

SUPPLY AGREEMENT

on Supply of Mobile Devices, Accessories and Mobile Devices Repair Services

between

RB Rail AS

("Company")

and

Akciju sabiedrība "CAPITAL"

("Contractor")

Contract registration number	1.19/LV-2022-48
CEF Contract No.	INEA/CEF/TRAN/M2014/1045990 INEA/CEF/TRANS/M2015/1129482 INEA/CEF/TRANS/M2016/1360716 INEA/CEF/TRAN/M2019/2098304 INEA/CEF/TRAN/M2019/2098073 INEA/CEF/TRAN/M2020/2428991
Procurement procedure identification No.	Future Grant Agreements to be signed RBR 2022/15

Riga

2022



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SUPPLY AGREEMENT

on Supply of Mobile Devices, Accessories and Mobile Devices Repair Services

This Agreement is entered into in Riga, on the date indicated on the timestamp of the last signature of the Agreement, by and between:

- (1) **RB Rail AS**, a joint stock company registered in the Latvian Commercial Register with registration No 40103845025 and legal address at Satekles iela 2B, Riga, LV-1050, Latvia (the "**Company**"), represented by Chairperson of the Management Board Agnis Driksna acting on the basis of the Regulation on Representation Rights dated 11 April 2022, on the one side, and
- (2) **Akciju sabiedrība "CAPITAL"**, a joint stock company registered in the Latvian Commercial Register with registration No 40003088497, legal address at **Ganību dambis 23C**, Riga, LV-1005 (the "**Contractor**"), represented by Member of the Board Ivars Šulcs acting on the basis of Articles of Association, on the other side,

(the Company and the Contractor referred to as the "Parties" and separately – as the "Party").

WHEREAS:

- (A) this Agreement is entered into under the Rail Baltica Global Project which includes all activities undertaken by the respective beneficiaries and implementing bodies of the Republic of Estonia, the Republic of Latvia and the Republic of Lithuania in order to build, render operational and commercialise the Rail Baltica railway – a new fast conventional double track electrified railway line European standard gauge (1435mm) on the route from Tallinn through Pärnu-Riga-Panevėžys-Kaunas to Lithuanian-Polish border, with the connection of Kaunas – Vilnius, and related railway infrastructure in accordance with the agreed route, technical parameters and time schedule (the "Global Project");
- (B) the Company has organised a procurement procedure "Supply of Mobile Devices, Accessories and Mobile Devices Repair Services" (identification No RBR 2022/15) (the "Procurement Procedure") where the tender proposal submitted by the Contractor (the "Contractor's Proposal") was selected as the winning bid;
- (C) this Agreement is co-financed from the Connecting Europe Facility ("**CEF**"), CEF Agreement No INEA/CEF/TRAN/M2014/1045990, INEA/CEF/TRANS/M2015/1129482, INEA/CEF/TRANS/M2016/1360716, INEA/CEF/TRAN/M2019/2098304, INEA/CEF/TRAN/M2019/2098073, INEA/CEF/TRAN/M2020/2428991 and other recently signed Grant Agreements or future Grant Agreements to be signed;

THEREFORE, the Parties agree as follows:

1. DEFINITIONS, INTERPRETATION AND ORDER OF PRECEDENCE

- 1.1. Definitions. In this Agreement, unless the context requires otherwise, the following definitions shall have the following meaning:
 - 1.1.1. "Annex" means any of the annexes enclosed to this Agreement and listed in Clause 1.3 of the Agreement.
 - 1.1.2. "Agreement" means this Agreement together with all its Annexes; whenever in the Agreement there is a reference to the Agreement, it includes a reference to all its Annexes, and reference to specific Annex following the reference to the Agreement is without prejudice to it.
 - 1.1.3. "Applicable Laws" means any legislative act, regulation, decree, order, ordinance, statute, treaty, directive, judgment, or other legislative measure applicable to the Agreement, the Services, the Parties, etc. (including, but not limited to the Public Procurement Law of the Republic of Latvia).
 - 1.1.4. "Approved Sub-Contractor" any person or organisation listed in **Annex C: List of Approved Sub-Contractors** which is in a contractual relationship with the Contractor (as a sub-contractor) to provide a part of the Services.
 - 1.1.5. "Business day" means any day except Saturday, Sunday and any day which is a public holiday in the Republic of Latvia.
 - 1.1.6. "CEF" as defined in the Preamble of the Agreement.
 - 1.1.7. "Confidential Information" as defined in Clause 16.1 of the Agreement.
 - 1.1.8. "Contractor" as defined in the above list of the parties to the Agreement.

- 1.1.9. **“Contractor’s Declaration”** means the declaration of the Contractor as described in Clause 9.2(f) of the Agreement.
- 1.1.10. **“Contractor’s Proposal”** as defined in the Preamble of the Agreement and enclosed in **Annex A: Technical Specification – Technical Proposal** and **Annex B: Financial Proposal**.
- 1.1.11. **“Company”** as defined in the above list of the parties to the Agreement.
- 1.1.12. **“Completion Date”** as defined in Clause 4.10(a) of the Agreement.
- 1.1.13. **“Corrective Period”** as defined in Clause 13.3 of the Agreement.
- 1.1.14. **“Damages”** any cost, claim, damage, demand, loss, expense or liability incurred by the relevant Party.
- 1.1.15. **“Defect”** means any error, fault, omission, defect or other non-compliance of the Services with the requirements of the Agreement.
- 1.1.16. **“Documentation”** means all documents, records, correspondence, and files of the Contractor, its employees, engineers, and consultants created, developed, subsisting or used in relation to the Services.
- 1.1.17. **“Equipment”** as defined in Clause 2.1.2 of the Agreement.
- 1.1.18. **“Fee”** as defined in Clause 6.1 of the Agreement.
- 1.1.19. **“Force Majeure Event”** means any of the following:
- (a) an act of the public enemy or war (declared or undeclared), threat of war, revolution, riot, insurrection, civil commotion, demonstration or sabotage;
 - (b) an act of vandalism or accidental damage or destruction of machinery, equipment, track or other infrastructure;
 - (c) a natural disaster or phenomena, including extreme weather or environmental conditions (such as lightning, earthquake, hurricane, storm, fire, flood, drought or accumulation of snow or ice);
 - (d) nuclear, chemical or biological contamination, epidemic or pandemic (except for COVID-19 pandemic);
 - (e) strike, lockout or other industrial action other than involving the Contractor or the Company.
- 1.1.20. **“Global Project”** as defined in the Preamble of the Agreement.
- 1.1.21. **“Good Industry Practice”** means, 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 or services of a similar size, nature, scope, type and complexity, complying with the Applicable Laws.
- 1.1.22. **“Order Request”** means the orders for the Services submitted to the Contractor by the Company for the supply of the Services according to the Clause 4.2 of the Agreement.
- 1.1.23. **“Party”** or **“Parties”** as defined in the above list of the parties to the Agreement.
- 1.1.24. **“Person”** includes any person, company, body corporate, government, state or agency of a state or any association or partnership (whether or not it is separate legal person).
- 1.1.25. **“Phones”** as defined in Clause 2.1.1 of the Agreement.
- 1.1.26. **“Procurement Procedure”** as defined in the Preamble of the Agreement.
- 1.1.27. **“Repair Services”** as defined in Clause 2.1.3 of the Agreement.
- 1.1.28. **“Replacement Devices”** as defined in Clause 2.1.4 of the Agreement.
- 1.1.29. **“Representatives”** as defined in Clause 11.4 of the Agreement.
- 1.1.30. **“Services”** as defined in Clause 2.1 of the Agreement.

