

FRAMEWORK AGREEMENT
ON
ASSESSMENT BODY SERVICES FOR RAIL BALTICA GLOBAL PROJECT

between

RB Rail AS

and

sabiedrība ar ierobežotu atbildību "EIROPAS DZELZCEĻA LĪNIJAS"

and

osaühing Rail Baltic Estonia

and

AB "LTG Infra"

and

CERTIFER SA

Contract registration number	1.19/LV-2021-40-1
CEF ¹ Contract No	<ul style="list-style-type: none">○ CEF 1: INEA/CEF/TRAN/M2014/1045990;○ CEF 2: INEA /CEF/TRAN/M2015/1129482;○ CEF 3: INEA /CEF/TRAN/M2016/1360716;○ CEF 6s: INEA /CEF/TRAN/M2019/2098304, Activity 7, Sub-activity 3;○ CEF 6w: INEA /CEF/TRAN/M2019/2098073, Activity 9, Sub-activity 4; and further CEFs.
Procurement procedure identification No	RBR 2021/3

Riga

28 July 2021

¹ Grant Agreement under the Connecting Europe Facility

TABLE OF CONTENTS

Section I. Definitions and Interpretation	4
Section II. Term and value of the Agreement	5
Section III. Subject of the Agreement	5
Section IV. Inception Report	6
Section V. Appointment of an Assignment	7
Section VI. General terms and conditions	8
Section VII. Responsibilities of Principal and the Implementing Bodies	10
Section VIII. Responsibilities of AsBo	11
Section IX. Representations and Warranties	15
Section X. Fee and Payment	16
Section XI. Commencement of Services, remedying of Defects and acceptance	18
Section XII. Intellectual Property Rights	20
Section XIII. Termination and suspension	22
Section XIV. Liability	24
Section XV. Performance Bond	25
Section XVI. Force Majeure	26
Section XVII. Confidentiality	26
Section XVIII. Right to Audit	28
Section XIX. On-the-spot-visits	28
Section XX. Governing Law and Resolution of Disputes	28
Section XXI. Miscellaneous provisions	29
Annex A: Definitions and common terms.....	32
Annex B: Technical Specification	35
Annex C: Performance Bond.....	36
Annex D: List of approved Sub-Contractors and Staff.....	38
Annex E: Draft Request for Assignment Order.....	39
Annex F: Draft Assignment Order.....	40
Annex G: Form of the Deed of Acceptance.....	41
Annex H: Rules of Adjudication	42
Annex I: Declaration of AsBo	50
Annex J: AsBo's Proposal.....	53
Annex K: AsBo's Financial Proposal.....	54

FRAMEWORK AGREEMENT
ON ASSESSMENT BODY SERVICES FOR RAIL BALTICA GLOBAL PROJECT

This framework agreement, together with all Annexes thereto, (the "Agreement") is entered into in Riga, on THE DATE INDICATED ON THE TIMESTAMP OF THE LAST SIGNATURE OF THE DOCUMENT, by and between:

- (1) **RB Rail AS**, a joint stock company registered in the Latvian Commercial Register, registration No 40103845025, legal address at Krišjāņa Valdemāra iela 8-7, Riga, LV-1010, Latvia (the "Principal"), represented by Chairperson of the Management Board Agnis Driksna acting on the basis of the Regulations on Representation Rights dated 17 May 2021, and
- (2) **sabiedrība ar ierobežotu atbildību "EIROPAS DZELZCEĻA LĪNIJAS"**, a limited liability company registered in the Latvian Commercial Register, registration No 40103836785, legal address at Gogoļa iela 3, Riga, LV-1743, Latvia (the "Implementing Body in Latvia"), represented by Chairperson of the Management Board Kaspars Vingris and Member of the Management Board Tālis Laizāns on the basis of statutes of the company, and
- (3) **osaühing Rail Baltic Estonia**, a limited liability company registered in the Estonian Commercial Register, registration No 12734109, legal address at Endla 16 Tallinn Harjumaa 10142, Estonia (the "Implementing Body in Estonia"), represented by Chief Executive Officer Tõnu Grünberg on the basis of Articles of Association, and
- (4) **AB "LTG Infra"**, a public limited liability company registered in the Lithuanian Register of Legal Entities, registration No 305202934, legal address at Vilnius, Geležinkelio g. 2, LT-02100, Lithuania (the "Implementing Body in Lithuania"), represented by Chief Executive Officer Karolis Sankovski on the basis of statutes of the company, on the one side, and
- (5) **CERTIFER SA**, a public limited liability company registered in the Trade and corporate register of France, registration No 802053397, legal address at 18 rue Edmond Membrée 59300 Valenciennes, France (the "AsBo"), represented by the Chief Executive Officer Pierre Kadziola acting on the basis of statutes of the company, on the other side,

who are collectively referred to as the "Parties" and separately – as the "Party", where the Implementing Body in Latvia, the Implementing Body in Estonia and the Implementing Body in Lithuania are collectively referred to as the "Implementing Bodies" and separately – as the "Implementing Body",

WHEREAS:

- (A) this Agreement 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 according TSI INF P2-F1 criteria and 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;
- (B) the Principal is acting as a Central Purchasing Body for the Implementing Bodies under the Agreement of the Contracting Scheme for the Rail Baltic/Rail Baltica, dated 30 September 2016;
- (C) the Principal has organised a procurement procedure "ASSESSMENT BODY (AsBo) SERVICES FOR RAIL BALTICA GLOBAL PROJECT" (identification No RBR 2021/3) (the "Procurement Procedure") where the tender proposal submitted by the AsBo (the "AsBo's Proposal") was selected as the winning bid;
- (D) this Agreement is co-financed from the Connecting Europe Facility (CEF), CEF Agreement No CEF 1: INEA/CEF/TRAN/M2014/1045990; CEF 2: INEA /CEF/TRAN/M2015/1129482; CEF 3: INEA /CEF/TRAN/M2016/1360716; CEF 6s: INEA /CEF/TRAN/M2019/2098304, Activity 7, Sub-activity 3; CEF 6w: INEA /CEF/TRAN/M2019/2098073, Activity 9, Sub-activity 4; and other recently signed Grant Agreements or future Grant Agreements to be signed.

Section I. Definitions and Interpretation

- 1.1 *Definitions.* In this Agreement, unless the context requires otherwise, all definitions shall have the meanings as described to such terms in accordance with *Annex A: Definitions and common terms.*
- 1.2 *Interpretation.*
- 1.2.1 The headings contained in this Agreement shall not be used in its interpretation.
- 1.2.2 References to the singular shall include references in the plural and vice versa, words denoting a gender shall include any other gender where the context requires, and words denoting natural persons shall include any other Persons.
- 1.2.3 References to a treaty, directive, regulation, law or legislative provision shall be construed, at any particular time, as including a reference to any modification, extension or re-enactment of the respective treaty, directive, regulation, law or legislative provision at any time then in force and to all subordinate legislation enacted from time to time.
- 1.2.4 In the event there arises a conflict between provisions of the Agreement, the last provision to have been written chronologically shall take precedence.
- 1.2.5 Any reference in this Agreement to a Person acting under the direction of another Person shall not include any action that is taken in contravention of any Applicable Law or Standards, unless the relevant Person can demonstrate that an explicit instruction or direction was given to take the relevant action.
- 1.2.6 Unless expressly stated to the contrary, any reference in this Agreement to the right of consent, approval or agreement shall be construed such that the relevant consent, approval or agreement shall not be unreasonably delayed or withheld. The Parties agree and acknowledge as follows:
- 1.2.6.1 neither Party shall be required to seek or apply for any consent, approval or agreement by any Person which would place the respective Party in breach of the Applicable Law or any Good Industry Practice; and
- 1.2.6.2 nothing in this Agreement shall require the Principal to give or procure the giving of any consent or approval which would be contrary to the protection, safety and efficient operation of the Railway and the Project.
- 1.2.7 A reference to “writing” shall include an e-mail transmission and any means of reproducing words in a tangible and permanently visible form.
- 1.2.8 The words “include” and “including” are to be construed without limitation.
- 1.2.9 Unless indicated otherwise, all references to “days” shall mean calendar days, but “Business Days” shall mean any day except any Saturday, any Sunday and any day which is a legal holiday in the Republic of Latvia with respect to the Principal and the Implementing Body in Latvia, the Republic of Lithuania with respect to the Implementing Body in Lithuania or the Republic of Estonia with respect to the Implementing Body in Estonia, as the case may be.
- 1.2.10 The words in this Agreement shall bear their natural meaning, except for any definitions in accordance with *Annex A: Definitions and common terms.*
- 1.2.11 Unless otherwise specified herein, references in this Agreement to any Clause, Section or Annex shall mean references to such Clause, Section or Annex of this Agreement, and references to any agreement, instrument, or other document in this Agreement refer to such agreement, instrument, or other document as originally executed or, if subsequently amended, replaced, or supplemented from time to time, as so amended, replaced, or supplemented and in effect at the relevant time of reference thereto.
- 1.3 *Order of Precedence.* In the event of any discrepancy or inconsistency between the documents forming part of this Agreement, the following order of precedence shall apply:
- 1.3.1 this Agreement document;
- 1.3.2 Explanations (clarifications) of the Procurement Procedure documentation;

- 1.3.3 Procurement Procedure documents with the annexes (including *Annex B: Technical Specification*);
- 1.3.4 clarifications of the AsBo's Proposal;
- 1.3.5 AsBo's Proposal;
- 1.3.6 respective Assignment Order;
- 1.3.7 all other Annexes of the Agreement.

Section II. Term and value of the Agreement

- 2.1 *On-demand basis.* The Services under the Agreement, save for the provision of the Inception Report under **Section IV. Inception Report** , are on-demand based with no fixed work-load and/or fixed overall value.
- 2.2 *Total value.* The total value of the Agreement together is **4 543 292,00 EUR (four million five hundred forty-three thousand two hundred ninety-two euro, zero cents)** , excluding VAT.
- 2.3 *Term.* The term of the Agreement is sixty (60) months starting from the Effective Date. The Agreement can be repeatedly extended by a written agreement between the Parties for an additional twelve (12) months.
- 2.4 *Expiry and termination.* After the expiry of the Agreement term or once the total value has been reached, no more new Assignment Orders can be concluded. The Agreement terminates once all of the existing Assignment Orders are fully completed by the AsBo and approved by the Principal and the Parties have fulfilled their contractual obligations arising out of this Agreement.

Section III. Subject of the Agreement

- 3.1 *General subject.* This Agreement sets out the rights and obligations, terms and conditions that apply to the Parties of this Agreement where the AsBo is contracted by the Principal and the Implementing Bodies to provide Services to the Principal and the Implementing Bodies for the successful implementation of the Project. The Principal acts as a Central Purchasing Body for the Implementing Bodies, however, each of the Parties is independently responsible for the diligent performance of its separate obligations under this Agreement to the extent provided herein.
- 3.2 *Scope and engagement.* The scope of Services to be provided by the AsBo to the Principal and the Implementing Bodies shall include the provision of the Inception Report under *Section IV. Inception Report* and the Services provided on an on-demand basis under *Annex B: Technical Specification*. Only the Principal (on behalf of itself or the respective Implementing Body, including upon the Implementing Bodies request, as the case may be) is entitled to and will separately and individually engage the AsBo for the provision of Services under *Annex B: Technical Specification* via separate Assignments under the terms of this Agreement.
- 3.3 *Framework.* The purpose of the Agreement is to define the terms and conditions under which the AsBo will provide Services to the Principal and the Implementing Bodies. The Agreement is framework-based and does not impose an obligation whatsoever on the Principal (on behalf of itself or the respective Implementing Body, including upon Implementing Bodies request, as the case may be) to appoint the AsBo to provide all of the Services nor does it guarantee any predetermined scope, save for the provision of the Inception Report under *Section IV. Inception Report*.
- 3.4 *Assignment Order.* For every Assignment, save for the provision of the Inception Report under *Section IV. Inception Report*, a separate Assignment Order (substantially in the form included in

- 3.5 *Annex F: Draft Assignment Order*) will be issued by the Principal (on behalf of itself or the respective Implementing Body, including upon the Implementing Bodies request, as the case may be) and confirmed by the AsBo.
- 3.6 *Authorization to the Principal.* Except where the Principal instructs otherwise, the Principal shall act as the sole administration body of the Agreement and sole representative of the Implementing Bodies and any stakeholders with regards to AsBo and shall be the sole addressee and contact person for AsBo concerning all and any Agreement related matters, including, without limitation, handling of any communication, engaging the AsBo for the provision Services, receiving Deliverables from AsBo and, more generally, coordinating the overall performance of the Agreement. For avoidance of doubt, unless otherwise instructed by the Principal, the AsBo shall not be entitled to accept Assignment Orders, provide Deliverables, request information and/or documents directly from/to the Implementing Bodies and from/to any other stakeholders involved in the Project implementation.
- 3.7 *Role of the Principal.* The Parties confirm their mutual understanding and agree that for the purpose of the Agreement the Principal shall act:
- 3.7.1 for itself and the Implementing Body in Latvia with respect to the Services to be provided concerning the part of the Project within the Republic of Latvia;
 - 3.7.2 as a Central Purchasing Body for the Implementing Body in Lithuania with respect to the Services to be provided concerning the part of the Project within the Republic of Lithuania in accordance with the Contracting Scheme Agreement, dated 30 September 2016;
 - 3.7.3 as a Central Purchasing Body for the Implementing Body in Estonia with respect to the Services to be provided concerning the part of the Project within the Republic of Estonia in accordance with the Contracting Scheme Agreement, dated 30 September 2016.
- 3.8 *Mutual agreement.* The AsBo undertakes to provide the Services only on the basis of an Assignment Order signed by the Principal and the AsBo, the conditions and provisions thereof being binding on both the AsBo as well as the Principal and the respective Implementing Body.
- 3.9 *Failure to perform.* If the AsBo refuses or fails to duly complete the Assignment in accordance with this Agreement, the AsBo is obligated to pay a contractual fine to either the Principal or the respective Implementing Body, depending on who is provided with the particular Services under the Agreement, at the latter's request in the amount corresponding to the double (2x) of the total sum of the Fee according to the Assignment Order, but no more than 50 000 EUR (fifty thousand *euro*).
- 3.10 *Independent Body.* The Parties acknowledge and consent that for the provision of the Services the AsBo must be free of any pressure and incentive, in particular of a financial type, which could affect their judgement or the results of their assessments, in particular from persons and groups of persons affected by the results of the Services, thus nothing in this Agreement shall affect AsBo's provision of impartial judgement based on evidence and the results of the independent safety assessment and/or the conclusions of the independent safety assessment concerning the compliance of the Principal's or the respective Implementing Bodies risk assessment and risk management with the requirements of the common safety methods (CSM) for risk assessment.
- 3.11 *General duty of participation.* The AsBo undertakes a general duty of participation for the provision of the Services and thus shall be obliged to confirm Assignment Orders issued by the Principal in accordance with the *Annex B: Technical Specification* and *Annex K: AsBo's Financial Proposal*. The AsBo has a right to reject the Assignment Order only in exceptional cases where the AsBo envisages that the implementation of a particular Assignment would result in a material conflict with the requirements set in this Agreement. The decision of the AsBo to reject the Principal's Assignment Order shall be provided in writing by stating the reasons for such decision in sufficient detail.

Section IV. Inception Report

- 4.1 *Scope of Inception Report.* The AsBo shall prepare Inception Report which shall conform and include the scope provided under *Annex B: Technical Specification* and submit it to the Principal. For the purpose of the Agreement, the preparation of the Inception Report shall be considered as a separate Assignment confirmed by the Parties as of the Effective Date.
- 4.2 *Review of draft Inception Report.* The AsBo shall prepare draft Inception Report within sixty (60) days from the Effective Date and submit it to the Principal for review. The Principal shall review the draft Inception Report and provide it's comments, if any, within thirty (30) days after the receipt of the draft Inception Report.

- 4.3 *Delivery and acceptance.* The Inception Report shall be delivered and accepted in accordance with the *Section XI. Commencement of Services, remedying of Defects and acceptance.*
- 4.4 *Inception Report Fee.* In consideration of the provision of the Inception Report, the AsBo shall be entitled to receive the amount of Fee prescribed for the Inception Report under *Annex K: AsBo's Financial Proposal.* The Fee for the Inception Report shall be paid in accordance with *Section X. Fee and Payment,* in three (3) equal parts by the Principal, the Implementing Body in Estonia and the Implementing Body in Lithuania to whom AsBo shall issue invoices accordingly.
- 4.5 *Updates to the Inception Report.* The Parties acknowledge that the Inception Report is a working document essential for the provision of the Services under the Agreement and therefore may be subject to amendments throughout the term of the Agreement to support the evolving requirements of the Project. AsBo shall update the Inception Report as and when needed throughout the term of the Agreement and will notify the Principal thereof without delay by submitting to the Principal the updated version of the Inception Report for Principal's approval which shall not be unreasonably delayed or withheld. Unless otherwise agreed by the AsBo and the Principal, the Inception Report shall be updated no later than within fifteen (15) Business Days upon the occurrence of events and/or circumstances that affect the content of the Inception Report and require Inception Report update. For the avoidance of doubt, no additional fee, compensation of Costs, etc. shall be payable to AsBo for the subsequent updates of the initial Inception Report throughout the term of the Agreement, if any.

