



**GENERAL TERMS AND CONDITIONS APPLICABLE TO BPIFRANCE INTELLECTUAL  
SERVICES CONTRACTS**



## TABLE OF CONTENTS

CHAPTER 1: OVERVIEW .....	3
CHAPTER 2: PRICES AND SETTLEMENT OF ACCOUNTS.....	11
CHAPTER 3: DEADLINES .....	14
CHAPTER 4: PERFORMANCE.....	16
CHAPTER 5: USE OF THE RESULTS.....	20
CHAPTER 6: CONFIRMATION OF PERFORMANCE OF THE SERVICES - WARRANTY..	26
CHAPTER 7: TERMINATION.....	29
CHAPTER 8: DISPUTES AND LITIGATION .....	34



## CHAPTER 1: OVERVIEW

### ARTICLE 1: SCOPE

The provisions of these General Terms and Conditions applicable to Intellectual Services contracts of Bpifrance (and its subsidiaries), a public limited company with capital of €20,981,406,140, whose registered office is located at 27-31 avenue du Général Leclerc, Maisons Alfort (94710) France, registered in the Créteil Trade and Companies Register under number 507 523 678, apply to the contracts expressly referred to herein.

These contracts may provide for exemptions from some of these provisions.

### ARTICLE 2: DEFINITIONS

For the purposes of this document:

- the “Client”, namely the company Bpifrance or one of its subsidiaries, is the entity that enters into the contract with the Contract Holder.
- The “Contract Holder” is the economic operator that concludes the contract with the Client. In the case of a consortium of economic operators, the “Contract Holder” shall designate the members of the consortium, represented, where applicable, by its representative.
- “Notification” is the act of bringing information or a decision to the knowledge of the contracting party or parties in any physical or non-physical format that allows for the date of receipt thereof to be determined with certainty. A date of receipt indicated on a receipt may be considered the date of notification.
- “Services” refers to the intellectual services that are the subject of the contract.
- The “service order” is the decision of the Client specifying the conditions for performing the services provided for in the contract.
- “Acceptance” is the decision, taken after inspections, by which the Client acknowledges the compliance of the services with the provisions of the contract. The acceptance decision represents an attestation that the service is completed and constitutes the starting point for the warranty periods.
- “Deferral” is the decision taken by the Client when it considers that deliverables are acceptable subject to certain modifications by the Contract Holder.
- “Reduction” is the decision taken by the Client to reduce the amount of the services to be paid to the Contract Holder, when the services do not fully meet the requirements of the contract, but may be accepted as they stand.
- “Rejection” is the decision taken by the Client indicating that the services cannot be accepted, even after deferral or with a reduction.

### ARTICLE 3: GENERAL OBLIGATIONS OF THE PARTIES

#### 3.1. Form of notifications and information

Notification of the Contract Holder of the decisions or information of the Client from which a time limit is triggered, is carried out:



- either directly to the Contract Holder, or to its duly qualified representative, against written receipt,
- either by paperless correspondence or on electronic media. The conditions of use of paperless means or electronic media are determined in the specific contract documents,
- or by any other means that allows certification of the date of receipt of the decision or information.

This notification may be made at the address of the Contract Holder mentioned in the specific contract documents or, failing that, at its registered office, unless these documents require the Contract Holder to have its place of residence established elsewhere.

In the case of a consortium, the notification shall be made to the representative for the entire consortium.

### **3.2. Calculation of the deadlines for performance of the services**

3.2.1. Any time period mentioned in the contract starts to run at midnight, the day after the day on which the act which served as the starting point for this deadline occurred.

The applicable dates and times are those used by the specific contract documents for deliveries or performance of the services.

3.2.2. When the deadline is set in days, it is understood in calendar days and it expires at midnight on the last day of the period.

*Comments:* The time zone used is that of the delivery or the performance of the service. A deadline set in calendar days includes Saturdays, Sundays and public holidays.

3.2.3. When the deadline is set in months, it is counted from calendar day to calendar day. If there is no corresponding calendar day in the month in which the deadline ends, it shall expire on the last day of said month, at midnight.

3.2.4. When the last day of the deadline is a Saturday, Sunday or public holiday, the deadline shall be extended to the end of the next working day at midnight.

3.2.5. When the deadline is set in working days, it is to be understood as excluding Saturdays, Sundays and public holidays.

3.2.6. The deadline applicable to the Contract Holder does not include the time required for the Client to carry out its verification operations and make its decision in accordance with Chapter 6.

### **3.3. Representation of the Client**

Upon signature of the contract, the Client shall appoint one or more natural persons, who are authorised to represent it before the Contract Holder, for the purpose of executing the contract. Other natural persons may be authorised by the Client during the performance of the contract.

Such representative(s) shall be deemed to have sufficient powers to make, upon notification of their name to the Contract Holder within the time period required or set by the contract, the necessary decisions binding the Client.

### **3.4. Representation of the Contract Holder**

Upon signature of the contract, the Contract Holder shall designate one or more natural persons, authorised to represent it before the Client, for the purpose of executing the contract.



Other natural persons may be authorised by the Contract Holder during the performance of the contract.

Such representative(s) shall be deemed to have sufficient powers to make, upon notification of their name to the Client within the time required or set by the contract, the necessary decisions binding the Contract Holder.

3.4.2. The Contract Holder is required to promptly notify the Client of changes occurring during the performance of the contract and which relate to:

- the persons authorised to make commitments on its behalf,
- the legal form under which it conducts its activity, - its business name or trade name,
- its address or registered office,
- the information it has provided for the acceptance of a subcontractor and the approval of its terms of payment,
- and, in general, all significant changes in the operation of the business that may affect the performance of the contract.

3.4.3. Implementation of services by a specially appointed person

Where it is provided in the contract that all or part of the services must be performed by a specially appointed person and that person is no longer able to perform this task, the Contract Holder must:

- notify the Client immediately and take all necessary measures to ensure the continued performance of the services,
- propose to the Client a replacement with at least equivalent skills and whose name and role shall be communicated to it within one month from the date of sending the notice mentioned in the preceding paragraph.

The replacement proposed by the Contract Holder shall be deemed accepted by the Client, if the latter does not object to said appointment within one month from the receipt of the communication mentioned in the previous paragraph. If the Client objects to the replacement, the Contract Holder shall have one month to propose another replacement. The Client shall justify its decision to object to the replacement. The Client's opinions, proposals and decisions shall be notified according to the terms and conditions set out in Article 3.1.

In the absence of a proposal for a replacement by the Contract Holder or in case of objection to the replacements by the Client, the contract may be terminated under the conditions set out in Article 32.

### **3.5. Co-contracting**

In the event of default on the part of the representative of the consortium, the members of the consortium shall be required to appoint a replacement. Failing this, and at the end of a period of eight days running from the issue of the formal notice by the Client to make such an appointment, the contracting party listed in second position shall become the new representative of the consortium.

### **3.6. Subcontracting**

3.6.1. If the Contract Holder wishes to subcontract a part of the contract, it shall ask the Client to approve each subcontractor and its terms of payment in advance and in writing.

3.6.2. The Contract Holder is required to communicate the subcontracting contract and any amendments thereto to the Client.



### **3.7. Purchase Orders**

3.7.1. Purchase orders shall be sent by the Client to the Contract Holder.

3.7.2. When the Contract Holder considers it necessary to make observations in relation to a purchase order it has received on the basis of the requirements contained therein, it must notify the signatory of the purchase order concerned within fifteen days from the date of receipt thereof, failing which the observations will be barred.

3.7.3. The Contract Holder shall comply with the purchase orders that are sent to it, whether or not they have been subject to any observations on its part.

3.7.4. In the case of outsourcing, the purchase orders shall be sent to the representative of the consortium, who has sole competence to submit any observations to the Client.

3.7.5. If, upon completion of a purchase order contract, the total of the Client's orders has not reached the minimum amount fixed by the contract, in terms of value or quantity, the Contract Holder shall be entitled to compensation equal to the profit margin that it would have realized on the services which remained to be carried out in order to reach this minimum. The Contract Holder is also entitled to be compensated for any costs and investments incurred for the contract and strictly necessary for its performance that were not taken into account in the amount of services paid. It is incumbent upon the Contract Holder to provide the Client with all the justifications necessary to determine this part of the compensation within fifteen days following notification of the termination of the contract.

