

FRAMEWORK AGREEMENT
ON
SHADOW OPERATOR SERVICES FOR RAIL BALTICA GLOBAL PROJECT

between

An Unincorporated Joint Venture of DB Engineering & Consulting GmbH;
RENFE-Operadora Entidad Pública Empresarial,
Ingeniería y Economía del Transporte S.M.E M.P. S.A

the Contractor

and

RB Rail AS

the Principal

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

sabiedrība ar ierobežotu atbildību "EIROPAS DZELZCEĻA LĪNIJAS"

the Latvian Beneficiary representative

and

osaühing Rail Baltic Estonia

the Estonian Beneficiary representative

Contract registration number	1.19/LV-2022-37-1
CEF ¹ Contract No	INEA/CEF/TRAN/M2019/2098304
Procurement procedure identification No	RBR 2020/14

Riga

Dated 30 August 2022

¹ Grant Agreement under the Connecting Europe Facility

TABLE OF CONTENTS

Section I. Definitions and Interpretation	4
Section II. Total value and Term	5
Section III. Subject of the Agreement	6
Section IV. Appointment of an Assignment	7
Section V. General terms and conditions	9
Section VI. Responsibilities of Principal and the Beneficiaries’ representatives	10
Section VII. Responsibilities of Contractor	11
Section VIII. Representations and Warranties	16
Section IX. Fee and Payment	17
Section X. Commencement of Services, remedying of Defects and acceptance	20
Section XI. Intellectual Property Rights	22
Section XII. Termination and suspension	23
Section XIII. Liability	26
Section XIV. Force Majeure	28
Section XV. Confidentiality	28
Section XVI. Right to Audit	29
Section XVII. On-the-spot-visits	30
Section XVIII. Governing Law and Resolution of Disputes	30
Section XIX. Miscellaneous provisions	31
Annex A: Definitions and common terms.....	34
Annex B: Scope of Services	37
Annex C: List of approved Sub-Contractors and Staff.....	38
Annex D: Request for Proposal	39
Annex E: Draft Assignment Order	40
Annex F: Form of the Deed of Acceptance.....	41
Annex G: Rules of Adjudication	42
Annex H: Contractor’s Proposal.....	50

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ON SHADOW OPERATOR SERVICES FOR RAIL BALTICA GLOBAL PROJECT

This framework agreement, together with all Annexes thereto, (the "Agreement") is entered into in Riga on 30 August 2022 by and between:

RB Rail AS, a joint stock company registered in the Latvian Commercial Register, registration No 40103845025, legal address at Satekles street 2B, Riga, LV-1050, Latvia (the "Principal"), represented by Agnis Driksna, Chairperson of the Management Board and Marc Philippe El Beze, Member of the Management Board acting on the basis of the Regulations on Representation Rights dated 11 April 2022,

and

sabiedrība ar ierobežotu atbildību "EIROPAS DZELZCEĻA LĪNIJAS", a limited liability company registered in the Latvian Commercial Register, registration No 40103836785, legal address at Gogoļa street 3, Riga, LV-1743, Latvia (the „the Latvian Beneficiary representative”), acting on behalf of the Ministry of Transport of the Republic of Latvia, registration No: 90000088687, registered address: Gogoļa street 3, Riga, LV-1743, Latvia

represented by the Kaspars Vingris Chairperson of the Management Board and Artūrs Caune, Member of the Management Board acting in accordance to the Articles of Association,

and

osaühing Rail Baltic Estonia, a limited liability company registered in the Estonian Commercial Register, registration No 12734109, legal address at Endla 16 Tallinn Harjumaa 10142, Estonia (the "Estonian Beneficiary representative”), acting on behalf of Ministry of Economic Affairs and Communications of the Republic of Estonia, Registry code: 70003158, registered address: Suur-Ameerika 1, Tallinn, 10122, Estonia

represented by the [●] on the basis of [●], on the one side,

and

an Unincorporated Joint Venture, consisting of:

DB Engineering & Consulting GmbH, a company registered and existing under the laws of Germany, registration No HRB 56655 B, legal address at EUREF-Campus 14, Torgauer Strasse 12-15, 10829, Berlin, Germany; duly represented by [●], on the basis of [●].

RENFE-Operadora Entidad Pública Empresarial ("Renfe"), a company registered and existing under the laws of the Kingdom of Spain, registration No Q-2801659J, with registered office at Avda. Pio XII, 110; 28036 – Madrid, Spain, duly represented by [●] on the basis of [●];

Ingeniería y Economía del Transporte S.M.E M.P. S.A. (Ineco), a company registered and existing under the laws of the Kingdom of Spain, with tax identification No A-28220168, duly represented by [●] on the basis of [●], acting through its branch in Latvia with registered address in Mazā Smilšu iela 12-5, Riga, LV – 1050, Latvia and VAT number LV40203245401,

(the "Contractor"), represented by DB Engineering & Consulting GmbH acting on the basis of Joint Venture Agreement concluded on 4 August 2022 on the other side,

who are collectively referred to as the "Parties" and separately – as the "Party", where the Latvian Beneficiary representative, the Estonian Beneficiary representative collectively referred to as the "Beneficiaries' representatives" and separately – as the "Beneficiary representative",

WHEREAS:

- (A) this Agreement is entered into under the Global Project which includes all activities undertaken by respective beneficiaries and the implementing bodies with respect to the Global Project in order to build, render operational and commercialise the Rail Baltica railway – a new fast conventional double track electrified railway line according to TSI INF P2-F1 criteria and European

standard gauge (1435mm) on the route from Tallinn through Pärnu-Riga-Panevėžys-Kaunas to Lithuanian-Polish border, with the connection of Kaunas – Vilnius, and related railway infrastructure in accordance with the agreed route, technical parameters and time schedule;

- (B) the Principal is acting as a Central Purchasing Body for the benefit of the Ministry of Transport of the Republic of Latvia, Ministry of Transport and Communications of the Republic of Lithuania, and Ministry of Economic Affairs and Communications of the Republic of Estonia as well as osāhning Rail Baltic Estonia, sabiedrība ar ierobežotu atbildību "EIROPAS DZELZCEĻA LĪNIJAS", and AB "LTG Infra" under the Agreement of the Contracting Scheme for the Rail Baltic/Rail Baltica, dated 30 September 2016, which *inter alia* authorizes the Principal to act on behalf and in the name of the respective beneficiaries and the implementing bodies with respect to the Global Project procurements, including entering into the procured agreements as well as the Agreement on behalf of respective beneficiaries and the implementing bodies;
- (C) the Principal has organised a procurement procedure "Shadow Operator Services for Rail Baltica Global Project" (identification No RBR 2020/14) (the "Procurement Procedure") for the benefit of the Ministry of Transport of the Republic of Latvia and Ministry of Economic Affairs and Communications of the Republic of Estonia. According to the written confirmation of the Ministry of Economic Affairs and Communications of the Republic of Estonia, dated 27 Aug 2020, No 24.5-6/20-0068/5312, osāhning Rail Baltic Estonia shall represent the interest for the part of Services to be procured for the benefit of the Ministry of Economic Affairs and Communications of the Republic of Estonia and according to written confirmation from Ministry of Transport of the Republic of Latvia dated 10 September 2020 No 18-02/3601 sabiedrība ar ierobežotu atbildību "EIROPAS DZELZCEĻA LĪNIJAS" shall represent the interest for the part of Services to be procured for the benefit of the Ministry of Transport of the Republic of Latvia;
- (D) in the Procurement Procedure the Contractor's tender proposal (the "Contractor's Proposal"; enclosed as *Annex H: Contractor's Proposal*) as well as tender proposal of one (1) other contractor [●] (the "Other Contractor") were awarded with the conclusion of the framework agreement, with the Contractors, as based on the results of the highest points received during the Procurement Procedure, as follows:*
1. 98 points – an Unincorporated Joint Venture of DB Engineering & Consulting GmbH, RENFE- Operadora Entidad Publica Empresarial, Ingenieria y Economia del Transporte S.M.E. M.P.S.A;

**NOTE: as a result of the procurement exercise, framework agreement was concluded with one Contractor. The point (D) of chapeau is left for the purposes of consistency purposes only*

- (E) according to the Procurement Procedure the Contractor's Proposal was selected as the winning bid for the implementation of the Assignment "Phase 1 – Fixed Scope" and therefore is awarded with the conclusion of the respective Assignment Order upon conclusion of the framework agreement;
- (F) this Agreement is co-financed from the Connecting Europe Facility (CEF), CEF Agreement No INEA/CEF/TRAN/M2019/2098304 and other recently signed Grant Agreements or future Grant Agreements to be signed.

Section I. Definitions and Interpretation

- 1.1 *Definitions.* In this Agreement, unless the context requires otherwise, all Definitions shall have the meanings as described to such terms in accordance with *Annex A: Definitions and common terms*.
- 1.2 *Interpretation.*
- 1.2.1 The headings contained in this Agreement shall not be used in its interpretation.
 - 1.2.2 References to the singular shall include references in the plural and vice versa, words denoting a gender shall include any other gender where the context requires, and words denoting natural persons shall include any other Persons.

- 1.2.3 References to a treaty, directive, regulation, law or legislative provision shall be construed, at any particular time, as including a reference to any modification, extension or re-enactment of the respective treaty, directive, regulation, law or legislative provision at any time then in force and to all subordinate legislation enacted from time to time.
- 1.2.4 Any reference in this Agreement to a Person acting under the direction of another Person shall not include any action that is taken in contravention of any Applicable Law or Standards, unless the relevant Person can demonstrate that an explicit instruction or direction was given to take the relevant action.
- 1.2.5 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/or any Assignment Orders concluded in compliance with the Agreement, and as amended from time to time.
- 1.2.6 Unless expressly stated to the contrary, any reference in this Agreement to the right of consent, approval or agreement shall be construed such that the relevant consent, approval or agreement shall not be unreasonably delayed or withheld. The Parties agree and acknowledge as follows:
- (a) 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
 - (b) nothing in this Agreement shall require the Principal to give or procure the giving of any consent or approval which would be contrary to the protection, safety and efficient operation of the Railway and the Project.
- 1.2.7 A reference to "writing" shall include an e-mail transmission and any means of reproducing words in a tangible and permanently visible form.
- 1.2.8 The words "include" and "including" are to be construed without limitation.
- 1.2.9 Unless indicated otherwise, all references to "days" shall mean calendar days, but "Business Days" shall mean any day except any Saturday, any Sunday and any day which is a legal holiday in the Republic of Latvia with respect to the Principal and the Latvian Beneficiary representative or the Republic of Estonia with respect to the Estonian Beneficiary representative, as the case may be.
- 1.2.10 Unless otherwise specified herein, references in this Agreement to any Clause, Section or Annex shall mean references to such Clause, Section or Annex of this Agreement, and references to any agreement, instrument, or other document in this Agreement refer to such agreement, instrument, or other document as originally executed or, if subsequently amended, replaced, or supplemented from time to time, as so amended, replaced, or supplemented and in effect at the relevant time of reference thereto.
- 1.3 *Order of Precedence.* In the event of any discrepancy or inconsistency between the documents forming part of this Agreement, the following order of precedence shall apply:
- 1.3.1 this Agreement document;
 - 1.3.2 explanations (clarifications) of the Procurement Procedure documentation;
 - 1.3.3 Procurement Procedure documents with the annexes (including *Annex B: Scope of Services*);
 - 1.3.4 respective Assignment Order;
 - 1.3.5 all other Annexes of the Agreement.
 - 1.3.6 clarifications of the Contractor's Proposal;
 - 1.3.7 Contractor's Proposal;

Section II. Total value and Term

- 2.1 *Total value.* The total value of the Agreement is concluded as a result of the Procurement Procedure is: 8`000`000 EUR (eight million *euro*), excluding VAT.

- 2.2 *On demand basis.* Under the Agreement is concluded as a result of the Procurement Procedure the Services shall be provided on-demand basis with no fixed work-load and/or granted overall value to the Contractor.
- 2.3 *Term.* The term of the Agreement is 72 (seventy-two) months starting from the date when the Principal has signed the Agreement. The Parties agree that if the Project implementation continues beyond the Term and/or the need of Services remains, the Term of the Agreement may be repeatedly extended for an additional period of up to twelve (12) months in the Principals' absolute discretion, by a written notice from the Principal to the other Parties.
- 2.4 *Expiry and termination.* After the expiry of the Agreement term or once the total value has been reached, no more new Assignment Orders can be concluded. The Agreement terminates once all of the existing Assignment Orders are fully completed by the Contractor and approved by the Principal and the Parties have fulfilled their contractual obligations arising out of this Agreement.

