

**AGREEMENT**

**BETWEEN**

**Azienda Regionale per l'Innovazione e gli Acquisti S.p.A. (Regional Company for  
Innovation and Purchasing)  
("ARIA SPA")**

**AND**

**[●]  
(THE "*FINANCIAL OPERATOR*")**

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## AGREEMENT

**GS24076\_A09720 - Awarding of the technical and economic feasibility design for the construction of the Great Malpensa Hospital.**

## BETWEEN

**AZIENDA REGIONALE PER L'INNOVAZIONE E GLI ACQUISTI S.P.A.**, with registered office in Milan, Via T. Taramelli no. 26, Tax ID/VAT number 05017630152, Economic and Administrative Index (R.E.A.) no. 1096149, in the person of [] and domiciled for the position with the Company he represents, with power of attorney of the [•] of the Company of [•] (Resolution no. [•]) (hereinafter “**ARIA SPA**”);

## AND

[], with registered office in [•] (Tax ID and VAT no.) [•] share capital [•], registered in the Companies Register of [•], Tax ID [•], VAT no. [•], in the person of [], and for the office domiciled as above, acting in his capacity as [•] of the aforementioned company, by virtue of the powers derived from [•] of the [•] and (*if the successful bidder is a temporary group*) acting as agent of the temporary group of financial operators formed with companies [], as per the act of special collective mandate with irrevocable representation of the [], rec. [] of the Notary [•] of [] (hereinafter the “**Financial Operator/Successful Bidder**”);

**ARIA SPA** and **Financial Operator/Successful Bidder** (hereinafter also referred to jointly as “**Parties**” and separately as “**Party**”).

## GIVEN THAT:

- A)** with Document no. [•] of [•], **ARIA SPA** has made the necessary decisions regarding the experiment of the “*Single phase design competition with restricted procedure for the construction of the Great Malpensa Hospital*”;

- B)** the competition was organised in a single phase with pre-selection of contestants admitted to submit the projects;
- C)** the winner of the Competition, **within 180 (one hundred and eighty) days** from the specific RUP Service Order, had to perfect the development of the competition drawings, reaching the level of the technical and economic feasibility project;
- E)** the Competition Notice, through the platform interoperability system, was sent to the Official Journal of the European Union on the date **and** published in the Official Gazette of the Italian Republic 5th special series no. [•] of [•];
- F)** the Notice of Competition was published on **ARIA SPA** 's website and on the telematic platform "*Concorsiarchibo.eu*" accessible at the link **<https://www.concorsiarchibo.eu/grande-ospedale-malpensa>** on [•], together with the Agreement, the technical documentation and related annexes, the forms for the application to participate and for the declarations in lieu and the Integrity Pact on regional public procurement;
- G)** by the deadline set in the competition notice of [•], time [•], for the submission of applications, **ARIA SPA** received no. [•] **applications** via the telematic competition platform "*Concorsiarchibo.eu*";
- H)** at the end of the competition procedure, the competitor [•] was identified as the highest bidder to whom the proposal of award was made, pursuant to art. 17, paragraph 5 of Legislative Decree 36/2023;
- I)** the competitor, after the positive outcome of the checks provided for by the *lex specialis* of the competition, with Document no. [•] of [•], was announced the winner of the competition;
- J)** the winner has communicated, through the appropriate Form transmitted by **ARIA SPA**, all the data required by Law no. 136/2010 and subsequent amendments;
- K)** the **Competition Identification Code (CIG)**, referred to in art. 83, paragraph 1 of Legislative Decree no. 36/2023 attributed to the assignment subject to this Agreement

also for traceability purposes pursuant to art. 3, paragraph 5, of Law no. 136/2010, is  
[•];

**L)** the **Single Project Code (CUP)**, referred to in art. 3, paragraph 5, of Law no. 136/2010, attributed to the assignment subject to this Agreement is: []

**M)** were received, in accordance with art. 91 of Legislative Decree no. 159/2011 the anti-mafia information acquired from the Single National Data Bank [(or) the 30-day period referred to in art. 92, paragraph 2 of Legislative Decree 159/2011 (or) the conditions of urgency referred to in art. 92, paragraph 2 of Legislative Decree 159/2011];

**N)** it is, therefore, the intention of the **Parties** to proceed with the signing of this Agreement;

All this being said and considered an integral and substantial part of this Agreement with negotiating value, the **Parties**, as constituted above, agree and stipulate the following.

## **1. PREMISES AND CONTRACTUAL DOCUMENTS**

**1.1.** This **Agreement** governs the set of obligations deriving from the contractual relationship as constituted as a result of the competition procedure carried out for the choice of the contractor.

**1.2.** The premises and the **Contractual Documents** form an integral and substantial part of this **Agreement** and, therefore, together with the latter, contribute to defining the overall intention of the **Parties** regarding any activity related to the execution of the **Agreement**.

**1.3.** The documents referred to in the following article 4, even if not attached, are considered an integral and substantial part of this **Agreement**.

## **2. DEFINITIONS**

**2.1.** Unless otherwise explicitly specified, the terms indicated with a capital letter will have, in the **Agreement**, both in the singular and in the plural, the meaning given to them below:

- **Contractor and Subcontractor** indicate the financial operators who, respectively, entrust, or to whom a **Subcontract** is entrusted, at any subcontracting level;
- **Successful Bidder or Financial Operator** indicates the subject and/or legal entity [] who signs this **Agreement**;

- **ACDat**, Data Sharing Environment, an environment for the organised collection and sharing of data relating to digital models and documents, referring to a single work or to a single set of works meeting the requirements of standard UNI 11337;
- **Contract** indicates the contract for services indicated in the **Agreement** and in the Contractual Documents;
- **Area** indicates the place where the technical services covered by this Agreement are performed;
- **ARIA SPA or Contracting Authority** indicates the **Regional Agency for Innovation and Purchasing S.p.A.**, with headquarters in Milan, Via T. Taramelli no. 26, Tax ID/VAT no. 05017630152, Economic and Administrative Index (R.E.A.) no. 1096149;
- **Authorisations** indicate the authorisations, opinions, permits, licenses, clearance, approvals, however named, and anything else that is necessary or appropriate for the execution of the **Agreement**, whatever the issuing Authority, Entity or Body;
- **Information Specifications** indicates the document referred to in the competition documentation as defined by standard UNI 11337 for carrying out design services or for the execution of works or for the management of works, which must, among others, contain:
  - general and specific strategic information requirements, including the levels of definition of informative content, taking into account the nature of the work, the process phase and the type of contract;
  - all useful elements to identify the requirements for production, management, transmission and filing of information, in close connection with decision-making and management objectives
- **Code** indicates Legislative Decree 31.03.2023, no. 36, which implements article 1 of Law 21 June 2022, no. 78, with delegation to the Government in the matter of public contracts;
- **Agreement** indicates this Agreement and its contractual documents;

- **Safety coordinator in the execution phase** indicates a person who has the requirements and qualifications to ensure compliance with health and safety regulations during the execution of the construction site;
- **Consideration** indicates the amount due to the winner of the Competition, calculated and paid in the manner set out in art. 22 of the Competition Notice;
- **Works Supervisor** indicates the person who works in full autonomy and in compliance with the service provisions given by the Sole Project Manager (RUP) for the execution of functions and activities referred to in art. 114 of the Code and Annex II.14 to the Code.
- **Director of Agreement Execution** (hereinafter also **DEC**) indicates the person in charge of directly carrying out the tasks of coordination, management, supervision and technical, accounting and administrative control during execution of the Works, pursuant to and for the purposes of the provisions of art. 114 of the Code;
- **Chief Operating Officer** indicates the person who collaborates with the Works Supervisor in verifying that processing of individual parts of the work to be carried out is performed regularly and in compliance with the contractual clauses. This person reports directly to the Works Supervisor;
- **Contractual Documents** means the documents referred to in the article 4 of this **Agreement**, constituting an integral and substantial part of the same;
- (where applicable) *Design Address Document (hereinafter also D.I.P.)*, indicates the document drawn up by the RUP in compliance with the provisions of art. 41 and Annex I.7 of the Code pursuant to art. 5.1.4 of ANAC Guidelines no. 3;
- **Institution** indicates the Lombardy Region/Healthcare Authority/other on whose behalf the **Intervention** is carried out;
- **Subcontract supply chain** indicates the succession of **Subcontracts** starting from the one assigned by the **Financial Operator**;
- **Force Majeure** means any event, action, fact or circumstance that is absolutely unforeseen or unpredictable, not directly attributable to the party invoking it, that could not be prevented using due diligence and such as to make it impossible, in whole or in part,

in an objective and absolute way, to fulfil obligations temporarily or permanently, including circumstances that constitute causes of impossibility that occurred, whether temporary or definitive. By way of non-exhaustive example, provided that they meet the above requirements, causes of force majeure and/or chance events include the following: (1) strikes, with the exception of those involving **ARIA SPA, the Financial Operator**, or subcontractors for the execution of works covered by the **Agreement**; (2) wars or acts of hostility, including terrorist attacks, sabotage, vandalism and riots, insurrections and other civil unrest; (3) explosions, radiation and chemical contamination; (4) adverse natural phenomena, including lightning, earthquakes, drought, accumulation of snow or ice; (5) epidemics, pandemics and infections; (6) prolonged unavailability of electricity, gas or water supplies for reasons not attributable to **ARIA SPA, the Financial Operator** or subcontractors for the execution of works covered by the **Agreement**; (7) actions or omissions of the authorities, which are not determined by the wilful, culpable, negligent or omissive conduct of the party that suffers the consequence;

