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**CONTRACT**

ON DESIGN REVIEW SERVICES AND DESIGN EXPERTISE SERVICES FOR RAIL BALTICA RAILWAY  
PROJECT IN LITHUANIA

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by and between:

[ \_\_\_\_\_ ]  
*ESP*

and

**RB Rail AS**  
*the Principal*

where the Principal is also acting in the name and on behalf of

**AB "Lietuvos geležinkelių infrastruktūra"**  
*the Beneficiary*

Contract registration No

CEF Agreement No

Procurement identification No

RBR 2019/15

Vilnius, [ \_\_\_\_\_ ]



**Co-financed by the Connecting Europe  
Facility of the European Union**

**DESIGN REVIEW SERVICES AND DESIGN EXPERTISE SERVICES CONTRACT FOR RAIL BALTICA  
RAILWAY PROJECT IN LITHUANIA**

This Contract has been entered into on [●] 2019 by and between:

- (1) [●], a company duly incorporated and operating under the laws of [●], registration number: [●], tax registration [●], registered address: [●] ("ESP"), represented by [●] acting in accordance with [●],
  
- (2) **RB RAIL AS LITHUANIAN BRANCH** (RB RAIL AS LIETUVOS FILIALAS), a branch acting in the name of and representing RB Rail AS, registration number: 40103845025, registered in the Republic of Latvia, registered address: Riga, K. Valdemara street 8-7, LV-1010, while a branch is duly incorporated and operating under the laws of the Republic of Lithuania, registration number: 304430116, registered address: Gedimino pr. 20, Vilnius, 01103, Lithuania ("**Principal**"), represented by [●] acting in accordance with [●],  
  
acting in the name and on behalf of
  
- (3) **AB "Lietuvos geležinkelių infrastruktūra"**, registration number: 305202934, registered address: Mindaugo g. 12, LT-03225 Vilnius, Lithuania, ("**Beneficiary**") which as mentioned above is represented by the Principal on the basis of Clauses 3.2.2 and 3.3.1 of the Contracting Scheme Agreement,

Hereinafter in the present Contract jointly referred to as "**the Parties**", and each individually as "**the Party**",

Whereas,

- This Contract is entered into under the Global Project which includes all activities undertaken by the respective beneficiaries and implementing bodies of the Republic of Estonia, the Republic of Latvia and the Republic of Lithuania in order to build, render operational and commercialise the Rail Baltica railway – a new fast conventional double track electrified railway line European standard gauge (1435mm) on the route from Tallinn through Pärnu-Riga-Panevėžys-Kaunas to Lithuanian-Polish border, with the connection of Kaunas – Vilnius, and related railway infrastructure in accordance with the agreed route, technical parameters and time schedule;
- For the purposes of the Contract the Principal is acting as an agent and Central Purchasing Body for the Beneficiary as per Clause 3.3.1 and 3.4.1 of the Contracting Scheme Agreement;
- The Beneficiary authorizes the Principal and assigns to the Principal all rights (including, but not limited to, claiming performance in arbitration proceedings or otherwise, claiming damages, statutory interest and contractual penalties, enforcement of the Performance Bond, Advance Payment Bond, and other performance or payment bonds as the case may be, withholding of any remuneration, Service Module Fee, expenditure and losses, enforcement of the warranty obligations, etc.) that may arise from this Contract. All claims made by the Principal against ESP are made on behalf of the Beneficiary;
- The Principal has organised the Procurement in which ESP's Proposal was selected as the winning bid;
- In accordance with the Proposal ESP offered to carry out, perform and complete the Services;
- According to Clauses 3.2.2 and 3.2.5 of the Contracting Scheme Agreement, the Beneficiary has irrevocably authorised the Principal to conclude the Contract insofar as the remuneration does not exceed the approved budget for the particular activity;

- For carrying out the Services, the Beneficiary undertakes to pay ESP the Contract Fee pursuant to the procedure specified in the Contract and assumes any other financial obligations and claims that may arise pursuant to the Contract;
- This Contract is co-financed from the CEF agreement No [●];

The Parties mentioned above have agreed as follows:

## **1. DEFINITIONS AND INTERPRETATION**

- 1.1. In the Contract, unless a different meaning is required by the context, the following terms when capitalised shall have the following meanings:
- 1.1.1. Acceptance Deed – transfer-acceptance deed to be signed by ESP and the Principal in order to certify completion of the Services with respect to the particular Service Module.
- 1.1.2. Advance Payment Bond – advance payment guarantee as indicated in Clause 9 of the Contract.
- 1.1.3. Assignment Order – an order, substantially based on the Annex 6 of the Contract, to be issued by the Principal to ESP, certifying the request to perform Design Review Services and (or) Design Expertise Services towards the specific Service Module indicated in Annex 5.
- 1.1.4. Beneficiary - shall have the meaning indicated in the introductory part of the Contract.
- 1.1.5. Business Day – business day in the Republic of Lithuania.
- 1.1.6. CEF – Connecting Europe Facility of the European Union.
- 1.1.7. Commencement Date – the date when a Design Review Services or Design Expertise Services are commenced on the basis of the Assignment Order with respect to the specific Service Module indicated in Annex 5.
- 1.1.8. Commencement Deed – a deed, substantially based on the form included in Annex 2 of the Contract.
- 1.1.9. Contract – the present Contract, including all the annexes hereto, also the amendments and supplements of the Contract and/or of the annexes hereto concluded under the Contract.
- 1.1.10. Contracting Scheme Agreement - Agreement on the Contracting Scheme for the Rail Baltic / Rail Baltica between RB Rail AS, Ministry of Economic Affairs and Communications of the Republic of Estonia, Ministry of Transport of the Republic of Latvia, Ministry of Transport and Communications of the Republic of Lithuania, Consumer Protection and Technical Regulatory Authority of the Republic of Estonia, Rail Baltic Estonia OU, sabiedrība ar ierobežotu atbildību "EIROPAS DZELZCEĻA LĪNIJAS", AB "Lietuvos geležinkeliai", Rail Baltica Statyba UAB and AB "Lietuvos geležinkelių infrastruktūra", concluded on 30 September 2016.
- 1.1.11. Contract Fee – total amount payable to ESP for completion of all Services regarding the all Service Modules pursuant to the procedure specified in the Contract, VAT exclusive.
- 1.1.12. Day – calendar day in the Republic of Lithuania.
- 1.1.13. Design Documentation – Master Design and Detailed Technical Design documentation, in conjunction, and all accompanying documents as the case may be pursuant to the Contract conditions.
- 1.1.14. Design Expertise Services – shall mean the legally mandated expertise required of the Project designs as specified in Clause 6 of this Contract and Clause 3 of the Technical Specification.
- 1.1.15. Design Review Services – shall mean the Principal's requested review of the Project designs as specified in Clause 5 and Clause 3 of the Technical Specification.
- 1.1.16. Detail Technical Design – the final stage in the Project's design process required to start construction works in the Republic of Lithuania. The Detailed Technical Design corresponds to "*Darbo projektas*" in Lithuanian language, as defined in Clause 1.1.1 of the Technical Specification.

- 1.1.17. ESP - shall have the meaning indicated in the introductory part of the Contract.
- 1.1.18. ESP's Representative – authorized representative of ESP as described in Clause 23 of the Contract.
- 1.1.19. Expert – ESP's (or ESPs employed Sub-Contractor's) staff member, specialist, expert, etc., as the case may be, as indicated in Annex 4 of the Contract, separately.
- 1.1.20. Experts – ESP's (or ESP's employed Sub-Contractor's) staff members, specialists, experts, etc., as the case may be, as indicated in Annex 4 of the Contract, jointly.
- 1.1.21. Force Majeure – events beyond the control and responsibility of the Parties (for example, warfare, strikes, etc., along with other circumstances beyond the reasonable control of the Parties), which could neither be foreseen, nor prevented by the Party.
- 1.1.22. Inception Report – a report, substantially based on the conditions of Clause 4 of the Technical Specification and Clause 4 of the Contract.
- 1.1.23. Master Design – full design documentation package aimed towards preparation of the Detailed Technical Design by considering all legal requirements set out in national construction legislation of the Republic of Lithuania and following the established design guidelines for the Project railway. Master Design corresponds to "*Techninis projektas*" in Lithuanian language, as further defined in Clause 1.1.1 of the Technical Specification.
- 1.1.24. Parties – ESP, the Principal and the Beneficiary, jointly.
- 1.1.25. Party – ESP, the Principal and the Beneficiary, separately.
- 1.1.26. Performance Bond – Contract performance security as indicated in Clause 9 of the Contract.
- 1.1.27. Principal - shall have the meaning indicated in the introductory part of the Contract.
- 1.1.28. Principal's Representative – authorized representative of the Principal as described in Clause 23.1 of the Contract.
- 1.1.29. Procurement - open competition "Detailed Technical Design Review and Design Expertise Services for Rail Baltica in Lithuania" (identification No RBR 2019/15), organized by the Principal.
- 1.1.30. Project – Rail Baltica public use railway infrastructure project within the framework of which a new 1435 mm or European standard gauge railway line will be built in the Baltic States, as described in the Procurement documents.
- 1.1.31. Proposal – ESP's winning bid in the Procurement.
- 1.1.32. Services – shall mean the Design Review Services and the Design Expertise Services and any part thereof as specified in this Contract.
- 1.1.33. Service Module – specific design section to be assessed as part of the Design Review Services or Design Expertise Services procedures stipulated in Clauses 5 and 6 of the Contract and indicated in Annex 5 of the Contract.
- 1.1.34. Service Module Fee - the amount payable for performance of the Design Review Services or Design Expertise Services with respect to a particular Service Module indicated in Annex 5 of the Contract based on the financial breakdown of prices indicated in the Proposal, inclusive of all taxes, but exclusive of VAT.
- 1.1.35. Signing Date – Contract's signing date which shall reflect the Contract's effectiveness.
- 1.1.36. Sub-Contractor – ESP's sub-contractor as indicated in Annex 4 of the Contract.
- 1.1.37. Technical Specification – technical specification included in Annex 1 of the Contract.
- 1.1.38. Variations – amendments (changes) to the Contract and the Services whether or not resulting in the Contract amendments as described in Clause 20 of the Contract.

## 2. SUBJECT MATTER OF THE CONTRACT

- 2.1. **Services provision appointment.** The Principal hereby engages ESP, in accordance with the terms and conditions of this Contract, to provide the Services that have been specified herein.