### **3.8. Service orders**

3.8.1. Service orders shall be sent by the Client to the Contract Holder.

3.8.2. When the Contract Holder considers it necessary to make observations in relation to a purchase order it has received on the basis of the requirements contained therein, it must notify the signatory of the purchase order concerned within fifteen days from the date of receipt thereof, failing which the observations will be barred.

3.8.3. The Contract Holder shall comply with the service orders that are sent to it, whether or not they have been subject to any observations on its part.

However, unless the contract provides that the start of the services may be ordered within a period of more than six months from the signature of the contract, the Contract Holder may refuse to execute this order, if it is notified to it more than six months after the signing of the contract. The Contract Holder shall then have a period of fifteen days, starting from the date of issuance of its refusal decision to the Client, to propose a new start date for the services. At the end of this period, if it has not proposed any other date, it must perform the services on the requested date. In the event that the Client refuses the new date proposed to it, the Contract Holder may request the termination of the contract, under the conditions set out in Article 31.2. This termination must be accepted.

3.8.4. In the event of co-contracting, the service orders shall be sent to the representative of the consortium, who has sole competence to make any comments to the Client.



## **ARTICLE 4: CONTRACTUAL DOCUMENTS**

### **4.1. Order of priority**

In the event of contradiction between the provisions of the contractual documents, these shall take priority in the following order:

- the Contract and any amendments thereto, signed by the Contract Holder(s), on the one hand, and Bpifrance, on the other,
- the contract specifications containing the specific administrative and technical specifications of the contract or
- the special administrative terms and conditions and any appendices thereto, - the special technical terms and conditions and any appendices thereto,
- the general terms and conditions applicable to Bpifrance's intellectual services contracts, subject of the contract, if it concerns this present document,
- the special subcontracting documents and their amendments, subsequent to the signature of the contract,
- the Contract Holder's technical and financial bid.

### **4.2. Validity date of the contractual documents**

Unless otherwise stipulated in the document (or documents), the contractual documents signed by the contracting party (or parties), on the one hand, and Bpifrance, on the other hand, shall take effect on the date of signature by all parties, without any need to provide notification of said signature.

## **ARTICLE 5: CONFIDENTIALITY - SECURITY MEASURES**

### **5.1. Obligation of confidentiality**

5.1.1. The Contract Holder and the Client who, during the execution of the contract, have knowledge of information or receive communication of documents or elements of any kind, reported as being of a confidential nature and relating, in particular, to the means to be implemented for performance of the contract, the operation of the services of the Contract Holder or the Client, are required to take all necessary measures to prevent this information or these documents or elements from being disclosed to a third party that is not required to have knowledge of them. A party may not request that any information, documents or elements that said party itself has made public be kept confidential.

5.1.2. The Contract Holder must inform its subcontractors of the confidentiality obligations and the security measures incumbent upon it for the performance of the contract. It must ensure compliance with these obligations by its subcontractors.

5.1.3. This obligation of confidentiality does not cover information, documents or elements that are already within the public domain at the time at which the parties to the contract are made aware thereof.

### **5.2. Obligation to comply with legal provisions regarding banking secrecy, professional secrecy and confidentiality agreements**



The Contract Holder is duly informed that the information relating to the Client, its clients and partners may be covered by professional secrecy, confidentiality agreements and/or banking secrecy, in accordance with Article L. 511-33 of the French Monetary and Financial Code and subsequent texts.

The Contract Holder must undertake to keep the information, documents and data to which it will have access and which are covered by said secrecy, entirely confidential. It must undertake to prevent, by all means, the reproduction and use of the documents, data or information, regardless of whether or not they are related specifically to the work entrusted under this contract.

The Contract Holder shall ensure in particular that this information will be accessible only to those who have a need to know and shall ensure that the persons concerned are duly and previously informed of these legal obligations. The Contract Holder shall apply this limitation of access to confidential information and this obligation of information to all of its staff, workers and subcontractors, as well as to the staff or workers of said subcontractors.

The Contract Holder must undertake, on its own behalf, and on behalf of its employees, subcontractors, and more generally any person related to it for any reason whatsoever, to respect - without any time limit - the banking secrecy and professional secrecy obligations. This obligation will continue, regardless of the end of the contract for any reason whatsoever, unless the information concerned has fallen into the public domain.

The Contract Holder must also undertake to have a confidentiality agreement signed by any person that may be required to have knowledge of such information and documents.

In the event of an injunction by a supervisory authority or an authorised judicial authority requesting disclosure of all or part of the information covered by banking secrecy, professional secrecy and contractual commitments, the Contract Holder must inform the Client of this injunction as soon as possible. The decision as to whether or not to disclose this Confidential Information will be the responsibility of the Client, which shall inform the Contract Holder of the decision made.

The Contract Holder shall ensure the compliance of its workers, agents or subcontractors, and more generally of any person related to it, with the confidentiality obligation laid down in this article.

The Contract Holder irrevocably undertakes to compensate for damages of any nature whatsoever, which may arise to the detriment of the Client or one of its officers or one of its workers, as a result of its own non-compliance with its obligations of confidentiality or non-compliance on the part of any persons having access to said data.

### **5.3. Protection of personal data**

5.3.1. Each party to the contract is bound to comply with the rules on the protection of personal data, to which it has access for the purposes of the performance of the contract.

5.3.2. In the event of changes to the legislation on the protection of personal data during the performance of the contract, any modifications requested by the Client in order to comply with the new rules shall lead to the signing of an addendum by the parties to the contract.

5.3.3. To ensure this protection, it is the Client's responsibility to make the declarations and to obtain the necessary administrative authorisations to perform the services provided for in the specific contract documents.



#### 5.4. Security measures

Where the services are to be performed in a place where security measures apply, particularly in areas protected under the legislative or regulatory provisions for the protection of national defence secrecy, these specific provisions must be indicated by the Client in the consultation documents. The Contract Holder is required to comply with these measures.

The Contract Holder may not claim, on this basis, any extension of the period of performance, nor any indemnity, or price supplement, unless the information was communicated to it only after the presentation of its bid and if it is able to establish that the obligations thus imposed on it necessitate additional time for performance of the services provided for in the contract or make performance of the contract more difficult or more expensive.

**5.5.** The Contract Holder shall notify its subcontractors that the obligations set out in this article are applicable to them and remains responsible for ensuring their compliance with said obligations.

### ARTICLE 6: LABOUR PROTECTION AND WORKING CONDITIONS

**6.1.** The obligations incumbent on the Contract Holder are those provided for by the laws and regulations relating to the protection of the labour force and the working conditions of the country in which such labour force is employed. The Contract Holder is also bound by the provisions of the eight fundamental conventions of the International Labour Organization, when these are not incorporated into the laws and regulations of the country in which said labour force is employed.

The Contract Holder must be able to justify compliance with said provisions, during the performance of the contract and during the warranty period, upon request of the Client.

*Comments:* The eight fundamental Conventions of the ILO, ratified by France, are:

- the Convention on Freedom of Association and Protection of the Right to Organise (C 87, 1948);
- the Right to Organise and Collective Bargaining Convention (C 98, 1949);
- the Forced Labour Convention (C 29, 1930);
- the Convention on the Abolition of Forced Labour (C 105, 1957);
- the Equal Remuneration Convention (C 100, 1951);
- the Discrimination Convention (Employment and Occupation, C 111, 1958);
- the Minimum Age Convention (C 138, 1973);
- the Worst Forms of Child Labour Convention (C 182, 1999).

**6.2.** In the event of any change in the legislation on the protection of labour and working conditions during the performance of the contract, any changes requested by the Client, in order to comply with the new rules, shall give rise to the signing of an addendum by the parties to the contract.

**6.3.** The Contract Holder may ask the Client, due to the specific conditions for performance of the contract, to send, along with its opinion, the requests for exemptions provided for in the laws and regulations mentioned above.



**6.4.** The Contract Holder shall notify its subcontractors that the obligations set out in this article are applicable to them and remains responsible for ensuring their compliance with said obligations.

#### **6.5 Rules of procedure**

The Contract Holder must take the necessary steps to ensure that, whenever its staff are at the premises of the Client, they comply with the Client's rules and with the provisions applicable to external companies present at the said premises and especially those relating to health and safety. For this purpose, the Client undertakes to inform the Contract Holder of these provisions prior to performance of any service.

