

## DESIGN AND CONSTRUCT TO USE - AGREEMENT

**THIS AGREEMENT IS MADE AND ENTERED INTO:**

### **BETWEEN**

1. **Watertruck+ bvba**, with registered office at Oostdijk 110, 2830 Willebroek, enterprise number: 0651.816.739.

Hereby represented by [REDACTED], in his capacity of director, and [REDACTED], in his capacity of director.

Also hereafter referred to as "**WT+**"

2. [REDACTED], with registered office at [REDACTED], [REDACTED], enterprise number: [REDACTED]

Hereby represented by [REDACTED], in his capacity of [REDACTED].

Also hereafter referred to as "**Operator**"

The contracting parties are also individually referred to as a "**Party**" and collectively as the "**Parties**".

### **WHEREAS**

- Waterwegen en Zeekanaal nv, De Scheepvaart nv and the vzw Vlaams Instituut voor Mobiliteit have, as Public Parties and in cooperation with several other stakeholders, completed the project Watertruck, a European Interreg IVB project (2010-2014). The aims of the project were to tackle current threats of the traditional inland navigation:
  - On the one hand, the rapidly decreasing number of small inland vessels, and
  - On the other hand, the lack of manning for inland navigation;

Watertruck (European Interreg IVB project 2010 - 2014) focused on the optimization and the development of transport of goods using small inland waterways by introducing a new navigational concept, consisting of a pusher and small barges on small waterways that are able to be combined as push units on large waterways, moved in convoy between origin and destination by a pusher. The results of this project were used as a sound basis for Watertruck+.

The outcomes of Watertruck were positive: market analyses showed that there is a big potential for modal shifts [up to 3 million tons in the regions West-Vlaanderen (FL) and Kempen (FL)]. Also, the pilots that have been conducted showed a promising potential. Other results showed that Watertruck scores good on economic feasibility and has buy-in power of younger skippers.

- Waterwegen en Zeekanaal nv, De Scheepvaart nv and the vzw Vlaams Instituut voor Mobiliteit have, thereafter, moved forward with the Watertruck-project.
- The European Commission launched, on the 11<sup>th</sup> of September 2014, a call for proposals to submit project proposals under the 2014 CEF Transport Calls – Multi-Annual Work Program. The Flemish government, represented by the Flemish minister Ben Weyts, has submitted, on the 26<sup>th</sup> of February 2015, an application for the Watertruck+ project.

The former has led to the signing, on the 4<sup>th</sup> of December 2015, of a Grant Agreement between the Innovation and Networks Executive Agency (INEA) and the Flemish government, whereby Waterwegen en Zeekanaal nv was appointed as lead partner.

- As a result of an open market surveys Call I and Call II operators DC Industrial and André Celis have signed the agreement “Design and construct to use” and have committed themselves to deploy 10 CEMT I barges, 6 CEMT II long barges, 2 CEMT II short barges and 1 small pusher for their operations.
- The latest insights and decisions of the Consultative Body and the board of directors of bvba Watertruck+ concerning the available budgets have led bvba Watertruck+, as legal successor of the aforementioned public parties, to organize a new call (hereafter “Call III”), wherein assessment criteria to award the agreements were enshrined.
- The Operator, as a consequence of this new Call III, has expressed her interest in Watertruck+ and she is willing to order barges, boats and equipment from WT+ according to the terms and conditions of the Agreement and the relevant terms provided for in the framework of the tender.

## **NOW, THEREFORE, PARTIES HAVE AGREED AS FOLLOWS**

### **Article 1. - Definitions**

1.1. For the purpose of this agreement,

**“Agreement”** shall mean this agreement, including her annexes and the documents referred to;

**“Background Intellectual Property”** shall mean all Intellectual Property Rights deemed to be necessary, relevant or useful for the execution of the Orders as owned by the Parties on the Date;

**“Confidential Information”** shall mean any information marked or declared to be confidential at the time of transmission and which is furnished to or obtained by the receiving party in any recorded form, orally or by observation. Confidential Information shall not include information which the receiving party can clearly demonstrate in writing: (i) belonged to the public domain on the date of signature of this Agreement; (ii) entered the public domain through no fault of the receiving party after the date of signature of this Agreement; (iii) was already known to the receiving party at the time it was received from the disclosing party; (iv) was developed after the date of signature of the present Agreement on behalf of the receiving party by its employees or agents who did not have access to any protected Confidential Information; or (v) was received from a third party that has the right to disclose such information to the receiving party without breaching any obligation, direct or indirect, to the disclosing party. Specific disclosures made under this Agreement shall not, however, be deemed covered by the foregoing exceptions merely because they are encompassed by more general information contained in the public domain or are in the possession of the receiving party. In addition, any combination of features shall not be deemed to fall within the foregoing exceptions merely because the individual features that comprise said combination belong to the public domain or are in the possession of the receiving party. Such a combination shall be covered only if the combination itself and its modus operandi belong to the public domain or are in the possession of the receiving party;

**“Date of the Agreement”** shall mean the date on which the Agreement commences according to art. 2.1;

**“Date of the Orders”** shall mean the date on which all Orders are placed, by the Operators which were withheld under Call I and Call II, by signing a final *“design and construct to use”*-agreement;

