

## **FRAMEWORK CONTRACT FOR SERVICES**

**NUMBER – PS/SRV/PRT/001/2023**

1. The Transport Community, represented by the Permanent Secretariat of the Transport Community ('the Contracting Authority') represented for the purposes of signing this framework contract by Matej Zakonjšek, 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, represented for the purposes of the signature of this framework contract by [forename, surname, function of legal representative and name of company in the case of a joint tender],*

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

And

3. *[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, 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],*

Contract number: [complete]

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

([collectively] ‘the Contractor’),

on the other part,

whereas the Contracting Authority has accepted the Contractors’ Tender to provide the services [insert],

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])

**Annex III** – Model for specific contracts

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

This FWC sets out:

- the procedure by which the contracting authority may order services from the Contractor;
- the provisions that apply to any *specific contract* which the Contracting Authority and the contractor may conclude under this FWC; and
- the obligations of the parties during and after the duration of this FWC

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 FWC. In all circumstances, in the event of contradiction between this FWC and documents issued by the contractor, this FWC 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 FWC, the rules set out in part II.2 of the General Conditions must be applied.

### **I.2 SUBJECT MATTER**

The purpose of the FWC is to establish the essential conditions that will govern the specific service contracts to be awarded during the course of this FWC.

The subject matter of the FWC is rental of printers and multifunctional device and managed printing services.

### **I.3 ENTRY INTO FORCE, COMMENCEMENT AND DURATION**

**I.3.1** The FWC enters into force on the date on which the last party signs it.

**I.3.2** The *implementation of the FWC* cannot start before its entry into force.

**I.3.3** The FWC is concluded for a period which shall not exceed 24 months with effect from the date of its entry into force.

**I.3.4** The parties must sign any *specific contract* before the FWC expires. The FWC continues to apply to such *specific contracts* after its expiry.

#### **I.3.5 Renewal of the FWC**

The FWC is not subject of renewal.

### **I.4 PRICE**

#### **I.4.1 Maximum amount of the FWC and maximum prices**

The maximum amount covering all purchases under this FWC, including all renewals and reimbursement of expenses is EUR 21,600.00. However, this does not bind the Contracting Authority to purchase for the maximum amount.

The maximum prices of the services are as listed in Annex A.

#### **I.4.2 Price revision index**

Price revision is not applicable to this FWC.

## **I.5 PAYMENT ARRANGEMENTS FOR SPECIFIC CONTRACT**

### **I.5.1 Pre-financing**

No advance payment shall be made under the *specific service contract*.

### **I.5.2 Schedules of payments**

The contractor shall issue a monthly Invoice to the contracting party latest by the 10<sup>th</sup> working day of the following month.

The contractor must send an invoice in RSD1 in paper format for payment due under a specific contract, as provided for in the tender specifications. The conversion of monetary values from EUR to RSD shall be done by applying the monthly InforEuro currency exchange rates:

[http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/inforeuro/index\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/index_en.cfm).

The invoice must contain: information about equipment being leased including type and number, information about the number of sheets printed for each device and classified by type colour/size.

The contracting authority must approve any submitted documents or supplies and pay within 30 days from receipt of the invoice.

If the contracting authority has observations to make, they must be sent to the contractor (or leader in the case of a joint tender) and the time limit for payment shall be suspended in accordance with Article II.20.

The contractor (or leader in the case of a joint tender) has 7 days to submit additional information or corrections if the contracting authority requires it.

The contracting authority must give its approval and pay within the stipulated time-limit unless it rejects partially or fully the submitted documents or supplies.

## **I.6 GUARANTEES**

Performance guarantees are not applicable to this contract.

## **I.7 BANK ACCOUNT**

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

Name of bank: [Full name]

Full address of branch: [Full address]

Exact denomination of account holder: [Full name]



Contract number: *[complete]*

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

[IBAN code:] *[Code]*

## **I.8 COMMUNICATION DETAILS**

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

Contracting Authority:

Permanent Secretariat of the Transport Community

Beogradjanka building, Masarikova 5/8, 11000 Belgrade, Republic of Serbia

E-mail:

Invoices must be sent by post to:

Beogradjanka building, Masarikova 5/8, 11000 Belgrade, Republic of Serbia

Communication related to financial matters must be sent to:

E-mail: [finance@transport-community.org](mailto: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 FWC is governed by the European Union's law, complemented, where necessary, by the law of Republic of Serbia.

