



Consortium Agreement

concerning the action SECURE NL, in the field of the Connecting Europe Facility / Trans-European Transport Networks (TEN-T), Grant Agreement: INEA/CEF/TRAN/M2018/1768044

The Coordinating Beneficiary, **Provincie Zuid-Holland**, Zuid-Hollandplein 1, 2596 AW Den Haag,
represented by J.G. ter Kuile, head of bureau,
hereinafter referred to as “Coordinating Beneficiary”,

and

the Associated Beneficiaries,

Havenbedrijf Rotterdam N.V.,
Wilhelminakade 909, 3072 AP Rotterdam, Netherlands,
represented by Ronald Paul, Chief Operating Officer,
hereinafter referred to as “Associated Beneficiary”,

Municipality of Dordrecht,
Spuiboulevard 300, 3311 GR Dordrecht, Netherlands,
represented by N.J. van Klinken, Program manager Westelijke Dordtse Oever,,
hereinafter referred to as “Associated Beneficiary”,

Municipality of Venlo,
Hanzeplaats 1, 5912 AT Venlo, Netherlands,
represented by Antoin Scholten, Mayor,
hereinafter referred to as “Associated Beneficiary”,

Loverbosch Beheer B.V.
Nobisweg 1, 5721 VA Asten, Netherlands
represented by Reinier A.P.M. Loverbosch, Chief Executive Officer,
hereinafter referred to as “Associated Beneficiary”.

Hereinafter referred to as “Beneficiary” and collectively as “the Beneficiaries,

CONSIDER AS FOLLOWS:

- A. The Beneficiaries, having considerable experience in Logistics, have submitted a Proposal for an Action entitled SECURE NL in the field of the trans-European transport networks (TEN-T) to the Innovation & Networks Executive Agency (INEA) with TENtec number 28137500.
- B. The Proposal is supported by the State of the Netherlands.
- C. The Action SECURE NL aims at the development and construction of 835 parking places at four safe and secure parking areas for Heavy Goods Vehicles in the South of the Netherlands that are operated with digital real-time information systems, feeding into the TEN-T core network and into the North Sea-Baltic, North Sea-Mediterranean and Rhine-Alpine Core Network Corridors.
A full description of the Action can be found in the Application Forms Part D of the Proposal.

Initials Coordinating beneficiary:



- D. The Beneficiaries have expressed the intention to implement SECURE NL by signing the Application Form A2.2 of the CEF 2018 Transport call for Proposals.
- E. The European Union has awarded a EU Financial Contribution for SECURE NL, under the terms and conditions set out in the Special Conditions, the General Conditions and the other Annexes to the Grant Agreement INEA/CEF/TRAN/M2018/1768044;
- F. The Beneficiaries are aware of the European Union rules on the eligibility of costs, awarding of contracts and procurement requirements as set out in the Grant Agreement mentioned above.
- G. The Beneficiaries have accepted the EU Financial Contribution and have agreed to implement SECURE NL under the terms and conditions of the Grant Agreement mentioned above.
- H. The Beneficiaries wish to agree upon the general rules related to the management and implementation of this Action from which they are Beneficiaries.

HAVE AGREED

1. General provisions

1. Definitions

Words beginning with a capital letter shall have the meaning defined in the Grant Agreement or hereafter:

Acceding Party	any Third Party acceding to this Consortium Agreement after the Effective Date.
Action	means the Action defined in Consideration C, mentioned above.
Administrative Obligations	the obligations of the Beneficiaries arising from and in relation to the Grant Agreement.
Affiliate	any legal entity directly or indirectly owned or controlled by or owning or controlling or under the same ownership or control as any of the Beneficiaries, such ownership or control existing through the direct or indirect ownership of more than 50% of the nominal value of the issued equity share capital, or ownership of more than 50% of the shares entitling the holders to vote for the election of directors or persons performing similar functions, or to the right by any other means to elect or appoint directors, or persons performing similar functions, who have a majority vote, or ownership of 50 % or more of the shares and the right to control management or operation of the company through contractual provisions.
ASR	the yearly Action Status Report under the rules of INEA.
Background Information	the information, whether or not confidential, which is held by any Beneficiary prior to its accession to the Grant Agreement, as well as any intellectual property rights pertaining to such information, such as but not limited to rights related to copyright, design rights, patent rights or similar forms of intellectual property rights, which information is needed for the implementation of the Action or for using Foreground Information.
Best Effort	the obligation for a party to take, in the performance of its commitments under this Consortium Agreement, all reasonable