- 2.2. **Availability period.** Period for the provision of the Design Review and Design Expertise Services is envisaged to last 24 (twenty-four) months starting from the Contract Signing Date, however, both services shall be available for the Contracting Authority till the end of the Design works for each Design Section, but no longer than sixty (60) months from Contract Signing Date.
- 2.3. **Contract Period.** Contract is valid until full completion of obligations of the Parties but no longer than 60 (months) from Contract Signing Date.
- 2.4. **Compliance with law.** Upon carrying out the work, ESP shall be guided by the following legal acts in the Republic of Lithuania, in particular (list is not all-inclusive):
- (a) Lietuvos Respublikos statybos įstatymas;
  - (b) Lietuvos Respublikos melioracijos įstatymas; STR 1.04.04:2017;
  - (c) STR 1.04.04:2017 „Statinio projektavimas, projekto ekspertizė“;
  - (d) MTR 1.05.01:2015 „Melioracijos statinių projekto ekspertizė ir melioracijos statinių ekspertizė“;
  - (e) PTR 3.03.01:2005 „Nekilnojamojo kultūros paveldo statinio tvarkomųjų statybos darbų projekto ar tvarkomųjų paveldosaugos darbų projekto paveldosaugos (specialiosios) ekspertizės atlikimo taisyklės“;
  - (f) other relevant construction-related sub-acts and decrees.
- 2.5. **Technical competence of ESP, ESP's Experts and ESP's Sub-Contractors.** In the performance of the Services, ESP, its Experts and Sub-Contractors shall exercise high level of skill, care and diligence to be expected from a professionals providing Services of such nature to the contracting authority (in this case – the Principal) which is acting outside their usual professional competence. The Services will be provided by ESP's Experts and Sub-Contractors specified in Annex 4 and Clause 12 of the Contract. ESP, its Experts and Sub-Contractors have the required licenses and represents and warrants that the each of them has the required practical and legal qualifications to be able to perform the Services in accordance with the Contract and can exercise high level of skill. At the Principal's request, ESP will furnish the relevant evidence to the Principal to prove statements set-forth in Clause 2.5 of the Contract, and will coordinate the work of the Experts and Sub-Contractors accordingly. Replacement of ESP's Experts and/or Sub-Contractors is permitted only with the written consent of the Principal and shall be carried out based on Clause 12 of the Contract.
- 2.6. **Responsibility.** ESP shall assume any liability over the performance (or non-performance) of the Services by Experts and the Sub-Contractors in all cases, and shall constantly keep each Expert and Sub-Contractor informed about any issue related to the implementation of the Services as may be required during the Contract implementation. In this respect any references to ESP includes ESP's Experts and Sub-Contractors for the purposes of the Contract. Sequentially, any work performed by ESP's Experts and Sub-Contractors shall be considered as work of ESP.
- 2.7. **Integrity.** ESP shall carry out the Services independently, in a responsible manner and with due professional integrity. ESP must not allow any undue influence or appearance of such with respect to the Services. ESP and any ESP's Expert and Sub-Contractor shall refrain from situations resulting in any pressure and incentive, in particular of a financial type, which could affect its judgement or the results of its Services, in particular from persons or groups of persons affected by the results of the Services, but also including national safety authorities, construction authorities, incumbent infrastructure managers as well as other regulatory and supervisory authorities and institutions, and private bodies, in particular the Project designers. ESP will notify the Principal without delay of any circumstances that could be perceived as leading to a conflict of interest between ESP and the Principal (or between ESP and any designer), and generally – towards ESP (and the Principal) and any ESP's Expert and/or Sub-Contractor. ESP shall undertake all legally and mandatory required conflict of interest prevention measures, and in any case in the amount not less than required by legal acts in the Republic of Lithuania.
- 2.8. **Contract administration.** All Contract administration cycle, in particular communication, decision-making, etc., shall be carried between the Principal and ESP, and in this respect ESP shall undertake full responsibility over activities of its Experts and the Sub-Contractors, and, to outline requirements set-forth in Clause 2.6, any activities undertaken by ESP shall be always coordinated between ESP and the Experts and Sub-Contractors.

The Principal is not obliged to carry out any communication with the Experts and/or the Sub-Contractors. As follows, the Principal shall be considered as sole Contract administration body to procure Service implementation under the Contract. In case ESP receives any instructions, orders, requests, etc., from any other entity rather than the Principal, ESP shall first seek instructions from the Principal.

- 2.9. **Copyright waiver.** The Principal and/or the Beneficiary may use any work prepared by ESP as part of the Services and any Services furnished by ESP in any manner the Principal and/or the Beneficiary see fit for the benefit of the Project starting from the moment of creation regardless of whether the work/service is produced or finally accepted. The Principal and/or the Beneficiary may reproduce and disclose any of the work to any of its cooperation partners including the designers, contractors, suppliers, etc., while always acting in a good faith without any approval of the ESP and without incurring obligation to pay any royalties or additional compensation whatsoever to the ESP. The Principal and/or the Beneficiary can combine any deliverables produced by ESP and can use them with other deliverables produced by other persons and publish them in their entirety or in parts, while always acting in a good faith, and always abstaining from modifications of any data and information which concerns national-wide regulated expertise assessment as part of the Services without any approval of the ESP and without incurring obligation to pay any royalties or additional compensation whatsoever to the ESP. The Principal and the Beneficiary are not required to publish the author of any deliverables produced by ESP, but the Principal and/or the Beneficiaries may not however misrepresent the author of such deliverables.
- 2.10. **No Additional Royalty.** It is acknowledged and agreed by the Parties that consideration for the transfer of ownership in the intellectual property shall be forming part of the Contract Fee and no additional royalty, fee or other consideration of any kind shall be payable by the Principal or the Beneficiary to the ESP or to any third party in consideration of the transfer of ownership in the intellectual property in any documentation (deliverable, work or service).
- 2.11. **English language.** ESP and its personnel shall be prepared to communicate in English language and shall provide all deliverables to the Principal in English language or with English translations unless otherwise agreed. Documents to be submitted to the authorities shall be prepared in the local language acceptable to the authorities with the executive summary translated into English language. All operational communication relating to performance of the Contract shall be in English. The Principal is entitled to request ESP to provide translation of documents to Lithuanian language as required by the applicable national laws and/or the Principal at no further cost.
- 2.12. **Interpretation.** Any discrepancy between the Contract and Technical Specification requirements shall be resolved based on the intention to carry out the Services timely and to facilitate mandatory expertise of the Design Documentation in the Republic of Lithuania, therefore putting the Project's railway into full operation as expedient as possible.
- 2.13. **Cooperation.** Without prejudice to requirements set-forth in Clause 25, the Parties shall carry out all reasonable measures to avoid any dispute, conflict, misinterpretation, etc., and shall put in place all reasonable cooperation measures to resolve any issue based on mutual negotiation principle to carry out the Services timely and to facilitate mandatory expertise of the Design Documentation in the Republic of Lithuania.
3. **SUBMISSION AND APPROVAL OF THE ADVANCE PAYMENT BOND, INSURANCE AND THE PERFORMANCE BOND**
- 3.1. No later than within ten (10) Days after the Signing Date, ESP shall submit to the Principal the following documents:
- 3.1.1. The insurance policy and/or certificate as specified in Clause 8 of the Contract;
- 3.1.2. The Performance Bond as specified in Clause 9 of the Contract.
- 3.1.3. The Advance Payment Bond specified in Clause 9 of the Contract, if advance payment is requested by ESP in accordance with the Proposal.

- 3.2. The Principal shall review and approve the documents set-forth in Clauses 3.1 of the Contract within five (5) Days of receipt of all documents thereof and submit to ESP Commencement Deed based on form provided in Annex 2 of the Contract.
- 3.3. The Principal's signed Commencement Deed's submission to ESP is a prerequisite for:
  - 3.3.1. accepting invoices by the Principal; and
  - 3.3.2. payment of the Service Module Fee or advance payment [IF APPLICABLE REGARDING THE ADVANCE PAYMENT].

#### **4. SUBMISSION AND APPROVAL OF THE INCEPTION REPORT**

- 4.1. Within fourteen (14) Days after signing this Contract, ESP shall draft and submit to the Principal the Inception Report pursuant to requirements set-forth in Clause 4 of the Technical Specification.
- 4.2. The Principal will review the Inception Report within five (5) Days from the receipt date, and shall notify ESP by e-mail indicated in Clause 23.1 about the Inception Report's quality and other objections within this deadline.
- 4.3. ESP shall correct any deficiencies identified by the Principal regarding the Inception Report within five (5) Days from the receipt date of the Principal's Representative's notice indicated in Clause 4.2.
- 4.4. The Principal's issues notice on the Inception Report's compliance with the Principal's requirements is a prerequisite for provision of any subsequent Services as set-forth in the Contract. ESP may provide any Services before approval of the Inception Report if so requested by the Principal.
- 4.5. Where the Principal has minor objections, comments or recommendations on the Inception Report (e.g., where the Inception Report is in line with essential requirements under the Contract), the Principal may, at its sole discretion, choose to accept the Inception Report by issuing the notice, in which case ESP shall be required to respectively update the Inception Report and submit it to the Principal at the earliest convenience, but not later than by following five (5) Days from receipt of the Principal's minor objections, comments or recommendations.

#### **5. DESIGN REVIEW SERVICES**

- 5.1. The aim of the Design Review Services is to improve the quality of the Design Documentation and to expedite the Project's design process in its entirety.
- 5.2. The Design Review Services shall be conducted both regarding the Master Design and the Detailed Technical Design as set-forth in Annex 5 of the Contract, and based on the Assignment Order with respect to the specific Service Module.
- 5.3. The Design Review Services shall be performed with respect to the specific Service Module in accordance with the specific requirements and checklists as indicated in the Technical Specification, in particular Clause 5 of the Technical Specification.
- 5.4. The Design Review Services with respect to the specific Service Module shall commence on the Commencement Date, which shall correspond with the Assignment Order's issuance date with respect to the specific Service Module.
- 5.5. The Design Review Services shall be carried taking into account the time frame indicated in Clause 3.3 of the Technical Specification, and pursuant to the submission and review procedure indicated in Clause 4 of the Technical Specification.
- 5.6. The Design Review Services for a particular Service Module is completed when ESP has provided as completion deliverable the review report as specified in the Clause 4.13.1 of the Technical Specification, and the Principal approved this review report by signing the Acceptance Deed.
- 5.7. If the Technical Specification stipulates the Principal's obligation to inform ESP in advance about submission to ESP the Assignment Order regarding the particular Service Module, such an advance notification shall be submitted to ESP accordingly.

- 5.8. The Principal is entitled to issue to ESP one or several Assignment Orders with respect to the Service Modules to be assessed within the Design Review Services, based on the timing decided by the Principal.

## **6. DESIGN EXPERTISE SERVICES**

- 6.1. The aim of the Design Expertise Services is to ensure that the Master Design and the Detailed Technical Design (for parts of Detailed Technical Design which require expertise based on applicable laws) comply with the applicable laws, regulations and relevant technical specification for such design.
- 6.2. The Design Expertise Services shall be conducted regarding the Master Design and the Detailed Technical Design (parts stipulated in the legal acts) as set-forth in Annex 5 of the Contract, and based on the Assignment Order with respect to the specific Service Module.
- 6.3. The Design Expertise shall always be conducted in accordance with the relevant local laws and regulations specified in Clause 2.4 of this Contract.
- 6.4. The Design Expertise Services with respect to the specific Service Module shall commence on the Commencement Date, which shall correspond with the Assignment Order's issuance date with respect to the specific Service Module.
- 6.5. The Design Expertise Services shall be carried out taking into account the time frame indicated in Clause 3.3 of the Technical Specification, and pursuant to the submission and review procedure indicated in Clause 4 of the Technical Specification.
- 6.6. The Design Expertise Services for a particular Service Module is completed when ESP has provided as completion deliverable the expertise report as indicated in Clause 4.13.2 of the Technical Specification and the Principal accepted it by signing the Acceptance Deed.
- 6.7. ESP acknowledges that the expertise report with respect to the particular Service Module may be submitted to the authorities by the Principal or the Principal's procured or authorised representative as part of the construction permit documentation.
- 6.8. If the Technical Specification stipulates the Principal's obligation to inform ESP in advance about submission to ESP the Assignment Order regarding the particular Service Module, such an advance notification shall be submitted to ESP accordingly.
- 6.9. The Principal is entitled to issue to ESP one or several Assignment Orders with respect to the Service Modules to be assessed within the Design Expertise Services, based on the timing decided by the Principal.

## **7. CONTRACT FEE AND PAYMENT**

- 7.1. The Service Module Fee for assessment of each Service Module is indicated in Annex 5 of the Contract where all amounts are indicated excluding value added tax in the Republic of Lithuania.
- 7.2. Each Service Module Fee shall be payable to ESP in case of proper and full completion of the Services as per the Assignment Order, the Contract requirements and with respect to the concerned Service Module as indicated in Annex 5 of the Contract.
- 7.3. The Contract Fee and each specific Service Module Fee includes, without limitation, the costs for works and labour, travel and accommodation, per-diem, machines, tools and transport, work organisation, taxes (excluding the value added tax in the Republic of Lithuania), insurance costs, costs related to drafting all relevant documents and their translations, inspection, testing, receipt of all relevant approvals and permits, including products, materials and equipment needed to properly perform the Services based on all-inclusive Contract concept.
- 7.4. The pre-conditions for Service Module Fee payments by the Beneficiary are as follows:
- 7.4.1. Regarding the Design Review Services:
- (a) review report as specified in the Clause 4.13.1 of the Technical Specification, and



- (b) the Principal's signed Acceptance Deed to certify completion and acceptance of the review report as specified in the Clause 5.6 of the Contract and the relevant Service Module, and
- (c) the Principal's accepted invoice for the respective Services pursuant to the procedure stipulated in Clause 7.9 of the Contract.

