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**Comments on ECE/TRANS/WP.15/AC.1/2013/13 risk evaluation
procedures in the transport of dangerous goods**

Transmitted by the Government of France

TENDER SPECIFICATIONS
ATTACHED TO THE INVITATION TO TENDER

Invitation to tender No. MOVE/B2/2012-31 concerning
Harmonised Risk Acceptance Criteria for Transport of Dangerous Goods

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I. SPECIFICATIONS

I.1. Introduction

In principle ADR, RID, and ADN regulations¹, when they are fulfilled, should allow the free movement of dangerous goods everywhere under normal operation. However the lack of harmonized and transparent Risk Acceptance Criteria (RAC) may hinder in many ways the fulfilment of this objective.

For each inland transport mode, the absence of harmonized RAC at EU and International level reduces the transparency and the effectiveness of decision making processes related to restrictions to the transport of dangerous goods, as some Member States may decide that a particular restriction is necessary while others, affected by the restriction may consider it as a barrier to the free movement, which is 'unjustified' from risk acceptance point of view.

The absence of harmonized RAC common to all inland transport modes can result in transport modes shifting, which may increase the risks supported by EU citizens, especially when unjustified restriction on a safer mode results in transport shifting to a riskier mode.

More globally, the overall 'hazardous material' risks bared by the citizens is the sum of the local risks (risk of the industrial process for the environment of the plant/storage) and the transport risk (risk of the supply/distribution chain). Therefore, not having harmonized RAC both for industries processing dangerous goods and the transport of dangerous goods itself is also problematic, as the lack of a coherent approach of the overall risk is leading to sub-optimization and uncontrolled risks shifting between transport and industries.

For examples, the lack of harmonised approach and use of risk acceptance criteria results generally in the following undesirable effects for the railway transport (or to temporary stop areas):

- 1) First example: Risk shifting between process industries and transport
 - a. In accordance with the SEVESO directive, the quantity of dangerous substances present within the limits of the 'establishments' is the main criteria used to categorise the dangerousity of a site processing or producing the dangerous substances. The applicability of the SEVESO directive requirements (non-SEVESO / lower-tier / upper-tier establishments) are based on this quantity.
 - b. For defining this quantity, the temporary presence of dangerous goods contained in transport units, entering in, or leaving out the establishments is counted in the same way than the permanent stocks present in the establishments.
 - c. As a result, many process industries prefer to be supplied by road in order to limit the quantity of dangerous present in the establishment (this quantity being lower

¹ ADR: the European Agreement concerning the International Carriage of Dangerous Goods by Road, concluded at Geneva on 30 September 1957. RID: the Regulations concerning the International Carriage of Dangerous Goods by Rail, appearing as Appendix C to the Convention concerning International Carriage by Rail (COTIF) concluded at Vilnius on 3 June 1999. ADN: the European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways concluded at Geneva on 26 May 2000. (Cf.: Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods).

than in a train) and for staying in a category of establishments for which less stringent requirements are to be complied with.

- d. As a consequence, risks are shifted from the ‘process industry’ to the transport chain, more specifically, to the road mode of transport, even if the railway mode of transport is safer than the road mode;

2) Second example: Risk shifting between modes of transport

- a. Even if the SEVESO directive clearly excludes the marshalling yards from its application scope, some countries apply additional restrictions on the ground of the quantity of dangerous goods present in the marshalling yard instead of defining the restrictions on the basis of the actual risks. This behaviour tends to reduce the traffic in marshalling yards and in turn in railway transport.
- b. As a result, the concerned traffic is often shifted from the railway mode to the road mode, leading to a global increase of risks for EU citizens.

Finally, although it is well recognized that the increase of railway transport usage is preferable from carbon foot print reduction point of view, it is not perceived that for the transport of dangerous goods the advantages of railway transport are both the carbon foot print reduction and the reduction of risks induced by the transport of dangerous goods.

I.2. Purpose of the contract

The main purpose of the study is the *analysis of the feasibility of defining and using harmonized risk acceptance criteria (RAC) in decision making processes for justification of restrictions in transport of dangerous goods (TDG) for each inland transport mode.*

The use of the harmonised criteria should be analysed from the point of view of: i) supporting the adoption of transport mode-specific provisions by the relevant regulatory bodies and ii) supporting the adoption of specific local and regional additional provisions.

The following steps towards the harmonization of RAC related to dangerous goods in transport and process industries are therefore required:

Task 1. SURVEYS:

- Survey of RAC used in practice by EU MS, Contracting parties to the COTIF and at UNECE levels for the justification of restrictions applied in addition to the ADR/RID/ADN provisions;
- Survey of RAC used in practice by EU MS for the justification of restrictions applied to the industries processing/producing dangerous goods;
- Survey of RAC used in practice by EU MS for the justification of restrictions applied to temporary stop areas, such as road parkings, harbours, multimodal platforms, marshalling yards...

Task 2. RAC and DECISION MAKING PROCESSES:

- Analysis of the feasibility to define harmonized RAC, in transport chains, process industries, and globally;

- Analysis of the feasibility to use harmonized RAC in decision making processes for justification of restrictions;
- Benefits and drawbacks of harmonised approach.

Task 3. LEGISLATIVE IMPLICATIONS of USING HARMONISED APPROACH to RISKS:

- Define the overarching principles guiding the harmonised approach to risks;
- Indicate the necessary changes in the current legislation and /or in its practical implementation, following this approach;
- Impact assessment of the proposed changes in the current legislation.

Current legislation affected by the absence of harmonized RAC:

(the list may be not exhaustive)

a) Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods:

- Art 1.4 “*Member States may lay down specific safety requirements for the national and international transport of dangerous goods within their territory as regards: .../... (b) where justified, the use of prescribed routes including the use of prescribed modes of transport;*”
- Art 5 - Restrictions on grounds of transport safety

“1. *Member States may on grounds of transport safety apply more stringent provisions, with the exception of construction requirements, concerning the national transport of dangerous goods by vehicles, wagons and inland waterway vessels registered or put into circulation within their territory.*

2. *If, in the event of an accident or incident within its territory, a Member State considers that the safety provisions applicable have been found to be insufficient to limit the hazards involved in transport operations and if there is an urgent need to take action, that Member State shall, at the planning stage, notify the Commission of the measures which it proposes to take.*

Acting in accordance with the procedure referred to in Article 9(2), the Commission shall decide whether to authorise the implementation of the measures in question and the duration of that authorisation.”
- Section 1.9 RID (annex of Directive 2008/68/EC) - Restrictions on carriage imposed by the competent authorities

“1.9.1 - *A Member State may apply to the international carriage of dangerous goods by rail on its territory certain additional provisions not included in RID, provided that these additional provisions*

 - *are in accordance with 1.9.2,*
 - *do not conflict with the provisions of 1.1.2 (b),*
 - *are contained in the Member State's domestic legislation applying equally to the domestic carriage of dangerous goods by rail on the territory of that Member State,*
 - *do not result in the prohibition of carriage by rail of the dangerous goods covered by these provisions in the whole territory of the Member State.*

.../...

1.9.3 Application of the additional provisions in accordance with 1.9.2 (a) and (b) presupposes that the competent **authority provides evidence of the need for measures.**”

- Section 1.9 ADR (annex of Directive 2008/68/EC) – Transport Restrictions by the competent authorities: Art 1.9.2 and 1.9.3 grant to the Contracting Parties the possibility to apply certain **additional provisions not included in ADR.**
- Section 1.9 ADN (annex of Directive 2008/68/EC) - Transport Restrictions by the competent authorities: Art 1.9.2 and 1.9.3 grant to the Contracting Parties the possibility to apply certain **additional provisions not included in ADN.**

b) Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 (Railway Safety Directive):

- Art 4 -Development and improvement of railway safety

*“1. Member States shall ensure that railway safety is generally maintained and, where **reasonably practicable**, continuously improved, taking into consideration the development of Community legislation and technical and scientific progress and giving priority to the prevention of serious accidents.*

*Member States shall ensure that safety rules are laid down, applied and enforced in an open and **non-discriminatory** manner, fostering the development of a single European rail transport system.”*

- Art 7 – Common safety targets

*“3. .../... All proposals for **draft and revised CSTs shall reflect the obligations on Member States laid down in Article 4(1)**. Such proposals shall be accompanied by an assessment of the estimated costs and benefits, indicating their likely impact for all the operators and economic agents involved **and their impact on the societal acceptance of risk.**”*

- Art 8 - National safety rules

*“1. In application of this Directive, **Member States shall establish binding national safety rules** and shall ensure that they are published and made available to all infrastructure managers, railway undertakings, applicants for a safety certificate and applicants for a safety authorisation in clear language that can be understood by the parties concerned. .../...*

*7. The Member State shall submit the draft safety rule to the Commission for examination, **stating the reasons for introducing it**. If the Commission finds that the draft safety rule is incompatible with the **CSMs** or with achieving at least the **CSTs**, or that it constitutes a means of **arbitrary discrimination or a disguised restriction on rail transport operations** between Member States, **a Decision**, addressed to the Member State concerned, shall be adopted in accordance with the procedure referred to in Article 27(2).”*

- Art 9 and Annex III – Safety Management System

*“1. **Infrastructure managers and railway undertakings shall establish their safety management systems** to ensure that the railway system can achieve at least the **CSTs**, is in conformity with the national safety rules described in Article 8 and Annex II and with safety requirements laid down in the **TSIs**, and that the **relevant parts of CSMs are applied**.*

2. *The safety management system shall meet the requirements and contain the elements laid down in Annex III, adapted to the character, extent and other conditions of the activity pursued. It shall ensure the control of all risks associated with the activity of the infrastructure manager or railway undertaking, including the supply of maintenance and material and the use of contractors. Without prejudice to existing national and international liability rules, the safety management system shall also take into account, where appropriate and reasonable, the risks arising as a result of activities by other parties”*

Annex III “*The basic elements of the safety management system are:*

.../...

