

**AGREEMENT FOR
THE AERODYNAMIC IMPACT ASSESSMENT**

between

RB Rail AS

and

[●]

Agreement registration number

[●]

Procurement procedure identification No

RBR 2025/1



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

Riga 2025

TABLE OF CONTENTS

1. Definitions and Interpretation	3
2. Services	4
3. Commencement	5
4. Times and Deliverables	5
5. Variations	6
6. Responsibilities of the Principal	8
7. Responsibilities of the Contractor	8
8. Representations and Warranties	11
9. Fee and Payment	12
10. Remedying of Defects and Deed of Acceptance of the Services	14
11. Intellectual Property Rights	15
12. Termination and suspension	15
13. Liability	17
14. Force Majeure	18
15. Confidentiality	19
16. Right to Audit	20
17. On-the-spot-visits	20
18. Governing Law and Resolution of Disputes	21
19. Miscellaneous provisions	21
Annex A: Definitions and common terms	23
Annex B: Technical Specification	27
Annex C: Schedule of Services and Payment	28
Annex D: List of approved Sub-Contractors and Key Experts	29
Annex E: Deed of Acceptance	30
Annex F: Clarifications to the Contractor's Proposal	31
Annex G: Contractor's Proposal	32
Annex H: Representatives	33
Annex J: Commencement Notice	34

This Agreement for the carrying out the assessment of the aerodynamic forces for the purposes of the Rail Baltica railway operation (hereinafter – “Aerodynamic Impact Assessment services”), together with all Annexes thereto (the “Agreement”), is entered into in Riga, on the date indicated on the timestamp of last signature of the document (the “Effective Date”) by and between:

RB Rail AS, a joint stock company registered in the Latvian Commercial Register under registration No 40103845025, legal address at Satekles iela 2B, Riga, LV-1050, Latvia (the “Principal”), represented by [●] acting on the basis of [●], on the one side,

and

[●], a limited liability company registered in the [●] Commercial Register under registration number [●], having its registered address at [●] (the “Contractor”), represented by [●] acting on the basis of [●], the other side,

WHEREAS:

- (A) this Agreement is entered into under the Rail Baltica Global Project (hereinafter – “the Project”), which includes all activities undertaken by the respective beneficiaries and implementing bodies of the Republic of Estonia, the Republic of Latvia and the Republic of Lithuania in order to build, render operational and commercialise the Rail Baltica railway – a new fast conventional double track electrified railway line according to TSI INF P2-F1 criteria and European standard gauge (1435mm) on the route from Tallinn (Estonia) through Latvia and Lithuania to Lithuanian-Polish border, with the connection of Kaunas – Vilnius, and related railway infrastructure in accordance with the agreed route, technical parameters and time schedule;
- (B) the Principal by acting as a Central Purchasing Body in accordance with the Clause 3.2.2 of the Agreement on Contracting Scheme for the Rail Baltic / Rail Baltica, in effect as of 30 September 2016 has organised the open competition procurement procedure “Aerodynamic impact assessment” (identification No RBR 2025/1) (the “Procurement Procedure”) whereby the Contractor’s tender proposal (the “Contractor’s Proposal”) was selected as the winning bid;
- (C) this Agreement is co-financed from the Connecting Europe Facility (CEF) and further grant and finance agreements (hereinafter also referred to as the “Grant”).

1. Definitions and Interpretation

1.1. *Definitions.* In this Agreement, unless the context requires otherwise, all definitions shall have the meanings as attached to such terms in accordance with *Annex A: Definitions and common terms*.

1.2. *Interpretation.*

- (a) The headings contained in this Agreement shall not be used in its interpretation.
- (b) References to the singular shall include references in the plural and vice versa, words denoting a gender shall include any other gender where the context requires, and words denoting natural persons shall include any other Persons.
- (c) References to a treaty, directive, regulation, law or legislative provision shall be construed, at any particular time, as including a reference to any modification, extension or re-enactment of the respective treaty, directive, regulation, law or legislative provision at any time then in force and to all subordinate legislation enacted from time to time.
- (d) Unless expressly stated to the contrary, any reference in this Agreement to the right of consent, approval or agreement shall be construed such that the relevant consent, approval or agreement shall not be unreasonably delayed or withheld. The Parties agree and acknowledge as follows:
 - (i) neither Party shall be required to seek or apply for any consent, approval or agreement by any Person which would place the respective Party in breach of the Applicable Law or any Good Industry Practice; and
 - (ii) nothing in this Agreement shall require the Principal to give or procure the giving of any consent or approval which would be contrary to the protection, safety and efficient operation of the Railway and the Project.
- (e) A reference to “writing” shall include an e-mail transmission.
- (f) The words “include” and “including” are to be construed without limitation.
- (g) Unless indicated otherwise, all references to “days” shall mean calendar days.

- (h) The words in this Agreement shall bear their natural meaning, except for any definitions in accordance with *Annex A: Definitions and common terms*.
- 1.3. *Order of Precedence*. In the event of any discrepancy or inconsistency between the documents forming part of this Agreement, the following order of precedence shall apply:
 - (a) This Agreement document;
 - (b) Explanations (clarifications) of the procurement documentation;
 - (c) Procurement documents with the annexes (including Technical Specification (Annex B));
 - (d) Schedule of Services (Annex C);
 - (e) List of Approved Sub-Contractors and Key Experts (Annex D)
 - (f) Deed of Acceptance (Annex E);
 - (g) Clarifications of the Contractor's Proposal (Annex F);
 - (h) Contractor's Proposal (Annex G);
 - (i) All other Annexes of the Agreement.

2. Services

- 2.1. *Engagement*. The Principal hereby engages the Contractor to provide and perform the assessment of the aerodynamic forces for several specific situations of the Rail Baltica railway operation services for the purposes of the Project as further described and according to the specification contained *Annex B: Technical Specification* to this Agreement (hereinafter – "the Services"), and the Contractor hereby accepts such engagement. The Services shall result in the provision to the Principal of the Deliverables identified in accordance with *Annex C: Schedule of Services and Payment* to this Agreement.
- 2.2. *Scope of the Services*. The Services shall be delivered in 4 Working Packages as defined under *Annex B: Technical Specification*. The Services shall include taking all available measures and use of the methodology, including those not explicitly listed in the Agreement and *Annex B: Technical Specification* and required for due performance of the Services and provision of the Deliverables 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 a contractual obligation of the Contractor according to the Agreement without any additional payment obligations by the Principal. In any case the Services include, but are not limited to:
 - 2.2.1. obtaining of existing publicly available data and results, documents and other information that are equivalent and justified for the Scope of the Services in accordance with *Annex B: Technical Specification*;
 - 2.2.2. performance of required simulations or measurements to achieve the best available results in order to deliver the Deliverables according to the applicable professional standards, if the Contractor may not reasonably demonstrate that an equivalent case has already been analysed in the available literature, aerodynamic simulations or measurements to be performed by the Contractor;
 - 2.2.1. taking any other measures required for the provision of the Services, and performance of the Agreement with due care and professional skills as required in order to achieve the best cost-efficient results.
- 2.3. *No guaranteed scope of Additional Services*. The Principal may order to the Contractor to deliver any additional Services directly related to the Scope of the Services as per Clause 2.2 and in accordance with Clause 5 of this Agreement ("the Additional Services"). However, the Agreement does not impose an obligation on the Principal to appoint the Contractor to provide Additional Services, nor does it guarantee that all or any part of Additional Services as listed under Clause 5.3 shall be ordered at the Commencement Date set under the Commencement Notice.
- 2.4. *Co-operation between the Parties*. The Parties shall cooperate with one another to fulfil their respective obligations under this Agreement. The Parties shall endeavour to maintain good working relationships among all key personnel engaged in the provision of the Services.
- 2.5. *Certification Requirements*. By signing this Agreement, the declaration is made by the Contractor that the Contractor is professionally qualified, registered, authorised and certified to provide the Services in accordance with the Applicable Law.

- 2.6. *General Obligations of the Contractor.* The Contractor shall be responsible for the provision of Services according to the commonly accepted professional quality and technical accuracy, and for coordination of the works undertaken under the Scope of the Services with the Principal, including, but not limited to obtaining required permits or authorisations on the use of the intellectual property owned by the third parties, where applicable, as well as for timely and accurate delivery of Deliverables, as well as any Additional Services as per the terms of this Agreement. The Contractor shall have an obligation, without additional compensation of any kind, to correct or revise any errors, deficiencies, or omissions in the used methodology, approaches taken, the Deliverables or in any other services rendered forming part of the Services and/or Additional Services.
- 2.7. *Acceptance or Lack of Information Not a Waiver.* The Principal's review, approval, acceptance, or payment for any part of the Services shall not be interpreted or construed to operate as a waiver of any right or cause for action arising out of the Contractor's performance of any Services under this Agreement. For the sake of clarity, the Contractor shall be obliged to request to the Principal the information, which is essential for the provision of the Services, and the Principal shall be allowed reasonable time to respond. The Contractor shall not be discharged from the liability, if the information request has not been furnished to the Principal or such request has not been furnished on a timely basis. The Contractor shall remain liable to the Principal according to the terms of this Agreement and the Applicable Law for any and all costs and/or Damages caused by the Contractor's negligent performance of any Services furnished under this Agreement.
- 2.8. *Representatives.* The Contractor and the Principal shall appoint an officer, employee or individual to serve as its authorised representative toward supply or receipt of the Services or any part thereof (including, but not limited to, the issuance or confirmation of the Deed of Acceptance, Objection Notice), with full authority to act on its behalf in connection with this Agreement, without the rights to conclude amendments or Variations (the "Representative"). The Representatives having been identified in *Annex H: Representatives*. Any restrictions with respect to the representation rights shall be notified to the other Party in writing.
- 2.9. *Replacements.* The Contractor and the Principal may replace or remove any Representative by notifying in writing the other Parties in accordance with Clause 19.3. For this purpose no separate amendments to the Agreement are required.