Section III. Subject of the Agreement

- 3.1 *General subject.* This Agreement sets out the rights and obligations, terms and conditions that apply to the Parties of this Agreement where the Contractor is contracted by the Principal to provide Services to the Principal and the Beneficiaries' representatives for the successful implementation of the Project. The Principal acts as a Central Purchasing Body for the benefit of the Ministry of Transport of the Republic of Latvia represented by Latvian Beneficiary representative and Ministry of Economic Affairs and Communications of the Republic of Estonia represented by Estonian Beneficiary representative in the Agreement, however, each of the Parties is independently responsible for the diligent performance of its separate obligations under this Agreement to the extent provided herein.
- 3.2 *Scope and engagement.* The scope of Services to be provided by the Contractor to the Principal and the Beneficiaries' representatives is further described under *Annex B: Scope of Services*. Only the Principal (on behalf of itself or the respective Beneficiary representative) is entitled to and will separately and individually engage the Contractor for the provision of Services under *Annex B: Scope of Services* via separate Assignments under the terms of this Agreement.
- 3.3 *Framework.* The purpose of the Agreement is to define the terms and conditions under which the Contractor will provide Services to the Principal and the Beneficiaries' representatives. The Agreement is framework-based and does not impose an obligation whatsoever on the Principal to appoint the Contractor to provide all of the Services nor does it guarantee any predetermined scope.
- 3.4 *Assignment Order.* For every Assignment a separate Assignment Order (substantially in the form included in Annex E: Draft Assignment Order) will be issued by the Principal (on behalf of itself or the respective Beneficiary representative) and confirmed by the Contractor.
- 3.5 *Authorization to the Principal.* Except where the Principal instructs otherwise, the Principal shall act as the sole administration body of the Agreement and sole representative of the Beneficiaries' representatives and any stakeholders with regards to Contractor and shall be the sole addressee and contact person for Contractor concerning all and any Agreement related matters, including, without limitation, handling of any communication, engaging the Contractor for the provision Services, receiving Deliverables from Contractor, concluding amendments to the Agreement and, more generally, coordinating the overall performance of the Agreement. For avoidance of doubt, unless otherwise instructed by the Principal, the Contractor shall not be entitled to accept Assignment Orders, provide Deliverables, request information and/or documents directly from/to the Beneficiaries' representatives and from/to any other stakeholders involved in the Project implementation.
- 3.6 *Mutual agreement.* The Contractor undertakes to provide the Services only on the basis of an Assignment Order signed by the Principal and the Contractor, the conditions and provisions thereof being binding on both the Contractor as well as the Principal and the respective Beneficiary representative.
- 3.7 *Failure to perform.* If the Contractor refuses or fails to duly complete the Assignment in accordance with this Agreement, the Contractor is obligated to pay a contractual fine to either the Principal or the respective Beneficiary representative, depending on who is provided with the particular Services under the Agreement, at the latter's request in the amount corresponding to the double (2x) of the total sum of the Fee according to the Assignment Order, but no more than 30 000 EUR (thirty thousand *euro*).
- 3.8 *General duty of participation.* The Contractor undertakes a general duty of participation for the provision of the Services and thus shall be obliged to confirm Assignment Orders issued by the Principal in compliance with the Agreement. The Contractor has a right to reject the Assignment Order only in exceptional cases

where the Contractor envisages that the implementation of a particular Assignment would result in a material conflict with the requirements set in this Agreement. The decision of the Contractor to reject the Principal's Assignment Order shall be provided in writing by stating the reasons for such decision in sufficient detail.

Section IV. Appointment of an Assignment

- 4.1 *Selection of Contractor or Other Contractor.* In order to receive Services, the Principal will select the Contractor or the Other Contractor and conclude an Assignment Order. The Assignment will be allocated either through a **direct award** or by conducting a **mini-competition**.
- 4.2 *Discretion of the Principal.* The selection between the direct award or conduction of mini-competition will remain within the discretion of the Principal taking into consideration including, but not limited to, previous performance and/or possible conflict of interest of the Contractor or the Other Contractor, complexity and scope of the Assignment, timeline for the Assignment implementation. If the Principal decides to implement a direct award instead of a mini-competition it shall provide a written explanation to Party not awarded.
- 4.3 *Procedure for Mini-competition.*
- 4.3.1 The Principal invites the Contractor as well as the Other Contractor to implement an Assignment by sending a request for proposal (the "**Request for Proposal**") specifying, amongst others, the scope and purpose of Services, Deliverables and intended timeline for the implementation of the Assignment and any other relevant information.
- 4.3.2 After receiving the Request for Proposal, the Contractor will, within ten (10) Business Days, unless otherwise specified in the Request for Proposal, respond by sending its proposal for the implementation of the Assignment. Failure to respond to the Request for Proposal within the required time period will be considered as a rejection to participate in the respective mini-competition and is subject to Clause 3.8. The Principal is entitled to unilaterally extend the term for the submission of proposals by sending a written notification to the Contractor and the Other Contractor.
- 4.3.3 Proposals received from the Contractor and Other Contractor will be evaluated by the Principal. The most economically advantageous proposal will be awarded with the implementation of the Assignment. If the proposals received exceed the planned budget or are otherwise untenable to the Principal, the Principal reserves the right to terminate the mini-competition.
- 4.3.4 The Principal will choose the winner of the mini-competition for the provision of the particular Assignment by comparing and evaluating the received proposals based on the criteria specified in the specific Request for Proposal that should follow these general criteria (listed in no particular order and containing no predefined value):
- a) amount of fee and time necessary for the provision of the particular Assignment;
 - b) experience and availability (considering workload or manpower invested by the respective experts in already committed and ongoing Assignments) of the respective staff of the Contractor or subcontractors designated for the provision of the particular Assignment;
 - c) potential quality of the provision of the particular Assignment, taking into account, *inter alia*, the estimation of the potential workload proposed by the Contractor to be invested for the provision of the particular Assignment by comparing it with workload already spent on similar Assignments by the Contractors within the same field of expertise if significant differences are identified;
 - d) cooperation experience with the respective Contractor in previous Assignments.

For clarity, the list of criteria above is not exhaustive and the Principal is not obliged to use all of the criteria above or in whole extent and is entitled to apply other criteria upon Principals' sole discretion.

- 4.3.5 The Principal shall inform the Contractor and Other Contractor on the results of each mini-competition.
- 4.3.6 The Contractor or the Other Contractor which has the most economically advantageous proposal shall be invited to sign the Assignment Order. If the Contractor is invited to sign the Assignment Order, the Principal prepares the specific Assignment Order draft based on the information laid down in the specific Request for Proposal and the Contractor's proposal in the mini-competition or direct award and aligns it with the Contractor, if not agreed otherwise by the Parties. The Assignment Order is first

signed by the Contractor and then by the Principal. Aligned Assignment Order should be signed and sent to the Principal as soon as possible but not later than within five (5) Business Days after receiving the aligned document for signing.

- 4.3.7 After the Contractor is invited to sign the Assignment Order under Clause 4.3.6, the conditions and provision set out in the Request for Proposal and the Contractors' proposal of the mini-competition will become binding upon the Parties of the particular Assignment and the particular Assignment has to be executed in accordance with its specific requirements as well as the general provisions set out in this Agreement.

4.4 *Procedure for direct award.*

- 4.4.1 The Principal is entitled to select direct award procedure for the Contractor or the Other Contractor based on objective and justified reasons, which amongst other would include one or several of the following:

- 4.4.1.1 the Contractor or the Other Contractor is in situation of factual or potential conflict of interests;
- 4.4.1.2 the Contractor or the Other Contractor has failed to perform previous Assignment Order in proper time or of satisfactory quality;
- 4.4.1.3 the complexity and scope of the Assignment is interrelated to results of the previously completed other Assignment;
- 4.4.1.4 the Fee of the Assignment Order to be directly awarded is not more than 3 000 EUR (three thousand euro);
- 4.4.1.5 Contractor or the Other Contractor is working on other Assignments and does not have the available capacity to implement the Assignment within the expected timeline;
- 4.4.1.6 the Contractor or the Other Contractor has rejected the Request for Proposal or failed to respond within the required time period, or the delivered proposal was not compliant with the requirements defined by the Principal;
- 4.4.1.7 the Assignment Order is awarded for both the Contractor and Other Contractor;
- 4.4.1.8 other objective reasons.

- 4.4.2 The Principal is entitled to invite either the Contractor or Other Contractor to implement an Assignment by sending a request for Proposal (the "Request for Proposal") specifying, amongst others, the scope and purpose of Services, Deliverables and intended timeline for the implementation of the Assignment and any other relevant information.

- 4.4.3 After receiving a Request for Proposal, as soon as possible but not later than within ten (10) Business Days, unless otherwise specified in the Request for Proposal, the Contractor shall respond by stating its availability to implement the Assignment by sending to the Principal a proposal to implement the Assignment. The Contractor may request for extension of term for submission of proposal.

- 4.4.4 The Principal accepts the Contractor's proposal to implement an Assignment by sending a request to draft the Assignment Order to the Contractor. The Contractor should draft the specific Assignment Order based on the information laid down in the specific Request for Proposal and its own proposal to implement an Assignment and align it with the Principal. Aligned Assignment Order should be signed and sent to the Principal as soon as possible but not later than within the five (5) Business Days after receiving the request to draft it. The Assignment Order is first signed by the Contractor and then by the Principal.

- 4.4.5 After the corresponding Request for Proposal is accepted by the Contractor and the proposal to implement an Assignment is accepted by the Principal, the conditions set in the Assignment Order become binding upon the respective Parties and the particular Assignment has to be executed in accordance with its specific requirements as well as the general provisions set out in this Agreement.

- 4.4.6 In case the Contractor rejects the Request for Proposal or fails to respond within the required time period, or the delivered proposal is not compliant with requirements defined by the Principal or not in line with the Principal's budget, the Principal reserves the right to discontinue direct-award procedure.

- 4.5 *General duty of participation.* The Contractor has a right to reject the Principal's Request for Proposal or Request for Proposal only in exceptional cases related to the current workload of the Contractor in relation to other Assignments in progress, or when the Contractor envisages that the implementation of a particular Assignment would result in a conflict with the requirements set in this Agreement, or in case of a conflict of interest as stated in Clause 7.11 of this Agreement. The decision of the Contractor to reject the Principal's Request for Proposal shall be provided in writing by stating the reasons for such decision in sufficient detail.
- 4.6 *Additional information.* The Contractor has the right to request reasonable explanatory information from the Principal regarding the specifics of provision of an Assignment. If the Principal finds it necessary to respond, the Principal has the obligation to disclose information provided to the Contractor also to Other Contractor if such information may influence the contents of the Contractor's bid in the respective mini-competition.

Section V. General terms and conditions

- 5.1 *Engagement.* The Principal (on behalf of the Principal itself or the respective Beneficiary representative) shall hereby engage the Contractor to provide and perform the Services for the purposes of the Project, as described in this Agreement and according to the specifications contained within the Agreement, including *Annex B: Scope of Services* and the respective Assignment Order, and the Contractor hereby accepts such engagement. The Services shall result in the provision of the Deliverables to the Principal as identified under each particular Assignment Order.
- 5.2 *Co-Operation of the Parties.* The Parties shall cooperate with one another to fulfil their respective obligations under this Agreement. Parties shall endeavour to maintain good working relationships among all key personnel engaged toward provision of the Services.
- 5.3 *General Obligations of Contractor.* The Contractor shall be responsible for the professional quality, technical accuracy, and coordination of all Deliverables provided under this Agreement. The Contractor shall have an obligation, without additional compensation of any kind, to correct or revise any Defects, errors, deficiencies, or omissions in Deliverables rendered hereunder and forming part of the Services.
- 5.4 *Acceptance Not a Waiver.* The Principal's review, approval, acceptance, or payment for the Assignments forming part of the Services shall not be interpreted or construed to operate as a waiver of any right or cause for action arising out of the Contractor's performance of any Assignments under this Agreement. The Contractor shall remain liable to the Principal or the respective Beneficiary representative as allowed under this Agreement and Applicable Law for all costs and/or Damages caused by the Contractor's negligent performance of any of the Assignments and Services furnished under this Agreement.
- 5.5 *Communication between the Parties.*
- 5.5.1 Communication under the Agreement (e.g. information, requests, submissions, formal notifications, etc.) must:
- 5.5.1.1 be carried out in English;
 - 5.5.1.2 be made in writing (including electronic form);
 - 5.5.1.3 be carried out between the authorised persons as specified in Clause 5.5.6 or additional specific contact persons as laid down in the corresponding Assignment Order;
 - 5.5.1.4 bear the Agreement's and Assignment Order's number.
- 5.5.2 During the implementation of the Assignment Order, the communication via e-mail shall be executed between contact persons indicated in the corresponding Assignment Order. Additionally, all copies of those e-mail messages shall be sent to the involved Parties' e-mail addresses specified in the Agreement.
- 5.5.3 Communications by e-mail are deemed made when they are sent by the sending Party to the receiving Party, unless the sending Party receives a message of non-delivery.
- 5.5.4 Assignment Orders, notices, declarations and invoices shall be deemed received:
- 5.5.4.1 if delivered by hand, on the first (1) Business Day following the delivery day;
 - 5.5.4.2 if sent by post, on the fifth (5) Business Day after the date of posting;

