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Confédération suisse  
Confederazione Svizzera  
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Swiss Confederation

Federal Department of Finance FDF

**Federal Office for Customs and Border Security FOCBS**  
Foundations Directorate

## **EETS approval contract**

between

the **Swiss Confederation**, represented by the Federal Office for Customs and  
Border Security FOCBS, Taubenstrasse 16, 3003 Bern,

- FOCBS -

and

**[Provider's name]**, **[provider's address]**, represented by [provider's representative],  
[address],

- EETS provider -

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## **1 Preamble**

Foreign hauliers should be able to use the interoperable European Electronic Toll Service (EETS) to collect the performance-related heavy vehicle charge (performance-related HVC). This service provides them with the devices that record the relevant data for the performance-related HVC (on-board units). Furthermore, it declares hauliers' chargeable trips to the Federal Office for Customs and Border Security (FOCBS), receives the corresponding assessments on their behalf and pays the FOCBS the performance-related HVC incurred. This requires not only a user agreement between the haulier (user) and the EETS provider, but also the EETS provider's approval to operate EETS and collect the performance-related HVC. This approval requires both an approval contract (contract) between the FOCBS and the EETS provider and approval by the FOCBS (approval decision), which is issued after a successful approval procedure (levels 1 to 4).

This contract is based on the following legal framework:

- Federal Act of 19 December 1997 on the Performance-Related Heavy Vehicle Charge (Heavy Vehicle Charge Act [HVCA]; SR 641.81);
- Ordinance of 6 March 2000 on the Performance-Related Heavy Vehicle Charge (Heavy Vehicle Charge Ordinance [HVCO]; SR 641.811);
- FDF Ordinance of 11 February 2020 on the Involvement of EETS and Fuel Card Providers in the Collection of the Heavy Vehicle Charge (FDF EETS and Fuel Card Providers Ordinance; SR 641.811.423).

## **2 Subject matter**

This contract governs the rights and obligations of the EETS provider and the FOCBS in connection with the implementation of EETS for collecting the performance-related HVC. The scope of application of the performance-related HVC is governed by international treaty and statutory requirements.

Once the EETS provider has successfully completed levels 1 to 3 of the current approval procedure in accordance with Article 5 paragraph 1 of the FDF EETS and Fuel Card Providers Ordinance, this contract is initially concluded for pilot operation at level 4. If the EETS provider meets the pilot operation requirements, the FOCBS grants the EETS provider approval for the performance-related HVC (approval decision) and the contract remains valid for regular operation.

Unless expressly referred to, the relationship between the EETS provider and the user liable to pay the charge is not the subject of this contract.

## **3 Contract components and order of precedence**

The following are integral parts of this contract:

- The EETS provider's approval decision (Annex 1), once the EETS provider has

- been approved;
- The technical and operational requirements of the Federal Department of Finance (FDF) concerning EETS, in accordance with Annex 1 to the FDF EETS and Fuel Card Providers Ordinance of 11 February 2020 and the associated Supplements 1 to 8 of 11 February 2020 (Annex 2);
  - The list of partners appointed by the EETS provider at the time of contract conclusion (Annex 3);
  - The cooperation and escalation arrangements (Annex 4);
  - The supplementary agreement (Annex 5), if the parties conclude one.

Amendments concerning the components are incorporated into the contract as addenda signed in writing (section 18 below). The new components replace the old ones.

In the event of discrepancies, the order of precedence of the contract components is as follows (in descending order):

- The approval decision (Annex 1);
- The contract addenda;
- This contractual document, together with the supplementary agreement (Annex 5) and the cooperation and escalation arrangements (Annex 4);
- The technical and operational requirements of the FDF (Annex 2).

#### **4 Conditions for the conclusion and termination of the contract**

The conclusion of this contract is conditional on the EETS provider having successfully completed levels 1 to 3 of the approval procedure.

If the FOCBS refuses to grant the EETS provider approval in an approval decision after the pilot operation (level 4) has been carried out, this contract will automatically terminate without compensation (condition subsequent).

