

EXAMPLE

CONTRACT FOR THE PROVISION OF SERVICES

Between:

The International Union of Railways (UIC), an association under French law, headquartered at 16, rue Jean Rey, F-75015 Paris, EU VAT number FR 43784601841, SIRET (French business registration number) 784 601 841, represented by Mr François Davenne, Director General

hereinafter referred to as “UIC” or “the LEAD CUSTOMER”,

DP Rail consortium partners xxxxx

Herein after referred to as “xx”

Collectively referred to as the “CUSTOMERS”

on the one hand,

and

Company X, legal form of the company,, headquartered at, EU VAT number XXXXXXXXXXXXX, business registration identification number (SIRET in France) XXXXXX, represented by.....with full power to sign on behalf of the company,

hereinafter referred to as “the SUPPLIER”, recognised for its technical skills and expertise in the domain of the present Contract,

on the other hand,

identified hereinafter as “the Parties” or individually as a “Party”,

WHEREAS

The consortium comprising the Lead Customer and xxxx is granted the CEF Project refxxxxxx (herein after referred to as the DP RAIL PROJECT);

The SUPPLIER submitted to the Customer an offer for the performance by the SUPPLIER of SERVICES within the framework of UIC Project no. relating to

xxxxxx

have agreed on the terms hereafter:

ARTICLE 1 -OBJECT

These terms and conditions govern the Supply of services ; they specify the terms of performance of the CONTRACT for the supply of services. They are part of the CONTRACT and the SUPPLIER is deemed to accept them unreservedly.

It is clear from the will of the parties that this contract is intended to formalise the provision of services and in no way constitutes an employment contract involving a relationship of subordination. The Service Provider shall execute the Services as an independent contractor. The Service Provider and its employees and agents cannot be considered as employees and/or agents of UIC. Furthermore, the contract may not be interpreted as establishing a partnership or joint company between the Parties.

ARTICLE 2 -DEFINITIONS

CONTRACT: means all the documents determining and governing the respective obligations of the CUSTOMERS and of the SUPPLIER.

SUPPLIER: means the person, firm or company whose identity is determined in the CONTRACT, and who is responsible for the supply of services.

SERVICES: means the services to be supplied by the SUPPLIER according to the CONTRACT.

FUNDING AUTHORITY: means the European Commission, that grants the CUSTOMERS the CEF budget and that has entered into a GRANT AGREEMENT with the CUSTOMERS for the carrying out of the DP RAIL PROJECT.

GRANT AGREEMENT: means xxxx

DP RAIL PROJECT: means xxxx

ARTICLE 3 -CONTRACTUAL DOCUMENTS

The CONTRACT shall include the documents listed below in order of precedence:

- ◆ This agreement and its annexes;
- ◆ The Requisition and attached documents (specifications, calculation notes, drawings, etc);
- ◆ An extract of the GRANT AGREEMENT, which the SUPPLIER is deemed to have received a copy.

These documents shall be complementary to each other and shall be interpreted by reference to one another. In case of contradictions or discrepancies between several documents or within one document or type of document, the SUPPLIER shall inform LEAD CUSTOMER, which shall notify it of the provision which are to prevail.

The CONTRACT constitutes the entire agreement between the Parties. It cancels and replaces any agreement, letter or other previous document of the same purpose.

ARTICLE 4 -CONCLUSION OF THE CONTRACT

The CONTRACT is formed on the day on which it is executed by the CUSTOMERS. The effective date shall be set on xx/xx/xxxx.

The start date for the performance of the SERVICES shall be notified by the LEAD CUSTOMER to the SUPPLIER in due course.

The SUPPLIER shall execute the CONTRACT within fifteen calendar days of its notification by LEAD CUSTOMER, by sending to LEAD CUSTOMER a copy of the CONTRACT, duly initialed, dated and signed by an authorized representative of the SUPPLIER. In the event that the SUPPLIER should fail to send such documents to LEAD CUSTOMER, as provided for hereabove, the SUPPLIER shall be deemed to have irrevocably refused the CONTRACT.

Acceptance of the CONTRACT in the manner described above cancels and replaces any condition, representation, reservation, verbal or written agreement, whether entered into at a prior date or at the same time, which shall not have been explicitly included or referred to in the contractual documents.

Acceptance of the CONTRACT by the SUPPLIER entails the waiving by it of its General Terms and Conditions of Sale and the acceptance of this CONTRACT as a basis of negotiation.

ARTICLE 5 -MODIFICATIONS - CHANGE ORDERS

During the performance of the CONTRACT no modification of the clauses of the CONTRACT by one of the parties may be made without the written agreement of the other parties.

The quantity and/or extent of the SERVICES may be increased or reduced by LEAD CUSTOMER. The SUPPLIER may not unreasonably refuse performance thereof where the requested amendments shall not imply a modification of more than one third of the volume of SERVICES initially provided.

Any variation shall be confirmed in writing and be included in a revised requisition, through an amendment to the CONTRACT and notified to the SUPPLIER in order that it may express its agreement on such amendment and indicate any possible consequences on the CONTRACT.

Any modification of the clauses of the CONTRACT may only be made by means of a signed amendment.

Corrections required by the SUPPLIER in order to put the SERVICES in conformity with the rules of the trade and/or the rules applicable to the CONTRACT such as they exist at the date of the CONTRACT may under no circumstances be considered as being amendments to the CONTRACT.

As regards the choice of processes that shall be used, the SUPPLIER may offer alternative solutions at least equivalent to those provided in the CONTRACT. However, such solutions may be implemented only after LEAD CUSTOMER has given its written approval and provided always that such agreement shall not necessarily constitute a modification of the other conditions of the CONTRACT.

Effectiveness of an amendment to the CONTRACT shall be conditional upon execution by the CUSTOMERS.

ARTICLE 6 -CONDITIONS OF PERFORMANCE OF THE CONTRACT

6.1 Quality and conformity of the SERVICES

The SUPPLIER undertakes, in conformity with the obligations it has undertaken under the CONTRACT, and those that are applicable to it under the laws and regulations in force and the rules of the trade and of the profession and the Good International Engineering Practice, to carry out the SERVICES conforming to the highest standards of quality in accordance with the most up-to-date state of technical progress.