Section V. Appointment of an Assignment

- 5.1 *Principal's discretion in procuring Services.* The Principal shall be entitled to issue Assignment Orders to the AsBo with respect to any Deliverable under the *Annex B: Technical Specification* at its sole discretion or at the request of the Implementing Body.
- 5.2 *Implementing Body's request.* The Implementing Body shall request the Principal to issue an Assignment Order to the AsBo for the provision of the particular Assignment by issuing a written request substantially in the form of *Annex E: Draft* to the Principal no later than twenty-five (25) Business Days before the intended commencement of the particular Assignment.
- 5.3 *Issuance of the Assignment Order.* The Principal shall engage the AsBo to implement an Assignment by issuing to the AsBo a draft Assignment Order substantially in the form of

- 5.4 *Annex F: Draft Assignment Order.* The Assignment Order, amongst others, shall include description of the Deliverables, Milestones, the Fee for the Assignment set according the *Annex K: AsBo's Financial Proposal* or under Clause 5.6 and indicate the party to which the Services are being provided to.
- 5.5 *Conclusion of the Assignment Order.* Immediately, but no later than within three (3) Business Days, after receiving the draft Assignment Order, unless otherwise specified by the Principal, the AsBo shall confirm the commencement of the Assignment by returning a signed Assignment Order.
- 5.6 *Changes in the design sections.* The Parties acknowledge that the distribution of the design sections at the construction and testing phase included in the *Annex B: Technical Specification* can be changed during the implementation of the Project. Therefore, where the design section at the construction and testing phase for the Deliverable is different than the design section for the construction and testing phase indicated under *Annex B: Technical Specification* by more than ten percent (10%), the Fee for the particular Deliverable under *Annex K: AsBo's Financial Proposal* shall be recalculated by the Principal by taking into account the actual number of kilometres of the particular design section.

Section VI. General terms and conditions

- 6.1 *Engagement.* The Principal (on behalf of the Principal itself or the respective Implementing Body, including upon the Implementing Bodies request, as the case may be) shall hereby engage the AsBo to provide and perform the Services for the purposes of the Project, as described in this Agreement and according to the specifications contained within the Agreement, including *Annex B: Technical Specification* and the respective Assignment Order, and the AsBo hereby accepts such engagement. The Services shall result in the provision of the Deliverables to the Principal as identified under *Section IV. Inception Report* and each particular Assignment Order.
- 6.2 *Co-Operation of the Parties.* The Parties shall cooperate with one another to fulfil their respective obligations under this Agreement. Parties shall endeavour to maintain good working relationships among all key personnel engaged toward provision of the Services.
- 6.3 *Accreditation Requirements.* By signing this Agreement, the declaration is made by the AsBo that the AsBo is accredited in accordance with the Applicable Law (including European Commission Regulation No 402/2013), to provide the Services to the Principal and the Implementing Bodies in the Republics of Latvia, Estonia and Lithuania and shall remain as such throughout the entire term of the Agreement. Moreover, in case under Applicable Law the AsBo is required to obtain any new or additional permits, licenses, certificates, recognitions, accreditations for the provision of the Services under the Agreement the AsBo shall obtain such permits, licenses, certificates, recognitions, accreditations in order to avoid any impediment, restriction or delay with respect of the provision of the Services under the Agreement.
- 6.4 *General Obligations of AsBo.* The AsBo shall be responsible for the professional quality, technical accuracy, and coordination of all Deliverables provided under this Agreement. The AsBo shall have an obligation, without additional compensation of any kind, to correct or revise any Defects, errors, deficiencies, or omissions in Deliverables rendered hereunder and forming part of the Services.
- 6.5 *Acceptance Not a Waiver.* The Principal's or the Implementing Body's review, approval, acceptance, or payment for the Assignments forming part of the Services shall not be interpreted or construed to operate as a waiver of any right or cause for action arising out of the AsBo's performance of any Assignments under this Agreement. The AsBo shall remain liable to the Principal or the respective Implementing Body as allowed under this Agreement and Applicable Law for all costs and/or Damages caused by the AsBo's negligent performance of any of the Assignments and Services furnished under this Agreement.
- 6.6 *Communication between the Parties.*
- 6.6.1 Communication under the Agreement (e.g. information, requests, submissions, formal notifications, etc.) must:
- 6.6.1.1 be carried out in English;
 - 6.6.1.2 be made in writing (including electronic form);
 - 6.6.1.3 be carried out between the authorised persons as specified in Clause 6.6.6 or additional specific contact persons as laid down in the corresponding Assignment Order;
 - 6.6.1.4 bear the Agreement's and Assignment Order's number.

- 6.6.2 During the implementation of the Assignment Order, the communication via e-mail shall be executed between contact persons indicated in the corresponding Assignment Order. Additionally, all copies of those e-mail messages shall be sent to the involved Parties' e-mail addresses specified in the Agreement.
- 6.6.3 Communications by e-mail are deemed made when they are sent by the sending Party to the receiving Party, unless the sending Party receives a message of non-delivery.
- 6.6.4 Assignment Orders, notices, declarations and invoices shall be deemed received:
- 6.6.4.1 if delivered by hand, on the first (1) Business Day following the delivery day;
 - 6.6.4.2 if sent by post, on the fifth (5) Business Day after the date of posting;
 - 6.6.4.3 if sent by e-mail, the same Business Day if sent prior to 17:00 o'clock and the next Business Day if sent after 17:00 o'clock (Eastern European Time).
- 6.6.5 For the purposes of the performance of the Agreement, the Parties agree that information may be exchanged electronically over the internet.
- 6.6.6 For the purposes of this Agreement:
- 6.6.6.1 the authorised representative of the Principal for Agreement fulfilment issues and Assignment Order procedures (authorized including, but not limited, to conclude the Assignment Order (and any Variations thereto), Deed of Acceptance and to issue the Objection Notice) is [•], e-mail: [•], phone: [•];
 - 6.6.6.2 the authorised representative of the Implementing Body in Latvia for Agreement fulfilment issues is [•], e-mail: [•], phone: [•];
 - 6.6.6.3 the authorised representative of the Implementing Body in Estonia for Agreement fulfilment issues is [•], e-mail: [•], phone: [•];
 - 6.6.6.4 the authorised representative of the Implementing Body in Lithuania for Agreement fulfilment issues is [•], e-mail: [•], phone: [•];
 - 6.6.6.5 the authorised representative of the AsBo for Agreement fulfilment issues and Assignment Order procedures (authorized including, but not limited, to conclude the Assignment Order (and any Variations thereto) and issue Deed of Acceptance) is [•], e-mail: [•], phone: [•].
- 6.7 *Variations.* Notwithstanding any provisions in this Agreement to the contrary, whenever the AsBo or the Principal reasonably consider that a variation to the Agreement or the Assignment Order (the "Variations") is necessary, the AsBo and the Principal shall negotiate in good faith on the terms of the intended Variations. For the avoidance of doubt, no Variation shall be effective unless and until concluded in writing by the respective Parties.
- 6.8 *Variations Scope.* For the purpose of the Agreement, and at any time prior to the completion of the Services under the Agreement or respective Assignment Order, as the case may be, Variations may be issued in respect of:
- 6.8.1 amendments to the Agreement, the Assignment Order, the Inception Report, or any part thereof, to comply with the amendments or adjustments to the Applicable Laws from time to time, if any;
 - 6.8.2 amendments to the Inception Report or any part thereof, save for the updates under to the Inception Report under Clause 4.5;
 - 6.8.3 amendments to *Annex B: Technical Specification* to comply with any requirements (mandatory or optional) of the National Security Agencies or any other state or municipal authorities or institutions of the Republic of Latvia, Republic of Estonia, and Republic of Lithuania, which are entitled to issue decrees, instructions or recommendations with respect to the Service provision during design, construction and testing stages of the Project implementation;
 - 6.8.4 supply of additional Services not previously foreseen under the Agreement;

- 6.8.5 provisions of the Agreement, which prescribe the conclusion of Variations;
 - 6.8.6 implementation of any amendments to the Agreement or respective Assignment Order as initiated or approved by the Principal during the provision of the Services within the design, construction, and testing stages of the Project implementation which are necessary due to such reasons which the Principal or the Implementing Bodies could not foresee in advance, including, but not limited to matters under Clauses 6.8.1; 6.8.2; and 6.8.3.
- 6.9 *Limitations to the Variations.* In case of Variations due to supply of additional Services under Clause 6.8.4, or due to reasons which the Principal or the Implementing Bodies could not foresee in advance under Clause 6.8.1; 6.8.2; 6.8.3, the total value of the Agreement may not change by more than fifty percent (50%).
- 6.10 *De minimis.* Notwithstanding anything to the contrary contained in the Agreement, the AsBo and the Principal may agree on the supply of additional Services not previously foreseen under the Agreement if they do not change the nature of the Agreement (type and purpose specified herein) and if the total value of such additional Services does not concurrently reach the thresholds specified by the Cabinet of Ministers of the Republic of Latvia, starting from which the agreement notice must be published in the Official Journal of the European Union and ten percent (10%) of the total value of the Agreement.
- 6.11 *Variation Fee.* Fee for additional services as a result of Variations, if any, shall be determined taking into account the calculations and fees under *Annex B: Technical Specification* and *Annex K: AsBo's Financial Proposal*. Furthermore, such Fee shall be consistent with the market practice and proportionate to the Fee for Assignments with similar scope under the Agreement, if any. Variations not resulting in additional services or works, including Variations related to the timeline of the provision of the Services under the Inception Report, shall not result in additional fees or compensation of Costs.
- 6.12 Fees for the Assignment provided under *Annex B: Technical Specification* can be adjusted only if as of result of the Variations the work amount of the particular Assignment is increased by more than ten percent (10%).

Section VII. Responsibilities of Principal and the Implementing Bodies

- 7.1 *Supply of Information.* Unless otherwise provided under this Agreement, the Principal and the Implementing Bodies shall, in a timely manner, provide to the AsBo any information, including information regarding requirements and parameters of the Railway and the Project, as may reasonably be requested by the AsBo for the purposes of the Services and Assignments, provided that the Principal and the Implementing Bodies are in possession of such information.
- 7.2 *Review of Documentation.* The Principal and the Implementing Bodies, if requested by the Principal, shall examine Documentation as may be submitted by the AsBo for review by the Principal and the Implementing Bodies toward partial completion of a particular Assignment and, upon request of the AsBo, shall render decisions and opinions pertaining thereto.
- 7.3 *Decisions.* On all matters properly referred to it in writing by the AsBo, the Principal shall give its decision in writing so as not to delay the provision of Services and a particular Assignment and within a reasonable time.
- 7.4 *Accounting and Auditing Services.* The Principal shall furnish accounting and auditing services as may be necessary for the provision of Services as the Principal may require to ascertain how and/or for what purposes the AsBo has used the funds paid under the terms of this Agreement.
- 7.5 *Action Upon Becoming Aware of Defects.* In the event the Principal or the respective Implementing Body observes or otherwise becomes aware of any error, fault, omission, or defect in the Services or Assignment or non-conformance of any action forming part of the Services or Assignment with the Deliverables, Documentation or information, the Principal (on behalf of itself or the respective Implementing Body, including upon Implementing Bodies request, as the case may be) shall give prompt notice thereof to the AsBo. The AsBo shall have the obligation to correct such error, fault, omission, or defect in the Services or Assignment or non-conformance of any action forming part of the Services or Assignment.
- 7.6 *No interference.* The Principal or the Implementing Body shall not interfere in bad faith with the AsBo's impartial Service provision in order to affect the conclusions of the independent safety assessment concerning the compliance of the Principals or the Implementing Bodies' risk assessment and risk management with the requirements of the common safety methods (CSM) for risk assessment.

Section VIII. Responsibilities of AsBo

- 8.1 *Standard of Performance.* The AsBo shall perform the Services impartially and as expeditiously as is consistent with professional skill and care, orderly progress of the Services and each Assignment, and in accordance with the conditions set forth in the Agreement and *Annex B: Technical Specification*.
- 8.2 *Deliverable Requirements and Language.* The AsBo may be required by the Principal or the Implementing Bodies to provide copies of prints or electronic editions of the Deliverables, as per the specific conditions of each Assignment Order. Where indicated in the respective Assignment Order by the Principal the AsBo shall procure that each Deliverable which is subject to further submission to the national security agencies or any other state authorities in Latvia, Lithuania, and Estonia upon delivery of respective Assignment under Clause 11.4 shall be submitted to the Principal both in the English language and the Latvian, Lithuanian or Estonian language, as applicable, and such obligation to provide the bilingual Deliverable shall not result in additional fees or compensation of Costs to the Principal or the Implementing Body.
- 8.3 *Obligation to Act in Accordance with Principal's Comments.* In performing the Services and Assignments, the AsBo shall have due regard to any comments made by the Principal or the respective Implementing Body in connection with any review of the Documentation or information furnished by the Principal or the respective Implementing Body to extent consistent with the impartial nature of the Services and shall provide reasons to the Principal where it does not take into account any such comments.
- 8.4 *Cooperation with stakeholders.* AsBo undertakes to cooperate with all the relevant stakeholders, including the relevant stakeholders mentioned under *Annex B: Technical Specification*, of the Principal or the Implementing Bodies that are directly or indirectly involved in the Project as will be necessary for the sufficient provision of the Services and the fulfilment of the objectives set out in the Agreement.
- 8.5 *Duty of Care and Exercise of Authority.* The AsBo shall:
- (a) in performing its obligations under this Agreement, exercise reasonable professional skill, diligence and care as may be expected of a properly qualified and competent person carrying out independent safety assessment services of a similar size, nature, type and complexity;
 - (b) ensure that its personnel are properly qualified and competent in accordance with the relevant Standards;
 - (c) ensure that specific documents as per respective Services, if any, and other documents and information required to be prepared or submitted by the AsBo under this Agreement conform to Good Industry Practice generally acceptable at the time of submission of such specific documents as per respective Services, documents and information;
 - (d) at all times during the term of the Services, ascertain and comply with all Applicable Laws and Good Industry Practice of the country of registration of the Party to which the particular Services are provided;
 - (e) comply, where applicable, with any reasonable requirements of the Principal not otherwise provided for in this Agreement;
 - (f) ensure that specific documents as per respective Services, if any, and all documents and information is furnished in accordance with Good Industry Practice, the Applicable Laws, and using conventional industry quality control methods; and
 - (g) notify the Principal of any Defects in accordance with Clause 11.3 of this Agreement as soon as such Defects are identified by the AsBo.
- 8.6 *Maintenance of Records.* During the term of the Services and for a period of ten (10) years from expiration or termination of this Agreement for any reason whatsoever, the AsBo shall keep and maintain clear, adequate and accurate records and Documentation evidencing, to the reasonable satisfaction of the Principal, that the Services have been and are being carried out in accordance with the Standards. In case of on-going audits, appeals, litigation or pursuit of claims concerning the grant, including in the case of correction of systemic or recurrent errors, irregularities, fraud or breach of obligations, the records shall be kept and maintained longer.
- 8.7 *Access to Documentation.* At all times during the term of the Services, the Principal shall have access to all Documentation. This access shall be continuing and survive the termination of this Agreement for either cause or convenience. The Documentation shall be kept to be accessed in a generally recognized format for a period of ten (10) years from the date of expiration or termination of this Agreement. All records forming part of the

Documentation shall be available to the Principal' auditor, or expert appointed by the Principal during the period of time specified in accordance with this Clause 8.7.

8.8 *Right to Sub-Contractors and Staff.*

8.8.1 In carrying out the Services, the AsBo may only rely on the services of those Approved Sub-Contractors and Staff listed in *Annex D: List of approved Sub-Contractors and Staff*, 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 applicable Public Procurement Law of the Republic of Latvia. Parties shall specify the name, contact details and legal representative(s) of each Approved Sub-Contractor as of the Effective Date in *Annex D: List of approved Sub-Contractors and Staff*. The AsBo shall have an obligation to notify the Principal in writing of any changes to Approved Sub-Contractor or Approved Staff data specified in *Annex D: List of approved Sub-Contractors and Staff* occurring during the term of this Agreement and of the required information for any new Sub-Contractors or Staff member which it may subsequently engage toward provision of the Services.

8.8.2 Pursuant to the Public Procurement Law of the Republic of Latvia the AsBo shall obtain prior written consent of the Principal for the replacement of each Approved Sub-Contractor or each Approved Staff member, or each key personnel indicated in *Annex D: List of approved Sub-Contractors and Staff* and involvement of additional Sub-Contractors or Staff members, or key personnel.