#### **5 EETS provider representations**

The EETS provider represents to the FOCBS that:

- a) it is duly established and effectively in existence and is entitled by law and the company articles to conclude the contract without contravening official orders;
- b) its ownership structure corresponds to the information provided to the FOCBS during the approval procedure;
- c) no enforcement proceedings are pending against it;
- d) there is neither insolvency nor over-indebtedness, nor an imminent threat of such, and no debt settlement is under way.

#### **6 Access to EETS implementation to collect the performance-related HVC**

The EETS provider is granted access to EETS implementation to collect the

performance-related HVC on the basis of this contract and any approval decision (Annex 1). Access initially applies for pilot operation during the approval procedure and, once an approval decision has been received, also for regular operation.

The performance-related HVC receivable falls under the relationship between the FOCBS and the user. The EETS provider is obliged to pay the performance-related HVC receivable to the FOCBS. In its relationship with the user, with which it has a user agreement, the EETS provider is entitled to claim payment of the performance-related HVC it paid in its own name and for its own account.

The parties agree that the aforementioned access to EETS implementation to collect the performance-related HVC does not establish any acquired rights for the EETS provider. Access therefore ceases without compensation upon termination of the contract.

## **7 EETS provider obligations**

### **7.1 Obligation to comply with EETS requirements**

The EETS provider is obliged to comply with the following within the framework of contract performance:

- a) The Heavy Vehicle Charge Act and the associated implementing ordinances, particularly the Heavy Vehicle Charge Ordinance and the FDF EETS and Fuel Card Providers Ordinance;
- b) The technical and operational requirements according to Annex 1 to the FDF EETS and Fuel Card Providers Ordinance, including the associated supplements.

### **7.2 Obligations in connection with EETS implementation**

The EETS provider has the following obligations towards the FOCBS in connection with EETS implementation for the performance-related HVC:

#### **7.2.1 Designation of an address for service in Switzerland**

The EETS provider must designate an address for service in Switzerland, where it will receive deliveries from the FOCBS for itself and for its users.

Insofar as possible, delivery between the parties is carried out electronically, in accordance with the technical and operational requirements of the FDF (Annex 2). This electronic delivery is equivalent to physical delivery at the address for service.

#### **7.2.2 Information for users**

EETS providers must inform users of their duties in relation to the authorised on-board unit for the performance-related HVC, in particular the correct trailer declaration and the procedure to be followed in the event of malfunctions in accordance with directive 15-02-03 of the FOCBS.

### **7.2.3 Registration of users liable to the charge, as well as their vehicles**

The EETS provider must register the users liable to the charge and the motor vehicles used by them with a view to collecting the performance-related HVC in accordance with the technical and operational requirements of the FDF (Annex 2). The EETS provider must keep the registered data up to date at all times.

### **7.2.4 Issuance of on-board units to users; proper functioning**

The EETS provider issues its users with on-board units that are individualised to the motor vehicles and that function properly for the collection of the performance-related HVC in accordance with the technical and operational requirements of the FDF (Annex 2). These on-board units must comply in particular with the dedicated short-range communications (DSRC transaction rate), which plays a role in checking the performance indicators (section 11 letter f below).

For regular operation, the EETS provider uses the on-board units (requirement) mentioned in the approval decision (Annex 1). If the EETS provider intends to replace or modify them, it must proceed according to section 7.3.4 (below). Any modification of the approval decision for the use of new on-board units automatically becomes part of the contract (Annex 1).

The EETS provider must keep the supplied on-board units functioning properly at all times for the duration of the contract with the FOCBS and must support users in this respect.

### **7.2.5 Individualisation of on-board units and transmission of the contract data to the FOCBS**

The EETS provider individualises the on-board units with the DSRC contract data relevant for the performance-related HVC area and transmits it to the FOCBS in accordance with the technical and operational requirements of the FDF (Annex 2). The EETS provider must keep the contract data up to date at all times.

The EETS provider must ensure that the on-board units of vehicles registered in Switzerland or the Principality of Liechtenstein are not individualised with a DSRC contract for the performance-related HVC area.

