

**AGREEMENT FOR
RAILWAY TUNNELS EXPERT SERVICES**

between

RB Rail AS

and

[●]

Contract registration number

[●]

CEF¹ Contract No

[●]

Procurement procedure identification No

[●]

Riga

Dated **[●]**

¹ Grant Agreement under the Connecting Europe Facility

AGREEMENT FOR RAILWAY TUNNELS EXPERT SERVICES

This agreement for railway tunnels expert services, 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 (the "Commencement Date") by and between:

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 Management Board Member acting on the basis of the Regulations on Representation Rights dated 17 May 2021, on the one side,

and

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

who are collectively referred to as the "Parties" and each separately – as the "Party".

WHEREAS:

- (A) the 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 has organised procurement for "Railway tunnels expert services" (identification No RBR **2021/16**) (the "Procurement Procedure") whereby the Contractor's tender proposal (the "Contractor's Proposal") was selected as the winning bid;
- (C) the Agreement is co-financed from the Connecting Europe Facility (CEF), CEF Contract No **[●]**, Activity "**[●]**", Action No: **[●]**.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained and intending to be legally bound hereby, the Parties hereby agree as follows:

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.*
 - (a) The headings contained in this Agreement shall not be used in its interpretation.
 - (b) 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.
 - (c) 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.
 - (d) Any reference to "this Agreement", "hereof", "herein", "herewith", "hereunder" and words of similar import shall unless otherwise stated or where the context requires otherwise, include a reference to this Agreement and any part thereof, including its Annexes, and as amended from time to time.

- (e) 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.
 - (f) 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:
 - (i) 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
 - (ii) 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.
 - (g) Any warranty, representation and/or undertaking of the Parties under the Agreement shall be interpreted and applied to the extent permitted under the Applicable Law.
 - (h) A reference to "writing" shall include an e-mail transmission and any means of reproducing words in a tangible and permanently visible form.
 - (i) The words "include" and "including" are to be construed without limitation.
 - (j) Unless indicated otherwise, all references to "days" shall mean calendar days.
 - (k) The words in this Agreement shall bear their natural meaning, except for any Definitions in accordance with *Annex A: Definitions and common terms*.
- 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:
- (a) this Agreement document;
 - (b) explanations (clarifications) of the procurement documentation;
 - (c) procurement documents with the annexes;
 - (d) clarifications of the Contractor's Proposal;
 - (e) Contractor's Proposal;
 - (f) all other Annexes of the Agreement.

Section II. General terms and conditions

- 2.1 *Engagement*. The Contractor undertakes to provide railway tunnel expert services to the Principal and its personnel on railway tunnel solutions in accordance with *Annex B: Technical Specification* and the terms of the Agreement upon the Principals' request (the "Services").
- 2.2 *On demand*. The Agreement is on-demand based with no fixed work-load and/or guaranteed value to the Contractor.
- 2.3 *Mutual agreement*. The Contractor undertakes to provide the Services only upon and in accordance with the Principals' request the conditions of which being binding on both Parties.
- 2.4 *Total Value*. The total value of the Agreement shall not exceed EUR 25'000 (twenty-five thousand euro, 00 cents) excl. VAT.
- 2.5 *Term*. The Agreement shall become effective as of the Commencement Date and shall continue in effect until 31 December 2022. After expiry of the Agreement or once the Total Value has been reached, no more additional requests for Services can be issued by the Principal. The Agreement terminates once all of the already started Services are fully completed by the Contractor and approved by the Principal and the Parties have fulfilled their contractual obligations arising out of this Agreement.

- 2.6 *Co-Operation of the Parties.* The Parties shall cooperate with one another to fulfil their respective obligations under this Agreement. Both Parties shall endeavour to maintain good working relationships among all key personnel engaged toward provision of the Services.
- 2.7 *General Obligations of Contractor.* The Contractor shall be responsible for the professional quality, technical accuracy, and coordination of all Services furnished under this Agreement. The Contractor shall have an obligation, without additional compensation of any kind, to correct or revise any errors, deficiencies, or omissions in concepts, programming, reports, designs, drawings, specifications, estimates, and other services rendered hereunder and forming part of the Services.
- 2.8 *Acceptance Not a Waiver.* The Principal's review, approval, acceptance, or payment for the Works 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 Contractor's performance of any Works under this Agreement. The Contractor shall remain liable to the Principal as allowed under this Agreement and under Applicable Law for any and all costs and/or Damages caused by the Contractor's negligent performance of any of the Works and Services furnished under this Agreement.

Section III. Responsibilities of Principal

- 3.1. *Supply of Information.* Unless otherwise provided under this Agreement, the Principal shall, in a timely manner, provide to the Contractor any information regarding requirements and parameters of the Project, as may reasonably be requested by the Contractor for the purposes of the Services, provided that the Principal is in possession of such information.
- 3.2. *Review of Documentation.* The Principal shall examine Documentation as may be submitted by the Contractor for review by the Principal toward partial completion of the Services and, upon request of the Contractor, shall render decisions and opinions pertaining thereto.
- 3.3. *Decisions.* On all matters properly referred to it in writing by the Contractor the Principal shall give its decision in writing so as not to delay the Services and within a reasonable time. The Principal is not limited to provide any answer and information to the Contractor by e-mail.
- 3.4. *Action Upon Becoming Aware of Defects.* In the event the Principal observes or otherwise becomes aware of any error, fault, omission, or defect in the Services or non-conformance of any action forming part of the Services, the Principal shall give prompt notice thereof to the Contractor. The Contractor shall have the obligation to correct such error, fault, omission, or defect in the Services or non-conformance of any action forming part of the Services.