- 1.1.31. "Signing Date" means the date on which this Agreement is signed by the Parties as indicated above or, if signed with secure electronic signature, the date indicated on the timestamp of the last signature of the Agreement.
- 1.1.32. "Technical Specification" means requirements included in the **Annex A: Technical Specification – Technical Proposal**.
- 1.1.33. "Total Value" as defined in Clause 3.1 of the Agreement.
- 1.1.34. "Variations" as defined in Clause 10.1 of the Agreement.
- 1.1.35. "Warranty period" as defined in Clause 5.1 of the Agreement.
- 1.2. Interpretation.
- (a) The headings contained in this Agreement shall not be used in its interpretation.
- (b) References to the singular shall include references in the plural and vice versa and words denoting natural persons shall include any other Persons.
- (c) References to a treaty, directive, regulation, law or legislative provision shall be construed, at any particular time, as including a reference to any modification, extension or re-enactment of the respective treaty, directive, regulation, law or legislative provision at any time then in force and to all subordinate legislation enacted from time to time.
- (d) Unless expressly stated to the contrary, any reference in this Agreement to the right of consent, approval or agreement shall be construed such that the relevant consent, approval or agreement shall not be unreasonably delayed or withheld.
- (e) A reference to "*writing*" shall include an e-mail transmission and any means of reproducing words in a tangible and permanently visible form.
- (f) **The words "include" and "including" are to be construed without limitation.**
- (g) **Unless indicated otherwise, all references to "days" shall mean calendar days.**
- 1.3. Annexes. The Agreement contains the following Annexes:
- 1.3.1. **Annex A: Technical Specification – Technical Proposal;**
- 1.3.2. **Annex B: Financial Proposal;**
- 1.3.3. **Annex C: List of Approved Sub-Contractors .**
- 1.4. Order of precedence. In the event of any discrepancy or inconsistency between the documents forming part of this Agreement, the following order of precedence shall apply:
- (a) this Agreement document (body text);
- (b) the Technical Specification;
- (c) explanations (clarifications) of the Procurement Procedure documentation;
- (d) the Procurement Procedure documents with the annexes;
- (e) clarifications of the **Contractor's** Proposal;
- (f) the **Contractor's** Proposal;
- (g) all other Annexes of the Agreement.

2. SERVICES

- 2.1. Services. The Company hereby engages, and the Contractor accepts such engagement and hereby undertakes to provide **the services (the "Services")** described under this Agreement (including the Technical Specification, **Annex B: Financial Proposal** and other Annexes), including:
- 2.1.1. Sales and delivery of new mobile smart devices (**the "Phones"**) according to the Clause 1 of **Annex A: Technical Specification – Technical Proposal**.
- 2.1.2. Sales and delivery of new equipment (**the "Equipment"**) according to the Clauses 2 - 4 of **Annex A: Technical Specification – Technical Proposal**.

- 2.1.3. Provision of repair services for Phones and Equipment (**the “Repair Services”**) as described in Clause 5 – 9 of **Annex A: Technical Specification – Technical Proposal**;
- 2.1.4. Provision of replacement devices (**the “Replacement Devices”**) as described in Clauses 10 – 11 of **Annex A: Technical Specification – Technical Proposal**.
- 2.1.5. Provision of warranty obligations described in Section 5;
- 2.1.6. other related and additional activities as specified under the Agreement.
- 2.2. **Scope of the Services.** The scope of the Services covers all measures, including those not explicitly listed in the Agreement required for due performance of the Services in accordance with the terms and conditions of the Agreement. When achievement of the above results is not possible without performance of a measure not explicitly listed in the Agreement, then performance of such a measure is considered as contractual obligation of the Contractor according to the Agreement. Such measures include, but are not limited to:
 - 2.2.1. communication with the Company, its executives, officers, employees;
 - 2.2.2. obtaining of data, studies, other information etc. from the Company and the third parties, as well as assessment, structuring and other relevant use of such data, studies or other information;
 - 2.2.3. providing advice to the Company or relevant third parties to the extent required for performance of the Services;
 - 2.2.4. taking other measures required for due provision of the Services and performance of the Agreement.
- 2.3. **Co-operation.** The Parties shall cooperate with one another to fulfil their respective obligations under this Agreement. Parties shall endeavour to maintain good working relationships among all personnel engaged toward provision of the Services.
- 2.4. **Engagement.** Contractor shall be engaged by the Company to provide the Services on an on-demand basis. The Agreement does not impose an obligation whatsoever on the Company to appoint the Contractor to provide any particular amount of Services, nor does it guarantee any exclusive right to the Contractor to provide Services to the Company. The Company is under no obligation to order the Services for the Total Value of the Agreement. Within execution of the Agreement the Company will make orders for the Services solely according to its needs and finances. The commitment to order any particular Services shall only be expressed within the Order Requests submitted in accordance with the Agreement.

3. TOTAL VALUE AND TERM OF THE AGREEMENT

- 3.1. **Total Value.** The total value of the Agreement is 160 000,00 EUR (one hundred sixty thousand euros 00 cents), excluding VAT (the **“Total Value”**).
- 3.2. **Term.** The Agreement term is 36 (thirty-six) months starting from the Signing Date or until the Total Value is reached, whichever comes first. In case the Total Value has not been reached, yet the initial 36 (thirty-six) month term has passed, then the Agreement can be further prolonged for an additional 1 (one) year, or until the Total Value has been reached, whichever comes first.
- 3.3. **Expiry and termination.** After the expiry of the Agreement term or once the Total Value has been reached, no more new Order Requests can be issued by the Company. The Agreement terminates once all of the existing Services are fully completed by the Contractor and approved by the Company and the Parties have fulfilled their contractual obligations arising out of the Agreement.

4. SERVICE DELIVERY, ACCEPTANCE AND DEFECTS

- 4.1. **Commencement of the Services.** The Services shall be commenced only when the respective Order Request is issued by the Company and shall be fulfilled in accordance with such Order Request.
- 4.2. **Order Requests.** The Contractor shall provide the Services to the Company based on separate Order Requests submitted by the Contractor’s **Representative**. The conditions and provisions of the Agreement are applicable to each Order Request and are binding on both the Contractor as well as the Company. The Parties agree that Order Requests may be issued electronically over the internet by a way of e-mail, if they are sent from **Contractor’s Representative’s** e-mail and contain an electronic signature (e.g., the name, last name and the position of the issuing person or similar

information that allows to identify the issuer of the document). Each Order Request must contain adequate amount of information on the scope of the Services required.