### **7.2.6 Device blocks**

The EETS provider must ensure that the FOCBS is not provided with data for blocked on-board units by selecting one of the following options:

- The EETS provider reports the blocked on-board units to the FOCBS with the exception list in accordance with the technical and operational requirements of the FDF (Annex 2).

The EETS provider blocks the on-board units itself and in good time, i.e. before entry into the performance-related HVC area.

This selection applies for the entire duration of the contract. Contract amendments remain reserved.

The EETS provider supplies the vehicle and holder data for the blocked vehicles to the FOCBS on request.

#### **7.2.7 Trailer declaration**

With regard to trailers, the EETS provider must select one of the following declarations to the FOCBS, as described in more detail in the technical and operational requirements of the FDF (Annex 2):

Simplified trailer declaration

Trailer weight declaration

This selection applies for the entire duration of the contract. Contract amendments remain reserved.

#### **7.2.8 Recording and declaration of the data needed for performance-related HVC collection**

The EETS provider records all data on its EETS users' chargeable trips that is needed for performance-related HVC collection in accordance with the technical and operational requirements of the FDF (Annex 2). Every day, it declares all chargeable trips made by its users during this period to the FOCBS in accordance with the aforementioned requirements. The EETS provider acknowledges that the FOCBS will assess the performance-related HVC at its discretion if the declaration is missing, incomplete or not submitted on time.

#### **7.2.9 Saving and retention of the data needed for performance-related HVC collection**

The EETS provider must store all data required for performance-related HVC collection and verification, and retain it at least until the FOCBS has confirmed receipt of the declaration.

#### **7.2.10 Receipt of performance-related HVC assessment decisions and forwarding to users**

The EETS provider receives the performance-related HVC assessment decisions issued by the FOCBS with effect for its users liable to pay the charge and immediately makes them available to users. In doing so, it acts in accordance with the technical and operational requirements of the FDF (Annex 2).



### **7.2.11 Review of complaints and forwarding to the FOCBS**

The EETS provider receives complaints from its users regarding the assessment, checks them with the user and forwards them to the FOCBS if it cannot deal with them itself.

### **7.2.12 Payment of the performance-related HVC due for users liable to pay the charge**

The EETS provider is obliged to periodically pay the FOCBS the performance-related HVC receivables that it has incurred for the users. This payment obligation also applies to chargeable trips that are not declared by the EETS provider and are instead determined by the FOCBS based on a check. The payment obligation also applies to the performance-related HVC assessed discretionarily (section 7.2.8 above).

Twice per month, the EETS provider will receive a collective invoice from the FOCBS for the performance-related HVC claims asserted by the FOCBS vis-à-vis the users for that billing period. This concerns both new receivables and corrections of earlier assessments (sections 8.2 and 8.3 below). The EETS provider must pay the FOCBS the full amount invoiced by means of a transfer to the account specified in the invoice. Any bank charges are to be borne by the EETS provider.

The invoice is payable within 30 days from the invoice date. Failure to pay within that timeframe automatically triggers default, regardless of any reminders. In the event of default, the EETS provider shall owe the FOCBS interest on arrears, the amount of which will be based on the FDF Ordinance on Interest on Late Payments and Refunds (SR 641.207.1).

Furthermore, the FOCBS will be entitled, but not obliged, to block the EETS provider's access (section 6 above) after it has defaulted on payment. The FOCBS will contact the EETS provider beforehand.

In relation to the user liable to pay the charge, the EETS provider bears the collection risk in full.

If an on-board unit is blocked by the EETS provider, the EETS provider's payment obligation will not cease until the block is effective when the user enters the performance-related HVC area. The effectiveness of the block is determined according to the technical and operational requirements of the FDF (Annex 2).

## **7.3 Further obligations**

### **7.3.1 Information**

The EETS provider must immediately inform the FOCBS in writing if it no longer fulfils a condition for the approval decision (Annex 1) or a technical or operational requirement of the FDF (Annex 2). The same applies if one of the contractual representations of the EETS provider in accordance with section 5 letters a, c and d (above), is no longer applicable.