### **ARTICLE 7: ENVIRONMENTAL PROTECTION**

**7.1.** The Contract Holder shall ensure that the services it performs comply with the legislative and regulatory requirements in force in terms of environment, personal health and safety, and preservation of the neighbourhood. It must be able to justify compliance with said provisions, during the performance of the contract and during the warranty period, upon request of the Client.

**7.2.** In the event of changes to the legislation on the protection of the environment during the performance of the contract, any modifications requested by the Client in order to comply with the new rules shall lead to the signing of an addendum by the parties to the contract.

### **ARTICLE 8: REPARATION OF DAMAGES**

**8.1.** Damages of any kind, caused to the Client's staff or property by the Contract Holder, as a result of performing the contract, shall be the responsibility of the Contract Holder.

Damages of any kind, caused to the Contract Holder's staff or property by the Client, as a result of performing the contract, shall be the responsibility of the Client.

**8.2.** As long as the supplies remain the property of the Contract Holder, the latter shall be, except in the case of fault on the part of the Client, solely responsible for the damage suffered by these supplies for any reason other than exposure to artificial radioactivity or duly recognised natural disasters.

This provision does not apply in the case of additional equipment supplied by the Client to the Contract Holder's material that causes damage to the latter.

**8.3.** The Contract Holder shall guarantee the Client against damage or destruction caused by the material it supplies or the actions of its employees affecting the premises where the material is used, and this shall include any claims by neighbours.



## **ARTICLE 9: INSURANCE**

**9.1.** The Contract Holder must take out insurance to cover its liability towards the Client and third parties that are victims of accidents or damage caused by performance of the services.

**9.2.** It must justify, within fifteen days of signing the contract and before commencing any performance thereof, that it is the policy holder of these insurance contracts, by means of a certificate establishing the extent of the liability insured. At any time during the performance of the contract, the Contract Holder must be able to produce this certificate, upon the request of the Client and within a period of fifteen days from receipt of the request.

## **CHAPTER 2: PRICES AND SETTLEMENT OF ACCOUNTS**

### **ARTICLE 10: PRICES**

#### **10.1. General rules**

10.1.1. The prices are deemed fixed.

10.1.2. If fixed prices may be updated, the update coefficient is rounded up to the nearest thousandth.

10.1.3. The prices are deemed to include all the taxes or other charges that must be applied to the services, the costs of packaging, storage, wrapping, insurance and transportation to the place of delivery, the costs relating to the application of Article 16.4, as well as all other expenses necessary for the performance of the services, margins for risk and profit margins.

The costs of handling and shipping arising from the deferral or rejection of the services shall be borne by the Contract Holder.

#### **10.2. Determination of settlement prices**

10.2.1. Where the contract provides that the price to be paid is the result of the application of a regulation, fee structure, tariff, price, quotation, index, or of any other element established outside the contract, without specifying a date, the element to be taken into consideration is that which is in force:

- on the day of delivery of the services, if these are carried out within the deadline set by the Client or if the Client has not fixed a deadline,
- at the deadline set by the Client for the delivery of the services when the deadline set has been exceeded.

10.2.2. When the contract provides for a revision of the prices, these prices shall be revised on the date or according to the frequency stipulated in the specific contract documents.



However, when the price includes a significant proportion of raw materials or products, directly affected by the fluctuation of global prices, the prices shall be revised at least every three months from the date of signature of the contract. The price revision conditions are set by the specific contract documents.

The prices to be paid are those applicable on the date of delivery of the services.

10.2.3. When the prices are revisable, the coefficient for revision is rounded up to the nearest thousandth.

## **ARTICLE 11: DETAILS ON PAYMENT CONDITIONS**

### **11.1. Instalments**

When the contract establishes only the frequency of the instalments, the amount of each one of them shall be determined by the Client, on the basis of the description of the services performed and their amount, produced by the Contract Holder. Each instalment shall be subject to a payment request.

**11.2.** Whenever the Contract Holder submits a payment request to the Client, it shall attach the documents necessary to justify the payment.

### **11.3. Content of the payment request**

11.3.1. The payment request shall be dated. It shall mention the contract references and, where applicable:

- the amount of the services received, established in accordance with the provisions of the contract, excluding VAT and, where applicable, minus the reductions fixed in accordance with the provisions of Article 27.3,
- the breakdown of lump-sum prices and details of unit prices, where the specific contract documents specify the details, or where, taking into account the requirements of the contract, the services have been carried out in an incomplete or non-compliant manner,
- where payment is due at the end of certain stages of performance of the contract, the amount corresponding to the period in question,
- in the case of a joint-liability consortium, for each economic operator, the amount of the services provided by the economic operator,
- in the case of subcontracting, the nature of the services performed by the subcontractor, their total amount excluding tax, their amount inclusive of tax and, where applicable, the price variations established exclusive and inclusive of tax,
- where applicable, the compensation, premiums and deductions other than the guarantee deposit, established in accordance with the provisions of the contract.

11.3.2. In the event of performance of services at the expense and risk of the defaulting Contract Holder, the additional cost borne by the Client, corresponding to the difference between the price it should have paid to the Contract Holder for the performance of the services and the price actually paid for the performance thereof in place of the defaulting Contract Holder, shall be deducted from the sums due to the Contract Holder in respect of the services received.



11.3.3. The payment request shall specify the elements subject to VAT, distinguishing them according to the applicable rate.

11.3.4. Unit prices may be divided, in order to reflect ongoing services.

11.3.5. Lump sum prices may be divided, if the service or part of the service to which the price relates is not completed. A fraction of the price equal to the percentage of performance of the service is then calculated. In order to determine this percentage, the breakdown of the prices referred to in Article 11.3.1 shall be applied, if requested by the Client.

11.3.6. The Contract Holder shall prepare its payment request in line with the model or in accordance with the conditions established by the specific contract documents.

#### **11.4. Calculation of the amount due by the Client for the services provided**

11.4.1. The amount of the sums due may be established on the basis of joint reports.

11.4.2. When the contract provides for the payment of instalments, upon the completion of certain stages of the performance of the services, and it indicates the portion of the price to be paid upon completion of each of these stages, the payment request shall include:

- for each part of the contract executed, the corresponding portion,
- for each part of the contract undertaken, after agreement by the Client, a fraction of the corresponding portion, equal to the percentage of performance of the services in question.

#### **11.5. Submission of the payment request**

11.5.1. The submission of a payment request shall be made: - either on the dates provided for in the contract, or

- after acceptance of the services, in accordance with the provisions of the contract, or
- at the beginning of each month for the services performed the previous month, in the case of services that are performed on a continuous basis; the Contract Holder shall then send the Client a monthly payment request establishing the total amount, fixed at the end of the previous month, of the sums it may claim as a result of the execution of the contract since the beginning thereof, or
- the dates scheduled for the payment of instalments.

11.5.2. The payment request may indicate the supplies which, in accordance with the provisions of the contract or by mutual agreement between the parties, shall be paid, even though they remain in storage at the Contract Holder's premises.

#### **11.6. Acceptance of the payment request by the Client**

The Client shall accept or correct the payment request. It shall complete it, if necessary, by indicating the advances to be reimbursed, and the premiums and the reductions applied. It shall agree on the amount of the sum to be paid and, if this is different from the amount indicated in the payment request, it shall notify the Contract Holder of said difference.



## **11.7. Payment for balance and final partial payments**

11.7.1. The payment request shall be sent to the Client after the acceptance decision. The payment request may also give rise to a final partial payment of the services performed, in the case where the specific contract documents provide for payments at the end of the performance of certain parts of the services provided for in the contract.

11.7.2. If, after having been given notice to do so, the Contract Holder does not produce its payment request within a period of 45 days from acceptance of the services, the Client may proceed *ex officio* with the settlement, on the basis of a statement of account that it shall prepare. Said statement of account shall be sent to the Contract Holder.

11.7.3. In the event of a dispute relating to the amount of the sums due, the Client shall settle the sums it has accepted. After resolution of the disagreement, it shall, if necessary, pay a supplement, plus, if applicable, default interest, running from the date of the request submitted by the Contract Holder.

## **ARTICLE 12: PAYMENT IN THE CASE OF CO-CONTRACTING**

### **12.1. Co-contracting provisions**

12.1.1. In the case of a joint-liability consortium, each member of the consortium shall directly receive the sums relating to the performance of its own services.