- 4.3. Contractor's Confirmation. The Contractor shall process all Order Requests placed by the Company not later than within 2 (two) business day of receipt of the order, by submitting to the Company's Representative information regarding receipt of the respective Order Request. The Contractor undertakes a general duty of participation for the provision of the Services and thus shall be obliged to confirm all Order Requests requested by the Company in accordance with the terms of the Agreement. The Contractor has a right to reject the Order Request only in exceptional cases where the Contractor envisages that the implementation of a particular Order Request would result in a material conflict with the requirements of the Agreement. The decision of the Contractor to reject the respective Order Request shall be provided in writing by stating the reasons for such decision in sufficient detail. If the Contractor fails to send the confirmation to the Company or to inform of the need for changes to the Order Request in the manner and within the time specified in this Clause 4.3, the Order Request shall be deemed mutually agreed.
- 4.4. Provision of the Services. Contractor is obliged to finish all the requested Services according to the terms set in the Agreement (including Order Request and **Annex A: Technical Specification – Technical Proposal**), unless otherwise explicitly agreed by Parties.
- 4.5. Delivery Place. **Taking into account Company's instructions**, the Phones and Equipment or any other devices shall be delivered to or collected from the following addresses: Satekles iela 2B, Riga and/or Endla 16, Tallinn, Estonia, and/or J. **Basanavičiaus str. 24, Vilnius, Lithuania**, unless otherwise agreed by the Parties. At least 1 (one) day Prior to each handover, the Representatives shall agree on specific time for the handover process.
- 4.6. Language and copies. All the necessary Documentation shall be in the English or Latvian language and supplied to the Company in one (1) hard copies and electronically on an electronic data storage device, unless otherwise instructed by the Company.
- 4.7. Defects and Cure Period. During the provision of and until the acceptance of the Services (pursuant to Clause 4.10), the Company shall notify the Contractor of each Defect promptly after Defect is identified by the Company and the Contractor shall have an obligation to notify the Company of each Defect as soon as the Defect is identified by the Contractor. Upon discovering a Defect, or upon receipt by the Contractor of a notification of the Defect from the Company, the **Contractor shall, at the Contractor's cost, remedy the Defect within 5 (five) business days**, unless other procedure is specified in Section 5, **Annex A: Technical Specification – Technical Proposal**, or otherwise **agreed by the Parties (the "Cure Period")**.
- 4.8. Failure to remedy Defects. In the event of inability or failure by the Contractor to remedy the Defect within the Cure Period, the Company shall be entitled, at the sole and exclusive discretion of the Company, to do any of the following:
 - (a) allow the Contractor an additional time period for remedying the Defect, such time period to be determined in the sole discretion of the Company,
 - (b) remedy the Defect at own cost of the Company (including by means of relying on the services of a third Person) and demand reimbursement by the Contractor of costs incurred by the Company as a result of having to pay other Person toward carrying out any work or action,
 - (c) terminate the specific Order Request or Agreement according to Section 13.
- 4.9. Completion of the Services. Delivery of the Services occurs when the Contractor has completed all the work it has undertaken to perform according to the respective Order Request. Upon completing the Services, the Contractor shall issue to the Company a signed Acceptance Deed. The Acceptance Deed shall include information on the Services provided and adequate supporting Documentation (manuals, warranty related documentation and any other information relevant to the Services completed). The Parties agree that in case a prior approval from the Company is received, Acceptance Deeds may be issued electronically over the internet by a way of **e-mail, if they are sent from Representative's e-mails** and contain an electronic signatures (e.g., the name, last name and the position of the issuing person or similar information that allows to identify the issuer of the document).
- 4.10. Review by Company. When the Company receives Acceptance Deed from the Contractor, the Company shall review the received Services (for example, count, visual and technical condition of

the Phones and Equipment, quality of the Replacement Devices etc.) within 10 (ten) business days from the date of receipt. After the Services are reviewed, the Company either:

- (a) accepts the Services by signing the Acceptance Deed if no reasons for rejection of the Acceptance Deed exist and delivering the signed Acceptance Deed to the Contractor; the date the Company accepts and signs the Acceptance Deed **shall constitute the "Completion Date" with respect to the delivered Services**; the signed Acceptance Deed may have annexed to it a list of any outstanding Defects or deficiencies to be corrected by the Contractor; or
 - (b) **rejects the acceptance of the Services and issues to the Contractor a written notice (the "Objection Notice") setting out in reasonable detail any Defects** or reason for the rejection, thus initiating the Cure Period and the Defects remedy period pursuant to Clause 4.7.
- 4.11. Completion of the Services after Objection Notice. After the Defects specified by the Company in the Objection Notice have been remedied, the Contractor shall issue to the Company a second signed Acceptance Deed as per the procedure specified in Clause 4.9 and the Company shall perform the review as generally provided for in Clause 4.10, and:
- (a) in the event no further reasons for objection to the second Acceptance Deed exist, then the Defects remedy procedure is concluded and the provisions of Clause 4.10(a) are to be applied; or
 - (b) in the event the Company rejects the submitted second Acceptance Deed, it shall give a second Objection Notice, thus simultaneously continuing the Defects remedy procedure with the possibility for the Company, at its own discretion, to exercise its rights under Clause 4.8.
- 4.12. Acceptance. The Services are deemed to be accepted by the Company only when the Company has signed the Acceptance Deed.
- 4.13. Objection Notice and contractual penalty. For the avoidance of any doubt, issuance of the Objection Notice and Cure period 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 14.2.1 or to pay Damages in accordance with the provisions Clause 14.3 of this Agreement.
- 4.14. No waiver. **The Company's review or acceptance of the Services or any payments under this Agreement shall not be interpreted or construed to operate as a waiver of any right or cause for action under this Agreement.**
- 4.15. Circumstances affecting performance. Each Party shall have an obligation to promptly notify the other Party in writing of any event or circumstances capable of impeding the proper or timely performance of its respective obligations under this Agreement.
- 4.16. Impediments and delays. If timely performance of the Services is affected due to impediments or delays caused by the Company or any third parties engaged by the Company:
- (a) the Contractor shall promptly notify the Company of the circumstances and probable effects of such impediment or delay on the performance of the Services (if not notified in timely manner, the Contractor shall lose its right to make any claim in this respect); and
 - (b) the Parties shall in good faith discuss such allegation of the Contractor, and, if agreed, the duration of the Services shall be extended by the number of days directly affected by such impediment or delay.

5. WARRANTY

- 5.1. Warranty period. The Contractor shall provide a warranty for the Phones and the Equipment at least 24 (twenty four) months starting from the moment when the respective Acceptance Deed is mutually signed, unless a manufacturer of the relevant Phones and/or Equipment has provided a longer warranty period (the "Warranty period"), in such case the Warranty period is set according to the manufacturer's set Warranty period.
- 5.2. Quality of the Phones/Equipment. The Contractor will ensure that during the Warranty period any incompliance of the Phones/Equipment, that is normally covered by a warranty of similar type of goods, will be fixed. During the Warranty period the Phones/Equipment, inter alia, will meet following criteria:
- 5.2.1. The Phones/Equipment will sustain the highest quality standards, e.g., will meet the requirements of the Applicable laws, applicable standards, manufacturer's technical documentation etc., and will fulfil all of its intended functions;

- 5.3. Warranty claim procedure. During the Warranty period, the Parties will follow this procedure:
- 5.3.1. Upon discovery of a Defect, the Company shall notify the Contractor within 5 (five) business days. In such case the Company shall send the Contractor a claim specifying the deficiencies found and shall invite the Contractor to sign a deed of deficiencies within a period specified by the Company, which shall not be shorter than 1 (one) business days from the date of dispatch of the claim. If the Contractor fails to appear at the time specified by the Company, the Company shall be entitled to unilaterally draw up a deed of deficiencies and send this deed to the Contractor, but the Contractor shall accept it as correct and valid.
- 5.3.2. Phones/Equipment or parts thereof which do not comply with the provisions of the Agreement shall be replaced by the Contractor with the same Phones/Equipment which complies with the provisions of the Agreement or shall be repaired in accordance with the warranty provisions of the respective Phones and/or Equipment manufacturer if the Defects found can be remedied by repair no later than 15 (fifteen) calendar days after the date of receipt of the Company's claim of the Defects found or, if for objective reasons this is not possible and the Company agrees, within a period agreed with the Company.
- 5.3.3. Warranty does not cover mechanical damages or Defects caused by improper use of the Phones/Equipment.
- 5.3.4. Transportation and all other expenses incurred by the performance of the warranty obligations shall be borne by the Contractor.

