

AGREEMENT

on Supply, Licensing, and Maintenance of ArcGIS Software Products

between

RB Rail AS

("Customer")

and

UAB "HNIT-BALTIC"

("Distributor")

Contract registration number	1.19/LV-2022-19
CEF Contract No.	INEA/CEF/TRAN/M2014/1045990, and other already signed or future CEF contracts

Riga

2022



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

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AGREEMENT

on Supply, Licensing, and Maintenance of ArcGIS Software Products

This Agreement is entered into in Riga, on the date indicated with respect to the last electronic signature of the Agreement, by and between:

- (1) **RB Rail AS**, a public limited liability company registered in Latvia with registration No. 40103845025 and legal address at Satekles iela 2B, Riga, LV-1050, Latvia (the "Customer"), represented by Chairman of the Management Board Agnis Driksna based on the Regulations on Representation Rights dated 11 April 2022, and
- (2) **UAB "HNIT-BALTIC"**, a private limited liability company registered in Lithuania with registration No. 110584280, legal address at S. Konarskio 28A, LT-03127, Vilnius (the "Distributor"), represented by Managing Director Linas Gipiškis, on the other side,

(the Customer and the Distributor referred to as the "Parties" and separately – as the "Party").

WHEREAS:

- (A) This Agreement is entered into under the Rail Baltica 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 with 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 (the "Global Project").
- (B) The Customer has carried out a negotiated procedure "Subscription of Esri products and software licences under the Esri Enterprise Agreement" with No. RBR 2022/6 (the "Procurement Procedure") within which the Distributor has submitted its proposal (the "Distributor's Proposal"), and the Customer has decided to enter into this Agreement with the Distributor.
- (C) The Distributor is the official distributor of the Products (as defined below) in the Baltics, and the Distributor has co-ordinated this Agreement and the Distributor's Proposal with Esri (as defined below).
- (D) This Agreement is co-financed from the Connecting Europe Facility ("CEF"), INEA/CEF/TRAN/M2014/1045990, and other recently signed CEF Grant Agreements or future CEF Grant Agreements to be signed.

THEREFORE, the Parties agree as follows:

1. DEFINITIONS, INTERPRETATION AND ORDER OF PRECEDENCE

- 1.1. Definitions. In this Agreement, unless the context requires otherwise, the following definitions shall have the following meaning:

- 1.1.1. "Acceptance Deed" means the deed of acceptance with the form enclosed in **Annex A**.
- 1.1.2. "Annex" means any of the annexes enclosed to this Agreement and listed in Clause 1.3.
- 1.1.3. "Agreement" means this Agreement together with all its Annexes; whenever in the Agreement there is a reference to the Agreement, it includes a reference to all its Annexes, and reference to specific Annex following the reference to the Agreement is without prejudice to it.
- 1.1.4. "Applicable Laws" means any legislative act, regulation, decree, order, ordinance, statute, treaty, directive, judgment, or other legislative measure applicable to the Agreement, the Parties, the obligations of the Parties, etc. (including, but not limited to the Public Procurement Law of the Republic of Latvia).
- 1.1.5. "business day" means any day except Saturday, Sunday and any day which is a public holiday in the Republic of Latvia.
- 1.1.6. "CEF" as defined in the Preamble of the Agreement.
- 1.1.7. "Commencement Date" means 31 May 2022 (3AM, Riga time).
- 1.1.8. "Conference Registrations" means at least 2 (two) free of charge registrations to each annual Esri user conference to be provided to the representatives of the Customer (included in the Fee).

- 1.1.9. "Confidential Information" as defined in Clause 15.1 of the Agreement.
- 1.1.10. "Customer" as defined in the above list of the parties to the Agreement.
- 1.1.11. "Deploy", "Deployment", or "Deployed" means to redistribute, or the redistribution of, the Products and the related authorization codes, or its having been redistributed, by the Customer during the License Term for installation and use by the Customer.
- 1.1.12. "Distributor" as defined in the above list of the parties to the Agreement.
- 1.1.13. "Distributor's Proposal" as defined in the Preamble of the Agreement.
- 1.1.14. "Damages" any cost, claim, damage, demand, loss, expense or liability incurred by the relevant Party.
- 1.1.15. "EA Grant" means the Esri standard enterprise agreement grant with the form and contents enclosed in **Annex B** to be signed by and between the Customer, Esri and the Distributor.
- 1.1.16. "Enterprise Agreement" means Esri standard enterprise agreement with the form and contents enclosed in **Annex C** to be signed by and between the Customer and the Distributor.
- 1.1.17. "Esri" means Environmental Systems Research Institute, Inc., 380 New York Street, Redlands, CA 92373-8100, which is the licensor of the Products.
- 1.1.18. "Fee" as defined in Clause 6.1 of the Agreement.
- 1.1.19. "Force Majeure Event" means any of the following:
- (a) an act of the public enemy or war (declared or undeclared), threat of war, revolution, riot, insurrection, civil commotion, demonstration or sabotage;
 - (b) an act of vandalism or accidental damage or destruction of machinery, equipment, track or other infrastructure;
 - (c) 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);
 - (d) nuclear, chemical or biological contamination, epidemic or pandemic (except for COVID-19 pandemic);
 - (e) strike, lockout or other industrial action other than involving the Distributor or the Customer.
- 1.1.20. "Global Project" as defined in the Preamble of the Agreement.
- 1.1.21. "Incident" means a request for technical assistance under the Maintenance.
- 1.1.22. "License" as defined in Clause 3.1.
- 1.1.23. "License Term" as defined in Clause 3.2.
- 1.1.24. "Maintenance" means the maintenance and support with respect to the Products which includes the Technical Support and the Tier 2 Support, updates, and patches provided by the Distributor for the Products, Unit-Priced Items and the Rolled-In Products.
- 1.1.25. "Maintenance Policy" means the standard Esri software maintenance policy available at: <https://www.esri.com/en-us/cp/maintenance?rsource=https%3A%2F%2Fwww.esri.com%2Fen-us%2Farcgis%2Fproducts%2Fmaintenance#benefits>.
- 1.1.26. "Master Agreement" means the Esri standard master agreement with the form and contents enclosed in **Annex D** to be signed by and between the Customer, Esri and the Distributor.
- 1.1.27. "Party" or "Parties" as defined in the above list of the parties to the Agreement.
- 1.1.28. "Person" includes any person, Customer, body corporate, government, state or agency of a state or any association or partnership (whether or not it is separate legal person).
- 1.1.29. "Procurement Procedure" as defined in the Preamble of the Agreement.
- 1.1.30. "Products" means the software products of Esri identified in Appendix A to the Enterprise Agreement, which includes supply, installation, configuration, support, and maintenance of these Products in accordance with the Agreement, the Master Agreement and the EA Grant. The

Products do not include Unit-Priced Items or Esri technology that may be embedded in third-party products purchased by the Customer.

