



SERVICE CONTRACT

NUMBER – [complete]

1. The Transport Community, represented by the Permanent Secretariat of the Transport Community ('the Contracting Authority') represented for the purposes of signing this contract by Matej Zakonjsek, Director of the Permanent Secretariat of the Transport Community,

on the one part, and

2. [Full official name]

[Official legal form]

[Statutory registration number or ID or passport number]

[Full official address]

[VAT registration number]

[appointed as the leader of the group by the members of the group that submitted the joint tender]

[For joint tenders, repeat these data as many times as there are contractors and continue numbering]

([collectively] 'the Contractor'), represented for the purposes of the signature of this contract by [forename, surname, function of legal representative and name of company in the case of a joint tender],

on the other part,

HAVE AGREED

to the **special conditions**, the **general conditions for service contracts** and the following annexes:

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

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

which form an integral part of this contract ('the Contract').

This Contract sets out the obligations of the parties during and after the duration of this Contract.

All documents issued by the Contractor (end-user agreements, general terms and conditions, etc.) except its tender are held inapplicable, unless explicitly mentioned in the special conditions of this Contract. In all circumstances, in the event of contradiction between this Contract and documents issued by the Contractor, this Contract prevails, regardless of any provision to the contrary in the Contractor's documents.

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I. SPECIAL CONDITIONS

I.1 ORDER OF PRIORITY OF PROVISIONS

If there is any conflict between different provisions in this Contract, the following rules must be applied:

- (a) The provisions set out in the special conditions take precedence over those in the other parts of the Contract.
- (b) The provisions set out in the general conditions take precedence over those in the other annexes.
- (c) The provisions set out in the tender specifications and its appendices (Annex I) take precedence over those in the tender (Annex II).

I.2 SUBJECT MATTER

The subject matter of the Contract is the detailed design, development and maintenance of the Transport Observatory Data/Information System (TODIS).

I.3 ENTRY INTO FORCE, COMMENCEMENT AND DURATION

I.3.1 The Contract enters into force on the date of signature by the Contracting Authority.

I.3.2 The Period of Performance of the Contract cannot start before its entry into force.

I.3.3 The Contracting Authority shall fix the date on which Performance of the Contract is due to begin (the Commencement Date) and inform the Contractor accordingly.

I.3.4. Save where the parties agree otherwise, performance of the Contract shall begin no later than 30 days following the entry into force of the Contract.

I.3.5 The Period of Performance of the Contract will be as following:

- a) **12 months** for Activities 1 to 6 (TODIS detailed design, development, implementation and users' training);
- b) **36 months** for Activity no. 7 (TODIS maintenance), starting with TODIS taking over date;

I.3.6 The Period of Performance of the Contract may be extended only with the express written agreement of the parties before the expiration of the Contract Duration.

I.4 PRICE

I.4.1 Price of the Contract

The price payable under this Contract is EUR [*amount in figures and in words*], as following:

- a) EUR [*amount in figures and in words*] for Activities 1 to 6 in the Tender Specifications (TODIS detailed design, development, implementation and users' training);
- b) EUR [*amount in figures and in words*] for 36 months of TODIS maintenance (activity 7 in the Technical Specifications).

I.4.2 Price revision

Price revision is not applicable to this Contract. The price referred to at Article I.4.1 is deemed to include any escalation due to inflation for the entire Period of Performance of the Contract.

I.4.3 Sufficiency of tender price

All costs are deemed included in the Contract price. The Contractor shall be deemed to have satisfied itself before submitting its tender as to the correctness and sufficiency of the tender and to have taken account of all that is required for the full and proper implementation of the tasks and to have included in its rates and prices all costs related to the services. No reimbursements shall be made under the Contract.

I.5 PAYMENT ARRANGEMENTS

I.5.1 Pre-financing

The Contractor may ask for an advance payment, as an interest-free loan for mobilisation (pre-financing). Pre-financing shall be paid against a guarantee observing the requirements set-up under the Contract.

I.5.2 Schedule of payments

I.5.2.1 Payments for TODIS Detailed Design, Development and Implementation (Activities 1 to 6) shall be done as following:

No.	Payment type	Payment value	Payment timing	Payment conditions
1.	Pre-financing	No more than 30% of the price referred to in Article I.4.1.a	After Commencement Date (at Contractor's request)	Setting-up of the Performance Guarantee Setting-up of the Advance Payment Guarantee

2.	Interim	70% of the price referred to in Article I.4.1.a minus the full amount of pre-financing (if applicable)	After the successful finalization of Activities 3 and 4	Unconditioned approval by the Contracting Authority of the following Technical Reports referred at in section 2.6.1.1 of the Technical Specifications: <ul style="list-style-type: none"> - The Inception Report; - The Business Analysis and System Design Report; - TODIS Acceptance Testing Plan; - TODIS Training Plan; - Report on imported and quality assured data. Starting of TODIS Acceptance Tests.
3.	Balance	30% of the price referred to in Article I.4.1.a	After the successful finalization of Activities 5 and 6	TODIS Taking Over by the Contracting Authority

I.5.2.2 Payments for TODIS Maintenance (Activity 7) shall be done as following:

No.	Payment type	Payment value	Invoice timing	Payment conditions
1 – 36	Monthly	1/36 of the price referred to in Article I.4.1.b	Monthly, at the end of each month of TODIS maintenance	Unconditioned approval by the Contracting Authority of the corresponding Monthly Maintenance Report referred at in section 2.6.1.1 of the Technical Specifications.
36	Balance	1/36 of the price referred to in Article I.4.1.b	At the end of the Maintenance Period provided in the Contract	Unconditioned approval by the Contracting Authority of the TODIS Maintenance Summary referred at in section 2.6.1.1 of the Technical Specifications.

I.5.3 Payment procedure

I.5.3.1 The Contractor (or leader in the case of a joint tender) shall claim each payment tranche, in accordance with the provisions of Articles I.5.2 and II.20.

I.5.3.2 The Contractor (or leader in the case of a joint tender) must send an invoice in paper format accompanied by the following:

- c) a list of all pre-existing rights to the results or parts of the results or a declaration stating that there are no such pre-existing rights, as provided for in Article II.12.4;

- d) The hard copies of the relevant documents provided under Article I.5.2 in the column “Payment conditions” (unconditionally approved Technical Reports/accepted testing and training protocols);

I.5.3.3 The Contracting Authority shall pay within 30 days from receipt of the invoice accompanied by all relevant documents provided under Article I.5.2.

I.5.3.4 The Contracting Authority may suspend the time limit for payment specified under Article I.5.3.3 in accordance with Article II.20.7. Once the suspension is lifted, the Contracting Authority shall pay within the remainder of the time-limit indicated in Article I.5.3.3.

I.5.3.5 The amount of each payment as laid down under Article I.5.2 above shall not be deemed representing the relative share of the deliverables against which such payment shall be made in the total value of the Contract.

I.6 GUARANTEES

I.6.1 Performance guarantee

I.6.1.1 Issuing and approval

A performance guarantee constituted by a bank guarantee in accordance with the conditions laid down in Article II.20.5 is requested for the amount of 10% of the Contract Price

The draft form of the guarantee shall be provided to the Contracting Authority for approval within 15 days from the Commencement Date. The Contracting Authority shall respond within 7 days from such submission by approving the draft form of the Performance Guarantee and the issuing body or requesting modifications, to the extent that:

- Legitimate concerns exist in relation to the proposed issuing body;
- The draft form does not observe the conditions provided under Article II.20.5;

Notwithstanding the Contracting Authority’s entitlement to request modifications on the draft version, Contractor’s failure to constitute a valid Performance Guarantee within 1 month and 15 days from Commencement Date shall be deemed representing a substantial failure of its obligations under the Contract.

I.6.1.2 Validity

The Contractor shall ensure that the Performance Guarantee is valid and enforceable until the time the conditions for release are met. If the terms of the Performance Guarantee specify its expiry date, and the conditions for release shall likely not be met within such term, the Contractor shall extend its validity no later than 14 days before the initial expiry date.