12.1.2. In the case of a joint-and-several liability consortium, payment shall be made into a single account, opened in the name of the members of the consortium or the representative, unless the contract provides for a distribution of payments between the members of the consortium and indicates the terms of said distribution.

12.1.3. Irrespective of the form of the consortium, the representative has sole authority to submit the payment request to the Client. In the case of a joint-liability consortium, the payment request submitted by the representative shall be broken down into as many parts as there are members of the consortium to be paid separately. Each party shall enter the information necessary for paying the economic operator concerned.

12.1.4. The representative has sole authority to formulate or communicate the claims of the members of the consortium.

## **CHAPTER 3: DEADLINES**

### **ARTICLE 13: DEADLINE FOR PERFORMANCE**

#### **13.1. Start of the period of performance**

13.1.1. The period of performance of the contract starts from its date of signature.

13.1.2. The period of performance of the purchase order starts from its date of notification.



13.1.3. The period of performance of a conditional stage starts from the date of notification of the confirmation decision.

## **13.2. Expiry of the period of performance**

13.2.1. In the event of delivery or performance of the services at the Client's premises, the expiry date of the period of performance is the date of delivery or completion of the services.

13.2.2. In the case of design services, the expiry date of the period of performance is the date of submission of the designs to the Client, in order to undertake the verification operations.

13.2.3. If the services are not completed by the expiry date of the validity of the contract, the period of performance of the services shall expire on the expiry date of the validity of the contract, with the exception of purchase orders issued during the validity of the contract.

## **13.3. Extension of the period of performance**

13.3.1. When the Contract Holder is unable to meet deadlines for performance as a result of the Client's actions or due to an event of force majeure, the Client shall extend the period of performance. The deadline thus extended shall have the same effects as the contractual period.

13.3.2. In order to benefit from this extension, the Contract Holder shall inform the Client of the causes hindering the performance of the contract within the contractual period. It shall have, for this purpose, a period of fifteen days from the date on which these causes emerged or until the end of the contract, in the event that the contract expires in a period of less than fifteen days. It shall, by means of the same request, inform the Client of the duration of the requested extension.

13.3.3. The Client shall have a period of fifteen days from the date of receipt of the request of the Contract Holder in which to notify the Contract Holder of its decision, provided that the contract does not come to an end before the end of this period.

The request for extension cannot be refused when the delay is due to the intervention of the service provider, as part of a requisition order.

Furthermore, provided that the purpose of the contract itself is not to respond to a situation of extreme urgency resulting from unforeseeable situations, the request for extension cannot be refused when the delay is due to the intervention of the service provider, in the context of a contract concluded in an extreme urgency resulting from unforeseen circumstances.

The period of performance of the contract shall be extended by the time required to deliver the services performed upon request or for the needs of the contract concluded in a situation of extreme urgency.

13.3.4. No request for an extension of the period of performance may be made after the expiry of the contractual period for performance of the service.



## **ARTICLE 14: PENALTIES FOR DELAY**

**14.1.** Penalties for delay start from, without any requirement to provide formal notice, the day after the day on which the contractual deadline for performance of the services has expired, subject to the provisions laid down in Articles 13.3 and 22.4.

This penalty is calculated by applying the following formula:

$$P = V * R/3000$$

where: P = the amount of the penalty

V = the value of the deliverables on which the penalty calculation is based, this value being equal to the base price cost, before price variations and not including VAT, of the portion of the deliverables that is supplied late or of all the deliverables, if the delay in supplying one part makes the whole package unusable.

R = the number of days late.

**14.2.** Once the amount of the penalties has been determined, the variation formula provided for in the contract is applied to them.

**14.3.** The Contract Holder is exempt from penalties whose total amount does not exceed €1,000, excluding tax, for the entire contract.

## **ARTICLE 15: INCENTIVES FOR EARLY COMPLETION OF THE SERVICES**

The contract may provide for incentives for the early completion of either all the services, or certain parts of the services subject to specific deadlines or time limits set in the contract.

The incentive shall be paid inclusive of tax, without the Contract Holder being obliged to request it, along with the balance for the corresponding service. It is subject to the same payment rules as those relating to said balance.

## **CHAPTER 4: PERFORMANCE**

### **ARTICLE 16: RESOURCES MADE AVAILABLE TO THE CONTRACT HOLDER**

**16.1.** The provisions of this article apply when the Client makes available to the Contract Holder the necessary resources to perform the service.

**16.2.** Where these resources are the property of the Client, they shall remain freely available to the Contract Holder for the performance of the contract.



**16.3.** A joint report shall be prepared in order to establish the status of these resources at the time they are made available to the Contract Holder. This report shall be signed by both parties. It shall mention the value of these resources.

The effective date of the provision of the resources shall be that of the joint report.

**16.4.** The Contract Holder shall be responsible for the supervision, storage, maintenance and use of the resources entrusted to it, as from the moment they are effectively made available to it. It may only use these resources to fulfil the purpose of the contract.

To this end, the Contract Holder must:

- keep a permanent inventory,
- affix on the resources any means of identifying the owner.

**16.5.** When one of these resources made available is damaged, destroyed or lost, the Contract Holder is required to repair it, to replace it or to refund the residual value at the date of disappearance or loss.

**16.6.** At the end of the performance period or after termination of the contract, or at the end of the term fixed by the contract, the resources provided shall be returned to the Client.

**16.7.** A joint report shall be prepared when the resources are returned. Where applicable, the costs related to returning the resources are borne by the Contract Holder.

**16.8.** If the Contract Holder does not comply with the obligations of 4, 5 and 6 of this article, the Client may suspend payment of the amounts due under the contract, up to the amount of the estimated loss, until these obligations are fulfilled.

Regardless of the sanctions set out above, the contract may be terminated, under the conditions of Article 32, in the event of failure to submit, of misuse or of abusive use of the resources provided to the Contract Holder.

## **ARTICLE 17: INSURANCE OF THE RESOURCES MADE AVAILABLE TO THE CONTRACT HOLDER**

**17.1.** The Contract Holder is required, prior to being provided with the resources and for as long as it makes use of them, to insure at its own expense all the resources belonging to the Client.

**17.2.** It must justify, within fifteen days of signing the contract and before commencing any performance thereof, that it is the policy holder of these insurance contracts, by means of a certificate establishing the extent of the liability insured. At any time during the performance of the contract, the Contract Holder must be able to produce this certificate, upon the request of the Client and within a period of fifteen days from receipt of the request.



**17.3.** If the Contract Holder contravenes these requirements, the Client may take out the necessary insurance policy (or policies) five days after a formal notice has remained ineffective.

The amount of the insurance premiums shall then be deducted from the sums due to the Contract Holder under the contract.

## **ARTICLE 18: PLACES OF PERFORMANCE**

**18.1.** At the request of the Client, the Contract Holder must inform the Client of the place of performance of the services. The Client may monitor performance on site. Access to the places of performance is reserved for the Client's representatives only. The persons designated by the Client for this purpose shall have free access to the areas concerned by the performance of the services provided for in the contract, in compliance with the safety instructions provided for the site. They shall be bound by the confidentiality obligations provided for in Articles 5.1 and 5.2.

**18.2.** If the Contract Holder interferes with the exercise of the Client's right of control during the performance of the contract, it shall incur the penalties provided for in Article 32.

## **ARTICLE 19: TECHNICAL CHANGES DURING PERFORMANCE OF THE CONTRACT**

**19.1.** During the performance of the contract, the Client may require that the Contract Holder make technical modifications or that it accepts the modifications proposed by the Client.

These changes may not change the purpose of the contract or substantially modify the technical characteristics of the bid presented by the Contract Holder during the call for tenders.

The Contract Holder shall not make any changes to the technical specifications without prior authorisation from the Client.

The decision of the Client shall be notified to the Contract Holder who shall execute it. The Contract Holder shall present any observations it may have within one month.

**19.2.** The Contract Holder must provide a detailed estimate indicating the anticipated changes to the price and time frame. To this end, it shall have a period of three months from the notification of the decision of the Client requiring or accepting the modifications, unless this decision has specified a different deadline.

The formulation of these modifications by the Client shall give rise to the establishment of an addendum.