3. Commencement

- 3.1. *Effective Date of the Agreement.* The Contractor shall commence the provision of Services on or about the Effective Date. For the avoidance of doubt, the Agreement shall become effective upon signing of the Agreement by both Parties.
- 3.2. *The Commencement Dates.* The Contractor shall begin the Services on or about the Effective Date. Optional Scope Services shall be ordered by the Principal, subject to the signed amendments to the Agreement on the Variations in accordance with Clause 5. The Principal shall notify the Commencement Date for the Optional Scope Services at its sole discretion, by issuing a written Commencement Notice.
- 3.3. *Commencement Date for Additional Services.* The Principal upon its sole discretion shall be entitled to set the exact Commencement Date by issuing to the Contractor a written notice on the commencement of the Optional Scope Services in full or in part as per Clause 5.3 and any other Additional Services as may be required by the by issuing the Commencement Notice as per Clause 3.3.
- 3.4. *Delivery of the Commencement Notice.* The Commencement Notice shall be delivered by the Principal to the Representative(s) of the Contractor either by hand, via e-mail to the notified e-mail address(es) of the Contractor or by registered post to the Registered Address of the Contractor in accordance with Clause 19.3.

4. Times and Deliverables

- 4.1. *Performance of the Services.* The Contractor shall perform the Services timely and with due diligence having due regard to any applicable Services Milestones for the performance of the Services set out in the Agreement and the *Annex C: Schedule of Services and Payment*, as may be amended from time to time with the consent of the Principal and in accordance with this Agreement and Public Procurement Law of the Republic of Latvia. The Contractor shall also confirm with the Principal the detailed Service provision plan, taking into account the Services Milestones as per *Annex C: Schedule of Services* prior to the Commencement Dates of Services. Such confirmation by the Principal shall be received by way of a written notice by the Contractor to the Principal in accordance with Clause 19.3.
- 4.2. *The Final Completion Date and the Service Milestones.* Subject to the terms and procedure provided under Clause 10, the Final Completion Date shall be the deadline for submission of the Final Report "High-Speed passenger trains and freight train operation study" (hereinafter – "the Final Report"), and it shall not be later than 40 (forty) weeks starting from the Commencement Date. The following Milestones are set in accordance with *Annex C: Schedule of Services and Payment* ("the Services Milestones"), which shall be met, when the

report on each of the following Working Packages ("WPs") have been submitted to and approved by the Principal:

- (a) Crosswind affecting train operation (WP 1);
- (b) Projection of material due to aerodynamic stress (WP 2);
- (c) Train passing at station (WP 3);
- (d) High-speed passenger trains and freight train operation (WP 4).

The Principal reserves the rights to review and comment on the Draft Assessment Reports under each of the Work Packages within 4 (four) weeks (the Draft submission Due Date) following the submission of the respective Draft Assessment Report to the Principal and within 4 (four) weeks following the submission of the draft of the Final Study Report by the Contractor to the Principal. The due dates for the submission of the Deliverables of the Additional Services, including the Optional Scope Services, shall be set in the Commencement Notice (Annex J).

- 4.3. *Deliverables.* Each of the Services Milestones shall be completed by submission of the Final Assessment Reports on Working Packages and the Final Study Report by the Contractor (each separately hereinafter referred to as "the Deliverable") subject to review by the Principal within the times set under *Annex C: Schedule of Services and Payment*. Upon completion of Additional Services the Contractor shall submit a Draft Report followed by the Final Report as per the Commencement Notice and in accordance with Clause 5.
- 4.4. *Impediments and Delays.* If the Services, or any part thereof, is impeded or delayed by the Principal and it has or may affect any Completion Date of the Services Milestones:
 - a) the Contractor shall inform the Principal of the circumstances and probable effects of such impediment or delay of the Services Milestones as per *Annex C: Schedule of Services and Payment*; and
 - b) the duration of the Services shall be prolonged, and any Services Milestones affected by the impediment or delay shall be extended accordingly by the Principal.

5. Variations

- 5.1. *Variations (Additional Services).* Notwithstanding any provisions in this Agreement to the contrary, whenever the Contractor or the Principal reasonably consider that Additional Services are required in respect of the Scope of the Agreement or any part thereof (the "Variations"), the Contractor and the Principal shall negotiate in good faith on the terms of the intended Variations. For the avoidance of doubt, no Variation shall be effective unless and until concluded in writing by the Parties and shall be subject to issue of the Commencement Notice in accordance with Clause 3.3.
- 5.2. *Variations Scope.* For the purpose of the Agreement, and at any time prior to the completion of the Services under the Agreement Variations may be issued in respect of:
 - (a) amendments to the Agreement or any part thereof to comply with the amendments or adjustments to the Applicable Laws or requirements, if any;
 - (b) amendments to *Annex B: Technical Specification* to comply with any requirements (mandatory or optional) by the National Safety Authority or any other authorities or competent institutions of the Republic of Estonia, Latvia or Lithuania respectively, or the Design Guidelines and any documents or drawings produced in accordance with the Design Guidelines;
 - (c) the supply of Additional Services not previously foreseen under the Scope of the Agreement;
 - (d) the Optional Scope Services as defined under Clause 5.3 of the Agreement and Clauses 2.7 and 2.8 of *Annex B: Technical Specification*;
 - (e) implementation of any amendments to the Agreement as initiated or approved by the Principal during the provision of the Services, which are necessary due to such reasons the Principal could not foresee in advance, including, but not limited to matters under sub-Clauses 5.2 (a)-(d).
- 5.3. *Optional Scope of the Services.* The Principal may order to the Contractor to provide the following Additional Services subject to the signed Variations to the Agreement and the Commencement Notice to be issued by the Principal:
 - 5.3.1. Option 1: the safety assurance documentation and the safety demonstrations; and
 - 5.3.2. Option 2: to carry out evaluation of probability of collision following penetration inside the opposite track gauge;

as defined under Clauses 2.7 and 2.8 of *Annex B: Technical Specification*. The Principal may order either Option 1 or Option 2, or both Options in accordance with the procedure as set under Clauses 3.3 and 3.4 ("Optional Scope Services") and the Contractor shall hereby commit to the Optional Scope Services within the timeline for completion as set under the Commencement Notice. The total amount of the Optional Scope Services shall be calculated in accordance with Clause 5.6, but shall not exceed the amount equal to 50% of the Fee as set under Clause 9.1.

- 5.4. *Limitations to the Variations.* Save as otherwise provided under Clause 5.3, in case of Variations due to supply of Additional Services not previously foreseen under the Scope of the Agreement or due to reasons which the Principal could not foresee in advance, the total value of the Agreement may not change by more than fifty percent (50%) in accordance with the fourth paragraph of the Section 61 of the Public Procurement Law of the Republic of Latvia.
- 5.5. *De minimis.* Notwithstanding anything to the contrary contained in the Agreement and with reference to Clause 2.1.3.3 of *Annex B: Technical Specification*, the Contractor and the Principal may agree on the supply of Additional Services, if they do not change the nature of the Agreement (type and purpose specified herein) and if the total value of such Additional Services does not concurrently reach the thresholds specified by the Cabinet of Ministers of the Republic of Latvia, starting from which the agreement notice must be published in the Official Journal of the European Union and ten percent (10%) of the total value of the Agreement.
- 5.6. *Variation Fee.* Fee for Additional Services as a result of Variations, if any, shall be determined taking into account the hourly rate as provided under

- 5.7.
- 5.8. **Annex G: Contractor's Proposal ("the Variation Fee")**. Furthermore, such Variation Fee shall be consistent with the market practice and proportionate to the Fee for the Services with similar or like scope under the Agreement, if any. The total amount of the Variation Fee shall be pre-agreed with the Principal prior to the approval of the Variation subject to the Contractor's proposal on the projected hours to be spent for the provision of the respective Additional Services following the receipt of the Principal's request for proposal ("**the Variation Fee Proposal**").

6. Responsibilities of the Principal

- 6.1. *Supply of Information*. Unless otherwise provided under this Agreement, the Principal shall, in a timely manner, provide to the Contractor any information regarding requirements and parameters of the Project, as may reasonably be requested by the Contractor for the purposes of the Services, provided that the Principal is in possession of such information.
- 6.2. *Review of Documentation*. Review of any documents and/or Deliverables by the Principal and any decisions or opinions issued to the Contractor shall not discharge from or limit the Contractor's liability for any errors, faults, omissions, deficiencies, or defects.
- 6.3. *Decisions*. On all matters properly referred to it in writing by the Contractor and reasonably required for fulfilment of the Agreement the Principal shall deliver its decision to the Contractor in writing and within a reasonable time so as not to delay the Services.
- 6.4. *Action Upon Becoming Aware of Defects*. In the event the Principal observes or otherwise becomes aware of any error, fault, omission, or defect in the Services or non-conformance of any action forming part of the Services, the Principal shall give prompt notice thereof to the Contractor. The Contractor shall have the obligation to correct such error, fault, omission, or defect in the Services or non-conformance of any action forming part of the Services.

