

ANS CR

ACG

CCL

HCL

SCL

LPS

and

FABCE, Aviation Services, Ltd.

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**AGREEMENT  
FOR THE PROVISION OF PROGRAM MANAGEMENT SERVICES**

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Pages: 16  
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THIS Agreement for the Provision of Program Management Services is entered into on 24. 4. 2018 **BY AND BETWEEN:**

- (1) **Air Navigation Services of the Czech Republic**, the state enterprise organized under the laws of the Czech Republic and registered with the Commercial Register of the Prague Municipal Court (entry number A 10771) with the business address Navigační 787, 252 61 Jeneč, Czech Republic, hereinafter referred to as “**ANS CR**” and
- (2) **Austro Control Österreichische Gesellschaft für Zivilluftfahrt mit beschränkter Haftung**, a limited liability company, registered with the Commercial Register of the Vienna Commercial Court (entry number 71000m) with Vienna as its principal place of business and having its registered office at 19 Wagramer Straße, 1220 Wien, Austria, hereinafter referred to as “**ACG**” and
- (3) **Croatia Control Ltd., Hrvatska kontrola zracne plovidbe d.o.o.**, a limited liability company, registered with the Commercial register of the Zagreb Commercial Court, identification No. 33052761319, with Zagreb as its principal place of business at Rudolfa Fizira 2, 10410 Velika Gorica, Croatia, Postal Address: Rudolfa Fizira 2, P.O.B. 103, 10410 Velika Gorica, Croatia, hereinafter “**CCL**” and
- (4) **HungaroControl Hungarian Air Navigation Services Pte.Ltd.Co**, a private limited company organised under the laws of Hungary and registered with the Metropolitan Court of Budapest, acting as the Court of Registration (registration number: Cg 01-10-045570, EU VAT No. HU 13851325) with Budapest as its principal place of business and having its registered seat at 33-35 Igló utca, 1185 Budapest, Hungary, hereinafter referred to as “**HCL**” and
- (5) **Kontrola zračnega prometa Slovenije, d.o.o.** (Slovenia Control, Ltd.), a limited liability company organised under the laws of the Republic of Slovenia and registered with the District court of Kranj (identification number 1913301000) with Zgornji Brnik as its principal place of business and having its business address at Zgornji Brnik 130N, 4210 Brnik – Aerodrom, Slovenia, hereinafter referred to as “**SCL**” and
- (6) **Letové prevádzkové služby Slovenskej republiky, štátny podnik, (v skratke “LPS SR, š. p.”)** a state enterprise, established under the laws of the Slovak Republic and registered by Commercial Register of the District Court Bratislava I., Section Pš, Item No. 418/B, Corporate Identification No. 35778458 with Bratislava as its principal place of business and having its registered seat at Ivanská cesta 93, 823 07 Bratislava, Slovakia, hereinafter referred to as “**LPS**”,

(hereinafter collectively referred to as “**Customers**” and individually also as “**Customer**”)

AND

- (7) **FABCE, Aviation Services, Ltd.**, a limited liability company organized under the laws of Republic of Slovenia and registered with the District court of Kranj, identification No. 6726909000, EU VAT No. SI40952240, Swift code: BACXSI22, IBAN: SI56 2900 0005 1413 834, with Zgornji Brnik as its principal place of business and having its business address at Zgornji Brnik 130N, 4210 Brnik – Aerodrom, Slovenia,

(hereinafter referred to as “**Provider**”)

(the Customers and the Provider are hereinafter sometimes collectively referred to as “**Parties**” and individually as “**Party**”)

## WHEREAS

- (A) The Customers are contracting parties to the Cooperation Agreement which established and regulates cooperation between the Air Navigation Service Providers of the States that established the Functional Airspace Block Central Europe;
- (B) The Provider was established under the Memorandum of Association and the Shareholders Agreement as a joint, non-market orientated and non-profit in-house entity of the Customers, to provide the services for the benefit of the Customers within the territory where the Customers perform their business activities;
- (C) On 3 April 2018, the Supervisory Board of the Provider approved the execution of this Agreement by the Director of the Provider with the Decision no. 48/2018;
- (D) This Agreement is in accordance with the Memorandum of Association and the Shareholders Agreement;