## **ARTICLE 20: TERMINATING PERFORMANCE OF THE SERVICES**

Where the services are divided into several technical parts to be performed separately, the Client may decide, at the end of each of these parts, either at his its initiative or at the request of the Contract Holder, not to continue performing the services, whenever both of the following conditions are met:



- the specific contract documents expressly provide for this possibility,
- each of these technical parts is clearly identified and assigned a value.

The decision to terminate performance of the services shall not give rise to any compensation. Terminating performance of the services shall result in the termination of the contract.

## **ARTICLE 21: STORAGE, PACKAGING AND SHIPPING**

For contracts involving the supply of goods that become the property of the Client, the following provisions apply to the storage, packaging and transport of these goods.

### **21.1. Storage**

21.1.1. If the specific contract documents provide for an obligation to store materials at the Contract Holder's premises, the Contract Holder shall assume responsibility as custodian of said materials during a period specified by the specific contract documents and starting from the receipt of said materials.

21.1.2. When the materials are stored at the Client's premises, the Client shall assume responsibility as custodian until the acceptance decision.

### **21.2. Packaging**

21.2.1. The quality of the packaging must be appropriate to the conditions and modes of shipping provided for in the specific contract documents. The quality of the packaging is the responsibility of the Contract Holder.

21.2.2. The packaging remains the property of the Contract Holder.

### **21.3. Shipping**

Materials are shipped to the place of delivery under the responsibility of the Contract Holder. The packaging, loading, stowage and unloading is done under its responsibility.

## **ARTICLE 22: DELIVERY**

**22.1.** Any delivery made by the Contract Holder must be accompanied by a delivery order or a list, prepared separately for each recipient, and specifying in particular:

- the date of shipment;
- the reference to the order or the contract;
- the identification of the Contract Holder;
- the identification of the items delivered and, where applicable, their distribution by package;
- the number of manufacturing lot(s), if required by the regulations relating to labelling.

Each package must clearly indicate its order number as it appears on the delivery order or list. Each package shall contain an inventory of its contents.



**22.2.** The delivery is recorded through the issuance of a receipt to the Contract Holder or by the signature of the delivery order or list, a copy of which shall be kept by each party. If delivery is not possible, said impossibility to deliver must be mentioned on one of these documents.

**22.3.** If the provision of the premises designated for carrying out the deliveries results in exceptional maintenance difficulties not provided for in the contract, the resulting additional delivery costs shall be paid separately. They shall be subject to an addendum.

**22.4.** A postponement of delivery may be granted by the Client to the Contract Holder when, except in the cases established for the extension of the period under Article 13.3, a cause beyond the control of the Contract Holder prevents delivery within the contractual period. The postponement of delivery shall suspend, for a time equal to its duration, the application of penalties for delay.

The formalities for granting the suspension of delivery are the same as those for the extension of the period mentioned in Article 13.3.

No postponement of delivery may be requested by the Contract Holder for events occurring after the expiry of the period of performance of the contract, including any extensions.

## **CHAPTER 5: USE OF THE RESULTS**

### **ARTICLE 23: DEFINITIONS**

**23.1.** “Results” refers to all the elements, in whatever form, nature and medium, which result from the performance of the services that are the subject of the contract, such as, in particular, works, software, their updates or their new versions, databases, distinctive signs, domain names, information, websites, reports, studies, trademarks, designs or models, patentable or non-patentable inventions within the meaning of the French Code of Intellectual Property, and more generally all elements protected or not by intellectual property rights or by any other method of protection, such as know-how, business secrets, image rights concerning property or persons.

**23.2.** “Know-how” is a set of non-patented practical and tested information, resulting from experience, which is:

1. Secret, i.e. it is not generally known or easily accessible,
2. Substantial, i.e. it is important and useful for producing the results; and



3. Identified, i.e. it is described in a sufficiently complete manner to enable verification that it fulfils the conditions of secrecy and substantiality.

The definition of know-how is provided under EC Regulation 772/2004 “Technology transfer agreements”.

**23.3.** “Intellectual property rights” refers to industrial property rights and literary and artistic property rights.

**23.4.** Literary and artistic property rights refer to the copyrights and the rights related to copyright governed by the French Intellectual Property Code, as well as the rights of the same nature recognised abroad or in accordance with international agreements, conventions and treaties.

**23.5.** “Industrial property titles” means industrial property titles and applications for industrial property titles governed by the French Intellectual Property Code including, but not limited to, patents, trademarks, designs and models, semiconductor topographies, utility models, supplementary protection certificates and titles or applications for titles issued abroad or in accordance with international agreements, conventions and treaties.

The list of industrial property titles relating to the results is appended to the contract and completed as and when the contract is performed.

**23.6.** “Prior knowledge” refers to all elements, in whatever form, nature and medium, which do not result from the performance of the services that are the subject of the contract, such as, in particular, the works, software, their updates or their new versions,

databases, distinctive signs, domain names, information, websites, reports, studies, trademarks, designs and models, patentable and non-patentable inventions within the meaning of the French Intellectual Property Code, and more generally all elements - protected or not - by intellectual property rights or by any other method of protection such as know-how, business secrets, domain names, image rights of goods or persons, and which, on the day of signing of the contract, belong to the Contact Holder or to third parties or are licensed to them.

**23.7.** “Third parties named in the contract” means the persons named in the specific contract documents who enjoy the same rights and who are subject to the same obligations as the Client for the use of the results.

## **ARTICLE 24: PRIOR KNOWLEDGE REGIME**

**24.1.** The conclusion of the contract does not imply the transfer of intellectual property rights or rights of any other nature relating to prior knowledge. The Client, the Contract Holder and the third parties named in the contract shall remain the Holders - each insofar as it is concerned - of the intellectual property rights or rights of any other nature relating to prior knowledge.



**24.2.** When the Contract Holder incorporates prior knowledge into the results or uses prior knowledge that is available under a free license scheme or where prior knowledge, without being incorporated into the results, is strictly necessary for the implementation of the results, the Contract Holder grants, on a non-exclusive basis, to the Client and to the third parties named in the contract, the right to use permanently or temporarily, in whole or in part, by any means and in any form, the prior knowledge strictly necessary for use of the results, for the purposes arising from the purpose of the contract. This right includes the right to reproduce, duplicate, load, display, store, execute, and represent the prior knowledge in order to use the results.

The granting of rights to prior knowledge is included in the contract price. The rights are granted for the duration of the rights of use relating to the results.

The rights of modification, adaptation, and translation shall be exercised, as necessary, under the conditions provided for by the specific contract documents.

**24.3.** During the performance of the contract, the Contract Holder may not use or incorporate, without the Client's prior consent, any prior knowledge necessary for achieving the purpose of the contract that would be likely to limit or make it more costly to exercise the rights to the results.

## **ARTICLE 25: REGIME OF INTELLECTUAL PROPERTY RIGHTS OR RIGHTS OF ANY OTHER NATURE RELATING TO THE RESULTS: ASSIGNMENT OF OPERATING RIGHTS OVER THE RESULTS**

The Contract Holder assigns, on an exclusive basis, all the rights or titles of any kind relating to the results, allowing the Client to use them freely, including for commercial purposes, for the destinations specified in the specific contract documents.

The specific contract documents may provide that the Client, beneficiary of the assignment, may reassign or grant, on a non-exclusive basis, certain rights of use to the Contract Holder.

The territory, the duration, and the operating procedures of the transferred rights and the price are defined in the specific contract documents.

The Contract Holder retains sole liability for its employees and third parties acting on its behalf.

Rights of use relating to the results shall be assigned to the Client only. The Client may assign certain rights to third parties.

### **25.1. Rights of the Client**

25.1.1. Results protected by a literary and artistic property right.

1. The Contract Holder assigns to the Client the pecuniary rights to literary and artistic property relating to the results for the territory, the duration, the operating procedures of the rights assigned and the price defined in the specific contract documents. This assignment of rights covers the results as from their delivery subject to acceptance of the services.



These rights shall comprise, in respect of moral rights, all the pecuniary rights of reproduction and performance and in particular the rights to adapt, arrange, correct, translate and incorporate and the right to communicate the results for commercial purposes, particularly for the operating procedures provided for in the specific contract documents.

