CONDITIONS OF THE AGREEMENT

The Conditions of the Agreement comprise the General Conditions” which form part of the „Client/Consultant Model Services Agreement”, Fifth Edition 2017 published by the Fédération Internationale des Ingénieurs-Conseils (FIDIC), and the following Particular Conditions which include amendments and additions to such General Conditions.

To obtain a copy of the “Client/Consultant Model Services Agreement”, Fifth Edition 2017 please apply to:

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Internet website : <http://www.fidic.org/bookshop>

Form of Agreement

Between:

1. **RB Rail AS**, a public limited liability company registered in the Latvian Commercial Register with registration No. 40103845025 and legal address at Satekles iela 2B, Riga, LV-1050, Latvia (the “Client”), represented by [.],
2. **AB “LTG Infra”,** a public limited company registered with the register of Legal Entities of the Republic of Lithuania company code 305202934 registered address Geležinkelio g. 2, (the “Implementing Body”), represented by [.], and
3. **DB Engineering & Consulting GmbH**, a company registered in the Federal Republic of Germany with registration No. HRB 56655 B, legal address at Torgauer Strasse 12-15, 10829 Berlin, Germany (the “Consultant”), represented by [.], on the other side,

(the Client, Implementing Body and the Consultant referred to as the “Parties” and separately – as the “Party”).

WHEREAS:

The Client desires that certain Services should be performed by the Consultant and has accepted an offer/proposal by the Consultant for the performance of such Services.

THE CLIENT AND THE CONSULTANT AGREE AS FOLLOWS:

1. In the Agreement words and expressions shall have the same meanings as are respectively assigned to them in Clause 1.1 of the General Conditions of the Client/Consultant Model Services Agreement, as amended by Particular Conditions.
2. The following documents shall be deemed to form and be read and construed as part of the Agreement and shall be given the order of precedence as below:
   1. This Form of Agreement;
   2. The Client/Consultant Model Services Agreement;
      1. Particular Conditions with Appendices in their order of precedence as set below:
      2. General Conditions;
      3. Appendix 1 [Technical Specification] including, Schedules, Client’s Requirements, Design Guidelines;
      4. Appendix 2 [Approved Sub-Contractors and Key Experts];
      5. Appendix 3 [Remuneration and Payment];
      6. Appendix 4 [Programme];
      7. Appendix 5 [Rules for Adjudication];
      8. Appendix 6 [Consultant’s Declaration];
      9. Appendix 7 [Information protection and security clearance requirements];
      10. Appendix 8 [Insurance and Guarantee Requirements];
      11. any other documents attached to or referred to in the Agreement.
3. In consideration of the payments to be made by the Client to the Consultant under the Agreement, the Consultant hereby agrees with the Client to perform the Services in conformity with the provisions of the Agreement.
4. The Client hereby agrees to pay the Consultant in consideration of the performance of the Services such amounts as may become payable under the provisions of the Agreement at the times and in the manner prescribed by the Agreement.

AUTHORISED SIGNATURES OF PARTIES:

|  |  |  |  |
| --- | --- | --- | --- |
| For and on behalf of the Implementing Body:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  [.] | For and on behalf of the Client:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  [.] | For and on behalf of the Consultant:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  [.] |  |
| [*THIS DOCUMENT IS SIGNED ELECTRONICALLY WITH A QUALIFIED ELECRONIC SIGNATURE*  *AND CONTAINS TIME SEAL*] | | |  |

**PARTICULAR CONDITIONS**

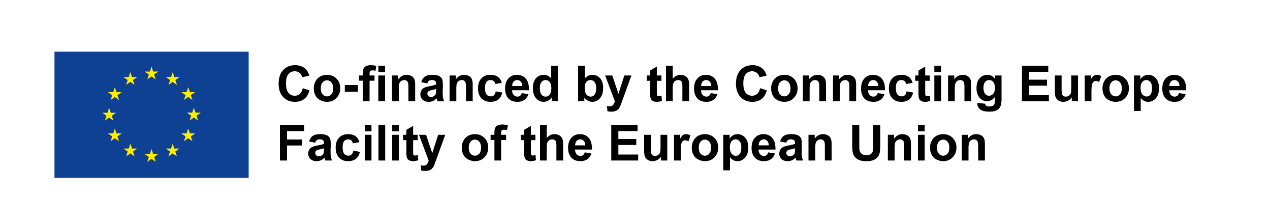
TO

GENERAL CONDITIONS OF

CLIENT/CONSULTANT MODEL SERVICES AGREEMENT, 5th EDITION 2017 (FIDIC)

FOR

DESIGN AND DESIGN SUPERVISION SERVICES FOR THE CONSTRUCTION OF THE NEW RAILWAY LINE FROM KAUNAS URBAN NODE TO POLISH STATE BORDER



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Vilnius, 2025

Part A – References from Clauses in the General Conditions

|  |  |  |
| --- | --- | --- |
| **1.1 Definitions** | | |
| 1.1 .4 Client's Representative | [.] | |
| 1.1.5 Commencement Date | Part A Design Services  [forty] 40 days after Effective Date  Part B Design Supervision Services  30 days prior to the start of the Construction Works. | |
| 1.1.8 Consultant's Representative | [.] | |
| 1.1.9 Country | Republic of Lithuania | |
| 1.1.22 Project | Design and design supervision services for the construction of the new line from Kaunas Urban Node to Polish State Border | |
| 1.1.24 Time for Completion | Part A Design Services  2 years  Part B Design Supervision Services  3 years | |
| 1.1.32 Defect Notification Period | 4 years | |
| **1.3 Notices and other Communications** | | |
| 1.3.1(c) Communication | e-mail subject to document to be electronically signed with a qualified electronic signature within the meaning of EU Regulation No 910/2014 (“eIDAS Regulation”). | |
| 1 .3.1 (d) Address for communications | | |
| Client's address: | Satekles iela 2B, Riga, LV-1050, Latvia  e-mail: [[.]](mailto:info@railbaltica.org) | |
| Consultant's address: | Audeju street 15, 4th floor, Riga, LV-1050, Latvia | |
|  | [.] | |
| **1.4 Law and Language** | | |
| 1.4.1 Law governing Agreement | [Law] Lithuanian | |
| 1.4.2 Ruling language of Agreement | [Language] English | |
| 1.4.3 Language for communications | [Language] English | |
| **1.8 Confidentiality** | | |
| 1.8.3 Period for expiry of confidentiality | [Period] 2 years | |
| **1.9 Publication** | | |
| 1.9.1 Publication restrictions | within two (2) years of completion of the Services or termination of the Agreement (whichever is the earlier) | |
| **3.10 Performance Security** | | |
|  | 10% of total Remuneration | |
| **7.3 Application for Payment** | |  |
| Address for submission of Application for Payment | e-mail: [[.]](mailto:sigitas.tamkunas@ltginfra.lt) |
| **7.5 Issue of Payment Certificates** | |
| Recipient of Invoice | [.] |
| Address for submission of Invoice | e-mail: [.] |
| **8.2 Duration of Liability** | | |
| 8.2.1 Period of Liability | [Period] 10 years after Completion of Services | |
| **8.3 Limit of Liability** | | |
| 8.3.3 Limit of Liability | [Percentage]  Consultant - 60% (sixty percent) in the Aggregate of the Remuneration  Client – 10% (ten percent) in the Aggregate of the Remuneration | |

|  |  |  |  |
| --- | --- | --- | --- |
| **9 Insurance** | | | |
| 9.1.1 Insurances to be taken out by Consultant | | | |
| Professional civil liability Insurance | | [Amount] EUR 10.000.000 | |
| General Liability Insurance | | [Amount] EUR 2.000.000 | |
| Event | Cover | | Period following Completion of the whole of the Services or earlier Termination |
| failure of the Consultant to use the skill and care normally used by professionals providing services similar to the services | Euro 5.000.000 in respect of each claim, without limit to the number of claims | | 5 years |
| death of or bodily injury to a person (not an employee of the Consultant) or loss of or damage to property resulting from an action or failure to take action by the Consultant |  | |  |
| Euro 10.000.000 in respect of each claim, without limit to the number of claims |  | |  |
| **10 Disputes and Arbitration** | | | |
| 10.4.1 Arbitration rules | | Rules of Arbitration of the International Chamber of Commerce | |
| 10.4.1 Language of arbitration | | [Language] English | |

