



## **PUBLIC PROCUREMENT OF CONSULTANCY SERVICES**

**Agence Française de développement**

5 Rue Roland-Barthes

75012 PARIS

**RE:**

**Study for vehicles labeling in Ecuador: road safety, energy efficiency and climate change**

**Special Administrative Terms and Conditions**

# **SPECIAL ADMINISTRATIVE TERMS AND CONDITIONS**

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# SPECIAL ADMINISTRATIVE TERMS AND CONDITIONS

## Article 1: Purpose of the procurement process - General provisions

### 1.1 - Preamble

Agence Française de Développement is an industrial and commercial public institution governed by banking laws, in its capacity as a financing company.

It is responsible, within the framework of the public development aid system, for financing, through long-term loans and/or grants, the economic and social development of nearly 80 developing countries and French overseas territories.

It has a code of ethics that is available on its website [www.afd.fr](http://www.afd.fr).

The AFD engages the Service Provider, which accepts the engagement,

The purpose of these special administrative terms and conditions is to state the conditions on which the Service Provider is required to provide these services to the AFD.

Furthermore, in order to promote sustainable development, the Parties have each acknowledged the need to encourage compliance with environmental and social standards recognised by the international community, including the fundamental conventions of the International Labour Organization (ILO) and international conventions on the protection of the environment.

### 1.2 - Definitions

#### Corruption:

Means the offences referred to in Articles 432-11, 433-1, 445-1 and 445-2 of the French Criminal Code.

#### Fraud:

Means any unfair activity (action or omission), whether or not a criminal offence, intended to deliberately mislead others, to intentionally conceal information from them or to compromise or vitiate their consent, to circumvent legal or regulatory obligations and/or violate internal rules in order to obtain an illegitimate benefit.

#### Concerted Practice:

Means concerted actions, agreements, express or tacit agreements or coalitions, including through the direct or indirect intermediary of a group company established in any country within the meaning, in particular, of Article 420-1 of the French Commercial Code, where their purpose or effect is to prevent, restrict or distort competition on a market, particularly when they are aimed at:

- limiting market access or free competition by other businesses;
- preventing price fixing through free market conditions by artificially encouraging their rise or fall;
- limiting or controlling production, opportunities, investments or technical progress;
- dividing markets or sources of supply.

#### Confidential Information:

Means:

- all information, data, documents of any kind, irrespective of their form or medium, including, but not limited to, all written publications, notes, reports, documents, studies, analysis of drawings, letters, listings, software or data content stored on a USB key, specifications, figures or graphs, provided by the AFD to the Service Provider in connection with the Contract;

- the Contract (including any information obtained during its negotiation and/or performance) and, more generally, any information or document that the Service Provider may have obtained, directly or indirectly, in writing or by any other means, from the AFD for the purposes of or in connection with the Contract, including, but not limited to, any technical, commercial, strategic or financial information, studies, specifications, software or products;
- the Service (including reports, works, studies carried out in connection with the Service) and any information relating thereto.

Employees:

Means the Service Provider's employees allocated to performing the Service

Service:

Means all tasks, activities, services, deliverables and services to be supplied by the Service Provider under the Contract.

Essential Outsourced Services:

The order of 3 November 2014 (Articles 10q, 231 et seq. and 253) and the French Monetary and Financial Code define essential outsourced services as follows:

- **banking transactions**, the issue and management of electronic money, payment services and investment services, for which the regulated undertaking has been approved
- **related transactions**
- services that are **directly related to the performance** of the transactions or services referred to above
- **any supply of services where an anomaly or failure in performance is likely to seriously impair the regulated undertaking's ability to comply at all times with the conditions and obligations of its approval and with the conditions associated with carrying out its activity, its financial performance or the continuity of its services and activities**

### 1.3 - Purpose of the contract

The provisions of these special administrative terms and conditions relate to:

Study for vehicles labeling in Ecuador: road safety, energy efficiency and climate change

The Service is more fully described in the special technical terms and conditions. The Service shall be performed and organised in accordance with the provisions set out in the special administrative terms and conditions and the schedules thereto.

**Place(s) of performance:** consultant's premises and on-site (Ecuador)

### **Appointment of subcontractors during the contractual term:**

In the event that subcontractors are appointed during the contractual term, a specific document shall specify all the elements set out in articles R2193-1 à R2193-9 of the code of the public procurement and shall also state, for subcontractors that are to be paid directly:

- The person authorised to provide information on pledges and on assignments of receivables;
- The account to be credited.

### **1.4 - Negotiated contract for similar services that may subsequently be entered into pursuant to the code of the public procurement**

The services that are the subject of this tender may lead to a new contract for the provision of similar services, entered into pursuant to the negotiated procedure without prior publication and without a prior call for tenders and which shall be performed by the successful tenderer for this contract.

### **1.6 - Detailed content of the services**

The contracting authority has decided not to launch the tendering process in separate batches for the following reasons:

**Separate batches may render the performance of services technically difficult.**

### **1.7 - Term - Completion deadline**

The term of the contract shall be the same as the completion deadline stated in the tender document and in these special administrative terms and conditions.