- **Working Group** indicates the working group consisting of the **Financial Operator**, as prescribed by the competition documents;
- **Methods and tools for digital information management of buildings**, according to the definition set out in art. 3 of Annex I.1, paragraph 1 letter q), of Legislative Decree no. 36/2023 also identified with the acronym BIM, Building Information Modelling;
- **Information model** indicates the set of containers of structured, semi-structured and non-structured information in accordance with and for the purposes of provisions laid down by standard UNI-EN-ISO 19650 and the standards of the UNI 11337 series;
- **Tender** indicates the entire set of actions and documents submitted by the **Financial Operator** during the competition phase, in accordance with the provisions of the competition documentation;
- **Tender for Information Management (OGI)** indicates the Document drawn up by the Financial Operator pursuant to Annex I.9, Art. 1, paragraph 10, letter b) Legislative Decree no. 36/2023 which, in response to the information requirements of the Information



Specifications (CI), temporarily and systemically structures the information flows in the contractor's or dealer's supply chain, illustrates their interactions with the latter's information and decision-making processes within the data sharing environment, describes the organisational and instrumental configuration of the operators, and specifies the responsibilities of the actors involved;

- **Integrity Pact in the matter of public contracts** indicates the “*Integrity Pact regarding public contracts of the Lombardy Region and the entities of the regional system*” approved by Regional Council Decree no. XI/1751 of 17 June 2019 (published in BURL Ordinary Series no. 26 of 26 June 2019), referred to in the Competition Documentation;
- **Information Management Plan (PGI)**, indicates the Document drawn up by the winner based on the Tender for Information Management (OGI) pursuant to Annex I.9, art. 1, paragraph 10, letter c) Legislative Decree no. 36/2023, to be submitted to the Contracting Authority after the Agreement is signed and before its execution. It may be updated during the execution of the Agreement;
- **First Level and levels of Subcontracts** indicates the first level of **Subcontracts** assigned by the **Financial Operator/Successful Bidder** to other Financial Operators who can, in turn, assign **Subcontracts** to other Financial Operators, determining the second level, and so on for subsequent levels;
- **Designers** indicates professionals in charge of drafting the Project;
- **Technical and Economic Feasibility Project** (hereinafter also: **PFTE**) indicates the project referred to in art. 41 and Annex I.7 of the Code;
- **Executive Project** (hereinafter also: **PE**) indicates the project referred to in art. 41 and Annex I.7 of the Code;
- **Project** indicates the overall drawings of works to be carried out, in compliance with the needs, criteria, constraints. It contains all the information referring to the characteristics of materials chosen and the inclusion of works in the territory, the characteristics of the works, and of the surfaces, and volumes to be created. The project defines, to the last detail, the work to be carried out and the relative cost;

- **Contact person of the Financial Operator/Successful Bidder indicates** the person designated by the **Financial Operator** with the task of representing him for all intents and purposes, in conversation with the Sole Project Manager or with a person designated by him;
- **Process Manager for the phase**, subject inserted in the organisational model identified by the Contracting Authority and responsible for specific phases. He is, however, under the supervision, direction and coordination of the RUP.
- **Sole Project Manager** (hereinafter also: **RUP**), indicates the subject, appointed by **ARIA SPA**, for the programming, design, assignment and execution phases of the procedure, pursuant to and for the purposes of art. 15 and Annex I.2 to the Code;
- **Sub-assignment** indicates a subcontract, at any level of the subcontracting chain, concerning the activities referred to in art. 1, paragraph 53 of Law 6 November 2011 no. 190;
- **Subcontracting** indicates a contract falling within the definition set out in art. 119, paragraph 2;
- **Subcontract** indicates the contract the **Financial Operator** or a **Contractor**, at any level of the subcontract chain, concludes with another financial operator (**Subcontractor**) for the execution of the Agreement, in compliance with the third last period of art. 119 paragraph 2 of Legislative Decree no. 50/2016;
- **Transparency & Traceability** indicates the clauses with which the **Contracting Authority** and the **Financial Operator/Successful Bidder** undertake to ensure traceability and transparency within the contractual relationship, even with respect to the supply chain of subcontracts.

### 3. SUBJECT

**3.1. ARIA SPA** entrusts the **Financial Operator**, who accepts for the agreed price, as better detailed in the following paragraph **5.1. (CONSIDERATION)** without any reservation, the execution, in perfect working order and according to the best technique, of design services, using methods and tools for digital information management of buildings, including any

surveys, inspections and supplementary geognostic and environmental surveys, as specified in Annex I.7 to the Code, pursuant to art. 41, of the "*Construction of the Great Malpensa Hospital*".

In particular, the subject of the Agreement includes the following activities:

- drafting the Technical and Economic Feasibility Design (PFTE);
- digital information management activities to be carried out as indicated in the Information Management Plan referred to in the following article 12.5 ("PGI");
- Pursuant to Annex 1.7, art. 6 paragraph 3, surveys and exploratory studies (morphology, geology, geotechnics, hydrology, hydraulics, seismic, ecosystem units, historical evolution, land use, urban destinations, landscape, architectural, historical and cultural values, preventive archaeology, regulatory constraints, etc.) carried out also by means of digital survey technologies aimed at defining information models of the existing situation and as necessary for the development of the PFTE.

**3.2.** In any case, the **Project** must comply with the legislative and regulatory, national and regional legislation in force on the subject, even if it came into force during the contractual relationship.

**3.3.** The **Financial Operator** is required to execute and complete the **Project** on his own, with his own means and organisation. He may resort to subcontracting in accordance with the provisions of current legislation on the subject, this Agreement and the competition regulations.

**3.4.** The **Project** must be executed by the **Financial Operator** in compliance with and in full compliance with the provisions contained in this **Agreement**, in the **Contractual Documents**, including those relating to BIM digital information management, the applicable regulations, and the provisions issued in application of the Agreement itself.

#### **4. CONTRACTUAL DOCUMENTS — INTERPRETATION**

**4.1.** They constitute an integral and substantial part of the **Agreement** and, therefore, together with the latter, contribute to defining the overall intention of the **Parties** in relation to any activity related to the performance of the services, precisely the following documents,

even if not materially attached to this **Agreement**:

**a) Regulatory Documents**

- (i) *“Integrity Pact in the matter of public contracts of the Lombardy Region and the entities of the regional system”* approved by Regional Council Decree no. XI/1751 of 17 June 2019 (published in BURL Ordinary Series no. 26, of 26 June 2019);

**b) Competition documents**

- (i) Competition Notice;
- (ii) Technical documentation:
- Planning Guidance Document and its annexes;
  - Information Specifications;
  - Project Control Document - BIM;
- (iii) Clarifications provided by the Contracting Authority during the tender phase in relation to the questions received, as published (anonymously together with the related requests) on the website [www.ariaspa.it](http://www.ariaspa.it)
- (iv) “Fee calculation in accordance with Ministerial Decree 17 June 2016”.

**c) Bidding Documents**

- (i) Winning project document of the **Financial Operator**;
- (ii) OGI - Tender for Information Management;

**d) Prodromal documents for the conclusion of the Agreement**

- (i) Model for communications in compliance with art. 3, Law 136/2010;
- (ii) Final guarantee and professional insurance policy provided by the **Financial Operator/Successful Bidder**;
- (iii) Articles of association of the temporary group of competitors (*where the successful bidder is a temporary group*).
- (iv) Elevation plan and exploratory surveys of the area referred to in paragraph 3.1.3 of the BIM Information Specifications;
- (v) Video clip in mp4 format.