Section IV. Responsibilities of Contractor

- 4.1. *Standard of Performance.* The Contractor's services shall be performed as expeditiously as is consistent with professional skill and care, orderly progress of the Services, and in accordance with the terms of the Agreement.
- 4.2. *Obligation to Act in Accordance with Principal's Comments.* In performing the Services, the Contractor shall have due regard to any comments made by the Principal regarding the provision of the Services or information furnished by the Principal and shall provide reasons to the Principal where it does not take into account any such comments.
- 4.3. *Duty of Care and Exercise of Authority.* The Contractor 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 services of a similar size, nature, type and complexity;
 - (b) ensure that its personnel are properly qualified and competent, including in accordance with the relevant Standards;
 - (c) ensure that all maps, drawings, plans, specifications, estimates, surveys and other documents and information required to be prepared or submitted by the Contractor under this Agreement conform to Good Industry Practice generally acceptable at the time of submission of such maps, drawings, plans, specifications, estimates, studies, documents and information;

- (d) at all times during the term of the Services, ascertain and comply with all Applicable Laws of the Republic of Latvia and Good Industry Practice of the European Union;
- (e) comply, where applicable, with any reasonable requirements of the Principal not otherwise provided for in this Agreement;
- (f) notify the Principal of any any error, fault, omission, or defect in the Services or non-conformance of any action forming part of the Services. The Contractor shall have the obligation to correct such error, fault, omission, or defect in the Services or non-conformance of any action forming part of the Services;
- (g) upon discovering a defect, or upon receipt by the Contractor of a notification of defect from the Principal, the Contractor shall have seven (7) days (unless otherwise specified by the Principal) to remedy the Defect (the "Cure Period").

4.4. *Maintenance of Records.* During the term of the Agreement and during ten (10) years from expiration or termination of this Agreement for any reason whatsoever, the Contractor shall keep and maintain clear, adequate and accurate records and Documentation evidencing, to the reasonable satisfaction of the Principal, that the Services has been and is 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.

4.5. *Access to Documentation.* At all times during the term of the Agreement, 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 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 Principals' auditor, or expert appointed by the Principal during the period of time specified in accordance with this Clause 4.5.

4.6. *Right to Sub-Contract and Staff.*

4.6.1. *Right to Sub-Contract and Staff according to law.* In carrying out the Services, the Contractor may only rely on the services of those Approved Sub-Contractors and Approved 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 Commencement Date in *Annex D: List of approved Sub-Contractors and Staff*. The Contractor shall have an obligation to notify the Principal in writing of any changes to *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.

Pursuant to the Public Procurement Law of the Republic of Latvia the Contractor 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.

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.

The Contractor shall replace the Sub-contractor and/or Staff member which, during the effectiveness of this Agreement, meets any of the compulsory grounds for exclusion of tenderers (or sub-contractors) that were verified during the Procurement Procedure.

4.7. *Responsibility for Performance by Sub-Contractors and Staff.* The Contractor 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 Contractor.

- 4.8. *Security Clearance Requirements.* The Contractor 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), 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.
- 4.8.1. At the Principal's request, the Contractor 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.
- 4.8.2. In order to assess the compliance of the natural person whom the Contractor intends to involve in the performance of the Agreement with the requirements specified in Clause 4.8 of this Agreement, the Principal has the right to organize an additional security compliance check.
- 4.8.3. The Contractor 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.
- 4.8.4. The Contractor 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 Contractor shall also submit a brief description of the role and responsibilities of the natural person in the performance of the Agreement.
- 4.8.5. The Principal has the right, at its own discretion, to prohibit a natural person specified by the Contractor from performing tasks related to the performance of the Agreement by notifying the Contractor thereof in writing if the requirements referred to in this Section are not complied with. The Parties agree that such decision of the Principal is incontestable.
- 4.8.6. If the Principal prohibits a natural person specified by the Contractor from performing the tasks related to the performance of the Agreement, the Contractor shall replace this natural person with another natural person by notifying the Principal in accordance with the procedure laid down in of Clause 4.8.4 of the Agreement.
- 4.8.7. If the Contractor cannot replace a natural person or if its replacement would cause disproportionately high expenses to the Contractor, the Contractor 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.
- 4.8.8. The Contractor 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 4.8 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.
- 4.8.9. The Contractor is obliged to:
- (a) ensure that a natural person who does not comply with the security clearance requirements is not involved in the performance of the Agreement;
 - (b) 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);
 - (c) observe and not contest the Principal's written instructions and decisions in accordance with Clause 4.8 of the Agreement;
 - (d) provide the Principal with all the necessary information and support related to the necessity to replace a natural person.

4.8.10. In any case, the Contractor 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 4.8 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.

4.8.11. If the Contractor violates the conditions referred to in Clause 4.8 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 IX. Termination and suspension*.