	actions and measures and more generally doing everything that may reasonably be expected from a normal, diligent and reasonable professional in the same circumstances.
Budget	the total of the estimated eligible costs of the Action.
Confidential Information	the information that is provided by a Beneficiary to the other Beneficiaries under the obligation to be treated as confidential.
Consortium	the collaborative partnership composed of the Beneficiaries .
Consortium Agreement	this agreement.
Coordinator	the official assigned by the Coordinating Beneficiary who coordinates the Implementation..
Default	any breach of this agreement, the Grant Agreement or the rules of INEA which has been identified as such by the Steering Committee.
Defaulting Party	the Beneficiary who is responsible of a Default.
Deliverables	all reports, milestones, certificates, audit declarations, data and other information required to be provided to INEA or Dutch programme bodies in line with the Grant Agreement.
Effective date	the date on which the Grant Agreement came into effect.
EU Financial Contribution	the EU financial contribution by INEA under the Grant Agreement.
Fault	any wrongful act, omission, breach of applicable laws or failure to comply with the terms of the Consortium Agreement.
Final Report	the Action's Final Report under the rules of INEA.
Force Majeure	any unforeseeable, exceptional situation or event beyond the parties' control, which prevents either of them from fulfilling any of their obligations under the Agreement, which was not attributable to error or negligence on their part or on the part of subcontractors, affiliated entities, implementing bodies or third parties in receipt of financial support and which proves to be inevitable in spite of exercising due diligence. Any default of a service, defect in equipment or material or delays in making them available, as well as labour disputes, strikes or financial difficulties cannot be invoked as force majeure, unless they stem directly from a relevant case of force majeure.
Foreground Information	the results, including information, whether or not confidential, that are generated in the Action, such as but not limited to rights related to copyright, design rights, patent rights or similar forms of protection.
Grant Agreement	the Grant Agreement to be signed by INEA with the Consortium based on a successful evaluation and adjudication of the Action proposal. Grant Agreement INEA/CEF/TRAN/M2018/1768044
General Conditions	the General Conditions in the Grant Agreement.
Implementation	the implementation of the Action by the Beneficiaries according to the Grant Agreement and the Consortium Agreement..
Interim Report	the Action's Interim Report under the rules of INEA.
Major Decisions	decisions that are designated as such.
Proposal	the proposal referred to in the Consideration A, mentioned above.
Representative	the natural person designated by a Beneficiary with the power



	to represent that Beneficiary.
Special Conditions	the Special Conditions in the Grant Agreement.
Steering Committee	the assembly of Representatives that is responsible for the timely and correct Implementation.
Sub-Contractor	a Third Party who has entered into an agreement with one or more Beneficiaries, in order to carry out a part of the Action.
INEA	the Innovation and Networks Executive Agency, representing the European Union.
Third Party	any person other than the Beneficiaries and Affiliates.
Written Form	means (i) documents duly signed by an authorized Representative and personally delivered or delivered by mail or (ii) electronic documents delivered with advanced electronic signatures which are based on a qualified certificate and which are created by a secure-signature-creation device.

2. Subject

- 2.1 The Consortium Agreement is concluded in relation to the Action SECURE NL as described in the Proposal and the Grant Agreement.
- 2.2 The Grant Agreement (and any Amendment thereto) signed by the Beneficiaries and INEA, which includes Special Conditions, the General Conditions, the Proposal and the other annexes, forms an integral part of the Consortium Agreement. Unless explicitly stated otherwise, all parts of the General Conditions are relevant for and apply to the Beneficiaries.
- 2.3 The provisions of the Grant Agreement shall take precedence over any other agreement between the Beneficiaries that may have an effect on the Implementation.
- 2.4 The Consortium Agreement is intended to define more precisely the terms on which the Beneficiaries will co-operate during the Action and adjudication phase and within the scope of the Grant Agreement. Accordingly, the Beneficiaries agree amongst themselves to take all reasonable and necessary measures to ensure that the Action is carried out in accordance with the terms and conditions of the Grant Agreement and the Consortium Agreement.

3. Duration

- 3.1 The Consortium Agreement is signed after the Grant agreement has been signed. The Consortium agreement shall come into force retroactively at the Effective Date, once all Beneficiaries have signed the Consortium Agreement. The Consortium Agreement shall continue in full force and effect until terminated in accordance with Article 20.

B. Organisation, roles and obligations

4. Composition of the Steering Committee

- 4.1 The Beneficiaries shall institute a Steering Committee composed of one Representative of each Beneficiary that shall be overall responsible for the Implementation including jointly defining the Major Decisions for the Action. Each Beneficiary shall appoint a Representative in the Steering Committee.
- 4.2 Within the scope of the Action the Beneficiaries agree to abide by all decisions of the Steering Committee.
- 4.3 The term of office of each of the Representatives on the Steering Committee shall be the complete duration of the Action and will expire at the formal end of the Action. A Beneficiary may at any time and reasonably justified replace its appointed Representative by providing all Beneficiaries notice hereof in writing. The notice of replacement of a Representative takes legal effect from the



moment of the Coordinator's receipt of the notice duly signed and executed by the Beneficiary replacing its Representative.

4.4 The Steering Committee shall be chaired by the Coordinator.

5. Responsibilities of the Steering Committee

5.1 The Steering Committee will be responsible for the actual Implementation, dissemination of results, financials, planning and communication strategy, and management of the Consortium and the Action in accordance with the Grant Agreement and the Consortium Agreement, in particular but not limited to:

- a) Deciding upon changes to the (i) allocation of work and (ii) the Action's budget as stated in the Grant Agreement, the preparation of the budget and any proposed amendments thereto as might become necessary during the Implementation;
- b) Making proposals to the Beneficiaries for the amendments of terms of the Grant Agreement including any major change in the nature of the Action including starting or ending a particular part of the Action;
- c) Deciding to suspend the Implementation in whole or in part or to terminate the Consortium Agreement in whole or in part;
- d) Taking measures in case of default of a Beneficiary;
- e) Resolving any problems regarding technical alternatives and resulting conflicts, if any;
- f) Accessing an Acceding Party to the Consortium Agreement and approving the conditions under the Consortium Agreement applicable to such Acceding Party.