**4.2.** In the event of a conflict and/or incompatibility between the provisions contained in this

**Agreement** and those contained in the **Contractual Documents**, or between the provisions contained in the same document or in more than one of the **Contractual Documents**, the procedure referred to in the following art. 19.1 shall be implemented for interpretative purposes.

**4.3.** In case of discrepancy, the parts of the Information Specifications that govern digital issues, information processes, hardware and software instrumentation and BIM information modelling shall prevail, for these aspects, over other competition documents.

**4.4.** All terms expressed in the number of days in the **Agreement** and in the **Contractual Documents** shall be understood as consecutive calendar days and, therefore, inclusive of any holidays.

## **5. CONSIDERATION**

**5.1.** The **Consideration** is agreed, in an all-inclusive, fixed and invariable manner, net of charges and VAT, as specified below:

- **Euro 8,992,323.41** for *the drafting of the Technical and Economic Feasibility Design (PFTE)*, with the exception of the amount already paid as a Prize at the end of the Competition.

The aforementioned amount has been calculated pursuant to the Decree of the Minister of Justice of 17 June 2016, in the manner set out in Annex I.13 to the Code. A 20% discount has been applied to this amount, as calculated above.

The security costs are equal to **Euro 0**, pursuant to art. 26, paragraph 3-bis, first sentence, of Legislative Decree no. 81/2008 and subsequent amendments,

- **Euro 500,000.00** as the maximum amount to be quantified per measure for surveys and exploratory studies.

**5.2.** The Parties acknowledge that the winner of the competition shall, within a maximum period of 30 days from the conclusion of this Agreement, provide a survey plan accompanied by economic quantification that will be subject to evaluation and approval by the RUP.

**5.3.** The Parties acknowledge that the amount of **euro 500,000.00** for surveys and exploratory studies is to be understood as the maximum threshold for such activities; the activities actually carried out, if previously authorised by the RUP, shall be accounted for on a measured basis,

on the basis of the prices stated in the reference price lists in force (Lombardy Region).

**5.4.** The **Consideration** is understood to include and remunerate everything necessary, even in an ancillary and complementary way, without exception, for the correct execution of the services, including those related to BIM digital information management, in compliance with applicable regulations and the provisions of the **Agreement** and all **Contractual Documents**. The Contracting Authority, with the payment of the consideration related to the design phase, takes ownership of the project, without prejudice to the intellectual property rights and copyright, which shall remain with the Financial Operator in accordance with the provisions of the law regarding copyright and intellectual property rights.

#### **PRICE REVIEW CLAUSE**

**5.5.** If during the execution of the Agreement, upon the occurrence of particular objective conditions, there is a change, increasing or decreasing, in the cost of the service greater than five percent of the total amount, the prices are updated, to the extent of eighty percent of the change, in relation to the services to be performed. For the purpose of calculating the change in prices, the price indices for the production of services (class 71 Activities of architectural and engineering firms, tests and technical analysis) referred to in article 60, paragraph 3, letter b) of the Code shall be used.

**5.6.** In the event of a price review provided for in the previous paragraph, the RUP will proceed with the relevant investigation and will formulate the proposal for a new agreement.

**5.7.** For the purpose of calculating the change in costs and prices, the price indices for the production of services (class 71 Activities of architectural and engineering firms, tests and technical analysis) referred to in article 60, paragraph 3, letter b) of the Code shall be used.

#### **OPTIONS:**

**5.8.** Pursuant to art. 120, paragraph 9 of Legislative Decree no. 36/2023, if during execution an increase or decrease in performance is necessary up to a fifth of the agreed amount, the Financial Operator is required to execute them under the same conditions originally envisaged and will not be able to assert the right to terminate the Agreement.

**5.9.** Pursuant to art. 120, paragraph 10 of Legislative Decree no. 36/2023, if it becomes

necessary to extend the duration of the services, the Financial Operator is required to perform the same at the prices, terms and conditions established in the Agreement or at market conditions when they are more favourable for the Contracting Authority.

## **6. CONDITIONS, TERMS OF PAYMENT AND INVOICING**

**6.1.** The consideration for the execution of activities referred to in the previous article **5.1** (CONSIDERATION), will be paid according to the methods and terms set out below:

- **EUR 1,492,323.41** upon delivery of the Information Management Project and the Plan of Investigations referred to in 12.5.1 and 4;
- **euro 2,500,000.00** following the LHA's approval of the functional layouts and spatial distribution diagrams;
- **EUR 2,500,000.00** upon delivery of completion of the PFTE;
- **EUR 2,500,000.00** upon approval by the Contracting Authority of the PFTE.

**6.2.** The **RUP** will issue the related payment certificates within the terms set out in art. 125, paragraph 5 of Legislative Decree no. 36/2023.

**6.3.** Payment will be made within 30 days from the date of adoption of the SAL, pursuant to art. 125, paragraph 6 of Legislative Decree no. 36/2023.

**6.4.** The issuance of these certificates is subject to verification of the Single Online Document of Regular Contribution of the **Financial Operator** and of any subcontractors.

**6.5.** Pursuant to art. 125, paragraph 5 of the Code, the **Financial Operator** shall issue an invoice when the payment certificate is adopted. In the event of an unjustified delay in adopting the CDP, the executor can still issue an invoice.

**6.6.** A withholding of 0.50 percent has been applied to the progressive net amount of benefits; withholding taxes will be released only during final liquidation, after approval by the contracting authority of the certificate of verification of compliance, after acquiring the single document of regular contribution.

**6.7.** Apart from the cases referred to in art. 119, paragraph 11 of the Code, the issuance of the payment certificate is also subject to the acquisition of invoices received from any

subcontractors. In this regard, the **Financial Operator** is obliged to send, within **20** days from the date of each payment made to him, a copy of the invoices received relating to the payments paid to the subcontractors, with an indication of the withholding applied. Failure to transmit the invoices received within the prescribed period will entitle **ARIA SPA** to consider the **Financial Operator** in default to the subcontractor and, consequently, to make direct payment in favour of the latter.

**6.8.** In the cases referred to in art. 119, paragraph 11 of the Code, if **ARIA SPA** directly pays the subcontractors, replacing the **Financial Operator**, the latter, together with his invoice, must also transmit the invoices of the subcontractors accompanied by a justified payment proposal referring to the amounts indicated on the invoice by the subcontractors themselves, with releasing effect for **ARIA SPA**.

**6.9.** Pursuant to art. 119, paragraph 11 of the Code, with reference to the holders of subcontracts that do not constitute a subcontract, pursuant to the fifth sentence of paragraph 2, the contracting authority shall pay the amount due for the services performed by them.

**6.10.** Pursuant to art. 11, paragraph 6 of the Code, in the event of a contribution default resulting from the Single Document of Regular Contribution relating to employees of the **Financial Operator** or of any subcontractor or of the entities holding subcontracts, the Contracting Authority will withhold from the payment certificate the amount corresponding to the default for the subsequent direct payment to social security and insurance institutions.

As a result of the same rule, in the event of a delay in the payment of salaries due to employees of the **Financial Operator** or of the subcontractor or of the owners of subcontracts and piecework, employed in the execution of the Agreement, the Sole Project Manager will invite in writing the defaulting person and, in any case, the **Financial Operator**, to do so within the next fifteen days. If the merits of the request have not been formally and reasonably contested within the above deadline, the contracting authority will also pay the back wages directly to the workers during construction, deducting the relative amount from the sums due to the **Financial Operator** responsible for the Agreement or from the sums due to the defaulting subcontractor, if direct payment is required.



**6.11.** Upon the successful outcome of the compliance check pursuant to art. 125, paragraph 7 of the Code and, in any case, within a period not exceeding seven days from the issuance of the relevant certificate, the RUP shall issue the payment certificate of the balance instalment; payment is made within **sixty** days from the successful outcome of the compliance check.

**6.12.** Payments are also subject to the declaration of non-default issued by the Revenue Collection Agency pursuant to art. 48 bis, Presidential Decree 29 September 1973, no. 602, and are, in any case, subject to the conditions dictated by the relevant legislation.

**6.13.** Pursuant to art. 25 of Decree-Law 24 April 2014 no. 66 “Urgent measures for competitiveness and social justice”, **ARIA SPA** has introduced electronic invoicing into its accounting management. The rules and mechanisms for the issuance, transmission and storage of electronic invoices are outlined in MEF Decree no. 55 of 3 April 2013 and subsequent amendments. The Unique Office Code of **ARIA SPA** is **UFK6Y8**.