**THEREFORE**, in consideration of mutual covenants and promises, the Parties have entered into the following Agreement:

### **Article 1 DEFINITIONS**

All capitalized terms used, but not otherwise defined in this Agreement, shall have the following meaning:

- 1.1 “**Acceptance protocol**” shall mean a protocol pursuant to Article 10.3.
- 1.2 “**Agreement**” shall mean this Agreement for the Provision of Program Management Services, including its Annexes.
- 1.3 “**CEO Committee**” shall mean an organ pursuant to Sec. 5.(1)(a) of the Cooperation Agreement.
- 1.4 “**Certification of Performance**” shall mean a set of activities carried out by the Parties as described in Article 10.
- 1.5 “**Specification of activities**” shall mean a report of the Provider pursuant to Article 19.1.
- 1.6 “**Cooperation Agreement**” shall mean the Cooperation Agreement of the FAB CE Air Navigation Service Providers, signed on May 5<sup>th</sup> 2011 at Brdo pri Kranju, Republic of Slovenia.
- 1.7 “**Contract Price**” shall mean aggregate costs payable by the Customers for the Services of the Provider as per Article 8.
- 1.8 “**Effective Date**” shall mean the date pursuant to Article 20.1.
- 1.9 “**FAB CE Program**” shall mean the activities of the Customers carried out under the remits of the Cooperation Agreement. For the purpose of this Agreement FAB CE Program shall mean FAB CE High Level Plan, as adopted and revised from time to time by the competent body and Overall Annual Plan of the Provider for the respective business year. Both documents are attached as Annex 1 to this Agreement.

- 1.10 **“Governing law”** shall mean the law pursuant to Article 24.1.
- 1.11 **“In-house performance”** shall mean the provision of the Services by the Provider through its own employees, statutory representatives, and other representatives of its corporate governance bodies.
- 1.12 **“Legal Sub Committee Chairperson”** shall mean a duly appointed chairperson of the Legal Sub Committee, an organ established pursuant to Sec. 5.(1)(c)(vii) of the Cooperation Agreement by the resolution of the CEO Committee.
- 1.13 **“Memorandum of Association”** shall mean the Memorandum of Association of the Provider, concluded on October 17<sup>th</sup> 2014 at Brnik, Republic of Slovenia, as amended.
- 1.14 **“PMO”** shall mean a service as per Article 3.1.1 of the PSO SLA as further defined in Sec. I.3 of Annex 1 to the PSO SLA.
- 1.15 **“Program Manager”** or **“PMr”** shall mean a natural person employed or otherwise engaged by the Provider to organize, supervise and carry out the activities related to the provision of the Services by the Provider under this Agreement.
- 1.16 **“PSO”** shall mean a service and/or function as per Article 3.1.2 of the PSO SLA as further defined in Sec. I.4 of Annex 1 to the PSO SLA.
- 1.17 **“PSO SLA”** shall mean the Framework Agreement for the Provision of PMO and PSO Services, concluded by and between the Customers and the Provider, which entered into force on 26 August 2017.
- 1.18 **“PSO Subcontract”** shall mean a contract concluded between the Provider and the Third party for the purpose of meeting the obligations of the Provider under the PSO SLA, the value of which is over the threshold triggering compulsory application of the public procurement procedures under the Governing law.
- 1.19 **“Services”** shall mean the services pursuant to Article 3.1 as specified in Annex 2.
- 1.20 **“Shareholders Agreement”** shall mean the Shareholders Agreement, concluded by and between the shareholders of the Provider and the Provider at Brnik, Republic of Slovenia, as later amended.
- 1.21 **“Sharing key”** shall mean a method for calculation of the Customer’s participation on the TCA and payments under this Agreement, laid down in Article 7.
- 1.22 **“SLA Committee”** shall mean a committee pursuant to Article 18.1.
- 1.23 **“Specific performance”** shall mean services, goods or works, provided, supplied or executed by one or more Customers to/for the benefit of the Provider under a contract concluded between one or more Customers and the Provider, the value of which is under the threshold triggering compulsory application of the public procurement procedures under the Governing law or is otherwise exempted from such procedures.
- 1.24 **“Steering Committee”** shall mean an organ pursuant to Sec. 5.(1)(b) of the Cooperation Agreement.
- 1.25 **“TCA”** shall mean an amount pursuant to Article 6.1.
- 1.26 **“Term”** shall mean the period commencing on the Effective Date and ending on the date pursuant to Article 20.2 or on earlier termination of this Agreement.

