards and requirements specified in the contract.

**(4)** Other special terms and conditions applicable to the contract

* Duration and renewal of the contract

The contract comes into force on its notification date until April 30, 2025.

The contract may be expressly renewed until its term, up to December 31, 2025.

Such renewal shall not modify or defer the applicable obligations. If applicable, the non-renewal decision is notified to the Contractor by means allowing a certain date to be obtained.

The contractor cannot claim compensation for the fact of the non-renewal of the contract. The Contractor cannot refuse the renewal. Unless otherwise specified, all times stipulated in days in the contract are calculated in calendar days.

* Implementation deadlines

Expertise France shall notify the contractor by work order of the start date for the implementation of the contract tasks.

The entire tasks must be achieved within a maximum period of five (5) months.

* Payment Schedule

By derogation to special and general terms and conditions, the payment schedule is defined as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| **Payment** | **Milestone** | **Amount** | **Supporting document** |
| Pre-financing payment (advance) | After notification of the contract | 30% of the total lump-sum price | Bank guarantee |
| Interim payment 1 | At the end of the second month | Based on progress | Form approved by the Project Engineer |
| Interim payment 2 | At the end of the fourth month | Based on progress | Form approved by the Project Engineer |
| Balance payment | After full completion of the works | Balance | Form approved by the Project Engineer |

In accordance with article 31, payment requests will show in detail the amounts to which the Contractor considers himself to be entitled, together with supporting documents which shall include the progress report of the month(s).

• Financial guarantee

The provision of a financial bank guarantee for the entire pre-financing amount is required. It will be released once the pre-financing has been fully reimbursed by the contractor for the interim payments due to it under the contract.

In witness whereof the parties have signed the contract. This contract shall take effect on the date it is notified by Expertise France, namely the contractor.

**Declarations and signatures**

The contractor, the members of its consortium, its suppliers, its service providers, its consultants and its subcontractors (including the directors, employees and agents of these entities) certify:

* that they do not and will not acquire and supply equipment, and that they do not and will not perform services in sectors under embargo by the United Nations, the European Union or France. For information, the list can be viewed on the following website: <https://www.sanctionsmap.eu>;
* that they are not included on the lists of financial sanctions endorsed by the United Nations, the European Union and/or France, in particular with regard to countering the financing of terrorism and violations of national peace and security. For information, the lists may be viewed using the following resources:
* for the United Nations Sanctions, the UN Security Council’s consolidated list: <https://www.un.org/sc/suborg/fr/sanctions/un-sc-consolidated-list>,
* for the European Union, the lists can be viewed at the following address: <https://www.sanctionsmap.eu>,
* for France, see: <http://www.tresor.economie.gouv.fr/4248_Dispositif-National-de-Gel-Terroriste>;
* that they are not subject to an exclusion decision by the World Bank and, as such, do not appear on the list published by the World Bank. For information, the list can be consulted at the following web address: <https://www.worldbank.org/en/projects-operations/procurement/debarred-firms>

*(In the event of such an exclusion decision, we may attach additional information to this sworn statement that would allow for said exclusion decision to be deemed irrelevant in connection with contract).*

Finally, the contractor, the members of its consortium, its suppliers, its service providers, its consultants and its subcontractors (including the directors, employees and agents of these entities) acknowledge and accept that such situations may result in the automatic termination of the contract.

These parties likewise undertake to communicate immediately to Expertise France any changes in their circumstances with regard to this declaration during the performance of the contract.

|  |
| --- |
| **For the Contractor:**  Handwritten words “Read and approved”:  Done in.....………....….., on...…….....2025 Signature[[1]](#footnote-1):  First Name/Surname of signatory:  Position: |
| **For Expertise France (Project owner):**  Done in.....………....….., on...…….....2025 Signature[[2]](#footnote-2):  First Name/Surname of signatory:  Position: |

**Drawn up in a single original copy kept by Expertise France.**

1. SPECIAL TERMS AND CONDITIONS

**Article 1 Language of the contract**

1.1 The language used shall be English.

**Article 2 Communication**

2.1 Contact person:

Margherita Gatta, Contract Manager, [Margherita.gatta@expertisefrance.fr](mailto:Margherita.gatta@expertisefrance.fr) Paris, FRANCE.

All communications related to the contract are mandatory in writing.

Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices, requests and discharges, these communications shall be:

1. in writing and delivered by hand (against receipt), sent by mail or courier, or transmitted using any of the agreed systems of electronic transmission as prior agreed; and
2. delivered, sent, or transmitted to the address for the recipient’s communications. However:
   1. if the recipient gives notice of another address, communications shall thereafter be delivered; accordingly, and
   2. if the recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued.

**Article 3 Supervisor and supervisor’s representative**

3.1 General conditions apply

**Article 4 Subcontracting**

4.1 In the selection of subcontractors, the contractor shall give preference to natural persons, companies or firms capable of implementing the tasks required on similar terms.

**Article 5 Documents to be provided**

5.1 Set of working drawings and detailed designs.

**Article 6 Access to the site**

6.1 The contractor is obliged, under this contract, to give Expertise France free access to its sites, factories, workshops, etc., and generally assist in the performance of his duties.

All correspondence between the contractor and Expertise France or project supervisor must be copied, for information, to the Addis office at the following official address: Alliance Ethio-Française Main Compound, Addis Ababa.

**Article 7 General obligations**

7.1 Warning sign / construction site sign Attention construction site - with warning, mandatory and prohibition signs according to ISO 7010 - emergency number

With note: Children are not allowed to enter with notice, parents are responsible for children.

**Article 8 Design and execution contracts**

8.1 Any project improvement suggestion drawn up by the contractor and submitted for the supervisor’s approval, must be done via a change order submitting a construction variation order.

**Article 9 Performance guarantee**

9.1 The provision of a guarantee certificate is not required.

**Article 10 Liabilities and insurance**

10.1 a) By way of derogation from Article 16.1, (a), 2nd paragraph, of the general conditions, compensation for damage to the works resulting from the contractor's liability in respect of the contracting authority is capped at an amount equal to 10 % of the total contract amount.

10.2 a) By way of derogation from Article 16.2, (a), 2nd paragraph of the general conditions it is two weeks after signing of the contract that the contractor shall provide the contracting authority and the supervisor with all cover notes and/or insurance certificates showing that the contractor's obligations relating to insurance are fully respected.

**Article 11 Program of implementation of tasks**

Will be submitted together with project tender.

**Article 12 Period of implementation of tasks**

12.1 The contractor shall provide as a part of the tender process a project implementation schedule.

**Article 13 Delays in the implementation of tasks**

13.1 The rate of liquidated damages for delays in the completion of works shall be 0.1% of the contract price for every day or part thereof which elapses between the end of the period of implementation of tasks and the actual date of completion, up to a maximum amount of 10 % of the contract price or, if the contract is subdivided into phases, of the concerned phase and up to a limit of 10 % of the price of the phase concerned.

**Article 14 Work register**

14.1 The contractor shall keep a construction site diary / logbook.

14.2 The drawing up statements must be certified by the site engineer before submission of any claim.

14.3 The site diary/logbook must be at disposal of the EF project officer, whenever it is asked for project checks and implementation.

**Article 15 Origin and quality of works and materials**

## 15.1 For these purposes, ‘origin’ means the place where the goods are mined, grown, produced or manufactured and/or from which services are provided. The origin of the goods must be determined according to the EU Customs Code or the applicable international agreement.

15.2 The works and the objects, appliances, equipment or materials used in their construction must comply with the following specifications: EBC Standards, EN European Standards, ISO Standards.

15.3 All material delivered to site, special rebar steel, cement and other materials must be pre-inspected, and a preliminary technical acceptance is necessary before applying at site.

**Article 16 Inspection and testing**

16.1 All materials can be inspected at the supplier’s site as well to the construction site.

The testing will take place at the construction site.

16.2 In case of technical discrepancies between the inspection and the testing phase, when the materials have been inspected at the supplier’s site, the supplier is responsible for the provision of the materials according to the inspected characteristics, as requested by the EF project officer / resident engineer.

**Article 17 Ownership of plant and materials**

17.1 The equipment, temporary structures, plant and materials on the site belong to the contracting authority under Article 43 of the general conditions and the legal instrument(s) used.

**Article 18 General principles for payments**

18.1 Payments shall be made in euro.

By derogation, pre-financing payment for the lump-sum advance shall be made within 30 days. Other pre-financing payments shall be made within 90 days. Payments to the contractor of the amounts due under each statement of account approved by the supervisor shall be made by the contracting authority within 90 days. The payment to the contractor of the amounts due under the final statement of account issued by the supervisor shall be made by the contracting authority within 90 days.

**Article 19 Pre-financing**

19.1 The total amount of the pre-financing is 30 % of the original contract price for the lump-sum advance.

19.2 Repayment of the pre-financing shall take the form of deductions based on interim payments.

Repayment shall begin with the first instalment and end, at the very latest, by the time 90 % of the amount of the contract has been paid.

Repayment shall be made in the same currency or currencies as the pre-financing.

The amount to be deducted from each instalment shall be calculated using the following formula:



where:

R = the amount to be repaid

Va = the agreed total amount of pre-financing

Vt = the initial contract amount

D = the amount of the instalment.

The result is rounded up to two decimal places.

**Article 20 Retention monies**

20.1 The sum to be retained from interim payments to guarantee implementation of the contractor’s obligations during the defect’s liability period is 5% of each instalment.

**Article 21 Price revision**

Not applicable, no price adjustment.

**Article 22 Measurement of works**

22.1 This is a unit price contract.

**Article 23 Interim payments**

23.1 The Contractor shall submit a Statement in three copies to the Engineer according to the schedule in “Other special terms and conditions (4)”, in a form approved by the Engineer, showing in detail the amounts to which the Contractor considers himself to be entitled, together with supporting documents which shall include the report on the progress during this month in accordance with Progress Reports.

The Statement shall include the following items, as applicable in the sequence listed:

1. the estimated contract value of the Works executed and the Contractor’s Documents produced up to the end of the month;
2. any amount to be deducted for retention, calculated by applying the percentage of retention stated in the Contract to the total of the above amounts, until the amount so retained by the Employer reaches the limit of Retention Money (if any) stated in the Contract;
3. any amounts to be added for the advance payment and (if more than one instalment) and to be deducted for its repayments in accordance with the Advance Payment;
4. any other additions or deductions which may have become due under the Contract or otherwise, including Claims, Disputes and Arbitration; and the deduction of amounts certified in all previous Payment Certificates.

**Article 24 Final statement of account**

24.1 The draft final statement of account shall be submitted at the latest on the date of request by the contractor for the issuance of the provisional acceptance certificate. In order to enable the supervisor to prepare the final statement of account, the draft final statement of account is submitted with supporting documents showing in detail the value of the work done in accordance with the contract and all further sums which the contractor considers to be due to it under the contract.

24.2 Within 30 days from issuing the final acceptance certificate referred to in Article 62, the supervisor shall prepare and sign the final statement of account.

**Article 25 Delayed payments**

25.1 By derogation from Article 53.1 of the general conditions, once the time-limit referred Article 44.3 has expired, the contractor shall be entitled to late-payment interest at the rate and for the period mentioned in the general conditions.

However, when the interest calculated in accordance with the first subparagraph is lower than or equal to EUR 200, it shall be paid only upon a demand submitted by the contractor within two months of the date of receipt of late payment.

**Article 26 Partial acceptance**

No partial acceptances.

**Article 27 Provisional acceptance**

27.1 In complement to Article 60.1 of the general conditions.

**Article 28 Defects liability**

28.1 The defects liability period is defined as the period commencing on the date of provisional acceptance and during which the contractor is required to complete the works and make good any defect in, or damage to, any part of the work as notified by the supervisor or the contracting authority. The rights and obligations of the parties with regard to this defect’s liability period are laid down in Article 61 of the general conditions.

In complement to Article 61.1 of the general conditions

28.2 The defects liability period is less than 180 days.

**Article 29 Dispute settlement**

Any dispute arising out between parties, of or relating to this contract and which cannot be settled otherwise shall be referred to the exclusive jurisdiction of in accordance with the national legislation of the State of the contracting authority.

**II) GENERAL TERMS AND CONDITIONS OF WORKS CONTRACTS**

THESE SPECIAL TERMS AND CONDITIONS CLARIFY AND SUPPLEMENT THE GENERAL TERMS AND CONDITIONS APPLICABLE TO THE CONTRACT. UNLESS OTHERWISE PROVIDED FOR IN THE SPECIAL TERMS AND CONDITIONS, THE STIPULATIONS OF THE ABOVE-MENTIONED GENERAL TERMS AND CONDITIONS REMAIN FULLY APPLICABLE. THE NUMBERING OF THE ARTICLES IN THE SPECIAL TERMS AND CONDITIONS IS NOT CONSECUTIVE, AND FOLLOWS THE NUMBERING OF THE ARTICLES IN THE GENERAL TERMS AND CONDITIONS. OTHER SPECIAL TERMS AND CONDITIONS SHOULD BE INDICATED SUBSEQUENTLY.

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**PRELIMINARY PROVISIONS**

## Article 1 - Definitions

1.1. The definitions and terms used in these general terms and conditions are found in the “Glossary” in Appendix A herein, which is an integral part of this contact. The headings and sub-headings are not deemed to constitute of an integral part of these general terms and conditions. Consequently, they are not taken into account for the interpretation of the contract, including in the event of a related dispute.

1.2. Context permitting, the words shall be taken to have the same meaning in both the singular and the plural. The same applies in the French-language version to masculine and feminine terms.

1.3. Words naming persons or parties include companies, enterprises, and any bodies having a legal capacity.

## Article 2 - Language applicable to the contract

2.1. The language applicable to the contract and to all communications between the contractor, Expertise France and the project owner or their representatives is that indicated in the special terms and conditions.

## Article 3 - Hierarchical order of the contractual documents

3.1. The hierarchical order of the documents is that specified in the special terms and conditions.

## Article 4 - Communications

4.1. Written communications between Enterprise France and/or the project owner, on one hand, and the contractor, on the other, must include the name of the contract and its identification number. They shall be sent by letter, telegram, telex, facsimile, email, or hand delivered to the addresses indicated by the parties for this purpose in the special terms and conditions.

4.2. If the party sending a communication requests proof of receipt, it must state this in the communication. All communications subject to a deadline must contain a request for proof of receipt. In any event, the sender must take all available measures to ensure the receipt of its communication within the agreed timeframe.

4.3. When the contract provides for a notification, an advance notice, a consent, an approval, an authorisation, a certificate or a decision from an individual, this notification, advance notice, consent, approval, authorisation, certificate or decision must be in writing, unless otherwise stipulated. The terms “to notify” “to give advance notice” “to consent” “to approve” “to authorise” “to certify” or “to decide” shall have the same effect. The consent, approval, authorisation, certificate or decision shall be neither rejected nor delayed unduly.