Part B – Additional or Amended Clauses

# Note: The green definitions GENERAL PROVISIONS

## Definitions

|  |  |  |
| --- | --- | --- |
|  | **1.1.1 “Agreement”** | *From the third line after the comma delete:*  Appendix 1 [Scope of Services], Appendix 2 [Personnel, Equipment, Facilities and Services of Others to be Provided by the Client], Appendix 3 [Programme], Appendix 4 [Remuneration and Payment], and Appendix 5 [Rules for Adjudication] and any letters of offer and acceptance attached any of the above.  *And replace with:*  “Appendix 1 [Technical Specification], Appendix 2 [Approved Sub-Contractors and Key Experts], Appendix 3 [Remuneration and Payment], Appendix 4 [Programme], Appendix 5 [Rules for Adjudication], Appendix 6 [Consultant’s Declaration], Appendix 7 [Information protection and security clearance requirements], Appendix 8 [Insurance and Guarantee Requirements] including, Schedules, Client’s Requirements, Design Guidelines any other documents attached to or referred to in the Agreement,” |
|  | 1.1.2 | *No amendment to original FIDIC White Book wording* |
|  | 1.1.3 | *No amendment to original FIDIC White Book wording* |
|  | 1.1.4 | *No amendment to original FIDIC White Book wording* |
|  | 1.1.5 | *No amendment to original FIDIC White Book wording* |
|  | 1.1.6 | *No amendment to original FIDIC White Book wording* |
|  | 1.1.7 | *No amendment to original FIDIC White Book wording* |
|  | 1.1.8 | *No amendment to original FIDIC White Book wording* |
|  | 1.1.9 | *No amendment to original FIDIC White Book wording* |
|  | 1.1.10 | *No amendment to original FIDIC White Book wording*  *Day means a ‘Business Day’ and excludes Public / Bank Holidays in the Country.* |
|  | 1.1.11 | *No amendment to original FIDIC White Book wording* |
|  | 1.1.12 | *No amendment to original FIDIC White Book wording* |
|  | 1.1.13 “**Exceptional Event**” | *At the end of the Sub-Clause add new sub-paragraph (vi) as follows:*  “(vi) archaeological and relevant and cultural heritage findings of such major importance that it makes it impossible to continue with the Services or a significant part thereof for a significant period of time.” |
|  | 1.1.14 | *No amendment to original FIDIC White Book wording* |
|  | 1.1.15 | *No amendment to original FIDIC White Book wording* |
|  | 1.1.16 | *No amendment to original FIDIC White Book wording* |
|  | 1.1.17 | *No amendment to original FIDIC White Book wording* |
|  | 1.1.18 | *No amendment to original FIDIC White Book wording* |
|  | 1.1.19 | *No amendment to original FIDIC White Book wording* |
|  | 1.1.20 | *No amendment to original FIDIC White Book wording* |
|  | 1.1.21 | *No amendment to original FIDIC White Book wording* |
|  | 1.1.22 | *No amendment to original FIDIC White Book wording* |
|  | 1.1.23 “**Services**” | *Delete the first line and replace with the following:*  “**Services**” shall mean both the “Design Services (Part A)” and the “Design Supervision Services (Part B)” as defined in Appendix 1 [Technical Specification]” |
|  | 1.1.24 | *No amendment to original FIDIC White Book wording* |
|  | 1.1.25 | *No amendment to original FIDIC White Book wording* |
|  | 1.1.26 | *No amendment to original FIDIC White Book wording* |
|  | 1.1.27 | *No amendment to original FIDIC White Book wording* |
|  | 1.1.28 | *No amendment to original FIDIC White Book wording* |
|  | 1.1.29 New Sub-Clause “**Client’s Requirements**” | *Add new definition:*  “**Client’s Requirements**” means the documents in Appendix 1 [Technical Specification] and Appendix 4 [Programme] including their annexes, as included in the Agreement, and any additions and modifications to such documents in accordance with the Agreement. Such documents describe the purpose(s) for which the Services are intended and specify Key Expert (if any), the scope, and/or design and/or other performance, technical and evaluation criteria, for the Services. |
|  | 1.1.30 New Sub-Clause “**Competent Supervisory Body**” | *Add new definition:*  “**Competent Supervisory Body**” means a competent public authority established and operating under the Laws of the Country or applicable legal acts of the European Union, which supervises and controls different stages of construction works under the Works Contract, development of design, and issues binding decision and instructions to the parties involved in the preparation of design or construction of respective infrastructure (including public and private utility services providers). |
|  | 1.1.31 New Sub-Clause “**Consultant’s Documents**” | *Add new definition:*  “**Consultant’s Documents**” means the documents prepared by the Consultant as described in Sub-Clause 3.10, including calculations, digital files, computer programs and other software, drawings, manuals, models, specifications and other documents of a technical nature (or otherwise). This shall include both, non-editable files and files in their native format. |
|  | 1.1.32. New Sub-Clause “**Defects Notification Period**” | *Add new definition:*  “**Defects Notification Period**” means the period for notifying defects in the Consultant’s Documents, the Services (as the case may be) under Sub-Clause 4.9 [Defects Liability] as stated in the Particular Conditions. This period is calculated from the Completion date of the Services. |
|  | 1.1.33. New Sub-Clause “**Design Services**” | *Add new definition:*  “(**Part A)** **Design Services**” means the Services required to provide the Master Design for the Project as defined in Appendix 1 [Technical Specification] in accordance with the Client’s Requirements and to the Standard of Care in accordance with this Agreement. |
|  | 1.1.34. New Sub-Clause “**Design Supervision Services**” | *Add new definition:*  “(**Part B)** **Design Supervision Services**” means the Services required to provide supervision services for the Works Contract in accordance with the Client’s Requirements and to the Standard of Care in accordance with this Agreement. |
|  | 1.1.35 New Sub-Clause “**Global Project**” | *Add new definition:*  “**Global Project**” means all the activities undertaken by the Rail Baltica railway implementing parties to build, render operational and commercialize the Rail Baltica railway and related railway infrastructure in accordance with the agreed route, technical parameters and time schedule. |
|  | 1.1.36 New Sub-Clause “**Performance Security**” | *Add new definition:*  **“Performance Security”** means the security under Sub-Clause 3.10 [Performance Security]. |
|  | 1.1.37 New Sub-Clause “**Site**” | *Add new definition:*  “**Site**” means the places where Project is located, and the permanent and temporary works (if any) are to be executed under the Works Contract and any other places as may be specified in the Agreement as forming part of the Site. |
|  | 1.1.38 New Sub-Clause “**Tender**” | *Add new definition:*  “**Tender**” means the letter of Tender, signed by the Consultant, stating the Consultant’s offer to the Client, signed and submitted by the Consultant within the framework of the procurement procedure, for the performance of the Services, and all other documents which the Consultant submitted, as included in the Agreement (the Consultant’s Proposal as per Framework Agreement). |
|  | 1.1.39 New Sub-Clause “**Performance Certificate**” | *Add new definition:*  “**Performance Certificate**” means the certificate issued by the Client (or deemed to be issued under Sub-Clause 4.9.4). |
|  | 1.1.40 New Sub-Clause “**Implementing Body**” | *Add new definition:*  “**Implementing Body**” means AB “LTG Infra” as defined in Appendix 1 [Technical Specification]. |
|  | 1.1.41 New Sub-Clause “**Beneficiary**” | *Add new definition:*  “**Beneficiary**” means Ministry of Transport and Communications of the Republic of Lithuania as defined in Appendix 1 [Technical Specification]. |
|  | 1.1.42 New Sub-Clause “**Defect**” | *Add new definition:*  “A “**Defect**” is:   * a part of the Services which is not in accordance with the Client’s Requirements or the Laws or any other provision in this Agreement, or * a part of a Consultant’s Document where the part of the Consultant’s Document is not in accordance with: * the Client’s Requirements, * the Laws * Consultant’s Documents which the Client has approved, or * any other provision in this Agreement.” |
|  | 1.1.43 New Sub-Clause “**Risk Register**” | *Add new definition:*  “**Risk Register**” means a register of the risks which either the Client or the Consultant has notified as an early warning matter. It includes a description of the risk and a description of the actions which are to be taken to avoid or reduce the risk. |
|  | 1.1.44 New Sub-Clause “**Completion**” | *Add new definition:*  “**Completion**” of the Services has been achieved when the Consultant has:   * provided all the Services and supplied to the Client all the documents required by this Agreement to be supplied within the Time for Completion and * corrected Defects which would have prevented the Client from fully using the Services without impediment, and Others from doing their work |
|  | 1.1.45 New Sub-Clause “**Others**” | *Add new definition:*  “**Others**” means people or organisations who are not the Client, the Adjudicator, the Consultant or any expert, subconsultant or subcontractor of the Consultant. |
|  | 1.1.46 New Sub-Clause “**Provide the Services**” | *Add new definition:*  To “**Perform the Services**” means to do the work necessary to complete the Services regularly and diligently, on time and under set Standard of care, and to remedy any defect in accordance with this Agreement and all incidental work, services and actions which this Agreement requires. |
|  | 1.1.47 New Sub-Clause “**Master Design**” | *Add new definition:*  “**Master Design**” (“**MD”**) means the Master Design as described in Appendix 1 [Technical Specification] and which scope is included in the Consultant’s financial proposal submitted with his Tender. |
|  | 1.1.48 New Sub-Clause “**Detailed Technical Design**” | *Add new definition:*  “**Detailed Technical Design**” (“**DTD**”) means the continuation of the Master Design as described in Appendix 1 [Technical Specification].. |
|  | 1.1.49 New Sub-Clause **“Activities”** | *Add new definition:*  **“Activities”** means the part of the deliverables within a Milestone to complete the Services. The ‘activity’ or ‘activities’ may be varied (including by omission or suspension) by the final version of the Special Plan consisting of Environmental Impact Assessment, land acquisition, as further detailed in Appendix 1 [Technical Specification]." |
|  | 1.1.50 New Sub-Clause “**Payment Certificate**” | *Add new definition:*  “**Payment Certificate**” means a payment certificate issued in accordance with the provisions in Appendix 3 [Remuneration and Payment]. |
|  | 1.1.51 New Sub-Clause “**Remuneration**” | *Add new definition:*  “**Remuneration**” means the price defined in Sub-Clause 7.1 [Remuneration] and includes adjustments in accordance with the Agreement. |
|  | 1.1.52 New Sub-Clause “**Early Warning Notice**” | *Add new definition:*  “**Early Warning Notice**” means a written communication identified as Early Warning Notice and issued in accordance with the provisions of Sub-Clause 1.3 [Notices and other Communications] and Sub-Clause 1.17.1 [Early Warning] |
|  | 1.1.53 New Sub-Clause “**Laws**” | *Add new definition:*  “**Laws**” means all national (or state or provincial) legislation, statutes, acts, decrees, rules, ordinances, orders, treaties, international law and other laws and regulations and by-laws or any other subsidiary legislation legally constituted by public authority. |
|  | 1.1.54 New Sub-Clause “**Key Expert**” | *Add new definition:*  “**Key Expert**” means Consultant’s Experts proposed by the Consultant and accepted by the Client in accordance with Sub-Clause 3.5.1. |
|  | 1.1.55 New Sub-Clause “**Design Guidelines**” | *Add new definition:*  “**Design Guidelines**” means Design Guidelines for Rail Baltica, a set of common design standards mandatory for design, construction and operations of the Rail Baltica infrastructure, which forms an integral part of the Technical Specification in Appendix 1. |
|  | 1.1.56 New Sub-Clause “**Design Priority Section**” | *Add new definition:*  “**Design Priority Section**” means a section of the Services falling under the scope of the Activities identified in Appendix 3 [Payment and Remuneration] Services. |
|  | 1.1.57 New Sub-Clause “**Part**” | *Add new definition:*  “**Part**” means the Services where Part A is Design Services and Part B is Design Supervision Services. |
|  | 1.1.58 New Sub-Clause “**Base Date**” | *Add new definition:*  “**Base Date**” means the date twenty (20) days before the latest date for final submission of the Tender. |
|  | 1.1.59 New Sub-Clause “**Schedule**” | *Add new definition:*  “**Schedule**” means the document(s) entitled schedules completed by the Consultant and submitted with his Tender or prepared by the Client and included in the Agreement. |
|  | 1.1.60 New Sub-Clause **“Connecting European Facility (CEF) ”** | *Add new definition:*  **“Connecting European Facility (CEF)”** means a key EU funding instrument to promote growth, jobs and competitiveness through infrastructure investment at European level. https://cinea.ec.europa.eu/programmes/connecting-europe-facility\_en |
|  | 1.1.61 New Sub-Clause “**Milestone**” | *Add new definition:*  A “**Milestone**” is an activity of the Services which is deemed completed and entitles the Consultant to payment as per Appendix 3 [Remuneration and Payment]. |
|  | 1.1.62 New Sub-Clause “**Unforeseeable difficulties**” | *Add new definition:*  "**Unforeseeable Difficulties**" are preventions, obstacles or similar circumstances due to which the implementation of the Agreement is objectively burdened (there is an objective impact on the price of the Services and the time of execution) and that could not have been foreseen until the last day of the final Tender submission and that arise from a cause that is beyond the reasonable control of the Consultant. |
|  | 1.1.63 New Sub-Clause “**Accepted Agreement Amount**” | “**Accepted Agreement Amount**” means the amount (without VAT) set in Clause 3.1 of the Framework Agreement for provision of Services. |
|  |  |  |

## Interpretation

|  |  |  |
| --- | --- | --- |
|  | 1.2.1 | *From the first line to the second line delete the words “*include the plural, and vice versa where the context requires*” and replace with “*also include the plural and words indicating the plural also include the singular where the context requires*”.* |
|  | 1.2.2 | *At the end of the sentence, replace the full stop with a semicolon and add the following:*  *“*and “he” and “his” and “himself” shall be read as “he/she”, “his/her” and “himself/herself” respectively.” |
|  | 1.2.3 | *On the second line after “*writing*” replace the comma with a full stop and delete “*and signed by both Parties*”.* |
|  | 1.2.4 | *No amendment to original FIDIC White Book wording* |
|  | 1.2.5 | *No amendment to original FIDIC White Book wording* |
|  | 1.2.6 | *No amendment to original FIDIC White Book wording* |
|  | 1.2.7 | *No amendment to original FIDIC White Book wording* |
|  | New Sub-Clause 1.2.8 | *Add new Sub-Clause 1.2.8:*  *“*“**Consent**” means that the Client or the Consultant (as the case may be) agrees to, or gives permission for the required matter*”* |
|  | New Sub-Clause 1.2.9 | *Add new Sub-Clause 1.2.9:*  *“*The words “approve”, “approved” or “approval” shall have the same meaning as “agree”, “agreed” and agreement” respectively in Sub-Clause 1.2.3 above and provisions including these words shall require the approval to be recorded in writing.*”* |

## 1.3. Notices and Other Communications

|  |  |  |
| --- | --- | --- |
|  | 1.3.1 | *On the third line after “*instructions,*” add the word “*determination*”.*  *On the second line of item (c) after “*transmitted*” add the following:*  “Signed and scanned as PDF format version (or acceptable digitally signed version)” |
|  | 1.3.2 | *Add new Sub-Clause 1.3.2:*  The Consultant, any Consultant’s experts and its sub-consultants involved in the implementation of the Agreement shall not rely on any guidance, instructions, orders or requests from any person other than the Client. In case if any orders or requests are submitted to the Consultant from other persons or entities, the Consultant shall first seek and receive Instruction from the Client. |

