



PROJECT INFORMATION	
Type of Project	HORIZON 2020
Call	H2020-MG-2014_TwoStages
Grant Agreement No.	635874
Project Duration	42 Months
Project Coordinator	TX Logistik
DOCUMENT INFORMATION	
Title	NexTrust Deliverable 6.7 - Drawing up a legal framework and model contracts to cover logistics collaboration for e-commerce and developing a legal basis for CITS/ICT
Version	1.0
Release Date	May 2, 2018
Workpackage	WP6
Dissemination Level	PU
DOCUMENT AUTHORS AND AUTHORISATION	
Document Owner	KKL
Contributors	Olaf van Haperen, Robbert Santifort, Sarah Zadeh, Marijn Rooke,



PROJECT INFORMATION			
		Hülya Avsar, Pascale Kos, Michiel Spanjaart, Esther van Aalst nextrust@kneppelhout.nl	
Checked by			
Authorised by			
DOCUMENT HISTORY			
Version	Date	Modified Contents	Implemented by
1.0	2-05-2018	Document finalised	



Table of Contents

1. Introduction	6
1.1 The NexTrust Project	6
1.2 The E-commerce Pilot.....	7
1.3 Purpose and scope of this document	7
2. The Stakeholders	9
2.1 Standard E-commerce Set Up	9
2.2 The processes in the Standard E-commerce Set Up.....	10
2.2 An Overview of all the Involved Stakeholders in the Standard E-Commerce Set Up....	12
2.3.1 The Trustee.....	12
2.3.2 The Vehicles and Vehicle Owners.....	13
2.3.3 The Drivers	14
2.3.4 The Retailers.....	15
2.3.5 The End Consumers	16
3. The General Legal Framework	17
3.1 Employment Law	17
3.1.1 The Driver as an Independent Contractor	17
3.1.2 The Driver as an Employee	18
3.1.3 Other points of attention	20
3.2 Transportation and Logistics	21
3.2.1 The National Carriage of Goods.....	22
3.2.2 Cross-Border Carriage of Goods.....	22



3.2.3 Contractual Relationships Between the Different Stakeholders.....	23
3.3 Insurance Law.....	24
3.3.1. Insurance obligations of the Trustee	24
3.3.2. Insurance obligations of the Vehicle Owners	24
3.4 Privacy and Data Protection.....	25
3.4.1. General Data Protection Regulation (EU) 2016/679	25
3.4.2. The processing of personal and special category data by the different Stakeholders.....	26
3.5.3. Data Subjects Rights.....	27
3.4.4. Accountability and governance.....	28
3.5 Intellectual Property Rights	32
3.5.1 Copyright	32
3.5.2 Database rights.....	33
3.5.3 Trademark law	33
3.5.4 Liability for counterfeit goods.....	34
3.5.5 Tradename law	35
3.5.6 Domain names.....	35
3.5.6 Trade secrets and knowhow	36
3.6 Competition Law	37
3.6.1 The cartel prohibition.....	37
3.6.2 Competitions risks for the E-commerce pilot	37



3.6.3 The Trustee Model as a safeguard against prohibited information exchange.....	38
3.6.4 Best Practice Rules for the Trustee.....	39
4. Summary of all the Legal Agreements based on the Standard E-Commerce Set Up.....	40
5. Conclusion and Recommendations.....	42



1. Introduction

1.1 The NexTrust Project

NexTrust is a 31 member consortium of Europe's leading thinkers on collaborative logistics and is funded by a grant from the European Commission (hereinafter referred to as: 'EC'). The grant was awarded in a competition entitled "*Fostering synergies alongside the supply chain (including e-commerce)*" under the *Horizon 2020* project.

NexTrust's objective is to increase efficiency and sustainability in European logistics, as it will create interconnected, trusted networks that collaborate together along the entire supply chain. These trusted networks, built horizontally and vertically, will fully integrate shippers, Logistic Service Providers (hereinafter referred to as '**LSP's**') and intermodal operators as equal partners.

To reach a high level of sustainability, NexTrust will not only bundle freight volumes, but shift them off the road to intermodal rail and waterway. NexTrust will build these trusted networks ideally bottom up, with like-minded partners, adding multiple layers of transport flows that have been de-coupled and then re-connected more effectively along the supply chain. Therefore, NexTrust will develop C-ITS cloud based smart visibility software to support the re-engineering of the networks, improving real-time utilization of transportation assets.

The focus will be placed on research activities that create stickiness for collaboration in the market, validated through pilot cases in live conditions. Major shippers will be engaging in this project, such as Beiersdorf, Borealis, Colruyt, Delhaize, KC, Mondelez, Panasonic, Philips, Unilever, which own freight volumes resulting in well over one million annual truck movements across Europe, plus Small-to-Medium Enterprise (hereinafter referred to as '**SME**') shippers and LSP's with a track record in ICT innovation.



The creation and validation of trusted collaborative networks will be market oriented and implemented at an accelerated rate for high impact. NexTrust will achieve such high impact with improved asset utilization and logistics cost efficiency, creating a sustainable, competitive arena for European logistics that should result in an inspirational example for the market.

1.2 The E-Commerce Pilot

Online retail sales, the so-called “e-commerce”, is a booming business sector. The European e-commerce turnover has reached a staggering € 530 billion in 2016, at a growth rate of nearly 14%, which has had a significant impact on the delivery component of e-commerce supply chain, also called the “last-mile” delivery.

This impressive growth has led to a continuous expansion of delivery fleets in the traditional parcel networks, which must fulfil the last mile deliveries to End Consumers. However, this growth also has down-sides, as it contributes to air pollution due to increased greenhouse gas (hereinafter referred to as ‘GHG’) emissions caused by multiple delivery attempts, urban congestion, due to the use of traditional delivery vehicles, which clog up the streets during peak times.

The e-commerce pilot aims, in accordance with the main goals of the NexTrust project, to reduce delivery transports and attempts, reduce GHG emissions and increase load factors, by building a collaborative trusted network around multiple, independently owned vehicles, tapping and pooling this “underutilized” pool of existing transport equipment.

1.3 Purpose and scope of this document

E-commerce exposes all kinds of new challenges. What happens with the personal data of the End Consumer (paragraph 2.3.5) if he or she places an order at the Retailer (paragraph 2.3.4)? Which stakeholders are involved in the e-commerce standard set up? What are the mutual rights, obligations and liabilities of these stakeholders? What rights can be derived from the platform developed and provided by the Trustee? Moreover, one should pay attention from a competition law point of view, when competitors disclose sensitive information in the execution

7



of a project. It is therefore important to identify the relationships between the stakeholders, pinpoint potential risks, discover blind spots and to offer insights on how these relationships should legally be characterized, as a first step towards drafting the necessary model contracts. This document will focus on developing a legal framework for collaboration in e-commerce and the legal basis for CITS/ICT, taking into account data and transport security, to provide the right elements which should be included in the agreements between the stakeholders.