## **Article 2: Contractual documents**

The contractual documents comprise the following and, in the event of conflict between the provisions thereof, the order of priority set out below shall apply:

- The tender document and any appendices thereto, including the Breakdown of the Overall Fixed Price;
- These special administrative terms and conditions and the schedules hereto (including the information security schedule)
- The Terms of references;
- The general administrative terms and conditions applicable to the public procurement of consultancy services, approved by the order of 16 September 2009
- The contractor's technical offer

## **Article 3: Term of the contract and completion deadlines for the services - completion schedule**

The deadlines for completing all the services are set out in the tender document.

## Article 4: Terms and conditions of performing the services

The services must comply with the provisions of the contract.

The contracting authority shall make available to the contractor the documents in its possession necessary for the performance of the services and shall facilitate, where necessary, the obtaining from the other competent bodies of the information and information that the holder may need.

In performing its obligations under the Contract, the Service Provider must use all its know-how and expertise in carrying out the Service. It shall provide all the logistics and provide all equipment necessary in order for the Service to be properly performed.

The Service Provider shall carry out the Service professionally and in accordance with best practices.

The Service Provider shall allocate appropriate Employees to the various tasks that need to be carried out in order for the Service to be properly performed. The names of the Employees, together with their tasks and responsibilities in connection with the Service, are set out *the service provider's bid*. The Service Provider shall provide the names and professional qualifications of the persons responsible for carrying out the services.

Employees shall carry out their duties under the supervision and under the legal, hierarchical and disciplinary responsibility of the Service Provider. The Service Provider therefore undertakes to carry out all applicable formalities for which employers are responsible under prevailing regulations relating, in particular, to employment laws, social security cover and tax obligations. The Service Provider shall in all circumstances be solely responsible for the Employees and the Employees shall report exclusively and directly to the Service Provider.

The Service Provider undertakes to do everything necessary to ensure that the Employees are able to perform their duties both in France and in the country in which the duties are to be carried out. In particular, it must carry out any formalities concerning the Employees' administrative situations and obtain visas and any document required under local regulations. The Service Provider also undertakes to (i) take all necessary steps (insurance, mutual insurance, etc.) to assist the Employees in the event of any difficulties that may arise locally, such as, for example, evacuations for health or political reasons and (ii) provide any technical assistance that Employees may need in connection with their duties.

The Service Provider may replace an Employee in the event of his/her breach provided that (i) the qualifications of the person suggested as a replacement are equivalent to or superior than those of the person being replaced, (ii) that the replacement of the Employee does not cause any delay to AFD in view of the completion schedule for the Service and (iii) the Service Provider first obtains AFD's written approval of the suggested replacement. The replacement must then be carried out immediately. The Service Provider shall bear all associated costs.

The Service Provider undertakes to comply with all applicable laws and regulations regarding security as part of the Services. The Provider will be responsible for the safety of his staff.

AFD is not responsible for the security of the Service Provider's personnel, the Provider's security procedures and the management of the security of the Contractor's personnel.

The Service Provider is solely responsible for the security of the natural persons or the personnel of the legal entities to which he entrusts or delegates, in any way whatsoever, all or part of the performance of the Services. The Agency is not responsible for security procedures and the security management of these individuals and their personnel.

The Provider undertakes, throughout the duration of the performance of the service and prior to any relocation of its staff, inquire at the Embassy of France or its embassy of attachment on the risks incurred. It undertakes that natural or legal persons acting on its behalf in the context of the performance of the Services respect this same obligation of information.

When the project implementation zone (s) is (are) or becomes the subject of a red zone classification by the Ministry of Europe and Foreign Affairs, the Service Provider undertakes to transmit, before the intervention in this (these) area (s) of its staff its security plan to the Embassy (s) of France of the concerned country (ies) or, if applicable, competent consular or local authorities with regard to their nationality.

The Service Provider undertakes, throughout the duration of the performance of the service, to respect and to ensure that the natural or legal persons to whom he delegates or entrusts all or part of the performance of the Services respect on all occasions the instructions of issued by the Ministry of Europe and Foreign Affairs or, if applicable, to the competent consular or local authorities with regard to their nationality. They are solely responsible for the decision to cancel or maintain the intended travel, after obtaining the aforementioned information about the risks involved.

## **Article 6: Price**

### 6.1 - Details of prices

The services that are the subject of the contract shall be paid for in accordance with the provisions of the tender document through fixed prices.

Prices are deemed to be complete; they include all taxes, parafiscal levies and other charges that mandatorily apply to the Service, as well as all costs required in order for the Service to be properly performed, including travel and labour costs (salaries, all premiums, allowances, social security charges, etc.).

### 6.2 – Fees - taxes - levies

Any fee, tax, levy and/or other duty or withholding, of any kind whatsoever, payable in connection with the entry into, performance or extension of the Contract shall be borne solely by the Service Provider.

In principle, the Services are only exempt from VAT in France if they are supplied "in connection with cooperative actions in favour of certain foreign States or bodies" (see the French tax legislation department's Note of 28 March 1986). Accordingly, studies carried out as part of the preparation or implementation of projects are exempt from VAT in France.