6. FEE AND PAYMENTS

- 6.1. Fee. In consideration of the due provision of the Services, the Company undertakes to pay to the Contractor a fee (the "Fee") which shall be determined in compliance with **Annex B: Financial Proposal**.
- 6.2. VAT. Value added tax ("VAT") will be charged at the rate applicable by the Applicable Laws at the time of invoicing.
- 6.3. Compliance with tax obligations. It is acknowledged and agreed by the Parties that the Fee shall include all taxes and duties payable by the Contractor in the consequence of provision of the Services, except 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 Laws. In addition, the Contractor shall assume all risks associated with the payment or obligation to pay such taxes and duties, if any. The Contractor assumes all risks associated with the possible increase in the amount of the Fee arising as a result of the obligation of having to pay any such taxes or duties.
- 6.4. All-inclusive. The Fee is the all-inclusive consideration for the duly provided Services. The Fee includes reimbursement of all and any expenditure incurred by the Contractor toward performance of any steps, actions or measures contemplated in accordance with this Agreement (**including, without limitation, meetings with the Company, training for Company's personnel**, travel costs, installation costs, necessary materials, warranty related costs, etc.). The Contractor agrees and acknowledges that it shall have no right to request reimbursement by the Company of any additional expenditure whatsoever as may have been incurred by the Contractor toward provision of the Services contemplated by this Agreement, unless reimbursement of such additional expenditure has been explicitly agreed between the Parties in writing.
- 6.5. Payments, costs, and commissions. Payment of the Contractor's invoices will be made in euro by bank transfer. Each Party shall bear its own costs, fees, commissions and expenses incurred in connection with the transfer of any funds under this Agreement to the other Party.
- 6.6. Invoice details. **The Contractor's invoices shall contain the following details:**

Contractor: **Akciju sabiedriba "CAPITAL"**
Registration No: 40003088497
VAT payer's No or
indication that the
Contractor is not a VAT
payer: LV40003088497

Legal address, city, Zip code, country: **Ganību dambis 23C, Riga, LV-1005, Latvia**

Legal name of Bank: **Luminor Bank AS Latvijas filiāle**

Bank SWIFT Code: **RIKOLV2X**

Bank Account No IBAN: **LV75RIKO0000082836852**

The Company **RB Rail AS**

The Company's **VAT No:** **LV40103845025**

Subject: **For provided services according to the Service Agreement No. 1.19/LV-2022-48**

Specific information for the Company: **Contract Manager: [•]**

- 6.7. Invoices. Once per every month, until 5th date of the respective month, **the Contractor's** Representative shall submit an invoice specifying all the Services completed in the previous period. The Company will accept invoices only if the Company does not have any objections against information on invoices and the quality of the completed Services.
- 6.8. Deficiencies in invoices. If the Company finds deficiencies in the submitted invoices, the Company shall inform the Contractor about such identified deficiencies, and the Contractor shall submit a corrected invoice to the Company within 3 (three) business days after receiving information from the Company.
- 6.9. Payments. The Company pays for received Services in accordance with the invoice prepared by the Contractor. The Contractor shall send the invoices to the Company electronically to the following e-mail address: invoices@railbaltica.org. In case payment for the Services will be made from more than one financing source, and upon the Company's request, the Contractor shall issue separate invoices corresponding to the amounts financed from the financing source as indicated by the Company. The Parties agree to recognize as valid and payable invoices prepared **electronically without the "signature" part of the details area**.
- 6.10. Payment term. The Company shall pay the invoices submitted by the Contractor, within 14 (fourteen) business days after the date when the Company has received a correct invoice for the respective period. Payment shall be deemed made when the Company has made a payment from **its bank account to the Contractor's bank account specified in the Agreement**.
- 6.11. Set-offs. The Company 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. If the Company uses the right to make the payments to the Contractor with set-off, retention, counterclaim, abatement, or other deduction of any kind, then the Company 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.
- 6.12. VAT payer's status. If required by the Applicable Laws, the Contractor shall obtain VAT payers status and VAT No. in the Republic of Latvia.
- 6.13. Repurchase. If the Parties are able to agree on a mutually acceptable price and terms of sale, the Company might sell and the Contractor might buy **Company's** used mobile smart devices (phones). In such cases next invoices shall be reduced by the value of used mobile smart devices (phones) sold. By mutual agreement, Representatives are authorized to change the payment arrangement referred to in this Clause 6.13.

7. **CONTRACTOR'S OTHER OBLIGATIONS AND COVENANTS**

- 7.1. Standard of performance. Without prejudice to the requirements prescribed elsewhere under the Agreement, the Contractor shall:
- 7.1.1. ensure that the Services comply with (i) the specifications and requirements contained in the Procurement Regulations, including the Technical Specification, (ii) the Applicable Laws, (iii) reasonable requirements, comments or specific instructions of the Company, (iv) to the extent

not being contrary to any of the above, the terms and conditions contained in the **Contractor's** Proposal, as well as (v) the Good Industry Practices;

- 7.1.2. carry out the Services and develop in a conscientious, diligent, expeditious, proper, workmanlike and impartial manner;
- 7.1.3. use its best efforts, skill and experience in delivering the Services and to allocate qualified and suitable key personnel devoting such time as is reasonably required to fulfil **the Contractor's** duties hereunder;
- 7.1.4. ensure that whenever required under this Agreement, the Applicable Laws or upon receipt of a separate request from the Company, presentation materials etc. under or in relation to this Agreement features logos or other requisites pertinent to the Global Project, including, without limitation, reference to the fact that the Global Project is financed under the auspices of CEF.
- 7.2. Maintenance of records. During the term of the Services and for a period of 10 (ten) 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 Company, that the Services have been carried out in accordance. In case of on-going audits, appeals, litigation or pursuit of claims concerning the grant, including in the case of correction of systemic or recurrent errors, irregularities, fraud or breach of obligations, the records shall be kept and maintained longer.
- 7.3. Access to documentations. At all times during the term of the Services, the Company shall have access to all documentation related to the Services. This access shall be continuing and survive the termination of this Agreement for either cause or convenience. The documentation shall be kept accessible in a generally recognized format for a period of 10 (ten) years from the date of expiration or termination of this Agreement. All records forming part of such Documentation shall be available to the Company's auditor, or expert appointed by the Company during the abovementioned period of time.
- 7.4. Right to sub-contractors. In carrying out the Services, the Contractor may rely only on the services of the Approved Sub-Contractors. In this respect:
 - 7.4.1. The list of the Approved Sub-Contractors may, from time to time, be modified or supplemented in agreement with the Company and in accordance with the terms and subject to the criteria contained in the Applicable Laws. The Parties shall specify the name, contact details and legal representative(s) of each Approved Sub-Contractor at the Signing Date in **Annex C: List of Approved Sub-Contractors**.
 - 7.4.2. The Contractor shall have an obligation to notify the Company in writing of any changes to Approved Sub-Contractor data specified **Annex C: List of Approved Sub-Contractors** occurring during the term of this Agreement and of the required information for any new Approved Sub-Contractors which it may subsequently engage toward provision of the Services.
 - 7.4.3. The Contractor shall obtain prior written consent of the Company for the replacement of each Approved Sub-Contractor indicated in **Annex C: List of Approved Sub-Contractors** and involvement of additional sub-Contractors. Review and evaluation of the replacement of Approved Sub-Contractors shall be carried out, and the consent or refusal to give consent shall be rendered by the Company in accordance with Applicable Laws (in particular, Article 62 of the Public Procurement Law of the Republic of Latvia).
 - 7.4.4. 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 shall, for the purposes of this Agreement, be deemed to be the act, failure to act, breach or negligence of the Contractor itself.
 - 7.4.5. The Contractor must replace every Approved Sub-Contractor's member involved in the performance of the Services, if requested by the Company and supported by the reasons such as repeated careless performance of duties, incompetence or negligence, non-fulfilment of obligations or duties stipulated in the Agreement, as well as other reasons prescribed under the Agreement.
- 7.5. No conflicting activity. Except with the Company's knowledge and express written permission, the Contractor shall not engage in any activity or accept any employment, other agreement, interest, or contribution that would reasonably appear to compromise the **Contractor's** professional judgment and performance with respect to the provision of Services and/or the Global 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.