**6.14.** The **Financial Operator** undertakes to ensure the traceability of financial flows, pursuant to and for the purposes of Law 13 August 2010, no. 136 and subsequent amendments, which are understood to be fully mentioned here and, with the signing of the **Agreement**, he explicitly accepts all the obligations set out in the above Law 136/2010.

**6.15.** For the purpose of tracing financial flows, pursuant to Law no. 136/2010 and subsequent amendments, the **Financial Operator** shall deliver to **ARIA SPA** the document referred to in paragraph **4.1. letter d)** (Contractual documents - interpretation) INDICATING THE DETAILS OF THE DEDICATED CURRENT account as well as the identification data of the persons delegated to operate the account.

The violation of obligations set out in Law 13 August 2010, no. 136, will result in the legal termination of the Agreement pursuant to art. 1456 of the Italian Civil Code, without prejudice to the right to compensation for major damages.

**6.16.** The **Financial Operator** undertakes to include in all agreements signed with his subcontractors, under penalty of absolute nullity, a special clause with which the parties accept all the obligations of traceability of financial flows, without exception, referred to in Law

13 August 2010, no. 136 and subsequent amendments;

**6.17.** In all cases where the transactions were carried out without using the bank or postal transfer method or other suitable methods to allow full traceability of transactions in violation of the obligations set out in this article and in Law 13 August 2010, no. 136 and subsequent amendments, the consequences set out in the following article **18** (TERMINATION OF THE AGREEMENT) OF this **Agreement** will be defined.

**6.18. The Financial Operator** shall undertake, in any case, to release and hold ARIA SPA harmless, for the entire duration of the Agreement and even after its expiry, from any request for payment and/or compensation for damages, of any nature and by anyone made, and/or from any sanction that may arise directly or indirectly from failure to fulfil the obligations established by law and/or the Agreement on the part of the **Financial Operator**.

**6.19.** The **Financial Operator** also undertakes to relieve and hold **ARIA SPA** harmless from any and all detrimental consequences that may derive from the alleged application (a) of art. 1676 (b) of the Italian Civil Code, Legislative Decree no. 81/2008, as well as any possible claim and/or action by the **Financial Operator's** staff concerning employment or factual relationships allegedly maintained with **ARIA SPA**.

**6.20.** *In the case of temporary groupings* of competitors, in accordance with the provisions of the articles of association, each entity constituting the group is required to invoice the transactions related to the execution of the service under its competence. The representative shall take care of and verify in advance the correctness of the invoices issued electronically by the principals and sent to **ARIA SPA**.

*In accordance with the provisions of the articles of association*, pursuant to art. 68, paragraph 6 of the Code, payments will be made to the agent or, alternatively, to the individual members of the group at the same time. In the first case, the agent shall undertake to comply with Law 136/2010 and subsequent amendments for payments made to principals, and shall be solely responsible to the principal companies for the periodic liquidation of the consideration due to them.

## **7. OBLIGATIONS OF THE FINANCIAL OPERATOR**

**7.1.** The **Financial Operator** shall accept the obligation to provide, at his own expense, for the performance of activities and all other charges provided for in this **Agreement** and in the Contractual Documents, as also provided for in Annex I.7 of Legislative Decree no. 36 of 31 March 2023.

**7.2.** The **Financial Operator** is civilly responsible for all activities deriving from and related to this **Agreement**, and for all damages that may occur when performing the services, both directly and indirectly, to people, including the providers of works, works and things.

**7.3.** The **Financial Operator** confirms that he has adequate organisation and specific skills to carry out the activities covered by the **Agreement**, which he undertakes to carry out with his own staff and means, with the exception of any subcontracted parties.

**7.4.** The **Financial Operator** shall undertake to comply with laws and regulations and with collective and supplementary corporate agreements in the field of employment relationships, even if they intervene after the conclusion of this **Agreement**, in relation to all the people who carry out activities for the same, both under direct employment and on an occasional basis, and accepts all responsibility for damages and injuries that may be suffered by said persons in the execution of every activity, directly or indirectly, concerning services covered by the Agreement, relieving and guaranteeing **ARIA SPA** of any burden, liability or damage the latter may suffer.

**7.5.** By signing this **Agreement**, the **Financial Operator** unconditionally accepts and undertakes to respect and enforce the provisions of the *"Integrity Pact with regard to regional public procurement"* to all possible subcontractors and assignees, as well as to all suppliers and service providers.

**7.6.** The **Financial Operator** undertakes to comply with the laws on public works, employment, environment and safety, as well as the current Italian National Labour Contract (CCNL). The **Financial Operator** also undertakes to comply with consideration and contribution obligations when performing employment relationships deriving from Legal Regulations and Collective Labour Agreements of all levels signed by Trade Unions, as well

as all current regulations on safety at work and accident prevention.

**7.7. The Financial Operator** undertakes, by signing this **Agreement**, to promptly report to the Police Forces or to the Judicial Authority any illegal request for money, service or other utility, or offer of protection that is made upon hiring or during the execution of the **Agreement** against one of his representatives or employees, as well as to report to the Prefecture and **ARIA SPA** the formalisation of such complaint.

**7.8. The Financial Operator** undertakes to use one or more bank or postal current accounts, opened at banks or at the company Poste Italiane S.p.A., dedicated - even if not exclusively - to this Agreement, on which all related financial movements must be recorded, to be carried out exclusively through the method of bank or postal transfer, or with other collection or payment methods suitable to allow full traceability of transactions.

**7.9.** For the purpose of tracing financial flows, payment methods must report, for each transaction related to this Agreement, the Competition Identification Code (CIG) assigned by the Supervisory Authority for public works, services and supplies contracts, and the Single Project Code (CUP).

**7.10.** The **Financial Operator** shall be obliged to carry out the assignment (as per the technical tender submitted) for the entire duration of the Agreement, in the following persons:

- The role of Head of Architectural Design with a coordinating function between the various disciplines shall be assumed by: **[•]**
- The role of Head of structural and anti-seismic design shall be assumed by: **[]**
- The role of Head of landscape design shall be assumed by: **[•]**
- The role of Head of electrical and special systems design shall be assumed by: **[]**
- The role of Head of road design shall be assumed by: **[•]**
- The role of Head of water and mechanical systems design shall be assumed by: **[]**
- The role of Safety Coordinator during the design phase will be assumed by: **[•]**
- The role of Geologist shall be assumed by **[•]**
- The role of BIM Manager shall be assumed by **[•]**

- The role of BIM Coordinator shall be assumed by [•]
- The role of BIM Coordinator for the individual specialist disciplines will be assumed by [•] (for each discipline identified in the tender)
- The role of CDE Manager shall be assumed by [•]
- The young professional will be [...]

as well as by making use of the additional professionals indicated by name and who are part of the working group as indicated in the tender.

The **Financial Operator** shall also be required to maintain, for the entire duration of the Agreement, the operating structure described in his Tender and to employ all the indicated professional figures in the implementation of the BIM digital information management.

**7.11.** Under no circumstances, without the explicit authorisation of **ARIA SPA**, will the **Financial Operator** have the right to change the composition of the Working Group and/or the names of the subjects indicated in the Tender; in the event of unauthorised changes within the Working Group, **ARIA SPA** is entitled to suspend, in whole or in part, payments, until the contractual conditions are met, as well as to terminate the **Agreement** in accordance with the following article **18** (TERMINATION OF THE AGREEMENT).

**7.12.** **ARIA SPA** has the right to request, at any time and for justified reasons, related to and/or attributable to the detected professional unsuitability of the staff responsible for carrying out the services covered by the **Agreement**, including those related to BIM digital information management, the replacement of the same, without the **Financial Operator** being able to make any claims of any kind, for any reason, against **ARIA SPA**; in the event that the replacement is requested, the **Financial Operator** must proceed with the replacement within **10** consecutive calendar days from the receipt of the formal request by **ARIA SPA**.

In any case, the staff proposed for replacement must have professional qualifications that are not lower than the one replaced.

**7.13.** The **Financial Operator** shall be obliged to notify Aria SPA of any event that may have led to the loss of professional fitness of the staff responsible for carrying out the services

covered by the **Agreement** within ten days of their occurrence.

**7.14.** In case of failure to communicate any causes for the loss of professional suitability of the personnel responsible for carrying out the services covered by the **Agreement**, or in case of failure to replace the staff as requested, ARIA SPA will proceed with the application of the penalties referred to in the following art. 11, or upon rightful termination of this Agreement.

## **8. SUB-ASSIGNMENTS AND SUBCONTRACTS**

**8.1.** The **Financial Operator** may use subcontractors for the execution of services in compliance with art. 119 of the Code, Law no. 136/2010.

The subcontract must be authorised by Aria Spa.