### 6.3 - Changes to prices

Not applicable

## **Article 7: Payment procedures**

### 7.1 – Invoicing terms

**The Service Provider's remuneration shall be broken down as follows:**



ACTIVITY	DATE OF DELIVERY :
<b>Advance</b>	20% of the total amount of the contract shall be invoiced after the contract notification
<b>Delivrables 1.1, 1.2, 1.3, 1.4, 1.5, 1.6 y 1.7</b>	30% of the total amount of the contract shall be invoiced after the reception and the validation by AFD of the deliverables in phase 1
<b>Deliverable 2.1</b>	30% of the total amount of the contract shall be invoiced after the reception and the validation by AFD of the Diagnostic deliverable in phase 2
<b>Delivrables 2.2, 2.3</b>	20% of the total amount of the contract shall be invoiced after the reception and the validation by AFD of all the other deliverables in phase 2

## 7.2 - Submitting payment requests

The procedures for submitting the request for payment shall be determined in accordance with the conditions set out in Article 11.4 of the general administrative terms and conditions for consultancy services.

Claims for payment shall be made in one original and two copies bearing, in addition to the legal information, the following particulars:

- the name or business name of the creditor
- where applicable, the registration reference to the trade or trade register
- where applicable, the SIREN or SIRET number
- the bank or postal account number;
- the contract number;
- the date of performance of benefits;
- the nature of the services performed;
- the designation of the debtor organization (if applicable);
- the decomposition of fixed prices
- where payment is due at the end of certain stages of the performance of the contract, the amount corresponding to the period in question;
- where applicable, applications of the reductions fixed in accordance with the provisions of The general administrative terms and conditions
- the total amount of taxes included in the services delivered or executed;
- the billing date.
- in the case of a joint group, 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 taxes, their amount including VAT and, where applicable, the price variations established
- where applicable, allowances, bonuses and deductions other than retention of security, established in accordance with the terms of the contract
- the mention of professional insurance and its geographical coverage, for craftsmen registered in the repertoire of trades and entrepreneurs covered by article 133-6-8 of the Social Security Code (in particular self-employed persons under the tax regime of the micro-enterprise)

1/ Invoices shall either be sent to the following address for registration purposes:

Agencia Francesa de Desarrollo  
Dirección regional países andinos  
Avenida calle 82, #10-33  
Bogotá, Colombia

*In the event of co-contracting:*

- In respect of jointly liable consortiums, each member of the consortium shall directly receive the amounts relating to services it supplies;
- In respect of a jointly and severally liable consortium, payment shall be made to a single account opened in the name of the members of the consortium or the representative, unless otherwise stated in the tender document.

The other provisions relating to co-contracting shall apply in accordance with Article 12.1 of the general administrative terms and conditions for consultancy services.

*In respect of sub-contracting:*

The sub-contractor shall issue its payment request:

- to the contractor, by registered letter with acknowledgement of receipt, or deliver it to the contractor against receipt;
- to the AFD, made out in its name, with duplicates of the documents sent to the contractor together with the acknowledgement of receipt or the receipt confirming that the contractor received the payment request.

### **7.3 - Payment terms**

Amounts payable to the contractor(s) and any first ranking subcontractor(s) under the contract shall be paid within 30 days of receipt of invoices or equivalent requests for payment.

Payment is subject to validation of the service that is the subject of the invoice.

In the event of late payment, the contractor is entitled to receive default interest, as well as lump sum compensation for debt collection costs in the amount of €40. The interest rate on arrears is equal to the interest rate applied by the European Central Bank to its most recent main refinancing transactions, in force on the first day of the first half of the calendar year in which the interest on arrears began to accrue, increased by eight percentage points.

The AFD is able to receive paperless invoices through CPP2017 (a shared technical solution, made available free of charge to suppliers). If you wish to use this option, your paperless invoices issued to the AFD must contain the following information:

Siret code	Establishment
77566559900129	Agence Française de Développement
Service code	Name
PAR-DOE-030	Div. Transports et mobilités

### **Applicable provisions for electronic invoicing:**

In addition to the legal notices, the electronic invoices sent by the holder and the subcontractor (s) accepted for direct payment includes the following mentions:

- 1- The date of issue of the invoice
- 2- The designation of the sender and the recipient of the invoice;
- 3- The unique number based on a chronological and continuous sequence established by the issuer of the invoice, the numbering being established under these conditions on one or more series
- 4- In the case of a contract executed by means of purchase orders, the number of the purchase order or, in other cases, the number of the commitment generated by the financial and accounting information system of the public entity
- 5- The identification code of the service in charge of the payment
- 6- The date of delivery of the supplies or performance of the services or works
- 7- The quantity and precise name of the delivered products, services and work done
- 8- The unit price excluding taxes of delivered products, services and works performed or, where applicable, their fixed price
- 9- The total amount before taxes and the amount of the tax to be paid, as well as the distribution of these amounts by rate of value-added tax, or, if applicable, the benefit of an exemption
- 10- If applicable, the specific terms of settlement
- 11- Where applicable, information on deductions or additional payments

They also include the issuer's identity number (or, if not, its identifier) and the addressee of the invoice.

The deposit, transmission and receipt of electronic invoices are made exclusively on the Chorus Pro billing portal. When an invoice is transmitted outside this portal, the public body may reject it after having reminded the issuer of this obligation and having invited it to comply with it.