The exercise of the pecuniary rights subject to the assignment for the needs resulting from the purpose of the contract, must be carried out whilst respecting the moral rights of the author. Article L. 121-1 of the French Intellectual Property Code states that *“the author shall enjoy the right to respect for his/her name, capacity and work. This right is attached to the person. It is eternal, inalienable and not subject to limitation (...)”*

In application of this article, the author is entitled in particular:

- to respect for his/her name and capacity. This “right to paternity” is reflected in the obligation to affix the author’s name and capacity to his/her work and to any reproduction of it (e.g. affixing the architect’s name to the building he/she created),
- respect for his/her work. This right authorises the author to have sanctions imposed for any alteration or distortion of his work. The adaptation, arrangement or modification may undermine the integrity of the work and cause the Client to incur liability.

Detecting any infringement of the right to respect for the work shall be made on a case-by-case basis by the courts, depending on the nature of the works and the uses made.

It is recommended that, prior to any adaptations, modifications or arrangement of the work that have not been the subject of a special authorisation in the specific contract documents and which might alter or distort the work, the Contract Holder or the authors of the proposed developments be informed.

2. For the operating procedures provided for in the specific contract documents and in compliance with the moral rights, the right of reproduction includes, if necessary, the right to reproduce the results, without limitation of number, in all or part, as they stand or as modified, by any means and in any medium including for unpredictable or unknown media at the date of signing the contract, subject to remuneration to be agreed for future operating procedures, not known on the date of signing the contract.
3. For the operating procedures provided for in the specific contract documents and in respect of the moral rights, the right of representation and distribution includes, if necessary, the right of communication to the public and the making available to the public of the results, in whole or in part, as they stand or as modified by any means, methods and processes, including those unpredictable or unknown at the date of signing the contract, for use in particular for commercial purposes.
4. The source codes and the documentation necessary for the implementation of the rights on the software delivered under the contract shall be delivered, on a usable medium, at the same time as the object code. The source codes are considered confidential.

#### 25.1.2. Results protected by an industrial property right.

1. The Contract Holder shall inform the Client of any result that has been identified as being reasonably likely to be protected by an industrial property right.
2. The Contract Holder shall authorize the Client to file any application or industrial property title in the name of and at the expense of the Client. The Contract Holder shall make every effort to enable the Client to proceed with the filing of the industrial property titles. As such, the Contract Holder shall submit



to the Client the information and authorizations necessary to obtain the industrial property rights relating to the results.

3. In the event that titles have been filed, the Contract Holder shall assign to the Client (i) the full ownership of the industrial property titles and applications for titles related to the results it has filed; (ii) the Paris Convention priority right that may be attached to the industrial property titles and applications for titles; (iii) the right to bring a lawsuit for any act of counterfeiting, unfair competition or free-riding prior or subsequent to the date of signing the contract. Accordingly, on the date of signing the contract, the Client alone shall acquire all the rights, actions and privileges of the Contract Holder over the results and shall have the ownership and full enjoyment of the industrial property titles and applications for titles.

With respect to applications for titles filed by the Contract Holder, the Contract Holder is required, without limitation of duration, to make all necessary arrangements and to sign all necessary documents to ensure that such applications are registered on behalf of the Client. If, in any of the countries covered by the contract, the applications for titles cannot be transferred to the Client, the Contract Holder must, at the time of the registration of the said applications for titles, sign all the documents so that they can be transferred to the Client. The costs as from the date of transfer shall be borne by the Client and, where applicable, third parties named in the contract. With respect to the applications for titles filed by the Client, the Contract Holder is required to sign all necessary documents to enable the Client to carry out the filing procedures in the Client's name. The costs shall be borne by the Client and, where applicable, third parties named in the contract.

The Contract Holder undertakes, in particular, to ensure that its staff, named as inventors, give all the signatures and perform all the formalities necessary for the filing, obtaining, maintaining in force and defence of the patents relating to the results.

#### 25.1.3. Results falling under other protection regimes.

1. The Contract Holder shall assign exclusively, definitively and irrevocably to the Client the right to use the results covered by the know-how or business secrets.

2. The Contract Holder shall assign to the Client the right to exploit the databases included, if any, in the results.

3. The Contract Holder shall assign, on an exclusive basis, the domain names for which a patent has been filed.

#### 25.2. Common provisions

1. In general, the Contract Holder may not assert its rights or intellectual property rights or any other rights to use the results.

2. In the event of termination of the contract for any reason whatsoever, the Client remains the assignee of all usage rights relating to the results.

3. The Contract Holder may freely publish the results subject to the provisions of Article 5 and the Client's prior agreement.

The existence of restrictions on the right to publish the results does not preclude the publication of general information on the existence of the contract and the nature of the results.

Said publication must mention that the results have been funded by the Client.



4. For a period of two years, the Contract Holder shall be required to provide, at the request of the Client, the assistance essential to exercising the rights necessary for use of the results.

The Contract Holder must, in particular:

a) Submit, within a maximum period of two months from the receipt of the application, all drawings, documents, templates, and models necessary for the manufacture of the objects, materials and constructions in question. This period may be extended by the Client, at the request of the Contract Holder, for items that cannot be made available without substantial additional work.

b) Assist by providing its technical advice and the temporary assistance of its specialised staff, as well as by communicating all manufacturing processes and know-how that are necessary for use of the results.

### 25.3. Warranties

1. The Contract Holder shall guarantee the Client's full and complete enjoyment, free of any servitude, of the intellectual property rights or rights of any kind relating to the results which are assigned under the terms of the contract.

The Contract Holder warrants:

- that it is the owner of the intellectual property rights in the applications for titles and the titles which it assigns,
- that it is the owner of or holds the rights granted on prior knowledge,
- that it has not granted any licence, collateral, pledge or any other right to the benefit of a third party, over the results, titles and applications for titles,
- that there is no lawsuit, pending or imminent, and that it has not been informed of any lawsuit that may be brought concerning the rights subject to the assignment,
- that it shall indemnify the Client, in the absence of any fault that is directly attributable to it, and without any benefit of seizure and sale or division, against any action, claim or form of opposition by any person whose right has been allegedly infringed by the use of the results and of prior knowledge of the Contract Holder pursuant to articles 24 and 25. If the Client is sued for infringement, unfair competition or free-riding, without fault on its part, as a result of the Contract Holder's use of the results and prior knowledge in accordance with the provisions of Articles 24 and 25, it shall immediately inform the Contract Holder who can then join the legal proceedings,
- that it undertakes, in these cases, to provide to the Client all the necessary assistance at its expense,
- that it undertakes, as it chooses, (i) to modify or replace the items in dispute, so that they cease to come within the scope of the complaint, while remaining compatible with the contract specifications, or (ii) to ensure that the Client can have unlimited use of the disputed items at no extra cost, or (iii) if neither of these solutions is reasonably practicable, to reimburse the sums paid by the Client in connection with the disputed items and compensate them for detriment suffered.

In these cases, the Contract Holder shall pay for any damages which the Client would, in the absence of any fault that is directly attributable to it, be ordered to pay for an act of counterfeiting, unfair competition or free-riding, due to the Contract Holder's use of the results and prior knowledge in accordance with the provisions of Articles 24 and 25, as soon as the judgement pronouncing said damages becomes enforceable.



2. The Contract Holder shall not be held liable for any claim relating to:

- the prior knowledge that the Client has provided to the Contract Holder for the performance of the contract,
- the elements incorporated into the results at the express request of the Client,
- modifications or adaptations made to the results, if the cause of the claim is based on a modification or adaptation made by the Client or at its express request.

#### **25.4. Rights of the Contract Holder**

1. The Contract Holder undertakes, as from the date of assignment of the rights, not to grant a licence, use or exploit, in any way whatsoever, the results transferred.

2. The Contract Holder shall retain its own rights, including usage rights, relating to the prior knowledge incorporated into the results in accordance with the provisions of Article 24.

The Contract Holder may only use the results, including commercially, with the Client's prior written consent

## **CHAPTER 6: CONFIRMATION OF PERFORMANCE OF THE SERVICES - WARRANTY**

### **ARTICLE 26: VERIFICATION OPERATIONS**

#### **26.1. Nature of the operations**

The purpose of the quantitative and qualitative verification operations is to enable the Client to check in particular that the Contract Holder:

- has implemented the means defined in the contract in accordance with the requirements laid down therein,
- has carried out the services defined in the contract as being at its expense, in accordance with the contractual provisions.