7. Responsibilities of the Contractor

- 7.1. *Standard of Performance*. The Contractor's Services shall be performed with due professional skill and care, according to Good Industry Practice, with the aim to achieve regular progress of the Services and in accordance with the schedule of Services set forth in accordance with *Annex C: Schedule of Services and Payment*.
- 7.2. *Obligation to Act in Accordance with Principal's Comments*. In performing the Services, the Contractor shall have due regard to any comments made by the Principal in connection with any review of the Documentation or information furnished by the Principal and shall provide reasons to the Principal where it does not take into account any such comments. For the sake of clarity, the Contractor shall be obliged to request to the Principal the information, which is essential for the provision of the Services.
- 7.3. *Deliverable Requirements and Language*. The Contractor shall submit a draft of the Deliverable until the due date as specified under Section 3.5 of *Annex B: Technical Specification* to allow the Principal to review it and to submit any comments, where required. The Contractor may be required by the Principal to provide copies of prints or electronic editions of the Deliverables, as well as any copies or extracts from the underlying Documentation, where required. Contractor shall procure that each Deliverable shall be submitted to the Principal in English language.
- 7.4. *Cooperation with stakeholders*. The Contractor undertakes to cooperate with the relevant stakeholders that are directly involved in the Project as may be necessary for the provision of the Services and the fulfilment of the objectives set out in the Agreement such as, but not limited to AsBo and NSA, only through liaison with the Principal. No direct communication between the Contractor and the above mentioned stakeholders is presumed under this Agreement.
- 7.5. *Duty of Care and Exercise of Authority*. The Contractor shall:
- (a) in performing its obligations under this Agreement exercise reasonable professional skill, diligence and care as may be expected of a properly qualified and competent person carrying out services of a similar size, nature, type and complexity;
 - (b) appoint Key Experts to perform the services, and shall ensure that the Key Experts shall act and perform the leading role in provision of the Services on behalf of the Contractor through-out the whole term of the Agreement, as well as ensure that its Key Experts and other personnel are properly qualified and with the required level of knowledge in the applicable technical standards and regulations;

- (c) ensure that all Deliverables and other Documentation, including the underlying information required to be prepared or submitted by the Contractor under this Agreement are compliant with Good Industry Practice generally acceptable at the time of submission of the Deliverables;
 - (d) at all times during the term of the Services, ascertain and comply with all national and EU Laws and regulations in particular, but not limited to the Tax Laws and regulations, and health and safety, and environment protection standards according to the Applicable Law;
 - (e) comply, where applicable, with any reasonable requirements by the Principal (including in respect to health and safety requirements and co-operation in this respect) not otherwise provided for in this Agreement;
 - (f) ensure that all Documentation and information is furnished in accordance with Good Industry Practice, and using conventional industry quality control methods; and
 - (g) notify the Principal of any Defects in accordance with Clause 10.1 of this Agreement as soon as such Defects are identified by the Contractor;
 - (h) use its own tools, materials and equipment or any parts thereof, which shall be properly tested, in good quality and workmanship and fit for the intended or customary purpose;
 - (i) provide all necessary management and supervision of the Services, whether of a temporary or permanent nature, so far as the necessity for providing such services is specified in or reasonably to be inferred from the Agreement.
- 7.6. *Maintenance of Records.* During the term of the Agreement and during six (6) years from expiration or termination of this Agreement for any reason whatsoever, the Contractor shall keep and maintain clear, adequate and accurate records and the Documentation evidencing, to the reasonable satisfaction of the Principal, that the Services have 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 for a longer period of time.
- 7.7. *Access to the Documentation.* During the term of the Agreement, the Principal shall have access to all the Documentation at all times. This access shall be continuing and survive the termination of this Agreement for either cause or convenience. All records forming part of the Documentation shall be available to the Principals' auditor or an expert or independent auditor appointed by the Principal and/or the Beneficiary during the period of time specified in accordance with this Clause 7.6.
- 7.8. *Sub-Contractors and Key Experts.*
- (a) In carrying out the Services, the Contractor may only rely on the services of those Approved Sub-Contractors and Approved Key Experts listed in *Annex D: List of approved Sub-Contractors and Key Experts*, as such list may, from time to time, be modified or supplemented subject to the prior written agreement with the Principal and in accordance with the terms and subject to the criteria contained in the applicable Public Procurement Law. Parties shall specify the name, contact details and legal representative(s) of each Approved Sub-Contractor as of the Effective Date in *Annex D: List of approved Sub-Contractors and Key Experts*. The Contractor shall have an obligation to notify the Principal in writing of any changes to *Annex D: List of approved Sub-Contractors and Key Experts* occurring during the term of this Agreement and of the required information for any new Sub-Contractors or Key Experts, which it may subsequently engage in the provision of the Services.
 - (b) Pursuant to the Public Procurement Law of the Republic of Latvia the Contractor shall obtain prior written consent of the Principal for the replacement of each Approved Sub-Contractor or each Approved Key Expert as indicated in *Annex D: List of approved Sub-Contractors and Key Experts* and involvement of additional sub-contractors or Key Experts.
 - (c) Review and evaluation of the replacement of Approved Sub-Contractors or Approved Key Experts shall be carried out, and the consent or refusal to give consent shall be rendered by the Principal in accordance with Article 62 of the Public Procurement Law. The Principal may refuse to approve the Sub-Contractor, if it does not comply with Section 42 and any one of the grounds as per Paragraphs 1 to 4 of Part three of Section 62 under of the Public Procurement Law.
 - (d) The Contractor shall replace the Sub-contractor and/or Key Experts which during the term of provision of Services under this Agreement meets any of the compulsory grounds for exclusion of tenderers (or sub-contractors) that were verified during the Procurement Procedure.

- 7.9. *Responsibility for Performance by the Sub-Contractors and Key Experts.* The Contractor shall retain the complete and full responsibility for the proper performance of all of its obligations under this Agreement, and any act, failure to act, breach or negligence on the part of any of its Approved Sub-Contractors and Approved Key Experts and other personnel. No subcontracting shall bind or purport to bind the Principal. Nevertheless, the Contractor shall ensure that any Approved Sub-Contractor and Approved Key Experts shall be bound by and comply with the provisions of the Agreement in so far as they apply to the respective Approved Sub-Contractor and Approved Key Experts.
- 7.10. *No Conflicting Activity.* Except with the Principal's knowledge and express written permission, the Contractor shall not engage in any activity or accept any employment, other agreement, interest or contribution that would reasonably appear to compromise the Contractor's professional judgment and performance with respect to the Services and/or the Project. During the provision of 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 life or any other direct or indirect interest, which may lead to the conflict of interests as described hereby under this Clause 7.10.
- 7.11. *Attendance of Meetings, Meeting Minutes and Recordings.* To the extent necessary to ensure smooth and efficient provision of the Services, the Contractor shall at the Principal's request and without additional charges to the Principal hold and/or attend meetings with the Principal, relevant stakeholders, Beneficiaries or any other third parties, at which appropriate personnel of the Contractor and the Principal and the Representatives of each Party shall be present. Upon the Principal's request the Contractor shall record all meetings (also online meetings) between Parties with the purpose to prepare meeting minutes within five (5) Working Days after each meeting, and the Contractor hereby consent to processing personal data contained in these recording. All meeting minutes shall be aligned with the Representative of the Contractor and confirmed by the Representative of Principal. The meeting minutes and recording shall be stored by the Principal in the safe cloud based electronic storage space kept by the Principal. The meeting minutes shall be kept for the time period as per Clause 7.6. The recording of the meetings shall be deleted after the respective meeting minutes have been confirmed by the Representative of the Principal, but not later than one (1) calendar month following the confirmation of the meeting minutes.
- 7.12. *Compliance with the Laws and Good Industry Practice, Ethical Standards and EU Values.* The Contractor shall during the provision of the Services review the Applicable Laws on a regular basis to ensure it is compliant with the Applicable Laws and Good Industry Practice. In carrying out any works forming part of the Services, the Contractor shall also at all times ensure compliance with the requirements imposed by the National Regulatory Authorities having jurisdiction over the Project. The Contractor shall also ensure that it itself, as well as its Key Experts, employees, personnel and Sub-contractors shall at all times abide to the highest ethical standards and the applicable EU values, such as respect for human dignity, freedom, democracy, equality, the rule of law and human rights, including the rights of minorities.
- 7.13. *Information Furnished by the Principal.* The Contractor shall provide prompt written notice to the Principal, if the Contractor becomes aware of any errors, omissions, or inconsistencies in the information and/or documents provided by the Principal, or if and when it requires information that is essential for completion of the Works, meeting the Milestones and/or submission of Deliverables as per *Annex B: Technical Specification*. It is the sole responsibility of the Contractor to furnish to the Principal the request for the information as soon as it becomes evident that such information is required, and the Principal shall respond to the Contractor as soon as practicable.
- 7.14. *Visibility Requirements.* At all times during performance of the Services, the Contractor undertakes to comply with each of the following requirements:
- (a) any report, brochure, document, or information related to the Services conducted to the Principal by the Contractor or the Sub-contractor shall include each of the following:
 - (i) a funding statement which indicates that the Services are financed from EU funds;
 - (ii) with respect to printed materials, a disclaimer releasing the European Union from liability with respect to any contents of any distributed materials substantially in the form as follows: "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
 - (iii) the flag of the Council of Europe and the European Union;

- (b) the requirements set forth in Clauses 7.14(a)(i) and 7.14(a)(iii) of this Agreement should be complied with by means of utilizing the following logo:



**Co-funded by
the European Union**

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

7.15. Reporting. The Contractor shall, in a format and at times to be agreed with the Principal:

- (e) provide the Principal with regular reports and status updates on the progress of the Services.
- (f) report on any circumstances that may cause changes to the Annexes of this Agreement, including but not limited to *Annex C: Schedule of Services and Payment*, which the Contractor considers may be needed in order to fulfil the objectives set out in the Agreement; and
- (g) use reasonable endeavours to provide any other information and status updates as may be reasonably requested by the Principal at any time.

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

8. Representations and Warranties

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

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

8.2. Certain Representations and Warranties by the Contractor. The Contractor represents and warrants to the Principal, as of the Effective Date and during the entire term of the Agreement, as follows:

- (a) it has all requisite qualification, skills and competence to perform the Services on the terms and conditions of this Agreement which are no less favourable than the terms and conditions of service identified by the Contractor in any document submitted by the Contractor to the Principal;
- (b) The Contractor is aware that the Tax Laws of Latvia prescribe certain instances when payments to non-residents are subject to a withholding tax (for instance, in case of management and consultancy services), and the Customer may be obliged to withhold tax from the amounts payable to non-resident Contractor with the following exception. Unless otherwise prescribed under the Applicable Law, no tax shall be withheld, if the Contractor (before the Principal is obliged to make any payment under the Agreement) will provide the Tax Residence certificate confirmed by the competent authority of the Contractor's country of tax residence allowing to make an exemption from such withholding pursuant to the terms of the Law of the Republic of Latvia and bilateral tax conventions or agreements between the Republic of Latvia and the Contractor's country of tax residence;
- (c) it holds all requisite licenses, permits, authorisations, approvals and consents necessary to enable performance by the Contractor of any works forming a part of the Services according to *Annex B: Technical Specification*;

- (d) it has all requisite ability to ensure the highest quality of the Services;
- (e) it will assign competent and duly qualified personnel indicated in the tender proposal to carry out the Services set out in this Agreement and applying the highest professional standard and Good Industry Practice. Moreover, whereby the Applicable Laws for the performance of any works forming a part of the Services requires the personnel to obtain a special certificate, license, permit, authorisation, qualification, the respective personnel assigned by the Contractor for carrying out the Services shall be duly certified according to the Applicable Laws;
- (f) it is not deemed to be a person associated with the Principal for the purposes of Applicable Law;
- (g) it has been registered as a VAT payer according to the Applicable Law;
- (h) it is compliant with all of the requirements of the Contractor's Declaration (<https://www.railbaltica.org/lv/iepirkumi/iepirkumu-regulesana-un-piegadataju-kvalifikacija/>) and will continue to be compliant with all such requirements during the duration of this Agreement;
- (i) it has made acquainted and updated itself of the information and documents included in the Technical Specification and its Annexes, and has made itself aware of the existing studies and data available for the equivalent or alike scope, methodology and conditions to the Services prior to commencement of the Services;
- (j) it will immediately arrange for engagement of supplemental personnel when necessary at the cost of the Contractor. For the avoidance of any doubt, the engagement of supplemental personnel shall not require approval by the Principal, provided that the personnel complies with the Applicable Law, including the Public Procurement Law of the Republic of Latvia, and this Agreement;
- (k) it will comply with all applicable health and safety regulations under the Applicable Law and in accordance with the obligations set by the Agreement.