- 5.5.4.3 if sent by e-mail, the same Business Day if sent prior to 17:00 o'clock and the next Business Day if sent after 17:00 o'clock (Eastern European Time).
- 5.5.5 For the purposes of the performance of the Agreement, the Parties agree that information may be exchanged electronically over the internet.
- 5.5.6 For the purposes of this Agreement:
- 5.5.6.1 the authorised representative of the Principal for Agreement fulfilment issues and Assignment Order procedures (authorized including, but not limited, to conclude the Deed of Acceptance and to issue the Objection Notice) is [●], e-mail [CONFIDENTIAL], phone [CONFIDENTIAL]. Communication for the procedure of mini-competition and the procedure for direct award under **Section IV. Appointment of an Assignment** shall be directed through the Principals' dedicated e-mail [●];
 - 5.5.6.2 the authorised representative of the Latvian Beneficiary representative for Agreement fulfilment issues is [●], e-mail: [CONFIDENTIAL], phone: [CONFIDENTIAL]
 - 5.5.6.3 the authorised representative of the Estonian Beneficiary representative for Agreement fulfilment issues is [●], e-mail [CONFIDENTIAL], phone [CONFIDENTIAL]
 - 5.5.6.4 the authorised representative of the Contractor for Agreement fulfilment issues and Assignment Order procedures (authorized including, but not limited, to conclude the Assignment Order (and any Variations thereto) and issue Deed of Acceptance) is [●], e-mail [CONFIDENTIAL], phone [CONFIDENTIAL].
- 5.6 *Variations.* Notwithstanding any provisions in this Agreement to the contrary, whenever the Contractor or the Principal reasonably consider that a variation to the Agreement or the Assignment Order (the "*Variations*") is necessary, the Contractor and the Principal shall negotiate in good faith on the terms of the intended Variations. For the avoidance of doubt, no Variation shall be effective unless and until concluded in writing by the Principal and the Contractor, if not agreed otherwise herein.
- 5.7 *Limitations to the Variations.* In case of Variations due to supply of additional Services, or due to reasons which the Principal or the Beneficiaries' representatives could not foresee in advance, the Total Value may not change by more than fifty percent (50%).
- 5.8 *De minimis.* Notwithstanding anything to the contrary contained in the Agreement, the Contractor and the Principal may agree on the supply of additional Services not previously foreseen under the Agreement if they do not change the nature of the Agreement (type and purpose specified herein) and if the total value of such additional Services does not concurrently reach the thresholds specified by the Cabinet of Ministers of the Republic of Latvia, starting from which the agreement notice must be published in the Official Journal of the European Union and ten percent (10%) of the Total Value.
- 5.9 *Variation Fee.* Fee for additional services as a result of Variations, if any, shall be determined by applying the rates under *Annex H: Contractor's Proposal*. Furthermore, such Fee shall be consistent with the market practice and proportionate to the Fee for Assignments with similar scope under the Agreement, if any. Variations not resulting in additional services or works shall not result in additional fees or compensation of Costs.

Section VI. Responsibilities of Principal and the Beneficiaries' representatives

- 6.1 *Supply of Information.* Unless otherwise provided under this Agreement, the Principal and the Beneficiaries' representatives shall, in a timely manner, provide to the Contractor any information, including information regarding requirements and parameters of the Railway and the Project, as may reasonably be requested by the Contractor for the purposes of the Services and Assignments, provided that the Principal and the Beneficiaries' representatives are in possession of such information.
- 6.2 *Review of Documentation.* The Principal and the Beneficiaries' representatives, if requested by the Principal, shall examine Documentation as may be submitted by the Contractor for review by the Principal and the Beneficiaries' representatives toward partial completion of a particular Assignment and, upon request of the Contractor, shall render decisions and opinions pertaining thereto.

- 6.3 *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 provision of Services and a particular Assignment and within a reasonable time.
- 6.4 *Accounting and Auditing Services.* The Principal shall furnish accounting and auditing services as may be necessary for the provision of Services as the Principal may require to ascertain how and/or for what purposes the Contractor has used the funds paid under the terms of this Agreement.
- 6.5 *Action Upon Becoming Aware of Defects.* In the event the Principal or the respective Beneficiary representative observes or otherwise becomes aware of any error, fault, omission, or defect in the Services or Assignment or non-conformance of any action forming part of the Services or Assignment with the Deliverables, Documentation or information, the Principal (on behalf of itself or the respective Beneficiary representative) 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 Assignment or non-conformance of any action forming part of the Services or Assignment.

Section VII. Responsibilities of Contractor

- 7.1 *Standard of Performance.* The Contractor shall perform the Services impartially and as expeditiously as is consistent with professional skill and care, orderly progress of the Services and each Assignment, and in accordance with the conditions set forth in the Agreement and *Annex B: Scope of Services*.
- 7.2 *Deliverable Requirements and Language.* The Contractor may be required by the Principal or the respective Beneficiaries' representatives to provide copies of prints or electronic editions of the Deliverables, as per the specific conditions of each Assignment Order. Where indicated in the respective Assignment Order by the Principal the Contractor shall procure that each Deliverable which is subject to further submission to the national security agencies or any other state authorities in Latvia and/or Estonia upon delivery of respective Assignment under Clause 10.86 shall be submitted to the Principal both in the English language and the Latvian or Estonian language, as applicable, and such obligation to provide the bilingual Deliverable shall not result in additional fees or compensation of Costs to the Principal or the Beneficiary representative.
- 7.3 *Obligation to Act in Accordance with Principal's Comments.* In performing the Services and Assignments, the Contractor shall have due regard to any comments made by the Principal or the respective Beneficiary representative in connection with any review of the Documentation or information furnished by the Principal or the respective Beneficiary representative to extent consistent with the impartial nature of the Services and shall provide reasons to the Principal where it does not take into account any such comments.
- 7.4 *Cooperation with stakeholders.* Contractor undertakes to cooperate with all the relevant stakeholders, including the relevant stakeholders mentioned under *Annex B: Scope of Services*, of the Principal or the Beneficiaries' representatives that are directly or indirectly involved in the Project as will be necessary for the sufficient provision of the Services and the fulfilment of the objectives set out in the Agreement.
- 7.5 *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 independent shadow operator services of a similar size, nature, type and complexity;
 - (b) ensure that its personnel are properly qualified and competent in accordance with the relevant Standards;
 - (c) ensure that specific documents as per respective Services, if any, and other documents and information required to be prepared or submitted by the Contractor under this Agreement conform to Good Industry Practice generally acceptable at the time of submission of such specific documents as per respective Services, documents and information;
 - (d) at all times during the term of the Services, ascertain and comply with all Applicable Laws and Good Industry Practice of the country of registration of the Party to which the particular Services are provided;
 - (e) comply, where applicable, with any reasonable requirements of the Principal not otherwise provided for in this Agreement;
 - (f) ensure that specific documents as per respective Services, if any, and all documents and information is furnished in accordance with Good Industry Practice, the Applicable Laws, and using conventional industry quality control methods; and

- (g) notify the Principal of any Defects in accordance with Clause 10.7 of this Agreement as soon as such Defects are identified by the Contractor.
- 7.6 *Maintenance of Records.* During the term of the Services and for a period of ten (10) years from expiration or termination of this Agreement for any reason whatsoever, the Contractor shall keep and maintain clear, adequate and accurate records and Documentation evidencing, to the reasonable satisfaction of the Principal, that the Services have been and are being carried out in accordance with the Standards. In case of on-going audits, appeals, litigation or pursuit of claims concerning the grant, including in the case of correction of systemic or recurrent errors, irregularities, fraud or breach of obligations, the records shall be kept and maintained longer.
- 7.7 *Access to Documentation.* At all times during the term of the Services, the Principal shall have access to all Documentation. This access shall be continuing and survive the termination of this Agreement for either cause or convenience. The Documentation shall be kept to be accessed in a generally recognized format for a period of ten (10) years from the date of expiration or termination of this Agreement. All records forming part of the Documentation shall be available to the Principal' auditor, or expert appointed by the Principal during the period of time specified in accordance with this Clause 7.7.
- 7.8 *Right to Sub-Contractors and Staff.*
- 7.8.1 In carrying out the Services, the Contractor may only rely on the services of those Approved Sub-Contractors and Staff listed in *Annex C: 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. Contractor shall specify the name, contact details and legal representative(s) of each Approved Sub-Contractor as of the Effective Date in *Annex C: List of approved Sub-Contractors and Staff*. The Contractor shall have an obligation to notify the Principal in writing of any changes to Approved Sub-Contractor or Approved Staff data specified in *Annex C: 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.
- 7.8.2 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 C: List of approved Sub-Contractors and Staff* and involvement of additional Sub-Contractors or Staff members, or key personnel.
- 7.8.3 Review and evaluation of the replacement of Approved Sub-Contractors or Approved Staff shall be carried out, and the consent or refusal to give consent shall be rendered by the Principal in accordance with Article 62 of the Public Procurement Law of the Republic of Latvia.
- 7.9 *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.
- 7.9.1 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.
- 7.9.2 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 7.9 of this Agreement, the Principal has the right to organize an additional security compliance check.
- 7.9.3 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.
- 7.9.4 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.

- 7.9.5 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.
- 7.9.6 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 Clause 7.9.4 of the Agreement.
- 7.9.7 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 Principal together with the Contractor shall try to agree on possible conditions and procedures in which this natural person may perform tasks related to the performance of the Agreement.
- 7.9.8 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 7.9 of this Agreement, otherwise creates or may create security risks for the Principal, incl. risks to the Principal's information systems, information or data, as well as risks to the Principal's reputation or operations.
- 7.9.9 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 7.9 of the Agreement;
 - d) provide the Principal with all the necessary information and support related to the necessity to replace a natural person.
- 7.9.10 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 7.9 of this Agreement, as well as notifies the Principal in writing of the replacement of such natural person involved in the performance of the Agreement.
- 7.9.11 If the Contractor violates the conditions referred to in Clause 7.9 of this Agreement and/or disregard Principal's instructions regarding security clearance requirements then it constitutes a material breach of the Agreement and as grounds for the Principal to immediately terminate the Agreement according to Section XII.
- 7.10 *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.
- 7.11 *No Conflicting Activity an Conflict of Interest.* Except with the Principals' 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 provision of 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.