- 1.27 “Third party” shall mean any natural or legal person regardless of whether established under private or public law, other than the Parties.

## **Article 2 SCOPE OF AGREEMENT**

- 2.1 This Agreement sets out the terms and conditions of the provision of the Services by the Provider to the Customers, including but not limited to the requirements on the Services and the remuneration of the Provider.
- 2.2 The Provider acknowledges that, in entering this Agreement, no form of exclusivity has been granted by the Customers for the Services from the Provider and that the Customers are at all times entitled to enter into other contracts and agreements with other suppliers for the provision of any or all services which are the same as or similar to the Services.
- 2.3 Nothing in this Agreement is intended or shall be deemed to grant any right or remedy to any Third party. This Agreement does not grant the Provider with the authority to legally bind any Customer and nothing in this Agreement shall be construed or interpreted as aiming at granting the Provider with such authority.

## **Article 3 SCOPE OF SUPPLY**

- 3.1 The Provider undertakes to provide the Customers in accordance with this Agreement with the program management services in support of the FAB CE Program, including but not limited to:
- a) Planning and the execution of the FAB CE Program;
  - b) Coordination and professional/methodological support to the execution of the FAB CE Program;
  - c) Monitoring of the execution of the FAB CE Program;
  - d) Proactive assessment of risks to the FAB CE Program;
  - e) Management, steering and supervision of the PMO and PSO, including management, steering and supervision of personnel subcontracted by the Provider under the PSO Subcontract;
  - f) Reporting on the activities under a) to e) to the CEO Committee and the SLA Committee.
- 3.2 The Provider has, in particular, the following responsibilities:
- a) Overall responsibility for implementing the FAB CE Strategy;
  - b) Management of the FAB CE Program;
  - c) Responsibility for budgeting the costs and resources at the FAB CE Program level;
  - d) Responsibility for managing the costs and resources according to the approved FAB CE Program budget;
  - e) Responsibility for synchronized cross-project planning and execution;
  - f) Responsibility for escalation of issues at the FAB CE Program level;
  - g) Responsibility for identification of the FAB CE Program level risks (Risk management) and making recommendations for their elimination;
  - h) Management of project changes to achieve planned project outputs.
- 3.2 Part “JOB DESCRIPTION” of Annex 2 specifies requirements, that shall be fulfilled by the individual, performing function of PMr, whereas part “Program Manager” of Annex 2 provides general description of services, to be provided by PMr on behalf of the Provider.

## **Article 4 SOURCE OF PERFORMANCE**

- 4.1 The Parties have agreed that the Services will be provided via the In-house performance only.

**Article 5**  
**SPECIFIC PERFORMANCE**

5.1 The Parties have agreed that no Specific performance will be provided under this Agreement.

**Article 6**  
**TOTAL CEILING AMOUNT**

6.1 The Parties have agreed that the aggregate payments of all the Customers for all the Services of the Provider under this Agreement shall not exceed a total ceiling amount of 502,278.18 EUR for whole Term.

6.2 Without prejudice to observance of TCA as per 6.1, the structure of the TCA – payments by the Customers to the Provider for Services is:

- i. the aggregate of the fee pursuant to Article 8.1 for complete Term;
- ii. cap for the reimbursable costs as per Article 8.2 and
- iii. aggregate of all bonuses permitted as per Article 8.3.

6.3 The amounts pursuant to this Article shall be net of all taxes and similar duties, including but not limited to VAT.

**Article 7**  
**SHARING KEY**

7.1 Sharing key shall be calculated with the following equation:

$$iANSP = \frac{rSU}{TSU}$$

where individual abbreviation in this equation shall have the following meaning:

- $iANSP$  = allotment of the relevant Customer;
- $rSU$  = number of en route service units for the area of responsibility of the relevant Customer according to the EUROCONTROL – CRCO for the year as per Article 7.3 herein;
- $TSU$  = total en route service units allocated by the EUROCONTROL – CRCO for all areas of the responsibility of all Customers for the year as per Article 7.3 herein.