7.4.2. Regarding the Design Expertise Services:

- (a) expertise report as specified in the Clause 14.13.2 of the Technical Specification, and
- (b) the Principal's signed Acceptance Deed to certify completion and acceptance of the expertise report as specified in the Clause 6.6 of the Contract and the relevant Service Module, and
- (c) the Principal's accepted invoice for the respective Services provided pursuant to the procedure stipulated in Clause 7.9 of the Contract.

7.5. If applicable, the pre-conditions for payment of the advance payment by the Beneficiary to ESP are as follows (all criteria shall be met):

7.5.1. ESP submitted to the Principal and the Principal accepted the Advance Payment Bond pursuant to the Contract conditions set-forth in Clause 9 and Annex 3 of the Contract; and

7.5.2. ESP submitted to the Principal the invoice for payment of the advance payment in the amount not exceeding the value indicated in Annex 3 of the Contract, and the Principal accepted the corresponding invoice pursuant to the procedure indicated in the Contract.

7.6. After receipt of the specific deliverable regarding the specific Service Module, but before signing the Acceptance Deed regarding the specific Service Module, the Principal shall submit the respective deliverable (review report regarding the Design Review Services or expertise report regarding the Design Expertise Services) to the Beneficiary and obtain from it opinion on the quality of the Services. The Beneficiary shall provide its opinion by sending it to the Principal within ten (10) Days from the day of receipt of the respective deliverable. In case an opinion is not received, after lapse of the ten (10) day period the Principal shall have the right to assume that the respective Beneficiary is satisfied with the quality of the particular deliverable. To the extent possible the Principal shall treat favourably the opinion of the Beneficiary, however the Principal shall not be prevented to accept the relevant Services if, in the best professional opinion of the Principal, the Services are rendered according to the required quality. In such case the Principal shall notify the Beneficiary about the Principal's decision at the Principal's earliest convenience, but not later than ten (10) Business Days after notifying ESP about the acceptance of the specific deliverable. This Clause is not applicable towards the Inception Report approval.

7.7. ESP shall proceed with issuance of the invoice as per the Clauses 7.8 and 7.9 of the Contract after alignment activities set-forth in Clause 7.6 of the Contract are carried out.

7.8. ESP shall send invoices to the Principal electronically by using e-mail [DEinvoices@Railbaltica.org](mailto:DEinvoices@Railbaltica.org). The invoice shall specify, inter alia, the following information regarding the payer (the Beneficiary):

Title: AB "Lietuvos geležinkelių infrastruktūra"
Registration No 305202934
Tax registration No LT100012666211
Address: Mindaugo g. 12, LT-03225 Vilnius, Lithuania
Bank: Swedbank, AB
Account No: LT21 7300 0101 5917 5126
Code: 73000, SWIFT HABALT22
E-mail <a href="mailto:DEinvoices@railbaltica.org">DEinvoices@railbaltica.org</a>
Contract No
CEF Contract No INEA/CEF/TRAN/M[●]/[●]Activity No [●]
Services:

- 7.9. After receipt of the invoice as per Clause 7.8 of the Contract the Principal shall carry administrative review of the specific invoice, and shall notify ESP on approval or rejection of the specific invoice within five (5) Days. In case of rejection based on objective reasons ESP shall rectify inconsistencies identified by the Principal and re-submit the invoice to the Principal within five (5) Days. In case the Principal finds that invoice complies with the conditions of the Contract and precisely reflects the amount of completed Services, the Principal shall approve the specific invoice by e-mail mentioned in Clause 23.1 of the Contract and ESP shall proceed with invoice submission procedure mentioned in Clause 7.10.
- 7.10. ESP shall send the Principal's accepted invoice to the Beneficiary through e-invoices system (in Lithuanian language: „e.sąskaita“) as applicable in the Republic of Lithuania. The date of invoice submission will be considered as the Day on which the Beneficiary receives the invoice in e-invoices system (in Lithuanian language: „e.sąskaita“).
- 7.11. Time for payment of the specific Service Module Fee by the Beneficiary shall not exceed sixty (60) Days starting from the submission date indicated in Clause 7.10 of the Contract. This payment period is applicable towards the advance payment, too [IF APPLICABLE].
- 7.12. All payments to ESP under the Contract shall be carried out by transferring the payment to the bank account of ESP indicated in the Contract. It shall be noted that payments for the invoices could be separated (e.g. VAT paid separately).
- 7.13. If the Principal has a claim of contractual penalty, direct damages or other amounts against ESP due to non-performance of the Contract or its part, the Principal on behalf of the Beneficiary shall have the right to deduct the relevant amount from the part of the amount payable by the Beneficiary by submitting the relevant reasoned statement of set-off, i.e. the Principal is entitled to set-off the claim of a contractual penalty or direct damages or another amount against the invoices payable to ESP on behalf of the Beneficiary. The statement shall be submitted at the same time as the payment or within a reasonable time period after the execution of the payment, or if the amount owed by ESP exceeds the amount of the payment, at the latest on the date the payment would have fallen due.
- 7.14. If applicable, advance payment shall be set-off against payments due to ESP based on Annex 5 of the Contract. For clarity, the advance payment shall be set-off against the first payment following the advance payment, until such time when the advance payment is completely set-off. It shall be noted that set-off against ESP invoices shall be applied until such time the entire value of the advance payment has been set-off.
- 7.15. The advance payment shall not be considered as a payment for fulfilment of any of the Services under the Contract, and in case if ESP is in material breach with the Contract or the Contract is suspended or terminated and at such time any proportion of advance payment has not yet been set-off and is still outstanding, the Principal shall have a right to request and entitlement to receive back any such outstanding proportion of the advance payment to be paid back to the Beneficiary or to carry out a recourse on the Advance Payment Bond without delay or withhold any such proportion of the invoices from ESP without delay and separate notification [IF APPLICABLE].
- 7.16. The refusal to pay the advance payment to ESP within ninety (90) days, in case if all pre-conditions set-forth in the Contract are fulfilled by ESP, shall be considered as a material breach of the Contract, and shall result in consequences indicated in Clause 15.10 of the Contract [IF APPLICABLE].
- 7.17. ESP hereby certifies that for the purposes of implementation of the Contract ESP has settled all tax and commercial registration issues, and in this respect can fully provide any Contract implementation activities.
- 7.18. ESP hereby certifies that the income mentioned in the Contract will not derive through permanent establishment or fixed base maintained by ESP in the Republic of Lithuania. ESP agrees to submit to the Principal four (4) copies of residence certificate-application for reduction of or exemption from Latvian anticipatory taxes withheld at source from payments (management and consultancy fees, leasing fees and certain other types of income), paid to residents of the [COUNTRY]" confirmed by competent authority of the [COUNTRY] and the revenue service of the Republic of Lithuania. The residence certificate shall be submitted to the Principal prior the Principal will due to make a payment of the fee or other payments to ESP. Otherwise the Principal will withhold withholding tax at the rate set-forth in the law and regulations from the fee and payments made to ESP. The

Principal is entitled to make any deductions from the payments due to ESP if ESP doesn't comply with this provision [IF APPLICABLE].

## **8. INSURANCE**

- 8.1. ESP at its own expense shall submit to the Principal ESP's professional civil liability insurance policy based on commercially reasonable terms (including reasonable exclusions) and which is compliant with the Contract conditions or certificate with the insurer's confirmation regarding full coverage of the policy towards the Contract conditions. In case of mandatory legal requirements related to specific insurances for activities stipulated in Clause 6 of the Contract ESP shall also provide additional insurance for these activities or shall include respective extensions to ESP's professional civil liability insurance policy. These documents shall be submitted to the Principal within a time frame indicated in Clause 3 of the Contract.
- 8.2. Together with the document indicated in Clause 8.1 of the Contract ESP and within a time frame indicated in Clause 3 of the Contract shall submit to the Principal payment evidences certifying payment for the particular insurance.
- 8.3. The insurance shall cover ESP (in case of group of suppliers – each member), it's Experts and Sub-Contractors Services and additional Services, as the case may be, under this Contract.
- 8.4. The insurance amount of the professional civil liability insurance in aggregate and for each insured event shall be no less than the Contract Fee and deductible shall be no more than EUR 2 900.
- 8.5. ESP shall maintain the professional civil liability insurance contract valid throughout the Contract Period. ESP's failure to maintain the professional civil liability insurance contract valid and/or extend it (as the case may be) and provide it to the Principal shall be considered as a material breach of the Contract, and shall result in consequences indicated in Clause 15.8 of the Contract.
- 8.6. The professional civil liability insurance contract (policy) must provide for no less than 24 months' extended reporting period as of the date of completion of all Services by ESP as confirmed by the Principal by issuance of the Services full performance statement (unless mandatory legal requirements related to specific insurances for activities stipulated in Clause 6 of this Contract specify different requirements in which case the validity of insurance of Design Expertise should meet respective mandatory requirement). The extended reporting period shall cover claims arising out of or in relation to an act or omission of ESP, it's Experts and Sub-Contractors occurring during the Contract Period, provided that the claim is reported by the Principal or the Beneficiary within the extended reporting period.
- 8.7. In each and every case of a renewed insurance policy, the coverage must be continuous and must be inclusive of all periods from the Signing Date to the issuance of a renewed insurance policy. It is ESP's obligation to constantly and proactively monitor validity of the insurance coverage and carry out all the necessary activities in order to ensure full insurance coverage as per the Contract conditions.
- 8.8. The professional civil liability insurance contract (insurance policy) shall be taken out with an insurance company (re-insurance company), bank or financial institution which is entitled to issue insurance policies, with a required minimum rating of BB+ (or equivalent) in accordance with Standard & Poor's rating, Fitch's rating or Moody's rating. The Principal has the right to request a replacement of the insurer in case the rating falls below the required minimum. The insurer shall be registered within the EU.
- 8.9. The insurance contract (insurance policy) shall refer to the direct beneficiaries as the Principal and the Beneficiary.
- 8.10. Professional civil liability insurance contract (policy) may not be subject to any unusual conditions limiting the insurance coverage as well as any reservations or exceptions.

## 9. ADVANCE PAYMENT BOND AND PERFORMANCE BOND

- 9.1. ESP at its own expense and within a time frame indicated in Clause 3 of the Contract, shall submit to the Principal an Advance Payment Bond substantially based on the form included in Annex 3 of the Contract and in the amount indicated in the Proposal (ten percent (10%). The Advance Payment Bond shall be unconditional, irrevocable, transferable and payable upon the Principal's first demand [IF APPLICABLE].
- 9.2. ESP at its own expense and within a time frame indicated in Clause 3 of the Contract, shall submit to the Principal the Performance Bond substantially based on the form included in Annex 3 of the Contract and in the amount equal to five percent (5%) of the Contract Fee. The Performance Bond shall be unconditional, irrevocable, transferable and payable upon the Principal's first demand.
- 9.3. Instead of provision of the Performance Bond ESP can transfer a deposit to the Principal equal to five percent (5%) of the Contract Fee. This deposit shall be considered as pledged for the benefit of the Principal to secure the obligations of ESP arising from the Contract. The Principal is not required to keep the deposit on separate account nor pay interest on the deposit. The remaining deposit (if any) is returned to the ESP's bank account specified by ESP at ESP's request within thirty (30) Days of the end of the Contract Period.
- 9.4. Under the Advance Payment Bond and/or the Performance Bond, at the Principal's sole discretion, the Principal on behalf of the Beneficiary shall be entitled to satisfy any and all claims, costs, expenditure and expenses, which occur to the Principal or to the Beneficiary due to full or partial non-fulfilment or improper fulfilment of ESP's obligations under this Contract.
- 9.5. The Advance Payment Bond and the Performance Bond shall be issued by a bank, insurance company (re-insurance company) or financial institution which is entitled to issue the performance (payment) guarantees and registered within the EU.
- 9.6. The issuer of the Advance Payment Bond and/or the Performance Bond shall meet the requirements regarding the financial ratings, replacement and registration as indicated in Clause 8.8 of the Contract.
- 9.7. In the Advance Payment Bond and in the Performance Bond the Principal shall be indicated as a direct beneficiary.
- 9.8. The Performance Bond shall be valid throughout the Contract Period (Contract Period shall be indicated in the document) and thirty (30) Days after the expiry of the effective period of the Contract. If the submitted Performance Bond expires earlier than the said date, ESP shall submit the renewed Performance Bond to the Principal no later than thirty (30) Days prior to the end of the term of the Performance Bond. ESP's failure to perform this duty shall be deemed to be a material breach of the Contract entitling the Principal to apply to the party which has issued the Performance Bond and demand payment of the amount of the Performance Bond.
- 9.9. The Advance Payment Bond shall be valid throughout the Contract Period up to the full repayment of the advance payment pursuant to the Contract conditions. If the submitted Advance Payment Bond expires earlier than the said date, ESP shall submit the renewed Advance Payment Bond to the Principal no later than thirty (30) Days prior to the end of the term of the Advance Payment Bond. ESP's failure to perform this duty shall be deemed to be a material breach of the Contract entitling the Principal to apply to the party which has issued the Advance Payment Bond and demand payment of the amount of the Advance Payment Bond without an obligation to prove actual damages or losses. The amount of the Advance Payment Bond can be decreased from time to time based on ESP's performance of the Services and reimbursed amount of the advance payment pursuant to Annex 5 of the Contract, and in this respect ESP is entitled to submit to the Principal updated Advance Payment Bond, and the Principal shall review it and inform ESP about the Principal's decision to accept new Advance Payment Bond. To avoid any doubt, the Principal is entitled to reject ESP's accordingly updated advance payment bond at sole discretion of the Principal (i.e. ESP is in a delay with the Contract performance) [IF APPLICABLE].
- 9.10. The Party liable for payment of any charges regarding the Advance Payment Bond and the Performance Bond is ESP.
- 9.11. The Advance Payment Bond and the Performance Bond shall be issued in the English language.