8.8.3 Review and evaluation of the replacement of Approved Sub-Contractors or Approved Staff shall be carried out, and the consent or refusal to give consent shall be rendered by the Principal in accordance with Article 62 of the Public Procurement Law of the Republic of Latvia.

8.9 *Security Clearance Requirements.* The AsBo shall not involve in the performance of the Agreement a person convicted of an intentional criminal offense (employees, sub-contractors and/or any other person and personnel), regardless of the criminal record having been set aside or extinguished, and/or a person of whom there are known facts that give grounds to doubt his or her ability to retain restricted access and/or classified information, as well as a person who has or may have a conflict of interest by involving him in the performance of the obligations under this Agreement.

8.9.1 At the Principal's request, the AsBo shall submit to the Principal a statement (certificate) from the relevant state penalty register regarding the criminal record of the natural person who will be involved in the performance of the Agreement.

8.9.2 In order to assess the compliance of the natural person whom the AsBo intends to involve in the performance of the Agreement with the requirements specified in Clause 8.9 of this Agreement, the Principal has the right to organize an additional security compliance check.

8.9.3 The AsBo undertakes to inform the natural person involved in the performance of the Agreement about the processing of personal data performed by the Principal when organizing a security compliance check.

8.9.4 The AsBo shall submit to the Principal in writing at least ten (10) Business Days prior to the involvement of any natural person in the performance of the Agreement the following information of the person: name, surname, personal identification code (or equivalent personal identification information), place of birth, position, company name (in case involved staff of sub-contractors), the country from which the person comes. At the Principal's request, the AsBo shall also submit a brief description of the role and responsibilities of the natural person in the performance of the Agreement.

8.9.5 The Principal has the right, at its own discretion, to prohibit a natural person specified by the AsBo from performing tasks related to the performance of the Agreement by notifying the AsBo thereof in writing if the requirements referred to in this section of the Agreement are not complied with. The Parties agree that such decision of the Principal is incontestable.

8.9.6 If the Principal prohibits a natural person specified by the AsBo from performing the tasks related to the performance of the Agreement, the AsBo shall replace this natural person with another natural person by notifying the Principal in accordance with the procedure laid down in of Clause 8.9.4 of the Agreement.

8.9.7 If the AsBo cannot replace a natural person or if its replacement would cause disproportionately high expenses to the AsBo, the AsBo shall immediately provide the Principal with a motivated explanation and the Parties shall try to agree on possible conditions and procedures in which this natural person may perform tasks related to the performance of the Agreement.

- 8.9.8 The AsBo shall take all necessary actions and measures in a timely manner to ensure that a natural person is not involved in the performance of the Agreement or the involvement is immediately terminated if the natural person does not comply with Clause 8.9 of this Agreement, otherwise creates or may create security risks for the Principal, incl. risks to the Principal's information systems, information or data, as well as risks to the Principal's reputation or operations.
- 8.9.9 The AsBo is obliged to:
- 8.9.9.1 ensure that a natural person who does not comply with the security clearance requirements is not involved in the performance of the Agreement;
 - 8.9.9.2 immediately replace a natural person who does not comply with the security clearance requirements in accordance with the provisions of this Agreement (and/or with the requirements of the Public Procurement Law);
 - 8.9.9.3 observe and not contest the Principal's written instructions and decisions in accordance with Clause 8.9 of the Agreement;
 - 8.9.9.4 provide the Principal with all the necessary information and support related to the necessity to replace a natural person.
- 8.9.10 In any case, the AsBo shall immediately notify the Principal in writing of any situation that has arisen before the start and during the performance of the Agreement, as a result of which there is or may be a risk of involving a natural person who does not comply with the security clearance requirements under Clause 8.9 of this Agreement, as well as notifies the Principal in writing of the replacement of such natural person involved in the performance of the Agreement.
- 8.9.11 If the AsBo violates the conditions referred to in Clause 8.9 of this Agreement and/or disregard Principal's instructions regarding security clearance requirements then it constitutes a material breach of the Agreement and as grounds for the Principal to immediately terminate the Agreement according to *Section XII. Termination and suspension*.
- 8.10 *Responsibility for Performance by Sub-Contractors and Staff.* The AsBo shall retain the complete responsibility for the proper performance of all of its obligations under this Agreement, and any act, failure to act, breach, or negligence on the part of any of its Approved Sub-Contractors and Approved Staff shall, for the purposes of this Agreement, be deemed to be the act, failure to act, breach or negligence of the AsBo.
- 8.11 *No Conflicting Activity.* Except with the Principals' knowledge and express written permission, the AsBo shall not engage in any activity or accept any employment, other agreement, interest, or contribution that would reasonably appear to compromise the AsBo's professional judgment and performance with respect to the provision of Services and/or the Project. In performing the Services, the AsBo shall take all necessary measures to prevent any situation where the impartial and objective implementation of the Services is compromised for reasons involving economic interest, political or national affinity, family, or emotional ties or any other shared interest.
- 8.12 *Attendance of Meetings.* To the extent necessary to ensure smooth and efficient provision of the Services, the AsBo shall, in accordance with the *Annex B: Technical Specification* and/or at the Principal's request, hold and/or attend meetings with the Implementing Bodies, relevant stakeholders, or any other persons. Upon the Principal's request, the AsBo shall arrange Assignment's communication's planning meetings as described in *Annex B: Technical Specification* and/or the particular Assignment Order, at which appropriate personnel of the AsBo, Principal, and the respective Implementing Body shall be present. If requested by the Principal, the AsBo shall record meetings (also online meetings) between Parties and prepare meeting reports within five (5) Business Days after each meeting. All meeting reports shall be confirmed by the Principal.
- 8.13 *Compliance with Laws.* The AsBo shall review the Applicable Laws that are applicable to the provision of Services in the Republic of Latvia, the Republic of Lithuania, and the Republic of Estonia. In carrying out any activities forming part of the Services, the AsBo shall, at all times, ensure compliance with requirements imposed by supra-national and/or governmental authorities having jurisdiction over the Project, in particular, the European Commission Regulation No 402/2013 of 30 April 2013.
- 8.14 *Information Furnished by Principal and Implementing Bodies.* The AsBo shall be entitled to rely on the accuracy and completeness of information furnished by the Principal and the Implementing Bodies. The AsBo shall provide prompt written notice to the Principal and the respective Implementing Body if the AsBo becomes aware of any errors, omissions, or inconsistencies in the information provided by the Principal and the Implementing Body or in the preparation or provision of Services, Assignments or information.

8.15 *Certain Negative Covenants.* In performing the Services, the AsBo undertakes not to procure goods or services of any kind from any person meeting any of the following criteria:

- (a) the Person who is a member of the Management Board or Supervisory Board of an Approved Sub-Contractor or procurator of an Approved Sub-Contractor, or is authorised to represent or act on behalf of an Approved Sub-Contractor with respect to any activity related to any subsidiary company of such Approved Sub-Contractor, and such Person has been accused of commitment of any of the following criminal offences pursuant to an order issued by a public prosecutor or was found to be guilty of commitment of any of the following criminal offences in accordance with a court judgment that has entered into legal force, is non-disputable and non-appealable:
 - (i) formation, organisation, leading or involvement in the criminal organisation or another criminal formation, or participation in the criminal acts of such organisation or formation;
 - (ii) accepting a bribe, giving of a bribe, misappropriation of a bribe, intermediation toward giving or taking of a bribe, acceptance of a prohibited benefit or commercial bribing;
 - (iii) fraud, misappropriation of funds or money laundering;
 - (iv) tax evasion or evasion of payments equivalent to tax;
 - (v) terrorism, financing of terrorism, instigation of acts of terrorism, terrorist threats or recruitment and training of a person with the aim of committing acts of terrorism;
 - (vi) human trafficking;
- (b) the Person has, by decision of a competent authority or judgment of a court which has entered into legal force and is non-disputable and non-appealable, been found guilty of violation of labour law in any of the following manners:
 - (i) employment of one or more citizens or nationals of countries who are not citizens or nationals of a Member State of the European Union and are residing in the territory of a Member State of the European Union unlawfully;
 - (ii) employment of one or more persons without having entered into written employment agreement with such persons, or without having submitted an employee declaration with respect to such persons within a period of time stipulated in accordance with applicable laws and regulations applicable to persons that enter into salaried employment;
- (c) the Person who, by decision of a competent authority or in accordance with judgment of a competent court which has entered into legal force, is non-disputable and non-appealable, has been held guilty of violation of applicable rules of competition law manifested as a vertical agreement aimed at restricting the ability of one or more purchasers to determine the resale price, or a horizontal cartel agreement, with the exception of instances where the relevant authority, upon having established the fact of violation of applicable rules of competition law, has discharged the candidate or participant in a tender offer from imposition of a fine or has reduced the amount of fine as a part of co-operation leniency programme;
- (d) the Person who has insolvency proceedings initiated against it (except in the circumstances where a bailout or a similar set of measures are applied within the insolvency proceedings and are aimed at preventing the bankruptcy and restoring the debtor back to solvency, in which case the AsBo shall evaluate the possibility of participation by such Person in performing the Services), economic activity of the Person has been suspended or discontinued, bankruptcy proceedings have been initiated against the Person or the Person is subject to a liquidation;
- (e) the Person has unpaid tax indebtedness in the country where the procurement is organised or in the country where the Person is registered or permanently residing as a tax payer, including the indebtedness with respect to State social insurance contributions, in the total amount exceeding EUR 150 in each individual country; in such case, the AsBo can, within its sole discretion, prompt the Approved Sub-Contractor to pay or discharge all outstanding tax indebtedness within ten (10) Business Days and, upon such payment or discharge, allow the Person to continue performance of the Services;
- (f) the Person is an entity registered offshore;
- (g) International or national sanctions or substantial sanctions by the European Union or the North Atlantic Treaty Organization Member State affecting the interests of the financial and capital market has been imposed to the Person and such sanctions can affect the execution of the Contract; and

- (h) any of the above-mentioned criteria shall apply to all members of a group of persons if the Person is a group of persons.

8.16 *Visibility Requirements.* At all times during performance of the Services, the AsBo undertakes to comply with each of the following requirements:

- (a) any report, brochure, document or information related to the Services conducted by the AsBo hereunder or any other Person, or which the AsBo makes publicly available shall include each of the following:
 - (i) a funding statement which indicates that the Services are financed from CEF funds substantially in the following form: "Co-financed by the Connecting Europe Facility of the European Union";
 - (ii) 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 sole responsibility of this publication lies with the author. The European Union is not responsible for any use that may be made of the information contained therein". 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
 - (iii) the flag of the Council of Europe and the European Union.
- (b) the requirements set forth in Clauses 8.16(a)(i) and 8.16(a)(iii) of this Agreement can be complied with by means of utilizing the following logo:



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

in the event the AsBo decides to utilize the above logo, the AsBo 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; and

- (c) in order to comply with the latest applicable visibility requirements established by the European Union, the AsBo shall regularly monitor changes to visibility requirements; as of the Effective Date, 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>.

8.17 *Reporting.* The AsBo shall, in a format and at intervals to be agreed with the Principal:

- (a) provide the Principal with regular reports and status updates on the progress of the Services or an Assignment;
- (b) report on any changes to the Annexes of this Agreement, which the AsBo considers may be needed in order to fulfil the objectives set out in the Agreement; and
- (c) use reasonable endeavours to provide any other information and status updates as may be reasonably requested by the Principal at any time.

In order to avoid any doubt, any change to the above-mentioned documentation can be made only pursuant to this Agreement, if agreed by Parties, and, if the proposed changes are compliant with the Public Procurement Law of the Republic of Latvia.

Section IX. Representations and Warranties

9.1 *Certain Representations and Warranties by Parties.* Each Party represents and warrants to the other Parties, as of the Effective Date, as follows:

- (a) it has entered into this Agreement with the aim of attaining all of the objectives and performing in all material respects all of the obligations and commitments herein set forth;

- (b) it has entered into this Agreement without having any intention or goal whatsoever to violate the Applicable Law, its own Articles of Association, other constitutional documents, laws or agreements of any kind to which it is a party;
- (c) it is not bankrupt and is not the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, it is not in an arrangement with creditors, where its business activities are suspended, or it is in any analogous situation arising from a similar procedure under the laws of the country where it is registered and submits its tax accounts; and
- (d) it has entered into this Agreement of its own volition and in good faith.

9.2 *Certain Representations and Warranties by AsBo.* The AsBo represents and warrants to the Principal and the Implementing Bodies, as of the Effective Date, as follows:

- (a) it has all requisite qualification, skills and competence to perform the Services on the terms and conditions of this Agreement which are no less favourable than the terms and conditions of service identified by the AsBo in any document submitted by the AsBo to the Principal as part of the Procurement Procedure and on the terms of the AsBo's Proposal;
- (b) it holds and will hold for the entire term of the Agreement all requisite accreditations, recognitions, licenses, permits, approvals and consents necessary under the Applicable Law (including European Commission Regulation No 402/2013) to enable performance by the AsBo of the Services according to the specifications contained in this Agreement and *Annex B: Technical Specification*;
- (c) it has all requisite ability to ensure the highest quality of the Services;
- (d) it will assign competent and duly qualified personnel to carry out the Services and particular Assignments set out in this Agreement according to the highest professional Standard and Good Industry Practice;
- (e) it is not deemed to be a person associated with the Principal or the Implementing Bodies for the purposes of Applicable Law;
- (f) it has been registered as a VAT payer in the French Republic;
- (g) it is compliant with all of the requirements of the Declaration of AsBo contained in *Annex I: Declaration of AsBo* and will continue to be compliant with all such requirements during the term of this Agreement;
- (h) in case the AsBo and the Principal or the respective Implementing Body to which the Services are provided from time to time are residing in different jurisdictions, the Services under this Agreement will not be provided through permanent establishment or fixed base maintained by the AsBo in the Republic of Latvia, in case the Services are provided to the Principal or the Implementing Body in Latvia, in the Republic of Estonia, in case the Services are provided to the Implementing Body in Estonia, and in the Republic of Lithuania, in case the Services are provided to the Implementing Body in Lithuania. The AsBo agrees to submit to the Principal or the respective Implementing Body four (4) copies of "*Residence Certificate–Application for Reduction of or Exemption from [Latvian/Estonian/Lithuania] anticipatory taxes withheld at source from payments (management and consultancy fees, leasing fees and certain other types of income), paid to residents of the French Republic*" (the "*Residence Certificate*") confirmed by Competent Authority of the French Republic and either the Latvian State Revenue Service, Estonian Tax and Customs Board, and Lithuanian State Tax Inspectorate as the case may be. The Residence Certificate shall be submitted to the Principal or the respective Implementing Body, as applicable, prior the Principal or the respective Implementing Body will due to make a payment of the fee or other payments to the AsBo. Otherwise the Principal or the respective Implementing Body will withhold withholding tax at the applicable rate of from the Fee and payments made to the AsBo. The Principal or the respective Implementing Body, as the case may be, is entitled to make any deductions from the payments due to the AsBo if the AsBo doesn't comply with this provision where applicable; and
- (i) immediately arrange for engagement of supplemental personnel when necessary at the cost of the AsBo. For the avoidance of any doubt, the engagement of supplemental personnel shall not require approval by the Principal, provided that these personnel comply with the Applicable Law, including the Public Procurement Law of the Republic of Latvia, and this Agreement.

Section X. Fee and Payment

10.1 *Fee.* In consideration of the provision of the Services, the Principal, the Implementing Body in Estonia or the Implementing Body in Lithuania, to which the particular Services are being provided per the *Annex B: Technical*

Specification and the Assignment Order, undertakes to pay the AsBo a fee in the total amount set forth by the Assignment Order or the Agreement, in case of Inception Report under *Section IV. Inception Report*, (the "Fee"). The Principal shall pay for the Services provided in the Republic of Latvia, the Implementing Body in Estonia shall pay for the Services provided in the Republic of Estonia and the Implementing Body in Lithuania shall pay for the Services provided in the Republic of Lithuania. The Fee for the Assignments shall be set according to *Annex K: AsBo's Financial Proposal*. For the Agreement, the Fee shall include all Costs and expenses incurred by the AsBo and Approved Sub-Contractors toward performing the particular Assignment. The Fee excludes value added tax that will be charged at the rate applicable by Applicable Law at the time of invoicing.

