



AGREEMENT

UNDER ARTICLE 76 OF REGULATION (EU) 2016/796

The **European Union Agency for Railways** (hereinafter referred to as “the Agency”),
an Agency of the European Union, having its seats at Valenciennes and Lille (France), represented for the purpose of this Agreement by [REDACTED], Executive Director of the Agency
of the one part,

and

The **Human Environment and Transport Inspectorate of the Ministry of Infrastructure and Water Management**,
the National Safety Authority of The Netherlands (hereinafter referred to as “the NSA”), whose principal office is Rijnstraat 8, 2515 EP The Hague, The Netherlands, represented for the purpose of the signature of this Agreement by Mr. [REDACTED] Director of the NSA
of the other part,

Both the Agency and the NSA being individually referred to as “a Party” and collectively as “the Parties”,

HAVE AGREED AS FOLLOWS:

ARTICLE 1 – SUBJECT MATTER AND SCOPE OF THIS AGREEMENT

- i. Part I of this Agreement establishes the conditions under which the Parties will cooperate in relation to the implementation of the Agency’s tasks pursuant to Article 76 (1) of the Regulation (EU) 2016/796¹, concerning single safety certificates, vehicle and vehicle type authorisations, in accordance with applicable EU legislation, including pre-engagement.
- ii. Part II of this Agreement establishes all the procedures and conditions for the cooperation between the Parties pursuant to Article 76 (8) of the Regulation (EU) 2016/796 in order to assist the Agency in relation to the single safety certificates, vehicle and vehicle type authorisations issued or to be issued by the Agency under respectively Articles 14, 20 and 21 of the Regulation (EU) 2016/796, including pre-engagement.

¹ Regulation (EU) 2016/796 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004, (OJEU, L 138, 26.5.2016, p. 1)

ARTICLE 2 - DEFINITIONS

- i. In this Agreement and in the Annex thereto, the following terms shall have the following meanings and cognate expressions shall be construed accordingly:
 - a) **“Agreement”**: this agreement between the two Parties, including its annex.
 - b) **“Allocation Request”**: the Agency’s request to the NSA made in accordance with Article 12 to select one or more of its experts from the Pool of Experts to assist the Agency in performing its tasks under Part II of this Agreement pursuant to an application for a single safety certificate or vehicle and vehicle type authorisation.
 - c) **“Allocated Expert”**: one or more experts of NSA selected by NSA from the Pool of Experts in accordance with Article 12 in relation to a project on single safety certificate or vehicle and vehicle types authorisation.
 - d) **“Allocation of Experts”**: the allocation, by the NSA to the Agency, of experts included in the Pool of Experts to assist the Agency.
 - e) **“Applicant”**: the person or entity submitting an Application.
 - f) **“Application”**: as the case may be, an application for a single safety certificate to be issued by the Agency, an application for a vehicle authorisation for placing on the market to be issued by the Agency or an application for a vehicle type authorisation to be issued by the Agency.
 - g) **“NSA Expert”**: one or more NSA expert(s) included in the Pool of Experts.
 - h) **“Pool of Experts”**: a group of experts meeting the competency requirements and nominated by the NSA for assisting the Agency in performing its tasks under this Agreement.
 - i) **“Project Team”**: a team composed of Agency and the NSA staff coordinating their respective assessment part of an Application.
- ii. Terms not defined in this Article shall have the meaning defined in the Regulation (EU) 2016/796 and other relevant legislative or implementing acts.
- iii. Headings are for convenience only and shall not affect the interpretation or meaning of the articles. The singular includes the plural and vice versa. The sequence of the articles neither has any meaning nor defines a legal priority of the stated obligations.

PART I - COOPERATION AGREEMENT UNDER ARTICLE 76(1) OF REGULATION (EU) 2016/796

ARTICLE 3 - ARRANGEMENTS FOR THE USE OF THE ONE-STOP SHOP (OSS)

- i. The Parties shall record, and keep up to date in the OSS:
 - a) the registered users;
 - b) information regarding their respective public holidays.
- ii. The Agency shall record in the OSS, and keep up to date, information regarding EU legal requirements that have to be met by the Applicant. If the NSA decides to record in the OSS information regarding the requirements laid down in the national rules notified in accordance with Directive (EU) 2016/798 that have to be met by the Applicant, the NSA shall keep this information up to date.
- iii. The Parties shall use the available functionalities of the OSS to manage relevant communication.
- iv. With respect to the integration between the OSS and the national IT systems the Agency shall make available to the NSA all the technical specifications of the initial interface and its future modifications in mutually agreed time before the system is released for operational use. The Agency shall provide a test system for testing the interface between the initial systems and after their future modifications. In the event the OSS operates below the agreed service level, the Parties shall be entitled to manage relevant communication outside of OSS, using alternative electronic means of communication and the pre-defined templates.