## **SIGNATURES**

For the Contractor,

For the Contracting Authority,

Contract number: *[complete]*

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

Signature: \_\_\_\_\_

Director

The Permanent Secretariat of the  
Transport Community

Signature: \_\_\_\_\_

Done at *[place]*, *[date]*

Done in Belgrade, *[date]*

In duplicate in English.

## II. GENERAL CONDITIONS FOR THE SERVICE CONTRACT

### II.1 DEFINITIONS

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

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

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

**‘Conflict of interest’**: means a situation where the impartial and objective *performance of the FWC* 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 FWC;

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

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

**‘Directive 2014/24/EU’**: means 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;

**‘Force majeure’**: means 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 FWC. 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’): means a 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’**: means 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’:** means 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.

**‘Implementation of the FWC’:** the purchase of services envisaged in the FWC through the signature and performance of *specific contracts*;

**‘Irregularity’:** means 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’): means a form of communication between the parties made in writing including by electronic means;

**‘Order form’:** a simplified form of *specific contract* by which the contracting authority orders services under this FWC;

**‘Performance of a specific contract’:** means the execution of the obligations under the *specific contract*, referring to the execution of the tasks and delivery of the purchased services;

**‘Period of Performance of the specific contract’:** means the period within which the Contractor is required to complete the execution of tasks and delivery of the purchased services;

**‘Personnel’:** means any person employed directly or indirectly or contracted by the Contractor to perform the FWC;

**‘Pre-existing material’:** means 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 FWC*;

**‘Pre-existing right’:** means 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’:** means a situation in which the Contractor’s previous or ongoing professional activities affect its capacity to perform the FWC to an appropriate quality standard.

**‘Related person’:** means 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;

**‘Request for services’:** a document from the Contracting Authority requesting that the contractors in a multiple FWC provide a specific tender for services whose terms are not entirely defined under the FWC;

**‘Result’:** any intended outcome of the implementation of the FWC, whatever its form or nature, which is delivered and finally or partially approved by the contracting authority. A result may be further defined in this FWC as a deliverable. A result may, in addition to materials produced by the contractor or at its request, also include pre-existing materials;

**‘Specific contract’:** a contract implementing the FWC and specifying details of a service to be provided;

**‘Tender’:** means the legal act through which the Contractor has expressed its will to legally commit to the FWC and the related documents, submitted by the Contractor and offer includes the Contractor’s technical and financial proposal, the JV Agreement (if applicable), and all other documents which the Contractor submitted as part of its tender.

## **II.2 ORDER OF PRIORITY OF PROVISIONS**

Unless otherwise stated in the special conditions, if there is any conflict between different provisions in this FWC, 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 FWC.
- (b) The provisions set out in the general conditions take precedence over those in the request for services and *specific contract* (Annex III)
- (c) The provisions set out in the *request for services* and *specific contract* (Annex III) take precedence over those in the other annexes.
- (d) The provisions set out in the tender specifications take precedence over those in the Contractor’s tender.
- (e) The provisions set out in the FWC take precedence over those in the *specific contracts*.
- (f) The provisions set out in the *specific contracts* take precedence over those in the *requests for services*.
- (g) The provisions set out in the *requests for services* take precedence over those in the specific tenders.

## **II.3 LAW AND LANGUAGE**

The FWC shall be governed by the law of the country (or other jurisdiction) stated in the special conditions.

The ruling language of the FWC shall be English unless otherwise stated in the special conditions. If there are versions of any part of the FWC which are written in more than one language, the version which is in the ruling language shall prevail.

The language for communications shall be English unless otherwise stated in the special conditions. If no language is stated there, the language for communications shall be the ruling language of the FWC.

## **II.4 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.5 SEVERABILITY**

Each provision of this FWC 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 FWC. This does not affect the legality, validity or enforceability of any other provisions of the FWC, 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.13 [Assignment]. The FWC must be interpreted as if it had contained the substitute provision as from its entry into force.