**8.2.** The subcontractor must be qualified for the services to be performed; the subcontractor must not be subject to the causes of exclusion referred to in Chapter II, Title IV, Part V of the Code (in this case, with the authorisation of the Administration, the successful bidder may replace the subcontractor);

**8.3.** the benefits or services, which are intended to be subcontracted, must be indicated at the time of the tender.

### **8.4. Obligations and responsibilities of the Financial Operator**

#### **The Financial Operator**

- is responsible to the Contracting Authority for joint execution with the **Subcontractor**;
- is responsible for joint contribution and remuneration obligations with the **Subcontractor**;
- is jointly liable with the **Subcontractor** for compliance with the economic and regulatory treatment established by collective employment contracts;
- is jointly liable with the **Subcontractor** for all obligations deriving from this Agreement;

### **8.5. Subcontractor Obligations**

#### **The Subcontractor:**

- is responsible to the Contracting Authority for joint execution of services with the principal contractor;

- is responsible for joint contribution and remuneration obligations with the principal contractor;
- must guarantee the same quality and performance standards set out in the Agreement, and acknowledge workers an economic and regulatory treatment not lower than that guaranteed by the principal contractor;
- is jointly liable to the principal contractor for security obligations.

**8.6.** The services of any subcontractors are included in the Consideration.

**8.7. Subcontracts** not constituting a subcontract referred to in the penultimate period of art. 119, paragraph 2 of Legislative Decree no. 36/2023 are subject to the obligation to communicate to the Contracting Authority in the terms indicated therein, and to compliance with the traceability of financial flows pursuant to Law no. 136/2010.

**8.8. Subcontracts** are subject to the authorisation of the S.A., issued following verification regarding the registration on the “white list” referred to in art. 1, paragraphs 52 and 52-bis of Law no. 190/2012 and subsequent amendments, and to verification of the acceptance of obligations to comply with the traceability of financial flows pursuant to Law no. 136/2010;

**8.9.** Without prejudice to the provisions of art. 120, paragraph 1, letter d) of the Code, and within the limits set out in the competition documentation, the transfer of the Agreement is void, just as any agreement that provides for the assignment to third parties of the full performance of the contracted services is void.

## **9. GUARANTEES, INSURANCE COVERAGES AND CHARGES**

**9.1.** At the same time as the conclusion of this **Agreement**, the **Financial Operator** provided **ARIA SPA** with the definitive guarantee security referred to in art. 117 of the Code, in compliance with the provisions of the Code, issued by [] — no. [] for an amount of **Euro []**, equal to 10% of the contractual amount and in compliance with the procedures indicated in the competition regulations.

**9.2. The Financial Operator** undertakes to supplement the guarantee or security deposit if, during the execution of the Agreement, it has been partially or completely waived as a result of delays or non-compliance by the Financial Operator . The warranty must be supplemented

within a mandatory period of fifteen days from its expiry.

**9.3.** In case of omitted or partial reinstatement within the terms indicated in the previous paragraph, **ARIA SPA** will send a formal request by certified email. If, even as a result of this request, the **Financial Operator** omits or does not fully integrate the guarantee within five days of receiving the request, the reinstatement will be made based on the accruals of the price to be paid, subject to the termination of the Agreement in accordance with the provisions of art. 1456 of the Italian Civil Code.

**9.4.** The **Parties** also acknowledge that the **Financial Operator** has delivered to **ARIA SPA**, at the same time as the conclusion of this **Agreement**, a policy/cover against professional risks issued by... valid up to... with a maximum of... The policy covers errors or omissions in carrying out the design and/or works supervision, and the security manager's activities, and extends to the coverage of damages caused by collaborators, employees and practitioners. It is accompanied by a statement from the **Financial Operator** who undertakes to guarantee the duration of the insurance coverage until the date of issue of the test certificate or of regular execution.

**9.5.** The **Financial Operator** undertakes to renew this policy throughout the term of the Agreement. If the policy is not renewed, Aria Spa reserves the right to terminate the Agreement in accordance with the provisions of art. 1456 of the Italian Civil Code, and the consequences set out in article 18 (termination of the Agreement) of this Agreement will be determined.

Any deductibles, overdrafts and coverage limitations present in the insurance policy referred to in this article shall remain the sole responsibility of the **Financial Operator**.

**9.6.** (if the **Financial Operator** is constituted in the form of a temporary group) the definitive guarantee must be submitted, on an irrevocable mandate, by the agent in the name and on behalf of all competitors, without prejudice to joint liability between the companies. Each component of the group, on the other hand, must present their own policy to cover professional risks.

- [●] stipulated with the company [●], no. [●], with a ceiling equal to Euro[●];



- [●] stipulated with the company [●], no. [●], with a ceiling equal to **Euro[●]**;
- [●] stipulated with the company [●], no. [●], with a ceiling equal to **Euro[●]**;

**9.7.** In any case, it is understood that the **Financial Operator**, being responsible for damages or prejudices of any kind caused by his activities at **ARIA SPA**, can under no circumstance invoke **ARIA SPA**'s liability for the damages or bias referred to in this article.

**9.8.** The required surety guarantees must comply with the standard outline set out in Article 117, paragraph 12, of the Code. The second and third periods of the same paragraph shall also apply.

## **10. DURATION OF THE AGREEMENT**

**10.1.** The **Agreement** shall be effective from the date of issue of a Specific Service Order by the Sole Project Manager and end with the approval of the PE by the Contracting Authority.

**10.2.** The **Agreement** has a total duration of **180** natural NON-consecutive **days**, spread over the estimated time period of **12 months**, of which

- no. **60** natural and consecutive **days** for the delivery of the functional distribution layouts for approval by the Valle Olona LHA, without prejudice to the deadlines set out in sections 5.2 and 12.5.1;
- **no. 120** natural and consecutive **days**, commencing from the date of approval of the distribution layouts referred to in the previous point, for **completion of the Technical-Economic Feasibility Project**, including the requirements of this **Agreement** and the relevant regulations, as well as the verifications with the competent bodies.

**10.3.** The **Financial Operator** is not entitled to obtain refunds, indemnities, compensation or damages for any reason in relation to the possible division or extension of the terms of execution of the Agreement and the possible delay of the deadline for the start of the above activity, even if this delay causes a delay in the execution of the activity.

**10.4.** Any delays in delivery, attributable to the **Financial Operator**, shall result in the application of the penalties provided for in the following article (PENALTIES) **11.**, without prejudice to **ARIA SPA**'s right to terminate the **Agreement** pursuant to the following article (TERMINATION) **18.**

**10.5.** The **Financial Operator** is required to perform the contractual services at the prices, terms and conditions established in this Agreement, even in the event of a division or extension of the terms of execution of the Agreement and/or of any delay in the deadline for the start of activities, even if this delay causes a delay in the execution of the activities.

**10.6.** Any delays in delivery of activities attributable to the **Financial Operator** shall result in the application of the penalties provided for in the following article (PENALTIES) **11.**, without prejudice to **ARIA SPA's** right to terminate the **Agreement** pursuant to the following article (TERMINATION) **18.**

**10.7.** The unilateral suspension of activities by the **Financial Operator** due to differences with **ARIA SPA** or for any other cause, extended for more than 10 consecutive calendar days will result in the application of the penalties provided for in the following article **Errore.**

**L'origine riferimento non è stata trovata.**, without prejudice to **ARIA SPA's** right to terminate the **Agreement** pursuant to the following article (TERMINATION) **18.**

## **11. PENALTIES**

**11.1.** In the event of a delay in the performance of professional services, **ARIA S.p.A.** will charge the **Financial Operator** the penalties provided for in accordance with art. 126 of the Code.

**11.2.** The penalties due for delayed performance are calculated on a daily basis between 0.3 per thousand and 1 per thousand of the net contract amount related to the design, to be determined in relation to the extent of the consequences related to the delay, and cannot in any case exceed, overall, 10 percent of said net contract amount.

**11.3.** In the event of a delay in delivery by the **Financial Operator** of the PGI - processed pursuant to and for the purposes of the following article 12.5.1 - with respect to the deadline referred to in the same article, a daily penalty equal to 1 per thousand of the net contract amount relating to the design to be applied up to the day of delivery of the PGI shall be applied, unless the delay does not exceed 30 consecutive calendar days. In the event that the delay in delivering the PGI exceeds the above deadline, the provisions of the following article 18

shall apply.

**11.4.** The application of the penalties referred to in this article does not affect compensation for any additional damages suffered by Aria SPA due to delays, without prejudice to the right to terminate the Agreement as per the following art. 18.

