**

**AGREEMENT**

**on**

**PURCHASE OF FUEL AND OTHER CAR-RELATED GOODS AND SERVICES IN PETROL STATIONS**

between

**RB Rail AS**

(“Customer”)

and

[●]

(“Seller”)

|  |  |
| --- | --- |
| DocLogix registration No  Agreement registration No | [●]  [●] |
| Procurement procedure identification No | RBR [●] |

Riga

2023



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**AGREEMENT**

**on**

**PURCHASE OF FUEL AND OTHER CAR-RELATED GOODS AND SERVICES IN THE PETROL STATIONS**

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

1. **RB Rail AS**, a public limited liability company registered in the Commercial Register of the Republic of Latvia with registration No 40103845025 and legal address at Satekles iela 2B, Riga, LV-1050, Latvia (the “Customer”), represented by [●] acting on the basis of [●], on the one side, and
2. [●], a company registered in [●] with registration No [●] and legal address at [●] (the “Seller”), represented by [●], acting on the basis of [●], on the other side,

(the Customer and the Seller referred to as the “Parties” and separately – as the “Party”).

**WHEREAS:**

* 1. this Agreement is entered into under the Rail Baltica Global Project which includes all activities undertaken by the respective beneficiaries and implementing bodies of the Republic of Estonia, the Republic of Latvia and the Republic of Lithuania in order to build, render operational and commercialise the Rail Baltica railway – a new fast conventional double track electrified railway line with European standard gauge (1435mm) on the route from Tallinn through Pärnu-Riga-Panevėžys-Kaunas to Lithuanian-Polish border, with the connection of Kaunas-Vilnius, and related railway infrastructure in accordance with the agreed route, technical parameters and time schedule (the “Global Project”);
  2. the Customer has organised a procurement “Purchase of the fuel and other car-related goods and services in the petrol stations” (identification No RBR 2023/7) (the “Procurement Procedure”) within which the Seller has submitted its proposal (the “Seller’s Proposal”) and the Seller’s Proposal was selected as the winning bid;
  3. This Agreement is co-financed from the Connecting Europe Facility funding instrument (“CEF”) and other signed grant agreements or future grant or financing agreements to be signed;

**THEREFORE,** the Parties agree as follows:

1. Definitions, Interpretation and Order of Precedence
   1. In this Agreement, unless the context requires otherwise, in addition to the definitions set out below in the Agreement, the following additional definitions shall have the following meaning:
      1. “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.
      2. “Annex” means any of the annexes enclosed to this Agreement and listed in Clause 1.3. of the Agreement.
      3. “Applicable Laws” means any legislative act, regulation, decree, order, ordinance, statute, treaty, directive, judgment, or other legislative measure applicable to the Agreement, the Parties, etc. (including, but not limited to the Public Procurement Law of the Republic of Latvia).
      4. “business day” means any day except Saturday, Sunday and any day which is a public holiday in Latvia.
      5. “Car-related Goods” means technical liquids (windscreen washer fluid, engine oil, AdBlue liquid etc.) air fresheners, windshield wipers, light bulbs and other similar car-related goods that usually may be purchased at petrol stations in Baltic States. For the sake of clarity, the term Car-related Goods does not include spare parts (other than windshield wipers and light bulbs), any covers, food, drinks, tobacco products, printed media and other products not directly related to the exploitation of a car.
      6. “Confidential Information” as defined in Clause 14.1. of the Agreement.
      7. “Defect” means any error, fault, omission, defect or other non-compliance of the Goods with the requirements of the Agreement, the Applicable Laws, or the Good Industry Practice.
      8. “EUR” and “euro” means the official currency of the eurozone, officially known as the euro area.
      9. “Force Majeure Event” means any means any event which meets all the following criteria:
         1. It is an event that cannot be avoided and whose consequences cannot be overcome;
         2. It could not be foreseen at the time when the Agreement was concluded;
         3. It was not caused by the act of the affected Party or a person under its control;
         4. It makes it impossible to fulfil the obligation arising from the Agreement.