Important note: this document is drafted from Dutch legal perspective only.



2. The Stakeholders

2.1 Standard e-commerce set up

The standard e-commerce set up is based on the e-commerce pilot case 4.1, which is part of Work Package 4 (hereinafter referred to as: **WP**). The 4.1 pilot case has its focus on the societal and mobility changes of e-commerce by building a collaborative trusted network around multiple, independently owned vehicles, tapping and pooling the ‘underutilized pool’ of existing equipment, as these vehicles are only used for approximately eight to ten hours a day.

Currently, more and more Retailers attempt to participate in e-commerce and experience growing volumes of e-commerce shipments, while End Consumers have growing demands and expectations towards e-commerce delivery. These developments exert pressure on the vehicle delivery networks to grow their fleets, including vehicle and driver capacity. Also, the current networks are designed for ‘commodities’ in parcels. Parcels that contain medicines, alcohol, or high value products are currently still a challenge for parcel delivery. In the standard e-commerce set up, however, the main focus was electronics and fashion shipments.

By just growing the fleets and vehicle capacity, new problems will arise, such as higher GHG emissions. Therefore, by using existing asset capacity of multiple independently owned vehicles more effectively and make them also available at off-peak periods by expanding delivery windows under the right business structure, the last mile delivery should be improved. The envisioned delivery network is visualized below.

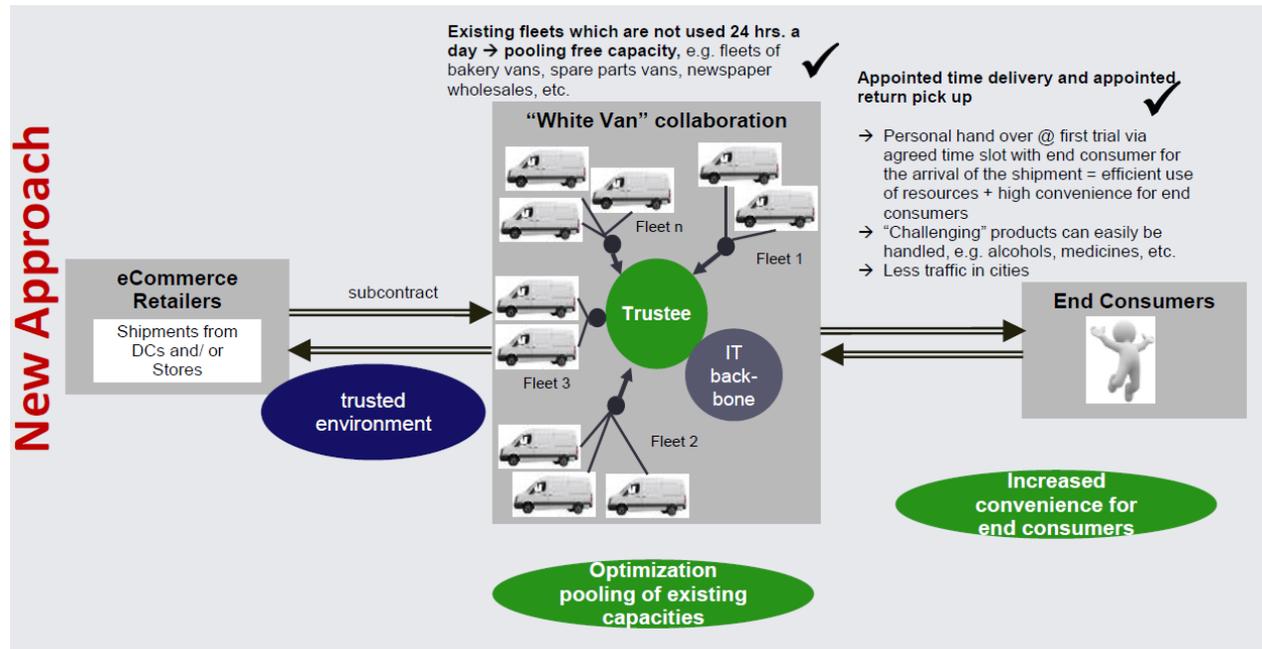


Figure 1: the trusted collaboration multiple vehicle delivery network

2.2 The processes in the standard e-commerce set up

Submitting the Retailer’s shipment order

The shipment starts with the submission of a Retailer’s shipment order to the NexTrust e-commerce platform. The e-commerce platform is the IT-backbone of the e-commerce set up as it enables Retailers, Vehicle Owners and Drivers to register and join the collaborative network. The platform accepts shipment orders from Retailers, builds transport units, determines routes for sustainable delivery and selects the vehicles and matches the vehicles with the Drivers.

Once the shipment has been created, Retailers (paragraph 2.3.4) and End Consumers (paragraph 2.3.5) can use the platform to check the current status of their shipment(s). The NexTrust e-commerce platform processes the shipment depending on the actual transports that



are required for delivery: is it a direct delivery from the Retailer to the End Consumers or is it an indirect delivery via a consolidation center? Depending on the answer, the platform assigns these transports to tours for delivery.

Assigning transports to tours

Depending on the incoming shipments, the transports are being assigned to tours. When the tour needs to be dispatched, the platform selects an available and qualified vehicle and matches the vehicle with available and qualified Drivers (paragraph 2.3.3) and offers the tour to them. The Driver who has accepted to operate a tour will be provided with additional tour details before the tour starts. At this time the Driver has access to the calculated route details and the estimated delivery schedule via his mobile device, including the step-by-step instructions that will guide the Driver through the tour.

Planning and executing the tour

The Driver first picks up the vehicle and scans the parcel labels upon pickup and delivery with his mobile device, while the information concerning the tours, e.g. the status of delivery and timestamps, is being reported back to the platform. The platform uses this information to recalculate the time schedule and send up-to-date notifications about the estimated delivery times to the End Consumers.

During the executing of the tour, the related shipments will receive status information. After the shipment has been successfully delivered, a Proof of Delivery (hereinafter referred to as '**POD**') will be submitted to the Retailer.

Finally the Retailer is invoiced for the shipment. At the end of the tour the vehicle will be returned by the Driver. Subsequently, both the Driver and the Vehicle Owner will be credited for the tour.



2.3. An Overview of all the Involved Stakeholders in the Standard E-commerce Set Up

2.3.1. The Trustee

In order to reduce the risk of an exchange of (commercially) sensitive information between (potentially competing) cooperating parties, a so-called 'Trustee' is installed. The Trustee acts as a neutral and independent third party, under strict scrutiny and confidentiality. In this regard, the Trustee is sometimes referred to as a 'firewall' or 'black box'.