- 4.9. *No Conflicting Activity.* Except with the Principal's knowledge and express written permission, the Contractor shall not engage in any activity, or accept any employment, other agreement, interest, or contribution that would reasonably appear to compromise the Contractor's professional judgment and performance with respect to the Services and/or the Project. In performing the Services, the Contractor 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. The Contractor shall have the continuous obligation to avoid conflict of interest that may appear during the implementation of the Agreement. The Contractor shall promptly disclose to the Principal any circumstances of which the Contractor becomes aware which might in Contractor's good faith judgment reasonably be expected to involve or give rise to a conflict of interest or potential conflict of interest.
- 4.10. *Attendance of Meetings and presence at the Principal.* To the extent necessary to ensure smooth and efficient provision of the Services, the Contractor shall, at the Principal's request, hold and/or attend meetings with the Principal or any Person. Upon the Principals' request the Contractor shall record all meetings (also online meetings) between Parties and prepare meeting reports within five (5) Working Days after each meeting. All meeting reports shall be harmonized by Principal.
- 4.11. *Compliance with Laws.* The Contractor shall review the Applicable Laws applicable to the provision of Services. In carrying out any activities forming part of the Services, the Contractor shall, at all times, ensure compliance with requirements imposed by the Applicable Law and supra-national and/or governmental authorities having jurisdiction over the Project.
- 4.12. *Visibility Requirements.* The Contractor undertakes to comply with each of the following requirements:
- (e) any report, brochure, document or information related to the Services conducted by the Contractor hereunder which the Contractor uses for advertising and/or makes publicly available shall include each of the following:
 - (i) a funding statement which indicates that the Services is 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.
 - (f) the requirements set forth in Clauses 4.12(e)(i) and 4.12(e)(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 Contractor decides to utilize the above logo, the Contractor 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

- (g) in order to comply with the latest applicable visibility requirements established by the European Union, the Contractor shall regularly monitor changes to visibility requirements; as of the Commencement 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>.

Section V. Representations and Warranties

5.1 *Certain Representations and Warranties by Parties.* Each Party represents and warrants to the other Party, as of the Commencement 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.

5.2 *Certain Representations and Warranties by Contractor.* The Contractor represents and warrants to the Principal, as of the Commencement 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 Contractor in any document submitted by the Contractor to the Principal as part of the Procurement Procedure and on the terms of the Contractor's Proposal;
- (b) it holds all requisite licenses, permits, approvals and consents necessary to enable performance by the Contractor of the Services according to the specifications contained in this Agreement;
- (c) it has all requisite ability to ensure and therefore it will ensure the highest quality of the Services;
- (d) it will assign competent and duly qualified personnel indicated in the tender proposal to carry out the Works set out in this Agreement according to the tender proposal and applying the highest professional Standard and Good Industry Practice;
- (e) it is not deemed to be a person associated with the Principal for the purposes of Applicable Law;
- (f) it has been registered as a VAT payer in [●];
- (g) it is compliant with all of the requirements of the Supplier's Declaration available on the Principals' website (here: https://www.railbaltica.org/wp-content/uploads/2019/03/Common-procurement-standards-and-guidelines_appendix6.pdf)

and will continue to be compliant with all such requirements during the term of this Agreement;

- (h) [IF APPLICABLE] the income mentioned in this Agreement will not derive through permanent establishment or fixed base maintained by the Contractor in the Republic of Latvia. The Contractor agrees to submit to the Principal four (4) copies of *"Residence Certificate– Application for Reduction of or Exemption from Latvian anticipatory taxes withheld at source from payments (management and consultancy fees, leasing fees and certain other types of income), paid to residents of the [●]"*(the *"Residence Certificate"*) confirmed by Competent Authority of the [●] and the Latvian State Revenue Service. The Residence Certificate shall be submitted to the Principal prior the Principal will due to make a payment of the fee or other payments to the Contractor. Otherwise the Principal will withhold withholding tax at the rate of 20% from the Fee and payments made to the Contractor. The Principal is entitled to make any deductions from the payments due to the Contractor if the Contractor doesn't comply with this provision;
- (i) it will immediately arrange for engagement of supplemental personnel when necessary at the cost of the Contractor. For the avoidance of any doubt, the engagement of supplemental personnel shall not require approval by the Principal, provided that the personnel complies with the Applicable Law, including the Public Procurement Law of the Republic of Latvia, and this Agreement.

Section VI. Fee and Payment

- 6.1 *Fee.* In consideration of the provision of the Services, the Principal undertakes to pay the Contractor a fee charged at the hourly rate set forth under *Annex C: Contractors' Proposal* (the *"Fee"*). No Services or cost shall be incurred without an authorization of the Principal. Moreover, the Contractor shall obtain the Principals' prior consent if the number of hours for a particular assignment upon the Principals' request under the Agreement would exceed ten (10) hours. It is acknowledged and agreed by the Parties that the Fee shall include all Costs and expenses incurred by the Contractor and Approved Sub-Contractors toward performing the Services. The hourly rate under *Annex C: Contractors' Proposal* excludes value added tax that will be charged at the rate applicable in accordance with Applicable Law at the time of invoicing.
- 6.2 *Time Report.* The Fee shall be paid on quarterly basis for the Services provided in the previous quarter as evidenced by a time report for the Services which the Contractor has prepared and submitted to the Principal no later than on the fifth (5th) Working Day of the month following the end of the previous quarter for the previous calendar quarter and which has been approved by the Principal. The Contractor shall fill out, complete and deliver time reports indicating the dates and the amount of hours spent for each particular assignment in accordance with the directions of the Principal. The Contractor shall complete all time reports accurately and the Contractor acknowledges that any false information provided by the Contractor in any time report shall be considered as a material breach of the Agreement.
- 6.3 *Invoicing.* Following the provision of Services, provided that the Principal has accepted/approved the time report for the quarter to which the invoice related, the Contractor shall deliver to the Principal an invoice specifying the amount of the Fee payable and the period of time with respect to which the Fee is payable, which shall not be less than thirty (30) days following the receipt of the invoice. In the event, the Principal objects to payment of any amount claimed by the Contractor in the invoice, notice in the form chosen by the Principal to this effect shall be given by the Principal to the Contractor not later than seven (7) days before the due date for payment under this Clause 6.4. 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 by the Principal, the amount to be paid is that stated in the invoice which shall become due and payable in accordance with this Agreement. For the avoidance of any doubt, the Principal shall not be required to pay any amount under this Agreement with respect to any part of the Services which are not provided in compliance with the terms and conditions of the Agreement.
- 6.4 *Payment.* Subject to the provisions of Clause 6.3, the Principal reserves the rights to make the payments to the Contractor with set-off, retention, counterclaim, abatement or other deduction of any kind that arises from this Agreement and from the obligations of the Contractor provided herein (i.e. in cases of accrued contractual penalty amounts, in case if the Principal haven't received