## **II.6 COMMUNICATION BETWEEN THE PARTIES**

### **II.6.1 Form and means of communication**

Any communication of information, notices or documents under the FWC shall:

- (a) be made in writing in paper or electronic format in the language for communication;
- (b) bear the FWC number;
- (c) be made using the relevant communication details set out in Article I.9 of the special conditions; and
- (d) be hand delivered or 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.6.2 Date of communications by mail and email**

Any communication is deemed to have been made when the receiving party receives it, unless this FWC 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.9. 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.9 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.7 PERFORMANCE OF THE SERVICES**

- II.7.1** Signature of the FWC does not guarantee any actual purchase. The contracting authority is bound only by *specific contracts* implementing the FWC.
- II.7.2** 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 FWC, 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.7.3** The Contractor shall comply with the minimum requirements provided for in the technical specifications. This includes compliance with applicable obligations under environmental, social and labour law established by Union law, the law applicable at the place where services are to be provided and collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU.
- II.7.4** The Contractor shall obtain any permit or licence required in the state where the services are to be provided.
- II.7.5** Unless otherwise stated in the special conditions, the place of the performance of the services shall be considered to be the usual place of business of the Contractor.
- II.7.6** All periods specified in the FWC are calculated in calendar days, unless otherwise specified.
- II.7.7** Unless otherwise instructed, the Contractor shall not present itself as a representative of the Contracting Authority and must inform third parties accordingly.
- II.7.8** 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.7.9** The Contractor must ensure that the *personnel* performing the FWC 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 documents.
- II.7.10** At the Contracting Authority's reasoned request, the Contractor shall 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.7.11** 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.7.12** 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.7.13** The Contracting Authority shall make available to the Contractor, promptly, any information and/or documents it possesses that may be relevant to the *performance of the FWC* as established in the specific conditions.

The Contracting Authority is fully responsible for the accuracy of the documents and any other information provided to the Contractor as well as for its Administrative Orders.

The Contracting Authority shall collaborate, as much as possible, with the Contractor to provide the information that the latter may reasonably request for the *performance of the FWC*.

## **II.8 LIABILITY**

**II.8.1** 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 *implementation of FWC*.

**II.8.2** If required by the relevant applicable legislation, the Contractor must take out an insurance policy against risks and damage or loss relating to *implementation of FWC*. 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.8.3** The Contractor is liable for any loss or damage caused to the Contracting Authority during or as a consequence of *implementation of FWC*, including in the event of subcontracting, but only up to an amount not exceeding three times the total amount of the FWC. 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.8.4** If a third party brings any action against the Contracting Authority in connection with the *implementation of FWC*, 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 *implementation of FWC*, Article II.8.3 applies.

**II.8.5** 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 *implementation of FWC*.

**II.8.6** The Contracting Authority is not liable for any loss or damage caused to the Contractor during or as a consequence of *implementation of FWC*, unless the loss or damage was caused by wilful misconduct or gross negligence of the Contracting Authority.

## **II.9 CONFLICT OF INTEREST AND PROFESSIONAL CONFLICTING INTERESTS**

**II.9.1** The Contractor must take all the necessary measures to prevent any situation of *conflict of interest* or *professional conflicting interest*.

**II.9.2** 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 *implementation of FWC*. 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;
- (c) do not award a *specific contract* to the Contractor.

**II.9.3** 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 *implementation of FWC*, 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.10 CONFIDENTIALITY**

**II.10.1** 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 *implementation of FWC* and identified in writing as confidential.

**II.10.2** Each party must:

- (a) not use *confidential information or documents* for any purpose other than to perform its obligations under the FWC 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.10.3** The confidentiality obligations set out in this Article are binding on the Contracting Authority and the Contractor during the *implementation of FWC* 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.10.4** 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 *implementation of FWC*, 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.11 SUBCONTRACTING**

**II.11.1** The Contractor must not subcontract and have the FWC performed by third parties beyond the third parties already mentioned in its tender without prior written authorisation from the Contracting Authority.

**II.11.2** Even if the Contracting Authority authorises subcontracting, the Contractor remains bound by its contractual obligations and is solely responsible for the *implementation of FWC*.

**II.11.3** The Contractor must ensure that the subcontract does not affect the rights of the Contracting Authority under this FWC, particularly those under Articles II.10 [Confidentiality], II.14 [Intellectual property rights] and II.27 [Checks and Audits].

**II.11.4** 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.19.1 [Grounds for termination by the Contracting Authority]. Where the replacement of the subcontractor is made in accordance with the Contracting Authority's request, then the FWC shall not be terminated on this ground.

## **II.12 AMENDMENTS**

**II.12.1** Any amendment to the FWC or to a *specific contract* must be made in writing before the expiry of the *FWC duration*.

**II.12.2** Any amendment must not make changes to the FWC or to a *specific contract* that might alter the initial conditions of the procurement procedure or result in unequal treatment of tenderers.