- 10.2 *Invoicing.* According to the particular Assignment Order and following each Completion Date, provided that the Principal has accepted/approved the particular Deliverable of the Assignment which the invoice related to, the AsBo shall deliver to the Principal a draft invoice specifying the amount of the Fee payable to the e-mail: invoices@railbaltica.org. Upon receipt of the draft invoice, the Principal shall verify its contents and, if the invoice is to be paid for by the Implementing Body, submit it to the respective Implementing Body for verification, which shall be provided within five (5) Business Days. Provided that the draft invoice is confirmed, the AsBo following Clause 10.6 shall deliver to the Principal or the Implementing Body, as applicable, an invoice specifying the amount of the Fee payable. In the event, the Principal or respective Implementing Body objects to payment of any amount claimed by the AsBo in the invoice, notice in the form chosen by the Principal or respective Implementing Body to this effect shall be given by the Principal or respective Implementing Body to the AsBo not later than on the due date for the respective payment under this Clause 10.2. This notice of objection shall state the amount to be withheld, the grounds for withholding the payment and the basis on which that amount is calculated. Unless such notice of objection is made, the amount to be paid is that stated in the invoice which shall become due and payable by this Agreement. For the avoidance of any doubt, the Principal or respective Implementing Body shall not be required to pay any amount under this Agreement for any part of the Services that have not been accepted per *Section XI. Commencement of Services, remedying of Defects and acceptance of this Agreement*.
- 10.3 *Payment.* Subject to the provisions of Clause 10.2, the Principal and the Implementing Bodies shall have the right to make the payments to the AsBo with set-off, retention, counterclaim, abatement or other deduction of any kind that arises from this Agreement and from the obligations of the AsBo provided herein (i.e. in cases of accrued contractual penalty amounts, in case if the Principal or the respective Implementing Body haven't received residence certificate as stipulated in this Agreement, etc.). If the Principal or the Implementing Body uses the right to make the payments to the AsBo with set-off, retention, counterclaim, abatement or other deduction of any kind, then the Principal or the respective Implementing Body notifies the AsBo no later than on the due date of the respective payment stating the amount, the grounds and the basis for the use of the right to set-off, retention, counterclaim, abatement or other deduction or other right. Invoices shall be paid within sixty (60) days after the date on which the Principal or the respective Implementing Body received a properly prepared invoice per Clause 10.6 on the accepted Deliverable and signed Assignment Order. Should the Principal or the Implementing Body receive an improperly prepared invoice the Principal or the respective Implementing Body shall notify the AsBo in writing.
- 10.4 *Costs and Commissions.* Each Party shall bear its own costs, fees, commissions and expenses incurred in connection with the transfer of any funds under this Agreement to the other Party.
- 10.5 *Compliance with Tax Obligations.* It is acknowledged and agreed by the Parties that the Fee shall include all taxes and duties payable by the AsBo in the consequence of provision of the Services or particular Assignment, except value added tax (the "VAT"). The AsBo shall, at the sole cost and expense of the AsBo, comply with the obligation to pay all taxes and duties relevant to the provision of the Services in accordance with Applicable Law. In addition, the AsBo shall assume all risks associated with the payment or obligation to pay such taxes and duties, if any. The AsBo assumes all risks associated with the possible increase in the amount of the Fee arising as a result of the obligation of having to pay any such taxes or duties.
- 10.6 *Invoice.* The AsBo's invoices shall contain the following AsBo's details and details about the Agreement:

AsBo	CERTIFER SA
Registration No	802053397
VAT payer's No or indication that the AsBo is not a VAT payer	FR2880205339700039
Legal address, city, Zip code, country	18 rue Edmond Membrée 59300 Valenciennes, France
Legal name of Bank	[.]

Bank SWIFT Code	[.]			
Bank Account No IBAN	[.]			
The Principal's or the Implementing Bodies VAT No	For the Principal: LV40103845025; for the Implementing Body in Estonia EE101954107; for the Implementing Body in Lithuania LT100012666211			
Subject:	For provided services according to the Framework Agreement No. [●], Assignment Order No. [●] [OPTIONAL]			
Specific information:	<table border="1"> <tr> <td>For the Principal: CEF [.] Contract Manager: [.]</td> <td>For the Implementing Body in Estonia: CEF [.] Contract Manager: [.]</td> <td>For the invoices concerning the Implementing Body in Lithuania: Name: AB "LTG Infra" Registration No: 305202934; Address: Geležinkelio g. 2, 02100 Vilnius, Lithuania; CEF: [.] Contract Manager: [.] Agreement No: [.]</td> </tr> </table>	For the Principal: CEF [.] Contract Manager: [.]	For the Implementing Body in Estonia: CEF [.] Contract Manager: [.]	For the invoices concerning the Implementing Body in Lithuania: Name: AB "LTG Infra" Registration No: 305202934; Address: Geležinkelio g. 2, 02100 Vilnius, Lithuania; CEF: [.] Contract Manager: [.] Agreement No: [.]
For the Principal: CEF [.] Contract Manager: [.]	For the Implementing Body in Estonia: CEF [.] Contract Manager: [.]	For the invoices concerning the Implementing Body in Lithuania: Name: AB "LTG Infra" Registration No: 305202934; Address: Geležinkelio g. 2, 02100 Vilnius, Lithuania; CEF: [.] Contract Manager: [.] Agreement No: [.]		

The AsBo shall send the invoice to the Principal electronically to the following e-mail address: invoices@railbaltica.org. The invoices for Implementing Body in Estonia shall be submitted through the e-invoices system (in Estonian language: "e-arved"), the invoices for the Implementing Body in Lithuania shall be submitted through the e-invoices system (in Lithuanian language: "E.sąskaita").

In case payment for the particular Services (in whole or in part) will be made from more than one financing source, and upon the Principals or the Implementing Bodies request, the AsBo shall issue separate invoices corresponding to the amounts financed to the particular financing source as indicated by the Principal or the Implementing Body.

- 10.7 *Indexation.* The AsBo is entitled to adjust the rates provided under *Annex K: AsBo's Financial Proposal* once every four (4) years starting from the Effective Date in proportion to the average increase of the services producer price index (SPPI) in the Eurozone, published by the Eurostat. For the first adjustment, the SPPI of the year preceding the Effective Date shall be compared to the SPPI of the year when the adjustment is made. For the avoidance of doubt, the adjusted rates can be applied only for the upcoming Assignments for which the Parties have not concluded Assignment Orders at the time of adjustment. For the purpose of the Agreement, each adjustment under Clause 10.7 shall not exceed two percent (2%).
- 10.8 *Notice of Indexation.* In case of Clause 10.7 the AsBo shall inform the Principal in writing with reasonable explanation and calculation of the adjustment. For avoidance of doubt, no adjustment to the rates provided under *Annex K: AsBo's Financial Proposal* shall be effective unless and until the Principal receives and confirms the AsBo's notice of indexation.
- 10.9 *VAT payers status.* If so required by the Applicable Law, AsBo shall obtain VAT payers status and VAT No. in the Republic of Estonia, Republic of Latvia or Republic of Lithuania.

Section XI. Commencement of Services, remedying of Defects and acceptance

- 11.1 *Commencement of Services.* The AsBo shall not commence provision of the Services until a particular Assignment Order has been confirmed by the AsBo and the Principal in accordance with the provisions of the Agreement, except for the provision of the Inception Report under *Section IV. Inception Report* which the AsBo shall commence providing as of the Effective Date. The AsBo shall perform the Services and each particular Assignment timely and with due diligence having due regard to any applicable Assignment Milestones and any other key dates for performance of the Services or particular Assignments set out in the Agreement, particular Assignment Orders and the applicable Annexes, as may be amended from time to time with the consent of the Principal or in accordance with this Agreement and Public Procurement Law of the Republic of Latvia.

11.2 *Impediments and Delays.* If the Services, and Assignment, or any part thereof, is impeded or delayed by the Principal, the Implementing Body or any third party engaged by the Principal or the Implementing Body so as to increase the duration of the Services or an Assignment:

11.2.1 the AsBo shall inform the Principal of the circumstances and probable effects of such impediment or delay upon the agreed Assignment; and

11.2.2 the duration of the particular Assignment shall be increased, and any Milestones affected by the impediment or delay shall be extended accordingly.

11.3 *Defects.* During the provision of and until the final acceptance of each Assignment the Implementing Body shall notify the Principal of each Defect as soon as Defect is identified by the Implementing Body, the Principal shall notify the AsBo of each Defect as soon as Defect is identified by the Principal or the respective Implementing Body and the AsBo shall have an obligation to notify the Principal of each Defect as soon as Defect is identified by the AsBo. Upon discovering a Defect, or upon receipt by the AsBo of a notification of Defect from the Principal, the AsBo shall have seven (7) days (unless otherwise specified by the Principal) to remedy the Defect (the "Cure Period"). In the event of inability or failure by the AsBo to remedy the Defect within the Cure Period, the Principal shall be entitled, at the sole and exclusive discretion of the Principal, to do any of the following:

11.3.1 allow the AsBo an additional time period for remedying the Defect, such time period to be determined in the sole discretion of the Principal;

11.3.2 terminate the specific Assignment Order or the Agreement according to *Section XIII. Termination and suspension* in addition to executing Clause 3.9.

For the avoidance of any doubt, the application of the Cure Period under this Clause 11.3 shall be without prejudice to and shall not relieve the AsBo from the obligation to pay any contractual penalty in accordance with the provisions of Clause 14.2 or to pay Damages in accordance with the provisions of Clause 14.3 of this Agreement upon the Principals request.

11.4 *Completion of an Assignment or part of the Assignment.* Delivery of each Assignment or the meeting of a Milestone or supply of a Deliverable occurs whenever the AsBo has completed all of the works which the AsBo has undertaken to perform according to the specific Assignment Order or *Section IV. Inception Report* with respect to the Inception Report. On meeting an Assignment Milestone and/or producing a Deliverable and/or completing the Assignment (including all Documentation and information forming part of the Deliverable or of the Assignment in whole), the AsBo shall issue to the Principal a signed Deed of Acceptance substantially in the form of *Annex G: Form of the Deed of Acceptance* (hereinafter, the "Deed of Acceptance"). The Deed of Acceptance shall include the Deliverable and adequate supporting Documentation and information relevant to the Assignment, Assignment Milestone attained and/or Deliverable completed.

11.5 *Acceptance or rejection of the Deed of Acceptance.* Upon the reception of the Deed of Acceptance from the AsBo in accordance with Clause 11.4 the Principal shall review the submitted Deed of Acceptance and the specific Deliverable and any supporting Documentation and:

11.5.1 in the event the Principal rejects the submitted Deed of Acceptance, it shall give notice to the AsBo setting out in reasonable detail any Defect or reason for the objection (the "Objection Notice") within reasonable time or as specified in the specific Assignment Order, if any, following receipt of the Deed of Acceptance thus initiating the Cure Period and Defects remedy procedure as specified in Clause 11.3; or

11.5.2 in the event no reasons for objection to the Deed of Acceptance exist, the Principal shall also sign (on behalf of itself or the respective Implementing Body, as the case may be) the Deed of Acceptance, within reasonable time following its receipt. The date the Principal accepts and signs the Deed of Acceptance shall constitute "Completion Date" with respect to the relevant Assignment Milestone and/or Deliverable or the Assignment as a whole. The signed Deed of Acceptance may have annexed to it a list of any outstanding Defects or deficiencies to be corrected by the AsBo.

11.6 *Completion of Assignment or part of an Assignment following Receipt of Objection Notice.* After the Defects specified by the Principal in the Objection Notice have been remedied the AsBo shall issue to the Principal a second signed Deed of Acceptance as per the procedure specified in Clause 11.4 and the Principal shall perform the review as generally provided for in Clause 11.5 of this Agreement and:

11.6.1 in the event no further reasons for objection to the second Deed of Acceptance exist, then the Defects remedy procedure is concluded and the provisions of Clause 11.5.2 are to be applied; or

- 11.6.2 in the event the Principal rejects the submitted second Deed of Acceptance it shall give a second Objection Notice, thus simultaneously continuing the Defects remedy procedure with the possibility for the Principal to execute the Clauses 11.3.1 – 11.3.2 at its own discretion.
- 11.7 *Objection Notice and Contractual Penalty.* For the avoidance of any doubt, the giving by the Principal of any Objection Notice under Clause 11.5 or second Objection Notice under the Clause 11.6 shall be without prejudice to and shall not relieve the AsBo from the obligation to pay any contractual penalty in accordance with the provisions of Clause 14.2 or to pay Damages in accordance with the provisions Clause 14.3 of this Agreement upon the Principals request.
- 11.8 *Hidden Defects.* For the avoidance of doubt the Parties agree that in addition to the regular Defects remedy procedure as specified in this *Section XI. Commencement of Services, remedying of Defects and acceptance*, in the event the Principal or the respective Implementing Body becomes aware of any previously unnoticed error, fault, omission, or defect in an already completed Assignment after the Completion Date the Principal shall give prompt notice thereof to the AsBo. The AsBo shall have the obligation to correct such error, fault, omission, or defect in the Assignment or non-conformance of any action forming part of the Assignment, free of any additional charge or payment, in no more than seven (7) calendar days after the reception of the respective notice from the Principal.
- 11.9 *Alignment with Implementing Body.* In case the Assignment is ordered by the request of the Implementing Body, upon receipt of the Deed of Acceptance from the AsBo under Clause 11.5 or 11.6 the Principal shall submit the relevant Deliverable to the respective Implementing Body for review. The Implementing Body shall review the Deliverable and inform the Principal of any Defect, if any, within five (5) Business Days from receipt of the Deliverable. In the event the Implementing Body rejects the submitted Deed of Acceptance, the Implementing Body shall notify the Principal of any Defect and the Principal shall give an Objection Notice to the AsBo under Clause 11.5.1 or 11.6.2. In case the Implementing Body has not informed the Principal of any Defect of the Deliverable within five (5) Business Days from receipt of the Deliverable it shall be presumed that the Implementing Body has no objection towards the signing of the Deed of Acceptance and the Principal shall not be restricted to sign the Deed of Acceptance with respect to any Deliverable, if, in the best professional opinion of the Principal, the Deliverable conforms with the requirements of the Agreement.

Section XII. Intellectual Property Rights

- 12.1 *Proprietary Rights.* All Documentation forming part of the Deliverables developed under this Agreement is and shall become the property of the Principal and/or the respective Implementing Body, as applicable, at the moment of creation regardless of whether the Assignment or Deliverable is produced or finally accepted. For clarity, the Deliverable provided to the Implementing Body in Latvia shall become the property of the Implementing Body in Latvia, the Deliverable provided to the Implementing Body in Lithuania shall become the property of the Implementing Body in Lithuania, and the Deliverable provided to the Implementing Body in Estonia shall become the property of the Implementing Body in Estonia. It is acknowledged and agreed by the Parties that the Principal or respective Implementing Body shall be permitted to reproduce the drawings and schemes and distribute the prints in connection with the use or disposition of the Documentation without any approval of the AsBo and without incurring obligation to pay any royalties or additional compensation whatsoever to the AsBo.
- 12.2 *Intellectual Property in Documentation.* The AsBo represents and warrants that it owns all Intellectual Property required for the purposes of completing its obligations under this Agreement and in all Documentation deliverable by or on behalf of the AsBo under this Agreement and that, to the extent any Intellectual Property in any Documentation is not owned by the AsBo, it has obtained all requisite consents from owner(s) of all Intellectual Property in the Documentation to fulfil all of the obligations undertaken by the AsBo under this Agreement and has fully discharged all obligations with respect to payment of any royalties or fees.
- 12.3 *Transfer of Ownership to Principal or the Implementing Body.* The Principal and/or the respective Implementing Body, as applicable according to Clause 12.1, shall acquire legal title to and ownership in the Intellectual Property in all Documentation deliverable to the Principal and/or the respective Implementing Body under this Agreement and separate Assignment Orders as of the moment of delivery by the AsBo to the Principal of the Deed of Acceptance, together with the Deliverable and Documentation and information forming part of the Deliverable, in accordance with Clause 11.4 of this Agreement; provided, however, that the Principal and/or respective Implementing Body has paid the Fee or other consideration payable under the terms of this Agreement with respect to the relevant Assignment or Deliverable. For the avoidance of any doubt, such title and ownership shall confer upon the Principal and/or the respective Implementing Body, without limitation, each of the following:

- (a) the right to reproduce the Documentation and information, or any part thereof, and distribute copies of the Documentation and information or any part thereof;
 - (b) the right to modify, amend and supplement the Documentation and information, or any part thereof;
 - (c) the right to licence the Documentation and information, or any part thereof, for use by others; and
 - (d) the right to transfer ownership in the Documentation and information, or any part thereof, to others.
- 12.4 *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 Fee and no additional royalty, fee or other consideration of any kind shall be payable to the AsBo or to any third party in consideration of the transfer of ownership in the Intellectual Property in any Documentation.
- 12.5 *No Infringement.* The AsBo represents and warrants to the Principal and the Implementing Bodies that no Documentation and information deliverable to the Principal under the terms of this Agreement and separate Assignment Orders which may be further delivered to the Implementing Bodies where applicable will infringe any existing Intellectual Property of any third party. In the event, any of the representations or warranties contained in this *Section XII. Intellectual Property Rights* prove to be untrue or inaccurate, the AsBo undertakes, at its own cost and expense, to defend and settle any claim raised by any third-party against the Principal and/or respective Implementing Body alleging infringement of Intellectual Property in the Documentation and information. The foregoing undertaking by the AsBo shall apply subject to the following conditions:
- (a) the Principal or the respective Implementing Body shall notify the AsBo, without undue delay, of any third-party claim alleging infringement of any Intellectual Property in any Documentation;
 - (b) the Principal or the respective Implementing Body refrains from admitting liability under any third-party claim or acting on the account of such claim without prior approval by the AsBo; and
 - (c) the exclusive control over any legal proceeding or settlement related any third-party claim shall be exercised by the AsBo; provided, however, that the Principal or respective Implementing Body shall render the AsBo all reasonable assistance toward such proceeding or settlement, at the cost and expense of the AsBo.
- 12.6 *Infringement Proceedings.* In the event the Principal or the respective Implementing Body is a party to legal proceedings involving allegations of infringement of any Intellectual Property in the Documentation of any third party, the AsBo shall keep the Principal or the respective Implementing Body fully informed of all aspects relevant to the legal proceedings and the Principal or the respective Implementing Body shall have the right, at its own cost, to be represented in the legal proceedings by separate counsel. In the event the AsBo fails to act against claims alleging infringement of any Intellectual Property in the Documentation and information of any third party within a reasonable time but, in any event, within twenty (20) days of having been notified of such claims, the Principal or the respective Implementing Body shall have the right to assume the legal defence against claims alleging infringement of Intellectual Property and shall be entitled to reimbursement by the AsBo of reasonable costs and expenses incurred toward such defence.
- 12.7 *Continued Use.* In the event a court of competent jurisdiction resolves in a binding judgment that the Documentation and information, or any part thereof, infringe Intellectual Property of any third party, the AsBo shall, at its own cost and expense, procure for the Principal or the respective Implementing Body the right of continued use of the Documentation and information, or part thereof infringing Intellectual Property of a third party.
- 12.8 *License in Intellectual Property of the AsBo.* The AsBo hereby grants the Principal and the respective Implementing Body an irrevocable and non-exclusive license to use, reproduce, modify and/or enhance any Intellectual Property of the AsBo, provided and to the extent Intellectual Property of the AsBo is used by the Principal or the Implementing Bodies and other Railway/Project stakeholders for the purposes of the Railway and/or the Project. It is agreed and acknowledged by the Parties that the license fee for the grant of license in accordance with this Clause 12.8 forms part of the Fee and such license shall continue to be valid irrespective of expiration of this Agreement following completion of the Assignment or termination of this Agreement for any reason.
- 12.9 *Indemnification by the AsBo.* The AsBo shall defend and indemnify the Principal and/or the Implementing Bodies, as applicable, from and against any and all Damages arising from the use by the Principal or the Implementing Bodies of any Intellectual Property of the AsBo, to the extent use is within the scope of the license granted in accordance with Clause 12.8.