- 7.6. Information furnished by Company. The Contractor shall be entitled to rely on the accuracy and completeness of information furnished by the Company. The Contractor shall provide prompt written notice to the Company if the Contractor becomes aware of any errors, omissions, or inconsistencies in the information provided by the Company provision of the Services.
- 7.7. Visibility requirements. At all times during performance of the Services, the Contractor undertakes to comply with each of the following requirements:
- 7.7.1. any report, brochure, document, or information related to the Services carried out by the Contractor hereunder or any other person, or which the Contractor makes publicly available shall include each of the following:
- (a) 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";**
 - (b) with respect to printed materials, a disclaimer releasing the European Union from liability with respect to any contents of any distributed materials substantially in the form as follows: **"The sole responsibility of this publication lies with the author. The European Union is not responsible for any use that may be made of the information contained therein".** The disclaimer in all official languages of the European Union can be viewed on the website <https://ec.europa.eu/inea/connecting-europe-facility/cef-energy/beneficiaries-info-point/publicity-guidelines-logos>; and
 - (c) the flag of the Council of Europe and the European Union.
- 7.7.2. the requirements set forth in Clauses 7.7.1(a) and 7.7.1(c) can be complied with by means of utilizing the following logo (if the Contractor uses this logo, the Contractor shall ensure that the individual elements forming part of the logo are not separated (the logo shall be used as a single unit) and sufficient free space is ensured around the logo):



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- 7.7.3. 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 at the Signing Date, the visibility requirements are available for review on the webpage <https://ec.europa.eu/inea/connecting-europe-facility/cef-energy/beneficiaries-info-point/publicity-guidelines-logos>.
- 7.8. Reporting. The Contractor shall, in a format and at intervals to be determined by the Company:
- (a) provide the Company with reports and status updates on the progress of the Services;
 - (b) use reasonable endeavours to provide any other information and status updates as may be reasonably requested by the Company at any time; and
 - (c) 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 (in any case, 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 Applicable Laws).

8. COMPANY'S OTHER OBLIGATIONS AND COVENANTS

- 8.1. Supply of information. Unless otherwise provided under this Agreement, the Company shall, in a timely manner, provide to the Contractor any information as may reasonably be requested by the Contractor for the purposes of the Services, provided that the Company is in possession of such information.

- 8.2. Review of Documentation. The Company shall examine Documentation as may be submitted by the Contractor for review by the Company toward completion of the Services and shall give comments regarding their adequacy.
- 8.3. Decisions. On all matters properly referred to it in writing by the Contractor, the Company shall give its decision in writing so as not to delay the provision of Services and within a reasonable time.

9. REPRESENTATIONS AND WARRANTIES

- 9.1. Certain representations and warranties of the Parties. Each Party represents and warrants to the other Party, as of the Signing Date, as follows:
- (a) it has full power to enter into and perform this Agreement, and the person signing this Agreement on its behalf has been duly authorized and empowered to enter into such agreement;
 - (b) it has read this Agreement, understands it and agrees to be bound by it;
 - (c) it has entered into this Agreement with the aim of attaining all of the objectives and performing in all material respects all of the obligations and commitments herein set forth;
 - (d) it has entered into this Agreement without having any intention or goal whatsoever to violate the Applicable Laws, its own articles of association, other constitutional documents, laws or agreements of any kind to which it is a party to;
 - (e) it is not bankrupt and is not the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, it is not in an arrangement with creditors, where its business activities are suspended, or it is in any analogous situation arising from a similar procedure under the laws of the country where it is registered and submits its tax accounts; and
 - (f) it has entered into this Agreement of its own volition and in good faith.
- (a) it shall inform the other Party immediately if the Representatives are replaced during the term of this Agreement. In such case it is not mandatory to conclude separate amendments to the Agreement.
- 9.2. Certain representations and warranties of the Contractor. The Contractor represents and warrants to the Company, as of the Signing 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 Company as part **of the Procurement Procedure and on the terms of the Contractor's Proposal**;
 - (b) it holds and will hold for the entire term of the Agreement all requisite accreditations, recognitions, licenses, permits, approvals and consents necessary under the Applicable Laws to enable performance by the Contractor of the Services;
 - (c) it has all requisite ability to ensure the highest quality of the Services;
 - (d) it will assign competent and duly qualified personnel to carry out the Services according to the highest professional standards and the Good Industry Practices;
 - (e) it is not deemed to be a person associated with the Company for the purposes of the Applicable Laws;
 - (f) it is compliant with all of the requirements of the **Contractor's** Declaration, available on the Company's website (https://www.railbaltica.org/wp-content/uploads/2019/03/Common-procurement-standards-and-guidelines_appendix6.pdf) and will continue to be compliant with all such requirements during the term of this Agreement;

10. VARIATIONS

- 10.1. Variations. Notwithstanding any provisions in this Agreement to the contrary, whenever the Company or the Contractor reasonably consider that a variation to the Agreement (the "Variations") is necessary, the Company and the Contractor shall negotiate in good faith on the terms of the intended Variations. For the avoidance of doubt, no Variation shall be effective unless and until concluded in writing by the respective Parties.

