



SERVICE CONTRACT

NUMBER – PS/SRV/CLB/041/2025

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 [insert name:.....], 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,

whereas the Contracting Authority has accepted the Contractor's Tender to provide the services described in the tender documentation no. [insert no.],



HAVE AGREED

to the **Special Conditions**, the **General Conditions for Service Contracts** and the following annexes:

Annex I – Technical Specifications (reference no. *[insert no.]* of *[insert date]*)

Annex II – Contractor's Tender (reference no. *[insert no.]* 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 a 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.



TABLE OF CONTENT

SERVICE CONTRACT	1
TABLE OF CONTENT	3
I. SPECIAL CONDITIONS	6
I.1 Order of priority of provisions	6
I.2 Subject matter	6
I.3 Entry into force, Commencement and duration	6
I.4 Price	6
I.4.1 Price of the Contract	6
I.4.2 Price revision	6
I.4.3 Sufficiency of the tender prices	7
I.5 Payment arrangements	7
I.5.1 Pre-financing	7
I.5.2 Schedules of payments	7
I.5.3 Payment procedure	8
I.6 Guarantees	8
I.6.1 Performance guarantee	8
I.6.2 Pre-financing guarantee	8
I.7 Bank account	8
I.8 Communication details	9
I.9 Applicable law	9
II. GENERAL CONDITIONS FOR THE SERVICE CONTRACT	10
II.1 Definitions	10
II.2 Order of priority of provisions	11
II.3 Law and Language	12
II.4 Roles and responsibilities in the event of a joint tender	12
II.5 Severability	12
II.6 Communication between the parties	12
II.6.1 Form and means of communication	12
II.6.2 Date of communications by mail and email	13
II.7 Performance of the Contract	13

II.8 Supply of Goods.....	14
II.9 Entry into force, Commencement and duration	15
II.10 Liquidated damages	15
II.10.1 Delay in delivery	15
II.10.2 Procedure	15
II.10.3 Nature of liquidated damages	16
II.10.4 Claims and liability in case of liquidated damages.....	16
II.11 Liability.....	16
II.12 Conflict of interest and professional conflicting interests	17
II.13 Confidentiality	17
II.14 Subcontracting	18
II.15 Amendments	18
II.16 Assignment.....	18
II.17 Intellectual property rights	18
II.17.1 Ownership of the rights in the results.....	18
II.17.2 Licensing rights on pre-existing materials	19
II.17.3 Exclusive rights.....	19
II.17.4 Identification of pre-existing rights	20
II.17.5 Evidence of granting of pre-existing rights	21
II.17.6 Quotation of works in the result.....	21
II.17.7 Moral rights of creators.....	21
II.17.8 Image rights and sound recordings	22
II.17.9 Copyright notice for pre-existing rights	22
II.18 Force majeure	22
II.19 Suspension of the performance of the Contract	22
II.19.1 Suspension by the Contractor	22
II.19.2 Suspension by the Contracting Authority	22
II.20 Termination of the Contract	23
II.20.1 Grounds for termination by the Contracting Authority	23
II.20.2 Grounds for termination by the Contractor	24
II.20.3 Procedure for termination.....	24
II.20.4 Effects of termination	25
II.21 Price revision.....	25
II.22 Invoices, value added tax and e-invoicing.....	25
II.22.1 Invoices and value added tax.....	25
II.22.2 E-invoicing	26
II.23 Reduction in price.....	26
II.23.1 Quality standards.....	26
II.23.2 Procedure	26
II.23.3 Claims and liability in case of price reduction	26
II.24 Payments and guarantees	26
II.24.1 Date of payment	26
II.24.2 Currency	26