For the purpose of this CONTRACT “**Good International Engineering Practice**” means the relevant practices, methods, standards and acts generally followed or approved by the international relevant industry with respect to the planning, design, development, commissioning, testing, operating, maintenance and remedy of defects and includes the performance of the work:

- (a) in a sound and workmanlike manner, with due care and skill and applying generally accepted engineering, development and management practices and procedures;
- (b) with due expedition and without unnecessary or unreasonable delay;
- (c) using appropriate internationally accepted standards for materials and workmanship applicable to the DP RAIL PROJECT; and
- (d) with all materials and workmanship suitable for their respective purposes and properly certified where appropriate.

6.2 Staff allocated to the CONTRACT

The SUPPLIER undertakes to allocate to the CONTRACT, during the period of its performance, the number of permanent qualified employees which shall be necessary for the carrying out of the SERVICES.

The SUPPLIER's representatives who are identified in the CONTRACT shall not be replaced during the whole duration of the CONTRACT, without the prior written approval of LEAD CUSTOMER.

6.3 Principles of collaboration

6.3.1 The Parties will cooperate in good faith and in good partnership. In order to secure fast and smooth communication and cooperation as part of the performance of the CONTRACT, each Party shall appoint a Representative as specified below:

LEAD CUSTOMER: xxxxxx + contact details

SUPPLIER: xxxxxxxx + contact details

6.3.2 Each Party's Representative shall meet with the other as frequently as LEAD CUSTOMER considers appropriate in order to review and plan the carrying out of the SERVICES. Each Party's Representative may delegate their responsibilities but shall retain overall responsibility for overseeing the carrying out of the SERVICES on behalf of the relevant Party. For the avoidance of doubts, although the CUSTOMERS are Parties to this CONTRACT for the purpose of arranging the payments as well as ensuring the smooth coordination with the performance by CUSTOMERS of the DP RAIL PROJECT, SUPPLIER shall take instructions from and communicate with the LEAD CUSTOMER only. SUPPLIER acknowledges and agrees that any instruction, information, request, approval, etc received from a CUSTOMER other than the LEAD CUSTOMER, unless otherwise approved in writing by the LEAD CUSTOMER, shall not be enforceable.

6.3.3 The SUPPLIER's Representative shall ensure that all assistance and information requested by LEAD CUSTOMER's Representative shall be provided in a timely manner.

6.3.4 Notices shall be made by e-mail or by letter with registered receipt, communicated to either Party at the addresses set out in subclause 6.3.1.

6.3.5 All waivers must be made in writing and signed by the Party granting such waivers. The failure by either Party to exercise or enforce any rights conferred by the CONTRACT shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter. The payment by CUSTOMERS of any amount set forth herein shall not be deemed to be a waiver of any prior occurring breach of any term, covenant, or condition of this CONTRACT even if LEAD CUSTOMER knows of such a breach existing at the time such payments are made.

6.3.6 The language of the CONTRACT and all of the notices and correspondence submitted pursuant to this CONTRACT shall be made in English. Any translation whether signed or not, is made for information purpose only and has no binding effect towards the Parties.

- 6.3.7** All weights, measures, units, computations, computer programs, plans, schedules, notes and drawings shall utilise the international metric system.
- 6.3.8** At all times during the performance of this CONTRACT, the Parties will act solely as independent contractors and nothing contained herein shall be deemed to create any relationship or agency, joint venture, employment or partnership.
- 6.3.9** Parties agree and acknowledge that because SUPPLIER's scope of work constitute an essential portion of CUSTOMERS's obligations under the GRANT AGREEMENT, this CONTRACT is to be performed on a back-to-back basis from the GRANT AGREEMENT, except where stated otherwise under this CONTRACT. For the purpose of this CONTRACT, "back-to-back" shall mean terms and conditions of the GRANT AGREEMENT so CUSTOMERS are not bearing greater risk exposure as SUPPLIER is, for matters placed at SUPPLIER's risks and responsibility under the CONTRACT. From a broader perspective, the back-to-back principle shall mean that SUPPLIER would be in the same situation as if SUPPLIER were signatory of the GRANT AGREEMENT with respect to SUPPLIER's scope of work. This includes without limitations:
- (i) Any right, remedy, relief which SUPPLIER is entitled to exercise under the CONTRACT shall be subject to similar entitlement granted to CUSTOMERS under the GRANT AGREEMENT;
 - (ii) Any right, remedy, relief which FUNDING AUTHORITY is entitled to exercise under the GRANT AGREEMENT shall apply to SUPPLIER *mutatis mutandi*;
 - (iii) An "If and When" principle shall apply to the CONTRACT, which includes without limitation that any approval shall be granted to SUPPLIER if and when and to the extent granted by the FUNDING AUTHORITY to CUSTOMERS;
 - (iv) Any variation claimed by SUPPLIER shall be subject to prior resolution of the same claimed variation under the GRANT AGREEMENT;
 - (v) SUPPLIER shall co-operate at all times with the LEAD CUSTOMER in order to ensure a smooth performance of the CONTRACT as well as the GRANT AGREEMENT which includes without limitation taking into account that any notice, communication, approval, action that LEAD CUSTOMER is due to provide with to SUPPLIER and/or FUNDING AUTHORITY is to be carried within a limited time period. SUPPLIER shall implement its best efforts in order to enable CUSTOMERS not to breach its own obligations as set out under the GRANT AGREEMENT as maybe notified by the LEAD CUSTOMER to SUPPLIER from time to time.

ARTICLE 7 – ETHICS AND COMPLIANCE

7.1 The SUPPLIER acknowledges that CUSTOMER's professional activities are governed by a set of commitments, values and charters that are publicly available on CUSTOMERS websites and SUPPLIER commits to perform the SERVICES in full compliance with those.

SUPPLIER agrees that CUSTOMERS may at their sole option elect to proceed with an ethics and compliance due diligence (Know Your Third Party).