## Law and Language

|  |  |  |
| --- | --- | --- |
|  | 1.4.1 | *No amendment to original FIDIC White Book wording* |
|  | 1.4.2 | *No amendment to original FIDIC White Book wording* |
|  | 1.4.3 | *No amendment to original FIDIC White Book wording* |

## Changes in Legislation

|  |  |  |
| --- | --- | --- |
|  | 1.5.1 | *Delete the entire Sub-Clause 1.5.1 and replace with the following:*  1.5.1 If after the Base Date the scope, extent, nature or type of Services is affected by any change in the Laws of the Country having application to the Services then such change to the Services shall be treated as a Variation to the Services under Sub-Clause 5.1 [Variations]. |
|  | 1.5.2 | *Delete the entire Sub-Clause 1.5.2 and replace with the following:*  “1.5.2 If the Consultant suffers delay and/or incurs Exceptional Costs as a result of any change in Laws, the Consultant shall be entitled subject to Sub-Clause 1.17.3 [Claims by the Consultant] to:  (a) an extension of the Time for Completion for any such delay, if completion is or will be delayed, in accordance with Sub-Clause 4.4 [Delays], and  (b) payment of such Exceptional Costs and the agreed Remuneration shall be adjusted in accordance with Sub-Clause 7.6 [Payment]*.* |

## Assignments and Sub-Contracts

|  |  |  |
| --- | --- | --- |
|  | 1.6.1 | *Delete the entire Sub-Clause 1.6.1 and replace with the following:*  “1.6.1. The Consultant shall not assign the benefit of the Agreement without the prior written consent of the Client.” |
|  | 1.6.2 | *Delete the entire Sub-Clause 1.6.2 and replace with the following:*  “1.6.2. The Consultant shall not assign obligations under the Agreement without the written consent of the Client.  The Client may assign the whole or any part of his rights and/or obligations under the Agreement to either the Implementing Body, or other institutions mentioned in the Client’s governance documents. All rights and obligations under the Agreement are reassigned from the moment notice is issued to the Consultant.. |
|  | 1.6.3 | *Supplement the Sub-Clause with the following provisions:*  The Consultant must ensure in the sub-contracting agreement concluded with the subcontractors ( natural and legal persons who meet qualification requirements set in the Procurement documents and are engaged in the provision of Services by the Consultant as Key Experts), and include their liability conditions against the Consultant, which would guarantee the proper and timely implementation of the Agreement. Upon the conclusion of the Agreement, but no later than the commencement of Services, the Consultant undertakes to inform the Client of the names, contact details, and representatives of the subcontractors known at that time. Also, during the entire performance of the Agreement, the Consultant must inform about changes in the aforementioned information and new subcontractors that he intends to use later.  The Consultant has the right to propose to replace the Subcontractor named in the Agreement, as well as to perform the Services assigned to such subcontractor himself, when:  (a) the Subcontractor no longer meets any of the qualification requirements set out in the Procurement Documents that he has met before;  (b) the Subcontractor loses the assessed qualification competence, resources, technical and/or financial capacity and as a result can no longer perform the tasks or subcontracting work assigned to the Subcontractor or confirms that he cannot properly perform all or part of the tasks or subcontracting work assigned to the Subcontractor or ceases legal relationship between Consultant and Subcontractor;  (c) the Subcontractor’s resources become unavailable to the Consultant or the Subcontractor is liquidated, bankrupt or has a bankruptcy case filed against him, or becomes insolvent, goes into liquidation, has or carries on business under the supervision of an administrator, trustee or other representative acting for the benefit of the Subcontractor's creditors, or if the Subcontractor is brought into proceedings having a similar effect to any of the foregoing mentioned;  (d) also in other cases where the necessity arises, if the Consultant would be unable to perform the Agreement without changing such Subcontractor, and the replacement of the Subcontractor does not create a situation that would be considered a material change of the Agreement according to the applicable requirements of the Public Procurement regulation.  The replacement of the Subcontractor cannot in any way damage, undermine, and/or limit the Client’s interests and/or the extent of the rights it had before the replacement.  The Consultant has the right to offer to use an additional Subcontractor when it is necessary for the Consultant to increase the speed of work in order to perform the Agreement properly and on time. Also, the Consultant has the right to propose using an additional Subcontractor due to the occurrence of force majeure circumstances, changes in the Client's Requirements or due to other circumstances or risks that according to the Agreement are not assigned to the responsibility or risk of the Consultant. The Consultant’s right to use additional Subcontractors specified in this Sub-Clause is possible if the Consultant has specified certain Services or part of them as permissible for subcontracting in the Tender.  The Consultant, proposing to replace the Subcontractor named in the Agreement, to engage an additional Subcontractor or to perform the work assigned to them on his own, must submit a corresponding request to the Client. In the request, the Consultant must provide a reasoned explanation and justification for the necessity of replacing a Subcontractor, engagement of an additional Subcontractor, or the transfer of their work to the Consultant, and submit documents confirming such necessity. Together with the request, the Consultant must submit documents that prove that the proposed new Subcontractor or the Consultant himself meets the qualification requirements set out in the Procurement Documents. The Consultant must submit documents of the absence of grounds for exclusion and qualification (permit for activity, financial and/or professional experience or other) only in cases where the Consultant replaces a Subcontractor whose qualification was relied upon in order to meet the qualification requirements set out in the Procurement Documents. Documents confirming the absence of grounds for exclusion of the Subcontractor (records of conviction, payment of taxes, etc.), qualifications and relevant experience must be confirmed by the Consultant’s proposal to replace the existing Subcontractor on the date of submission. Documents confirming the absence of grounds for exclusion of a Subcontractor are considered valid if they are issued no earlier than 30 (thirty) calendar days before the date of submission of the Consultant’s request to engage an additional (new) or to replace the existing Subcontractor.  The Client has the right to demand the replacement of the Subcontractor used by the Consultant with another subcontractor, if it is determined that the participation of the relevant entity in the performance of the Agreement is prohibited or is not compatible with the requirements set out in the legislation (e.g. requirements of the Law on the Protection of Objects Important for Ensuring the National Security of the Republic of Lithuania etc.). Upon receipt of the Client’s request, the Consultant must submit a proposal to replace the existing Subcontractor or for the Consultant himself to take over the obligations of the Subcontractor, within 30 calendar days:  a) together with the proposal, the Consultant must submit documents that prove that the proposed new Subcontractor or the Consultant himself meets the qualification requirements set out in the Procurement Documents and/or the criteria for economic evaluation of offers (if applicable).  b) the Consultant must submit documents of the absence of grounds for exclusion and qualification (permit for activity, financial and/or professional experience or other) only in cases where the Consultant replaces a Subcontractor whose qualification was relied upon in order to meet the qualification requirements set out in the Procurement Documents. Documents confirming the absence of grounds for exclusion of the supplier (records of conviction, payment of taxes, etc.), qualifications and relevant experience must be confirmed by the Consultant’s proposal to replace the existing Subcontractor on the date of submission. Documents confirming the absence of grounds for exclusion of a Subcontractor are considered valid if they are issued no earlier than 30 (thirty) calendar days before the date of submission of the Consultant’s proposal to replace the existing Subcontractor.  The Client evaluates the request submitted by the Consultant and approves or refuses to approve such a replacement of Subcontractor, the use of a new one or to transfer the works of Subcontractor to the Consultant, in writing within the next 5 (five) business days.  The Client's approval is not required for the use of a relevant Subcontractor, when the Consultant uses a new (additional) or changes an existing Subcontractor, whose qualification was not based on the compliance with the qualification requirements and (in the case of a Subcontractor used) the value of the services performed by such Subcontractor (i.e. the price of the services including VAT) is no more than 10.000 (ten thousand) EUR. However, the Consultant must inform (in advance, in writing) about any changes related to the Subcontractors during the entire performance of the Agreement. In any case, during the entire performance of the Agreement, the Consultant must inform the Client about the change of any information related to the change and use of Subcontractors. In addition, the Client has the right in all cases to object to the replacement of the relevant Subcontractor or the use of a new one, if he determines that the use of the relevant entity is prohibited or is not compatible with the requirements set out in legal acts (e.g. with the requirements of the Law on the Protection of Objects Important for National Security of the Republic of Lithuania , etc.).The Client shall not agree to the change of nominated Subcontractor (specified in the tender), if any of the following conditions applies:  1) subcontractor does not meet the requirements specified for the subcontractor in the procurement procedure documents;  2) the subcontractor on whose capacity the Consultant relied to confirm that its qualifications meet the requirements set out in the contract documents is substituted and the proposed subcontractor does not have at least the same qualifications as those relied on by the Consultant to certify that its qualifications meet the requirements set out in the contract documents, or that meets the reasons for exclusion of tenderers specified in the procurement procedure documents;  3) the proposed subcontractor the value of the services to be provided by which is at least EUR 10 000 corresponds to the reasons for exclusion of tenderers specified in the procurement procedure documents;  4) as a result of the change of the subcontractor, there would be such amendments made in the tender of the Consultant, which, had they been initially included therein, would have influenced the selection of the tender in accordance with the tender evaluation criteria specified in the procurement procedure documents.  The Consultant is responsible for the actions or inactions of the specialists used, the Subcontractor, his authorized representatives and employees in the same way as he would be responsible for his own actions and inactions. The Consultant must notify the Client of the date each Subcontractor intends to start the work no later than 14 (fourteen) days before the start of the work performed by them*.* |
|  | 1.6.4 | *No amendment to original FIDIC White Book wording* |

