

# Request for Proposals

Selection of statutory auditor 2024.

EIT Urban Mobility - Mobility for more liveable urban spaces

EIT Urban Mobility

EIT Urban Mobility KIC LE (“Contracting Authority” or “CA”)

C/ Pamplona 104, 3rd Floor,

08018 Barcelona

Spain

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eiturbanmobility.eu



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# 1. Overview of EIT Urban Mobility

EIT Urban Mobility, supported by the European Institute of Innovation and Technology (EIT), acts to accelerate positive change on mobility to make urban spaces more liveable.

EIT Urban Mobility is an initiative of the European Institute of Innovation and Technology (EIT). Since January 2019 we have been working to encourage positive changes in the way people move around cities in order to make them more liveable places. We aim to become the largest European initiative transforming urban mobility. Co-funding of up to € 400 million (2020-2026) from the EIT, a body of the European Union, will help make this happen.



*We create systemic solutions that will **move more people around the city more efficiently and free up public space.***



*We bring **all key players in urban mobility together** to avoid fragmentation and achieve more.*



*We **engage cities and citizens** from the word go, giving them the opportunity to become true agents of change.*

The EIT Urban Mobility S.L delivers breakthrough innovations to the market and breeds entrepreneurial talent for economic growth and improved quality of life in Europe. It does this by mobilizing a pan-European ecosystem of more than 50 top European corporations, SMEs, start-ups, universities, and research institutes constituted into the EIT Urban Mobility Association.

As a Knowledge and Innovation Community (KIC) of the European Institute of Innovation and Technology (EIT), the EIT Urban Mobility S.L is focused on entrepreneurship and is at the forefront of integrating education, research, and business by bringing together students, researchers, engineers, business developers and entrepreneurs. This is done in a pan-European network of Co-Location Centers (CLCs), 5 Limited Liability Companies respectively based in Germany, Czech Republic, Denmark, the Netherlands, and Spain. The EIT Urban Mobility Association holds 100% of the shares of EIT Urban Mobility S.L

We create systemic solutions that will move more people around the city more efficiently and free up public space.

We bring all key players in urban mobility together to avoid fragmentation and achieve more.

## 2. General objectives and scope of work

### 2.1. General objectives

By the present procurement procedure, the EIT KIC Urban Mobility., hereby being referred to as “EIT UM” is aiming at appointing statutory auditors (hereby being referred to as “the contractor”) who will be responsible for the statutory audit and certification of the accounts of t the EIT Urban Mobility Association, the EIT Urban Mobility Foundation and of its’ CLCs for the fiscal year 2024 only.

The EIT UM closes its accounts on 31/12 of each year.

A more complete description of the control tasks and expected deliverables can be found in section 2.2 of this document (below).

It shall be noted that EITUM, as part of the EIT, is funded by the European Commission. As such, all principles around financial rules and regulations are governed by Horizon Europe rules and principles.

### 2.2. Detailed scope of work

The EIT UM delivers breakthrough innovations to the market and breeds entrepreneurial talent for economic growth and improved quality of life in Europe. It does this by mobilising a pan-European ecosystem of over 150 top European corporations, cities, SMEs, start-ups, universities, and research institutes.

As a Knowledge and Innovation Community of the European Institute of Innovation and Technology, EIT UM is focused on entrepreneurship and is at the forefront of integrating education, research, and business by bringing together students, researchers, engineers, business developers and entrepreneurs.

To implement its activities, the EIT UM is organised as follows:

The EIT Urban Mobility Association, is a Non-for-Profit organisation, whose members are representing the Knowledge Triangle. The Association uses financial contributions received from its members and other sources for the purpose of the Association. The Association is the sole shareholder of the EIT KIC Urban Mobility S.L.

The EIT KIC Urban Mobility S.L. functions as the KIC Legal Entity and encompasses the Supervisory Board, as its main governing body, and the management team, as its main operational body in charge of day-to-day operations. The Supervisory Board, elected by the general assembly of the non-for-profit association, is made up of seven members, four of them are independent, three of them representing the Knowledge Triangle.

The CLCs are 5 different legal entities based in Germany, Czech Republic, Denmark, the Netherlands, and Spain. Each entity is a Node Organisation of the EIT UM. In that regards, they all are subject to each respective national legislation in terms of audits and reporting. Their accounts are then integrated to the EIT UM in Spain.

The EIT KIC Urban Mobility Foundation based in Spain promotes education activities in the field of EIT Urban Mobility.

The business model of EIT UM evolves along a roadmap from phase 1 - Community Kickstarter (2020-2022), to phase 2 - Community Engine (2023-2030) to phase 3 - Community Facilitator (2030+).

At this initial phase 1 stage, there are two revenue streams:

- The EIT UM will receive a total budget raising from EUR 5 million to EUR 50 million per year at the end of the 7<sup>th</sup> year of the Framework Partnership Agreement signed with the EIT. It average, it is estimated that each CLC will have an annual budget rising from EUR 500 000 to EUR 1,5 million. The rest of the remaining budget will be allocated to the headquarter in Spain and to the Foundation.
- In addition, it will also receive income arising from the activities implemented (trainings, conferences etc.) and will receive funding from its partners from the private sector. Revenues generated in phase one and two will be invested to achieve an independent future organization in phase 3.

The number of staff members is expected to grow in 2024 and to reach around 190 people. Those staff members will be located either in the Headquarter Spain, in the Foundation or in one of the CLCs. It is estimated that each CLC will have from 7 to 11 staff members at the end of 2024, the Foundation will have staff 15 members. The rest of the staff will be working for the EIT UM in the Headquarter in Spain.

In terms of operations, the main objective is to centralise as much as possible the administration of the activities in Spain. With regards to the CLCs and the Foundation, it is estimated that the main part of the costs will be composed of the salaries of the employees employed locally, related travel costs, communication activities and events.

### 2.2.1 Control Methodology

This audit methodology and the certification of the financial statements to carry out the statutory audit of accounting documents will be established by a qualified independent auditor and will be done in accordance with Directive 2014/56/EU of the European Parliament and the Council transposed into the law of 20 July 2015 on the organization of the profession and the public supervision of the statutory auditors and the related law and royal decree, and the standards in the matter (as stated by the *Instituto de Contabilidad y auditoria de Cuentas - "ICAC"* and the *Instituto de Censores Jurados de Cuentas de España - "ICJCE"* for Spain and by the competent authorities in the other countries for the CLCs).

The statutory auditor for CLCs, Foundation and Association is appointed based on procurement process and score as it is stated in the request for proposals.

This appointment will be pronounced for the length of for 1 year (2024) in the case of Association, Foundation and 5 CLCs.

### 2.2.2 Description of the mission

The mission of the statutory auditor is to provide an independent and objective opinion on the actual image and conformity of the financial statements of the EIT Urban Mobility Association and the EIT UM Foundation and CLCs with the legal regulations, in compliance with international auditing standards and according to national law applicable in each country of residence (legal requirements and standards applicable in Spain, as issued by the "ICJCE" and by the "ICAC").

Each audit must be done in accordance with the legal requirements and standards applicable in each Country as issued by the relevant competent authorities.

### 2.2.3 Timeframe for providing the services

The statutory audits are performed on an annual basis. The external audits are performed before the annual accounts are submitted for approval to the corresponding governing bodies. The statutory auditors might be requested to answer questions to the governing bodies when the audited accounts are formulated.