residence certificate as stipulated in this Agreement, etc.). If the Principal uses the right to make the payments to the Contractor with set-off, retention, counterclaim, abatement or other deduction of any kind, then the Principal so notifies to the Contractor no later than on the date of the respective payment stating the amount, the grounds and the basis on the Principal uses its right to set-off, retention, counterclaim, abatement or other deduction or other right.

- 6.5 *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.
- 6.6 *Compliance with Tax Obligations.* It is acknowledged and agreed by the Parties that the Fee shall include all taxes and duties payable by the Contractor in the consequence of provision of the Services, except value added tax (the "VAT"). The Contractor shall, at the sole cost and expense of the Contractor, comply with the obligation to pay all taxes and duties relevant to the provision of the Services in the [●] and in accordance with Applicable Law of the [●]. In addition, the Contractor shall assume all risks associated with the payment or obligation to pay such taxes and duties, if any. The Contractor 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.
- 6.7 *Invoice.* The Contractor's invoices shall contain the following Contractor's details and details about the Agreement:
- a) Contractor's details and details about the Agreement:

Contractor	[●]
Registration No	[●]
VAT payer's No or indication that the Contractor is not a VAT payer	[●]
Legal address, city, Zip code, country	[●]
Legal name of Bank	[●]
SWIFT Code	[●]
IBAN	[●]
The Principal's VAT No	LV40103845025
Subject:	For provided services according to the agreement for railway tunnel expert services No [●] (CEF Contract No [●] Activity No [●], Contract Manager: [●])

- b) the serial number and date of issue of the invoice;
- c) the name or a description of the Services;
- d) the quantity of the Services (hours spent) for each assignment and the date of provision of the Services;
- e) payment due date in compliance with the Clause 6.3;
- f) the Fee of the Services exclusive of value added tax and any discounts;
- g) the taxable amount broken down by different rates of value added tax together with the applicable rates of value added tax or the amount of supply exempt from tax;
- h) the amount of value added tax payable. The amount of value added tax shall be indicated in euros.

The Contractor shall send the invoice to the Principal electronically to the following e-mail address: invoices@railbaltica.org. The Parties agree that the invoices should be submitted only electronically and that the invoice should not contain the requisite "signature" for its validity

Section VIII. Intellectual Property Rights

- 7.1 *Proprietary Rights.* To the extent permitted under the Applicable Law, all Documentation forming part of the Deliverables developed under this Agreement is and shall become the property of the Principal at the moment of creation regardless of whether the Services or Deliverable is produced or finally accepted. It is acknowledged and agreed by the Parties that the Principal 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 Contractor and without incurring obligation to pay any royalties or additional compensation whatsoever to the Contractor.

- 7.2 *Licence from employees of Contractor.* The Contractor hereby warrants that it shall obtain from its employees and grant to the Principal an exclusive licence to use the personal Intellectual Property rights pertaining to the Documentation. The licence shall be valid for the time period the Intellectual Property is under legal protection.
- 7.3 *Intellectual Property in Documentation.* The Contractor 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 Contractor under this Agreement and that, to the extent any Intellectual Property in any Documentation is not owned by the Contractor, 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 Contractor under this Agreement and has fully discharged all obligations with respect to payment of any royalties or fees.
- 7.4 *Transfer of Ownership to Principal.* The Principal shall acquire legal title to and ownership in the Intellectual Property in all Documentation deliverable to the Principal under this Agreement as of the moment of delivery by the Contractor to the Principal of the Deliverable and Documentation and information forming part of the Deliverable; provided, however, that the Principal has paid the Fee or other consideration payable under the terms of this Agreement with respect to the relevant part of the Services or Deliverable. For the avoidance of any doubt, such title and ownership shall confer upon the Principal, 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.
- 7.5 *Grant of Limited License to Contractor.* Upon acceptance by the Principal of any Deliverable and Documentation forming part of any Deliverable the Principal shall be deemed to have granted the Contractor an irrevocable and exclusive licence to reproduce, modify and distribute copies of any Documentation forming part of any Deliverable for the purposes of the Services and the Project, subject to the following restrictions:
- (a) the license shall apply during the term of this Agreement only;
 - (b) the permitted use shall only cover the right to reproduce, modify and distribute the Documentation and information, or any part thereof, for the purposes of performing, implementing or modifying the Services; and
 - (c) the Documentation and information, or any part thereof, shall not, without the prior consent by the Principal, be distributed or communicated to any third party for purposes other than those permitted in accordance with this Clause 7.5 of this Agreement.

The license in accordance with this Clause 7.5 of this Agreement shall be deemed to have been granted to the Contractor as of the Completion Date.