The date of receipt of a payment request transmitted electronically corresponds to the date of notification of the electronic message informing the buyer of the availability of the invoice on the billing portal.

## **Article 8: Penalties**

### 8.1 Late payment penalties

Any delay in performing the services that is not expressly approved by the AFD may give rise to late payment penalties (proportionate to the value of the service and non-abusive) payable by the Service Provider in the amount of fifty euros (in words) 50 (in figures) for each day payment is late, commencing 3 days after receipt of the formal notice sent by AFD to the Service Provider by registered letter, provided the delay is not resolved in that time.

### 8.2 Penalties for undeclared work

If the contractor does not carry out the formalities provided for in the French Employment Code with regard to undeclared work through concealing activity or salaried employment, the contracting authority shall apply a penalty equal to 10% of the value of the contract, including VAT.

However, the amount of this penalty may not exceed the amount of the criminal penalty imposed pursuant to the French Employment Code in respect of undeclared work.

### **8.3 Procedure for applying penalties**

Payment of these penalties shall not prevent the Contract being automatically terminated, and without compensation, with any associated costs payable by the Service Provider, in the event that it breaches or fails to perform its obligations.

The penalties set out above shall apply automatically and without prior notice or other legal or judicial formalities.

The amount of the late payment penalties shall be deducted by the AFD from the balance payable to the contractor, and any excess shall be paid by the Service Provider to the AFD on request.

The total amount of the penalties shall be capped at 20% of the total VAT-exclusive value of the contract.

## **Article 9: Verifications and acceptance**

### **9.1 - Verifications**

ANT and AFD gives approval on deliverables

Comments to deliverables will be formulated within 15 days following delivery of deliverables  
The service provider has 5 days to integrate them into a final version.

### **9.2 - Acceptance**

Once the verifications have been carried out, decisions on acceptance, postponement or rejection shall be taken by the contracting authority on the conditions set out in Article 27 of the general administrative terms and conditions for consultancy services.

## **Article 10: Industrial and intellectual property rights**

The option chosen with respect to the use of the results and stating the respective rights of the project owner and the project manager in connection therewith is option B as defined in chapter V of the general administrative terms and conditions for consultancy services.

### **10.1. ASSIGNMENT OF COPYRIGHT**

The Service Provider assigns the rights to the Service, as well as any partial or integral aspect thereof, exclusively to the AFD. It irrevocably and exclusively assigns to the AFD, for the entire world and for the statutory duration of copyright, any rights of exploitation, representation and reproduction and adaptation for commercial and/or non-commercial purposes that it currently holds or will hold in the future over the reports, works, studies and documents produced in connection with the Service (hereinafter the “Assignment”).

More specifically, the Assignment covers the following rights:

1. to use, reproduce, store, distribute, communicate, execute, translate, exploit, distribute or represent the Service;

2. for promotional, commercial or non-commercial, public or private purposes and in particular, without limitation, in connection with exhibitions and information or public relations initiatives);
3. in whole or in part on any medium, whether or not currently existing, including on paper, optical, digital, magnetic or any other computer, electronic or telecommunications medium.

The rights shall be assigned as and when reports, works, studies and documents are completed by the Service Provider in connection with the Service.

The Service Provider also acknowledges that the AFD shall be entitled to transfer its right to use the reports, works, studies and documents produced by the Service Provider under the Contract to any third party.

#### **10.2. WARRANTIES IN RESPECT OF THE ASSIGNMENT**

Throughout the term of the Assignment, the Service Provider (i) undertakes not to disseminate the Service on any medium whatsoever without the AFD's consent and (ii) guarantees peaceful enjoyment of title to the rights hereby assigned to the AFD against any disturbances, claims and dispossession of any kind. In particular, it warrants that it has properly acquired all the rights, in particular the intellectual property rights, required in order to carry out the Assignment.

Consequently, the Service Provider shall indemnify the AFD against any action, claim, demand or objection by any person invoking a property right, in particular an intellectual property right, or any acts of unfair competition and/or passing-off to which the Assignment gives rise.

The Service Provider warrants that the Service contains nothing that might constitute a breach of prevailing laws and regulations, in particular the laws on libel and slander, privacy and image rights, public decency, infringement or plagiarism.

#### **10.3. CONSIDERATION FOR THE ASSIGNMENT**

The price for the Assignment is included, as a fixed and final sum, in the amount described in Article 4 of the Contract. The Service Provider acknowledges that it is aware thereof and may not claim any additional sum in respect of the Assignment.

### **Article 11: Halting performance of the services**

Pursuant to Article 20 of the general administrative terms and conditions for consultancy services, the contracting authority reserves the right to halt performance of the work under the contract at the end of each of the service provider's intervention phases as defined in the general administrative terms and conditions.

### **Article 12: Termination of the contract**

The conditions on which this contract may be terminated are those set out in Articles 29 to 36 inclusive of the general administrative terms and conditions for consultancy services.

### **Article 13: Liability and Insurance**

Each Party shall be liable, on the conditions set out in the general law of contractual liability, for losses caused to the other Party as a result of breaching any of its contractual obligations.