I.6.1.3 Claims on the Performance Guarantee

The Contracting Authority shall not make a claim under the Performance Guarantee, except for the following cases:

- a) failure by the Contractor to extend the validity of the Performance Guarantee as requested under Article I.6.1.2, in which event the Contracting Authority may claim the full amount of the Performance Guarantee;
- b) failure by the Contractor to pay the Contracting Authority an amount established as per the provisions of Article II.22, in which event the Contracting Authority will claim for the amount due;
- c) Termination of the Contract by the Contracting Authority under the provisions of Article II.18.1 (a) - (i) in which case the Contracting Authority will claim for the full amount of the Performance Guarantee;

I.6.1.4. Release of the Performance Guarantee

The Performance Guarantee shall be released as following:

- 70% of the value of the Performance Guarantee after the taking over of TODIS as per the provisions Article 2.6.3 of the Technical Specifications;
- 30% of the value of the Performance Guarantee after the unconditioned approval by the Contracting Authority of the TODIS Maintenance Summary.

I.6.2 Pre-financing guarantee

I.6.2.1 The Contractor shall provide a financial guarantee observing the conditions laid down in Article II.20.5 for the full amount of the pre-financing payment requested.

I.6.2.2 The draft form of the guarantee shall be provided to the Contracting Authority for approval. The Contracting Authority shall respond within 7 days from such submission by approving the draft form of the Pre-financing Guarantee and the issuing body or requesting modifications, to the extent that:

- Legitimate concerns exist in relation to the proposed issuing body;
- The draft form does not observe the conditions provided under Article II.20.5;

I.6.2.3 The Contractor shall ensure that the Pre-financing guarantee is valid and enforceable until the time the conditions for release are met. If the terms of the Pre-financing guarantee specify its expiry date, and the conditions for release shall likely not be met within such term, the Contractor shall extend its validity no later than 14 days before the initial expiry date.

I.6.2.4 The Contracting Authority shall be entitled to claim the Pre-financing guarantee:

- a) If the Contractor fails to extend the validity of the Performance Guarantee as requested under Article I.6.2.3;

- b) If the contract is terminated for any reason whatsoever, the financial guarantee may be invoked forthwith in order to repay any balance still owed to the Contracting Authority by the Contractor.

I.6.2.5 The Pre-financing guarantee shall be released when the pre-financing is repaid in full as per the provisions of Article I.5.2.1 of the Contract.

I.7 BANK ACCOUNT

Payments must be made to the Contractor's (or leader's in the case of a joint tender) bank account denominated in Euro, identified as follows:

Name of bank: [*Full name*]

Full address of branch: [*Full address*]

Exact denomination of account holder: [*Full name*]

Full account number including bank codes: [*Full number*]

[IBAN code:] [*Code*]

I.8 COMMUNICATION DETAILS

For the purpose of this Contract, communications must be sent to the following addresses:

Contracting Authority:

Permanent Secretariat of the Transport Community

Blace Baruh 26 (MIA Dorcol), 11000 Belgrade, Republic of Serbia

E-mail: transport.observatory@transport-community.org

Invoices must be sent by post to:

Blace Baruh 26 (MIA Dorcol), 11000 Belgrade, Republic of Serbia

Communication related to financial matters must be sent to:

E-mail: finance@transport-community.org

Contractor (or leader in the case of a joint tender):

[*Full name*]

[*Function*]

[Company name]

[Full official address]

E-mail: [complete]

I.9 APPLICABLE LAW

The Contract is governed by the European Union's law, complemented, where necessary, by the law of Republic of Serbia.

I.10 SETTLEMENT OF DISPUTES

I.10.1. The Parties shall endeavour to settle amicably any disputes or complaints relating to the interpretation, application or validity of the Contract, including its existence or termination.

I.10.2 In the absence of an amicable settlement, any dispute shall be settled by final and binding arbitration in accordance with the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organizations and States, as in effect on the date of entry into force of this Contract.

I.10.3 The appointing authority shall be the Secretary General of the Permanent Court of Arbitration. The arbitration proceedings must take place in the Hague and the language used in the arbitral proceedings will be English. The arbitrator's decision shall be binding on all Parties and there shall be no appeal.

I.11 SERVICES PROVIDED ON THE PREMISES OF THE CONTRACTING AUTHORITY

In case TODIS delivery will imply transfer of any hardware infrastructure to the Contracting Authority, fulfilment of the Contractor's obligations during the maintenance period might imply regular and quick access to the Contracting Authority's Headquarters.

I.12 MAINTENANCE PERIOD

I.12.1 During the 3 years' time of performing TODIS maintenance (Activity 7 in the Technical Specifications), the Contractor shall:

- Remedy TODIS *defects* (i.e. inherent deficiencies of the system);
- Maintain the system operational and remedy *errors* (problems in the functioning of the system, which may or may not be the result of a *defect*);
- Serve requests for support from TODIS users.

Contractor's obligations during the maintenance period are provided in more detail in the Technical Specifications.

I.12.2 Contractor's failures during the maintenance period (including but not limited to fixing system's defects and/or errors within the time limits prescribed in the Technical Specifications, keeping the system within the operational parameters or solving user's request sent through the Help Desk system) shall entitle the Contracting Authority to take any of the following measure(s):

- a) Apply liquidated damages and/or price reduction from the amount corresponding to 1 month of maintenance (1/36 of the price referred at under Article I.4.1.b);
- b) Suspend payment of monthly tranches until such obligations duly performed;
- c) Remedy the defect itself or through 3rd parties on the Contractor's cost;
- d) Terminate the Contract and execute the Performance Guarantee;

I.13 OTHER SPECIAL CONDITIONS

I.13.1. Replacement of staff

The Contractor shall not make any changes of its Key or Non-key Staff, other than provided under Article II.4.8 or in the following cases:

- Death or illness of an agreed staff that would render her/him unavailable for further performance of the services;
- For any other reason beyond the Contractor's control.

In all cases, the proposed substitute must possess at least equivalent qualifications, experience and skills with the replaced expert.

Suitable replacement must be proposed within 15 days from the first agreed day of staff absence. The Contracting Authority shall approve or reject the proposed replacement within 10 days from nomination. Failure from the Contractor to propose suitable replacement within the time limit set-out above or rejection by the Contracting Authority of a unfit proposal would entitle the latter to apply liquidated damages amounting at 0,2% of the Contract Price for each day elapsed between the last day such obligation should have been fulfilled and the day a suitable proposal is being put forward.

Irrespective of the underlying reasons for staff replacement and notwithstanding the above-described procedure for new staff approval, the Contractor shall not be entitled to any extension of the Period of Performance of the Contract or payment of any additional costs it might incur from that reason.

I.13.2. Liquidated damages and reduction in price

For the purpose of calculating liquidated damages and/or applying the price reductions rereferred at in Article II.14 and II.15 respectively, the following breakdown of price shall apply:

Technical Reports

No.	Deliverable	Share
1.	Inception Report	5% of the price referred at under Article I.4.1.a
2.	Business Analysis and System Design Report	20% of the price referred at under Article I.4.1.a
3.	TODIS Acceptance Testing Plan	20% of the price referred at under Article I.4.1.a
4.	TODIS Training Plan	5% of the price referred at under Article I.4.1.a
5.	Report on imported and quality assured data	10% of the price referred at under Article I.4.1.a
6.	TODIS System Documentation and Maintenance Plan	40% of the price referred at under Article I.4.1.a
7.	TODIS Maintenance Reports	1/36 of the price referred at under Article I.4.1.b
8.	Final Maintenance Summary	1/36 of the price referred at under Article I.4.1.b

Services delivery

Services	Share
TODIS Detailed Design, Development and Implementation_(confirmed by Acceptance Tests)	100% of the price referred at under Article I.4.1.a
Training delivery (confirmed by approved Training Protocols)	5% of the price referred at under Article I.4.1.a

Delays in delivery that would render liquidated damages applicable might refer at:

- Contractor's failure to deliver the Technical Reports referred at in the Tender Specifications Article 2.6.1.1 within the time limits thereunder provided;
- Notwithstanding the Contracting Authority's right to submit comments/ask for revised versions, the Contractor's failure of having the Technical Reports unconditionally approved within the 60 days' timeframe set by the Contract in this regard.
- Delays in successfully completing Activities no. 5 (Contractor's failure to have the TODIS Acceptance Tests fully passed within the timeframe limit provided in the Contract) and 6;

- Any delay in performing an obligation that would render liquidated damages applicable under the Contract.