A calendar taking into account the different steps will be established on a yearly basis and communicated beforehand to the Contractor. It can already be estimated that the final reports shall be ready, around the end of April of each calendar year.

### 2.2.4 Mandate of the Statutory Auditor

The statutory auditor should have unrestricted access to all (administrative) files, archives, organizational assets, and personnel. The statutory auditor should have the opportunity to contact the members of the Supervisory Board if the statutory auditor deems it necessary.

The statutory auditor is free to choose audit controls and techniques to achieve their objectives as long as it is reasonably justified by the mission and scope of the statutory audit, as described above.

Please note that the applicable framework shall be Spanish and the European framework of the rules applicable to the control and certification of accounts of SME, Regulation (EU) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002, of Regulation (EU) No

1290/2013 of the European Parliament and of the Council of 11 December 2013 laying down rules for participation in the Horizon 2020 Framework Program for Research and Innovation(2014-2020) and the dissemination rules and repealing Regulation (EC) No 1906/2006 and Regulation(EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on the specific requirements applicable to the statutory audit of the accounts of public interest entities and repealing Commission Decision 2005/909 / EC.

### 2.2.5 Audit Methodology

The audit will include a risk assessment of material misstatements in the financial statements. In making these risk assessments, the statutory auditor will take into account the internal control pertaining the preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate to the circumstances but not aiming at expressing an opinion on the effectiveness of the internal control. International standards will be used by the Contractor to develop the statutory audit methodology, in accordance with the terms of reference and the "Code of Conduct for Professional Accountants" issued by IFAC.

### 2.2.6 Audit Report

For each of the CLCs, the Association and the Foundation the reports, as required by each national law, will include:

- An introduction reflecting the work done and the specific scope and approaches of audit performed.
- An auditor's opinion on the financial statements
- Recommendations
- Additional comments, referring to the compliance of the legal entity being audited with the applicable law
- Will be written in English and in the national language as necessary by law
  
- 

The findings of the statutory audit will be discussed by the statutory auditor with the CFO, the Head of finance and or delegated officers before drafting the final auditor's report.



## 2.3. Timing and planning

### 2.3.1 Start date & period of implementation

The intended start date is, at the latest, 9th December 2024.

Association, Foundation and CLCs legal entities the implementation is expected to last until the Annual Accounts of the fiscal year 2024 are approved.

EIT Urban Mobility intends to use the direct award procedure with the winner of the present procedure for covering the needs of additional 12 months in the course of 2025- 2026 once the budget is known and all resources of the present contract are used up in terms of CLCs and the Association.

### 2.3.2 Location

EIT UM requires that the assignment is coordinated from Spain, since its head office is in Barcelona. There is no objection for cloud solutions/placement of information in the cloud as long as:

- The servers are placed in Europe and are subject to European Law and;
- The solution complies to the General Data Protection Regulation 2016/679/EC that applies since 25th of May 2018.

The EIT UM also requires that tenderer offers one and the same point of contact (mandatorily located in Spain) for the EIT UM, Association and each of its CLCs entities.

### 2.3.3 Payment terms

The services should be invoiced in one single invoice per legal entity including specific timesheets if needed, to be issued during 2024.

Payment shall be made instalments upon the acceptance of the deliverables completed

## 2.4. Deliverables

EIT UM requires to receive the statutory audit report with the auditor's opinion.

## 3. Proposal Process

### 3.1. Proposal Schedule

|  | DATE                           |
|--|--------------------------------|
| Publication of the RfP on Website                  | 22 <sup>nd</sup> November,2024 |
| Deadline for submitting proposal                   | 3 <sup>rd</sup> December,2024  |
| Intended date of notification of preliminary award | 5th December,2024              |
| Stand still period                                 | 3 days                         |
| Intended date of contract signature                | 9 <sup>th</sup> December, 2024 |
| Intended start date of the contract implementation | 9 <sup>th</sup> December, 2024 |

### 3.2. Participation

Participation in this procedure is open to all interested applicants.

### 3.3. Submission of proposal

Proposals are requested to be emailed in written form, **in English** to the following address until **the deadline of 3<sup>rd</sup> December, 2024** 19:00 Central European Time, to:

**Contact name:** For the attention of Ms. Silvia Simonelli, Head of Finance at EIT URBAN MOBILITY.

**E-mail:** [procurement@eiturbanmobility.eu](mailto:procurement@eiturbanmobility.eu)

The proposal shall contain:

- a. The technical response to the services requested (see Section 2.2: 'Detailed scope of work')
- b. The financial offer (the price for the service.) The financial offer must be presented in **EUR**. The price must be indicated as net amount, excl. VAT)

**The email including the proposal from the bidder should be sent and delivered by 3<sup>rd</sup> December 2024, 19:00 Central European Time.**

- Proposal must be submitted in proper (legibly) scanned and non-editable PDF, which is accessible without entering a password.
- Proposal must be signed by the tenderer.
- Proposal will be deemed timely submitted, if it is received by EIT Urban Mobility by the submission deadline. All risks associated with the delay or loss of the proposal shall be borne by the Tenderer only. EIT Urban Mobility will deem proposal received after the submission deadline invalid.
- Proposal should be concise and clear. The tenderer's proposal will be incorporated into any contract that results from this procedure. Tenderer is, therefore, cautioned not to make claims or statements that they are not prepared to commit to contractually. Subsequent modifications and counter-proposals, if applicable, shall also become an integral part of any resulting contract.
- The tenderer represents that the individual submitting the natural or legal entity's proposal is duly authorized to bind its entity to the proposal as submitted. The tenderer also affirms that it has read the request for proposals and has the experience, skills, and resources to perform, according to conditions set forth in this proposal and the tenderers' proposal.

### 3.4. Minimum requirements

The following documents and declarations are to be submitted together with the tender by the tenderer (in case of a group of tenderers, this applies to each member). In order to be considered valid, proposals must include:

- Tender Submission form and Tender declaration form (Annex 1.2 and 1.3) together with supporting documents evidencing the legal name of the Tenderer (copy of the official documents showing the name of the natural person or legal person, the address of its head office, and the registration number given to it by the national authorities);
- An administrative part including all the information and documents required by the EIT UM for the evaluation of the tender on the basis of the exclusion and selection criteria set out below;
- Bidders must provide their comments in writing to the contract agreement terms of EIT UM (Annex 1) and in case they are proposing any amendments to the terms and conditions, they have to submit their proposal in their offer. Any amendment requests after the tender submission deadline and the notification of award shall not be accepted or discussed. EIT UM is not obliged to accept any amendment requests, proposed modifications nor contract templates.

#### 3.4.1. Minimum Requirement including:

- Proof of capacity to act as statutory auditor

- 1 reference of services provided to SMEs concerning the control and certification of Statutory Accounts. The concerned SMEs shall fulfil at least two of the following criteria:
  - € 6,250 Million of income other than exceptional;
  - Having at least 50 employees on average on an annual basis;
  - Having at least € 3,125 Million balance sheet.
  - 1 reference of its capacity to perform the services required in the 5 countries in which the EIT UM s.l and its CLCs will be based.
  - 1 reference of audit services provided to either SMEs, or non-for-profit association financed by the European Commission under the framework programme HorizonEurope.
- Curriculum vitae of the project manager who will coordinate the audits based on the provided criteria – detailed CV indicating all the projects/assignments he/she worked on with values/contracting entities/scopes listed. The tenderer shall have the capacity to put together a team supervised by a project manager having at least:
  - At least 10 years of professional experience in auditing,
  - Over 5 years' experience managing an audit department,
  - Status of a certified auditor in Spain,
  - Excellent command of English (level C1) and Spanish.