- 9.12. A demand or other document with respect to recourse on the Advance Payment Bond and/or the Performance Bond shall be presented as a:
- 9.12.1. Paper form (written) demand signed by all Management Board Members of the Principal which shall be sent by courier to the legal address of the guarantor with a copy to the legal address of ESP; or
- 9.12.2. Electronical form (scanned and signed “.PDF” file, whereas the file may be in a asice container) to the e-mail of the guarantor as indicated in the Performance Bond by using safe electronic signature with a time stamp; shall be signed by all Management Board Members of the Principal; or
- 9.12.3. Authenticated SWIFT message using SWIFT submission system (not necessarily, but can be combined with scanned and signed “.PDF” file, whereas the file may be in a asice container, and secured by using safe electronic signature with a time stamp; shall be signed by all Management Board Members of the Principal.
- 9.13. Any dispute, controversy or claim arising out of or relating to the Advance Payment Bond and/or the Performance Bond, or the breach, termination or validity of these documents thereof, shall be finally settled by by the competent court of the Republic of Lithuania in accordance with law of the Republic of Lithuania.
- 9.14. The Principal shall discharge and release the Advance Payment Bond and the Performance Bond no later than within thirty (30) Days after the expiry of the effective period of the Contract under condition that ESP has fulfilled all its obligation under the Contract.

## 10. VISIBILITY REQUIREMENTS

- 10.1. ESP procures that any report, brochure, document or information related to the Services conducted by ESP hereunder or any other person, or which ESP makes publicly available shall include each of the following:
- (a) a funding statement which indicates that the Project is financed from CEF funds substantially in the following form: “Rail Baltica is co-financed by the European Union’s Connecting Europe Facility”;
- (b) with respect to printed materials, a disclaimer releasing the European Union from liability with respect to any contents of any distributed materials substantially in the form as follows: “The contents of this publication are the sole responsibility of [name of the implementing partner] and do not necessarily reflect the opinion of the European Union”. The disclaimer in all official languages of the European Union can be viewed on the website <https://ec.europa.eu/inea/connecting-europe-facility/cef-energy/beneficiaries-info-point/publicity-guidelines-logos>; and
- (c) the flag of the Council of Europe and the European Union.
- 10.2. The requirements set forth in the previously mentioned clauses can be complied with by means of utilizing the following logo:



**Co-financed by the Connecting Europe  
Facility of the European Union**

- 10.3. In the event ESP decides to utilize the above logo, ESP shall ensure that the individual elements forming part of the logo are not separated (the logo shall be utilized as a single unit) and sufficient free space is ensured around the logo.
- 10.4. In order to comply with the latest applicable visibility requirements established by the European Union, ESP shall regularly monitor changes to visibility requirements; as of the date hereof, the visibility requirements are available for review on the webpage <https://ec.europa.eu/inea/connecting-europe-facility/cef-energy/beneficiaries-info-point/publicity-guidelines-logos>.

## **11. RIGHT TO AUDIT**

- 11.1. Notwithstanding anything to the contrary set forth in the Contract, the Principal itself, a reputable outside independent body or an expert engaged and authorised by the Principal shall be entitled to inspect and/or audit ESP to ensure compliance with the terms of the Contract and EU financing rules, including inspecting and/or auditing:
- (a) the performance of any aspect of the Services (the audit shall not however take a position on the findings of the Design Expertise or in any way jeopardise the independence of ESP); and/or
  - (b) any documentation, including all payrolls, accounts of ESP and/or other records used in or related to the performance of the Services.
- 11.2. ESP shall provide all reasonable assistance to the Principal or the independent body authorized by the Principal in carrying out any inspection or audit pursuant to this section. The Principal shall be responsible for its own costs, or the costs incurred by the outside independent body designated by the Principal, incurred toward carrying out such inspection or audit, unless, in the case of any such audit, that audit reveals that ESP is not compliant with the terms of this Contract, in which case ESP shall reimburse the Principal for all of its additional reasonable costs incurred, provided such non-compliance is material.
- 11.3. The rights and obligations of the Principal set forth in accordance with this section shall survive expiration or termination of the Contract for any reason and shall continue to apply during ten (10) years following expiration or termination of this Contract for any reason whatsoever.
- 11.4. ESP is under obligation to retain in immediately accessible readable format all working files, correspondence and in paper or email for the time period of ten (10) years after expiry of the Contract.

## **12. SUB-CONTRACTORS AND STAFF**

- 12.1. In carrying out the Services, ESP may only rely on the services of those approved Sub-Contractors and Experts listed in the Proposal submitted during the procurement by ESP and indicated in Annex 4 of the Contract, as such list may, from time to time, be modified or supplemented in agreement with the Principal and in accordance with the terms and subject to the criteria contained in the Public Procurement Law of the Republic of Latvia. ESP shall specify the name, contact details and legal representative(s) of each approved Sub-Contractor and name and contact details of the Experts. ESP shall have an obligation to notify the Principal in writing of any changes to Sub-Contractor and Experts data occurring during the Contract period and of the required information for any new Sub-Contractors and Experts, which it may subsequently engage toward provision of the Services.
- 12.2. ESP shall obtain prior written consent of the Principal for the replacement of a Sub-Contractor or Experts on whose capacities ESP has relied on during the selection or evaluation stages of the Procurement (the Principal is entitled to ask Sub-Contractor's and Expert's opinion regarding the reasons of replacement). Failure to do so constitutes a material breach (breach of a material term or condition) of the Contract.
- 12.3. Review and evaluation of the replacement Sub-Contractors and Experts shall be carried out, and the consent or refusal to give consent shall be rendered by the Principal in accordance with the Public Procurement Law of the Republic of Latvia.
- 12.4. The Principal shall be entitled to demand replacement of the Sub-Contractors and Experts, which, during the effectiveness of this Contract, meets any of the compulsory grounds for exclusion of tenderers (or Sub-Contractors and Experts, namely, the staff) that were verified during the Procurement exercise. The Principal shall also be entitled to demand replacement of the Sub-Contractors and Experts on existence of reasonable grounds for their replacement, e.g., where the Sub-Contractors or Expert do not perform in line with requirements and standards prescribed under the Contract or the applicable Procurement Law of the Republic of Latvia, there are reasonable doubts as regards their integrity, etc.

- 12.5. ESP shall retain the complete responsibility for the proper performance of all of Sub-Contractors and Experts obligations under this Contract, and any act, failure to act, breach or negligence on the part of any of its approved Sub-Contractors and Experts shall, for the purposes of this Contract, be deemed to be the act, failure to act, breach or negligence of ESP.

### **13. SECURITY CLEARANCE REQUIREMENTS**

- 13.1. ESP shall not involve in implementation of the Contract the employees and/or staff, including but not limited to key office-holders, key personnel, designers, design supervisors, engineers, construction and design specialists, Sub-Contractors and their personnel and staff, Experts, and other staff (if any) who have a criminal record.
- 13.2. ESP shall submit to the Principal the name, surname, personal code (identification number), professional title (job position) of every person that will implement the Contract at least ten (10) Business Days prior involvement of this person in the implementation of the Contract. ESP shall also provide a brief (concise) description of duties towards the implementation of the Contract of such persons, if requested by the Principal.
- 13.3. The Principal has a right to demand dismissal of such a natural person non-compliant with the security clearance requirements stipulated in the Contract or laws at the Principal's sole discretion on the basis of the Principal's written request for dismissal. Such Principal's decision is incontestable.
- 13.4. ESP shall immediately undertake all the necessary actions and measures to ensure that any risk of involvement of such a natural person in the implementation of the Contract is promptly and duly eliminated.
- 13.5. In addition, ESP is obliged:
- 13.5.1. to prevent involvement of such a natural person in the implementation of the Contract, and to prevent the presence of this person in the real estate, construction site or any other site; and
- 13.5.2. to immediately replace the dismissed person according to the laws and the Contract; and
- 13.5.3. to comply with the Principal's written instructions pursuant to the Contract and not to challenge these instructions; and
- 13.5.4. to inform the Principal about dismissal or replacement proceedings.
- 13.6. In any occasion ESP shall immediately notify the Principal in writing about any situation that emerged before and during the implementation of the Contract, as a result of which there could appear or appears a risk of involving such a natural person in the implementation of the Contract, and about the immediate replacement of non-compliant or dismissed natural person involved in the implementation of the Contract.
- 13.7. In case if the immediate dismissal or replacement of the dismissed natural person non-compliant with the security clearance requirements stipulated in the Contract results in the unreasonable increase of the costs towards ESP, ESP shall immediately inform the Principal about this fact in writing and the Parties shall agree upon the conditions of the provision of the Services.
- 13.8. ESP's non-compliance with the security clearance requirements stipulated in the Contract, the Principal's instructions towards ESP regarding these security clearance requirements or other provisions of this section constitutes a material breach (breach of a material term or condition) of the Contract, and shall result in consequences indicated in Clause 15.8 of the Contract.

### **14. LIABILITY, DELAYS**

- 14.1. The Parties shall be liable for the direct damages caused to the other Party due to breach of the Contract or incorrect, false or misleading representation or warranty. Neither Party shall be liable for the loss of revenue, loss of profit or any incidental loss incurred by the other Party.
- 14.2. ESP shall be fully liable for the activities, inactivity, infringement or negligence of the Sub-Contractors and Experts within the framework of this Contract, and always shall keep the

Principal indemnified from and against all costs which the Principal incurs or suffers as a result of any action, claim or proceedings by its Sub-Contractors and Experts.

- 14.3. ESP liability is not reduced nor is ESP released from liability for defects in the Services by:
- (a) acceptance by the Principal of ESP's reports or other deliverables;
  - (b) review of ESP's work by any designers, contractors or any private or state authorities working with the project in consequent stages;
  - (c) defects in the original work of the designer being reviewed by ESP.
- 14.4. If a payment under the Contract is delayed, the injured Party is entitled to demand a delay interest in the amount of zero point three percent (0,3%) of the delayed amount per each Day of delay, starting from the first delayed Day, however not exceeding 10% of the Contract Fee. Delay of the payment for more than ninety (90) Days without objective justification shall be considered as a material breach of the Contract, and shall result in consequences indicated in Clauses 15.8 or 15.10 (depending on the Party in breach) of the Contract.
- 14.5. If ESP is in delay for providing the documents indicated in Clause 3 of the Contract the Principal shall be entitled to request ESP to pay a contractual penalty in the amount of EUR 100 (one hundred *euro*) per each Day of delay starting from the first delayed Day, however not exceeding 10% of the Contract Fee, and in case if ESP is in a delay for providing any of the Services, the Principal shall be entitled to request ESP to pay a contractual penalty in the amount of zero point three percent (0,3%) of the amount of the delayed Service Module Fee per each Day of delay, starting from the first delayed Day, however not exceeding 10% of the Contract Fee.
- 14.6. The Principal on behalf of the Beneficiary shall be entitled to withhold any penalty amount from the invoices due to ESP, and in this respect the Principal may exercise this right with respect to any outstanding invoice or any subsequent invoices as the case may be.
- 14.7. The payment of the penalty shall not release the Parties from the further performance of the Contract and shall not release from the obligation to compensate direct damages not covered by the amount of a penalty.