I.13.3 In case TODIS delivery will imply transfer of any hardware infrastructure to the Contracting Authority, the provisions of Article II.24 shall apply.

SIGNATURES

For the Contractor,

For the Contracting Authority,

[Company name/forename/surname/position] Matej Zakonjsek

Signature: _____

Director

The Permanent Secretariat of the
Transport Community

Signature: _____

Done at [place], [date]

Done at [place], [date]

In duplicate in English.

II. GENERAL CONDITIONS FOR THE SERVICE CONTRACT

II.1 DEFINITIONS

For the purpose of this Contract, the following definitions (indicated in *italics* in the text) apply:

‘Breach of obligations’: failure by the Contractor to fulfil one or more of its Contractual obligations.

‘Commencement Date’: the date notified under Article I.3.3 on which implementation of the tasks is due to commence.

‘Confidential information or document’: any information or document received by either party from the other or accessed by either party in the context of the *performance of the Contract*, that any of the parties has identified in writing as confidential. It may not include information that is publicly available;

‘Conflict of interest’: a situation where the impartial and objective *performance of the Contract* by the Contractor is compromised for reasons involving family, emotional life, political or national affinity, economic interest, any other direct or indirect personal interest, or any other shared interest with the Contracting Authority or any third party related to the subject matter of the Contract;

‘Contract duration’: means the period from Contract signature to the fulfilment of all obligations the Parties have committed to each other.

‘Creator’: means any natural person who contributes to the production of the *result*;

‘Force majeure’: any unforeseeable, exceptional situation or event beyond the control of the parties that prevents either of them from fulfilling any of their obligations under the Contract. The situation or event must not be attributable to error or negligence on the part of the parties or on the part of the subcontractors and must prove to be inevitable despite their exercising due diligence. Defaults of service, defects in equipment or material or delays in making them available, labour disputes, strikes and financial difficulties may not be invoked as *force majeure*, unless they stem directly from a relevant case of *force majeure*;

‘Formal notification’ (or ‘formally notify’): form of communication between the parties made in writing by mail or email, which provides the sender with compelling evidence that the message was delivered to the specified recipient;

‘Fraud’: an act or omission committed in order to make an unlawful gain for the perpetrator or another by causing a loss to the Transport Community's financial interests, and relating to: i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or assets from the Transport Community budget, ii) the non-disclosure of information in violation of a specific obligation, with the same effect or iii) the misapplication of such funds or assets for purposes other than

those for which they were originally granted, which damages the Transport Community's financial interests;

'Grave professional misconduct': a violation of applicable laws or regulations or ethical standards of the profession to which a Contractor or a related person belongs, including any conduct leading to sexual or other exploitation or abuse, or any wrongful conduct of the Contractor or a related person which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence.

'Irregularity': any infringement of an applicable legal provision resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the Transport Community's budget.

'Notification' (or 'notify'): form of communication between the parties made in writing including by electronic means;

'Period of Performance of the Contract': the period provided under Article I.3.5 within which the Contractor is required to complete the execution of tasks and delivery of the purchased services;

'Personnel': persons employed directly or indirectly or Contracted by the Contractor to perform the Contract;

'Pre-existing material': any material, document, technology or know-how which exists prior to the Contractor using it for the production of a *result* in the *performance of the Contract*;

'Pre-existing right': any industrial and intellectual property right on *pre-existing material*; it may consist in a right of ownership, a licence right and/or right of use belonging to the Contractor, the *creator*, the Contracting Authority as well as to any other third parties;

'Professional conflicting interest': a situation in which the Contractor's previous or ongoing professional activities affect its capacity to perform the Contract to an appropriate quality standard.

'Related person': any natural or legal person who is a member of the administrative, management or supervisory body of the Contractor, or who has powers of representation, decision or control with regard to the Contractor;

'Result': any intended outcome of the *performance of the Contract*, whatever its form or nature. A *result* may be further defined in this Contract as a deliverable. A *result* may, in addition to newly created materials produced specifically for the Contracting Authority by the Contractor or at its request, also include *pre-existing materials*;

II.2 ROLES AND RESPONSIBILITIES IN THE EVENT OF A JOINT TENDER

In the event of a joint tender submitted by a group of economic operators and where the group does not have legal personality or legal capacity, one member of the group is appointed as leader of the group.

II.3 SEVERABILITY

Each provision of this Contract is severable and distinct from the others. If a provision is or becomes illegal, invalid or unenforceable to any extent, it must be severed from the remainder of the Contract. This does not affect the legality, validity or enforceability of any other provisions of the Contract, which continue in full force and effect. The illegal, invalid or unenforceable provision must be replaced by a legal, valid and enforceable substitute provision which corresponds as closely as possible with the actual intent of the parties under the illegal, invalid or unenforceable provision. The replacement of such a provision must be made in accordance with Article II.11. The Contract must be interpreted as if it had contained the substitute provision as from its entry into force.

II.4 PERFORMANCE OF THE CONTRACT

II.4.1 The Contractor must provide services of high quality standards, in accordance with the state of the art in the industry and the provisions of this Contract, in particular the tender specifications and the terms of its tender. Where the Transport Community has the right to make modifications to the *results*, they must be delivered in a format and with the necessary information which effectively allow such modifications to be made in a convenient manner.

II.4.2 The Contractor must comply with the minimum requirements provided for in the tender specifications. This includes compliance with applicable obligations under environmental, social and labour law established by Union law, Serbian law and collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU¹.

II.4.3 The Contractor must obtain any permit or licence required in the State where the services are to be provided.

II.4.4 All periods specified in the Contract are calculated in calendar days, unless otherwise specified.

II.4.5 Unless otherwise instructed, the Contractor must not present itself as a representative of the Contracting Authority and must inform third parties accordingly.

¹ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC.

II.4.6 The Contractor is responsible for the *personnel* who carry out the services and exercises its authority over its *personnel* without interference by the Contracting Authority. The Contractor must inform its *personnel* that:

- (a) they may not accept any direct instructions from the Contracting Authority; and
- (b) their participation in providing the services does not result in any employment or contractual relationship with the Contracting Authority.

II.4.7 The Contractor must ensure that the *personnel* performing the Contract and any future replacement *personnel* possess the professional qualifications and experience required to provide the services, as the case may be on the basis of the selection criteria set out in the tender specifications.

II.4.8 At the Contracting Authority's reasoned request, the Contractor must replace any member of *personnel* who:

- (c) does not have the expertise required to provide the services; or
- (d) has caused disruption at the premises of the Contracting Authority.

The Contractor bears the cost of replacing its *personnel* and is responsible for any delay in providing the services resulting from the replacement of *personnel*.

II.4.9 The Contractor must record and report to the Contracting Authority any problem that affects its ability to provide the services. The report must describe the problem, state when it started and what action the Contractor is taking to resolve it.

II.4.10 The Contractor must immediately inform the Contracting Authority of any changes in the exclusion situations as declared, according to Article 57 of Directive 2014/24/EU.

II.5 COMMUNICATION BETWEEN THE PARTIES

II.5.1 Form and means of communication

Any communication of information, notices or documents under the Contract must:

- (a) be made in writing in paper or electronic format in the language of the Contract;
- (b) bear the Contract number;
- (c) be made using the relevant communication details set out in Article I.8; and
- (d) be sent by mail or email.

If a party requests written confirmation of an e-mail within a reasonable time, the other party must provide an original signed paper version of the communication as soon as possible.

The parties agree that any communication made by email has full legal effect and is admissible as evidence in judicial proceedings.