A Technical part including all the information required by EIT UM for the evaluation of the tender on the basis of the award criteria as set out in the point 4.2 – Award Criteria including (list non-exhaustive):

- The financial offer
- All the elements allowing EIT UM to perform the quality check (description of the team, its structure, organisation and coordination proposed including its experience and expertise in auditing; a description of the audit methodology (max 4 pages A4); A description of the workplan (max 3 pages A4) and a description of the understanding of the auditor of the context and needs of the EIT UM holding.

The documents and declarations described in this section are to be submitted together with the tender by the tenderer (in case of a group of tenderers, this applies to each member):

Tenderers must demonstrate that they have the technical, economic, and financial capacity to complete the contract. To this end, they demonstrate that they meet the requirements described below.

Subcontracting is allowed in line with the attached draft service agreement form, but tenderers must be able to control their own entities and/or subcontractors at all times.

### 3.4.2. Ability to audit

The tenderer is required to produce:

- If the tenderer is a natural person:

With regards to the main organisation, EIT UM proof of his status as a member of the *Instituto de Contabilidad y auditoria de Cuentas (ICAC)*. EIT UM will also incorporate 5 Collocation Centres (CLCs) based in Germany, Czech Republic, Denmark, the Netherlands, and Spain and the Association in Spain. In that regards the natural person shall provide proof that it is part of an international network of auditors, allowing it to organise and centralise the audit services in the 5 Collocation Centres (CLCs). It shall also provide proof that the other persons (natural or legal) selected in the 5 countries are members or appointed team members that are members of their national register of auditors.

- If the tenderer is a legal person:

With regards to the main organisation, EIT UM, the tenderers have to present that they are members of the ICAC - via submitting a certificate or a declaration.

EIT UM will also incorporate 5 CLCs based in Germany, Czech Republic, Denmark, the Netherlands and Spain and the Association in Spain. In that regards the natural person shall provide proof that it is part of an international network of auditors, allowing it to organise and centralise the audit services in the 5 CLCs. It shall also provide proof that the other persons (natural or legal) selected in the 5 countries are members of their national register of auditors.

### 3.4.3 Technical or professional capacity of the Tender

Tenderers must be able to demonstrate sufficient technical or professional capacity to perform the contract in line with the requirements listed in 3.4.

## 3.5. Validity of the proposal

Tenderers are bound by its proposal 90 days after the deadline for submitting the proposal or until they have been notified of non-award.

The winners must maintain its proposal for a further 90 days to close the contract.

Proposals not following the instructions of this Request for Proposal can be rejected by EIT Urban Mobility.

### 3.6. Additional information before the deadline for submitting proposals

The instructions to the tenderers should be clear enough to avoid the tenderers having to request additional information during the procedure. In case the tenderer is in need of additional information, please address it to the address below.

**Contact name:** for the attention of Ms. Silvia Simonelli, Head of the Finance at EIT URBAN MOBILITY.

**E-mail:** [procurement@eiturbanmobility.eu](mailto:procurement@eiturbanmobility.eu)

EIT Urban Mobility has no obligation to provide clarification if decides.

### 3.7. Cost for preparing proposals

No costs incurred by the tenderers in preparing and submitting the proposal are reimbursable. All such costs must be borne by the tenderer.

### 3.8. Ownership and confidentiality of proposals

EIT Urban Mobility retains ownership of all proposals received under this tendering procedure. Proprietary information identified as such, which is submitted by tenderer in connections with this procurement, will be kept confidential.

The potential or actual supplier should accept that during the implementation of the contract and for four years after the completion of the contract, the CA has the right for the purposes of safeguarding its financial interests that the proposal and the contract of the supplier may be transferred to internal as well as statutory audit services.

### 3.9. Clarification related proposals

After submission of the proposal, it shall be checked if it satisfies all the formal requirements set out in the proposal dossier. Where information or documentation submitted by the tenderer is or appears to be incomplete or erroneous or where specific documents are missing, the CA may request the tenderer concerned to submit, supplement, clarify or complete the relevant information or documentation within an appropriate time limit.

### 3.10. Negotiation about the submitted proposal

After checking the administrative compliance of the tenderer, EIT Urban Mobility can negotiate the contract terms and conditions with the tenderer. In this negotiation, EIT Urban Mobility will ask the tenderer to adjust the proposal or specific sections of the proposal within an appropriate time limit.

# 4. Evaluation of proposals

## 4.1 Exclusion criteria

The Tenderers will be excluded from participation in the current procedure, if:

- a) it is bankrupt, subject to insolvency or winding-up procedures, where its assets are being administered by a liquidator or by a court, where it is in an arrangement with creditors, where its business activities are suspended, or where it is in any analogous situation arising from a similar procedure provided for under national laws or regulations;
- b) it has been established by a final judgment or a final administrative decision that the Tenderer is in breach of its obligations relating to the payment of taxes or social security contributions in accordance with the applicable law;
- c) it has been established by a final judgment or a final administrative decision that the Tenderer is guilty of grave professional misconduct by having violated applicable laws or regulations or ethical standards of the profession to which the Tenderer belongs, or by having engaged in any wrongful conduct which has an impact on its professional credibility where such conduct denotes a wrongful intent or gross negligence, including, in particular, any of the following:
  - i. fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of selection criteria or in the performance of a contract;
  - ii. entering into agreement with other Tenderers with the aim of distorting competition;
  - iii. violating intellectual property rights;
  - iv. attempting to influence the decision-making process of the contracting authority during the procurement procedure;
  - v. attempting to obtain confidential information that may confer upon it undue advantages in the procurement procedure;
- d) it has been established by a final judgment that the Tenderer is guilty of fraud, corruption or money laundering.

## 4.2 Award criteria

EIT UM will award the contract to the tenderer who submitted the most advantageous technical and financial proposal based on best value for money based on the following criteria (including the weighting assigned to them). The quality of each proposal will be evaluated in accordance with the below mentioned award criteria.

The award criteria will be examined in accordance with the requested service/support indicated in Section 2 of the document, and ensure best value for money by applying the below equation:

The technical score is calculated based on the assessment rating below:

|   |                       |
|---|-----------------------|
| <p>The description of the tenderer team structure, organization and coordination proposed. EIT UM during the evaluation shall establish ranking among the bids based on the received information based on the level of detailedness, harmony with Section 2 and based on international practices.</p> <p>The highest ranking will receive 10 points, 2nd 7, 3rd 4, 4th 1.</p>   | <p>Max. 10 points</p> |
| <p>Description of the methodology (max. 6 pages A4) concerning the annual accounts of the EIT UM group: Association, Spanish S.L and the 5 CLCs (located in 5 different countries). EIT UM during the evaluation shall establish ranking among the bids based on the received information based on the level of detailedness, harmony with Section 2 and based on international practices.</p> <p>The highest ranking will receive 15 points, 2nd 10, 3rd 5, 4th 1.</p>   | <p>Max. 15 points</p> |
| <p>Description of the "work plan" (max. 3 pages A4) concerning the annual accounts of each entities with an estimation of the total cost. Quality and relevance of the proposed work plan in days and hours including details on each phase (e.g. preparation, field work, reporting, etc.) of the audit of the EIT UM group: Association, Spanish S.L and the 5 CLCs (located in 5 different countries). EIT UM during the evaluation shall establish ranking among the bids based on the received information based on the level of detailedness harmony with Section 2 and based on international practices.</p> <p>The highest ranking will receive 15 points, 2nd 10, 3rd 5, 4th 1</p> | <p>Max. 15 points</p> |

The applicable award criteria will be weighted as follows:

- A. Technical content:60%
- B. Financial offer: 40%

Aggregate evaluation and scoring:

- A. Technical content (maximum weighted score: 60%)
  - Evaluation of the technical content will be carried out following the below sub-criteria:
    - I. Technical capacity of the Tenderer (maximum score: 40)
- B. Financial offer (maximum weighted score: 40%)
  - The financial offer must be presented in EUR. Prices must be indicated as net amount, excl. VAT.