In such case LEAD CUSTOMER will inform SUPPLIER accordingly and SUPPLIER undertakes to fully cooperate with LEAD CUSTOMER with the aim to successfully complete this process.

Should it appear upon completion of the due diligence process to be not successful, LEAD CUSTOMER shall notify SUPPLIER of the same and this CONTRACT shall be deemed automatically cancelled without any compensation nor any right of compensation in favor of SUPPLIER, unless CUSTOMERS consent in writing that SUPPLIER implements forthwith remedial measures with immediate effect.

7.2 The SUPPLIER hereby declares that it is familiar with and understands the provisions of the OECD Convention, French anti-corruption laws, and any other applicable anti-corruption laws. The SUPPLIER declares that it has not engaged and will not engage in any conduct that violates the provisions of such legislation and shall abide by such legislation while performing the SERVICES.

Neither the SUPPLIER nor any person acting for or on behalf of the SUPPLIER shall offer, promise, arrange for or pay, either directly or indirectly, anything of value to any “government official” for the purpose of obtaining any improper advantage. All payments under the CONTRACT made by CUSTOMERS to the SUPPLIER will be received by the SUPPLIER for its own account and the SUPPLIER is not authorized to offer, give or promise any part of such payments, directly or indirectly, to any “government official”.

For the purpose of this sub-article “government official” means and includes any:

- (i) elected or appointed government official,
- (ii) employee, official, contractor, consultant or representative of a government or a state-owned companies, including all employees of any national company,
- (iii) employee or person acting for or on behalf of a government official,
- (iv) political party, officer, employee or person acting for or on behalf of a political party or candidate for public office,
- (v) person in the service of a government, including members of the military, police or civil service,
- (vi) employee or person acting for or on behalf of a public international organization,
- (vii) employees of Non-Governmental Organizations, or
- (viii) family members and relatives of any of the above.

Neither the SUPPLIER nor any person acting for or on behalf of the SUPPLIER shall offer, promise, arrange for or pay, either directly or indirectly, anything of value to any employee, officer or representative of the CUSTOMERS or of the FUDING AUTHORITY, for the purpose of obtaining any improper advantage or benefit.

SERVICESSERVICES

The SUPPLIER declares that neither the corporate entity it represents, nor any of its executives or employees, is under current criminal investigation or has been subject to any civil or criminal enforcement actions, at home or abroad, for improper conduct relating to bribery, corruption, or violation of the laws governing business corporate entities.

LEAD CUSTOMER shall have the right from time to time to audit the SUPPLIER’s books and records, during normal business hours in order to evaluate the SUPPLIER’s compliance with this provision. In this respect, the SUPPLIER shall cooperate and provide full and immediate access to LEAD CUSTOMER and its designated representatives to SUPPLIER’s books and records to facilitate such audit.

SUPPLIER shall include for itself identical rights of audit in all contracts with its subcontractors and suppliers and such right shall be extendible for the benefit of LEAD CUSTOMER.

SUPPLIER warrants and represents it is not and will not be under any conflict of interest with respect to the DP RAIL PROJECT and/or the CUSTOMERS and/or the FUNDING AUTHORITY.

7.3 CUSTOMERS require the SUPPLIER to apply the highest importance and priority on quality, safety, health, protection of the environment, social accountability and security during the performance of the SERVICES.

SERVICESSERVICES

The SUPPLIER shall ensure that appropriate arrangements are in place to protect the health and safety of its employees or those engaged in the performance of the SERVICES, and shall comply with all applicable health, safety and environmental laws and regulations while performing the SERVICES.

The SUPPLIER is encouraged to apply the principles of sustainable procurement and to put in place appropriate arrangements in order to minimize any adverse effects on the environment while performing the SERVICES. SUPPLIER shall implement factors such as value for money (price, quality, availability, functionality), the entire life cycle of the SERVICES and the effects on the environment that the SERVICES has over the whole lifecycle (green procurement, carbon footprint).

7.4 The SUPPLIER shall comply with all applicable local rules and regulations regarding labor rights and fair working conditions, forced or child labor. The SUPPLIER shall comply with the principles provided by the International Labor Organization as well as all applicable laws.

7.5 The SUPPLIER's failure to comply with this article 7 while performing the SERVICES under this CONTRACT shall constitute a material breach of the CONTRACT, entitling LEAD CUSTOMER to forthwith terminate the CONTRACT. The exercise of such right will be without prejudice to any other right or remedy available to LEAD CUSTOMER under this CONTRACT, in equity or at law and the SUPPLIER shall hold CUSTOMERS free and harmless from any losses, damages, liabilities, actions which LEAD CUSTOMER may suffer as a result of the SUPPLIER's failure to comply with the above mentioned requirements.

7.6 The SUPPLIER shall ensure that the foregoing provisions are included in all contracts to be entered into with its subcontractors and suppliers.

ARTICLE 8 -ASSIGNMENT - SUB-CONTRACTORS

8.1 Assignment

The SUPPLIER undertakes not to assign all or any part of the CONTRACT without the prior written approval of LEAD CUSTOMER.

8.2 Sub-contractors

The SUPPLIER undertakes not to sub-contract all or any part of the SERVICES without the prior written approval of LEAD CUSTOMER.

Where sub-contracting is to take place. The SUPPLIER shall submit to LEAD CUSTOMER the list of sub-contractors, indicating the places of performance. LEAD CUSTOMER reserves the right to refuse the sub-contractors thus proposed.

Approval of a sub-contractor by LEAD CUSTOMER is final only if a copy of the subcontract, except as regards the price, is approved by LEAD CUSTOMER. To be acceptable such subcontract shall contain obligations that are compatible with those undertaken by the SUPPLIER under the CONTRACT.

Where such subcontracting has been approved by LEAD CUSTOMER, the SUPPLIER shall take all appropriate steps to ensure the necessary coordination. It shall retain responsibility for the subcontracted SERVICES.

ARTICLE 9 -PROGRESS.

9.1 The time schedule for the performance of the SERVICES is determined in the CONTRACT.

9.2 During the whole period of carrying out of the SERVICES, the SUPPLIER shall provide LEAD CUSTOMER with all information which will be required to assess progress, by means of realization programs, plannings, progress reports, reports of visits by its own agents on the premises of its subcontractors.