The Trustee is responsible for the collection and analyzation of all the relevant data provided by a.o. the Retailers. It also manages the collaboration of a number of different shippers and LSP's. Due to the involvement of the Trustee, it is possible that (commercially) sensitive information is independently analyzed, without the risk that (commercially) sensitive data is exchanged between the Retailers. To this end, the Trustee will ensure the confidentiality of the (commercially) sensitive data and will only process the data for those purposes for which the data has been collected. Therefore, the Trustee is essential for ensuring compliance with competition law. In NexTrust, different models of Trustees have been tested. In WP 4 on E-Commerce the Trustee acts as a platform provider. Therefore, this approach will also be used in D6.7.

In general, two different roles can be assigned to the Trustee as a platform provider: the Trustee without operational responsibility and Trustee with operational responsibility. In the standard e-commerce set up, the Trustee will be assigned with operational responsibility.

The Trustee as a platform provider has two areas of operational responsibility:

Platform operator

The coordination between the different stakeholders is based on a platform that offers the technology for the communication between the stakeholders. However, this platform has to be operated, monitored, maintained and updated. Therefore, the Trustee hosts this online platform to efficiently match freight flows on the last mile transport of goods, while safeguarding all



confidential information. The Trustee is the only one who is authorized to administer the data, to continuous improvement of the system and is responsible to facilitate a proper interaction between all the Stakeholders.

Trusted network facilitator

The Trustee also offers neutral logistic support for each Stakeholder that takes part in the process, as it takes part as an advanced Fourth Party Logistics (hereinafter referred to as: '4PL') with trustee functions, such as ensuring fair payment for Vehicle Owners, fair payment for the Driver and sustainable dispatching.

2.3.2 Vehicles and Vehicle Owners

NexTrust aims to establish a trusted collaborative vehicle network for e-commerce deliveries. This network can only be established with a sufficient amount of Drivers (2.3.3) and Vehicles. The vehicles that will be deployed within the delivery network are called the White Van Fleet (hereinafter referred to as: 'WVF'). The vehicles also have additional requirements to meet, e.g. the emission levels, year of registration and special furnishing. These additional requirements have been further outlined in Deliverable 4.1, under paragraph 3.1.1.

The Vehicle Owners are the companies operating in grocery chains, retail chains, newspaper delivery networks, car rentals, spare parts and/or wholesalers. They will be the main providers of vehicles of the WVF in the e-commerce standard set up pilot case, as the companies that operate in these branches possibly have unutilized vehicle capacity during the day.

Each vehicle from the Vehicle Owners fleet (each consisting of at least three vehicles) must be available for at least four consecutive hours, as stated in Deliverable 4.1. Furthermore, all the vehicles must be equipped and licensed for use on public roads and covered by insurance. Even though it is most likely that almost all the vehicles will meet these (basic) requirements, the part of insurance coverage requires special attention and will be set out in paragraphs 3.4.1. and 3.4.2.



Moreover, to ensure that the vehicles meet the requirements imposed by NexTrust, such as the minimum required loading space, the layout of the vehicle doors, the vehicle loading space configuration and load security arrangements, the Driver is able to rate the vehicles. This data will be processed and analyzed by the NexTrust e-commerce platform. The Vehicle Owners and Trustee can view all the ratings of the vehicles, but only the Vehicle Owner can see ratings which concern his own vehicles.

2.3.3 The Drivers

Another essential 'resource' for (the set-up of) the WVF is, next to a sufficient amount of Vehicles, a pool of (potential) Drivers. When constructing a pool of (potential) Drivers, the requirements for Drivers and operating hours of the delivery network should be taken into account.

As the unemployment rate in Germany was approximately 6.0 % in 2016, more than 2.6 million people were unemployed in 2016. As the network has a so-called open approach, it is possible for every person with a valid driver's license to take part of the network. The Driver can decide on a daily basis if he wishes to drive a tour for the NexTrust e-commerce network. This concept is based on shared economy models like Uber and Lyft. The decision whether the Drivers will be employed by the Trustee as employees or on a self-employed basis (independent contractors) has yet to be made. The legal consequences of these two employment strategies will be further outlined in paragraph 3.1.

This flexibility, combined with the fact that the WVF's operating hours will mainly cover afternoon and evening hours, as vehicles are underutilized during this time of the day, means that driving a White Van will generally be a part time job. This means that the pool of potential Drivers can be large, as it can also include people that are not unemployed, such as (university) students or persons with marginal employments or people who wish to have a part time job. Thus, NexTrust could potentially benefit (marginal) (un)employed people by offering them the possibility to drive for the NexTrust network, while establishing a sufficient pool of Drivers.



The Driver's task is to drive a predetermined tour with several stops to deliver the parcels from Retailers to the End Consumer. Every distance that gets travelled by the Driver or the parcel is being tracked and monitored by the NexTrust e-commerce platform.

Also, to ensure the quality of the service, the NexTrust e-commerce platform also processes and analyzes the ratings of the tour, rated by the Driver, and the ratings of the Drivers, rated by the Vehicle Owner, the Retailer and the End Consumer.

The Drivers can view all the ratings that have been created for him. If the Driver's ratings are poor, the Trustee may exclude the Driver. However, before a Driver will be excluded, a feedback loop will be established, containing the reasons for the insufficient ratings. Based on the feedback loop the Trustee can also decide if the Driver for example needs more training.

2.3.4. The Retailer

The e-commerce Retailers can be divided into mere e-commerce Retailers, which are e-commerce Retailers that solely sell products via the internet and generally don't own brick-and-mortar store(s) or storage facilities in urban areas, and multichannel-Retailers, which are e-commerce Retailers that sell customer goods and/or services to customers through multiple channels. Shipments of mere e-commerce Retailers will be transported directly from the Retailer to the End Consumers, while shipment of multichannel-Retailers will be disassembled in one transport from the Retailer to the consolidation center and from the consolidation center to the End Consumers.

Therefore, the platform differentiates two situations:

1. Direct deliveries from the Retailer to the End Consumer
2. Indirect deliveries (multiple transports) via a consolidation center



The determination of needed transports is an essential process for the reduction of unnecessary tours. Important is to note, that there are no contractual relationships between the Drivers and the Retailers, nor between the Vehicle Owners and the Retailers.