Section XIII. Termination and suspension

- 13.1 *Termination for Material Breach or Bankruptcy.* Subject to the provisions of Clause 13.2 the Principal and the AsBo shall be entitled to terminate this Agreement or a particular Assignment Order, upon giving a written notice of termination to the other Parties in the event of material breach by the other Party of any of its obligations under this Agreement. The written notice of termination shall contain an itemized description of the breach. For the purposes of this *Section XIII. Termination and suspension* an event of material breach shall include, but not be limited to, any of the following:
- 13.1.1 commitment by a Party of any persistent or material breach of this Agreement (which shall include failure to pay an amount of at least EUR 20,000 due to the other Party or perform any part of the Assignment or an Assignment valued at least EUR 20,000);
 - 13.1.2 failure by the AsBo to duly address and remedy the Defects in the Cure Period in accordance with Clause 11.3;
 - 13.1.3 failure by any Deliverable to conform to any of the material requirements to such Deliverable contained in the Agreement or particular Assignment Order, provided that such failure is not capable of being remedied upon receipt of the Objection Notice;
 - 13.1.4 failure by the Principal or the Implementing Body, as applicable, to make any payment to the AsBo in accordance with this Agreement within at least fifteen (15) Business Days from the date of payment falling due;
 - 13.1.5 any of the representations or warranties given by either Party under *Section IX. Representations and Warranties* or any of the declarations, representations or warranties given by the AsBo under Clause 6.3 and/or Clause 9.2 proving to be untrue.

- 13.2 *Corrective Period.* In the event of a material breach by either Party of its obligations under this Agreement, the non-breaching Party shall allow the breaching Party fourteen (14) days for corrective action or submission of a corrective action plan (the "Corrective Period"). The Corrective Period shall be counted from the date of receipt by the breaching Party of a written notice of breach. Should no satisfactory corrective action be taken, or acceptable corrective action plan provided by the breaching Party, the non-breaching Party shall have the right to terminate the Agreement or the particular Assignment Order. It is acknowledged and agreed by the Parties that the provisions of this Clause 13.2 shall not apply with respect to any of the events enumerated in accordance with Clause 13.3. In addition and for the avoidance of any doubt, the application of the Corrective Period under this Clause 13.2 shall be without prejudice to and shall not relieve either Party from the obligation to pay any contractual penalty in accordance with the provisions of Clause 14.2 or to pay Damages incurred by the other Party in accordance with the provisions of Clause 14.3 upon the Principal's request.

To clarify the Corrective Period is not applied where the breach of the Agreement is related to Defects and Acceptance procedures as specified in Clauses 13.1.2 and 13.1.3 as in these cases the purpose of the Corrective Period is fulfilled by the Cure Period and its prior application.

- 13.3 *Right to Terminate Immediately.*

- 13.3.1 Notwithstanding anything to the contrary contained in this Agreement, the Principal and the AsBo may terminate this Agreement or the particular Assignment Order immediately upon giving the Parties a written notice of termination explaining, in reasonable detail, the reason for termination upon occurrence of any of the following:
- (a) breach by a Party of Clause 21.2;
 - (b) an event of Force Majeure has been continuing during more than sixty (60) days;
 - (c) a Party had passed a resolution for winding-up (other than in order to amalgamate or reconstruct);
 - (d) a Party is unable to pay its debts and has presented a petition for voluntary bankruptcy;
 - (e) a Party had a bankruptcy order issued against it;
 - (f) liquidation, insolvency or legal protection proceedings have been initiated with respect to a Party or a Party is declared insolvent;
 - (g) the occurrence of any event analogous to the events enumerated under Clauses 13.3.1 (d) - (f) under the law of any jurisdiction to which a Party's assets and undertaking are subject.

13.3.2 *Principal's Right to Terminate Immediately.* The Principal may terminate this Agreement or the particular Assignment Order immediately upon giving the AsBo a written notice of termination explaining, in reasonable detail, the reason for termination, if:

- (a) CEF Co-financing for further financing of the Services are not available to the Principal or either of the Implementing Body fully or partly;
- (b) breach by the AsBo any of the confidentiality undertakings contained in *Section XVII. Confidentiality* or the undertakings under Clause 8.8 and Clause 8.9;

In case of Clause 13.3.2 (a); (b), the Principal or the respective Implementing Body shall pay the AsBo the Fees in respect of the Services provided under this Agreement up to the date of the notification of the termination of this Agreement and the Principal or the respective Implementing Body is not obliged to pay contractual or any other penalty or Damages to the AsBo;

- (c) it is not possible to execute the Agreement due to the application of international or national sanctions, or European Union or North Atlantic Treaty Organization applied sanctions significantly affecting interests of financial or capital market.

13.4 *Termination according to Public Procurement Law.* The Agreement can be immediately terminated by the Principal upon giving the other Parties a written notice of termination explaining, in reasonable detail, the reason for termination upon occurrence of any of the provisions mentioned in the Article 64 of the Public Procurement Law. In such a case, the Principal and the respective Implementing Bodies shall pay the AsBo the fees in respect of the Services provided under this Agreement up to the date of the notification of the termination of this Agreement and the Principal or the Implementing Bodies are not obliged to pay contractual or any other penalty or Damages to the AsBo.

13.5 *Consequences of Termination.* Upon expiration or termination of this Agreement, the obligations of the Parties set forth in this Agreement shall cease, except with respect to the following:

- (a) any obligations arising as a result of any antecedent breach of this Agreement or any accrued rights; and
- (b) the provisions stipulated in accordance with Clauses 8.6, 8.7, 11.3, 12.2, 12.3, 12.4, 12.5, 12.9, 14.1, 14.2, 14.3, 21.2, and *Section XVII. Confidentiality, Section XVIII. Right to Audit, Section XV. On-the-spot-visits* and *Section XX. Governing Law and Resolution of Disputes* which shall survive the termination or expiry of this Agreement and continue in full force and effect along with any other Clauses of or Annexes hereof which are necessary to give effect to the Clauses specifically identified in this Clause 13.5 (b).

13.6 *Principal's Obligation to Pay.* Except in the event of termination by the Principal occurring as a result of violation by the AsBo of Clause 21.2, or termination by the Principal according to Clause 13.3.2 or 13.4 in the event this Agreement or the specific Assignment Order is terminated for any reason prior to completion of an Assignment, the Principal or the respective Implementing Body, as applicable, shall have an obligation to pay the AsBo the following:

- (a) the Costs incurred by the AsBo up to the date of termination; and
- (b) except where termination is due to negligence of the AsBo, due to the application of international sanctions, breach by the AsBo, insolvency of the AsBo or a Force Majeure Event under *Section XVI. Force Majeure*:
 - (i) an amount equal to the costs reasonably and properly incurred by the AsBo as a result of or in connection with such termination; and
 - (ii) such additional amount as is required to put the AsBo in the same after-tax position (taking into account the amount of any relief, allowance, deduction, set-off or credit relating to tax available to the AsBo in respect of the payment received) as it would have been in if the payment had not been a taxable receipt in the hands of the AsBo.

13.7 *No Obligation to Pay Costs Incurred Prior to Acceptance.* Notwithstanding anything set forth in this Agreement to the contrary including, without limitation, under Clause 13.6, the Principal or the respective Implementing Body shall have no obligation to pay any of the Costs incurred by the AsBo with respect to any particular Assignment (or part of any particular Assignment) not deemed as having been accepted by the Principal in accordance with Clauses 11.4, 11.6.

13.8 *No Prejudice to Other Rights.* The right to terminate this Agreement or the specific Assignment Order shall be without prejudice to any other right of either Party which has accrued prior to or as a result of such termination

or to any remedy available to either Party under the terms of this Agreement or in accordance with Applicable Law.

- 13.9 *Notification.* The Principal will promptly notify the other Implementing Bodies if it becomes aware of any fact or condition that causes or constitutes a material breach of the Agreement or other grounds for termination of the Agreement under *Section XIII. Termination and suspension.* In such case the Principal undertake to use all reasonable endeavours to align among the Implementing Bodies the termination of the Agreement under *Section XIII. Termination and suspension.* For the avoidance of doubt, this Clause shall in no manner affect or impair the rights of the Principal per *Section XIII. Termination and suspension.*

Section XIV. Liability

- 14.1 *Liability of the Parties.* AsBo shall be liable to compensate Damages incurred by the Principal or the respective Implementing Body arising out of or in connection with this Agreement and pay contractual penalty set forth in accordance with Clause 14.2 if a breach of any of the obligations of the AsBo under this Agreement is established against the AsBo. The Principal and the Implementing Bodies shall be liable to pay only the contractual penalty set forth in accordance with Clause 14.2 if a breach of payment obligations of the Principal or the respective Implementing Body under this Agreement is established against the Principal or the respective Implementing Body, as the case may be.
- 14.2 *Contractual Penalty.* In the event of failure by the AsBo to meet any Milestone and/or supply any Deliverable, the AsBo shall be liable to pay to the Principal or the respective Implementing Body a penalty of up to zero point one percent (0.1%) of the amount of the Fee payable under this Agreement with respect to the relevant Assignment for each day of delay starting from the first delayed day with meeting any of the Milestones and/or supplying any of the Deliverables set forth in accordance with the Agreement or particular Assignment Order provided, however, that the total amount of penalty payable by the AsBo under this Clause 14.2 for the relevant Assignment shall not exceed ten percent (10%) of the total amount of the Fee payable in consideration of such Assignment. In the event of failure by the Principal or the Implementing Body to pay any amount in accordance with *Section X. Fee and Payment,* the Principal or the respective Implementing Body, as applicable, shall be liable to pay the AsBo a penalty of up to zero point zero one percent (0.01%) of the amount of the amount invoiced for each day of delay with meeting the payment obligation; provided, however, that the total amount of penalty payable by the Principal or the respective Implementing Body under this Clause 14.2 shall not exceed ten percent (10%) of the total amount remaining unpaid under the relevant invoice.

For the avoidance of doubt the contractual penalties shall be applied upon the sole discretion of the entitled Party under the Agreement considering the material consequences of the infringement. For avoidance of doubt the contractual fine as specified in Clause 3.9 of this Agreement is payable in addition to the contractual penalty specified in this Clause 14.2 if the conditions of Clause 3.9 and Clause 11.3.2 have occurred.

In case of application of the contractual penalty the Party can issue a separate invoice to the other Party indicating the amount of the contractual penalty applied which may not be higher than specified in the Agreement.

- 14.3 *Compensation for Damages.* Notwithstanding of and without prejudice to any contractual penalty payable in accordance with Clause 14.2 or contractual fine payable in accordance with Clause 3.9 and subject to the provisions of Clause 14.5, in the event it is established that either Party is liable to the other Party with respect to any breach of its respective obligations under this Agreement, the liable Party shall compensate the other Party for any Damages incurred as a result of such breach, subject to the following terms:
- (a) the amount of compensation shall be limited to the amount of reasonably foreseeable Damages suffered as a result of the breach(es), but not otherwise; and
 - (b) if either Party is considered to be liable jointly with third parties to the other, the proportion of compensation payable by the liable Party shall be limited to that proportion of liability which is attributable to the breach by the liable Party.
- 14.4 *Attribution of Damages.* Any Damages suffered by either Party shall, for the purposes of Clause 14.3, be reduced to the extent that the Damages are caused by or contributed to by the another Party's own negligence or breach of its obligations under this Agreement.
- 14.5 *Limitation of Liability.* Notwithstanding anything to the contrary set forth in this Agreement, in no circumstances shall any Party be liable to the other Party for any loss of production, loss of profit, loss of revenue, loss of contract, liability incurred under other agreements (with the exception of costs paid by the Principal to contractors appointed by the Principal in relation to the Services or particular Assignment or the Project) or any

indirect or consequential loss arising out of or in connection with this Agreement. The AsBo's total liability for the Services carried out under this Agreement in accordance with concluded Assignment Orders shall in no circumstances exceed double the Fee of each concluded Assignment Order.

- 14.6 *Insurance Against Liability.* The AsBo shall insure against public/third party liability (the "Professional risk indemnity insurance") for the implementation of the Agreement. The Professional risk indemnity insurance shall be in compliance with fair market practice and its scope shall include, but not be limited to, civil liability of AsBo and its sub-contractors against the Principal, the Implementing Bodies and third parties for non-performance of the Services, failure to perform Services in good quality and/or form (including omissions, errors, defects, incompleteness, deficiencies), for personal injury, death, and for loss or damage to any property entrusted or not, machinery and equipment of the Project, property of the Principal, the Implementing Bodies and third parties located at sites of the Project and loss of documents. The AsBo's failure to maintain the Professional risk indemnity insurance in accordance with the terms of the Agreement shall constitute a material breach of the Agreement.
- 14.6.1 *Obligation to Effect Insurance.* The AsBo undertakes to effect such insurance with an insurer and on terms and conditions as detailed herein and may be further specified by the Principal. The limit of Professional risk indemnity insurance liability for the insurance coverable shall be no less than one hundred and fifty percent (150%) of the total value of the Agreement under Clause 2.2 during the entire term of the Agreement. The amount of the Professional risk indemnity insurance liability for each insured event shall be no less than twenty percent (20%) of the total value of the Agreement under Clause 2.2. The costs of such insurance shall be at the sole expense of the AsBo.
- 14.6.2 *Extended Reporting Period.* The Professional risk indemnity insurance shall provide for no less than twenty-four (24) month's extended reporting period as of the date of termination or expiration of the Agreement. The extended reporting period shall cover claims arising out of or in relation to an act or omission of AsBo or its sub-contractors and occurring during the policy period, provided that the claim is reported by the Principal or the respective Implementing Body within the extended reporting period.
- 14.6.3 *Insurance Company.* The AsBo's Professional risk indemnity insurance shall be provided by an insurance company (re-insurance company) with a required minimum rating of BB+ (or equivalent) in accordance with either Standard & Poor's, Fitch's or Moody's rating agencies. The insurance company shall be registered within the European Union.
- 14.6.4 *Direct Beneficiaries.* The AsBo's Professional risk indemnity insurance shall refer to direct beneficiaries as follows: for insurance events arising within the Republic of Latvia the direct beneficiary shall be the Principal and the Implementing Body in Latvia, for the insurance events arising within the Republic of Estonia the direct beneficiary shall be the Implementing Body in Estonia, for the insurance events arising within the Republic of Lithuania the direct beneficiary shall be the Implementing Body in Lithuania.
- 14.6.5 *Insurance Certificate.* Within twenty (20) Business Days following the Effective Date, the AsBo shall provide a copy of insurance policy accompanied with an original certificate from its insurer or broker stating that the Professional risk indemnity insurance required under this *Section XIII. Liability* is in full force and effect. In case the insurance policy or the certificate is in other language than English, the AsBo shall provide a translation of the certificate in English. The AsBo shall maintain the Professional risk indemnity insurance in force as long as it is necessary to accomplish any obligations according to this Agreement and the specific Assignment Order. In addition, the AsBo shall provide not less than five (5) Business Days prior written notice to the Principal of any cancellation or material reduction in the Professional risk indemnity insurance. The AsBo is obliged to submit to the Principal a copy of a renewed insurance policy accompanied with an original certificate from its insurer or broker or a copy of a new insurance policy accompanied with an original certificate from its insurer or broker stating that the Professional risk indemnity insurance is in full force and effect within five (5) Business Days before the date of expiry of the previous Professional risk indemnity insurance.
- 14.6.6 *Adjustments to the Insurance.* At the AsBo's request and to comply with fair market practice the above terms for to the Professional risk indemnity insurance may be further adjusted with the Principal's consent, upon the sole discretion of the Principal, to the extent the adjustment would not alter the substance and the objective of the above terms.