## Article 5 - The project owner and its representative

5.1. The project owner shall perform the tasks stipulated in the contract. Unless expressly indicated otherwise in the contract, the project owner is not authorised to unbind the contractor from any of its contractual obligations.

5.2. If need be, the project owner may delegate tasks or skills with which it is entrusted to its own representative, while itself remaining ultimately accountable. It may likewise revoke this delegation or replace the representative at any time. Any delegation, revocation or replacement of this kind shall be done in writing and shall take effect only when a copy has been submitted the contractor. The work order setting out the tasks, obligations and identity of the project owner’s representative is issued by the project owner at the same time as the order to begin implementing the tasks under the contract. The project owner’s representative is tasked with overseeing and controlling the works, and testing and inspecting the materials implemented and the quality of the structures. The project owner’s representative shall in no case have the power to relieve the contractor of its obligations under the contract. Similarly – except in the case of express instructions indicated below or in the contract – it shall not have the power to order any works that would extent the task implementation period or that would incur additional costs payable by Expertise France, or to introduce any changes to the nature or scale of the works.

5.3. All communications to the contractor by the project owner’s representative pursuant to such a delegation shall have the same effects as if they had been made by the project owner itself, provided that:

a) if the project owner’s representative omits to express its disapproval regarding materials, equipment or a structure, this omission shall not impinge upon the project owner's right to express its disapproval regarding said materials, equipment or structure, and to issue the necessary instructions for their rectification;

b) the project owner shall be free to contradict or change the contents of the communication.

5.4. The project owner’s written instructions and/or orders are considered to be work orders. These work orders shall be dated, numbered and recorded in a register. If necessary, copies shall be hand delivered to the contractor's representative.

## Article 6 - Assignment

6.1. An assignment is only valid if it is the subject of a written agreement via which the contractor transfers all or part of its contract to a third party.

6.2. The contractor may not assign all or part of the contract, or any resultant benefit or interest, without the prior consent of Expertise France, except in the following instances:

a) the creation of a guarantee in favour of the contractor’s banks for any sum due or likely to be due to it under the contract, or

b) the assignment to the contractor’s insurers of the contractor’s right to obtain compensation from any liable person when the insurers have paid compensation for the harm it has suffered or for which it has assumed liability.

6.3. For the purposes of Article 6.2, the approval of an assignment by Expertise France does not release the contractor from its obligations relating to the part of the contract already performed or that has not been transferred.

6.4. If the contractor has transferred its contract without authorisation, Expertise France may, as of right and without formal notice, apply the penalties for non-performance provided for in Article 63 and/or terminate the contract under the conditions provided for in Article 64.

6.5. Assignees must meet the eligibility criteria set out in the contract award procedure, and must not be in any of the situations of exclusion indicated in the tender documents.

6.6. If necessary, before giving its approval, Expertise France can ask to receive a performance bond from the assignee for the entire contract, a pre-financing guarantee, and a retention guarantee.

## Article 7 - Subcontracting

7.1. Subcontracting is only allowed if it is the subject of a written agreement via which the contractor entrusts the performance of part of its contract to a third party. Equipment rental contracts, supply contracts and employment contracts do not constitute the “subcontracting agreements” referred to in this article.

7.2. The use of subcontractors by the contractor requires the prior approval of Expertise France. This request must indicate the elements of the contract to be subcontracted and the identity of the subcontractor(s).

Within 30 days of receipt of the authorisation request, Expertise France shall either extend this period by a maximum of 15 additional days or notify the contractor of its decision, giving its reasons in the event of refusal. In the absence of a decision notified by Expertise France before the deadline, the request shall be deemed approved upon the expiry of the deadline.

7.3. Subcontractors must meet the eligibility criteria set out in the contract award procedure, and must not be in any of the situations of exclusion described in the tender documents.

7.4. Subject to Article 7.6 and Article 52, no subcontracting agreement can create contractual relations between a subcontractor and Expertise France.

7.5. The contractor shall be liable for the acts, breaches and negligence of its subcontractors and their agents or employees as if these were its own acts, breaches or negligence, or those of its agents or employees. Expertise France’s approval of the subcontracting of part of the contract or the performance by a subcontractor of part of the works does not release the contractor from any of its contractual obligations.

7.6. If a subcontractor has entered into obligations with the contractor for the works that it has carried out or for the goods, materials, equipment and services it has provided, the duration of which extends beyond the guarantee period provided for in the contract, the contractor must, at any time after the expiry of this period, transfer the benefits of these obligations to Expertise France immediately, at its request and expense, for the duration of which they remained un-expired. If the contractor does not carry out this transfer, these obligations for which is remains responsible shall be transferred automatically.

7.7. If the contractor enters into a subcontracting agreement without approval, Expertise France may apply as of right the non-performance penalties provided for in Articles 63 and 64.

7.8. If Expertise France or the project owner considers that a subcontractor is not competent to perform the tasks assigned to it, either party can either ask the contractor immediately to remove said contractor from the site and replace it with a subcontractor whose qualifications and experiences Expertise France considers acceptable, or perform the tasks itself.

**EXPERTISE FRANCE’S OBLIGATIONS**

## Article 8 - Documents to be provided

8.1. Unless otherwise stipulated in the special terms and conditions, the project owner shall provide the contractor free of charge, within 30 days following the signing of the contract, with a copy of the task implementation plans, as well as two copies of the specifications and any other contractual documents. The contractor may purchase additional copies of these plans, specifications and other documents, within the limit of the quantities available. After final acceptance, the contractor shall return all plans and other contractual documents to the project owner.

8.2. Expertise France shall help the contractor to obtain any information relevant to the contract and that the contractor may reasonably request for its performance.

8.3. Unless necessary for the purposes of the contract, the plans, specifications and other documents provided by Expertise France shall be neither used by the contractor nor communicated by it to third parties without the prior consent of the project owner.

8.4. The project owner is authorised to send work orders to the contractor, including any additional documents or instructions needed for the proper performance of the works and to remedy any defects.

## Article 9 - Access to the site

9.1. Expertise France shall make the site and its access routes available to the contractor in a timely manner and as work progresses, in accordance with the approved task implementation programme referred to in Article 17. The contractor shall grant appropriate access to other persons, as stipulated in the special terms and conditions or as required.

9.2. The contractor shall not use the land made available to it by Expertise France for purposes unrelated to the implementation of the tasks.

9.3. The contractor shall maintain the premises made available to it in a good state for the duration of their use. At the request of Expertise France or the project owner, it shall return these premises in their original condition after the performance of the contract, taking normal levels of wear and tear into account.

9.4. The contractor is not entitled to any payment for improvements resulting from work that it has carried out at its own initiative.

## Article 10 - Assistance with local regulations

10.1. In circumstances where these elements may affect the performance of its obligations under the contract, the contractor may request assistance from Expertise France in obtaining copies of laws and regulations, as well as information on the practices or administrative provisions of the country in which the works are being performed. Expertise France may provide the contractor with the assistance requested, at the contractor’s expense.

10.2. Subject to the foreign labour laws and regulations of the country in which the work is to be carried out, Expertise France shall assist the contractor, at its request, in applying for the visas and permits required by the administrative provisions of the country in which the work is to be carried out, and in particular work and residence permits for staff whose services are deemed necessary by the contractor and Expertise France, as well as residence permits for their family members.

## Article 11 - Delays in payments to the contractor's staff

11.1. In the event of a delay in the payment of the wages and salaries due to the contractor's employees, as well as the allowances and social security contributions provided for by the law of the country in which the work is carried out, Expertise France may notify the contractor of its intention to pay the wages, salaries, allowances and contributions directly, within a period of 15 days. If the contractor disputes the fact that such payments are due, it shall have 15 days in which to lodge an appeal with the project owner, explaining its reasons. If, after examining this appeal, Expertise France believes that the payment of wages and salaries are due, it may pay the wages, salaries, allowances and contributions on the sums due to the contractor. Failing this, it may deduct these sums from any of the guarantees provided for by these general terms and conditions. No action taken by Expertise France under this article may release the contractor from its obligations towards its employees, except in instances where this allows an obligation to be fulfilled. Such action does not incur the liability of Expertise France towards the contractor’s employees.

**CONTRACTOR’S OBLIGATIONS**

## Article 12 - General Obligations

12.1. The contractor shall implement the contract with all due care and diligence and in accordance with the contractual clauses and the instructions of the project owner. It shall design, perform and complete the works according to the procedures provided for in the contract, and remedy any defects that they may present.

12.2. The contractor shall carry out the works and shall provide the staff, materials, equipment, facilities, and any other temporary or permanent elements necessary for the design, performance and completion of the works, as well as for the remedy of any defects, to the extent stipulated in the contract or which may be reasonably inferred from its provisions.

12.3. The contractor assumes full responsibility for the appropriateness, quality and safety of all construction operations and methods used in connection with the contract.

12.4. The contractor shall comply with the work orders that it receives. When it considers that the requirements of a work order exceed the competencies of the project owner or the purpose of the contract, the contractor must send a notification to the project owner explaining its reasons within 30 days of receipt of the work order, under penalty of foreclosure. The performance of the work order shall not be suspended due to this notification.

12.5. The contractor shall promptly provide any information and documents requested by Expertise France or the European Commission regarding the implementation of the contract.

12.6. The contractor shall comply with and apply the laws and regulations in force in the country where the work is carried out. It shall likewise ensure that its staff, dependants and local employees also comply with and apply these law and regulations. The contractor shall hold Expertise France harmless from any claim or lawsuit resulting from a breach of said laws or regulations committed by itself, by its employees, or by persons under their responsibility.

12.7. Subject to the provisions of Article 12.9, the contractor undertakes to respect the strictest confidentiality and not to use or disclose to third parties any information or document relating to the implementation of the contract without the prior consent of Expertise France. The contractor shall continue to be bound by this commitment after the implementation of the contract, and must obtain the same declaration from each member of its staff. However, making reference to the contract for marketing or tendering purposes does not require the prior consent of Expertise France, unless Expertise France declares that the contract is confidential.

12.8. If the contractor acts on behalf of a joint venture or consortium comprising two or more persons, or is itself one of these structures, these persons shall be jointly and severally liable for compliance with the obligations provided for in the contract, including any recoverable amounts. The person appointed by the consortium to act on its behalf for the purposes of the contract shall be authorised to enter into binding agreements on behalf of the consortium. The composition or constitution of the joint venture or consortium may not be modified without the prior consent of Expertise France. Any change in the composition or constitution of the joint venture or consortium without Expertise France’s prior consent may result in the termination of the contract under the conditions provided for in Article 64.

12.9. All statements must be stored for seven years after final payment made under the contract. In the event of a breach of this obligation to store the statements, Expertise France may automatically apply the penalties for non-performance provided for in Article 63 and/or terminate the contract under the conditions provided for in Article 64.

12.10. As part of the National Strategy to Combat Imported Deforestation (SNDI), and in the event of the use of raw materials or processed products, the contractor undertakes to accurately assess the quantities that are truly necessary, and to study alternatives to the at-risk products listed below:

- meat;

- eggs;

- dairy products;

- cooked dishes, margarine, spreads;

- leather shoes;

- vehicle trim;

- cleaning and maintenance products;

- agrofuels;

- lumber;

- furniture made of wood or particle board;

- combustibles;

- paper;

- cardboard;

- textiles;

- coffee, chocolate;

- exotic fruits;

- electronics.

For more information, the Committing to “Zero Deforestation” in a Public Procurement Policy guide is available at the following web address:

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

## Article 12(a) - Code of Conduct

12(a) 1. The contractor must act impartially and as a loyal advisor, at all times, in accordance with its professional code of ethics. It shall refrain from making public statements concerning the project or services without the prior approval of Expertise France. It shall not commit Expertise France in any way without its prior consent, and shall make third parties aware of this obligation.

12(a) 2. The contractor and its staff shall respect human rights and undertake not to contravene the political, cultural and religious practices of the country where the work is carried out.

12(a) 3. The contractor shall comply with the environmental standards applicable in the country where the work is carried out and the internationally agreed core labour standards, in this case the ILO's core labour standards, the conventions on freedom of association and collective bargaining, on the elimination of forced and compulsory labour, on the elimination of discrimination in employment and labour, and on the abolition of child labour, as well as the applicable obligations under the following conventions:

- the Vienna Convention of 22 March 1985 on the protection of the ozone layer and the Montreal Protocol of 16 September 1987 on substances responsible for ozone depletion;

- the Basel Convention of 22 March 1989 on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (Basel Convention);

- the Stockholm Convention of 22 May 2001 on Persistent Organic Pollutants;

- the Rotterdam Convention of 10 September 1998 on the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO) (PIC Convention), and its three regional protocols.

12(a) 4. The contractor and its subcontractors, agents or staff must not abuse any power delegated for private purposes. The contractor and its subcontractors, agents or staff may not receive or agree to receive, offer or propose to give or provide any gift, gratuity, commission or remuneration as an incentive or reward for carrying out or refraining from carrying out any acts relating to the contract, or to treat anyone either favourably or unfavourably in connection with the contract. The contractor must comply with applicable anti-corruption laws, regulations and codes of conduct.

12(a) 5. Payments to the contractor under the contract are the only income or benefit that it may enjoy in relation to said contract. The contractor and its staff must refrain from carrying out any activity or receiving any benefit that conflicts with their obligations under the contract.

12(a) 6. The performance of the contract must be carried out in good faith, in accordance with the principle of the fairness in contractual relations. It must not give rise to the payment of extraordinary commercial costs. Extraordinary commercial costs relate to any commission not mentioned in the main contract or that is not the result of a valid contract referring to this contract; any commission that does not relate to a legitimate service; any commission paid in a tax haven; any commission paid to a beneficiary whose identity is not clearly identified, or to a company that looks like a front company. The European Commission may carry out any documentary and on-site inspection that it deems necessary in connection with the contract to gather evidence of suspected extraordinary commercial costs.

## Article 12(b) – Conflict of interest

12(b) 1. The contractor shall take all necessary measures to prevent or terminate any situation that may compromise the impartial, objective performance of the contract. A conflict of interest may result in particular from economic interests, political or national affiliations, family or emotional ties, or from any other common relations or interests. Any conflict of interest arising during the performance of the contract must be notified immediately to the project owner. The contractor shall immediately take all necessary measures to put an end to any conflict of interest should it arise.

12(b) 2. Expertise France reserves the right to check that said measures are appropriate and to require additional measures, if necessary. The contractor shall ensure that members of its staff and administrative and management bodies are not in a situation that could give rise to a conflict of interest. Without prejudice to its obligations under the contract, the contractor shall immediately replace any member of its staff exposed to such a situation in the performance of the contract, without compensation from Expertise France.