The materials and objects required for the tests shall be taken by the Client from the deliveries made under the contract.

#### **26.2. Period for verifications**

The Client shall have a period of two months to carry out the verifications and notify its decision of acceptance, deferral, acceptance with reduction or rejection.

#### **26.3. Starting point of the period for verification operations**



26.3.1. For the verifications carried out at the Client's establishments, the starting point of the period is the date of handover by the Contract Holder, or delivery, of the services to the Client.

26.3.2. For verifications that are carried out at the Contract Holder's premises or at any other place designated in the specific contract documents, the starting point of the period is the date on which the Contract Holder notifies the Client that the services are ready to be verified.

#### **26.4. Verification costs**

26.4.1. Irrespective of the results of the verifications, the costs involved shall be borne by the Client for the operations which, in accordance with the provisions of the contract, must be performed at its own premises. In all other cases, they are borne by the Contract Holder. However, where one of the parties has agreed to have tests carried out at its own premises which, in accordance with the specific contract documents, should have been carried out at the premises of the other party, the corresponding costs shall be borne by the other party.

26.4.2. The Contract Holder shall notify the Client of the date from which the services can be presented for these verifications.

#### **26.5. Presence of the Contract Holder**

The Client shall notify the Contract Holder, at least eight days before the scheduled date, of the dates and times set for the verifications, in order to enable it to attend or be represented. The absence of the duly informed Contract Holder, or its representative, shall not hinder the implementation or validity of the verification operations.

### **ARTICLE 27: ACCEPTANCE, DEFERRAL, REDUCTION AND REJECTION**

At the end of the verification operations, the Client shall, within the deadline referred to in Article 26.2, make a decision to accept, defer, issue a reduction or reject the services.

If the Client of the contract does not notify its decision within the deadline stipulated in Article 26.2, the services shall be deemed accepted, with effect from the expiry of the deadline. In the case of a contract with separate services to be performed, each service shall be subject to separate verifications and decisions.



### **27.1. Acceptance**

The Client shall declare acceptance of the services if they fulfil the provisions of the contract. The acceptance shall take effect on the date of providing notification of the decision to the Contract Holder.

In the case of tacit acceptance, the effective date shall be the expiry of the period mentioned in Article 26.2.

### **27.2. Postponement**

27.2.1. The Client, when it considers that services may only be accepted following certain adjustments, may decide to defer acceptance of the services by means of a reasoned decision. This decision shall invite the Contract Holder to present the updated services to the Client within a period of fifteen days. The Contract Holder must make known its acceptance within ten days from the notification of the deferral decision. In the event of refusal by the Contract Holder or in the absence of declaration by the Contract Holder during this period, the Client shall have the option of declaring acceptance of the services with reduction or rejecting them, under the conditions set out in points 3 and 4 of this Article, within a period of fifteen days from the notification of the Contract Holder's refusal or from the expiry of the ten-day period mentioned above.

The absence of declaration by the Client beyond this period of fifteen days shall be deemed a decision to reject the services. 27.2.2. If the Contract Holder again presents the updated services, after the decision to defer acceptance of the services, the Client shall again have the totality of the time period provided for to carry out the verifications of the services, as from their new presentation by the Contract Holder.

27.2.3. In the event that the verification operations are carried out at the Client's premises, the Contract Holder shall have a period of fifteen days from the notification of the deferral decision to remove any supplies that were delivered as part of the services subject to the postponement decision.

After this period, these supplies may be removed or destroyed by the Client, at the expense of the Contract Holder.

### **27.3. Reduction**

When the Client considers that the services, although not fully in compliance with the provisions of the contract, may nevertheless be accepted as they stand, it may accept them with a price reduction proportional to the extent of the imperfections noted. This decision must be justified. The Contract Holder cannot be notified of said decision until it has been given the opportunity to submit its observations.

If the Contract Holder does not submit any observations within fifteen days from the decision to accept the services with a payment reduction, it shall be deemed to have accepted said decision. If the Contract Holder makes observations within this period, the Client shall then have fifteen days to notify it of a new decision. In the absence of such notification, the Client is deemed to have accepted the Contract Holder's observations.



## **27.4. Rejection**

27.4.1. When the Client considers that the services are not in compliance with the provisions of the contract and cannot be accepted as they stand, it shall declare partial or total rejection of them.

27.4.2. In the event of rejection, the Contract Holder is required to perform the service provided for in the contract again.

27.4.3. The Contract Holder shall have a period of one month from the notification of the rejection decision to remove any supplies delivered in respect of the rejected services. When this period has elapsed, they may be removed or destroyed by the Client, at the expense of the Contract Holder.

**27.5.** When the poor quality or defectiveness of the supplies or materials delivered by the Client, and included in the composition of the services, is the reason for the lack of conformity of the services with the provisions of the contract, the Client may not take a deferral, acceptance with reduction, or rejection decision:

- if the Contract Holder has, within a period of fifteen days from the date on which it had the opportunity to inspect said supplies, materials or equipment, informed the Client of the defects in the supplies, materials or equipment delivered, where reservations made concerning hidden defects are unable to be detected with the means at its disposal,
- and the Client has decided that the supplies, materials or equipment should nevertheless be used and has notified the Contract Holder of its decision.

## **ARTICLE 28: TECHNICAL WARRANTY**

The services are covered by a minimum one-year warranty. The starting point of the warranty period is the date of notification of the acceptance decision.

## **CHAPTER 7: TERMINATION**

### **ARTICLE 29: GENERAL PRINCIPLES**

#### **29.1. Termination due to external events or related to the contract, or due to fault of the Contract Holder**

The Client may terminate the performance of the services which are the subject of the contract before the completion of said services, either in the case of the special circumstances mentioned in Article 30, or at the request of the Contract Holder under the conditions provided for in Article 31, or due to the fault of the Contract Holder under the conditions provided for in Article 32.

The decision to terminate the contract shall be notified to the Contract Holder and shall take effect on the date set in the decision to terminate the contract or, failing that, on the date of its notification.

#### **29.2. Termination by the Client or the Contract Holder due to another reason**



The Contract Holder and the Client may request the termination of the contract at any time by giving 30 days' notice to the other party by registered letter with acknowledgement of receipt, specifying the reasons for such termination. In the event that, after a negotiation phase, no agreement has been reached on the continuation of the contract, the parties shall agree to terminate it, and the termination account shall be established in accordance with the provisions of Article 33.4. The termination shall take effect on the date mutually agreed between the Client and the Contract Holder.

## **ARTICLE 30: TERMINATION DUE TO EVENTS EXTERNAL TO THE CONTRACT**

### **30.1. Death or civil incapacity of the Contract Holder.**

In the event of death or civil incapacity of the Contract Holder, the Client may terminate the contract or accept its continuation by the successors or the administrator. A transfer amendment shall be established for this purpose.

The termination, if pronounced, shall take effect on the date of death or civil incapacity. It does not entitle the Contract Holder or its successors to any compensation.

### **30.2. Insolvency proceedings and bankruptcy**

In the event of insolvency proceedings, if the court appointed administrator states that he is unable to fulfil the contractor's obligations, under the conditions set out in Article L. 622-13 of the French Code of Commerce, the contract is terminated.

In the event of the Contract Holder's bankruptcy, if the court appointed liquidator states that he is unable to fulfil the contractor's obligations, under the conditions set out in Article L. 641-10 of the French Code of Commerce, the contract is terminated.

The termination, if pronounced, shall take effect on the date of the event. It does not entitle the Contract Holder to any compensation.

### **30.3. Physical incapacity of the Contract Holder**

In case of manifest and long-term physical incapacity of the Contract Holder, compromising the smooth performance of the contract, the Client may terminate the contract. Termination of the contract shall not entitle the Contract Holder to any compensation.

## **ARTICLE 31: TERMINATION DUE TO EVENTS RELATED TO THE CONTRACT**

### **31.1. Difficulty in the performance of the contract**

Where the Contract Holder encounters, during performance of the services, any particular technical difficulties the resolution of which would require the implementation of means that are disproportionate to the value of the contract, the Client may terminate the contract at its own initiative or at the request of the Contract Holder.



When the Contract Holder is unable to perform the contract due to an event of force majeure, the Client shall terminate the contract.

### **31.2. Late service order**

When the termination is pronounced at the request of the Contract Holder pursuant to Article 3.8.3, the latter shall be compensated for the costs and investments it may have incurred for the contract and strictly necessary for its performance.