Section XV. Performance Bond

- 15.1 *Performance Bond.* The AsBo shall provide an unconditional and irrevocable performance (payment) guarantee statement for the due and punctual fulfilment of the AsBo's obligations under the Agreement substantially in the form enclosed as *Annex C: Performance Bond* (the "Performance Bond") to the Principal for the amount

equal to ten percent (10%) of the total value of the Agreement under Clause 2.2. Within twenty (20) Business Days following the Effective Date, the AsBo shall submit the Performance Bond to the Principal. The AsBo's failure to maintain the Performance Bond in accordance with the terms of the Agreement shall constitute a material breach of the Agreement. The costs of such Performance Bond be at the sole expense of the AsBo.

- 15.2 *Guarantor.* The Performance Bond shall be provided by a licensed credit institution, insurance company (re-insurance company) or financial institution which is entitled to issue such Performance Bond. The AsBo's Performance Bond shall be provided by a guarantor with a required minimum rating of BB+ (or equivalent) in accordance with either Standard & Poor's, Fitch's or Moody's rating agencies. The guarantor shall be registered within the European Union.
- 15.3 *Term.* The Performance Bond shall be valid throughout the term of the Agreement. The Performance Bond shall provide twelve (12) months extended notification period as of the date of completion of all Services by AsBo as confirmed by the Principal. If the Performance Bond expiration date falls before the termination or expiration of the Agreement, AsBo shall submit a new Performance Bond substantially in the form enclosed as *Annex C: Performance Bond* to the Principal not later than within twenty (20) Business Days before the expiration date of the previous Performance Bond.

Section XVI. Force Majeure

- 16.1 *Effects of Force Majeure.* Subject to the requirements set forth in accordance with Clauses 16.2 and 16.3, each Party shall be relieved from liability for non-performance of its obligations under this Agreement (other than any obligation to pay) to the extent that the Party is not able to perform such obligations due to a Force Majeure Event.
- 16.2 *Action on Becoming Aware of Force Majeure.* Each Party shall at all times, following the occurrence of a Force Majeure Event:
- (a) take reasonable steps to prevent and mitigate the consequences of such an event upon the performance of its obligations under this Agreement, resume performance of its obligations affected by the Force Majeure Event as soon as practicable and use reasonable endeavours in accordance with Good Industry Practice to remedy its failure to perform; and
 - (b) not be relieved from liability under this Agreement to the extent that it is not able to perform, or has not in fact performed, its obligations under this Agreement due to any failure to comply with its obligations under Clause 16.2(a).
- 16.3 *Notification Requirements.* Upon the occurrence of a Force Majeure Event, the affected Party shall notify the other Parties as soon as reasonably practicable and in any event within ten (10) Business Days of it becoming aware of the relevant Force Majeure Event. Such notification shall give sufficient details to identify the particular event claimed to be a Force Majeure Event and shall contain detailed information relating to the failure to perform (or delay in performing), including the date of occurrence of the Force Majeure Event, the effect of the Force Majeure Event on the ability of the affected Party to perform, the action being taken in accordance with Clause 16.2(a) and an estimate of the period of time required to overcome the Force Majeure Event. The affected Party shall provide the other Party with any further information it receives or becomes aware of which relates to the Force Majeure Event and provide an update on the estimate of the period of time required to overcome its effects.
- 16.4 *Notification of Resumed Performance.* The affected Party shall notify the other Parties as soon as practicable once the performance of its affected obligations can be resumed (performance to continue on the terms existing immediately prior to the occurrence of the Force Majeure Event).
- 16.5 *Mitigation of Effects of Force Majeure.* As soon as practicable after the notification specified pursuant to Clause 16.3, the Parties shall use reasonable endeavours to agree appropriate terms or modifications to the Assignment to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement.

Section XVII. Confidentiality

- 17.1 *Confidential Information.* "Confidential Information" means, in relation to the Principal and the Implementing Bodies, all information of a confidential nature relating to the Principal, the respective Implementing Body and its affiliates which is supplied by the Principal or the Implementing Body (whether before or after the date of this Agreement) to the AsBo, either in writing, orally or in any other form and includes all analyses, compilations,

notes, studies, memoranda and other documents and information which contain or otherwise reflect or are derived from such information, but excludes information which:

- (a) the Principal or the Implementing Body, as applicable, confirms in writing is not required to be treated as confidential; or
- (b) the AsBo can show that the Confidential Information was in its possession or known to it (by being in its use or being recorded in its files or computers or other recording media) prior to receipt from the Principal or the respective Implementing Body and was not previously acquired by the AsBo from the Principal or the respective Implementing Body under an obligation of confidence; or
- (c) was developed by or for the AsBo at any time independently of this Agreement.

17.2 *Undertakings with Respect to Confidential Information.* Subject to *Section XVII. Confidentiality* and Clause 17.3, the AsBo shall:

- (a) at all times keep confidential all Confidential Information received by it and shall not disclose such Confidential Information to any other Person; and
- (b) procure that its affiliates and its and their respective officers, employees and agents shall keep confidential and not disclose to any Person any Confidential Information except with the prior written consent of the Party to which such Confidential Information relates.

17.3 *Permitted Disclosure.* Notwithstanding anything to the contrary set forth in accordance with *Section XVII. Confidentiality* and Clause 17.2, the AsBo shall, without the prior written consent of the Principal or the respective Implementing Body, as applicable, be entitled to disclose Confidential Information:

- (a) that is reasonably required by the AsBo in the performance of its obligations pursuant to this Agreement, including the disclosure of any Confidential Information to any employee, AsBo, agent, officer, Sub-Contractor (of any tier) or adviser to the extent necessary to enable the AsBo to perform its obligations under this Agreement;
- (b) to enable a determination to be made pursuant to *Section XIX. On-the-spot-visits*;
- (c) to its lenders or their professional advisers, any rating agencies, or its insurance advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;
- (d) to the extent required by Applicable Law or pursuant to an order of any court of competent jurisdiction, any parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of law; or
- (e) to the extent Confidential Information has become available to the public other than as a result of any breach of an obligation of confidence; provided that any such disclosure is made in good faith.

17.4 *Obligation of Confidentiality Pertinent to Recipients of Confidential Information.* Whenever disclosure is permitted to be made pursuant to Clauses 17.3(a) or (c), the AsBo shall require that the recipient of Confidential Information be subject to the same obligation of confidentiality as that contained in this Agreement.

17.5 *Certain Obligations on Termination of Agreement.* If this Agreement is terminated for whatsoever reason, the AsBo shall:

- (a) return to the Principal or the respective Implementing Body all of the Confidential Information then within the possession or control of the AsBo; or
- (b) destroy such Confidential Information using a secure and confidential method of destruction.

17.6 *No Press Release by AsBo.* Save as required by Applicable Law, the AsBo shall not issue any press release in relation to the matters contemplated under this Agreement without the prior written consent of the Principal (such consent not to be unreasonably withheld or delayed) as to both the content and the timing of the issue of the press release.

17.7 *Right to Publish.* For the avoidance of any doubt, the Principal and the respective Implementing Body shall have the right to publish any of the documents, information or data provided by the AsBo to the Principal or the respective Implementing Body during provision of the Services.

17.8 *Remedies.* The Parties acknowledge and agree that a breach of the provisions of this *Section XVII. Confidentiality* may cause the owner of Confidential Information to suffer irreparable Damages that could not be adequately

remedied by an action at law. Accordingly, the AsBo agrees that the owner of Confidential Information that is disclosed in breach of Clauses 17.2, 17.4 or 17.6 may be entitled to specific performance of those provisions to enjoin a breach or attempted breach thereof and to any other remedy, including, inter alia, damages and injunctive relief, awarded by a court of competent jurisdiction.

Section XVIII. Right to Audit

- 18.1 *Right to Audit.* Notwithstanding anything to the contrary set forth in this Agreement including, the Principal itself, a reputable outside independent body or expert engaged and authorized by the Principal shall be entitled to inspect and/or audit the AsBo to ensure compliance with the terms of this Agreement, including inspecting and/or auditing:
- (a) the performance of any aspect of the Services; and/or
 - (b) any documentation, including all payrolls, accounts of the AsBo and/or other records used in or related to the performance of the Services.
- 18.2 *Obligation to Assist.* The AsBo 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 XVIII. Right to Audit*. 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 the AsBo is not compliant with the terms of this Agreement, in which case the AsBo shall reimburse the Principal for all of its additional reasonable costs incurred, provided such non-compliance is material.
- 18.3 *Survival of Termination.* The rights and obligations of the Principal set forth in accordance with this *Section XVIII. Right to Audit* shall survive expiration or termination of this Agreement for any reason and shall continue to apply during ten (10) years following expiration or termination of this Agreement for any reason whatsoever.

Section XIX. On-the-spot-visits

- 19.1 *Right to perform On-the-spot visits.* By submitting a written notice five (5) Business Days in advance, but at the same time reserving the right of an unannounced on-the-spot visit without an advance notice, the Principal may carry out on-the-spot visits to the sites and premises where the activities implemented within the Agreement are or were carried out.
- 19.2 *Personnel involved.* On-the-spot visits may be carried out either directly by authorised staff or representatives of the Principal or by any other outside body or third party authorised to do so on behalf of the Principal. Information provided and collected in the framework of on-the-spot visits shall be treated on confidential basis. The Principal shall ensure that any authorised outside body or third party shall be bound by the same confidentiality obligations.
- 19.3 *Access to the information.* AsBo shall provide to the performer of the on-the-spot visit or any other authorised outside body or third party access to all the information and documents, including information and documents in electronic format, which is requested by the authorised staff of the performer of the on-the-spot visit or any other authorised outside body or third party for the performance of an on-the-spot visit and which relates to the implementation of the Agreement, as well as shall allow the authorised staff of the performer of the on-the-spot visit or any other authorised outside body or third party the copying of the information and documents, with due respect to the confidentiality obligation.
- 19.4 *OLAF checks and inspections.* By virtue of Council Regulation (Euratom, EC) No 2185/961 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities and Regulation (EU) No 883/20132 of the European Parliament and the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF), OLAF may also carry out on-the-spot checks and inspections in accordance with the procedures laid down by European Union law for the protection of the financial interests of the European Union against fraud and other irregularities. Where appropriate, OLAF findings may lead to criminal prosecution under national law.

Section XX. Governing Law and Resolution of Disputes

- 20.1 *Governing Law.* This Agreement shall be governed by and construed in accordance with law of the Republic of Latvia.

- 20.2 *Resolution by Amicable Means.* The Parties shall first attempt to settle any dispute, controversy or claim arising out of or relating to this Agreement by negotiation in good faith prior to pursuing resolution under Clause 20.3 or referring to arbitration, or other legal proceeding.
- 20.3 *Adjudication.* Should the Parties fail to agree by means of amicable negotiations within two (2) months from the date of serving the respective written complaint to the other Party, the Parties shall attempt to settle any dispute, controversy or claim arising out of or relating to this Agreement in accordance with the rules for adjudication in accordance with *Annex H: Rules of Adjudication.*
- 20.4 *Venue for Resolution of Disputes.* Should the Parties fail to settle such disputes, controversies or claims within four (4) months by amicable negotiations and pursuant to the rules for adjudication in accordance *with Annex H: Rules of Adjudication,* the Parties shall submit all their disputes arising out of or in connection with this Agreement to the exclusive jurisdiction of International Court of Arbitration of the International Chamber of Commerce and shall be finally settled in accordance the Rules of Arbitration of the International Chamber of Commerce. Notwithstanding the procedural Rules of Arbitration of the International Chamber of Commerce, any dispute, controversies or claims shall be settled in accordance with the material norms of the laws of the Republic of Latvia. The arbitration shall be in English language. The place of arbitration shall be Stockholm, Sweden. The arbitral tribunal shall be composed of three (3) arbitrators. Decision of arbitration shall be final and binding on all the Parties.
- 20.5 *Language.* The Parties hereby represent and warrant that the English language is understandable for both Parties in accordance with Article 8(1)(a) of the Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) and repealing Council Regulation (EC) No 1348/2000.

Section XXI. Miscellaneous provisions

- 21.1 *Capacity.* Each Party warrants to the other Party that it has full power to enter into and perform this Agreement, and the person signing this Agreement on its behalf has been duly authorized and empowered to enter into such agreement. Each Party further acknowledges that it has read this Agreement, understands it and agrees to be bound by it.
- 21.2 *Conflict of Interest, Corruption and Fraud.* Notwithstanding any penalties that may be enforced against the AsBo under Applicable Law, or the laws of other jurisdiction(s), the AsBo shall be deemed to have committed a breach under this Agreement and the Principal shall be entitled to terminate this Agreement immediately and without any regard to the provisions of Clause 13.2, if it is shown that the AsBo is guilty of:
- (a) offering, giving, receiving or soliciting anything of value with a view to influencing the behaviour or action of anyone, whether a public official or otherwise, directly or indirectly in the selection process or in the conduct of the Agreement; or
 - (b) misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Principal, including the use of collusive practices intended to stifle or reduce the benefits of free and open competition.
- 21.3 For the purpose of execution of this Agreement, the Parties might transfer to each other certain personal data, such as data on employees of the Parties, data on suppliers, data on potential candidates, Project stakeholders and their employees, etc. Furthermore, the Party transferring to the other Party certain personal data shall be responsible for informing and obtaining the consent of the data subject for the processing of the personal data. The Parties acknowledge that for the purpose of the Agreement the transferring Party shall act as the controller and the receiving Party shall act as a processor.
- 21.4 To ensure compliance of the data processing hereunder, the data controller is entitled to provide the processor with binding instructions in writing regarding the procedure and conditions for processing of personal data and to control the processors ability to comply with the Agreement.
- 21.5 The Party shall transfer the personal data to the other Parties and such other Parties shall process the personal data only for the purposes of execution of the Agreement and other such purposes as required by Applicable laws.
- 21.6 The Parties agree that except where the Party has a separate legal basis for processing the personal data referred to in the Applicable laws governing the protection of personal data, the Party shall not process the personal data for any other purpose.

- 21.7 Besides other obligations provided for in the Agreement, each of the Parties undertakes:
- 21.7.1 to process the personal data to the minimum extent necessary;
 - 21.7.2 not to infringe any rights of the data subjects;
 - 21.7.3 to implement and apply proper organizational and technical measures ensuring the compliance with the requirements of the law;
 - 21.7.4 to ensure the compliance with other requirements of the statutory law governing the protection of personal data.
- 21.8 *Notices.* Notices under the Agreement shall be in writing and will take effect from receipt by the Party to which the notice is addressed at the address of the Party set forth in the preamble to this Agreement. Delivery can be by hand or facsimile message against a written confirmation of receipt or by registered letter.
- 21.9 *Damages Covered by Insurance.* To the extent Damages are covered by insurance, the Parties waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance current as of the date of this Agreement.
- 21.10 *Relationship of the Parties.* The relationship between the AsBo to the Principal and the Implementing Bodies under this Agreement is that of independent contractor. The AsBo (or the AsBo's Sub-Contractors) is not an employee of the Principal or the Implementing Body, is not carrying out the regular business of the Principal or the Implementing Body and is not subject to the same employment regulations as are applicable to employees of the Principal or the Implementing Body. Each of the Parties shall be solely and entirely responsible for their own acts and the acts of their employees. No benefits, special considerations, or employer/employee-type provisions are provided by the Principal or the Implementing Body to the AsBo, the AsBo's employees, or the AsBo's consultants, or the employees of such consultants.
- 21.11 *Severability.* If any provision of this Agreement shall be held to be illegal, invalid, void or unenforceable under Applicable Laws, the legality, validity and enforceability of the remainder of this Agreement shall not be affected, and the legality, validity and enforceability of the whole of this Agreement shall not be affected.
- 21.12 *Successors and Assigns.* The Parties each bind themselves, their successors, legal representatives, and assigns to the other party to this Agreement and to the partners, successors, legal representatives and assigns of such other party in respect to all covenants of this Agreement. Neither Party shall assign or transfer its respective interest in the Agreement without written consent of the other Party, if not directly provided otherwise under the Agreement.
- 21.13 *Amendments and Variations.* No amendment to or variation of this Agreement shall be effective unless made in writing by duly authorized representatives of both Parties, if not provided otherwise herein. The Agreement can be amended in compliance with the provisions of Article 61 of the Public Procurement Law of the Republic of Latvia.
- 21.14 *Entire Agreement.* This Agreement, and the Annexes hereto, constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes and extinguishes all and any prior drafts, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter.
- 21.15 *Possible merger of the Principal.* The Parties acknowledge that in the event the Implementing Bodies will merge with the Principal to form a single legal entity this Agreement shall continue with the Principal assuming the rights and obligations previously held by either of the Implementing Bodies, as applicable.
- 21.16 *Execution.* This Agreement is executed as an electronic document.