**11.5.** The penalty will be notified to the **Financial Operator**, after a written dispute by the **Sole Project Manager** and counted as a deduction on the first payment. **ARIA SPA's** right, with regard to the above breaches, to retaliate against the definitive guarantee by withholding it in whole or in part, shall remain unaffected.

**11.6.** The amount of any penalties accrued will be withheld by **ARIA SPA** upon authorisation, by the **RUP**, at the first payment of the invoice issued after the delay that generated them for the amount corresponding to the penalty.

**11.7.** If the amount of the penalty exceeds a value equal to **10% (ten percent)** of the amount of the **Agreement**, **ARIA SPA** may terminate the **Agreement**, in accordance with the following article **18** (TERMINATION) and refuse services with any related consequences.

**11.8.** The action for compensation for any further damages shall remain unaffected.

## **12. HOW THE SERVICES ARE CARRIED OUT**

### **12.1. Design development**

**12.1.1** The **Parties** shall continuously and mutually discuss the development of the activity covered by this **Agreement**, committing from now on to agree, within **5** days from the date of signing the **Agreement**, a schedule of periodic meetings on a weekly basis.

**12.1.2** Meetings, for which minutes signed by all participants will be drawn up, must be attended by the following:

- for **ARIA SPA**: the Sole Project Manager, or a person delegated by the latter, as well as the **ARIA SPA** technicians whom the **Sole Project Manager** deems to convene from time to time;
- for the **Financial Operator**: the coordinator of the Working Group, the BIM Coordinator, or/and other subject identified for this purpose by the **Financial Operator** as well as their collaborators who, as appropriate, **ARIA SPA** asks him,

from time to time, to participate in individual meetings.

**12.1.3** The **Financial Operator** must also provide **ARIA SPA** with the technical and administrative assistance and all the documentation necessary to obtain the authorisations, permits, approvals and enabling acts, however named by the entities in charge, as well as for the successful outcome of any other administrative procedure planned or assessed as appropriate by **ARIA SPA** for carrying out the intervention. In the case of a service conference, the **Financial Operator** must also assist **ARIA SPA** during all the sessions convened, and engage in preparatory meetings at the Institutions that make it possible to reduce the number of the same sessions.

**12.1.4** The **Economic Operator** must also provide **ARIA SPA** with support in obtaining authorisation titles for the purpose of the subsequent development and construction of the work.

**12.1.5** The consideration for all activities referred to in this article is, in any case, included in the Consideration section, art. 5.

## **12.2. Validation and approval of the Design**

**12.2.1** **ARIA SPA**, through the **Sole Project Manager** and with the assistance of subjects appointed for this purpose, will proceed both with the Design Monitoring activity and with the verification/validation of the documentation that will be prepared in relation to the design phase, pursuant to the Code and with reference to the information contents in accordance with the provisions of the Information Specifications.

**12.2.2** **Project** verification will be carried out according to the criteria set out in art. 42 of the Code and Annex I.7.

**12.2.3** Once the verification activity has been completed, the Project will be submitted for final approval by **ARIA SPA** in accordance with art. 38 of the Code. **ARIA SPA** will complete the approval activities within its competence within **15** days from the conclusion of the verification activities.

**12.2.4** If **ARIA SPA** considers that the Project submitted for the purpose of verification does not meet, or does not respond adequately, to the evaluation criteria set out in the

previous article **12.2.2**, it will invite the **Financial Operator** to formulate his counter-deductions to the observations contained in the Verification Reports, and to make the necessary changes and additions, assigning him for this purpose a deadline of not less than **7** days. Consequently, in the present case, the terms referred to in the previous article **12.2.3** will be considered extended, in accordance with the above deadline.

**12.2.5** In the event of non-compliance with the terms set out in the previous article 12.2.4, the documents and information models subject to the verification procedure will be considered not promptly submitted, and the penalties referred to in Article **11** (PENALTIES) SHALL BE APPLIED. To this end, for the period between the deadline set in the same article **11** (PENALTIES) and the date of submission of the new documents as requested by **ARIA SPA**, the maximum deductible period provided for in this article shall apply.

**12.2.6** If the **Financial Operator** does not make the necessary changes and additions as requested by **ARIA SPA** referred to in article **12.2.4**, this conduct will cause the legal termination of the Agreement pursuant to art. 1456 of the Italian Civil Code, and will produce the effects set out in article **18** (TERMINATION) of this **Agreement**.

**12.2.7** Any project activity referred to in the previous points will under no circumstance give rise to higher consideration, if attributable to the **Financial Operator**.

### **12.3. Variants in progress**

**12.3.1** The introduction of variants while work is in progress is allowed only in the cases provided for by the Code.

### **12.4 Documents**

**12.4.1** For each draft and any other document drawn up for each phase, the **Financial Operator** shall deliver, upon request of **ARIA SPA** up to no. **2** (two) hard copies and no. **1** (one) copy recorded on digital media - both in editable and reproducible format and in .pdf format -, signed and stamped according to the provisions issued by **ARIA SPA**.

**12.4.2** The consideration for all activities referred to in this article is, in any case, included in the Consideration section, art. 5.

**12.4.3** Any additional copies will be prepared by the **Financial Operator** at the request of **ARIA SPA**, subject to reimbursement at the bottom of the list of only out-of-pocket expenses charged to **ARIA SPA**.

### **12.5 Information Management Plan (PGI)**

**12.5.1** Within 10 days of signing the Agreement, the **Financial Operator** will deliver the Information Management Plan to the Contracting Authority, in a non-editable (.pdf) and editable (.doc) format.

**12.5.2** The Information Management Plan must be drawn up in accordance with the provisions of the Information Specifications and incorporate the contents of the Tender for Information Management accepted by the Contracting Authority. The **Financial Operator** shall ask the Contracting Authority, by means of a specific written communication, for indications the Information Specifications reserve for the latter's competence, indications required for the **Financial Operator** to complete the PGI. The **Financial Operator** must request these indications in good time for delivery of the PGI within the deadline referred to in the previous paragraph. In order to correctly meet the needs related to the correct execution of the Agreement, it is the right of the Contracting Authority to convene special meetings with the **Financial Operator** to examine the issues in question and to provide the indications within his competence during such meetings.

**12.5.3** The Contracting Authority shall verify and may prescribe any additions and/or changes to the submitted PGI he deems necessary. The **Financial Operator** is required to make the changes and additions requested within 5 days of receiving the request, or within the longer deadline set by the Contracting Authority. From the new delivery made by the **Financial Operator**, the verification-approval deadline of the PGI shall be effective for the remaining part. In any case, from said delivery date,

at least 10 days are given to the Contracting Authority for approval by the PGI.

**12.5.4** The Contracting Authority may follow the draft of the PGI to verify its correct processing, convening special meetings with the **Financial Operator**. If the Contracting Authority finds deficiencies or non-compliance, it will notify the Contractor, giving, if necessary, the appropriate prescriptions, which the **Financial Operator** must comply with.

**12.5.5** The PGI may be updated during the execution of the Agreement, at the request of the Contracting Authority and/or on the proposal of the **Financial Operator**, if shared by the Contracting Authority. In this case, the provisions of the previous paragraphs shall apply for delivery and approval of the PGI update.

The Contractor must perform the services for the digital management of the construction through the use of methods and tools for digital information management of buildings, in compliance with and in scrupulous implementation of the provisions of the Information Specifications and of the PGI approved by the Contracting Authority. In case of discrepancies between the Information Specifications and the PGI, the provisions of the Information Specifications shall prevail.

### **13. TECHNICAL ADVISORY BOARD**

**13.1.** The Technical Advisory Board will, if necessary, be established pursuant to the legislation in force at the time of the conclusion of this Agreement.

### **14. PROJECT MANAGER AND CONTACT PERSON OF THE FINANCIAL OPERATOR**

**14.1.** The **Parties** acknowledge that:

a) The Sole Project Manager is: **Eng. Rosario Cirrelli**

c/o ARIA SPA - via Taramelli 26 - 20124 Milan

Tel. 02.39331. [] - email: []

b) The **Financial Operator's** contact person is: []

c/o [•]

Tel. [•] – email: [•]

**14.2.** Each **Party** must notify the other, by certified email, of any replacement of the subjects appointed pursuant to this article. In any case, any replacement, even temporary, of the **Financial Operator's Contact Person** must be authorised in advance by **ARIA SPA**. Any change in these data will be ineffective in the absence of a specific communication in this regard issued in the manner provided for in this article.