7.2 For Services, provided in 2018 in accordance with this Agreement, following Sharing key shall apply, where such sharing key is calculated observing EUROCONTROL – CRCO values for 2016:

- a) ANS CR: 23,39 %;
- b) ACG: ■■■■ ■■
- c) CCL: ■■■■ ■■
- d) HCL: ■■■■ ■■
- e) SCL: ■■■■ ■■
- f) LPS: ■■■■ ■■

7.3 Sharing key shall be calculated on a basis of information, provided by the EUROCONTROL – CRCO and shall be revised in January each year in accordance with Article 7.4 and Article 7.5, observing principle of T – 2 years.

7.4 Together with the Specification of activities for January of each year the Provider shall submit to the SLA Committee revised Sharing key. E.g. together with conformance report for January 2019 the Provider shall submit revised Sharing key, observing EUROCONTROL – CRCO information for 2017 and *mutatis mutandis* for each following year.

- 7.5 If revised Sharing key is calculated correctly (the Provider considered correct EUROCONTROL CRCO values, observing T – 2 years principle), SLA Committee shall confirm revised Sharing key. Revised Sharing key shall apply from 1 January until 31 December of the respective year. Revised Sharing key, confirmed by the SLA Committee shall be considered as integral part of this Agreement without the need to conclude amendment of this Agreement.
- 7.6 In case of conclusion of “Some-in SLA”, as defined in Article 1.18 Memorandum of Association payments, that shall be made by the individual Customer, are adjusted in accordance with the rules from the respective Overall Annual Plan.

## **Article 8 CONTRACT PRICE**

- 8.1 The Parties have agreed that in consideration for the performance of the Services certified in accordance with the Certification of Performance, the Provider is entitled to the regular monthly fee. Regular monthly fee covers cost of expert (man-power), engaged by the provider. Regular monthly fee equals to the ██████████ ██████████ Amounts of tax, social and similar contributions, prescribed by the Governing law, are not included in the afore-mentioned amount and are added to such amount. Regular monthly fee, including amounts from the previous sentence is currently equal to the amount of ██████████ ██████████ If contributions from the third sentence of this para changes, total amount of regular monthly fee is automatically adjusted, without need to conclude written annex to this agreement. Such automatic adjustment applies only if caused due to the changes of the Governing law. The actual breakdown of the payments as per the third sentence (rates) for each individual contribution is attached hereto as the Annex 5. Should the rate for the individual contribution change due to the changes of the Governing law, the Annex 5 should be amended accordingly, observing actual rate for the individual contribution.
- 8.2 Without prejudice to Article 8.1 and provided that the performance of the Services is certified by the Customers in accordance with the Certification of Performance, the demonstrably incurred reasonable costs shall be reimbursed to the Provider on the monthly pass-through basis up to the aggregate amount of ██████████ ██████████ complete Term. In case of increase of monthly fee as per Article 8.1. this amount is adjusted in order to respect TCA.
- 8.3 The SLA Committee shall assess the performance of the Services within the timeframe and against the criteria laid down in Annex 3. Should the SLA Committee conclude that the Provider met these criteria, the Provider shall be entitled to a bonus as per Annex 3 however not exceeding 45% of the aggregate of regular monthly fees calculated for the period for which the bonus is granted. The assessment shall be undertaken within December of given year and if bonus is awarded, it shall be paid to the Provider until end of January of subsequent year. For the sake of clarity applicable bonus is calculated from the regular monthly fee, which does not include contributions from third sentence of para 8.1. of this Agreement.
- 8.4 The amounts pursuant to this Article shall be net of all the taxes and similar duties, including but not limited to the VAT. Except for the foregoing, the Provider is not entitled to any additional fee, compensation or other allowance in excess of the Contract Price. The Parties agree that aggregate amount of the payments as per 8.1, 8.2 and 8.3 shall not exceed the amount of TCA as per 6.1.