- 1.1.31. "Project Manager" a person indicated in the Distributor's Proposal as the Distributor's employee who will act as a project manager for the purposes of the Agreement.
 - 1.1.32. "Representatives" as defined in Clause 10.4.
 - 1.1.33. "Rolled-In Products" means Esri products of the same type as the Products that the Customer acquired for use prior to the Commencement Date that are current on paid maintenance (as shown in Esri's customer service records) and that receive the Maintenance during the term of this Agreement (for the avoidance of doubt, the fact that any of the Products is covered under the Rolled-In Products shall be without prejudice to the Customer's rights and interests under this Agreement).
 - 1.1.34. "Signing Date" means the date on which this Agreement is signed by the Parties as indicated above or, if signed with secure electronic signature, the date indicated with respect to the last electronic signature.
 - 1.1.35. "Sub-Contractor" as defined in Clause 7.4.1.
 - 1.1.36. "Supplier's Declaration" means Appendix 6¹ to the Common Procurement Standards and Guidelines for the Rail Baltica Project.
 - 1.1.37. "Technical Specification" means Annex 2 of the Procurement Regulations enclosed in **Annex E** to this Agreement.
 - 1.1.38. "Technical Support" means a process to attempt to resolve reported Incidents through error correction, patches, hot fixes, and workarounds; replacement deliveries; or any other type of the Product corrections or modifications specified in the Maintenance Policy and Section 5 of the Agreement.
 - 1.1.39. "Tier 1 Support" means the initial support with respect to the Products that the Customer attempts to solve internally without involvement of the Distributor as described in Clause 5.3.
 - 1.1.40. "Tier 2 Support" means the Technical Support provided by the Distributor to the Customer upon the Customer's request, including as described in Clause 5.4.
 - 1.1.41. "Unit-Priced Items" means the following pre-agreed and separately orderable Esri products or maintenance that is available subject to a per-unit license fee, subscription fee, or maintenance fee: [CONFIDENTIAL].
- 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 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) 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.
 - (e) A reference to "writing" shall include an e-mail transmission and any means of reproducing words in a tangible and permanently visible form.
 - (f) The words "include" and "including" are to be construed without limitation.
 - (g) Unless indicated otherwise, all references to "days" shall mean calendar days.
- 1.3. Annexes. The Agreement contains the following Annexes:

¹ Latest version available here: https://www.railbaltica.org/wp-content/uploads/2021/06/APPENDIX-6_SUPPLIERS-DECLARATION_June_2021.pdf

- 1.3.1. **Annex A:** Acceptance Deed Form;
 - 1.3.2. **Annex B:** EA Grant;
 - 1.3.3. **Annex C:** Enterprise Agreement;
 - 1.3.4. **Annex D:** Master Agreement;
 - 1.3.5. **Annex E:** Technical Specification;
- 1.4. **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 (body text);
 - (b) the Procurement Procedure documents (including the Technical Specification);
 - (c) all other Annexes of the Agreement;
 - (d) clarifications to the Distributor's Proposal;
 - (e) the Distributor's Proposal.
2. **SUBJECT MATTER**
- 2.1. **Supply of the Products.** The Distributor undertakes to supply to the Customer the Products on an "end user" basis as well as carry out and/or ensure additional activities and services under the terms of this Agreement, the Enterprise Agreement, the Master Agreement, and the EA Grant.
- 2.2. **Co-operation.** The Parties shall cooperate with one another to fulfil their respective obligations under this Agreement. Parties shall endeavour to maintain good working relationships among all key personnel engaged towards fulfilment of the Agreement.
3. **PRODUCTS AND LICENSING**
- 3.1. **License.** The Customer's rights to use the Products and the use of the Products is subject to the EA Grant (which includes, but is not limited to, additional grants and restrictions on use) and the Master Agreement (the "**License**"). The Unit-Priced Items, if acquired, and the Rolled-In Products are licensed in the same manner. The Products will be used exclusively for the purposes of the Global Project and will primarily be used by the users located in Estonia, Latvia, or Lithuania (can also be used by the users working on the Global Project, but permanently or temporarily located in other countries).
- 3.2. **License Term.** The License is granted for a period of 3 (three) years (the "**License Term**") commencing on the Commencement Date and ending on 31 May 2025 (last day of the License Term).
- 3.3. **Signing of Master Agreement and EA Grant.** The Parties shall ensure that the Enterprise Agreement is signed by the Customer and the Distributor, and the Master Agreement and the EA Grant are duly signed by the Customer, Esri and the Distributor prior to the Commencement Date. The signing of the Acceptance Deed pursuant to Clause 4.2 shall be considered as confirmation that the Enterprise Agreement, Master Agreement and the EA Grant are duly signed, and, subject to the payment of the Fee pursuant to Clause **Error! Reference source not found.**, the Customer is free and entitled to enjoy all the rights and benefits under the Agreement, the Master Agreement, and the EA Grant.
- 3.4. **User Accounts.** The estimated number of users with respect of each of the Products is indicated in Appendix A of the Enterprise Agreement. However, the Customer shall be entitled to grant the rights to use the Products to more users than indicated in in Appendix A of the Enterprise Agreement without any obligation to pay additional Fee under the Agreement (the Customer is aware that such additional number of users may be taken into consideration in the future renewals of the licenses subject to a separate agreement).
- 3.5. **Ordering of Unit-Priced Items.** The Unit-Priced Items are not covered under the Fee and, if ordered, are paid in addition to the Fee based on a separate invoice of the Distributor. To order the Unit-Priced Items, the Customer sends an e-mail to the Distributor's Representative informing about the number of the Unit-Priced Items the Customer wishes to order. Following such e-mail of the Customer, the Distributor issues the respective invoice to the Customer. After the invoice is paid, the Distributor ensures the Customer access to the respective Unit-Priced Items.

4. DELIVERY, ACCEPTANCE, AND DEPLOYMENT

- 4.1. Availability of Products. Immediately after the Signing Date and throughout the License Term:
- (a) the Products shall be available to the Customer for downloading, installation, use and operation as envisaged under the Agreement;
 - (b) the Distributor shall provide all necessary authorization codes and other required assistance to activate the non-destructive copy protection program that enables the Customer to download, use, operate, or allow access to the Products;
 - (c) the delivery of updates/new versions of the Products shall be made in the same manner.
- 4.2. Acceptance. The Parties agree that the availability of the Products will be confirmed by mutual signing of the Acceptance Deed. Such Acceptance Deed shall be signed by the Parties within 10 (ten) business days after the Signing Date. The Customer shall sign the Acceptance Deed only if the Products made available to the Customer comply with Technical Specification and the Distributor's Proposal, and the Customer does not have objections against the quality of the delivered Products. No deeds of acceptance are required with respect to downloading, installation, etc. of each separate Product.
- 4.3. No prejudice. Signing of the Acceptance Deed and/or payment of the Fee is without prejudice to the rights of the Customer under the Agreement, the Enterprise Agreement, the Master Agreement, and the EA Agreement.
- 4.4. Deployment. Upon each anniversary date of the Commencement Date and 90 (ninety) days prior to the expiration date of the License Term, the Customer shall provide a written report, as set forth in Appendix C of the Enterprise Agreement, to the Distributor detailing all the Deployments made. The report will be subject to audit by an authorized representative of the Distributor or Esri.
- 4.5. Conference Registrations. The Customer shall receive the Conference Registrations annually during the License Term (starting with the respective Esri User Conference in 2022). Third parties may not represent or attend on behalf of the Customer at any such Esri User Conference).

5. MAINTENANCE

- 5.1. Availability. The Distributor undertakes to provide a constantly available Maintenance services to the Customer by e-mail, phone and online during the License Term. The Distributor shall aim to respond to a request within 1 (one) business day after the request is filed.
- 5.2. Scope. The Products and the Rolled-In Products will receive the Maintenance as specified in this Agreement and in the Maintenance Policy.
- 5.3. Tier 1 Support. The employees of the Customer trained in the Products will:
- (a) act as the initial point of contact for the users and will attempt to assist the users in resolving how-to and operational questions as well as questions on installation and troubleshooting procedures;
 - (b) will try to obtain a full description of each reported Incident and the system configuration (this may include obtaining any customizations, code samples, or data involved in the Incident and may also include use of any other information and databases that may be developed to satisfactorily resolve Incidents).
- 5.4. Tier 2 Support. The Customer's Representative will contact the Distributor's Representative whenever the Customer's Representative will consider that involvement of the Distributor is necessary with respect to the Maintenance. Upon such request the Distributor:
- (a) will log the request received from the Customer;
 - (b) will review all information collected by and received from the Customer, including preliminary documented troubleshooting, if any, provided by the Customer;
 - (c) may request the Customer to provide verification of information, additional information, or answers to additional questions to supplement any preliminary information gathering or troubleshooting performed by and received from the Customer;
 - (d) will attempt to resolve the Incidents reported by the Customer by assisting the Customer's employees involved in Tier 1 Support;
 - (e) when the Incident is resolved, the Distributor will communicate the information to the Customer's Representative who will disseminate the resolution internally; as well as

- (f) Esri may, at Esri's sole discretion, make patches, hot fixes, or updates available for downloading from Distributor's or Esri's website or, if requested, deliver them on media.