ARTICLE 4 - COORDINATION OF PROJECTS

- i. The Parties agree that the Project Team shall:
 - a) agree on a common language for the coordination of the project;
 - b) define detailed milestones at project level;
 - c) provide their respective deliverables according to these milestones;
 - d) decide on the appropriate communication channels for the project;
 - e) take into account the deadlines stipulated in the relevant legislation, including the time necessary for coordination before taking a decision on each stage of the assessment process;
 - f) when necessary, commonly decide to change the project planning and if relevant communicate any such alteration from the established project planning to the applicant;
 - g) record all decisions relevant to the project.
- ii. Documents prepared by and shared within the Project Team for the purposes of the assessment shall be provided, where possible, in the commonly agreed language.
- iii. When a document is not available in the commonly agreed language, the authority that has prepared and shared the document shall explain its content to the appointed Project Team during a coordination meeting or otherwise. The Agency shall be fully liable for any decisions it takes on the basis of such explanation. In case of doubts the Agency shall decide upon the translation of the document.
- iv. The Parties commit to make use of the web forms and common templates from the OSS. The Agency provides these web forms and common templates to the NSA in a way to be agreed on between NSA and Agency.

- v. The NSA shall in the context of the application present an outline of the supervision activities referred to in art. 5 of Regulation 2018/761², linking the supervision evidence and conclusions with the assessment requirements.
- vi. The Parties agree that the appointed team shall:
 - a) evaluate, agree on the need for, and plan visits, inspections or audits within the assessment process;
 - b) present to the project team a report of any visit, inspection or audit linking the visit, inspection or audit findings and the SSC assessment requirements;
 - c) appropriately record in the OSS any findings from visits, inspections or audits relevant for the assessment.
- vii. Without prejudice to Article 10 (7) of the Directive (EU) 2016/798³ or Article 21 (7) of Directive (EU) 2016/797⁴, disputes at project level that cannot be settled and/or resulting in a milestone being in danger, shall be escalated at the level of the Executive Director of the Agency and the Director of the NSA, or their respective authorised representatives, who will make their best efforts to reach an amicable settlement by the appropriate deadline.

ARTICLE 5 - COST OF TRANSLATIONS

- i. The Agency or the NSA shall bear the cost of translation of documents prepared by the other Party respectively when these are necessary for its own part of the assessment.
- ii. The Agency shall bear the cost of translation of the decision concerning the issuing of the single safety certificate, vehicle authorisation for placing on the market or vehicle type authorisations, or (a) relevant part(s) of it, after a request of the NSA, when the application file submitted by the applicant is not in Dutch language. Before the publication, the Agency will consult the NSA in order to verify the quality of the translation.

ARTICLE 6 - TRAINING OF NSA STAFF TO THE USE OF THE OSS

- i. If the NSA so requests, the Agency shall assist the NSA in familiarising its staff to the use of the OSS in order to ensure that designated NSA staff will have the knowledge and skills needed to train other colleagues within the NSA.
- ii. The training referred to in point i shall be delivered free of charge.

ARTICLE 7 - APPORTIONMENT OF THE FEES PAYABLE BY THE APPLICANT

- i. The NSA shall deliver to the Agency a statement of costs mentioning the reference of the specific project. The submission of all statements of costs shall be done within 20 calendar days after the Agency's decision has been issued and at least quarterly during the pre-engagement stage.

² Commission Delegated Regulation (EU) 2018/761 of 16 February 2018 establishing common safety methods for supervision by national safety authorities after the issue of a single safety certificate or a safety authorisation pursuant to Directive (EU) 2016/798 of the European Parliament and of the Council and repealing Commission Regulation (EU) No 1077/2012, (OJEU, L 129, 25.5.2018, p. 16)

³ Directive (EU) 2016/798 of the European Parliament and of the Council of 11 May 2016 on railway safety (OJEU, L 138, 26.5.2016, p. 1)

⁴ Directive (EU) 2016/797 of the European Parliament and of the Council of 11 May 2016 on the interoperability of the rail system within the European Union (OJEU, L 138, 26.5.2016, p. 44)

Payments shall be made in Euros to the NSA bank account stated in the NSA identification form (Legal Entity File (LEF) and Bank Account Form (BAF)) provided to the Agency. They shall be deemed to have been made on the date on which Agency's account is debited.