12(b) 3. The contractor shall avoid any contact likely to compromise its independence or that of any member of its staff.

12(b) 4. The contractor shall limit its work in relation to the project to the performance of the contract.

## Article 12 (c) - Design and construction contracts

12(c).1 For design and construction contracts only, the contractor shall carry out and assume responsibility for the design of the works, with the assistance of experienced designers meeting the criteria set by Expertise France. It shall draft the required technical documents according to the procedures defined by the special terms and conditions and the technical specifications. These documents must be submitted to the project owner for approval, in accordance with the stipulations of the special terms and conditions. These may be corrected, at the contractor’s expense, to meet Expertise France's contractual requirements and to eliminate errors, omissions, ambiguities, inconsistencies and other design defects. The contractor shall train Expertise France’s staff and issue and update all the detailed documents, as well as the operation and maintenance manuals, in accordance with the stipulations of the special terms and conditions.

## Article 13 - Carrying out the work

13.1. The contractor shall either carry out the work itself or appoint a representative for this purpose. This appointment must be approved by the project owner within 30 days of the signing of the contract. The project owner must accept or reject this approval within 10 days. The approval may be withdrawn at any time. In the event of the appointed representative being rejected within the given timeframe, or approval being withdrawn, the project owner shall give the reasons for its decision and the contractor shall immediately propose a replacement. The address of the contractor’s representative is considered to be the service address provided by the contractor.

13.2. If the project owner withdraws its approval for the appointment of the contractor’s representative, the contractor shall remove said representative as soon as possible upon receipt of the notification of the withdrawn approval, and replace it with a representative approved by the project owner.

13.3. The contractor’s representative shall be endowed with all powers to take any decision necessary for the performance of the works, to receive and execute work orders, and to countersign the work log referred to in Article 39 or the task sheet, as the case may be. In any event, the contractor remains liable for the proper performance of the works and must in particular ensure that its own employees, its subcontractors and their staff comply with requirements and work orders.

## Article 14 - Contractor's staff

14.1. The contractor’s staff must be of a sufficient size to ensure the optimal use of the human resources of the country in which the work is carried out. These staff must have the qualifications and experience necessary to ensure the smooth running and proper performance of the works. As part of the performance of the contract, the contractor shall immediately replace any employee reported to it by the project owner, in a letter explaining its reasons, as likely to compromise the proper performance of the works.

14.2. The contractor shall be responsible for all staff and labour hiring. The pay scales and general working conditions set by the laws of the country in which the work is carried out shall apply, as a minimum level, to staff working on the site.

## Article 15 - Performance bond

15.1. Along with the return of the countersigned contract, the contractor must provide the project owner with a bond for the complete and correct performance of the contract. The amount of this bond is set in the special terms and conditions. It must be between 5-10% of the contract value, including the amounts mentioned in any amendments.

15.2. The performance bond is to compensate the project owner for any loss resulting from the fact that the contractor has not performed its contractual obligations completely and correctly.

15.3. The performance bond is established according to the model provided for in the contract. It can be in the form of a bank guarantee, a bank cheque, a certified cheque, a performance bond issued by an insurance and/or surety company, an irrevocable letter of credit, or a cash deposit with Expertise France. If the performance bond is provided in the form of a bank guarantee, bank cheque, certified cheque or a payment obligation, it must be issued by a bank or by an insurance and/or surety company approved by Expertise France.

15.4. Unless otherwise stipulated in the special terms and conditions, the performance bond shall be in the currency in which the contract must be paid, and in the proportions under the terms of the contract.

15.5. No payment shall be made to the contractor before the performance bond is provided. This bond shall remain in force until the signature of the final account referred to in Article 51.

15.6. If, during the performance of the contract, the legal entity or natural person providing the performance bond is unable to meet its commitments, the bond shall expire. Expertise France shall give the contractor formal notice to provide a new performance bond under the same conditions as the previous. If the contractor does not provide a new bond, Expertise France may terminate the contract under the conditions provided for in Article 64.

15.7. Expertise France may claim payment against the bond of all sums that the guarantor owes due to a breach by the contractor under the contract, in accordance with the conditions of the bond and up to its total value. The guarantor shall pay these sums immediately, at Expertise France's first request. It cannot object to this for any reason whatsoever. Before calling in the bond, Expertise France shall send the contractor a notice specifying the nature of the breach on which its claim is based.

15.8. Unless otherwise stipulated in the special terms and conditions, the performance bond shall be released for its total amount within 60 days of the signature of the final account referred to in Article 51, with the exception of amounts subject to amicable settlement, arbitration or legal proceedings.

## Article 16 - Liability, insurance and safety features

16.1. Liability

a) Liability for damage to the works

Without prejudice to Article 61 (obligations under the guarantee) and Article 66 (force majeure), the contractor shall assume (i) full liability for maintaining the integrity of the works and (ii) the risk of loss and damage, whatever the causes, until final acceptance as referred to in Article 62.

Compensation for damage to the works resulting from the contractor’s liability towards Expertise France is capped at €1,000,000 if the contract value is less than or equal to €1,000,000. If the contract value is greater than €1,000,000, compensation for damages arising from the contractor’s liability shall be capped at the contract value.

However, compensation for losses or damage caused as a result of fraud or gross negligence by the contractor, its staff, its subcontractors and any person for whom the contractor is responsible may not be capped under any circumstances.

After final acceptance as referred to in Article 62, the contractor shall remain liable for any breach of its contractual obligations for the period applicable to the contract under the law, or failing that for a period of 10 years.

b) Contractor’s liability towards Expertise France

At all times, the contractor shall remain liable and shall compensate Expertise France for any damage caused to the project owner by itself, its staff, its subcontractors and any person for whom it is answerable during the performance of the works.

Compensation for damages resulting from the contractor’s liability towards Expertise France is capped at €1,000,000 if the value of the contract is less than or equal to €1,000,000. If the contract value is greater than €1,000,000, compensation for damages arising from the contractor’s liability shall be capped at the contract value.

However, compensation for losses or damages arising from the contractor’s liability for bodily injury, including death, may not be capped under any circumstances. The same applies to compensation for any damage, of any kind whatsoever, resulting from fraud or gross negligence by the contractor, its staff, its subcontractors and any person for whom it is answerable.

c) Contractor’s liability towards third parties

The contractor shall guarantee and cover, at its expense, Expertise France, its agents and its staff against any action, loss or harm, whether direct or indirect, of any kind whatsoever (hereinafter “claim(s)”) resulting from an act or omission committed in the performance of the services by the contractor, its staff, its subcontractors and/or any person for whom it is answerable.

Expertise France must notify the contractor as soon as it becomes aware of any third-party claim.

If Expertise France opts to challenge and defend itself against the claim(s), the contractor shall bear the reasonable defence costs incurred by Expertise France, its agents and its staff.

Pursuant to these general terms and conditions, Expertise France’s representatives and staff, as well as the contractor’s staff, subcontractors and any person for whom it is answerable are considered as third parties.

The contractor shall handle any claim, working closely with Expertise France.

Any transaction or agreement regarding the settlement of a claim requires the express prior consent of Expertise France and the contractor.

16.2. Insurance

a) Insurance - general provisions

With the return of the countersigned contract, at latest, and throughout the task implementation period, the contractor shall ensure that it, its staff, its subcontractors and any person for whom it is answerable are properly insured with insurance companies that are recognised within the international insurance market, unless Expertise France has expressly agreed in writing to a specific insurance company.

With the return of the countersigned contract, at latest, the contractor shall provide Expertise France and the project owner with all cover notes and/or insurance certificates demonstrating that the contractor is in full compliance with its insurance obligations. At each request by Expertise France or the project owner, the contractor shall promptly present an updated version of the cover notes and/or insurance certificates.

The contractor shall obtain an undertaking from its insurers to inform Expertise France and the project owner, personally and directly, of any event likely to reduce, cancel or alter the coverage concerned in any way whatsoever. Insurers must provide this information as quickly as possible, and in any event at least thirty (30) days before the reduction, cancellation or any alteration of the coverage comes into effect. Expertise France reserves the right to withdraw the insurer in the event of the contractor’s non-payment of the premium, without prejudice to Expertise France's right to recover the amount of the premium paid by it, as well as to claim compensation for any damage it may suffer as a result.

Whenever possible, the contractor shall ensure that the insurance policies taken out contain a waiver of recourse clause in favour of Expertise France and the project owner, their representatives and staff.

The taking out of the appropriate insurance policies shall under no circumstances exempt the contractor from its legal and/or contractual responsibilities.

The contractor shall fully bear the consequences of a total or partial lack of insurance coverage, with Expertise France and the project owner relieved entirely of all responsibility.

The contractor shall ensure that its staff, its sub-contractors and any person to whom it is answerable comply with the same insurance obligations imposed on the contractor under the terms of this contract. In the event of a lack of insurance or inadequate insurance for its staff, its subcontractors or any person for whom it is answerable, the contractor shall cover Expertise France and the project owner for all consequences resulting therefrom.

The contractor shall ensure that all mandatory insurance policies are taken out in compliance with and in application of the laws and regulations in force in the country in which the works are carried out, under its sole responsibility and without prejudice to the obligation to take out any insurance covering its obligations under this contract. It shall also ensure that it complies with any legal obligations applicable to insurance coverage.

Expertise France and the project owner bear no responsibility for the assessment and adequacy of the insurance policies taken out by the contractor with regard to their contractual and/or legal obligations.

b) Insurance - special provisions

*1. Insurance for damage caused to third parties*

The contractor shall take out civil liability insurance covering bodily injury and material damage that may be caused to third parties as a result of the performance of the works, as well as during the guarantee period. The insurance policy must specify that the staff of Expertise France and the project owner, as well as that of other companies and third parties on the site, are considered as third parties under this insurance coverage, which must be unlimited for bodily injury.

*2. Insurance covering on-site risks*

The contractor shall take out a “Comprehensive Site” insurance policy for the joint benefit of itself, its subcontractors, the project owner and the project manager.

This insurance shall cover all material damage to which the structures covered by the contract may be subject, including damage due to a defect or fault in the design, plans, construction or implementation materials for which the contractor is liable under the contract, as well as damage due to natural events. This insurance will also cover damage caused to the existing goods and property belonging to Expertise France and the project owner.

This insurance shall also cover the temporary equipment and structures on the site up to their total reconstruction/replacement value.

*3. Motor vehicle insurance*

The contractor must take out insurance covering all vehicles used by the contractor or its subcontractors (whether or not they own the vehicles) in connection with the performance of the contract.

*4. Insurance against accidents at work*

The contractor shall take out insurance policies covering itself, its staff, its subcontractors and any person to whom it is answerable in the event of an accident at work or on the way to work. It shall ensure that its subcontractors do likewise. The contractor indemnifies Expertise France against any claims that its staff or subcontractors may make in this respect. The contractor shall also comply with the applicable legislation and regulations of the country of origin for its expatriate permanent staff, if applicable.

*5. Liability insurance linked to the stability of structures*

The contractor shall take out insurance providing full coverage for its potential liability for the stability of the structures, even after final acceptance, as required by the law of the country where the works are carried out.

## Article 17 - Task implementation programme

17.1. Notwithstanding any work programme attached to the bid, the contractor shall provide the project owner with a detailed task implementation programme for each activity and each month, within 30 days of the signing of the contract. This program shall contain a minimum of the following information:

a) the order in which the contractor proposes to carry out the work, as well as the deadlines;

b) deadlines for submitting and approving plans;

c) an organizational chart of the site’s management staff indicating the names of the various agents, their qualifications and CVs;

d) a general description of methods, including the order in which the contractor proposes to carry out the work by month and by type;

e) a set-up and organisation plan for the site; and

f) any other details and information that the project owner may reasonably request.

17.2. These documents shall be returned to the contractor by the project owner, with the latter’s approval and any useful observations, within ten days of their receipt by the project owner, except in the event that the project owner notifies the contractor of its wish to hold a meeting to discuss the items submitted within this 10-day period.

17.3. In the absence of approval or a request for a meeting notified by the project owner to the contractor within 10 days, the programme shall be deemed approved.

17.4. The project owner’s approval of the task implementation programme does not release the contractor from any of its contractual obligations.

17.5. No significant changes should be made to the task implementation program without the approval of the project owner. However, if the works do not proceed in accordance with the task implementation programme, the project owner may instruct the contractor to submit a revised programme, in accordance with the procedure described in Article 17.

## Article 18 - Price breakdown

18.1. If one has not been submitted already in its bid, and if necessary for the purposes of the contract, the contractor shall provide a detailed breakdown of its prices and rates within a maximum period of 20 days from the request of the project owner, stating its reasons.

18.2. For information purposes only, the contractor shall provide the project owner with a detailed quarterly cash flow estimate, showing all payments to which the contractor is likely to be due under the contract, within 30 days of notification of the award of the contract. The contractor shall subsequently provide revised quarterly estimates if requested by the project owner. This communication does not in any way incur the liability of Expertise France or the project owner.

## Article 19 - Contractor's execution plans and studies

19.1. As its own expense, the contractor shall submit for the project owner’s approval all the detailed plans, execution plans and other documents and items necessary to successfully complete the performance of the contract, and in particular:

a) the plans, documents, samples and/or models specified in the contract according to the deadlines and procedures set in the contract or in the task implementation programme;

(b) such plans as the project owner may reasonably request for the implementation of the tasks;

c) the plans, documents and calculations necessary to prove the stability and strength of the structures, including the foundations design and detailed reinforcement drawings. These calculations and soil surveys are supported by appropriate site inspections and shall be submitted for the project owner’s approval, in three copies, at least 30 days before construction begins on the structures to which they relate.

19.2. The project owner shall return the plans, documents, samples, models, design notes, objects and any other documents to be provided pursuant to Article 19.1 to the contractor, either signed for approval or accompanied by observations, within the deadline set in the contract or in the approved task implementation programme, or, if no deadline has been set, within 15 days of receipt. If the project owner cannot give its approval or observations within the above-mentioned period due to the complexity or number of documents submitted for approval, it shall send a holding reply within 15 days of receipt indicating a different deadline for sending its approval or observations, taking into account the relative urgency and complexity of the issue.

If the project owner does not give notice of its approval, observations or a holding reply within the above-mentioned deadlines, the plans, documents, samples, models, design notes, objects and any other documents to be provided to the project owner under Article 19.1 shall be deemed approved at the expiry of said deadlines.

19.3. There shall be no derogation from the plans, documents, samples and models signed or otherwise marked by the project owner, unless instructed otherwise by the latter. Any of the contractor’s plans, documents, samples or models that the project owner declines to approve shall be immediately amended to meet the project owner’s requirements, and then resubmitted by the contractor for approval. The contractor must make any corrections, adjustments, etc. to the documents, plans, design notes, etc. arising from the project owner’s observations, to which these were submitted for approval, within 15 days of notification of these observations. The modified or fine-tuned documents, plans, design notes, etc. are again subject to the project owner’s approval, following the same procedure as previously.