6. FEE AND PAYMENTS

- 6.1. Fee. The Customer undertakes to pay to the Distributor a fee in the aggregate amount of EUR 375,800 (three hundred seventy-five thousand eight hundred euro) (the "Fee") in consideration of the Products, the License during the License Term, the Maintenance, the Conference Registrations, as well as other obligations of the Distributor and Esri under the Agreement, the Master Agreement, or the EA Grant.
- 6.2. Payments. The Fee will be paid pro rata to the period of validity of this Agreement during the License Term in the following instalments:
- 6.2.1. [CONFIDENTIAL];
- 6.2.2. [CONFIDENTIAL];
- 6.2.3. [CONFIDENTIAL].
- 6.3. VAT. The Fee excludes value added tax ("VAT") that will be charged at the rate applicable by the Applicable Laws at the time of invoicing.
- 6.4. No payments to Esri. For the avoidance of doubt, the Customer shall be under no obligation to make any payments to Esri, and the Fee covers all financial obligations (other than as a result of any claims for damages) of the Customer towards Esri and the Distributor pursuant to the Agreement, the Master Agreement, or the EA Grant.
- 6.5. All-inclusive. The Fee is the all-inclusive consideration for the Products, the License during the License Term, the Maintenance, the Conference Registrations, as well as other obligations of the Distributor and Esri under the Agreement, the Master Agreement, or the EA Grant. The Fee includes reimbursement of all and any expenditure incurred by the Distributor or Esri toward performance of any steps, actions or measures contemplated in accordance with this Agreement, the Master Agreement, or the EA Grant. The Distributor agrees and acknowledges that it shall have no right to request reimbursement by the Customer of any additional expenditure whatsoever as may have been incurred by the Distributor towards fulfilment of the Agreement unless reimbursement of such additional expenditure has been explicitly agreed between the Parties in writing.
- 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 Distributor or Esri in relation to the Agreement, the Master Agreement, or the EA Grant. The Distributor shall, at the sole cost and expense of the Distributor, comply with the obligations to pay all taxes and duties in relation to the Agreement, the Master Agreement, or the EA Grant.
- 6.7. Payments, costs, and commissions. Payment of the Distributor's invoices will be made in euro by bank transfer. 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.
- 6.8. Invoice details. The Distributor's invoices shall contain the following details:

Distributor: Hnit-Baltic UAB
Registration No: 110584280
VAT payer's No or LT105842811
indication that the
Distributor is not a VAT
payer:
Legal address, city, Zip S. Konarskio g. 28A, 03127 Vilnius, Lithuania
code, country:
Legal name of Bank: [CONFIDENTIAL]
Bank SWIFT Code: [CONFIDENTIAL]
Bank Account No IBAN: [CONFIDENTIAL]
The Customer's VAT No: LV40103845025

Subject: For provided services according to the Agreement No. 1.19/LV-2022-19
Specific information for the Customer: INEA/CEF/TRAN/M2014/1045990; Contract Manager: [CONFIDENTIAL]

- 6.9. Invoicing. The Distributor shall send the invoice to the Customer electronically to the following e-mail address: invoices@railbaltica.org. In case payment of the Fee (in whole or in part) will be made from more than one financing source, and upon the Customer's request, the Distributor shall issue separate invoices corresponding to the amounts financed from the financing source as indicated by the Customer.

7. DISTRIBUTOR'S OTHER OBLIGATIONS AND COVENANTS

- 7.1. Standard of performance. Without prejudice to the requirements prescribed elsewhere under the Agreement, the Distributor shall:

- (a) ensure that the Distributor's obligations are fulfilled in accordance with (i) the Agreement and the specifications and requirements contained in the Procurement Regulations, including the Technical Specification, (ii) the Applicable Laws, (iii) reasonable requirements of the Customer, and (iv) to the extent not being contrary to any of the above, the terms and conditions contained in the Distributor's Proposal;
- (b) to deliver the Products in a workmanlike and professional manner.

- 7.2. Maintenance of records. During the term of the Agreement and for a period of 10 (ten) years from expiration or termination of this Agreement for any reason whatsoever, the Distributor shall keep and maintain clear, adequate, and accurate records and documentation evidencing, to the reasonable satisfaction of the Customer, fulfilment of the obligations under the Agreement. 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.

- 7.3. Access to documentation. At all times during the term of the Agreement, the Customer shall have access to all documentation related to the fulfilment of this Agreement. This access shall be continuing and survive the termination of this Agreement for either cause or convenience. The documentation shall be kept accessible in a generally recognized format for a period of 10 (ten) years from the date of expiration or termination of this Agreement. All records forming part of such documentation shall be available to the Customer's auditor, or expert appointed by the Customer during the abovementioned period of time.

- 7.4. Subcontracting.

- 7.4.1. The Distributor has the right to hire a sub-contractor (the "Sub-Contractor") if such is indicated in the Distributor's Proposal for the delivery of the Products subject to the conditions described below.
- 7.4.2. The Distributor undertakes to reflect the same terms and conditions as in this Agreement into the sub-contract agreement with the Sub-Contractor.
- 7.4.3. The Distributor and the Sub-Contractor must be entities which are compliant with the requirements of the GDPR² and the Information Security Directive³ and the applicable national legal acts in the field of personal data protection and information security.
- 7.4.4. Appointment or replacement of each Sub-Contractor and any agreement made in that respect between the Distributor and a Sub-Contractor is subject to the Customer's prior written approval.
- 7.4.5. The Distributor remains liable for the performance of this Agreement and has an obligation to ensure that any Sub-Contractor adheres to the applicable provisions of this Agreement.
- 7.4.6. The Sub-Contractor must be able to meet the same data processing and information security requirements as the Distributor.

² 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.

³ Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union.