- 7.12 *Attendance of Meetings.* To the extent necessary to ensure smooth and efficient provision of the Services, the Contractor shall, in accordance with the *Annex B: Scope of Services* and/or at the Principal's request, hold and/or attend meetings with the Beneficiaries' representatives, relevant stakeholders or any other persons. Upon the Principal's request the Contractor shall arrange Assignment's communication's planning meetings as described in the *Annex B: Scope of Services* and/or the particular Assignment Order, at which appropriate personnel of the Contractor, Principal and the respective Beneficiary representative shall be present. If requested by the Principal, the Contractor shall record meetings (also online meetings) between Parties and prepare meeting reports within five (5) Business Days after each meeting. All meeting reports shall be confirmed by the Principal.
- 7.13 *Compliance with Laws.* The Contractor shall review the Applicable Laws that is applicable to the provision of Services in the Republic of Latvia and the Republic of Estonia. In carrying out any activities forming part of the Services, the Contractor shall, at all times, ensure compliance with requirements imposed by supra-national and/or governmental authorities having jurisdiction over the Project.
- 7.14 *Information Furnished by Principal and Beneficiaries' representatives.* The Contractor shall be entitled to rely on the accuracy and completeness of information furnished by the Principal and the Beneficiaries' representatives. The Contractor shall provide prompt written notice to the Principal and the respective Beneficiary representative if the Contractor becomes aware of any errors, omissions, or inconsistencies in the information provided by the Principal and the Beneficiary representative or in the preparation or provision of Services, Assignments or information.
- 7.15 *Certain Negative Covenants.* In performing the Services, the Contractor undertakes not to procure goods or services of any kind from any person meeting any of the following criteria:
- (a) the Person who is a member of the Management Board or Supervisory Board of an Approved Sub-Contractor or procurator of an Approved Sub-Contractor, or is authorised to represent or act on behalf of an Approved Sub-Contractor with respect to any activity related to any subsidiary company of such Approved Sub-Contractor, and such Person has been accused of commitment of any of the following criminal offences pursuant to an order issued by a public prosecutor or was found to be guilty of commitment of any of the following criminal offences in accordance with a court judgment that has entered into legal force, is non-disputable and non-appealable:
 - (i) formation, organisation, leading or involvement in the criminal organisation or another criminal formation, or participation in the criminal acts of such organisation or formation;
 - (ii) accepting a bribe, giving of a bribe, misappropriation of a bribe, intermediation toward giving or taking of a bribe, acceptance of a prohibited benefit or commercial bribing;
 - (iii) fraud, misappropriation of funds or money laundering;
 - (iv) tax evasion or evasion of payments equivalent to tax;
 - (v) terrorism, financing of terrorism, instigation of acts of terrorism, terrorist threats or recruitment and training of a person with the aim of committing acts of terrorism;
 - (vi) human trafficking;
 - (b) the Person has, by decision of a competent authority or judgment of a court which has entered into legal force and is non-disputable and non-appealable, been found guilty of violation of labour law in any of the following manners:
 - (i) employment of one or more citizens or nationals of countries who are not citizens or nationals of a Member State of the European Union and are residing in the territory of a Member State of the European Union unlawfully;
 - (ii) employment of one or more persons without having entered into written employment agreement with such persons, or without having submitted an employee declaration with respect to such persons within a period of time stipulated in accordance with applicable laws and regulations applicable to persons that enter into salaried employment;

- (c) the Person who, by decision of a competent authority or in accordance with judgment of a competent court which has entered into legal force, is non-disputable and non-appealable, has been held guilty of violation of applicable rules of competition law manifested as a vertical agreement aimed at restricting the ability of one or more purchasers to determine the resale price, or a horizontal cartel agreement, with the exception of instances where the relevant authority, upon having established the fact of violation of applicable rules of competition law, has discharged the candidate or participant in a tender offer from imposition of a fine or has reduced the amount of fine as a part of co-operation leniency programme;
- (d) the Person who has insolvency proceedings initiated against it (except in the circumstances where a bailout or a similar set of measures are applied within the insolvency proceedings and are aimed at preventing the bankruptcy and restoring the debtor back to solvency, in which case the Contractor shall evaluate the possibility of participation by such Person in performing the Services), economic activity of the Person has been suspended or discontinued, bankruptcy proceedings have been initiated against the Person or the Person is subject to a liquidation;
- (e) the Person has unpaid tax indebtedness in the country where the procurement is organised or in the country where the Person is registered or permanently residing as a tax payer, including the indebtedness with respect to State social insurance contributions, in the total amount exceeding EUR 150 in each individual country; in such case, the Contractor can, within its sole discretion, prompt the Approved Sub-Contractor to pay or discharge all outstanding tax indebtedness within ten (10) Business Days and, upon such payment or discharge, allow the Person to continue performance of the Services;
- (f) the Person is an entity registered offshore;
- (g) International or national sanctions or substantial sanctions by the United Nations, the European Union or the North Atlantic Treaty Organization Member State affecting the interests of the financial and capital market has been imposed to the Person and such sanctions can affect the execution of the Contract; and
- (h) any of the above-mentioned criteria shall apply to all members of a group of persons if the Person is a group of persons.

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

- (a) any report, brochure, document or information related to the Services provided by the Contractor hereunder which the Contractor makes or intends to make publicly available shall include each of the following:
 - (i) a funding statement which indicates that the Services are financed from CEF funds substantially in the following form: "Co-financed by the Connecting Europe Facility of the European Union";
 - (ii) with respect to printed materials, a disclaimer releasing the European Union from liability with respect to any contents of any distributed materials substantially in the form as follows: "The sole responsibility of this publication lies with the author. The European Union is not responsible for any use that may be made of the information contained therein". The disclaimer in all official languages of the European Union can be viewed on the website <https://ec.europa.eu/inea/connecting-europe-facility/cef-energy/beneficiaries-info-point/publicity-guidelines-logos>; and
 - (iii) the flag of the Council of Europe and the European Union.
- (b) the requirements set forth in Clauses 7.16(a)(i) and 7.16(a)(iii) of this Agreement can be complied with by means of utilizing the following logo:



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

in the event the 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

- (c) 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 Effective Date, the visibility requirements are available for review on the webpage <https://ec.europa.eu/inea/connecting-europe-facility/cef-energy/beneficiaries-info-point/publicity-guidelines-logos>.

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

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

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

Section VIII. Representations and Warranties

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

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

8.2 *Certain Representations and Warranties by Contractor.* The Contractor represents and warrants to the Principal and the Beneficiaries' representatives, as of the Effective Date, as follows:

- (a) it has all requisite qualification, skills and competence to perform the Services on the terms and conditions of this Agreement which are no less favourable than the terms and conditions of service identified by the 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 has all requisite ability to ensure the highest quality of the Services;
- (c) it will assign competent and duly qualified personnel to carry out the Services and particular Assignments set out in this Agreement according to the highest professional Standard and Good Industry Practice;
- (d) it is not deemed to be a person associated with the Principal or the Beneficiaries' representatives for the purposes of Applicable Law;
- (e) DB E&C has been registered as a VAT payer in Latvia;
- (f) 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/2021/06/APPENDIX-6_SUPPLIERS-DECLARATION_June_2021.pdf) and will continue to be compliant with all such requirements during the term of this Agreement;

- (g) in case (i) the Contractor and the Principal or the respective Beneficiary representative to which the Services are provided are residing in different jurisdictions, and (ii) the Services under this Agreement will not be provided by the Contractor through its permanent establishment or fixed base maintained in the country where the respective Beneficiary Representative or the Principal are established – the Contractor agrees to submit to the Principal or the respective Beneficiary representative four (4) copies of *“Residence Certificate–Application for Reduction of or Exemption from [Latvian/Estonian] anticipatory taxes withheld at source from payments (management and consultancy fees, leasing fees and certain other types of income), paid to residents of the Federal Republic of Germany,“(the “Residence Certificate”)* confirmed by Competent Authority of Federal Republic of Germany; and either the Latvian State Revenue Service or Estonian Tax and Customs Board as the case may be. The Residence Certificate shall be submitted to the Principal or the respective Beneficiary representative, as applicable, prior the Principal or the respective Beneficiary representative will due to make a payment of the Fee or other payments to the Contractor. Otherwise, the Principal or the respective Beneficiary representative will withhold withholding tax at the applicable rate of from the Fee and payments made to the Contractor. The Principal or the respective Beneficiary representative, as the case may be, is entitled to make any deductions from the payments due to the Contractor if the Contractor doesn't comply with this provision where applicable; and
- (h) 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 these personnel comply with the Applicable Law, including the Public Procurement Law of the Republic of Latvia, and this Agreement.

Section IX. Fee and Payment

- 9.1 *Fee.* In consideration of the provision of the Services, the Principal, the Estonian Beneficiary representative or the Latvian Beneficiary representative, to which the particular Services are being provided per the Assignment Order, undertakes to ensure the payment by the respective Beneficiary to the Contractor a Fee in the total amount set forth by the Assignment Order (the “Fee”). The Fee for the Assignments shall be set according to *Annex H: Contractor's Proposal*. The Fee shall include all Costs and expenses incurred by the Contractor and Approved Sub-Contractors toward performing the particular Assignment. The Fee excludes value added tax that will be charged at the rate applicable by Applicable Law at the time of invoicing.
- 9.2 *Invoicing.* According to the particular Assignment Order and following each Completion Date, provided that the Principal has accepted/approved or suspended, as the case may be, of the particular Deliverable of the Assignment which the invoice related to, the Contractor shall deliver to the Principal a draft invoice specifying the amount of the Fee payable to the e-mail: [Confidential]. Upon receipt of the draft invoice, the Principal shall verify its contents and, if the invoice payment is to be ensured by the Beneficiary representative, submit it to the respective Beneficiary representative for verification, which shall be provided within five (5) Business Days. Provided that the draft invoice is confirmed, the Contractor following Clause 9.7 shall deliver to the Principal or the Beneficiary representative, as applicable, an invoice specifying the amount of the Fee payable. In the event, the Principal or respective Beneficiary representative objects to payment of any amount claimed by the Contractor in the invoice, notice in the form chosen by the Principal or respective Beneficiary representative to this effect shall be given by the Principal or respective Beneficiary representative to the Contractor not later than on the due date for the respective payment. This notice of objection shall state the amount to be withheld, the grounds for withholding the payment and the basis on which that amount is calculated. Unless such notice of objection is made, the amount to be paid is that stated in the invoice which shall become due and payable by this Agreement. For the avoidance of any doubt, the Principal or respective Beneficiary shall not be required to pay any amount under this Agreement for any part of the Services that have not been accepted per Section X of this Agreement.
- 9.3 *Payment.* Subject to the provisions of Clause 9.2, the Principal and the Beneficiaries shall have the right 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 or the respective Beneficiary representative haven't received residence certificate as stipulated in this Agreement, etc.). If the Principal or the Beneficiary representative 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 or the respective Beneficiary representative notifies the Contractor no later than on the due date of the respective payment stating the amount, the grounds and the basis for the use of the right to set-off, retention, counterclaim, abatement or other deduction or other right. Invoices shall be paid within thirty (30) days after the date on which the

Principal or the respective Beneficiary representative received a properly prepared invoice per Clause 9.7 on the accepted Deliverable and signed Assignment Order.

9.4 *Costs and Commissions.* Each Party shall bear its own costs, fees, commissions and expenses incurred in connection with the transfer of any funds under this Agreement to the other Party.

9.5 *Travel expenses.* Travel and subsistence expenses shall only be paid where the relevant staff have been instructed by the Principal to work or attend meetings away from his/her place of residence or Tenderer's office (whatever is applicable) for more than 200 km one way and shall be paid net without any mark up. Where traveling is included, the Expert shall ensure average level economical travel and accommodation expenses. Public transport should be used whenever practical for business journeys. The Principal shall reimburse incurred travel expenses and accommodation allowance and daily allowance (only when the implementation of the Assignment requires overnight stay) for every Expert included in a particular Assignment order. The Principal must approve overseas accommodation in advance. The following travel expenses are subject to reimbursement:

- 9.5.1 Bus travel and/or second-class rail travel - for a distance of less than 400 km one way;
- 9.5.2 Economy class air travel - for a distance of more than 400 km one way;
- 9.5.3 A travel expense (a return ticket) shall not exceed 500 EUR. Travel expense exceeding 500 EUR on return ticket will be reimbursed at 500 EUR max.
- 9.5.4 Accommodation allowance limit is 120 EUR/per day.
- 9.5.5 Daily allowance (covers expenditures for meals, local transport etc.) limit is 40 EUR/per day.

The Principal does not reimburse other expenditures or that exceed the limits set above. Valid VAT receipts or other documentation must be provided wherever possible in support of all items of expense claimed. Completed expenses forms shall all be signed by the project manager (supplier) and passed to the Principal, who will verify the expenses and if accepted, will approve for payment. In situations where errors have been identified, the Principal will return the documents unauthorised and advise the Supplier where errors have been identified. A copy of countersigned Expenses Forms shall be attached to the Supplier's invoice relating to the time in which the expenses were incurred. Expenses must be shown as a separate line on the invoice. All other costs related to delivery of particular Assignment order shall be included in experts' daily rates.

9.6 *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 or particular Assignment, 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 accordance with Applicable Law. 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.