## **Article 9 TERMS OF PAYMENT**

- 9.1 Each Customer shall pay and remain solely liable for due disbursement of the Contract Price to the extent as allotted to it pursuant to the Sharing key. No Customer guarantees, owes or is otherwise liable for a payment of the Contract Price assigned to another Customer.
- 9.2 Every payment of the Contract Price shall be against an invoice issued individually to each Customer for such Customer’s allotment pursuant to the Sharing key as follows:

- a) a monthly invoice for the previous calendar month' regular monthly fee pursuant to Article 8.1 and for the reimbursable costs pursuant to Article 8.2 demonstrably incurred during the previous calendar month', upon adoption of respective Acceptance protocol;
  - b) an invoice for the bonus pursuant to 8.3, upon adoption of a decision of the SLA Committee pursuant to Article 8.3 and for an amount as per such decision.
- 9.3 All invoices under this Article shall be issued in a form prescribed by Annex 4. An invoice compliant with this Agreement issued on the basis of respective document as per Article 9.2 adopted unanimously by all Customers shall be paid by the Customer by wire transfer to the bank account of the Provider, indicated in respective invoice, within thirty (30) days from the date of receipt of respective invoice.
- 9.4 The Provider shall send the invoices to all the Customers on the same day, i.e. on the day of their issue by electronic means to the email addresses pursuant to Article 18.4 or by registered or certified mail to the addresses of the Customers set forth at the beginning of the Agreement.
- 9.5 Regular monthly fee (Article 9.2. a) may be adjusted due to the change social, healthcare and other contributions, related to the employment relationships, which shall be covered by the Provider in relation to the existing employment relationship(s). Without prejudice to the amendment of the Annex 5, such adjustment is made unilaterally by the Provider and shall be applicable without the need to conclude written annex to this Agreement whereas Customers have the right to demand explanation of the adjustment (for example, explanation, which rule of the Governing law was modified). In case of change of rate of contributions, addressed in this provision 9.5, the Provider shall specify such change in the Specification of activities, prepared in accordance with Article 19. New rates and consequently adjusted regular monthly fee are confirmed with confirmation of specification of activities and shall apply from the date of change on.

## **Article 10**

### **CERTIFICATION OF PERFORMANCE**

- 10.1 The compliance of the performance of the Provider with the terms and conditions of this Agreement shall be assessed by the SLA Committee.
- 10.2 The Provider shall submit respective Specification of activities within ten (10) days following the end of the calendar month. The SLA Committee shall assess the performance and incurred costs covered by such Specification of activities within fifteen (15) days from the date of its delivery against:
- a) the deadline(s), requirements, specifications, any other criteria as per this Agreement, including but not limited to Annex 2;
  - b) if all incurred costs are reimbursable;
  - c) if all reimbursable costs were demonstrably incurred during respective period.
  - d) if a measure proposed by Provider to remedy the delay against the schedule specified in respect of Services is reasonable.
- 10.3 The performance shall be accepted by virtue of an Acceptance protocol of the SLA Committee, signed by all members of the SLA Committee. However, if the SLA Committee fails to deliberate within the time limit pursuant to Article 10.2 and no objection is delivered to the Provider through the SLA Committee member within the said time limit the performance and the reimbursable costs covered by respective Specification of activities shall be deemed as accepted. Notwithstanding the above mentioned, should the SLA Committee not accept the Specification of activities because of dissent of its member(s) and therefore no Acceptance protocol is signed, the performance covered by such Specification of activities shall be deemed as the performance with defects for the purpose of Article 15.3.



- 10.4 No SLA Committee member acting on behalf of its Customer is obliged to accept performance of Services.

**Article 11**  
**OBLIGATIONS OF THE PARTIES**

- 11.1 The Parties shall perform the obligations under this Agreement diligently with best skill, due care and judgement.
- 11.2 The Parties shall perform their rights and obligations under this Agreement in a manner not endangering the schedule and aims of the FAB CE Program and the cooperation of the Customers under the Cooperation Agreement.
- 11.3 The Parties hereby declare that they are fully aware of the contents of this Agreement and that they will not act in any way contrary or inconsistent with this Agreement.

**Article 12**  
**OBLIGATIONS OF THE PROVIDER**

- 12.1 The Provider shall ensure that the Services are adequate, suitable and fit for the purpose for which they are intended and provided timely in strict compliance with the requirements and specifications under this Agreement.
- 12.2 The Provider undertakes to ensure that its respective obligations under this Agreement will be performed by a competent PMr with levels of qualification and experience as per Annex 2 and with proper skill and care. The Provider is obligated to:
- a) Inform the SLA Committee on the identity of the PMr upon his/her appointment;
  - b) Replace PMr within three (3) months upon an objection of the SLA Committee against Provider's choice of the PMr or the performance of the PMr.
- 12.3 The Provider shall promptly deliver to the SLA Committee all the documents, data or information produced or acquired in connection with the performance of the Services.
- 12.4 The Provider shall inform the SLA Committee as promptly as practicable and in any event within the seven (7) days of its occurrence of any event substantially affecting the provision of all or some of the Services. Concurrently, the Provider shall indicate the corrective measures taken or intended to be taken by the Provider to recover such event.
- 12.5 The Provider shall comply with international law and the Governing law and all orders of any governmental authority binding on the Provider.