- 7.4.7. If the Distributor wants to replace the Sub-Contractor, the Distributor submits a prior written application to the Customer. The application must be accompanied by information and documents proving that the proposed Sub-Contractor meets the requirements of the Agreement.
- 7.4.8. The Customer refuses sub-contracting of such company if the potential Sub-Contractor does not meet the requirements of the Agreement or its staff does not meet the same professional qualification and experience as the staff evaluated during the tender process.
- 7.4.9. The Customer refuses sub-contracting of the company, if the initial indication of the proposed Sub-Contractor in the offer would have influenced the selection of the tender in accordance with the tender evaluation criteria specified in the procurement documents.
- 7.5. Replacement of the Sub-Contractor or the Project Manager. The Sub-Contractor indicated in the Distributor's Proposal may only be replaced with a prior approval of the Customer. The Customer will adopt a decision to allow or refuse replacement of the Sub-Contractor as soon as possible, but not later than within 5 (five) business days after receiving all the information and documents necessary for making the decision. The Customer refuses to replace the Sub-Contractor if:
- (a) the proposed Sub-Contractor does not meet qualification criteria set out in the procurement procedure;
 - (b) the existing Sub-Contractor has the qualities, which the Distributor has relied on in order to prove its own conformity with the requirements of the Agreement and the procurement procedure documents, and the proposed Sub-Contractor does not have at least the same qualification as the previous Sub-Contractor, or if the proposed Sub-Contractor meets the exclusion criteria set out in the procurement procedure;
 - (c) the proposed Sub-Contractor whose value of work is at least 10% of the total value of the Agreement meets the exclusion criteria set out in the procurement procedure;
 - (d) the change of the Sub-Contractor would affect the selection of the tender in accordance with the tender evaluation criteria specified in the procurement procedure.
- 7.6. Security clearance requirements. The Distributor shall not involve in the performance of the Agreement a person convicted of an intentional criminal offense (employees, sub-contractors and/or any other person and personnel), regardless of the criminal record having been set aside or extinguished, and/or a person of whom there are known facts that give grounds to doubt his or her ability to retain restricted access and/or classified information, as well as a person who has or may have a conflict of interest by involving him in the performance of the obligations under this Agreement. In this respect:
- 7.6.1. At the Customer's request, the Distributor shall submit to the Customer 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.
 - 7.6.2. In order to assess the compliance of the natural person whom the Distributor intends to involve in the performance of the Agreement with the requirements specified in this Clause 7.6, the Customer has the right to organize an additional security compliance check.
 - 7.6.3. The Distributor undertakes to inform the natural person involved in the performance of the Agreement about the processing of personal data performed by the Customer when organizing a security compliance check.
 - 7.6.4. The Distributor shall submit to the Customer in writing at least 10 (ten) 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, Customer name (in case involved staff of sub-Distributors), the country from which the person comes. At the Customer's request, the Distributor shall also submit a brief description of the role and responsibilities of the natural person in the performance of the Agreement.
 - 7.6.5. The Customer has the right, at its own discretion, to prohibit a natural person specified by the Distributor from performing tasks related to the performance of the Agreement by notifying the Distributor thereof in writing if the requirements referred to in this section of the Agreement are not complied with. The Parties agree that such decision of the Customer is incontestable.
 - 7.6.6. If the Customer prohibits a natural person specified by the Distributor from performing the tasks related to the performance of the Agreement, the Distributor shall replace this natural person

with another natural person by notifying the Customer in accordance with the procedure laid down in Clause 7.6.4.

- 7.6.7. If the Distributor cannot replace a natural person or if its replacement would cause disproportionately high expenses to the Distributor, the Distributor shall immediately provide the Customer 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.
- 7.6.8. The Distributor 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 this Clause 7.6, otherwise creates or may create security risks for the Customer, incl. risks to the Customer's information systems, information or data, as well as risks to the Customer's reputation or operations.
- 7.6.9. The Distributor 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 Applicable Laws);
 - (c) observe and not contest the Customer's written instructions and decisions in accordance with this Clause 7.6;
 - (d) provide the Customer with all the necessary information and support related to the necessity to replace a natural person.
- 7.6.10. In any case, the Distributor shall immediately notify the Customer 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 this Clause 7.6, as well as notify the Customer in writing of the replacement of such natural person involved in the performance of the Agreement.
- 7.6.11. If the Distributor violates the conditions referred to in this Clause 7.6 and/or disregards the Customer's instructions regarding security clearance requirements, then it constitutes a material breach of the Agreement and a ground for the Customer to immediately terminate the Agreement.
- 7.7. Visibility requirements. At all times during performance of the Agreement, the Distributor undertakes to comply with each of the following requirements:
 - 7.7.1. any report, brochure, document, or information related to the Agreement, or which the Distributor makes publicly available shall include each of the following:
 - (a) a funding statement which indicates that the Agreement is financed from CEF funds substantially in the following form: "Co-financed by the Connecting Europe Facility of the European Union";
 - (b) with respect to printed materials, a disclaimer releasing the European Union from liability with respect to any contents of any distributed materials substantially in the form as follows: "The 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
 - (c) the flag of the Council of Europe and the European Union.
 - 7.7.2. the requirements set forth in Clauses 7.7.1(a) and 7.7.1(c) can be complied with by means of utilizing the following logo (if the Distributor uses this logo, the Distributor shall ensure that the individual elements forming part of the logo are not separated (the logo shall be used as a single unit) and sufficient free space is ensured around the logo):



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

- 7.7.3. in order to comply with the latest applicable visibility requirements established by the European Union, the Distributor shall regularly monitor changes to visibility requirements; as at the Signing Date, the visibility requirements are available for review on the webpage <https://ec.europa.eu/inea/connecting-europe-facility/cef-energy/beneficiaries-info-point/publicity-guidelines-logos>.

8. CUSTOMER'S OTHER OBLIGATIONS AND COVENANTS

- 8.1. Supply of information. Unless otherwise provided under this Agreement, the Customer shall, in a timely manner, provide to the Distributor any information as may reasonably be requested by the Distributor for the purposes of the Agreement, provided that the Customer is in possession of such information.
- 8.2. Decisions. On all matters properly referred to it in writing by the Distributor, the Customer shall give its decision in writing so as not to delay the fulfilment of the Agreement and within a reasonable time.

9. REPRESENTATIONS AND WARRANTIES

- 9.1. Certain representations and warranties of the Parties. Each Party represents and warrants to the other Party, as of the Signing Date, as follows:
- (a) 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;
 - (b) it has read this Agreement, understands it and agrees to be bound by it;
 - (c) 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;
 - (d) it has entered into this Agreement without having any intention or goal whatsoever to violate the Applicable Laws, its own articles of association, other constitutional documents, laws or agreements of any kind to which it is a party to;
 - (e) 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
 - (f) it has entered into this Agreement of its own volition and in good faith.
- 9.2. Certain representations and warranties of the Distributor. The Distributor represents and warrants to the Customer, as of the Signing Date, as follows:
- (a) it has all requisite qualification, skills and competence to perform the Agreement on the terms and conditions of this Agreement;
 - (b) it will assign competent and duly qualified personnel for the purposes of fulfilment of the Agreement;
 - (c) it has been registered as a VAT payer in Lithuania;
 - (d) if the Distributor and the Customer are residing in different jurisdictions, the services under this Agreement will not be provided through a permanent establishment or fixed base maintained by the Distributor in the Republic of Latvia. The Distributor is aware that the applicable laws of Latvia prescribe certain instances when payments to non-residents are subject to a withholding tax (for instance, in case of management and consultancy services), and the Customer will be obliged to make such withholdings with the following exception. No withholdings will be made if the Distributor (before the Customer will be obliged to make any payment under the Agreement) will provide all necessary information and documents (including, where relevant, a residence certificate confirmed by the competent authority of the Distributor's country of residence and the Latvian State Revenue Service) allowing to make an exemption from such withholding pursuant to the

terms of the applicable laws of Latvia and international conventions or agreements between Latvia and the Distributor's country of residence;

- (e) it is compliant with all of the requirements of the Supplier's Declaration and will continue to be compliant with all such requirements during the term of this Agreement;
- (f) the Distributor is and during the License Term will be authorized by to distribute Esri product licenses and provide technical support and trainings.

10. COMMUNICATION

10.1. Main principles. Communication under the Agreement (e.g., information, requests, submissions, formal notifications, etc.) must:

- (a) be carried out in English;
- (b) be made in writing (including electronic form);
- (c) be primarily carried out between the Representatives as specified in Clause 10.4 or otherwise notified to each other;
- (d) bear the Agreement's number.

10.2. Presumption of receipt. Notices, declarations, invoices etc. shall be deemed received:

- (a) if delivered by hand, on the first (1) business day following the delivery day;
- (b) if sent by post, on the fifth (5) Business Day after the date of posting;
- (c) if sent by e-mail, the same Business Day if sent prior to 17:00 o'clock and the next Business Day if sent after 17:00 o'clock (Eastern European Time); communication by e-mail is deemed made when it is sent by the sending Party to the receiving Party, unless the sending Party receives a message of non-delivery.