II.24.3 Conversion	26
II.24.4 Costs of transfer	27
II.24.5 Pre-financing, performance and money retention guarantees..	27
II.24.6 Interim payments and payment of the balance.....	27
II.24.7 Suspension of the time allowed for payment	28
II.24.8 Interest on late payment.....	28
II.25 Reimbursements.....	28
II.26 Recovery	29
II.26.2 Recovery procedure.....	29
II.26.3 Interest on late payment.....	29
II.26.4 Recovery rules in the case of joint tender	30
II.27 Settlement of Disputes.....	30
II.28 Checks and audits	30
II.29 Code of conduct.....	31
II.30 Processing of personal data	32

I. SPECIAL CONDITIONS

I.1 ORDER OF PRIORITY OF PROVISIONS

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

- (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

I.2.1 The subject matter of the Contract is provision of *Technical Assistance to design, build and operationalise a regional digital platform that supports deployment of zero-emission bus fleets, systematic and Sustainable Urban Mobility Plans implementation*, as described in the Technical Specifications.

I.2.2 The Contractor shall execute the tasks assigned to him in accordance with the Technical Specifications annexed to the contract.

I.3 ENTRY INTO FORCE, COMMENCEMENT AND DURATION

In the application of the Article II.9.5 of General Conditions, the *Period of Performance of the Contract* shall be

I.4 PRICE

I.4.1 Price of the Contract

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

I.4.2 Price revision

Price revisions are not applicable. The price of the Contract referred to in 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 the tender prices

All costs associated with performing the services to the full satisfaction of the Contracting Authority are included in the lump-sum Contract Price referred to in Article I.4.1. The Contractor is deemed to have ensured the accuracy and sufficiency of its tender before submission, accounting for all requirements for the full and proper implementation of the tasks and including all related costs in its rates and prices. The Contracting Authority will not reimburse any costs under the provisions of Article II.25 of the General Conditions.

I.5 PAYMENT ARRANGEMENTS

I.5.1 Pre-financing

Pre-financing is not applicable to this Contract.

I.5.2 Schedules of payments

Payments under the Contract shall be done as following:

No.	Payment type	Payment value	Payment timing	Payment conditions
1.	Interim payment I	The price corresponding to Activities 1 - 3 under Section 2.2.4 of the Technical Specification. 40 % of the price referred to in Article I.4.1	After the finalisation of Activities 1 – 3 (inclusive) from Section 2.2.4 of the Tender Specifications	Approval of the Report confirming deployment, results, performance/security compliance, and readiness for live operations from task 3
2.	Interim payment II	The price corresponding to Activities 4 - 5 under Section 2.2.4 of the Technical Specification 50 % of the price referred to in Article I.4.1	After the finalisation of Activities 4 – 5 (inclusive) from Section 2.2.4 of the Tender Specifications	Approval of the Test Report And completion of Administrator and user training sessions (online + recorded) and User Manual
3.	Balance	The price corresponding to Activity 6-7 under Section 2.2.4 of the	After the finalisation of all activities 6 - 7 under the Contract	Approval by the Contracting Authority of the Final Report

		Technical Specification 10 % of the price referred to in Article I.4.1		
--	--	---	--	--

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.24 [Payments and Guarantees].

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 hard copies of the approved Final Report.

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 [Schedule of Payments].

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.24.7 [Suspension of the time allowed for payment]. 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.6 GUARANTEES

I.6.1 Performance guarantee

No Performance guarantee shall be constituted under the Contract.

I.6.2 Pre-financing guarantee

No Pre-financing Guarantee shall be constituted under 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

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

E-mail: *[to be confirmed]*

Invoices must be also copied to 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 law of Republic of Serbia, complemented by the specific European Union Law referred at in any of the documents forming the Contract. Modifications of the Contract are governed by Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement.

SIGNATURES

For the Contractor,

[Company name/forename/surname/position]

Signature: _____

For the Contracting Authority,

.....

.....

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

‘Commencement Date’: means the date notified under Article II.9.3 on which implementation of the tasks is due to commence.

‘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 Contract*, 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 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*;

‘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 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’): means a form of communication between the parties made in writing by mail or email, made in due observance of the provisions of Articles I.8 and II.6 and ensuring proof of receipt;

‘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 European Union'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 European Union's budget, or budgets managed by, or on behalf of, the European Union
- 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.