The lowest offered price shall receive the highest score (60), others shall be calculated in relation to that in linear equation.

### 4.3 Selection of the suppliers

The final selection of the supplier will be based on the best price-quality ratio principle. The best price-quality ratio is established by weighing technical quality against price on an 60%/40% basis, i.e.

*Total technical score: max. 40 (weight: 60%)*

*Total financial score: max. 60 (weight: 40%)*

*Total score: max. ... (total technical score x 0,6 + total financial score x 0,4)*

The winners shall be the one with the highest total score summed from technical and financial scores, and that tenderer shall be proposed for the contract.

The successful and unsuccessful tenderers will be informed in writing via email about the result of the award procedure.

### 4.4 Signature of contract(s)

The tenderers will be informed in writing (via email) about the result of the award procedure.

For the contract, the template in Annex 1 shall apply.

Within 3 days of receipt of the contract from EIT Urban Mobility, the selected tenderer shall sign and date the contract and return it to EIT Urban Mobility.

### 4.5 Cancellation of the proposal procedure

In the event of cancellation of the proposal procedure, EIT Urban Mobility will notify the tenderers of the cancellation. In no event shall EIT Urban Mobility be liable for any damages whatsoever including, without limitation, damages for loss of profits, in any way connected with the cancellation of a proposal procedure, even if EIT Urban Mobility has been advised of the possibility of damages.

### 4.6 Appeals / Complains

Tenderers believing that it has been harmed by an error or irregularity during the award process may file a complaint. Appeal should be addressed to EIT Urban Mobility. The tenderer has 3 days to file their complaint from the receipt of the letter of notification of award.

## 4.7 Ethics clauses / Corruptive practices

EIT Urban Mobility reserves the right to suspend or cancel the procedure, where the award procedure proves to have been subject to substantial errors, irregularities, or fraud. If substantial errors, irregularities, or fraud are discovered after the award of the Contract, EIT Urban Mobility may refrain from concluding the Contract.

The suppliers shall take all measures to prevent any situation where the impartial and objective implementation of the contract is compromised for reasons involving economic interest, political or national affinity, family or emotional ties or any other shared interest ('conflict of interests'). He should inform EIT Urban Mobility immediately if there is any change in the above circumstances at any stage during the implementation of the tasks.

## 4.8 Safeguarding of EU's financial interest

The potential or actual supplier should accept that during the implementation of the contract and for four years after the completion of the contract, EIT Urban Mobility has the right for the purposes of safeguarding the EU's financial interests, the proposal and the contract of the supplier may be transferred to internal audit services, EIT, to the European Court of Auditors, to the Financial Irregularities Panel or to the European Anti-Fraud Office.

# Annexes

## Annex 1: Service Agreement

### SERVICE AGREEMENT

**This Service Agreement (“Agreement”) is hereby made by and between:**

**EIT Urban mobility /UM/ [EIT Urban Mobility s.l.]**, a private limited company, having its registered office and place of business at [Cl Pamplona, 104 Barcelona Spain], with company registration number [Temporary registration number: 118237] and VAT number [B67513630], legally represented herein by [name of representative], acting as [position of the representative]; hereinafter referred to as: the **‘Contracting Party’**;

and

**[Company name]**, a private limited company, having its registered office and place of business at [Company’s address], with company registration number [Company’s registration number] and VAT number [Company’s VAT number], legally represented herein by [name of representative], acting as [position of the representative]; hereinafter referred to as: the **‘Supplier’**;

Hereinafter jointly referred to as: the ‘Parties’ or individually as a “Party”;

#### **WHEREAS:**

*EIT UM is an association whose funds are used to promote innovation, entrepreneurship and education in the field of urban mobility;*

EIT UM has launched a procurement procedure for the performance of certain Services described in Annex 1 to this Agreement, via a tender referred to in Annex 1 (“**EIT UM Tender**”) and Supplier has been selected as Service Provider for EIT UM for such Services, based on Supplier’s Offer as referred to in Annex 1.

Supplier has knowledge and experience in performing the aforementioned Services described in Annex 1, on the basis of a temporary engagement (hereinafter: the **‘Services’**);

Supplier is willing and able to provide the Services to EIT UM, as further provided for in this Agreement;

**NOW, THEREFORE, THE PARTIES HAVE AGREED AS FOLLOWS:**

#### **Structure of the Agreement and precedence**

This Agreement consists of the body of this Agreement and Annex 1 attached to this Agreement.

The body contains standard general provisions applicable to all Services purchased by EIT UM from Supplier under this Agreement.

Annex 1 contains the description of the Services and the time schedule for the delivery of such Services (extracted from Supplier's Offer), as well as additional specific conditions and details adapted to the type of Services purchased by EIT UM from Supplier under this Agreement.

Both the body and Annex 1, as well as the EIT UM Tender (as referred to in Annex 1) form the Agreement.

In case of discrepancy between the description of Services and time schedule in the EIT UM Tender and the description of Services and time schedule in Annex 1, the EIT UM Tender shall prevail. In case of discrepancy between a provision in the body and a provision in Annex 1, the provision in the body shall prevail unless the deviating provision in Annex 1 states expressly that it is specifically agreed by both Parties as being in deviation of a specific provision of the body and refers clearly to the provision of the body concerned.

### **Ordering of Services, non-applicability of Supplier's (standard) terms and conditions**

Supplier does not commit to provide the Services exclusively to EIT UM, unless and to the extent provided in Annex 1 for certain specific types of Services.

The contractual relationship between EIT UM and Supplier shall solely be governed by the terms and conditions of this Agreement. EIT UM is therefore not bound by and expressly rejects Supplier's general conditions of services and any additional or different terms or provisions that may appear on any proposal, quotation, price list, acknowledgment, invoice, packing slip or the like used by Supplier.

### **Performance of the Services, organization, quality, timely delivery, subcontracting, reporting of progress, acceptance, changes**

With due observance of the other provisions of the Agreement, Supplier shall perform the Services specified under Annex 1 for EIT UM under this Agreement, within the time schedule specified under Annex 1.

Supplier agrees to perform the Services by exercising due skill, speed and care, at a level generally required of well-reputed Suppliers in the same field as the one covered by this Agreement and shall make every effort to the best of Supplier's abilities to serve the interests of EIT UM as much as possible.