For example, these events could be considered as Force Majeure Events if they meet the criteria defined above (this list is not exhaustive):

* + - * 1. an act of the public enemy or war (declared or undeclared), threat of war, revolution, riot, insurrection, civil commotion, demonstration or sabotage;
        2. an act of vandalism or accidental damage or destruction of machinery, equipment, track or other infrastructure;
        3. 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);
        4. nuclear, chemical or biological contamination, epidemic or pandemic (except for COVID-19 pandemic);
        5. strike, lockout or other industrial action other than involving the Seller or the Customer.
    1. “Fuel” means diesel fuel and petrol that meet the requirements of Agreement (including the Technical Specification) and other terms and conditions not mentioned in the Agreement, which must be complied with in accordance with laws of the Republic of Latvia, the Republic of Lithuania and the Republic of Estonia and other Applicable Laws.
    2. “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 the services of a similar size, nature, scope, type and complexity, complying with the Applicable Laws.
    3. “Procurement Procedure” as defined in the Preamble of the Agreement.
    4. “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.
    5. “Sub-Contractor” means any person or organisation listed in ANNEX C: APPROVED SUB-CONTRACTOR which is in a contractual relationship with the Seller to fulfil a part of the Seller’s obligations under the Agreement.
    6. “Supplier’s Declaration” means Appendix 6[[1]](#footnote-2) to the Common Procurement Standards and Guidelines for the Rail Baltica Project.
    7. “Technical Specification” means a description of the requirements towards Purchases which are prepared by the Customer and set out in the Procurement Procedure, which is enclosed in ANNEX A: TECHNICAL SPECIFICATION to this Agreement.
    8. “Washing Services” means car wash services that meet the requirements of the Technical Specification.
  1. The following interpretation rules of the provisions of this Agreement shall apply:
     + 1. The headings contained in this Agreement shall not be used in its interpretation.
       2. References to the singular shall include references in the plural and vice versa and words denoting natural persons shall include any other Persons.
       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.
       4. 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.
       5. A reference to “writing” shall include an e-mail transmission and any means of reproducing words in a tangible and permanently visible form.
       6. The words “include” and “including” are to be construed without limitation.
       7. Unless indicated otherwise, all references to “days” shall mean calendar days.
  2. The Agreement contains the following Annexes:
     1. ANNEX A: TECHNICAL SPECIFICATION;
     2. ANNEX B: SELLER’S PROPOSAL;
     3. ANNEX C: APPROVED SUB-CONTRACTOR.
  3. In the event of any discrepancy or inconsistency between the documents forming part of this Agreement, the following order of precedence shall apply:
     + 1. this Agreement document (body text);
       2. explanations (clarifications) of the Procurement Procedure documentation;
       3. the Procurement Procedure documents with the annexes (including the Technical Specification);
       4. clarifications of the Seller’s Proposal;
       5. the Seller’s Proposal.

1. SUBJECT MATTER OF THE AGREEMENT
   1. The Seller sells and the Customer may purchase the Fuel, the Car-related Goods and the Washing Services (hereinafter the Fuel, the Car-related Goods and the Washing Services collectively referred to as – the “Goods”) at the Seller`s (including its cooperation partner’s) petrol stations specified in the ANNEX B: SELLER’S PROPOSAL (the “Petrol Stations”).
   2. The Seller shall ensure that the Goods may be bought in Petrol Stations in the territory of the Republic of Latvia, the Republic of Lithuania and the Republic of Estonia by using post-payment cards issued by the Seller (hereinafter – the “Cards”) in accordance with terms and conditions included in the Agreement. The Seller shall provide the opportunity to buy Fuel 24 (twenty-four) hours a day, 7 (seven) days a week in the territory of Latvia, Lithuania and Estonia.
   3. The Seller shall ensure that the Customer receives a discount when Fuel is purchased from the Seller. The exact discount amounts are indicated in ANNEX B: SELLER’S PROPOSAL, and they shall be applied to the retail Fuel prices set at the Petrol Station (where the purchase is made) at the time of purchase of the Fuel. The discounts referred to in this Clause 2.3. of the Agreement, will be fixed (permanent) and valid for the entire term of the Agreement.
2. total value AND TERM
   1. The total amount of the Agreement during the term of the Agreement is up to 41 999,99 EUR (forty-one thousand nine hundred and ninety-nine euros, 99 cents) without the value added tax (the “Total Value”).
   2. The Agreement does not impose any obligation whatsoever on the Customer to buy any particular quantity of the Goods at any time, nor does it guarantee any exclusive right to the Seller to supply the Goods to the Customer.