‘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.

‘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 European Union’s budget.

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

‘Performance of the Contract’: means the execution of the obligations under the Contract, referring to the execution of the tasks and delivery of the purchased services;

‘Period of Performance of the Contract’: means the period provided under Article II.9.5 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 Contract;

‘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 Contract*;

‘Pre-existing right’: means any industrial and intellectual property right on *pre-existing material*; it may consist of 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 Contract 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;

‘Result’: means 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*;

‘Tender’: means the legal act through which the Contractor has expressed its will to legally commit to the *Contract* and the related documents, submitted by the Contractor and 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 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 Technical Specifications and its appendices (Annex I) take precedence over those in the Tender (Annex II)

II.3 LAW AND LANGUAGE

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

The ruling language of the Contract shall be English unless otherwise stated in the special conditions. If there are versions of any part of the Contract 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 Contract.

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.

The members of a group which does not have legal personality or legal capacity shall be jointly and severally liable to the Contracting Authority for the performance of the Contractor's obligations under the Contract.

The leader shall have the authority to bind the Contractor and each member of the group.

Neither the members nor (if known) the activities /services to be carried out by each member nor the legal status of the group shall be altered without the prior consent of the Contracting Authority. Such consent shall not relieve the altered group from any liability under the paragraph above.

II.5 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.16 [Assignment]. The Contract 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 Contract shall:

- (a) be made in writing in paper or electronic format in the language for communication;
- (b) bear the Contract number;
- (c) be made using the relevant communication details set out in Article I.8 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 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 of the Special Conditions. 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 of the Special Conditions 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 CONTRACT

- II.7.1** 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 Technical 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.7.2** The Contractor must 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.7.3** The Contractor must obtain any permit or licence required in the state where the services are to be provided.
- II.7.4** Unless otherwise stated in the Special Conditions or Technical Specifications, the place of the performance of the services shall be considered to be the usual place of business of the Contractor.
- II.7.5** All periods specified in the Contract are calculated in calendar days, unless otherwise specified.
- II.7.6** Unless otherwise instructed, the Contractor shall not present itself as a representative of the Contracting Authority and must inform third parties accordingly.
- II.7.7** 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.7.8** 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 documents.

II.7.9 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.7.10 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.7.11 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.7.12 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 Contract* as established in the Technical Specifications.

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 Contract*.

II.7.13 The Contracting Authority may issue Administrative Orders regarding the subject matter of the Contract. In the event that the Contractor considers that Administrative Order is contrary to the provisions of the law of the Contract or that it may lead to the delay performance of the task and activities, the Contractor shall notify the Contracting Authority, within a term as established in the Special Conditions, and any dispute shall be resolved according to Article II.27 [Settlement of Disputes].

If the activities in the Contract cannot be continued and the deadlines cannot be respected according to the contractual provisions, without resolving the respective dispute, the activities are suspended under the conditions stipulated Article II.19 Suspension for solving disputes regarding the Administrative Orders, until the disputes are resolved.

II.8 SUPPLY OF GOODS

II.8.1 If any goods are to be supplied to the Contracting Authority under the Contract (hereinafter referred at as "Goods"), the 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 postal address stated in the special conditions or whatever address notified by the Contracting Authority in this regard, providing that such address is in Belgrade, Republic of Serbia.

II.8.2 The Contractor will ensure supply and full installation and configuration of the Goods at the designated place as stated in technical specification and/or in the special conditions.

II.8.3 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 a period stated in the Special Conditions after the Goods have been delivered to installed and accepted at their final destination.

- II.8.4** 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.8.5** All Goods/Services delivered under this Contract will conform to the requirements stated in the Technical Specifications or provided in the Contractor's Technical Offer, if superior those from the Technical Specifications.
- II.8.6** The Contracting Authority shall promptly notify the Contractor in writing of any claims arising under this warranty.
- II.8.7** 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.8.8** 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.8.9** The Contractor further represents and warrants that it has full title to the Goods at the time of delivery to the Contracting Authority.