## **II.13 ASSIGNMENT**

**II.13.1** The Contractor must not assign the rights and obligations arising from the FWC, 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.13.2** Any right or obligation assigned by the Contractor without authorisation is not enforceable against the Contracting Authority.

## **II.14 INTELLECTUAL PROPERTY RIGHTS**

### **II.14.1 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 FWC and incorporated in the *results*, without prejudice however to the rules applying to *pre-existing rights* on *pre-existing materials*, as per Article II.14.2.

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 *implementation of the FWC*. The Contracting Authority may exploit and use the acquired rights as stipulated in this FWC. 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.14.2 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 FWC.

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 FWC. 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 FWC covers all territories worldwide and is valid for the duration of intellectual property rights protection.

The payment of the price as set out in the *specific 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 FWC* 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 FWC.

### **II.14.3 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 FWC, 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 FWC and from the intention of the parties;
  - (ii) the rights to receive both the source code and the object code;
  - (iii) the rights to decompile or disassemble the software;
- (m) the right to license to third parties any of the exclusive rights or of the modes of exploitation set out in this FWC; 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 FWC, 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.14.4 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 FWC, the *results*, 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 FWC 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.14.5 Evidence of granting of pre-existing rights**

Upon request by the Contracting Authority, the Contractor shall 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 FWC.

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 FWC 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.14.6 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.14.7 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.14.8 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.14.9 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.14.10 Visibility of Transport Community funding and disclaimer**

When making use of the *results*, the Contractor must declare that they have been produced under a FWC 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.15 FORCE MAJEURE**

**II.15.1** 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.15.2** A party is not liable for any delay or failure to perform its obligations under the FWC or a *specific 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.15.3** The parties must take all necessary measures to limit any damage due to *force majeure*.

### **II.16 LIQUIDATED DAMAGES**

#### **II.16.1 Delay in delivery**

If the Contractor fails to perform its contractual obligations within the applicable time limits set out in this FWC, 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*;

$d$  is the duration specified in the *specific contract* for delivery of the relevant purchase or deliverable or *result* or, failing that, the period between the date specified in Article I.4.2 and the date of delivery or performance specified in the relevant *specific contract*, expressed in days.

Liquidated damages may be imposed together with a reduction in price under the conditions laid down in Article II.22 [Reduction in Price]. In such a case, the liquidated damages shall be calculated at the initial price of the delayed service or activity.

### **II.16.2 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.16.3 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 FWC.

### **II.16.4 Claims and liability in case of liquidated damages**

Any claim for liquidated damages does not affect the Contractor's actual or potential liability or the Contracting Authority's rights under Article II.19 [Termination of the FWC].

## **II.17 SUSPENSION OF THE PERFORMANCE OF THE FWC**

### **II.17.1 Suspension by the Contractor**

If the Contractor is affected by *force majeure*, it may suspend the provision of services under a *specific 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 provision of services.



The Contractor must *notify* the Contracting Authority as soon as it is able to resume *performance of the specific contract*, unless the Contracting Authority has already terminated the FWC or the respective *specific contract*.

## **II.17.2 Suspension by the Contracting Authority**

The Contracting Authority may suspend the *implementation of the FWC* or the *performance of a specific contract* or any part of it:

- (a) if the procedure for awarding the FWC or of a *specific contract* or the *implementation of the FWC* proves to have been subject to *irregularities, fraud* or *substantial errors*;
- (b) in order to verify whether the presumed *irregularities, fraud* or *substantial errors* have actually occurred;
- (c) if there is no annual budget approved at the beginning of each calendar year; or
- (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 FWC or the respective *specific contract* under Article II.19.1(f) or (j) [Grounds for termination by the Contracting Authority].

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 FWC or of the respective *specific contract*.

The Contracting Authority may in addition suspend the time allowed for payments in accordance with Article II.23.7 [Suspension of the time allowed for payment].