## **15. SUSPENSION OF THE SERVICES AND CONTRACT TERMINATION**

- 15.1. The Principal may suspend all or part of the Services (to the extent determined by the Principal) at its sole discretion and for any reason by giving a notice to ESP with immediate effect.
- 15.2. The suspension notice shall contain anticipated duration and the scope of suspension (Service Module, design stage, specific object or structure within the Service Module and other information as indicated by the Principal and based on the level of detail decided by the Principal) of performance of this Contract. The suspension postpones the Services provision deadline attributable to the particular Service Module, thus extending the Contract Period upon the suspension release proportionally to the suspended time period. The suspension does not release ESP from the obligation to provide and maintain valid the insurance, if applicable, the Advance Payment Bond and the Performance Bond for the duration of the Contract Period pursuant to extension requirements set-forth in Clauses 9.8 and 9.9 of the Contract.
- 15.3. If the Services are being suspended in part, the notice shall specify to which deliverables of the Service the suspension applies. Partial suspension shall not affect provision of the Services where the Services are not suspended.
- 15.4. Where the Services are suspended, ESP shall resume the Services or part thereof, as the case may be, as soon as reasonably practicable based on the Principal's sole decision to revoke suspension or after the expiry of the suspension period indicated by the Principal, whichever occurs earlier. In all cases, ESP shall comply with the information indicated in the Principal's suspension and suspension release notices, as the case may be.
- 15.5. During the period of suspension, ESP shall not perform the Services or part thereof as the case may be, but shall ensure, so far as is reasonably practicable, the security,



maintenance and custody of any Services or relevant property used by ESP so as to maintain the possibility to continue the provision of the Services.

- 15.6. ESP shall take reasonable efforts and measures to mitigate the effects of the suspension of the Services or part thereof. If ESP continues performance of the suspended Services on or after the effective date of the suspension of the Contract or part thereof, this shall be at ESP's own risk and expense. ESP shall be paid for the Services performed in accordance with the Contract up to the date of the suspension of the Contract, and in this respect ESP shall request partial payment based on this Clause 15.6. ESP shall not be paid for the suspended Services performed on or after the effective date of the suspension of the Contract or part thereof.
- 15.7. The Contract may be terminated fully or partly upon mutual agreement of all of the Parties at any time. In such a case, the Parties shall agree on the consequences of the termination of the Contract.
- 15.8. If ESP is in material breach of the Contract, the Principal may give a written or e-mail (in case of e-mail, the notice shall be sent to e-mail indicated in Clause 23.1 of the Contract) notice to ESP outlining the breach and the remedy required under the Contract. If ESP has not proceeded to remedy the breach within fourteen (14) Days after issuance of the respective notice, then the Principal may terminate the Contract with immediate effect unilaterally without resorting to arbitration, without incurring any negative consequences (including, without limitation, sanctions and other claims) by notifying ESP in a written form. In this case the Principal is entitled to carry out a recourse on the Advance Payment Bond, if applicable, and the Performance Bond, as the case may be.
- 15.9. Notwithstanding anything mentioned in the Contract, the Principal may, upon serving ESP fourteen (14) Days written or e-mail notice (in case of e-mail, the notice shall be sent to e-mail indicated in Clause 23.1 of the Contract), terminate the Contract in full or in part unilaterally without resorting to arbitration, without incurring any negative consequences for itself (including, without limitation, sanctions and other claims) in the following cases:
  - 15.9.1. where a Force Majeure event has led to a suspension of the Services for more than three (3) months;
  - 15.9.2. if international or national sanctions, or substantial sanctions by a Member State of the European Union or the North Atlantic Treaty Organisation affecting the financial and capital market interests have been imposed on ESP;
  - 15.9.3. if the bankruptcy case is initiated against ESP or ESP becomes insolvent;
  - 15.9.4. if ESP is in breach of the Principal's Code of Conduct of suppliers and/or the Suppliers Declaration available on the Principal's webpage <http://www.railbaltica.org/procurement/procurement-regulation-supplier-qualification/>.
  - 15.9.5. the Principal has no financing available for the Services, including, without limitation, where CEF co-financing for further financing of the Services (entirely or partly) is not available (including cases when CEF co-financing is insufficient in order to implement the Contract fully or partly);
  - 15.9.6. if ESP is in breach with representations and warranties included in the Contract, and this specific breach can be considered as a material breach, namely, this specific non-compliance substantially prevents efficient provision of the Services and timely completion of the Project;
  - 15.9.7. in other instances, at the sole discretion of the Principal on the basis of objective reasons in relation to the implementation of the Project within set objectives and pursuant to global plans. The Principal shall exercise this right honestly, reasonably and in good faith.
- 15.10. If the Principal is in material breach of the Contract, ESP may give a notice to the Principal outlining the breach (with a precise indication to the Contract clause where the Principal's

material breach is described) and the remedy required under the Contract. If the Principal has not proceeded to remedy the breach within fourteen (14) Days after the issue of the notice, then ESP may terminate the Contract unilaterally with immediate effect without resorting to arbitration, without incurring any negative consequences (including, without limitation, sanctions and other claims) by notifying the Principal in written form.

- 15.11. If the Principal is declared bankrupt and the Principal's assets are not acquired by any other entity within the Project within ninety (90) Days, ESP shall be entitled to terminate the Contract upon serving the Principal fourteen (14) Days' notice in written form.
- 15.12. Where the Contract have been suspended in full by the Principal for more than, in aggregate, one hundred twenty (120) Days, ESP may terminate the Contract with immediate effect by notifying the Principal in written form. In case the Services have been suspended in respect of multiple suspension requests of the Principal, the time period above shall be calculated from the date of the first suspension.
- 15.13. The termination of the Contract shall not prejudice or affect the accrued rights or claims and liabilities of the Parties.
- 15.14. ESP shall be paid for the Services performed in accordance with the Contract up to the date of the termination of the Contract.
- 15.15. Regardless of the basis of termination of the Contract, ESP must deliver, and the Principal shall take over from ESP, all documents regarding the Design Documentation, in particular, information, calculations and other deliverables, whether in electronic format or otherwise, pertaining to the Services performed up to the date of termination of the Contract. All documents in electronic format shall be editable, save for documents with signatures. Delivery of documents, calculations and other deliverables shall take place on the date of termination of the Contract and shall be confirmed by signing a respective statement of delivery and acceptance wherein ESP shall be obliged to confirm that it has duly delivered all the documents, calculations and other deliverables related to the Services and has not retained anything.
- 15.16. If the Contract is terminated on the grounds specified in Clauses 15.10 and 15.11 of the Contract, ESP (without prejudice to any other rights the Party may have under the Contract) shall be entitled to claim for compensation of direct damages in line with provisions of Clause 14.1 of the Contract.
- 15.17. If the Contract is terminated on the grounds specified in Clauses 9.88, 12.2, 13, 15.9.2, 15.9.3, 15.9.4, 16, 17, 18 or 19 of the Contract, the Principal on behalf of the Beneficiary (without prejudice to any other rights the Party may have under the Contract), shall be entitled to claim for compensation of direct damages in line with provisions of Clause 14.1, and claim payment of penalty in the amount of ten percent (10%) of the Contract Fee without any obligation to prove actual damages or losses.

## **16. CONFLICT OF INTEREST**

- 16.1. ESP shall take all the necessary action and measures to ensure that there is no conflict of interest related to impartial and objective implementation of the Contract, in particular, as relates to economic interests, political or civil dependence, family or emotional ties or any other interests. This applies both to ESP, and ESP's Sub-Contractors and Experts.
- 16.2. ESP represents that neither ESP nor ESP's Sub-Contractors and Experts and any of its sub-contractors and their staff have been and will not be in contact with any existing and potential bidders for the design, construction and testing services for the Project. Any contact with the potential bidders shall be dealt exclusively with express permission of the Principal.
- 16.3. ESP shall immediately notify the Principal in writing about any situation that emerged during the implementation of the Contract, as a result of which a conflict of interest arises or may arise.
- 16.4. ESP shall immediately undertake all the necessary actions to ensure that any conflict of interest is duly eliminated.

- 16.5. The Principal reserves a right to verify whether the measures that have been undertaken by ESP are sufficient and may require undertaking additional measures in accordance with the instructions set by the Principal.

## **17. ANTI-BRIBERY**

- 17.1. ESP shall not, and shall procure that its directors, employees, agents, representatives, contractors or Sub-Contractors and Experts shall not, engage in any activity, practice or conduct which would constitute an offence under any anti-bribery and anti-corruption laws. ESP shall have in place adequate procedures designed to prevent any person working for or engaged by ESP or any other third party in any way connected to this Contract, from engaging in any activity, practice or conduct which would infringe such procedures or any anti-bribery and anti-corruption laws.
- 17.2. ESP's non-compliance with requirements set-forth in Clause 17 of the Contract, constitutes a material breach (breach of a material term or condition) of the Contract.

## **18. NON-RECRUITMENT AND NON-ENGAGEMENT REQUIREMENTS**

- 18.1. During the period of the Contract, and in the event of any termination, suspension of the Contract and until the expiration of the Contract, ESP shall not and shall cause ESP's Sub-Contractors, Experts, board members, employees, or any other personnel or entity assigned by ESP not to, without the prior consent of the Principal and the Beneficiary, either directly or indirectly, on his own behalf or in the service of or on behalf of others, solicit or attempt to solicit for employment (headhunt) and/or solicit for any engagement with employment purpose of any person employed or engaged with the Principal and ultimate beneficiaries under the Project, and whether or not such employment is pursuant to a labour or independent contractor agreement and whether or not such employment or engagement is for a determined period or is limited in any manner.
- 18.2. ESP's non-compliance with the conditions set forth in this section of the Contract and/or with the Principal's instructions towards ESP regarding these non-recruitment and non-engagement requirements, constitutes a material breach (breach of a material term or condition) of the Contract.

## **19. CONFIDENTIALITY**

- 19.1. The confidential information regarding the Principal and Beneficiary is the information regarding the Principal and Beneficiary, which the Principal and/or the Beneficiary submits to ESP (before or after the Signing Date) in writing, orally or in any other form and that contains all kind of analyses, compilations, remarks, research, as well as technical, commercial and any other information on the activities of the Principal and/or Beneficiary that has become available to ESP during the execution of the Contract, except for:
- 19.1.1. the information the Principal confirms in writing is not a confidential information; or
- 19.1.2. if ESP can demonstrate that the information was already at his disposal or was known to him (as he used it or it was stored on his files, computers or other recording media) before it was received from the Principal and ESP did not receive it from the Principal or the Beneficiary subject to the confidentiality obligation; or
- 19.1.3. the information that ESP has developed himself or that has been developed for ESP, regardless of this Contract.
- 19.2. ESP undertakes to:
- 19.2.1. always keep the confidential information securely and not disclose it to the other persons; and
- 19.2.2. ensure that ESP's Sub-Contractors, Experts, officials, employees and agents shall not disclose the confidential information to other persons, except in the event where the Principal issues a written consent.