10.3. Exchange over internet. For the purposes of the performance of the Agreement, the Parties agree that information may be exchanged electronically over the internet, always complying with the IT security requirements, if any, determined by the Customer.

10.4. Representatives. The Customer and the Distributor shall appoint an officer, employee or individual to serve as its representative and point of contact towards the implementation of the Agreement (including signing of the Acceptance Deed), with full authority to act on its behalf in connection with this Agreement, without the right to conclude amendments to the Agreement (the "Representative"). Any restriction placed by either Party on its Representative's authority shall be notified to the other Party in writing to be effective. The Representatives may delegate their authority by notice in writing specifying the contact information of the delegate and specifying the scope of authority so delegated. Each Party may replace or remove any Representative by notifying in writing the other Party immediately, but not later than 1 (one) business day after the replacement or the removal of the respective Representative. The initial Representatives are:

- (a) the authorised representative(s) of the Customer for the Agreement fulfilment issues and procedures:
[CONFIDENTIAL]
- (b) the authorised representative(s) of the Distributor for the Agreement fulfilment issues and procedures:
[CONFIDENTIAL]

11. INTELLECTUAL PROPERTY RIGHTS

11.1. Rights of Use. The Customer has the rights to use the Products in accordance with the Agreement, the Master Agreement, and the EA Grant.

11.2. Prevention of Infringement. The Customer shall prevent any infringement of Esri's intellectual property rights in the Products and will promptly report to the Distributor any such infringement that comes to its attention. In particular, the Customer:

- (a) will ensure that each user, before starting to use the Product, is made aware that it is proprietary to Esri and that it can only be used in accordance with this Agreement, the Master Agreement, and the EA Grant;
 - (b) has the right to permit the third parties with whom the Customer have concluded the cooperation agreements on implementation of the Global Project (including but not limited to national implementing bodies of Rail Baltica Global Project, the beneficiaries of the Rail Baltica Global Project and the suppliers involved in the designing of the railway line for the Rail Baltica Global Project) to have access to the Products without the prior written consent of the Distributor or Esri, always provided that the access by such third parties is used exclusively for the purposes of the Global Project.
- 11.3. Third Party Rights. The Distributor ensures that the intellectual property rights to the Products are duly owned (or licensed, or assigned, or held on any other valid legal basis) by Esri, and the use of the Products by the Customer in the way described in this Agreement, the Master Agreement or the EA Grant will not harm any third party intellectual property rights.
- 11.4. Indemnity. The Distributor shall defend, hold harmless and indemnify the Customer from all third party claims and related costs (including without limitation reasonable attorneys' fees and costs) resulting from any claims or potentially unlawful use of third party intellectual property, which is the result of misleading or incomplete information provided by the Distributor, or which are in any way connected with the actions or omissions of the Distributor or Esri, unless conditions included in the Master Agreement or the EA Grant provide stricter requirements.

12. TERM, TERMINATION AND SUSPENSION

- 12.1. Entry into force and expiry. The Agreement enters into force when signed by the Parties and expires once the Parties have fulfilled their contractual obligations arising out of this Agreement, unless terminated earlier pursuant to the provisions of the Agreement. Expiry or termination of this Agreement shall automatically mean expiry or termination of the Master Agreement and the EA Grant to the extent not provided otherwise by the Master Agreement or the EA Grant.
- 12.2. Right to terminate without a reason. The Parties may terminate this Agreement by submitting a 3 (three) months prior written notice to the other Party.
- 12.3. Termination due to breach. Any Party may terminate this Agreement by submitting a written notice to the other Party at least 30 days in advance:
- 12.3.1. if the other Party commits a material breach of any of the terms of this Agreement, the Master Agreement or the EA Grant and that breach (if capable of remedy) is not remedied within 30 days of notice being given by the suffering Party requiring the remedy;
 - 12.3.2. if liquidation, bankruptcy, insolvency, or legal protection proceedings have been initiated against the other Party or if the other Party itself has filed for liquidation, bankruptcy, insolvency or legal protection proceedings.
- 12.4. Customer's additional rights to terminate. The Customer may terminate this Agreement with immediate effect by submitting a relevant written notice to the Distributor:
- 12.4.1. if the Distributor, Esri or the Sub-Contractor fails to meet any requirements set out for the data processing within the European Union, in the Agreement, or in any applicable law;
 - 12.4.2. if by the third party's decision the Connecting Europe Facility (CEF) co-financing of the Agreement becomes unavailable to the Customer fully or partly;
 - 12.4.3. if international or national sanctions, or substantial sanctions by a Member State of the European Union or the North Atlantic Treaty Organization affecting the financial and capital market interests have been imposed on the Distributor, Esri or any Sub-Contractor;
 - 12.4.4. if major interface or functionality changes are made with respect to any of the Products or any of the Products cease to be available or supported;
 - 12.4.5. in the cases specifically indicated in Article 64 of the Public Procurement Law of the Republic of Latvia.
- 12.5. Consequences of termination. Upon expiration or termination of this Agreement, the obligations of the Parties set forth in this Agreement shall cease, except where the Agreement is terminated prior to the

expiry of the License Term the Customer will be entitled to continue the use of the Products for the period for which the Fee has been pre-paid, namely:

- (a) if the Agreement is terminated after the part of the Fee under Clause **Error! Reference source not found.** is paid, the Client shall be entitled to continue using the Products until expiry of 1 (one) year after the Commencement Date;
- (b) if the Agreement is terminated after the part of the Fee under Clause 6.2.1 is paid, the Client shall be entitled to continue using the Products until expiry of 2 (two) years after the Commencement Date;
- (c) if the Agreement is terminated after the part of the Fee under Clause 6.2.3 is paid, the Client shall be entitled to continue using the Products until expiry of 3 (three) years after the Commencement Date.

- 12.6. No prejudice to other rights. The right to terminate this Agreement shall be without prejudice to any other right of either Party which has accrued prior to or as a result of such termination or to any remedy available to either Party under the terms of this Agreement or in accordance with the Applicable Laws.

13. LIABILITY

Each Party shall be liable for the damages caused to the other. Notwithstanding anything to the contrary set forth in this Agreement, in no circumstances shall any Party be liable to the other Party for any loss of production, loss of profit, loss of revenue, loss of contract, liability incurred under other agreements or any indirect or consequential loss arising out of or in connection with this Agreement. Liability limitations with respect to the License and the Products are prescribed under the Master Agreement and the EA Grant.

14. FORCE MAJEURE

- 14.1. Effects of Force Majeure Event. Subject to the requirements set forth in accordance with Clauses 14.2 and 14.3, each Party shall be relieved from liability for non-performance of its obligations under this Agreement (other than any obligation to pay) to the extent that the Party is not able to perform such obligations due to a Force Majeure Event.
- 14.2. Action on becoming aware of Force Majeure Event. 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 14.2(a).
- 14.3. 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 10 (ten) business days of it becoming aware of the relevant Force Majeure Event. Such notification shall give sufficient details to identify the particular event claimed to be a Force Majeure Event and shall contain detailed information relating to the failure to perform (or delay in performing), including the date of occurrence of the Force Majeure Event, the effect of the Force Majeure Event on the ability of the affected Party to perform, the action being taken in accordance with Clause 14.2 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.
- 14.4. Notification of resumed performance. The affected Party shall notify the other Parties as soon as practicable once the performance of its affected obligations can be resumed (performance to continue on the terms existing immediately prior to the occurrence of the Force Majeure Event).
- 14.5. Mitigation of effects of Force Majeure Event. As soon as practicable after the notification specified pursuant to Clause 14.3, the Parties shall use reasonable endeavours to agree appropriate terms or modifications to obligations under the Agreement to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement.