## **II.18 TERMINATION OF THE FWC**

### **II.18.1 Grounds for termination by the Contracting Authority**

The Contracting Authority may terminate the FWC or a *specific contract* in the following circumstances:

- (a) if provision of the services under a pending *specific 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.12.2 [Amendments];
- (b) if the Contractor is unable, through its own fault, to obtain any permit or licence required for *implementation of the FWC*;
- (c) if the Contractor:
- i. does not implement the FWC or does not perform the *specific contract* in accordance with the tender specifications or *request for service*; or
  - ii. is in breach of another substantial contractual obligation; or
  - iii. repeatedly refuses to sign *specific contracts*;
  - iv. termination of three or more *specific contracts* in these circumstances also constitutes grounds for termination of the FWC;
- (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 respectively of the Article 136.1.a of the Financial Rules, Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council;
- (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, respectively of the Article 136 of the Financial Rules, Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council;
- (f) if the procedure for awarding the FWC or the *performance of the FWC* 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.9 [Conflict of interest and professional conflicting interests];
- (i) if a change to the Contractor's legal, financial, technical, organisational or ownership situation is likely to substantially affect the *implementation of the FWC* or substantially modify the conditions under which the FWC was initially awarded, or a change regarding the exclusion situations listed in Art 57 of EU Directive no. 2014/24/EU, respectively of article 136 of the Financial Rules, that calls into question the decision to award the FWC;
- (j) in the event of *force majeure*, where either resuming implementation is impossible or the necessary ensuing amendments to the FWC or a *specific contract* would mean that the tender specifications are no longer fulfilled or result in unequal treatment of tenderers or Contractors;
- (k) if the needs of the Contracting Authority change and it no longer requires new services under the FWC; in such cases ongoing *specific contracts* remain unaffected;

- (l) if the termination of the FWC with one or more of the Contractors means that the multiple FWC with reopening of competition no longer has the minimum required level of competition;
- (m) if the amounts approved for this purpose in the annual budget of the Contracting Authority render impossible the performance of the FWC or of a *specific contract*.

## **II.18.2 Grounds for termination by the Contractor**

The Contractor may terminate the FWC or a *specific contract* if:

- (a) the Contracting Authority fails to comply with its obligations, in particular the obligation to provide the information needed for the Contractor to perform the FWC as provided for in the tender specifications;
- (b) it has evidence that the Contracting Authority has committed *substantial errors, irregularities or fraud* in the procedure for awarding the FWC or the *implementation of the FWC*.

## **II.18.3 Procedure for termination**

A party must *formally notify* the other party of its intention to terminate the FWC or a *specific 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) to (m) of Article II.19.1 and in Article II.19.2, 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.19.1, 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.18.4 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 FWC or a *specific 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.19.1(j) and (k) or Article II.19.2. 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 FWC or a *specific contract*, including loss of anticipated profits, unless the loss was caused by the situation specified in Article II.19.2.

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 FWC or a *specific contract* with each member of the group separately on the basis of points (d), (e) and (g), and of Article II.19.1, under the conditions set out in Article II.11.2. [Amendments].

## **II.19 INVOICES, VALUE ADDED TAX AND E-INVOICING**

### **II.19.1 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 FWC reference and reference to the *specific contract*.

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 *implementation of the FWC* are exempt from taxes and duties, including VAT.

### **II.19.2 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.20 PRICE REVISION

If a price revision index is provided in Article I.5.2, this Article applies to it.

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

At the beginning of the second and every following year of the FWC, 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 FWC. 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 Contracting Authority purchases on the basis of the prices in force at the date on which the *specific contract* enters into force.

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 FWC enters into force;

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

## II.21 REDUCTION IN PRICE

### II.21.1 Quality standards

If the Contractor fails to provide the service in accordance with the FWC or a *specific 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 [...] 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.17 [Liquidated Damages].

## **II.21.2 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.21.3 Claims and liability in case of price reduction**

Any reduction in price does not affect the Contractor's actual or potential liability or the Contracting Authority's rights under Article II.19 [Termination of the FWC].

## **II.22 PAYMENTS AND GUARANTEES**

### **II.22.1 Date of payment**

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

### **II.22.2 Currency**

Payments are made in euros, unless another currency is provided for in Article I.8.

### **II.22.3 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](http://ec.europa.eu/budget/Contracts_grants/info_Contracts/inforeuro/inforeuro_en.cfm)

### **II.22.4 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.22.5 Pre-financing, performance and money retention guarantees**

If, as provided for in Article I.7, 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 *specific contract*. The Contracting Authority must release the guarantee fully after final approval of the service, as provided for in the *specific contract*.

Retention money guarantees cover full delivery of the service in accordance with the *specific contract* including during the contractual 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 *specific contract*. The Contracting Authority must release the guarantee after the expiry of the liability period as provided for in the *specific contract*.