**“Date of the Award”** shall mean the date on which WT+ shall place the Orders with a third-party;

**“Foreground Intellectual Property”** shall mean Intellectual Property Rights arising from the design research, development and acts undertaken in relation to this Agreement, and including rights in the Technology or financial, commercial or technical models / plans, after the date of signature of the Agreement whether generated by one Party or two or more Parties jointly;

**“Grant Agreement”** shall mean the agreement, dated 04.12.2015, with INEA reference INEA/CEF/TRAN/M2014/1025721, and the amendment N°1 dated 11.10.2017, concluded between INEA and the Flemish government whereby, under conditions, subsidies were granted to Watertruck+;

**“Award Criteria”** shall mean the assessment criteria, enshrined in the third market exploration Call III, to be awarded to conclude a *“construct to use”*-agreement with WT+;

**“Intellectual Property Rights”** shall mean all rights in, to, or arising out of: (i) trademark protection in any territory and / or any Nice-classification, or to register any domain, irrespective of the suffix, holding a trademark, (ii) any patent, national or international, or any application therefor and any and all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof; (iii) inventions, discoveries (whether patentable or not in any country), invention disclosures, improvements, trade secrets, proprietary information, know-how, technology, financial and technical data; (iv) copyrights, copyright registrations, registrations, and applications therefor in the any country, and all other rights corresponding thereto throughout the world; (v) any other proprietary rights in or to the Technology or other data anywhere in the world;

**“Order”** shall mean the order, against remuneration, placed by the Operator holding the design, the construction and delivery (to use) of:

[ ]

**“Orders”** shall mean the Order and all the Orders of all other Operators as a whole;

**“Period”** shall mean the period starting on the Date of the Agreement until 31.12.2019;

**“Consultative Body”** shall mean the committee established in accordance with article 3.1. of the present Agreement;

**“Standard”** shall mean the approved specification demands, as (if applicable) unilaterally adapted by WT+ in consultation with the third-party responsible for the production of the Order, and as enshrined in the specification of requirements (SoR) d.d. 30.12.2015, the design considerations d.d. 19.07.2016 and the technical building specifications, relating to the different types of standard barges and the different types of standard pusher.

**“Standard Order”** shall mean the Order build and delivered in accordance with the Standard and not equipped with any Generic or Specific Customization.

**“Subsidy”** shall mean the part of the subsidy, received due to the Grant Agreement, that shall be used to finance a maximum of 50% of the price of the Standard Order.

**“Subsidy Allowance”** shall mean a part of the subsidy, received due to the Grant Agreement, that may, exceptionally, be granted by WT+ in accordance with article 5.3.

**“Technology”** shall mean all designs, developments, improvements, specifications enhancements and modifications to the barges, the boats and equipment and any related technological developments, including the Standard, know-how, methods, techniques, systems, designs, drawings, plans, Customizations, documentation, data and any other information conceived, created, first fixed in a tangible medium, first made, first used or first reduced to practice under this Agreement or in connection with the services, tasks or obligations which the Operators together or each Operator as an individual has engaged WT+ to undertake on its behalf pursuant to this Agreement;

**“TEN-T Core Network”** shall mean the Trans-European transport network as defined by the European Commission in the so-called TEN-T Regulation (1315/2013) and is structured around nine core network corridors, and as identified in the annex to the CEF-Regulation (1316/2016);

**“Customization Request”** shall mean the request of an Operator in the framework of his Order to equip the subject of his Order with Generic or Specific Customizations which do not adversely affect the application of Watertruck+;

**“Generic Customization”** shall mean one of the following exhaustive additions to the Standard Order which are easily removable:

- Installation of a diesel direct or a diesel electric bow thruster in forward engine room;
- Installation of an electric thruster in aft engine room;
- Installation of an electric power plant;
- Installation of a wheelhouse with navigation control desk;
- Railings on cargo hold deck sides;
- Installation of cargo holds customizations:
  - o Shell Frame closing plated
  - o Double side, extension of the coaming plate
  - o Different type of hold floorings (thickness, grade, type)
- Installation of cargo hatches;

**“Specific Customization”** shall mean any addition to the Standard Order which is not a Generic Customization.

**“Watertruck”** shall mean the European Interreg IVB project (2010 to 2014) holding conceptual development and first test with a new, complementary, navigational concept, consisting of a pusher and adapted barges;

**“Watertruck+”** shall mean the project consisting of the continuation of Watertruck as set out in the Grant Agreement;

**“New Traffics”** shall mean the transportation of volumes of goods via inland shipping which on the Date of the Agreement are not yet subject of transportation via inland shipping by a Party and which are in addition not yet subject of transportation via inland shipping by any other third-party.

## **Article 2 – Duration**

- 2.1. This Agreement shall commence on the date of signature by the last signing Party and shall have a fixed duration which is equal to the Period.
- 2.2. The Agreement may be terminated prematurely in the circumstances described in article 18.

## **Article 3 – Consultative body**

- 3.1. Parties agree to form, together with all other operators which have closed a *“Design and construct to use”-agreement*, a Consultative Body in order to facilitate the proper execution of the Orders, monitor compliance with the Award Criteria and, in general, guarantee compliance with the provisions of the Grant Agreement.
- 3.2. Within 14 working days, following on the Date of the Agreement, each Party shall appoint one (1) qualified person to have a seat in the Consultative Body.