(d) procedures and methods for carrying out risk evaluation and implementing risk control measures whenever a change of the operating conditions or new material imposes new risks on the infrastructure or on operations;”

c) Seveso Directive (draft revised directive 21/12/2010)

- *Art 2.1) This Directive shall apply to establishments where dangerous substances are present in quantities equal to or in excess of the quantities listed in Parts 1 and 2 of Annex I.*
- *Art 2.2 (c) “This Directive shall not apply to any of the following:
.../...
(c) the transport of dangerous substances and intermediate temporary storage by road, rail, internal waterways, sea or air, outside the establishments covered by this Directive, including loading and unloading and transport to and from another means of transport at docks, wharves or marshalling yards;”*

Remark: As explained in introduction (example 2) some Member States use to apply to temporary stops the same regime than the one applicable to SEVESO ‘establishments’ as they consider the quantity of dangerous goods present in these areas in the same way than the stocks. This practice leads, for example in marshalling yards to mainly consider the hazards related to the presence of dangerous goods instead of the actual risks, on contrary of the requirements set out in the directive 2004/49/EC on the Safety of Community Railways which applies to marshalling yards, and which is based on a risk evaluations. This practice generally results in unjustified limitation of traffic levels in the marshalling yards and can lead to transport shift to road mode.

Task 4. FINAL REPORT and RECOMMENDATIONS:

The consultant in charge shall consolidate the material collected during the tasks 1 to 3 to develop a synthesis in view of improving the present legal approach. This synthesis shall underline the critical points in the implementation of the directives mentioned above and eventual inconsistencies between the ‘spirit’ of the directive and its actual application in the Member States.

The consultant will develop also his advice to the Commission, concerning:

- Possible changes in EU legislation,
- Rules applicable at country or company level,
- Foreseeable impact on international regulation.

I.3. Reports and documents to produce - Timetable to observe

Execution of the tasks begins after the date on which the Contract enters into force.

In principle, the deadlines set out below cannot be extended. The Contractor is deemed solely responsible for delays occasioned by subcontractors or other third parties (except for rare cases of *force majeure*). Adequate resources and appropriate organisation of the work including management of potential delays should be put in place in order to observe the timetable below.

A **kick-off meeting** will take place at the Commission's premises in Brussels, at the latest 30 calendar days following the signature of the contract, in order to settle all the details of the study, including the modalities on reporting and communication on the progress, to be undertaken.

An **interim meeting** during which the contractor will present the interim findings will be held within 5 months following the signature of the contract. It will be organised at the Commission's premises in Brussels.

A **final meeting** during which the contractor will present the draft final study report will be held within 10 months following the signature of the contract. It will be organised at the Commission's premises in Brussels. During the meeting the organisation of the Public Workshop defined below will be finalised.

A **Public Workshop** will be organised, at the request of the Commission services, by the contractor on the final report. The contractor will organise a one-day workshop bringing together stakeholders, with the aim to present the conclusion of the study and consolidate the guide. The workshop will take place in Brussels at the Commission's premises. The organisation of the workshop, including invitations to participants, the presentations, the moderation, the reporting, will be the responsibility of the contractor. The contractor will bear some related costs (travel and subsistence expenses of 2 invited experts and of contractor's own staff). The other participants will bear their own costs of travelling, lunch and accommodation. Booking arrangements, rental of a conference room, lunch/catering, will not be born by the contractor.

The contractor shall prepare the final study report on the basis of the outcome of the final meeting and of the workshop.

I.3.1. Progress reports

Preparatory documents for the kick-off meeting, including a draft meeting agenda, study objectives, methodology, resources and timetable, a draft (but detailed) **outline of the study report**, to be delivered to the Commission's services one week before the kick-off meeting. It will answer the basic questions: "*Who? What? How? By when?*"

Kick-off meeting report, that will contain the minutes of discussions and agreements reached in the kick-off meeting. It will be accompanied by the updated preparatory documents mentioned above in accordance with the indications provided by the Commission during the kick-off meeting. The Kick-off meeting report shall be made available to the Commission's services one week after the kick-off meeting. The Commission shall have two weeks from receipt to approve or reject the report. Within two weeks of receiving the Commission's observations, the Contractor will submit additional information or another report.

The **Draft Interim study report** shall be made available to the Commission's services ten days before the interim meeting. It shall contain at least the results of the Tasks 1 and 2 and some indications on how the consultant intends to undertake the Tasks 3 and 4.

Interim meeting report, that will contain the minutes of discussions and agreements reached in the interim meeting. It shall be made available to the Commission's services one week after the interim meeting.

Interim study report, updated in accordance with the indications provided by the Commission during the Interim meeting shall be made available to the Commission's services two weeks after the interim meeting. The Commission shall have twenty days from receipt to approve or reject the report. Within twenty days of receiving the Commission's observations, the Contractor will submit additional information or another report.

1.3.2. Final report

Draft final study report, including the following sections:

- Separate executive summary of around 10 pages containing a description of the most important findings, in easy-to-understand terms
- Main report
- Advice to the Commission.

The draft final study report shall be made available to the Commission's services two weeks before the final meeting.

Final meeting report, that will contain the minutes of discussions and agreements reached in the final meeting. It shall be made available to the Commission's services one week after the Final meeting.

Supporting documents for the public workshop shall be made available to the Commission's services one week before the workshop.

Record of the workshop proceedings shall be made available to the Commission's services two weeks after the workshop.

The contractor will submit the **final report** to the Commission at the latest 12 months months after the signature of the contract. The Commission shall have twenty days from receipt to approve or reject the final report, and the Contractor shall have twenty days to submit additional information or a new final report.

All the reports and all supporting document for the workshop shall be drafted in **English**.

1.3.3. Report format and publication

Three copies of the reports shall be supplied in paper form and one copy in electronic form, either in MS Word or in HTML format.

The Commission may publish the results of the study. For this purpose, the tenderer must ensure that the study is not subject to any restrictions deriving from intellectual property rights of third parties, in line with the Intellectual Property Rights provisions provided for in the Contract.

I.4. Duration of the tasks

The duration of the tasks shall not exceed *fourteen months*. This period is calculated in calendar days.

I.5. Place of performance

The tasks will be performed on the Contractor's premises. However, meetings between the contractor and the Commission may be held on Commission premises in Brussels.

I.6. Estimate of the amount of work involved

The amount of work involved to carry out this contract is assessed at 200 man-days.

II. TERMS OF CONTRACT

In drawing up his offer, the tenderer should bear in mind the provisions of the draft contract attached to this invitation to tender (Annex 5). Any limitation, amendment or denial of the terms of contract will lead to automatic exclusion from the procurement procedure.

The Commission may, before the contract is signed, either abandon the procurement procedure or cancel the award procedure without the tenderers being entitled to claim any compensation.

II.1. Terms of payment

Payments shall be made in accordance with the provisions specified in Annex 6, the draft service contract

II.2. Subcontracting

If the tenderer intends to subcontract part of the service, he shall indicate in his offer which part will be subcontracted and to what extent (% of the total contract value).

Tenderers must ensure that Article II.20 of the contract (Annex 6) can be applied to subcontractors. Once the contract has been signed, Article II.6 of the above-mentioned contract shall govern the subcontracting.

II.3. Joint tenders

In case of a joint tender submitted by a group of tenderers, these latter will be regarded as partners. If awarded the contract, they will have an equal standing towards the contracting authority in the execution of the contract.

The tenderers should indicate in their offer whether the partnership takes the form of:

a) a new or existing legal entity which will sign the contract with the Commission in case of award

or

b) a group of partners not constituting a new legal entity, who via a power of attorney, signed by an authorised representative of each partner (except the lead partner), designate one of the partners as lead partner, and mandate him as lead contractor to sign the contract with the Commission in case of award.

If the contractor is a grouping or consortium of two or more persons, all such persons shall be jointly and severally liable to the Commission for the fulfilment of the terms and conditions of the contract. Such persons shall designate one of them to act as leader with full authority to bind the grouping or the consortium and each of its members. It shall be responsible for the receipt and processing of payments for members of the grouping, for managing the service administration and for coordination. The composition and constitution of the grouping or consortium, and the allocation of the scope of tasks amongst the members, shall not be altered without the prior written consent of the Commission which can be withheld at discretion.

III. FORM AND CONTENT OF THE TENDER

III.1. General

Tenders must be written in **one of the official languages** of the European Union and submitted in **triplicate** (one clearly marked "original" and two copies) as well as a copy of the offer on a CD-Rom. The attention of the tenderers is drawn to the fact that the majority of the deliverables requested under Specific Contracts will have to be submitted in English.

Tenders must be clear and concise, with continuous page numbering, and assembled in a coherent fashion (e.g. bound or stapled). Since tenderers will be judged on the content of their written bids, they must make it clear that they are able to meet the requirements of the specifications.

The original signature of the single tenderer's or lead partner's authorised representative) (preferably in blue ink) on the administrative identification form (Annex 1) shall be considered as the signature of the tender, binding the single tenderer or the group of partners to the terms included in the tender.

III.2. Structure of the tender

All tenders must include three sections i.e. an administrative, a technical and a financial proposal.

III.2.1. Section One: administrative proposal

This section must provide the following information, set out in the standard identification forms attached to these tender specifications (Annexes 1, 2, 3, 4 and 5 as well other evidence required):

- Tenderers' identification (Annex 1)
 - All tenderers must provide proof of **registration**, as prescribed in their country of establishment, on one of the **professional or trade registers** or provide a declaration or certificate.
 - If the tenderer is a natural person, he/she must provide a copy of the identity card/passport or driving licence and proof that he/she is covered by a social security scheme as a self-employed person.