Furthermore, the EETS provider must inform the FOCBS of any significant changes with regard to the confirmed ownership structure (section 5 letter b above) and, upon request, inform it who exercises a decisive economic influence on it. This includes in particular third parties who directly or indirectly hold or control 25 % or more of the capital or voting rights. Notification of the changed ownership structure is deemed to be a new contractual representation.

The EETS provider subsequently has to inform the FOCBS in good time in advance of any measures or events that could have an impact on EETS implementation for the collection of the performance-related HVC. This concerns in particular plans to cease its activity as an EETS provider.

### **7.3.2 Information on financial capacity**

On its own initiative or upon first request, the EETS provider must periodically provide the FOCBS with all information and documents which allow the FOCBS to verify the financial capacity of the EETS provider at any time in accordance with the technical and operational requirements of the FDF (Annex 2).

### **7.3.3 Cooperation**

The EETS provider has various statutory obligations to cooperate. On the operational level, it cooperates in particular by measuring the indicators concerning its contractual services in accordance with the technical and operational requirements of the FDF (Annex 2), and agrees any necessary improvements with the FOCBS. Moreover, it supports the FOCBS with the introduction of technical innovations, especially by clarifying the effects of the innovations and by participating in the relevant tests.

### **7.3.4 Adjustments to the performance-related HVC EETS system by the EETS provider**

If, for its part, the EETS provider wishes to change or replace the performance-related HVC EETS system or parts thereof in accordance with section 2.9 of Annex 1 to the FDF EETS and Fuel Card Providers Ordinance, it must notify the FOCBS thereof beforehand in keeping with the process set out in the technical and operational requirements of the FDF (Annex 2) and submit the documents and information mentioned therein.

The implementation of the adjustments planned by the EETS provider requires the explicit approval of the FOCBS. The EETS provider acknowledges that the FOCBS is entitled to require improvements, to order a review in the approval procedure or to reject the adjustment. The review in the approval procedure concerns in particular the replacement of the on-board unit (section 7.2.4 above).

## **8 FOCBS obligations**

### **8.1 Access to EETS implementation to collect the performance-related HVC**

If and to the extent that the EETS provider meets the approval requirements and complies with all assurances, specifications and obligations, the FOCBS will grant it access to EETS implementation to collect the performance-related HVC in accordance with the technical and operational requirements of the FDF ([Annex 2](#)).

### **8.2 Performance-related HVC invoicing**

Twice per month, the FOCBS will send the EETS provider a collective invoice for all HVC claims that have arisen for the FOCBS vis-à-vis the users during the billing period. Invoicing is based on the technical and operational requirements of the FDF as well as the information on the EETS provider's delivery addresses ([Annex 2 and 4](#)).

In the aforementioned collective invoices, the remuneration for the EETS provider (section 8.4 below) is deducted directly from the total amount of HVC receivables generated during the billing period (net invoicing). Furthermore, any corrections resulting from user complaints regarding the assessment will be taken into account.

### **8.3 Submission of assessment decisions, complaints**

The FOCBS will periodically send the EETS provider the performance-related HVC assessment decisions for the trips of users liable to pay the charge. The delivery arrangements are based on the technical and operational requirements of the FDF ([Annex 2](#)).

If the FOCBS receives user complaints from the EETS provider regarding the assessment, it will examine them and, if necessary, issue a new assessment decision. In addition, the FOCBS will include any correction of the amount in the next collective invoice.

### **8.4 EETS provider remuneration**

The FOCBS owes the EETS provider a flat-rate payment for all services in connection with EETS implementation for the performance-related HVC. This is calculated as a percentage of the total new HVC claims that have arisen for the FOCBS vis-à-vis the users during the billing period. The applicable percentage is based on the FDF EETS and Fuel Card Providers Ordinance of 11 February 2020. At the time of contract conclusion, it is 2.7%.

### **8.5 Information**

The FOCBS must inform the EETS provider about any measures or events that could have an impact on EETS implementation for the collection of the performance-related HVC.