19.4. The contractor shall provide additional copies of the approved plans, in the form and quantities indicated in the subsequent contract or work orders.

19.5. The project owner’s approval of the plans, documents, samples or models does not release the contractor from any of its contractual obligations.

19.6. The project owner has the right to inspect all plans, documents, samples or models relating to the contract at the contractor’s premises, at any time deemed reasonable.

19.7. Prior to provisional acceptance of the works, the contractor shall provide Expertise France with user and maintenance manuals, as well as plans drawn up in sufficient detail to allow Expertise France to operate, maintain, adjust and repair all aspects of the structures. Unless otherwise specified in the special terms and conditions, said manuals and plans shall be drawn up in the same language as the contract. The works are not considered as complete for the purpose of provisional acceptance until Expertise France has received the relevant manuals and plans.

## Article 20 - Sufficient level of the bid amount

20.1. Subject to the additional provisions in the special terms and conditions, the contractor is deemed to have inspected and examined the site and its surroundings and to have ensured the quality of the soil and subsoil prior to submitting its bid. Similarly, it is deemed to have taken into account the layout and nature of the site, the extent and nature of the works and the materials necessary for their execution, the means of communication and access to the site, the accommodation it may require, and, in general, to have obtained on its own behalf all necessary information regarding the risks, hazards and any other factors likely to influence or affect its bid.

20.2. The contractor is deemed to have ensured the accuracy and sufficient level of its bid prior to submission, as well as the rates and prices indicated in the estimated breakdown or in the price schedule, which, unless otherwise stipulated in the contract, cover all its contractual obligations.

20.3. The contractor is deemed to have set its prices based on its own calculations, operations and estimates. As such, it shall perform, at no additional cost, any work that falls within the remit of its bid and for which it has not indicated any unit price or fixed price.

## Article 21 - Unforeseen technical constraints

21.1. If, during the performance of the works, the contractor encounters artificial obstacles or physical conditions that could not reasonably be foreseen by an experienced contractor, and if it considers that this situation requires additional costs and/or an extension of the task implementation period, it shall notify the project owner of these unforeseen technical constraints in accordance with Article 35 and/or Article 55. In this notification, the contractor shall specify the artificial obstacles and/or physical conditions in question, indicating in detail the foreseeable effects, the measures it is taking or intends to take, as well as the extent of the foreseeable delay or disruption to the performance of the works.

21.2. Upon receipt of the notification, the project owner may, among others:

(a) ask the contractor to provide an estimate of the cost of the actions it is taking or intends to take;

(b) approve the measures referred to in Article 21.2(a), with or without modifications;

(c) provide written instructions on how such artificial obstacles or physical conditions should be handled;

d) with its expressly formulated prior validation, order a modification by work order to take into account the observed technical constraints, a suspension of the works, or the termination of the contract under the conditions provided for in Article 64. The work order issued based on these stipulations must include the express mention of the project owner’s validation, on pain of nullity.

21.3. Insofar as the project owner considers that the artificial obstacles or physical conditions in question could not be reasonably foreseen by an experienced contractor, in whole or in part, the project owner shall:

a) take into account any delay suffered by the contractor as a result of these obstacles or conditions when determining the extension of the task implementation period afforded to the contractor under Article 35; and/or

(b) in the case of artificial obstacles or physical conditions other than climatic conditions, decide on any additional payments due to the contractor under Article 55.

21.4. The contractor may not make any claim under Article 55 due to weather conditions.

21.5. If the project owner considers that artificial obstacles or physical conditions were reasonably foreseeable, in whole or in part, by an experienced contractor, the project owner shall notify the contractor as soon as possible, stating its reasons.

## Article 22 - Work site safety

22.1. The contractor has the right to prohibit access to the site by any person not involved in the performance of the contract, with the exception of persons authorised by the project owner or Expertise France.

22.2. The contractor shall ensure that the sites remain safe throughout the duration of the works. In the interest of its own employees, Expertise France representatives and third parties, the contractor is required to take the measures necessary to prevent any harm or accident that may result from the performance of the works.

22.3. The contractor shall make every effort to ensure the protection, preservation and maintenance of existing constructions and facilities, under its own responsibility and at its own expense. It is required to provide and maintain, at its own expense, all lighting, protection, fencing and security systems necessary for the proper implementation of the tasks or that the project owner may reasonably require.

22.4. If, during the implementation of the tasks, urgent measures are required to prevent any risk of accident or damage, or to make conditions safe following an accident or damage, the project owner shall give the contractor formal notice to do what is required. If the contractor is unwilling or unable to take the required measures, the project owner may have the work carried out at the contractor’s expense, provided that the contractor is responsible.

## Article 23 - Protecting neighbouring properties

23.1. The contractor shall, under its own responsibility and at its own expense, take all precautions required by best practices relating to construction, and which are tailored to local conditions, to protect neighbouring properties and avoid any abnormal disturbances.

23.2. The contractor shall hold Expertise France harmless from the financial consequences of all claims by local residents, provided that it is responsible and that the damage caused to neighbouring properties does not result from a risk created by a project design or construction method imposed on the contractor by Expertise France or by the project owner.

## Article 24 - Obstruction to traffic

24.1. The contractor shall ensure that the works and structures do not impede or obstruct traffic on routes or means of communication, such as roads, railways, waterways or airports, except to the extent permitted by the special terms and conditions. In particular, it shall take into account load limitations when selecting routes and vehicles.

24.2. Specific measures that the contractor considers necessary or that are specified in the special terms and conditions or required by Expertise France for the protection or reinforcement of sections of roads, railways or bridges are the responsibility of the contractor, whether or not it carries out these measures. The contractor must inform the project owner of the measures it intends to take before carrying them out. The contractor shall be responsible for repairing any damage caused to roads, railways or bridges when transporting materials, equipment or installations.

## Article 25 - Cables and pipes

25.1. If the contractor comes across markers indicating the path of cables, pipes or underground facilities during the performance of the works, it shall keep these markers in their original position or reinstall them if the performance of the works required their temporary removal. These ancillary operations require the project owner’s authorisation.

25.2. The contractor is responsible for preserving, moving and reinstalling, as the case may be, the cables, pipes and facilities specified by Expertise France in the contract, and shall bear the related costs.

25.3. Where the presence of cables, pipes or facilities has not been mentioned in the contract but is shown by markers or indicators, the contractor has a general duty of care and obligations similar to those set out above with regard to preservation, relocation and reinstallation. In this case, Expertise France shall compensate it for the costs relating to this work, insofar as the work is necessary for the performance of the contract.

25.4. However, the obligation to move and replace the cables, pipes and facilities, as well as the resulting costs, is not incumbent on the contractor if Expertise France decides to assume responsibility for these. The same applies if this obligation and the related costs are the responsibility of another specialised authority or a representative.

25.5. The contractor shall immediately inform the project owner in writing if the performance of on-site work risks causing disruption or harm to a public service. It shall provide reasonable notice to ensure that appropriate measures can be taken in a timeframe that allows the normal progress of the works.

## Article 26 - Installation of structures

26.1. The contractor is responsible for:

a) the exact location of the structures in relation to the markers, lines and reference levels provided by the project owner;

b) the accuracy of the positioning, levelling, sizing and alignment of all parts of the structures; and

c) the supply of all necessary instruments and accessories, as well as labour needed for the tasks listed above.

26.2. If, at any time during the performance of the works, an error appears in the positioning, levelling, sizing or alignment of any part of the structures, the contractor must remedy this error at its own expense and to the satisfaction of the project owner, if the latter so requests. However, if this error is based on incorrect data provided by the project owner that an experienced contractor displaying normal diligence could not have detected, Expertise France shall bear the cost of remedial work.

26.3. The verification of any tracing, alignment or levelling by the project owner in no way releases the contractor from its responsibility to ensure the accuracy of these operations. The contractor must protect and carefully preserve all markers, boning rods, posts and other marks used during the installation of the structures.

## Article 27- Demolition materials

27.1. Where the contract includes demolitions, the resultant materials and elements are the property of the contractor, unless otherwise stipulated in the special terms and conditions and/or the laws of the country where the works are carried out, and subject to the provisions of Article 28.

27.2. If the special terms and conditions grant Expertise France the right of ownership over the materials or all or part of the elements resulting from demolitions, the contractor shall take all necessary precautions to ensure their preservation. The contractor shall be liable for any destruction or damage of these materials or elements caused by it or its agents.

27.3. Regardless of how Expertise France proposes to use the materials or elements to which it reserves the right of ownership, all transport and storage costs, as well as storage costs at the place indicated by the project owner, shall be borne by the contractor for distances not exceeding 1,000 metres.

27.4. Unless otherwise stipulated in the special terms and conditions, and at its own expense, the contractor shall gradually remove the rubble and other demolition materials, debris and waste from the site.

## Article 28 - Discoveries

28.1. The project owner shall be made aware immediately of any discovery of any interest made during the excavations or demolition work. The project owner shall determine the arrangements to be made regarding these discoveries, taking due account of the laws of the country in which the work is carried out.

28.2. Expertise France reserves the right of ownership over materials found during excavations and demolition work carried out on land that it owns, subject to the contractor being compensated for the specific efforts it has made.

28.3. Works of art and antiques, natural or numismatic objects, and any other objects of scientific interest, as well as rare or precious metal objects found during excavations or demolition work are the property of Expertise France.

28.4. In case of disagreement, Expertise France is responsible for determining the classifications stated in Article 28.1 and Article 28.3.

## Article 29 - Temporary structures

29.1. The contractor shall install all temporary structures to enable the performance of the works, at its own expense. Plans for structures of this type that it intends to use (e.g. cofferdams, scaffolding, wire-mesh fencing and formwork) shall be submitted to the project owner. The contractor shall take the project owner’s observations into account, while assuming responsibility for these plans.

29.2. When the special terms and conditions stipulate that it is Expertise France’s responsibility to design specific temporary structures, the project owner shall provide the contractor with all necessary plans, and in sufficient time for it to build these structures in accordance with its programme. In this case, Expertise France is solely responsible for the safety and appropriate nature of the design. However, the contractor is responsible for their proper execution.

## Article 30 - Soil studies

30.1. Subject to the clauses of the special terms and conditions and the technical specifications, the contractor shall provide the project owner with the staff and facilities needed to perform any soil studies that the project owner may reasonably deem necessary. Unless already provided for in the contract, the contractor shall be compensated for the actual cost of the labour and facilities used or made available for this work, plus a reasonable profit margin.

## Article 31 - Interlocking contracts

31.1. In accordance with the requirements of the project owner, the contractor must provide all facilities to other contractors employed by Expertise France and their workers, within reasonable limits, as well as to workers of Expertise France and any other public service that may be employed on or near to the site for the performance of works not included in the contract, or any contract concluded by Expertise France that is related or ancillary to the construction of the structures.

31.2. If, however, at the written request of the project owner, the contractor makes roads or routes that it is required to maintain available to another contractor, a public service or Expertise France, or if it allows these persons to use its temporary structures, scaffolding or other facilities located on the site, or if it provides any other service, of any kind whatsoever, that was not provided for in the contract, Expertise France shall grant the contractor remuneration and/or a deadline extension for this use or service, as deemed reasonable by the project owner.

31.3. Article 31 does not release the contractor from any of its contractual obligations, nor does it entitle it to any compensation other than that provided for in Article 31.2.

31.4. Difficulties arising in relation to one of the contracts may not authorise the contractor to modify or delay the performance of the other contracts under any circumstances. Conversely, Expertise France may not suspend payments due under another contract as a result of these difficulties.

## Article 32 - Patents and licences

32.1. Subject to any contrary provisions in the special terms and conditions, the contractor shall hold Expertise France and the project owner harmless for any damages and procedural costs in the event of legal action brought by a third party, including creators and intermediaries, due to the alleged or actual infringement of any right whatsoever relating to intellectual and industrial property, or to any other property resulting from the use of patents, licences, plans, drawings, models, trademarks or registered trademarks, as stipulated by the contract, except when this infringement results from the strict application of the project or specifications provided by Expertise France and/or the project owner.

32.2. All industrial and intellectual property rights and other property rights (in particular, but not exclusively, patent rights and copyright) arising from the performance of the tasks by the contractor or on its behalf, and in particular, but not exclusively, the rights provided for in all documents prepared for the requirements of the contract or the tasks, shall remain vested in the contractor. For the purposes of the contract, however, Expertise France has a non-exclusive, irrevocable and free licence for the aforementioned rights.

This licence confers the right to grant sub-licences, and Expertise France may transfer it to third parties without the contractor’s consent.

All industrial and intellectual property rights and other property rights (in particular, but not exclusively, patent rights and copyright) arising from the performance of the tasks by the contractor or on its behalf, and in particular, but not exclusively, the rights provided for in all documents prepared for the requirements of the contract or the tasks, shall remain vested in Expertise France. The contractor may, however, copy, use and have these documents communicated to it for the purposes of the contract and at its own expense.

Notwithstanding any termination of the contract, for any reason whatsoever, as well as after completion of the tasks, Expertise France will continue to benefit from the license mentioned in Article 32.2 (i).

**IMPLEMENTATION PERIOD AND DELAYS**

## Article 33 - Orders to begin

33.1. The project owner shall notify the contractor by work order of the start date for the implementation of the contract tasks.

33.2. Unless otherwise agreed between the parties, the task implementation period cannot start until:

a) all or part of the site has been made available to the contractor according to the progress of the work provided for in the task implementation programme approved by the project owner, in accordance with Article 9;

b) the contractor has provided the contractor with the documents referred to in Article 8.1.

33.3. Unless otherwise agreed between the parties, the implementation of the tasks shall begin no later than 180 days after notification of the award of the contract.

## Article 34 - Task implementation period

34.1. The task implementation period is set in the special terms and conditions, without prejudice to any extensions that may be granted under Article 35.

34.2. If separate implementation periods are provided for the different batches, and in cases where several batches are allocated to the contractor, the implementation periods for the tasks relating to each batch shall not be aggregated.

## Article 35 - Extension to the task implementation period

35.1. The contractor may request an extension to the task implementation period in the event of an actual or foreseeable delay in the performance of the contract due to any of the following causes:

a) exceptionally adverse weather conditions likely to affect the performance of the contract;

b) artificial obstacles or physical conditions that cannot reasonably be foreseen by an experienced contractor;

c) work orders affecting the completion date, except where they result from a breach by the contractor;

d) failure by Expertise France to fulfil its contractual obligations;

e) any suspension of services that is not attributable to a breach by the contractor;

f) a case of force majeure;

g) any other cause referred to in these general terms and conditions that is not attributable to a breach by the contractor.