9.7 *Invoice.* The Contractor's invoices shall contain the following Contractor's details and details about the Agreement:

Contractor	<p>for Latvia:</p> <p>DB Engineering & Consulting GmbH Pastavīga parstāvniecība Latvija</p> <p>on behalf of an Unincorporated Joint Venture consisting of DB Engineering & Consulting GmbH; RENFE-Operadora Entidad Pública Empresarial Avda, Ingeniería y Economía del Transporte S.M.E M.P. S.A.</p> <p>for Estonia DB Engineering & Consulting GmbH EUREF-Campus 14, Torgauer Strasse 12-15, 10829, Berlin, Germany</p> <p>on behalf of an Unincorporated Joint Venture consisting of DB Engineering & Consulting GmbH;</p>
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	RENFE-Operadora Entidad Pública Empresarial Avda, Ingeniería y Economía del Transporte S.M.E M.P. S.A. (for Estonia from registration in Germany or still to be registered branch in Estonia)		
Registration No	90012422987 (Latvia) 56655 (for Estonia from registration in Germany or still to be registered branch in Estonia)		
VAT payer's No or indication that the Contractor is not a VAT payer	LV90012422987 (Latvia) DE 114 139 523 (for Estonia from registration in Germany or still to be registered branch in Estonia)		
Legal address, city, Zip code, country	Audeju street 15-6, Riga, LV-1050, Latvia (Latvia) EUREF-Campus 14, Torgauer Strasse 12-15, 10829, Berlin, Germany (for Estonia from registration in Germany or still to be registered branch in Estonia)		
Legal name of Bank	[Confidential]		
Bank SWIFT Code	[Confidential]		
Bank Account No IBAN	[Confidential]		
The Principal's or the Beneficiaries VAT No	For the Principal: LV40103845025; for the Beneficiary in Estonia EE101954107; for the Beneficiary in Latvia LV40103836785		
Subject:	For provided services according to the Framework Agreement No. 1.19/LV-2022-37-1, Assignment Order No. [●] [OPTIONAL]		
Specific information:	For the Principal: CEF INEA/CEF/TRAN/M2019/2098304 Contract Manager: [●]	For the Beneficiary in Estonia: CEF INEA/CEF/TRAN/M2019/2098304 Contract Manager: [●]	For the Beneficiary in Latvia: CEF INEA/CEF/TRAN/M2019/2098304 Contract Manager: [●]

The Contractor shall send the invoice to the Principal electronically to the following e-mail address: [Confidential]; to the Latvian Beneficiary representative to the following e-mail address: [Confidential]. The invoices for the Estonian Beneficiary representative shall be submitted through the e-invoices system (in Estonian language: "e-arved").

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

- 9.8 *Indexation.* The Contractor is entitled to adjust the prices provided under Contractor's Proposal upon expiry of every two (2) years (i.e. first such indexation may take place after two (2) years have expired after the Effective Date) in proportion to the average increase of the services producer price index (SPPI) in the Eurozone, published by the Eurostat, during twenty-four (24) months prior to the date of the adjustment. For the avoidance of doubt, the adjusted rates can be applied only for the upcoming Assignments for which the Parties have not concluded Assignment Orders at the time of adjustment. Adjustment under Clause 9.8 shall be applicable if SPPI shall exceed two percent (2%).
- 9.9 *Notice of Indexation.* In case of Clause 9.8 the Contractor shall inform the Principal in writing with reasonable explanation and calculation of the adjustment. For avoidance of doubt, no adjustment to the rates provided under *Annex H: Contractor's Proposal* shall be effective unless and until the Principal receives and confirms the Contractor's notice of indexation.
- 9.10 *VAT payers status.* If so required by the Applicable Law, Contractor shall obtain VAT payers status and VAT No in the Republic of Estonia or Republic of Latvia.

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

- 10.1 *Commencement of Services.* The Contractor shall not commence provision of the Services until a particular Assignment Order has been confirmed by the Contractor and the Principal in accordance with the provisions of the Agreement. The Contractor shall perform the Services and each particular Assignment timely and with due diligence having due regard to any applicable Milestones and any other key dates for performance of the Services or particular Assignments set out in the Agreement, particular Assignment Orders and the applicable Annexes, as may be amended from time to time with the consent of the Principal or in accordance with this Agreement and Public Procurement Law of the Republic of Latvia.
- 10.2 *Performance security.* The Contractor within twenty-eight (28) days after signing the Agreement shall obtain (at the Contractor's cost) a Performance Security for the amount not less than [100 000] Eur (one hundred thousand) to secure the Contractor's proper performance of his obligations under the Agreement and applicable laws which shall comply with all the following requirements:
- 10.2.1 shall be a first-demand, unconditional and irrevocable guarantee covering all of Contractor's obligations and liabilities under the Agreement and applicable laws (including, but not limited to Contractor's obligation to pay contractual penalties set in the Agreement);
 - 10.2.2 Performance Security shall be an independent obligation and by no means considered as a surety (in Latvian: *galvojums*) under the applicable laws (i.e., Articles 1692 to 1715 of the Latvian Civil Law shall be explicitly excluded from the applicability of the Performance Security);
 - 10.2.3 no additional documents/information may be required by the issuer of the Performance Security for purposes of payment, the Principal shall not be obliged to justify its demand, and payment cannot be suspended or denied;
 - 10.2.4 the payment under Performance Security shall be made not later than within five (5) business days as of receipt of the demand; the issuer of the Performance Security shall have no rights to verify or evaluate the basis for demand made;
 - 10.2.5 Performance Security shall be issued by reputable regulated financial institution with good financial standing (i.e., with minimum Standard & Poor's, Fitch's, and Moody's rating of BB+ (or equivalent)) from the Country, or any other country from the European Union or the European Economic Area (or other jurisdiction to which the Principal gives a prior consent);
- 10.3 *Increase of Performance Security.* The Contractor shall increase the amount of performance security by additional EUR 100 000 (one hundred thousand euros) for increase of value of Services assigned by every EUR 1 000 000 (one million euros). For the sake of clarity, when the value of Services assigned to the Contractor reaches EUR 1 000 000 (one million euros), the amount of performance security shall be increased to at least EUR 200 000 (two hundred thousand euros), when value reaches EUR 2 000 000 (two million euros), performance security shall be increased to at least EUR 300 000 (three hundred thousand euros) and etc. Such increase of the Performance Security shall be submitted to the Principal not later than within fourteen (14) days after commencing any Services under the respective Assignment Order.
- 10.4 *Delay of delivery of Performance Security.* If the Contractor is in delay for providing the documents indicated in sub-Clauses 10.2 and 10.3 of the Agreement the Principal shall be entitled to request the Contractor to pay a contractual penalty in the amount of EUR 100 (one hundred euro) per each day of delay starting from the first delayed day, however not exceeding ten percent (10%) of the total value under Clause 2.1. Failure to provide this document for more than ninety (90) days shall be considered as a material breach of the Agreement. Provisions of this Clause to not prevent the Principal from ordering Services from the Contractor. The Principal on behalf of the Beneficiary representative shall be entitled to withhold any penalty amount from the invoices due to the Contractor, and in this respect the Principal may exercise this right with respect to any outstanding invoice or any subsequent invoices as the case may be.
- 10.5 *Validity of the Performance security.* Contractor shall ensure that the Performance Security remains valid and enforceable during whole duration of the Agreement and two (2) months after the completion of last of the Assignment Order issued. In case of a failure to prolong the Performance Security, the Principal is entitled to upon its own discretion to choose to suspend any payments under this Agreement or to use the Performance Security in full amount and keep the monies received as a security for fulfilment of the Contractor's obligations under the Agreement until the Contractor submits and the Principal accepts the increased or prolonged Performance Security.

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

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

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

10.7 *Defects.* During the provision of and until the final acceptance of each Assignment the Beneficiary representative shall notify the Principal of each Defect as soon as Defect is identified by the Beneficiary representative, the Principal shall notify the Contractor of each Defect as soon as Defect is identified by the Principal or the respective Beneficiary representative and the Contractor shall have an obligation to notify the Principal of each Defect as soon as Defect is identified by the Contractor. 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"). In the event of inability or failure by the Contractor to remedy the Defect within the Cure Period, the Principal shall be entitled, at the sole and exclusive discretion of the Principal, to do any of the following:

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

10.7.2 terminate the specific Assignment Order or the Agreement according to Section XII in addition to executing Clause 3.7.

For the avoidance of any doubt, the application of the Cure Period under this Clause 10.7 shall be without prejudice to and shall not relieve the Contractor from the obligation to pay any contractual penalty in accordance with the provisions of Clause 13.2 or to pay Damages in accordance with the provisions of Clause 13.3 of this Agreement upon the Principals request.

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

10.9 *Acceptance or rejection of the Deed of Acceptance.* Upon the reception of the Deed of Acceptance from the Contractor in accordance with Clause 10.8 the Principal shall review not later than within 5 (five) business days the submitted Deed of Acceptance and the specific Deliverable and any supporting Documentation and:

10.9.1 in the event the Principal rejects the submitted Deed of Acceptance, it shall give notice to the Contractor setting out in reasonable detail any Defect or reason for the objection (the "Objection Notice") within reasonable time or as specified in the specific Assignment Order, if any, following receipt of the Deed of Acceptance thus initiating the Cure Period and Defects remedy procedure as specified in Clause 10.7; or

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

10.10 *Completion of Assignment or part of an Assignment following Receipt of Objection Notice.* After the Defects specified by the Principal in the Objection Notice have been remedied the Contractor shall issue to the Principal a second signed Deed of Acceptance as per the procedure specified in Clause 10.8 and the Principal shall perform the review as generally provided for in Clause 10.9 of this Agreement and:

10.10.1 in the event no further reasons for objection to the second Deed of Acceptance exist, then the Defects remedy procedure is concluded and the provisions of Clause 10.9.2 are to be applied; or

- 10.10.2 in the event the Principal rejects the submitted second Deed of Acceptance it shall give a second Objection Notice, thus simultaneously continuing the Defects remedy procedure with the possibility for the Principal to execute the Clauses 10.7.1 – 10.7.2 at its own discretion.
- 10.11 *Objection Notice and Contractual Penalty.* For the avoidance of any doubt, the giving by the Principal of any Objection Notice under Clause 10.9 or second Objection Notice under the Clause 10.10 shall be without prejudice to and shall not relieve the Contractor from the obligation to pay any contractual penalty in accordance with the provisions of Clause 13.2 or to pay Damages in accordance with the provisions Clause 13.3 of this Agreement upon the Principals request.
- 10.12 *Hidden Defects.* For the avoidance of doubt the Parties agree that in addition to the regular Defects remedy procedure as specified in this Section, in the event the Principal or the respective Beneficiary representative becomes aware of any previously unnoticed error, fault, omission, or defect in an already completed Assignment after the Completion Date the Principal shall give prompt notice thereof to the Contractor. The Contractor shall have the obligation to correct such error, fault, omission, or defect in the Assignment or non-conformance of any action forming part of the Assignment, free of any additional charge or payment, in no more than seven (7) calendar days after the reception of the respective notice from the Principal.

Section XI. Intellectual Property Rights

- 11.1 *Proprietary Rights.* All Documentation forming part of the Deliverables developed under this Agreement is and shall become the property of the Principal and/or the respective Beneficiary representative, as applicable, at the moment of creation regardless of whether the Assignment or Deliverable is produced or finally accepted. It is acknowledged and agreed by the Parties that the Principal or respective Beneficiary representative 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.
- 11.2 *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.
- 11.3 *Transfer of Ownership to Principal or the Beneficiary representative.* The Principal and/or the respective Beneficiary representative, as applicable according to Clause 11.1, shall acquire legal title to and ownership in the Intellectual Property in all Documentation deliverable to the Principal and/or the respective Beneficiary representative under this Agreement and separate Assignment Orders as of the moment of delivery by the Contractor to the Principal of the Deed of Acceptance, together with the Deliverable and Documentation and information forming part of the Deliverable, in accordance with Clause 10.8 of this Agreement; provided, however, that the Principal and/or respective Beneficiary representative has paid the Fee or other consideration payable under the terms of this Agreement with respect to the relevant Assignment or Deliverable. For the avoidance of any doubt, such title and ownership shall confer upon the Principal and/or the respective Beneficiary representative, 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.
- 11.4 *No Additional Royalty.* It is acknowledged and agreed by the Parties that consideration for the transfer of ownership in the Intellectual Property shall be forming part of the Fee and no additional royalty, fee or other consideration of any kind shall be payable to the Contractor or to any third party in consideration of the transfer of ownership in the Intellectual Property in any Documentation.
- 11.5 *No Infringement.* The Contractor represents and warrants to the Principal and the Beneficiaries' representatives that no Documentation and information deliverable to the Principal under the terms of this Agreement and separate Assignment Orders which may be further delivered to the Beneficiaries'

representatives where applicable will infringe any existing Intellectual Property of any third party. In the event, any of the representations or warranties contained in this Section 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 against the Principal and/or respective Beneficiary representative 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 or the respective Beneficiary representative shall notify the Contractor, without undue delay, of any third-party claim alleging infringement of any Intellectual Property in any Documentation;
- (b) the Principal or the respective Beneficiary representative 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 or respective Beneficiary representative shall render the Contractor all reasonable assistance toward such proceeding or settlement, at the cost and expense of the Contractor.