- 7.6 *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 by the Principal to the Contractor or to any third party in consideration of the transfer of ownership in the Intellectual Property in any Documentation.
- 7.7 *No Infringement.* The Contractor represents and warrants to the Principal that no Documentation and information deliverable to the Principal under the terms of this Agreement will infringe any existing Intellectual Property of any third party. In the event any of the representations or warranties

contained in this *Section VIII. Intellectual Property Rights* prove to be untrue or inaccurate, the Contractor undertakes, at its own cost and expense, to defend and settle any claim raised by any third party alleging infringement of Intellectual Property in the Documentation and information. The foregoing undertaking by the Contractor shall apply subject to the following conditions:

- (a) the Principal shall notify the Contractor, without undue delay, of any third-party claim alleging infringement of any Intellectual Property in any Documentation;
- (b) the Principal refrains from admitting liability under any third-party claim or acting on the account of such claim without prior approval by the Contractor; and
- (c) the exclusive control over any legal proceeding or settlement related any third-party claim shall be exercised by the Contractor; provided, however, that the Principal shall render the Contractor all reasonable assistance toward such proceeding or settlement, at the cost and expense of the Contractor.

- 7.8 *Infringement Proceedings.* In the event the Principal is a party to legal proceedings involving allegations of infringement of any Intellectual Property in the Documentation of any third party, the Contractor shall keep the Principal fully informed of all aspects relevant to the legal proceedings and the Principal shall have the right, at its own cost, to be represented in the legal proceedings by separate counsel. In the event the Contractor fails to act against claims alleging infringement of any Intellectual Property in the Documentation and information of any third party within reasonable time but, in any event, within twenty (20) days of having been notified of such claims, the Principal shall have the right to assume legal defence against claims alleging infringement of Intellectual Property and shall be entitled to reimbursement by the Contractor of reasonable costs and expenses incurred toward such defence.
- 7.9 *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 Contractor shall, at its own cost and expense, procure for the Principal the right of continued use of the Documentation and information, or part thereof infringing Intellectual Property of a third party.
- 7.10 *License in Intellectual Property of the Contractor.* The Contractor hereby grants the Principal an irrevocable and non-exclusive license to use, reproduce, modify and/or enhance any Intellectual Property of the Contractor, provided and to the extent Intellectual Property of the Contractor is used by the Principal 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 7.10 forms part of the Fee and such license shall continue to be valid irrespective of expiration of this Agreement following completion of the Services or termination of this Agreement for any reason.
- 7.11 *Obligation to Procure Intellectual Property Rights.* Where the Contractor is not the legal owner of any relevant Intellectual Property of the Contractor, the Contractor shall use reasonable endeavours to procure for the Principal the rights specified in accordance with Clause 7.10 of this Agreement.
- 7.12 *Obligation to Indemnify with Respect to Uses Other Than for the Purpose.* The Principal shall defend and indemnify the Contractor from and against any and all Damages and Costs arising from the use by the Principal of any Intellectual Property of the Contractor other than for the purposes of the Railway and/or the Project.
- 7.13 *Indemnification by the Contractor.* The Contractor shall defend and indemnify the Principal from and against any and all Damages arising from the use by the Principal of any Intellectual Property of the Contractor, to the extent use by the Principal is within the scope of the license granted to the Beneficiary in accordance with Clause 7.10 of this Agreement.

Section IX. Termination and suspension

- 8.1 *Termination for Material Breach or Bankruptcy.* Subject to the provisions of Clause 8.2 of this Agreement, either Party shall be entitled to terminate this Agreement upon giving a written notice of termination to the other Party 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 Clause 8.1 of this Agreement an event of material breach shall include, but not be limited, to any of the following:

- (a) commitment by a Party of any persistent or material breach of this Agreement (which shall include failure to pay an amount of at least 2,500 EUR due to the other Party or perform any part of the Services valued at least 2,500 EUR;
- (b) failure by the Contractor to duly address and remedy the Defects in the Cure Period;
- (c) failure by any part of the Services to conform to any of the requirements under the Agreement provided that such failure is not capable of being remedied during the Cure Period;
- (d) any of the representations or warranties given by either Party under Clause 5.1 of this Agreement or any of the representations or warranties given by the Contractor under Clause 5.2 of this Agreement proving to be untrue; or
- (e) breach by the Contractor of the undertaking contained in Clause 7.11 of this Agreement.

8.2 *Corrective Period.* In the event of breach by either Party of its obligations under this Agreement, the non-breaching Party shall allow the breaching Party seven (7) 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. It is acknowledged and agreed by the Parties that the provisions of this Clause 8.2 of this Agreement shall not apply with respect to any of the events enumerated in accordance with Clause 8.3, 8.4 and 8.5 of this Agreement. In addition and for the avoidance of any doubt, the application of the Corrective Period under this Clause 8.2 of this Agreement 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 10.2 of this Agreement or to pay Damages incurred by the other Party in accordance with the provisions of Clause 10.3 of this Agreement.

To clarify the Corrective Period is also not applied where the breach of the Agreement is related to defects as specified under Clause 4.3 (g) as in this case the purpose of the Corrective Period is already fulfilled by the Cure Period and its prior application.