- 10.2. Variations scope. For the purpose of the Agreement, as the case may be, Variations may be issued in respect of:
- 10.2.1. amendments to the Agreement or any part thereof, to comply with the amendments or adjustments to the Applicable Laws;
 - 10.2.2. amendments to the Technical Specification to comply with any requirements (mandatory or optional) of the national security agencies or any other state or municipal authorities or institutions of the Republic of Latvia, Republic of Estonia, and Republic of Lithuania, which are entitled to issue decrees, instructions or recommendations with respect to the provision of the Services or the implementation of the Global Project;
 - 10.2.3. supply of additional services not previously foreseen under the Agreement;
 - 10.2.4. provisions of the Agreement, which prescribe the conclusion of Variations;
 - 10.2.5. implementation of any amendments to the Agreement as initiated or approved by the Company during the provision of the Services which are necessary due to such reasons which the Company could not foresee in advance.
- 10.3. Limitations to the Variations. In case of Variations due to supply of additional Services or due to reasons which the Company could not foresee in advance, the total value of the Agreement may not change by more than the maximum amount permitted under the Applicable Laws.
- 10.4. De minimis. Notwithstanding anything to the contrary contained in the Agreement, the Company and the Contractor 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 under the Applicable Laws (in particular, Clause 5 of Article 61 of the Public Procurement Law of the Republic of Latvia).
- 10.5. Variations fee. If possible, fee for additional services as a result of Variations, if any, shall be determined taking into account the calculations and fees under **Annex A: Technical Specification – Technical Proposal** and **Annex B: Financial Proposal**. Furthermore, such fee shall be consistent with the market practice and proportionate to the Fee for the Services with similar scope under the Agreement, if any. Variations not resulting in additional services or works, including Variations related to the timeline of the provision of the Services, shall not result in additional fees or compensation of costs.

11. COMMUNICATION

- 11.1. Main principles. Communication under the Agreement (e.g., information, requests, submissions, formal notifications, etc.) must:
- (a) be carried out in English or Latvian;
 - (b) be made in writing (including electronic form) or orally (if this is not contrary to other provisions of the Agreement);
 - (c) be primarily carried out between the Representatives as specified in Clause 11.4 or otherwise notified to each other;
 - (d) **bear the Agreement's number**.
- 11.2. Presumption of receipt. Notices, declarations, invoices etc. shall be deemed received:
- (a) if delivered by hand, on the first (1) business day following the delivery day;
 - (b) if sent by post, on the fifth (5) Business Day after the date of posting;
 - (c) if sent by e-mail, **the same Business Day if sent prior to 17:00 o'clock and the next Business Day if sent after 17:00 o'clock** (Eastern European Time); communication by e-mail is deemed made when it is sent by the sending Party to the receiving Party, unless the sending Party receives a message of non-delivery.
- 11.3. Exchange over internet. For the purposes of the performance of the Agreement, the Parties agree that information may be exchanged electronically over the internet, always complying with the IT security requirements, if any, determined by the Company.

- 11.4. Representatives. The Company and the Contractor shall appoint an officer, employee or individual to serve as its representative toward the implementation of the Agreement and supply or receipt of the Services (including the request or confirmation of the Request Orders, signing of Acceptance Deed and the Objection Notice etc.), with full authority to act on its behalf in connection with this Agreement, but without the right to conclude amendments to the **Agreement (the "Representative")**. Any restriction placed by either Party **on its Representative's** authority shall be notified to the other Party in writing to be effective. The Representatives may delegate their authority by notice in writing (including via e-mail) specifying the contact information of the delegate and specifying the scope of authority so delegated. Each Party may replace or remove any Representative by notifying in writing the other Party immediately, but not later than 1 (one) business day after the replacement or the removal of the respective Representative. The initial Representatives are:
- (a) the authorised Representative of the Company for the Agreement fulfilment issues and procedures is [•].
 - (b) the authorised Representatives of the Contractor for the Agreement fulfilment issues and procedures is [•].

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1. No additional royalty. It is acknowledged and agreed by the Parties that consideration for the transfer of usage rights and/or ownership in the Intellectual Property shall be forming part of the Fee and no additional royalty, fee or other consideration of any kind shall be payable by the Company to the Contractor or to any third party in consideration of the transfer of usage rights and/or ownership in the Intellectual Property.
- 12.2. Contractor's representations and warranties. The Contractor represents and warrants that:
- (a) it owns all intellectual property required for the purposes of completing its obligations 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 such intellectual property 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;
 - (b) that no Documentation and information deliverable to the Company under the terms of this Agreement will infringe any existing intellectual property of any third party.
- 12.3. License in Contractor's intellectual property. The Contractor hereby grants the Company an irrevocable and non-exclusive license to use any intellectual property of the Contractor which is provided under the Agreement, provided and to the extent the intellectual property of the Contractor is used by the Company for the purposes of the Global Project. It is agreed and acknowledged by the Parties that the license fee for the grant of license in accordance with this Clause 12.3 forms part of the Fee.
- 12.4. Contractor's liability. In the event, any of the representations or warranties contained in this Section 12 prove to be untrue or inaccurate, the Contractor undertakes, at its own cost and expense, to indemnify the Company and defend and settle any claim raised by any third-party against the Company alleging infringement of its intellectual property in the Documentation and information. 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 Company the right of continued use of the Documentation and information, or part thereof infringing intellectual property of a third party.

13. TERM, TERMINATION AND SUSPENSION

- 13.1. Entry into force and expiry. The Agreement enters into force when signed by the Parties and expires once the Parties have fulfilled their contractual obligations arising out of this Agreement, unless terminated earlier pursuant to the provisions of the Agreement.
- 13.2. Termination for material breach. Subject to the provisions of Clause 13.3, either the Company or the Contractor shall be entitled to terminate this Agreement upon giving a written notice of termination to the other Party in the event of material breach by the Party of any of its obligations under this Agreement. The written notice of termination shall contain an itemized description of

the breach. For the purposes of this Clause 13.2 an event of material breach shall include any of the following:

- (a) failure by the Contractor to duly address any of the matters raised in the second Objection Notice given by the Company in accordance with Clause 4.11(b);
- (b) failure by the Services to conform to any of the material requirements contained in the Agreement, provided that such failure is not capable of being remedied upon receipt of the rejection in accordance with Clause 4.10(b);
- (c) failure by the Company, as applicable, to make any payment to the Contractor in accordance with this Agreement within at least 15 (fifteen) business days from the date of payment falling due;
- (d) any of the representations or warranties given by either Party under Clause 9.1 or any of the declarations, representations or warranties given by the Contractor under Clause 9.2 **Error! Reference source not found. or the Contractor's Declaration proves to be untrue.**
- (e) failure by the Contractor to comply with any set deadlines in the Agreement for more than 10 (ten) days.

13.3. 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 10 (ten) days for the corrective action or submission of a **corrective action plan (the "Corrective Period")**. The Corrective Period shall be counted from the date of receipt by the breaching Party of a written notice of breach. Should no satisfactory corrective action be taken, or acceptable corrective action plan provided by the breaching Party, the non-breaching Party shall have the right to terminate the Agreement. It is acknowledged and agreed by the Parties that the provisions of this Clause 13.3 shall not apply with respect to any of the events listed in Clause 13.4. In addition and for the avoidance of any doubt, the application of the Corrective Period under this Clause 13.3 shall be without prejudice to and shall not relieve either Party from the obligation to pay any contractual penalty in accordance with the provisions of Clause 14.2 or to pay Damages incurred by the other Party in accordance with the provisions of Clause 14.3. To clarify, the Corrective Period is not applied where the breach of the Agreement is related to Defects and Acceptance procedures as referred to in Clauses 13.2(a) and 13.2(b) as in these cases the purpose of the Corrective Period is fulfilled by the Cure Period and its prior application.

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

- (a) breach by a Party of Clause 20.1;
- (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 above paragraphs (d) - (f) under the law of any jurisdiction to which a **Party's assets and undertaking are subject**.