- ii. In application of Article 6 of the Implementing Regulation (EU) 2018/764⁵, when the applicant's failure to pay relates to the statement of costs delivered by the NSA, the Agency may request the NSA to provide assistance to ensure full payment of invoices issued, within the limits of its ability to do so under its national legal framework. Upon request by the Agency the NSA assists the Agency by providing at least known and available information about the applicant such as address and contact details according to the current national legal framework in the Netherlands.
- iii. In the event the Agency fails to pay on expiry of the time limits laid down in article 5 (10) of the Implementing Regulation (EU) 2018/764, the NSA shall be entitled to interest for late payment at the rate described in Article 6 (2) of such Regulation. Interest for late payment covers the period running from the day following the due date for payment up to and including the date of payment.
- iv. Where the Agency requests clarification of the statement of costs delivered by the NSA, the NSA shall have a maximum of 10 calendar days after the receipt of the Agency's request to provide the requested data, unless otherwise agreed in writing between the Parties. The payment of the NSA statement of cost shall be suspended until the NSA has submitted the requested data.
- v. The cost of visits, inspections or audits that the Agency requests the NSA to carry out on its behalf shall be borne by the Agency. To this end, the NSA shall deliver to the Agency a statement of costs with related details of the visits, inspections or audits performed. The handling of this statement of costs shall follow what is prescribed in paragraphs i, iii and iv mutatis mutandis.

ARTICLE 8 - SHARING OF INFORMATION AFTER AN ASSESSMENT PROCESS

- i. The Parties may provide upon justified request from each other safety related information concerning railway undertakings whose single safety certificates the Agency has issued.
- ii. When the Agency is asked by the NSA to restrict or revoke a certificate in accordance with art. 17 (5) of Directive (EU) 2016/798 or to amend, suspend or revoke an authorisation in accordance with art. 26 of Directive (EU) 2016/797, it shall decide promptly and inform the NSA accordingly.
- iii. The NSA shall, when the circumstances allow, inform the Agency before applying temporary safety measures in accordance with Art. 17 (6) of Directive (EU) 2016/798 and Article 26 (3) of Directive (EU) 2016/797 related to certificates or authorisations issued by the Agency.

ARTICLE 9 - REVIEWING OF DECISIONS

- i. When there is a request for review of a negative decision of the Agency that relates to the assessment of the national requirements made by the NSA, the Agency shall promptly ask the NSA to review its assessment.
- ii. The NSA shall review its assessment under point i in an impartial manner and deliver its opinion within the relevant timescale, including the time necessary for the Agency to confirm or reverse the decision.

⁵ Commission Implementing Regulation (EU) 2018/764 of 2 May 2018 on the fees and charges payable to the European Union Agency for Railways and their conditions of payment (OJEU, L 129, 25.5.2018, p. 68)

ARTICLE 10 -LIABILITY REGIME GOVERNING PART I OF THIS AGREEMENT AND APPLICABLE TO THE PARTIES

- i. The liability of the Agency is governed by Article 72 of Regulation (EU) 2016/796 and the liability of the NSA is governed by its national legal framework.

ARTICLE 11 - SUBCONTRACTING

- i. If the applicable legislation allows, each Party is entitled to subcontract all or part of its tasks under Part I of this Agreement. Each Party remains solely responsible and liable for the acts of its subcontractors.

PART II – COOPERATION AGREEMENT UNDER ARTICLE 76(8) OF REGULATION (EU) 2016/796 ON THE POOL OF EXPERTS

ARTICLE 12 - PROCEDURE FOR THE ALLOCATION AND REPLACEMENT OR WITHDRAWAL OF NSA'S EXPERTS TO ASSIST THE AGENCY

- i. In case the Agency would like to request assistance from the NSA, the Agency shall make an Allocation Request to NSA through the contact point referred to in Article 21 (ii)(d).
When making an Allocation Request, the Agency shall describe the tasks to be performed, the language(s) and other skills required, the deadlines and duration of such tasks and other data relevant for the NSA to make its decision, using the Allocation Request form attached hereto in Annex.
- ii. The NSA shall promptly evaluate its possibility to provide assistance to the Agency and confirm, reject or ask for a modified Allocation Request.
An Allocation Request shall be regarded as rejected by the NSA if it fails to notify the Agency of its acceptance in writing within 10 working days after the receipt, unless otherwise agreed in writing.
- iii. If during the performance of the task it is identified that the conditions for the allocation agreed under point i cannot be met, the Parties shall evaluate the implications and mutually agree on alterations to the terms of the agreed Allocation Request if needed.
- iv. The Parties shall promptly inform each other about any potential or imminent change that could affect the allocation of the NSA expert to the Agency and evaluate the consequences thereof. This may result in the replacement of the expert by an expert with equivalent competence or in the suspension or termination of the allocation by the NSA. No Party shall be liable to the other in case an expert needs to be replaced or the allocation of the expert needs to be terminated before its term. Each Party shall make reasonable efforts to minimise the adverse consequences on the other Party.
- v. When so required in the interest of the service of the NSA, the NSA may, replace or withdraw the Allocated Expert(s) on reasonable notice to the Agency provided that, if possible, it shall replace them with another NSA's expert with equivalent competence. The NSA and the Agency shall ensure that the experts are given the opportunity to arrange for a proper hand-over of the files on which those experts are working.