## Intellectual Property

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|  | 1.7.1 | *Delete the entire Sub-Clause 1.7.1 and replace with the following:*  “The Parties hereby agree that all economic rights (in Lithuanian: *autoriaus turtinės teisės*) to any author’s works related to and Intellectual Property are transferred to the Implementing Body (and with a royalty free usage right to the Client and the Beneficiary) at the moment of their creation, without signing of separate deed. For the avoidance of doubt everything that the Client (also the Beneficiary and the Implementing Body) receives fully or partly, also including BIM native files (including its supportive files) with full capability to modify and update BIM models for other project participants in different stages without additional tools or addons (if native files have been created with addons it should be provided also as supportive files to the BIM model), is assumed to be cleared of any intellectual property rights.  With regard to all moral rights arising out of such author’s works, the Consultant irrevocably consents to the following rights:   * + - 1. right to inviolability of the work (in Lithuanian: *teisė į kūrinio neliečiamybę*); the Consultant irrevocably allows the Client (also the Beneficiary and the Implementing Body) or any other third party to modify, change and make excerpts from or supplements to any author’s works authorised or indicated by the Client (also the Beneficiary and the Implementing Body), including any documentation (and subsequently to rebuild, reconstruct, renovate, transform, expand the object constructed on the basis of such documentation or subsequently to create new documentation to serve to the Client (also the Beneficiary and the Implementing Body) for any purpose) prepared by the Consultant under this Agreement;       2. right to revocation of the work the Consultant confirms that it will not exercise its rights to revoke any of the author’s works created under this Agreement; the Consultant shall not revoke the any of the author’s works created under this Agreement.       3. right to distribute of the work’s original or copies, as well as to import, export, and public display original or copies of the works, publishing the work, including making it publicly accessible through computer networks (the internet). |
|  | 1.7.2 | *Delete words “royalty-free” from Sub-Clause 1.7.2.* |
|  | 1.7.3 | *No amendment to original FIDIC White Book wording* |
|  | 1.7.4 | *No amendment to original FIDIC White Book wording* |
|  | 1.7.5 | *Delete the entire Sub-Clause 1.7.5 and replace with the following:*  “The licence granted by the Consultant under Sub-Clause 1.7.2 shall survive the termination of the Agreement (for any reason) and the Client (also the Beneficiary and the Implementing Body) shall remain entitled to copy, use, modify and communicate the Consultant’s Background Intellectual Property for the purpose of Project (including, any marketing activities related to the Rail Baltica Global Project). The licence shall be valid world-wide for the whole life cycle of the Rail Baltica Global Project and shall not be limited by any territory.” |
|  | New Sub-Clause 1.7.6 | *Add new Sub-Clause 1.7.6:*  1.7.6 With respect to Sub-Clause 1.7.1 the Consultant confirms and guarantees that:   1. the Implementing Body (and with a royalty free usage right to the Client and the Beneficiary) will obtain all property rights under this Agreement free of any claims by any third parties (including, the Consultant warrants that the Consultant and its sub-consultants within the performance of this Agreement shall not be in a breach with Laws, and that the Consultant and its sub-consultants are entitled to transfer the said rights to the Implementing Body (and with a royalty free usage right to the Client and the Beneficiary) pursuant to provisions of this Agreement; 2. all natural persons who were involved in performance of the Services have on their behalf to the benefit of the the Client (also the Beneficiary and the Implementing Body) issued the same certifications regarding execution of moral rights arising out of author’s works as provided in Sub-Clause 1.7.1 (the Client (also the Beneficiary and the Implementing Body) may at any time request that such certifications are transferred to the Implementing Body (and with a royalty free usage right to the Client and the Beneficiary), in which case the Consultant shall transfer them within five (5) days as of the date of the Client (also the Beneficiary and the Implementing Body) Notice); 3. any further corrections, renovation, reconstruction, rebuilding, transformation, expansion or any other changes introduced to the Works the Client (also the Beneficiary and the Implementing Body), or any third party will not constitute violation of the intellectual property rights of the Consultant and its engaged authors.   Therefore, the Consultant waives all possible future claims or complaints with this regard |
|  | New Sub-Clause 1.7.7 | *Add new Sub-Clause 1.7.7:*  “1.7.7 The royalty for the licence granted by the Consultant under Sub-Clause 1.7.2 as well as the remuneration for transfer of economic rights and use of author’s moral rights as per Sub-Clause 1.7.1 above form part of the Accepted Agreement Amount and are fully included in the first payment to be made under the Agreement. The Parties agree that such royalty and remuneration are the true value of the licence and the transfer, and thus neither Party has any claims with this regard against the other Party.” |
|  | New Sub-Clause 1.7.8 | *Add new Sub-Clause 1.7.8:*  “1.7.8 The Consultant shall transfer to the Implementing Body (and with a royalty free usage right to the Client and the Beneficiary) as of their creation or upon the Client’s (also the Beneficiary’s and the Implementing Body’s) request all objects that contain Foreground Intellectual Property and Consultant’s Background Intellectual Property licensed to the Implementing Body (and with a royalty free usage right to the Client and the Beneficiary) in accordance with this Sub-Clause. The Consultant is obliged to transfer paper files and electronic files in an editable format (.*doc, .xls, .dwg*, and others as may be indicated by the Client (also the Beneficiary and the Implementing Body)).” |
|  | New Sub-Clause 1.7.9 | *Add new Sub-Clause 1.7.9:*  “1.7.9 If requested by the Client (also the Beneficiary and the Implementing Body), the Consultant irrevocably undertakes to issue a separate consent, approval from the head of design (Lith. *Projekto vadovas*), and/or head of part of the design (Lith*. Projekto dalies vadovas*) required by national construction regulations and needed for another designer to develop Detailed Technical Design.” |

## Confidentiality

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|  | 1.8.1 | *Delete the entire Sub-Clause 1.8.1 and replace with the following:*  *“*1.8.1All Confidential Information obtained by the Consultant in the course or conduct of the Agreement shall be held confidential and shall not be divulged by the Consultant to any third party save to the extent necessary to effect the execution of the Agreement and then only on the basis that the recipient of such information shall be bound by similar confidentiality obligations to those undertaken by the Consultant hereunder.*”* |
|  | 1.8.2 | *Delete the entire Sub-Clause 1.8.2 and replace with the following*:  “1.8.2 Provided however that this obligation shall not apply to information which:   1. is or shall become part of the public domain otherwise than in consequence of a breach of the Consultant of its obligations under this Sub-Clause; 2. was in the Consultant's possession prior to award of the Agreement and which the Client did not notify the Consultant as being confidential or which would not reasonably be regarded as confidential by its very nature; 3. was received from third parties having to the best of the Consultant's knowledge the right to disclose such information. 4. is required to be disclosed pursuant to a court order or statutory requirement provided that the Parties shall to the extent permitted by the relevant legal or statutory requirement: (i) provide prompt written notice of any such requirement before such disclosure is made and (ii) take all reasonable action to avoid and limit such disclosure as may be requested by the other Party. 5. Is provided to the Beneficiary, the Implementing Body, any other Contracting Authority or any government department. All government departments receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments on the basis that the information is confidential and is not disclosed to a third party which is not part of the Beneficiary, the Implementing Body, any other Contracting Authority or any government department.” |
|  | 1.8.3 | *No amendment to original FIDIC White Book wording* |
|  | New Sub-Clause 1.8.4 | *Add new Sub-Clause 1.8.4 as follows:*  “1.8.4 This clause shall remain binding on the Consultant notwithstanding the completion or termination of this Agreement for any reason.” |
|  | New Sub-Clause 1.8.5 | *Add new Sub-Clause 1.8.5 as follows:*  “1.8.5 The Consultant shall ensure that the provisions of this Sub-Clause are incorporated in any subconsultant agreements and/or subcontracts or and that the employees, agents or representatives of all or any of the subconsultants or subcontractors comply with the same.” |
|  | New Sub-Clause 1.8.6 | *Add new Sub-Clause 1.8.6 as follows:*  “1.8.6 The Consultant shall return to Client all Confidential Information of Client (save to the extent necessary to continue to provide Services which are not terminating) which it may have in its possession or, at Client’s request, destroy the same.” |

## Publication

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|  | 1.9.1 | *No amendment to original FIDIC White Book wording* |
|  | 1.9.2 | *On the second line after “*purposes*” remove the full stop and add the following:*  “Only with prior written consent by the Client.” |
|  | New Sub-Clause 1.9.3 | *Add new Sub-Clause 1.9.3:*  “1.9.3 Visibility requirements  The Consultant shall comply with following requirements of visual identity:   * + - 1. every report, brochure, other documents or information related to the Services that is prepared by the Consultant and submitted to the Client, or any other third party, or made public, shall include the following:  1. notification of financing should include reference to the fact that the Consultant is recipient of the financing by CEF: “The project Rail Baltica is co-financed from the funds of Connecting Europe Facility”; 2. (printed materials) should contain a reservation that states that the European Union does not undertake any responsibility for the content of the published materials: “All the responsibility for this publication rests with its author. The European Union assumes not responsibility for the use of the information contained.”; 3. The flag of the European Union.    * + 1. The Consultant shall use the following logo:   Funded by the EU  If the Consultant elects to use the logo specified in thus sub-paragraph (b), he must ensure that the elements of the logo are not separated (the logo is used as a single unit) and that there is sufficient free space around it;   * + - 1. The Consultant shall comply with the latest visual identity requirements specified by the European Union. The Consultant shall at his own cost to follow the changes of the visual identity.” |

## Anti-Corruption

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|  | 1.10.1 | *No amendment to original FIDIC White Book wording* |
|  | 1.10.2 | *No amendment to original FIDIC White Book wording* |
|  | 1.10.3 | *No amendment to original FIDIC White Book wording* |

## RElationships of Parties

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|  | 1.11.1 | *No amendment to original FIDIC White Book wording* |
|  | 1.11.2 | *No amendment to original FIDIC White Book wording* |

## Agreement Amendment

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|  | 1.12.1 | *No amendment to original FIDIC White Book wording* |

## Severability

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|  | 1.13.1 | *No amendment to original FIDIC White Book wording* |

## Non-Waiver

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|  | 1.14.1 | *No amendment to original FIDIC White Book wording* |

## Priority of Documents

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|  | 1.15.1 | *No amendment to original FIDIC White Book wording* |

## Good Faith

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|  | 1.16.1 | *On the second line after “trust” remove the full stop and add the following:*  *“*and work collaboratively towards achieving the goals of the Project and its successful implementation*.”* |
|  | New Sub-Clause 1.16.2 | *Add a new Sub-Clause 1.16.2 as follows:*  “1.16.2 The Parties shall perform their obligations under the Agreement promptly and proactively and in accordance with the “Contracting Authority Code of Conduct” and the „Supplier and Sub-Contractor Code of Conduct” (their latest versions can be found at http://www.railbaltica.org/procurement/procurement-regulation-supplier-qualification/).” |

## Early Warnings and Claims

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|  | New Sub-Clause 1.17 | *Add a new Sub-Clause 1.17 as follows:*  “**1.17** **Early Warnings and Claims**  1.17.1. Early Warnings  The Client and the Consultant give an early warning by notifying the other as soon as either becomes aware of any matter, specific, actual or probable future event or circumstance which may:   * lead to an increase in the cost of the Services or give rise to a claim by the Consultant, * delay Completion, * affect the Approved Programme, * delay meeting a Milestone, * impair the usefulness of the Services to the Client or * affect the work of the Client, a Client’s contractor or another consultant. * Changes in Legislation * Incur Exceptional Cost   The Consultant may give an early warning by notifying the Client of any other matter, event or circumstance which could increase his total cost. The Consultant enters early warning matters in the Risk Register. Early warning of a matter, event or circumstance for which a variation has previously been notified is not required.  The Client may require the Consultant to submit an estimate of the anticipated effect of the future event or circumstances, and/or a proposal under Sub-Clause 5.1.1 [Variations to Services].  1.17.2. Risk Reduction  The Client may instruct the Consultant, or the Consultant may request the Client (such request not to be unreasonably refused) to attend a risk reduction meeting.  At a risk reduction meeting, those who attend co-operate in  • making and considering proposals for how the effect of the registered risks can be avoided or reduced,  • seeking solutions that will bring advantage to all those who will be affected,  • deciding on the actions which will be taken and who, in accordance with this Agreement, will take them and  • deciding which risks have now been avoided or have passed and can be removed from the Risk Register.  Within a week of each risk reduction meeting, the Consultant revises the Risk Register to record the decisions made and issues the revised Risk Register to the Client. If a decision needs a change to the Services, the Client (if he has not already done so) instructs the change when he receives the revised Risk Register.  If the change in Services is the result of a risk for which the Consultant is responsible then, notwithstanding any other term of this Agreement, that change in Services does not give rise to a Variation and does not result in any increase to the agreed Remuneration or any delay to the completion of the Services or any Milestone. Failure by the Consultant to issue a revised Risk Register entitles the Client to provide to the Consultant a written record of the decision or decisions made at the risk reduction meeting.  1.17.3. Consultant’s claims  If the Consultant considers himself to be entitled to an extension of the Time for Completion and / or payment of Exceptional Costs, under any clause of these Conditions or otherwise in connection with the Agreement, the Consultant shall give Notice to the Client, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than twenty (20) days after the Consultant became aware, or should have become aware, of the event or circumstance.  If the Consultant fails to give notice of a claim within such period of twenty (20) days, the Time for Completion shall not be extended, the Consultant shall not be entitled to payment of Exceptional Costs, and the Client shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.  The Consultant shall also submit any other Notices which are required by the Agreement, and supporting particulars for the claim, all as relevant to such event or circumstance.  The Consultant shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Client. Without admitting the Client’s liability, the Client may, after receiving any Notice under this Sub-Clause, monitor the record-keeping and/or instruct the Consultant to keep further contemporary records. The Consultant shall permit the Client to inspect all these records and shall (if instructed) submit copies to the Client.  Within forty (40) days after the Consultant became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Consultant and approved by the Client, the Consultant shall send to the Client a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of the Time for Completion and/or payment of Exceptional Costs claimed.  If the event or circumstance giving rise to the claim has a continuing effect:  (a) this fully detailed claim shall be considered as interim;  (b) the Consultant shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Client may reasonably require; and  (c) the Consultant shall send a final claim within twenty (20) days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Consultant and approved by the Client.  Within eighty (80) days after receiving a final claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Client and approved by the Consultant, the Client shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars but shall nevertheless give his response on the principles of the claim within such time. This period is reset once needed particulars are submitted.,  Each Payment Certificate shall include such amounts for any claim as have been reasonably substantiated as due under the relevant provision of the Agreement. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Consultant shall only be entitled to payment for such part of the claim as he has been able to substantiate.  The Client shall proceed in accordance with Sub-Clause 2.2 [Determinations] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 4.4 [Delays], and/or (ii) the additional payment (if any) to which the Consultant is entitled under the Agreement.  The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Consultant fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/or payment of Exceptional Costs shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause  1.17.4. Client‘s Claims  If the Client considers himself to be entitled to any payment under any clause of these Conditions or otherwise in connection with the Agreement, the Client shall give notice and particulars to the Consultant. However, notice is not required for payments for other services requested by the Consultant. The notice shall be given as soon as practicable after the Client became aware of the event or circumstances giving rise to the claim.  The particulars shall specify the clause or other basis of the claim and shall include substantiation of the amount and/or extension to which the Client considers himself to be entitled in connection with the Agreement.  The Client shall deduct the remedies available under such claims through the payment certificate. Certain non-compliance remedies are listed in Sub-Clause 8.5 Remedies.” |