Furthermore, the FOCBS must inform the EETS provider about forthcoming legal amendments and changes concerning the remuneration rate (section 8.4 above), the

operational or technical requirements of the FDF, as well as the quality criteria and indicators for reviewing the EETS provider's services (section 3 above; [Annex 2](#)).

## **9 Cooperation and escalation**

### **9.1 Cooperation**

#### **9.1.1 Cooperation – not a simple partnership and no representation**

The parties cooperate to enable EETS implementation to collect the performance-related HVC. They seek to avoid disadvantages for the EETS, as well as losses of performance-related HVC receipts, and eliminate the causes of such disadvantages as soon as they occur.

The parties have no partnership or partnership-like ties, and in particular do not form a simple partnership within the meaning of Article 530 et seq. of the Swiss Code of Obligations of 30 March 1911 (CO; SR 220).

With respect to third parties, the parties act exclusively in their own name, and not in the name of the other party. They are not entitled to represent the other contracting party.

#### **9.1.2 Bodies and contacts**

The parties may establish bodies with specific tasks to implement EETS for the collection of the performance-related HVC ([Annex 4](#)). Among other things, information on the further development of EETS is exchanged, performance measurements are discussed and any improvement measures concerning the EETS provider are agreed in this way. Where necessary, a meeting is organised once per year and generally takes place alternately in Switzerland or at the headquarters of the EETS provider.

#### **9.1.3 Communication at specialist level**

The parties communicate at technical level through the mutually designated contacts and the agreed channels ([Annex 4](#)).

### **9.2 Escalation**

The parties will make every effort to settle any differences and conflicts arising in connection with this contract amicably before taking legal action.

If possible, the parties will resolve any differences regarding compliance with the technical or operational requirements of the FDF ([Annex 2](#)) via the specialist contacts. If these cannot reach an agreement, an escalation procedure is applied up to management level (defined in [Annex 4](#)).

The parties may agree on improvements if they concern compliance with performance indicators. They check and record whether the improvements have been implemented correctly and on time. If the EETS provider does not implement the agreed improvements, does not implement them in full or does not implement

them in good time, the FOCBS is entitled to block the EETS provider's access (section 6 above), in particular by deactivating the DSRC contract data. More extensive FOCBS rights arising from this contract or from HVC legislation remain reserved.

## **10 Liability and warranty**

### **10.1 EETS provider liability and warranty**

The EETS provider shall be liable towards the FOCBS for intent and negligence in the event of a breach of statutory or contractual obligations and in the event of incorrect representations in accordance with the general legal provisions of Swiss civil law.

The EETS provider's liability concerns in particular duty breaches in connection with EETS implementation for the collection of the performance-related HVC, as well as responsibility for representations and compliance with requirements, also with regard to data protection and data security.

The EETS provider shall be liable for the conduct (acts or omissions) of its auxiliaries and third parties called upon (section 12 below) in the same way as for its own. If the FOCBS wishes to assert liability directly against the auxiliaries or third parties called upon, the EETS provider will, on first request, assign any claims of its own to the extent of the assertion intended by the FOCBS.

The FOCBS's right to impose contractual penalties for breach of contract (section 11 below) remains unaffected by this liability clause.

### **10.2 FOCBS liability**

The FOCBS shall be liable towards the EETS provider solely for physical injury and other damage caused intentionally or through gross negligence. The liability of the FOCBS is excluded in all other circumstances. Liability for other damages is limited to what was typical and foreseeable for the contract.

The FOCBS accepts no liability for damage arising from or in connection with the electronic exchange of data or information. In particular, it shall not be liable for damage resulting from transmission errors, technical defects, malfunctions or interruptions of its electronic connections (including interface), illegal interference with telecommunications equipment, virus infiltration, copying and falsification of content, network overload, failure to detect forgeries, identity or credential defects, or wilful or accidental blocking of electronic connections by third parties. This exclusion of liability concerns in particular the EETS portal and communication between the FOCBS's roadside infrastructure and the EETS provider's on-board units.