- 19.3. ESP shall be entitled to disclose the confidential information without a written consent of the Principal in such cases:
- 19.3.1. where reasonably required for the purpose of implementation of the Contract (including the disclosure of the confidential information to ESP's employees, Sub-Contractors, Experts, agents, officials to the extent to ensure the fulfilments of ESP's obligations under the Contract;
- 19.3.2. if the disclosure is required by the applicable laws.
- 19.4. In case of disclosure of information by ESP, ESP shall obtain from the recipient of the information the undertakings concerning the non-disclosure, equivalent to those applicable hereunder to ESP (unless in case of disclosure required by the applicable laws, where ESP may not reasonably obtain such undertaking).
- 19.5. Regardless of the reasons the Contract is terminated ESP shall:
- 19.5.1. return to the Principal all the confidential information (originals) that is in the use or possession of ESP;
- 19.5.2. destroy such confidential information (copies) by using a safe and confidential method of destroying.
- 19.6. Except as required by laws, ESP, without a prior written consent of the Principal, shall be prohibited from issuing any public notices (such as press releases, etc.) in relation to the Contract.
- 19.7. The provisions contained within this Clause 19 of the Contract shall survive expiration of the Contract.

## **20. VARIATIONS**

- 20.1. Variations can be initiated by the Principal or by ESP, but shall be agreed with the Principal in all cases pursuant to Clause 20 of the Contract.
- 20.2. Notwithstanding anything to the contrary in this Contract any Variations can be carried out to the extent permitted by Public Procurement Law of the Republic of Latvia, in particular, Article 61.
- 20.3. Upon its own initiative or at the suggestion of ESP, a Variation to the Services may be initiated by the Principal by issuance of a Variation notice at any time prior to completion of the Services and it may be issued in respect of any (any of the criteria shall be met):
- 20.3.1. Amendments of the design contracts procured by the Principal. In this respect the Variations of the Contract shall be implemented to facilitate assessment of the amended design solutions or amended packages of the design during any design contracts stages. For clarity, the purpose of this Clause 20.3.1 is to allow the Principal to implement any Variations to follow-up on changes made in the design contracts procured by the Principal;
- 20.3.2. Implementation of any corrigenda, replacement, omission, inclusion, or amendments to the applicable assessment criteria as part of the Services based on objective reasons required to implement the Project with respect to the Services timely and efficiently;
- 20.3.3. Implementation of Variations to Annex 1 of the Contract based on the Principal's initiative or approval of ESP's initiative in order to:
- (a) amend technical solutions affecting the Services during the design stages of the Project's implementation; or
  - (b) introduce, reduce or to substitute any mandatory assessment criteria during the design stages of the Project's implementation; or

- (c) comply with any requirements (mandatory or optional) of the state or municipal authorities or institutions which are entitled to issue decrees, instructions or recommendations with respect to the Services during the design stages of the Project's implementation
- whether or not resulting in the amendments of the Inception Report (or its respective part) or Annex 1 of the Contract;
- 20.3.4. Supply of additional Services not previously foreseen under the Contract, in particular with respect to the Principal's requirements to provide additional assessment as part of the Services, which have not been prescribed under the Inception Report and/or Annex 1 of the Contract, in order to facilitate assessment of the Design Documentation;
- 20.3.5. Change of sequence of performance of the Services as initiated or approved by the Principal based on objective reasons required to implement the Project with respect to the Services timely and efficiently whether or not resulting in the amendments of the Inception Report (or its respective part) and/or Annex 1 of the Contract;
- 20.3.6. Implementation of Services performance risk mitigation measures as initiated or approved by the Principal based on objective reasons required to implement the Project with respect to the Services timely and efficiently whether or not resulting in the amendments of the Inception Report (or its respective part) and/or Annex 1 of the Contract;
- 20.3.7. Implementation of any amendments to the Contract as initiated or approved by the Principal during the Services provision within the design stages of the Project's implementation which are necessary due to such reasons which the Principal could not be foreseen in advance, including, but not limited to occasions set-forth in Clauses 20.3.3, 20.3.4 and 20.3.6 of the Contract;
- 20.3.8. Extension of the Contract Period indicated in Clause 2.3 of the Contract as may be required and determined by the Principal together with the Beneficiary in order to facilitate full assessment of the Design Documentation.
- 20.4. In case of supply of additional Services not previously foreseen under the Contract (Clauses 20.3.4 and 20.3.7), the Contract Fee may not increase or decrease by more than fifty percent (50%).
- 20.5. The increase or decrease of the Contract Fee regarding all successive Variations may not exceed ten percent (10%) of the Contract Fee.
- 20.6. Any Variations case shall be decided based on the Principal's sole discretion and the Principal shall issue a Variations approval notice or Variations rejection notice, as the case may be. ESP shall comply with such notice.
- 20.7. Without prejudice to any other Contract requirements, the cost of any Variation shall be agreed by ESP and the Principal in a good faith and the Principal is entitled to reject any Variations proposal if it cannot be carried out due to objective restrictions applicable to the Principal as a contracting authority. Pursuant to such agreement the Principal shall issue an order to ESP to commence work on the Variation, and ESP shall be bound with such a notice.
- 20.7.1. The value of any Variation for any reason shall be determined in accordance with calculations indicated in the Proposal or, where these calculations are not applicable for any reason (as determined by the Principal), value of the Variation in question shall be agreed by ESP and the Principal based on prices usually applicable in the relevant assessment industry;
- 20.7.2. For clarity, and notwithstanding any other rules set-forth in Clause 20 of the Contract, ESP shall always keep updated the Inception Report provided by the ESP and the Service Programme included in Annex 5 of the Contract.

- 20.7.3. Service Module Fee of the particular Service Module can be changed only if due to the specific Variation work amount of this Service Module increases more than for ten percent (10%).

## **21. MAINTENANCE OF RECORDS**

- 21.1. During the term of and ten (10) years from expiration or termination of this Contract for any reason whatsoever, ESP shall keep and maintain clear, adequate and accurate records and evidence regarding the provision of the Services to the extent reasonably necessary to comply with the requirements of the Contract and applicable laws. This period shall be extended if there are any relating on-going audits, appeals, litigation or pursuit of claims. In such cases the records shall be kept until such audits, appeals, litigation or pursuit of claims are closed. During the above-mentioned term, ESP shall ensure access to the necessary documentation.

## **22. DATA PRIVACY**

- 22.1. For the purpose of implementation of the Contract, the Parties will eventually transfer to each other certain personal data, such as data on employees, sub-contractors and other data subjects (names, surnames, e-mail addresses, business addresses, phone numbers, a derivative of a personal identification document without disclosing special categories of personal data such as ethnicity, documents to support qualifications of the data subjects and other data relating to the implementation of the Contract).
- 22.2. The Parties agree and acknowledge that for the purpose of the Contract each of the Parties shall be viewed as controllers of personal data.
- 22.3. The personal data transferred by each Party to the other Party will be processed only in accordance with the procedure, terms and conditions established in the Contract.
- 22.4. The Party shall transfer the personal data to the other Party and such other Party shall process the personal data only for the purposes of implementation of the Contract and other such purposes as required by laws. The Parties agree that except where the Party has a separate legal basis for processing the personal data referred to in the laws governing the protection of personal data arising outside the Contract, they shall not process the personal data for any other purpose except as referred to in the present Clause of the Contract.
- 22.5. Besides other obligations provided for in the Contract and the laws, each of the Parties undertake:
- 22.5.1. To process the personal data to the minimum extent necessary;
- 22.5.2. Not to infringe any rights of the data subjects;
- 22.5.3. To implement and apply proper and necessary organizational and technical measures ensuring the compliance with the requirements of the laws;
- 22.5.4. To duly keep records of the personal data processing activities if such an obligation arises from the requirements of the laws;
- 22.5.5. To immediately notify the other Party if, in the opinion of the notifying Party, the actions of the other Party are likely to violate the requirements of the laws governing the protection of personal data;
- 22.5.6. To ensure the compliance with other requirements of the laws governing the protection of personal data.
- 22.6. Taking into account the level of development of technical capacities and the nature, scope, context and objectives of the processing of personal data, as well as the probability and seriousness of risks arising from data processing to rights and freedoms of data subjects concerned, each Party and the Beneficiary, prior to commencing the processing

of personal data, will implement and maintain throughout the processing of personal data the appropriate technical and organizational measures necessary to ensure the protection of personal data and the protection and implementation of rights of the data subjects established in the laws.

- 22.7. In the event of personal data security violation, or if a Party reasonably suspects such a violation, such a Party or the Beneficiary shall immediately, however, in any case not later than within twenty-four (24) hours after having become aware of this, inform the other Party in writing and provide all information and data relating to such a violation. In this relevant case, the notifying Party shall provide at least the following information:
  - 22.7.1. The nature of the personal data security violation, including, if possible, categories and an approximate number of data subjects involved as well as categories and an approximate number of relevant records of personal data;
  - 22.7.2. The name and contact details of the data protection officer and the name and contact details of another person who can provide more information;
  - 22.7.3. The expected consequences of the personal data security violation;
  - 22.7.4. The measures taken or proposed to be taken in order to eliminate the personal data security violation, including, where appropriate, measures to reduce the potential negative consequences thereof.
- 22.8. The Parties shall cooperate in every possible way and assist each other in:
  - 22.8.1. eliminating the violation of the personal data security as well as its negative consequences, and/or
  - 22.8.2. proving that all necessary measures have been taken to prevent and correct the violation.
- 22.9. Each Party shall properly document the fact of the personal data security violation and any actions of elimination of its consequences in order at the request of the other Party it would be possible to effectively prove that the Parties have taken all measures provided for in the laws. At the request of the other Party, the Party shall provide it with such documentation.
- 22.10. Each of the Parties shall be entitled to transfer personal data to third parties and/or to a third state or to international organization, including the transfer of personal data for the purpose of their processing, only in accordance with the procedure and conditions defined in the laws. At the request of a Party, the other Party shall provide detailed information about what personal data has been transferred to what third state or international organization.
- 22.11. In the event of a reasonable suspicion that the other Party inadequately implements the data processing requirements, the Party shall be entitled to suspend the provision of all or some personal data to the other Party until the latter eliminates the violation and presents evidence thereof and confirms its obligation to comply with this Contract and the requirements of the laws in the future.
- 22.12. Upon the disappearance of legal grounds to process personal data established in this Contract, each of the Parties shall undertake to terminate the processing of personal data, unless it has a separate and independent right (arising outside the Contract) to process the personal data.

**23. AUTHORIZED REPRESENTATIVES, COMMUNICATION AND MEETINGS**

- 23.1. Any notice or other communication under the Contract must be in English and in writing (which, for the purposes of this Contract, includes e-mail, but not fax) and must be addressed as set out below in writing:

	The Principal's Representative	ESP's Representative
Name, surname,	<input type="text"/>	<input type="text"/>

<b>Title</b>	[Technical Project Manager]	
<b>Entity</b>	RB Rail AS	
<b>Address</b>		
<b>Email</b>		

- 23.2. The Principal's Representative indicated in Clause 23.1 of the Contract is entitled to settle all on-going operational issues related to Contract fulfilment and administration, with authorization to carry out all Contract administration cycle, but without going beyond the scope of the Contract. The Principal's Representative is authorized, in particular:
- 23.2.1. To organise and control the course of Contract fulfilment, including, but not limited to all communication between the Parties and between the Principal and ESP;
  - 23.2.2. To request information and documents from ESP;
  - 23.2.3. To provide information and documents to ESP;
  - 23.2.4. To order the Services;
  - 23.2.5. To ensure delivery / acceptance of the documentation related to the Contract (Acceptance Deeds, invoices, etc.);
  - 23.2.6. To issue instructions on the performance of the Contract and provision of the Services;
  - 23.2.7. To issue claims on the performance of the Services;
  - 23.2.8. To organize meetings between the Parties, in particular between the Principal and ESP;
  - 23.2.9. To participate in any meetings regarding the implementation of the Contract;
  - 23.2.10. To undertake other actions related to proper fulfilment of contractual obligations;
  - 23.2.11. To prepare, sign, send and receive all the necessary documents and information with respect to the Services and the Contract implementation.
- 23.3. The Principal's Representative is not authorised to undertake amendments or supplements to the Contract, including changes to the Contract Fee, Service Module Fee and/or Services performance deadlines, also to waive the contractual rights of the Principal and/or the Beneficiaries or to carry out Variations.
- 23.4. ESP's Representative indicated in Clause 23.1 of the Contract is entitled to settle all on-going operational issues related to Contract fulfilment and administration, with authorization to carry out all Contract administration cycle and with authorization to go beyond the scope of the Contract. The Principal's Representative is authorized, in particular:
- 23.4.1. To organise and control the course of Contract fulfilment, including, but not limited to communication between the Principal and ESP;
  - 23.4.2. To request information and documents from the Principal;
  - 23.4.3. To provide information and documents to the Principal;
  - 23.4.4. To ensure delivery / acceptance of the deliverables which shall be produced under the Contract;
  - 23.4.5. To sign the documentation related to the Contract (Acceptance Deeds, all reports, invoices, etc.);
  - 23.4.6. To sign any Variations notices and amended Contract documents;
  - 23.4.7. To participate in any meetings regarding the implementation of the Contract;



- 23.4.8. To undertake other actions related to proper fulfilment of contractual obligations;
- 23.4.9. To prepare, sign, send and receive all the necessary documents and information with respect to the Services and the Contract implementation.
- 23.5. The Parties shall not later than within five (5) Days inform the other Party concerning the change of the contact and other technical details of the Party (i.e. representative, address, new details of bank accounts, registration numbers and/or other data that may have effect on the proper implementation of the contract). In case of failure to inform in the time specified, any payments, notifications, meetings' requests and confirmations and other correspondence made to such Party to the contact information specified in the Contract shall be considered valid and properly served.