5.2 The Steering Committee shall not pass any decision requiring the Beneficiaries to issue guarantees, undertake indemnities, provide surety for any Third Party or provide funds without written consent from the persons rightfully authorized by the affected Beneficiaries to make such a decision, with the exception of such obligations already set out in the Consortium Agreement.

6. Meetings of the Steering Committee

6.1 The Steering Committee shall meet at least once a semester during the Implementation at the invitation of the chair. Additional meetings may be convened at the request of at least two Beneficiaries.

6.2 The chair shall send the notice together with the draft agenda and the documents for the meeting no later than fifteen calendar days to each Representative .

6.3 The Coordinator shall draft the minutes of these meetings and circulate them via e-mail to all Beneficiaries. The minutes will be approved within fifteen (15) calendar days. In case of no-reply, the minutes will be deemed as accepted after fifteen (15) calendar days.

6.4 When the Steering Committee has to be reconvened pursuant to Article 7 or upon request of a Beneficiary, meetings may be carried out in the form of a telephone conference. The Coordinator shall draft the minutes of the telephone conference and circulate them via e-mail to all Beneficiaries. The minutes will be approved within fifteen (15) calendar days. In case of no-reply, the minutes will be deemed as accepted after fifteen (15) calendar days. If requested by a Beneficiary, decisions can also be taken via signed documents scanned and sent electronically.

7. Quorum and voting rules

7.1 The Steering Committee shall not deliberate and decide validly unless a quorum of 60% of its members are present or represented. A Representative may be represented and vote at a meeting of the Steering Committee under a written proxy given to any other Representative.

7.2 All decisions shall be made based on simple majority of voting power represented at a meeting unless otherwise specified in the Consortium Agreement. Each Beneficiary, including the Coordinator, shall have one vote.



- 7.3 If voting in respect of any matter is even and all Representatives are present or represented in that meeting the Coordinator shall also have a casting vote. If not all Representatives are present or represented in that meeting, a second meeting of the Steering Committee will be called with at least five working days' notice, in order to enable all members of the Steering Committee to attend or be represented and vote again on the proposed matter (it being understood however that the normal quorum of 60% of its members shall apply for such second meeting). The notice for this second meeting shall specify the relevant matter and the fact that the voting in the first meeting was even. In the second meeting the members represented shall vote again on the relevant matter. If the voting is again even, the Coordinator shall have a casting vote.
- 7.4 If the quorum is not reached as required for any meeting, the Steering Committee can reconvene with five working days' notice without quorum requirements but only with respect to items listed in the original agenda for the meeting in respect of which the quorum was not reached. The notice for this second meeting shall specify the relevant items listed in the original agenda and the fact that the quorum for the first meeting was not reached.

8. Major Decisions by the Steering Committee

- 8.1 Any decision to be made by the Steering Committee relating to any of the following matters shall require a specific majority vote of 60 % of all votes that can be validly cast by the Beneficiaries:
- the preparation of the Budget, and any proposed amendments to the Budget in case of Defaulting;
 - the identification and declaration of a Default, the exclusion of the Defaulting Party and the reallocation of the tasks and funds of the Defaulting Party.
 - the decision that a Default has been sufficiently remedied and the decision that a Defaulting Party shall cease to be a Defaulting Party;
 - any major necessary change in the nature of the Action including starting or ending a significant part of the Action;
 - Suspension of the Action in whole or in part or termination of the Consortium Agreement in whole or in part.
- 8.2 In the event the Steering Committee identifies a Default, the Coordinator will give written notice to the Defaulting Party requiring that the Default be remedied within 30 calendar days. If the Default is not remedied within the given period, the Steering Committee may decide to declare the Beneficiary to be a Defaulting Party and to decide on the consequences thereof.
- 8.3 A Defaulting Party has no voting right but retains the right to attend and speak at all meetings.

9. Obligations of the Coordinating Beneficiary

- 9.1 The Coordinating Beneficiary shall perform the tasks assigned to the Coordinating Beneficiary by the Grant Agreement and the Consortium Agreement, but shall not be entitled to act or to make legally binding declarations on behalf of any other Beneficiary, unless expressly authorized to do so in the Consortium Agreement or in Written Form by all the other Beneficiaries. The Coordinating Beneficiary shall not enlarge its role beyond the tasks specified in the Consortium Agreement and in the Grant Agreement.
- 9.2 The Coordinating Beneficiary shall be the intermediary and single point of contact between the Beneficiaries and INEA and shall perform all tasks assigned to the Coordinating Beneficiary in accordance with the Grant Agreement.
- 9.3 In addition to the obligations of the Coordinating Beneficiary under the Grant Agreement, the Coordinating Beneficiary shall be responsible for the following additional coordination responsibilities:
- a) interacting with INEA and Third Parties about the Action, including the submission of Deliverables to INEA;
 - b) collecting, receiving, compiling and distributing to the Beneficiaries and other relevant recipients



documents, reports, minutes of meetings of the Steering Committee and other relevant information from and to the Beneficiaries.

- c) keeping the address list of Beneficiaries and other contact persons updated and available.
- d) providing, upon reasonable request, the Beneficiaries with official copies or originals of documents which are in the sole possession of the Coordinating Party when such copies or originals are necessary for the Beneficiaries to present claims.
- e) managing the EU financial contribution, fulfilling the financial tasks described in Article 14 and keeping record of the payments made by INEA and the allocation thereof.