13.5. Company's right to terminate immediately. The Company may terminate this Agreement immediately upon giving the Contractor a written notice of termination explaining, in reasonable detail, the reason for termination, if:

- (a) CEF co-financing for further financing of the Services is not available to the Company fully or partly;
- (b) breach by the Contractor of any of the confidentiality undertakings contained in Section 16 or the undertakings under Clause 7.4;

If paragraph (a) or (b) of this Clause 13.5 is applied, the Company shall pay the Contractor in respect of the Services already provided under this Agreement up to the date of the notification of the termination of this Agreement, but the Company shall have no other liability in this respect (including, but not limited to not being obliged to pay contractual or any other penalty or Damages to the Contractor);

- (c) it is not possible to execute the Agreement due to the application of international or national sanctions, or the European Union or the North Atlantic Treaty Organization applied sanctions significantly affecting interests of financial or capital market;
- 13.6. Termination according to Public Procurement Law. The Agreement can be immediately terminated by the Company upon giving the Contractor 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 of the Republic of Latvia. In such a case, the Company shall pay the Contractor the Fee in respect of the Services already provided under this Agreement up to the date of the notification of the termination of this Agreement, but the Company shall have no other liability in this respect (including, but not limited to not being obliged to pay contractual or any other penalty or Damages to the Contractor).
- 13.7. Company's right to terminate. The Company, upon its sole discretion, may unilaterally terminate this Agreement upon giving the other Parties a written notice of termination three (3) months in advance. In such case, the Company shall pay the Contractor the Fee in respect of the Services provided under this Agreement up to the date of the termination of this Agreement and the Company is not obliged to pay contractual or any other penalty or Damages to the Contractor.
- 13.8. 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 Section 5, Clauses 7.2, 7.3, Section 12, Section 14, Section 16, Section 17, Section 18, Section 19 which shall survive the termination or expiry of this Agreement and continue in full force and effect along with any other Clauses of or Annexes hereof which are necessary to give effect to the Clauses specifically identified in this Clause 13.8.13.8(b).
- 13.9. No obligation to pay costs incurred prior to acceptance. Notwithstanding anything set forth in this Agreement to the contrary including, the Company shall have no obligation to pay any of the costs incurred by the Contractor with respect to the Services (or part of the Services) not deemed as having been accepted by the Company in accordance with Clause 4.9.
- 13.10. No prejudice to other rights. The right to terminate this Agreement shall be without prejudice to any other right of either Party which has accrued prior to or as a result of such termination or to any remedy available to either Party under the terms of this Agreement or in accordance with the Applicable Laws.

14. LIABILITY

- 14.1. Liability of Parties. The Contractor shall be liable to compensate Damages incurred by the Company arising out of or in connection with this Agreement and pay contractual penalty set forth in accordance with Clause 14.2.1 if a breach of any of the obligations of the Contractor under this Agreement is established against the Contractor. The Company shall be liable to pay the contractual penalty set forth in accordance with Clause 14.2.2 if a breach of payment obligations of the Company under this Agreement is established against the Company.
- 14.2. Contractual penalty.
 - 14.2.1. In the event of failure by the Contractor:
 - (a) to meet any of the set deadlines related to the Services mentioned in Clauses 2.1.1 and 2.1.2, the Company shall be entitled to claim from the Contractor a contractual penalty in the amount of 0.1% (zero point one percent) from the total amount of specific Order Request for each day of delay, provided that the total amount of the contractual penalty payable by the Contractor under this Clause 14.2.1 shall not exceed 10% (ten percent) of the total amount of the total amount of specific Order Request.
 - (b) to meet any requirements laid down in Clause 1.4, 1.5 and 18 of **Annex A: Technical Specification – Technical Proposal**, the Company shall be entitled to claim from the Contractor a contractual penalty in the amount of 50 EUR (fifty euro) for each time (including for each Phone) these infringements occur.

- (c) to meet any of the set deadlines related to the Services mentioned in Clauses 2.1.3 - 2.1.6, the Company shall be entitled to claim from the Contractor a contractual penalty in the amount of 50 EUR (fifty euro) for each time these infringements occur.
- 14.2.2. In the event of failure by the Company to pay any amount in accordance with Clause 6.10, the Contractor shall be entitled to claim from the Company a contractual penalty in the amount of 0.1% (zero point one percent) from the delayed amount for each day of delay, provided that the total amount of such contractual penalty payable by the Company under this Clause 14.2.2 shall not exceed 10% (ten percent) of the delayed amount.
- 14.3. Compensation for Damages. Notwithstanding of and without prejudice to any contractual penalty payable in accordance with Clause 14.2 and subject to the provisions of Clause 14.5, in the event it is established that either Party is liable to the other Party (**or relevant Party's sub-contractor**) with respect to any breach of its respective obligations under this Agreement, the liable Party shall compensate the other Party for any Damages incurred as a result of such breach, subject to the following terms:
- (a) the amount of compensation shall be limited to the amount of reasonably foreseeable Damages suffered as a result of the breach(es), but not otherwise; and
- (b) if either Party is considered to be liable jointly with third parties to the other, the proportion of compensation payable by the liable Party shall be limited to that proportion of liability which is attributable to the breach by the liable Party.
- 14.4. Attribution of Damages. Any Damages suffered by either Party shall, for the purposes of Clause 14.3, be reduced to the extent that the Damages are caused by or contributed to by the other **Party's own negligence or breach of its obligations under this Agreement**.
- 14.5. Limitation of liability. Notwithstanding anything to the contrary set forth in this Agreement, in no circumstances shall any Party be liable to the other Party for any loss of production, loss of profit, loss of revenue, loss of contract, liability incurred under other agreements or any indirect or consequential loss arising out of or in connection with this Agreement.
- 14.6. Transfer of risks. Up until the Completion Date the Contractor shall be liable for any casualty risk in connection with which the Phones or Equipment are destroyed or damaged.

15. FORCE MAJEURE

- 15.1. Effects of Force Majeure Event. Subject to the requirements set forth in accordance with Clauses 15.2 and 15.3, 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.
- 15.2. Action on becoming aware of Force Majeure Event. Each Party shall at all times, following the occurrence of a Force Majeure Event:
- (a) take reasonable steps to prevent and mitigate the consequences of such an event upon the performance of its obligations under this Agreement, resume performance of its obligations affected by the Force Majeure Event as soon as practicable and use reasonable endeavours in accordance with Good Industry Practice to remedy its failure to perform; and
- (b) not be relieved from liability under this Agreement to the extent that it is not able to perform, or has not in fact performed, its obligations under this Agreement due to any failure to comply with its obligations under Clause 15.2(a).
- 15.3. Notification requirements. Upon the occurrence of a Force Majeure Event, the affected Party shall notify the other Party as soon as reasonably practicable and in any event within 10 (ten) business days of it becoming aware of the relevant Force Majeure Event. Such notification shall give sufficient details to identify the particular event claimed to be a Force Majeure Event and shall contain detailed information relating to the failure to perform (or delay in performing), including the date of occurrence of the Force Majeure Event, the effect of the Force Majeure Event on the ability of the affected Party to perform, the action being taken in accordance with Clause 15.2(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.

- 15.4. 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).
- 15.5. Mitigation of effects of Force Majeure Event. As soon as practicable after the notification specified pursuant to Clause 15.3, the Parties shall use reasonable endeavours to agree appropriate terms or modifications to the Services to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement.