ARTICLE 13 - CONDITIONS REGARDING THE NSA'S EXPERTS ALLOCATED TO ASSIST THE AGENCY

- i. The experts shall be allocated by the NSA from the "Pool of Experts" maintained by the Agency. Subcontractors of the NSA cannot join the "Pool of Experts" on behalf of the NSA .
- ii. The Allocated Experts concerned will remain employees of the NSA. If such experts are performing their tasks at the Agency's premises, they shall comply with the Agency's internal policies concerning security, confidentiality, health, safety and professional conduct. The Agency shall provide such experts with the necessary information about its internal policies.
The NSA undertakes to pay the salaries and employer charges and expenses of such experts while they assist the Agency.
- iii. When performing their task for the Agency, Allocated Experts shall act in the sole interest of the Agency's tasks; the Agency shall be responsible for endorsing or approving or not the results of the work done by the expert(s). The NSA shall refrain from any interference in the work of Allocated Experts performed on

behalf of the Agency. Whilst performing their tasks on behalf of the Agency the Allocated Experts shall perform their tasks in accordance with the Agency's internal procedures.

**ARTICLE 14 - REIMBURSEMENT OF COSTS INCURRED UNDER PART II OF THIS AGREEMENT – COSTS
INCURRED BY THE NSA FOR NSA'S EXPERTS ALLOCATED TO THE AGENCY**

- i. The Agency shall reimburse the NSA according to the relevant national hourly rate for the cost incurred by the NSA's experts who are assisting the Agency in its tasks. Any fraction of working hours shall be calculated on a pro rata basis.
- ii. The NSA shall provide the Agency by written notice with its hourly rate(s) applicable to the tasks under Part II of this Agreement; it shall do so for the first time promptly after the entry into force of Part II of this Agreement and thereafter whenever there is a change of its hourly rates.
- iii. The NSA shall deliver to the Agency a detailed statement of costs signed by the authorised officer of the NSA comprising the following elements:
 - a) the reference of the specific project;
 - b) the tasks performed by the NSA's allocated expert detailed in working hours with an indication of the timing of the work done;
 - c) other expenses approved by the Agency with related supporting documents;
 - d) a formal request for payment of the total amount to be paid in Euros;
 - e) bank account on which payment should be made and reference to be mentioned for the payment;
 - f) the creditor's identification (name of NSA, address, name of contact person); and
 - g) the debtor's identification (name, address)

The NSA shall submit statement of costs that will clearly separate hourly rates, charges and other costs. The NSA shall submit together with the first statement of costs a statement of exemption of VAT on the services performed.

The statement of costs shall be submitted within twenty 20 calendar days after completion of its task by the expert allocated to the Agency.

The NSA may deliver interim statement of costs every three months after its expert has started to work on a task under Part II of this Agreement.

- iv. Payments shall be made in Euros within sixty (60) days following receipt of the statement of costs to the bank account stated in the NSA's identification form (LEF and BAF) provided to the Agency. They shall be deemed to have been made on the date on which Agency's account is debited.

In the event the Agency fails to pay on expiry of the above mentioned time limit, the NSA shall be entitled to interest for late payment at the rate described in Article 6 (2) of the Commission Implementing Regulation (EU) 2018/764. Interest for late payment covers the period running from the day following the due date for payment up to and including the date of payment.

- v. Where the Agency requests clarification of the statement of costs delivered by the NSA, the NSA shall have a maximum of ten (10) calendar days after the receipt of the Agency's request to provide the requested data, unless otherwise agreed in writing between the Parties. The payment of the NSA statement of cost shall be suspended until the NSA has submitted the requested data.

- vi. The NSA shall have sole responsibility for compliance with applicable regulations on tax. Failure to comply shall imply corrective actions by the NSA.

The NSA recognises that the Agency is, as a rule, exempt from all taxes and dues, 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.

The NSA shall accordingly complete the necessary formalities with the relevant authorities to ensure that the services required for performance of Part II of this Agreement are exempt from taxes and duties, including VAT.

- vii. Subject to the prior agreement of the Agency as to a mission or travel of Allocated Experts for their participation in meetings organised by ERA, the NSA shall be entitled to the reimbursement of their travel costs, plus accommodation and/or daily allowances in the conditions set forth in the “Rules on the reimbursement of expenses incurred by people from outside the European Railway Agency invited to attend meetings in an expert capacity” (ERA Administrative Board Decision 22/2008 of 28-10-2008). The NSA may request to the Agency the coverage of the travel, accommodation and subsistence cost of its Experts allocated to assist the Agency for their participation in meetings not organised by ERA and which have taken place in the framework of the Agency’s tasks under Part II of this Agreement.