- 11.6 *Infringement Proceedings.* In the event the Principal or the respective Beneficiary representative 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 or the respective Beneficiary representative fully informed of all aspects relevant to the legal proceedings and the Principal or the respective Beneficiary representative 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 a reasonable time but, in any event, within twenty (20) days of having been notified of such claims, the Principal or the respective Beneficiary representative shall have the right to assume the 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.
- 11.7 *Continued Use.* In the event a court of competent jurisdiction resolves in a binding judgment that the Documentation and information, or any part thereof, infringe Intellectual Property of any third party, the Contractor shall, at its own cost and expense, procure for the Principal or the respective Beneficiary representative the right of continued use of the Documentation and information, or part thereof infringing Intellectual Property of a third party.
- 11.8 *License in Intellectual Property of the Contractor.* The Contractor hereby grants the Principal and the respective Beneficiary representative 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 or the Beneficiaries' representatives and other Railway/Project stakeholders for the purposes of the Railway and/or the Project. It is agreed and acknowledged by the Parties that the license fee for the grant of license in accordance with this Clause 11.8 forms part of the Fee and such license shall continue to be valid irrespective of expiration of this Agreement following completion of the Assignment or termination of this Agreement for any reason.
- 11.9 *Indemnification by the Contractor.* The Contractor shall defend and indemnify the Principal and/or the Beneficiaries' representatives, as applicable, from and against any and all Damages arising from the use by the Principal or the Beneficiaries' representatives of any Intellectual Property of the Contractor, to the extent use is within the scope of the license granted in accordance with Clause 11.8.

Section XII. Termination and suspension

- 12.1 *Right to suspend.* The Principal reserves the right to suspend all or part of the Services with immediate effect due to unforeseen or third party circumstances, preventing to provide necessary input data necessary to fulfil the Service, or other objective and justified reasons at the Principals' sole discretion by giving the Parties a written notice at least five (5) days in prior. The suspension postpones the Services provision deadline attributable to the particular Services, thus extending the Agreement term, the respective Assignment Orders and any affected Milestones proportionally to the suspended period. The Contractor shall be paid for Services properly performed in accordance with the Agreement up to date of suspension of the Services or part thereof, as the case may be. For the sake of clarity, the Principal is entitled to suspend the Services under separate Assignment Order without the obligation to suspend all of them if it is not necessary at the Principals' discretion. The suspension does not release Contractor from the obligation to provide and maintain valid Professional risk indemnity insurance and Performance security in compliance with the Agreement. During

the period of suspension, the Contractor shall not perform the suspended Services, but shall take efforts, so far as is reasonably practicable, to mitigate the effects of the suspension of the Services.

- 12.2 *Suspension notice.* The suspension notice shall contain anticipated duration of the suspension, the scope of Services subject to suspension and reasonable justification for the suspension of the Services. If the Services are being suspended in part, the Principal within the notice shall specify to which Assignment Orders and/or Deliverables the suspension shall be applied.
- 12.3 *Resuming of the provision of Services.* Where the Services are suspended, Contractor shall resume the provision of the respective Services as soon as reasonably practicable based on the Principal's sole decision to revoke suspension or after the expiry of the suspension period indicated by the Principal, whichever occurs earlier. In all cases, the Contractor shall comply with the information indicated in the Principal's suspension and suspension release notices, as the case may be.
- 12.4 *Termination for Material Breach or Bankruptcy.* Subject to the provisions of Clause 12.5 the Principal and the Contractor shall be entitled to terminate this Agreement or a particular Assignment Order, upon giving a written notice of termination to the other Parties in the event of material breach by the other Party of any of its obligations under this Agreement. The written notice of termination shall contain an itemized description of the breach. For the purposes of this Section an event of material breach shall include, but not be limited to, any of the following:
- 12.4.1 commitment by a Party of any persistent or material breach of this Agreement (which shall include failure to pay an amount of at least EUR 20,000 due to the other Party or perform any part of the Assignment or an Assignment valued at least EUR 20,000);
- 12.4.2 failure by the Contractor to duly address and remedy the Defects in the Cure Period in accordance with Clauses 10.7;
- 12.4.3 failure by any Deliverable to conform to any of the material requirements to such Deliverable contained in the Agreement or particular Assignment Order, provided that such failure is not capable of being remedied upon receipt of the Objection Notice;
- 12.4.4 any of the representations or warranties given by either Party under Section VIII proving to be untrue or breach of any undertakings by the Contractor under Section VII.
- 12.5 *Corrective Period.* In the event of a material breach by either Party of its obligations under this Agreement, the non-breaching Party shall allow the breaching Party fourteen (14) days for corrective action or submission of a corrective action plan (the "Corrective Period"). The Corrective Period shall be counted from the date of receipt by the breaching Party of a written notice of breach. Should no satisfactory corrective action be taken, or acceptable corrective action plan provided by the breaching Party, the non-breaching Party shall have the right to terminate the Agreement or the particular Assignment Order. It is acknowledged and agreed by the Parties that the provisions of this Clause 12.5 shall not apply with respect to any of the events enumerated in accordance with Clause 12.9. In addition and for the avoidance of any doubt, the application of the Corrective Period under this Clause 12.5 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 13.2 or to pay Damages incurred by the other Party in accordance with the provisions of Clause 13.3 upon the Principal's request.

To clarify the Corrective Period is not applied where the breach of the Agreement is related to Defects and Acceptance procedures as specified in Clauses 12.4.2 and 12.4.3 as in these cases the purpose of the Corrective Period is fulfilled by the Cure Period and its prior application.

- 12.6 *Right to Terminate Immediately.*
- 12.6.1 Notwithstanding anything to the contrary contained in this Agreement, the Principal and the Contractor may terminate this Agreement or the particular Assignment Order immediately upon giving the Parties a written notice of termination explaining, in reasonable detail, the reason for termination upon occurrence of any of the following:
- (a) breach by a Party of Clause 19.2;
 - (b) an event of Force Majeure has been continuing during more than sixty (60) days;
 - (c) a Party had passed a resolution for winding-up (other than in order to amalgamate or reconstruct);
 - (d) a Party is unable to pay its debts and has presented a petition for voluntary bankruptcy;

- (e) a Party had a bankruptcy order issued against it;
- (f) liquidation, insolvency or legal protection proceedings have been initiated with respect to a Party or a Party is declared insolvent;
- (g) the occurrence of any event analogous to the events enumerated under Clauses 12.6.1 (d) - (f) under the law of any jurisdiction to which a Party's assets and undertaking are subject;
- (h) the provision of all of the Services under the Agreement have been suspended by the Principal for more than six (6) consecutive months.

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

12.7.1 CEF Co-financing for further financing of the Services are not available to the Principal or either of the Beneficiary representative fully or partly;

12.7.2 breach by the Contractor any of the confidentiality undertakings contained in Section XIII or the undertakings under Clause 7.8 and Clause 7.9;

In case of Clause 12.7.1 and 12.7.2, the Principal or the respective Beneficiary representative 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 or the respective Beneficiary representative is not obliged to pay contractual or any other penalty or Damages to the Contractor;

12.7.3 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.

12.8 *Termination according to Public Procurement Law.* The Agreement can be immediately terminated by the Principal upon giving the other Parties a written notice of termination explaining, in reasonable detail, the reason for termination upon occurrence of any of the provisions mentioned in the Article 64 of the Public Procurement Law. In such a case, the Principal and the respective Beneficiaries' representatives 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 or the Beneficiaries' representatives are not obliged to pay contractual or any other penalty or Damages to the Contractor.

12.9 *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 7.6, 7.7, 10.7, 11.2, 11.3, 11.4, 11.5, 11.9, 13.1, 13.2, 13.3, 19.2, and Section XV, Section XVI, Section XVII and Section XVIII which shall survive the termination or expiry of this Agreement and continue in full force and effect along with any other Clauses of or Annexes hereof which are necessary to give effect to the Clauses specifically identified in this Clause 12.9 (b).

12.10 *Principal's Obligation to Pay.* Except in the event of termination by the Principal occurring as a result of violation by the Contractor of Clause 19.2, or termination by the Principal according to Clause 12.7 or 12.8 in the event this Agreement or the specific Assignment Order is terminated for any reason prior to completion of an Assignment, the Principal or the respective Beneficiary representative, as applicable, 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, due to the application of international sanctions, breach by the Contractor, insolvency of the Contractor or a Force Majeure Event under Section XIV:
 - (i) an amount equal to the costs reasonably and properly incurred by the Contractor as a result of or in connection with such termination; and

- (ii) such additional amount as is required to put the Contractor in the same after-tax position (taking into account the amount of any relief, allowance, deduction, set-off or credit relating to tax available to the Contractor in respect of the payment received) as it would have been in if the payment had not been a taxable receipt in the hands of the Contractor.

- 12.11 *No Obligation to Pay Costs Incurred Prior to Acceptance.* Notwithstanding anything set forth in this Agreement to the contrary including, without limitation, under Clause 12.10, the Principal or the respective Beneficiary representative shall have no obligation to pay any of the Costs incurred by the Contractor with respect to any particular Assignment (or part of any particular Assignment) not deemed as having been accepted by the Principal in accordance with Clauses 10.8, 10.10.
- 12.12 *No Prejudice to Other Rights.* The right to terminate this Agreement or the specific Assignment Order shall be without prejudice to any other right of either Party which has accrued prior to or as a result of such termination or to any remedy available to either Party under the terms of this Agreement or in accordance with Applicable Law.
- 12.13 *Notification.* The Principal will promptly notify the other Beneficiaries' representatives if it becomes aware of any fact or condition that causes or constitutes a material breach of the Agreement or other grounds for termination of the Agreement under Section XII. In such case the Principal undertake to use all reasonable endeavours to align among the Beneficiaries' representatives the termination of the Agreement under Section XII. For the avoidance of doubt, this Clause shall in no manner affect or impair the rights of the Principal per Section XII.

Section XIII. Liability

- 13.1 *Liability of the Parties.* Contractor shall be liable to compensate Damages incurred by the Principal or the respective Beneficiary representative arising out of or in connection with this Agreement and pay contractual penalty set forth in accordance with Clause 13.2 if a breach of any of the obligations of the Contractor under this Agreement is established against the Contractor. The Principal and the Beneficiaries' representatives shall be liable to pay only the contractual penalty set forth in accordance with Clause 13.2 if a breach of payment obligations of the Principal or the respective Beneficiary representative under this Agreement is established against the Principal or the respective Beneficiary representative, as the case may be.
- 13.2 *Contractual Penalty.* In the event of failure by the Contractor to meet any Milestone and/or supply any Deliverable, the Contractor shall be liable to pay to the Principal or the respective Beneficiary representative a penalty of up to zero point one percent (0.1%) of the amount of the Fee payable under this Agreement with respect to the relevant Assignment for each day of delay starting from the first delayed day with meeting any of the Milestones and/or supplying any of the Deliverables set forth in accordance with the Agreement or particular Assignment Order provided, however, that the total amount of penalty payable by the Contractor under this Clause 13.2 for the relevant Assignment shall not exceed ten percent (10%) of the total amount of the Fee payable in consideration of such Assignment. In the event of failure by the Principal or the Beneficiary representative to pay any amount in accordance with Section IX, the Principal or the respective Beneficiary representative, as applicable, shall be liable to pay the Contractor a penalty of up to zero point one percent (0.1%) of the amount of the amount invoiced for each day of delay with meeting the payment obligation; provided, however, that the total amount of penalty payable by the Principal or the respective Beneficiary representative under this Clause 13.2 shall not exceed ten percent (10%) of the total amount remaining unpaid under the relevant invoice.

For the avoidance of doubt the contractual penalties shall be applied upon the sole discretion of the entitled Party under the Agreement considering the material consequences of the infringement. For avoidance of doubt the contractual fine as specified in Clause 3.7 of this Agreement is payable in addition to the contractual penalty specified in this Clause 13.2 if the conditions of Clause 3.8 and Clause 10.7.2 have occurred.