9.4 The Coordinator shall perform the tasks appointed to the Coordinating Party and may be supported by a Sub-contractor in order to provide external support for the Implementation.

10. Obligations of the Associated Beneficiaries

10.1 Unless provided otherwise in the Consortium Agreement or in writing, all obligations of the Beneficiaries are on a Best Effort basis. However, compliance with deadlines shall always be considered as an obligation of result.

10.2 Each Beneficiary is bound by the terms and conditions of the Grant Agreement, the Consortium Agreement and the guidelines of INEA. Each Beneficiary undertakes to take part in the efficient Implementation, and to cooperate, perform and fulfil, promptly and on time, all his obligations under the Grant Agreement and the Consortium Agreement as may be reasonably required from him and in a manner of good faith. For the avoidance of any doubt, the Coordinating Beneficiary shall release funds as agreed unless the Steering Committee states that the Beneficiary has not complied with all obligations herein and under the Grant Agreement.

10.3 Each Beneficiary shall promptly supply the Coordinator with all such information, reports, documents and Deliverables as required in order to fulfil his obligations under the Grant Agreement and the Consortium Agreement.

10.4 The Beneficiaries shall support the Coordinator in fulfilling the obligations of the Coordinating Beneficiary under the Grant Agreement and the Consortium Agreement. In particular, the Associated Beneficiaries shall:

- a) communicate with INEA solely through the Coordinating Beneficiary;
- b) participate in the Implementation as specified in the Proposal;
- c) promptly notify the Coordinator of any significant information, fact, problem or delay likely to affect the efficient and timely Implementation, including any change in his legal, financial, technical, organizational or ownership situation;
- d) notify the Coordinator of any awareness of a Default ;
- e) provide any relevant information to the Coordinator in due time and fit for purpose before the submission of reports to INEA and in case of audits, checks and evaluations and prepared to provide additional information, should INEA so request;
- f) be solely responsible for the correctness and accuracy of the required information and for the timely submission thereof to the Coordinator. The Associated Beneficiary shall verify consistency of its reports with the Action tasks and certify in written form the eligibility, correctness and completeness of the costs in the financial statements before transmitting these to the Coordinator
- g) promptly notify the Coordinator and the other Beneficiaries of any change regarding officials involved in the Implementation
- h) give insight in their financial administration to INEA or other CEF programme authority bodies if required.

10.5 For the purpose of (timely) compliance with the obligations under the Grant Agreement and the Consortium Agreement the time schedule enclosed in the Grant Agreement shall apply to each Beneficiary. The time schedule shall determine which Beneficiary is responsible for the timely



performance of any action set out therein.

- 10.6 Each Beneficiary undertakes to promptly notify, in accordance with the governance structure of the Action, any significant information, fact, problem or delay likely to affect the Implementation. Each Beneficiary shall promptly provide all information reasonably required by the Steering Committee or the Coordinator in order to carry out their tasks.
- 10.7 For the provision of information and documentation by each beneficiary to the coordinator for the Deliverables an internal planning is available in Annex A.
- 10.8 The Coordinator shall specify the format and number of copies in which all the Deliverables and other information to be provided by a Beneficiary according to the Action Status Report (ASR) and financial reports, shall be submitted.
- 10.9 No rights or obligations of the Beneficiaries arising from the Consortium Agreement may be assigned or transferred, in whole or in part, to any Third Party without prior formal approval of all the other Beneficiaries

11 Notices

- 11.1 Any notice to be given under the Consortium Agreement shall be made in Written Form to the recipients as listed in the most current address list kept by the Coordinator as mentioned in Article 9.3 section c).

12 Consultancy

- 12.1 The Coordinator will propose and hire a consultant with experience in the field of CEF to support the Beneficiaries in fulfilling their obligations as stated in Article 10 and the financial reporting as stated in Article 14.
- 12.2 The Coordinator has the responsibility that the procurement of the consultant is done in compliance with the procurement rules set by the EU or stated in the Grant Agreement and in such a manner that the costs for these consultancy activities are eligible pursuant to the Grant Agreement.
- 12.3 All Beneficiaries are permitted to use the services of the consultant for the fulfillment of their own obligations as stated in Article 10. Any assignment by a Beneficiary to the consultant shall be in writing. The Beneficiary concerned shall notify the Coordinator of such assignment.
- 12.4 The Coordinator shall pay the costs of the consultancy activities. The consultant shall send a detailed invoice to the Coordinator concerning all consulting activities in relation to the Implementation. The Coordinator shall settle these consultancy costs within the final payments to the Beneficiaries.

C. Financial and administrative provisions

13 General financial provisions

- 13.1 The financial contributions of the European Union shall be paid into the account of the Coordinating Beneficiary according to the provisions of the Grant Agreement. The Coordinating Beneficiary shall be responsible for the administrative and financial management of the funds and for the distribution of the funds between the Beneficiaries. The Coordinator is required to keep the EU Financial Contribution separated from his own business accounts, assets and property.
- 13.2 The Coordinating Beneficiary will allocate the EU Financial Contribution according to the Grant Agreement. A Beneficiary shall only be funded for activities carried out in accordance with the Grant Agreement..