Each person shall have one vote in the Consultative Body.

Decisions are taken by reaching consensus between the persons attending the meeting, or in case no consensus could be reached by a simple majority of the attending votes.

The appointed representative has the right to appoint a substitute whenever he is unable to attend a meeting of the Consultative Body.

The Consultative Body may request technical experts to attend meetings of the Consultative Body in order to provide the Consultative Body with technical advice.

- 3.3. The Consultative Body shall meet monthly (in person or by phone) or at any other such times as specifically agreed between the members of the Consultative Body upon request of WT+.
- 3.4. Parties agree that the tasks of the Consultative Body as enshrined in the Agreement will be transferred to the board of directs of WT+ in case WT+ unilaterally decides to do so. WT+ shall immediately inform the Operator of such a decision.

## **Article 4 - Order**

- 4.1. The Operator orders, through the signing of this Agreement, the Order and exclusively assigns WT+ to produce, or assign a third-party to produce, the subject of the Order in accordance with the provisions of the Agreement, and as eventually adapted in accordance with the Agreement.
- 4.2. WT+ accepts the order of the Order, as eventually adapted in accordance with the Agreement, under reservation of her right to terminate the Agreement prematurely as provided for in article 18.

- 4.3. In the event the Operator does not file, or does untimely file, a Customization Request with WT+ the Order shall unequivocally be a Standard Order and shall be produced as such.

**Article 5 – Customizations requested by the Operator**

- 5.1. During the period ranging from the Date of the Agreement until one (1) month thereafter the Operator has the right to file a Customization Request with WT+.

Untimely Customization Requests shall be regarded as inadmissible and shall not be treated in the framework of this article.

- 5.2. In the event the Operator has filed a timely Customization request, in accordance with article 5.1., WT+ shall immediately decide if the Customization Request holds a Generic Customization or a Specific Customization.

5.2.1. If WT+ decides that the Customization Request wholly or partly holds a Generic Customization, WT+ shall act in accordance with article 5.3. for the whole or the relevant part of the Customization Request holding a Generic Customization.

5.2.2. If WT+ decides that the Customization Request wholly or partly holds a Specific Customization, WT+ shall act in accordance with article 5.4. for the whole or the relevant part of the Customization Request holding a Specific Customization.

5.2.3. Decisions of WT+ relating to this article 5.2. cannot be appealed and will be taken discretionary by WT+.

- 5.3. If WT+ decides that the Customization Request wholly or partly holds a Generic Customization, WT+ shall act as follows for the whole or the relevant part of the Customization Request holding a Generic Customization.

5.3.1. At first WT+ shall evaluate if and in how far the Generic Customization is permissible.

5.3.1.1. Hereby WT+ shall especially, but not exhaustively, evaluate if:

- (i) the purpose of the requested customization is not to threaten the application, or the further deployment of the concept of Watertruck+;
- (ii) the requested customization leads to the inability (or the ability by utilizing unreasonable means) to restore the subject of the Order to a Standard Order;
- (iii) the customization is in compliance with the Award Criteria;
- (iv) the customization is in compliance with the Grant Agreement;
- (v) the compliance of the Operator with his obligations under this Agreement is becoming more burdensome or even impossible;

- 5.3.2. WT+ may, in compliance with article 5.3.1. decide to permit, conditionally permit or reject the whole or the relevant part of the Customization Request holding a Generic Customization.
- 5.3.3. WT+ shall immediately inform the Operator of his decision, mentioned in article 5.3.2.

If WT+ decides to conditionally permit the Customization Request, mentioned in article 5.3.2., she shall invite, in aforementioned notification, the Operator to accept the conditions or to withdraw his Customization Request in whole or in part.

If the Operator is willing to accept the imposed conditions she shall inform WT+ and Parties will act in accordance with article 5.3.4.

Decisions of WT+ relating to this article 5.3.2. cannot be appealed and will be taken discretionary by WT+.

- 5.3.4. If WT+ decides to permit, or permit under accepted conditions, the whole or the relevant part of the Customization Request, she shall decide if, and in how far the aforementioned is eligible for a Subsidy Allowance. WT+ shall in relation thereto apply the principle that Generic Customizations are not eligible for a Subsidy Allowance. As a consequence, the Operator cannot claim any right to a Subsidy Allowance.

5.3.4.1. When taking the aforementioned decision WT+ shall especially, but not exhaustively, evaluate:

- (i) the estimated influence of the Customization Request on the price of the Order;
- (ii) if there are sufficient available resources to grant any Subsidy Allowance.

- 5.3.5. WT+ may, in compliance with article 5.3.4., decide not to grant, or partly or wholly grant, a Subsidy Allowance to the whole or the relevant part of the Customization Request holding a Generic Customization. The Subsidy Allowance is however at all times limited to a maximum of 50% of the cost, ex. VAT, of the whole or the relevant part of the Customization Request that has been accepted.