**Article 13**  
**OBLIGATIONS OF THE CUSTOMER**

- 13.1 Each Customer is individually obliged to pay its allotment of the Contract Price to the Provider in accordance with the terms and conditions of this Agreement.
- 13.2 Each Customer shall make available to the Provider within a reasonable period of time such information that is reasonably required for the performance of the Services by the Provider unless such Customer is restricted to do so. Any information furnished by the Customer to the Provider shall be used by the Provider solely for the purpose of complying with its obligations under this Agreement.

## **Article 14**

### **LIABILITY**

- 14.1 This Agreement or any decision adopted under this Agreement shall to the fullest extent permitted by Governing law neither constitute a joint or several liability of the Customers vis-à-vis the Provider nor a joint or several liability of two or more Customers vis-à-vis the other Customer or Customers and nothing in this Agreement shall be construed or interpreted as aiming at or creating such liability.
- 14.2 To the fullest extent permitted by the Governing law, a Customer shall not be held individually or collectively liable for any acts or omissions of another Customer or for any default of another Customer.
- 14.3 The Provider shall be solely and exclusively liable for the acts or omissions of its employees, agents and advisors.
- 14.4 In recognition of the relative risks and benefits of the performance under this Agreement for both the Customers and the Provider, the risks have been allocated in such manner that the Customers agree, to the fullest extent permitted by the Governing law, to limit the liability of the Provider to the Customers for any and all damages of any nature whatsoever arising out of or in connection with this Agreement so that the total aggregate liability of the Provider to the Customers shall not exceed 15 % of the TCA. It is intended that this limitation applies to any and all liability or cause of action alleged or arising out of or in connection with this Agreement, unless otherwise prohibited by the Governing law. Any Customer may individually claim damages from Provider in accordance with this Article 14.4.
- 14.5 The Parties have further agreed, to the fullest extent permitted by the Governing law, to limit the liability of the Customers towards the Provider for any and all damages, losses of any nature whatsoever arising out of or in connection with this Agreement, so that the total aggregate liability of the Customer shall not exceed 15 % of such Customer's allotment on the TCA, excluding the default interest under Article 15.4. It is intended that this limitation applies to any and all liability or cause of action alleged or arising out of or in connection with this Agreement, unless otherwise prohibited by the Governing law.

## **Article 15**

### **PENALTIES**

- 15.1 Contractual penalty in case of delay: Should the Provider be in delay longer than thirty (30) days for reason attributable to it to achieve stop end date as laid down in this Agreement, each Customer individually is entitled to contractual penalty in sum of 0.05% of the TCA for each day of delay, however maximum up to 2% of the TCA.
- 15.2 Contractual penalty in case of non-performance: Should SLA Committee find that the Provider did not perform Services and Provider is responsible for such non-performance or the Provider breached the duty under Article 12.2 b), the Customers are individually entitled to apply a contractual penalty in the sum of 2 % of the TCA. The application of this Article 15.2 is subject to a prior consultation mechanism between Customer(s) and Provider not exceeding fifteen (15) days aimed at remedying the notified non-performance through setting an extended deadline, as appropriate.
- 15.3 Contractual penalty in case of performance with defects: In case of performance with defects, contractual penalty, calculated according to Article 15.1 applies for the period until the Provider performs obligations as stipulated. Contractual penalty from this Article 15.3 shall apply if the Agreement is not terminated due to performance with defects.

- 15.4 If any amount is not paid by the obliged Customer to the account of the Provider on the due date, such Customer shall pay to the Provider the default interest at a statutory rate, unless such default is cured within five (5) business days following the notice of the Provider.
- 15.5 The contractual penalties are due and payable within fifteen (15) days of serving the respective invoice.
- 15.6 In case if incurred damage due to the delay / non-performance / performance with the defects is higher than the amount of contractual penalty, injured party can demand, besides applicable contractual penalty, also difference between the amount of contractual penalty and incurred damages up to the limits set out in Article 14.4 and 14.5.