Each tenderer (including subcontractor(s) or any member of a consortium or grouping) must complete and sign the identification forms in Annex 1 and also provide above-mentioned documents. However, the subcontractor(s) shall not be required to fill in or provide those documents when the services represent less than 20% of the contract.

- Financial identification (Annex 2)

The **bank identification form** must be filled in and signed by an authorised representative of the tenderer and his/her banker. A standard form is attached in Annex 2 and a specific form for each Member State is available at the following Internet address:

http://ec.europa.eu/budget/contracts_grants/info_contracts/financial_id/financial_id_en.cfm

In the case of a grouping, this form must only be provided by the person heading the project only.

If the corresponding bank account of economic operators is already registered in the Commission's files they are not obliged to provide a new form on the condition that they confirm that no change in the information already provided as occurred. In case of doubt, we recommend submitting a new form.

- Legal entities (Annex 3)

The legal entity form in Annex 3 must be filled in and should be accompanied by a number of supporting documents, available on the Web site:

http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm

In the case of a grouping, this form must be provided by all partners.

Economic operators already registered as a legal entity in the Commission's files (i.e. they are or have been contractors of the Commission) are not obliged to provide a new form on the condition that they confirm that no change in the information already provided as occurred, In case of doubt, we recommend submitting a new form.

- Declaration of honour with respect to the Exclusion criteria and absence of conflict of interest (Annex 4)

An original should be filled and signed by (an) authorised representative(s) of all partners. Only sub-contractors with a part of the contract above 20% should the sign the form.

- Power of attorney (Annex 5) – in case of grouping only

An original should be filled and signed by (an) authorised representative(s) of each partner.

- All the supporting documentation for the purpose of checking the selection criteria (IV.2) should also be submitted under this section

The Commission reserves the right, however, to request clarification or additional evidence in relation to the bid submitted for evaluation or verification purposes within a time-limit stipulated in its request.

III.2.2. Section Two: Technical proposal

This section is of great importance in the assessment of the bids, the award of the contract and the future execution of any resulting contract.

The award criteria as set out in chapter IV.3 define those parts of the technical proposal to which the tenderers should pay particular attention as they will be the ground for the evaluation of the quality of the proposal.

The technical proposal should address all matters laid down in the specifications and should include models, examples and technical solutions to problems raised in the specifications. The level of detail of the tender will be extremely important for the evaluation of the tender. Tenderers must present in their bids a proposal on the methodology and the organisation of the work to carry out in the framework of the study.

III.2.3. Section Three: Financial proposal

All tenders must contain a financial proposal. The tenderer's attention is drawn to the following points:

- Prices must be quoted in **euros**, including the countries which are not in the euro-area. As far as the tenderers of those countries are concerned, they cannot change the amount of the bid because of the evolution of the exchange rate. The tenderers choose the exchange rate and assume all risks or opportunities relating to the rate fluctuation.
- Prices must be fixed amounts and include all expenses, such as travel expenses and daily allowances.
- **Prices must be quoted free of all duties, taxes and other charges, i.e. also free of VAT**, as the European Union is exempt from such charges in the EU under Articles 3 and 4 of the Protocol on the Privileges and Immunities annexed to the Treaty on the Functioning of the European Union. Exemption is granted to the Commission by the governments of the Member States, either through refunds upon presentation of documentary evidence or by direct exemption. For those countries where national legislation provides an exemption by means of a reimbursement, the amount of VAT is to be shown separately. In case of doubt about the applicable VAT system, it is the tenderer's responsibility to contact his or her national authorities to clarify the way in which the European Union is exempt from VAT;
- **Prices shall be fixed** and not subject to revision during the performance of the contract;
- For each category of staff involved in the project, the tenderer must specify:
 - the total labour costs;
 - **the daily rates** and **total number of days** (man/days) each member of staff will contribute to the project;
 - other categories of costs, indicating the nature of the cost, the total amount, the unit price and the quantity.

Bids involving more than one service provider (consortium) must specify the amounts indicated above for each provider.

IV. ASSESSMENT AND AWARD OF THE CONTRACT

Participation in tendering procedures is open on equal terms to all natural and legal persons coming within the scope of the Treaties and to all natural and legal persons in a third country which has a special agreement with the Union in the field of public procurement, under the conditions laid down in that agreement.

Where the Multilateral Agreement on Public Contracts concluded within the framework of the WTO applies, the contracts are also open to nationals of states which have ratified this Agreement, under the conditions provided for therein.

The procedure for the award of the contract, which will concern only admissible bids (see requirements in the invitation to tender, in particular, regarding the deadline for submission and the presentation of the offers and packaging), will be carried out in three successive stages.

The aim of each of these stages is:

- 1) to check on the basis of the exclusion criteria, whether tenderers can take part in the tendering procedure;
- 2) to check on the basis of the selection criteria, the technical and professional capacity and economic and financial capacity of each tenderer;
- 3) to assess on the basis of the award criteria each bid which has passed the exclusion and selection stages.

The assessment will be based on each tenderer's bid. All the information will be assessed in the light of the criteria set out in these specifications.

IV.1. Exclusion criteria (exclusion of tenderers)

IV.1.1. Exclusion criteria (Article 93 Financial Regulation²)

1. To be eligible for participating in this contract award procedure, tenderers must not be in any of the following situations:
 - (a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
 - (b) they have been convicted of an offence concerning their professional conduct by a judgement which has the force of *res judicata*;
 - (c) they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;
 - (d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the

² Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 248 of 16.9.2002)

- country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;
- (e) they have been the subject of a judgement which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Union's financial interests;
 - (f) they are currently subject to an administrative penalty referred to in Article 96(1) of the Financial Regulation³ for being guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in a contract procurement procedure or by the authorising officer as a condition of participation in a grant award procedure, for failing to supply this information or for having been declared to be in serious breach of their obligations under contracts or grants covered by the Union budget.
2. The cases referred to in point IV.1.1. e) above shall be the following:
- a) cases of fraud as referred to in Article 1 of the Convention on the protection of the European Communities' financial interests established by the Council Act of 26 July 1995 (OJ/C 316 of 27.11.1995, p. 48);
 - b) cases of corruption as referred to in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, established by the Council Act of 26 May 1997 (OJ/C 195 of 25.6.1997, p. 1);
 - c) cases of involvement in a criminal organisation, as defined in Article 2(1) of Joint Action 98/733/JHA of the Council (OJ/L 315 of 29.12.1998, p. 1);
 - d) cases of money laundering as defined in Article 1 of Council Directive 91/308/EEC (OJ/L 166 of 28.6.1991, p.77).

IV.1.2. Other cases of exclusion

1. In accordance with Article 94 Financial Regulation, contracts will not be awarded to tenderers who, during the procurement procedure:

- a) **are subject to a conflict of interest;**

Tenderers must declare:

- that they do not have any conflict of interest in connection with the contract; a conflict of interest could arise in particular as a result of economic interests, political or national affinities, family or emotional ties, or any other relevant connection or shared interest;
- that they will inform the contracting authority, without delay, of any situation constituting a conflict of interest or which could give rise to a conflict of interest;
- that they have not made and will not make any offer of any type whatsoever from which an unjustified advantage can be derived under the contract;
- that they have not granted and will not grant, have not sought and will not seek, have not attempted and will not attempt to obtain, and have not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, where such advantage constitutes an illegal practice or involves corruption, either

³ Council Regulation (EC, Euratom) n° 1605/2002 of 25 June 2002 on the Financial regulation applicable to the general budget of the European Communities, OJ L 248 of 16 September 2002, p. 1, amended by Council Regulation (EC, Euratom) n° 1995/2006 of 13 December 2006, OJ L 390 of 30 December 2006, p.1.

directly or indirectly, inasmuch as it is an incentive or reward relating to performance of the Contract.

The Commission reserves the right to check the above information.

- b) **are guilty of misrepresentation** in supplying the information required by the contracting authority as a condition of participation in the procurement procedure or fail to supply this information.
 - c) find themselves in one of the **situations of exclusion**, referred to in paragraph IV.1.1. above for this procurement procedure.
2. As mentioned under section III.2.1., the tenderers must provide proof of **registration**, as prescribed in their country of establishment, on one of the professional or trade registers or provide a declaration or certificate.

IV.1.3. Evidence to be provided by the tenderers

1. When submitting their bids, each tenderer (including subcontractor(s) or any member of a consortium or grouping) shall provide a declaration on their honour, duly signed and dated, stating that they are not in one of the situations mentioned above (cf. IV.1.1 and VI.1.2). For that purpose, they must complete and sign the form attached in Annex 4. Where the tenderer is a legal entity, they shall, whenever requested by the Commission, provide information on the ownership or on the management, control and power of representation of the legal entity.
2. The tenderer to whom the contract is to be awarded shall provide, within 15 calendar days after notification of the results of the procurement procedure and in any case before the signature of the contract, the following evidence, confirming the declaration referred to above:

The Commission shall accept, as satisfactory evidence that the tenderer is not in one of the situations described in point IV.1.1 (a), (b) or (e) above, a recent extract from the judicial record or, failing that, an equivalent document recently issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied.

The Commission accepts, as satisfactory evidence that the tenderer is not in the situation described in point IV.1.1 (d) above, a recent certificate issued by the competent authority of the State concerned.

Where no such document or certificate is issued in the country concerned, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.

3. Depending on the national legislation of the country in which the candidate or tenderer is established, the documents referred to in paragraph 1 and 2 above shall relate to legal and/or natural persons including, if applicable with regard to points b) and e), company directors or any person with powers of representation, decision-making or control in relation to the tenderer.
4. When the subcontracted part is above 20% of the contract value, the subcontractor(s) must also provide the above-mentioned declaration on honour. In case of doubt on this declaration on the honour, the contracting authority may also request the evidence referred to in paragraphs 2 and 3 above.