# THE CLIENT

## 2.1. Client’s Requirements

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|  | 2.1 | *Delete the entire Sub-Clause 2.1 and replace with the following:* “2.1 Client’s Requirements “2.1.1. The Consultant shall be deemed to have reviewed and scrutinised, prior to Effective Date, the Client's Requirements exercising the level of skill, care, diligence and prudence as set out Sub-Clause 3.3.1 [Standard of Care] with a view to ensuring that such information does not contain any error, inaccuracy, omission or ambiguity, except as stated below.  2.1.2 The Client shall not be responsible for any error, inaccuracy, omission or ambiguity of any kind in the Client's Requirements as originally included in the Agreement and shall not be deemed to have given any representation of accuracy or completeness of any data or information, except as stated below. Any data or information received by the Consultant, from the Client or otherwise, shall not relieve the Consultant from his responsibility for the Services.  However, the Client shall be responsible for the correctness of the following portions of the Client's Requirements and of the following data and information provided by (or on behalf of) the Client:  (a) portions, data and information which are stated in the Agreement as being immutable or the responsibility of the Client,  (b) definitions of intended purposes of the Services or any parts thereof,  (c) portions, data and information which cannot be verified, within reasonable efforts and time, by the Consultant, except as otherwise stated in the Agreement.  The Client, subject to the limitations of liability provided in the Agreement, is responsible for all consequences of the Consultant using such provided data under a) to c), if it emerges that such data is not incorrect. In any case, if the Consultant believes this data may be incorrect, he must inform the Client before continuing to provide Services related to the use of this data.  2.1.3 If after the Effective Date the Consultant finds any error, inaccuracy, omission or ambiguity of any kind in the Client's Requirements the Consultant shall, at his own cost, make good any Defect or deficiency resulting from such any error, inaccuracy, omission or ambiguity (as the case may be) and shall give Notice to the Client describing the error, inaccuracy, omission or ambiguity.  After receiving this Notice, the Client shall proceed in accordance with Sub-Clause 2.2 [Determinations] to agree or determine.  (a) whether or not there is an error, inaccuracy, omission or ambiguity in the Client's Requirements  (b) whether or not an experienced Consultant exercising the level of skill, care, diligence and prudence as set out Sub-Clause 3.3.1 [Standard of Care] would have discovered such error, inaccuracy, omission or ambiguity when scrutinising the Client’s Requirements before submitting the Tender and  (c) what measures (if any) the Consultant is required to take to rectify error, inaccuracy, omission or ambiguity.  If, under sub-paragraph (b) above an experienced Consultant exercising the level of skill, care, diligence and prudence as set out Sub-Clause 3.3.1 [Standard of Care] would not have discovered such error, inaccuracy, omission or ambiguity when scrutinising the Client’s Requirements before submitting the Tender:   1. Sub-Clause 5.1 [Variations] shall apply to the measures that the Consultant is required to take and 2. If the Consultant has suffered delay and / or incurred Exceptional Costs as a result of the error, inaccuracy, omission or ambiguity, the Consultant shall be entitled subject to Sub-Clause 1.17.3 [Consultant's Claims] to an extension of the Time for Completion and / or payment of Exceptional Costs.” |

## 2.2 Determinations

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|  | 2.2 | *Delete the entire Sub-Clause 2.2 “*Decisions*” and replace with the following:*  **“2.2 Determinations**  2.2.1 Whenever these Conditions provide that the Client shall proceed in accordance with this Sub-Clause 2.2 to agree or determine any matter, the Client shall consult with the Consultant in an endeavour to reach agreement. If agreement is not achieved, the Client shall make a fair determination in accordance with the Agreement, taking due regard of all relevant circumstances.  2.2.2 The Client shall give notice to the Consultant of each agreement or determination, with supporting particulars. Each Party shall give effect to each agreement or determination unless the Consultant refers the matter as a dispute under Clause 10 [Disputes and Arbitration] within five (5) days of receipt of such notice.” |

## 2.3. Assistance

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|  | 2.3.1 | *Delete the entire Sub-Clause and replace with:*  “2.3.1. In the Country and in respect of the Consultant, his personnel and sub-contractors/sub-consultants, if any, as the case may be, the Client shall (where he is in a position to do so) provide reasonable assistance to the Consultant at the request of the Consultant in:   1. providing unobstructed access to the project site during the Works Contract where it is required for the Design Supervision Services; 2. providing access to other organisations for collection of information which is to be obtained by the Consultant. 3. for the Consultant's applications for any permits, licences or approvals required by the Laws of the Country which the Consultant is required to obtain under Sub-Clause 3.3.3”   For the avoidance of doubt, the Consultant is solely responsible for any permits, licences or approvals required for the Design Services as defined in Appendix 1 [Technical Specification]. |

## 2.4. Client’s Financial Arrangements

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|  | 2.4 | *Delete the entire Sub-Clause 2.4 and replace with the words “Not used.”* |

## 2.5. Supply of Client’s Equpment and Facilities

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|  | 2.5 | *Delete the entire Sub-Clause 2.5 and replace with the words “Not used.”* |

## 2.6. Supply of Client’s Personnel

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|  | 2.6 | *Delete the entire Sub-Clause 2.6 and replace with the words “Not used.”* |

## 2.7. Client’s Representative

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| --- | --- | --- |
|  | *2.7*  *New Sub-Clauses* | *Add new Sub-Clauses as follows:*  2.7.2 For the avoidance of doubt, the any person working for the Client and/ or the Implementing Body may be appointed as the Client’s Representative.  2.7.3. Under separate Client’s Representative’s notice, the Implementing Body may replace RB Rail AS in the role of the Client and (or) assume part or all of the Client's rights and obligations under this Agreement. |

## 2.8. Service of Others

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|  | 2.8 | *Delete the entire Sub-Clause 2.8 and replace with the words “Not used.”* |

# THE CONSULTANT

## 3.1. Scope of Services

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|  | 3.1.1 | *Delete the entire Sub-Clause 3.1.1 and replace with:*  “3.1.1 Consultant’s General Obligations  The Consultant shall perform the Services in accordance with the Agreement, Laws, applicable and conventionally (usually) enforceable standards in the corresponding industry. When completed, the Services shall satisfy the function and purpose as described in Sub-Clause 3.2.1 and defined in the Client’s Requirements.  The Consultant shall provide the Consultant’s Documents specified in the Client’s Requirements, all Consultant’s Personnel.  The Services shall include any work which is necessary to meet the Client’s Requirements necessary for the completion of the Services.  The Consultant shall be responsible for the accuracy of all documents prepared by him or on his behalf. Neither Client’s approval of any such documents nor his failure to discern any defect in or omission from any such documents shall absolve or relieve the Consultant from any of his responsibilities, duties and obligations under this Agreement.  The Consultant's duties during the Services provision with respect to all matters under the Consultant's control and supervision, within the Contract's scope or implied by the nature of the Services, shall be carried out proactively and responsibly on a daily basis. This includes actively engaging in daily tasks and providing thorough follow-ups using reasonable skill, care and diligence to timely attend the duties within the Consultant's realm of control. |
|  | 3.1.2 | *No amendment to original FIDIC White Book wording* |
|  | 3.1.3 | *Delete the entire Sub-Clause and replace with:*  “3.1.3 The Consultant warrants that he does not and will not have at the Effective Date or at any time before the completion of the Services any interest in any matter where there is or is reasonably likely to be a conflict of interest with the Client or Beneficiary or Implementing Body save to the extent fully and fairly disclosed to and approved by the Client in writing.  The Consultant checks for any conflict of interest at regular intervals until the completion of all the Consultant's obligations under this Agreement and in any event at least once in every six months and ensures that any subconsultant and subcontractor or lower tier subconsultants or subcontractors do the same until the completion of their respective obligations. The Consultant notifies the Client in writing immediately upon becoming aware of any actual or potential conflict of interest with the Client or Beneficiary or Implementing Body or any such conflict of interest arising in respect of any subconsultant and subcontractor or lower tier subconsultants or subcontractors and works with the Client to do whatever is necessary (including the separation of staff working on, and data relating to, the works from the matter in question, terminating any sub consultancy agreement or subcontract or compelling the termination of any lower tier sub consultancy agreement or subcontract) to manage such conflict to the Client's satisfaction. Where the Client is not, in his sole and absolute discretion, so satisfied, then without prejudice to any other right or remedy which the Client may have whether under this Agreement or at law he may terminate the Consultant’s obligation to perform the Services or Part. |
|  | New Sub Clause 3.1.4 | *Add new Sub-Clause 3.1.4 as follows:*  “3.1.4 The Consultant shall sign a waiver permitting other consultants to provide the Detailed Technical Design (“DTD”) in case the Client does not request the DTD to be performed by the Consultant in accordance with Appendix 1 [Technical Specification]. |
|  | New Sub Clause 3.1.5 | *Add new Sub-Clause 3.1.5*:  “3.1.5 The Consultant shall, to the extent it is attributable to the Services, fully cooperate with Conformity Assessment Body, Competent Supervisory Bodies, and other stakeholders involved in the implementation of the Project and Rail Baltica Global Project to perform the Services. |
|  | New Sub Clause 3.1.6 | *Add new Sub-Clause 3.1.6*:  3.1.6 The Consultant shall participate in Construction Works tender Questions and Answers process and shall provide answers and comments regarding the designed technical solutions (including the translation to Lithuanian) within 5 (five) days upon receipt of the questions, unless agreed otherwise. |

## 3.2 Function and Purpose of Services

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|  | 3.2.1 | *Delete the entire Sub-Clause and replace with:*  “3.2.1. The purpose of the Services are as follows.   * **Part A Design Services** is to obtain building permit and develop specification to procure the Works Contract as detailed in Appendix 1 [Technical Specifications] and; * **Part B Design Supervision Services** corresponds to Project Implementation Supervision as detailed in Appendix 1 [Technical Specifications]. |

## 3.3 Standard of Care

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|  | 3.3.1 | *No amendment to original FIDIC White Book wording* |
|  | 3.3.2 | *No amendment to original FIDIC White Book wording* |
|  | 3.3.3 | *Delete the entire Sub-Clause and replace with the following:*  “3.3.3 The Consultant shall, in performing the Agreement, comply with all Laws.  The Consultant shall give all notices, pay all taxes, duties and fees, remedies, and obtain the building permits or similar permits, and any other permits, permissions, licences and/or approvals described in the Client’s Requirements, and as required by the Laws in relation to performance of the Services and the remedying of any defects.  The Consultant shall indemnify and hold the Client harmless against and from the consequences of any failure to do so. |

## 3.4. Client’s Property

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|  | 3.4.1 | *No amendment to original FIDIC White Book wording* |