15. CONFIDENTIALITY

- 15.1. Confidential Information. "Confidential Information" means, in relation to the Customer, all information of a confidential nature relating to the Customer and its affiliates which is supplied by the Customer (whether before or after the date of this Agreement) to the Distributor, either in writing, orally or in any other form and includes all analyses, compilations, notes, studies, memoranda and other documents and information which contain or otherwise reflect or are derived from such information, but excludes information which:
- (a) the Customer confirms in writing is not required to be treated as confidential; or
 - (b) the Distributor 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 Customer and was not previously acquired by the Distributor from the Customer or its affiliates under an obligation of confidence; or
 - (c) was developed by or for the Distributor at any time independently of this Agreement.
- 15.2. Undertakings with respect to Confidential Information. The Distributor 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 Customer.
- 15.3. Permitted disclosure. The Distributor shall, without the prior written consent of the Customer, be entitled to disclose Confidential Information:
- (a) that is reasonably required by the Distributor in the performance of its obligations pursuant to this Agreement, including the disclosure of any Confidential Information to any employee, agent, officer, Esri, approved Sub-Contractor or adviser to the extent necessary to enable the Distributor to perform its obligations under this Agreement;
 - (b) to the extent required by the Applicable Laws 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
 - (c) 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.
- 15.4. Obligations of recipients. Whenever disclosure is permitted to be made pursuant to Clause 15.3(a), the Distributor shall require that the recipient of Confidential Information be subject to the same obligation of confidentiality as that contained in this Agreement.
- 15.5. Obligations on termination or expiry of Agreement. If this Agreement is terminated for whatsoever reason or it expires or the Customer so requests, the Distributor shall:
- (a) return to the Customer all of the Confidential Information then within the possession or control of the Distributor; or
 - (b) destroy such Confidential Information using a secure and confidential method of destruction.
- 15.6. No press release. Save as required by the Applicable Laws, the Distributor shall not issue any press release in relation to the matters contemplated under this Agreement without the prior written consent of the Customer (such consent not to be unreasonably withheld or delayed) as to both the content and the timing of the issue of the press release.
- 15.7. Remedies. The Parties acknowledge and agree that a breach of the provisions of this Section 15 may cause the owner of Confidential Information to suffer irreparable Damages that could not be adequately remedied by an action at law. Accordingly, the Distributor agrees that the owner of Confidential Information that is disclosed in breach of Clauses 15.2, 15.4 or 15.6 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.

16. RIGHT TO AUDIT

- 16.1. Right to audit. Notwithstanding anything to the contrary set forth in this Agreement, the Customer itself, a reputable outside independent body or expert engaged and authorized by the Customer shall be entitled to inspect and/or audit the Distributor to ensure compliance with the terms of this Agreement.
- 16.2. Obligation to assist. The Distributor shall provide all reasonable assistance to the Customer or the independent body authorized by the Customer in carrying out any inspection or audit pursuant to this Section 16. The Customer shall be responsible for its own costs, or the costs incurred by the outside independent body designated by the Customer, incurred toward carrying out such inspection or audit, unless, in the case of any such audit, that audit reveals that the Distributor is not compliant with the terms of this Agreement, in which case the Distributor shall reimburse the Customer for all of its additional reasonable costs incurred, provided such non-compliance is material.
- 16.3. Survival of termination. The rights and obligations of the Customer set forth in accordance with this Section 16 shall survive expiration or termination of this Agreement for any reason and shall continue to apply during the period of 10 (ten) years following expiration or termination of this Agreement for any reason whatsoever.

17. ON-THE-SPOT VISITS

- 17.1. Right to perform on-the-spot visits. By submitting a written notice 5 (five) business days in advance, but at the same time reserving the right of an unannounced on-the-spot visits (to the extent relevant for the Agreement) without any advance notice, the Customer may carry out on-the-spot visits to the sites and premises where the activities implemented within the Agreement are or were carried out.
- 17.2. Personnel involved. On-the-spot visits may be carried out either directly by authorised staff or representatives of the Customer or by any other outside body or third party authorised to do so on behalf of the Customer. Information provided and collected in the framework of on-the-spot visits shall be treated on confidential basis. The Customer shall ensure that any authorised outside body or third party shall be bound by the same confidentiality obligations.
- 17.3. Access to the information. The Distributor 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.
- 17.4. OLAF checks and inspections. By virtue of Council Regulation (Euratom, EC) No 2185/961 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities and Regulation (EU) No 883/20132 of the European Parliament and the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF), OLAF may also carry out on-the-spot checks and inspections in accordance with the procedures laid down by European Union law for the protection of the financial interests of the European Union against fraud and other irregularities. Where appropriate, OLAF findings may lead to criminal prosecution under national law.

18. GOVERNING LAW AND RESOLUTION OF DISPUTES

- 18.1. Governing law. This Agreement shall be governed by and construed in accordance with law of the Republic of Latvia.
- 18.2. 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.
- 18.3. Venue for resolution of disputes. Should the Parties fail to settle such disputes, controversies or claims within 2 (two) months by amicable negotiations, 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.
- 18.4. Language. The Parties hereby represent and warrant that the English language is understandable for both Parties in accordance with Article 8(1)(a) of the Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and

extrajudicial documents in civil or commercial matters (service of documents) and repealing Council Regulation (EC) No 1348/2000.

19. PERSONAL DATA PROTECTION

- 19.1. For the purpose of implementation of the Agreement, the Parties will eventually transfer to each other certain personal data, such as data on employees, sub-contractors and other data subjects (e.g., names, surnames, e-mail addresses, business addresses, phone numbers etc.).
- 19.2. The Parties agree and acknowledge that for the purpose of the Agreement each of the Parties shall be viewed mainly as controllers of personal data and conditions of this Section shall be applicable. In case the roles of the Parties change (or are considered to have changed) as a result of which the Customer is considered to be the data controller and the Distributor is considered to be the data processor, the Parties shall, upon the Customer's request, sign a personal data processing agreement with the form and contents reasonably satisfactory to the Customer. In cases there are any discrepancy or inconsistency between the conditions of such personal data processing agreement and the Agreement, conditions of the personal data processing agreement shall prevail.
- 19.3. The personal data transferred by each Party to the other Party will be processed only in accordance with the procedure, terms and conditions established in the Agreement and in accordance with the applicable laws (including 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).
- 19.4. The Party shall transfer the personal data to the other Party and such other Party shall process the personal data only for the purposes of implementation of the Agreement and other such purposes as required by laws. The Parties agree that except where the Party has a separate legal basis for processing the personal data referred to in the laws governing the protection of personal data arising outside the Agreement, they shall not process the personal data for any other purpose except as referred to in the present Clause of the Agreement.
- 19.5. The Party transferring to the other Party certain personal data shall be responsible for informing and, if necessary, obtaining the consent of the data subject for the processing of the personal data.
- 19.6. Besides other obligations provided for in the Agreement and the laws, each of the Parties undertake:
 - (a) to process the personal data to the minimum extent necessary;
 - (b) not to infringe any rights of the data subjects;
 - (c) to implement and apply proper and necessary organizational and technical measures ensuring the compliance with the requirements of the laws;
 - (d) to duly keep records of the personal data processing activities if such an obligation arises from the requirements of the laws;
 - (e) to immediately notify the other Party if, in the opinion of the notifying Party, the actions of the other Party are likely to violate the requirements of the laws governing the protection of personal data;
 - (f) to ensure the compliance with other requirements of the laws governing the protection of personal data.
- 19.7. Taking into account the level of development of technical capacities and the nature, scope, context and objectives of the processing of personal data, as well as the probability and seriousness of risks arising from data processing to rights and freedoms of data subjects concerned, each Party, prior to commencing the processing of personal data, will implement and maintain throughout the processing of personal data the appropriate technical and organizational measures necessary to ensure the protection of personal data and the protection and implementation of rights of the data subjects established in the laws.