35.2. In the event that the contractor considers that it is entitled to extend the task implementation period, it must:

a) notify the project owner of its intention to request an extension of the task implementation period no later than 15 days after it became aware, or should have become aware of the event or circumstances giving rise to its request. If the contractor fails to notify the project owner of its intention to request an extension of the task implementation period within this 15-day deadline, the task implementation period cannot be extended and Expertise France is released from any liability in this respect; and

(b) submit full and detailed information regarding the request for the project owner’s consideration, within 30 days of this notification, unless otherwise agreed between the contractor and the project owner.

35.3. Within 30 days of receiving the full and detailed information regarding the contractor’s request, and after appropriate consultation with Expertise France, the project owner shall notify the contractor either of its decision to grant an extension to the task implementation period that it deems justified, for the future or applying retroactively, or of its decision to reject the extension request.

## Article 36 - Task implementation delays

36.1. If the contractor does not complete the works within the deadline(s) stipulated in the contract, Expertise France is entitled, without formal notice and without prejudice to other remedies provided by the contract, to fixed compensation for each day or part-day elapsing between the end of the task implementation period, as possibly extended under Article 35, and the actual date of completion of the works, at the rate and up to the ceiling set in the special terms and conditions.

If the structures have been partially accepted in accordance with Article 59, the fixed compensation set in the special terms and conditions may be reduced in proportion to the value of the part of the structures that has been partially accepted, compared to the overall value of all the structures.

36.2. If Expertise France is entitled to obtain the maximum amount under Article 36.1, it may, after giving notice to the contractor:

a) call on the performance bond; and/or

b) terminate the contract under the conditions provided for in Article 64; and/or

c) enter into a contract with a third party at the contractor’s expense for the completion of the remaining work.

## Article 37 - Modifications

37.1. Any modification to the contract must be the subject of an amendment signed by both parties, or a work order issued by the project owner or the project manager under the conditions provided for in Article 21.2 (d).

37.2. The project owner has the authority to order any modification to any part of the structures necessary for the proper completion and/or proper operation of the works. Such changes by work order may include additions, cancellations, substitutions, changes in quality, quantity, form, nature, type, location, dimensions, level or alignment, as well as changes in the sequencing, mode or schedule, as stipulated, of the performance of the works. Without prejudice to the provisions of Article 21.2 (d), it is understood that no work order may have the purpose or effect of terminating the contract or making its performance impossible; however, the potential financial impact of all these changes shall be assessed in accordance with Article 37.5 and Article 37.7.

37.3. Any work order shall be issued in writing, it being understood that:

a) if for any reason the contractor considers it necessary to give oral instructions, it shall confirm these as soon as possible via a work order;

b) if the contractor gives written confirmation of an oral instruction issued for the purposes of Article 37.3(a), and the confirmation is not immediately refuted in writing by the project owner, the project owner shall be deemed to have issued a work order;

c) a work order is not required to increase or decrease the quantity of any part of the works, and that this increase or decrease is the result of an under- or over-valuation of the estimated quantities listed in the estimated breakdown or in the price schedule, following the works valuation mentioned in Article 49.

37.4. Without prejudice to the provisions of Article 37.3, the project owner shall notify the contractor of the nature and form of the modification before issuing a work order. The contractor shall then submit a written proposal to the project owner, as soon as possible, including:

a) a description of the tasks to be carried out or measures to be taken and an implementation programme;

b) the necessary modifications to the tasks implementation programme or to any of the contractor’s obligations under the contract; and

c) the adjustment of the contract amount in accordance with the rules set out in Article 37.

37.5. After receipt of the contractor’s proposal referred to in Article 37.4, the project owner shall decide whether or not to accept the modification, as soon as possible, following appropriate consultation with Expertise France and, if applicable, the contractor. If the project owner accepts the modification, it shall inform the contractor by work order that it should carry out the modification at the prices and under the conditions specified in the contractor's proposal referred to in Article 37.4 or as revised by the project owner in accordance with Article 37.6.

37.6. The project owner shall determine the prices applicable to the modifications it has ordered, in accordance with Article 37.3 and Article 37.5 and with regard to the following principles:

a) when the works are of the same nature as those quantified in the estimated breakdown or in the price schedule, and are carried out under similar conditions, they shall be valued at the rates and prices indicated therein;

b) when the works are not of the same nature or not carried out under similar conditions, these shall be valued based on market rates and prices, to the extent justified, failing which the contractor shall make a fair valuation;

c) if, in the project owner’s opinion, the nature or amount of a modification in relation to the nature and amount of the entire contract or part thereof is such that the contractual rate or price for a type of structure no longer seems consistent due to this modification, the project owner shall set the rate or price that it considers reasonable and appropriate in the circumstances;

d) where a modification is required due to a breach by the contractor or by a breach of contract attributable to it, any additional costs incurred thereunder shall be borne by the contractor.

37.7. Upon receipt of the work order, the contractor shall execute the requested modification in accordance with the following principles:

a) The contractor is obliged to comply with these general terms and conditions in the same way as if the modification required by the work order had been stipulated in the contract.

b) The contractor shall not delay the execution of the work order pending a possible extension of the execution deadline or an adjustment to the contract amount.

c) If the work order comes prior to the adjustment of the contract amount, the contractor shall draw up a statement of costs for the modification and the time spent on its execution. This statement may be reviewed by the project owner at any time deemed reasonable.

37.8. If, following provisional acceptance, an increase or reduction in the total value of the works resulting from a work order or any other circumstance not attributable to a breach by the contractor exceeds 15% of the initial amount of the contract (or as modified by amendment), the project owner shall determine all additions or reductions to the contract amount pursuant to Article 37.6, after consulting Expertise France and the contractor. This sum shall be determined based on the portion of the increase or decrease in the value of the works exceeding 15%. The project owner shall notify Expertise France and the contractor of this sum, and adjust the contract amount accordingly.

37.9. The contractor shall inform Expertise France of any change of bank account using the form in Appendix V. Expertise France has the right to object to the contractor’s change of bank account.

## Article 38 - Suspension

38.1. Suspension by order of the project owner:

The contractor shall suspend the works at the request of the project owner, in whole or in part, for the term and in the manner that the project owner deems necessary. This suspension shall take effect on the day the contractor receives the order, or at a later date as stipulated in the order. The project owner shall order the contractor to resume the suspended contract as soon as possible.

38.2. Suspension upon notice from the contractor:

The contractor may suspend the works, or reduce the rate of the works, after giving at least 30 days’ notice to Expertise France, following any failure to pay the sums due in respect of any account drawn up by the project owner more than 30 days from the expiry of the period referred to in Article 44.3(b), unless and until the contractor has received reasonable proof of payment or actual payment.

The contractor’s action shall not affect its rights to late payment interest under Article 53.1 and its rights to termination under Article 65.1.

If the contractor subsequently receives such proof or payment before giving notice of termination, it must resume normal work as soon as reasonably possible. Unless the parties agree otherwise, this resumption shall be no later than 30 days after receipt of the proof of payment or actual payment.

38.3. Suspension in case of substantive errors, irregularities or alleged fraud:

The contract may be suspended in order to confirm whether substantive errors, irregularities or alleged fraud have occurred during the contract award procedure or the performance of the contract. In the absence of such confirmation, the performance of the contract shall be resumed as soon as possible.

38.4. During the suspension period, the contractor shall take all necessary protective measures to ensure that the structures, equipment, facilities and site are protected against any deterioration, loss or damage. The additional costs incurred by these protective measures may be added to the contract amount, unless:

a) the contract provides otherwise; or

b) suspension is necessary due to breach for non-performance by the contractor; or

c) suspension is necessary due to the normal weather conditions of the site; or

d) suspension is necessary to ensure the safety or proper performance of all or part of the works, insofar as this does not result from an act, fault or breach by the project owner or Expertise France, or from one of the unforeseen technical constraints referred to in Article 21; or

e) the substantive errors, irregularities or alleged fraud referred to in Article 38.3 are confirmed and attributable to the contractor.

38.5. The contractor may request additional payment or an extension of the performance deadline in accordance with Article 35 and Article 55.

38.6. If the suspension period exceeds 180 days, and the suspension is not attributable to a breach or fault of the contractor, the contractor may request authorisation from the project owner to continue the contract within 30 days or terminate the contract under the conditions provided for in Article 65.

38.7. As soon as possible, Expertise France shall either order the contractor to resume the suspended contract, or give notice that it is terminating the contract under the conditions provided for in Article 64.

**MATERIALS AND WORKMANSHIP**

## Article 39 - Work log

39.1. Unless otherwise specified in the special terms and conditions, a work log shall be kept on the site by the project owner. This shall record a minimum of the following information:

a) atmospheric conditions, work interruptions due to bad weather, working hours, the number and category of workers employed on the site, materials supplied, equipment used, equipment not in service, on-site tests performed, samples dispatched, unforeseen events, and orders issued to the contractor;

b) detailed task sheets for all quantitative and qualitative elements of the work performed and supplies delivered and used, which can be checked on-site and used to calculate payments to the contractor.

39.2. These task sheets are an integral part of the work log but may be the subject of separate documents, where necessary. The technical rules for preparing task sheets are set out in the special terms and conditions.

39.3. The contractor shall ensure that task sheets are prepared in good time and in accordance with the special terms and conditions for works, services and supplies that cannot be measured or subsequently checked. Failing this, the contractor must accept the decisions of the project owner unless it produces proof to the contrary, at its own expense.

39.4. Entries to the work log as work progresses shall be signed by the project owner and countersigned by the contractor or its representative. In the event of a dispute, the contractor shall inform the project owner of its position within 15 days of the date on which the disputed log entry or task sheets were recorded. If the contractor refrains from countersigning or making its position known within the allotted time, it is deemed to have accepted the log entries. It may examine the log at any time and may make or obtain copies of the information it considers necessary, without removing the document.

39.5. The contractor shall provide the project owner, upon request, with the information necessary to properly maintain the work log.

## Article 40 - Origin and quality of structures and materials

40.1. Unless otherwise specified in the special terms and conditions, all goods purchased under the contract must originate from one of the eligible countries listed in the invitation to tender. The contractor must certify that the purchased goods meet this requirement and specify their country of origin. It may be asked to provide more detailed information in regard to this.

40.2. Structures, components and materials must comply with the technical specifications, plans, measurements, models, samples, grades and other requirements stipulated in the contract, which must be made available to Expertise France or the project owner for reference purposes throughout the performance of the contract.

40.3. The contractor shall send a request to the project owner for any preliminary technical acceptance stipulated in the special terms and conditions. This request shall reference the contract and indicate the batch number and location for said acceptance, as appropriate. The components and materials specified in the request may only be used in the structures with prior certification from the project owner that they meet these acceptance conditions.

40.4. Even if the materials or elements to be used in the structures or in the manufacture of the components have been technically accepted in this way, they may still be rejected if a new examination reveals faults or defects, in which case they must be replaced by the contractor immediately. The contractor shall be given the option to repair and improve the rejected materials and elements. However, these materials and elements may only be accepted for use in the structures if they have been repaired and improved in a manner deemed satisfactory by the project owner.

## Article 41 - Supervision and control

41.1. The contractor shall ensure that the components and materials are transported to the site in good time for acceptance by the project owner. The contractor is deemed to have fully considered any difficulties it may encounter in this regard, and may not invoke any reason for delaying the performance of its obligations.

41.2. The project owner has the right to inspect, examine, measure and test the components, materials and workmanship to check that they have the requisite quality and, if applicable, quantities. Similarly, it may check the preparation, manufacturing or construction of anything being prepared, manufactured or constructed for delivery under the contract, either by itself or through an agent. These checks shall take place at the place of construction, manufacturing or preparation, or at any other place indicated in the contract.

41.3. For the purpose of these tests and inspections, the contractor shall:

a) provide the project owner, free of charge and on a temporary basis, with the assistance, samples, parts, machines, equipment, tools or materials, as well as the labour, drawings and manufacturing data that are normally required for inspections and tests;

(b) agree the time and place of the testing with the project owner;

c) give the project owner access to the tests locations at all reasonable times.

41.4. If the project owner is not present on the agreed date for the tests, and unless otherwise instructed by the project owner, the contractor may proceed with the tests, which shall be deemed to have been carried out in the presence of the project owner. The contractor shall immediately send duly certified copies of the test results to the project owner, which shall be bound by the readings taken if it was not in attendance.

41.5. When the components and materials have successfully undergone the above-mentioned tests, the project owner shall notify the contractor of the results or endorse the certificate issued by the contractor for this purpose.

41.6. In the event of disagreement between the project owner and the contractor about the results of the tests, each party shall communicate its point of view to the other within 15 days of said disagreement. Either party may request that the tests be repeated under the same conditions, or, if one of the parties so requests, by a mutually approved expert. All test reports shall be submitted to the project owner, who shall communicate the results to the contractor immediately. The results of the counter-checks are decisive. The costs of the counter-checks shall be borne by the party proven wrong by said counter-checks.

41.7. In the performance of their duties, the project owner and any person appointed by it shall not disclose information about the construction methods and company processes obtained via these inspections and tests to persons not authorised to know it.

## Article 42 - Discarded components and materials

42.1. Components and materials that do not have the specified quality shall be discarded. A specific mark can be applied to discarded components and materials. It must not alter them or affect their commercial value. Discarded components and materials shall be removed from the site by the contractor within a period set by the project owner, which, failing this, shall remove them immediately at the contractor’s expense and risk. Any structure incorporating discarded components or materials shall be rejected.

42.2. During the construction of the structures and before their acceptance, the project owner has the power to order or decide on:

a) the removal of all components or materials from the site, within the deadlines set in a work order, that in its opinion do not comply with the contract;

b) their replacement by suitable and compliant components or materials; or

c) the proper demolition and reconstruction or satisfactory repair by the contractor, notwithstanding any preliminary tests or advance payments, of any structure that the project owner deems non-compliant with the contract in respect of the components, materials, workmanship or design for which the contractor is responsible.

42.3. The project owner shall notify the contractor of its decision, as soon as reasonably possible, by providing a description of the alleged defects.

42.4. The contractor shall promptly remedy the identified defects, at its own expense. Failing this, Expertise France is entitled to employ other persons to perform the same direct or ancillary works. Any related costs may be deducted by Expertise France from the sums due or to be due to the contractor.

42.5. The provisions of this Article 42 do not infringe the rights of Expertise France provided for in Article 36 and Article 63.

## Article 43 - Ownership of equipment and materials

43.1. When brought onto the site, all facilities, temporary structures, equipment and materials supplied by the contractor are deemed to be exclusively for the performance of the works. The contractor may not remove them, in whole or in part, except to reposition them inside the site, without the consent of the project owner. However, this consent is not necessary for vehicles used to transport managers, workers, facilities, temporary structures, equipment and materials to or from the site.