The Contractor must take out insurance policies, for a sufficient amount, required to cover its risks and liabilities under both general law and its contractual commitments and shall keep those policies in place.

Within fifteen days of the contract being awarded and before work is commenced, the contractor shall provide evidence that it is covered by a third party liability insurance policy as referred to in Articles 1240 to 1242 of the French Civil Code and by a professional indemnity policy, covering losses caused by the performance of the contract.

It must therefore provide a certificate from its insurer demonstrating that it is up to date with its premiums and that its policy provides cover that is appropriate to the scale of the service.

At any time during the performance of the service, the Contractor must be able to produce such a certificate, if requested to do so by the contracting authority, within fifteen days of receipt of the request.

## **Article 14: Law and Language**

In the event of a dispute, the Paris Administrative Court shall have jurisdiction in this matter.

In all cases, this Contract shall be governed by French law. Any dispute relating to the validity, interpretation, performance, termination or any of the clauses of the Contract SHALL be brought before the competent courts of Paris, if it is unable to be resolved out-of-court.

## **Article 15: Additional clauses**

### **15.1 - Court-supervised administration or liquidation**

The following provisions shall apply in the event of court-supervised administration or liquidation.

The contractor shall immediately notify the contracting authority of the judgment that imposes court-supervised administration or liquidation. The same shall apply to any judgment or decision that may affect performance of the contract.

The contracting authority shall send the administrator or liquidator formal notice requesting whether it intends to require performance of the contract. In the event of court-supervised administration, this formal notice shall be sent to the contractor where a simplified procedure without an administrator is used, provided that, pursuant to Article L627-2 of the French Commercial Code, the bankruptcy judge expressly authorises the contractor to exercise the option provided for by Article L622-13 of the French Commercial Code.

If a negative response is provided or no response is provided within one month of the formal notice being sent, the contract shall be terminated. This one-month period may be extended or shortened if, before the expiry of the period, the bankruptcy judge grants the administrator or the liquidator an extension, or imposes a shorter period.

Termination shall take effect on the date of the administrator, liquidator or contractor's decision to cease performing the contract, or on the expiry of the one-month period referred to above. Termination shall not entitle the contractor to any compensation.

## *15.2 - The service provider's representations and obligations*

### **15.2.3 - THE SERVICE PROVIDER'S OBLIGATIONS**

Pursuant to Articles L 8222-1 and D 8222-5 of the French Employment Code, the Service Provider must provide the following documents on signing the Contract, then every six (6) months, until the Contract terminates:

- a certificate confirming that it has submitted the social security declarations issued by the social security body responsible for collecting the social security contributions for which the Service Provider is liable, issued within the previous six (6) months; this certificate must confirm that the social security payments and contributions have been paid and state the name of the company, the number of employees and the remuneration base declared on the latest summary of social security contributions sent to the collection agency;
- an extract from the Service Provider's registration on the Trade and Companies Register] **or** [a copy of the Service Provider's identification card evidencing registration on the business directory] **or** [a declaration filing receipt issued by a business registration centre]<sup>1</sup>;
- a sworn statement from the Service Provider certifying that it has provided payslips to its employees in accordance with French regulations.<sup>2</sup>

Pursuant to Article L 8222-6 of the French Employment Code, the AFD reserves the right to impose a penalty on the Service Provider if it does not comply with the formalities referred to in Articles L 8221-3 to L 8221-5 of the French Employment Code on undeclared work through concealing activity or salaried employment.

In such circumstances, the amount of the applicable penalties:

- shall be at least equal to 10% of the contract value;
- and may not exceed the amount of the fines incurred pursuant to Articles L 8224-1, L 8224-2 and L 8224-5 of the French Employment Code.

If the AFD is informed in writing that the Service Provider or a sub-delegatee is in breach of the required formalities, it shall issue formal notice to the Service Provider by registered letter with acknowledgement of receipt to remedy the breach without delay.

The Service Provider shall provide evidence that it has remedied the breach. If it fails to remedy the breach, the AFD may either apply the contractual penalties or terminate the Contract without being required to pay compensation, at the Service Provider's cost and risk.

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<sup>1</sup> For companies in the process of being registered, or when the Service Provider is not required to register with the trade and companies register or the business directory.

<sup>2</sup> To be inserted if the Service Provider employs staff for a period of more than one month-



#### 15.2.4 - Confidentiality obligation

The Service Provider, acting both for itself and on behalf of its Employees for whom it stands surety, undertakes, during the term of the Contract and for a period of five (5) years following the date on which the Contract terminates, that the Confidential Information:

- shall remain protected, be kept strictly confidential and be treated with the same degree of caution and protection with which it treats its own Confidential Information of equal importance;
- is only sent internally to the Employees;
- is not used for any purpose other than the purpose set out in the Contract.

Notwithstanding the paragraph above, information to which professional confidentiality and banking confidentiality obligations apply must be kept confidential until the relevant confidentiality obligation is lifted.

The Service Provider therefore undertakes not to disclose the Confidential Information, directly or indirectly, in whole or in part, without the express, prior and written agreement of the AFD, to keep all information and documents obtained in connection with the Contract confidential and not to communicate with third parties about the engagement entrusted to it without the prior, express and written authorisation of the AFD.