Similarly, the FOCBS accepts no liability for any damage resulting from the possible involvement of third parties in the performance of this contract.

Claims of the EETS provider against the FOCBS arising from the conclusion of EETS approval contracts with other providers are thus excluded.

## **11 EETS provider contractual penalties**

During regular operation (not pilot operation), the EETS provider shall owe the FOCBS a contractual penalty as follows for the breaches of the contractual obligations listed below and failure to comply with the technical and operational requirements of the FDF (Annex 2):

- a) CHF 5,000 if the registration of the vehicle data does not have the required quality of at least 99.9% (section 7.2.3 above);
- b) CHF 3,000 if the registration of the holder data does not have the required quality of at least 99.9% (section 7.2.3 above);
- c) CHF 10,000 if the transmitted position data on the chargeable EETS trip does not have the required quality of at least 99.7% (section 7.2.8 above);
- d) CHF 4,000 if under 99.7% of the data delivery deadlines (position or holder data) are met (section 7.2.8 above);
- e) CHF 3,000 if under 99.7% of the data retrieval deadlines for assessments are met (section 7.2.10 above);
- f) CHF 10,000 if the DSRC transaction rate falls below 99.5% (section 7.2.4 above).

A review will be carried out at the end of each calendar month to determine whether such breaches have occurred. The contractual penalty will become due at that time and will remain payable for as long as the EETS provider is in breach of the contract and the requirements.

The total monthly contractual penalties may not exceed the EETS provider's monthly remuneration (section 8.4 above).

The contractual penalty is to be paid on the FOCBS's first written request and is due even after termination of the contract. Payment of the contractual penalty does not exempt the EETS provider from compliance with the contract. The contractual penalty will be offset against any compensation for damages under this contract if and to the extent that this is based on the same facts. Payment is generally by means of offsetting.

In addition to the contractual penalty, the other rights of the FOCBS are reserved, namely the blocking of EETS access (section 9.2 above) and extraordinary termination (section 22.4.2 below), as well as the withdrawal or suspension of approval as an EETS provider and claims for damages (section 10.1 above).

## **12 Involvement of third parties**

The EETS provider may involve the partners known at the time of contract conclusion (see [Annex 3](#)) as third parties for the performance of this contract. If the EETS provider wishes to involve other or additional partners, it must inform the FOCBS in good time beforehand. The FOCBS may refuse this involvement for justified reasons.

Where the EETS provider delegates tasks to the third party, it must transfer to the third party all obligations arising from this contract that are associated with the task. This applies in particular to compliance with the provisions on data protection and data security (section 13 below) and to the obligations arising from the FOCBS's rights of inspection and review (section 15 below).

## **13 Data protection and data security**

The parties undertake to comply with the current federal regulations on data protection and data security (Federal Act on Data Protection and Ordinance to the Federal Act on Data Protection; SR 235.1 and SR 235.11, respectively) to the extent that EETS implementation concerns the application of these Swiss regulations.

Within the framework of this contract, the parties will restrict the collection and further processing of personal data on users to that which is necessary for EETS implementation for the performance-related HVC. The corresponding exchange of data between the EETS provider and the FOCBS is carried out electronically in Switzerland, in accordance with the technical and operational requirements of the FDF ([Annex 2](#)).

Where data of relevance for the performance of this contract is held by the EETS provider, it will take appropriate technical and organisational measures to protect it against unauthorised processing.

The exchange of data and information between the EETS provider and the user is based on their contract and is not at the behest of the FOCBS. This applies in particular to any cross-border data transmission for the purpose of storing or processing data abroad. In its relationship with the user, the EETS provider is responsible for compliance with the applicable provisions on data protection and data security.

The obligations concerning data protection and data security will continue to apply after termination of the contract.

## **14 Confidentiality**

Both parties are to treat as confidential the data and information they collect themselves or receive from the other party in the course of EETS implementation for the performance-related HVC. This is without prejudice to any mandatory disclosure obligations under Swiss law applicable to one or both parties.