- 5.3.6. WT+ shall immediately notify the Operator of her decision, mentioned in article 5.3.5. Moreover, WT+ shall include in aforementioned notification the estimated influence of the Customization Request on the price of the Order, taking into account the eventual influence of the Subsidy Allowance.

Thereon the Operator has the right to accept the decision and the estimated influence of the customization on the price, or has the right to wholly or partly withdraw his Customization Request.

Decisions of WT+ relating to this article 5.3.5. cannot be appealed and will be taken discretionary by WT+.

5.4. If WT+ decides that the Customization Request wholly or partly holds a Specific Customization, WT+ shall act as follows for the whole or the relevant part of the Customization Request holding a Specific Customization.

5.4.1. At first WT+ shall evaluate if and in how far the Specific Customization is permissible.

5.4.1.1. When taking the aforementioned decision WT+ shall especially, but not exhaustively, evaluate:

- (i) the purpose of the requested customization is not to threaten the application, or the further deployment of the concept of Watertruck+;
- (ii) the requested customization leads to the inability (or the ability by utilizing unreasonable means) to restore the subject of the Order to a Standard Order;
- (iii) the customization is in compliance with the Award Criteria;
- (iv) the customization is in compliance with the Grant Agreement;
- (v) the compliance of the Operator with his obligations under this Agreement is becoming more burdensome or even impossible;

5.4.2. WT+ may, in compliance with article 5.4.1. decide to permit, conditionally permit or reject the whole or the relevant part of the Customization Request holding a Specific Customization.

5.4.3. WT+ shall immediately inform the Operator of his decision, mentioned in article 5.4.2.

If WT+ decides to conditionally permit the Customization Request, mentioned in article 5.4.2., she shall invite, in aforementioned notification, the Operator to accept the conditions or to withdraw his Customization Request in whole or in part.

If the Operator is willing to accept the imposed conditions she shall inform WT+ and Parties will act in accordance with article 5.4.4.

Decisions of WT+ relating to this article 5.4.2. cannot be appealed and will be taken discretionary by WT+.

5.4.4. If WT+ decides to permit, or permit under accepted conditions, the whole or the relevant part of the Customization Request she will evaluate what the estimated influence of the Customization Request is on the price of the Order. Thereon she shall immediately notify the Operator of the estimated influence on the price of the Order of the Customization Request.

Thereon the Operator has the right to accept the decision and the estimated influence of the customization on the price, or has the right to wholly or partly withdraw his Customization Request.

5.4.5. The whole or the part of a Customization Request holding a Specific Customization is never eligible for a Subsidy Allowance.



- 5.5. If the Operator decides to withdraw his Customization Request, in application of article 5.3. and / or article 5.4. this will have no effect on her order of a Standard Order, mentioned in article 4.

#### **Article 6 – Customizations by WT+**

- 6.1. WT+ has the right during the period starting on the Date of the Agreement and until the Date of the Award to customize the Order in case such seems useful or necessary:
- To reduce CO2-emissions of the subject of the Order with at least 25% vis-a-vis the existing inland shipping fleet or to achieve an emission level of harmful substances which amounts to at least a level equal to the emission criteria applied in the EURO VI norm for road transportation or equivalent.
- 6.2. If WT+ decides to customize the Order, in accordance with article 6.1., she shall immediately notify the Operator and, where applicable, notify the Operator of the estimated influence on the price of the Order.
- 6.3. The Operator has no right to object to customizations of the Order in application of this article 6.

#### **Article 7 – Award of the Orders**

- 7.1. After the date of the Orders, or if later, the date on which the customizations within the framework of article 5 and / or article 6 are dealt with, WT+ shall award the Orders by a tender to a third-party.
- 7.2. After the Orders were awarded, by signing of a legally binding and final agreement, and unabated application of article 18, WT+ shall notify the Date of the Award to the Operators.
- 7.3. WT+ shall within a reasonable term after the Date of the Award notify to the Operator the timing and milestones relating to the Order accompanied by the presumed date of delivery but at all times in compliance with the provisions enshrined in the special specifications related hereto.
- 7.4. Delivery shall take place ex works at place to be defined in Belgium or the Netherlands. All costs and taxes relating to a further delivery shall be borne by the Operator.
- 7.5. The Operator acknowledges that delivery times notified to her in accordance with article 7.3. are non-binding delivery terms. WT+ shall employ best efforts to respect the terms notified to the Operator but is not liable for any exceedance of the delivery terms relating to the Order.

#### **Article 8 – Price & Payment**

- 8.1. The price for the Order, including customizations shall unilaterally be defined in good faith by WT+ immediately after the Date of the Award. Such on the basis of objective information, such as, among others, the price notified to her by third-parties for the production of the Order and taking into account the Subsidy and the Subsidy Allowance, if applicable.

The Operator explicitly conforms the validity of this party decision granted to WT+ taken into account the inability to define a fixed price on the Date of the Agreement.

The price of the Order, which the Operator shall have to pay, shall at times be reduced with the Subsidy and the Subsidy Allowance.