2.3.5 The End Consumer

The End Consumer receives, after ordering via the webstore of, and paying the remuneration to, the e-commerce Retailer, a separate email offering the option to pick a time slot for delivery. This option is only active for a specified amount of time. Via the link in the e-mail, the End Consumer can book the preferred time slot on the NexTrust portal, that can be entered via the website or app. If an End Consumer has entered his (mobile) phone number, he will receive a text message one hour before the actual delivery or possible delays. If the End Consumer doesn't wish to enter, or has not entered his (mobile) phone number, the End Consumer can always view the current status and tracking information of a shipment via the NexTrust portal.

On each tour stop the time schedule for the remaining tour stops is recalculated to make sure that the End Consumer can be notified one hour before the estimated arrival time.

After delivery, the End Consumers can rate the Driver. These ratings will be processed by the Platform Operator (Trustee) to ensure the quality standards.



3. The General Legal Framework

In the following, a General Legal Framework for collaboration in e-commerce and the legal basis for CITS/ICT will be drafted.

The General Legal Framework is based on the following fields of law: Employment Law (paragraph 3.2), Insurance Law (paragraph 3.3), Transportation and Logistics (paragraph 3.4), Privacy and Data Protection (paragraph 3.5), Intellectual Property Rights (paragraph 3.6), and Competition Law (paragraph 3.7).

3.1. Employment Law

As stated in paragraph 2.3.3 the Drivers will be employed by the Trustee as employees or on a self-employed basis (independent contractors). The following paragraphs will elaborate on these two different options, followed by significant attention points.

3.1.1 The Driver as an Independent Contractor

In May 2016 a new Dutch Act came into effect: the Assessment of Employment Relationships (Deregulation) Act (In Dutch: *Wet DBA*). This Act determines whether the contract that has been concluded between the contracting parties should be qualified as an employment contract or an employment relationship, and thus if there is an obligation to deduct payroll taxes.

The Trustee has to assess whether the execution of the assignment (driving a predetermined tour and delivering parcels) can be seen as an employment service or not. This assessment can be done by answering the following set of questions, as published on the website of the Dutch Tax Authority:

- Does the self-employed person have the obligation to fulfill the job personally?
- Is there an authority relationship between the Trustee and the self-employed?
- Does the self-employed receive salary?



In case of doubt concerning the qualification of the relationship between the Trustee and the Driver, the Trustee can use model agreements that have been made available by the Tax Authorities. However, when the outcome of the questions state that the relationship between both parties resembles an employment contract, it is not possible for the Trustee to employ the Driver on a self-employed basis.

If the Driver is employed on a self-employed basis by the Trustee and the Dutch Tax Authority considers that this qualification is incorrect, no penalties or additional charges shall be filed against the Trustee until 2020, due to the suspension of penalties, as the Assessment of Employment Relationships (Deregulation) Act generated a lot of imbalance amongst employers and independent contractors. The Dutch government is currently working on new legislation that presumably will enter into force on January 1, 2020.

If the Trustee decides to enter into a relationship with a self-employed person, the Trustee is not obliged to insure the self-employed person for continued payment in case of illness, accrual of pension or the unemployment benefit, as these are responsibilities that belong to the independent contractor. The independent contractor can, however, voluntarily insure themselves. This could result in the independent contractor asking for a higher fee per hour due to his insurance costs.

3.1.2. The Driver as an Employee

Contrary to the abovementioned, Trustee does have to take into account some of the elements as stated above for an employee with an employment contract.

An employer (Trustee) is obliged to take out insurances for his employees (working on basis of an employment contract). The insurance for incapacity for work or unemployment is optional.

The accrual of pension for a *normal* employee depends on whether or not the Trustee has included this in the contract. On the other hand, a self-employed person does not accrue pension in the first place (only if he has arranged it himself).



According to Dutch Employment Law, a termination may not take place without a valid reason. There are only several ways to terminate agreements, if they do not already end by operation of law. Termination can take place if both parties would agree on ending the agreement mutually by a settlement agreement. The (employment) contract can also be dissolved by the court.

Dysfunctioning

In case the Trustee wants to terminate the contract with an employee who does not meet the requirements, it is recommended that the Trustee starts an improvement process with the concerned employee. There needs to be a description of the dysfunction and how parties will try to improve this dysfunction (think of trainings and courses etcetera). It is of the outmost importance that the Trustee gives the employee the opportunity to improve himself. At the same time it is highly recommended that the Trustee constructs all the files about the dysfunction. If the improvement process did not have the result the parties had in mind, Trustee needs to look for the possibility of repositioning the employee. If that is not possible employer should request for dissolution at the court.

Fair compensation

When a termination – without a valid reason but nevertheless with the consent of an employee – would take place, the Trustee needs to keep in mind that the employee will probably only accept the termination when a fair compensation will be paid.

Transition fee

Another part of the Dutch Law is the part of the transition fee. At the moment, the Dutch Civil Code stipulates that anyone that involuntarily gets terminated and has been employed for at least two years, is entitled to receive a transition fee. This is 1/6th of the monthly salary per six months that someone is working. Important note on this subject: the government is in discussion to remove the two-year term wherefore the transition fee applies directly. This is still on the low.



Based on the two different options as stated above, employing the Driver as an independent contractor is much more interesting for the Trustee, as this offers the Trustee and the Driver flexibility, because it is up to the Trustee to determine whether and which Driver is needed, and for how long, whilst the Driver has the freedom to accept and decline assignments.

3.2.3. Other points of attention

Bad rankings not a valid termination cause

The Drivers can view all the ratings that the End Consumers, Vehicle Owners and Retailers assign to him. If the Driver's ratings are poor, the Trustee may exclude the Driver. However, before a Driver will be excluded, a feedback loop will be established, containing the reasons for the insufficient ratings. Based on the feedback loop the Trustee can also decide if the Driver for example needs more training.

In case the courses would not lead to a satisfactory result, the Trustee wants to terminate the contract with those employees who score poorly.

A termination on the grounds of poor ratings would not be sufficient enough to end an employment relationship according to Dutch Law. As mentioned above, the Trustee would have to start an improvement process to help the employee, or otherwise to find him/her a better position. As a last resort and only if the improvement process did not help, the Trustee can go to the court.

Collective labor agreement

Finally, it should be considered that the Trustee could be subject to the collective labor agreement 'Professional Transport' (*CAO BGV: Beroepsgoederenvervoer*).

In the collective labor agreement, professional transport is defined as 'transport of goods with one or more trucks that is performed against one or more third parties, not being own transport'. Based on the conditions and knowing that the Trustee would not be eligible for the exceptions, it can be concluded that it is well arguable that the Trustee would fall within the scope of the collective labor agreement because of its activities. This would mean that the Trustee has to apply the same



employment conditions as included in the collective labor agreement and would be on equal terms with the rest of the industry.

3.2 Transportation and Logistics

3.2.1 The national carriage of goods

The Driver

To the transportation of goods by road in the Netherlands, the most recent version of the General Transport Conditions (hereinafter referred to as '**AVC 2002**') applies.