The EETS provider is thus obligated not to otherwise use or pass on, sell to third parties or otherwise make accessible in any other way the data and information collected or received for implementing EETS for the performance-related HVC without the user's consent. This does not include the necessary granting of access to any third parties duly involved (section 12 above). If the EETS provider is officially obliged under foreign law to disclose confidential data or information, it must inform the FOCBS of this prior to disclosure.

The EETS provider also has to ensure that only persons who reasonably need access to the data and information concerning EETS implementation for the performance-related HVC are granted access. It will expressly draw the attention of its employees and any third parties involved with the consent of the FOCBS to the confidentiality of the data and information. The third parties involved will be bound by the obligation to maintain confidentiality.

The obligation to maintain confidentiality will continue to apply after the contract has been terminated.

## **15 Rights of inspection and review of the FOCBS and other units**

The EETS provider must grant the FOCBS or a third party designated by the FOCBS access at all times to all data and information necessary for checking compliance with the EETS provider's statutory and contractual requirements and obligations regarding EETS implementation for the performance-related HVC, subject to prior notification and during normal business hours. The EETS provider will provide the FOCBS with information in this respect on first request and give it access to all data, information and documents to enable such a review to be carried out. The inspection and the granting of access will take place in Switzerland.

Other federal units designated by the FOCBS will also have the aforementioned rights of the FOCBS, provided that they act within the scope of their powers.

The FOCBS shall also be entitled to the rights described before or during any legal proceedings in relation to the EETS provider or user and they will continue to apply after termination of the contract. The exercise of these rights will not give rise to any compensation for the EETS provider.

## **16 Property rights**

Subject to the provisions of the following paragraphs, this contract does not affect the existing and new property rights of the parties (intangible property rights and related rights, rights to know-how and rights to manufacturing and trade secrets, as well as vested rights to such rights). All property rights and rights of use thereto belong and remain in their entirety with the respective holders of such rights. The parties do not grant one another any licences and are not entitled to use the rights of the other party without prior written consent. In particular, the EETS provider may not use the Swiss



coat of arms when providing services.

The EETS provider shall already grant the FOCBS a simple right of use (licence) to property rights in case property rights arise for the EETS provider in connection with the performance of this contract and that they are of significance for EETS with regard to the performance-related HVC. This right of use will arise together with the property rights and includes sub-licensing. The right of use is restricted spatially to the performance-related HVC area, and in terms of content and time to that which is necessary for EETS implementation regarding the performance-related HVC. The EETS provider guarantees that it is entitled to sub-license.

The parties assume that they will not create any joint property rights within the framework of this contract. Should this unexpectedly happen, the parties will be entitled to use such property rights for the purposes and for the duration of the contract. The FOCBS is entitled to sub-license for the performance-related HVC area. Upon termination of the contract, the parties will agree in writing who will take over the rights, what rights of use will be granted to the other party and how the rights will be compensated financially.

### **17 Non-assignability and ban on both debt assumption and contract transfer**

The EETS provider is not entitled to assign rights under this contract to third parties without the FOCBS's prior written and signed consent. The same applies to third parties' assumption of contractual obligations or the whole contract from the EETS provider. The granting or refusal of consent is at the FOCBS's discretion.

### **18 Contract amendment**

The FOCBS is entitled to adapt the contract to changed statutory or official requirements and to technical developments at any time. This concerns in particular the technical and operational requirements of the FDF ([Annex 2](#)).

After first notifying the FOCBS (section 8.5 above), the EETS provider is obliged to agree with the FOCBS any amendments or addenda to the contract that may be necessary as a result of changed statutory or official requirements or technical developments.

If the EETS provider agrees to the amendment, the parties shall set out the details in a contract addendum (section 3 above). The right to repeat the approval procedure is reserved.

If the EETS provider does not agree to the required contract amendment or does not agree within a reasonable period of time, the FOCBS will be entitled to terminate the contract no later than the implementation date of the amendment. Such termination will not relieve the EETS provider from fulfilment of its contractual obligations.