The term of the Agreement is 24 (twenty-four) months starting on the Signing Date or until the Total Value has been reached (the “Term”), whichever is earlier. In case the Total Value has not been reached, yet the initial 24 (twenty-four) 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.

* 1. After the expiry of the Term or once the Total Value has been reached, no more Goods can be bought.

1. Use of the Cards
   1. Upon a written e-mail request of the Customer, the Seller shall deliver the number of Cards requested by the Customer to the Customer free of charge within 5 (five) business days. Information on Card pin codes must be supplied at the time of Card delivery, unless otherwise agreed between the Parties.
   2. The Customer shall not be obliged to pay for production, renewal, delivery and/or use of the Cards.
   3. The Seller ensures the ability for the Customer to buy the Goods in all Sellers` Petrol Stations no later than on the next day after the Cards are issued to the Customer.
   4. If after the delivery of the Cards or during the term of the Agreement the Customer finds the Card to be damaged or the Card is lost, the Seller shall replace it with a new Card free of charge within 5 (five) business days after the date of submission of the damaged Card to the Seller or the date on which Customer has notified by e-mail the Seller about the loss of the Card.
   5. If the Card is lost or damaged, the Customer or its authorized person shall notify the Seller thereof immediately, as soon as it becomes aware, in writing by e-mail: [●] or by phone: [●].
   6. If the Customer notifies the Seller that the Card is lost, the Seller is obliged to immediately suspend the possibility to use the respective Card. If the Seller fails to comply with the obligation set out in this Clause 4.6. of the Agreement, the Customer will not be obliged to pay for the Goods bought after notification of the loss of the Card is issued.
2. Quality of the FUEL
   1. The Seller undertakes to sell the Fuel in in line with and in the quality specified in the Agreement. The Fuel sold must comply with the requirements and standards specified under the Applicable Laws.
   2. The Seller certifies that the quality of the Fuel has been approved by a conformity certificate issued by an accreditation conformity assessment body following the procedures specified under Applicable Laws and guarantees the compliance of the sold Fuel with the quality requirements specified in the country of sale, even when such requirements are changed.
   3. The Seller is responsible for the quality of the Fuel sold to the Customer and shall be liable for all justified losses (damages) incurred to the Customer related to the non-compliance of the Fuel with the respective quality requirements.
3. Payments
   1. By the 5th day of each calendar month, the Seller shall submit to the Customer a report and invoice on the use of the Cards in the previous month, which includes information about the Goods bought with each Card, including, Card number; date, place, time, type and quantity of Fuel, Car-related Goods and the Washing Services bought; an indication of the price of 1 (one) litre of Fuel bought; applied discount in percent (%); and the total Card payment amount with value added tax (the “VAT”).
   2. The Seller’s invoices shall contain the following details:

|  |  |
| --- | --- |
| The Seller: | [●] |
| Registration No: | [●] |
| VAT payer's No or indication that the Seller is not a VAT payer: | [●] |
| Legal address, city, Zip code, country: | [●] |
| Legal name of Bank: | [●] |
| Bank SWIFT Code: | [●] |
| Bank Account No IBAN: | [●] |
| The Customer’s name and VAT No: | RB Rail AS  LV40103845025 |
| Subject: | For purchases made under the Agreement No. [●] |
| Specific information: | [*CEF reference if so requested by the Customer and/or other information requested by the Customer, if any]*  Authorised representative of the Customer: [●]. |