Carriers in the Netherlands have to apply for licenses from the National and International Road Transport Organization. Therefore, the Driver will need to apply for the license. The license that the Driver is required to have, depends on the destination of the cargo the Driver is transporting.

On the basis of the AVC 2002, the carrier is not liable, if loss or damage is caused by:

- Transport in an open vehicle if this method of transport has been agreed upon;
- The lack of or defective packaging of items which should have been properly packaged;
- The processing, loading, unloading or stowing of the load by or on behalf of a party with an interest in the load;
- The nature of the load;
- Differences in temperature, weather and humidity conditions, unless the vehicle is specially equipped for these circumstances;
- An incomplete address or incomplete lettering on the shipment.

The Trustee

Trustee acts as an intermediary between the Retailer and the WVF as it arranges the storage and shipping of the goods on behalf of the Retailers. The Trustee utilizes and matches the different goods, vehicles, Drivers and routes with each other, in order to move the Retailers' goods along the most economical route by working out various bids and choosing the one that



best balances the speed, the costs and the reliability. Therefore, the Trustee acts as a so-called Freight Forwarder.

To any form of service which the forwarder shall perform within the Netherlands, Dutch Forwarding Conditions, also called the General Conditions of the FENEX (Netherlands Association for Forwarding and Logistics) shall apply.

3.2.2 Cross-border carriage of goods

To cross-border transportation the Convention on the Contract for the International Carriage of Goods by Road (hereinafter referred to as 'CMR') applies. The CMR is a United Nations convention, signed in Geneva on 19 May 1956. It standardizes the conditions governing the contract for the international carriage of goods by road, particularly with respect to the documents used for such carriage and to the carrier's liability.

On the basis of the CMR, the contract between the Retailer and the Driver must be confirmed by the making out of a consignment note. However, the absence or loss of such a document will not prevent the convention provisions from being applied, therefore, the goods that are carried by the carrier will be subject to the convention in any case.

The carrier is liable for loss, damage or delay to the goods between the time they are taken into its charge until the time they are delivered.

3.2.3. Contractual relationships between the different stakeholders

The contracts between the stakeholders shall describe their relationship, the respective rights and obligations concerning their cooperation and consisting of a description of services, the agreed remuneration, the duration of the contract and possibilities to terminate, rules on liability and insurance, rules on confidentiality and a separate Data Processing Agreement (paragraph 3.3.2).



The contract between the Trustee and the Retailer

Between the Trustee and the Retailer a contract will be drafted that is in line with the market standard contracts on courier-express-parcel-services (CEP-services).

These provisions shall describe the trusted platforms' services regarding the delivery of shipments from the Retailer to the End Consumer. The contract should also include a provision on liability and insurance with reasonable limitations of the liability of the Trustee for its delivery services (paragraph 3.5.1).

The remuneration shall mention the abovementioned costs of an insurance and provisions on price adjustments in case the cost parameters change, such as minimum wages, energy costs and the structure and volume of the shipments.

The contract shall be finalized with the signature of the Trustee and the Retailer. The contract with accompanying documents shall be exchanged either by post or by fax.

The contract between the Trustee and the Vehicle Owner

Between the Trustee and the Vehicle Owners Frame Contracts will be concluded. These Frame Contracts in particular contain the following obligations of the Vehicle Owners:

The Vehicle Owners shall add and administer their data, such as the number and the location of the available vehicles, via the secured homepage of the platform. The data shall be updated frequently and whenever necessary; and

The Vehicle Owners shall provide vehicles in the agreed condition at the agreed minimum times.

The contract shall be finalized with the signature of the Trustee and the Vehicle Owner. The contract with accompanying documents shall be exchanged either by post or by fax.



The contract between the Trustee and the Driver

The Drivers will either work as independent contractors and rent the vehicles themselves using the trusted platform as an agent or the trusted platform hires them as marginally employed. The trusted platform will conclude a respective contract with the Drivers.

The identity of the Drivers and their driving license will be checked by the trusted platform before conclusion of a contract.

3.3 Insurance Law

As NexTrust will build a large trusted collaborative multiple vehicle delivery network, risk management and liability insurance will be one of the important key considerations for the NexTrust business operations. In order to provide protection against such risks, insurances must be taken out. The following paragraphs shall elaborate on the insurance obligations of the different stakeholders.

3.3.1. Insurance obligations of the Trustee

To provide protection against any potential risks, the Trustee can cover its potential risks by taking out a so-called 'Freight Forwarder Legal Liability Insurance' (German: *Verkehrshaftpflichtversicherung*). The Freight Forwarder Legal Liability Insurance is an insurance which covers a freight forwarder or load broker for their liability for physical loss of or damage to customers' cargo and for their consequential loss resulting from such loss or damage.

3.3.2. Insurance obligations of the Vehicle Owners

Regarding the legally required motor insurance there are two possible solutions: Either the Vehicle Owners expand their existing insurance in order to cover the situation that their vehicle are used by third parties, not employed by them. Or the trusted platform intermediates an insurance coverage by an insurance company for the Vehicle Owners during the pilot case.



3.3.2. Insurance obligations of the Drivers

If the Drivers will work as independent contractors, a non-owner car insurance could potentially mitigate risks such as property damage, as the Drivers are not the Vehicle Owners.

3.4 Privacy and Data Protection

Creating a large trusted collaborative multiple vehicle network, means that the Trustee needs to collect, analyse and exchange ('process') (personal) data received from and disclosed to Retailers, Drivers, Vehicle Owners and other stakeholders. Such data not only contains personal data of End Consumers but also financial information, such as the payment details of Drivers and Vehicle Owners. Without such data, the Trustee cannot provide its services.

3.4.1. General Data Protection Regulation (EU) 2016/679

In order to ensure a high level of protection personal data of natural persons, so-called 'data subjects', in the digital economy and to ensure a level playing field for organizations responsible for processing personal data, the General Data Protection Regulation (hereinafter referred to as 'GDPR') will be applied as from May 25th, 2018. It will replace current national privacy legislation, in the Netherlands: the Dutch Data Protection Act ('Wet bescherming persoonsgegevens') and the Privacy Directive (95/46/EC) and puts a greater emphasis on data subjects' rights, such as the right to be forgotten and data portability and establishes more strict responsibilities for 'controllers' and 'processors' of personal data.

The Retailer, Trustee, Driver and Vehicle Owner will all process personal data, such as name, address details, telephone numbers and e-mail addresses. The legitimate ground for processing such personal data for these stakeholders is considered to be the performance of the (purchase) contract between the Retailer and the data subject. Both the Retailer and the Trustee should be regarded as data controllers with respect to the delivery of the goods purchased by End Consumers, due to the fact that both determine the purposes and means



with respect to this delivery. The Trustee is also considered to be the controller of personal data with regard to personal data of Drivers and Vehicle Owners.