14 Financial reporting

Initials Coordinating beneficiary:



- 14.1 Each Beneficiary shall be solely responsible for justifying his costs with respect to INEA. Neither the Coordinating Beneficiary nor any of the other Beneficiaries is in any way liable or responsible for such justification of costs towards INEA.
- 14.2 The Associated Beneficiaries have agreed to annually report costs as specified in the General Conditions of the Grant Agreement
- 14.3 The Associated Beneficiaries shall annually provide the Coordinating Beneficiary with a dated and signed " Financial Statement" (template is an annex of the Grant Agreement) at a set date specified in an internal planning for reporting to be provided by the Coordinator.
- 14.4 The coordinator can only accept a Financial Statement from an Associated Beneficiary for consolidated reporting to INEA if all requirements of the Grant Agreement regarding the Financial Statement are met, and if the Financial Statement is accompanied by an audit declaration based on guidelines provided by the RVO: Rijksdienst voor Ondernemers (see Annex A).
- 15 Estimated eligible costs and division of the EU Financial Contribution**
- 15.1 In accordance with the Grant agreement, the Associated Beneficiaries will implement actions with a maximum Budget per Beneficiary as indicated in the Annex 3 of the Grant Agreement.
- 15.2 The amount to be paid to each Beneficiary shall be calculated on the declared and accepted eligible costs by INEA
- 15.3 The estimated total costs incurred by a Beneficiary will be regularly reviewed during the Action. The Coordinator will keep track of the total costs of the Implementation.
- 15.4 The final settlement will be based on INEA's assessment of the request for payment of the balance and more precisely on the accepted eligible costs of the Implementation.
- 15.5 According to the General Conditions, the EU contribution will be reduced proportionally to the actual final rate of reimbursement of the eligible costs approved by INEA in case the Implementation generates profit. The remaining portion of any such profit will be allocated to the Beneficiaries according to the percentage share derived from each Beneficiary's input.
- 16 Payment terms**
- 16.1 Beneficiaries who spend less than their respective share in the Budget will be funded in accordance with their actual and duly justified eligible costs. Beneficiaries who spend more than their respective share in the Budget will be funded only in respect of duly justified eligible costs up to the EU Financial Contribution as allocated to them by the Grant Agreement.
- 16.2 In case one or more Beneficiaries spend less than their initially estimated eligible costs, the remaining part of the EU Financial Contribution will be divided among the other Beneficiaries in a ratio of their actual eligible costs exceeding their initial estimated eligible costs. This final clearance will only be performed at the final payment to the Beneficiaries.
- 16.3 The Coordinating Beneficiary shall transfer the final payment to the Associated Beneficiaries after INEA has made the final payment.
- 16.4 Each Beneficiary shall specify to the Coordinator an account to which his part of the EU Financial Contribution shall be transferred.
- 16.5 The Coordinator after the Steering Committee decision is entitled to withhold any payments to a Defaulting Part, in particular in cases such as failure in providing input to technical and financial information necessary for the reporting in terms of the ASR or the Interim Report or the Final Report, or when a Beneficiary does not supply the Deliverables in time to the Coordinator according to Article 10.7 of the Consortium Agreement. The Coordinator is entitled to recover any payments already paid to a Defaulting Party to the extent that such payments relate to the same matter as the breach by that Defaulting Party. The Coordinator shall nevertheless be entitled to recover all payments already paid to a Defaulting Part when the breach causes the scope of the Consortium Agreement to be at risk and only when such a breach of scope is a reason for INEA to



- reclaim their payments at the Coordinator.
- 16.6 Where an amount, paid by INEA to the Coordinator in its capacity of recipient of all payments and transferred by the Coordinator to one or more Beneficiaries, is to be recovered under the terms of the Grant Agreement, the final recipient of the amount due will refund the sum in question with no undue delay.
- 16.7 A Beneficiary leaving the Consortium shall refund all advances paid to him except the amount of expended eligible costs accepted by INEA.
- 16.8 The Beneficiaries agree that all payments are considered as pre-financing payments until INEA has approved the final technical and financial reports and has transferred the final payment to the Coordinating Beneficiary.

17 Taxes

- 17.1 Each Beneficiary shall be responsible for paying all taxes, duties and similar charges ("Taxes" for the purpose of this Article) levied upon him in connection with the performance of his part of the Action. He shall carry out all necessary filings and registrations and fulfil all other obligations towards relevant fiscal authorities in relation thereto.
- 17.2 In case the fiscal authorities in the country where any part of the Action must be implemented impose Taxes on the basis of the total contract value relating to the Action rather than on the basis of the individual portions of contract value, then all Beneficiaries shall bear the burden of such Taxes in proportion to their respective share in the Action to be performed. In that case the Steering Committee shall decide on how and by whom all necessary filings, registrations and other required formalities for the Consortium are going to be handled as well as possible remuneration for the fulfilment of that task.
- 17.3 Nothing contained in this Article shall limit the responsibility of each Beneficiary to keep proper accounts and documentation and to comply with the relevant tax regulations in the country where he resides.
- 17.4 Each Beneficiary shall be solely responsible for due payment of all Taxes in respect of his own personnel as well as the personnel of his subcontractors.