## Consultant’s Personnel

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|  | 3.5.1 | *Include this sentence between the first and second sentences:*  *“*In order to be accepted by the Client*,* Key experts shall be certified or to be able to present evidence that they applied for certification according to Lithuanian legalisation within a month after signing of agreement*.”* |
|  | New Sub-Clause 3.5.2 | *Add new Sub-Clause 3.5.2 as follows:*  “3.5.2 SECURITY CLEARANCE REQUIREMENTS  The Consultant shall not involve any employee and/or staff, including but not limited to key experts, key personnel, designers, design supervisors, engineers, construction and design specialists, consultants and design subconsultants (if any) who have a criminal record, in the implementation of the Agreement.  The Consultant shall submit to the Client the name, surname, personal code (identification number), professional title (job position) of every person that will implement the Agreement and/or will be present on site at least ten (10) days prior involvement of this person in the implementation of the Agreement and/or its presence on site. When requested by the Client, the Consultant shall provide a brief description of the person’s duties in the implementation of the Agreement.  The Client, at his sole discretion and upon prior Notice, may request removal of any person who does not comply with the security clearance requirements stipulated in this Sub-Clause upon written notice. Parties agree that such Client’s decision is incontestable.  The Consultant shall immediately take all necessary actions and measures to ensure that any risk of involvement of such person in the implementation of the Agreement is promptly and duly eliminated.  The Consultant shall:   1. prevent involvement of such a person in the implementation of the Agreement, and to prevent the presence of this person in the office, on the construction site or any other site, and 2. immediately replace the removed person according to the Agreement, and 3. comply with the Client’s written instructions pursuant to this Section and not challenge these instructions, and 4. inform the Client of the removal and/or replacement proceedings.   In any case the Consultant shall immediately notify the Client in writing of any situation emerged prior and during the implementation of the Agreement, which there could appear or appeared to be a risk of involving a person as described above in the implementation of the Agreement, and about the replacement of any non-compliant or removed person involved in the implementation of the Agreement.  If, as a result of the immediate removal or replacement of the person which has been found to be non-compliant with the security clearance requirements described in this Sub-Clause, the Consultant suffer delay or incurs Exceptional Costs, the Consultant shall not be entitled to an extension of the Time for Completion or and not be entitled to payment of such Exceptional Costs.  The Consultant’s non-compliance with the security clearance requirements stipulated in this Clause shall constitute a breach for the purposes of Sub-Clause 6.4.1 (f) (ix) and Sub-Clause 8.5.1. |
|  | New Sub-Clause 3.5.3 | *Add new Sub-Clause 3.5.3:*  “3.5.3 The Consultant is not allowed to use and must avoid the use of legal or physical persons in the sanctions list of the UN, EU, a member state of the EU or the North Atlantic Treaty Organization (“NATO”) (if the sanctions by a member state of EU or the NATO affect the interests of financial or capital market of the Country), or the Country. The Consultant may not use any countries, ports, access points or other such aspects as part of their supply chain and Agreement implementation that are in the sanctions list of the UN, EU, a member state of the EU or the NATO (if the sanctions by a member state of EU or the NATO affect the interests of financial or capital market of the Country), or the Country. |
|  | New-Sub-Clause 3.5.4 | *Add new Sub-Clause 3.5.4 as follows:*  “3.5.4 Data Protection  The Consultant shall not disclose any personal data as required by the Laws.  Upon request, but not more than twice per each Design documentation, the Consultant shall provide a copy of Design documentation for Construction Works procurement without personal data as follows:  (a) Designers: names, numbers of qualification certificates do not need to be concealed. Phone numbers, email addresses – must be concealed.  (b) Surveyors: all personal data must be concealed  (c) Owners of the adjacent plots: all personal data must be concealed  (d) In private bodies approval letters: all personal data must be concealed  (e) In institutional approval letters or tables: all personal data must be concealed  (f) Correspondence with private bodies: all personal data must be concealed.  The Consultant shall adhere to the data protection laws applicable in the Republic of Lithuania, the requirements which derive from the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons regarding the processing of personal data and on the free movement of such data, and the Law on Legal Protection of Personal Data of the Republic of Lithuania.  The Consultant shall also adhere inter alia to requirements Sub-clause 27 of the Law on Construction of Lithuania restricting to disclose other natural persons’, except for persons, participating in the preparation of the project’s design, conducting project’s expertise, name and surname. It is restricted to disclose natural persons personal codes, birthdate, residence place.  The Consultant shall restrict disclosing any data (personal or else) of surveyors, utility owners, persons who signed approvals, or any person which is considered a person involved in the construction process.  If the Consultant fails to comply with personal data protection laws requirements, or their application by Consultant differs from the established application by the responsible institutions, RB Rail AS will reject the Consultant’s prepared documentation on basis of non-compliance with mandatory data protection laws requirements. |
|  | New Sub-Clause 3.5.5 | *Add new Sub-Clause 3.5.5:*  “3.5.5 The Consultant shall at all times comply with all data protection laws in connection with the processing of personal data (as defined in applicable data protection laws including the General Data Protection Regulation ((EU) 2016/679)), and shall indemnify and keep indemnified the Client against all losses, claims, damages, liabilities, fines, sanctions, interest, penalties, costs, charges, expenses, demands and legal and other professional costs arising out of or in connection with any breach by the Consultant. Pursuant to this Clause, the Consultant shall also undertake to prepare versions of deliverables without personal data if said deliverables shall be disclosed to third parties.” |

## Consultant’s Representative

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|  | 3.6.1 | *Delete the entire Sub-Clause 3.6.1 and replace with the following:*  “3.6.1 The Consultant shall appoint the Consultant’s Representative and shall give him all Consultant's authority necessary to act on the Consultant’s behalf under the Agreement.  Unless the Consultant's Representative is named in the Particular Conditions, the Consultant shall, prior to the Commencement Date, submit to the Client for consent the name and particulars of the person the Consultant proposes to appoint as Consultant's Representative, If consent is withheld or subsequently revoked, or if the appointed person fails to act as Consultant's Representative, the Consultant shall similarly submit the name and particulars of another suitable person for such appointment.  The Consultant shall not, without the prior consent of the Client, revoke the appointment of the Consultant's Representative or appoint a replacement.  The Consultant's Representative may delegate any powers, functions and authority to any competent person, and may at any time revoke the delegation. Any delegation or revocation shall not take effect until the Client has received prior Notice signed by the Consultant's Representative, naming the person and specifying the powers, functions and authority being delegated or revoked.  The Consultant's Representative and all these persons shall be fluent in the language for communications defined in Sub-Clause 1.4 [Law and Language].  The Consultant's Representative and all these persons shall also be fluent in Lithuanian. If the Consultant's Representative, or these persons, are not fluent in Lithuanian, the Consultant shall make a competent interpreter available during all working hours.” |
|  | 3.6.2 | *No amendment to original FIDIC White Book wording* |

## Changes in Consultant’s Personnel

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|  | 3.7.1 | *At the end of this Sub-Clause 3.7.1 add the following:*  Without prejudice to the Laws and requirements set in Procurement Documents and Appendix 1 [Technical Specification], the Consultant shall submit the name, relevant qualifications and experience of a proposed replacement person to the Client for acceptance. The Consultant shall ensure that any proposed Consultant’s personnel (where applicable) meet the qualification requirements set in the Procurement Documents and Appendix 1 [Technical Specification] and evidence that said person has passed security clearance (if applicable).  The Client shall not unreasonably withhold such consent. The Client shall take decision regarding replacement of the personnel not later than five (5) business days from the day of receipt of all information and documents that are needed for taking the decision. A reason for not accepting the proposed person is that his relevant qualifications and experience are not as good as those of the person who is to be replaced. In the event that the Client accepts the replacement of the Key Expert, the replacement expert shall commence the job of the Key Expert being replaced within a reasonable period prior to such Key Expert leaving in order to facilitate an appropriate handover of work. The Cost of the replacement Key Expert during this period is to the Consultant's account and shall not be recoverable under this Agreement. |
|  | 3.7.2 | *Delete this Sub-Clause entirely.* |
|  | New Sub-Clause 3.7.3 | *Add new Sub-Clause 3.7.3 as follows:*  “3.7.3 The Client may, having stated his reasons, instruct the Consultant to remove an employee or any employee of a subconsultant or subcontractor or lower tier subconsultant or subcontractor. The Consultant shall arrange that, after one day, the employee or any employee of a subconsultant or subcontractor or lower tier subconsultant or subcontractor has no further connection with the Services in this Agreement.  The Client may, having stated his reasons, deny any employee of the Consultant or any subconsultant or subcontractor or lower tier subconsultant or subcontractor access to the Site. Where the Client has instructed the Consultant to remove an employee, the Consultant's costs shall not be recoverable under this Agreement.” |

## Safety and Security of Consultant’s Personnel

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|  | 3.8.1 | *No amendment to original FIDIC White Book wording* |

## Construction Administration

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|  | 3.9.1 | *Delete in its entirety* |
|  | 3.9.2 | *Delete in its entirety* |
|  | 3.9.3 | *Delete in its entirety* |
|  | 3.9.4 | *Delete in its entirety* |
|  | 3.9.5 | *Delete in its entirety* |
|  | 3.9.6 | *Delete in its entirety* |

## Performance Security

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| --- | --- | --- |
|  | 3.10 | *Add new Sub-Clause 3.10 as follows:*  “**3.10 Performance Security**  3.10.1 The Consultant shall obtain (at his cost) a Performance Security for proper performance, in the amount and currencies stated in the Particular Conditions for the Services including Part A Design Services and Part B Design Supervision Services not less than 10% of the total Remuneration.  The Consultant shall ensure that the Performance Security remains valid and enforceable until twenty (20) days after the issue of the Performance Certificate.  3.10.2 The Consultant shall deliver the Performance Security to the Client within one month after the Effective Date with the possibility to extend the period by another month at the sole discretion of the Client based on objective necessity.  If the Consultant fails to provide the Performance Securities within forty (40) days of the Effective Date, the Client shall be entitled to terminate the Agreement. Part A Design Services shall not commence until Performance Security and Insurance Certificates have been provided by the Consultant.  3.10.3 The Performance Security shall be issued by an entity and from within a country (or other jurisdiction) to which the Client gives consent and shall be in the form annexed to the Appendix 3 [Remuneration and Payment] or in another form agreed by the Client (both such consent and/or agreement shall not relieve the Consultant from any obligation under this Sub-Clause).  3.10.4 The Consultant shall reduce the Performance Security amount to 10% of Part B Design Supervision Services upon receiving Taking-Over Certificate of Part A Design Services.  3.10.5 If the terms of the Performance Security specify its expiry date, and the Consultant has not become entitled to receive the respective Performance Certificate by the date twenty (20) days prior to the expiry date, the Consultant shall extend the validity of the Performance Security until the issue of the respective Performance Certificate.  3.10.6 Whenever Variations and/or adjustments under Clause 5 [Variations to the Services] result in an accumulated change (increase or decrease) of the cost of the Services by more than ten percent (10%) of the agreed Remuneration, combined for Part A and Part B of the Services, the Consultant shall, at the Client’s request, promptly change the amount of the respective Performance Security accordingly in that currency by a percentage equal to the accumulative change. If the Consultant incurs costs as a result of the Client’s request, Sub-Clause 5.1 [Variations] shall apply as if the increase had been instructed by the Client.  3.10.7 The Performance Security shall be issued by reputable credit institution (as defined in Article 4(1)(1) of the Regulation (EU) No 575/2013 of 26 June 2013 on prudential requirements for credit institutions and investment firms) and insurance undertakings (as defined in Article 13(1) of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)) with good financial standing (i.e., with minimum Standard & Poor’s, Fitch’s, and Moody’s rating of BB+ (or equivalent)) from the Country, or any other country from the European Union or the European Economic Area (or other jurisdiction approved by the Client in writing prior to issuance of the Performance Securities), in compliance with all other requirements of Appendix 8 [Insurance and Guarantee Requirements].  3.10.8 Claims under the Performance Security  The Client shall not make a claim under the Performance Security, except for amounts to which the Client is entitled under the Agreement in the event of:  (a) failure by the Consultant to extend the validity of the Performance Security as described in the Sub-Clause 3.10.1, in which event the Client may claim the full amount of the Performance Security,  (b) failure by the Consultant to pay the Client an amount due, as agreed or determined under Sub-Clause 2.2 [Determinations] or decided under Clause 10 [Disputes and Arbitration], within forty (40) days after the date of the agreement or determination or decision or arbitral award (as the case may be),  (c) failure by the Consultant to remedy a default stated in a Notice given under sub-paragraph (a) of Sub-Clause 6.4.1 [Termination by the Client] within forty (40) days or other time (if any) stated in the Notice, or  (d) circumstances which entitle the Client to termination under Sub-Clause 6.4.1 [Termination by Client], irrespective of whether notice of termination has been given.  (e) breach under Clause 8.1.1  The Client shall indemnify and hold the Consultant harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from a claim under either Performance Security to the extent to which the Client was not entitled to make the claim.  3.10.9 Return of the Performance Security  The Client shall return the respective Performance Security to the Consultant:  (a) within fifteen (15) days after the issue of the relevant Performance Certificate or  (b) promptly after the date of termination if the Agreement is terminated in accordance with Sub-Clause 6.4.1 [Termination by the Client] or Sub-Clause 6.4.2 [Termination by the Consultant]. |