II.9 ENTRY INTO FORCE, COMMENCEMENT AND DURATION

- II.9.1** The Contract enters into force on the date of signature by the Contracting Authority.
- II.9.2** The *Period of Performance of the Contract* cannot start before its entry into force.
- II.9.3** 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.
- II.9.4.** 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.
- II.9.5** The *Period of Performance of the Contract* shall be the period established in the Special Conditions.
- II.9.6** 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*.

II.10 LIQUIDATED DAMAGES

II.10.1 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 [Price of the Contract];

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 II.9.5 expressed in days.

Liquidated damages may be imposed together with a reduction in price under the conditions laid down in Article II.23 [Reduction in Price]. In such a case, the liquidated damages shall be calculated at the initial price of the delayed service or activity.

II.10.2 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.10.3 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.10.4 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.20 [Termination of the Contract].

II.11 LIABILITY

II.11.1 The Contractor shall assume sole liability towards third parties, including liability for damage or injury of any kind sustained by them while the Contract is being carried out or as a consequence of the Contract. The Contractor shall discharge the Contracting Authority of all liability arising from any claim or action brought as a result of an infringement of rules or regulations by the Contractor or the Contractor's employees or individuals for whom those employees are responsible, or as a result of violation of a third party's rights. For the purpose of this Article, Contractor's employees shall be considered third parties.

II.11.2 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.11.3 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.11.4 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.11.3 applies.

II.11.5 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.11.6 The Contracting Authority cannot under any circumstances or for any reason whatsoever be held liable for damage or injury sustained by the staff or property of the Contractor during the performance of the Contract or as a consequence of the services delivery. The Contracting Authority cannot, therefore, accept any claim for compensation or increases in payment in connection with such damage or injury.

II.12 CONFLICT OF INTEREST AND PROFESSIONAL CONFLICTING INTERESTS

II.12.1 The Contractor must take all the necessary measures to prevent any situation of *conflict of interest* or *professional conflicting interest*.

II.12.2 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.

Upon receiving such notification, the Contracting Authority may take any of the following actions:

(a) verify whether the Contractor's remedial action is appropriate;

(b) require the Contractor to take further action within a specified deadline;

II.12.3 The Contractor must pass on in writing all the relevant obligations arising from this Article 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.13 CONFIDENTIALITY

II.13.1 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.13.2 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.13.3 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.13.4 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.14 SUBCONTRACTING

II.14.1 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.14.2 Even if the Contracting Authority authorises subcontracting, the Contractor remains bound by its contractual obligations and is solely responsible for the *performance of the Contract*.

II.14.3 The Contractor must ensure that the subcontract does not affect the rights of the Contracting Authority under this Contract, particularly those under Articles II.13 [Confidentiality], II.17 [Intellectual Property Rights] and II.28 [Checks and Audits]

II.14.4 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.20.1 [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 Contract shall not be terminated on this ground.

II.15 AMENDMENTS

II.15.1 Any amendment to the Contract must be made in writing before the expiry of the *Contract Duration*.

II.15.2 Any amendment must not alter the initial conditions of the procurement procedure or result in unequal treatment of tenderers.

II.16 ASSIGNMENT

II.16.1 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.16.2 Any right or obligation assigned by the Contractor without authorisation is not enforceable against the Contracting Authority.

II.17 INTELLECTUAL PROPERTY RIGHTS

II.17.1 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.17.2. [Licensing rights on pre-existing materials]

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 performance of the Contract*. The Contracting Authority may exploit and use the acquired rights at its sole discretion, including transferring the *results* or ownership of *results*. 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.17.2 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 end recipients/beneficiaries of the assistance, Contractors and subcontractors, whether legal or natural persons 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.17.3 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:
 - () 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;
 - () 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:
 - () 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;
 - () 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.17.2 [Licensing rights on pre-existing materials];
- (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.17.4 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.17.5 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.17.4 [Identification of pre-existing rights], 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.17.6 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.17.7 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.17.8 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.17.9 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.18 FORCE MAJEURE

II.18.1 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.18.2 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.18.3 The parties must take all necessary measures to limit any damage due to *force majeure*.