8.3 *Right to Terminate Immediately.*

8.3.1. Notwithstanding anything to the contrary contained in this Agreement, a Party may terminate this Agreement immediately upon giving the other Party a written notice of termination explaining, in reasonable detail, the reason for termination upon occurrence of any of the following:

- (a) breach by the other Party of Clause 1816.2 of this Agreement;
- (b) an event of Force Majeure has been continuing during more than sixty (60) days;
- (c) breach by the Contractor any of the confidentiality undertakings contained under *Section XII. Confidentiality* and/or the security clearance requirements under Clause 4.8;
- (d) the other Party had passed a resolution for winding-up (other than in order to amalgamate or reconstruct);
- (e) the other Party is unable to pay its debts and has presented a petition for voluntary bankruptcy;
- (f) the other Party had a bankruptcy order issued against it;
- (g) liquidation, insolvency or legal protection proceedings have been initiated with respect to the other Party or the other Party is declared insolvent;
- (h) the occurrence of any event analogous to the events enumerated under Clauses 8.3.1 (d) – (g) under the law of any jurisdiction to which the other Party's assets and undertaking are subject.

8.3.2. *Principal's Right to Terminate Immediately.* The Principal may terminate this Agreement immediately upon giving the other Party a written notice of termination explaining, in reasonable detail, the reason for termination, if:

- (a) CEF Co-financing for further financing of the Services is not available to the Principal fully or partly;

In such a case, the Principal shall pay the Contractor 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 is not obliged to pay contractual or any other penalty or Damages to the Contractor.

- (b) 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.

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

8.5 *Principals' Right to Terminate.* The Principal shall be entitled to terminate the Agreement upon the Principals' sole discretion by providing a written notification to the Contractor at least thirty (30) days in advance.

8.6 *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 4.4, 4.5, 7.3, 7.4, 7.6, 7.7, 7.13, 8.7, 10.1, 10.2, 10.3, 1816.1 of this Agreement and *Section XII. Confidentiality, Section XIII. Right to Audit, Section XV. On-the-spot-visits* and *Section XV. 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 8.6(b) of this Agreement.

8.7 *Partial Acceptance.* Notwithstanding anything in this Agreement to the contrary including, and in the event of termination of this Agreement, the Principal shall have the right, in the sole discretion of the Principal, to partially accept any Works, part of Works or part of the Services delivered to the Principal under this Agreement (the "Right of Partial Acceptance"). The Principal shall notify the Contractor of its intention to exercise the Right of Partial Acceptance in the termination notice given in accordance with Clause 8.1 or Clause 8.3 of this Agreement, specifying, in reasonable detail, the Works, part of Works or part of the Services which the Principal would like to partially accept. In the event of receipt of such notice, the Contractor shall reasonably cooperate with the Principal in order to ascertain transfer to the Principal of ownership in the result(s) of such Works, part of Works or part of the Services and determination of the amount of consideration payable by the Principal.

8.8 *Principal's Obligation to Pay.* Subject to the provisions of Clause 8.7 of this Agreement and except in the event of termination by the Principal occurring as a result of violation by the Contractor of Clause 1816.2 of this Agreement, or termination by the Principal according to Clause 8.3.2 or 8.4 of this Agreement in the event this Agreement is terminated for any reason prior to completion of the Services, the Principal shall have an obligation to pay the Contractor the following:

- (a) the Costs incurred by the Contractor up to the date of termination; and
- (b) except where termination is due to negligence of the Contractor, breach by the Contractor, insolvency of the Contractor or a Force Majeure Event under *Section XI. Force Majeure* an amount equal to the costs reasonably and properly incurred by the Contractor as a result of or in connection with such termination.

Section X. Liability

- 10.1 *Liability of the Parties.* The Contractor shall be liable to compensate Damages incurred by the Principal arising out of or in connection with this Agreement and pay contractual penalty set forth in accordance with Clause 10.2 of this Agreement if a breach of any of the obligations of the Contractor under this Agreement is established against the Contractor. The Principal shall be liable to pay the contractual penalty set forth in accordance with Clause 10.2 of this Agreement if a breach of payment obligations of the Principal under this Agreement is established against the Principal.
- 10.2 *Contractual Penalty.* In the event of failure by the Contractor to provide Services or any part thereof in compliance with the Agreement, the Contractor shall be liable to pay to the Principal a penalty of zero point five (0.5%) of the Total Value for each day of delay or non-compliance with the Agreement; provided, however, that the total amount of penalty payable by the Contractor under this Clause 10.2 shall not exceed ten percent (10%) of the Total Value. In the event of failure by the Principal to pay any amount in accordance with Clause 6.1 of this Agreement, the Principal shall be liable to pay the Contractor a penalty of zero point five percent (0.5%) 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 under this Clause 10.2 of this Agreement shall not exceed ten percent (10%) of the total amount remaining unpaid under the relevant invoice.
- 10.3 *Compensation for Damages.* Notwithstanding of and without prejudice to any contractual penalty payable in accordance with Clause 10.2 of this Agreement and subject to the provisions of Clause 10.5 of this Agreement, 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.
- 10.4 *Attribution of Damages.* Any Damages suffered by either Party shall, for the purposes of Clause 10.3 of this Agreement, be reduced to the extent that the Damages are caused by or contributed to by the other Party's own negligence or breach of its obligations under this Agreement.
- 10.5 *Limitation of Liability.* Notwithstanding anything to the contrary set forth in this Agreement, in no circumstances shall the Contractor or the Principal be liable to one another for any loss of production, loss of profit, loss of revenue, loss of contract, liability incurred under other agreements or any indirect or consequential loss arising out of or in connection with this Agreement. The Contractor's total liability for the Works carried out under this Agreement shall in no circumstances exceed EUR 50,000 (fifty thousand euros).