9.3 The CONTRACT determines the appropriate progress criteria, inter alia those which are related to payment instalments.

ARTICLE 10 - INSPECTIONS DURING PERFORMANCE

10.1 The SUPPLIER shall check that the quantity and quality of the SERVICES conform to the requirements of the CONTRACT.

10.2 LEAD CUSTOMER may at any time check the work being done by the SUPPLIER and reserves the right of intervention while performance is under way in order to enforce compliance with the CONTRACT.

10.3 The SUPPLIER shall grant to LEAD CUSTOMER free access to any place where a work under the CONTRACT is performed; LEAD CUSTOMER may at any time make comments or issue directions in connection with such work.

10.4 The SUPPLIER may not, under the conditions described in this article, refuse access to any place where a work relating to the CONTRACT is being performed to duly authorized representatives of the LEAD CUSTOMER or FUNDING AUTHORITY.

10.5 The fact that representatives of LEAD CUSTOMER are present on sites, offices or workshops, or the fact that the LEAD CUSTOMER has verified or possibly approved the works, shall not release the SUPPLIER from any one of its contractual responsibilities. Under no circumstances may the SUPPLIER call on the liability of LEAD CUSTOMER in connection with inspection visits.

10.6 The SUPPLIER shall put at the disposal of LEAD CUSTOMER, in conformity with the contractual provisions, all documents listed in the CONTRACT which are necessary for the carrying out of the inspection of the SERVICES.

ARTICLE 11 - TIME FOR COMPLETION – LIQUIDATED DAMAGES FOR DELAY

11.1 Time is of the essence. Acceptance of the CONTRACT implies on the part of the SUPPLIER an irrevocable undertaking as to contractual time limits, which represent one of the essential conditions of the CONTRACT.

The terms "Time for Completion", apply to satisfactory delivery of services information and documents, as well as to compliance with interim milestones evidencing a particular state of progress.

11.2 No cause whatsoever, with the exception of the event of force majeure defined under this CONTRACT and the delays directly and exclusively caused by the LEAD CUSTOMER, shall release the SUPPLIER from its obligation to comply with the Time for Completion.

11.3 Except in the event of force majeure, any Time for Completion exceeded by the SUPPLIER shall entitle LEAD CUSTOMER to apply liquidated damages for delay, as defined in the CONTRACT.

Except where the parties have exceptionally agreed to postpone such Time for Completion the application of such liquidated damages shall be made without previous formal notice. The CUSTOMERS may set off the amount of liquidated damages against the payment CUSTOMERS owe to the SUPPLIER as a result of this CONTRACT.

ARTICLE 12 - TRANSFER OF OWNERSHIP

Ownership of all designs, documents, application, software, computer program and information of any kind whatsoever to be delivered by the SUPPLIER to CUSTOMERS under the CONTRACT and all intellectual property thereof shall pass to LEAD CUSTOMER gradually upon completion of each stage.

If there is a sub-contractor, the SUPPLIER shall specify for its own benefit the same obligation as to transfer of ownership.

For the purpose of this CONTRACT, “Computer Program(s)” means a sequence of instructions, data or equations in any form, and explanations thereof, intended to cause a computer, a control data processor or the like to perform any kind of operation that is part of the SERVICES. Computer Programs may at times be referred to as software or firmware and the provisions herein applicable to Computer Programs shall be applicable to software or firmware, as the case may be.

ARTICLE 13 - TERMS OF PAYMENT – INVOICES

13.1 The CONTRACT specifies the terms, conditions and means of payment as well as the entity that is part of the CUSTOMER who is to proceed with such payment. The schedule of payment is determined according to the progress of the carrying out of the SERVICES or according to calendar periods.

13.2 The SUPPLIER shall send to LEAD CUSTOMER separate invoices the number of which is determined in the CONTRACT relating to each of the payment instalments. Payment shall be made by the entity specified under the CONTRACT.

All invoices shall indicate the references and labels of the CONTRACT and separately specify the amount of any taxes that are being invoiced.

Expenditures of different types labelled in the CONTRACT by a LEAD CUSTOMER codification must appear separately in each invoice.

13.3 The prices are firm and not subject to escalation. SUPPLIER acknowledges and agrees that the GRANT AGREEMENT provides for a fixed budget that is not subject to variation and as a consequence, SUPPLIER waives any entitlement to claim extra costs, except in case LEAD CUSTOMER requires modifications in the SERVICES or are otherwise agreed in writing by the CUSTOMERS. In case CUSTOMER requests changes in the SERVICES, SUPPLIER shall notify the impacts on the prices and time for completion within five business days from the date of request made by the LEAD CUSTOMER. SUPPLIER shall be barred from claiming variation after this five day-period.

13.4 The invoices must include the following information:

- Name of the bank
- IBAN code
- BIC
- EU VAT number

ARTICLE 14 – WARRANTIES

14.1 The SUPPLIER warrants that it will perform its obligations within the time limits fixed in the CONTRACT.

14.2 The SUPPLIER warrants it will comply with all terms and conditions provided under this CONTRACT.

14.3 The SUPPLIER owes to LEAD CUSTOMER a warranty of complete carrying out of its SERVICES, and may not put forward, in order to diminish its responsibilities, the inaccuracy of any

designs, documents and information whatsoever, supplied by LEAD CUSTOMER in relation to the CONTRACT.

14.4 When the SUPPLIER's obligations include procurement services, the SUPPLIER warrants that it will obtain from its suppliers conditions of warranty whose duration and extent comply with the requirements mentioned in the CONTRACT and satisfactory in time, quantity and quality in order in particular to allow at all times compliance with the requirements of the CONTRACT and the GRANT AGREEMENT.

The SUPPLIER undertakes to assist LEAD CUSTOMER in the enforcement of the warranties granted by its suppliers.