II.19 SUSPENSION OF THE PERFORMANCE OF THE CONTRACT

II.19.1 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.19.2 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 substantial breach of obligations*;
- (b) in order to verify whether the presumed *irregularities, fraud or substantial breach of obligations* 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 Contract under Article II.20.1(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 Contract.

The Contracting Authority may in addition suspend the time allowed for payments in accordance with Article II.24.7 [Suspension of the time allowed for payment].

II.19.3 Suspension for solving disputes regarding the Administrative Orders

If the activities in the Contract cannot be continued and the deadlines cannot be respected according to the contractual provisions, without resolving the respective dispute regarding an Administrative Order, the *performance of the Contract* or any part of it shall be suspended

Within three days after the dispute is resolved, the Contracting Authority shall notify the lift suspension to the Contractor.

II.20 TERMINATION OF THE CONTRACT

II.20.1 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.15.2 [Amendments];
- (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, 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 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.12 [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 *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 execution of the Contract.

II.20.2 Grounds for termination by the Contractor

The Contractor may terminate the Contract if the Contracting Authority fails to comply with its key obligations.

II.20.3 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.20.1 and in Article II.20.2, 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.20.1, 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.20.4 Effects of termination

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.20 (j) and (k) or Article II.20.2. 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.20.2.

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.20.1, under the conditions set out in Article II.15.2. [Amendments].

II.21 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.22 INVOICES, VALUE ADDED TAX AND E-INVOICING

II.22.1 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.22.2 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.

II.23 REDUCTION IN PRICE

II.23.1 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 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.10 [Liquidated Damages].

II.23.2 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.23.3 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.20 [Termination of the Contract].

II.24 PAYMENTS AND GUARANTEES

II.24.1 Date of payment

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

II.24.2 Currency

Payments are made in Euro, unless another currency is provided for in Article I.7 of the Special Conditions.

II.24.3 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.24.4 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.24.5 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.24.6 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 Technical 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 Technical 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.24.7 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.24.8 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 Euro (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.24.7 [Suspension of the time allowed for payment] 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.24.1 [Date of Payment].

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.25 REIMBURSEMENTS

II.25.1 If provided for in the Special Conditions or in the Technical 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.25.2 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.25.3 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 will reimburse travel expenses outside the territory of Transport Community Treaty signatories or observing participants, provided it has given prior written approval for these expenses.

II.25.4 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.25.5 The Contracting Authority reimburses the cost of shipment of equipment or unaccompanied luggage if it has given prior written approval for the expense.

II.26 RECOVERY

II.26.1 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.26.2 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.26.3 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.24.8 [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.26.4 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.11 [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.26.2 (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.26.2.

II.27 SETTLEMENT OF DISPUTES

II.27.1. 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.

II.27.2 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.

II.27.3 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.28 CHECKS AND AUDITS

II.28.1 The Contracting Authority and the European Commission 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.28.2 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.28.3 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.28.4 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.26 and may take any other measure which it considers necessary.

II.28.5 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.28.6 The Court of Auditors and the European Public Prosecutor's Office established by Council Regulation (EU) 2017/1939¹ ('the EPPO') have the same rights as the Contracting Authority, particularly right of access, for the purpose of checks, audits and investigations.

II.29 CODE OF CONDUCT

II.29.1 The Contractor shall at all time act impartially and as a faithful adviser in accordance with the code of conduct of its profession as well as with appropriate discretion. It shall refrain from making any public statements concerning the Contract or the services without the prior approval of the Contracting Authority. It shall not commit the contracting authority in any way whatsoever without its prior consent and shall make this obligation clear to third parties.