D. Assignment, amendment and termination of the Consortium Agreement

18 Assignment

- 18.1 No rights or obligations arising from the Consortium Agreement may be assigned or transferred, in whole or in part, to any Third Party without consent from INEA.

19 Amendments

- 19.1 Any approval or request addressed to INEA regarding the amendment or the termination of the Grant Agreement shall require the prior approval of all Beneficiaries in Written Form, which approval shall not be unreasonably withheld.
- 19.2 A proposal for an amendment of the Consortium Agreement affects all Beneficiaries. The decision to amend the Consortium Agreement has therefore to be made unanimously by the Beneficiaries.
- 19.3 Amendment of the Consortium Agreement is not possible unless an unforeseen circumstance, occurs that has consequences for one or more Beneficiaries of such a nature that the unaltered continuation of the Consortium Agreement is not reasonable, such as but not limited to the circumstances defined in the General Conditions.
- 19.4 A proposal for an amendment of the Consortium Agreement must be submitted to the Coordinating Beneficiary, in Written Form and duly motivated. The Coordinating Beneficiary shall notify the Beneficiaries and prescribe the further procedure.



20 Termination of the Consortium Agreement

- 20.1 The Consortium Agreement shall continue in full force and effect until the Steering Committee has established complete fulfilment of all obligations undertaken by the Beneficiaries under the Grant Agreement and the Consortium Agreement.
- 20.2 The Consortium Agreement shall terminate automatically without any further demand and without liability of any Beneficiary to the others upon occurrence of any of the following events:
- cancellation of financing of the Action by INEA;
 - indication of INEA indicates that the award of the EU Financial Contribution pursuant to the Proposal is on condition that one or more of the Beneficiaries is to be excluded.
- 20.3 The Steering Committee will determine the exact date of termination and other conditions for termination.

21 Exit or exclusion of the Beneficiaries

- 21.1 The Beneficiaries agree not to withdraw from the Action nor to terminate the Consortium Agreement unless amendment of the Consortium Agreement in accordance with Article 19 is not possible or insufficient and unmodified continuation of the Consortium Agreement has unreasonable consequences for one or more Beneficiaries.
- 21.2 In the event that any Beneficiary is sold or subject to a change in majority share ownership then the other Beneficiaries must be notified within 48 hours of the change. The Coordinator will inform INEA of the change of ownership. In the event that INEA notifies the Beneficiaries that such change of ownership will result in the cancellation, discontinuation or termination of the Grant Agreement or part thereof or of the participation of one or more Beneficiaries, the other Beneficiaries shall, subject to approval by INEA and the Steering Committee, be entitled to take over the fulfilment of such Beneficiary's obligations or to appoint a new party to take over the fulfilment of such Beneficiary's obligations. This new party shall be considered an Acceding Party. In this event the Steering Committee shall, subject to approval by INEA, also be entitled to terminate whole or part of the obligations of such Beneficiary.
- 21.3 In case an Associated Beneficiary deems further participation in the Action no longer possible or viable because of problems with spatial planning procedures and as a consequence withdraws from the Action and terminates the Consortium Agreement, this Associated Beneficiary cannot be held responsible or legally accountable by other Beneficiaries for (financial) consequences or damages caused by this withdrawal. In this specific case, the other Associated Beneficiaries will not start legal proceedings towards the Associated Beneficiary that has withdrawn from the Action and Consortium Agreement.
- 21.4 In case of termination of any of the Beneficiaries' participation all his rights and obligations under the Grant Agreement and the Consortium Agreement shall in good faith be redistributed among the remaining Beneficiaries on the basis of the work performed by the affected Beneficiary prior to the occurrence of the reason of termination. The termination of the participation of a Beneficiary shall in no way affect the obligation of that Beneficiary to grant Access Rights to the remaining Beneficiaries.
- 21.5 The termination of any Beneficiary's participation shall not relieve that Beneficiary from its responsibilities under the Consortium Agreement or the Grant Agreement in respect of the part of that Beneficiary's tasks that has been carried out (or that should have been carried out) up to the date of the termination nor from any obligation or liability arising out of such termination.
- 21.6 The provisions of the Consortium Agreement relating to confidentiality and liability, as set out in Article 31, shall survive the term or termination of the Consortium Agreement, to the extent needed to enable the Beneficiaries to pursue the remedies and benefits provided for in Article 31.
- 21.7 For the avoidance of any doubt, termination shall not affect any right or obligation incurred prior to the date of the termination.



- 21.8 The Steering Committee will determine the date of termination and other conditions for termination and the reallocation of the leaving Beneficiary's obligations and workload.

22 Accession to the Consortium Agreement

- 22.1 Any accession to the Consortium Agreement shall require:
- the prior approval by the Steering Committee;
 - and a written confirmation by the Acceding Party that he accepts the Consortium Agreement and the Grant Agreement in whole.
- 22.2 Such accession shall have effect from the date identified in the written confirmation mentioned in Article 22.1.

E. Liability

23 Liability towards Beneficiaries

- 23.1 No Beneficiary shall be liable to any other Beneficiary for indirect or consequential loss or damages such as but not limited to loss of profit, loss of revenue, loss of contracts, loss of electric power supply, loss of production, loss of use, costs of capital, costs of replacement of electric power supply, or loss of anticipated savings, except in case of fraud or wilful misconduct or an infringement of the confidentiality obligations set forth under Article 31.
- 23.2 No Beneficiary shall be considered to be in breach of the Consortium Agreement if such breach is caused by Force Majeure as defined in the General Conditions.
- 23.3 The terms of the Consortium Agreement shall not be construed to amend or limit any Beneficiary's statutory liability.