- 8.2. WT+ shall immediately after the Date of the Agreement notify an estimated price for the Order to the Operator and invite her to, utterly within five (5) working days after the Date of the Agreement, prove her sufficient financial capacity by providing WT+ with a bank guarantee on first demand, from a respected credit company, for an amount equal to the estimated price of the Order, as reduced with the Subsidy.
- 8.3. The price shall be paid as follows on the account of WT+:
  - 100% immediately after the Operator has been notified of the Date of the Award.
- 8.4. WT+ has the right to suspend her obligations under this Agreement until all due payments relating to the Order are received by her.

#### **Article 9 – Execution of the Order**

- 9.1. WT+ shall inform the Operator on a monthly basis after the Date of the Award of the progress of the Order in accordance with the special specifications.
- 9.2. WT+ has the right, free of charge, to request technical assistance from the Operator. In general, the Operator shall provide WT+ with all reasonable assistance and information in order to allow WT+ to deliver the Order in accordance with the Agreement.
- 9.3. WT+ shall inform the Operator of any request from the third-party producing the Order to accept the Order, in whole or in part.
- 9.4. WT+ and the Operator shall inspect, in good faith and together, the part of the Order the third-party claims to have completed in his request, mentioned in article 9.3. Parties shall accept or reject the works of the third-party.
- 9.5. If the Operator is not willing to wholly accept the part of the Order the third-party has requested to accept, she shall in writing motivate her decision and Parties will mark-up a certificate of partial acceptance holding an exhaustive enumeration of the defects to be repaired in relation to the part of the Order the third-party has requested to accept.

WT+ shall send these remarks to the third-party producing the Order but reserves the right to only send these remarks which were reasonably proven and to deny remarks which are dilatory.

Parties shall thereon work together in order to resolve the notified defects.

WT+ shall immediately after the works enshrined in the certificate of partial acceptance were executed invite the Operator to accept the relevant part of the Order and accept delivery.

- 9.6. Together, Parties shall, after having received a request for final acceptance of the whole Order, inspect the Order in good faith. Parties shall as a consequence accept the whole Order or reject and motivate the final acceptance.
- 9.7. The Operator acknowledges to have gained knowledge of the special specifications. The Operator acknowledges that she accepts the provisions enshrined in these documents relating to the acceptance and delivery of the Order.

**Article 10 – Right / obligation of use – transfer of ownership**

- 10.1. WT+ retains ownership of the subject of the Order, during the Period. The physical delivery of the subject of the Order during the Period to an Operator by WT+, or the payment of an Order by an Operator during the Period does not constitute a transfer of ownership.
- 10.2. Unabated article 10.1. WT+ confers upon the Operator an exclusive, royalty- free license to use, during the Period, the subject of their Order for inland shipping in Europe and in accordance with the obligations of the Operator under this Agreement. Aforementioned right to use the Order shall commence after delivery and acceptance of the Order.

To this extent Parties agree that the barges and boats ordered will each receive a unique number in order to facilitate proper identification.

Parties agree that if the Operator 1] is not paying all sums due under this Agreement or 2] is using her rights to use the Order in a way incompatible with her obligations under this Agreement, WT+ has the right to immediately suspend the aforementioned right to use the subject of the Order, without any further right to compensation for the Operator.

- 10.3. Unabated article 10.1. WT+ grants the Operator, at the end of the Period, a call-option to buy the subject of the Order and make further use of it, in accordance with article 10.4. In case the Operator exercises his call-option no additional remuneration is due by the Operator.

The Operator is obliged, at her own costs, to restore the subject of his Order to a Standard Order, as customized with Generic Customizations which are the subject of a Subsidy Allowance, if she has not exercised her call-option, utterly by the end of the Period. Thus, the Operator is obliged, in case she is not exercising her call-option in relation to the subject of her Order, to remove, at her own costs, all Generic Customizations which are not the subject of a Subsidy Allowance and all Specific Customizations. In such a case the Operator shall after the removals have been done delivery the subject of his Order to WT+.

- 10.4. The Operator shall, in case she has exercised her call-option mentioned in article 10.3., be obliged to keep using, during a period of minimum five (5) years after the Period, the subject of her Order for inland shipping in accordance with the purposes of Watertruck+. This obligation also applies to the boats and barges produced by making use of the right enshrined in article 15.3.
- 10.5. WT+ has at all times the right to suspend aforementioned usage right in case the Operator is in default under this Agreement.

## **Article 11 – Other obligations of the Operator**

11.1. the Operator acknowledges and accepts that all obligations enshrined in this article are guarantees and that any infringement of these guarantees will grant WT+ the right to apply sanctions as enshrined in article 13 and / or article 18.

11.2. De Operator guarantees that she shall, on a yearly basis, transport [ ] [INSERT TONNAGE] by exclusively making use of the subject of the Order. Volumes which are transported by other boats than the subject of the Order will explicitly not be taken into account when controlling the fulfillment of this guarantee.

The Operator guarantees in relation thereto that she shall have transported 40% of [ ] [INSERT TONNAGE] utterly on 30.06.2019 and that she shall have transported 100% of [ ] [INSERT TONNAGE] utterly on 31.03.2020.

11.3. The obligation of article 11.2. can only be fulfilled by the Operator by transporting the aforementioned volumes from and to the following destinations:

[ ] → [ ]

Volumes which are being transported via any other water way are explicitly excluded from the fulfillment of this guarantee and shall be disregarded when controlling the guarantee.