Supplier is free to organise the way it provides the Services and the timing thereof autonomously and at its own discretion without supervision or authority of EIT UM, (i) provided the Services are performed accurately and diligently and in accordance with the requirements of this Agreement, including the timely delivery of the Services as specified under Annex 1, and (ii) subject to specific requirements as may be stated in Annex 1 regarding the way the Services shall be provided. Supplier may conduct its business activities from its own premises but may

be requested to operate from EIT UM's premises whenever it is necessary for the performance of the Services. Supplier shall arrange their own travel, should they need to travel in order to perform the Services. When performing the Services, Service Provider shall use its own tools and materials, work forces. Supplier shall be fully responsible for the proper execution of this Agreement in all respects.

Supplier shall use personnel who possess the qualifications and experience necessary for the performance of the Services. Additional requirements relating to personnel may be provided in Annex 1, as the case may be.

Unless otherwise specifically provided under Annex 1, Supplier may subcontract part of the provision of the Services to subcontractors, provided such subcontractors are contractually bound by similar obligations as under this Agreement, and provided Supplier has disclosed the elements of the Agreement to be subcontracted and the identity of the relevant subcontractor to the subcontracting. Supplier remains at all times responsible for the work performed by its subcontractors and for the acts, defaults and negligence of such subcontractors, and no subcontract shall create any contractual relationship between any subcontractor and EIT UM. Additional requirements relating to subcontracting may be provided in Annex 1, as the case may be.

In order for EIT UM and Supplier to monitor the proper performance of the Services throughout the Term of the Agreement, Supplier shall report to EIT UM progress of the performance of the Services, in writing, at intervals and under conditions specified under Annex 1. Supplier shall provide EIT UM with time sheets describing the tasks performed by Supplier and the time spent on each task, pursuant to the regularity provided under Annex 1 and pursuant to the time sheet template provided by EIT UM separately.

If, for whatever reason, Supplier is not able to perform the agreed Services, or is not able to meet the deadlines agreed in Annex 1, Supplier shall notify EIT UM hereof promptly in writing, and shall take any reasonable measure to mitigate the consequences of such situation, in agreement with EIT UM.

Services delivered are subject to the acceptance of EIT UM. EIT UM shall issue a Performance certificate after completion of Services. Should EIT UM fail to reject part or all of the Services provided within 15 (or other deadline set forth in Annex 1) calendar days as from such delivery, on the grounds of a lack of quality or compliance, or because of late delivery, Services shall be considered as accepted. Should EIT UM reject a Service (within the above deadline) because of lack of quality or compliance, and such failure is capable of remedy, Supplier shall re-perform the rejected (part of the) Service promptly (but no later than 5 days in absence of any further instructions) at no additional charge for EIT UM. Should such failure be not capable of remedy (given the type of Service and/or the extent of the failure) or should the delivery have occurred after an essential delivery deadline which renders the Service irrelevant or useless, the Services at stake shall be considered as rescinded, and EIT UM is not obliged to provide any compensation to Supplier for such Services.

Modifications to the Services and/or other provisions of this Agreement may only be agreed by the Parties as per the EIT UM procurement rules, i.e. if:

mutually agreed in writing, and

the need for modification has been brought about by circumstances which a diligent contracting entity could not foresee; and

the modification does not alter the overall nature of the contract; and

any increase in price is not higher than 25 % of the original value of the Agreement. In addition, if several successive increases in price would be agreed, the total cumulating of such successive increases shall not exceed 25% of the original value of the Agreement; and

modifications above 10% of the original value of the Agreement should only amend specific conditions of the Agreement and be made by way of an amendment to this Agreement signed by both Parties.

The Parties designate the following contact persons for communication with respect to this Contract:

For EIT UM:      For Service Provider:

Name: ...      Name: ...

Phone: ...      Phone: ...

E-mail: ...      E-mail: ...

### **Compensation, invoicing and payment, expenses**

Supplier is entitled to charge, in respect of Supplier's Services as described under Annex 1, the compensation specified in Annex 1 per Service.

Supplier may only charge the amounts under Section 4.1. corresponding to the delivered Services, after acceptance of such Services by EIT UM.

Further, Supplier may only charge the amounts under 4.1. subject to (i) EIT UM having received a correct invoice bearing the essential elements below, (ii) all relevant Progress Reports relating to the delivered Services so invoiced having been properly delivered to EIT UM in a timely manner and accepted by EIT UM in writing (as the case may be).

An invoice shall be considered as correct when containing the following essential elements:

the name and address of Supplier

the VAT identification number of Supplier

the VAT identification number of EIT UM

the name and address of EIT UM

the invoice number

the invoice date

the date on which the Services were supplied (provided EIT UM S has accepted them pursuant to this Agreement)

the quantity and type of goods supplied (if applicable)

the nature and type of Services supplied

the following data for every VAT tariff or exemption:

the price per piece or unit, excluding VAT

any reductions that are not included in the price

the VAT tariff that has been applied

the cost (the price excluding VAT)

in case of advance payment: the date of payment, if this is different from the invoice date

the amount of VAT

By deviation to Section 4.2., Supplier may charge the amounts under Section 4.1., at the beginning of each (quarterly, monthly or other) period specified in Annex 1, if such alternative is specifically agreed by EIT UM in Annex 1. In such a case, requirements of Section 4.3. shall apply to each regular invoice.

The payment term applying to Supplier invoices fulfilling the requirements of this Section 4 is fixed in Annex 1.

All amounts corresponding to the compensation per Service, as fixed in Annex 1, shall be fixed tariffs, which may not be revised during the Term of this Agreement, unless specifically provided otherwise in Annex 1 (and within the limits of the price revision mechanisms authorised under the procurement procedure).

Supplier may charge expenses to EIT UM, to the extent Annex 1 provides for such possibility. Expenses shall only be paid if EIT UM has given its written approval prior to Supplier incurring said costs.

If Supplier fails to fulfil any of its obligations under the Agreement, EIT UM may suspend payment to Supplier, upon notice to Supplier.

Supplier hereby unconditionally accepts that EIT UM has the right to set off any amount that EIT UM owes to Supplier under this Agreement, with any amount Supplier owes to EIT UM under this Agreement or any other agreement.

#### **Taxes, other contributions, no employment agreement and related indemnification**

All tariffs are gross amounts but exclusive of any value added tax (VAT), sales tax, GST, consumption tax or any other similar tax ("**Taxes**").

If the Services under this Agreement are subject to any other Taxes, Supplier may charge such Taxes to EIT UM, which taxes shall be paid by EIT UM in addition to the compensation for Supplier. Supplier is responsible for paying any applicable Taxes to the appropriate (tax) authorities.

In addition to Section 5.1. and 5.2., all social security, fiscal charges or taxation of any kind and contributions of any kind including but not limited to value added, levies, withholdings, unemployment, medical insurance and insurance of any kind, pensions, national insurance contributions and social security benefits, as imposed by any law, accommodation and travel costs, living expenses, or other expenses and charges arising from this Agreement, will be the exclusive responsibility of Supplier, who must pay such taxes, charges, any kind of expenses and contributions directly to the competent authorities or employees (as the case may be) (altogether called "**Contributions**").

Supplier shall perform the Services hereunder as an independent contractor and not as an agent of EIT UM and nothing contained in the Agreement is intended to create a partnership, joint venture or employment relationship between the Parties irrespective of the extent of economic dependency of Supplier on EIT UM.