9. Fee and Payment

- 9.1. *The Fee.* The Company undertakes to pay to the Contractor the fixed fee in the total amount of EUR [●] ([●]) ("**the Fee**") in consideration of the due provision of Services. The Fee shall be payable in several instalments following submission of each of the Deliverable by the Contractor as provided in *Annex C: Schedule of Services and Payment* and shall be subject to review and approval of each of the Deliverable by the Principal in accordance with signed Deed of Acceptance by both Parties.
- 9.2. *Payment of the Fee for the Services.* In consideration of provision of the Services, the Principal undertakes to pay to the Contractor a fixed Fee as set forth in accordance with Clause 9.1. The Fee shall be payable in several instalments as set under *Annex C: Schedule of Services and Payment*. It is acknowledged and agreed by the Parties that the Fee shall include all Costs and expenses incurred by the Contractor and Approved Sub-Contractors toward performing the Services. The Fee specified in accordance with Clause 9.19.1 does not include value added tax (the "VAT") that will be charged at the rate applicable in accordance with Applicable Law at the time of invoicing.
- 9.3. *Payment of the Variation Fee.* Subject to Clause 5.6 any Additional Services, including the Optional Scope Services, shall be compensated by the Principal to the Contractor based on the hourly rates as set under *Annex G: Contractor's Proposal* and in accordance with the Variation Fee Proposal. The Variation Fee payable to the Contractor shall be calculated, taking into account the actual hours spent for the provision of Additional Services as reported by the Contractor and confirmed by the Principal before the invoicing. The Variation Fee shall become payable subject to signing of the Deed of Acceptance by both Parties.
- 9.4. *Invoicing.* According to Clauses 9.1 - 9.3 and following each Completion Date, provided that the Principal has accepted/approved the particular Deliverable of the Services according to the terms of Clauses 10.3 - 10.6, which the invoice is related to, the Contractor shall deliver to the Principal an invoice specifying the amount of the Fee payable and the period of time with respect to which the Fee is payable. In the event the Principal objects to payment of any amount claimed by the Contractor in the invoice, notice in the form chosen by the Principal to this effect shall be given by the Principal to the Contractor not later than seven (7) days before the due date for payment under this Clause 9.5. This notice of objection shall state the amount to be withheld, the grounds for withholding the payment and the basis on which that amount is calculated. Unless such notice of objection is made by the Principal, the amount to be paid is that stated in the invoice which shall become due and payable in accordance with this Agreement.
- 9.5. *Method of Payment.* Subject to the provisions of Clause 9.2 and 9.4, the Principal reserves its rights to make the payments to the Contractor with set-off, retention, counterclaim, abatement or other deduction of any kind that arises from this Agreement and from the obligations of the Contractor provided herein. If the

Principal uses the right to make the payments to the Contractor with set off, retention, counterclaim, abatement or other deduction of any kind, then the Principal so notifies to the Contractor no later than on the date of the respective payment stating the amount, the grounds and the basis on which the Principal uses its right to set off, retention, counterclaim, abatement or other deduction or other right. Invoices shall be paid within sixty (60) days after the date of issue of the invoice. For the avoidance of any doubt, the Principal shall not be required to pay any amount with respect to any invoice in the absence of a Deed of Acceptance duly signed by the Principal taking into account that the Services shall be accepted by the Principal in accordance with Clauses 10.3, 10.4, 10.5 and 10.6 of this Agreement.

- 9.6. *Costs and Commissions.* Each Party shall bear its own costs, fees, commissions and expenses incurred in connection with the transfer of any funds under this Agreement to the other Party.
- 9.7. *Compliance with Tax Obligations by the Contractor.* It is acknowledged and agreed by the Parties that the Fee shall include all taxes and duties payable or which may be attributable to and become payable within the scope of the Services by the Contractor, but not including the value added tax. The Contractor shall at the sole cost and expense of the Contractor shall assume all risks, including the risk of increase of any taxes and duties, and shall comply with the obligations to report and pay all taxes and duties relevant to the provision of the Services in accordance with Applicable Laws.
- 9.8. *Invoice.* The Contractor's invoices shall contain the following Contractor's details and details about the Agreement:

a) Contractor's details and details about the Agreement:

Contractor	[●]
Registration No	[●]
VAT payer's No	[●]
Legal address, city, Zip code, country	[●]
Legal name of Bank	[●]
SWIFT Code	[●]
IBAN	[●]
Subject:	[●]

b) the number and date of issue of the invoice;

c) the name or a description of the Services, including the reference to the relevant Work Packages according to *Annex B: Technical Specification*;

d) the date of submission of the Deliverable of the Services;

e) the price of the services, with no value added tax included, and any discounts, if applicable;

f) the amount of value added tax payable. The amount of value added tax shall be indicated in euros;

g) the following Principal's details:

The Principal	RB Rail AS
Registration No	40103845025
VAT payer's No	LV40103845025
Address	Satekles iela 2b, Riga, LV-1050
Name of Bank	Valsts kase

Bank Code	TRELLV22
Bank Account No	LV37TREL990954000200B

The Contractor shall send the invoice to the Principal electronically to the following e-mail address: invoices@railbaltica.org. The Principal shall review the invoice to verify whether it contains all necessary requisites.

10. Remedying of Defects and Deed of Acceptance of the Services

- 10.1. *Defects and Discrepancies in the Deliverables.* The Principal shall notify the Contractor of each Defect as soon as it is identified by the Principal, and the Contractor shall have an obligation to notify the Principal of each Defect as soon as it is identified by the Contractor. Upon discovering a Defect or upon receipt by the Contractor of a notification of the Defect by the Principal, the Contractor shall have no more than five (5) Working Days to remedy the Defect (the "Cure Period"). In the event of inability or failure by the Contractor to remedy the Defect within the Cure Period, the Principal shall be entitled at the sole and exclusive discretion of the Principal to do any of the following:

- (a) allow the Contractor an additional time period for remedying the Defect, such time period to be determined in the sole discretion of the Principal;
- (b) remedy the Defect at the costs of the Principal (including by means of relying on the services of a third party), and demand the reimbursement by the Contractor of all direct and associated costs incurred by the Principal as a result of having to pay other Persons toward carrying out any work or action;
- (c) terminate the Agreement according to Sub-clause (b) of 12.1 (Termination and suspension).

For the avoidance of any doubt, the application of the Cure Period under this Clause 10.1 shall be without prejudice to and shall not relieve the Contractor from the obligation to pay any contractual penalty in accordance with the provisions of Clause 13.2 at the Principal's request or to compensate any Damages in accordance with the provisions of Clause 13.3 of this Agreement.

- 10.2. *Defects Claims Period.* The Defects Claims Period shall be 3 (three) calendar months from the date of submission and acceptance by the Principal of the Final Report in accordance with Clause 4.2.
- 10.3. *Completion of Services and the Deed of Acceptance.* Meeting of a Services' Milestone and supply of a Deliverable occurs whenever the Contractor has completed all of the Services which the Contractor has undertaken to perform, including the Additional Services, which the Contractor has ordered to the Contractor as per the Commencement Notice. On meeting a Services' Milestone and/or producing a Deliverable (including all Documentation and information forming part of the Deliverable) constituting all or an identifiable part of the Services, the Contractor shall issue to the Principal a Deed of Acceptance (the "Deed of Acceptance"). The Deed of Acceptance shall include the Deliverable and adequate supporting Documentation and information relevant to the Services Milestone attained and/or Deliverable completed. The Principal reserves the rights to review, comment and request for any amendments to the Deliverables at the times as indicated under Clause 3.5 of *Annex B: Technical Specification*, but not later than until the Final Report have been approved by the Principal.
- 10.4. *Acceptance or Rejection of the Deed of Acceptance.* Upon the reception of the Deed of Acceptance from the Contractor in accordance with Clause 10.3 the Principal shall review the submitted Deed of Acceptance and the specific Deliverable and any supporting Documentation and:
- (a) in the event the Principal rejects the submitted Deed of Acceptance, it shall give notice to the Contractor setting out in reasonable detail any Defect or reason for the objection (the "Objection Notice") within reasonable time following the receipt of the Deed of Acceptance thus initiating the Cure Period and Defects remedy procedure as specified in Clause 10.1; or
 - (b) in the event no reasons for objection to the Deed of Acceptance exist, the Principal shall also sign the Deed of Acceptance within reasonable time following its receipt. The date the Principal accepts and signs the Deed of Acceptance shall constitute "Completion Date" with respect of the relevant Deliverable. The signed Deed of Acceptance may have annexed to it a list of any outstanding Defects or deficiencies to be corrected by the Contractor.
- 10.5. *Completion of Services Following Receipt of Objection Notice.* After the Defects specified by the Principal in the Objection Notice have been remedied, the Contractor shall issue to the Principal a second signed Deed of Acceptance as per the procedure specified in Clause 10.3, and the Principal shall perform the review as generally provided for in Clause 10.4 of this Agreement and:

- (a) in the event no further reasons for objection to the second Deed of Acceptance exist, then the Defects remedy procedure is concluded and the provisions of Sub-clause (b) of Clause 10.4 are to be applied;
 - (b) in the event the Principal rejects the submitted second Deed of Acceptance, it shall give a second Objection Notice, thus simultaneously continuing the Defects remedy procedure with the possibility for the Principal to execute the Clauses 10.1(a)– 10.1(c) at its own discretion.
- 10.6. *Objection Notice and Contractual Penalty.* For the avoidance of any doubt, the giving by the Principal of any Objection Notice or second Objection Notice shall be without prejudice to and shall not relieve the Contractor from the obligation to pay any contractual penalty or to pay Damages in accordance with the provisions of this Agreement upon the Principals request.