14.5 The SUPPLIER shall bear totally and without any limit the burden of remaking, completing, modifying or correcting its SERVICES as a result of mistakes, errors, omissions or negligence and more generally non-compliance with the CONTRACT and/or the GRANT AGREEMENT for which it is responsible and shall indemnify the CUSTOMERS accordingly for a period of 24 months from the signature date of the PROVISIONAL ACCEPTANCE CERTIFICATE duly signed by the LEAD CUSTOMER.

If the object of the SERVICES so requires, the SUPPLIER shall send to the site, at its own cost the staff required for the carrying out of the required SERVICES on the spot.

14.6 The SUPPLIER represents and warrants that the SERVICES will be free from defect (including latent defects) and liens.

ARTICLE 15 – LIABILITY, INDEMNITIES, BONDS

15.1 During the carrying out of the SERVICES, the SUPPLIER is liable for any damages caused to third parties either through its negligence, or its agents and employees, sub-contractors, and suppliers of goods and services.

15.2 The SUPPLIER shall indemnify, defend and hold harmless the CUSTOMERS, CUSTOMERS's Representative their employees, officers and agent, the FUNDING AUTHORITY, from and against all claims damages, losses and expenses (including legal fees) of whatever kind and nature and claims therefore arising out of or in connection with the SUPPLIER's sole or concurrent acts, defaults, omissions or negligence (or those of its Sub-sellers, employees other engaged personnel and agents).

15.3 The SUPPLIER shall obtain and maintain, at its own cost, an on demand, irrevocable and unconditional Performance Security for the proper performance of the CONTRACT from an office of a commercial bank which holds a long-term, unsubordinated, senior, unsecured debt rating (not supported by third-party enhancement rating) of at least A by S&P or A2 by Moody's and previously approved by Owner in the amounts and in the form specified [to be provided], and deliver it to the LEAD CUSTOMER within fifteen (15) Business Days from the signature date of the CONTRACT. The Performance Security shall be equal to an amount of ten percent (10%) of the Contract Price. The Performance Security shall remain valid until the end of the warranty period.

Notwithstanding any other provision of the CONTRACT, compliance with this clause is a condition precedent to the entitlement of the SUPPLIER to receive any payment from the CUSTOMERS under the CONTRACT and no payment shall be due or payable until this clause is satisfied.

The performance security shall be provided as security for any and all of Seller's obligations and liabilities under the CONTRACT.

In the event that any performance security is issued with a fixed expiry date and such expiry date may occur prior to the end of the warranty period, the SUPPLIER shall ensure that the expiry date under the performance security is extended accordingly or deliver a replacement Bond to cover such period meeting the end of the warranty period. Such extended or replacement Bond shall be delivered duly executed to the LEAD CUSTOMER no later than thirty (30) Business Days before the relevant expiry date.

ARTICLE 16 – INSURANCE

16.1 The SUPPLIER and, where applicable, its sub-contractors shall each take out and keep in force the following insurance policies:

16.1.1 A policy covering adequately the financial consequences of any damage caused to any third party, arising from professional negligence in connection with the CONTRACT.

16.1.2 A policy covering the financial consequences of damages caused to any third party during the performance of the CONTRACT by the SUPPLIER, its agents and employees.

This policy must also cover damages for bodily injury including death without limitation and any other damages up to an amount which may not be less than 5 000 000 euros per damage and per year.

16.2 The CUSTOMERS and the FUNDING AUTHORITY, their employees and their representatives, shall be deemed to be a third party for the purpose of this subclause 16. CUSTOMERS and FUNDING AUTHORITY shall be named as additional insured parties to the said policies.

16.3 The policies listed above must be taken out with companies of financially sound reputation. Before the commencement of the procedure for providing the SERVICES, the SUPPLIER shall supply to LEAD CUSTOMER satisfactory evidence of the cover contained in the said policies.

16.4 The SUPPLIER must at any time be in a position to justify the validity of the policies described in this Article. To this end it shall submit a certificate issued by its insurance company which shall include the obligation undertaken by the company to inform LEAD CUSTOMER, with sixty calendar days prior notice, of any modification or amendment to the policies. In addition the SUPPLIER shall waive any right of recourse against LEAD CUSTOMER in connection with the CONTRACT. It shall obtain from its insurers the same waiver of any recourse against the CUSTOMERS and THE FUNDING AUTHORITY.

16.5 The fact that the SUPPLIER fulfils its obligations under this article does not release it from all or part of its other obligations under the CONTRACT.

ARTICLE 17 - FAILURE ON THE PART OF THE SUPPLIER, TESTS AND ACCEPTANCE

If LEAD CUSTOMER finds that there are substantial deficiencies which may affect the quality and conformity of the SERVICES, or if LEAD CUSTOMER notes a delay in the performance of the CONTRACT which would lead inevitably to extend contractual time limits, the SUPPLIER, at the request of LEAD CUSTOMER, shall modify, expedite and/or increase the work task force and the technical means allocated to the performance of the CONTRACT in order to remedy such deficiency at no costs to the CUSTOMERS.

17.1 Tests

The respective obligations of the LEAD CUSTOMER and the SUPPLIER in relation to the carrying out of the tests on the SERVICES shall be as set out in the Requisition [to be provided].

17.1.1 Retesting

If, prior to the Completion Date for Acceptance, the SERVICES or any part thereof fail to pass the Tests, the LEAD CUSTOMER's Representative may require such failed tests to be repeated under the same terms and conditions, within a period to be determined by the LEAD CUSTOMER (acting reasonably).

If such failure and retesting result from a default of the SUPPLIER and cause the LEAD CUSTOMER to incur increased costs (which shall be determined by the LEAD CUSTOMER's Representative), in the timely completion of the DP RAIL PROJECT or in relation to the other CUSTOMERS' suppliers, then, such costs shall be recoverable from the SUPPLIER by the CUSTOMERS, and without prejudice to any other method of recovery including but not limited to claims under the Performance Security, the LEAD CUSTOMER may deduct such costs from any monies due, or to become due, to the SUPPLIER.