Supplier shall indemnify and keep EIT UM harmless from any claims from any authority for payment of any Contributions, including all interest charged in respect thereof, surcharges and possible administrative fines in connection with the Services performed by Supplier on the basis of the Agreement.

### **Intellectual property, ownership and licensing, IP infringement indemnification**

"**Intellectual Property Rights**" or "**IP**" shall mean patents, utility certificates, utility models, (industrial) design rights, copyrights, database rights, trademarks, trade names and trade secrets, including moral rights and any applications, renewals, extensions, combinations, divisions, discontinuations or re-issues of the foregoing.

Unless expressly specified otherwise in Annex 1, should the performance of the Services entail the delivery of (written) advice, reports or any other materials or results ("**Deliverables**"), the ownership of any Intellectual Property Rights in such Deliverables shall be vested in EIT UM.

In addition to Section 6.1., any item provided by EIT UM (or by a third party designated by EIT UM on behalf of EIT UM) and used to perform the Services and/or embedded in the delivered Services, shall at all times remain the ownership of EIT UM S. Supplier shall have no right, title or interest in any of these items nor any trademark or trade name from EIT UM.

By exception to Section 6.1., Intellectual Property Rights owned or controlled by Supplier before the start of the performance of the Services shall remain the ownership of Supplier ("**Background IP**").

Supplier hereby grant a non-exclusive, royalty-free and fully paid-up, worldwide, irrevocable and perpetual license under its Background IP used for the performance of the Services, to EIT UM,



with the right to sublicense, for the use, make, have made, build-in, market, sell, lease, license distribute and/or otherwise dispose of the Services and/or Deliverables.

Supplier shall not, without EIT UM' prior written consent, publicly make any reference to EIT UM, whether in press releases, advertisements, sales literature or otherwise.

Unless expressly specified otherwise in Annex 1,

Supplier shall indemnify and hold harmless EIT UM, its Affiliates, partners, contractors and employees in respect of any and all claims, damages, costs and expenses (including but not limited to loss of profit and reasonable attorneys' fees) in connection with any third party claim that any of the Services alone or in any combination or their use infringes any third party IPRs, or, if so directed by EIT UM, shall defend any such claim at Supplier's own expense. By "Affiliate" is meant any and all companies, firms and legal entities with respect to which now or hereafter EIT UM, directly or indirectly holds 50% or more of the nominal value of the issued share capital or 50% or more of the voting power at general meetings or has the power to appoint a majority of directors or otherwise to direct the activities of such company, firm or legal entity, including but not limitedly through a domination agreement.

EIT UM shall give Supplier prompt written notice of any such claim, provided, however, any delay in notice shall not relieve Supplier of its obligations hereunder except to the extent it is prejudiced by such delay. Supplier shall provide all assistance in connection with any such claim as EIT UM may reasonably require.

If any Services alone or in any combination, provided under the Agreement are held to constitute an infringement or if their use is enjoined, Supplier shall, as directed by EIT UM, but at its own expense: either 1) procure for EIT UM or its users the right to continue using the Services alone or in any combination; or 2) replace or modify the Services alone or in any combination with a functional, non- infringing equivalent.

If Supplier is unable either to procure for EIT UM the right to continue to use the Services alone or in any combination or to replace or modify the Services alone or in any combination in accordance with the above, EIT UM may terminate the Agreement and upon such termination, Supplier shall reimburse to EIT UM the price paid, without prejudice to Supplier's obligation to indemnify EIT UM as set forth herein.

### **Confidentiality, documents**

Confidential Information means any and all proprietary and/or confidential data and information, such as but not limited to commercial and/or technical information, that EIT UM, its Affiliates or representatives may disclose directly or indirectly, whether in writing or any other form, to Supplier that is related to the Service, which (a) is marked as "confidential" or "proprietary" or words of similar import when disclosed, and (b) is orally disclosed and is summarized and described as confidential in a writing that is delivered to Supplier within fifteen (15) days of disclosure.

During the period beginning on the Effective Date and continuing for a period of five (5) years thereafter (the "**Confidentiality Period**"), Supplier agrees not to: (i) use EIT UM' Confidential Information for any purpose other than for the Service; and (ii) disclose EIT UM Confidential

Information to any third party, except to its employees and other persons under its supervision that are operating within its organization, including without limitation, its Partners' employees who (A) have a legitimate "need to know" to accomplish the Service, and (B) are obligated to protect such Confidential Information pursuant to terms and conditions not less restrictive than those contained in this Agreement. Supplier shall protect EIT UM' Confidential Information as required hereunder using the same degree of care, but no less than a reasonable degree of care, as Supplier uses to protect its own confidential information of a like nature.

Supplier's obligations above shall not apply to any data or information that it can prove: (a) is lawfully available to EIT UM, prior to the time of receipt from EIT UM as verified by written records; (b) is or becomes publicly available without violation of this Agreement or any other obligation of confidentiality and through no act or omission of Supplier; (c) is lawfully furnished to Supplier by a third party without use or disclosure restrictions; or (d) is developed by Supplier without use of or reference to any of EIT UM' Confidential Information. Furthermore, a disclosure by Supplier that is required pursuant to any judicial or governmental proceeding shall not be considered a breach of this Agreement, provided that Supplier promptly after learning of such action shall notify, to the extent permitted by applicable law, EIT UM thereof to give Supplier the opportunity to contest disclosure or to seek any available legal remedies to maintain such information in confidence.

Supplier is not permitted - alone or with or through others – to remove, dispatch, transmit or allow any third parties to inspect, use or otherwise have access to any property belonging to EIT UM or any of its Affiliates, including but not limited to any notes, drawings, letters, formulas, recipes, other documents and/or any copies thereof, tools, designs, products manufactured or (copies of) computer files or other data carriers, unless EIT UM has given its prior written permission to any such action.

EIT UM shall remain the owner of all property it has made available to Supplier in connection with this Agreement.

Supplier shall make all property belonging to EIT UM (or its Affiliates) such as, but not limited to any notes, drawings, letters, formulas, recipes, other documents and/or copies of such matters, tools, models, finished products, (copies of) automated files or other data carriers, which come into its possession during the term of this Agreement, available to EIT UM in good condition immediately upon initial request, but in any case on the day on which the Agreement ends.

## Personal data

For the purpose of this Agreement,

**"Personal Data"** shall mean any and all information relating to an identified or identifiable individual, including but not limited to EIT UM current or former employees, employee family members, dependents or beneficiaries, customers, consumers, suppliers, business partners or contractors;

**"Processing"** shall mean any operation or set of operations performed or to be performed upon Personal Data, whether or not by automatic means, such as creation, access, collection, recording, organization, storage, loading, employing, adaptation or alteration, retrieval, consultation, displaying, use, disclosure, dissemination or otherwise making available,

alignment or combination, blocking, erasure or destruction (hereinafter also referred to as a verb “**Process**”).

Where Supplier in the performance of the Agreement Processes Personal Data, then Supplier agrees and warrants that Supplier shall:

comply with all privacy and data protection law and regulations applicable to its Services;

Process Personal Data only (i) on behalf of and for the benefit of EIT UM, (ii) in accordance with EIT UM’ instructions, and (iii) for the purposes authorized by this Agreement or otherwise by EIT UM, and (iv) insofar necessary for the Services rendered to EIT UM and as permitted or required by law;

maintain the security, confidentiality, integrity and availability of the Personal Data;

implement and maintain appropriate technical, physical, organizational and administrative security measures, procedures, practices and other safeguards to protect the Personal Data against (i) anticipatable threats or hazards to its security and integrity; and (ii) loss, unauthorized access to, or acquisition or use of or unlawful Processing; and

promptly inform EIT UM of any actual or suspected security incident involving the Personal Data.