II.5.2 Date of communications by mail and email

Any communication is deemed to have been made when the receiving party receives it, unless this Contract refers to the date when the communication was sent.

E-mail is deemed to have been received by the receiving party on the day of dispatch of that e-mail, provided that it is sent to the e-mail address indicated in Article I.8. The sending party must be able to prove the date of dispatch. In the event that the sending party receives a non-delivery report, it must make every effort to ensure that the other party actually receives the communication by email or mail. In such a case, the sending party is not held in breach of its obligation to send such communication within a specified deadline.

Mail sent to the Contracting Authority is deemed to have been received by the Contracting Authority on the date on which the department responsible referred to in Article I.8 registers it.

Formal notifications are considered to have been received by the receiving party on the date of receipt indicated in the proof received by the sending party that the message was delivered to the specified recipient.

II.6 LIABILITY

II.6.1 The Contracting Authority is not liable for any damage or loss caused by the Contractor, including any damage or loss to third parties during or as a consequence of performance of the Contract.

II.6.2 If required by the relevant applicable legislation, the Contractor must take out an insurance policy against risks and damage or loss relating to the *performance of the Contract*. It must also take out supplementary insurance as reasonably required by standard practice in the industry. Upon request, the Contractor must provide evidence of insurance coverage to the Contracting Authority.

II.6.3 The Contractor is liable for any loss or damage caused to the Contracting Authority during or as a consequence of *performance of the Contract*, including in the event of subcontracting, but only up to an amount not exceeding three times the total amount of the Contract. However, if the damage or loss is caused by the gross negligence or wilful misconduct of the Contractor or of its *personnel* or subcontractors, as well as in the case of an action brought against the Contracting Authority by a third party for breach of its intellectual property rights, the Contractor is liable for the whole amount of the damage or loss.

II.6.4 If a third party brings any action against the Contracting Authority in connection with the *performance of the Contract*, including any action for alleged breach of intellectual property rights, the Contractor must assist the Contracting Authority in the legal

proceedings, including by intervening in support of the Contracting Authority upon request.

If the Contracting Authority's liability towards the third party is established and that such liability is caused by the Contractor during or as a consequence of the *performance of the Contract*, Article II.6.3 applies.

II.6.5 If the Contractor is composed of two or more economic operators (i.e. who submitted a joint tender), they are all jointly and severally liable to the Contracting Authority for the *performance of the Contract*.

II.6.6 The Contracting Authority is not liable for any loss or damage caused to the Contractor during or as a consequence of *performance of the Contract*, unless the loss or damage was caused by wilful misconduct or gross negligence of the Contracting Authority.

II.7 CONFLICT OF INTEREST AND PROFESSIONAL CONFLICTING INTERESTS

II.7.1 The Contractor must take all the necessary measures to prevent any situation of *conflict of interest* or *professional conflicting interest*.

II.7.2 The Contractor must *notify* the Contracting Authority in writing as soon as possible of any situation that could constitute a *conflict of interest* or a *professional conflicting interest* during the *performance of the Contract*. The Contractor must immediately take action to rectify the situation.

The Contracting Authority may do any of the following:

- (a) verify that the Contractor's action is appropriate;
- (b) require the Contractor to take further action within a specified deadline;

II.7.3 The Contractor must pass on all the relevant obligations in writing to:

- (a) its personnel;
- (b) any natural person with the power to represent it or take decisions on its behalf;
- (c) third parties involved in the performance of the Contract, including subcontractors.

The Contractor must also ensure that the persons referred to above are not placed in a situation which could give rise to conflicts of interest.

II.8 CONFIDENTIALITY

II.8.1 The Contracting Authority and the Contractor must treat with confidentiality any information or documents, in any format, disclosed in writing or orally relating to the *performance of the Contract* and identified in writing as confidential.

II.8.2 Each party must:

- (a) not use *confidential information or documents* for any purpose other than to perform its obligations under the Contract without the prior written agreement of the other party;
- (b) ensure the protection of such *confidential information or documents* with the same level of protection as its own *confidential information* and in any case with due diligence;
- (c) not disclose, directly or indirectly, *confidential information or documents* to third parties without the prior written agreement of the other party.

II.8.3 The confidentiality obligations set out in this Article are binding on the Contracting Authority and the Contractor during the *performance of the Contract* and for as long as the information or documents remain confidential unless:

- (a) the disclosing party agrees to release the receiving party from the confidentiality obligation earlier;
- (b) the *confidential information or documents* become public through other means than a breach of the confidentiality obligation;
- (c) the applicable law requires the disclosure of the *confidential information or documents*.

II.8.4 The Contractor must obtain from any natural person with the power to represent it or take decisions on its behalf, as well as from third parties involved in the *performance of the Contract*, a commitment that they will comply with this Article. At the request of the Contracting Authority, the Contractor must provide a document providing evidence of this commitment.**II.9 SUBCONTRACTING****II.9.1** The Contractor must not subcontract and have the Contract performed by third parties beyond the third parties already mentioned in its tender without prior written authorisation from the Contracting Authority.**II.9.2** Even if the Contracting Authority authorises subcontracting, the Contractor remains bound by its contractual obligations and is solely responsible for the *performance of this Contract*.**II.9.3** The Contractor must ensure that the subcontract does not affect the rights of the Contracting Authority under this Contract, particularly those under Articles II.8, II.12 and II.23.

II.9.4 The Contracting Authority may request the Contractor to replace a subcontractor found to be in a situation provided for in points (d) and (e) of Article II.17.1.

II.10 AMENDMENTS

II.10.1 Any amendment to the Contract must be made in writing before the expiry of the Contract duration.

II.10.2 Any amendment must not make changes to the Contract that might alter the initial conditions of the procurement procedure or result in unequal treatment of tenderers.

II.11 ASSIGNMENT

II.11.1 The Contractor must not assign the rights and obligations arising from the Contract, including claims for payments or factoring, without prior written authorisation from the Contracting Authority. In such cases, the Contractor must provide the Contracting Authority with the identity of the intended assignee.

II.11.2 Any right or obligation assigned by the Contractor without authorisation is not enforceable against the Contracting Authority.

II.12 INTELLECTUAL PROPERTY RIGHTS

II.12.1 Ownership of the rights in the results

The Transport Community acquires irrevocably worldwide ownership of the *results* and of all intellectual property rights on the newly created materials and products produced specifically for the Transport Community under the Contract and incorporated in the *results*, without prejudice however to the rules applying to *pre-existing rights* on *pre-existing materials*, as per Article II.12.2.

The intellectual property rights so acquired include any rights, such as copyright and other intellectual or industrial property rights, to any of the *results* and in all technological solutions and information created or produced by the Contractor or by its subcontractor in *in performance of the Contract*. The Contracting Authority may exploit and use the acquired rights as stipulated in this Contract. The Transport Community acquires all the rights as from the moment the Contractor has created the *results*.

The payment of the price includes any fees payable to the Contractor about the acquisition of ownership of rights by the Transport Community including for all modes of exploitation and of use of the *results*.

II.12.2 Licensing rights on pre-existing materials

Unless provided otherwise in the special conditions, the Transport Community does not acquire ownership of *pre-existing rights* under this Contract.

The Contractor licenses the *pre-existing rights* on a royalty-free, non-exclusive and irrevocable basis to the Transport Community, which may use the *pre-existing materials* for all the modes of exploitation set out in this Contract. Unless otherwise agreed, the licence is non-transferable and cannot be sub-licensed, except as provided hereafter:

(a) the *pre-existing rights* can be sub-licensed by the Contracting Authority to persons and entities working for it or cooperating with it, including Contractors and subcontractors, whether legal or natural persons, but only for the purpose of their mission for the Transport Community;

(b) if the *result* is a "document" such as a report or a study, and it is meant to be published, the existence of *pre-existing materials* in the *result* may not prevent the publication of the document, its translation or its "reuse", it being understood however that the "reuse" may only be made of the *result* as a whole and not of the *pre-existing materials* taken separately from the *result*.