5. The Commission reserves the right to request any other document relating to the proposed tender for evaluation and verification purpose, within a delay determined in its request.

Remark:

The tenderers will be waived of the obligation to submit the documentary evidence above mentioned if such evidence has already been submitted for the purposes of another procurement procedure launched by the Directorates General in charge of Energy or Transport and provided that the documents are not more than one year old starting from their issuing date and that they are still valid. In such a case, the tenderer shall declare on his honour that the documentary evidence has already been provided in a previous procurement procedure, specifying the reference of the call for tender for which the documents have been provided, and confirm that no changes in his situation have occurred.

IV.1.4. Administrative and financial penalties

Without prejudice to the application of penalties laid down in the contract, candidates or tenderers and contractors who have been found guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the procurement procedure or have failed to supply this information or have been declared to be in serious breach of their obligations under contracts covered by the Union budget may be subject to administrative or financial penalties, in accordance with Article 96 of the Financial Regulation and Articles 134b and 133a of the Implementing Rules.⁴

IV.2. SELECTION CRITERIA (SELECTION OF TENDERERS)

To be eligible, the tenderers must have the economic and financial capacity as well as the technical and professional capacity to perform the tasks required in this call for tender.

IV.2.1. Economic and financial capacity – Criteria and references required

The tenderers must demonstrate their economic and financial capacity to carry out reliably the activities under the contract. In case of an offer by a consortium the following criteria apply individually to all members of the group.

The tenderer must have positive cash and cash equivalents at the end of the last three financial years.

Evidence of this capacity shall be furnished on the basis of the following documents: presentation of balance sheets or extract from balance sheets for the last three years for which accounts have been closed, where publication of this document is required under the company law of the country in which the economic operator is established. The extract from balance sheets should clearly indicate “short term assets” and “short term liabilities” to calculate the difference.

⁴ Commission Regulation (EC, Euratom) n° 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, OJ L 357 of 31 December 2002, p. 1, as amended.

This rule applies to all service providers, regardless of the percentage of tasks they intend to execute, once they have chosen to submit a tender. However, if the tender includes subcontractors whose tasks represent less than 20% of the contract, those subcontractors are not obliged to provide evidence of their economic and financial capacity.

IV.2.2. Technical and professional capacity – Criteria and references required

- 1) The tenderers must have at least:
 - three experts on transport of dangerous goods and environmental issues, with min. five years of experience in the relevant sector. Their expertises should cover the following topics: railway safety, road safety and waterways safety, as well as chemical plant safety;
 - one expert with minimum three years of experience in transport of dangerous goods and environmental legislation.

Evidence of this capacity shall be furnished on the basis of the following documents: detailed curriculum vitae of each staff member responsible for carrying out the work, including his or her educational background, degrees and diplomas, professional experience, research work, publications and linguistic skills and a list of projects carried on railway safety and on transport of dangerous goods.

The CV's shall be presented, preferably, in accordance to the Commission Recommendation on a common European format for curricula vitae, published in OJ L79 of 22 March 2002, p. 66.

- 2) The tenderers must have worked on at least three projects, each with a budget of at least 50% of the financial offer submitted by the tenderer for the present tender in fields related to transport of dangerous goods in the past three years.

Evidence of this capacity shall be furnished on the basis of the following documents: list of the main services and tasks delivered by the tenderer during the last three years with the sums, dates and recipients, public or private.

IV.3. EVALUATION OF TENDERS – AWARD CRITERIA

The contract will be awarded according to the criteria given below, on the basis of the economically most advantageous tender.

Only bids that have reached a total score of a minimum of 70% and a minimum score of 60 % for each criterion will be taken into consideration for awarding the contract.

a) Technical evaluation criteria in their order of importance as weighted by percentage

N°	Award Criteria	Weighting
1	Quality of the proposed approach, methodology and work programme	40%
2	Quality of the project management and organisation of the team, including tasks and resources allocation	30%
3	Understanding of the tender specifications and the objective of the study	20%
4	Presentation and clarity of the bid	10%
Total number of points		100

b) Total price

The contract will be awarded to the tender that offers the best quality combined with a low price weighted according to the following formula:

Score for tender x =

$$\frac{\text{price of lowest tender}}{\text{price of tender } x} \text{ multiplied by } 0.4$$

+

$$\frac{\text{total quality score for award criteria for tender } x}{100} \text{ multiplied by } 0.6$$

IV.4. INFORMATION FOR TENDERERS

The Commission will inform tenderers of decisions reached concerning the award of the contract, including the grounds for any decision not to award a contract or to recommence the procedure.

Upon written request, the Commission will inform the rejected tenderers of the reasons for their rejection and the tenderers having submitted an admissible tender of the characteristics and relative advantages of the selected tender and the name of the successful tenderer.

However, certain information may be withheld where its release would impede law enforcement or otherwise be contrary to the public interest, or would prejudice the legitimate commercial interests of economic operators, public or private, or might prejudice fair competition between them.

V. ANNEXES

1. Identification of the Tenderer
2. Financial Identification
3. Legal Entity Form
4. Declaration by the Tenderer (relating to the exclusion criteria and absence of conflict of interest)
5. Power of Attorney (mandate in case of joint tender)
6. Draft Contract

ANNEX 1

IDENTIFICATION OF THE TENDERER

(Each service provider, including subcontractor(s) or any member of a consortium or grouping, must complete and sign this identification form)

Call for tender MOVE/B2/2012-31

Identity	
Name of the tenderer	
Legal status of the tenderer	
Date of registration	
Country of registration	
Registration number	
VAT number	
Description of statutory social security cover (at the level of the Member State of origin) and non-statutory cover (supplementary professional indemnity insurance) ⁵	
Address	
Address of registered office of tenderer	
Where appropriate, administrative address of tenderer for the purposes of this invitation to tender	
Contact Person	
Surname: First name: Title (e.g. Dr, Mr, Ms) : Position (e.g. manager): Telephone number: Fax number: E-mail address:	

⁵ For natural persons

Legal Representatives	
Names and function of legal representatives and of other representatives of the tenderer who are authorised to sign contracts with third parties	
Declaration by an authorised representative of the organisation⁶ I, the undersigned, certify that the information given in this tender is correct and that the tender is valid.	
Surname: First name:	Signature:

⁶ This person must be included in the list of legal representatives; otherwise the signature on the tender will be invalidated.

ANNEX 2

Financial identification form

(to be completed by the tenderer and his or her financial institution)

A specific form for each Member State is available at the following Internet address:

http://ec.europa.eu/budget/contracts_grants/info_contracts/financial_id/financial_id_en.cfm

In the case of a grouping, this form must only be provided by the person heading the project.

ANNEX 3

Legal entity form

Complete the legal entity form, which should be accompanied by a number of supporting documents, available on the Web site:

http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm

Please note that we can only accept either original documents or certified copies, which must be less than 6 months old.

ANNEX 4

Declaration of honour with respect to the Exclusion Criteria and absence of conflict of interest

Each service provider, including subcontractor(s) or any member of a consortium or grouping, must sign this declaration

The undersigned *[name of the signatory of this form, to be completed]*:

- in his/her own name (*if the economic operator is a natural person or in case of own declaration of a director or person with powers of representation, decision making or control over the economic operator⁷*)
- or
- representing (*if the economic operator is a legal person*)

official name in full (*only for legal person*):

official legal form (*only for legal person*):

official address in full:

VAT registration number:

declares that the company or organisation that he/she represents / he/she:

- a) is not bankrupt or being wound up, is not having its affairs administered by the courts, has not entered into an arrangement with creditors, has not suspended business activities, is not the subject of proceedings concerning those matters, and is not in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- b) has not been convicted of an offence concerning professional conduct by a judgment which has the force of *res judicata*;
- c) has not been guilty of grave professional misconduct proven by any means which the contracting authorities can justify;
- d) has fulfilled all its obligations relating to the payment of social security contributions and the payment of taxes in accordance with the legal provisions of the country in which it is established, with those of the country of the contracting authority and those of the country where the contract is to be carried out;

⁷ To be used depending on the national legislation of the country in which the candidate or tenderer is established and where considered necessary by the contracting authority (see art. 134(4) of the Implementing Rules).

- e) has not been the subject of a judgement which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Union's financial interests;
- f) is not a subject of the administrative penalty for being guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the procurement procedure or failing to supply an information, or being declared to be in serious breach of his obligation under contract covered by the budget.

In addition, the undersigned declares on their honour:

- g) they have no conflict of interest in connection with the contract; a conflict of interest could arise in particular as a result of economic interests, political or national affinities, family or emotional ties or any other relevant connection or shared interest;
- h) they will inform the contracting authority, without delay, of any situation considered a conflict of interest or which could give rise to a conflict of interest;
- i) they have not made and will not make any offer of any type whatsoever from which an advantage can be derived under the contract;
- j) they have not granted and will not grant, have not sought and will not seek, have not attempted and will not attempt to obtain, and have not accepted and will not accept any advantage, financial or in kind, to or from any party whatsoever, constituting an illegal practice or involving corruption, either directly or indirectly, as an incentive or reward relating to award of the contract;
- k) that the information provided to the Commission within the context of this invitation to tender is accurate, sincere and complete;
- l) that in case of award of contract, they shall provide upon request the evidence that they are not in any of the situations described in points a, b, d, e above.

For situations described in (a), (b) and (e), production of a recent extract from the judicial record is required or, failing that, a recent equivalent document issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied. Where the Tenderer is a legal person and the national legislation of the country in which the Tenderer is established does not allow the provision of such documents for legal persons, the documents should be provided for natural persons, such as the company directors or any person with powers of representation, decision making or control in relation to the Tenderer.