43.2. Throughout the performance of the contract, the special terms and conditions may stipulate that all installations, temporary structures, equipment and materials on the site belonging to the contractor or to a company in which it has a majority stake are:

a) assigned to Expertise France; or

b) pledged to Expertise France as collateral; or

c) subject to any other lien or pledge arrangement.

43.3. In the event of termination of the contract for non-performance by the contractor, in accordance with Article 63 and under the conditions provided for in Article 64, Expertise France has the right to use the facilities, temporary structures, equipment and materials on the site to complete the works.

43.4. Any lease by the contractor of the facilities, temporary works, equipment and materials brought onto the site shall stipulate that, upon written request by Expertise France made within seven days of the effective date of the termination under Article 64, and upon Expertise France undertaking to pay all the lease costs from that date, the owner shall lease these facilities, temporary works, equipment and materials to Expertise France under the same conditions as it has leased them to the contractor, without prejudice to Expertise France’s right to allow their use by any other contractor working for it to complete the works in accordance with the stipulations of Article 64.3.

43.5. In the event of termination of the contract before completion of the works, the contractor shall immediately provide Expertise France with the facilities, temporary structures, equipment and materials whose ownership has been assigned or pledged as collateral to Expertise France, pursuant to Article 43.2. Failing this, Expertise France may take measures it deems appropriate to take possession of said facilities, temporary structures, equipment and materials, and recover the related costs from the contractor.

**PAYMENTS**

## Article 44 - General principles

44.1. Payments shall be made in euros or in another national currency, as set out in the special terms and conditions. The special terms and conditions set the administrative or technical terms and conditions governing pre-financing payments, advance payments and/or final payments made in accordance with these general terms and conditions.

44.2. Payments due by Expertise France are made to the bank account detailed in the financial identification sheet completed by the contractor. Any changes of bank account must be reported using the same form, attached to the payment request.

44.3. Payments to the contractor are made as follows:

a) Pre-financing payments are made within 90 days of receipt by Expertise France of the documents referred to in Article 46.3. “Payment date” means the date on which the account making the payment is debited.

b) Payment to the contractor of the amounts due in respect of each statement of account and the final account prepared by the project owner shall be made by Expertise France within 90 days from the date on which it is presented with this statement of account or final account, accompanied by the contractor’s invoice. “Payment date” means the date on which the account making the payment is debited.

44.4. The period referred to in Article 44.3 may be suspended by notification to the contractor that the invoice cannot be honoured, either because the amount is not due or because the correct supporting documents have not been produced, or due to information casting doubt on the eligibility of expenses. In the latter case, additional checks may be carried out in the form of an on-site inspection. The contractor shall provide all clarifications, modifications or additional information within 30 days of the request. The project owner shall decide on and issue a revised statement of account or a revised final account, if necessary, within 30 days of receipt of these clarifications, with the payment period running from this date.

44.5. The contractor undertakes to reimburse Expertise France the amounts paid to it over and above the final amount due, before the deadline mentioned in the debit note, which is 45 days from the issue of this debit note.

In the event of non-reimbursement by the contractor within this deadline, Expertise France may, unless the contractor is an authority or public body of a Member State of the European Union, apply late payment interest to the amounts due at the following rates:

 the rediscount rate applied by the issuing institute of the State of Expertise France, if payments are made in national currency;

 the rate applied by the European Central Bank to its main refinancing operations in euros, as published in the Official Journal of the European Union, series C, if payments are made in euros;

the rate in force on the first day of the month during which this deadline expired, plus three and a half percentage points. Late payment interest relates to the period between the expiry date of the payment deadline and the effective date of payment. Any partial payment is first charged against the late payment interest set in accordance with the above conditions.

Expertise France may refund the sums due to it by offsetting this amount against sums due to the contractor in any capacity whatsoever, without prejudice to any schedules agreed between the parties. Bank charges incurred by the refund of sums due to Expertise France shall be borne exclusively by the contractor.

44.6. Expertise France may suspend payments as a precautionary measure, without prior notice, either instead of or prior to the completion of the contract, as provided for in Article 64.

44.7. When it is proven that the award or performance of the contract are subject to substantive errors, irregularities or fraud attributable to the contractor, Expertise France may refuse to make payments and/or recover the amounts already paid in proportion to the significance of the errors, irregularities or fraud, in addition to the option to suspend the performance of the contract as provided for in Article 38.3, and to terminate the contract as provided for in Article 64.

## Article 45 - Provisional price contracts

45.1. Exceptionally, the contract is awarded is at provisional prices. In this case, the amount due under the contract is calculated:

a) as for cost plus contracts referred to in Article 49.1(c); or

b) on the basis of provisional prices initially, and then, as soon as the conditions for the performance of the contract are known, as for fixed price contracts or unit price contracts referred to in Article 49.1(a) and (b), respectively, or as for mixed contracts.

45.2. The contractor shall provide any information on any subject relating to the contract that Expertise France or the project owner may reasonably request for valuation purposes. In the absence of agreement on the valuation of the works, the amounts due are set by the project owner.

## Article 46 - Pre-financing

46.1. If the special terms and conditions so provide, pre-financing may be granted to the contractor, at its request, and before payment of the first advance payment, for operations related to the implementation of the tasks. This can apply in the following cases:

a) as a lump sum advance, to enable the contractor to meet the contract start-up costs;

b) if the contractor can prove that it has entered into a purchase agreement or an order for materials, equipment, facilities, machines and tools, as well as other significant preliminary expenses, such as patent purchases or studies necessary for the performance of the contract. To obtain pre-financing, proof of such purchases or orders must be provided by the contractor.

46.2. The special terms and conditions set the total pre-financing amount, which may not exceed 10% of the initial amount of the contract for the lump sum advance referred to in Article 46.1(a), and 20% of this amount for all other pre-financing referred to in Article 46.1(b).

46.3. No pre-financing shall be provided prior to:

a) the signing of the contract;

b) the provision of the performance bond in accordance with Article 15;

c) unless otherwise stipulated in the special terms and conditions, the provision of a financial guarantee for the entire pre-financing amount, which is only released once the pre-financing has been fully reimbursed by the contractor for the advance payments due to it under the contract;

d) the contractor performing its obligations under Article 16;

e) the project owner’s approval of the task implementation programme.

46.4. The contractor shall use pre-financing payments exclusively for operations related to implementing the tasks. If the contractor uses all or part of the pre-financing for other purposes, the pre-financing becomes immediately due and refundable, and no further pre-financing will be paid.

46.5. If the pre-financing guarantee is longer valid, and the contractor fails to remedy this, Expertise France may deduct the amount of the pre-financing from future payments due to the contractor under the contract, or apply the provisions of Article 15.6.

46.6. If the contract is terminated, for any reason, pre-financing guarantees may be collected to repay the balance of the pre-financing still owed by the contractor. The guarantor may not defer or object to payment for any reason whatsoever.

46.7. The pre-financing guarantees provided for in Article 46 are released as and when the pre-financing is repaid.

46.8. The other terms and conditions governing the granting and repayment of pre-financing are set out in the special terms and conditions.

## Article 47 - Holdbacks

47.1. The special terms and conditions stipulate the amount of the advance payments that must be held as security for the performance of the contractor’s obligations during the guarantee period, as well as the rules governing this guarantee, it being understood that the money held in guarantee may not under any circumstances exceed 10% of the amount of the contract.

47.2. The contractor may, if it so wishes, and subject to approval by Expertise France, replace this money held in guarantee with a holdback in accordance with Article 15.3, at the latest on the date set for the commencement of the works.

47.3. Holdback(s) or monies held in guarantee shall be released within 60 days of the date of delivery of the signed final account referred to in Article 51, for their total amount except for amounts subject to amicable settlement, arbitration or legal proceedings.

## Article 48 - Price adjustments

48.1. Unless otherwise stipulated in the special terms and conditions, and subject to the provisions of Article 48.4, this contract is fixed price and non-adjustable.

48.2. If the contract is for adjustable prices, the adjustment shall take into account the changes to the prices of significant elements of local or external origin used in setting the bid prices, such as labour, services, materials and supplies, as well as legal or regulatory expenses. The adjustment procedure is set out in the special terms and conditions.

48.3. The prices in the contractor’s bid are deemed:

(a) to have been calculated based on conditions in effect 30 days prior to the tender closing date or, in the case of negotiated contracts, on the date of the contract;

b) to take into account the legislation and tax provisions in force on the reference date referred to in Article 48.3(a).

48.4. In the event of an amendment or introduction of a law, an order, a decree, or any other legislative or regulatory provision of a national or regional body, or a regulation or an order from a local authority or another public authority, which comes after the date mentioned in Article 48.3 and which results in a change in the contractual relations between the parties to the contract, Expertise France and the contractor shall discuss the most appropriate measures in view of the contract. Following these discussions, the parties may decide to:

(a) amend the contract; or

b) provide for payment to compensate the imbalance caused by one party to the other; or

c) terminate the contract by mutual agreement, in accordance with the conditions provided for by the contract and the general rules applicable to government contracts.

48.5. In the event of a delay in the implementation of tasks attributable to the contractor, the price adjustment indices to be taken into account are either those applied to the last interim statement of account relating to tasks carried out during the implementation period, or those adjusted until the provisional acceptance of the works, with the chosen index being the one that is most favourable to Expertise France.

## Article 49 - Valuation of works

49.1. The following methods apply for the valuation of works contracts:

a) for fixed price contracts, the amounts due under the contract are set based on the breakdown of the overall fixed price or a breakdown corresponding to the completed lots, expressed as a percentage of the total contract amount. Where items contain quantities, these are firm quantities for which the contractor has submitted fixed prices and are paid regardless of the volume of work actually performed;

b) in the case of a unit price contract

i. the amount due under the contract is calculated by applying unit prices to the quantities actually performed for the corresponding items, in accordance with the contract;

ii. the quantities set in the estimated breakdown are estimated quantities, which cannot be taken to represent the actual and exact volume of work the contractor is obliged to perform;

iii. the project owner shall use measurements to determine the actual volume of work carried out by the contractor, which shall be paid in accordance with Article 50. Unless otherwise stipulated in the special terms and conditions, there shall be no addition to the items included in the price estimate, except following an amendment in accordance with Article 37 or another contractual clause granting the contractor the right to an additional payment;

iv. if the project owner intends to measure part of the works, it must notify the contractor within a reasonable timeframe by inviting it to attend or be represented by a qualified professional. The contractor or its representative shall assist the project owner with these measurements and provide it with all the details it requests. If the contractor or its representative is not present, the measurements taken or approved by the project owner shall be binding on the contractor;

v. work is valued as a net amount, notwithstanding general or local practices, unless otherwise specified in the contract;

c) for cost plus contracts, the amount due under the contract is determined based on actual costs, plus the agreed on general operating expenses and profits. The special terms and conditions shall state the information to be provided by the contractor to the project owner for the purposes of Article 49.1(c), and the means of this provision.

49.2. When a contract item is marked “provisional”, the provisional sum allocated is not taken into account when calculating the percentages referred to in Article 37.

## Article 50 – Advance/interim payments

50.1. The Contractor shall submit an advance invoice to the project owner at the end of each period referred to in Article 50.7 in the form approved by the project owner. This invoice shall include the following, as the case may be:

a) the estimate of the contractual value of the permanent structures implemented until the end of the period in question;

(b) the amount resulting from the price adjustment in accordance with Article 48;

(c) the amount retained as security pursuant to Article 47;

d) any credit and/or debit relating to the period in question and concerning the equipment and materials on the site intended for use in permanent structures, for the amounts and under the conditions provided for in Article 50.2;

(e) the amount to be deducted for the repayment of pre-financing in accordance with Article 46; and

f) any other sum that the contractor is entitled to receive under the contract.

50.2. The contractor is entitled to receive the sums that the project owner deems appropriate for the equipment and materials intended for use in the permanent structures, provided that:

a) the equipment and materials comply with the specifications relating to permanent structures, and are grouped into batches so that the project owner can identify them;

b) the equipment and materials have been delivered to the site and are properly stored and protected against any loss, damage or deterioration under conditions deemed satisfactory by the project owner;

c) the contractor’s summary statement relating to needs, orders, receipts, and use of equipment and materials under the contract is kept in the form approved by the project owner and made available to the latter for inspection;

d) the contractor submits, along with its task sheet, an estimate of the value of the equipment and materials on the site, accompanied by any documents that the project owner may require to assess the equipment and materials and which certify the ownership and payment thereof;

e) the ownership of the equipment and materials referred to in Article 43 shall be deemed to be vested to Expertise France, if the special terms and conditions so provide.

50.3. The project owner's approval of any advance invoice for equipment and materials pursuant to Article 50 does not prejudice the project owner's contractual right to reject equipment or materials that do not comply with the clauses of the contract.

50.4. The contractor shall be responsible for any loss or damage to the equipment and materials on the site, and shall bear the storage and handling costs thereof. If necessary, it shall take out additional insurance to cover the risks of loss or damage, whatever the cause.

50.5. Within 30 days of receipt of the advance invoice, the project owner shall:

a) check that, in its opinion, the advance invoice reflects the amount due to the contractor under the contract. In the event of a discrepancy in the value of an item, the project owner’s stance shall prevail;

b) after determining the amount due to the contractor, address and send to Expertise France for payment, and to the contractor for information purposes, a statement of account showing this amount and indicating to the contractor the work the payment relates to.

50.6. The project owner may use a statement of account to make corrections or modifications to a statement that it has previously drawn up. It has the right to modify the assessment or suspend the delivery of a statement of account if the works are not carried out, in whole or in part, in a manner that it deems satisfactory.

50.7. Unless otherwise specified in the special terms and conditions, advance payments shall be made on a monthly basis.

## Article 51 - Final account

51.1. Unless otherwise stipulated in the special terms and conditions, the contractor shall submit a draft final account to the project owner no later than 45 days after delivery of the final acceptance certificate referred to in Article 62. To enable the project owner to draw up a final account, the draft final account shall be submitted along with the supporting documents detailing the value of the work carried out in accordance with the contract, as well as all other sums that the contractor considers due to it under the contract.

51.2. Within 45 days from receipt of the draft final account and all information that may reasonably be requested to check it, the project owner shall prepare and sign the final account, which determines:

a) the final amount that, in the project owner’s opinion, is due under the contract; and

b) the balance possibly due by Expertise France to the contractor or by the contractor to Expertise France, as the case may be, having established the amounts previously paid by Expertise France and any sums to which Expertise France is entitled under the contract.