17.1.2 Failure to pass the tests

If such deficiency is not remedied, even after a formal notice to this end, LEAD CUSTOMER may, as from the expiry of the time limits specified in the formal notice, and without prejudice of its entitlement to terminate the CONTRACT, proceed as follows :

- ◆ either to impose on the SUPPLIER technical assistance at SUPPLIER's costs. Such assistance shall not relieve the SUPPLIER from its obligations under the CONTRACT;
- ◆ or to ensure the carrying out of the SERVICES either by itself or by means of sub-contractors, at the SUPPLIER's costs.

These conditions shall also be applicable to the warranty period.

17.2 Acceptance Certificate

The Acceptance Certificate shall be issued by the LEAD CUSTOMER's Representative when:

- (a) the SERVICES have been completed in accordance with the CONTRACT (except the completion of minor outstanding items that do not affect the use of the SERVICES for their intended purpose, at the LEAD CUSTOMER's discretion, which items shall be listed in the Acceptance Certificate);
- (b) An advance copy of the as-built documentation sufficient for the CUSTOMERS to operate and use the SERVICES has been delivered to the LEAD CUSTOMER; and
- (c) the Tests as provided under the subclause 17.1 have been passed successfully.

The SUPPLIER may apply by notice to the LEAD CUSTOMER's Representative for the Acceptance Certificate and the LEAD CUSTOMER's Representative shall, within fifteen (15) business days after the receipt of the SUPPLIER's application:

- (a) issue the Provisional Acceptance Certificate to the Seller certifying that conditions (a), (b) and (c) above have been met.
- (b) reject the application, giving its reasons and specifying the SERVICES or tests required to be done by the SUPPLIER to enable the Acceptance Certificate to be issued: the Seller shall then complete such SERVICES or tests before issuing a further notice under this sub-clause.

ARTICLE 18 - REJECTION

If in spite of LEAD CUSTOMER's requests, the SERVICES do not comply with any of the contractual requirements, LEAD CUSTOMER shall formally notify the SUPPLIER, by registered letter, that it must remedy such deficiency without any increase of price or extension of time limits, and LEAD CUSTOMER shall accordingly withhold payment of the sums due to the SUPPLIER.

If the steps taken by the SUPPLIER do not remedy the deficiency, LEAD CUSTOMER may reject all or part of the SERVICES concerned and carry out or cause to be carried out by a third party the same SERVICES at the SUPPLIER's costs, without prejudice to the possibility for it to terminate the CONTRACT in accordance with the provisions of article 20 below.

In the event that the SERVICES are rejected payments already made in respect of such SERVICES shall be reimbursed by the SUPPLIER to CUSTOMERS within sixty days of notification that they have been rejected. To these sums shall be added the amount of any liquidated damages and indemnities provided in the CONTRACT, after deduction of any amounts determined by agreement between the parties in consideration of the keeping by LEAD CUSTOMER of information and documents of any kind corresponding to rejected SERVICES recognized by LEAD CUSTOMER as capable of being partly utilized for the purpose specified in the CONTRACT.

ARTICLE 19 - BANKRUPTCY

In case of bankruptcy of the SUPPLIER, LEAD CUSTOMER may terminate the CONTRACT by mere notification, to the extent permitted by applicable laws.

ARTICLE 20 - SUSPENSION OF THE CONTRACT

The SUPPLIER shall interrupt temporarily the performance of the SERVICES in the event that the LEAD CUSTOMER notifies SUPPLIER of the suspension of the CONTRACT.

Such suspension shall be effective as from the date on which it shall be notified in writing by LEAD CUSTOMER to the SUPPLIER.

During the period of suspension, the obligations under the CONTRACT shall be suspended with the exception of those relating to confidentiality, insurance, patents and safeguarding of the information and documents relating to the SERVICES.

The suspension of the CONTRACT, in the absence of either an event of force majeure or default on the part of the SUPPLIER entitles the SUPPLIER to be reimbursed by LEAD CUSTOMER for supplementary and unavoidable expenses directly incurred as a result of such suspension, and on the basis of supporting documents.

LEAD CUSTOMER shall notify in writing the SUPPLIER of the resumption of the performance of the CONTRACT, and SUPPLIER agrees to resume the performance of the CONTRACT at the date provided by the LEAD CUSTOMER.

ARTICLE 21 - TERMINATION OF THE CONTRACT

Except in the case of force majeure the SUPPLIER shall be liable for non-performance, in whole or in part of its obligation to perform the SERVICES, or breach of its other obligations.

21.1 LEAD CUSTOMER may terminate the CONTRACT in case of default on the part of the SUPPLIER that is not remedied within the conditions and period notified by the LEAD CUSTOMER and SUPPLIER shall indemnify CUSTOMERS in respect of all extra expenses incurred as a result of such default and to make good any resulting damages, without the SUPPLIER being entitled to any indemnity whatsoever as a result of such termination.

The termination of the CONTRACT shall be notified to the SUPPLIER by registered letter. Such termination shall not release the SUPPLIER from any penalties for late delivery which it has already incurred at the date of termination.

21.2 In the absence of any default on the part of the SUPPLIER, LEAD CUSTOMER may at any time terminate the CONTRACT in whole or in part, subject to the payment to the SUPPLIER of the expenses it has incurred for the performance of the CONTRACT up to the date of such termination and eventually to the payment of an indemnity to be fixed by agreement between the parties.

21.3 Notwithstanding the provisions of subclause 21.2 of this CONTRACT, LEAD CUSTOMER shall be entitled to terminate the CONTRACT in case of termination of the GRANT AGREEMENT. SUPPLIER shall be entitled to receive payment for SERVICES that are completed according to the CONTRACT, and which are accepted by the LEAD CUSTOMER and SUPPLIER waives any entitlement to claim any damages as a result of such termination.

21.4 In the case of termination, the SUPPLIER may require payment in respect of all SERVICES which have been provided in conformity with the CONTRACT as at the date of termination.

21.5 The SUPPLIER shall, within fifteen days of receipt of the letter notifying it of such termination, put at the disposal of LEAD CUSTOMER or of a third party appointed by LEAD CUSTOMER the documents used for the carrying out of the SERVICES, and any data, books, manuals, plans, information, etc ... established for its use and by itself in connection with the performance of the CONTRACT, and it shall assign to LEAD CUSTOMER all the rights arising under sub-contracting agreements entered into by the SUPPLIER in connection with the CONTRACT.