* 1. The Seller shall send invoices to the Customer electronically to the following e-mail address: [invoices@railbaltica.org](mailto:invoices@railbaltica.org). In case payment for the Goods bought (in whole or in part) will be made from more than one financing source, and upon the Customer’s request, the Seller shall issue separate invoices corresponding to the amounts financed from the financing source as indicated by the Customer.  The Parties agree to recognize as valid and payable invoices prepared electronically without the “signature” part of the details area.
  2. Payment of the Seller's invoices will be made in euro by bank transfer within 30 (thirty) days after the compliant invoice and all the necessary information, as indicated in Clause 6.1. of the Agreement, are received. The Customer may reject the invoice or at any point suspend the payment deadline if (i) invoice supporting documents are missing, (ii) the invoice is incorrect, or (iii) the Customer has to make further checks to verify details of the invoice/supporting documents. In such case the Customer must notify the Seller of the suspension and the reasons for it. After the condition for suspending the payment deadline is rectified, the suspension will be lifted — and the remaining payment period will resume.
  3. 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.
  4. VAT will be charged at the rate applicable in accordance with Applicable Laws at the time of invoicing.
  5. The Customer shall have the right to make the payments to the Seller with set-off, retention, counterclaim, abatement, or other deduction of any kind that arises from this Agreement and from the obligations of the Seller provided herein. If the Customer uses the right to make the payments to the Seller with set-off, retention, counterclaim, abatement, or other deduction of any kind, then the Customer notifies the Seller 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.

1. SELLER’s obligations and covenants
   1. Without prejudice to the requirements prescribed elsewhere under the Agreement, the Seller shall:
      1. perform its obligations under the agreement in accordance with the terms of the Agreement, and also in accordance with the Applicable Laws and the Good Industry Practice;
      2. exercise reasonable professional skill, diligence and care as may be expected of a properly qualified and competent person carrying out services of a similar size, nature, type and complexity;
      3. ensure that its personnel are properly qualified and competent.
   2. During the term of the Agreement and for a period of 10 (ten) years from expiration or termination of this Agreement for any reason whatsoever, the Seller shall keep and maintain clear, adequate, and accurate records and documentation evidencing, to the reasonable satisfaction of the Customer, that the fulfilment of the Agreement has been carried out in accordance with the Agreement. In case of on-going audits, appeals, litigation or pursuit of claims concerning the grant, including in the case of correction of systemic or recurrent errors, irregularities, fraud or breach of obligations, the records shall be kept and maintained longer.
   3. During the fulfilment of the Agreement, the Seller may only rely on the services of those Sub-Contractors listed in ANNEX C: APPROVED SUB-CONTRACTOR. The Seller must take into account that when engaging Sub-Contractors and other partners involved in the performance of the Agreement, the following terms and conditions must be taken into account:
      1. The list of the Sub-Contractors may, from time to time, be modified or supplemented always subject to (i) a prior written consent of the Customer, (ii) compliance of new Sub-Contractors with all the qualification criteria under the Procurement Procedure documents must be fulfilled (iii) compliance with all the other terms and conditions of the Agreement and the criteria contained in the Applicable Laws.
      2. The Seller shall have an obligation to notify the Customer in writing of any changes to the Sub-Contractors data occurring during the term of this Agreement and of the required information for any new Sub-Contractors who it may subsequently engage toward fulfilment of the Agreement.
      3. The Seller shall obtain prior written consent of the Customer for the replacement of each Sub-Contractors or involvement of any new sub-contractors. Review and evaluation of the replacement of Sub-Contractors shall be carried out, and the consent or refusal to give consent shall be rendered by the Customer in accordance with Applicable Laws (in particular, Article 62 of the Public Procurement Law of the Republic of Latvia) and this Agreement.
      4. The Seller 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 Sub-Contractors, business partners, employees, etc., shall, for the purposes of this Agreement, be deemed to be the act, failure to act, breach or negligence of the Seller itself.
   4. At all times the Seller undertakes to comply with each of the following requirements:
      1. any report, brochure, document, or information related to the fulfilment of the Agreement which the Seller makes publicly available shall include each of the following:
         * 1. a funding statement which indicates that the fulfilment of the Agreement is financed from CEF funds substantially in the following form: “Co-funded by the European Union”;
           2. 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: “Co-funded by the European Union. Views and opinions expressed are those of the author(s) only and do not necessarily reflect those of the European Union or the granting authority. Neither the European Union nor the granting authority can be held responsible for them”. The disclaimer in all official languages of the European Union can be viewed on the website <https://cinea.ec.europa.eu/communication-toolkit_en> ; and
           3. the flag of the Council of Europe and the European Union.
      2. the requirements set forth in Clauses 7.4.1(a) and 7.4.1(c) should be complied with means of utilizing the following logo:



* + 1. the Seller shall ensure that the logo remains distinct and separate and no other visual identity or logo may be used to highlight the EU support.
    2. in order to comply with the latest applicable visibility requirements established by the European Union, the Seller shall regularly monitor changes to visibility requirements; as of the Signing Date, the visibility requirements are available for review on the webpage <https://cinea.ec.europa.eu/communication-toolkit_en>.

1. Customer’s obligations and covenants
   1. The Customer shall, in a timely manner, provide to the Seller any information in the possession of the Customer as may reasonably be requested by the Seller for the purposes of fulfilment obligations under this Agreement.
   2. The Customer shall pay for the Goods in compliance with the provisions of the Agreement.
2. other Representations and Warranties of the Parties
3. 1. Each Party represents and warrants to the other Party, as of the Signing Date, as follows:
      * 1. 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;
        2. it has read this Agreement, understands it and agrees to be bound by it;
        3. it has entered into this Agreement without violating the Applicable Laws, its own articles of association, other constitutional documents, laws or agreements of any kind to which it is a party to;
        4. 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
        5. it has entered into this Agreement of its own volition and in good faith.
   2. The Seller represents and warrants to the Customer, as of the Signing Date, as follows:
      * 1. it has all requisite qualification, skills and competence to fulfil the commitments arising from the Agreement on the terms and conditions of this Agreement which are no less favourable than the terms and conditions of service identified by the Seller in any document submitted by the Seller to the Customer as part of the Procurement Procedure and on the terms of the Seller’s Proposal;
        2. 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 Seller of the obligations under the Agreement;
        3. it will assign competent and duly qualified personnel to carry out the obligations arising under the Agreement according to the highest professional standards and the Good Industry Practices;
        4. it is not deemed to be a person associated with the Customer for the purposes of the Applicable Laws;
        5. it is compliant with all of the requirements of the Supplier’s Declaration and will continue to be compliant with all such requirements during the term of this Agreement;
        6. it has been registered as a VAT payer in the Republic of Latvia.
4. Communication
   1. Communication under the Agreement must:
      * 1. be carried out in English or Latvian;
        2. be made in writing (including electronic form);
        3. be primarily carried out between the Representatives as specified in Clause 10.3. of the Agreement.
   2. Notices, declarations, invoices etc. shall be deemed received:
      * 1. if delivered by hand, on the first (1) business day following the delivery day;
        2. if sent by post, on the fifth (5) business day after the date of posting;
        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); 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.
   3. The Customer and the Seller shall appoint an officer, employee or individual to serve as its representative toward the implementation of the Agreement with full authority to act on its behalf in connection with this Agreement, without the right to conclude amendments to the Agreement (the “Representative”). Any restriction placed by either Party on its Representative’s authority shall be notified to the other Party in writing to be effective. The Representatives may delegate their authority by notice in writing specifying the contact information of the delegate and specifying the scope of authority so delegated. Each Party may replace or remove any Representative by notifying in writing the other Party immediately, but not later than 1 (one) business day after the replacement or the removal of the respective Representative. The initial Representatives are:
      * 1. the authorised representative of the Customer for the Agreement fulfilment issues and procedures is [●], e-mail: [●] , phone: [●];
        2. the authorised representative of the Seller for the Agreement fulfilment issues and procedures is [●], e-mail: [●], phone: [●].
5. Termination of the Agreement
   1. The Agreement enters into force when signed by the Parties.
   2. The Parties may terminate the Agreement before the expiry of the Agreement by mutual written agreement of the Parties.
   3. The Customer is be entitled to unilaterally terminate the Agreement with a 30 (thirty) days prior written notice to the Seller without specifying the cause for termination.