ARTICLE 15 - COOPERATION ON PLANNING OF NEEDS FOR ALLOCATION OF EXPERTS

- i. At least once per year the Agency will share with the NSA information on its non-binding analysis of workload trends, on whose basis the Parties will estimate the NSA’s prospective assistance to the Agency in its tasks in order to enable the NSA to plan its resource capacity and availability.

ARTICLE 16 - TRAINING OF NSA’S STAFF INTENDED TO ASSIST THE AGENCY UNDER PART II OF THIS AGREEMENT

- i. The Agency shall provide the necessary training to the NSA’s Experts intended to assist the Agency in order to ensure efficient assessment of Applications.
- ii. The Agency shall bear the cost of participation of the NSA Experts in the training referred to in this Article, according to the Agency “Rules on the reimbursement of expenses incurred by people from outside the Agency invited to attend meetings in an expert capacity”⁶.

ARTICLE 17 - PARTICIPATION OF ALLOCATED EXPERTS IN REVIEW OF DECISIONS

- i. If an applicant requests a review of a decision made by the Agency and if the review process addresses issues treated by an Allocated Expert of the NSA during the assessment, the Agency shall inform the NSA of this request and may ask the NSA to allocate an expert to perform the review of these issues. The procedure set forth under Article 12 shall apply mutatis mutandis; the Allocation Request shall be regarded as rejected if the NSA fails to reply within five (5) working days.
- ii. If so requested, the NSA shall review the task of its Experts concerned in an impartial and independent manner and deliver its opinion within the relevant timescale. The Agency shall reimburse the NSA at the hourly rate referred to in Article 14 (2) for the cost incurred by the NSA experts who are involved in the review of such tasks.

⁶ Rules on the reimbursement of expenses incurred by people from outside the European Railway Agency invited to attend meetings in an expert capacity (ERA Administrative Board Decision 22/2008 of 28-10-2008)

ARTICLE 18 - LIABILITY REGIME GOVERNING ONLY PART II OF THIS AGREEMENT AND APPLICABLE TO THE PARTIES IN THE CASE OF THIRD PARTY CLAIMS

- i. The responsibility for the performance of the tasks by an Allocated Expert rests with the Agency. The Agency shall bear any liability arising from the performance of such tasks, other than in cases of gross negligence or intentional misconduct of those Experts. In the latter cases, the liability lies with the NSA.
- ii. The Agency agrees to waive any claim it may have against the NSA's Allocated Experts personally in connection with their performance of their tasks under Part II of this Agreement. This applies without prejudice to any claim it may have against the NSA due to gross negligence or intentional misconduct of its Allocated Experts.
- iii. The Agency shall indemnify the NSA and its staff and board members (if any) against any actions or claims brought against them by any third party in connection with the tasks performed by the Agency and against any liabilities, including any legal costs, any damages and any expenses arising from or incurred due to or in connection with such actions or claims, except and to the extent that the actions or claims are brought as a result of the gross negligence or the intentional misconduct of the NSA, its staff and its board members (if any).
- iv. The Parties will cooperate with each other and reasonably assist each other in case of legal action against any of them that is related to the execution of Part II of this Agreement.

ARTICLE 19 - INTELLECTUAL PROPERTY RIGHTS LINKED TO THE PERFORMANCE OF PART II OF THIS AGREEMENT

- i. Without prejudice to any pre-existing intellectual property rights of the NSA or other third Parties (like applicants), ownership of all copyright and other pre-existing intellectual property rights, including any documentation, data, technical information and know-how provided to the NSA's expert(s) in performance of Part II of this Agreement remains vested to the Agency. All such information shall be held in confidence and may not be disclosed or copied to third Parties, without the express written permission of the Agency.
- ii. Any results or rights connected to the results of the tasks executed under Part II of this Agreement, including copyright and other intellectual property rights, obtained by the NSA's experts in performance of Part II of this Agreement, remains property of the Agency.

CLAUSES APPLICABLE TO PART I AND PART II OF THIS AGREEMENT

ARTICLE 20 - PROVISION ON LANGUAGE OF THIS AGREEMENT

- i. This Agreement is signed in two identical originals in English.
- ii. Without prejudice to a Decision of the Management Board on language arrangements in accordance with Article 74 of Regulation (EU) 2016/796 and without prejudice to the language regime for assessments under the Implementing Acts for single safety certificates and vehicle (type) authorisations, communication concerning this Agreement between the Parties under this Agreement shall be in English.