11. Intellectual Property Rights

- 11.1. *Proprietary Rights.* All Documentation forming part of the Deliverables developed under this Agreement is and shall become the property of the Principal at the moment of creation regardless of whether the Services or Deliverable is produced or finally accepted. It is acknowledged and agreed by the Parties that the Principal shall be permitted to use and reproduce the Documentation without any approval of the other Parties and without incurring obligation to pay any royalties or additional compensation whatsoever to the Contractor. For the avoidance of any doubt, such title and ownership shall confer upon the Principal, without limitation, each of the following:
- (a) the right to reproduce the Documentation and information, or any part thereof, and distribute copies of the Documentation and information or any part thereof;
 - (b) the right to modify, amend and supplement the Documentation and information, or any part thereof;
 - (c) the right to issue any licence with respect to the use of the Documentation and information, or any part thereof, for use by a third party, and
 - (d) the right to transfer ownership in the Documentation and information, or any part thereof, to a third party.
- 11.2. *License from Employees of the Contractor.* The Contractor hereby warrants that it shall obtain from any personnel, Approved Sub-Contractors and Approved Key Experts, and grants to the Principal an exclusive licence to use the personal Intellectual Property rights pertaining to the Documentation. The licence shall be valid for the statutory time period applicable to the protection of the respective Intellectual Property rights in accordance with the Applicable Law.
- 11.3. *Intellectual Property Rights within the Documentation.* The Contractor represents and warrants that it owns all Intellectual Property required for the purposes of completing its obligations under this Agreement and in all Documentation deliverable by or on behalf of the Contractor under this Agreement and that, to the extent any Intellectual Property rights in any Documentation is not owned by the Contractor, it has obtained all requisite consents from the owner(s) of the respective Intellectual Property rights to comply with its obligations undertaken by the Contractor under this Agreement, and has fully discharged the Principal from any obligations with respect to payment of any royalties or fees.
- 11.4. *No Additional Royalty.* It is acknowledged and agreed by the Parties that consideration for the transfer of ownership of the Intellectual Property shall be forming part of the Fee and no additional royalty, fee or other consideration of any kind shall be payable by the Principal to the Contractor or to any third party in consideration of the transfer of ownership of the Intellectual Property in any Documentation.
- 11.5. *No Infringement.* The Contractor represents and warrants to the Principal that no Documentation and information deliverable to the Principal under the terms of this Agreement shall infringe any existing Intellectual Property rights of any third party. In the event any of the representations or warranties contained in this Clause 11 *Intellectual Property Rights* prove to be untrue or inaccurate, the Contractor undertakes at its own cost and expense to defend and settle any claim raised by any third party alleging infringement of Intellectual Property rights in the Documentation and information.
- 11.6. *Indemnification by the Contractor.* The Contractor shall indemnify the Principal from and against any and all Damages arising from the use by the Principal of any Intellectual Property of the Contractor, to the extent use by the Principal is within the scope of the license granted to the Principal.

12. Termination and suspension

- 12.1. *Termination due to Material Breach or Bankruptcy.* Subject to the provisions of Clause 12.2 of this Agreement, either Party shall be entitled to terminate (withdraw from) this Agreement upon giving a written notice of termination to the other Party in the event of material breach by the other Party of any of its obligations under

this Agreement. The written notice of termination shall contain an itemized description of the breach. An event of material breach shall include, but shall not be limited to, any of the following:

- (a) commitment by a Party of any persistent or material breach of this Agreement, which shall include failure to pay an amount of at least EUR 9,000 due to the other Party or perform any part of the Services valued at least EUR 9,000;
- (b) failure by the Contractor to duly address any of the matters raised in the second Objection Notice given by the Principal in accordance with Clause 10.5;
- (c) failure by any Deliverable to conform to any of the material requirements to such Deliverable contained in *Annex B: Technical Specification* provided that such failure is not capable of being remedied during the Cure Period;
- (d) failure by the Principal to make any payment to the Contractor in accordance with this Agreement within at least thirty (30) Working Days from the date of payment falling due;
- (e) any of the representations or warranties given by either Party under Clause 8.1 of this Agreement or any of the representations or warranties given by the Contractor under Clause 8.2 of this Agreement proving to be untrue; or
- (f) breach by the Contractor of the undertaking contained in Clause 11.3 of this Agreement.

- 12.2. *Corrective Period.* In the event of breach by either Party of its obligations under this Agreement, the non-breaching Party shall allow the breaching Party seven (7) days for corrective action or submission of a corrective action plan (the "Corrective Period"). The Corrective Period shall be counted from the date of receipt by the breaching Party of a written notice of breach. Should no satisfactory corrective action be taken, or acceptable corrective action plan provided by the breaching Party, the non-breaching Party shall have the right to terminate the Agreement. It is acknowledged and agreed by the Parties that the provisions of this Clause 12.2 of this Agreement shall not apply with respect to any of the events listed in accordance with Clause 12.3 of this Agreement. In addition and for the avoidance of any doubt, the application of the Corrective Period under this Clause 12.2 of this Agreement shall be without prejudice to and shall not relieve either Party from the obligation to pay any contractual penalty in accordance with the provisions of Clause 13.2 of this Agreement or to pay Damages incurred by the other Party in accordance with the provisions of Clause 13.3 of this Agreement.

For the sake of clarity, the Corrective Period is not applied in case of material breach under Clause 12.1(b) or Clause 12.1(c), as in these cases the purpose of the Corrective Period is fulfilled by the Cure Period or the term specified in the Objection Notice, as the case may be, and their prior application.

- 12.3. *Right to Terminate the Agreement Immediately.*

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

- (a) breach by the other Party of Clause 19.2 of this Agreement;
- (b) an event of Force Majeure has been continuing during more than sixty (60) days;
- (c) the other Party has passed a resolution for winding-up;
- (d) liquidation, insolvency or legal protection proceedings have been initiated with respect to the other Party or the other Party is declared insolvent;
- (e) the occurrence of any event analogous to the events listed under Clauses 12.3.1 (d) under the law applicable in the jurisdiction to which the other Party's assets and undertaking are subject.

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

- (a) CEF co-funding for financing of the Services is not available to the Principal fully or partly, or the Principal, its successor or assignee to whom the Contract has been assigned in accordance to Clause 19.7 has decided not to proceed with the Services;

In such a case, the Principal shall pay the Contractor the fees in respect of the Services provided under this Agreement up to the date of the notification of the termination of this Agreement and the Principal is not obliged to pay contractual or any other penalty or Damages to the Contractor.

- (b) it is not possible to execute the Agreement due to the application of international or national sanctions, or European Union or North Atlantic Treaty Organization applied sanctions significantly affecting interests of financial or capital market.
 - (c) in case, if the proposed time schedule described in *Annex C: Schedule of Services and Payment* is breached;
 - (d) breach by the Contractor any of the confidentiality undertakings contained under Section 15 Confidentiality.
- 12.4. *Termination according to Public Procurement Law.* The Agreement may be immediately terminated upon giving to the other Party a written notice of termination explaining in reasonable detail the reason for termination upon occurrence of any of the circumstances listed under Article 64 of the Public Procurement Law. In such a case the Principal shall pay to the Contractor the fees in respect of the Services completed under this Agreement up to the date of the notification of the termination of this Agreement, and the Principal is not obliged to pay contractual or any other penalty or Damages to the Contractor.
- 12.5. *Right to Advance to Completion.* In the event the Contractor is in breach of Clauses 12.1 and 12.3.2 (c) and (d)(c) above or fails to cure any breach in accordance with Clause 12.2 of this Agreement, and the Agreement is terminated by the Principal, the Principal may advance the Services to completion by contracting the provision of Services by other professional service supplier(s) or by other means available to the Principal. The Contractor shall be liable to the Principal for any and all additional costs incurred due to failure by the Contractor to perform. The rights and remedies available to the Principal set forth in accordance with this Clause 12.5 of this Agreement shall be in addition to any and all other rights and remedies available under the Applicable Law.
- 12.6. *Consequences of Termination.* Upon expiration or termination of this Agreement, the obligations of the Parties set forth in this Agreement shall cease, except with respect to the following:
 - (a) any obligations arising as a result of any preceding breach of this Agreement or with respect of any accrued rights; and
 - (b) the provisions stipulated in accordance with Clauses 7.6, 7.7, 9.7, 10.1, 11.3, 11.4, 11.5, 11.6, 13.1, 13.2, 13.3, 15, 16, 17, 18, 19.1, 19.2 of this Agreement 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 12.6 (b) of this Agreement.
- 12.7. *Principal's Obligation to Pay.* In the event of termination of the Agreement due to the fault of the Principal in accordance with Clause 12.1 or 12.3.1 of the Agreement, the Principal shall be obliged to compensate to the Contractor only those direct and reasonable Costs which are attributable to the Services and are incurred by the Contractor until the termination of the Agreement. The total amount of such Costs shall in any case not exceed the amount of the Fee payable as per Clause 9.1 for the Services. The Principal shall have no obligation to pay any of the Costs incurred by the Contractor with respect to any Services (or part of the Services), if the Agreement has been terminated due to the violation of Clause 19.2 by the Contractor or due to application of international sanctions as per Clause 12.3.2 (b) or for the Services, which are not deemed as having been accepted by the Principal in accordance with Clauses 10.2, 10.4, 10.5 and 10.6 of this Agreement due to the fault of the Contractor.
- 12.8. *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 Law.