   4. By sending a written notice to the Seller, the Customer is entitled to terminate the Agreement unilaterally on the day of sending the notice, in the following cases:
      1. the Seller has committed substantial errors, irregularities or fraud, or is in material breach of its obligations under the Procurement Procedure or under the Agreement, including if there have been false declarations made, etc.;
      2. if the Seller does not comply with the requirements specified in the Agreement or other Applicable Laws regarding the protection of personal data, confidentiality, and security of information;
      3. if the Connecting Europe Facility (CEF) co-financing of the Agreement becomes unavailable to the Customer fully or partly;
      4. if the Seller is under international (including OFAC) or national sanctions, or a Member State’s of the European Union or North Atlantic Treaty Organization applied sanctions;
      5. in the cases specifically indicated in Article 64 of the Public Procurement Law of the Republic of Latvia.
      6. Either Party may terminate the Agreement by giving written notice to the other Party at least 30 (thirty) days in advance if liquidation, bankruptcy, insolvency, or legal protection proceedings have been initiated against the other Party.
   5. The Seller is entitled to unilaterally terminate the Agreement with a 30 (thirty) days prior written notice to the Customer if the Customer fails to make a payment where such failure has not been eliminated within thirty (30) days after calendar days after receipt of a written notice of failure to pay from the Seller.
   6. Unless prohibited by Applicable Laws, in the event of termination of the Agreement, the Customer shall pay the Seller for the Goods received until the date of termination of the Agreement, but the Customer shall not be obliged to pay the Seller a contractual penalty or any other penalty, loss, compensation etc.
6. Liability
7. 1. Each Party shall be liable for the damages caused to the other. Notwithstanding anything to the contrary set forth in this Agreement, in no circumstances shall any Party be liable to the other Party for any loss of production, loss of profit, loss of revenue, loss of contract, liability incurred under other agreements or any indirect or consequential loss arising out of or in connection with this Agreement.
   2. The Parties agree that the following Contractual Penalty are applicable:
      1. for the delay of the payment due date specified in the Agreement, the Seller shall be entitled to claim from the Customer a contractual penalty in the amount of 0.05% (zero point zero five percent) of the amount of the outstanding payment for each business day of delay, but not exceeding 10% (ten percent) of the amount of the outstanding payment.
      2. the Customer shall be entitled to claim from the Seller the contractual penalty in the amount of 50 EUR (fifty euros) each time when due to the fault of the Seller the Customer will be unable to buy Goods in accordance with the terms of the Agreement and/or when the Goods will have any Defects.
   3. The application of the contractual penalty under this Agreement in each particular case shall be at the sole discretion of the entitled Party taking into account material consequences of the infringement. The entitled Party may apply the contractual penalty at any time until the date of expiry or termination of the Agreement by providing to the breaching Party a written notice and issuing an appropriate invoice. The breaching Party shall pay the contractual penalty within a time period of 30 (thirty) days following the date on which the breaching Party received the invoice.
   4. Payment of any contractual penalty under the Agreement does not release the respective Party from fulfilment of its obligations (including, does not release from the obligation to compensate damages).
8. Force Majeure
   1. Subject to the requirements set forth in accordance with Clauses 13.2 and 13.3, each Party shall be relieved from liability for non-performance of its obligations under this Agreement to the extent that the Party is not able to perform such obligations due to a Force Majeure Event.
   2. Each Party shall at all times, following the occurrence of a Force Majeure Event:
      * 1. 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
        2. 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 13.2(a).
   3. 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 13.2(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.
   4. The affected Party shall notify the other Party as soon as practicable once the performance of its affected obligations can be resumed (performance to continue on the terms existing immediately prior to the occurrence of the Force Majeure Event).