**14.3.** Any notice, communication or document to be sent to each of the **Parties** to the **Agreement** must be in writing, unless otherwise established, and must be received by certified email to the addresses mentioned in the previous paragraphs 1 and 2

**14.4.** **ARIA SPA** acknowledges that the **Director of Agreement Execution (DEC)**, to whom all functions are conferred in accordance with the Code and Ministerial Decree 49/2018, will be appointed before the start of the services and formally communicated to **the Financial Operator**.

## **15. CHANGES TO THE AGREEMENT**

**15.1.** Any modification or addition to the **Agreement** and the **Contractual Documents** must take place by agreement between the **Parties**, in writing.

## **16. TRANSFER OF THE AGREEMENT AND TRANSFER OF RECEIVABLES**

**16.1.** The transfer of the **Agreement** is prohibited.

**16.2.** The transfer of receivables is allowed, in accordance with and in the manner set out in art. 120, paragraph 12 of the **Code**

For the purpose of being enforceable against contracting authorities, transfers of receivables must be stipulated by public instrument or notarised private contract, and must be notified to debtor administrations. Without prejudice to compliance with traceability obligations, **ARIA Spa** reserves the right to refuse the transfer of receivables with communication to be notified to the transferor and the transferee within forty-five days from notification of the transfer. This is without prejudice to **Aria SPA's** right to assert against the transferee all exceptions enforceable against the transferor under the Agreement concluded.

**16.3.** **The Financial Operator/Transferor** has the obligation to communicate to the Transferee the Unique Project Code (**CUP**), the Competition Identification Code (**CIG**) and the



details of the Dedicated Current Account.

**16.4.** Even the Transferee, for payments relating to this **Agreement**, shall use a dedicated current account and shall communicate the identification details to **ARIA SPA**.

**16.5.** The Deed of Transfer must regulate the Transferee's obligation to make payments to the Transferor by bank transfer using the Dedicated Current Accounts, respectively, of the transferor and of the transferee, and indicating the **CUP** and the **CIG**.

## **17. SUSPENSION OF THE AGREEMENT - FORCE MAJEURE**

### **17.1 Temporary suspension of the effectiveness of the Agreement**

**17.1.1** It is the right of **ARIA SPA**, for justified reasons, to temporarily suspend, at its discretion, the execution of the service

**17.1.2** The suspension will be notified to the **Financial Operator** by certified email and will take effect as of the date of receipt by the **Financial Operator**.

**17.1.3** Following the suspension, the **Financial Operator** will have the right to extend the contractual terms for a period equal to the duration of the suspension itself.

**17.1.4** It is understood that during the period of suspension, the **Financial Operator** will not be entitled to any consideration or allowance.

**17.1.5** If the service is interrupted or suspended for reasons not attributable to the **Financial Operator**, for a period of time not less than 12 consecutive months, the **Financial Operator** may unequivocally withdraw from the Agreement, by written communication to be sent by certified email, without therefore boasting or demanding anything against ARIA SPA. If the withdrawal is not exercised within 15 days following the expiry of the term referred to in the first period of this paragraph, the **Financial Operator** will remain bound by this Agreement without additional consideration or revision of the agreed consideration.

### **17.2 Force Majeure**

**17.2.1** In the event that a Force Majeure event occurs, as defined in article 2 of this Agreement, the **Financial Operator**, whose fulfilment of obligations is prevented or delayed by the event, must promptly - and in any case no later than 5 days after the occurrence of the event - communicate it to the **RUP** indicating:

- a) the foreseeable duration of the event, with its description, and the impact it has on the fulfilment of its obligations;
- b) the remedies it intends to activate.

**17.2.2** The Parties will then verify these circumstances by drafting a special report, and will identify, in an adversarial manner, possible common actions to mitigate the effects caused by the Force Majeure event.

**17.2.3** Pending a Force Majeure event, the Party concerned undertakes to:

- a) provide the other Party with an estimate of the duration of the event and the impact it has on the fulfilment of his obligations;
- b) make every reasonable effort to continue and fulfil duties;
- c) carry out every possible activity to either control or stop the event;
- d) carry out every possible activity aimed at recovering the delay in the execution of the Agreement, and at mitigating any other negative consequence of the event in the execution of the Agreement;
- e) constantly inform the other Party of all the activities carried out - as well as of the effects - in order to control or stop the event, and to make up for the delay in the execution of the Agreement, and to mitigate any other negative consequence of the event in the execution of the same;
- f) notify the other Party of the cessation of the event without delay.

**17.2.4** In the event of a Force Majeure event involving a delay in the execution of the Agreement, the **Financial Operator** will be entitled to an extension of the contractual terms for a period equal to the delay actually achieved.

## **18. TERMINATION OF THE AGREEMENT**

**18.1.** Without prejudice to the hypotheses and methods of resolution provided for by art. 122 of the Code, without prejudice to any other legal remedy, **ARIA SPA** will have the right to terminate the **Agreement**, pursuant to art. 1456 of the Civil Code, upon the occurrence of one of the following events:

- a) the violation of obligations set out in Law 13 August 2010, no. 136, without prejudice to the right to compensation for major damages if the **Financial Operator** becomes insolvent or is subject to bankruptcy or other bankruptcy proceedings that prevent the activity from being carried out;
- b) in all cases where the transactions were carried out without using the bank or postal transfer method or other suitable methods to allow full traceability of transactions in violation of the obligations set out in art. **6.13** of this Agreement and in Law 13 August 2010, no. 136 and subsequent amendments;
- c) change, not previously and explicitly authorised by **ARIA SPA**, of the composition of the Working Group, indicated in the Tender;
- d) failure to communicate any causes for the loss of professional suitability of the staff responsible for carrying out the services covered by the Agreement, or in case of failure to replace the staff as requested by Aria SPA;
- e) evident inability or unsuitability, even if only legal, to execute the **Agreement**;
- f) failure to submit or renew or return or supplement the security or insurance policy;
- g) a delay causing the application of penalties - pursuant to the previous article **11** (PENALTIES) - of an amount greater than **10%** of the net contractual **Consideration**;
- h) if the **Financial Operator** is guilty of fraud or serious negligence;
- i) if the **Financial Operator**, due to differences with **ARIA SPA** or for any other reason, suspends carrying out the assignment for more than **10** consecutive calendar days;
- j) existence of elements relating to attempts at mafia infiltration into Companies or businesses involved in any way in the execution of the **Agreement**, following checks carried out pursuant to art. 91, paragraph 1 of Legislative Decree no. 159/2011.

**18.2.** Upon the occurrence of one of the causes of termination mentioned above, the **Agreement** will be considered rightfully terminated as soon as **ARIA SPA** has declared to the **Financial Operator**, by means of a specific notice of termination to be sent by certified email within **10** days of the event, the intention to make use of the explicit termination clause

established for the exclusive benefit of **ARIA SPA**.

**18.3.** In the event of termination of the **Agreement** due to default on the part of the **Financial Operator**, the latter will be granted the right to pay only for the services regularly performed and accepted by **ARIA SPA**, deducted of the additional costs to **ARIA SPA** deriving from the dissolution of the **Agreement** (including the higher expenses for entrusting the remaining contractual services to another person) and the amount of damages suffered by **ARIA SPA**.

**18.4.** If the **Financial Operator** does not precisely fulfil the obligations set out in the **Agreement**, **ARIA SPA**, pursuant to art. 1454 of the Italian Civil Code, will warn him to comply, assigning him for this purpose a minimum term of **15** days, or another longer term considered suitable by **ARIA SPA**, giving at the same time explicit warning that after this term has elapsed unnecessarily, the **Agreement** will certainly be considered terminated.

**18.5.** However, **ARIA SPA**'s right to request the judicial termination of the **Agreement** for any other serious breach or incorrect performance by the **Financial Operator** shall remain unaffected.

**18.6.** In any case of termination of the **Agreement**, the **Financial Operator** will be required to compensate **ARIA SPA** (and any client entities) for all direct and indirect damages, without exception, and to reimburse them for the increased costs deriving, without prejudice, in any case, to the payment of the penalties referred to in the previous article **11** (PENALTIES) accrued in the meantime.

**18.7.** It should be noted that in all cases of termination of this Agreement for reasons attributable to the **Financial Operator**, as well as in any other case of early termination of the Agreement, the Contracting Authority will retain ownership of the models shared in ACDat and delivered. The Contracting Authority may use what is produced by the **Financial Operator** in accordance with the provisions set out in the Information Specifications.