3.4.2. The processing of personal data by the different Stakeholders

Retailer

The Retailer – as a controller – will process personal data of the End Consumer, e.g. name, address and payment details, in order to process the order and preparing it for delivery. The Retailer can place orders for the delivery of the individual shipments via the secured homepage of the NexTrust platform or via the interface from its IT-system to the NexTrust platform.

Trustee

The Trustee –as a (joint) controller – will process personal data of the End Consumer, e.g. name, address, e-mail address of the End Consumer, in order to process, dispatch and deliver the parcels to the End Consumer.

The Trustee might, however, also process personal data of the Drivers and the Vehicle Owners, e.g. name, address, e-mail address, Vehicle Registration Number, payment details, ID and/or driving license documents of the Drivers and Vehicle Owners, in order to identify the Drivers and the Vehicle Owners, to match the Drivers to the Vehicles, to process their ratings and to predetermine the route.

When the Drivers are employed by the Trustee, the Trustee will potentially also process medical data of the Drivers, for example whenever the Driver has to take a sick leave. Information on the medical condition of the Driver is one of the special categories of personal data under Article 9 GDPR. However, the processing of the medical data of the Driver in such circumstances is necessary for the purposes of carrying out the obligations and exercising specific rights of the Trustee in the field of employment and social security and social protection law. In such



predetermined circumstances, the processing of such special category data is not prohibited according to the GDPR.

Driver

The Driver will process personal data of the End Consumer, e.g. name and address, in order to process, dispatch and deliver the order to the End Consumer. The Driver should be regarded as a processor when not employed by the Trustee, with regard to End Consumer data.

Vehicle Owner

The Vehicle Owner will process the name and contact details of the Driver that picks up and drives the Vehicle. Personal data of End Consumers shall not be disclosed to or processed by Vehicle Owners.

3.5.3. Data Subjects Rights

Each data subject can exercise certain rights under the GDPR, which should be taken into account by the Trustee:

- **Right to be informed:** data subjects have the right to be informed about the processing of their personal data. They should be informed of a.o. the purposes for processing their personal data, retention periods, security measures, and to which receivers their personal data is disclosed.
- **The right of access:** data subjects have the right to access their personal data and to acquire supplementary information in order for them to be aware of and verify the lawfulness of the processing.
- **The right to rectification:** data subjects have the right to have inaccurate personal data rectified, or completed if their personal data is incomplete.



- **The right to erasure:** data subjects have the right to have personal data erased, also known as ‘the right to be forgotten’.
- **The right to restrict processing:** data subjects have the right to request the restriction or suppression of their personal data.
- **The right to data portability:** data subjects have the right of data portability, which means that they have the right to obtain and reuse their personal data for their own purposes from one IT environment to another.
- **The right to object:** data subjects have the right to object the processing that is based on the legitimate interests or the performance of a task in the public interest, direct marketing, and the processing for purposes of scientific or historical research and statistics.

Therefore, the Trustee must be prepared to promptly respond to the abovementioned requests potentially made by data subjects. These rights should therefore be addressed in relevant privacy policies as an accepted instrument to inform the data subjects about their rights and to inform them on the procedures they will have to follow in order to exercise these rights (paragraph 3.4.5).

3.4.4. Accountability and governance

As stated above, the Retailer, the Trustee, the Driver and the Vehicle Owner will all process personal and/or special category data. Therefore, appropriate technical and organizational measures have to be taken in order to meet the requirements of accountability and governance, which follow from the GDPR. The Trustee could use the following steps to become compliant with the GDPR.



Data Flow Chart

Creating a data flow chart (as a blue print of all data flows in an organization) is not mandatory for GDPR compliance. However, in order to identify all processing activities, grounds of processing, necessary (security) measures, applicable retention periods and the possibility to mitigate potential risks, a data flow chart could be the perfect instrument.

Register of Processing Activities

Following the completion of the data flow chart, the Trustee should register its processing activities in a register (art. 30 GDPR). That record shall contain all of the following information:

- the name and contact details of the controller and, where applicable, the joint controller, the controller's representative and the data protection officer;
- the purposes of the processing;
- a description of the categories of data subjects and of the categories of personal data;
- the categories of recipients to whom the personal data have been or will be disclosed including recipients in third countries or international organisations;
- where applicable, transfers of personal data to a third country or an international organisation, including the identification of that third country or international organisation and, in the case of transfers referred to in the second subparagraph of Article 49(1), the documentation of suitable safeguards;
- where possible, the envisaged time limits for erasure of the different categories of data;
- where possible, a general description of the technical and organisational security measures.

Data Protection Impact Assessment (DPIA)

In certain circumstances, especially in case of the processing of special category data, executing a 'Data Protection Impact Assessment' is mandatory. A Data Protection Impact Assessment is a common tool to identify and minimize potential data protection risks.



Internal and External Privacy Policies

Internal and external privacy policies are known instruments to inform the data subjects about their rights and the procedures they have to follow to exercise these rights. An internal privacy policy consists for example of information on the monitoring of Drivers and how Drivers can access their data, while an external privacy policy consists for example of information on the website of the Trustee on how End Consumers can file a request to exercise their data subjects rights, for example their right to be forgotten.

Data Processing Agreements

Controllers frequently outsource the processing of the personal data of the data subjects to various third parties or service providers, which are considered processors, under the responsibility of the controller. As mentioned, the Trustee is considered to be a controller of personal data : it determines for which purposes and with which means personal data of data subjects is processed, in order to build a trusted collaboration multiple vehicle delivery network. However, the Trustee might also outsource the processing of the personal data of the Retailers, Drivers, Vehicle Owners and End Consumers.

For example, the Trustee will outsource the processing of personal data to 2Degrees, as 2Degrees will built the IT-backbone and moderate the NexTrust platform. Whenever the Trustee outsources such processing of personal data, a Data Processing Agreement must be concluded between the Trustee and the processor, e.g. 2Degrees.

Important provisions in a Data Processing Agreement include provisions on the nature and purpose of the processing, the type of personal data and categories of data subject, the engagement of a sub-processor, submitting the processor to audits and inspections, data breach notification provisions and data subject rights.



Data Breach Protocol

Under specific circumstances, a data breach will have to be reported to the national supervisory authority and the data subject. It is important for the Trustee to act adequately when a data breach occurs. Therefore, a Data Breach Protocol is helpful to comply with data breach notification obligations.