All *pre-existing rights* are licensed to the Transport Community from the moment the *results* are delivered and approved by the Contracting Authority.

The licensing of *pre-existing rights* to the Transport Community under this Contract covers all territories worldwide and is valid for the duration of intellectual property rights protection.

The payment of the price as set out in this Contract is deemed to also include any fees payable to the Contractor in relation to the licensing of *pre-existing rights* to the Transport Community, including for all forms of exploitation and of use of the *results*.

Where *implementation of the Contract* requires that the Contractor uses *pre-existing materials* belonging to the Contracting Authority, the Contracting Authority may request that the Contractor signs an adequate licence agreement. Such use by the Contractor will not entail any transfer of rights to the Contractor and is limited to the needs of this Contract.

II.12.3 Exclusive rights

The Transport Community acquires the following exclusive rights:

- (a) reproduction: the right to authorise or prohibit direct or indirect, temporary or permanent reproduction of the *results* by any means (mechanical, digital or other) and in any form, in whole or in part;
- (b) communication to the public: the exclusive right to authorise or prohibit any display, performance or communication to the public, by wire or wireless means, including the making available to the public of the *results* in such a way that members of the public may access them from a place and at a time individually chosen by them; this also includes the communication on Internet and broadcasting by cable or by satellite;
- (c) distribution: the exclusive right to authorise or prohibit any form of distribution of *results* or copies of the *results* to the public, by sale or otherwise;
- (d) rental: the exclusive right to authorise or prohibit rental or lending of the *results* or of copies of the *results*;

- (e) adaptation: the exclusive right to authorise or prohibit any modification of the *results*;
- (f) translation: the exclusive right to authorise or prohibit any translation, adaptation, arrangement, creation of derivative works based on the *results*, and any other alteration of the *results*, subject to the respect of moral rights of authors, where applicable;
- (g) where the *results* are or include a database: the exclusive right to authorise or prohibit the extraction of all or a substantial part of the contents of the database to another medium by any means or in any form; and the exclusive right to authorise or prohibit the re-utilization of all or a substantial part of the contents of the database by the distribution of copies, by renting, by on-line or other forms of transmission;
- (h) where the *results* are or include a patentable subject-matter: the right to register them as a patent and to further exploit such patent to the fullest extent;
- (i) where the *results* are or include logos or subject-matter which could be registered as a trademark: the right to register such logo or subject-matter as a trademark and to further exploit and use it;
- (j) where the *results* are or include know-how: the right to use such know-how as is necessary to make use of the *results* to the full extent provided for by this Contract, and the right to make it available to Contractors or subcontractors acting on behalf of the Contracting Authority, subject to their signing of adequate confidentiality undertakings where necessary;
- (k) where the *results* are documents:
 - (i) the right to authorise the reuse of the documents, to the extent it is applicable and the documents fall within its scope and are not excluded by any of its provisions;
 - (ii) the right to store and archive the *results* in line with the document management rules applicable to the Contracting Authority, including digitisation or converting the format for preservation or new use purposes;
- (l) where the *results* are or incorporate software, including source code, object code and, where relevant, documentation, preparatory materials and manuals, in addition to the other rights mentioned in this Article:
 - (i) end-user rights, for all uses by the Transport Community or by subcontractors which result from this Contract and from the intention of the parties;
 - (ii) the rights to receive both the source code and the object code;
- (m) the right to license to third parties any of the exclusive rights or of the modes of exploitation set out in this Contract; however, for *pre-existing materials* which are only licensed to the Transport Community, the right to sub-license does not apply, except in the two cases foreseen by Article II.12.2.;
- (n) to the extent that the Contractor may invoke moral rights, the right for the Contracting Authority, except where otherwise provided in this Contract, to publish the *results* with or without mentioning the *creator(s)*' name(s), and the right to decide when and whether the *results* may be disclosed and published.

The Contractor warrants that the exclusive rights and the modes of exploitation may be exercised by the Transport Community on all parts of the *results*, be it via a transfer of

ownership of the rights, on those parts which were specifically created by the Contractor, or via a licence of the pre-existing rights, on those parts consisting of *pre-existing materials*.

Where *pre-existing materials* are inserted in the *results*, the Contracting Authority may accept reasonable restrictions impacting on the above list, provided that the said materials are easily identifiable and separable from the rest, that they do not correspond to substantial elements of the *results*, and that, should the need arise, satisfactory replacement solutions exist, at no additional costs to the Contracting Authority. In such case, the Contractor will have to clearly inform the Contracting Authority before making such choice and the Contracting Authority has the right to refuse it.

II.12.4 Identification of pre-existing rights

When delivering the *results*, the Contractor must warrant that, for any use that the Contracting Authority may envisage within the limits set in this Contract, the newly created parts and the *pre-existing material* incorporated in the *results* are free of claims from *creators* or from any third parties and all the necessary *pre-existing rights* have been obtained or licensed.

To that effect, the Contractor must establish a list of all *pre-existing rights* to the *results* of this Contract or parts thereof, including identification of the rights' owners. If there are no *pre-existing rights* to the *results*, the Contractor must provide a declaration to that effect. The Contractor must provide this list or declaration to the Contracting Authority together with the invoice for payment of the balance at the latest.

II.12.5 Evidence of granting of pre-existing rights

Upon request by the Contracting Authority, the Contractor must, in addition to the list mentioned under Article II.12.4., provide evidence that it has the ownership or the right to use all the listed *pre-existing rights*, except for the rights owned or licensed by the Transport Community. The Contracting Authority may request this evidence even after the end of this Contract.

This provision also applies to image rights and sound recordings.

This evidence may refer, for example, to rights to: parts of other documents, images, graphs, sounds, music, tables, data, software, technical inventions, know-how, IT development tools, routines, subroutines or other programs ('background technology'), concepts, designs, installations or pieces of art, data, source or background materials or any other parts of external origin.

This evidence must include, as appropriate:

- (a) the name and version number of a software product;
- (b) the full identification of the work and its author, developer, *creator*, translator, data entry person, graphic designer, publisher, editor, photographer, producer;
- (c) a copy of the licence to use the product or of the agreement granting the relevant rights to the Contractor or a reference to this licence;

- (d) a copy of the agreement or extract from the employment Contract granting the relevant rights to the Contractor where parts of the *results* were created by its *personnel*;
- (e) the text of the disclaimer notice if any.

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

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

II.12.6 Quotation of works in the result

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

II.12.7 Moral rights of creators

By delivering the *results*, the Contractor warrants that the *creators* will not object to the following on the basis of their moral rights under copyright:

- (a) that their names be mentioned or not mentioned when the *results* are presented to the public;
- (b) that the *results* be divulged or not after they have been delivered in their final version to the Contracting Authority;
- (c) that the *results* be adapted, provided that this is done in a manner which is not prejudicial to the *creator's* honour or reputation.

If moral rights on parts of the *results* protected by copyright may exist, the Contractor must obtain the consent of *creators* regarding the granting or waiver of the relevant moral rights in accordance with the applicable legal provisions and be ready to provide documentary evidence upon request.

II.12.8 Image rights and sound recordings

If natural persons appear in a *result* or their voice or any other private element is recorded in a recognisable manner, the Contractor must obtain a statement by these persons (or, in the case of minors, by the persons exercising parental authority) giving their permission for the described use of their image, voice or private element and, on request, submit a copy of the permission to the Contracting Authority. The Contractor must take the necessary measures to obtain such consent in accordance with the applicable legal provisions.

II.12.9 Copyright notice for pre-existing rights

When the Contractor retains *pre-existing rights* on parts of the *results*, reference must be inserted to that effect when the *result* is used, with the following disclaimer: ‘© — year — Transport Community. All rights reserved. Certain parts are licensed under conditions to the Transport Community’, or with any other equivalent disclaimer as the Contracting Authority may consider best appropriate, or as the parties may agree on a case-by-case basis. This does not apply where inserting such reference would be impossible, notably for practical reasons.