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

- 13.3 *Compensation for Damages.* Notwithstanding of and without prejudice to any contractual penalty payable in accordance with Clause 13.2 or contractual fine payable in accordance with Clause 3.7 and subject to the provisions of Clause 13.5, in the event it is established that either Party is liable to the other Party with respect to any breach of its respective obligations under this Agreement, the liable Party shall compensate the other Party for any Damages incurred as a result of such breach, subject to the following terms:

- (a) the amount of compensation shall be limited to the amount of reasonably foreseeable Damages suffered as a result of the breach(es), but not otherwise; and
 - (b) if either Party is considered to be liable jointly with third parties to the other, the proportion of compensation payable by the liable Party shall be limited to that proportion of liability which is attributable to the breach by the liable Party.
- 13.4 *Attribution of Damages.* Any Damages suffered by either Party shall, for the purposes of Clause 13.3, be reduced to the extent that the Damages are caused by or contributed to by the another Party's own negligence or breach of its obligations under this Agreement.
- 13.5 *Limitation of Liability.* Notwithstanding anything to the contrary set forth in this Agreement, in no circumstances shall any Party be liable to the other Party for any loss of production, loss of profit, loss of revenue, loss of contract, liability incurred under other agreements (with the exception of costs paid by the Principal to contractors appointed by the Principal in relation to the Services or particular Assignment or the Project) or any indirect or consequential loss arising out of or in connection with this Agreement. The Contractor's total liability for the Services carried out under this Agreement in accordance with concluded Assignment Orders shall in no circumstances exceed the total amount of the Fees of all concluded Assignment Orders.
- 13.6 *Insurance Against Liability.* The Contractor shall insure against public/third party liability (the "Professional risk indemnity insurance") for the implementation of the Agreement. The Professional risk indemnity insurance shall be in compliance with fair market practice and its scope shall include, but not be limited to, civil liability of Contractor and its sub-contractors against the Principal, the Beneficiaries' representatives and third parties for non-performance of the Services, failure to perform Services in good quality and/or form (including omissions, errors, defects, incompliances, deficiencies), for personal injury, death, and for loss or damage to any property entrusted or not, machinery and equipment of the Project, property of the Principal, the Beneficiaries' representatives and third parties located at sites of the Project and loss of documents. The Contractor's failure to maintain the Professional risk indemnity insurance in accordance with the terms of the Agreement shall constitute a material breach of the Agreement.
- 13.7 *Obligation to Effect Insurance.* The Contractor undertakes to affect such insurance with an insurer and on terms and conditions as detailed herein and may be further specified by the Principal. The limit of Professional risk indemnity insurance liability for the insurance coverable shall be no less than one hundred percent (100%) of the Total Value of the Agreement under Clause 2.1 during the entire term of the Agreement. The amount of the Professional risk indemnity insurance liability for each insured event shall be no less than ten percent (10%) of the Total Value of the Agreement under Clause 2.1. The costs of such insurance shall be at the sole expense of the Contractor.
- 13.8 *Extended Reporting Period.* The Professional risk indemnity insurance shall provide for no less than twenty-four (24) month's extended reporting period as of the date of termination or expiration of the Agreement. The extended reporting period shall cover claims arising out of or in relation to an act or omission of Contractor or its sub-contractors and occurring during the policy period, provided that the claim is reported by the Principal or the respective Beneficiary representative within the extended reporting period.
- 13.9 *Insurance Company.* The Contractor's Professional risk indemnity insurance shall be provided by an insurance company (re-insurance company), bank or financial institution which is entitled to issue insurance policies, and which (individually or as a part of a group of companies, or where the company having substantial participation in the respective insurance company (re-insurance company), bank or financial institution) has obtained a required minimum rating of BB+ (or equivalent) in accordance with Standard & Poor's rating, Fitch's rating or Moody's rating. The insurance company shall be registered within the European Union.
- 13.10 *Insurance Certificate.* Within twenty (20) Business Days following the Effective Date, the Contractor shall provide a copy of insurance policy accompanied with an original certificate from its insurer or broker stating that the Professional risk indemnity insurance required under this Section is in full force and effect. In case the insurance policy or the certificate is in other language than English, the Contractor shall provide a translation of the certificate in English. The Contractor shall maintain the Professional risk indemnity insurance in force as long as it is necessary to accomplish any obligations according to this Agreement and the specific Assignment Order. In addition, the Contractor shall provide not less than five (5) Business Days prior written notice to the Principal of any cancellation or material reduction in the Professional risk indemnity insurance. The Contractor is obliged to submit to the Principal a copy of a renewed insurance policy accompanied with an original certificate from its insurer or broker or a copy of a new insurance policy accompanied with an original certificate from its insurer or broker stating that the Professional risk indemnity insurance is in full force and

effect within five (5) Business Days before the date of expiry of the previous Professional risk indemnity insurance.

- 13.11 *Adjustments to the Insurance.* At the Contractor's request and to comply with fair market practice the above terms for to the Professional risk indemnity insurance may be further adjusted with the Principal's consent, upon the sole discretion of the Principal, to the extent the adjustment would not alter the substance and the objective of the above terms. In this case, separate amendments to the Agreement are not required.

Section XIV. Force Majeure

- 14.1 *Effects of Force Majeure.* 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.* 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 Parties as soon as reasonably practicable and in any event within ten (10) Business Days of it becoming aware of the relevant Force Majeure Event. Such notification shall give sufficient details to identify the particular event claimed to be a Force Majeure Event and shall contain detailed information relating to the failure to perform (or delay in performing), including the date of occurrence of the Force Majeure Event, the effect of the Force Majeure Event on the ability of the affected Party to perform, the action being taken in accordance with Clause 14.2(a) and an estimate of the period of time required to overcome the Force Majeure Event. The affected Party shall provide the other Party with any further information it receives or becomes aware of which relates to the Force Majeure Event and provide an update on the estimate of the period of time required to overcome its effects.
- 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.* 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 the Assignment to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement.

Section XV. Confidentiality

- 15.1 *Confidential Information.* "Confidential Information" means, in relation to the Principal and the Beneficiaries' representatives, all information of a confidential nature relating to the Principal, the respective Beneficiary representative and its affiliates which is supplied by the Principal or the Beneficiary representative (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, notes, studies, memoranda and other documents and information which contain or otherwise reflect or are derived from such information, but excludes information which:
- (a) the Principal or the Beneficiary representative, as applicable, 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 or the respective Beneficiary representative and was not previously acquired by the Contractor from the Principal or the respective Beneficiary representative under an obligation of confidence; or

- (c) was developed by or for the Contractor at any time independently of this Agreement.
- 15.2 *Undertakings with Respect to Confidential Information.* Subject to Section XV and Clause 15.3, 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.
- 15.3 *Permitted Disclosure.* Notwithstanding anything to the contrary set forth in accordance with Section XV and Clause 15.2, the Contractor shall, without the prior written consent of the Principal or the respective Beneficiary representative, as applicable, 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 XVII;
 - (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.
- 15.4 *Obligation of Confidentiality Pertinent to Recipients of Confidential Information.* Whenever disclosure is permitted to be made pursuant to Clauses 15.3(a) or (c), the Contractor shall require that the recipient of Confidential Information be subject to equivalent obligation of confidentiality as that contained in this Agreement.
- 15.5 *Certain Obligations on Termination of Agreement.* If this Agreement is terminated for whatsoever reason, the Contractor shall:
- (a) return to the Principal or the respective Beneficiary representative 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.
- 15.6 *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.
- 15.7 *Right to Publish.* For the avoidance of any doubt, the Principal and the respective Beneficiary representative shall have the right to publish any of the documents, information or data provided by the Contractor to the Principal or the respective Beneficiary representative during provision of the Services.
- 15.8 *Remedies.* The Parties acknowledge and agree that a breach of the provisions of this Section XV 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 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.

Section XVI. Right to Audit

- 16.1 *Right to Audit.* Notwithstanding anything to the contrary set forth in this Agreement 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.

16.2 *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. 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.

16.3 *Survival of Termination.* The rights and obligations of the Principal set forth in accordance with this Section 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 XVII. On-the-spot-visits

17.1 *Right to perform On-the-spot visits.* By submitting a written notice five (5) Business Days in advance, but at the same time reserving the right of an unannounced on-the-spot visit without an advance notice, the Principal may carry out on-the-spot visits to the sites and premises where the activities implemented within the Agreement are or were carried out.

17.2 *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.

17.3 *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.

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.

Section XVIII. 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 by negotiation in good faith prior to pursuing resolution under Clause 18.3 or referring to arbitration, or other legal proceeding.

18.3 *Adjudication.* Should the Parties fail to agree by means of amicable negotiations within two (2) months from the date of serving the respective written complaint to the other Party, the Parties shall attempt to settle any dispute, controversy or claim arising out of or relating to this Agreement in accordance with the rules for adjudication in accordance with *Annex G: Rules of Adjudication*.

- 18.4 *Venue for Resolution of Disputes.* Should the Parties fail to settle such disputes, controversies or claims within four (4) months by amicable negotiations and pursuant to the rules for adjudication in accordance with *Annex G: Rules of Adjudication*, the Parties shall submit all their disputes arising out of or in connection with this Agreement to the exclusive jurisdiction of International Court of Arbitration of the International Chamber of Commerce and shall be finally settled in accordance the Rules of Arbitration of the International Chamber of Commerce. Notwithstanding the procedural Rules of Arbitration of the International Chamber of Commerce, any dispute, controversies or claims shall be settled in accordance with the material norms of the laws of the Republic of Latvia. The arbitration shall be in English language. The place of arbitration shall be Stockholm, Sweden. The arbitral tribunal shall be composed of three (3) arbitrators. Decision of arbitration shall be final and binding on all the Parties.
- 18.5 *Language.* The Parties hereby represent and warrant that the English language is understandable for both Parties in accordance with Article 8(1)(a) of the Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) and repealing Council Regulation (EC) No 1348/2000.

Section XIX. Miscellaneous provisions

- 19.1 *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.
- 19.2 *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 12.5, 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.
- 19.3 For the purpose of execution of this Agreement, the Parties might transfer to each other certain personal data, such as data on employees of the Parties, data on suppliers, data on potential candidates, Project stakeholders and their employees, etc. Furthermore, the Party transferring to the other Party certain personal data shall be responsible for informing and obtaining the consent of the data subject for the processing of the personal data. The Parties acknowledge that for the purpose of the Agreement the transferring Party shall act as the controller and the receiving Party shall act as a processor.
- 19.4 To ensure compliance of the data processing hereunder, the data controller is entitled to provide the processor with binding instructions in writing regarding the procedure and conditions for processing of personal data and to control the processors ability to comply with the Agreement.
- 19.5 The Party shall transfer the personal data to the other Parties and such other Parties shall process the personal data only for the purposes of execution of the Agreement and other such purposes as required by Applicable laws.
- 19.6 The Parties agree that except where the Party has a separate legal basis for processing the personal data referred to in the Applicable laws governing the protection of personal data, the Party shall not process the personal data for any other purpose.
- 19.7 Besides other obligations provided for in the Agreement, each of the Parties undertakes:
- 19.7.1 to process the personal data to the minimum extent necessary;
 - 19.7.2 not to infringe any rights of the data subjects;
 - 19.7.3 to implement and apply proper organizational and technical measures ensuring the compliance with the requirements of the law;

- 19.7.4 to ensure the compliance with other requirements of the statutory law governing the protection of personal data.
- 19.8 *Notices.* Notices under the Agreement shall be in writing and will take effect from receipt by the Party to which the notice is addressed at the address of the Party set forth in the preamble to this Agreement. Delivery can be by hand or facsimile message against a written confirmation of receipt or by registered letter.
- 19.9 *Damages Covered by Insurance.* To the extent Damages are covered by insurance, the Parties waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance current as of the date of this Agreement.
- 19.10 *Relationship of the Parties.* The relationship between the Contractor to the Principal and the Beneficiaries' representatives under this Agreement is that of independent contractor. The Contractor (or the Contractor's Sub-Contractors) is not an employee of the Principal or the Beneficiary representative, is not carrying out the regular business of the Principal or the Beneficiary representative and is not subject to the same employment regulations as are applicable to employees of the Principal or the Beneficiary representative. Each of the Parties shall be solely and entirely responsible for their own acts and the acts of their employees. No benefits, special considerations, or employer/employee-type provisions are provided by the Principal or the Beneficiary representative to the Contractor, the Contractor's employees, or the Contractor's consultants, or the employees of such consultants.
- 19.11 *Severability.* If any provision of this Agreement shall be held to be illegal, invalid, void or unenforceable under Applicable Laws, the legality, validity and enforceability of the remainder of this Agreement shall not be affected, and the legality, validity and enforceability of the whole of this Agreement shall not be affected.
- 19.12 *Successors and Assigns.* The Parties each bind themselves, their successors, legal representatives, and assigns to the other party to this Agreement and to the partners, successors, legal representatives and assigns of such other party in respect to all covenants of this Agreement. Neither Party shall assign or transfer its respective interest in the Agreement without written consent of the other Party, if not directly provided otherwise under the Agreement.
- 19.13 *Amendments and Variations.* No amendment to or variation of this Agreement shall be effective unless made in writing by duly authorized representatives of both Parties, if not 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.
- 19.14 *Entire Agreement.* This Agreement, and the Annexes hereto, constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes and extinguishes all and any prior drafts, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter.
- 19.15 *Possible merger of the Principal.* The Parties acknowledge that in the event the Beneficiaries' representatives will merge with the Principal to form a single legal entity this Agreement shall continue with the Principal assuming the rights and obligations previously held by either of the Beneficiaries' representatives, as applicable.
- 19.16 *Execution.* This Agreement is executed in four (4) copies, one for each, all having the same legal effect.