To the extent that Supplier allows a (sub)contractor to process the Personal Data, Supplier shall ensure that it binds such (sub)contractor to obligations which provide a similar level of protection, but in no way less restrictive, as this Section 8.

Supplier shall, upon the termination of the Agreement, securely erase or destroy all records or documents containing the Personal Data. Supplier accepts and confirms that it is solely liable for any unauthorized or illegal processing or loss of the Personal Data, if Supplier fails to erase or destroy the Personal Data upon termination of the Agreement.

Supplier shall indemnify and hold harmless EIT UM, their officers, agents and personnel from any damages, fines, losses and claims arising out of a breach of this Section 8.

### **Liability, indemnification, insurance**

Supplier shall indemnify and hold harmless EIT UM, its Affiliates, agents and employees, from and against all suits, actions, legal or administrative proceedings, claims, demands, damages, judgments, liabilities, interest, attorneys’ fees, costs and expenses of whatsoever kind or nature (including but not limited to special, indirect, incidental, consequential damages), whether arising before or after completion of the performance of the Services covered by the Agreement, in any manner caused or claimed to be caused by the acts, omissions, faults, breach of express or implied warranty, breach of any of the provisions of this Agreement, or negligence of Supplier, or of anyone acting under its direction or control or on its behalf, in connection with Services or any other information furnished by Supplier to EIT UM under the Agreement.

Supplier warrants that it has taken out sufficient insurance against the aforementioned damage, costs and interest, or has made a sufficient provision for this purpose and is obliged to fully

disclose to EIT UM immediately upon initial request all the (policy conditions of the) aforementioned insurance(s) and/or provisions. Supplier shall indemnify EIT UM and shall pay its insurance proceeds to EIT UM and furthermore indemnify for the excess amount of the total claim of damages that is not covered by the insurance of Supplier or any other insurance. EIT UM shall be entitled to take legal action against Supplier.

Neither Party excludes or limits its liability for death or personal injury arising from its own negligence, fraud, breach of confidentiality or for any liability that cannot by law be excluded or limited.

Subject to Section 9.3 In no event shall EIT UM be liable under any theory of liability, for indirect, incidental, special, consequential or punitive damages, which includes without limitation damages for lost profits or revenues, lost business opportunities, loss of image or lost data, even if EIT UM has been advised of the possibility of such damages and in no event shall EIT UM be liable to Supplier, its successors or assigns for damages in excess of the amount due to Supplier for complete performance under the Agreement, less any amounts already paid to Supplier by EIT UM.

Subject always to Section 9.3., depending on the nature of the Services and the liability risk associated therewith, a cap to the liability of Supplier under this Agreement may apply only if expressly mutually agreed in writing in Annex 1.

### **Suspension, termination of the Agreement**

The Agreement is entered into as from the Effective Date specified in Annex 1 and shall end by operation of law, without the requirement of prior notice of termination, on the date the last of the Services have been delivered by Supplier, accepted and paid by EIT UM (“**Term**”).

As an exception to the above, EIT UM may suspend, withdraw, dissolve or terminate this Agreement fully or partially with immediate effect without incurring any penalty or compensation if and as soon as:

Supplier breaches any of its material obligations under this Agreement and, notwithstanding a written request from EIT UM to repair the current breach and to take appropriate measures to prevent such a breach in the future, fails to comply with such a request within a reasonable deadline fixed by EIT UM in the notice; or

EIT UM, in its reasonable discretion, determines that Supplier is not able to perform the Services as required; or

Supplier fails to provide EIT UM with adequate assurance of performance following request by EIT UM; or

Supplier files a petition for bankruptcy or is declared bankrupt; or

Supplier has become unable to pay its debts as they fall due or make any special arrangement(s) or composition with its creditors;

Supplier enters into voluntary or judicial liquidation;

the business of Supplier ceases to exist or control or ownership is taken over by a third party;

as a result of the termination of the European Programme(s) which requested EIT UM to enter into this Agreement (as the case may be).

As from receipt of a termination notice from EIT UM (under any legal ground), Supplier shall take immediate steps to bring the terminated Services to a closure in a prompt and orderly manner and to reduce expenditure to a minimum.

Supplier may, after giving 14 calendar days written notice to EIT UM, terminate the Agreement if EIT UM:

Fails for more than 120 calendar days to pay Supplier the amounts due after the expiration of the payment term stated in Section 4; or

Consistently fails to meet its material obligations after repeated reminders; or

Suspends the progress of the Services or any part thereof for more than 90 calendar days for reasons not specified in the Agreement, or not attributable to Supplier's breach or default.

### **Safeguarding of EU's financial interest and conflict of interest**

Supplier accepts without reservation that during the implementation of the Agreement and for four (4) years after the completion of the Agreement, EIT UM has the right for the purposes of safeguarding the EU's financial interests, the tender proposal and the Agreement with Supplier may be transferred to internal audit services, the EIT, to the European Court of Auditors, to the Financial Irregularities Panel or to the European Anti-Fraud Office ('safeguarding the EU's financial interests').

Supplier confirms that it shall take all measures to prevent any situation where the impartial and objective implementation of the Agreement is compromised for reasons involving economic interest, political or national affinity, family or emotional ties or any other shared interest ('conflict of interests'). The contractor is obliged to inform EIT UM immediately if there is any change in the above circumstances at any stage during the implementation of the tasks under the Agreement.

### **Miscellaneous**

All notices given under this Agreement shall be given in writing. Any subsequent change of address shall be promptly notified by the Party concerned to the other Party and embodied in an amendment to the preamble of this Agreement.

In the event that Supplier is prevented from performing any of its obligations under the Agreement for reason of force majeure (being an event unforeseeable and beyond the control of Supplier) and Supplier has provided sufficient proof for the existence of the force majeure, the performance of the obligation concerned shall be suspended for the duration of the force majeure. EIT UM shall be entitled to terminate the Agreement with immediate effect by written notice to Supplier, immediately if the context of the non-performance justifies immediate termination, and in any event if the circumstance constituting force majeure endures for more

than thirty (30) days and, upon such notice, Supplier shall not be entitled to any form of compensation in relation to the termination. Force majeure on the part of Supplier shall in any event not include shortage of personnel or production materials or resources, strikes, not officially declared epidemic or pandemic, breach of contract by third parties contracted by Supplier, financial problems of Supplier, nor the inability of Supplier to secure the necessary licenses in respect of software to be supplied or the necessary legal or administrative permits or authorizations in relation to the Services to be supplied.

Supplier shall not transfer, pledge or assign any of its rights or obligations under the Agreement without the prior written consent of EIT UM. Any such pre-approved, transfer, pledge or assignment shall be null and void and have no effect vis-à-vis such third party.

The rights and remedies reserved to EIT UM are cumulative and are in addition to any other or future rights and remedies available under the Agreement, at law or in equity.

Neither the failure nor the delay of EIT UM to enforce any provision of the Agreement shall constitute a waiver of such provision or of the right of EIT UM to enforce each and every provision of the Agreement.