## Sufficiency of the Remuneration

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|  | 3.11 New Sub-Clause | *Add new Sub-Clause 3.11 as follows:*  “**3.11. Sufficiency of the Remuneration**  3.11.1 The Consultant shall be deemed to have satisfied himself as to the correctness and sufficiency of the Remuneration. Unless otherwise stated in the Agreement, the Remuneration covers all the Consultant’s obligations under the Agreement and all things necessary for the proper performance of the Services and the remedying of any defects. |

## Unforeseeable Difficulties

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|  | New Sub-Clause 3.12 | *Add new Sub-Clause 3.12 as follows:*  “**3.12** **Unforeseeable Difficulties**  3.12.1 Except as otherwise stated in the Particular Conditions:   1. the Consultant shall be deemed to have obtained all the reasonable and available information as to risks, contingencies and other circumstances which may influence or affect the Services; 2. by signing the Agreement, the Consultant accepts total responsibility for having foreseen all difficulties that were reasonably foreseeable until the final Tender submission date pursuant to this Sub-Clause; and 3. the Remuneration and/or time extension of Services shall be adjusted taking into account the Unforeseeable Difficulties, following the procedure of Chapter 5 *[Variations]*. |

## Consultant’s Documents

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| --- | --- | --- |
|  | New Sub-Clause 3.13 | *Add new Sub-Clause 3.13 as follows:*  “**3.13** **Consultant’s Documents**  3.13.1 Preparation by the Consultant  The Consultant's Documents shall comprise the documents:  (a) specified in the Client's Requirements;  (b) required to satisfy all permits, permissions, licences and other regulatory approvals which are the Consultant’s responsibility under Sub-Clause 3.3.3.  Unless otherwise stated in the Client's Requirements, the Consultant's Documents shall be written in the language for communications defined in Sub-Clause 1.4 [Law and Language] and Appendix 1 [Technical Specification].  The Consultant shall prepare all Consultant's Documents necessary to perform and complete the Services and to instruct the Client’s Personnel. The Client shall have the right to inspect the preparation of all these documents (including any investigation, modelling and testing) wherever they are being prepared.  3.13.2 Review by the Client  If the Client's Requirements or the Agreement specify that a Consultant's Document is to be submitted to the Client for review and/or approval, they shall be submitted accordingly, together with a notice as described below. In the following provisions of this Sub-Clause, (i) "review period" means the period required by the Client for review and (if so specified) for approval, and (ii) "Consultant's Documents" exclude any documents which are not specified as being required to be submitted for review and/or for approval but included all documents on which a specified Consultant’s Document relies for completeness.  Unless otherwise stated in the Client's Requirements, each review period shall not exceed fifty (50) days, calculated from the date on which the Client receives a Consultant's Document and the Consultant's notice. This notice shall state that the Consultant's Document is considered ready, both for review (and approval, if so specified) in accordance with this Sub-Clause and for use. The notice shall also state that the Consultant's Document complies with the Consultant’s Requirements and/or the Agreement, or the extent to which it does not comply.  The Client shall, within the review period, give notice to the Consultant that the Consultant’s Document is approved, with or without comments, or that it fails (to the extent stated) to comply with the Client’s Requirements and/or the Agreement.  If the Client gives no Notice within the review period, the Client shall be deemed to have approved the Consultant’s Document (provided that all other Consultant’s Documents on which that Consultant’s Document relies have been submitted).  If the Client instructs that further Consultant’s Documents are reasonably required to demonstrate that the Consultant’s design complies with the Agreement, the Consultant shall prepare and submit them promptly to the Client at the Consultant’s cost.  If the Client gives Notice that the Consultant's Document fails to comply with the Client’s Requirements and/or the Agreement, the Consultant shall:   1. revise the Consultant’s Document; 2. resubmit to the Client for review and (if so specified) for approval in accordance with the Sub-Clause 3.13.2 and the review period shall be calculated from the date the Client receives it; and 3. not be entitled to an extension of Time for Completion for any delay caused by any such revision and resubmission and/or subsequent review by the Client.   Any such approval or consent, or any review (under this Sub-Clause or otherwise) shall not relieve the Consultant from any obligation or responsibility under this Agreement. |

## Consultant’s Undertaking

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|  | New Sub-Clause 3.14 | *Add new Sub-Clause 3.14 as follows:*  “**3.14** **Consultant’s Undertaking**  3.14.1 The Consultant undertakes that the Consultant’s Documents, the performance of the Services and the completed Services will be in accordance with:   1. The Laws; and 2. The documents forming the Agreement, as altered or modified by Variations. |

## Technical Standards and Regulations

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| --- | --- | --- |
|  | New Sub-Clause 3.15 | *Add new Sub-Clause 3.15 as follows:*  “**3.15** **Technical Standards and Regulations**  3.15.1 The Consultant's Documents, the performance of the Services and the complete Services (including defects remedied by the Consultant) shall comply with the technical standards, applicable to the product being produced from the Services, other forms of standards and codes of practice specified in the Client’s Requirements, applicable to the Services, or defined by the Laws.  All these technical or other standards and Laws shall, in respect of the Services, be those in force when the Services are taken over by the Client under Sub-Clause 4.8 [Taking-Over of the Services].  References in the Agreement to published standards shall be understood to be references to the edition applicable on the Base Date, unless stated otherwise. If changed or new applicable standards come into force in the Country after the Base Date, the Consultant shall promptly give notice to the Client and (if appropriate or requested by Client) submit proposals for compliance. To the extent that:   1. the Client considers that compliance is required, and such compliance requires change(s) to the performance of the Services; and 2. the Consultant’s proposals for compliance constitute a Variation;   then the Client shall initiate a Variation in accordance with Clause 5 [Variations to the Services]. |

# COMMECEMENT AND COMPLETION

## 4.1. Agreement Effective

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|  | 4.1.1 | *No amendment to original FIDIC White Book wording* |

## 4.2. Commencement and Completion of Services

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| --- | --- | --- |
|  | 4.2.1 | *Delete the entire Sub-Clause 4.2.1 and replace with the following:*  “4.2.1 Commencement of Services  The Client shall give separate Notice to the Consultant stating the Commencement Date, not less than fifteen (15) days before the Commencement Date of each Part of the Services. Unless otherwise stated in the Particular Conditions, the Commencement Date shall be within forty (40) days of the Effective Date.  The Consultant shall commence the performance of Part A Design Services on, or as soon as is reasonably practicable after, the Commencement Date of Part A Design Services and shall then proceed with due expedition and without delay.  The Consultant shall commence the performance of Part B Design Supervision Services on, or as soon as is reasonably practicable after, the Commencement Date for Part B Design Supervision Services and shall then proceed with due expedition and without delay. |
|  | New Sub-Clause 4.2.2 | *Add new Sub-Clause 4.2.2*  “4.2.2 Time for Completion  The Consultant shall complete the Services or Part, within the Time for Completion for the Services or Part, including all works which are stated in the Agreement as being required for the Services or Part to be considered to be completed for the purposes of taking over under Sub-Clause 4.8 [Taking Over the Services].  Time for Completion shall be calculated for each Part of the Services from the issuance of the Notice to commence each Part of the Services as indicated in Part A of the Particular Conditions of the Agreement.  For clarity – the Client is under no obligation to issue a Notice to commence Design Supervision Services. The scope of Services to be performed by the Consultant includes only the Services issued via Notice to commence for each Part of the Services.  On the Effective Date the scope of the Services is Design Services only. |

## 4.3. Programme

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|  | 4.3.1 | *Delete the entire Sub-Clause 4.3.1 and replace with the following:*  4.3.1 The programme requirements are described in Appendix 1 [Technical Specification] and Appendix 4 [Programme]. and shall be read in conjunction with this Sub-Clause 4.3.  The Consultant shall submit a detailed time programme within fifteen (15) days after receiving the Notice under Sub-Clause 4.2.1 [Commencement of Services] for Design Services on the basis of the key dates indicated in Appendix 4 [Programme]. The Consultant shall also submit a revised programme whenever the previous programme is inconsistent with actual progress or with the Consultant’s obligations. Each programme shall include as a minimum:  (a) the Commencement Date and the Time for Completion, of the Services and of each Part,  (b) the order and timing in which the Consultant intends to carry out the Services in order to complete the Services within the Time for Completion,  (c) the periods for review under Sub-Clause 3.13 [Consultant’s Documents],  (d) any key dates stipulated in Appendix 4 [Programme] or elsewhere in the Agreement for the delivery of any part of the Services to the Client;  (e) the key dates when decisions, consents, approvals or information from the Client or third parties are required to be given to the Consultant;  (f) for a revised programme:  (i) the sequence and timing of the remedial work (if any) proposed by the Consultant under Sub-Clause 4.10.1 and/or instructed by the Client under Sub-Clause 4.10.1 (i).  (ii) for each activity the actual progress to date, any delay to such progress and the effects of such delay on other activities (if any),  (g) any other requirements stated in Appendix 1 [Technical Specification] and Appendix 4 [Programme].  If, at any time the Client gives notices to the Consultant that a programme fails (to the extent stated) to comply with the Agreement or to be consistent with actual progress and the Consultant’s stated intention, the Consultant shall submit a revised programme to the Client in accordance with the Sub-Clause.  Nothing in any programme or any supporting report shall be taken as, or relieve the Consultant from any obligation to give, a Notice under the Agreement. |
|  | 4.3.2 | *On the first line replace “*fourteen (14) days*” with “*twenty (20) days*” and on the fourth line replace “*its*” with “*his*”.* |
|  | 4.3.3 | *Delete Sub-Clause 4.3.3 entirely.* |