20. MISCELLANEOUS PROVISIONS

- 20.1. Amendments. Any amendments to the Agreement may be made only in compliance with Section 61 of the Public Procurement Law including but not limited to the Customer's right to propose extension of the duration of the Agreement. Any amendments and changes to the Agreement are valid only if they are in writing and signed by the Parties.

- 20.2. Conflict of interest, corruption and fraud. Notwithstanding any penalties that may be enforced against the Distributor under the Applicable Laws, or the laws of other jurisdiction(s), the Distributor shall be deemed to have committed a breach under this Agreement and the Customer shall be entitled to terminate this Agreement immediately if it is shown that the Distributor 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 Customer, including the use of collusive practices intended to stifle or reduce the benefits of free and open competition.
- 20.3. Relationship of Parties. The relationship between the Distributor and the Customer under this Agreement is that of independent Distributor. The Distributor (or the Sub-Contractors or the Project Manager) is not an employee of the Customer, is not carrying out the regular business of the Customer and is not subject to the same employment regulations as are applicable to employees of the Customer. 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 Customer to the Distributor, its employees, its consultants, or the employees of such consultants.
- 20.4. Severability. If any provision of this Agreement shall be held to be illegal, invalid, void or unenforceable under the 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.
- 20.5. Successors and assigns. The Parties each bind themselves, their successors, legal representatives, and assigns to the other party to this Agreement and to the partners, successors, legal representatives and assigns of such other party in respect to all covenants of this Agreement. Neither Party shall assign or transfer its respective interest in the Agreement without written consent of the other Party, if not directly provided otherwise under the Agreement.
- 20.6. 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.
- 20.7. Execution. This Agreement is executed as an electronic document.

For and on behalf of the Customer:

For and on behalf of the Distributor:

Agnis Driksna
Chairman of the Management Board

Linas Gipiškis
Managing Director

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

Annex A: Acceptance Deed Form

Date: [date]

Place: [place]

From: UAB "HNIT-BALTIC", a private limited liability company registered in Lithuania with registration No. 110584280, legal address at [●] (the "Distributor")

To: RB Rail AS, registration No. 40103845025, legal address at Satekles iela 2B, Riga, LV-1050, Latvia (the "Customer").

Whereas:

- (A) the Customer and the Distributor have entered into the Agreement on Supply, Licensing, and Maintenance of ArcGIS Software Products (the "Agreement");
- (B) pursuant to Clause 4.2 of the Agreement the availability of the Products (as defined under the Agreement) shall be confirmed by signing of this Acceptance Deed;
- (C) this Acceptance Deed also serves as a confirmation that the EA Agreement (as defined under the Agreement) and the Master Agreement (as defined under the Agreement) have been duly signed;
- (D) this Acceptance Deed also serves as the basis for the payment of the first part of the Fee (as defined under the Agreement) pursuant to Clause 6.2.1 of the Agreement (subject to receiving the respective invoice from the Distributor);

Now, therefore, the Parties confirm the availability of the Products and the duly commencement of the License Term (as defined under the Agreement).

For and on behalf of the Customer:

For and on behalf of the Distributor:

[●]

[●]

Annex B: EA Grant

[CONFIDENTIAL]

Annex C: Enterprise Agreement

[CONFIDENTIAL]

Annex D: Master Agreement

[CONFIDENTIAL]

**TECHNICAL SPECIFICATION FOR THE NEGOTIATED PROCEDURE
"SUBSCRIPTION OF ESRI PRODUCTS AND SOFTWARE LICENCES
UNDER THE ESRI ENTERPRISE AGREEMENT"
(ID NO. RBR 2022/6)**



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

Riga

2022

1. INTRODUCTION TO RAIL BALTICA

The Baltic countries Estonia, Latvia and Lithuania have historically been linked to the east-west railway transport axis using the 1520 mm gauge railway system. Because of the existing historical and technical constraints, the existing rail system is incompatible with mainland European standards, thus there is a consensus that Estonia, Latvia and Lithuania need to be fully integrated into the wider European rail transport system. Currently there is no efficient 1435 mm railway connection along the Warsaw-Kaunas-Riga-Tallinn axis, i.e. there are missing links or significant bottlenecks. Thus, there are no direct passenger or freight services along the railway axis as the existing infrastructure does not allow for competitive services compared to alternative modes of transport. Thus, the clear majority of the North-South freight is being transported by road transport and the overall accessibility in the region is low.

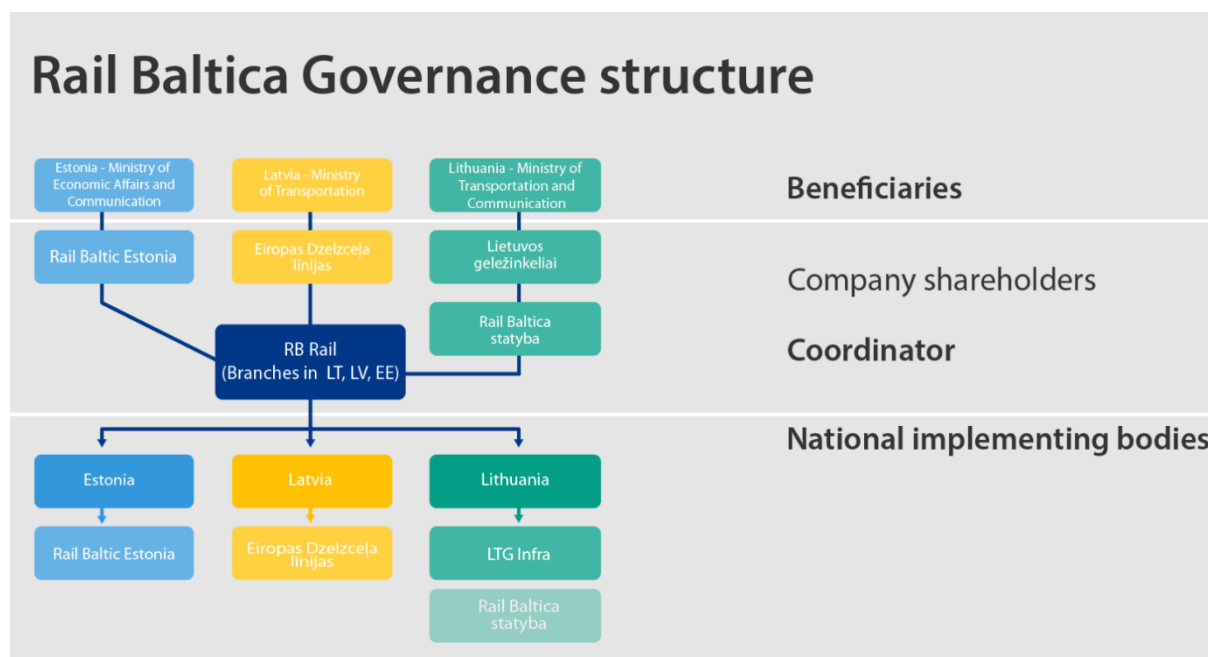
The ambitions of the Rail Baltica Global project (Global Project) are:

- to become a powerful catalyst for sustainable economic growth in the Baltic States;
- to set a new standard of passenger and freight mobility;
- to ensure a new economic corridor will emerge;
- sustainable employment and educational opportunities;
- an environmentally sustainable infrastructure;
- new opportunities for multimodal freight logistics development;
- new intermodal transport solutions for passengers;
- safety and performance improvements;
- a new value platform for digitalization and innovation;
- completion of Baltic integration in the European Union transport ecosystem.