## **19 Force majeure**

If a party becomes unable to fulfil a contractual obligation temporarily or permanently due to force majeure or other objectively unavoidable events, it shall inform the other party thereof immediately in writing. The affected rights and obligations of the parties will be suspended for the corresponding period. This will not affect the parties' right to terminate the contract.

## **20 Written form**

All amendments and addenda to this contract must be made in writing. This also applies to the lifting of the written form requirement.

## **21 Severability clause**

Should individual contractual provisions be ineffective or unenforceable, this shall not affect the effectiveness of the remaining provisions or of the contract itself. Ineffective or unenforceable provisions are to be replaced by provisions which correspond to what the parties would have agreed had they known of the ineffectiveness or unenforceability.

## **22 Contract duration and termination, and procedure upon contract termination**

### **22.1 Entry into effect and term**

This contract will come into force when it is signed by the parties and is concluded for an indefinite period.

### **22.2 Start of service**

The EETS provider will put the EETS into service for the performance-related HVC on the following date:

- a) Pilot operation: .....
- b) Regular operation: according to the approval decision

### **22.3 Ordinary termination**

This contract may be terminated by either party by giving three (3) months' notice for the end of a month. The earliest possible termination date is .....

### **22.4 Extraordinary termination**

#### **22.4.1 Extraordinary termination for good cause**

Both parties are entitled to terminate the contract for good cause without notice if continuation of the contract is unreasonable for reasons for which the other party is responsible.

## **22.4.2 Good cause for the FOCBS**

Good cause for the FOCBS exists in particular if:

- a) the EETS provider no longer meets one of the approval requirements (Annex 1) or is not approved when it is necessary to repeat the process (section 18 above);
- b) an EETS provider representation (section 5 above) does not apply or is no longer applicable;
- c) the EETS provider repeatedly violates the technical or operational requirements of the FDF (Annex 2) or the Heavy Vehicle Charge Act or its implementing ordinances;
- d) the EETS provider does not implement the improvement measures agreed by the parties due to (partial) non-compliance with the technical and operational requirements of the FDF (Annex 2), or does not do so in full or on time, and escalation is unsuccessful (sections 7.3.3 and 9.2 above);
- e) the EETS provider does not wish to implement or does not implement a necessary contractual amendment requested by the FOCBS (section 18 above).

Good cause for the FOCBS also exists if the EETS provider once violates the technical or operational requirements of the FDF (Annex 2), statutory requirements or contractual obligations (in particular sections 7, 9, 12 to 17 above) in a particularly serious manner.

This is without prejudice to the administrative suspension or withdrawal of approval by the FOCBS and the assertion of liability and enforcement of contractual penalties arising from the contract (sections 10.1 and 11 above).

## **22.5 Form of termination notice**

Notice of termination is to be sent by registered letter to the other party's designated contact person (Annex 4; section 9.1.3 above).

## **22.6 Procedure upon contract termination**

### **22.6.1 Continuation of contractual services**

The EETS provider must continue to provide its contractual services until the time of termination and even beyond if the purpose so requires. In particular, the obligation to pay for chargeable trips that have already been recorded or are to be recorded remains in force (section 7.2.12 above). The same applies to the obligation to supply, save and retain the relevant data (section 7.2.8 et seq. above). The EETS provider must maintain data protection and data security (section 13 above), and confidentiality (section 14 above), as well as grant rights of inspection and review (section 15 above) after termination of the contract.

**22.6.2 Information for users**

Upon termination of the contract, the EETS provider must inform users that they can no longer use their on-board units via the provider because the FOCBS no longer permits EETS use for the performance-related HVC area. The EETS provider deactivates the relevant DSRC contract data.

**23 Applicable law, place of jurisdiction and language version**

This contract and its interpretation are governed by Swiss law, excluding any rules on conflict of laws. The exclusive place of jurisdiction is Bern.

This contract was drafted in German. In the event of any differences or contradictions, the German original will prevail over the English translation.

**24 Execution and signature**

This contract is issued and signed in duplicate. Each party will receive a signed original.

Bern, ..... ..

**Federal Office for Customs and Border Security** .....

Director .....

.....  
(Signature)

.....  
(Signature)