For and on behalf of the Principal

Agnis Driksna
Chairperson of the Management Board

Bank details:
[•]

For and on behalf of the AsBo:

Pierre Kadziola
Chief Executive Officer

Bank details:
[•]

For and on behalf of the Implementing Body in
Latvia

Kaspars Vingris
Chairperson of the Management Board

Tālis Laizāns
Member of the Management Board

For and on behalf of the Implementing Body in
Estonia

Tõnu Grünberg
Chief Executive Officer

For and on behalf of the Implementing Body in
Lithuania

Karolis Sankovski
Chief Executive Officer

THIS DOCUMENT IS SIGNED ELECTRONICALLY WITH A QUALIFIED ELECTRONIC SIGNATURE
AND CONTAINS TIME SEAL

Annex A: Definitions and common terms

The following capitalized terms shall be ascribed the following meaning for the purposes of the Agreement:

- (a) "Agreement", this Agreement, together with all Annexes thereto.
- (b) "Applicable Law" or "Law", any legislative act, regulation, decree, order, ordinance, statute, treaty, directive, judgment, or other legislative measure. For the avoidance of any doubt, these terms shall include any legislative act or directive relevant to public procurement.
- (c) "Approved Staff", any person or organization listed pursuant to *Annex D: List of approved Sub-Contractors and Staff*, which is in a contractual relationship with the AsBo to provide a part of the Services.
- (d) "Approved Sub-Contractor", any person or organisation listed pursuant to *Annex D: List of approved Sub-Contractors and Staff*, which is in a contractual relationship with the AsBo to provide a part of the Services.
- (e) "Assignment", means the specific instance of Services that is procured by the Principal (on behalf of itself or the respective Implementing Body, as the case may be) in accordance with this Agreement, including preparation of the Inception Report under *Section IV. Inception Report* and the work packages under the *Annex B: Technical Specification*.
- (f) "Assignment Order", means the agreement between the Principal (on behalf of itself or the respective Implementing Body) and the AsBo for the implementation of an Assignment.
- (g) "Completion Date", as defined in accordance with Clause 11.4 and 11.6, as appropriate.
- (h) "Confidential Information", as defined in accordance with *Section XVII. Confidentiality* of the Agreement.
- (i) "AsBo", the company CERTIFER SA, as further specified in the preamble of this Agreement, which is engaged by the Principal as an independent professional contractor to perform the Services to the Principal and the Implementing Bodies, and legal successors to the Principal and the Implementing Bodies and permitted assignees of the Principal and the Implementing Bodies.
- (j) "Costs", direct costs reasonably incurred in relation to the Project. Specifically, the Cost shall include any of the following:
 - (i) costs of all materials and supplies forming part of the Services, including transportation and storage expenses (discounts for cash or prompt payments will not reduce these costs);
 - (ii) salaries for personnel in the direct employ of the AsBo in the performance of the Services or relating to the Services;
 - (iii) salaries of the AsBo's employees for the time that they spend in connection with the Services;
 - (iv) payments to sub-contractors for relating to the Services;
 - (v) costs of all employee benefits and taxes for items such as social security and other benefits for the labour and employees;
 - (vi) costs, including transportation and maintenance, of equipment and hand tools not owned by workmen employed by the AsBo which are employed or consumed toward the Services;
 - (vii) payments for rental charges for machinery, equipment, facilities and tools used in connection with the Services, and payments for installations, repairs, replacements, dismantling, removal, lubrication, transportation and delivery of those rental items;
 - (viii) other transportation costs incurred in connection with the Services;
 - (ix) that portion attributable to this Agreement of premiums for insurance that is required by this Agreement (if applicable) or by law to be obtained or maintained by the AsBo;
 - (x) sales, use, gross receipts or other taxes related to the Services, imposed by any governmental authority, to the extent that the AsBo is responsible for such taxes;

- (xi) costs of long-distance telephone calls, telephone service at the site and postage relating to the Services;
 - (xii) costs of any data processing services used in connection with the performance of the Services required under this Agreement; and
 - (xiii) losses and expenses, not compensated by insurance, sustained by the AsBo in connection with the Services under this Agreement (if applicable), provided they resulted from causes other than the fault or neglect of the AsBo.
- (k) "Corrective Period", as defined in accordance with Clause 13.2.
 - (l) "Cure Period", as defined in accordance with Clause 11.3.
 - (m) "Damages", any cost, claim, damage, demand, loss, expense or liability incurred by the relevant Party or Person.
 - (n) "Deed of Acceptance", as defined in accordance with Clause 11.4 and in the form as provided *in Annex G: Form of the Deed of Acceptance*.
 - (o) "Defect", is a part of the Services or an Assignment which is not in accordance with *Annex B: Technical Specification*, the Agreement, the Applicable Law or Good Industry Practice. For the purpose of the Agreement, taking into account the nature of the Services hereunder, the Defects are limited to the part of the Services or an Assignment which contains technical or formal errors not compliant with the requirements of the *Annex B: Technical Specification*, the Agreement, the Applicable Law or Good Industry Practice, not the part of Services or an Assignment reflecting the impartial judgement based on evidence and the results of the independent safety assessment and/or the conclusions of the independent safety assessment concerning the compliance of the Principal's or the respective Implementing Bodies' risk assessment and risk management with the requirements of the common safety methods (CSM) for risk assessment.
 - (p) "Deliverable", the Inception Report, the Safety Assessment Reports and any information, notes, material, drawings (including drawings in 3D model), records, documents and/or other items which the AsBo is required to deliver to the Principal as part of an Assignment.
 - (q) "Documentation", all records, correspondence, and files of the AsBo, its employees, engineers, and consultants pertaining to the Project.
 - (r) "Effective Date", the date when all Parties have signed the Agreement.
 - (s) "EUR" and "euro", the official currency of the eurozone, officially known as the euro area.
 - (t) "Fee", as specified in accordance with Clause 10.1.
 - (u) "Force Majeure Event", any of the following events:
 - (i) an act of the public enemy or war (declared or undeclared), threat of war, revolution, riot, insurrection, civil commotion, demonstration or sabotage;
 - (ii) an act of vandalism or accidental damage or destruction of machinery, equipment, track or other infrastructure;
 - (iii) a natural disaster or phenomena, including extreme weather or environmental conditions (such as lightning, earthquake, hurricane, storm, fire, flood, drought or accumulation of snow or ice);
 - (iv) nuclear, chemical or biological contamination, epidemic, pandemic, quarantine;
 - (v) pressure waves caused by devices travelling at supersonic speeds;
 - (vi) discovery of fossils, antiquities or unexploded bombs; and/or
 - (vii) strike, lockout or other industrial action other than involving the AsBo, the Principal or the Implementing Bodies.
 - (v) "Good Industry Practice", in relation to the performance of any activity to which this standard is applied, the exercise of that degree of skill, diligence, prudence and foresight as would reasonably be expected to be exercised by a properly qualified and competent person engaged in carrying out Services of a

similar size, nature, scope, type and complexity, complying with Applicable Law, applicable Standards and published codes of practice.

- (w) "Intellectual Property", all intellectual property rights in any part of the world in respect of any documentation or information provided by the AsBo to the Principal or the Implementing Bodies, including any patent, patent application, trade mark, trade mark application, registered design, registered design application, utility model, trade name, discovery, invention, process, formula, specification, copyright (including all neighbouring rights, rights in computer software and database and topography rights), know how or unregistered design right.
- (x) "Inception Report", a Deliverable which AsBo is required to deliver to the Principal as part of a separate Assignment under *Section IV. Inception Report*, which may be adjusted from time to time.
- (y) "Intellectual Property of the AsBo", all Intellectual Property owned or licensed to the AsBo with a right to sub-license.
- (z) "Objection Notice", as defined in accordance with Clause 11.5.
- (aa) "Party" and "Parties", the Principal, the Implementing Bodies and the AsBo and include their respective successors in title, permitted assigns and permitted transferees.
- (bb) "Person" shall include any person, company, corporate body, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) or two or more of the foregoing.
- (cc) "Project", development of a 1435 mm standard gauge railway line in the Rail Baltica (RB) corridor through Estonia, Latvia and Lithuania aimed at eliminating the technical bottleneck due to the gauge differences (1,520 mm vs. the EU standard of 1,435 mm).
- (dd) "Principal", the RB Rail AS, which procures the services of the AsBo, on behalf of the Principal itself or the respective Implementing Body, as the case may be, and legal successors to the AsBo and permitted assignees of the AsBo.
- (ee) "Railway", a new fast conventional double track electrified railway line according TSI INF P2-F1 criteria and European standard gauge (1435 mm) on the Route.
- (ff) "Residence Certificate", a certificate mentioned in Clause 9.2(h).
- (gg) "Standards", CEF Standards and Grant Agreement Standards.
- (hh) "Safety Assessment Report", a Deliverable containing the conclusions of the assessment performed by the AsBo on the system under assessment in accordance with the European Commission Regulation No 402/2013 which the AsBo is obliged to deliver to the Principal as part of an Assignment;
- (ii) "Milestone", the date for delivery of one or more Deliverables, as may be set out in specific Assignment Orders or the Agreement.
- (jj) "Services", the assessment body services that are to be provided in accordance with the Agreement and on an on-demand basis as specified in *Annex B: Technical Specification*.
- (kk) "VAT", value added tax.
- (ll) "Business Day", as specified in accordance with Clause 1.2.9 of this Agreement.

Annex B: Technical Specification

TECHNICAL SPECIFICATION

ASSESSMENT BODY (ASBO) SERVICES FOR RAIL BALTICA GLOBAL PROJECT

(IDENTIFICATION NO RBR 2021/3)



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

Riga

2020

Annex C: Performance Bond
to the Framework Agreement No [●]

FORM OF THE PERFORMANCE BOND

To the Beneficiary: RB Rail AS, registration No 40103845025

Legal address: Krišjāņa Valdemāra iela 8-7, LV-1010 Riga, the Republic of Latvia

Payment guarantee No [●]
[insert place and date of issuance]

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

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

Beneficiary: RB Rail AS.

Date: [●]

Underlying Relationship: the Framework Agreement No [●], executed between RB Rail AS, registration No 40103845025, legal address: Krišjāņa Valdemāra iela 8-7, LV-1010 Riga, Latvia, as the Principal, sabiedrība ar ierobežotu atbildību "Eiropas dzelzceļa līnijas", a limited liability company registered in the Latvian Commercial Register, registration No 40103836785, legal address at Gogoļa iela 3, Riga, LV-1743, Latvia, as the Implementing Body in Latvia, which is represented by the Principal, osāhning Rail Baltic Estonia, a limited liability company registered in the Estonian Commercial Register, registration No 12734109, legal address at Endla 16 Tallinn Harjumaa 10142, Estonia, as the Implementing Body in Estonia, which is represented by the Principal, and AB "LTG Infra", a public limited liability company registered in the Lithuanian Register of Legal Entities, registration No 305202934, legal address at Vilnius, Geležinkelio g. 2, LT-02100, Lithuania, as the Implementing Body in Lithuania, which is represented by the Principal, and [insert the name of AsBo, registration No of AsBo and legal address of AsBo] as AsBo, on [●] (hereinafter the Agreement) and obligations of the Applicant to perform the Agreement in accordance with the terms of the Agreement.

Guarantee Amount and currency: [EUR _____ (_____ *euro*)].

Document in support of the demand for payment and form of submission: a first demand issued by RB Rail AS that shall be presented as follows:

- Paper form (written) demand signed by an authorised representative of the RB Rail AS 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 ASIC-E 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 an authorised representative of the RB Rail AS; 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 ASIC-E or similar container and secured by using safe electronic signature with a time stamp; the document shall be signed by an authorised representative of the RB Rail AS.

Language of all required documents: the English language.

Expiry date: [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 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 date and pursuant to the form of submission conditions indicated above.

We further agree that no change or addition to or other modification of the terms of the Agreement 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 the form mentioned above. The Beneficiary shall not be obliged to justify its demand. The Beneficiary is entitled to transfer (assign) the Guarantee (the rights arising therefrom) to the Implementing Body in Latvia, Implementing Body in Lithuania or the Implementing Body in Estonia. The Guarantor has been notified that the Beneficiary may require the Applicant to extend the Guarantee.

Applicable law and Disputes: THIS GUARANTEE IS SUBJECT TO THE UNIFORM RULES FOR DEMAND GUARANTEES (URDG) 2010 REVISION, ICC PUBLICATION NO 758 (ICC RULES). Article 33 of the ICC Rules does not apply in case any or all rights under this Guarantee or the Guarantee as a whole are assigned, pledged or transferred. Matters which are not covered by the above mentioned ICC Rules shall be decided according to Latvian law. For avoidance of doubt, Articles 1692 to 1715 of the Civil Law of Latvia do not apply to this Guarantee, as this Guarantee does not constitute a surety (in Latvian – galvojums) and instead this Guarantee constitutes a separate and independent (not accessory) obligation of the Guarantor. Any dispute, controversy or claim arising out of or relating to this Guarantee shall be settled by the competent court of the Republic of Latvia.

This Guarantee cannot be changed or terminated, and it cannot be assigned to any other third-party or used as a bond without a prior written consent of the Beneficiary.

This Guarantee is executed in two (2) originals – the Beneficiary and the Guarantor shall each receive one (1) original.

SIGNATURE AND SEAL OF THE GUARANTOR

Date

.....

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

.....

Address

.....

Annex D: List of approved Sub-Contractors and Staff

[A LIST OF ALL SUB-CONTRACTORS AND/OR SUPPLIERS THE ASBO ANTICIPATES TO ENGAGE TOWARD PROVISION OF THE SERVICES. PLEASE INDICATE NAME, CONTACT DETAILS AND LEGAL REPRESENTATIVE(S) OF EACH SUB-CONTRACTOR]

Non-applicable

Annex E: Draft Request for Assignment Order

From: [●]
Registration number:
Registered address:
e-mail:

To: **RB Rail AS**
Registration number:
Registered address:
e-mail:

REQUEST FOR ASSIGNMENT ORDER NO. [●]
FOR THE PROVISION OF ASSESSMENT BODY SERVICES

[●] (the “Implementing Body”) hereby requests the Principal pursuant to the Framework Agreement No [●] to issue an Assignment Order to the AsBo for the provision of the following Assignment:

1. Deliverables: [●].
2. Milestones: [●].
3. Preferable time for review of the Deliverables [OPTIONAL]: [●]
4. Assignment`s communication`s planning meetings [OPTIONAL]: [●]
5. Contact person(s) for the Implementing Body: [●].
6. Other terms: [●].

Date [●]

Implementing Body

Annex F: Draft Assignment Order

ASSIGNMENT ORDER NO. [●]

Date [●]

FOR THE PROVISION OF ASSESSMENT BODY SERVICES

This Assignment Order has been entered into pursuant to the Framework Agreement No [●] between:

RB Rail AS, a joint stock company registered in the Latvian Commercial Register, registration No 40103845025, legal address at [●] (the "Principal"), represented by [●] acting on the basis of the [●], on the on side, and

[●], a [●] company organized and existing under [●] law, registration number with [●], having its registered address at [●] (the "AsBo"), represented by [●][●] acting on the basis of [●], on the other side,

for providing of the Assignment by the AsBo to the Principal on the following conditions:

1. The Party to which the Services are provided: [●];
2. Names of the persons to implement Assignment Order: [●];
3. Deliverables: [●]
4. Language of Deliverables: [●]
5. Milestones: [●];
6. Time for review of the Deliverables [OPTIONAL]: [●];
7. Assignment`s communication`s planning meetings [OPTIONAL]: [●];
8. Contact person(s) for the Principal: [●];
9. Contact person(s) for the AsBo: [●];
10. Fee in total (exclusive of VAT) for provision of the Assignment: [●];
11. Payment: According to the Framework Agreement for No [●] .
12. Governance: This Assignment Order supplements, forms part of and is subject to the Framework Agreement No [●]. All provisions contained in the Agreement thereof govern this Assignment Order. In the event of any inconsistency between the provisions of the Framework Agreement No [●] and this Assignment Order, this Assignment Order shall prevail.
13. Other terms: [●].