## **19. WITHDRAWAL**

**19.1.** Without prejudice to the provisions of articles 88, paragraph 4-ter and 92, paragraph

4, of the code of anti-mafia laws and prevention measures referred to in Legislative Decree 6 September 2011, no. 159, ARIA SPA has the right to withdraw from the **Agreement** pursuant to art. 123 of the Code. This right will be exercised through a formal written communication to the **Financial Operator** to be given with no less than twenty days notice.

**19.2.** In the event of a withdrawal, one tenth of the amount of the services not performed for the purpose of applying Article 123, paragraph 1 of the Code will be calculated on the difference between the amount of four-fifths of the price placed on the basis of the competition, adjusted for the auction discount, and the net amount of the services performed.

## **20. DISPUTE RESOLUTION — JURISDICTION**

**20.1.** In the event that the clauses of this Agreement should give rise to interpretative doubts, the most appropriate interpretation must be adopted for the performance of the assignment in the interest of both parties.

**20.2.** Any disputes relating to subjective rights deriving from the execution of the **Agreement** may be resolved by the **Parties** through the use of the transaction, pursuant to art. 212 of the **Code**. The *pro tempore* Legal Representative of **ARIA SPA** is the person responsible for evaluating or formulating a proposal for a transaction, after consulting the **Sole Project Manager**.

**20.3.** In any case, the **Financial Operator** is required, even pending disputes and controversies, to comply with the provisions of **ARIA SPA**, without suspending or affecting the regular execution of the **Agreement** and without being able to object, renouncing the exception set out in art. 1460 of the Italian Civil Code.

## **21. PERSONAL DATA PROCESSING — INFORMATION ON PERSONAL DATA PROCESSING**

**21.1.** This Information is provided by **ARIA SPA** as Data Controller (hereinafter, also only “Data Controller”), pursuant to art. 13 of Reg. EU 2016/679 — General Data Protection Regulation (hereinafter, also referred to as “Regulation”) and Legislative Decree 30 June 2003, no. 196, (as amended by Legislative Decree 10 August 2018, no. 101), with the aim of providing information about the purposes and methods of processing personal data, their

possible recipients and the rights granted to the data subject (hereinafter, “Data Subject”).

**21.2.** Personal data processing means any operation or set of operations carried out with or without the aid of automated processes and applied to personal data or sets of personal data, even if not registered in a database, such as collection, registration, organisation, structuring, storage, processing, selection, blocking, adaptation or modification, extraction, consultation, use, communication by transmission, dissemination or any other form of provision, comparison or interconnection, restriction, cancellation or destruction.

**21.3.** The data is processed in order to execute this Agreement and to fulfil any related fiscal, accounting and administrative obligation, as well as any other legal obligation deriving, either directly or indirectly, from the same.

**21.4.** The legal basis identified for the processing in question is the execution of a contract to which the party concerned is a party or the execution of pre-contractual measures adopted at the request of the same, pursuant to art. 6, paragraph 1, letter (b), of the Regulation. The refusal of the party concerned to communicate their personal data will, in fact, make it impossible for the Data Controller to continue with the establishment of the contractual relationship.

**21.5.** Pursuant to art. 13, paragraph 1, letter (e) of the Regulation, personal data may be communicated to subjects operating on behalf of the Data Controller or, in any case, subject to his authority. The data may also be communicated to any other third party when communication is mandatory by law, including in the area of prevention/suppression of any illegal activity. A list of companies acting as Data Controllers (hereinafter, also only “Managers”) pursuant to art. 28 of the Regulation, is available at the Data Controller's headquarters.

**21.6.** With reference to the personal data being processed for the execution of the Agreement, the same will be processed on paper and with the aid of electronic or automated means and stored in compliance with the principles of necessity and proportionality and, in any case, until the purposes of the processing have been pursued, using civil law relating to prescription as a criterion. **21.7.** Please note that Data Subjects have the right to object at any time to the

processing of their personal data. In addition, the parties concerned enjoy, where applicable, the rights referred to in articles 15-22 of the Regulation or the right to request the correction, cancellation or limitation of the processing of personal data concerning them or to object to their processing, as well as to lodge a complaint with the Italian Data Protection Authority.

**21.8.** The Data Protection Officer (DPO) can be contacted at the following email address:

[rdp@ariaspa.it](mailto:rdp@ariaspa.it).

**21.9.** The Data Controller is ARIA S.p.A., with headquarters in Via Torquato Taramelli no. 26, 20124 Milan. The party concerned may contact the Data Controller to exercise the rights described above by sending communication by registered mail to the address Via Torquato Taramelli no. 26, 20124 Milan, for the attention of the “*Regulatory Support Structure for the Protection of Personal Data of ARIA S.p.a.*” or by email to the email address [uffprivacy.siss@ariaspa.it](mailto:uffprivacy.siss@ariaspa.it).

## **22. ORGANISATION AND MANAGEMENT MODEL PURSUANT TO LEGISLATIVE DECREE 231/02001 AND CODE OF ETHICS AND CONDUCT**

**22.1.** The Contractor declares he is aware that ARIA S.p.A. has implemented Legislative Decree 8 June 2001 no. 231 adopting the Organisation and Management Model - General Part (hereinafter, also the “231 Model”), published at <http://www.ariaspa.it> in the “Transparent Society/Other Contents - Prevention of Corruption” section, which he declares to know and have viewed.

**22.2.** The Contractor also declares he is aware that ARIA S.p.A. has adopted a Code of Ethics and Conduct published at <http://www.ariaspa.it> in the “Transparent Society/Other Contents — Prevention of Corruption” section, which he declares to know and have viewed.

**22.3.** Consequently, the Contractor undertakes to fulfil the contractual obligations assumed therein in full compliance with the principles of legality, transparency and correctness expressed in Model 231 and in the Code of Ethics and Conduct of ARIA S.p.A., which the Contractor declares to share and to which it undertakes to conform its behaviour in the execution of the contractual services rendered in favour, in the name and/or on behalf of ARIA S.p.a.

**22.4.** The Contractor declares he is aware that non-compliance with the above principles of legality, transparency and fairness in the execution of this Agreement may constitute a serious breach of the obligations assumed therein, with the consequent right of ARIA S.p.A. to terminate this Agreement with immediate effect pursuant to and for the purposes of art. 1456 of the Italian Civil Code with every consequence of the law.

### **23. INCOMPATIBILITY**

**23.1.** The Contractor, by signing this Agreement, explicitly and irrevocably declares that the stipulation takes place in compliance with the provisions of article 53, paragraph 16 ter, of Legislative Decree no. 165/2001.

**23.2.** If the declaration made does not conform to the truth, the Supplier acknowledges and accepts that the consequences provided for by the above legislation shall apply.

### **24. PLAN FOR THE PREVENTION OF CORRUPTION AND TRANSPARENCY PURSUANT TO LAW 190/2012 AND INTEGRITY PACT IN THE FIELD OF PUBLIC CONTRACTS OF THE LOMBARDY REGION**

**24.1.** By signing this Agreement, the Contractor declares to have read the Three-Year Plan for Transparency and the Prevention of Corruption (hereinafter "PTPCT"), referred to in Law 6 November 2012, no. 190, adopted by ARIA SPA, published on its institutional website (Transparent Company Section - General Provisions), and undertakes to implement behaviours in accordance with the dictates and principles contained therein.

**24.2.** By signing this Agreement, the Contractor declares to have read and expressed full and unconditional acceptance of the "Integrity Pact in the matter of public contracts of the Lombardy Region" (hereinafter "Integrity Pact"), published at <http://www.ariaspa.it>, "Transparent Society/Other Contents - Prevention of Corruption" section, and undertakes to comply and base his behaviour on the principles of loyalty, transparency and fairness.

**24.3.** The Contractor declares he is aware that non-compliance with the above principles of legality, transparency and fairness in the execution of this Agreement may constitute a serious breach of the obligations assumed therein, with the consequent right of ARIA S.p.A. to



terminate this Agreement with immediate effect pursuant to and for the purposes of art. 1456 of the Italian Civil Code with every consequence of the law.

## **25. AGREEMENT-RELATED EXPENSES AND TAXATION**

**25.1.** All charges, costs, customs duty, taxes and expenses, including fiscal and notarial charges relating to the **Agreement**, the execution of the same or, in any case, arising from the same, including stamp and registration fees, are borne by the **Financial Operator**.

Read, confirmed and signed.

**Azienda Regionale per l'Innovazione e gli Acquisti S.p.A. (Regional Company for  
Innovation and Purchasing)**

**[•]**

**THE FINANCIAL OPERATOR**

**[•]**

*Digitally signed electronic document in accordance with the single text of Presidential Decree 28 December 2000,*

*no. 445*

*of Legislative Decree no. 7 March 2005, no. 82 and related standards.*