For and on behalf of the Principal and the Estonian Beneficiary: For and on behalf of the Contractor:

Agnis Driksna

Chairperson of the Management Board
RB Rail AS

Marc Philippe El Beze

Member of the Management Board

[●]

[●]

[●]

RB Rail AS

For and on behalf of the Latvian Beneficiary
representative:

Kaspars Vingris

Chairperson of the Management Board
sabiedrība ar ierobežotu atbildību "EIROPAS DZELZCEĻA
LĪNIJAS"

Artūrs Caune

Chairperson of the Management Board
sabiedrība ar ierobežotu atbildību "EIROPAS DZELZCEĻA
LĪNIJAS"

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 C: 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 C List of approved Sub-Contractors and Staff*, which is in a contractual relationship with the Contractor to provide a part of the Services.
- (e) "Assignment" means the specific instance of Services that is procured by the Principal (on behalf of itself or the respective Beneficiary representative) in accordance with this Agreement.
- (f) "Assignment Order", means the agreement between the Principal (on behalf of itself or the respective Beneficiary representative) and the Contractor for the implementation of an Assignment.
- (g) "Beneficiary" shall mean of the Ministry of Transport of the Republic of Latvia for Latvian Beneficiary or the Ministry of Economic Affairs and Communications of the Republic of Estonia for Estonian Beneficiary that have authorised the Beneficiaries' representatives to represent their interests in the procurement, conclusion, and execution of the Agreement.
- (h) "Beneficiary representative" shall mean sabiedrība ar ierobežotu atbildību "EIROPAS DZELZCEĻA LĪNIJAS" in case of Latvian Beneficiary representative or osāhning Rail Baltic Estonia in case of Estonian Beneficiary representative as specified in the preamble of this Agreement.
- (i) "Completion Date", as defined in accordance with Clause 10.8 and 10.10, as appropriate.
- (j) "Confidential Information", as defined in accordance with Section XV of the Agreement.
- (k) "Contractor", an Unincorporated Joint Venture of DB Engineering & Consulting GmbH, RENFE-Operadora Entidad Pública Empresarial, Ingeniería y Economía del Transporte S.M.E M.P. S.A, as further specified in the preamble of this Agreement, which is engaged by the Principal as an independent professional contractor to perform the Services to the Principal and the Beneficiaries' representatives , and legal successors to the Principal and the Beneficiaries' representatives and permitted assignees of the Principal and the Beneficiaries' representatives .
- (l) "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 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 Services required under this Agreement; and
 - (xiii) losses and expenses, not compensated by insurance, sustained by the Contractor in connection with the Services under this Agreement (if applicable), provided they resulted from causes other than the fault or neglect of the Contractor.
- (m) "Corrective Period", as defined in accordance with Clause 12.5.
 - (n) "Cure Period", as defined in accordance with Clause 10.7.
 - (o) "Damages", any cost, claim, damage, demand, loss, expense or liability incurred by the relevant Party or Person.
 - (p) "Deed of Acceptance", as defined in accordance with Clause 10.8 and in the form as provided in Annex F: Form of the Deed of Acceptance.
 - (q) "Defect", is a part of the Services or an Assignment which is not in accordance with *Annex B: Scope of Services*, the Agreement, the Applicable Law or Good Industry Practice.
 - (r) "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 an Assignment.
 - (s) "Documentation", all records, correspondence, and files of the Contractor, its employees, engineers, and consultants pertaining to the Project.
 - (t) "Effective Date", the date when all Parties have signed the Agreement.
 - (u) "EUR" and "euro", the official currency of the eurozone, officially known as the euro area.
 - (v) "Fee", as specified in accordance with Clause 9.1.
 - (w) "Force Majeure Event", any of the following events:
 - (i) an act of the public enemy or war (declared or undeclared), threat of war, revolution, riot, insurrection, civil commotion, demonstration or sabotage;
 - (ii) an act of vandalism or accidental damage or destruction of machinery, equipment, track or other infrastructure;
 - (iii) a natural disaster or phenomena, including extreme weather or environmental conditions (such as lightning, earthquake, hurricane, storm, fire, flood, drought or accumulation of snow or ice);
 - (iv) nuclear, chemical or biological contamination, epidemic, pandemic, quarantine;
 - (v) pressure waves caused by devices travelling at supersonic speeds;
 - (vi) discovery of fossils, antiquities or unexploded bombs; and/or

- (vii) strike, lockout or other industrial action other than involving the Contractor, the Principal or the Beneficiaries' representatives.
- (x) "Good Industry Practice", in relation to the performance of any activity to which this standard is applied, the exercise of that degree of skill, diligence, prudence and foresight as would reasonably be expected to be exercised by a properly qualified and competent person engaged in carrying out Services of a similar size, nature, scope, type and complexity, complying with Applicable Law, applicable Standards and published codes of practice.
- (y) "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 or the Beneficiaries' representatives, 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.
- (z) "Intellectual Property of the Contractor", all Intellectual Property owned or licensed to the Contractor with a right to sub-license.
- (aa) "Objection Notice", as defined in accordance with Clause 10.9.
- (bb) "Party" and "Parties", the Principal, the Beneficiaries' representatives and the Contractor and include their respective successors in title, permitted assigns and permitted transferees.
- (cc) "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.
- (dd) "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).
- (ee) "Principal", the RB Rail AS, which procure the services of the Contractor, on behalf of the Principal itself or the respective Beneficiary representative, as the case may be, and legal successors to the Contractor and permitted assignees of the Contractor.
- (ff) "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.
- (gg) "Residence Certificate", a certificate mentioned in Clause 8.2(g).
- (hh) "Standards", CEF Standards and Grant Agreement Standards.
- (ii) "Milestone", the date for delivery of one or more Deliverables, as may be set out in specific Assignment Orders or the Agreement.
- (jj) "Services", the shadow operator services that are to be provided in accordance with the Agreement and on an on-demand basis as specified in *Annex B: Scope of Services*.
- (kk) "VAT", value added tax.
- (ll) "Business Day", as specified in accordance with Clause 1.2.9 of this Agreement.

Annex B: Scope of Services

SCOPE OF SERVICES

[Confidential]



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

Riga

2022

Annex C: List of approved Sub-Contractors and Staff

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

[•]

Annex D: Request for Proposal

REQUEST FOR PROPOSAL NO. [●]

Date [●]

FOR THE PROVISION OF SHADOW OPERATOR SERVICES

This this Request for Proposal (RfP) has been submitted pursuant to the Framework Agreement No [●] between by RB Rail AS, a joint stock company registered in the Latvian Commercial Register, registration No 40103845025, legal address at [●] (the "Principal"), represented by [●] acting on the basis of the [●],

for submitting a proposal under following conditions for the Shadow Operator services.

1. The description of Services: [●];
 - a. Deliverables [●];
 - b. Expected milestones [●];
 - c. Fee cap [OPTIONAL]: [●];
2. The Contractor is required to reply to the RfP with providing its proposal that should include the following:
 - a. Proposition how the Services shall be provided, and deliverables shall be achieved;
 - b. Confirmation/proposition regarding milestones;
 - c. Names of experts to be providing Services under Proposal;
 - d. Fee in total (exclusive of VAT) for provision of the Proposal: [●];
3. The Proposal shall be evaluated based on the following criteria:
 - a. [●];
 - b. [●];
 - c. [●];
4. Proposal shall be submitted not later by: [●]
5. Contact person(s) for the Principal: [●];
6. In case of the award, the Assignment Order shall be formed based on the submitted proposal. In the event of any inconsistency between the provisions of the Assignment Order and the proposal, the Assignment Order shall prevail.
7. Other terms: [●].

Principal

Contractor

Annex E: Draft Assignment Order

ASSIGNMENT ORDER NO. [●]

Date [●]

FOR THE PROVISION OF SHADOW OPERATOR SERVICES

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

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

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

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

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

Principal

Contractor

Annex F: Form of the Deed of Acceptance

No [INSERT NUMBER]

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

Location: [INSERT LOCATION]

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

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

Whereas:

- (A) the Principal and the Contractor have entered into the Assignment Order No. [●];
- (B) one or more Milestones have been met and/or Deliverables of the Assignment have been completed or the Assignment have been fully completed by the Contractor;
- (C) as stipulated by Clause 10.8 of the Agreement, completion of a Milestone/Deliverable or the Assignment shall be evidenced by means of the Contractor issuing a signed Deed of Acceptance;
- (D) as per Clause 10.9 of the Agreement the Principal following the reception of a signed Deed of Acceptance shall review the submitted Deed of Acceptance and either sign the Deed of Acceptance conforming the compliance of the Services rendered or raise objections by issuing an Objection Notice.

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

By signing this Deed of Acceptance the Principal confirms in accordance with Clauses 10.9.2 of the Agreement its satisfaction with the result of the Assignment or the Deliverable/Milestone completed and submitted, and the Principal accepts the respective Deliverable/Milestone or the Assignment in its entirety or partly as specified in Clause 10.9.2 of the Agreement. Additionally, the Principal certifies that all of the necessary authorisations for the acceptance of the Deliverable/Milestone or Assignment have been duly received.

Signatures:

For and on behalf of the Principal
(or the Beneficiary representative, as the case may
be)

[.]

For and on behalf of the Contractor
[.]

Annex G: Rules of Adjudication

to the Framework Agreement on Shadow Operator services for Rail Baltica Global Project

RULES FOR ADJUDICATION

CONTENT

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

I RULES FOR ADJUDICATION

General

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

Appointment of Adjudicator

3. The Principal and Contractor shall jointly ensure that the Adjudicator shall be a suitable qualified person.
4. If for any reason the appointment of the Adjudicator is not agreed (a dispute adjudication Agreement is not signed) by the Principal and the Contractor within fifteen (15) days at the latest of the reference of a dispute in accordance with the Rules, Contractor and the Principal may skip the reference of a dispute to the Adjudicator, and proceed with the arbitration as per Clause 18.4 of the Agreement without an option to refer the same dispute to the Adjudicator.
5. The Adjudicator's appointment may be terminated by the mutual agreement of the Principal and Contractor. The Adjudicator's appointment shall expire when the Services have been completed or when any disputes referred to the Adjudicator shall have been withdrawn or decided, whichever is the later.

Terms of Adjudicator

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

Payment

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

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

Obtaining Adjudicator's Decision

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

II GENERAL CONDITIONS OF THE DISPUTE ADJUDICATION AGREEMENT

1. Definitions

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

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

The Principal, the Beneficiaries' representatives and Contractor have entered (or intend to enter) into a Agreement, which is called the " Framework Agreement on Shadow Operator services for Rail Baltica Global Project " and is defined in the Dispute Adjudication Agreement, which incorporates this Annex. In the Dispute Adjudication Agreement, words and expressions, which are not otherwise defined, shall have the meanings assigned to them in the "Framework Agreement on Shadow Operator services for Rail Baltica Global Project" ("the Agreement").

2. General Provisions

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

3. Warranties

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

4. General Obligations of the Adjudicator

The Adjudicator shall:

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

(e) comply with the Rules for Adjudication contained in Annex G of the Agreement and with Clause 18.3 of the Agreement;

(f) not give advice to the Principal, the Beneficiaries' representatives or Contractor concerning the conduct of the Agreement, other than in accordance with the Rules for Adjudication;

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

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

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

5. General Obligations of the Principal and Contractor

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

6. Payment

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

4. Default of the Adjudicator

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

5. Dispute Resolution

Any dispute or claim arising out of or in connection with this Dispute Adjudication Agreement, or the breach, termination or invalidity thereof, shall be submitted to the International Court of Arbitration of the International Chamber of Commerce and shall be finally settled in accordance the Rules of Arbitration of the International Chamber of Commerce. Notwithstanding the procedural Rules of Arbitration of the International Chamber of Commerce, any dispute, controversies or claims shall be settled in accordance with the material norms of the laws of the Republic of Latvia. The arbitration shall be in English language. The place of arbitration shall be Stockholm, Sweden. The arbitral tribunal shall be composed of one (1) arbitrators.

III FORM OF DISPUTE ADJUDICATION AGREEMENT

Identification of the Project

("the Project")

Name and address of the Principal

("the Principal")

Name and address of Contractor

("Contractor")

Name and address of the Adjudicator

("the Adjudicator")

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

the Principal, Contractor and the Adjudicator agree as follows:

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

Signed for and on behalf of the Principal:

..... Signature of Authorised Signatory

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

..... Date of signing

Signed for and on behalf of Contractor:

..... Signature of Authorised Signatory

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

..... Date of signing

Signed for and on behalf of the Adjudicator:

..... Signature of Adjudicator

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

..... Date of signing

Annex H: Contractor's Proposal

[Confidential]