Section XI. Force Majeure

- 11.1 *Effects of Force Majeure.* Subject to the requirements set forth in accordance with Clauses 11.2 and 11.3 of this Agreement, 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 which has occurred after the Commencement Date and which the affected Party could not foresee and prevent.
- 11.2 *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 11.2(a) of this Agreement.

- 11.3 *Notification Requirements.* Upon the occurrence of a Force Majeure Event, the affected Party shall notify the other Party as soon as reasonably practicable and in any event within ten (10) Working 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 11.2(a) of this Agreement 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.
- 11.4 *Notification of Resumed Performance.* The affected Party shall notify the other Party 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).
- 11.5 *Mitigation of Effects of Force Majeure.* As soon as practicable after the notification specified pursuant to Clause 11.3 of this Agreement, the Parties shall use reasonable endeavours to agree appropriate terms or modifications to the Services to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement.

Section XII. Confidentiality

- 12.1 *Confidential Information.* "Confidential Information" means, in relation to the Principal, all information of a confidential nature relating to the Principal and its affiliates which is supplied by the Principal (whether before or after the date of this Agreement) to the Contractor, either in writing, orally or in any other form and includes all analyses, compilations, Deeds, 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 confirms in writing is not required to be treated as confidential; or
 - (b) the Contractor 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 and was not previously acquired by the Contractor from the Principal under an obligation of confidence; or
 - (c) was developed by or for the Contractor at any time independently of this Agreement.
- 12.2 *Undertakings with Respect to Confidential Information.* Subject to Clauses 12.1 and 12.3, the Contractor 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.
- 12.3 *Permitted Disclosure.* Notwithstanding anything to the contrary set forth in accordance with Clauses 12.1 and 12.2 of this Agreement, the Contractor shall, without the prior written consent of the Principal, be entitled to disclose Confidential Information:
- (a) that is reasonably required by the Contractor in the performance of its obligations pursuant to this Agreement, including the disclosure of any Confidential Information to any employee, contractor, agent, officer, Sub-Contractor (of any tier) or adviser to the extent necessary to enable the Contractor to perform its obligations under this Agreement;
 - (b) to enable a determination to be made pursuant to *Section XIV. 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.
- 12.4 *Obligation of Confidentiality Pertinent to Recipients of Confidential Information.* Whenever disclosure is permitted to be made pursuant to Clauses 12.3(a) or (c), the Contractor shall require that the recipient of Confidential Information be subject to the same obligation of confidentiality as that contained in this Agreement.
- 12.5 *Certain Obligations on Termination of Agreement.* If this Agreement is terminated for whatsoever reason, the Contractor shall:
- (a) return to the Principal all of the Confidential Information then within the possession or control of the Contractor; or
 - (b) destroy such Confidential Information using a secure and confidential method of destruction.
- 12.6 *No Press Release by Contractor.* Save as required by Applicable Law, the Contractor 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.
- 12.7 *Right to Publish.* For the avoidance of any doubt, the Principal shall have the right to publish any of the documents, information or data provided by the Contractor to the Principal during provision of the Services.
- 12.8 *Remedies.* The Parties acknowledge and agree that a breach of the provisions of this *Section XII. 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 Contractor agrees that the owner of Confidential Information that is disclosed in breach of Clauses 12.2, 12.4 or 12.6 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 XIII. Right to Audit

- 13.1 *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 Contractor 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 Contractor and/or other records used in or related to the performance of the Services.
- 13.2 *Obligation to Assist.* The Contractor 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 XIII. 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 Contractor is not compliant with the terms of this Agreement, in which case the Contractor shall reimburse the Principal for all of its additional reasonable costs incurred, provided such non-compliance is material.
- 13.3 *Survival of Termination.* The rights and obligations of the Principal set forth in accordance with this *Section XIII. 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 XIV. On-the-spot-visits

- 14.1 *Right to perform On-the-spot visits.* By submitting a written notice five (5) Working 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.
- 14.2 *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.
- 14.3 *Access to the information.* Contractor 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.
- 14.4 *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 883/2013 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 XV. Governing Law and Resolution of Disputes

- 15.1 *Governing Law.* This Agreement shall be governed by and construed in accordance with law of the Republic of Latvia.
- 15.2 *Resolution by Amicable Means.* The Parties shall first attempt to settle any dispute, controversy or claim arising out of or relating to this Agreement through good faith debate, discussion, and negotiating prior to submitting them to mediation, arbitration, or other legal proceeding.
- 15.3 *Venue for Resolution of Disputes.* Should the Parties fail to agree by means of amicable negotiations within the time period of thirty (30) days from the date of serving of the respective written complaint to the other Party, the Parties shall submit all their disputes arising out of or in connection with this Agreement to the exclusive jurisdiction of the courts of the Republic of Latvia. The Parties hereby represent and warrant that the English language is understandable for all 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 XVI. Miscellaneous provisions