13. Liability

- 13.1. *Liability of the Parties.* The Contractor shall be liable to compensate Damages incurred by the Principal arising out of or in connection with this Agreement and pay contractual penalty set forth in accordance with Clause 13.2 of this Agreement if a breach of any of the obligations of the Contractor under this Agreement is established against the Contractor. The Principal shall be liable to pay the contractual penalty set forth in accordance with Clause 13.2 of this Agreement if a breach of payment obligations of the Principal under this Agreement is established against the Principal.
- 13.2. *Contractual Penalty.* In the event of failure by the Contractor to meet any Services Milestone and/or to supply any Deliverable, the Contractor shall be liable to pay to the Principal a penalty of zero point five (0.5%) of the amount of total Fee payable under this Agreement with respect to the particular Services Milestone and/or Deliverable for each day of delay starting from the first delayed day to meet the respective Services Milestone and/or supply of the particular Deliverable set forth in accordance with *Annex C: Schedule of Services and Payment*; provided, however, that the total amount of penalty payable by the Contractor under this Clause

13.2 for the relevant Services, as specified according to *Annex C: Schedule of Services and Payment* shall not exceed ten percent (10%) of the total amount of the Fee. In the event of failure by the Principal to pay any amount in accordance with the Clause 9 *Fee and Payment*, the Principal shall be liable to pay to the Contractor a penalty of zero point five percent (0.5%) of the amount of the amount invoiced for each day of delay to meet the payment obligation; provided, however, that the total amount of penalty payable by the Principal under this Clause 13.2 of this Agreement shall not exceed ten percent (10%) of the total amount remaining unpaid under the relevant invoice.

- 13.3. *Compensation for Damages.* Notwithstanding of and without prejudice to any contractual penalty payable in accordance with Clause 13.2 of this Agreement and subject to the provisions of Clause 13.5 of this Agreement, in the event it is established that either Party is liable to the other Party with respect to any breach of its respective obligations under this Agreement, the liable Party shall compensate the other Party for any Damages incurred as a result of such breach, but shall be limited to the amount of reasonably foreseeable Damages suffered as a result of the breach(es), but not otherwise.
- 13.4. *Attribution of Damages.* Any Damages suffered by either Party shall, for the purposes of Clause 13.3 of this Agreement, be reduced to the extent that the Damages are caused by or contributed to by the other Party's own negligence or breach of its obligations under this Agreement provided that the other Party has been duly notified of an impediment or potential delay in accordance with the terms of Clauses 4.4 and 14.3 of this Agreement.
- 13.5. *Limitation of Liability.* Notwithstanding anything to the contrary set forth in this Agreement, in no circumstances shall the Contractor or the Principal be liable to one another for any loss of profit, loss of revenue, loss of contract, liability incurred under other agreements or any indirect or consequential loss arising out of or in connection with this Agreement. The Contractor's total liability for the Services provided under this Agreement shall in no circumstances exceed twice (2) the amount of the total value of the Agreement as per Clause **Error! Reference source not found.** .

14. Force Majeure

- 14.1. *Effects of Force Majeure.* Subject to the requirements set forth in accordance with Clauses 14.2 and 14.3 of this Agreement, 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.
- 14.2. *Action on Becoming Aware of Force Majeure.* Each Party shall at all times, following the occurrence of a Force Majeure Event:
- (a) take reasonable steps to prevent and mitigate the consequences of such an event upon the performance of its obligations under this Agreement, resume performance of its obligations affected by the Force Majeure Event as soon as practicable and use reasonable endeavours in accordance with Good Industry Practice to remedy its failure to perform; and
 - (b) not be relieved from liability under this Agreement to the extent that it is not able to perform, or has not in fact performed, its obligations under this Agreement due to any failure to comply with its obligations under Clause 14.2 (a) of this Agreement.
- 14.3. *Notification Requirements.* Upon the occurrence of a Force Majeure Event, the affected Party shall notify the other Party as soon as reasonably practicable and in any event within ten (10) Working Days of it becoming aware of the relevant Force Majeure Event. Such notification shall give sufficient details to identify the particular event claimed to be a Force Majeure Event and shall contain detailed information relating to the failure to perform (or delay in performing), including the date of occurrence of the Force Majeure Event, the effect of the Force Majeure Event on the ability of the affected Party to perform, the action being taken in accordance with Clause 14.2 (a) of this Agreement and an estimate of the period of time required to overcome the Force Majeure Event. The affected Party shall provide the other Party with any further information it receives or becomes aware of which relates to the Force Majeure Event and provide an update on the estimate of the period of time required to overcome its effects.
- 14.4. *Notification of Resumed Performance.* The affected Party shall notify the other Party as soon as practicable once the performance of its affected obligations can be resumed (performance to continue on the terms existing immediately prior to the occurrence of the Force Majeure Event).
- 14.5. *Mitigation of Effects of Force Majeure.* As soon as practicable after the notification specified pursuant to Clause 14.3 of this Agreement, the Parties shall use reasonable endeavours to agree appropriate terms or modifications to the Services to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement.

15. Confidentiality

- 15.1. *Confidential Information.* "Confidential Information" means all information of a confidential nature relating to the Principal and its affiliates which is supplied by the Principal (whether before or after the date of this Agreement) to the Contractor, either in writing, orally or in any other form and includes all designs, analyses, compilations, deeds, studies, memoranda or any part thereof, and other documents and information which contain or otherwise reflect or are derived from such information, but excludes information which:
- (j) the publicly available and generally accessible studies, analysis, data and any other information;
 - (a) the Principal confirms in writing is not required to be treated as confidential; or
 - (b) the Contractor can show that the Confidential Information was in its possession or known to it (by being in its use or being recorded in its files or computers or other recording media) prior to receipt from the Principal and was not previously acquired by the Contractor from the Principal under an obligation of confidence; or
 - (c) was developed by or for the Contractor at any time independently of this Agreement.
- 15.2. *Undertakings with Respect to Confidential Information.* Subject to Clauses 15.1 and 15.3, the Contractor shall:
- (a) at all times keep confidential all Confidential Information received by it and shall not disclose such Confidential Information to any other Person; and
 - (k) procure that its affiliates, Approved Sub-Contractors and their respective officers, employees and agents shall keep confidential and not disclose to any Person any Confidential Information except with the prior written consent of the Party to which such Confidential Information relates.
- 15.3. *Permitted Disclosure.* Notwithstanding anything to the contrary set forth in accordance with Clauses 15.1 and 15.2 of this Agreement, the Contractor shall, without the prior written consent of the Principal, be entitled to disclose Confidential Information:
- (a) that is reasonably required by the Contractor in the performance of its obligations pursuant to this Agreement, including the disclosure of any Confidential Information to any employee, contractor, agent, officer, Sub-Contractor (of any tier) or adviser to the extent necessary to enable the Contractor to perform its obligations under this Agreement;
 - (l) to enable a determination to be made pursuant to Clause 17 (*On-the-spot visits*);
 - (b) 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;
 - (c) to the extent required by Applicable Law or pursuant to an order of any court of competent jurisdiction, any statutory obligation or the legally binding rules of any stock exchange or governmental or National Regulatory Authority; or
 - (d) to the extent Confidential Information has become available to the public other than as a result of any breach of an obligation of confidence provided that any such disclosure is made in good faith.
- 15.4. *Survival of Obligations.* The obligations of the Parties under this Clause shall survive for a period of no less than five (5) years following the day of expiry or termination of all and any other obligations under this Agreement.
- 15.5. *Obligation of Confidentiality Applicable to Recipients of Confidential Information.* Whenever disclosure is permitted to be made pursuant to Clauses 15.3(a) or (b), the Contractor shall require that the recipient of Confidential Information be subject to the same obligation of confidentiality as that contained in this Agreement.
- 15.6. *Certain Obligations on Termination of Agreement.* If this Agreement is terminated for whatsoever reason, the Contractor shall:
- (a) return to the Principal all of the Confidential Information then within the possession or control of the Contractor; or
 - (b) destroy such Confidential Information using a secure and confidential method of destruction.
- 15.7. *No Press Release by the Contractor.* Save as required by Applicable Law, the Contractor shall not issue any press release in relation to the matters contemplated under this Agreement without the prior written consent of the Principal (such consent not to be unreasonably withheld or delayed) as to both the content and the timing of the issue of the press release.

- 15.8. *Right to Publish.* For the avoidance of any doubt, the Principal shall have the right to publish any of the documents, information or data provided by the Contractor to the Principal during provision of the Services.
- 15.9. *Remedies.* The Parties acknowledge and agree that a breach of the provisions of this Clause 15 may cause to the owner of Confidential Information to suffer irreparable Damages that could not be adequately remedied by an action at law. Accordingly, the Contractor agrees that the owner of Confidential Information that is disclosed in breach of Clauses 15.2, 15.4, 15.5 or 15.7 may be entitled to any other remedy, including, inter alia, damages and injunctive relief, awarded by a court of competent jurisdiction.

16. Right to Audit

- 16.1. *Right to Audit.* Notwithstanding anything to the contrary set forth in this Agreement including, the Principal itself, a reputable outside independent body or expert engaged and authorised by the Principal shall be entitled to inspect and/or audit the Contractor to ensure compliance with the terms of this Agreement, including inspecting and/or auditing:
- (a) the performance of any aspect of the Services; and/or
 - (b) any documentation, including all payrolls, accounts of the Contractor and/or other records used in or related to the performance of the Services.
- 16.2. *Obligation to Assist.* The Contractor shall provide all reasonable assistance to the Principal or the independent body authorised by the Principal, as the case may be, in carrying out any inspection or audit pursuant to this Right to Audit. The Principal shall be responsible for its own costs, or the costs incurred by the outside independent body designated by the Principal, incurred toward carrying out such inspection or audit, unless, in the case of any such audit, that audit reveals that the Contractor is not compliant with the terms of this Agreement, in which case the Contractor shall reimburse the Principal for all of its additional reasonable costs incurred, provided such non-compliance is material.
- 16.3. *Survival of Termination.* The rights and obligations set forth in accordance with this Clause 16 shall survive expiration or termination of this Agreement for any reason and shall continue to apply during five (5) years following expiration or termination of this Agreement for any reason whatsoever.