II.12.10 Visibility of Transport Community funding and disclaimer

When making use of the *results*, the Contractor must declare that they have been produced under a Contract with the Transport Community and that the opinions expressed are those of the Contractor only and do not represent the Contracting Authority’s official position. The Contracting Authority may waive this obligation in writing or provide the text of the disclaimer.

II.13 FORCE MAJEURE

II.13.1 If a party is affected by *force majeure*, it must immediately *notify* the other party, stating the nature of the circumstances, their likely duration and foreseeable effects.

II.13.2 A party is not liable for any delay or failure to perform its obligations under the Contract if that delay or failure is a *result* of *force majeure*. If the Contractor is unable to fulfil its Contractual obligations owing to *force majeure*, it has the right to remuneration only for the services actually provided.

II.13.3 The parties must take all necessary measures to limit any damage due to *force majeure*.

II.14 LIQUIDATED DAMAGES

II.14.1 Delay in delivery

If the Contractor fails to perform its Contractual obligations within the applicable time limits set out in this Contract, the Contracting Authority may claim liquidated damages for each day of delay using the following formula:

$$0.3 \times (V/d)$$

where

V is the price of the relevant purchase or deliverable or *result* or, failing that, the price specified in Article I.4.1;

d is the duration specified for delivery of the relevant purchase or deliverable or *result* or, failing that, the duration of *performance of the Contract* specified in Article I.3.5 expressed in days.

Liquidated damages may be imposed together with a reduction in price under the conditions laid down in Article II.15.

II.14.2 Procedure

The Contracting Authority must *formally notify* the Contractor of its intention to apply liquidated damages and the corresponding calculated amount.

The Contractor has 30 days following the date of receipt to submit observations. Failing that, the decision becomes enforceable the day after the time limit for submitting observations has elapsed.

If the Contractor submits observations, the Contracting Authority, taking into account the relevant observations, must *notify* the Contractor:

- (a) of the withdrawal of its intention to apply liquidated damages; or
- (b) of its final decision to apply liquidated damages and the corresponding amount.

II.14.3 Nature of liquidated damages

The parties expressly acknowledge and agree that any amount payable under this Article is not a penalty and represents a reasonable estimate of fair compensation for the damage incurred due to failure to provide the services within the applicable time limits set out in this Contract.

II.14.4 Claims and liability

Any claim for liquidated damages does not affect the Contractor's actual or potential liability or the Contracting Authority's rights under Article II.17.

II.15 REDUCTION IN PRICE

II.15.1 Quality standards

If the Contractor fails to provide the service in accordance with the Contract ('unperformed obligations') or if it fails to provide the service in accordance with the expected quality levels specified in the tender specifications ('low quality delivery'), the Contracting Authority may reduce or recover payments proportionally to the seriousness of the unperformed obligations or low quality delivery. This includes (without being limited to) particular cases where the Contracting Authority cannot approve a *result*, report or deliverable as defined in Technical Specifications Article 2.6 after the Contractor has submitted the required additional information, correction or new version.

A reduction in price may be imposed together with liquidated damages under the conditions of Article II.14.

II.15.2 Procedure

The Contracting Authority must *formally notify* the Contractor of its intention to reduce payment and the corresponding calculated amount.

The Contractor has 30 days following the date of receipt to submit observations. Failing that, the decision becomes enforceable the day after the time limit for submitting observations has elapsed.

If the Contractor submits observations, the Contracting Authority, taking into account the relevant observations, must *notify* the Contractor:

- (a) of the withdrawal of its intention to reduce payment; or
- (b) of its final decision to reduce payment and the corresponding amount.

II.15.3 Claims and liability

Any reduction in price does not affect the Contractor's actual or potential liability or the Contracting Authority's rights under Article II.17.

II.16 SUSPENSION OF THE PERFORMANCE OF THE CONTRACT

II.16.1 Suspension by the Contractor

If the Contractor is affected by *force majeure*, it may suspend the *performance of the Contract*. The Contractor must immediately *notify* the Contracting Authority of the suspension. The *notification* must include a description of the *force majeure* and state when the Contractor expects to resume the *performance of the Contract*.

The Contractor must *notify* the Contracting Authority as soon as it is able to resume *performance of the Contract*, unless the Contracting Authority has already terminated the Contract.

II.16.2 Suspension by the Contracting Authority

The Contracting Authority may suspend the *performance of the Contract* or any part of it:

- (a) if the procedure for awarding the Contract or the *performance of the Contract* proves to have been subject to *irregularities, fraud or breach of obligations*;
- (b) in order to verify whether the presumed *irregularities, fraud or breach of obligations* have actually occurred.
- (c) if there is no annual budget approved at the beginning of each calendar year;

- (d) if the amounts approved for this purpose in the annual budget of the Contracting Authority are not sufficient to allow the payment of the activities scheduled to be delivered for that calendar year.

The Contracting Authority must *formally notify* the Contractor of the suspension and the reasons for it. Suspension takes effect on the date of *formal notification*, or at a later date if the *formal notification* so provides.

In cases referred under points (a) and (b) above, the Contracting Authority must *notify* the Contractor as soon as the verification is completed whether:

- (a) it is lifting the suspension; or
- (b) it intends to terminate the Contract under Article II.17.1(f) or (j).

In case referred under points (c) and (d) above, the Contracting Authority shall lift suspension providing that the underlying reasons have ceased to produce effects.

The Contractor is not entitled to compensation for suspension of any part of the Contract.

The Contracting Authority may in addition suspend the time allowed for payments in accordance with Article II.20.7.

II.17 TERMINATION OF THE CONTRACT

II.17.1 Grounds for termination by the Contracting Authority

The Contracting Authority may terminate the Contract in the following circumstances:

- (a) if provision of the services under the Contract has not actually started within 15 days of the scheduled date and the Contracting Authority considers that the new date proposed, if any, unacceptable, taking into account Article II.10.2;
- (b) if the Contractor is unable, through its own fault, to obtain any permit or licence required for *performance of the Contract*;
- (c) if the Contractor does not perform the Contract in accordance with the tender specifications or is in breach of another substantial contractual obligation;
- (d) if the Contractor or any person that assumes unlimited liability for the debts of the Contractor is in one of the situations provided for in Article 57.4.b of the Directive no. 2014/24/EU;
- (e) if the Contractor or any *related person* is in one of the situations provided for in Article 57 of the Directive no. 2014/24/EU;
- (f) if the procedure for awarding the Contract or the *performance of the Contract* prove to have been subject to *irregularities, fraud or breach of obligations*;

- (g) if the Contractor does not comply with applicable obligations under environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU;
- (h) if the Contractor is in a situation that could constitute a *conflict of interest* or a *professional conflicting interest* as referred to in Article II.7;
- (i) if a change to the Contractor's legal, financial, technical, organisational or ownership situation is likely to substantially affect the *performance of the Contract* or substantially modify the conditions under which the Contract was initially awarded, or a change regarding the exclusion situations listed in Art 57 of EU Directive no. 2014/24/EU that calls into question the decision to award the Contract;
- (j) in the event of *force majeure*, where either resuming implementation is impossible or the necessary ensuing amendments to the Contract would mean that the tender specifications are no longer fulfilled or result in unequal treatment of tenderers or Contractors;
- (k) If the amounts approved for this purpose in the annual budget of the Contracting Authority render impossible the performance of the Contract.

II.17.2 Grounds for termination by the Contractor

The Contractor may terminate the Contract if the Contracting Authority fails to comply with its obligations, in particular the obligation to provide the information needed for the Contractor to perform the Contract as provided for in the tender specifications.

II.17.3 Procedure for termination

A party must *formally notify* the other party of its intention to terminate the Contract and the grounds for termination.

The other party has 30 days following the date of receipt to submit observations, including the measures it has taken or will take to continue fulfilling its Contractual obligations. Failing that, the decision to terminate becomes enforceable the day after the time limit for submitting observations has elapsed.

If the other party submits observations, the party intending to terminate must *formally notify* it either of the withdrawal of its intention to terminate or of its final decision to terminate.