## **Article 16 CONFIDENTIALITY**

- 16.1 Each Party shall keep confidential any and all information of whatever nature relating to the other Party supplied or obtained by it during the negotiations or performance of the rights and obligations under this Agreement except for information which:
- a) is required for conducting the public procurement procedure or similar procedure by the Provider;
  - b) is required for execution of the competences of the bodies of the Provider;
  - c) at the time of its disclosure is in the public domain by other means than breach of obligation of confidentiality whether contractual or from the law;
  - d) subsequently comes into the public domain, except through breach of duty of confidentiality set out in this Agreement or through breach of any other duty of confidentiality relating to that information;
  - e) was lawfully obtained by any Party from other sources than the Party to which such information relates, unless the disclosing Party reasonably should have recognized that the relevant information was released in violation of a confidentiality obligation owned to the Party to which such information relates;
  - f) is required to be disclosed by virtue of law applicable to the Party or an order of any governmental authority which is binding for the Party.

## **Article 17 INTELLECTUAL PROPERTY RIGHTS**

- 17.1 The Provider shall enter, to the extent legally feasible under the Governing law, into proper arrangements with any and all holders of any and all intellectual property rights, existing on any creation(s), arising out of or connected with this Agreement and any activity/activities, performed due to this Agreement in order that intellectual property right(s), acquired in such manner, can be transferred from the Provider to the Customers, respecting following elements: (1) to each Customer individually (2) for worldwide territory (3) for unlimited scope (4) for a duration of validity of respective intellectual property right.
- 17.2 The Provider is obliged to enter into any necessary arrangement with any Customer according to which respective Customer will acquire intellectual property right from this article in the following scope: (1) for worldwide territory (2) for unlimited scope (3) for a duration of validity of respective intellectual property right and (4) free of charge.
- 17.3 If the transfer of the intellectual property rights is not legally feasible, then the Provider shall ensure that it receives a licence to use such intellectual property rights and is entitled to grant respective sub-licences to the Customers, as provided in this Article.

**Article 18**  
**COORDINATION**

- 18.1 The Parties hereby agree that the SLA Committee established pursuant to Article 21.1 of the PSO SLA shall act as and shall be considered as the SLA Committee pursuant to and for the purposes of this Agreement.
- 18.2 The SLA Committee shall have the competences assigned to it by this Agreement and shall adopt its decisions unanimously, by affirmative votes of all its members. In case of lack of unanimity the Customers shall make all efforts to rapidly resolve the situation.
- 18.3 For avoidance of any doubt, the Parties confirm that the rules of procedure of the SLA Committee, adopted pursuant to Article 21.3 of the PSO SLA shall apply to the procedures of the SLA Committee when acting under this Agreement.
- 18.4 The invoices pursuant to Article 9 to be sent by electronic means shall be sent to each Customer at:
- b) ANS CR: email [REDACTED] simultaneously in copy to [REDACTED]
  - c) ACG: email [REDACTED]
  - d) CCL: email [REDACTED]
  - e) HCL: email [REDACTED]
  - f) SCL: email [REDACTED]
  - g) LPS: email [REDACTED]
- unless a Customer instructs the Provider otherwise by written notice.
- 18.5 Should SLA Committee, established with PSO SLA and referred in 18.1. of this Agreement cease to exist, whereas this Agreement would remain in force also after such termination, the Customers shall establish SLA Committee for the purpose of implementation of this Agreement without undue delay.

**Article 19**  
**REPORTING**

- 19.1 The Provider shall submit to the SLA Committee a monthly Specification of activities carried out in the course of the previous calendar month within the time limit pursuant Article 10.2. The Specification of activities shall include:
- a) Description of the activities, and demonstration of compliance of Services with this Agreement;
  - b) Information on the progress achieved during previous calendar month;
  - c) Time sheet describing working hours used for providing Services;
  - d) Summary of costs reimbursable incurred during the previous calendar month;
  - e) Information on measures taken or intended to be taken by the Provider to prevent or remedy delays in the FAB CE Program against the schedules pursuant to Annex 1.

Copies of invoiced, demonstrating that the costs reimbursable were incurred during the previous calendar month and any other evidence that services as a proof of expenses shall be attached to respective Specification of activities.