On termination of the Contract, the Service Provider undertakes to [destroy all manual or computerised files storing the inputted information] or [return all the documents provided].

#### 15.2.5 - The Service Provider's powers

The Service Provider has no authority to act in the name and on behalf of the AFD or to bind the AFD, save where it is granted an express, specific mandate by the AFD on a case-by-case basis. The AFD is solely authorised to take decisions on proposals submitted to it by the Service Provider on conclusion of the Service.

#### 15.2.6 - Integrity

The Service Provider represents and undertakes:

- that it has not committed any act that may influence the competitive process and, in particular, that no Concerted Practice has been, or will be, carried out;
- that the negotiation, award and performance of the Contract have not given, do not give and will not give rise to Corruption and/or Fraud.

#### 15.2.7 - Sustainable development

The AFD places great importance on complying with provisions that promote sustainable development, both socially and environmentally.

Consequently, the Service Provider undertakes to comply with the provisions set out in Schedule 2.

#### 15.2.8 - Personal data

For the purposes of the Study, the Service Provider may be required to process personal data within the meaning of Law no. 78-17 of 6 January 1978, as amended (hereinafter “the Data”), on behalf of and under the responsibility of the AFD. The Service Provider shall therefore act as a “processor” for



the AFD, within the meaning and subject to the conditions set out in Article 35 of Law no. 78-17 of 6 January 1978, as amended.

Where appropriate, the Service Provider also undertakes:

- ✓ not to use the Data for purposes other than those necessary for the implementation of the Service and not to make any copies of the Data other than strictly for the purpose of performing its obligations under the Contract,
- ✓ to comply with the principles of the relevance and proportionality of the processing of personal data and, consequently, only to collect/process Data that strictly necessary in order to provide the Services. In any event, the Service Provider undertakes to act only on the prior written instructions of the AFD which may, either spontaneously or at the Service Provider's request, state in writing the categories of personal data that may be processed for the performance of the Service,
- ✓ not to transfer the Data to States that are nor members of the European Economic Area, within the meaning of Articles 68 et seq. of Law no. 78-17 of 6 January 1978 as amended, without the prior written consent of the AFD.

### **Sub-contracting**

The Service Provider undertakes not to sub-contract all or part of the Services to third-party companies, where they involve processing of the Data, unless it has first obtained the AFD's written consent. If the AFD agrees to the proposed sub-contracting, the Service Provider undertakes to enter into an agreement with its identified sub-contractor that contains the same obligations with regard to data protection as those agreed herein.

The Service Provider shall provide evidence, at AFD's request, of the contractual undertakings made by any third-party service provider involved in the processing of the Data, if necessary by disclosing the related contractual documents.

### **Security, confidentiality and auditing**

The Service Provider undertakes to treat the Data in strict confidence. The Service Provider shall manage, as part of its responsibilities, its company's internal structure and shall define logical, physical and organisational measures that are capable of meeting the AFD's specific instructions and, more generally, its obligation of protecting Data against unauthorised access, misuse, fraudulent use or loss. The Service Provider must immediately inform the AFD if the measures taken do not or no longer meet these requirements.

The Service Provider must immediately inform the AFD of any control measures or access requests made by authorities duly authorised in this respect, such as the CNIL (the French data protection authority) or the judicial police.

These Data confidentiality and security obligations shall remain in effect following termination of the Contract if the Service Provider continues to store or access the Data. These obligations shall only cease on the date that the Service Provider ceases accessing and/or storing the Data.

Pursuant to the provisions of Article 35 of Law no. 78-17 of 6 January 1978 as amended, the AFD must ensure compliance with the security and confidentiality measures implemented by the Service Provider. The AFD is therefore authorised, directly or through any person it has appointed for this purpose, to:

- request any relevant information from the Service Provider that provides evidence of the implementation of security and confidentiality measures (checks on documents),

- verify the effectiveness of the implementation of these measures (on-site inspections) at the Service Provider or its subcontractor's place of business.

The AFD may carry out an on-site inspection once a year, at the Service Provider's premises, during normal office hours, provided that it shall not disrupt the Service Provider's business operations. In addition to this annual inspection, the AFD may carry out any ad hoc checks in the event of a security breach at the Service Provider that compromises the confidentiality, integrity or security of the Data, whether carried out voluntarily or accidentally, in particular any breach, loss, theft, unauthorised access, disclosure, destruction or alteration of the Data (hereinafter a "Data Breach").

The AFD must comply with the Service Provider's operational processes and provide 72 hours' notice of any visit, stating the scope of the checks, save in respect of ad hoc checks following a Data Breach.

The Service Provider undertakes to use its best efforts to provide assistance to the person appointed by the AFD during the checks and to allow access to the premises as well as to the relevant facilities. The Service Provider undertakes to provide, at the AFD's request, the information required by the AFD to carry out checks, either on a documentary basis or on-site, on the Data processing conditions, and shall provide it with all associated documentation.

### **Notification of Data Breaches by the Service Provider**

The Service Provider undertakes to immediately inform the AFD of the occurrence of any Data Breach as soon as it becomes aware thereof. The Service Provider undertakes, where appropriate, to provide, at the same time as notifying the AFD, all information required by the AFD (or any person expressly appointed by the AFD) to assess the risks and impacts of the Data Breach and to enable it to make any relevant decisions.