For the situation described in point (d) above, recent certificates or letters issued by the competent authorities of the State concerned are required. These documents must provide evidence covering all taxes and social security contributions for which the Tenderer is liable, including for example, VAT, income tax (natural persons only), company tax (legal persons only) and social security contributions.

For any of the situations (a), (b), (d) or (e), where any document described in two paragraphs above is not issued in the country concerned, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.]

By signing this form, the undersigned acknowledges that they have been acquainted with the administrative and financial penalties described under art 133 and 134 b of the Implementing Rules (Commission Regulation 2342/2002 of 23/12/02), which may be applied if any of the declarations or information provided prove to be false.

Full name

Date

Signature

ANNEX 5

POWER OF ATTORNEY

mandating one of the partners in a joint tender as lead partner and lead contractor ⁸

The undersigned:

– Signatory (Name, Function, Company, Registered address, VAT Number)

having the legal capacity required to act on behalf of his/her company,

HEREBY AGREES TO THE FOLLOWING:

- 1) To submit a tender as a partner in the group of partners constituted by **Company 1, Company 2, Company N**, and led by **Company X**, in accordance with the conditions specified in the tender specifications and the terms specified in the tender to which this power of attorney is attached.
- 2) If the European Commission awards the Contract to the group of partners constituted by **Company 1, Company 2, Company N**, and led by **Company X** on the basis of the joint tender to which this power of attorney is attached, all the partners shall be co-signatories of the Contract in accordance with the following conditions:
 - (a) All partners shall be jointly and severally liable towards the European Commission for the performance of the Contract.
 - (b) All partners shall comply with the terms and conditions of the Contract and ensure the proper delivery of their respective share of the services and/or supplies subject to the Contract.
- 1) Payments by the European Commission related to the services and/or supplies subject to the Contract shall be made through the lead partner's bank account: **[Provide details on bank, address, account number]**.
- 2) The partners grant to the lead partner all the necessary powers to act on their behalf in the submission of the tender and conclusion of the Contract, including:
 - (a) The lead partner shall submit the tender on behalf of the group of partners.
 - (b) The lead partner shall sign any contractual documents — including the Contract, and Amendments thereto — and issue any invoices related to the Services on behalf of the group of partners.
 - (c) The lead partner shall act as a single contact point with the European Commission in the delivery of the services and/or supplies subject to the Contract. It shall co-ordinate the delivery of the services and/or supplies by the group of partners to the European Commission, and shall see to a proper administration of the Contract.

Any modification to the present power of attorney shall be subject to the European Commission's express approval. This power of attorney shall expire when all the contractual obligations of the group of partners towards the European Commission for the delivery of the services and/or supplies subject to the Contract have ceased to exist. The parties cannot terminate it before that date without the Commission's consent.

Signed in on **[dd/mm/yyyy]**

Place and date:

Name (in capital letters), function, company and signature:

⁸ To be filled in and signed by each of the partners in a joint tender, except the lead partner;

ANNEX 6
DRAFT CONTRACT



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MOBILITY AND TRANSPORT
Directorate B - European mobility network
B.2 - Single European rail area

SERVICE CONTRACT

CONTRACT NUMBER – [complete⁹]

The European Union (hereinafter referred to as "the Union"), represented by the European Commission (hereinafter referred to as "the Commission"), which is represented for the purposes of the signature of this contract by Mr Jean-Eric Paquet, Director in the Directorate-General for Mobility and Transport, Directorate for European mobility network

of the one part,

and

[official name in full]

[official legal form] (Delete if contractor is a natural person or a body governed by public law.)

[statutory registration number] (Delete if contractor is a body governed by public law. For natural persons, indicate the number of their identity card or, failing that, of their passport or equivalent)

[official address in full]

[VAT registration number]

(hereinafter referred to as "the Contractor"), [represented for the purposes of the signature of this contract by [forename, surname and function,]]

[The parties identified above and hereinafter collectively referred to as 'the Contractor' shall be jointly and severally liable vis-à-vis the Commission for the performance of this contract.]

of the other part,

⁹ Comments [*in italics*] to be deleted and replaced by appropriate data
Options [in roman] to be completed or deleted

HAVE AGREED

the **Special Conditions** and the and the following Annexes¹⁰:

Annex I – General Conditions for service contracts

Annex III – Tender Specifications (Invitation to Tender No [complete] of [insert date])

Annex III – Contractor's Tender (No [complete] of [insert date])

[Other Annexes]

which form an integral part of this contract (hereinafter referred to as “the Contract”).

- The terms set out in the Special Conditions shall take precedence over those in the other parts of the Contract.
- The terms set out in the General Conditions shall take precedence over those in the other Annexes.
- The terms set out in the Tender Specifications (Annex II) shall take precedence over those in the Tender (Annex III).

Subject to the above, the several instruments forming part of the Contract are to be taken as mutually explanatory. Ambiguities or discrepancies within or between such parts shall be explained or rectified by a written instruction issued by the Commission, subject to the rights of the Contractor under Article I.7 should he dispute any such instruction.

¹⁰ Voluminous annexes may be replaced by a reference to publicly available documents.

I – SPECIAL CONDITIONS

ARTICLE I.1 - SUBJECT

- I.1.1.** The subject of the Contract is the analysis of the feasibility of defining and using harmonized risk acceptance criteria (RAC) in decision making processes for justification of restrictions in transport of dangerous goods (TDG) for each inland transport mode.
- I.1.2.** The Contractor shall execute the tasks assigned to him in accordance with the Tender Specifications annexed to the Contract (Annex II).

ARTICLE I.2 - DURATION

- I.2.1.** The Contract shall enter into force on the date on which it is signed by the last contracting party.
- I.2.2.** Under no circumstances may implementation commence before the date on which the Contract enters into force.
- I.2.3.** The duration of the execution of the tasks shall not exceed fourteen months. This period and all other periods specified in the Contract are calculated in calendar days. Execution of the tasks shall start from the date of entry into force of the Contract. The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses.
- I.2.4. Contract renewal** [*not applicable*]

ARTICLE I.3 – CONTRACT PRICE

- I.3.1.** The maximum total amount to be paid by the Commission under the Contract shall be EUR [*amount in figures and in words*] covering all tasks executed.

This price also covers any fees payable to the Contractor in relation to the vesting of rights in the Union and where applicable the transfer of rights to the Union and any use of the results by the Commission.

- I.3.2** Prices shall be expressed in EUR.
- I.3.3 Price revision** [*not applicable*]
- I.3.4. Reimbursement of expenses** [*not applicable*]

ARTICLE I.4 – PAYMENTS

I.4.1 Interim payment

The Contractor shall submit an admissible invoice indicating the reference number of the Contract for an interim payment of EUR [amount in figures and in words] equal to 50 % of the total amount referred to in Article I.3.1.

Invoices for interim payment shall be admissible if accompanied by an interim report in accordance with the instructions laid down in Annex II.

The Commission shall have forty-five days from receipt to approve or reject the progress report, and the Contractor shall have twenty days in which to submit additional information or a new progress report.

Provided the progress report has been approved, the Commission shall have thirty days from the date of receipt of the relevant invoice¹¹ to pay an interim payment.

I.4.2 Payment of the balance

Within sixty days of completion of the tasks referred to in Annex II, the Contractor shall submit an admissible invoice indicating the reference number of the Contract for payment of the balance.

The invoice shall be admissible if accompanied by the final report in accordance with the instructions laid down in Annex II.

The Commission shall have forty-five days from receipt to approve or reject the final progress report, and the Contractor shall have twenty days in which to submit additional information or a new final progress report.

Provided the final progress report has been approved, the Commission shall have thirty days from the receipt of the relevant invoice to pay the balance.

For Contractors established in Belgium, the provisions of the Contract constitute a request for VAT exemption No 450, provided the Contractor includes the following statement in his invoice(s): “Exonération de la TVA, article 42, paragraphe 3.3 du code de la TVA (circulaire 2/1978)” or an equivalent statement in the Dutch or German language.

ARTICLE I.5 – BANK ACCOUNT

Payments shall be made to the Contractor’s bank account denominated in euro, identified as follows:

¹¹ The invoice will be deemed to have been received by the Commission on the date on which it is registered by the department responsible indicated in Article I.6.

Name of bank: [complete]
Address of branch in full: [complete]
Exact designation of account holder: [complete]
Full account number including codes: [complete]
[IBAN¹² code: [complete]]

ARTICLE I.6 – GENERAL ADMINISTRATIVE PROVISIONS

Any communication relating to the Contract or to its implementation shall be made in writing in paper or electronic form and shall bear the Contract number. Ordinary mail shall be deemed to have been received by the Commission on the date on which it is registered by the department responsible indicated below.

Electronic communication must be confirmed by paper communication when requested by any of the parties. The parties agree that paper communication can be replaced by electronic communication with electronic signature.

Communications shall be sent to the following addresses¹³:

Commission:

European Commission
Directorate-General for Mobility and Transport
Directorate for European mobility network
Unit Single European rail area
B-1049 Bruxelles

Contractor:

Mr/Mrs/Ms [complete]
[Function]
[Company name]
[Official address in full]

ARTICLE I.7– APPLICABLE LAW AND SETTLEMENT OF DISPUTES

¹² BIC or SWIFT code for countries with no IBAN code.

¹³ Fax number and e-mail accounts may be added. If an e-mail account is given, incoming e-mails should be redirected if the account holder is absent and a clause should be added specifying what is considered to be the reference date of the electronic communication (date of sending, receiving or opening).

- I.7.1.** The Contract shall be governed by Union law, complemented, where necessary, by the national substantive law of Belgium.
- I.7.2.** Any dispute between the parties resulting from the interpretation or application of the Contract which cannot be settled amicably shall be brought before the courts of Belgium.