ARTICLE 21 –COMMUNICATION

- i. Any formal communication between the Parties relating to this Agreement shall be made by official letter to the Executive Director as far as the Agency is concerned and to the Director as far as the NSA is concerned.
- ii. The Parties shall each provide and keep up to date the details of one or more contact points for the purpose of:
 - a. Coordinating administrative and technical matters such as handling of applications, requests for pre-engagement, requests for review of negative decisions and appeals;
 - b. sharing information about previously authorised vehicles or certified railway undertakings;
 - c. handling of financial matters;
 - d. communication related to the assistance requested by the Agency under Part II of this Agreement;
 - e. other exchange of information necessitated in this Agreement;
 - f. exchanging information in case of an accident or a major incident involving a vehicle or a certified railway undertaking of which they were involved in the assessment.
- iii. Without prejudice to Art. 3 point ii and except in cases that an official letter is required under this Agreement or a Party decides to send an official letter to the other Party the Parties shall choose the most appropriate communication channel, favouring the use of electronic means for their communication.
- iv. The Parties shall take into account the language(s) of the application file when allocating resources to the project.

ARTICLE 22 - CONFLICTS OF INTEREST

- i. Each Party shall take all necessary measures to prevent or end any situation that could compromise the impartial and objective performance of this Agreement. Any conflict of interests during performance of this Agreement, must be notified to the other Party in writing without delay.
- ii. Acting in accordance with its regulatory framework, each Party shall ensure that its staff dealing directly or indirectly with the cooperation under this Agreement is not placed in a situation, which could give rise to conflict of interests. If necessary, such staff member shall be assigned to other tasks not related to the cooperation and be replaced without undue delay if possible.
- iii. The NSA shall ensure that its expert(s) allocated to assist the Agency under Part II of this Agreement are not in a situation of conflict of interests. In case of a risk of conflict of interest, the Agency and the NSA

shall forthwith contact each other and discuss the possible replacement or withdrawal of such expert exposed to a conflict of interest.

ARTICLE 23 - PUBLIC ACCESS TO DOCUMENTS AND TRANSPARENCY

- i. Without prejudice to their respective applicable legal framework the Parties shall promptly inform and may consult each other in case of a request for access to any documentation related to the cooperation under this Agreement and emanating in whole or in part from the other Party. The Parties shall also inform each other of their decision regarding the request to access said documents.

ARTICLE 24 – CONFIDENTIALITY

- i. To the extent permitted by their respective applicable legal framework, in particular on public access to documents, the Parties undertake to treat in the strictest confidence and not to divulge to third Parties other than other NSAs any sensitive information or documents which are linked to the performance of their tasks under this Agreement except as otherwise agreed in writing between the Parties. The Parties will continue to be bound by this obligation even in the case of termination of this Agreement.

ARTICLE 25 - PERSONAL DATA PROTECTION

- i. Any personal data for the purpose of this Agreement shall be processed:
 - a. By the Agency pursuant to Regulation (EU) 2018/1725⁷
 - b. By the NSA pursuant to Regulation (EU) 2016/679⁸.

ARTICLE 26 – ENTRY INTO FORCE, DURATION, SUSPENSION AND TERMINATION OF THIS AGREEMENT

- i. This Agreement shall enter into force on the date on which it is signed by the last Party signing. Part I and Part II of this agreement shall apply as from 16/06/2019.
- ii. Part I of this Agreement shall remain in force for an unlimited duration. Part I of this Agreement can be suspended or terminated by a Party in whole or in part under the conditions set forth hereafter in sub-sections iii and iv of this Article. Part II of this Agreement shall remain in force until it is terminated by a Party in whole or in part under the conditions set forth in sub-section vii of this Article. It can be suspended under the conditions set forth hereafter in sub-section vi of this Article.

⁷ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJEU L295, 21.11.2018, p. 39)

⁸ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJEU L119, 4.5.2018, p. 1)

- iii. Part I of this Agreement may be suspended at the initiative of the NSA in case of force majeure affecting whole or part of its tasks hereunder, notified in accordance with Article 29 of this Agreement, for the duration and to the extent such force majeure prevents the NSA to perform its tasks.
- iv. Part I of this Agreement may be terminated by an official letter, in whole or in part, on the following grounds:
 - a. at the initiative of the NSA:
 - i) in case The Netherlands withdraws from the EU in accordance with the Treaty on the EU with effect at the date of entry into force of the withdrawal agreement or in the conditions set forth in Article 50 (3) of the TEU;
 - ii) in case of a constitutional or legislative change in the EU and/or national legal framework applicable to the NSA affecting the NSA and this Agreement;
 - iii) in other duly justified cases, with a six months prior official letter to the Agency.
 - b. at the initiative of the Agency:
 - i) if so required by a decision of the Management Board of the Agency. Such decision can only be made upon duly justified reasons and should be communicated promptly to the NSA.
- v. The Party suspending or terminating Part I of the agreement in whole or in part shall send an official letter to the other Party specifying the circumstances that require the suspension or termination of this Agreement and specifying the date of effective suspension or termination of Part I of this Agreement or specific parts of it.