## **24. FORCE MAJEURE**

- 24.1. The Party shall be exempt from any liability for non-performance of the Contract in full or partially, if the non-performance is due to Force Majeure conditions after the Contract has come into effect, which were beyond the control of the Party to prevent or predict.
- 24.2. The Party subject to Force Majeure conditions shall immediately and not later than within three (3) Days after the occurrence of Force Majeure conditions notify the other Party thereof, and where possible shall attach to the notification a statement, which is issued by a competent authority and contains the confirmation and characterization of Force Majeure conditions.
- 24.3. Neither of the Parties shall be held liable for damages due to Force Majeure conditions, where the relevant Party has notified the other Party.

## **25. LAW AND DISPUTE RESOLUTION**

- 25.1. Any dispute, controversy or claim arising out of or in connection with the Services shall be resolved, as indicated in Clause 2.13 of the Contract, by amicable negotiations between the Principal and ESP, where the Principal shall carry out all negotiation on behalf of the Beneficiary, within a reasonable period of time, but not more than thirty (30) Days.
- 25.2. Any dispute, controversy or claim arising out of or relating to Contract or the breach, termination or validity of the Contract, which cannot be resolved pursuant to Clause 25.1 of the Contract and within a time frame indicated in Clause 25.1 of the Contract, shall be finally settled by arbitration in accordance with the Arbitration Rules of the Finland Chamber of Commerce. The number of arbitrators shall be one (1). The seat of arbitration shall be Riga, Latvia. The language of the arbitration shall be the English language.
- 25.3. The Contract shall be governed and interpreted in accordance with the laws and regulation of the Republic of Lithuania.
- 25.4. All dispute resolution related clauses set-forth in the Contract shall survive the Contract termination for any reason.

## **26. MISCELLANEOUS**

- 26.1. All annexes and the amendments and supplements of the Contract and/or annexes hereto concluded under the Contract form an integral part of this Contract.
- 26.2. If any of the provisions of the Contract text contradicts to the annexes of the Contract, the provisions of the Contract shall prevail as far as it is necessary to secure full provision of the Services, and this rule shall be applicable without prejudice of Clause 2.12 of the Contract.
- 26.3. Any amendments or supplements to the Contract shall be made in writing and shall become an integral part of the Contract when signed by ESP and the Principal, and in this respect it shall be understood that the Principal is entitled to conclude and carry out the amendment of the Contract in the name and on behalf of the Beneficiary.

- 26.4. Each Party shall pay its own costs and expenses (including attorneys' fees) incurred by it or required by laws to be incurred by it, in connection with the negotiation, execution and performance of this Contract.
- 26.5. This Contract or the rights and obligations arising therefrom shall not be assignable in whole or in part by any Party hereto without the written consent of the other Parties. For clarity, the Principal shall be entitled to unilaterally assign / novate the whole or part of the Contract and or the rights / obligations arising from the Contract Project stakeholders, such as, without limitation, entities designated by the relevant governmental bodies within Republic of Latvia, Republic of Lithuania or Republic of Estonia.
- 26.6. This Contract shall be binding upon and inure to the benefit of the Parties their respective successors and permitted assigns. Unless otherwise provided under the Contract or laws, nothing expressed or referred to in this Contract will be construed to give any party, other than the Parties to this Contract, any legal or equitable right, remedy or claim under or with respect to this Contract or any provision of this Contract except such rights as may inure to a successor or permitted assignee.
- 26.7. The following annexes were attached to the Contract, all of which form an integral part of the Contract:
- 26.7.1. Annex 1 – Technical Specification;
- 26.7.2. Annex 2 – Commencement Deed form;
- 26.7.3. Annex 3 – Advance Payment or Performance Bond form;
- 26.7.4. Annex 4 – Sub-Contractors and Experts;
- 26.7.5. Annex 5 – Service Programme;
- 26.7.6. Annex 6 – Assignment Order form;
- 26.7.7. Annex 7 – Acceptance Deed form;
- 26.7.8. Annex 8 – Proposal;
- 26.7.9. Annex 9 – Supplier's Declaration.
- 26.8. This Contract is made in three (3) counterparts, one (1) for ESP, one (1) for the Principal and one (1) for the Beneficiary.

## 27. DETAILS OF THE PARTIES

Details of the Principal	Details of the Beneficiary in Lithuania	Details of ESP
Title: RB Rail AS	Title: Lietuvos geležinkelių infrastruktūra"	Title:
Registration No 40103845025	Registration No 110053842	Registration No
Tax registration No LV40103845025	Tax registration No LT100538411	Tax registration No
Address: Krišjāņa Valdemāra iela 8-7, LV-1010 Rīga, Latvia	Address: Mindaugo g. 12, LT-03603 Vilnius, Lithuania	Address:
Bank: Luminor Bank AS Latvijas filiāle	Bank: [●]	Bank:
Account No: LV73NDEA0000084270995	Account No: [●]	Account No:
Code: NDEALV22	Code: [●]	Code:
E-mail DEinvoices@railbaltica.org	E-mail	E-mail
Contract No	Contract No	Contract No

**28. SIGNATURES**

**IN WITNESS WHEREOF**, each Party hereto has duly signed this Contract as of the date first above written:

**THE PRINCIPAL (FOR ITSELF AND ON BEHALF OF THE BENEFICIARY)**

Name Surname:  
Position:

Signature:  
Date:

**ESP:**

Name Surname:  
Position:

Signature:  
Date:

## Annex 1 TECHNICAL SPECIFICATION

Annex 2 COMMENCEMENT DEED FORM



[HEADER]

Gedimino pr. 20,  
Vilnius, 01103,  
Phone[●]  
e-mail: [●]

Name, surname  
Title  
Entity  
Address  
Phone:  
e-mail:

COMMENCEMENT DEED	
REFERENCE TO THE CONTRACT:	CONTRACT ON DESIGN REVIEW SERVICES AND DESIGN EXPERTISE SERVICES FOR RAIL BALTCA RAILWAY PROJECT IN LITHUANIA [●].[●].2020
DATE:	[●]
DATE OF COMMENCEMENT OF THE CONTRACT	[●]
DESCRIPTION OF REQUEST:	With this notice, the Principal confirms the delivery of the commencement deliverables and the services under the CONTRACT ON DESIGN REVIEW SERVICES AND DESIGN EXPERTISE SERVICES FOR RAIL BALTCA RAILWAY PROJECT IN LITHUANIA may commence.

\_\_\_\_\_  
full name and signature

### Annex 3 PERFORMANCE BOND FORM

To: Beneficiary "RB Rail AS", registration No. 40103845025  
Legal address: Riga, K. Valdemara street 8-7, LV-1010

**Guarantee No [insert number]  
[insert place and date of issuance]**

Guarantor: [identify bank or insurance company (re-insurance company) or financial institution, by specifying its full name and legal form, registration number, legal address]

Applicant: [specify ESP's full name and legal form, registration number, legal address]

Beneficiary: RB Rail AS.

Date: [insert date]

Underlying Relationship: the Contract NO [ ] on Design Review Services and Design Expertise Services for Rail Baltica Railway Project in Lithuania, executed between the Applicant, the Beneficiary and AB "Lietuvos geležinkelių infrastruktūra" on [insert the date of the Contract] (hereinafter the Contract) and obligations of the Applicant to perform the Contract in accordance with the terms of the Contract.

Guarantee Amount and currency: [EUR \_\_\_\_\_ ( \_\_\_\_\_ euros)].

Document in support of the demand for payment: Original of the statement issued by RB Rail AS, that shall be presented as follows:

- Paper form (written) demand signed by all management board members of the Beneficiary which shall be sent by courier to the legal address of the Guarantor with a copy to the legal address of the Applicant; or
- Electronical form (scanned and signed ".PDF" file, whereas the file may be in a asice or similar container, to the e-mail of the Guarantor as indicated above by using safe electronic signature with a time stamp; the document shall be signed by all management board members of the Beneficiary; or
- Authenticated SWIFT message using SWIFT submission system (not necessarily, but can be combined with scanned and signed ".PDF" file, whereas the file may be in a asice or similar container and secured by using safe electronic signature with a time stamp; the document shall be signed by all Management board members of the Beneficiary.

Language of all required documents: the English language.

Expiry: [insert date].

As Guarantor, we hereby irrevocably and unconditionally undertake to pay the Beneficiary any amount up to the Guarantee Amount upon presentation of the first Beneficiary's complying demand, in the form of presentation indicated above and supported (document in support of the demand for payment), in any event, by the Beneficiary's statement, whether in demand itself or in a separate signed document accompanying or identifying the demands, indicating in what amount the Applicant is in breach of its obligations under the Underlying Relationship. Any demand under this Guarantee must be received by us on or before Expiry indicated above.

We further agree that no change or addition to or other modification of the terms of the Contract shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition or modification. We hereby also waive any options, possibilities or rights to reject or suspend the Beneficiary's demand if it is issued in accordance with this document. The Beneficiary shall not be obliged to justify its demand. The Beneficiary is entitled to transfer (assign) the Guarantee (the rights arising therefrom). The Guarantor has been notified that the Beneficiary may require the Applicant to extend the Guarantee.

Applicable law and Disputes: This Guarantee shall be governed by and construed in accordance with the law of the Republic of Lithuania. Any dispute, controversy or claim arising out of or relating to this Guarantee shall be settled by the competent court of Lithuania.

This Guarantee cannot be changed or terminated without the prior written consent of the Beneficiary.

This Guarantee is executed in two originals – the Beneficiary and the Guarantor shall each receive one original.

SIGNATURE AND SEAL OF THE GUARANTOR

Date

.....

Name of bank or insurance company (re-insurance company) or financial institution

.....

Address

.....