ARTICLE I.8 – DATA PROTECTION

Any personal data included in the Contract shall be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Such data shall be processed solely for the purposes of the performance, management and monitoring of the Contract by the Director of the Shared Resource Directorate MOVE/ENER acting as data controller without prejudice to possible transmission to the bodies charged with monitoring or inspection task in application of Union law.

ARTICLE I.9 - USE OF THE RESULTS

I.9.1 Modes of exploitation

All studies, reports and documented data produced within this Contract and for which the rights vest in the Union and thereby the Union has acquired the ownership in accordance with Article II.10 may be used in the following way:

- i) distribution:
 - publishing in paper copies
 - publishing in electronic form as downloadable/non-downloadable file
 - making available on internet
 - broadcasting
 - public presentation or display
 - communication through a press information services,
 - inclusion in widely accessible databases or indexes
 - in any form and by any method existing at this date and in the future
 - giving access on individual requests without right to reproduce or exploit, as provided for by Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents
- ii) storage:
 - in paper format
 - in electronic format
- iii) archiving in line with the applicable document management rules
- iv) modifications made by the Commission or by a third party:
 - shortening
 - making a summary
 - modification of the content
 - necessary correction of technical errors

- addition of new elements, paragraphs titles, leads, bolds, legend, table of content, summary, graphics, subtitles, sound, etc.,
 - preparation in audio form, preparation as a presentation, animation, pictograms story, slide-show, public presentation etc.
 - extracting a part or dividing into parts
 - use of a concept or preparation of a derivative work
 - digitisation or converting the format for storage or usage purposes
 - translate in any language
- v) use for own purposes:
- making available to the staff of the Commission
 - making available to the persons and entities working for the Commission or cooperating with it, including: contractors, subcontractors whether legal or natural persons, EU-institutions, agencies and bodies, Member States institutions
 - making a copy, reproducing
- vi) allow use of results by third parties:
- for commercial or non commercial purposes,
 - against payment, without payment or against fulfilment of other conditions
 - assignment in full or in part
 - giving a licence
 - for a particular period or unlimited in time

Where the Commission becomes aware that scope of modifications exceeds the scope envisaged in the Contract the creator shall be consulted. The creator will be obliged to provide his response within two weeks. He shall provide his agreement including any suggestions of modifications free of charge. The creator may refuse the intended modification only when it may harm his honour, reputation or distort integrity of the work.

I.9.2 Pre-existing rights, intermediaries, creators' rights

Where industrial and intellectual property rights, including rights of ownership and use of the Contractor and third parties, exist prior to the Contract being entered into, ("pre-existing rights") the Contractor shall establish a list which shall specify all pre-existing rights and disclose it to the Commission at the latest when delivering a final result.

All pre-existing rights to delivered results shall vest in the Union and thereby under the terms of the Contract be effectively transferred to the Union, as provided for in Article I.9.1.

The Contractor shall present relevant and exhaustive proofs of acquiring all necessary rights together with delivery of the final report at the latest. The latter should be fulfilled by presentation of the contractors', all subcontractors' intermediating in the transfer of rights and creators' statements prepared in accordance with annex A1.

I.9.3 Partial vesting of rights [not applicable]

I.9.4 Persons depicted in photographs or films

In case natural, recognisable person(s) are depicted in a photograph or film the Contractor shall submit a statement of these depicted persons giving their permissions for the described use of their images. The above does not refer to photographs taken or films shot in public places where random members of the public are identifiable only hypothetically and to public persons acting in their public activities.

ARTICLE I.10 – TERMINATION BY EITHER CONTRACTING PARTY

Either contracting party may, of its own volition and without being required to pay compensation, terminate the Contract by serving one month formal prior notice. Should the Commission terminate the Contract, the Contractor shall only be entitled to payment corresponding to part-performance of the Contract before the termination date. Article II.14.4 applies accordingly.

ARTICLE I.11 - CONTRACT CONCLUDED DURING STANDSTILL PERIOD

In case this Contract was signed by both the Commission and the Contractor before the expiry of 14 calendar days from the day after simultaneous dispatch of information about the award decisions and decisions to reject, this Contract shall be null and void.

This article is not applicable for contracts not covered by Directive 2004/18/EC and in cases indicated in Article 158a(2) of the rules for the implementation of the Financial Regulation (Regulation No 2342/2002).

SIGNATURES

For the Contractor,
[*Company name/forename/surname/function*]

For the Commission,
[forename/surname/function]

signature[s]: _____

signature[s]: _____

Done at [Brussels], [date]

Done at [Brussels], [date]

In duplicate in English.

II – GENERAL CONDITIONS

ARTICLE II.1 – PERFORMANCE OF THE CONTRACT

- II.1.1.** The Contractor shall perform the Contract to the highest professional standards. The Contractor shall have sole responsibility for complying with any legal obligations incumbent on him, notably those resulting from employment, tax and social legislation.
- II.1.2.** The Contractor shall have sole responsibility for taking the necessary steps to obtain any permit or licence required for performance of the Contract under the laws and regulations in force at the place where the tasks assigned to him are to be executed.
- II.1.3.** Without prejudice to Article II.3 any reference made to the Contractor's staff in the Contract shall relate exclusively to individuals involved in the performance of the Contract.
- II.1.4.** The Contractor must ensure that any staff performing the Contract has the professional qualifications and experience required for the execution of the tasks assigned to him.
- II.1.5.** The Contractor shall neither represent the Commission nor behave in any way that would give such an impression. The Contractor shall inform third parties that he does not belong to the European public service.
- II.1.6.** The Contractor shall have sole responsibility for the staff who executes the tasks assigned to him.

The Contractor shall make provision for the following employment or service relationships with his staff:

- staff executing the tasks assigned to the Contractor may not be given orders direct by the Commission;
 - the Commission may not under any circumstances be considered to be the staff's employer and the said staff shall undertake not to invoke in respect of the Commission any right arising from the contractual relationship between the Commission and the Contractor.
- II.1.7.** In the event of disruption resulting from the action of a member of the Contractor's staff working on Commission premises or in the event of the expertise of a member of the Contractor's staff failing to correspond to the profile required by the Contract, the Contractor shall replace him without delay. The Commission shall have the right to request the replacement of any such member of staff, stating its reasons for so doing. Replacement staff must have the necessary qualifications and be capable of performing the Contract

under the same contractual conditions. The Contractor shall be responsible for any delay in the execution of the tasks assigned to him resulting from the replacement of staff in accordance with this Article.

II.1.8. Should any unforeseen event, action or omission directly or indirectly hamper execution of the tasks, either partially or totally, the Contractor shall immediately and on his own initiative record it and report it to the Commission. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with his obligations under the Contract. In such event the Contractor shall give priority to solving the problem rather than determining liability.

II.1.9. Should the Contractor fail to perform his obligations under the Contract, the Commission may - without prejudice to its right to terminate the Contract - reduce or recover payments in proportion to the scale of the failure. In addition, the Commission may impose penalties or liquidated damages provided for in Article II.12.

ARTICLE II.2 – LIABILITY

II.2.1. The Commission shall not be liable for damage sustained by the Contractor in performance of the Contract except in the event of wilful misconduct or gross negligence on the part of the Commission.

II.2.2. The Contractor shall be liable for any loss or damage sustained by the Commission in performance of the Contract, including in the event of subcontracting under Article II.6 but only up to three times the total amount of the Contract. Nevertheless, if the damage or loss is caused by the gross negligence or wilful misconduct of the Contractor or by its employees, the Contractor shall remain liable without any limitation as to the amount of the damage or loss.

II.2.3. The Contractor shall provide compensation in the event of any action, claim or proceeding brought against the Commission by a third party as a result of damage caused by the Contractor in performance of the Contract.

II.2.4. In the event of any action brought by a third party against the Commission in connection with performance of the Contract, the Contractor shall assist the Commission. Expenditure incurred by the Contractor to this end may be borne by the Commission.

II.2.5. The Contractor shall take out insurance against risks and damage relating to performance of the Contract if required by the relevant applicable legislation. He shall take out supplementary insurance as reasonably required by standard practice in the industry. A copy of all the relevant insurance contracts shall be sent to the Commission should it so request.

ARTICLE II.3 - CONFLICT OF INTERESTS

II.3.1. The Contractor shall take all necessary measures to prevent any situation that could compromise the impartial and objective performance of the Contract. Such conflict of interests could arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest. Any conflict of interests which could arise during performance of the Contract must be notified to the Commission in writing without delay. In the event of such conflict, the Contractor shall immediately take all necessary steps to resolve it.

The Commission reserves the right to verify that such measures are adequate and may require additional measures to be taken, if necessary, within a time limit which it shall set. The Contractor shall ensure that his staff, board and directors are not placed in a situation which could give rise to conflict of interests. Without prejudice to Article II.1 the Contractor shall replace, immediately and without compensation from the Commission, any member of his staff exposed to such a situation.

II.3.2. The Contractor shall abstain from any contact likely to compromise his independence.

II.3.3. The Contractor declares:

- that he has not made and will not make any offer of any type whatsoever from which an unjustified advantage can be derived under the Contract,
- that he has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, where such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, inasmuch as it is an incentive or reward relating to performance of the Contract.

II.3.4. The Contractor shall pass on all the relevant obligations in writing to his staff, board, and directors as well as to third parties involved in performance of the Contract.

ARTICLE II.4 – CONFIDENTIALITY

II.4.1. The Contractor undertakes to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to performance of the Contract. The Contractor shall continue to be bound by this undertaking after completion of the tasks.

II.4.2. The Contractor shall obtain from each member of his staff, board and directors an undertaking that they will respect the confidentiality of any information which is linked, directly or indirectly, to execution of the tasks and that they will not divulge to third parties or use for their own benefit or that of any third party any document or information not available publicly, even after completion of the tasks.