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

#### **II.22.6 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.6 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.6 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.22.7 Suspension of the time allowed for payment**

The Contracting Authority may suspend the payment periods specified in Article I.6 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 FWC or the *specific contract*;
- (b) because the contractor has not produced the appropriate documents or deliverables; or
- (c) because the contracting authority has observations on the documents or deliverables submitted with the invoice.
- (d) because the Contractor has not observed the payment conditions provided under Article I.6.

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.22.8 Interest on late payment**

On expiry of the payment periods specified in Article I.6, 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.23.7 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.23.1.

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.23 REIMBURSEMENTS**

**II.23.1** If provided for in the special conditions or in the tender documents, 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.23.2** 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.23.3** 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.23.4** 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.23.5** The Contracting Authority reimburses the cost of shipment of equipment or unaccompanied luggage if it has given prior written approval for the expense.

## **II.24 RECOVERY**

### **II.24.1 Amount to be recovered**

If an amount is to be recovered under the terms of the FWC or a specific contract, the Contractor must repay the Contracting Authority the amount in question.

## **II.24.2 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.24.3 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.23.8 [Interest on late payment]. 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.24.4 Recovery rules in the case of joint tender**

If the Contractor is a group (joint tender), the group is jointly and severally liable under the conditions set out in Article II.8 [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.25.2 (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.25.2.

## **II.25 SETTLEMENT OF DISPUTES**

**II.25.1.** The Parties shall endeavour to settle amicably any disputes or complaints relating to the interpretation, application or validity of the FWC, including its existence or termination.

**II.25.2** 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 FWC.

**II.25.3** 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.

## **II.26 CHECKS AND AUDITS**

**II.26.1** The Contracting Authority and the Regional Steering Committee may check or require an audit on the *implementation of the FWC*. 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 provision of services and up to five years starting from the payment of the balance of the last *specific contract* issued under this FWC.

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.26.2** 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 of the last *specific contract* issued under this FWC.

**II.26.3** 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 FWC and/or the *specific contract* are 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.26.4** 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 and may take any other measure which it considers necessary.

**II.26.5** 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 FWC 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.26.6** The Court of Auditors and the European Public Prosecutor's Office established by Council Regulation (EU) 2017/1939 ('the EPPO') have the same rights as the Contracting Authority, particularly right of access, for the purpose of checks, audits and investigations.

**ANNEX III**  
**SPECIFIC CONTRACT**

No [complete]  
implementing framework contract No [complete]

1. The Transport Community, represented by the Permanent Secretariat of the Transport Community ('the Contracting Authority') represented for the purposes of signing this *specific contract* by [insert name: 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 leader of the group by the members of the group that submitted the joint tender]

[repeat these data as many times as there are contractors in case of joint tender and continue numbering]

([collectively] "the contractor"), represented for the purposes of signing this *specific contract* by [forename, surname and function of legal representative,]



## **HAVE AGREED**

### **ARTICLE 1 Subject Matter**

**1.1** This *specific contract* implements framework contract (FWC) No [insert], signed by the last party on [insert date].

**1.2** In accordance with the provisions set out in the FWC and in *this specific contract* and their annexes, which form an integral part of it, the contractor must provide the services specified in Annex 1.

### **ARTICLE 2 Entry into Force and Duration**

**2.1** This *specific contract* enters into force on the date on which the last party signs it.

**2.2** The provision of the services starts from the date of entry into force of this *specific contract*.

**2.3** The provision of the services must not exceed 24 months.

### **ARTICLE 3 Price**

**3.1** The price payable under this *specific contract* excluding reimbursement of expenses is EUR [insert the amount in figures and in words].

**3.2** The price payable under this *specific contract* is EUR [insert the amount in figures and in words].

### **ARTICLE 4 Communication Details**

For the purpose of this *specific contract*, communications must be sent to the following addresses: [insert for both parties]

### **ARTICLE 5 Performance Guarantee**

Performance guarantee is not applicable to this *specific contract*.

### **ARTICLE 6 Retention Money Guarantee**

Retention money guarantee is not applicable to this *specific contract*.

### **Annexes**

Contract number: [complete]

- Request for services
- Contractor's specific tender of [insert date], which forms an integral part of this contract.

### Signatures

For the Contractor,  [Company name/ forename /surname /function]	For the Contracting Authority,  [forename/surname/function] ,
Signature  Done at [ <i>place</i> ], [ <i>date</i> ]	Signature  Done in Belgrade, [ <i>date</i> ]