11.4. The Operator guarantees that [ ] [INSERT %] of the goods that she shall transport in accordance with article 11.2. and article 11.3., shall make the modal shift towards the waterways and shall thus exclusively be executed via New Traffics.

11.5. In general, the Operator guarantees the diligent and proper compliance with the Award Criteria.

## **Article 12 – Monitoring & Reports**

12.1. In order to allow WT+ to comply with her obligations under the Grant Agreement the Operators explicitly acknowledges that WT+ has the right to monitor the obligations of the Operator under this Agreement.

12.2. Especially WT+ has the right to monitor at all times which volumes the Operator has transported by making use of the subject of her Order.

12.3. Especially WT+ has the right to monitor at all times to and from which destinations the volumes mentioned in article 11.2. were transported.

12.4. Especially WT+ has the right to monitor at all times in how far the modal shift has been realized.

12.5. De Operator shall during the Period and until five (5) years thereafter retain all documentation in relation to the volumes mentioned in article 11.2. and article 11.3. Aforementioned documentation shall, at least, contain the following elements:

- Origin and destination;
- Nature of the load;
- Amount of the load;
- Date and hour of departure and date and hour of arrival;
- Identification (class of) waterway and completed distance;
- Operational costs, excluding toll and membership rights, but including at all times:
  - Fuel consumption;
  - Labour costs;
  - Maintenance costs;

12.6. WT+ has the right at all times to request the information mentioned in article 12.5. If the Operator rejects, within a reasonable term after a simple written request, to hand over the requested documentation, WT+ shall have the right to appoint an expert in order to obtain this information, whereby costs shall be borne by the Operator.

WT+ shall also have the right to appoint an expert if she determines that the received information is incomplete, inaccurate or otherwise deficient. Costs shall be borne by the Operator.

### **Article 13 - Sanctions**

13.1. WT+ may deploy all measures she deems necessary or useful, including the recuperation in whole or in part of the subsidies granted to an Order, in case one of the following circumstances occur:

- The Operator has committed recurrent small errors, one grave error or fraud under the Agreement;
- The Operator has infringed her obligations under article 11; or
- The Operator is contributing to any violation of the provisions of this Agreement;
- The subsidy granted to WT+ under the Grant Agreement is being recuperated, for whatever reason, from WT+.

13.2. If one of the aforementioned circumstances occur, WT+ shall immediately inform the Operator by a registered letter, accompanied with prove as to the reality of the aforementioned circumstances.

13.3. Within the term of one (1) month after aforementioned letter, WT+ shall, if applicable, inform the Operator of her decision to recuperate any subsidy and she shall invite the Operator to immediately refund the amount granted to the Order (and thus deducted from the price of the Order).

In case the Operator does not comply with the request an interest will be due equal to 7,5% / yearly.

### **Article 14 – Appointment**

14.1. WT+ is allowed to appoint third-parties to perform her obligations under this Agreement.

14.2. Neither Party can assign or transfer any of its rights or obligations under this Agreement, in whole or in part, to any third party without the prior written consent of the other Party, and any assignment or transfer without such consent shall be deemed null and void.

14.3. However, deviating from article 14.2., Operators shall be entitled to assign or transfer this Agreement, in whole or in part, to any other affiliate in the group of companies to which it belongs or in connection

with the sale, transfer, merger, consolidation or any other disposition of all or substantially all of its assets or business, upon the provision of formal written notice to this effect to WT+ and provided such transfer or assignment does not adversely affect the rights of WT+.

#### **Article 15 – Intellectual Property Rights**

- 15.1. Each Operator agrees and acknowledges that WT+ shall own any and all Foreground Intellectual Property rights regardless of whether the Technology or other information is susceptible to any form of legal protection including, but not limited to, the full and exclusive right to apply for patents, register copyrights and designs, and any other intellectual property protection applicable to the Technology or other information.
- 15.2. Background Intellectual Property Rights will be licensed, free of charge, by the Operator to WT+ to be used in relation to the execution of this Agreement. Such information will be regarded Confidential Information.
- 15.3. WT+ hereby grants, but only if the call-option mentioned in article 10.3. was exercised, to the Operator a non-exclusive, perpetual, royalty- free license, starting after the Period, to produce (to the fullest extent permitted by law) additional boats, barges and equipment according to the Standard and to exclusively use them afterwards in accordance with the purposes of Watertruck+.

#### **Article 16 – Revision of contractual terms**

- 16.1. All Parties to this Agreement are bound to perform their contractual duties even if events have rendered performance more onerous than could reasonably have been anticipated at the time of the conclusion of this Agreement.
- 16.2. Notwithstanding article 16.1., where a Party to this Agreement proves that:
  - I. The continued performance of its contractual duties has become excessively onerous due to an event beyond its reasonable control and that;
  - II. It could not reasonably have avoided or overcome the event or its consequences,

The Parties are bound, within a reasonable time of the invocation of this Clause, to negotiate alternative contractual terms, in the Consultative Body, which reasonably allow for the consequences of the event.