The Parties shall make reasonable efforts to agree on transitional provisions for their cooperation under Part I of this Agreement related to on-going cases of cooperation pending at the time of effective suspension or termination.
- vi. Part II of this Agreement may be suspended on the following grounds at the initiative of the NSA:
 - i) in the case of non-payment by the Agency of an invoice that is due and payable to the NSA, two (2) months after the due date for payment has elapsed, until the NSA has received the payment;
 - ii) In case of force majeure affecting whole or part of its tasks hereunder, notified in accordance with Article 29 of this Agreement, for the duration and to the extent such force majeure prevents the NSA to perform its tasks.
- vii. Part II of this Agreement may be terminated, in whole or in part, at the initiative of either Party with a six months prior official letter to the other Party.
- viii. Except in the case of a serious breach of its obligations under Part II of this Agreement by the Agency or as otherwise mutually agreed, the Parties shall make reasonable efforts to agree on transitional provisions for the on-going projects at the time of suspension or termination in whole or in part of Part II of this Agreement.

ARTICLE 27 - AMENDMENTS TO, REVIEW AND EVALUATION OF THIS AGREEMENT

- i. Should either Party see a need to change this Agreement or a part of it, it may at any time submit a detailed request for a change.
- ii. Until the proposed change is assessed and put in place in accordance with this provision, the Parties shall, unless otherwise agreed in writing, continue to apply this Agreement as if the request had not been made.
- iii. Amendments to this Agreement shall be mutually agreed in writing in a common document and signed by the Parties.

- iv. If a Party so requests, the change request related to Part I of this Agreement shall be discussed at the Management Board before an amendment is negotiated and signed.
- v. Any change under Part I of this Agreement affecting the list of main elements as defined in the Agency's MB decision no. 174⁹ requires the prior approval of the Management Board.
- vi. The Agency shall inform all the other NSAs of the European Economic Area and Switzerland about any significant change requested under Part I of this Agreement, as well as any change agreed upon under Part II of this Agreement.

After the signature of this Agreement the Agency shall make it available to all NSAs of the European Economic Area and Switzerland.

The Agency shall inform its Management Board and all the other NSAs about any significant change agreed upon Part I of this Agreement.

This Agreement shall be amended to take account of any revision of the Decision of the Management Board under Article 51(1)(t) of the Regulation (EU) 2016/796 or a change in the EU legislation affecting the cooperation between the Parties.

Without prejudice to any decision adopted by the Management Board in this regard, the Parties shall negotiate in good faith and agree on any amendment reasonably justified and requested by a Party.

- vii. At the request of one of the Parties, the Parties shall coordinate in order to evaluate the performance of this Agreement or a part of it and to decide how to improve their cooperation thereunder. Each Party chooses its respective authorised representative freely.

ARTICLE 28 - APPLICABLE LAW

- i. This Agreement shall be governed by the European Union law supplemented where necessary by the national substantive laws of The Netherlands.

ARTICLE 29 - FORCE MAJEURE

- i. Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the Parties which prevents or delays either of them from performing any of their obligations under this Agreement, which was not due to error or negligence on their part or on the part of a subcontractor, and which could not have been avoided by the exercise of due diligence. Defects in equipment or material internal labour disputes, strikes or financial problems cannot be invoked as force majeure unless they stem directly from a relevant case of force majeure.
- ii. If either of the Parties is faced with force majeure, it shall notify the other Party without delay by official letter with acknowledgement of receipt or, if not possible, by another acceptable means of communication, stating the nature, likely duration and foreseeable effects.
- iii. Neither Party shall be held in breach of its obligations hereunder if it has been prevented or delayed from performing them by force majeure. Where the NSA is unable to perform its obligations under this

⁹ Decision n°174 of the Management Board of the European Union Agency for Railways adopting guidelines and the list of the main elements to be included in the cooperation agreements to be concluded between the Agency and the national safety authorities ((ERA Management Board Decision 174 done on 26.6.2018)

Agreement due to force majeure, the NSA shall have the right to remuneration only for tasks actually executed. The Parties shall take the necessary measures to reduce damage to a minimum.