17. On-the-spot visits

- 17.1. *Right to perform on-the-spot visits.* By submitting a written notice five (5) Working Days in advance, but at the same time reserving the right of an unannounced on-the-spot visit without an advance notice, the Principal may carry out on-the-spot visits to the sites and premises where the activities implemented within the Agreement are or were carried out.
- 17.2. *Personnel involved.* On-the-spot visits may be carried out either directly by authorised staff or representatives of the Principal or by any other outside body or third party authorised to do so on behalf of the Principal. Information provided and collected in the framework of on-the-spot visits shall be treated as confidential. The Principal shall ensure that any authorised outside body or third party shall be bound by the same confidentiality obligations.
- 17.3. *Access to the information.* Contractor shall provide to the performer of the on-the-spot visit 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 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 the copying of the information and documents, with due respect to the confidentiality obligation.
- 17.4. *Checks and Inspections.* 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 Contractor in case such activities are related to the use of grants awarded.

18. Governing Law and Resolution of Disputes

- 18.1. *Governing Law.* This Agreement shall be governed by and construed in accordance with laws of the Republic of Latvia (also referred to as "the Applicable Law").
- 18.2. *Resolution by Amicable Means.* The Parties shall first attempt to settle any dispute, controversy or claim arising out of or relating to this Agreement through good faith debate, discussion, and negotiating prior to submitting them to mediation or other legal proceeding.
- 18.3. *Venue for Resolution of Disputes.* Should the Parties fail to agree by means of amicable negotiations within the time period of two (2) months from the date of serving of the respective written complaint to the other Party, the Parties shall submit all their disputes arising out of or in connection with this Agreement to the exclusive jurisdiction of the courts of a general jurisdiction of the Republic of Latvia. The Parties hereby represent and warrant that the English language is understandable for all Parties in accordance with Article 8(1)(a) of the Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) and repealing Council Regulation (EC) No 1348/2000.

19. Miscellaneous provisions

- 19.1. *Capacity.* Each Party warrants to the other Party that it has full power to enter into and perform this Agreement, and the person signing this Agreement on its behalf has been duly authorised and empowered to enter into such agreement. Each Party further acknowledges that it has read this Agreement, understands it and agrees to be bound by it.
- 19.2. *Conflict of Interest, Corruption and Fraud.* Notwithstanding any penalties that may be enforced against the Contractor under Applicable Law, or the laws of other jurisdiction(s), the Contractor shall be deemed to have committed a breach under this Agreement and the Principal shall be entitled to terminate this Agreement immediately and without any regard to the provisions of Clause 12.2 of this Agreement, if it is shown that the Contractor is guilty of:
- (a) offering, giving, receiving or soliciting anything of value with a view to influencing the behaviour or action of anyone, whether a public official or otherwise, directly or indirectly in the selection process or in the conduct of the Agreement; or
 - (b) misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Principal, including the use of collusive practices with the detrimental effects or intended to reduce the benefits of free and open competition.
- 19.3. *Notices.* Notices under the Agreement shall be in writing and will take effect from receipt by the Party to which the notice is addressed. Delivery can be made by hand, by post, or by e-mail. Notice shall be deemed to be received on the next Working Day after the Notice is sent via e-mail or on the day following the 7 (seven) working days after the Notice have been handed over to the post.
- 19.4. *Relationship of the Parties.* The relationship between the Contractor and the Principal under this Agreement is that of independent contractors. The Contractor (and the Contractor's sub-contractors) is not an employee of the Principal, is not carrying out the regular business of the Principal and is not subject to the same employment regulations as are applicable to employees of the Principal. Each of the Parties shall be solely and entirely responsible for their own acts and the acts of their employees. No benefits, special considerations, or employer/employee-type provisions are provided by the Principal to the Contractor, the Contractor's employees, or the Contractor's consultants, or the employees of such consultants.
- 19.5. *Severability.* If any provision of this Agreement shall become illegal, invalid, void or unenforceable under the Applicable Law, the legality, validity and enforceability of the remaining parts of this Agreement shall not be affected, and the legality, validity and enforceability of the whole of this Agreement shall not be affected.
- 19.6. *Successors and Assignees.* The Principal and the Contractor each bind themselves, their successors, legal representatives, and assignees to the other Parties to this Agreement and to the partners, successors, legal representatives and assignees of such other Parties 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 except for the cases provided under Clause 19.7 (Permitted Assignment).
- 19.7. *Permitted Assignment.* The Parties hereby acknowledge and agree that the Principal is entitled to assign any rights and liabilities, including any present or future ownership rights on property acquired or confirmed upon it as the result of the execution of this Agreement to the Beneficiaries or Implementing Bodies, or any other party designated by the Beneficiary or Beneficiaries.

- 19.8. *Amendments and Variations.* No amendment or variation of this Agreement shall be effective unless made in writing and signed by duly authorised representatives of all 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.
- 19.9. *Entire Agreement.* This Agreement, and the Annexes hereto, constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes and extinguishes all and any prior drafts, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter.
- 19.10. *Execution.* This Agreement is prepared and is executed as an electronic document.
- 19.11. *Validity of the Agreement.* This Agreement shall enter into force on the Effective Date and will remain in force until full completion of the obligations of the Parties arising out of this Agreement. The term of the Agreement shall be 3 (three) calendar years as from the Effective Date of the Agreement.

Signed by:

For and on behalf of the Principal:

For and on behalf of the Contractor:

[●]

[●]

THIS AGREEMENT IS SIGNED WITH SECURE ELECTRONIC SIGNATURES AND CONTAINS A TIMESTAMP

Annex A: Definitions and common terms

The following capitalised terms shall be ascribed the following meaning for the purposes of the Agreement:

1. "Agreement", this Agreement, together with all Annexes thereto.
2. "Applicable Law" or "Law" or "Governing Law", any legislative act, regulation, decree, order, ordinance, statute, treaty, directive, judgment, or other legislative measure. For the avoidance of any doubt, these terms shall include, but not be limited to, any legislative act or directive relevant to public procurement and provision of the Services as applicable within the territory of the provision of the Services.
3. "Approved Key Experts", any person or organization listed pursuant to *Annex D: List of approved Sub-Contractors and Key Experts*, which is in a contractual relationship with the Contractor to provide a part of or full Scope of the Services.
4. "Approved Sub-Contractor", any person or organisation listed pursuant to *Annex D: List of approved Sub-Contractors and Key Experts*, which is in a contractual relationship with the Contractor to provide a part of the Services.
5. "Assessment Body" or "AsBo", means a company (CERTIFER SA), which is engaged by the Principal as an independent professional contractor to perform the services to the Principal and the Implementing Bodies, and legal successors to the Principal and the Implementing Bodies and permitted assignees of the Principal and the Implementing Bodies in order to build, render operational and commercialise the Rail Baltica railway – a new fast conventional double track electrified railway line according TSI INF P2-F1 criteria and European standard gauge (1435mm).
6. "Beneficiary" or the "Beneficiaries", the Ministry of Climate of the Republic of Estonia, Ministry of Transport of the Republic of Latvia and Ministry of Transport and Communications of the Republic of Lithuania.
7. "CEF" means the Connecting Europe Facility established by the Regulations (EU) No 1316/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Connecting Europe Facility, amending Regulation (EU) No 913/2010 and repealing Regulations (EC) No 680/2007 and (EC) No 67/2010 and Regulation (EU) 2021/1153 of the European Parliament and of the Council of 7 July 2021 establishing the Connecting Europe Facility and repealing Regulations (EU) No 1316/2013 and (EU) No 283/2014 and implemented in the 2014 – 2020 and 2021-2027 and 2028-2034 Multiannual Financial Framework under the respective EU regulation.
8. "Commencement Date", the date of the Deed of Commencement signed by the Principal as per Commencement Notice.
9. "Commencement Notice", as mentioned under Clause 4.23 of the Agreement and substantially in the form of *Annex J: Commencement Notice*.
10. "Completion Date", as defined in accordance with Clause 10.4 and 10.5 of this Agreement, as appropriate.
11. "Confidential Information", as defined in accordance with Clause 15.1 of this Agreement.
12. "Contractor", [●] the company as further specified in the preamble of this Agreement, which is employed by the Principal as an independent professional contractor to perform the Services.
13. "Costs", direct costs reasonably incurred in relation to the Project. Specifically, the Cost shall include any of the following:
 - (i) costs of all materials and supplies forming part of the Services, including transportation and storage expenses (discounts for cash or prompt payments will not reduce these costs);
 - (ii) salaries and payroll expenses of employees and other personnel, as well as management costs of the Contractor;
 - (i) payments to the Approved Sub-Contractors for Works relating to the Services;
 - (iii) costs of all employee benefits and taxes, including social security and similar contributions, and other benefits attributable to the employment;
 - (iv) costs, including logistics, loading / unloading and maintenance of equipment and tools;

- (v) payments for rental charges for machinery, equipment, facilities and tools used in connection with the Services, and payments for installations, repairs, replacements, dismantling, removal, lubrication, transportation and delivery of those rental items;
 - (vi) other transportation costs incurred in connection with the Services;
 - (vii) that portion attributable to this Agreement of premiums for insurance that is required by this Agreement (if applicable) or by law to be obtained or maintained by the Contractor;
 - (viii) Any taxes or fees related to the Services, imposed by any governmental or local authority;
 - (ix) costs of telecommunications and internet services attributable to the Services;
 - (x) costs of any data processing services used in connection with the performance of the Work required under this Agreement; and
 - (xi) losses and expenses, not compensated by insurance, sustained by the Contractor in connection with the Works under this Agreement (if applicable), provided they resulted from causes other than the fault or neglect of the Contractor.
14. "Corrective Period", as defined in accordance with Clause 12.2 of this Agreement.
 15. "Cure Period", as defined in accordance with Clause 10.1 of this Agreement.
 16. "Damages", any cost, claim, damage, demand, loss, expense or liability incurred by the relevant Party or Person.
 17. "Deed of Acceptance", as defined under Clause 10.3 of the Agreement and substantially in the form as provided in *Annex E: Deed of Acceptance*.
 18. "Defect", is a part of the Services which is not in accordance with the *Annex B: Technical Specification* and/or the