**Article 20**  
**TERM AND TERMINATION**

- 20.1 This Agreement shall become effective on 1 May 2018, begin of day. Prior this date Parties shall perform all necessary activities and procedures, applicable for each individual party in order to assure effectiveness of this Agreement on set date.

- 20.2 This Agreement is concluded for definite period of three years from the Effective Date or until the TCA is reached, whichever occurs sooner. The Term may be extended by mutual agreement of all Parties in accordance with the amendment procedure as per Article 21.1., however TCA shall not be exceeded.
- 20.3 This Agreement may be terminated by mutual agreement of all the Parties. In such case the Provider shall be entitled to the outstanding part of the Contract Price due for the Services provided until the termination becomes effective. To the maximum extent permitted by Governing law, neither Party shall make any other claim against any other Party for any loss, damage or compensation except for those under first sentence.
- 20.4 Should the PSO SLA be terminated the Customers shall provide for creation of the SLA Committee for the purpose of implementation of this Agreement without undue delay.
- 20.5 The Customers may terminate this Agreement for their convenience at any time upon providing a sixty (60) days joint notice of all the Customers to the Provider. In such case, the Provider shall be entitled to:
- a) a termination fee in an amount of 3% of the yet un-invoiced part of the TCA as at the date when the termination becomes effective;
  - b) outstanding part of the Contract Price due for the Services provided in accordance with this Agreement until the termination becomes effective;

To the maximum extent permitted by Governing law, the amounts under points a) and b) above are the sole and exclusive remedies of the Provider for the termination of this Agreement under this provision and the Provider shall not be entitled to, and hereby waives, claims for lost profits and all other damages and expenses.


## **Article 21 AMENDMENTS**

- 21.1 This Agreement contains the entire understanding between the Parties with respect to its subject matter and supersedes all prior agreements and understandings between the Parties with respect to that subject matter. Save as otherwise provided in Article 21.4, Article 7.5 and in the Article 8.1 (regarding Annex 5) the terms and conditions of this Agreement may not be amended, changed, modified, supplemented or waived unless agreed upon in writing between and by all the Parties and undersigned by authorized representatives of the Parties.
- 21.2 The Parties shall negotiate in good faith on an amendment which would:
- a) allow Agencija za pružanje usluga u vazdušnoj plovidbi 'Bosne i Hercegovine, a governmental institution established under Bosnia and Herzegovina Law (hereinafter referred to as "BHANSA"), to become a party to this Agreement;
  - b) address provision of the Services and rights and obligations of the Parties under this Agreement in case that the Provider would be about to provide Services to all Customers and to Bosnia and Herzegovina Air Navigation Services Agency (BHANSA) and, in addition, also to other providers of air navigation services.
- 21.3. In any case services from Art. 21.2 shall not and cannot jeopardize status of the Provider as the "in-house" entity towards Customers. In this relation:
- i. threshold regarding the value of the services, to be provided by the Provider to other than Shareholders shall be less than 20 %;
  - ii. such services can not interfere with exclusive control of the Customers of the Provider over the Provider;
  - iii. provision of such services cannot be considered as economic activity, performed on an open market;
  - iv. regardless of such services the Provider can still be classified as non-market entity.


IN WITNESS WHEREOF, each Party has caused this Agreement to be executed on its behalf, by its authorized representative, on the 24. 4. 2018.

**For and on behalf of**


Air Navigation Services of the Czech Republic,  
the State Enterprise

  
Mr. Jan Klas  
Director General

Austro Control Österreichische Gesellschaft  
für Zivilluftfahrt mit beschränkter Haftung

  
Mr. Ludwig Heinz Sommerbauer  
Chief Executive Officer


Hrvatska kontrola zračne plovidbe d.o.o.

  
Mr. Vlado Bagarić  
Director General

HungaroControl  
Hungarian Air Navigation Services Pte.Ltd.Co.

  
.....  
Mr. Kornél Szepessy  
Executive Officer

Kontrola zračnega prometa Slovenije, d.o.o.

  
Mr. Franc Željko Županič  
Chief Executive Officer

Letové prevádzkové služby Slovenskej republiky,  
štátny podnik

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SLOVAK REPUBLIC  
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Mr. [Redacted] ec  
Chief Executive Officer

FABCE, Aviation Services, Ltd.