Principal

AsBo

Annex G: Form of the Deed of Acceptance

No [INSERT NUMBER]

Date: [INSERT DATE IN THE FORM OF 1 January 2020]

Location: [INSERT LOCATION]

For: [INSERT PRINCIPAL], registration number [●], legal address: [●] (the "Principal")

This Acceptance Deed is issued to the Principal by [●] [INSERT NAME, REGISTRATION NUMBER INSERT REGISTRATION NUMBER, LEGAL ADDRESS] (the "AsBo"), represented by [INSERT NAME OF REPRESENTATIVE ON THE BASIS OF INSERT BASIS OF REPRESENTATION].

Whereas:

- (A) the Principal and the AsBo have entered into the Assignment Order No. [●];
- (B) one or more Milestones have been met and/or Deliverables of the Assignment have been completed or the Assignment have been fully completed by the AsBo;
- (C) as stipulated by Clause 11.4 of the Agreement, completion of a Milestone/Deliverable or the Assignment shall be evidenced by means of the AsBo issuing a signed Deed of Acceptance;
- (D) as per Clause 11.5 of the Agreement the Principal following the reception of a signed Deed of Acceptance shall review the submitted Deed of Acceptance and either sign the Deed of Acceptance conforming the compliance of the Services rendered or raise objections by issuing an Objection Notice.

The AsBo hereby confirms that following Deliverable/Milestone has/have been supplied on [INSERT DATE IN THE FORM OF 1 January 2020], as specified in accordance with the Assignment Order No. [●], or the Assignment have been completed in full: [DESCRIBE IN REASONABLE DETAIL THE DELIVERABLE SUPPLIED AND ATTACH THE RESPECTIVE SUPPORTING DOCUMENTATION]

By signing this Deed of Acceptance the Principal confirms in accordance with Clauses 11.5.2 of the Agreement its satisfaction with the result of the Assignment or the Deliverable/Milestone completed and submitted, and the Principal accepts the respective Deliverable/Milestone or the Assignment in its entirety or partly as specified in Clause 11.5.2 of the Agreement. Additionally, the Principal certifies that all of the necessary authorisations for the acceptance of the Deliverable/Milestone or Assignment have been duly received.

Signatures:

For and on behalf of the Principal (or the Implementing Body, as the case may be)

[●]

For and on behalf of the AsBo

[●]

Annex H: Rules of Adjudication
to the Framework Agreement on Assessment Body Services for Rail Baltica Global Project

RULES FOR ADJUDICATION

CONTENT

I Rules for Adjudication	2
II General Conditions of Dispute Adjudication Agreement	5
III Form of Dispute Adjudication Agreement	8

I RULES FOR ADJUDICATION

General

1. Any reference in the Agreement to the rules for adjudication shall be a reference to these Rules for Adjudication (hereinafter "the Rules").
2. Definitions in the Agreement shall apply in the Rules.

Appointment of Adjudicator

3. The Principal and AsBo shall jointly ensure that the Adjudicator shall be a suitable qualified person.
4. If for any reason the appointment of the Adjudicator is not agreed (a dispute adjudication Agreement is not signed) by the Principal and the AsBo within fifteen (15) days at the latest of the reference of a dispute in accordance with the Rules, AsBo and the Principal may skip the reference of a dispute to the Adjudicator, and proceed with the arbitration as per Clause 20.4 of the Agreement without an option to refer the same dispute to the Adjudicator.
5. The Adjudicator's appointment may be terminated by the mutual agreement of the Principal and AsBo. The Adjudicator's appointment shall expire when the Services have been completed or when any disputes referred to the Adjudicator shall have been withdrawn or decided, whichever is the later.

Terms of Adjudicator

6. The Adjudicator is to be and shall remain throughout his/her appointment, impartial, and independent of the Parties and shall immediately disclose in writing to the Parties anything of which he/she becomes aware which could affect his/her impartiality or independence.
7. The Adjudicator shall not give advice to the Parties or their representatives concerning the conduct of the Project of which the Verification services form part other than in accordance with the Rules.
8. The Adjudicator shall not be called as a witness by the Parties to give evidence concerning any dispute in connection with or arising out of the Agreement.
9. The Adjudicator shall treat the details of the Agreement and all activities, and hearings of the Adjudicator as confidential and shall not disclose the same without a prior written consent of the Parties. The Adjudicator shall not, without a prior written consent of the Principal and AsBo, assign or delegate any of his/her work under the Rules or engage legal or technical assistance.
10. The Adjudicator may resign by giving thirty (30) days' notice to the Principal and AsBo. In the event of resignation, death or incapacity, termination or a failure or refusal to perform the duties of the Adjudicator under the Rules, the Principal and AsBo shall agree upon a replacement of the Adjudicator within fifteen (15) days. In case of failure to agree regarding replacement of the Adjudicator within fifteen (15) days, Rule 4 above shall apply.
11. The Adjudicator shall in no circumstances be liable for any claims for anything done or omitted in the discharge of the Adjudicator's duties unless the act or omission is shown to have been in bad faith.
12. If the Adjudicator shall knowingly breach any of the provisions of Rule 6 above or act in bad faith, he/she shall not be entitled to any fees or expenses hereunder and shall reimburse the Principal and AsBo for any fees and expenses properly paid to him/her if, as a consequence of such breach, any proceedings or decisions of the Adjudicator are rendered void or ineffective.

Payment

13. The Adjudicator shall be paid the fees and expenses set out in the Dispute Adjudication Agreement.

14. All payments to the Adjudicator shall be made by the Principal and AsBo in equal parts. The Principal is entitled to request the Implementing Bodies to reimburse the corresponding (proportional) part of these payments to the Principal.
15. All payments to the Adjudicator shall be made within sixty (60) days upon receipt of the Adjudicator's invoice and the Adjudicator's decision as per Rule 21.
16. The Adjudicator shall submit to AsBo and the Principal, an invoice for the fee of his/her dispute resolution services and expenses based on the Dispute Adjudication Agreement conditions.

Obtaining Adjudicator's Decision

17. A dispute between the Principal and AsBo may be referred in writing by AsBo or the Principal to the Adjudicator for the decision, with a copy to the other party of the dispute. If the Adjudicator has not been agreed or appointed, the dispute shall be referred in writing to the other party to the dispute, together with a proposal for the appointment of an Adjudicator. A reference shall identify the dispute and Rules.
18. The Adjudicator may decide to visit the site(s), offices or any other location(s) of the Project. The Adjudicator may decide to conduct a hearing in which event he/she decides on the date, place and duration for the hearing. The Adjudicator may request that written statements from the Parties be presented to him/her prior to, at or after the hearing. The Parties shall promptly provide the Adjudicator with sufficient copies of any documentation and information relevant to the Agreement that may be requested. All these activities shall be carried out in an open, impartial and transparent way without giving any procedural or other advantages to AsBo or the Principal.
19. The Adjudicator shall act as an impartial expert, not as an arbitrator, and shall have full authority to conduct any hearing as he/she thinks fit, not being bound by any rules or procedures other than those set herein. The Principal and AsBo empower the Adjudicator, among other things to:
 - (a) establish the procedure to be applied in deciding a dispute,
 - (b) make use of his/her own specialist knowledge, if any,
 - (c) adopt an inquisitorial procedure,
 - (d) open up, review and revise any opinion, instruction, determination, certificate or valuation, related to the dispute,
 - (e) refuse admission of hearings to any persons other than the Principal, AsBo and their respective representatives, and to proceed in the absence of any party to the dispute who the Adjudicator is satisfied received notice of the hearing.
20. All communications between either of the Principal or AsBo and the Adjudicator and all hearings shall be in the language of the Dispute Adjudication Agreement. All such communications shall be copied to the other party to the dispute.
21. Not later than within thirty (30) days after the day on which the Adjudicator received a reference or, if later, the day on which the Dispute Adjudication Agreement came into effect, the Adjudicator shall give a written notice of his/her decision to the Parties. Such decision shall include reasons and state that it is given under the Rules.

II GENERAL CONDITIONS OF THE DISPUTE ADJUDICATION AGREEMENT

1. Definitions

"Dispute Adjudication Agreement" is a tripartite agreement by and between:

1. the "Principal";
2. "AsBo"; and
3. the "Adjudicator".

The Principal, the Implementing Bodies and AsBo have entered (or intend to enter) into a Agreement, which is called the "Framework Agreement on Assessment Body Services for Rail Baltica Global Project" and is defined in the Dispute Adjudication Agreement, which incorporates this Annex. In the Dispute Adjudication Agreement, words and expressions, which are not otherwise defined, shall have the meanings assigned to them in the "Framework Agreement on Assessment Body Services for Rail Baltica Global Project" ("the Agreement").

2. General Provisions

1. The Dispute Adjudication Agreement shall take effect when the Principal, AsBo and the Adjudicator have respectively each signed a dispute adjudication Agreement.
2. This employment of the Adjudicator is a personal appointment. No assignment or sub-contracting of the Dispute Adjudication Agreement is permitted without a prior written agreement of all the parties to it.

3. Warranties

1. The Adjudicator warrants and agrees that he/she is and shall be impartial and independent of the Principal, the Implementing Bodies and AsBo. The Adjudicator shall promptly disclose to each of them any fact or circumstance which might appear inconsistent with his/her warranty and agreement of impartiality and independence.
2. When appointing the Adjudicator, the Principal and AsBo relied upon the Adjudicator's representations that he/she is:
 - (i) experienced in the work, which AsBo is to carry out under the Agreement;
 - (ii) experienced in the interpretation of Agreement documentation; and
 - (iii) fluent in the language for communications defined in the Agreement.

4. General Obligations of the Adjudicator

The Adjudicator shall:

- (a) have no interest financial or otherwise in the Principal, the Implementing Bodies or AsBo, nor any financial interest in the Agreement except for payment under the Dispute Adjudication Agreement;
- (b) not previously have been employed, involved in consulting or otherwise somehow engaged as a consultant or otherwise by the Principal, the Implementing Bodies or AsBo, except in such circumstances as were disclosed in writing to the Principal and AsBo before they signed the Dispute Adjudication Agreement;
- (c) have disclosed in writing to the Principal and AsBo before entering into the Dispute Adjudication Agreement and to his/her best knowledge and recollection, any professional or personal relationships with any director, officer or employee of the Principal, the Implementing Bodies or AsBo, and any previous involvement in the overall project of which the Agreement forms part;
- (d) not, for the duration of the Dispute Adjudication Agreement, be employed as a consultant or otherwise by the Principal, the Implementing Bodies or AsBo, except as may be agreed in writing jointly by the Principal and AsBo;

(e) comply with the Rules for Adjudication contained in *Annex H: Rules of Adjudication* of the Agreement and with Clause 20.3 of the Agreement;

(f) not give advice to the Principal, the Implementing Bodies or AsBo concerning the conduct of the Agreement, other than in accordance with the Rules for Adjudication;

(g) not enter into discussions or make any agreement with the Principal, the Implementing Bodies or AsBo regarding employment by any of them, whether as a consultant or otherwise, after ceasing to act under the Dispute Adjudication Agreement;

(h) ensure his/her availability for any site visit and hearings as are necessary; and

(i) treat the details of the Agreement and all the activities and hearings as private and confidential, and not publish or disclose them without a prior written consent of the Principal and AsBo.

5. General Obligations of the Principal and AsBo

1. The Principal and AsBo shall not request advice from or consultation with the Adjudicator regarding the Agreement. The Principal and AsBo shall be responsible for compliance with this provision.
2. The Principal and AsBo undertake to each other and to the Adjudicator that the Adjudicator shall not, except as otherwise agreed in writing by the Principal, AsBo and the Adjudicator:
 - (i) be appointed as an arbitrator in any arbitration under the Agreement;
 - (ii) be called as a witness to give evidence concerning any Dispute before arbitrator(s) appointed for any arbitration under the Agreement; or
 - (iii) be liable for any claims for anything done or omitted in the discharge or purported discharge of the Adjudicator's functions, unless the act or omission is shown to have been in bad faith.

6. Payment

1. The Adjudicator shall be paid for the dispute resolution services by the Principal and AsBo (in equal parts) an amount in *euro*, VAT inclusive, which amount needs to be agreed in each and every case with the Adjudicator separately and needs to be specified in the Dispute Adjudication Agreement, within sixty (60) days upon receipt of the Adjudicator's invoice and the Adjudicator's decision as per Rule 21.
2. The fee indicated in the foregoing clause shall be all-inclusive with respect to any expenses and shall reflect the total amount of all Adjudicator's expenses required in order to resolve a specific dispute between AsBo and the Principal.
3. If AsBo or the Principal fails to pay to the Adjudicator the amount to which he/she is entitled under the Dispute Adjudication Agreement, AsBo or the Principal shall, as the case may be, cover the non-compliant party's debt and pay to the Adjudicator the other party's expenditure. Consequently, the other party to the dispute shall be entitled to reimbursement of all sums paid in excess of one-half of these payments.

4. Default of the Adjudicator

If the Adjudicator fails to comply with any obligation under the Dispute Adjudication Agreement or the Agreement, he/she shall not be entitled to any fees or expenses hereunder and shall, without prejudice to their other rights, reimburse each of the Principal and AsBo for any fees and expenses received by the Adjudicator (including those paid as an advance), for proceedings or decisions (if any) of the adjudication which are not duly and properly rendered, or rendered void or ineffective.

5. Dispute Resolution

Any dispute or claim arising out of or in connection with this Dispute Adjudication Agreement, or the breach, termination or invalidity thereof, shall be submitted to the International Court of Arbitration of the

International Chamber of Commerce and shall be finally settled in accordance the Rules of Arbitration of the International Chamber of Commerce. Notwithstanding the procedural Rules of Arbitration of the International Chamber of Commerce, any dispute, controversies or claims shall be settled in accordance with the material norms of the laws of the Republic of Latvia. The arbitration shall be in English language. The place of arbitration shall be Stockholm, Sweden. The arbitral tribunal shall be composed of one (1) arbitrators.

III FORM OF DISPUTE ADJUDICATION AGREEMENT

Identification of the Project

("the Project")

Name and address of the Principal

("the Principal")

Name and address of AsBo

("AsBo")

Name and address of the Adjudicator

("the Adjudicator")

Whereas the Principal, the Implementing Bodies and AsBo have entered into an agreement ("the Agreement") for the execution of the Project and wish to appoint the Adjudicator to act in accordance with the Rules for Adjudication ("the Rules"),

the Principal, AsBo and the Adjudicator agree as follows:

1. The Rules, General Conditions of the Dispute Adjudication Agreement and the dispute resolution provisions of the Agreement shall form part of this Dispute Adjudication Agreement.
2. The Adjudicator shall be paid a fee for the dispute resolution services in the amount of [_____ (euro)], VAT inclusive, within sixty (60) days upon receipt of the Adjudicator's invoice and the Adjudicator's decision as per Rule 21. The fee shall be all-inclusive with respect to any expenses and reflects the total amount of all Adjudicator's expenses required in order to resolve a specific dispute between AsBo and the Principal.
3. The Adjudicator agrees to act as an adjudicator in accordance with the Rules for Adjudication and has disclosed to the Parties any previous or existing relationship with the Parties or other concern with the Project or other projects.
4. The laws of Latvia shall govern this Dispute Adjudication Agreement.
5. The language of the Dispute Adjudication Agreement shall be English.

Signed for and on behalf of the Principal:

..... Signature of Authorised Signatory

..... Full name of above (print)

..... Date of signing

Signed for and on behalf of AsBo:

..... Signature of Authorised Signatory

..... Full name of above (print)

..... Date of signing

Signed for and on behalf of the Adjudicator:

..... Signature of Adjudicator

..... Full name of above (print)

..... Date of signing

Annex I: Declaration of AsBo

I, Pierre Kadziola, the undersigned duly authorised representative, on behalf of CERTIFER SA 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 14 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 AsBo or an undertaking related to the AsBo 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 contractor's business or any kind of economic ties with the AsBo;
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 AsBos' 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 AsBo which participated in a procurement procedure or restrictions with similar effect applies;
18. To promote the adoption of the principles set forth in this AsBo's Declaration by my potential business partners and promote the implementation of the principles set forth in this document towards own contractors;
19. Not procure goods, works and services from other contractors:
 - a. Who, or its member of the Management Board or the Supervisory Board or procurator of such contractor, or a person having the right to represent such contractor 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 contractor to participate in the tender), economic activity of such contractor has been suspended or discontinued, proceedings regarding bankruptcy of such contractor have been initiated or such contractor will be liquidated;
- e. who has tax debts in the country where the procurement is organised or a country where such contractor 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.

Pierre Kadziola

On behalf of AsBo

THIS DOCUMENT IS SIGNED ELECTRONICALLY WITH A QUALIFIED ELECTRONIC SIGNATURE
AND CONTAINS TIME SEAL

Annex J: AsBo's Proposal

Annex K: AsBo's Financial Proposal