No course or prior dealings between the parties, no course of performance, and no usage of the trade shall be relevant to determine the meaning of the Agreement and to modify the provisions of this Agreement.

No waiver, consent, modification or amendment of the terms of the Agreement shall be binding unless made in a writing specifically referring to the Agreement signed by EIT UM and Supplier.

In the event that any provision(s) of this Agreement shall be held invalid, unlawful or unenforceable by a court of competent jurisdiction or by any future legislative or administrative action, such holding or action shall not negate the validity or enforceability of any other provisions of the Agreement. Any such provision held invalid, unlawful or unenforceable, shall be substituted by a provision of similar import reflecting the original intent of the clause to the extent permissible under applicable law.

All terms and conditions of the Agreement which are destined, whether express or implied, to survive the termination or the expiration of the Agreement, including but not limited to Intellectual Property, Confidentiality and Personal Data, shall survive.

The Agreement shall be governed by and construed in accordance with the laws of the country or state in which the EIT UM ordering entity is located, as applicable.

Supplier and EIT UM each consents to the exclusive jurisdiction of the competent courts in (i) the country or state in which the EIT UM ordering entity is located; or (ii), at the option of EIT UM, the jurisdiction of the entity of Supplier to which the order was placed, or (iii), at the option of EIT UM, for arbitration in which case Section 12.12. applies. Supplier hereby waives all defences of lack of personal jurisdiction and forum non-convenience.

If so chosen by EIT UM in accordance with Section 12.11, any dispute, controversy or claim arising out of or in connection with this Agreement, or their breach, termination or invalidity shall be finally settled solely under the International Chamber of Commerce Rules of arbitration,

which Supplier and EIT UM declare to be known to them. Supplier and EIT UM agree that: (i) the appointing authority shall be the ICC-International Chamber of Commerce of Paris, France; (ii) there shall be three (3) arbitrators; (iii) arbitration shall take place in the jurisdiction of the EIT UM entity mentioned in the recitals or, at the option of EIT UM, the jurisdiction of the Supplier's entity mentioned in the recitals; (iv) the language to be used in the arbitration proceedings shall be English; and (v) the material laws to be applied by the arbitrators shall be the laws as determined under Section 12.10.

The United Nations Convention on International Sale of Goods shall not apply to the Agreement.

Drawn up on [DATE] and signed in two copies:

---

EIT UM

[name of representative]

[position of representative]

---

[company name]

[name of representative]

[position of representative]

Table of Content

**Type chapter title (level 1)** ..... 1

Type chapter title (level 2) ..... 2

Type chapter title (level 3) ..... 3

**Type chapter title (level 1)** ..... 4

Type chapter title (level 2) ..... 5

Type chapter title (level 3) ..... 6

In addition to the general terms and conditions specified in the body of the Service Agreement, the Parties hereby agree on the following specific conditions and details:

Description and timing of the Services subject to the procurement procedure (as per the Whereas section, Section 3.1., of the Agreement) and detailed description of the types of Services and Deliverables (as per Section 6.2 of the Agreement) covered by the Agreement:

Task 1

Task 2

Price of the Services (as per Section 4 of the Agreement):

In application of Section 4.1. of the Agreement, the following Services shall be remunerated on the basis of an hourly rate, fixed per type of Services, as follows:

| Services                  | Price                          |
|---------------------------|--------------------------------|
| [subject of the services] | [(unit) price of the services] |

Charging the compensation to EIT UM (as per Section 4. of the Agreement)

Supplier may charge the amounts of the Agreement at the end of the following period:

|                           |        |
|---------------------------|--------|
| Payment 1 – [description] | [date] |
| Payment 2 - [description] | [date] |
| Payment 3 - [description] | [date] |

Payment term applying to Supplier invoices (as per Section 4 of the Agreement):

|   |         |
|---|---------|
| Payment term (expressed in calendar days) | 30 days |
|---|---------|

Term of the Agreement (as per Section 10 of the Agreement):



In application of Section 10.1. of the Agreement, the Effective Date on which the Agreement starts and the Termination Date on which the Agreement shall terminate automatically are set forth below:

|   |   |
|---|---|
| Effective Date (start of the Agreement) | Termination Date (i.e. date on which the last Service is expected to be delivered and paid) |
| [starting date of the contract]         | [end date of the contract]  |

## Annex 2: Tenders submission form

### Tender Submission Form

for the procedure of “.....[title of the procurement procedure]”

#### 1. Tender submitted by

|                         |  |
|-------------------------|--|
| Name of legal entity    |  |
| Registered address      |  |
| Tax registration number |  |

#### 2. Contact person

|                |  |
|----------------|--|
| Name           |  |
| Address        |  |
| Telephone      |  |
| E-mail address |  |

#### 3. Statement

I, <name>, the undersigned, being the authorised signatory of the above tenderer [for consortiums, this must include all consortium members], hereby declare that we have examined and accept without reserve or restriction the entire content of the tender documentation for the above procurement procedure. We offer to provide the services requested in the tender documentation on the basis of the following, which comprise our financial offer and our technical offer [if applicable]:

| Award criteria          | Tenderer’s Offer |
|-------------------------|------------------|
| <b>Financial offer:</b> | net X EUR        |

|  |  |
|--|--|
| <p>&lt;presented in EUR (net amount, excl. VAT)&gt;</p>  |  |
| <p>&lt;<b>Technical offer: (if applicable)</b>&gt;</p> <p>&lt;e.g. presented in number of years of experience&gt;</p> <p><b>e.g.:</b></p> <ul style="list-style-type: none"> <li>• <b>name and professional capacity of Expert 1 (according to RFP 4.2 a) ii)</b></li> <li>• <b>name and professional capacity of Expert N (according to RFP 4.2 a) ii)</b></li> </ul> | <p><b>e.g.:</b></p> <ul style="list-style-type: none"> <li>• <b>Expert 1:</b></li> <li>• <b>XY – X years of experience</b></li> </ul><br><ul style="list-style-type: none"> <li>• <b>Expert N:</b></li> <li>• <b>XY – X years of experience</b></li> </ul> |

<Signature of authorised representative>

## Annex 3: Tenders declaration form

<Date>

<Name and address of Contracting Authority >

**Subject:** <Please include here the title of the procurement procedure>

### TENDERER'S DECLARATION

Dear Sir/Madam,

In response to your letter of invitation for the above contract I, < Name and position of authorised representative of the firm>, hereby declare that we:

are submitting this tender for this contract. We confirm that we are not participating in any other tender for the same contract in any form (as in a consortium or as an individual candidate);

we also confirm that we shall take all measures to prevent any situation where the impartial and objective implementation of the contract is compromised for reasons involving economic interest, political or national affinity, family or emotional ties or any other shared interest ('conflict of interests'). We will inform the Contracting Authority immediately if there is any change in the above circumstances at any stage during the implementation of the tasks;

we accept that during the implementation of the contract and for four years after the completion of the contract, the supplier must keep confidential any data, documents or other material that is identified as confidential at the time it is disclosed ('confidential information');

we accept that during the implementation of the contract and for four years after the completion of the contract, the Contracting Authority has the right for the purposes of safeguarding its financial interests, the proposal and the contract of the supplier may be transferred to internal as well as statutory audit services.

We understand that if the information provided is proved false, the award may be considered null and void.

Yours faithfully,

<Signature of authorised representative>