Rail Baltica is already designed to become a part of the EU TEN-T North Sea – Baltic Core Network Corridor, which links Europe's largest ports of Rotterdam, Hamburg and Antwerp – through the Netherlands, Belgium, Germany and Poland – with the three Baltic States, further connecting to Finland via the Gulf of Finland short sea shipping connections with a future fixed link possibility between Tallinn and Helsinki. Further northbound extension of this corridor shall pave the way for future connectivity also with the emerging Arctic corridor, especially in light of the lucrative prospects of the alternative Northern Circle maritime route development between Europe and Asia. Furthermore, the North Sea – Baltic Corridor crosses with the Baltic-Adriatic Corridor in Warsaw, paving the way for new supply chain development between the Baltic and Adriatic seas, connecting the Baltics with the hitherto inadequately accessible Southern European markets. In a similar fashion, Rail Baltica shall strengthen the synergies between North-South and West-East freight flows, creating new trans-shipment and logistics development opportunities along the Europe and Asia overland trade routes. The new Rail Baltica infrastructure would, therefore, not only put the Baltics firmly on the European rail logistics map, but also create massive opportunities for value creation along this infrastructure with such secondary economic benefits as commercial property development, revitalization of dilapidated urban areas, private spin-off investment, new business formation, technology transfer and innovation, tourism development and other catalytic effects. Rail Baltica aims to promote these effects from the early stages of the Global Project, learning from the key global success stories and benchmarks in this regard.

The Contracting authority RB Rail AS (hereinafter - RBR) was established by the Republics of Estonia, Latvia and Lithuania, via state-owned holding companies, to coordinate the development and construction of the fast-conventional standard gauge railway line on the North Sea – Baltic TEN-T Core Network Corridor (Rail Baltica II) linking three Baltic states with Poland and the rest of the EU.

The diagram below illustrates the shareholder and project governance structure of the Rail Baltica project.



RBR together with governments of Estonia, Latvia and Lithuania (represented by the ministries in charge of transport policy) have applied for co-financing and signed Grant Agreements under the Connecting Europe Facility (CEF) Transport sector in 2014, 2015, 2016, 2020 and 2021 (six grant agreements in total) to support the Global Project expenses.

Rail Baltica is a joint project of three EU Member States – Estonia, Latvia and Lithuania – and concerns the building of a fast conventional double-track 1435 mm gauge electrified and ERTMS equipped mixed use railway line on the route from Tallinn through Pärnu (EE), Riga (LV), Panevėžys (LT), Kaunas (LT) to the Lithuania/Poland state border (including a Kaunas – Vilnius spur) with a design speed of 240km/h. In the longer term, the railway line could potentially be extended to include a fixed link between Helsinki and Tallinn, as well as integrate the railway link to Warsaw and beyond.

The expected core outcome of the Rail Baltica Global Project is a European gauge (1435mm) double-track railway line of almost 900 km in length meant for both passenger and freight transport and the required additional infrastructure (to ensure full operability of the railway). It will be interoperable with the TEN-T Network in the rest of Europe and competitive in terms of quality with other modes of transport in the region. The indicative timeline and phasing of the project implementation can be found here: <http://www.railbaltica.org/about-rail-baltica/project-timeline/>.

2. OBJECTIVE AND GENERAL DESCRIPTION OF THE PLANNED SUPPLIES

2.1 An Enterprise Agreement (hereinafter - EA) is a contract in which the customer commits to a set fee to Esri for a specified period of time in exchange for a set of software and maintenance. RBR seeks to sign this contract for a period of 3 years. Long-term agreement will bring more certainty for the further development of Rail Baltica geographic information system (hereinafter – GIS) and make more efficient use of available technical and human resources.

2.2 The primary purpose of EA is to obtain software and licenses. Primary assessment of needs is provided in tables below.

EA TERM PRODUCTS – UNCAPPED QUANTITIES

Product Family	Product Name
ArcGIS Desktop Extensions Single Use	ArcGIS 3D Analyst
	ArcGIS Data Reviewer
	ArcGIS Geostatistical Analyst

	ArcGIS Network Analyst
	ArcGIS Publisher
	ArcGIS Schematics
	ArcGIS Spatial Analyst
	ArcGIS Workflow Manager
ArcGIS Desktop Software Single Use	ArcGIS Desktop Advanced
	ArcGIS Desktop Standard
ArcGIS Enterprise	ArcGIS Enterprise Advanced
	ArcGIS Enterprise Standard
ArcGIS Enterprise Additional Capability Servers	ArcGIS GeoEvent Server
	ArcGIS Image Server
ArcGIS Enterprise Extensions	ArcGIS 3D Analyst
	ArcGIS Data Reviewer
	ArcGIS Geostatistical Analyst
	ArcGIS Network Analyst
	ArcGIS Schematics
	ArcGIS Spatial Analyst
	ArcGIS Workflow Manager
ArcGIS GIS Servers	Advanced
Other	ArcGIS Monitor (Cores)
Staging ArcGIS Enterprise	ArcGIS Enterprise Advanced Staging
Staging ArcGIS Enterprise Additional Capability Servers	ArcGIS GeoEvent Server Staging
	ArcGIS Image Server Staging

EA PRODUCTS – CAPPED QUANTITIES

Product Name	Existing Qty	Qty/Seats to be Deployed	Total
ArcGIS Data Interoperability for Desktop Single Use License	0	1	1
ArcGIS Image Analyst for Pro Single Use License	0	1	1
ArcGIS Survey123 for ArcGIS Enterprise Term License	0	70	70
ArcGIS Enterprise GIS Professional Advanced Term License	0	3	Year 1: 3 Year 2: 3 Year 3: 3
ArcGIS Enterprise GIS Professional Standard Term License	0	17-22	Year 1: 17 Year 2: 20 Year 3: 22
ArcGIS Enterprise Editor Term License	0	145	Year 1: 145 Year 2: 145 Year 3: 145
ArcGIS Enterprise Field Worker Term License	0	32	Year 1: 32 Year 2: 32 Year 3: 32

Site Scan Single Operator Term License	0	1	1
ArcGIS Online Creator Term License (500 Annual Credits / User)	0	4	Year 1: 4 Year 2: 4 Year 3: 4
ArcGIS Enterprise GIS Professional Extension - 3D Analyst	0	5	5
ArcGIS Enterprise GIS Professional Extension - Data Reviewer	0	1	1
ArcGIS Enterprise GIS Professional Extension - Geostatistical Analyst	0	5	5
ArcGIS Enterprise GIS Professional Extension - Network Analyst	0	1	1
ArcGIS Enterprise GIS Professional Extension - Publisher	0	1	1
ArcGIS Enterprise GIS Professional Extension - Schematics	0	1	1
ArcGIS Enterprise GIS Professional Extension - Spatial Analyst	0	5	5
ArcGIS Enterprise GIS Professional Extension - Workflow Manager	0	2	2
ArcGIS Enterprise GIS Professional Extension - LocateXT	0	1	1
ArcGIS Enterprise GIS Professional Extension - Data Interoperability	0	9	9
ArcGIS Enterprise GIS Professional Extension - Tracking Analyst	0	1	1
ArcGIS Enterprise GIS Professional Extension - Image Analyst	0	1	1
ArcGIS Drone2Map for ArcGIS Enterprise Term License - Year 3 Only	0	1	1
ArcGIS GeoBIM User Type Extension for ArcGIS Enterprise Term License - Year 3 Only; available upon commercial release	0	1	1

2.3 RBR may deploy additional users in direct support of the RBR, but any increase over the estimated number of users will be used to re-value the EA at the time of renewal.

3. INVOICING AND PAYMENT

3.1. The contract amount will be split in three payments to be paid as follows: first payment within 30 days after the effective date, the second within 30 days upon the first anniversary of the effective date and the third within 30 days after the third anniversary of the effective date (details to be prescribed under the Contract).