In the cases referred to in points (a) to (d), (g) to (i) and (k) of Article II.17.1 and in Article II.17.2, the date on which the termination takes effect must be specified in the *formal notification*.

In the cases referred to in points (e), (f) and (j) of Article II.17.1, the termination takes effect on the day following the date on which the Contractor receives *notification* of termination.

In addition, at the request of the Contracting Authority and regardless of the grounds for termination, the Contractor must provide all necessary assistance, including information, documents and files, to allow the Contracting Authority to complete, continue or transfer the services to a new Contractor or internally, without interruption or adverse effect on the quality or continuity of the services. The parties may agree to draw up a transition plan detailing the Contractor's assistance unless such plan is already detailed in other contractual documents or in the tender specifications. The Contractor must provide such assistance at no additional cost, except if it can demonstrate that it requires substantial additional resources or means, in which case it must provide an estimate of the costs involved and the parties will negotiate an arrangement in good faith.

II.17.4 Effects of termination

The Contracting Authority may claim compensation for such damage. The Contractor is liable for damage incurred by the Contracting Authority as a result of the termination of the Contract, including the additional cost of appointing and contracting another Contractor to provide or complete the services, except if the damage is a result of a termination in accordance with Article II.17.1(j) and (k) or Article II.17.2. The Contracting Authority may claim compensation for such damage.

The Contractor is not entitled to compensation for any loss resulting from the termination of the Contract, including loss of anticipated profits, unless the loss was caused by the situation specified in Article II.17.2.

The Contractor must take all appropriate measures to minimise costs, prevent damage and cancel or reduce its commitments.

Within 60 days of the date of termination, the Contractor must submit any report, deliverable or *result* and any invoice required for services that were provided before the date of termination.

In the case of joint tenders, the Contracting Authority may terminate the Contract with each member of the group separately on the basis of points (d), (e) and (g), and of Article II.17.1, under the conditions set out in Article II.10.2.

II.18 INVOICES, VALUE ADDED TAX AND E-INVOICING

II.18.1 Invoices and value added tax

Invoices must contain the Contractor's (or leader's in the case of a joint tender) identification data, the amount, the currency and the date, as well as the Contract reference.

The Contracting Authority is exempt from all taxes and duties, including VAT, in accordance with Article 10 of the [Agreement between the Republic of Serbia and the Transport Community regarding the seat of the Permanent Secretariat of the Transport Community](#).

The Contractor (or leader in the case of a joint tender) must complete the necessary formalities with the relevant authorities to ensure that the supplies and services required for *performance of the Contract* are exempt from taxes and duties, including VAT.

II.18.2 E-invoicing

If provided for in the special conditions, the Contractor (or leader in the case of a joint tender) submits invoices in electronic format if the conditions regarding electronic signature specified by Directive 2006/112/EC on VAT are fulfilled, i.e. using a qualified electronic signature or through electronic data interchange.

Reception of invoices by standard format (pdf) or email is not accepted.

II.19 PRICE REVISION

If a price revision index is provided in Article I.4.2, this Article applies to it.

Prices are fixed and not subject to revision during the first year of the Contract.

At the beginning of the second and every following year of the Contract, each price may be revised upwards or downwards at the request of one of the parties.

A party may request a price revision in writing no later than three months before the anniversary date of entry into force of the Contract. The other party must acknowledge the request within 14 days of receipt.

At the anniversary date, the Contracting Authority must communicate the final index for the month in which the request was received, or failing that, the last provisional index available for that month. The Contractor establishes the new price on this basis and communicates it as soon as possible to the Contracting Authority for verification.

The price revision is calculated using the following formula:

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

where: Pr = revised price;

Po = price in the tender;

Io = index for the month in which the Contract enters into force;

Ir = index for the month in which the request to revise prices is received.

II.20 PAYMENTS AND GUARANTEES

II.20.1 Date of payment

The date of payment is deemed to be the date on which the Contracting Authority's account is debited.

II.20.2 Currency

Payments are made in euros, unless another currency is provided for in Article I.7.

II.20.3 Conversion

The Contracting Authority makes any conversion between the euro and another currency at the daily euro exchange rate published in the Official Journal of the European Union, or failing that, at the monthly accounting exchange rate, as established by the European Commission and published on the website indicated below, applicable on the day when it issues the payment order.

The Contractor makes any conversion between the euro and another currency at the monthly accounting exchange rate, established by the Commission and published on the website indicated below, applicable on the date of the invoice.

http://ec.europa.eu/budget/Contracts_grants/info_Contracts/inforeuro/inforeuro_en.cfm

II.20.4 Costs of transfer

The costs of the transfer are borne as follows:

- (a) the Contracting Authority bears the costs of dispatch charged by its bank;
- (b) the Contractor bears the costs of receipt charged by its bank;
- (c) the party causing repetition of the transfer bears the costs for repeated transfer.

II.20.5 Pre-financing, performance and money retention guarantees

If, as provided for in Articles I.5 and I.6, a financial guarantee is required for the payment of pre-financing, as performance guarantee or as retention money guarantee, it must fulfil the following conditions:

- (a) the financial guarantee is provided by a bank or a financial institution approved by the Contracting Authority or, at the request of the Contractor and with the agreement of the Contracting Authority, by a third party; and
- (b) the guarantee shall have the effect of making the bank or financial institution or the third party provide irrevocable collateral security or stand as first-call

guarantor of the Contractor's obligations without requiring that the Contracting Authority has recourse against the principal debtor (the Contractor).

The guarantee shall be unconditional, entitling the Contracting Authority to demand payment by simply giving a notice in the form thereunder required without any proof of default being necessary and regardless whether there is a dispute on the validity of the reasons for calling on the bond.

The Contractor bears the cost of providing such guarantee.

Pre-financing guarantees must remain in force until the pre-financing is cleared against interim payments or payment of the balance. Where the payment of the balance takes the form of a debit note, the pre-financing guarantee must remain in force for three months after the debit note is sent to the Contractor. The Contracting Authority must release the guarantee within the following month.

Performance guarantees cover compliance with substantial Contractual obligations until the Contracting Authority has given its final approval for the service. The performance guarantee must not exceed 10% of the total price of the Contract. The Contracting Authority must release the guarantee fully after final approval of the service, as provided for in the Contract.

Retention money guarantees cover full delivery of the service in accordance with the Contract including during the Contract liability period and until its final approval by the Contracting Authority. The retention money guarantee must not exceed 10% of the total price of the Contract. The Contracting Authority must release the guarantee after the expiry of the Contract liability period as provided for in the Contract.

The Contracting Authority must not request a retention money guarantee where it has requested a performance guarantee.

II.20.6 Interim payments and payment of the balance

The Contractor (or leader in the case of a joint tender) must send an invoice for interim payment, as provided for in Article I.5 or in the tender specifications.

The Contractor (or leader in the case of a joint tender) must send an invoice for payment of the balance within 60 days of the end of the period of provision of the services providing that all conditions referred at in Article I.5 or in the tender specifications are met.

Payment of the invoice and approval of documents does not imply recognition of the regularity, authenticity, completeness and correctness of the declarations and information they contain.

Payment of the balance may take the form of recovery.

II.20.7 Suspension of the time allowed for payment

The Contracting Authority may suspend the payment periods specified in Article I.5 at any time by *notifying* the Contractor (or leader in the case of a joint tender) that its invoice cannot be processed. The reasons the Contracting Authority may cite for not being able to process an invoice are:

- (a) because it does not comply with the Contract;
- (b) because the Contractor has not observed the payment conditions provided under Article I.5.

The Contracting Authority must *notify* the Contractor (or leader in the case of joint tender) as soon as possible of any such suspension, giving the reasons for it. The Contracting Authority shall notify the Contractor (or leader in case of a joint tender) the time limits to submit additional information or corrections or a new version of the documents or deliverables if the Contracting Authority requires it.

Suspension takes effect on the date the Contracting Authority sends the *notification*. The remaining payment period resumes from the date on which the outstanding conditions are being fulfilled.