24 Liability towards Third Parties

- 24.1 Each Beneficiary shall be solely liable (no joint and several liability between the Beneficiaries) for any loss, damage or injury to Third Parties resulting from the performance of said Beneficiary's obligations under the Consortium Agreement or from use of Foreground Information or Background Information by him or on his behalf. In case more than one Beneficiary is responsible for any such loss, the respective Beneficiaries shall be liable according to the extent of their Fault. In case it is not possible to determine the exact extent of each Fault, the concerned Beneficiaries shall be liable in equal parts.
- 24.2 The liable Beneficiary shall hold the other Beneficiaries harmless against any claims from Third Parties in case a Third Party claims compensation from a not directly concerned Beneficiary. In that case the limitation of liability mentioned in Article 23 is not applicable.
- 24.3 The Beneficiary receiving a claim from a Third Party as mentioned in Article 24.1 and 24.2, and the Coordinator receiving a claim from INEA shall:
- (1) give prompt notice thereof to the liable Beneficiary or Beneficiaries of the potential liability or claim;
 - (2) fully cooperate with the liable Beneficiary or Beneficiaries in such response and defence as reasonably required;
 - (3) not agree to any settlement of such claim or liability without the prior written consent of the liable Beneficiary or Beneficiaries, it being understood that a liable Beneficiary shall have no obligation to indemnify any other Beneficiary or the Coordinator in connection with such settlement if and insofar the liable Beneficiary did not agree to the settlement in advance and in writing.

25 Force Majeure

- 25.1 No Beneficiary shall be liable for any failure to perform or any delay in performing any of its obligations under the Consortium Agreement if such failure or delay arises out of Force Majeure.



The Beneficiary relying on Force Majeure shall promptly notify the other Beneficiaries and shall use its best endeavors to remedy any resulting Default. If the consequences of Force Majeure for the Implementation are not overcome within six (6) weeks after such notification, the measures to be taken shall be decided by the Steering Committee.

26 Insurance

- 26.1 Unless otherwise agreed, each Beneficiary shall at his own expense take out adequate and sufficient insurance against any and all risks in connection with his business and his part in the Implementation which insurance shall be maintained throughout the entire term of the Consortium Agreement.

F. Final provisions

27 Publicity and Press Releases

- 27.1 Nothing in the Consortium Agreement shall be construed as conferring rights on any Beneficiary to use in advertising, publicity or otherwise the name of the other Beneficiaries or any of their logos or trademarks without their prior written approval.
- 27.2 All Beneficiaries shall adhere by the rules for communication as determined by INEA and outlined in the Grant Agreement and explained in their "Publicity Guidelines and Logos" section of the INEA CEF Transport website.

28 Language

- 28.1 The Consortium Agreement is drawn up in English, which language shall govern all documents, notices, meetings, arbitral procedures and processes relative thereto.
The Consortium Agreement is drawn up in English and all documents and notices and meetings shall be in the English or the Dutch language.
- 28.2 In case of translation of the Consortium Agreement or any other means of written communication in another language, the English version shall be binding.
- 28.3 The costs of translation into another language will be borne by the Beneficiary that has commissioned the translation and are not eligible under the Grant Agreement.

29 Antitrust Compliancy

- 29.1 The Beneficiaries believe a competitive and free enterprise system is the basis of a free market economy. This system, as the basis of a free market, is protected and promoted by competition law. Consequently the actions of all Beneficiaries will comply with all applicable antitrust and other laws regulating competition.
- 29.2 The Beneficiaries do not act in a manner that unfairly influences the free market economy.
- 29.3 The Beneficiaries do not make any agreements - formal or otherwise - to fix or set prices or allocate products, markets, territories or customers.
- 29.4 The Beneficiaries do not obtain or share current or future information about price, profit margins or costs, bids, market share, distribution practices, terms of sales, specific customers or vendors.

30 Bribery and Corruption

- 30.1 Each Beneficiary hereby warrants that he will not, directly or indirectly, and does not know that other persons will, directly or indirectly, make any payment, gift or other commitment to his customers, to government officials or to agents, directors and employees of any Beneficiary or any other party in a manner contrary to applicable laws (including but not limited to the U.S. Foreign Corrupt Practices Act and, where applicable, legislation enacted by member States and



signatories implementing the OECD Convention Combating Bribery of Foreign Officials) and that he shall comply with all relevant laws, regulations, ordinances and rules regarding bribery and corruption.

- 30.2 Nothing in the Consortium Agreement shall render a Beneficiary liable to reimburse another Beneficiary for any such consideration given or promised.
- 30.3 A material violation by a Beneficiary of any of the obligations contained in this Article may be considered by another Beneficiary to be a Default and shall entitle the affected Beneficiary to terminate the Consortium Agreement with immediate effect and without prejudice to any further right or remedies on his part under the Consortium Agreement or applicable law. The violating Beneficiary shall indemnify the affected Beneficiary / Beneficiaries for all liabilities, damages, costs or expenses incurred as a result of any such violation and the termination of the Consortium Agreement.