   5. As soon as practicable after the notification specified pursuant to Clause 13.3, the Parties shall use reasonable endeavours to agree appropriate terms or modifications to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement.
9. Confidentiality
   1. “Confidential Information” means all information relating to the Customer and its affiliates which is collected by the Seller or supplied by the Customer (whether before or after the date of this Agreement) to the Seller, 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:
      * 1. the Customer confirms in writing is not required to be treated as confidential;
        2. the Seller can show that the Confidential Information was in its possession or known to it (by being in its use or being recorded in its files or computers or other recording media) prior to receipt from the Customer and was not previously acquired by the Seller from the Customer under an obligation of confidence.
   2. The Seller shall (i) at all times keep confidential all Confidential Information received by it and shall not disclose such Confidential Information to any other person, and (ii) procure that its affiliates and its and their respective officers, employees and agents shall keep confidential and not disclose to any person any Confidential Information except with the prior written consent of the Customer.
   3. Notwithstanding anything to the contrary set forth in accordance with this Section 14, the Seller shall, without the prior written consent of the Customer, be entitled to disclose Confidential Information:
      * 1. that is reasonably required by the Seller in the performance of its obligations pursuant to this Agreement, including the disclosure of any Confidential Information to any employee, contractor, agent, officer, or adviser to the extent necessary to enable the Seller to perform its obligations under this Agreement (subject to the same confidentiality undertakings by the recipients);
        2. to enable a determination to be made pursuant to Section 15 and Section 16;
        3. 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 (subject to the same confidentiality undertakings by the recipients);
        4. 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
        5. 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.
   4. Upon request of the Customer, the Seller shall:
      * 1. return to the Customer all of the Confidential Information within the possession or control of the Seller; or
        2. destroy such Confidential Information using a secure and confidential method of destruction.
   5. Save as required by the Applicable Laws, the Seller shall not issue any press release in relation to the matters contemplated under this Agreement without the prior written consent of the Customer.
10. Right to Audit
    1. Notwithstanding anything to the contrary set forth in this Agreement, the Customer itself, a reputable outside independent body or expert engaged and authorized by the Customer is entitled to inspect and/or audit the Seller to ensure compliance with the terms of this Agreement, including inspecting and/or auditing:
       * 1. the performance of any aspect of the fulfilment of the Agreement; and/or
         2. any documentation, including all payrolls, accounts of the Seller and/or other records used in or related to the performance of the Agreement.
    2. The Seller shall provide all reasonable assistance to the Customer or the independent body authorized by the Customer in carrying out any inspection or audit pursuant to this Section 15. The Customer shall be responsible for its own costs, or the costs incurred by the outside independent body designated by the Customer, incurred toward carrying out such inspection or audit, unless, in the case of any such audit, that audit reveals that the Seller is not compliant with the terms of this Agreement, in which case the Seller shall reimburse the Customer for all of its additional reasonable costs incurred, provided such non-compliance is material.
    3. The rights and obligations of the Customer set forth in accordance with this Section 15 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.
11. On-the-spot visits
12. 1. 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 Customer may carry out on-the-spot visits to the sites and premises where the activities implemented within the Agreement are or were carried out.
    2. On-the-spot visits may be carried out either directly by authorised staff or representatives of the Customer or by any other outside body or third party authorised to do so on behalf of the Customer. Information provided and collected in the framework of on-the-spot visits shall be treated on confidential basis. The Customer shall ensure that any authorised outside body or third party shall be bound by the same confidentiality obligations.
    3. The Seller 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.