II.20.8 Interest on late payment

On expiry of the payment periods specified in Article I.5, the Contractor (or leader in the case of a joint tender) is entitled to interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in euros (the reference rate) plus four points. The reference rate is the rate in force, as published in the C series of the *Official Journal of the European Union*, on the first day of the month in which the payment period ends.

Suspension of the payment period as provided for in Article II.20.7 is not considered as giving rise to late payment.

Interest on late payment covers the period running from the day following the due date for payment up to and including the date of payment as defined in Article II.20.1.

However, when the calculated interest is EUR 200 or less, it must be paid to the Contractor (or leader in the case of a joint tender) only if it requests it within two months of receiving late payment.

II.21 REIMBURSEMENTS

II.21.1 If provided for in the special conditions or in the tender specifications, the Contracting Authority must reimburse expenses directly connected with the provision of the services either when the Contractor provides it with supporting documents or on the basis of flat rates.

II.21.2 The Contracting Authority reimburses travel and subsistence expenses on the basis of the shortest itinerary and the minimum number of nights necessary for overnight stay at the destination.

II.21.3 The Contracting Authority reimburses travel expenses as follows:

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

In addition, the Contracting Authority reimburses travel outside Western Balkans territory if it has given its prior written approval for the expenses.

II.21.4 The Contracting Authority reimburses subsistence expenses on the basis of a daily subsistence allowance as follows:

- (a) for journeys of less than 200 km for a return trip, no subsistence allowance is payable;
- (b) the daily subsistence allowance is payable only on receipt of supporting documents proving that the person concerned was present at the destination;
- (c) the daily subsistence allowance takes the form of a flat-rate payment to cover all subsistence expenses, including meals, local transport including transport to and from the airport or station, insurance and sundries;
- (d) the daily subsistence allowance is reimbursed at the flat rates specified in the special conditions;
- (e) accommodation is reimbursed on receipt of supporting documents proving the necessary overnight stay at the destination, up to the flat-rate ceilings specified in Article I.4.3.

II.21.5 The Contracting Authority reimburses the cost of shipment of equipment or unaccompanied luggage if it has given prior written approval for the expense.

II.22 RECOVERY

II.22.1 If an amount is to be recovered under the terms of the Contract, the Contractor must repay the Contracting Authority the amount in question.

II.22.2 Recovery procedure

Before recovery, the Contracting Authority must *formally notify* the Contractor of its intention to recover the amount it claims, specifying the amount due and the reasons for recovery and inviting the Contractor to make any observations within 30 days of receipt.

If no observations have been submitted or if, despite the observations submitted, the Contracting Authority decides to pursue the recovery procedure, it must confirm recovery by *formally notifying* a debit note to the Contractor, specifying the date of payment. The Contractor must pay in accordance with the provisions specified in the debit note.

If the Contractor does not pay by the due date, the Contracting Authority may, after informing the Contractor in writing, recover the amounts due:

- (a) by offsetting them against any amounts owed to the Contractor by the Transport Community;
- (b) by calling in a financial guarantee if the Contractor has submitted one to the Contracting Authority;
- (c) by taking legal action.

II.22.3 Interest on late payment

If the Contractor does not honour the obligation to pay the amount due by the date set by the Contracting Authority in the debit note, the amount due bears interest at the rate indicated in Article II.20.8. Interest on late payments will cover the period starting on the day after the due date for payment and ending on the date when the Contracting Authority receives the full amount owed.

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

II.22.4 Recovery rules in the case of joint tender

If the Contract is signed by a group (joint tender), the group is jointly and severally liable under the conditions set out in Article II.6 (liability). The Contracting Authority shall send the debit note first to the leader of the group.

If the leader does not pay by the due date the whole amount, and if the amount due cannot be offset or can only be offset partially in accordance with Article II.22.2 (a), then the Contracting Authority may claim the amount still due to any other member or members of the group by respectively *notifying* them with a debit note in conformity with the provisions laid down in Article II.22.2.

II.23 CHECKS AND AUDITS

II.23.1 The Contracting Authority and the Regional Steering Committee may check or require an audit on the *performance of the Contract*. This may be carried out by any outside body authorised to do so on its behalf.

Such checks and audits may be initiated at any moment during the *performance of the Contract* and up to five years starting from the payment of the balance.

The audit procedure is initiated on the date of receipt of the relevant letter sent by the Contracting Authority. Audits are carried out on a confidential basis.

II.23.2 The Contractor must keep all original documents stored on any appropriate medium, including digitised originals if authorised under national law, for a period of five years starting from the payment of the balance.

II.23.3 The Contractor must grant the Contracting Authority's staff and outside *personnel* authorised by the Contracting Authority the appropriate right of access to sites and premises where the Contract is performed and to all the information, including information in electronic format, needed to conduct such checks and audits. The Contractor must ensure that the information is readily available at the moment of the check or audit and, if so requested, that information is handed over in an appropriate format.

II.23.4 On the basis of the findings made during the audit, a provisional report is drawn up. The Contracting Authority or its authorised representative must send it to the Contractor, who has 30 days following the date of receipt to submit observations. The Contractor must receive the final report within 60 days following the expiry of that deadline to submit observations.

On the basis of the final audit findings, the Contracting Authority may recover all or part of the payments made in accordance with Article II.23 and may take any other measure which it considers necessary.

II.23.5 In accordance with Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspection carried out by the Commission in order to protect the European Communities' financial interests against *fraud* and other *irregularities* and Regulation (EU, Euratom) No 883/2013 of the European Parliament and the Council of 11 September 2013 concerning investigation conducted by the European Anti-Fraud Office, the European Anti-Fraud Office may carry out investigations, including on-the-spot checks and inspections, to establish whether there has been *fraud*, corruption or any other illegal activity under the Contract affecting the financial interests of the Union. Findings arising from an investigation may lead to criminal prosecution under national law.

The investigations may be carried out at any moment during the provision of the services and up to five years starting from the payment of the balance.

II.23.6 The Court of Auditors and the European Public Prosecutor's Office established by Council Regulation (EU) 2017/1939² ('the EPPO') have the same rights as the Contracting Authority, particularly right of access, for the purpose of checks, audits and investigations.

II.24 SUPPLY OF GOODS

II.24.1 Any goods to be supplied to the Contracting Authority under the Contract (hereinafter referred at as "Goods") shall be delivered as following:

- With prior notification of at least 5 days;
- In any working day, between 09.00 – 17.00 h CET;
- At the Contracting Authority's headquarters in Blace Baruh 26 (MIA Dorcol), 5th floor, 11000 Belgrade, Republic of Serbia or whatever address notified by the Contracting Authority in this regard, providing that such address is in Belgrade, Republic of Serbia.

II.24.2 The Contractor will ensure supply and full installation and configuration of the Goods at the designated place in Contracting Authority's office, including but not limited to site preparation, assembly and operationalization so that to ensure full functionality of TODIS in the Contracting Authorities premises.

II.24.3 The Contractor warrants that any Goods to be supplied to the Contracting Authority under this Contract shall have no defect, arising from design, materials, or workmanship or from any act or omission of the Contractor that may develop under normal use of the supplied goods. This warranty shall remain valid for twelve (12) months after the Goods have been delivered to installed and accepted at their final destination.

II.24.4 The Contractor warrants that all Goods supplied under this Contract are new, unused, of the most recent or current models and that they incorporate all recent improvements in design and materials unless provided otherwise in this Contract.

II.24.5 All Goods/Services delivered under this Contract will conform to the specifications provided in the Contractor's Technical Offer and TODIS System Design.

² Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office

II.24.6 The Contracting Authority shall promptly notify the Contractor in writing of any claims arising under this warranty.

II.24.7 Upon receipt of such notice, the Contractor shall, within the time period specified in the notice, repair or replace the defective Goods or parts thereof, without cost to the Contracting Authority.

II.24.8 The Contracting Authority's continued use of such Goods after notifying the Contractor of their defect or failure to conform or breach of warranty will not be considered a waiver of the Contractor's warranty.

II.24.9 The Contractor further represents and warrants that it has full title to the Goods at the time of delivery to the Contracting Authority.