- 16.1 *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.
- 16.2 *Conflict of Interest, Corruption and Fraud.* Notwithstanding any penalties that may be enforced against the Contractor under Applicable Law, or the laws of other jurisdiction(s), the Contractor 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 8.2 of this Agreement, if it is shown that the Contractor 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.
- 16.3 *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.
- 16.4 *Data Protection.* The Parties shall have the right to process personal data obtained from the other Party only for the purpose of fulfilling the obligations under this Agreement, while ensuring compliance with the requirements of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).
- 16.5 *Transfer of Personal Data.* The Party transferring the personal data to the other Party for processing shall be responsible for obtaining the consent of the data subjects concerned. The Parties undertake not to transfer to third parties the data of natural persons obtained from the other Party, except in cases when the Agreement provides otherwise, or the regulatory enactments provide for the transfer of such data. If, in accordance with regulatory enactments, a Party may be obliged to transfer to third parties the personal data obtained from the other Party, it shall inform the other Party thereof prior to the transfer of such data, unless prohibited by regulatory enactments.
- 16.6 *Contractors' Consent.* Notwithstanding the provisions of Clause 16.5 of the Agreement, the Contractor agrees that the Principal transfers the personal data received from the Contractor to third parties who provide services to the Principal and with whom the Principal cooperates to ensure its operation and performance of the Agreement.
- 16.7 *Obligation to Destroy.* The Parties undertake to destroy, at the request of the other Party, the data of natural persons obtained from the other Party if the need to process them to ensure the performance of the Agreement ceases.
- 16.8 *Relationship of the Parties.* The relationship between the Contractor to the Principal under this Agreement is that of independent contractors. The Contractor (or the Contractor's Sub-Contractors) is not an employee of the Principal, is not carrying out the regular business of the Principal and is not subject to the same employment regulations as are applicable to employees of the Principal. 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 to the Contractor, the Contractor's employees, or the Contractor's consultants, or the employees of such consultants.
- 16.9 *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.
- 16.10 *Successors and Assigns.* The Principal and the Contractor 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.
- 16.11 *Amendments and Variations.* No amendment to or variation of this Agreement shall be effective unless made in writing and signed by duly authorized representatives of all Parties, if not agreed 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.
- 16.12 *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.

16.13 *Execution.* This Agreement is prepared and is executed as [●].

Signed by:

For and on behalf of the Principal:

For and on behalf of the Contractor:

Signature:

Signature:

Name, title:

Name, title:

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 Contractor 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 Contractor to provide a part of the Services.
- (e) "Commencement Date", as first above specified in the Preamble to this Agreement and reflects the date when Agreement is signed by Principal and Contractor.
- (f) "Confidential Information", as defined in accordance with Clause 12.1 of this Agreement.
- (g) "Contractor", the company [●] as further specified in the Preamble of this Agreement, which is employed by the Principal as an independent professional contractor to perform the Services to the Principal, and legal successors to the Principal and permitted assignees of the Principal.
- (h) "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 Contractor in the performance of the Services or relating to the Services;
 - (iii) salaries of the Contractor's employees for the time that they spend in connection with the Services;
 - (iv) payments to sub-contractors for Works 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 Contractor 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 Contractor;
 - (x) sales, use, gross receipts or other taxes related to the Services, imposed by any governmental authority, to the extent that the Contractor 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 Work required under this Agreement; and
- (xiii) losses and expenses, not compensated by insurance, sustained by the Contractor in connection with the Works under this Agreement (if applicable), provided they resulted from causes other than the fault or neglect of the Contractor.
- (i) "Corrective Period", as defined in accordance with Clause 8.2 of this Agreement.
- (j) "Damages", any cost, claim, damage, demand, loss, expense or liability incurred by the relevant Party or Person.
- (k) "Deliverable", any information, notes, material, drawings (including drawings in 3D model), records, documents and/or other items which the Contractor is required to deliver to the Principal as part of the Services, if any.
- (l) "Documentation", all records, correspondence, and files of the Contractor, its employees, engineers, and consultants pertaining to the Project.
- (m) "EUR" and "euro", the official currency of the eurozone, officially known as the euro area.
- (n) "Fee", a compensation for the Services to be calculated and paid by the Principal to the Contractor in accordance with the Agreement.
- (o) "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, 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 Contractor or the Principal.
- (p) "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 Work, Services or services of a similar size, nature, scope, type and complexity, complying with Applicable Law, applicable Standards and published codes of practice.
- (q) "Intellectual Property", all intellectual property rights in any part of the world in respect of any documentation or information provided by the Contractor to the Principal, 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.
- (r) "Intellectual Property of the Contractor", all Intellectual Property owned or licensed to the Contractor with a right to sub-license.
- (s) "Party" and "Parties", the Principal and the Contractor and include their respective successors in title, permitted assigns and permitted transferees.

- (t) "Person" shall include any person, company, body corporate, 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.
- (u) "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).
- (v) "Principal", the company RB Rail AS, as further specified in the Preamble of this Agreement, which employs the services of the Contractor, and legal successors to the Contractor and permitted assignees of the Contractor.
- (w) "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.
- (x) "Residence Certificate", a certificate mentioned in Clause 5.2(h) of this Agreement.
- (y) "Right of Partial Acceptance", as defined in accordance with Clause 8.7 of this Agreement.
- (z) "Services", railway tunnel expert services as further specified under the Agreement and the *Annex B: Technical Specification* in particular.
- (aa) "Total Value", the total value of the Agreement indicated under Clause 2.4.
- (bb) "VAT", value added tax;
- (cc) "Working Day", any day (other than Saturday or Sunday) on which banks in the Republic of Latvia are open for conduct of business.
- (dd) "Works", all incidental works, steps and actions performed by the Contractor for the attainment of the objectives of the Services and/or the Project.

Annex B: Technical Specification

Annex C: Contractors' Proposal

Annex D: List of approved Sub-Contractors and Staff

Annex E: Supplier's Declaration

I, the undersigned duly authorised representative, on behalf of [•] 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 Contractor or an undertaking related to the Contractor 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 Contractor;
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 Contractors' 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 Contractor which participated in a procurement procedure or restrictions with similar effect applies;
18. To promote the adoption of the principles set forth in this Contractor'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.

On behalf of the Contractor