ARTICLE II.5 – DATA PROTECTION

- II.5.1** The Contractor shall have the right of access to his/her personal data and the right to rectify any such data. Should the Contractor have any queries concerning the processing of his/her personal data, s/he shall address them to the entity acting as data controller provided for in Article I.8.
- II.5.2** The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.
- II.5.3** Where the Contract requires the processing of personal data by the Contractor, the Contractor may act only under the supervision of the data controller, in particular with regard to the purposes of the processing, the categories of data which may be processed, the recipients of the data, and the means by which the data subject may exercise his/her rights.
- II.5.4** The Contractor shall limit access to the data to the staff strictly necessary for the performance, management and monitoring of the Contract.
- II.5.5** The Contractor undertakes to adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned in order to:
- a) prevent any unauthorised person from having access to computer systems processing personal data, and especially:
 - aa) unauthorised reading, copying, alteration or removal of storage media;
 - ab) unauthorised data input as well as any unauthorised disclosure, alteration or erasure of stored personal data;
 - ac) unauthorised use of data-processing systems by means of data transmission facilities;
 - b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
 - c) record which personal data have been communicated, when and to whom;
 - d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting institution or body;
 - e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
 - f) design its organisational structure in such a way that it meets data protection requirements.

ARTICLE II.6 – SUBCONTRACTING

- II.6.1.** The Contractor shall not subcontract without prior written authorisation from the Commission nor cause the Contract to be performed in fact by third parties.
- II.6.2.** Even where the Commission authorises the Contractor to subcontract to third parties, he shall none the less remain bound by his obligations to the Commission under the Contract and shall bear exclusive liability for proper performance of the Contract.
- II.6.3.** The Contractor shall make sure that the subcontract does not affect rights and guarantees to which the Commission is entitled by virtue of the Contract, notably Article II.20.

ARTICLE II.7 – AMENDMENTS

Any amendment to the Contract shall be the subject of a written agreement concluded by the contracting parties before fulfilment of all their contractual obligations. An oral agreement shall not be binding on the contracting parties.

ARTICLE II.8 – ASSIGNMENT

- II.8.1.** The Contractor shall not assign the rights and obligations arising from the Contract, in whole or in part, without prior written authorisation from the Commission.
- II.8.2.** In the absence of such authorisation, or in the event of failure to observe the terms thereof, assignment by the Contractor shall not be enforceable against and shall have no effect on the Commission.

ARTICLE II.9 - USE, DISTRIBUTION AND PUBLICATION OF INFORMATION ABOUT THE CONTRACT

- II.9.1.** The Contractor shall authorise the Commission to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, any data contained in the Contract, in particular the identity of the Contractor, the subject matter, the duration and the amount paid. Where personal data is concerned, Articles I.8 and II.5 shall apply.
- II.9.2.** Unless otherwise provided by the Special Conditions, the Commission shall not be required to distribute or publish documents or information supplied in performance of the Contract. If it decides not to distribute or publish the documents or information supplied, the Contractor may not have them distributed or published elsewhere without prior written authorisation from the Commission.
- II.9.3.** Any distribution or publication of information relating to the Contract or use of outcome of the implementation of the Contract and provided as such by

the Contractor shall require prior written authorisation from the Commission and, if so requested, shall mention that it was produced within a contract with the Commission. It shall state that the opinions expressed are those of the Contractor only and do not represent the Commission's official position.

- II.9.4.** The use of information obtained by the Contractor in the course of the Contract for purposes other than its performance shall be forbidden, unless the Commission has specifically given prior written authorisation to the contrary.

ARTICLE II.10 – OWNERSHIP OF THE RESULTS - INTELLECTUAL AND INDUSTRIAL PROPERTY

- II.10.1** A result shall be any outcome of the implementation of the Contract and provided as such by the Contractor.

A creator shall be any person who contributed to production of the result.

Pre-existing intellectual property rights, sometimes referred to as background technology, are any industrial and intellectual property rights which exist prior to the contract being entered into and include rights of ownership and use of the Contractor, the Commission and any third parties ("pre-existing rights").

It shall be a material term of the Contract and of the essence of the Contract that Contractors shall be under a duty to provide a list of pre-existing rights at the date of delivery of the final result the latest.

- II.10.2** The ownership of all the results or rights thereon as listed in the tender specification and the tender attached to the contract, including copyright and other intellectual or industrial property rights, and all technological solutions and information embodied therein, obtained in performance of the Contract, shall be irrevocably and fully vested to the Union, which may use them as described in the Contract. All the rights shall be vested on the Union from the moment the results were delivered and accepted by the Commission.

For the avoidance of doubt and where applicable, any such vesting of rights is also deemed to constitute an effective transfer of the rights from the Contractor to the Union.

The payment of the fee under Article I.3 is deemed to include all forms of use by the Union of the results as set out in Article I.9.

The above vesting of rights in the Union under this Contract covers all territories worldwide and is valid for the whole duration of intellectual property rights protection.

- II.10.3** Any intermediary sub-result, raw data, intermediary analysis made available to the Commission by the Contractor cannot be used by the Union without written consent of the Contractor, unless the tender specification explicitly provides for it to be treated as self-contained result.

- II.10.4** The Contractor retains all right, title and interest in pre-existing rights not fully vested into the Union in line with Article I.9.2, and hereby grants the

Union for the requested period a licence to use the pre-existing rights to the extent necessary to use the delivered results.

II.10.5 The Contractor shall ensure that delivered results are free of rights or claims from third parties including in relation to pre-existing rights, for any use envisaged by the Commission. This does not concern the moral rights of natural persons and rights referred to in Article II.10.4.

II.10.6 The Contractor shall clearly point out all quotations of existing textual works made by the Contractor. The complete reference should include as appropriate: name of the author, title of the work, date of publishing, date of creation, place of publication, address of publication on internet, number, volume and other information allowing to identify the origin easily.

II.10.7 The Contractor shall clearly indicate all parts to which there are pre-existing rights and all parts of the result originating from external sources: parts of other documents, images, graphs, tables, data, software, technical inventions, know-how etc. (delivered in paper, electronic or other form).

For non-textual results or results provided in electronic form only, the description, instruction or information document shall list all parts coming from external sources: IT development tools, routines, subroutines and/or other programs ("background technology"), concepts, designs, installations or pieces of art, data, source or background materials or any other parts of external origin.

II.10.8 If the Commission so requires, the Contractor shall provide proof of ownership or rights to use all necessary rights to the materials referred to in Article II.10.7.

II.10.9. By delivering the results the Contractor confirms that the creators undertake not to oppose their names being recalled when the results are presented to the public and confirms that the results can be divulged.

The Contractor shall possess all relevant agreements of the creator and provide proof by way of documentary evidence.

II.10.10. By delivering the results the Contractor warrants that the above transfer of rights does not violate any law or infringe any rights of others and that he possesses the relevant rights or powers to execute the transfer. He also warrants that he has paid or has verified payment of all fees including fees to collecting societies, related to the final results.

II.10.11. The Contractor shall indemnify and hold the Union harmless for all damages and cost incurred due to any claim brought by any third party including creators and intermediaries for any alleged breach of any intellectual, industrial or other property right based on the Union 's use of the works and in relation to which the Contractor has granted the Union user rights.

ARTICLE II.11 – FORCE MAJEURE

II.11.1. Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the contracting parties which prevents either of them from performing any of their obligations under the Contract, was not

due to error or negligence on their part or on the part of a subcontractor, and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making it available, labour disputes, strikes or financial problems cannot be invoked as force majeure unless they stem directly from a relevant case of force majeure.

- II.11.2.** Without prejudice to Article II.1.8, if either contracting party is faced with force majeure, it shall notify the other party without delay by registered letter with acknowledgment of receipt or equivalent, stating the nature, likely duration and foreseeable effects.
- II.11.3.** Neither contracting party shall be held in breach of its contractual obligations if it has been prevented from performing them by force majeure. Where the Contractor is unable to perform his contractual obligations owing to force majeure, he shall have the right to remuneration only for tasks actually executed.
- II.11.4.** The contracting parties shall take the necessary measures to reduce damage to a minimum.

ARTICLE II.12 – LIQUIDATED DAMAGES

Should the Contractor fail to perform his obligations under the Contract within the time limits set by the Contract, then, without prejudice to the Contractor's actual or potential liability incurred in relation to the Contract or to the Commission's right to terminate the Contract, the Commission may decide to impose liquidated damages per calendar day of delay according to the following formula: $0.3 \times (V/d)$

V is the amount specified in Article I.3.1;

d is the duration specified in Article I.2.3 expressed in days

The Contractor may submit arguments against this decision within thirty days of notification by registered letter with acknowledgement of receipt or equivalent. In the absence of reaction on his part or of written withdrawal by the Commission within thirty days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable. These liquidated damages shall not be imposed where there is provision for interest for late completion. The Commission and the Contractor expressly acknowledge and agree that any sums payable under this Article are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the losses that may be reasonably anticipated from such failure to perform obligations.

ARTICLE II.13 – SUSPENSION OF THE CONTRACT

Without prejudice to the Commission's right to terminate the Contract, where the Contract is subject to substantial error, irregularity or fraud the Commission may suspend execution of the Contract or any part thereof. Suspension shall take effect on the day the Contractor receives notification by registered letter with acknowledgment of receipt or equivalent, or at a later date where the notification so provides. The

Commission shall as soon as possible give notice to the Contractor to resume the service suspended or inform that it is proceeding with contract termination. The Contractor shall not be entitled to claim compensation on account of suspension of the Contract or of part thereof.