- 16.3. Notwithstanding article 16.1. where the European Commission or INEA imposes certain conditions upon Parties under the Grant Agreement the Parties are bound, if necessary, within a reasonable time of the invocation of this Clause, to negotiate terms which WT+ will impose upon the Operator to allow her to comply with these provisions.
- 16.4. WT+ will, unabated the principle of article 16.1, enter into negotiations with the Operator to conclude alternative terms in the event the aforementioned Operator was unable to raise sufficient funding for his Order placed under this Agreement.

#### **Article 17 – Liabilities and warranties**

- 17.1. WT+ will employ best efforts to obtain and maximize EU-funding but they to no extent provide any guarantee as to the result of her performance.
- 17.2. WT+ shall employ best efforts (i) to perform all construction and design activities under this Agreement substantially in accordance with the standards and practices of care, skill and diligence customarily observed by similar enterprises under similar circumstances at the time the services or activities are rendered; (ii) to construct and design free from material defects in workmanship; and (iii) to let any barges, boats and equipment designed and developed under this Agreement conform to the Standard and the customizations requested and approved by WT+.
- 17.3. Parties guarantee that they will execute the Agreement in good faith.
- 17.4. WT+ cannot be held liable for any consequential damage the Operator should suffer under this Agreement. WT+ is only liable, except in case of fraud, for direct damages to the extent she is duly insured for.

#### **Article 18 – Termination**

- 18.1. WT+ has the right, free of charge, to unilaterally and prematurely terminate this Agreement if she decides not to award to any third-party the production of the subject of the Order, for whatever reason. In such a case no compensation is due by WT+.

In the circumstances mentioned in article 18.1., WT+ shall immediately inform the Operator by registered letter of her decision not to award the production of the subject of the Order en thus terminating the Agreement. If WT+ already received a part of the price of the Order from the Operator she shall immediately refund this payment, without any interest.

- 18.2. WT+ has the right to unilaterally, without any right to compensation, and prematurely terminate this Agreement if one of the following circumstances occur:
- The Operator does not, or untimely provides WT+ with a bank guarantee, mentioned in article 8.2.
  - The price for the Order is not paid in full in accordance with article 8.3.

In the circumstances mentioned in article 18.2., WT+ shall immediately inform the Operator by registered letter of her decision to terminate the Agreement.

- 18.3. This Agreement may be terminated by either party prior to expiry of its initial term providing written notice to the other party: (i) if the other party is in breach of a substantial material term or condition of this Agreement and fails to remedy the situation within 30 working days after receiving a written request to this effect; (ii) effective immediately, if the other party should be declared insolvent or bankrupt or make an assignment or other arrangement for the benefit of its creditors.
- 18.4. Termination pursuant to article 18.2. or 18.3. shall be effected by delivery by the terminating party to the other party of a notice of termination (the "Notice of Termination") specifying the effective date and extent of the termination.

- 18.5. Upon receipt of a Notice of Termination from the Operator, WT+ shall immediately (i) stop the work specified in the Notice; (ii) place no further subcontracts or orders for materials, tools, services, etc., except as necessary to complete performance of the work; (iii) cancel all subcontracts and orders to the extent they relate to the work to be terminated; (iv) with the Operators' approval, settle all outstanding debts and pay any damages arising from termination of subcontracts or third-party orders; (v) transfer to the Operator all completed or as yet unmade parts, works in process, completed work, and supplies developed for the purposes of this Agreement; (vi) complete performance of any work not terminated by the Notice of Termination; and (vii) take any such other action as may be necessary or appropriate to minimize and mitigate the costs and consequences of termination and protect and preserve the property developed on the Operators' behalf.
- 18.6. Within 90 days following receipt of a Notice of Termination, WT+ shall submit a settlement proposal to the Operator, computed in accordance with the provisions of this Agreement. If the Parties agree on the amount of the settlement, the Public Parties shall remit such amount to the Operator. If the Parties are unable to agree on the amount of the settlement, the Public Parties shall not remit the following amounts: (i) the contract price for any completed services accepted by the Operator and not previously paid for; (ii) the costs of settling all subcontracts and orders for the terminated portion of the contract, if not otherwise included in the amounts stipulated above.

#### **Article 19 – Confidentiality**

- 19.1. Each party agrees to limit its disclosure of proprietary information to the other party to the amount necessary to carry out the Orders under this Agreement by WT+.
- 19.2. Each Party agrees that it shall use at least the same degree of care in protecting Confidential Information received from the other Party as it uses to protect its own confidential information, and any Confidential Information received from a Party shall be disclosed solely to personnel of the receiving Party on a need-to-know basis. Each party shall be responsible for performance of the obligations set forth in the present article by any person to whom Confidential Information is disclosed.
- 19.3. Any Confidential Information disclosed may only be used by the receiving Party for the purposes of this Agreement and may not be reproduced without the written consent of the originating Party, except where necessary to implement this Agreement or as otherwise specifically agreed. Disclosure of Confidential Information to a subcontractor can only be done if subject to the subcontractor in question having provided confidentiality undertakings in writing equivalent in all respects to those contained herein.
- 19.4. In order to assure adequate protection of Confidential Information, WT+ shall prevent access by any unauthorized person(s) to areas containing Confidential Information. To the extent possible, all layouts, drawings, plans and other tangible sources of Confidential Information shall be kept in a secure (i.e. locked) location during non-business hours and will not be shared between Operators in so far not necessary for the performance of their obligations under this Agreement.
- 19.5. Except to the extent expressly set forth herein, neither the execution of this Agreement nor the disclosure of any Confidential Information shall be construed as granting to the receiving Party, either expressly or by implication, any right or license under any intellectual property right now or hereafter



held or controlled by the originating party except to the extent necessary for the receiving Party to perform its obligations under this Agreement. In any event, the copyright for any Confidential Information shall always remain vested in the originating Party.