Data Protection Officer

Under the GDPR, appointing a Data Protection Officer (hereinafter referred to as 'DPO') if the organization is a public authority (except for courts acting in their judicial capacity), or if the core activities require large scale, regular and systematic monitoring of individuals (for example, online behavior tracking); or if the core activities consist of large scale processing of special category data or data relating to criminal convictions and offences. As the Trustee will process a lot of personal data, it already would be recommended to appoint a DPO as a 'best practice'. Tasks of the DPO include supervising and evaluating the processing activities within an organization and being involved in the decision making process concerning privacy matters.



3.5 Intellectual property rights

In the following paragraphs we will elaborate on the intellectual property rights which could occur or are established in the NexTrust project. In this regard we focused once more on the position of the Trustee, as the entity responsible for the collection and analyzation of all relevant data and as a platform provider. Please note that the legal framework with regard to intellectual property rights is set out from a Dutch legal perspective. Due to national regulation throughout Europe, there might be differences that require further research.

3.5.1 Copyright

In order for the Trustee to provide its services, a platform to collect and analyze all the relevant data will be developed and maintained. In the context of building such a software platform and accompanying applications and materials, copyrights on the software and other materials may arise. Software is protected by copyright if it is original in the sense that it is the author's own intellectual creation. This means that, in order to be protected by copyright, a certain level of creativity of the creator has to be involved. When writing software or developing an application, a programmer has to make certain choices, for example menus, texts for dialog boxes and so on. These choices usually indicate that the work was the result of creative activity and therefore is the author's own intellectual creation.

In the NexTrust context it might be possible that a source code protected by copyright will be developed. It must be noted that functionality, the programming language and the underlying ideas and principles of a program are not protected. It is very well possible that the Trustee will instruct a third party to develop the software or the app. If this were the case, the Trustee must make sure that the copyrights that may arise, will be vested in the Trustee through a developing agreement that specifies the Trustee as the owner of all intellectual property rights, including copyrights.



The copyright owner can act against any party infringing on its copyrights. If there are many similarities, the author of the older work may allege the author of the younger work has copied his work. But if the latter author can show (for example, with early versions, flowcharts and so on) that he independently developed his work, there is no infringement of the copyright on the older work. Good version control management can be very important in proving independent creation of a computer program.

Copyrights do not need to be registered in any register in order to be protected, they arise simply by creating the work and are vested in the author of the work.

Use of the software (the platform) can be provided by means of the applicability of terms of use (as a free license to use), which should be adhered by all users of the platform.

3.5.2 Database rights

A sui generis database right is considered to be a property right. It is comparable to, but distinct from copyright, and it exists to recognize the investment that is made in compiling a database. This means that if the Trustee invests in compiling a database of the data collected and analyzed, database rights may occur. Database rights are created automatically and vested in the creator, and do not have to be registered to have effect.

The term of protection for a sui generis database right is fifteen years from the first of January of the year following the date of completion. Should database rights arise, the Trustee has the right to prevent extraction and re-utilization of the whole or of a substantial part, evaluated qualitatively and/or quantitatively, of the contents of that database.

3.5.3 Trademark law

Trademarks serve their owners in advertising and selling of their products and services. They also enable consumers to make their choice between the various goods and services available



on the market. A trademark is any sign that individualizes the goods of a given enterprise and distinguishes them from the goods of its competitors or other third parties. In order to fulfil their distinguishing function for consumers – who wish to make a choice between various products and services – trademarks must be legally protected. Otherwise competitors could use identical signs for the same or similar products and services. That would ultimately lead to confusion as to the origin of the goods or services.

In order for the Trustee to identify the origin of its services, it might be worthwhile to apply for trademark registrations. In the European Union there is actually a four-tier system for registering trademarks. First of all it is possible to register via the national route, a trademark application is filed at any national IP office. Second, there is the Benelux system. A Benelux trademark registration offers protection in the Netherlands, Belgium and Luxembourg. The third route is a trademark registration at the European Union Intellectual Property Office. An EU trademark offers protection in all 28 member states. Therefore, we consider this an obvious method of registration within in the NexTrust context. A fourth possible way is the international registration, A national or EU trademark application is required to expand protection internationally.

After registration of the trademark, the term of trademark protection is ten years. It can be renewed indefinitely on payment of additional fees.

3.5.4 Liability for counterfeit goods

Further to the trademark rights that might be acquired by the Trustee, we would also like to note that the Trustee might also encounter with IP related issues regarding the products of third parties, during its business activities. Counterfeit products are a growing problem for (luxury) brands. IP owners have taken aim at the operators of for example auction websites and online marketplaces, asserting that these defendants are liable for contributory infringements due to sales of counterfeit goods on their websites.



As the party responsible for collecting and analyzing the data and providing a platform, it appears that the Trustee has a neutral role and is in principle excluded from liability. We do not foresee any direct liabilities for the Trustee. If however the Trustee plays an active role by which it has knowledge of or control over stored data concerning illegal facts and circumstances, the Trustee might be liable.

Also, it might be possible that a trademark owner will address the Trustee in order to obtain information about alleged counterfeit products or even try to seize any counterfeit products. Therefore it is an issue that might need more attention in the future, depending on the actual roll-out of the NexTrust project, the parties involved and the tasks of the Trustee.

3.5.5 Tradename law

Tradename law is regulated at a national level. According to the Dutch Trade Name Act, a tradename is the name under which a business is conducted. To avoid misleading or confusing the public, the trade name law protects the undertaker. In general this means that another company is not allowed to use the same or a similar name if the risk of confusion exists.

A tradename does not need to be registered in any tradename register in order to be protected. The undertaker using the name can invoke protection. If the Trustee effectively starts using a tradename, tradename rights will be established.

3.5.6 Domain names

It is likely that the Trustee will register a domain name to provide its services. Domain names are issued by so-called registrars. The top-level domain names “.com” are issued by registrars accredited by ICANN (the International Corporation for Assigned Names and Numbers).

In practice it is possible that the Trustee will be involved in disputes with respect to domain names. Domain names are regulated by regular national law, such as trademark law,



tradename law and liability law, but there are also specific policies developed by specialized entities. For example, ICANN and WIPO (the World Intellectual Property Organization) have developed the Uniform Dispute Resolution Policy. This policy attempts to provide a mechanism for rapid, cheap and reasonable resolution of domain name conflicts, avoiding the traditional court system for disputes by allowing cases to be brought to one of a set of bodies that arbitrate domain name disputes.

3.5.7 Trade secrets and knowhow

A trade secret is a valuable piece of information for an enterprise that meets the following requirements:

- it is secret in the sense that it is not generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
- it has commercial value because it is secret;
- it has been subject to reasonable steps under the circumstances to keep it secret, by the person lawfully in control of the information.