ARTICLE 22 – INTELLECTUAL PROPERTY RIGHTS

The SUPPLIER shall defend, indemnify and hold harmless the CUSTOMERS and CUSTOMERS' Representative, their sellers, agents and their respective employees and the FUNDING AUTHORITY, against all losses, damages and expenses (including reasonable fees attorney and expenses) or claims or legal actions of whatsoever kind and nature in respect of actual or alleged infringement of any patent, registered design, copyright, trade mark or trade name, rights in confidential information or other intellectual property arising from SUPPLIER's performance (or performance of its Affiliates or Sub-sellers) under this CONTRACT. In such a case, SUPPLIER shall implement any remedial measure (including modification of the SERVICES), subject to prior written agreement by the LEAD CUSTOMER, in order to make the SERVICES free from any infringement of intellectual property rights.

The SUPPLIER gratuitously grants to CUSTOMERS and/or the FUNDING AUTHORITY the free use of rights of industrial property necessary, in the event of a failure for the completion of the SERVICES as well as, after the expiry of the warranties, for the maintenance and/or replacement, repair, modification and adjustment of the SERVICES.

ARTICLE 23 - PROPERTY IN DOCUMENTS – CONFIDENTIALITY

23.1 All designs, documents and information of any kind whatsoever, supplied by CUSTOMERS and/or FUNDING AUTHORITY to the SUPPLIER, remain the property of CUSTOMERS and/or the FUNDING AUTHORITY.

They may not be disclosed or used without LEAD CUSTOMER's prior written consent, except for the performance of the CONTRACT on a need-to-know basis.

23.2 The documentation and Computer Programs that are part of the SERVICES shall not, without the LEAD CUSTOMER's consent, be used, copied or communicated to a third party by the SUPPLIER. The SUPPLIER shall require all third parties engaged for the purposes of carrying out the CONTRACT to enter into terms commensurate with the terms of this sub clause.

23.3 LEAD CUSTOMER shall have the free use of designs and documents drawn up on the SUPPLIER's headed notepaper or with the SUPPLIER's mark in connection with the CONTRACT and DP RAIL PROJECT.

23.4 The SUPPLIER undertakes to keep confidential all information of any kind relating to the CONTRACT, (hereinafter called INFORMATION) which shall be communicated by LEAD CUSTOMER or by a third party during the negotiation or performance of the CONTRACT.

In this respect, the SUPPLIER shall reserve access to the INFORMATION to members of its staff subject to an obligation of confidentiality and provided their duties require that they should have knowledge thereof.

Where the performance of its obligations under the CONTRACT makes this necessary, the SUPPLIER is authorized to disclose the INFORMATION to third parties, to the extent and within the limits required for the performance of the CONTRACT, on a need-to-know basis, and subject to the latter signing an undertaking of confidentiality.

This undertaking of confidentiality shall not apply to the INFORMATION,

- which the SUPPLIER can prove was in its possession at the time when such INFORMATION was communicated to it,
- which, at the time of its communication to the SUPPLIER, was in the public domain,
- which, after being communicated to the SUPPLIER, becomes publicly available without any fault on the part of the SUPPLIER.

LEAD CUSTOMER undertakes reciprocally and under the same conditions to keep confidential INFORMATION which will be transmitted by the SUPPLIER that are marked as CONFIDENTIAL, unless required under the GRANT AGREEMENT or for the purpose performing the DP RAIL PROJECT, for which SUPPLIER gives irrevocably consent.

23.5 The obligation of confidentiality shall remain in force for an unlimited duration and the SUPPLIER shall ensure the observance of strict discipline in this respect by its staff.

23.6 Any publicity, written or oral communication to the Press, relating to the performance of the CONTRACT, must be subject to CUSTOMERS' prior consent.

ARTICLE 24 - SETTLEMENT OF DISPUTES

The parties shall endeavour to settle their disputes amicably.

All disputes arising out of or in connection with this CONTRACT, which cannot be resolved amicably, shall be settled by the courts of Brussels to which exclusive jurisdiction is granted.

Joinder of dispute: In case of a dispute under the CONTRACT which has, in LEAD CUSTOMER's opinion, strong connections with a dispute under the GRANT AGREEMENT, SUPPLIER agrees to join the said dispute and to be bound to the resolution of dispute under the GRANT AGREEMENT to the extent the resolution is connected with the dispute under the CONTRACT.

ARTICLE 25 - FORCE MAJEURE

Force majeure shall have the meaning set out under the GRANT AGREEMENT and SUPPLIER shall be released from its obligations directly impacted by such Force Majeure event if and to the extent such Force Majeure event is so qualified by the FUNDING AUTHORITY under the GRANT AGREEMENT.

ARTICLE 26 - APPLICABLE LAW

This CONTRACT shall be construed in accordance with and governed by the laws of Belgium excluding its conflict of law provisions.

Parties expressly agree that the Vienna Convention dated April 11th, 1980 is not applicable to this CONTRACT.

Signed in in ... copies on

Signatures of the parties

ANNEX

[IF THE SERVICE IS WHOLLY OR PARTIALLY PERFORMED IN FRANCE]

The Service Provider shall undertake to provide UIC with:

- A certificate, less than six months old, of provision of social declarations and payment of social security deductions and contributions as provided for in Article L. 243-15 from the social welfare agency responsible for collecting deductions and contributions, the authenticity of which shall be checked with the social security contribution collection body.
- As part of efforts to combat the employment of foreign nationals without a work permit, the Service Provider shall submit the documents referred to in articles L8254-1 and D8254-1 et seq. of the French Labour Code on the day of signature of the Contract and every six months until completion of performance of the Contract, to include the list of names of foreign employees employed by the Service Provider and subject to work authorisation as provided for in Article [L. 5221-2](#), specifying for each employee:
 1. his or her date of hire;
 2. his or her nationality;
 3. the type and serial number of the document constituting his or her authorisation to work.