- 19.6. Upon termination of this Agreement, either Party may require the other to return forthwith all Confidential Information (and copies thereof) supplied hereunder, with the exception of one archival copy which must be kept in a secure and locked location that cannot be accessed by operating personnel.
- 19.7. In case parties are under a legal obligation or court discussion to reveal information or are involved in a legal dispute between them, they are allowed to reveal for that extent the confidential information.

#### **Article 20 – Miscellaneous general provisions**

- 20.1. This Agreement (and its Annexes) contains the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes and replaces all prior agreements or understandings, whether written or oral, with respect to the same subject matter still in force between the Parties.
- 20.2. Any amendment to this Agreement, as well as any addition or deletion, must be mutually agreed by the Consultative Body except as where such an amendment only has the effect of amending provisions relating to one Operator in which case a written approval signed by WT+ and the relevant Operator could suffice.
- 20.3. Whenever possible, the provisions of this Agreement shall be interpreted in such a way as to be valid and enforceable under applicable law. However, if one or more provisions of this Agreement are found to be invalid, illegal or unenforceable, in whole or in part, the remainder of that provision and of this Agreement shall continue in full force and effect as if such invalid, illegal or unenforceable provision had never been contained herein. Moreover, if the Parties decide to amend the invalid, illegal or unenforceable provision(s), or any part thereof, and/or agree on a new provision, they should do so in such a way as to ensure that the new or amended provision embodies insofar as possible the purpose of the invalid, illegal or unenforceable provision(s).
- 20.4. Any failure to exercise or delay in exercising any right under this Agreement by a Party, any single or partial exercise of any such right, or any partial reaction or absence of reaction by a Party in the event of violation by the other Party of one or more provisions of this Agreement shall not operate or be interpreted as a waiver (either express or implied, in whole or in part) of any of that Party's rights under this Agreement or under said provision(s) nor shall it preclude any further exercise of such rights. Any waiver of a right must be expressed in writing.
- 20.5. If there has been an express written waiver of a right following a specific failure by a Party, this waiver cannot be invoked by the other Party in favor of a new failure, similar to the previous one, or of a failure of another nature.
- 20.6. Any notice or other form of communication required under this Agreement must be in writing and delivered to the receiving Party by hand through a reputable courier service or sent by fax with a confirmation report or by registered letter (return receipt requested) to the addresses indicated in the header.

Any notice shall be considered to have been delivered to the recipient's address on the date of delivery if delivered in person, 3 working days following the mailing date if sent by registered letter, and upon receipt of a transmission report if sent by fax. Either Party may change the address to which notices are to be delivered or transmitted by giving the other Party written notice to this effect in the manner set forth herein.

- 20.7. Each Party shall bear its own costs (including lawyers' fees and other expenses) for the preparation and negotiation of this Agreement.
- 20.8. This Agreement is executed in separate copies, each of which is deemed an original and all of which taken together constitute one and the same agreement. Translations into any language other than English may be made but are for the sake of convenience only, even when executed by one or both Parties. Only copies signed by all parties involved, are valid.
- 20.9. By ordering the Order the Operator acknowledges to have been duly informed concerning the content of this Agreement, the Award Criteria, and the Grant Agreement.

#### **Article 21 – Notifications**

21.1. Except as otherwise provided for, every notification under this agreement should be as follows:

- to WT+:
  - by post, via registered letter:  
Watertruck+ bvba, p.a. [REDACTED], Oostdijk 110, 2830 Willebroek.
  - by e-mail with receipt confirmation:  
[REDACTED]
- to the Operator:
  - by post, via registered letter:  
[REDACTED]
  - by e-mail with receipt confirmation:  
[REDACTED]

#### **Article 22 – Applicable Law and Jurisdiction**

22.1. All issues, questions and disputes concerning the validity, interpretation, enforcement, performance and termination of this Agreement shall be governed by and construed in accordance with Belgian law, and no effect shall be given to any other choice-of-law or conflict-of-laws rules or provisions (whether Belgian, foreign or international).

22.2. Any dispute concerning the validity, interpretation, enforcement, performance or termination of this Agreement shall at first be submitted to the Consultative Body. The Consultative Body shall hear all Parties involved in the dispute, mediate and if possible propose a settlement.

If the Consultative Body employed best efforts to remedy the dispute, but the dispute was not settled within two months, each Party has the right to refer the dispute to courts of the jurisdiction Hasselt.

Executed in \_\_\_\_, on \_\_\_\_\_, in \_\_\_\_ original copies, each party acknowledging receipt of one.

- **For and on behalf of WT+**

[\_\_\_\_\_]

[\_\_\_\_\_]

- **For and on behalf of Operator**

[\_\_\_\_\_]