- 19.
20. **Annex G: Contractor's Proposal** , and/or the Applicable Law and/or Good Industry Practice.
21. **"Deliverable"**, any information, notes, studies, drawings, records, reports, documents and/or other items which the Contractor is required to deliver to the Principal as part of the Services, as further specified pursuant to *Annex C: Schedule of Services and Payment*.
22. **"Design Guidelines"**, set of predefined and standardized technically and economically justified engineering and design solutions for Rail Baltica infrastructure to be applied at design, construction, and operation phases of Rail Baltica Railway, published by the Principal and as may be amended from time to time on the Principal's web page: <https://www.railbaltica.org/design-guidelines/>.
23. **"Documentation"**, all records, correspondence, and files of the Contractor, its Key Experts and other employees, as well as consultants engaged in delivering of the Services. The Documentation shall also refer to any copies of or excerpts from the reports or studies received by the Contractor from any third parties, which are relevant to the Services, and to which the reference is made in the Deliverables.
24. **"Effective Date"**, the date when the Agreement is signed by the Principal and the Contractor as indicated in the preamble of the Agreement and as per Clause 3.1 of this Agreement.
25. **"EUR"**, and **"euro"**, the official currency of the eurozone, officially known as the euro area.
26. **"Fee"**, as specified in accordance with Clause 9.1 of the Agreement.
27. **"Force Majeure Event"**, any of the following events:
- (i) an act of the public enemy or war (declared or undeclared), threat of war, revolution, riot, insurrection, civil commotion, demonstration or sabotage;
 - (ii) an act of vandalism or accidental damage or destruction of machinery, equipment, track or other infrastructure;
 - (iii) a natural disaster or phenomena, including extreme weather or environmental conditions (such as lightning, earthquake, hurricane, storm, fire, flood, drought or accumulation of snow or ice);
 - (iv) nuclear, chemical or biological contamination;
 - (v) strike, lockout or other industrial action other than involving the Contractor, the Principal or the Beneficiary.
28. **"Good Industry Practice"**, in relation to the performance of any activity to which this standard is applied, the exercise of that degree of skill, diligence, prudence and foresight as would reasonably be expected to be exercised by a properly qualified and competent person engaged in carrying out the Work, Services or services of a similar size, nature, scope, type and complexity, complying with Applicable Law, applicable standards and published codes of practice.
29. **"Implementing Body"** or **"Implementing Bodies"** means a body (or bodies) designated by the Beneficiaries in CEF Grant Agreements.
30. **"Intellectual Property"**, all intellectual property rights in any part of the world in respect of any documentation or information provided by the Contractor to the Beneficiary, including any patent, patent application, trade mark, trade mark application, registered design, registered design application, utility model, trade name, discovery, invention, process, formula, specification, copyright (including all neighbouring rights, rights in computer software and database and topography rights), know how or unregistered design right.
31. **"Intellectual Property of the Contractor"**, all Intellectual Property owned or licensed to the Contractor with a right to sub-license.
32. **"Key Expert"** means an individual appointed by the Contractor, who according to the Contract shall play an active role in the execution of the Contract for the provision of the Services throughout the Contract Period, and shall not be replaced by the Contractor unless explicitly agreed with the Principal according to the terms of the Contract.
33. **"National Safety Authority"** or **"NSA"** means the national body entrusted with the tasks regarding railway safety in accordance with EU Directive 2016/798 and which are established in the territory of the Republic of Estonia, Republic of Latvia and Republic of Lithuania. The following authorities have been listed by the European Railway Agency (ERA) with respect of the Project:

- Tarbijakaitse ja Tehnilise Järelevalve Amet for Estonia;
 - Valsts Dzelzceļa Tehniskā inspekcija for Latvia;
 - Valstybinė Geležinkelio Inspekcija for Lithuania.
34. "Objection Notice", as defined in accordance with Clause 10.4 of this Agreement.
 35. "Party" and "Parties", the Principal and the Contractor and include their respective successors in title, permitted assigns and permitted transferees.
 36. "Person", shall include any individual, company, corporate body, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) or two or more of the foregoing.
 37. "Project", development of a 1435 mm standard gauge railway line in the Rail Baltica (RB) corridor through Estonia, Latvia and Lithuania aimed at eliminating the technical bottleneck due to the gauge differences (1,520 mm vs. the EU standard of 1,435 mm).
 38. "Principal", RB Rail AS as specified in the preamble of this Agreement.
 39. "Railway", a new fast conventional double track electrified railway line according TSI INF P2-F1 criteria and European standard gauge (1435 mm) on the Route.
 40. "Representative", an officer, employee or individual appointed by the Contractor and/or the Principal to serve as its authorised representative toward the supply or receipt of the Service and indicated under *Annex H: Representatives*.
 41. "Services", the assessment of the aerodynamic forces for several specific situations of the Rail Baltica railway operation services for the purposes of the Project as defined under Clauses 2.1 and 2.2 of this Agreement and further described under *Annex B: Technical Specification*;
 42. "Services Milestone", the date for delivery of one or more Deliverables, as set out in the *Annex B: Technical Specification* and *Annex C: Schedule of Services and Payment*, as well under the respective Commencement Notice for Additional (Optional Scope) Services, if applicable;
 43. "VAT", value added tax.
 44. "Variations", a variation to the Agreement or any part thereof mentioned in Clause 5.1.
 45. "Working Day", any day (other than Saturday or Sunday) on which banks in the Republic of Latvia are open for conduct of business.
 46. "Works", all incidental works, steps and actions performed by the Contractor for the attainment of the objectives of the Services and/or the Project.

Annex B: Technical Specification

Annex C: Schedule of Services and Payment

1. The Services Commencement Date: Effective Date or the date as per the Commencement Notice (CD).
2. The Due Dates for the Deliverables: in the table under Section 3.5.1 of Annex B “Technical Specification”.
3. The Principal will accept all Deliverables in accordance with the Clauses 10.3 - 10.6 of the Agreement only if they will conform with the quality and other requirements defined under *Annex B: Technical Specification*.
4. The Principal may provide comments or remarks to Deliverables after signing of the Deed of Acceptance. In such situations the Contractor shall implement and/or consider mentioned comments and remarks until the submission of subsequent Deliverables.

Annex D: List of approved Sub-Contractors and Key Experts

Annex E: Deed of Acceptance

No [INSERT NUMBER]

Date: [INSERT DATE]

Location: [INSERT LOCATION]

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

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

Whereas:

- (A) the Principal and the Contractor have entered into the Agreement [●];
- (B) one or more Services Milestones have been met and/or Deliverables of the Services have been completed or the Services have been fully completed by the Contractor;
- (C) as stipulated by Clause 4.2 of the Agreement, completion of a Services Milestone/Deliverable shall be evidenced by means of the Contractor issuing a signed Deed of Acceptance;
- (D) as per Clause 10.2 of the Agreement the Principal following the reception of a signed Deed of Acceptance shall review the submitted Deed of Acceptance and either sign the Deed of Acceptance conforming the compliance of the Services rendered or raise objections by issuing an Objection Notice.

The Contractor hereby confirms that following Services Deliverable has/have been supplied on [INSERT DATE], as specified in accordance with the Agreement, or the Services have been completed in full: [DESCRIBE IN REASONABLE DETAIL THE DELIVERABLE SUPPLIED AND ATTACH THE RESPECTIVE SUPPORTING DOCUMENTATION].

By signing this Deed of Acceptance the Principal confirms in accordance with Clause 10.4(b) of the Agreement its satisfaction with the result of the Deliverable submitted in accordance with the terms and conditions of this Agreement and Annex B: Technical Specification and the Services Milestone completed, and the Principal accepts the respective Deliverable in its entirety or partly as specified in Clause 10.4(b) of the Agreement.

The Principal also confirms that the Services Milestones [have been met, and there have been no delays on the part of the Contractor as per the times defined in accordance with Annex C: Schedule of Services and Payment.]

OR

[have not been met, and the following delays of the Service Milestones or the deadline to be met under Clause 3.5.1 of *Annex B: Technical Specification* are hereby being notified to the Contractor: in total [●] days [TO BE FILLED IN BY THE PRINCIPAL] (the "Delay"). Following the Delay, the total amount of Contractual Penalty as per Clause 13.2 is [●] EUR ([●] Euros).]

Additionally, the Principal certifies that all the necessary authorisations for the acceptance of the Deliverable have been duly received.

Signatures:

For and on behalf of the Principal

[●]

For and on behalf of the Contractor

[●]

Annex F: Clarifications to the Contractor's Proposal

Annex G: Contractor's Proposal

Annex H: Representatives

Name and Surname of the contact persons	Phone number and e-mail address
Contact person of the Principal: [•]	[•]
Contact person of the Contractor: [•]	[•]

Annex J: Commencement Notice

No [INSERT NUMBER]

Date: [INSERT DATE]

Location: [INSERT LOCATION]

For: [INSERT CONTRACTOR], registration number [●], legal address: [●] (the "Contractor")

This Deed of Commencement is issued to the Contractor by RB Rail AS (the "Principal"), represented by [INSERT NAME OF REPRESENTATIVE AND THE BASIS OF REPRESENTATION].

Whereas:

- (A) the Principal and the Contractor have entered into the Amendments [●] to the Agreement [●] (the "Agreement Amendments");
 - (B) As per Clause 3.1 the Principal upon its sole discretion shall be entitled to set the exact Commencement Date of the following Additional Services by issuing to the Contractor a written Commencement Notice in accordance with Clause 3.3.
1. With reference to the Agreement Amendments, the Principal hereby directs to the Contractor to proceed with the following Additional Services [../]
("the Additional Services").
 2. The Commencement Date (**CD**) for the Additional Services as per Paragraph 1 of this Commencement Notice is: [INSERT DATE].
 3. The due dates for the submission of the Deliverables for the Additional Services as per Paragraph 1 and schedule of payments of Variation Fee shall be:

No.	Tasks	Deliverable	No. of copies	Draft submission due date	Review and approval by Principal	Due date	Payment, % of Variation Fee
1							
2							
3							

On behalf of the Principal:

[●]