51.3. The project owner shall send the final account showing the final amount to which the contractor is entitled under the contract to Expertise France or its duly authorised representative and to the contractor. Expertise France or its duly authorised representative and the contractor shall both sign the final account, thereby acknowledging the overall and definitive value of the work performed under the contract. They shall then send a signed copy to the project owner immediately, accompanied by an invoice for the payment of any sums due to the contractor. However, the final account and the invoice for the sums due to the contractor do not include any disputed amounts that are the subject of negotiations, a conciliation or arbitration procedure, or legal proceedings.

51.4. The final account signed by the contractor constitutes a receipt releasing Expertise France. It confirms that the total of the final account constitutes the full and final balance of all amounts due to the contractor under the contract, other than those subject to amicable settlement, arbitration or legal proceedings. However, the receipt shall only become final once all payments due to the contractor have been made in accordance with the final account and once the performance bond referred to in Article 15 has been returned.

51.5. Unless the contractor has attached a claim relating thereto to its draft final account, Expertise France assumes no liability towards the contractor for any issue or subject whatsoever related directly or indirectly to the performance of the contract.

## Article 52 - Direct payments to subcontractors

52.1. If a subcontractor duly authorised under Article 7 brings a claim, arguing that the contractor has not fulfilled its financial obligations towards it, the project owner shall give the contractor formal notice to either pay the subcontractor or state the reasons for objecting to the payment. In the absence of payment or explanations within the deadline set by the formal notice, the project owner may draw up the corresponding payment certificate, after confirming that the subcontractor has performed its services. Expertise France shall then settle the subcontractor's claim against the sums remaining due to the contractor. The contractor shall retain full liability for services paid directly.

52.2. If the contractor justifies its refusal to settle all or part of the subcontractor’s claim, Expertise France shall only pay the undisputed sums to the subcontractor. The sums claimed by the subcontractor for which the contractor has justified its refusal to pay shall only be paid by Expertise France following an amicable settlement between the parties, or after an arbitral award or a judicial decision has been duly notified to the project owner.

52.3. Direct payments to subcontractors may not exceed the contractual value of the services performed and for which payment is requested. This value is calculated or estimated based on the estimated breakdown, the price schedule or the all-inclusive fixed price breakdown.

52.4. Direct payments to subcontractors shall be made in full either in the national currency of the country in which the work is carried out, or partially in the national currency and partially in foreign currency, in accordance with the contract.

52.5. Direct payments to subcontractors made in foreign currency shall be calculated in accordance with Article 56. They may not give rise to any increase in the total amount payable in foreign currency, as stipulated in the contract.

52.6. The provisions of Article 52 shall apply subject to the provisions of the applicable law under Article 54 relating to the right to payment of creditors who are the beneficiaries of an assignment or a pledge.

## Article 53 - Late payment

53.1. With effect from the expiry of the period referred to in Article 44.3, the contractor, if it so requests within two months of the date of late payment, shall be entitled to late payment interest:

- at the rediscount rate applied by the central bank of the country where the work is carried out, if payments are made in that country’s currency;

- at the rate applied by the European Central Bank to its main refinancing operations in euros, as published in the Official Journal of the European Union, series C, if payments are made in euros, on the first day of the month during which this period expired, plus three and a half percentage points. Interest is payable for the period between the expiry of the deadline and the date on which the account making the payment was debited.

53.2. Any failure to pay more than 30 days from the expiry of the period set in Article 44.3(b) shall authorise the contractor to suspend work, in accordance with the procedure set out in Article 38.2.

53.3. Any failure to pay more than 120 days from the expiry of the period set in Article 44.3(b) shall entitle the contractor to terminate the contract, in accordance with the procedure set out in Article 65.

## Article 54 - Payments to third parties

54.1. Payment orders to third parties may only be executed following an assignment, in accordance with Article 6. This assignment shall be notified to Expertise France.

54.2. It is the contractor’s sole responsibility to inform the beneficiaries of these assignments.

54.3. In the event of regular seizure of the contractor’s assets affecting the payment of the sums due to it under the contract, and without prejudice to the period provided for in Article 53, Expertise France has 30 days to resume payments to the contractor, starting from the day on which it is notified of the final release of the seizure order.

## Article 55 - Additional payment requests

55.1. If the contractor considers that certain circumstances entitle it to additional payment under the contract:

a) it shall give the project owner notification thereof or submit a request stating its reasons, if it intends to request such payment, within 15 days from the date on which it became aware or should have become aware of the events or circumstances giving rise to this request. If the contractor fails to notify the project owner or to submit a request stating its reasons within this 15-day period, the contractor is not entitled to additional payment and Expertise France is released from any obligation linked to this request; and

b) it shall provide all necessary details relating to its request as soon as reasonably possible, but no later than 30 days after the date of said notification, unless otherwise agreed with the project owner. In any event, insofar as the project owner agrees to a period other the stipulated 30 days, the agreed new period requires that these details be provided no later than the date of presentation of the draft final account. The contractor shall then immediately submit all documents that the project owner may reasonably request in order to assess the merits of the request.

55.2. After receiving all the details it requires regarding the contractor’s request, the project owner shall decide, without prejudice to Article 21.4, and after appropriate consultation of Expertise France and, if necessary, the contractor, whether the contractor is entitled to an additional payment. The project owner shall then notify the parties of its decision.

55.3. The project owner may reject any request for additional payment that does not comply with the requirements of Article 55.

## Article 56 - Completion date

56.1. Expertise France’s payment obligations under this contract shall end 18 months after the end of the task implementation period, at latest, except in the event of contract termination in accordance with the stipulations of these general terms and conditions. In the case of co-financing, this date is set by the special terms and conditions.

**ACCEPTANCE AND OBLIGATIONS UNDER THE GUARANTEE**

## Article 57 - General principles

57.1. The project owner shall check the works in the presence of the contractor with a view to their provisional or final acceptance. The absence of the contractor does not mean that these checks cannot take place, provided that the contractor has been duly convened at least 30 days prior to the date on which the checks have been scheduled.

57.2. If, during the period set for provisional or final acceptance, exceptional circumstances make it impossible to ascertain the state of the works or prevent the acceptance of the structures, the project owner shall draw up a report confirming this unfeasibility, if possible after consulting the contractor. Checks shall be carried out and a report of acceptance or refusal drawn up within 30 days of the date on which this unfeasibility no longer applies. The contractor may not invoke these circumstances to avoid its obligation to present the structures in good condition.

## Article 58 - Checks at the conclusion of the works

58.1. The structures shall only be accepted having first undergone the prescribed checks and tests at the contractor’s expense. The contractor shall notify the project owner of the date on which such checks and tests may commence.

58.2. Structures that do not meet the clauses and conditions of the contract or, in the absence of such clauses or conditions, that are not executed in accordance with professional practices in the country where the works are carried out, shall, if necessary, be demolished and rebuilt by the contractor, or repaired under conditions deemed satisfactory by the project owner. Otherwise, they shall be demolished immediately, at the contractor's expense and following formal notice, at the request of the project owner. The project owner may also require the contractor to demolish, rebuild or repair structures in which unacceptable materials have been used, or which have been executed during the suspension periods provided for in Article 38, under conditions that the project owner deems satisfactory.

## Article 59 - Partial acceptance

59.1. Expertise France may use the various structures, or parts or sections of the structures forming part of the contract, as and when they are completed. Any possession taken by Expertise France of any structures or parts or sections of structures must be preceded by a partial provisional acceptance. However, possession may be taken prior to acceptance in the event of an emergency, subject to the project owner drawing up an inventory of outstanding work, with prior approval from the contractor and the project owner. As soon as Expertise France takes possession of a structure or a part or section of a structure, the contractor is no longer required to repair damages other than those resulting from construction faults or defects.

59.2. At the contractor’s request, and if the nature of the work permits, the project owner may issue a partial provisional acceptance, provided that the structures or parts or sections of the structures are completed and suitable for the use specified in the contract.

59.3. In the event of partial provisional acceptance as referred to in Article 59.1 and Article 59.2, the guarantee period provided for in Article 62 shall begin on the partial provisional acceptance date, unless otherwise stipulated in the special terms and conditions.

## Article 60 - Provisional acceptance

60.1. Expertise France shall take possession of the works as soon as they have passed the completion tests and a provisional acceptance certificate has been issued or is deemed to have been issued.

60.2. The contractor may request, by notice sent to the project owner, that a provisional acceptance certificate be drawn up no earlier than 15 days before the date on which, in its opinion, the works are completed and ready for provisional acceptance. Within 30 days of receiving the contractor’s request, the project owner shall:

a) draw up the provisional acceptance certificate for the contractor, with a copy sent to Expertise France. This certificate shall indicate, where applicable, the project owner’s reservations, and in particular the date on which, in its opinion, the structures were completed in accordance with the contract and ready for provisional acceptance; or

b) reject the request, stating the reasons for its decision and specifying what measures, in its opinion, the contractor must take for the certificate to be issued.

60.3. If the project owner fails either to issue the provisional acceptance certificate or to reject the contractor’s request within 30 days, it shall be deemed to have issued this certificate on the last day of this period. The provisional acceptance certificate shall not be considered as acknowledgement of full completion of the works. If the contract provides for the division of works into lots, the contractor is entitled to request one certificate per lot.

60.4. After provisional acceptance of the works, the contractor must clear and remove the temporary facilities and materials that are no longer necessary for the performance of the contract. It must also remove any rubble or clutter and restore the premises to their original condition, in accordance with the contract.

60.5. Expertise France can use all the structures implemented following provisional acceptance.

## Article 61 - Obligations under the guarantee

61.1. The contractor is obliged to remedy any defect or damage affecting the works, in whole or in part, that may appear or occur during the guarantee period and which:

a) result from the use of defective facilities or materials or from the contractor’s poor workmanship or design and/or

b) result from any act or omission by the contractor during the guarantee period and/or

c) appear during an inspection made by or on behalf of Expertise France.

61.2. The contractor shall remedy any defect or damage as soon as possible, at its own expense. The guarantee period for all replaced or repaired items restarts from the date on which the replacement or repair was carried out in a manner deemed satisfactory by the project owner. If the contract provides for partial acceptance, the guarantee period shall only restart for the part of the works concerned by the replacement or repair.

61.3. Expertise France or the project owner shall notify the contractor if defects or damages occur within the guarantee period. If the contractor fails to repair a defect or damage within the period indicated in the notification, Expertise France may:

a) carry out the work itself or have it carried out by a third party, at the contractor's expense and risks. The costs borne by Expertise France shall then be deducted from the sums due to the contractor or from the sum held back as guarantee, or from both of these; or

b) terminate the contract under the conditions provided for in Article 64.

61.4. If the defect or damage is such that Expertise France has been substantively deprived of all or part of its normal enjoyment of the structures, it is entitled to recover all sums paid for the parts of the structures in question, as well as the costs incurred by the dismantling of these structures and the restoration of the site, without prejudice to any other recourse.

61.5. In cases of emergency, when the contractor cannot be reached immediately or cannot take the required measures after being contacted, Expertise France or the project owner can have the works carried out at the contractor’s expense. Expertise France or the project owner shall inform the contractor as soon as possible of the measures taken.

61.6. Where the special terms and conditions stipulate that the contractor shall perform maintenance work relating to normal wear and tear, payment for this work shall be deducted from the provisional amount. Damage resulting from the circumstances provided for in Article 21 or from abnormal use is excluded from this obligation, unless it pertains to a fault or defect that justifies the request for repair or replacement under Article 61.

61.7. The guarantee period is set in the special terms and conditions and the technical specifications. Unless otherwise specified, it is 365 days. The guarantee period shall start on the date of provisional acceptance and may restart pursuant to Article 61.2.

61.8. After provisional acceptance, and without prejudice to the maintenance obligation set out in Article 61, the contractor is no longer liable for the risks to which the structures may be exposed and which result from causes not attributable to it. However, it shall remain liable for the solidity of the structures from the date of provisional acceptance, as required by the laws of the country where the work is carried out.

## Article 62 - Final acceptance

62.1. Upon the expiry of the guarantee period, or, where there are several guarantee periods, upon expiry of the last guarantee period, and where all defects or damage have been rectified, the project owner shall issue a final acceptance certificate to the contractor, with a copy to Expertise France, indicating the date on which the contractor has fulfilled its contractual obligations in a manner deemed satisfactory by the project owner. The final acceptance certificate shall be issued by the project owner within 30 days of the expiry of the aforementioned period, or as soon as the works ordered pursuant to Article 61 have been completed in a manner it deems satisfactory.

62.2. The works are not considered to be completed until the final acceptance certificate has been signed by the project owner and sent to Expertise France, with a copy to the contractor.

62.3. Notwithstanding the issuance of the final acceptance certificate, the contractor and Expertise France shall remain bound by any contractual obligation prior to the issuance of the final acceptance certificate and which was yet to be fulfilled at the time said certificate was issued. The nature and scope of any such obligation shall be determined by reference to the provisions of the contract.

**NON-PERFORMANCE AND TERMINATION**

## Article 63 - Non-performance

63.1. Each of the parties shall be in breach for non-performance when it does not fulfil its obligations in accordance with the stipulations of the contract.

63.2. In the event of non-performance, the party affected by the non-performance shall have recourse to the following measures:

a) claims for compensation and/or

b) termination of the contract under the conditions provided for in Article 64 or Article 65, depending on the party concerned.

63.3. Compensation may take the form of:

a) damages, or

b) fixed compensation.

63.4. If the contractor does not perform one of its obligations in accordance with the stipulations of the contract, Expertise France shall also have recourse to the followed measures, without prejudice to its right under Article 63.2:

a) suspension of payments, and/or

b) reduction or recovery of payments in proportion to the extent of the non-performance.

63.5. If Expertise France is entitled to compensation, this can be deducted from any sum due to the contractor or by calling on the appropriate guarantee.

63.6. The procedures for calculating compensation that may be paid pursuant to Article 63 shall be determined in accordance with the conditions provided for by the contract and by the general rules applicable to government contracts.