**CERTIFICATE CONFIRMING THAT
CLANDESTINE WORKERS ARE NOT
EMPLOYED**

Checks carried out prior to conclusion of a
subcontracting agreement or contract for the provision of services

French Decree 92-508 of 11 June 1992

Confirmation upon signature of the contract. After this time, any order shall be deemed unwritten.

Name or corporate name of the company _____, represented by
_____ acting as _____.

The undersigned certifies that it is compliant with the obligations of the French Labour Code relating to illegal work and, in accordance with the provisions of the French Decree of 11 June 1992, undertakes to attach the following documents to this sheet:

1. Choice of:

- m Certificate, less than one year old, of provision of social declarations from the social welfare agency (URSSAF, etc.) responsible for collecting social contributions.
- m Tax assessment notice relating to business tax for the previous year.
- m Certificates proving that the company is meeting its obligations with regard to Articles 52, 53, 54 and 259 of the French Code of Public Procurement.
- m Financial guarantee certificate (temporary employment agencies only).

2. As well as one of the two following documents:

- m An extract of the entry in the French Companies Register (K or K bis).
- m An identification card providing evidence of registration in the French Trades Register.

If the company is established or domiciled abroad, attach as required:

- A document indicating the identity and address of the person representing the company to the French tax authorities.
- A document confirming that the company is meeting its obligations with regard to social conditions and personnel.
- A document certifying that the subcontractor has been registered in a professional register in its country of origin where such registration is compulsory.

Furthermore, the undersigned certifies on its honour that the service provided for in the Contract shall be carried out by personnel employed in accordance with labour legislation and in particular with articles L 3243-1, L3243-2, L 3243-4, L 1221-10, L 1221-13 and L 1221-15 of the French Labour Code.

Signed in on

Signature and company stamp

<p>French Service Provider and service performed in France</p>	<p>In particular, the Service Provider declares that is it compliant with the provisions arising from the French Labour Code, particularly those relating to the prohibition of undeclared work arising from Articles L.8221-3 et seq. of said Code, and certifies that the Services covered by the Contract shall be performed in accordance with the labour legislation in force.</p> <p>Thus, in application of Article D8222-7 of the French Labour Code, it must submit to UIC, when the Contract is concluded and every six months until the end of its execution, all of the following documents so that UIC is deemed to have carried out the verifications required by Article L. 8222-1 of the French Labour Code:</p> <ol style="list-style-type: none"> 1. A certificate, less than six months old, of provision of social declarations and payment of social security deductions and contributions as provided for in Article L. 243-15 from the social welfare agency responsible for collecting deductions and contributions, the authenticity of which shall be checked with the social security contribution collection body. 2. When registration of the co-contractor in the Companies Register or in the Trades Register is compulsory or in the case of a regulated profession, one of the following documents: <ol style="list-style-type: none"> a) An extract of the entry in the French Companies Register (K or K bis); b) An identification card providing evidence of registration in the French Trades Register; c) An estimate, advertising document or professional correspondence, provided that the name or company name, the full address and the registration number in the French Companies Register, French Trades Register or a list or table of a professional body or a reference to accreditation issued by the competent authority are indicated; <p>A deposit slip for filing the declaration with a business start-up centre (CFE) for people in the process of registering.</p> <p>Furthermore, as part of efforts to combat the employment of foreign nationals without a work permit, the Service Provider shall submit the documents referred to in Articles L8254-1 and D8254-1 et seq. of the French Labour Code on the day of signature of the Contract and every six months until completion of performance of the Contract:</p> <p>The list of names of foreign employees employed by the Service Provider and subject to work authorisation as provided for in Article L. 5221-2, specifying for each employee:</p> <ol style="list-style-type: none"> 1. his or her date of hire; 2. his or her nationality; 3. the type and serial number of the document constituting his or her authorisation to work.
<p>Service Provider established outside France and service</p>	<p>In particular, the Service Provider declares that is it compliant with the provisions of Articles L.8221-3 et seq. of the French Labour Code relating to the prohibition of undeclared work and certifies that the Services covered by</p>

<p>performed in whole or in part in France</p>	<p>the Contract shall be performed in accordance with the labour legislation in force.</p> <p>Thus, in application of Article D8222-7 of the French Labour Code, if the Service Provider is required to perform all or part of its Services on French territory, it must submit to UIC, when the Contract is concluded and every six months until the end of its execution, all of the following documents so that UIC is deemed to have carried out the verifications required by Article L. 8222-4 of the French Labour Code:</p> <ul style="list-style-type: none"> a) A document indicating its individual identification number assigned in application of Article 286b of the French General Tax Code. If the co-contractor is not obliged to have such a number, a document indicating its identity and address or, where applicable, the contact details of its ad hoc tax representative in France; b) A document, less than six months old, confirming that the Service Provider is meeting its obligations with regard to social conditions with regard either to Regulation (EEC) No 1408/71 of 14 January 1971 or to an international social security agreement or, failing that, a certificate of social security declarations from the French social welfare agency responsible for collecting the social security contributions incumbent on the Service Provider; c) In addition, if registration in a professional register is compulsory for the Service Provider in the country of its establishment or domicile, either: <ul style="list-style-type: none"> i) a document from the authorities keeping the professional register or an equivalent document certifying registration; ii) an estimate, advertising document or professional correspondence, provided that the name or company name, the full address and the type of registration in the professional register are indicated; iii) or, for companies in the process of being created, a document less than six months old from the authority empowered to receive entries for registration in the professional register and certifying the application for registration in said register. <p>Furthermore, as part of efforts to combat the employment of foreign nationals without a work permit, the foreign Service Provider posting foreign employees on French territory shall submit the documents referred to in Articles L8254-1 and D8254-3 et seq. of the French Labour Code on the day of signature of the Contract and every six months until completion of performance of the Contract:</p> <p>The list of names of foreign employees employed by the Service Provider and subject to work authorisation as provided for in article L. 5221-2, specifying for each employee:</p> <ol style="list-style-type: none"> 1. his or her date of hire; 2. his or her nationality; 3. the type and serial number of the document constituting his or her authorisation to work.
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