II.29.2 Physical abuse or punishment, or threats of physical abuse, sexual abuse or exploitation, harassment and verbal abuse, as well as other forms of intimidation shall be prohibited. The Contractor shall also inform the Contracting Authority of any breach of ethical standards or code of conduct as set in the present Article. In case the Contractor is aware of any violations of the abovementioned standards, it shall report in writing within 30 days to the Contracting Authority.

II.29.3 The Contractor and its staff shall respect human rights, applicable data protection rules and environmental legislation applicable in the country(ies) where the Contract is implemented and internationally agreed core labour standards, e.g. the ILO core labour standards, conventions on freedom of association and collective bargaining, elimination of forced and compulsory labour, elimination of discrimination in respect of employment and occupation, and the abolition of child labour.

II.29.4 The Contractor or any related person shall not abuse of its entrusted power for private gain. The Contractor or any of its subcontractors, agents or staff shall not receive or agree to receive from any person or offer or agree to give to any person or procure for any person, gift, gratuity, commission or consideration of any kind as an inducement or reward for performing or refraining from performing any act relating to the performance of the Contract or for showing favour or disfavour to any person in relation to the Contract. The Contractor shall comply with all applicable laws and regulations and codes relating to anti-bribery and anti-corruption.

II.29.5 The payments to the Contractor under the Contract shall constitute the only income or benefit it may derive in connection with the contract. The Contractor and its/their staff

¹ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office

must not exercise any activity or receive any advantage inconsistent with their obligations under the Contract.

II.29.6. The execution of the Contract shall not give rise to unusual commercial expenses. Unusual commercial expenses are commissions not mentioned in the Contract or not stemming from a properly concluded contract referring to the Contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a recipient who is not clearly identified or commission paid to a company which has every appearance of being a front company. The Contracting Authority and the European Commission may carry out documentary or on-the-spot checks they deem necessary to find evidence in case of suspected unusual commercial expenses.

II.29.7. The respect of the code of conduct set out in the present Article constitutes a contractual obligation. Failure to comply with the code of conduct is always deemed to be a breach of obligations under Article II.2 of the General Conditions. In addition, failure to comply with the provision set out in the present Article can be qualified as grave professional misconduct that may lead either to suspension or termination of the Contract, without prejudice to the application of administrative sanctions, including exclusion from participation in future contract award procedures.

II.30 PROCESSING OF PERSONAL DATA

II.30.1 Any personal data included in the Contract shall be processed in accordance with Regulation (EU) 2018/1725 and the Law on data protection of the Republic of Serbia. Such data will be processed solely for the purposes of the implementation, management and monitoring of the Contract. This does not affect its possible transmission to the bodies entrusted with monitoring or inspection tasks in application of Union law.

II.31.2 The Contractor has the right to access its personal data and the right to rectify any such data. The Contractor should address any queries concerning the processing of its personal data to the Contracting Authority.

II.31.3 If the Contract requires the Contractor to process any personal data, the Contractor may act only under the supervision of the data controller, in particular with regard to the purposes of the processing, the categories of data that may be processed, the recipients of the data and the means by which the data subject may exercise its rights.

II.31.4 The Contractor must grant *personnel* access to the data to the extent strictly necessary for the implementation, management and monitoring of the Contract.

II.31.5 The Contractor must adopt appropriate technical and organisational security measures giving due regard to the risks inherent in the processing and to the nature of the personal data concerned, in order to:

- () prevent any unauthorised person from gaining access to computer systems processing personal data, and especially:
 - (i) unauthorised reading, copying, alteration or removal of storage media;
 - (ii) unauthorised data inputting, as well as any unauthorised disclosure, alteration or erasure of stored personal data;
 - (iii) unauthorised use of data processing systems by means of data transmission facilities;
- () ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
- () record which personal data have been communicated, when and to whom;
- () ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting authority;

- () ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
- () design its organisational structure in such a way that it meets data protection requirements.