Following this definition it might be very well possible that the Trustee will encounter such trade secrets in its course of business. As European companies are increasingly exposed to the misappropriation of trade secrets, the existing diverging national laws on the protection were recently standardized on a European level by means of the Trade Secrets Directive. This Directive will be implemented in the Netherlands in the Dutch Trade Secrets Law, which is expected to enter into force June 2018. It will ultimately enable companies to exploit and share their trade secrets with privileged business partners across the Internal Market.

Based on the Dutch Trade Secrets Law, the use or disclosure of a trade secret shall be considered unlawful whenever carried out, without the consent of the trade secret holder, by a person who is found to meet any of the following conditions:



- having acquired the trade secret unlawfully;
- being in breach of a confidentiality agreement or any other duty not to disclose the trade secret;
- being in breach of a contractual or any other duty to limit the use of the trade secret.

The Trustee and Retailers address the issue of trade secrets by concluding non-disclosure agreements.

3.6 Competition law

The legal matters and risks for parties cooperating in the supply chain from the perspective of competition law have been described in much detail in the report concerning Nextrust Deliverable 6.3. Its most essential elements as well as the solution which has been developed to address the most important concerns - the Trustee Model - will be summarized in this chapter.

3.6.1 The cartel prohibition

Very generally, any cooperation between competitors or even potential competitors bears an inherent risk of collusion i.e. a violation of the cartel prohibition. This applies under national competition law, under EU competition law, and also in many countries abroad.

In addition, agreements between cooperating parties who are not competitors but do prevent, restrict or distort competition, for instance when they enter into exclusive arrangements, shall be subject to review from a competition law angle.

3.6.2 Competitions risks for the E-commerce pilot

The main competition concerns for a cooperation like the E-commerce pilot lies with the direct or indirect exchange of commercially sensitive information between competing undertakings (in the E-commerce project Vehicle Owners, Drivers and/or Retailer). Such concerns may arise

37



regardless whether the information will be shared via the platform or otherwise, for instance during a meeting.

Once (potential) competitors are involved one of the main legal requirements is that the exchange of commercially sensitive information shall be restricted to such information as is strictly necessary for a proper functioning of the cooperation. As a result, the cooperating parties may need to build in safeguards to protect them against 'excessive' prohibited information exchange.

3.6.3 The Trustee Model as a safeguard against prohibited information exchange

A third party such as a Trustee may function as a 'blackbox', hence protecting parties against prohibited exchange of commercially sensitive information.

Note that this Trustee (and any other platform manager or third party processing and/or sharing commercially sensitive information) may be held responsible and liable as a so-called 'cartel facilitator' in case of a violation of the cartel prohibition.

Nextrust Deliverable 6.3 describes the so-called Trustee Model which was developed in the course of the NexTrust project to among others avoid prohibited information exchange. This Trustee Model encompasses the so-called NexTrust three step methodology (identification phase, preparation phase, implementation phase). Reference is made to Chapter 6 of Nextrust Deliverable 6.3.

With regard to the three step methodology and the role of the trustee in general, reference is also made to NexTrust Deliverable 6.2 ('Report on the legal aspects of the initial phase of matchmaking and the pre-contractual phase') and to NexTrust Deliverable 6.4 ('Report on the legal definition of the trustee concept and legal forms').



3.7.3 Best Practice Rules for the Trustee

As may be clear from the foregoing, the Trustee has an important task in ensuring compliance with the competition rules throughout the entire cooperation. In the context of NexTrust, best practices have been developed to provide guidance for Trustees. These Best Practices have are set out in Nextrust Deliverable 6.3 (Chapter 6.6).

The Trustee shall be trained to recognize commercially sensitive information and its various forms of exchange. It shall liaise with a competition expert in case of questions or concerns.

Another valuable measure to ensure compliance with competition law is to monitor the communication among the (potential) competitors and with (or via) the Trustee and/or E-commerce platform. Such monitoring shall be done by means of an audit held on a regular basis (NB the competition authorities require quick interference and the earliest stages of a violation).



4. Summary of all the Legal Agreements based on the Standard E-Commerce Set Up

Employment Law

The Trustee will have to conclude a contract with the Driver. Based on whether the execution of the assignment (driving a predetermined tour and delivering parcels) can be seen as an employment service or not, the contract that has been concluded between the contracting parties could be qualified as an employment contract or an employment relationship.

Transportation and Logistics

Between the Trustee and the Retailer a contract will be drafted that is in line with the market standard contracts on courier-express-parcel-services (CEP-services). These provisions shall describe the trusted platforms' services regarding the delivery of shipments from the Retailer to the End Consumer.

The Trustee will conclude Frame Contracts with the Vehicle Owners.

The Drivers will either work as independent contractors and rent the vehicles themselves using the trusted platform as an agent or the trusted platform hires them as marginally employed. The trusted platform will conclude a respective contract with the Drivers.

Privacy and Data Protection

The Trustee and its processors will have to conclude data processing agreements. All employees of the Trustee should comply with the confidential nature of personal data. Furthermore, the Trustee should have a privacy statement in place to inform data subjects about a.o. their rights.

Confidential information
as per Art. 36 GA



Intellectual property rights

In order to protect confidential information, including trade secrets, non-disclosure agreements should be concluded between the Trustee and the Retailer. Furthermore, confidentiality obligations should be part of contracts with Drivers and Vehicle Owners.

Use of the NexTrust software platform should be provided by means of 'terms of use', to be accepted by all users.



Final Conclusion

Based on the abovementioned, it must be concluded, that in order to set up an e-commerce platform, several options must be examined in greater depth, such as whether the Driver will be employed as an employee or as an independent contractor and with which parties the Trustee will have to conclude a data processing agreement. The abovementioned also revealed potential legal, organizational and security risks for NexTrust.

In order to cover those legal and organizational risks, several legal agreements should be concluded, for example by concluding legal agreements between the Trustee and the Retailer, such as an agreement on courier-express-parcel-services and a Non-Disclosure Agreement.

But also by drafting policies, organizational and legal risks can be hedged, such as a Data Breach Protocol, external and internal Privacy Policies and a policy on the dysfunctioning of employees.

Not all risks can be hedged with 'paper based' measures. In order to prevent direct or indirect exchange of commercially sensitive information between competing undertakings, the Trustee should be trained to recognize commercially sensitive information and its various forms of exchange. Also, it should liaise with a competition expert in case of questions or concerns.

Once (potential) competitors are involved one of the main legal requirements is that the exchange of commercially sensitive information shall be restricted to such information as is strictly necessary for a proper functioning of the cooperation. The cooperating parties may potentially also need to build in safeguards to protect them against 'excessive' prohibited information exchange.