### **31.3. Terminating performance of the services**

When termination of the performance of the services is declared pursuant to Article 20, the Client shall terminate the contract.

Termination of the contract shall not entitle the Contract Holder to any compensation.

## **ARTICLE 32: TERMINATION DUE TO FAULT OF THE CONTRACT HOLDER**

**32.1.** The Client may terminate the Contract due to fault by the Contract Holder in the following cases:

- a) The Contract Holder contravenes any legal or regulatory obligations relating to the work or the protection of the environment,
- b) Resources have been made available to the Contract Holder, which finds itself in one of the situations provided for in Article 16.8,
- c) The Contract Holder has not fulfilled its obligations within the contractual deadlines,
- d) The Contract Holder has obstructed the performance of an inspection by the Client under Article 18,
- e) The replacement of the person designated to ensure the performance of the services is disqualified, failing the appointment of a new replacement within one month, or disqualification of said replacement within one month,
- f) The Contract Holder has subcontracted work in contravention of the laws and regulations relating to subcontracting, or it has not fulfilled the obligations relating to subcontractors set out in Article 3.6;
- g) The Contract Holder has not produced the insurance certificates under the conditions provided for in Article 9,
- h) The Contract Holder declares, irrespective of the cases provided for in Article 30.1, that it is unable to fulfil its obligations,
- i) The Contract Holder has not communicated the changes mentioned in Article 3.4.2 and these changes are likely to jeopardize the proper performance of the contract,
- j) The Contract Holder has engaged in fraudulent acts during the performance of the contract;



k) The Contract Holder or the subcontractor does not fulfil the obligations relating to confidentiality, professional banking secrecy, protection of personal data, and security, in accordance with Article 5,

l) The use of the results by the Client is seriously compromised, due to the Contract Holder's delay in the performance of the contract,

m) Subsequent to the signing of the contract, the Contract Holder has been prohibited from practising any industrial or commercial profession,

n) Subsequent to the signing of the contract, the information or documentation produced by the Contract Holder, in support of its application or required prior to the award of the contract, prove to be inaccurate.

**32.2.** Except in the cases provided for in j, m and n of 32.1 above, a formal notice, together with a period of performance, must have been previously notified to the Contract Holder and have remained ineffective.

As part of the formal notice, the Client shall inform the Contract Holder of the proposed penalty and invite it to submit its comments.

**32.3.** The termination of the contract does not preclude the exercise of civil or criminal proceedings that may be brought against the Contract Holder.

## **ARTICLE 33: TERMINATION ACCOUNT**

**33.1.** The termination of the contract is subject to a termination statement of account, which shall be prepared by the Client and notified to the Contract Holder.

**33.2.** The termination account prepared following a termination decision made under Article 31 shall include:

33.2.1. Debited to the Contract Holder:

- the amount of the sums paid as an advance, instalment, final partial payment and balance,
- the value, fixed by the contract and any amendments thereto, of the resources entrusted to the Contract Holder that the latter is unable to return as well as the value of recovery of the resources which the Client assigns to the Contract Holder amicably;
- the amount of the penalties;

33.2.2. Credited to the Contract Holder:

33.2.2.1. The value of the services provided to the Client, namely:

- the contractual value of the services received, including, where applicable, default interest;
- the value of the any services provided at the request of the Client, such as the storage of supplies.

33.2.2.2. Expenses incurred by the Contract Holder for the performance of services that have not been provided to the Client, to the extent that these expenses have not been previously recovered or cannot be subsequently recovered, namely:

- the cost of materials and items supplied for the performance of the contract,



- the cost of the facilities, equipment and tools supplied for the performance of the contract,
- other expenses of the Contract Holder directly related to the performance of the contract.

33.2.2.3. Staff expenses for which the Contract Holder provides proof that they result directly and necessarily from the termination of the contract.

**33.3.** The termination account following a termination decision made under Article 32 shall include:

33.3.1. Debited to the Contract Holder:

- the amount of the sums paid as an advance, instalment, final partial payment and balance,
- the value, fixed by the contract and any amendments thereto, of the resources entrusted to the Contract Holder that the latter is unable to return as well as the value of recovery of the resources which the Client assigns to the Contract Holder amicably;
- the amount of the penalties;
- where applicable, any additional costs arising from contracts entered into by the Contract Holder at its own risk and expense in the circumstances specified in Article 35.

33.3.2. Credited to the Contract Holder:

- the contractual value of the services received, including, where applicable, default interest,
- the value of any services provided at the request of the Client, such as the storage of supplies.

**33.4.** The termination account following a termination decision made under Article 30 or Article 29.2 shall include:

33.4.1. Debited to the Contract Holder:

- the amount of the sums paid as an advance, instalment, final partial payment and balance,
- the value, fixed by the contract and any amendments thereto, of the resources entrusted to the Contract Holder that the latter is unable to return as well as the value of recovery of the resources which the Client assigns to the Contract Holder amicably, the amount of the penalties;

33.4.2. Credited to the Contract Holder:

- the contractual value of the services received, including, where applicable, default interest;
- the value of any services provided at the request of the Client, such as the storage of supplies.

•

**33.5.** The Client must provide notification of the statement of account to the Contract Holder no later than two months after the effective date of termination of the contract. In this case, the penalties for late payment shall be applied up to and including the day before the effective date of termination.

## **ARTICLE 34: DELIVERY OF SERVICES AND MATERIAL RESOURCES PERMITTING PERFORMANCE OF THE CONTRACT**

In the event of termination, the Client may require the Contract Holder:

- to deliver the services in progress, as well as the materials and objects in its possession for the performance of the contract,
- to deliver the material resources specifically intended for the contract,
- to take precautionary measures, in particular storage or security operations.



The Client shall inform the Contract Holder or its successors, upon notification of the termination of the contract, by indicating the deadline for delivering these items by the Contract Holder and the conditions for storing them pending said delivery.

In the event of termination due to fault of the Contract Holder, this Article shall be applied at the expense of the Contract Holder.

## **ARTICLE 35: PERFORMANCE OF THE SERVICE AT THE EXPENSE AND RISK OF THE CONTRACT HOLDER**

**35.1.** On the condition that it is provided for in the specific contract documents and expressly mentioned in the decision to terminate the contract, the Client may have a third party perform the services provided for in the contract, at the expense and risk of the Contract Holder, either in the event of non-performance by the Contract Holder of a service which, due to its nature, cannot incur any delay, or in the event of termination of the contract declared due to fault on the part of the Contract Holder.

**35.2.** If it is not possible for the Client to obtain, under acceptable conditions, services that are exactly in accordance with those provided for in the specific contract documents, it may substitute them for equivalent services.

**35.3.** The Contract Holder of the terminated contract is not allowed to participate, either directly or indirectly, in the performance of services carried out at its own expense and risk. It must, however, provide all the information collected and the means implemented in the performance of the initial contract and which are necessary for the performance of said contract by the third party appointed by the Client.

**35.4.** The increase in expenses, in comparison to the contract prices, resulting from the performance of the services at the expense and risk of the Contract Holder, shall be borne by the Contract Holder. The Contract Holder shall not benefit from any decrease in expenses.

## **CHAPTER 8: DISPUTES AND LITIGATION**

### **ARTICLE 36: DISPUTES BETWEEN THE PARTIES**

The Client and the Contract Holder shall make every effort to settle any dispute concerning the interpretation of the provisions of the contract or the performance of the services which are the subject of the contract in an amicable manner.

Any dispute between the Contract Holder and the Client must be the subject of a letter of complaint from the Contract Holder setting out the reasons for its disagreement and indicating, where applicable, the amount of the sums claimed. This letter must be communicated to the Client within two months, starting from the day the dispute arose, failing which the complaint will be barred.



The Client shall have a period of two months, starting from receipt of the letter of complaint, to send notice of its decision. The absence of a decision within this period shall be deemed as rejection of the claim.

### **ARTICLE 37: ATTRIBUTION OF JURISDICTION**

If, however, the parties cannot reach an agreement, for any dispute that may arise relating to the interpretation or performance of the contract, exclusive jurisdiction is assigned to the Commercial Court of Paris, notwithstanding multiple defendants or third-party claims, even for urgent or preventive measures, by application for summary proceedings or by petition.