## Annex 4 Sub-Contractors and Experts



## Annex 5 SERVICE PROGRAMME

This Service Programme describes Project's design sections to be assessed under the Contract in the Republic of Lithuania:

No	Project's design section	Design priority section within the Project's design section	Service Module	Service Module Fees for the specific Design priority section within the Project's design section, excluding value added tax in the Republic of Lithuania	Allocation of the Contract Fee	Service Module assessment completion evidence	Reimbursement of the advance payment (amount from the advanced payment in extent the payment will be reduced)
	DTD1 (Kaunas – Ramygala)	DSP1	Master Design - Design Review Services	[●]	Fifty percent (50%) of the total amount of DPS1 in section DTD1 (Kaunas – Ramygala)	<b>For Design Review Services:</b> (i) Report of Design Review (Clause 4.13.1 of technical Specification); (ii) Acceptance Deed (Clause 5.6 of the Contract); (iii) approved invoice for the Services (Clause 7.9 of the Contract)	Proportionally, based on the Service Modules amount
			Detailed Technical Design - Design Review Services	[●]	Twenty percent (20%) of the total amount of DPS1 in section DTD1 (Kaunas – Ramygala)		
			Master Design - Design Expertise Services	[●]	Twenty percent (20%) of the total amount of DPS1 in section DTD1 (Kaunas – Ramygala)		
			Detailed Technical Design - Design Expertise Services	[●]	Ten percent (10%) of the total amount of DPS1 in section DTD1 (Kaunas – Ramygala)		
			Master Design - Design Review Services	[●]	Fifty percent (50%) of the total amount of DPS2 in section DTD1 (Kaunas – Ramygala)		
			Detailed Technical Design	[●]	Twenty percent (20%) of the total amount of DPS2		
		DPS2	Master Design - Design Review Services	[●]		<b>For Design Expertise Services:</b> (i) for Design Expertise (Clause 4.13.2 of technical Specification); (ii) Acceptance Deed (Clause 6.6 of the Contract);	

					(iii) approved invoice for the Services (Clause 7.9 of the Contract)			
		- Design Review Services			in section DTD1 (Kaunas – Ramygala)			
		Master Design - Design Expertise Services	[●]		Twenty percent (20%) of the total amount of DPS2 in section DTD1 (Kaunas – Ramygala)			
		Detailed Technical Design - Design Expertise Services	[●]		Ten percent (10%) of the total amount of DPS2 in section DTD1 (Kaunas – Ramygala)			
		Master Design - Design Review Services	[●]		Fifty percent (50%) of the total amount of DPS3 in section DTD1 (Kaunas – Ramygala)			
	DPS3		Detailed Technical Design - Design Review Services	[●]		Twenty percent (20%) of the total amount of DPS3 in section DTD1 (Kaunas – Ramygala)		
			Master Design - Design Expertise Services	[●]		Twenty percent (20%) of the total amount of DPS3 in section DTD1 (Kaunas – Ramygala)		
		DPS4		Detailed Technical Design - Design Expertise Services	[●]			Ten percent (10%) of the total amount of DPS3 in section DTD1 (Kaunas – Ramygala)
				Master Design - Design Review Services	[●]			Fifty percent (50%) of the total amount of DPS4 in section DTD1 (Kaunas – Ramygala)
				Detailed Technical Design - Design Review Services	[●]			Twenty percent (20%) of the total amount of DPS4 in section DTD1 (Kaunas – Ramygala)
					[●]			



				[●]	Twenty percent (20%) of the total amount of DPS2 in section DTD2 (Ramygala – LT/LV state border)		
			Detailed Design - Design Expertise Services	[●]	Ten percent (10%) of the total amount of DPS2 in section DTD2 (Ramygala – LT/LV state border)		
			Master Design - Design Review Services	[●]	Fifty percent (50%) of the total amount of DPS3 in section DTD2 (Ramygala – LT/LV state border)		
			Detailed Design - Design Review Services	[●]	Twenty percent (20%) of the total amount of DPS3 in section DTD2 (Ramygala – LT/LV state border)		
	DPS3		Master Design - Design Expertise Services	[●]	Twenty percent (20%) of the total amount of DPS3 in section DTD2 (Ramygala – LT/LV state border)		
			Detailed Design - Design Expertise Services	[●]	Ten percent (10%) of the total amount of DPS3 in section DTD2 (Ramygala – LT/LV state border)		
			Master Design - Design Review Services	[●]	Fifty percent (50%) of the total amount of DPS4 in section DTD2 (Ramygala – LT/LV state border)		
	DPS4		Detailed Design - Design Review Services	[●]	Twenty percent (20%) of the total amount of DPS4 in section DTD2		

					(Ramygala – LT/LV state border)	
			[●]	Master Design - Design Expertise Services	Twenty percent (20%) of the total amount of DPS4 in section DTD2 (Ramygala – LT/LV state border)	
			[●]	Detailed Technical Design - Design Expertise Services	Ten percent (10%) of the total amount of DPS4 in section DTD2 (Ramygala – LT/LV state border)	

Annex 6 ASSIGNMENT ORDER FORM

[HEADER]



Gedimino pr. 20,  
Vilnius, 01103,  
Phone[●]  
e-mail: [●]Phone[●]  
e-mail: [●]

Name, surname  
Title  
Entity  
Address  
Phone:  
e-mail:

ASSIGNMENT ORDER	
REFERENCE TO THE CONTRACT:	CONTRACT ON DESIGN REVIEW SERVICES AND DESIGN EXPERTISE SERVICES FOR RAIL BALTICA RAILWAY PROJECT IN LITHUANIA [●].[●].2020
DATE:	[●]
DESCRIPTION OF REQUEST:	With this notice, the Principal requests commencement of work for the following Service Module: [●]

\_\_\_\_\_  
full name and signature

Annex 7 ACCEPTANCE DEED FORM



Name, surname  
RB RAIL AS LITHUANIAN  
BRANCH (RB RAIL AS LIETUVOS  
FILIALAS)

Gedimino pr. 20,  
Vilnius, 01103,  
Phone[●]  
e-mail: [●]Phone[●]  
e-mail: [●]

Name, surname  
Title  
Entity  
Address  
Phone:  
e-mail:

ACCEPTANCE DEED	
REFERENCE TO THE CONTRACT:	CONTRACT ON DESIGN REVIEW SERVICES AND DESIGN EXPERTISE SERVICES FOR RAIL BALTICA RAILWAY PROJECT IN LITHUANIA [●].[●].2020
DATE:	[●]
SERVICE MODULE COMPLETED:	With this notice, the Principal confirms completion of work for the following Service Module: [●]

\_\_\_\_\_  
full name and signature

**Annex 8 PROPOSAL**



## DECLARATION OF SUPPLIER

I, the undersigned duly authorised representative, on behalf of [*name of the ESP*] undertake:

1. To respect the freely-exercised right of workers, without distinction, to organize, further and defend their interests and to bargain collectively, as well as to protect those workers from any action or other form of discrimination related to the exercise of their right to organize, to carry out trade union activities and to bargain collectively;
2. Not to use forced or compulsory labour in all its forms, including but not limited to not employ people against their own free will, nor to require people to lodge 'deposits' or identity papers upon commencing employment;
3. Not to employ: (a) children below 15 years of age or, if higher than that age, the minimum age of employment permitted by the law of the country or countries where the performance, in whole or in part, of a contract takes place, or the age of the end of compulsory schooling in that country or countries, whichever is higher; and (b) persons under the age of 18 for work that, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of such persons;
4. To ensure equality of opportunity and treatment in respect of employment and occupation without discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin and such other ground as may be recognized under the national law of the country or countries where the performance, in whole or in part, of a contract takes place;
5. To ensure the payment of wages in legal fashion, at regular intervals no longer than one month, in full and directly to the workers concerned; to keep an appropriate record of such payments. Deductions from wages will be conducted only under conditions and to the extent prescribed by the applicable law, regulations or collective Contract, and the workers concerned shall be informed of such deductions at the time of each payment. The wages, hours of work and other conditions of work shall be not less favourable than the best conditions prevailing locally (i.e., as contained in: (i) collective Contracts covering a substantial proportion of employers and workers; (ii) arbitration awards; or (iii) applicable laws or regulations), for work of the same character performed in the trade or industry concerned in the area where work is carried out;
6. To ensure, so far as is reasonably practicable, that: (a) the workplaces, machinery, equipment and processes under their control are safe and without risk to health; (b) the chemical, physical and biological substances and agents under their control are without risk to health when the appropriate measures of protection are taken; and (c) where necessary, adequate protective clothing and protective equipment are provided to prevent, so far as is reasonably practicable, risk of accidents or of adverse effects to health;
7. To support and respect the protection of internationally proclaimed human rights and not to become complicit in human rights abuses;
8. To create and maintain an environment that treats all employees with dignity and respect and will not use any threats of violence, sexual exploitation or abuse, verbal or psychological harassment or abuse. No harsh or inhumane treatment coercion or corporal punishment of any kind is tolerated, nor is there to be the threat of any such treatment;
9. To have an effective environmental policy and to comply with existing legislation and regulations regarding the protection of the environment; wherever possible support a precautionary approach to environmental matters, undertake initiatives to promote greater environmental responsibility and encourage the diffusion of environmentally friendly technologies implementing sound life-cycle practices;
10. To identify and manage chemical and other materials posing a hazard if released to the environment to ensure their safe handling, movement, storage, recycling or reuse and disposal;
11. To monitor, control and treat as required prior to discharge or disposal wastewater and solid waste generated from operations, industrial processes and sanitation facilities;

12. To characterize, monitor, control and treat as required prior to discharge or disposal air emissions of volatile organic chemicals, aerosols, corrosives, particulates, ozone depleting chemicals and combustion by-products generated from operations;
13. To reduce or eliminate at the source or by practices, such as modifying production, maintenance and facility processes, materials substitution, conservation, recycling and re-using materials, waste of all types, including water and energy;
14. To adhere to the highest standards of moral and ethical conduct, to respect local laws and not engage in any form of corrupt practices, including but not limited to extortion, fraud, or bribery;
15. To disclose (a) any situation that may appear as a conflict of interest, such as but not limited to: where a Supplier or an undertaking related to the Supplier has advised a Beneficiary or Implementing Body or has otherwise been involved in the preparation of the procurement procedure; and (b) if any Beneficiaries' or Implementing Bodies' official, professional under contract with Beneficiary or Implementing Body or sub-contractor may have a direct or indirect interest of any kind in the Supplier's business or any kind of economic ties with the Supplier;
16. Not to offer any benefit such as free goods or services, employment or sales opportunity to a Beneficiary's and Implementing Body's staff member in order to facilitate the Suppliers' business with Beneficiaries or Implementing Bodies;
17. Within a period set in the applicable national legislation following separation from service or award of a contract, as the case may be, to refrain from offering employment to any Beneficiaries' and Implementing Bodies' staff in service and former Beneficiaries' and Implementing Bodies' staff members who participated in the procurement process and to whom a legal restriction to receive material benefits from or be employed by a Supplier which participated in a procurement procedure or restrictions with similar effect applies;
18. To promote the adoption of the principles set forth in this Supplier's Declaration by my potential business partners and promote the implementation of the principles set forth in this document towards own Suppliers;
19. Not procure goods, works and services from other Suppliers:
  - a. Who, or its member of the Management Board or the Supervisory Board or procurator of such Supplier, or a person having the right to represent such Supplier in activities related to a subsidiary, has been found guilty in any of the following criminal offences by a such punishment prescription of prosecutor or a judgement of a court that has entered into effect and is non-disputable and not subject to appeal:
    - i. bribetaking, bribery, bribe misappropriation, intermediation in bribery, taking of prohibited benefit or commercial bribing;
    - ii. fraud, misappropriation or laundering;
    - iii. evading payment of taxes and payments equivalent thereto,
    - iv. terrorism, financing of terrorism, invitation to terrorism, terrorism threats or recruiting and training of a person for performance of terror acts;
  - b. who, by such a decision of a competent authority or a judgment of a court which has entered into effect and has become non-disputable and not subject to appeal, has been found guilty of an infringement of employment rights which means:
    - i. employment of such one or more citizens or nationals of countries, which are not citizens or nationals of the European Union Member States, if they reside in the territory of the European Union Member States illegally;
    - ii. employment of one person without entering into a written employment contract, not submitting an informative declaration regarding employees in respect of such person within a time period laid down in the laws and regulations, which is to be submitted regarding persons who commence work;
  - c. who, by such a decision of a competent authority or a judgment of a court which has entered into effect and has become non-disputable and not subject to appeal, has been found guilty of infringement of competition rights manifested as a vertical Contract aimed at restricting the opportunity of a purchaser to determine the resale price, or horizontal

cartel Contract, except for the case when the relevant authority, upon determining infringement of competition rights, has released the candidate or tenderer from a fine or reduced fine within the framework of the co-operation leniency programme;

- d. whose insolvency proceedings have been announced (except the case where a bailout or similar set of measures is applied within insolvency proceedings oriented towards prevention of possible bankruptcy and restoration of solvency of the debtor, in which case I shall evaluate the possibility of such Supplier to participate in the tender), economic activity of such Supplier has been suspended or discontinued, proceedings regarding bankruptcy of such Supplier have been initiated or such Supplier will be liquidated;
- e. who has tax debts in the country where the procurement is organised or a country where such Supplier is registered or permanently residing, including debts of State social insurance contributions, in total exceeding an amount which is common threshold in public procurements in the respective country.

\_\_\_\_\_ [signature] [name, last name]  
[position] [date]