31 Confidentiality

- 31.1 No Beneficiary shall – during the Implementation and for a duration of five (5) years thereafter - disclose to any Third Party - any Confidential Information Implementation unless expressly permitted by the Consortium Agreement or the Grant Agreement or with prior formal approval of all other concerned Beneficiaries.
- 31.2 The Beneficiaries hereby undertake for the period mentioned in Article 31.1:
- not to use Confidential Information for any other purpose than for which it was disclosed;
 - not to disclose Confidential Information to any Third Party without the prior written consent by the disclosing Beneficiary or a prior signed confidentiality agreement with the Third Party, which is consistent with the provisions of this Article;
 - to ensure that internal distribution of Confidential Information by a Beneficiary, and distribution to external representatives such as professional advisors, external consultants, insurers, attorneys-at-law, Sub-Contractors and agents shall take place on a strict need-to-know basis; and
 - to return to the disclosing Beneficiary on demand all Confidential Information that has been supplied to or acquired by the recipients including all copies thereof and to delete all information stored in a machine readable form, except (i) electronic copies made pursuant to automatic archiving, computer back-up procedures and/or disaster recovery systems and (ii) to the extent the Beneficiaries are required to retain a copy for archival purposes only for the recording of ongoing obligations.
- 31.3 The Beneficiaries shall be responsible for the fulfilment of the obligations mentioned in Article 31.1 and 31.2 on the part of their employees and external Representatives and shall ensure that these employees and external Representatives are, as far as legally possible, bound by confidentiality obligations at least as strict as those set forth in this article, for a duration at least equal to the period set forth in Article 31.1.
- 31.4 The Articles 31.1 and 32.2 shall not apply to any disclosure or use of Confidential Information, if and in so far as the recipient can demonstrate that:
- the Confidential Information has become publicly available by means other than a breach of the recipient's confidentiality obligations;
 - the disclosing Beneficiary subsequently informs the recipient that the Confidential Information is no longer confidential;
 - the Confidential Information is communicated to the recipient without any obligation of confidentiality by a Third Party who is in lawful possession thereof and under no obligation of confidence to the disclosing Beneficiary;
 - the disclosure is required by law or by a competent authority;
 - the Confidential Information was, at any time, developed by the recipient completely



- independently of any such disclosure by the disclosing Beneficiary; or
- it can be established that the Confidential Information was already known to the recipient prior to the disclosure.

32 Applicable law

- 32.1 The law applicable to the Consortium Agreement shall be the law of the Netherlands.
- 32.2 Nothing in the Consortium Agreement shall be deemed to require a Beneficiary to breach any mandatory statutory law under which the Beneficiary is operating.

33 Disputes and jurisdiction

- 33.1 The Parties undertake to strive for an amicable settlement of any dispute, controversy or claim arising under, out of or relating to the Grant Agreement and the Consortium Agreement and any subsequent amendments, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, or the Implementation.
- 33.2 In case of a dispute as mentioned in Article 33.1 between two or more Beneficiaries, the Beneficiaries concerned shall first endeavor to settle the dispute amicably within the Steering Committee within three (3) months. The Beneficiaries concerned or the Steering Committee may appoint a mediator to help finding an amicable settlement. The costs of the mediator will be reallocated among the Beneficiaries concerned.
- 33.3 Failing amicable settlement, the Court of The Hague, the Netherlands, shall have sole competence to rule on any dispute between the Beneficiaries in respect of the Grant Agreement, the Consortium Agreement or the Implementation.

34 No representation, partnership or agency

- 34.1 The Beneficiaries shall not be entitled to act or to make legally binding declarations on behalf of any other Beneficiary. Nothing in the Consortium Agreement shall be deemed to constitute a joint venture, agency, partnership, interest grouping or any other kind of formal business grouping or entity between the Beneficiaries.

35 Miscellaneous

- 35.1 The Consortium Agreement with its Annexes constitutes the entire agreement between the Beneficiaries on the subject matter hereof.
- 35.2 In case the terms of the Consortium Agreement are in conflict with the terms of the Grant Agreement, the terms of the latter shall prevail. In case of conflicts between the appendices and the core text of the Consortium Agreement, the latter shall prevail.
- 35.3 In the event that any of the provisions agreed upon herein is, entirely or partly, held invalid by an administrative body or a court of competent jurisdiction, this invalidity shall not affect the validity of the remaining provisions of the Consortium Agreement. In such case, the Beneficiaries agree to modify the Consortium Agreement such as to comply with the relevant law, rules and regulations and to reflect the original intent of the Beneficiaries as closely as possible, in accordance with Article 19.



SIGNATURES

For the Coordinating Beneficiary Province of Zuid-Holland
Annette ter Kuile, Head of bureau

.....

Done at The Hague, on

For the Associated Beneficiary Port of Rotterdam
Ronald Paul, Chief Operating Officer

.....

Done at Rotterdam, on

For the Associated Beneficiary Municipality of Dordrecht
Nico (N.J.) van Klinken, Program manager

.....

Done at Dordrecht, on

For the Associated Municipality of Venlo
Antoin Scholten, Mayor

.....

Done at Venlo, on

For the Associated Beneficiary Loverbosch Beheer B.V.
Reinier A.P.M. Loverbosch, Chief Executive Officer

.....

Done at Asten, on.....



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Annex A – RVO guidelines for CEF audit