ARTICLE 30 - AMICABLE SETTLEMENT OF DISAGREEMENTS AND DISPUTES

- i. Before any Board of Appeal proceedings or court proceedings are initiated, the Parties shall always try to settle amicably any disputes between them about matters arising under Part I of this Agreement considering however the time-limits set forth in the Commission Implementing Regulation on Board(s) of Appeal¹⁰ and other applicable legislation.
The Parties shall always try to settle amicably any disputes between them about matters arising under Part II of this Agreement.
- ii. Disputes that cannot be settled shall be presented to the Executive Director of the Agency and the Director of the NSA, or their respective authorised representatives, who will make their best efforts to reach an amicable settlement by the appropriate deadline.
Particularly in relation to matters arising under Part II of this Agreement the aforementioned efforts to reach an amicable settlement must be done by the appropriate deadline, if any, and not later than thirty (30) calendar days after the dispute has been presented to them (taking into consideration any relevant milestone).
- iii. During the discussions to reach an amicable settlement, the Parties shall continue to perform all of their respective obligations under this Agreement unless otherwise agreed in writing between the Parties.
- iv. The Parties shall formally discuss all issues concerning the dispute at hand and any action agreed shall be documented and signed by each Party.

ARTICLE 31 - JURISDICTION COMPETENT TO SETTLE DISPUTES

- i. Any dispute between the Parties regarding the interpretation, application or validity of this Agreement (other than one to be submitted to the Board of Appeal for arbitration) which cannot be settled amicably in accordance with the procedure under Article 30 of this Agreement shall be brought exclusively before the Court of Justice of the European Union.

ARTICLE 32 - NO ASSIGNMENT

- i. Neither Party shall assign the rights and obligations arising from this Agreement, in whole or in part.

ARTICLE 33 - SEVERABILITY

- i. Each provision in this Agreement shall be treated as a separate and independent clause, and the unenforceability of any one clause shall in no way impair the enforceability of any of the other clauses herein.

¹⁰ Commission Implementing Regulation (EU) 2018/867 of 13 June 2018 laying down the rules of procedure of the Board(s) of Appeal of the European Union Agency for Railways (OJEU, L 149, 14.6.2018, p. 3)

Signed in duplicate, each Party receiving an original:

For the Inspectie Leefomgeving en Transport (NSA)

**For the European Union Agency for Railways
(the Agency)**

[Redacted Signature]

Director

[Redacted Signature]

Executive Director

Signed bij the ERA and the ILT

Done in Utrecht, The Netherlands, on 25th April 2019

ANNEX

Allocation Request

following Article 12 (i) of this Agreement

Part A: Reference data [to be filled by the Agency]

Project title*:	Project title supporting project identification
Project number:	Project reference number in the OSS
Date of the request*:	Date of your allocation request
Related process*:	Type of the process
Responsible person at the Agency*:	Name and surname

Part B: Application details [to be filled by the Agency]

Applicant*:	Legal denomination of the applicant
Application date:	Submission date of the application
Type of application*:	<input type="checkbox"/> VA: Tick box and select type of application for VA
	<input type="checkbox"/> SSC: Tick box and select type of application for SSC
VA type of authorization*:	<input type="checkbox"/> VA: Tick box and define scope of VA application including type of vehicle, type ID, type name, alternative name etc.
SSC type of operation*:	<input type="checkbox"/> SSC: Tick box and define scope of SSC application including type of services (e.g. passenger, freight, shunting, other).
Area of operation/use*:	MS/organisations relevant for the area of operation/use
Link to Pre-engagement:	Pre-engagement reference number allocated by the OSS
Language of the application*:	Language of the part of application to be assessed by ERA

Part C: Scope of the request: [to be filled by the Agency]

Planned start date*:	Starting date for expert's involvement
Planned end date*:	End date for expert's involvement
Proposed estimated workload*:	Estimated number of hours
Required language(s)*:	List of required languages
Role(s) to be allocated*:	Role to be allocated
Required specific competencies*:	Required competencies and skills
Tasks to be allocated*:	Tasks to be allocated to an expert

Part D: NSA's evaluation of the request: [to be filled by the NSA]

Required expert available*	<input type="checkbox"/> YES <input type="checkbox"/> NO
Update of the request necessary	<input type="checkbox"/>
	Provide details when update of the request is necessary
Hourly rate*:	Hourly rate applicable to your expert
Name:	Expert's name (if possible at this stage)
Surname:	Expert's surname (if possible at this stage)
Contact details:	Expert's contact details (if possible at this stage)
Possible starting date*:	Earliest possible starting date of expert's availability
Additional conditions (if any):	Additional conditions impacting expert's availability

Part E: NSA's signature [to be filled by the NSA]

Provide name and surname	Provide date
Name and surname of the NSA's authorized staff member*	Date*

Part F: Approval of the Agency [to be filled by the Agency]

Proposed allocation accepted:	<input type="checkbox"/> YES <input type="checkbox"/> NO
	Provide details if not accepted
Provide name and surname Name and surname of the NSA's authorized staff member*	Provide date Date*

*Obligatory fields