Working with the AFD, the Service Provider shall promptly take all appropriate measures to prevent any further Data Breach.

The notification of Data Breaches to the AFD by the Service Provider and management thereof form an integral part of the Services and shall not give rise to additional charges.

In the event that prevailing regulations require the AFD, in its capacity as data controller, to notify the CNIL, the Service Provider shall provide it with all necessary assistance to enable it to make that notification within the applicable period.

In the event that data subjects are required to be notified, notification shall be carried out in accordance with a timetable and using content determined by the AFD (where applicable, in consultation with the competent supervisory authority).

### **The AFD's power to give instructions**

The AFD has extensive rights to issue any instructions, in particular with regard to the nature, importance and methods of processing the Data. The instructions given by the AFD must be in writing and may not give rise to a request from the Service Provider for additional payment.

As part of its advisory obligation, the Service Provider shall immediately inform the AFD if it considers that an instruction is contrary to French and European regulations on the protection of personal data.

At the end of its engagement, the Service Provider shall, at the AFD's discretion, either return the Data in its possession to the AFD or immediately delete it in full, subject to the application of legal provisions that prohibit the wholesale deletion of the Data. The same shall apply to copies used as automatic back-ups.

If the Data is deleted, the deletion shall be recorded in a report stating the date thereof. A copy of these minutes shall be sent to the AFD.

### **Rights of data subjects**

Any request for information from the Service Provider issued by a data subject, within the meaning of Article 2 of Law no. 78-17 of 6 January 1978 as amended, shall be immediately sent to the AFD's Data Protection Officer or any other person expressly appointed by the AFD. The same shall apply to any request to access, rectify or object to data. The Service Provider shall provide the AFD with all relevant assistance it requires in order to comply with these requests within the legal deadlines.

### **Formalities**

The Service Provider shall collaborate with the AFD and provide it with all information it requires to draw up and update the list of instances of automated processing provided for in Article 47 of the Decree of 20 October 2005 or, more generally, carry out any necessary formalities prior to carrying out the processing, including impact assessments, requests for authorisation or prior consultation of the CNIL.

### **Evidence that the processing is compliant**

The Service Provider undertakes to retain and keep at the disposal of the AFD any useful documentation evidencing that the processing of the Data by the Service Provider on behalf of the AFD has been carried out in accordance with the undertakings made in the Contract and any specific instructions issued by the AFD.

The Service Provider undertakes to keep that documentation after termination of the Contract and until the expiry of the applicable limitation period during which the AFD may be held liable in respect of the conditions and procedures applied by the Service Provider in processing the Data. The Service Provider may, however, be discharged from this obligation early by providing the AFD with that documentation on termination of the Contract.

### **AFD supplier management**

As part of the administrative management of its suppliers, the AFD processes personal data that may pertain to the Service Provider's employees, who have a right of access, a right of rectification and a right to object to the data processing under the French Data Protection Law. These rights shall be exercised directly with the AFD Group's Data Protection Officer, in particular by e-mail to the following address: [informatique.libertés@afd.fr](mailto:informatique.libertés@afd.fr).

#### **15.2.9-Illegality**

The performance by the AFD of any of its obligations under the Contract is or becomes illegal under prevailing regulations.

#### **15.3 - AFD's obligations**

To enable the Service Provider to properly carry out its work, the AFD shall ensure:

- that it discloses all information in its possession to the Service Provider where that information is needed by the Service Provider to understand the problem with a view to supplying the Service;
- facilitate contact between the Service Provider and the persons at the AFD involved in the Service.

#### 15.4 - Miscellaneous

The Service Provider may not assign any of its rights and/or obligations under this Contract unless it first obtains the AFD's explicit consent.

All notices, reports and other communications relating to the Contract shall be delivered or sent to the Parties' respective registered offices set out at the beginning of this Contract. They shall become effective on receipt at this address or at any new address duly notified in writing to the other party.

Any changes to the terms and conditions of the Contract, including changes made to the nature or volume of the Service or the value of the Contract, must be the subject of a written agreement between the Parties.

The originals of the Contract shall be drawn up and signed in English.

#### **Article 16: Exceptions to the general administrative terms and conditions Consultancy services**

The article 8 of this STAC derogate to the article 14 of the general administrative terms and conditions

## **SCHEDULE 1 - SECURITY**



## **SERVICES CONTRACT**

### **SCHEDULE 1 - SECURITY**

INFORMATION SECURITY IN THE PERFORMANCE OF SERVICE  
CONTRACTS

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## Definitions

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- **The Contract**

Means the services agreement to which this document is appended.

- **The Customer**

Means the AFD group entity (i.e. the AFD and/or PROPARCO) that is party to the Contract.

- **The Service Provider**

Means the service provider that is party to the Contract.

- **Information system**

All hardware, software, methods and procedures and, where necessary, staff requested in order to process the Information.

- **Information**

Means the information belonging to the Customer, whether or not stored on its information system and to which the service provider may have access in performing the contract.

- **Remote Login**

Means a connection that provides remote access to the Customer's information system using infrastructure that does not belong to it.