16. CONFIDENTIALITY

- 16.1. Confidential Information. “Confidential Information” means, in relation to the Company, all information of a confidential nature relating to the Company and its affiliates which is supplied by the Company (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 Company 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 Company and was not previously acquired by the Contractor from the Company or its affiliates under an obligation of confidence; or
 - (c) was developed by or for the Contractor at any time independently of this Agreement.
- 16.2. Undertakings with respect to Confidential Information. 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 Company.
- 16.3. Permitted disclosure. The Contractor shall, without the prior written consent of the Company, 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, agent, officer, Approved Sub-Contractor 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 18;
 - (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 the Applicable Laws or pursuant to an order of any court of competent jurisdiction, any parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of law; or
 - (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.
- 16.4. Obligations of recipients. Whenever disclosure is permitted to be made pursuant to Clauses 16.3(a) or 16.3(c), the Contractor shall require that the recipient of Confidential Information be subject to the same obligation of confidentiality as that contained in this Agreement.
- 16.5. Obligations on termination or expiry of Agreement. If this Agreement is terminated for whatsoever reason or it expires or the Company so requests, the Contractor shall:
- (a) return to the Company 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.
- 16.6. No press release. Save as required by the Applicable Laws, the Contractor shall not issue any press release in relation to the matters contemplated under this Agreement without the prior written

consent of the Company (such consent not to be unreasonably withheld or delayed) as to both the content and the timing of the issue of the press release.

- 16.7. Right to publish. For the avoidance of any doubt, the Company shall have the right to publish any of the documents, information or data provided by the Contractor to the Company during provision of the Services.
- 16.8. Remedies. The Parties acknowledge and agree that a breach of the provisions of this Section 16 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 16.2, 16.4 or 16.6 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.

17. RIGHT TO AUDIT

- 17.1. Right to audit. Notwithstanding anything to the contrary set forth in this Agreement, the Company itself, a reputable outside independent body or expert engaged and authorized by the Company 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.
- 17.2. Obligation to assist. The Contractor shall provide all reasonable assistance to the Company or the independent body authorized by the Company in carrying out any inspection or audit pursuant to this Section 17. The Company shall be responsible for its own costs, or the costs incurred by the outside independent body designated by the Company, 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 Company for all of its additional reasonable costs incurred, provided such non-compliance is material.
- 17.3. Survival of termination. The rights and obligations of the Company set forth in accordance with this Section 17 shall survive expiration or termination of this Agreement for any reason and shall continue to apply during the period of 10 (ten) years following expiration or termination of this Agreement for any reason whatsoever.

18. ON-THE-SPOT VISITS

- 18.1. Right to perform on-the-spot visits. By submitting a written notice 5 (five) business days in advance, but at the same time reserving the right of an unannounced on-the-spot visits without any advance notice, the Company may carry out on-the-spot visits to the sites and premises where the activities implemented within the Agreement are or were carried out.
- 18.2. Personnel involved. On-the-spot visits may be carried out either directly by authorised staff or representatives of the Company or by any other outside body or third party authorised to do so on behalf of the Company. Information provided and collected in the framework of on-the-spot visits shall be treated on confidential basis. The Company shall ensure that any authorised outside body or third party shall be bound by the same confidentiality obligations.
- 18.3. Access to the information. The 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.
- 18.4. 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.

19. GOVERNING LAW AND RESOLUTION OF DISPUTES

- 19.1. Governing law. This Agreement shall be governed by and construed in accordance with law of the Republic of Latvia.
- 19.2. Resolution by amicable means. The Parties shall first attempt to settle any dispute, controversy or claim arising out of or relating to this Agreement through good faith debate, discussion, and negotiating prior to submitting them to mediation, arbitration, or other legal proceeding.
- 19.3. Venue for resolution of disputes. Should the Parties fail to settle such disputes, controversies or claims within 30 (thirty) days by amicable negotiations, the Parties shall submit all their disputes arising out of or in connection with this Agreement to the exclusive jurisdiction of the courts of the Republic of Latvia.
- 19.4. Language. The Parties hereby represent and warrant that the English language is understandable for both Parties in accordance with Article 8(1)(a) of the Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) and repealing Council Regulation (EC) No 1348/2000.

20. MISCELLANEOUS PROVISIONS

- 20.1. Conflict of interest, corruption and fraud. Notwithstanding any penalties that may be enforced against the Contractor under the Applicable Laws, or the laws of other jurisdiction(s), the Contractor shall be deemed to have committed a breach under this Agreement and the Company shall be entitled to terminate this Agreement immediately and without any regard to the provisions of Clause 13.3, 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 Company, including the use of collusive practices intended to stifle or reduce the benefits of free and open competition.
- 20.2. Personal data. 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, etc. Furthermore, the Party transferring to the other Party certain personal data shall be responsible for informing and, if necessary, obtaining the consent of the data subject for the processing of the personal data. The Parties agree and acknowledge that for the purpose of the Agreement each of the Parties shall be viewed as controllers of personal data. In this respect:
 - 20.2.1. 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 the Applicable Laws.
 - 20.2.2. 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.
 - 20.2.3. Besides other obligations provided for in the Agreement, each of the Parties undertakes:
 - (a) to process the personal data to the minimum extent necessary;
 - (b) not to infringe any rights of the data subjects;
 - (c) to implement and apply proper organizational and technical measures ensuring the compliance with the requirements of the law;

- (d) to ensure the compliance with other requirements of the statutory law governing the protection of personal data.
- 20.3. Relationship of Parties. The relationship between the Contractor and the Company under this Agreement is that of independent contractor. The Contractor (or the Approved Sub-Contractors) is not an employee of the Company, is not carrying out the regular business of the Company and is not subject to the same employment regulations as are applicable to employees of the Company. Each of the Parties shall be solely and entirely responsible for their own acts and the acts of their employees and sub-contractors. No benefits, special considerations, or employer/employee-type provisions are provided by the Company to the Contractor, its employees, its consultants, or the employees of such consultants.
- 20.4. Severability. If any provision of this Agreement shall be held to be illegal, invalid, void or unenforceable under the Applicable Laws, the legality, validity and enforceability of the remainder of this Agreement shall not be affected, and the legality, validity and enforceability of the whole of this Agreement shall not be affected.
- 20.5. Successors and assigns. The Parties each bind themselves, their successors, legal representatives, and assigns to the other party to this Agreement and to the partners, successors, legal representatives and assigns of such other party in respect to all covenants of this Agreement. Neither Party shall assign or transfer its respective interest in the Agreement without written consent of the other Party, if not directly provided otherwise under the Agreement.
- 20.6. Amendments and Variations. No amendment to or Variation of this Agreement shall be effective unless made in writing by duly authorized representatives of both Parties, if not provided otherwise herein. The Agreement can be amended in compliance with the provisions of Article 61 of the Public Procurement Law of the Republic of Latvia.
- 20.7. Entire agreement. This Agreement, and the Annexes hereto, constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes and extinguishes all and any prior drafts, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter.
- 20.8. Execution. This Agreement is executed as an electronic document.

21. DETAILS AND SIGNATURES OF THE PARTIES

For and on behalf of the Company:

Name, title: **Agnis Driksna**
Chairperson of the Management Board

For and on behalf of the Contractor:

Name, title: **Ivars Šulcs**
Member of the Board

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

ANNEX A: TECHNICAL SPECIFICATION – TECHNICAL PROPOSAL

[CONFIDENTIAL]

ANNEX B: FINANCIAL PROPOSAL

[CONFIDENTIAL]

ANNEX C: LIST OF APPROVED SUB-CONTRACTORS

[NOT-APPLICABLE]