## Article 64 - Termination by Expertise France

64.1. Expertise France may terminate the contract at any time, and with immediate effect if it so specifies, by a termination decision notified to the contractor. The contractor may then be expelled from the site as a result of this decision. Such termination may take place for any reason, and in particular in any of the following cases:

a) the contractor is in serious breach of this contract due to non-compliance with its obligations;

b) the contractor fails to comply, within a reasonable period, with notification from the project owner to remedy the negligence or breach of its contractual obligations that seriously compromises the proper performance of the works within the deadlines;

c) the contractor refuses or fails to execute work orders from the project owner;

d) the contractor assigns the contract or uses subcontractors without Expertise France’s authorisation;

e) the contractor is in a state of bankruptcy or is subject to insolvency or liquidation proceedings; its assets are being handled by an administrator in bankruptcy or placed under judicial administration; it has entered into a preventive arrangement; it is in a state of cessation of activities; or it is in any similar situation resulting from a procedure of the same nature provided for by the national laws or regulations to which it is subject;

f) there is a change in the organisation of the company that results in a change to the contractor’s legal personality, nature or control, unless an amendment is drawn up to record this change;

g) another type of legal incapacity prevents the performance of the contract;

h) the contractor fails to provide the required guarantees or take out the required insurance, or the person providing the previous guarantee or insurance coverage is unable to meet its commitments;

i) the contractor has committed gross negligence or serious misconduct, established by any means that Expertise France can justify;

j) it has been established by a final court decision, or an administrative decision, or by evidence held by Expertise France that the contractor has been guilty of fraud, corruption, participation in a criminal organisation, money laundering or terrorist financing, terrorism-related offences, child labour or other forms of human trafficking, or has committed an irregularity;

k) the contractor, in the performance of another contract financed by the European Union budget or Federal Reserve System (FED) funds, has been declared in serious breach leading to the early termination of the contract, or the application of fixed damages or other contractual penalties, or in light of discoveries pursuant to inspections, audits or investigations carried out by the European Commission, Expertise France, the European Anti-Fraud Office (OLAF) or the Court of Auditors;

(l) following the award of the contract, the contract award procedure or the performance of the contract is proved to have been tainted by substantive errors, irregularities or fraud;

m) the procedure for awarding or performing another contract financed by the European Union budget or FED funds proves to have been tainted by substantive errors, irregularities or fraud, which are likely to affect the performance of this contract;

n) the contractor fails to perform its obligations in accordance with Article 12.8, Article 12(a) or Article 12(b);

64.2. The termination decision shall be notified to the contractor by registered letter with acknowledgement of receipt. It shall mention the effective date of termination, which may be immediate.

64.3. Termination shall be without prejudice to the other rights or competences of Expertise France or the contractor under the contract. Expertise France may then either complete the works itself or conclude another contract with a third party at the contractor’s expense. As soon as Expertise France has terminated the contract, the contractor shall immediately cease to be liable for delays in performance, without prejudice to any prior liability incurred in this respect.

64.4. Upon termination of the contract or receipt of notice thereof, the contractor shall take immediate action to effectively and promptly stop the works, in order to minimize costs.

64.5. As soon as practicable after termination, the project owner shall ascertain the value of the works and all sums due to the contractor at the date of termination of the contract.

64.6. In the event of termination:

a) a report on the works performed by the contractor shall be drawn up within 30 days from the notification of the termination after the inspection of the works is carried out and the inventory of the temporary works, materials, equipment and facilities is compiled. The contractor is requested to be present while the inspection is carried out and the inventory compiled. The wages owed by the contractor to the workers it has employed under the contract, and the sums owed by the contractor to Expertise France shall also be recorded;

b) Expertise France has the option to purchase all or part of the temporary works that have been approved by the project owner, as well as the equipment and materials supplied or manufactured specifically in connection with the performance of the works under the contract;

c) the purchase price of the above-mentioned temporary structures, facilities, equipment and materials shall not exceed the unpaid part of the costs incurred by the contractor, with these costs being limited to those required for the performance of the contract under normal conditions;

d) Expertise France may acquire materials and articles supplied or ordered by the contractor and not yet paid for by Expertise France at market prices, under conditions that the project owner deems appropriate.

64.7. Expertise France is not obliged to make any further payments to the contractor until the works are completed. When the works are completed, the contractor shall reimburse Expertise France for any additional costs incurred by the completion of the works, or Expertise France shall pay any outstanding balance still due to the contractor.

64.8. If Expertise France terminates the contract pursuant to one of the cases expressly mentioned in Article 64.1, it is entitled to obtain compensation from the contractor for the loss that it has suffered up to a maximum of 10% of the contract amount, in addition to the additional costs required for the completion of the works, and without prejudice to the other remedies provided by the contract.

64.9. Where termination does not result from an act or omission of the contractor, a case of force majeure, or other circumstances beyond Expertise France’s control, the contractor is entitled to claim compensation for damage suffered, in addition to the sums due to it for work already performed.

64.10. The procedures for calculating compensation that may be paid pursuant to Article 64.9 shall be determined in accordance with the conditions provided for by the contract and by the general rules applicable to government contracts.

64.11. This contract shall be terminated as of right, without the need to state this in writing, if it has not resulted in any payment within two years of its signature by the parties.

## Article 65 - Termination by the contractor

65.1. The contractor may terminate the contract with 30 days’ notice to Expertise France by registered letter with acknowledgement of receipt, if Expertise France:

a) does not pay it the sums due in respect of any account drawn up by the project owner at the end of the period indicated in Article 44.3 for a period of more than 120 days; or

b) systematically avoids its obligations after multiple reminders; or

c) orders the suspension of all or part of the works for more than 180 days, for reasons not specified in the contract or not attributable to breach or default by the contractor.

65.2. The contractor may not terminate the contract except as expressly stipulated in Article 65.1.

65.3. Termination shall be without prejudice to the other rights of Expertise France or the contractor acquired under the contract. Upon termination, the contractor has the right to immediately remove its facilities from the site, subject to the laws of the country in which the works are carried out.

65.4. In case of termination of this type, Expertise France shall compensate the contractor for any harm or damage that it may have suffered. Compensation is capped at 10% of the contract value.

## Article 66 - Force majeure

66.1. Neither of the parties shall be held in breach or default of their contractual obligations if they are prevented from fulfilling them by a situation of force majeure occurring either after the date of notification of the contract award or after the date of its entry into force.

66.2. “Force majeure” means, for the purposes of this contract, any unforeseeable event that is beyond the control of the parties and irresistible, i.e. that they cannot overcome despite their diligence, such as natural disasters, declared or undeclared wars, blockades or epidemics.

66.3. For the purposes of this contract, a decision by France or the European Union to suspend cooperation with the partner country is expressly considered to be a case of force majeure when it involves the suspension of financing for this contract.

66.4. Notwithstanding the stipulations of Article 36 and Article 64, the contractor shall not be liable to forfeit its performance bond, to pay fixed compensation, or to termination for non-performance if and to the extent that its delay in performance or any other failure to fulfil its obligations under the contract results from a case of force majeure. Similarly, and notwithstanding the stipulations of Article 53 and Article 65, Expertise France shall not be liable for the payment of late payment interest, or the contractor’s non-performance of its obligations, or for the termination of the contract by the contractor for default, if and to the extent that a delay on the part of Expertise France or any other failure to fulfil its obligations results from a case of force majeure.

66.5. Should one of the parties deem that a case of force majeure likely to affect the performance of its obligations has occurred, it shall immediately inform the other party as well as the project owner, specifying the nature, likely duration and expected impacts of this event. Unless instructed otherwise by the project owner in writing, the contractor shall continue to fulfil its contractual obligations insofar as is reasonably possible, and shall seek any other reasonable means to allow it to fulfil these obligations that the case of force majeure does not preclude. It shall only implement these other means if the project owner instructs it to do so.

66.6 If the contractor is faced with additional costs after following the project owner’s instructions or using the other means referred to in Article 66.5, this amount shall be certified by the project owner.

66.7 If a case of force majeure has occurred and continues for a period of 180 days, notwithstanding any extension to the period for the performance of the contract that the contractor may have thereupon obtained, each party shall have the right to give the other 30 days’ notice to terminate the contract. This notice shall be given by registered letter with acknowledgement of receipt. Should the case of force majeure continue at the expiry of the 30-day period, the contract shall be automatically terminated.

## Article 67 - Death

67.1. The contract shall be terminated as of right if the contractor is a natural person and dies. However, Expertise France shall examine any proposal from the heirs or beneficiaries if they have notified their intention to continue the contract.

67.2. When the contractor is constituted by several natural persons, and one or more of them die, a joint statement of the progress of the works shall be drawn up. Expertise France shall then decide whether to terminate or continue the contract, depending on the commitment given by the survivors and by the heirs or beneficiaries, as the case may be. Expertise France's decision must be notified to the interested parties within 30 days from receipt of such a proposal.

67.3. In the cases provided for in Article 67.1 and Article 67.2, the individuals proposing to continue the performance of the contract shall notify Expertise France within 15 days of the date of the death.

67.4. These individuals shall be jointly and severally liable for the proper performance of the contract, in the same way as the deceased contractor. The continuation of the contract is subject to the rules on the provision of guarantees provided for therein.

**DISPUTE RESOLUTION AND APPLICABLE LAW**

## Article 68 - Dispute resolution

68.1. The parties shall make every effort to achieve an amicable resolution to any dispute arising between them, or between project owner and the contractor, in the performance of this contract, in accordance with the principle of loyalty in contractual relations.

68.2. In the event of a dispute, one party shall notify the other of its request for amicable resolution by informing it of its position on the dispute and any solution it envisages. The other party must respond to this request within 30 days, stating its position on the dispute. Unless otherwise agreed by the parties, the maximum period for reaching an amicable resolution is 120 days from the date of notification by the party seeking amicable resolution. If the other party does not agree with this request, if it does not respond within the allotted time, or if the amicable resolution procedure does not produce a satisfactory outcome within the given deadline, the amicable resolution procedure is deemed to have failed.

68.3. In the absence of an amicable resolution, a party may notify the other party of its request for resolution via third-party conciliation. If the European Commission is not a party to the contract, it may agree to act as a conciliator. The other party must respond to the conciliation request within 30 days. Unless otherwise agreed by the parties, the maximum period for resolution by conciliation is 120 days from the date of notification by the requesting party. If the other party does not agree with this request, if it does not respond within the allotted time, or if the conciliation procedure does not produce a satisfactory outcome within the given deadline, the resolution by conciliation procedure is deemed to have failed.

68.4. In the event of failure of the amicable resolution procedure and, where applicable, of the conciliation procedure, each party may refer the dispute either to the decision of a national court or to arbitration, as specified in the special terms and conditions.

## Article 69 - Applicable law

69.1. The law applicable to this contract is that of the country of Expertise France.

**FINAL PROVISIONS**

## Article 70 - Administrative penalties

70.1. After inter partes discussions, and without prejudice to the application of other contractual penalties, the contractor may be excluded from all contracts and subsidies financed by the European Union if it:

a) has committed serious professional misconduct, been guilty of irregularities, or has been declared in serious breach of its contractual obligations. The duration of the exclusion does not exceed the duration set by a final court ruling or an administrative decision, or, failing that, three years;

b) has been guilty of fraud, corruption, participation in a criminal organisation, money laundering, terrorism offences, child labour or human trafficking. The duration of the exclusion does not exceed the duration set by a final court ruling or an administrative decision, or, failing that, five years.

70.2. In addition or as an alternative to the administrative penalties referred to in Article 70.1, the contractor may also be subject to a financial penalty imposed by Expertise France of between 2-10% of the contract amount.

70.3. When Expertise France is entitled to impose financial penalties, it can do so by deducting them from any amount due to the contractor or by calling on the appropriate guarantee.

70.4. The decision to impose administrative penalties may be published on a specific website, with explicit mention of the contractor’s name.

70.5 The aforementioned administrative penalties may also be imposed on individuals who are members of the company’s administrative, management or supervisory body; individuals with powers of representation, decision or control with regard to the contractor; individuals jointly and severally liable for the performance of the contract; and subcontractors.

**Article 71 - Data protection**

71.1. As part of their contractual relations, the parties undertake to comply with the regulations in force applicable to the processing of personal data and, in particular, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 applicable as of 25 May 2018 (hereinafter, “the EU General Data Protection Regulation” or “GDPR”).

71.2. The personal data mentioned in the contract shall be processed in accordance with the GDPR. These data may only be processed for the purposes of the execution, management and monitoring of the contract by Expertise France, without prejudice to their possible transmission to the bodies responsible for a control or inspection assignment pursuant to European Union law. The contractor shall have the right of access to the personal data concerning it, as well as the right to rectification of this data. The contractor should contact Expertise France for any questions relating to these rights. The contractor also has the right to refer the matter to the European Data Protection Supervisor, at any time.

71.3. Insofar as this contract involves the processing of personal data, the contractor may only act under the supervision of the controller. The contractor undertakes in particular to:

a) only process the data for the purpose(s) that is/are the subject of the contract;

b) process the data in accordance with the controller’s documented instructions, appended to this contract if necessary. The contractor shall inform the controller immediately if it considers that an instruction constitutes a breach of the GDPR, or any other provision of European Union law, or of the law of the Member States relating to data protection. Furthermore, if the contractor is required to transfer data to a third country or an international organisation under European Union law or the law of the Member State to which it is subject, it must inform the controller of this legal obligation before processing, unless the law in question prohibits such information on significant grounds of public interest;

c) guarantee the confidentiality of the personal data processed under this contract;

d) ensure that the persons authorised to process personal data under this contract undertake to respect confidentiality or are subject to an appropriate legal confidentiality obligation, and that they receive the necessary personal data protection training;

e) take into account the principles of data protection by design and by default with regard to its tools, products, applications or services.

71.4. At the time of data collection, the contractor must provide the data subjects with information about the data processing it intends to carry out. The wording and format of the information must be agreed with the controller prior to data collection.

71.5. As far as possible, the contractor must assist the controller in fulfilling its obligation to respond to data subjects’ requests to exercise their rights: the rights of access, rectification, erasure and objection; the right to restriction of processing; the right to data portability; the right to avoid automated decision-making (including profiling).

71.6. Where applicable, the contractor shall notify the controller of any personal data breach upon becoming aware of it. This notification shall be accompanied by any relevant documentation that would enable the controller to notify the breach to the competent supervisory authority, if necessary.

71.7. The contractor undertakes to destroy all personal data processed at the conclusion of the provision of services relating to this processing.

71.8. The contractor shall provide the controller with the name and contact details of its data protection officer, if it has appointed one pursuant to Article 37 of the GDPR.

71.9. The contractor warrants that it maintains a written record of all categories of processing activities carried out on behalf of the controller, including:

a) the name and contact details of the controller on whose behalf it is acting, any sub-processors and, where applicable, the data protection officer;

b) the categories of processing carried out on behalf of the controller;

c) where applicable, transfers of personal data to a third country or to an international organisation, including the identification of this third country or international organisation and, in the case of transfers referred to in Article 49.1(2) of the GDPR, the documents certifying the existence of appropriate guarantees;

d) as far as possible, a general description of the technical and organisational security measures.

71.10. The contractor undertakes to provide the controller with the documentation necessary to demonstrate compliance with all its obligations and to enable the performance of audits, including inspections, by the controller or another auditor appointed by it, and to contribute to these audits.

71.11. Non-compliance with the obligations set out in Article 72 constitutes a serious breach of the contract, and therefore serious misconduct.

1. Date and original signature of a person qualified to make a legal commitment on behalf of the Contractor. [↑](#footnote-ref-1)
2. Date and original signature of the Chief Executive Officer of Expertise France or of his/her delegated representative. [↑](#footnote-ref-2)