ARTICLE II.14 – TERMINATION BY THE COMMISSION

II.14.1. The Commission may terminate the Contract in the following circumstances:

- (a) where the Contractor is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) where the Contractor has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;
- (c) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of professional misconduct;
- (d) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Union's financial interests;
- (e) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of substantial errors, irregularities or fraud in the award procedure or the performance of the Contract;
- (f) where the Contractor is in breach of his obligations under Article II.3;
- (g) where the Contractor was guilty of misrepresentation in supplying the information required by the Commission as a condition of participation in the Contract procedure or failed to supply this information;
- (h) where a change in the Contractor's legal, financial, technical or organisational situation could, in the Commission's opinion, have a significant effect on the performance of the Contract;
- (i) where execution of the tasks has not actually commenced within three months of the date foreseen, and the new date proposed, if any, is considered unacceptable by the Commission;
- (j) where the Contractor is unable, through his own fault, to obtain any permit or licence required for performance of the Contract;
- (k) where the Contractor, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period following receipt of the formal notice, remains in serious breach of his contractual obligations.

II.14.2. In case of force majeure, notified in accordance with Article II.11, either contracting party may terminate the Contract, where performance thereof cannot be ensured for a period corresponding to at least to one fifth of the period laid down in Article I.2.3.

II.14.3. Prior to termination under point c), d), e), h) or k), the Contractor shall be given the opportunity to submit his observations.

Termination shall take effect on the date on which a registered letter with acknowledgment of receipt terminating the Contract is received by the Contractor, or on any other date indicated in the letter of termination.

II.14.4. Consequences of termination

In the event of the Commission terminating the Contract in accordance with this article and without prejudice to any other measures provided for in the Contract, the Contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required by the Special Conditions for the tasks executed up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

The Commission may claim compensation for any damage suffered and recover any sums paid to the Contractor under the Contract.

On termination the Commission may engage any other contractor to execute or complete the services. The Commission shall be entitled to claim from the Contractor all extra costs incurred in doing so, without prejudice to any other rights or guarantees it has under the Contract.

ARTICLE II.14a – SUBSTANTIAL ERRORS, IRREGULARITIES AND FRAUD ATTRIBUTABLE TO THE CONTRACTOR

Where, after the award of the Contract, the award procedure or the performance of the Contract prove to have been subject to substantial errors, irregularities or fraud, and where such errors, irregularities or fraud are attributable to the Contractor, the Commission may refuse to make payments, may recover amounts already paid or may terminate all the contracts concluded with the Contractor, in proportion to the seriousness of the errors, irregularities of fraud.

ARTICLE II.4 – INVOICING AND PAYMENTS

II.15.1. Pre-financing guarantee:

Where required by Article I.4.1 or if the pre-financing is over €150.000, the Contractor shall provide a financial guarantee in the form of a bank guarantee or equivalent supplied by a bank or an authorised financial institution (guarantor) equal to the amount indicated in the same article to cover pre-financing under the Contract. Such guarantee may be replaced by a joint and several guarantee by a third party.

The guarantor shall pay to the Commission at its request an amount corresponding to payments made by it to the Contractor which have not yet been covered by equivalent work on his part.

The guarantor shall stand as first-call guarantor and shall not require the Commission to have recourse against the principal debtor (the Contractor).

The guarantee shall specify that it enters into force at the latest on the date on which the Contractor receives the pre-financing. The guarantee shall be retained until the pre-financing has been deducted from interim payments or payment of the balance to the Contractor. It shall be released the following month. The cost of providing such guarantee shall be borne by the Contractor.

II.15.2. Interim payments and payment of the balance:

Payments shall be executed only if the Contractor has fulfilled all his contractual obligations by which the invoice is submitted.

At the end of each of the periods indicated in Annex II the Contractor shall submit to the Commission a formal request for payment accompanied by the following documents which are provided for in the Special Conditions.

If providing a progress report is a condition for payment, on receipt the Commission shall have the period of time indicated in the Special Conditions in which:

Ø to approve it, with or without comments or reservations, or suspend such period and request additional information; or

Ø to reject it and request a new progress report.

Approval of the progress report shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations or information it contains.

Where the Commission requests a new report because the one previously submitted has been rejected, this shall be submitted within the period of time indicated in the Special Conditions. The new progress report shall likewise be subject to the above provisions.

II.15.3. Payment currency and costs:

Payments are executed in the currency of the contract.

Costs of the transfer are borne in the following way:

Ø costs of dispatch charged by the bank of the Commission are borne by the Commission,

Ø cost of receipt charged by the bank of the Contractor are borne by the Contractor,

Ø all costs of repeated transfer caused by one of the parties are borne by the party who caused repetition of the transfer.

ARTICLE II.16 – GENERAL PROVISIONS CONCERNING PAYMENTS

II.16.1. Payments shall be deemed to have been made on the date on which the Commission's account is debited.

II.16.2. The payment periods referred to in Article I.4 may be suspended by the Commission at any time if it informs the Contractor that his invoice is not admissible, either because the amount is not due or because the necessary supporting documents have not been properly produced. The Commission may proceed with further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the invoice is admissible.

The Commission shall notify the Contractor accordingly by registered letter with acknowledgment of receipt or equivalent. Suspension shall take effect from the date of dispatch of the letter. The remainder of the period referred to in Article I.4 shall begin to run again once the suspension has been lifted.

II.16.3. In the event of late payment the Contractor shall be entitled to interest, provided the calculated interest exceeds EUR 200. In case interest does not exceed EUR 200, the Contractor may claim interest within two months of receiving the payment. Interest shall be calculated at the rate applied by the European Central Bank to its most recent main refinancing operations (“*the reference rate*”) plus seven percentage points (“*the margin*”). The reference rate in force on the first day of the month in which the payment is due shall apply. Such interest rate is published in the C series of the Official Journal of the European Union. Interest shall be payable for the period elapsing from the calendar day following expiry of the time limit for payment up to the day of payment. Suspension of payment by the Commission may not be deemed to constitute late payment.

ARTICLE II. 17 – TAXATION

II.17.1. The Contractor shall have sole responsibility for compliance with the tax laws which apply to him. Failure to comply shall make the relevant invoices invalid.

II.17.2. The Contractor recognises that the Commission is, as a rule, exempt from all taxes and duties, including value added tax (VAT), pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union.

II.17.3. The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the goods and services required for performance of the Contract are exempt from taxes and duties, including VAT.

II.17.4. Invoices presented by the Contractor shall indicate his place of taxation for VAT purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

ARTICLE II.18 - REIMBURSEMENTS

II.18.1. Where provided by the Special Conditions or by Annex II, the Commission shall reimburse the expenses which are directly connected with execution of the tasks on production of original supporting documents, including receipts and used tickets.

II.18.2. Travel and subsistence expenses shall be reimbursed, where appropriate, on the basis of the shortest itinerary.

II.18.3. Travel expenses shall be reimbursed as follows:

- a) travel by air shall be reimbursed up to the maximum cost of an economy class ticket at the time of the reservation;
- b) travel by boat or rail shall be reimbursed up to the maximum cost of a first class ticket;
- c) travel by car shall be reimbursed at the rate of one first class rail ticket for the same journey and on the same day;
- d) travel outside Union territory shall be reimbursed under the general conditions stated above provided the Commission has given its prior written agreement.

II.18.4. Subsistence expenses shall be reimbursed on the basis of a daily allowance as follows:

- a) for journeys of less than 200 km (return trip) no subsistence allowance shall be payable;
- b) daily subsistence allowance shall be payable only on receipt of a supporting document proving that the person concerned was present at the place of destination;
- c) daily subsistence allowance shall take the form of a flat-rate payment to cover all subsistence expenses, including accommodation, meals, local transport, insurance and sundries;
- d) daily subsistence allowance, where applicable, shall be reimbursed at the rate specified in Article I.3.

II.18.5. The cost of shipment of equipment or unaccompanied luggage shall be reimbursed provided the Commission has given prior written authorisation.

II.18.6. Conversion between the euro and another currency shall be made using the daily euro exchange rate published in the C series of the *Official Journal of the European Union* of the day on which the expense was made.

ARTICLE II.19 – RECOVERY

II.19.1. If total payments made exceed the amount actually due or if recovery is justified in accordance with the terms of the Contract, the Contractor shall reimburse the appropriate amount in euro on receipt of the debit note, in the manner and within the time limits set by the Commission.

II.19.2. In the event of failure to pay by the deadline specified in the debit note, the sum due shall bear interest at the rate indicated in Article II.16.3. Interest

shall be payable from the calendar day following the due date up to the calendar day on which the debt is repaid in full.

- II.19.3.** The Commission may, after informing the Contractor, recover amounts established as certain, of a fixed amount and due by offsetting, in cases where the Contractor also has a claim on the Union that is certain, of a fixed amount and due. The Commission may also claim against the guarantee, where provided for.

ARTICLE II.20 – CHECKS AND AUDITS

- II.20.1.** Pursuant to Article 142 of the Financial Regulation applicable to the general budget of the European Communities, the Court of Auditors shall be empowered to audit the documents held by the natural or legal persons receiving payments from the budget of the Union from signature of the Contract up to five years after payment of the balance.
- II.20.2.** The Commission or an outside body of its choice shall have the same rights as the Court of Auditors for the purpose of checks and audits limited to compliance with contractual obligations from signature of the Contract up to five years after payment of the balance.
- II.20.3.** In addition, the European Anti Fraud Office may carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 and Parliament and Council Regulation (EC) No 1073/1999 from signature of the Contract up to five years after payment of the balance.

ANNEX

Statement of Contractor concerning right to delivered result

I, *[insert name of the authorised representative of the Contractor]* representing *[insert name of the Contractor]*, party to the Contract *[insert title and/or number of the contract]* warrants that the Contractor holds full right to the delivered *[insert title and/or description of result]* which is free of any claims, including claim of the creators who transferred all their rights and *[were fully paid]* *[will be paid as agreed within [complete] weeks from [delivery of this statement.]* *[receipt of confirmation of acceptance of the work].*

Date, place, signature