    4. By virtue of Council Regulation (Euratom, EC) No 2185/96 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, Regulation (EU, Euratom) No 883/2013 of the European Parliament and the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 and other legislation and documentation relating to European Union grant awarding and subsequent monitoring processes, the European Commission; the European Anti-Fraud Office; the European Climate, Infrastructure and Environment Executive Agency; the European Court of Auditors and other European Union institutions and bodies might perform checks, reviews, audits and investigations towards Seller in case such activities are related to the use of grants awarded.
13. personal data
    1. 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 etc. 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 acknowledge that for the purpose of the Agreement each of the Parties shall act as an independent controller. The Party shall transfer the personal data to the other Party and such other Party shall process the personal data only for the purposes of execution of the Agreement and other such purposes as required by Applicable laws. 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.
    2. Besides other obligations provided for in the Agreement, each of the Parties undertakes:
       * 1. to process the personal data to the minimum extent necessary;
         2. not to infringe any rights of the data subjects;
         3. to implement and apply proper organizational and technical measures ensuring the compliance with the requirements of the law;
         4. to ensure the compliance with other requirements of the law governing the protection of personal data.
14. Governing Law and DISPUTE RESOLUTION
    1. This Agreement shall be governed by and construed in accordance with law of the Republic of Latvia.
    2. 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.
    3. Should the Parties fail to settle such disputes, controversies or claims within 2 (two) months by amicable negotiations, the Parties shall submit all their disputes arising out of or in connection with this Agreement to the exclusive jurisdiction of the courts of the Republic of Latvia.
15. Miscellaneous provisions
    1. Notwithstanding any penalties that may be enforced against the Seller under the Applicable Laws, or the laws of other jurisdiction(s), the Seller shall be deemed to have committed a breach under this Agreement and the Customer is entitled to terminate this Agreement immediately, if it is shown that the Seller is guilty of:
       * 1. 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
         2. misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Customer, including the use of collusive practices intended to stifle or reduce the benefits of free and open competition.
    2. The relationship between the Seller and the Customer under this Agreement is that of independent contractor. The Seller is not an employee of the Customer, is not carrying out the regular business of the Customer and is not subject to the same employment regulations as are applicable to employees of the Customer. Each of the Parties shall be solely and entirely responsible for their own acts and the acts of their employees. No benefits, special considerations, or employer/employee-type provisions are provided by the Customer to the Seller, its employees, its consultants, or the employees of such consultants.
    3. 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.
    4. 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.
    5. Notwithstanding any provisions in this Agreement to the contrary, whenever the Customer or the Seller reasonably consider that a variation to the Agreement (the “Variations”) is necessary, the Customer and the Seller shall negotiate in good faith the terms of the proposed Variations. For the avoidance of doubt, no Variation shall be effective unless and until concluded in writing by the Parties. All Variations will only be permitted to be entered into if permitted to do so under Applicable Law (including Public Procurement Law of the Republic of Latvia).
    6. 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.
    7. This Agreement is executed as an electronic document.

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| --- | --- |
| For and on behalf of the Customer:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  [●]  [●] | For and on behalf of the Seller:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  [●]  [●] |

THIS DOCUMENT IS SIGNED ELECTRONICALLY WITH A QUALIFIED ELECRONIC SIGNATURE

AND CONTAINS TIME STAMP

Annex A: Technical Specification

[●]

Annex B: Seller’s Proposal

[●]

Annex C: Approved Sub-Contractors

[●]

1. <https://www.railbaltica.org/wp-content/uploads/2021/06/APPENDIX-6_SUPPLIERS-DECLARATION_June_2021.pdf> [↑](#footnote-ref-2)