## General provisions

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The Customer regularly engages service providers that require access to the Information in order to supply their services. Access to and use of the Information must therefore be controlled and the security rules applicable to service providers must be drawn up.

The purpose of this schedule is to set out conditions for the secure access to and use of the Information, in particular by determining the criteria on which the Service Provider is granted secure and controlled access to the Information and that prevent the Information from being used without authorisation.

The provisions of this schedule apply to the Service Provider, its employees and its sub-contractors who have or may have access to the Information.

## **Undertakings and rights of the Parties in relation to security**

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The Customer shall provide the Service Provider with its documentation on information security (policies, procedures and rules) that the Service Provider requires in order to perform its obligations under the Contract. The Service Provider undertakes to familiarise itself with the documentation provided by the Customer on information security and to comply with the policies, procedures and rules contained therein. The Service Provider undertakes not to disclose the documentation sent in connection with the performance of the Contract.

The Service Provider undertakes to require its employees and the sub-contractors working on its behalf to undergo security checks and must be able to provide evidence of the procedures and results of those checks.

The Service Provider undertakes to keep a list of individuals authorised to use the access rights and logistical services provided by the Customer on its behalf.

The Service Provider undertakes to inform the Customer in writing, as soon as possible, of any change to the list referred to in the paragraph above and to propose any change it deems necessary concerning the nature or scope of access to the Information. The Customer is responsible for formally notifying the Service Provider of its consent to the changes requested. Without formal consent, the change is deemed to have been refused.

The Service Provider undertakes to respect the intellectual property rights associated with the information and software made available to it by the Customer.

The Service Provider is hereby informed that the Customer processes information subject professional banking secrecy rules within the meaning of the French Monetary and Financial Code. The Service Provider undertakes to respect the confidentiality of the Customer's information as required by the professional secrecy rules governing its profession.

The Customer and the Service Provider are each responsible for selecting, implementing and maintaining their own security procedures and policies, and for the suitability of those procedures and policies for the services to be provided under the Contract. This aims to protect their respective information from unauthorised access, modification, or destruction.

As part of the implementation of its security policy and procedures, the Customer is entitled to record and supervise any activity carried out by the Service Provider in performing its obligations under the Contract. As such, the Service Provider's employees and sub-contractors shall be subject to the same checks as the Customer's employees.

The Customer may require the Service Provider to provide copies of the identity documents of those of its employees who are responsible for performing the services referred to in the Contract before they are granted access to the Customer's sites and/or Information.

The Customer reserves the right to refuse access to any of the Service Provider's employees without notice or to require an employee to be replaced if he/she does not comply with the security policies, procedures and rules.

## **Control over access**

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The Service Provider undertakes only to access Information that is strictly necessary for the performance of its duties. The Service Provider's access to the Information, services and infrastructures is restricted to the minimum level it requires in order to perform its services under the Contract. The Service Provider shall inform the Customer as soon as possible if it becomes aware of an error in the allocation of access rights that prevents it from carrying out its duties or that exceeds the scope of its duties.

Access to the IT system and/or to the Customer's premises shall be issued by name to persons acting for the Service Provider in connection with the performance of the Contract.

Access rights may be permanently subject to protection mechanisms and be recorded. In order to protect and control access to its Information, the Customer shall not be limited to the protection mechanisms put in place by the Service Provider. The Customer shall grant, control and revoke the Service Provider's access to the premises and to the Information it requires in order to provide the services. In this respect, the Service Provider is informed that those of its employees who work on the contract may, at any time and without prior notice, be subject to security controls based on the traces recorded on the Customer's IT system.

If access is required to Information classified as "CONFIDENTIAL" or higher, or to the Customer's premises where such information is stored, processed or disseminated, a risk assessment shall be carried out in order to identify the protection mechanisms to be put in place. The protection mechanisms identified during the risk assessment shall be notified to the Service Provider, documented and put in place.

The Service Provider must exclusively use the IT equipment made available to it by the Customer in order to access the Customer's IT system, unless the Customer first authorises the Service Provider in writing to use other access methods.

## **Remote access to the Customer's network**

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Any remote access to the Customer's network must be made using computer equipment or an access portal made available to the Service Provider by the Customer. The Customer may, without notice or justification, suspend, refuse or extend remote access to its network. The Customer shall disconnect remote access to the network when it is no longer required.

Remote access to the Customer's network is constantly recorded and archived.

## **Risk assessment**

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At the Customer's discretion, the service may be evaluated in order to determine information security risks. Such an evaluation principally covers the potential impact on the Customer of any adverse effects on the availability, integrity, confidentiality and transmission of its Information used in connection with the service.

## **Final provisions**

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Failure to comply with the provisions of this security schedule constitutes a breach of the Contract that may justify it being terminated without penalty for the Customer.

Furthermore, any delay or postponement arising as a result of the Service Provider's failure to comply with the security rules and the measures implemented by the Customer to remedy such failures, under this schedule, may not be invoked by the Service Provider as the basis for requesting an extension to the deadlines for providing its services under the Contract, by which the Service Provider remains bound, or for requesting any waiver of penalties.

This security schedule may be revised by the Customer every year and be amended, where necessary, without penalty or additional cost.