ANNEX 6: MODEL BANK GUARANTEE

1. Model bank guarantee per toll charger.

THE UNDERSIGNED, [name of the credit institution], established at [place], (the Bank),

CONSIDERING THAT:

The Brussels-Capital Region, the Flemish Region, and Sofico (the toll chargers), as well as the interregional entity Viapass; and

[Name service provider], with registered office at [__●__],[__●__] and registered under number [__●__] (the service provider);

have concluded a bilateral agreement on [DATE], aiming at determining the rights and obligations of the service provider on the one hand, and the toll chargers and the interregional entity Viapass, on the other hand, concerning the provision of services in the frame of the Belgian kilometer charging system;

the service provider must, on the basis of title II.3.4. (*The Guarantee*) of the toll domain statement and provision [X] of the bilateral agreement, in order "*to secure its collection and payment obligations, provide a bank guarantee in the form of an abstract, irrevocable and unconditional bank guarantee, payable at the first request of the beneficiary, provided by a credit institution of a member state of the European Union with at least an A rating (Standard & Poor's) or an A2 rating (Moody's) (or an equivalent rating)*";

The Bank is willing to provide the said bank guarantee for the benefit of the [concerned toll charger] according the conditions set out below;

HERBY DECLARES WHAT FOLLOWS:

(a) The Bank hereby independently undertakes to irrevocably and unconditionally act as a guarantor towards the [concerned toll charger] in respect of all the amounts [the concerned toll charger] can claim from the service provider on the basis of the bilateral agreement;

(b) The Bank shall, upon first written request of [the concerned toll charger], without requiring any motivation or further evidence, proceed to the payment of all the amounts [the concerned toll charger] declares being entitled to claim from the service provider on the basis of the bilateral agreement consequently to a breach by the service provider of its obligations pursuant to the bilateral agreement, unless the amount of the payment of the guarantee exceeds the amount intended in paragraph (c).

(c) This guarantee is issued to an amount of [amount][1];

[1] Regarding the calculation of the amount, see title II.3.4.

(d) This bank guarantee has a duration of at least thirteen[2] months, and must be extended by a term of thirteen months at the latest fourteen calendar days before the end of each term of thirteen months.

(e) This bank guarantee expires:

(i) on the date that the [concerned toll charger] notifies the Bank in writing that the termination date of the bank guarantee has been reached and the bank guarantee has come to expire in the absence of extension; or

(ii) as soon as the [concerned toll charger] notifies the Bank in writing of its unwillingness to claim payment by invoking the bank guarantee; or

(iii) at termination of the bilateral agreement, in which case the [concerned toll charger] must, upon prior written request by the service provider, notify it to the Bank within ten days after termination.

(f) After expiry of this bank guarantee according to paragraph (e), the [concerned toll charger] must return the original as soon as possible to the Bank.

(g) This bank guarantee is an autonomous and abstract guarantee so that the Bank hereby waives and cannot appeal to any defense finding its origin in the legal relationship between [the concerned toll charger] on the one hand, and the service provider on the other hand, or in the legal relationship between the Bank and the service provider.

This bank guarantee is governed by Belgian law.

Any dispute arising in relation to this bank guarantee will be settled by the competent tribunal of Brussels.

[- place -], [- date -]

[- name Bank -]

[2] This concerns a minimum duration.

2. Model collective bank guarantee.

THE UNDERSIGNED, [name of the credit institution], established at [place], (the Bank),

CONSIDERING THAT:

The Brussels-Capital Region, the Flemish Region, and Sofico (the toll chargers), as well as the interregional entity Viapass; and

[Name service provider], with registered office at [__●__],[__●__] and registered under number [__●__] (the service provider);

have concluded a bilateral agreement on [DATE], aiming at determining the rights and obligations of the service provider on the one hand, and the toll chargers and the interregional entity Viapass, on the other hand, concerning the provision of services in the frame of the Belgian kilometer charging system;

the service provider must, on the basis of title II.3.4. (*The Guarantee*) of the toll domain statement and provision [X] of the bilateral agreement, in order "*to secure its collection and payment obligations, provide a bank guarantee in the form of an abstract, irrevocable and unconditional bank guarantee, payable at the first request of the beneficiary, provided by a credit institution of a member state of the European Union with at least an A rating (Standard & Poor's) or an A2 rating (Moody's) (or an equivalent rating)*";

The Bank is willing to provide the said collective bank guarantee for the benefit of the toll chargers according the conditions set out below;

HEREBY DECLARES WHAT FOLLOWS:

(a) The Bank hereby independently undertakes to irrevocably and unconditionally act as a guarantor towards the toll chargers in respect of all the amounts the toll chargers or one of them can claim from the service provider on the basis of the bilateral agreement;

(b) The Bank shall, upon first written request of the toll chargers or one of them, without requiring any motivation or further evidence, proceed to the payment of all the amounts the toll chargers or one of them declare being entitled to claim from the service provider on the basis of the bilateral agreement consequently to a breach by the service provider of its obligations pursuant to the bilateral agreement, unless the amount of the payment of the guarantee exceeds the amount intended in paragraph (c).

(c) This collective guarantee is issued to an amount of [amount][3];

(d) This collective bank guarantee has a duration of at least thirteen[4] months, and must be extended by a term of thirteen months at the latest fourteen calendar days before the end of each term of thirteen months.

(e) This collective bank guarantee expires:

[3] Regarding the calculation of the amount, see title II.3.4.
[4] This concerns a minimum duration.

(i) on the date that the toll chargers or one of them, notifies the Bank in writing that the termination date of the collective bank guarantee has been reached and the collective bank guarantee has come to expire in the absence of extension; or

(ii) as soon as the toll chargers or one of them, notifies the Bank in writing of their unwillingness to claim payment by invoking the collective bank guarantee; or

(iii) at termination of the bilateral agreement, in which case the toll chargers or one of them must, upon prior written request by the service provider, notify it to the Bank within ten days after termination.

(f) After expiry of this collective bank guarantee according to paragraph (e), Viapass, in name and on behalf of the toll chargers, must return the original as soon as possible to the Bank.

(g) This collective bank guarantee is an autonomous and abstract guarantee so that the Bank hereby waives and cannot appeal to any defense finding its origin in the legal relationship between Viapass and the toll chargers on the one hand, and the service provider on the other hand, or in the legal relationship between the Bank and the service provider.

This collective bank guarantee is governed by Belgian law.

Any dispute arising in relation to this collective bank guarantee will be settled by the competent tribunal of Brussels.

[- place -], [- date -]

[- name Bank -]

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