## 4.4. Delays

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|  | 4.4.1 | *Delete Sub-Clause 4.4.1 entirely and replace with the following:*  4.4.1. The Consultant shall be entitled subject to Sub-Clause 1.17.3 [Consultant’s claims] to an extension of the Time for Completion if and to the extent that completion of the Services is or will be delayed by any of the following causes:  (a) a Variation to the Services or Part (unless an adjustment to the Time for Completion has been agreed under Sub-Clause 5.2 [Agreement of Variation Value and Impact];  (b) any delay, impediment or prevention caused by or attributable to the Client, or the Client's other consultants, contractors, or other third parties;  (c) an Exceptional Event; or  (d) any other event or circumstance giving an entitlement to extension of the Time for Completion under the Agreement.  (e) Delays caused by Authorities subject to the following conditions being met:  (i) The Consultant has diligently followed the procedures laid down by the relevant legally constituted public authorities in the Country,  (ii) These authorities delay or disrupt the Consultant’s work, and   1. the delay or disruption was not reasonably foreseeable by an experienced consultant by the date of submission of Tender.   The Consultant must have enough resources to perform the Services within the Time for Completion of the Services for up to 20% increase (including, but not limited to increase of number of geotechnical investigations, increased number of roads, bridges, viaducts or other structures to be designed and etc.) in Remuneration save for if the Remuneration increases more than 20% from the agreed Remuneration upon Commencement Date. The Consultant shall take all reasonable steps to mitigate the effects of any delay to the progress of the Services.  The Consultant shall not be responsible for Land Acquisition, Special Plan and EIA (Environment Impact Assessment, lit. *Poveikio Aplinkai Vertinimas*) preparation, amendment, or correction procedures. However, Land Acquisition Process shall be accounted for and mitigated by the Consultant as much as practicable. For the avoidance of doubt, ongoing Land Acquisition Process shall not constitute a delay event for the purposes of this Sub-Clause 4.4.1 and the Consultant shall not be entitled to an extension of the Time for Completion and/or additional payment, unless it has direct and unavoidable impact on possibility to complete the Services or the Part thereof.  In the cases and procedure provided for in the Agreement, the Extension of Time granted must not exceed 120 (one hundred and twenty) days. A longer Extension of Time is possible only if the provisions of the legal regulation of public procurement are followed.  The Consultant must have enough resources to perform the Services within the Time for Completion of the Services or Part for up to 20% increase in Remuneration due to additional activities being performed and shall not be entitled to Extension of Time.  However, EIA Variation cannot consider extension of time and/or additional remuneration, unless the Consultant presents relevant impact assessment indicating it causes rework, shifting services or additional services needed after the EIA is provided. |
|  | 4.4.2 | *No amendment to original FIDIC White Book wording* |
|  | 4.4.3 | *From the second line after “*Exceptional Costs,*” delete “*then the agreed remuneration shall be adjusted in accordance with Sub-Clause 7.1.2 [Payment to the Consultant]. As soon as reasonably practicable the Consultant shall inform the Client of the occurrence of the Exceptional Costs by issue of a Notice*” and replace with the following:*  “the Consultant shall be entitled subject to Sub-Clause 1.17.3 [Consultant's Claims] to payment of such Exceptional Costs” |

## 4.5. Rate of Progress of Services

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|  | 4.5.1 | *No amendment to original FIDIC White Book wording* |

## Exceptional Event

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|  | 4.6 | *No amendment to original FIDIC White Book wording* |

## Delay Damages

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|  | New Sub-Clause 4.7 “Delay Damages” | *Add new Sub-Clause 4.7 as follows:*  “4.7 Delay Damages   * + 1. If the Consultant fails to comply with Sub-Clause 4.2.2 [Time for Completion], the Consultant shall subject to Sub-Clause 1.17.4 [Client's Claims] pay delay damages to the Client for this default. These delay damages shall be the sum stated in Clause 8.5 Remedies , which shall be paid for every day which shall elapse between the relevant delay to the each respective Milestone has occurred which will form the final date for Time for Completion and the date stated in the Taking-Over Certificate.   However, the total amount due under this Sub-Clause shall not exceed the maximum amount of delay damages stated in the Agreement.  These delay damages shall be the only damages due from the Consultant for such default, other than in the event of termination under Sub-Clause 6.4.1 [Termination by the Client] prior to completion of the Services. These damages shall not relieve the Consultant from his obligation to complete the Services, or from any other duties, obligations or responsibilities which he may have under the Agreement. |

## Taking-Over of the Services

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|  | New Sub-Clause 4.8 “Taking Over of the Services” | *Add new Sub-Clause 4.8 as follows:*  “**4.8 Taking Over of the Services**   * + 1. Taking Over of the Services   The Services (Part A Design Services and Part B Design Supervision Services) shall be taken over by the Client when (i) the respective Part has been completed in accordance with the Agreement, including the matters described in Sub-Clause 4.2.2 [Time for Completion] and except as allowed in sub-paragraph Sub-Clause 4.8.3 (a) below, and (ii) a Taking-Over Certificate for the respective Part has been issued, or is deemed to have been issued in accordance with this Sub-Clause.   * + 1. The Consultant may apply by notice to the Client for a Taking-Over Certificate for the respective Part not earlier than fifteen (15) days before the respective Part will, in the Consultant’s opinion, be complete and ready for taking over.     2. The Client shall, within twenty (20) days after receiving the Consultant’s application:   (a) issue the Taking-Over Certificate to the Consultant, stating the date on which the respective Part of the Services was completed in accordance with the Agreement, except for any minor outstanding work and defects which will not substantially affect the use of the respective Part for their intended purpose (either until or whilst this work is completed and these defects are remedied); or  (b) reject the application, giving reasons and specifying the work required to be done by the Consultant to enable the Taking-Over Certificate to be issued. The Consultant shall then complete this work before issuing a further notice under this Sub-Clause.  If the Client fails either to issue the Taking-Over Certificate or to reject the Consultant's application with the period of forty (40) business days, the Taking-Over Certificate shall be deemed to have been issued on the last day of that period.   * + 1. For the avoidance of doubt, the Client shall issue two separate Taking-Over Certificates for Part A Design Services and Part B Design Supervision Services respectively. This will allow the Consultant to reduce the Performance Security as referenced in Sub-Clause 3.10.4. |

## Defects Liability

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|  | New Sub-Clause 4.9 “Defects Liability” | Add new Sub-Clause 4.9 as follows:  “4.9 Defects Liability   * + 1. Remedying Defects and Rejection   Without limitation to any other obligation or liability of the Consultant under the Agreement, the Consultant shall be and remain responsible at its own cost to remedy or otherwise make good in accordance with this Clause 8 any Defect in the Services or the Consultant’s Documents which may appear or occur at any time:  (a) prior to Completion of the Services, or  (b) before the expiry date of the Defects Notification Period  (c) within the warranty terms set it the Laws  If, prior to Completion or during the relevant Defects Notification Period, a part of the Services or the Consultant’s Documents is found to be defective or otherwise not in accordance with the Agreement, the Client shall give Notice to the Consultant describing the part of the Services or the Consultant’s Documents that has been found to be defective. The Consultant shall then as quickly as reasonably possible considering set Standard of Care, as well as competence and experience expected from Consultant performing such scope and complexity of Services, prepare and submit a proposal for necessary remedial work.  The Client may review this proposal and may give Notice to the Consultant stating the extent to which the proposed work, if carried out, would not result in the part of the Services or the Consultant’s Documents complying with the Agreement. After receiving such Notice, the Consultant shall promptly submit a revised proposal to the Client. If the Client gives no such Notice within fifteen (15) days after receiving the Consultant’s proposal (or revised proposal), the Client shall be deemed to have given his approval to such proposal.  If the Consultant fails to promptly submit a proposal (or revised proposal) for remedial work, or fails to carry out the proposed remedial work to which the Client has given (or is deemed to have given) his approval, the Client may:  (i) instruct the Consultant to make good the part of the Services or the Consultant’s Documents, in which case the Consultant shall comply with the instruction as soon as practicable and not later than the time (if any) specified in the instruction and shall bear the cost of all remedial work required; or  (ii) reject the part of the Services or the Consultant’s Documents by giving Notice to the Consultant with reasons, in which case sub-paragraph (a) of Sub-Clause 4.9.4 [Failure to Remedy Defects] shall apply.   * + 1. Cost of Remedying Defects   All work required to remedy or otherwise make good any Defect shall be executed at the risk and cost of the Consultant and without any effect on the Time for Completion, if and to the extent that the work is attributable to:  (a) a part of the Services not being in accordance with the Client’s Requirements or the Laws or any other provision in this Agreement  (b) a part of a Consultant’s Document where the part of the Consultant’s Document is not in accordance with:  (i) the Client’s Requirements,  (ii) the Laws,  (iii) Consultant’s Documents which the Client has approved, or  (iv) any other provision in this Agreement,  (c) failure by the Consultant to comply with any other obligation.  If the Consultant considers that the work is attributable to any other cause, the Consultant shall promptly give Notice to the Client and the Client shall proceed under Sub-Clause 2.2 [Determinations] to agree or determine the cause. If it is decided that the work is attributable to a cause other than those listed above, Sub-Clause 5.1 [Variations to Services] shall apply as if such work had been instructed by the Client.   * + 1. Failure to Remedy Defects   If remedying or otherwise making good any Defect under Sub-Clause 8.1 is unduly delayed by the Consultant, a date may be fixed by the Client, on or by which the defect is to be remedied. A Notice of this fixed date shall be given to the Consultant by the Client, which Notice shall allow the Consultant reasonable time (taking due regard of all reasonable circumstances) to remedy the defect.  If the Consultant fails to remedy the defect by the date stated in this Notice and this remedial work was to be executed at the cost of the Consultant under Sub-Clause 8.2 [Cost of Remedying Defects], the Client may (at his sole discretion):   1. carry out the work or have the work carried out by others, in the manner required under the Agreement and at the Consultant's cost, but the Consultant shall have no responsibility for this work. The Client shall be entitled subject to Sub-Clause 1.17.4 [Client's Claims] to payment by the Consultant of the costs reasonably incurred by the Client in remedying the defect where such claim may be subject to Performance Security; 2. accept the defective work, in which case the Client shall be entitled subject to Sub-Clause 1.17.4 [Client's Claims] to a reduction in the agreed Remuneration. The reduction shall be in full satisfaction of this failure only and shall be in the amount as shall be appropriate to cover the reduced value to the Client as a result of this failure; 3. treat any part of the Services which cannot be used for its intended purpose(s) under the Agreement by reason of this failure as an omission, as if such omission had been instructed under Sub-Clause 5.1 [Variations]; or 4. terminate the Agreement as a whole with immediate effect (and Sub-Clause 6.4.1 [Termination by the Client] shall not apply) if the defect deprives the Client of substantially the whole benefit of the Services. The Client shall then be entitled to recover all sums paid for the Services, plus financing charges.   The exercise of discretion by the Client under sub-paragraph (c) or (d) above shall be without prejudice to any other rights the Client may have under the Agreement or otherwise.   * + 1. Performance Certificate   Performance of the Consultant's obligations under the Agreement shall not be considered to have been completed until the Client has issued the Performance Certificate to the Consultant, stating the date on which the Consultant fulfilled the Consultant’s obligations under the Agreement for each Part of the Services.  The Client shall issue the Performance Certificate within twenty (20) days after the latest of the expiry dates of the Defects Notification Periods, or as soon thereafter as the Consultant has supplied all the Consultant’s Documents and completed all the Services (including remedying any defects) in accordance with the Agreement for the respective Part of the Services.  If the Client fails to issue the Performance Certificate within this period of twenty (20) days for the respective Part of the Services, the Performance Certificate shall be deemed to have been issued on the date twenty (20) days after the date on which it should have been issued, as required by this Sub-Clause.  Only the Performance Certificate shall be deemed to constitute acceptance of the Services.  For the avoidance of doubt the Client shall issue Performance Certificate for Part A Design Services and Part B Design Supervision Services respectively. |

## Milestone Activities

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|  | New Sub-Clause 4.10.1 | *Add new Sub-Clause 4.10.1:*  “4.10.1 Notwithstanding any other term of this Agreement, between the date of the Agreement until the Commencement Date, the Consultant is only authorised to commence performance of the Activities within the Milestones. Except where approved in writing by the Client, the Client's liability under the Agreement shall be limited for the Activities and any amounts approved by the Client (or deemed approved) in accordance with the Consultant's proposals under Inception Report or as may otherwise be approved by the Client in accordance with the terms of this Agreement.  For the avoidance of doubt, notwithstanding any other provision of the Agreement, Activities prior to the commencement of respective Milestone are not a Variation under Clause 5. Such amounts form part of the Accepted Agreement Amount as at the date of the Agreement (except any suspension or cancellation fees which are only payable in accordance with Sub-Clause 6.1 and the Remuneration shall not be adjusted for such amounts if any additional amounts for Activities are approved by the Client. |
|  | New Sub-Clause 4.10.2 | *Add new Sub-Clause 4.10.2:*  “4.10.2 In addition to those Activities as stated in the Appendix 3 [Remuneration and Payment], where the Consultant:   1. considers that it can comply with the Agreement in the performance of such Activities (including without limitation to obtain the relevant Consents, 2. discharge all conditions and obtain all permits, licences and approvals as required by Consents or Statutory Requirements and ensure the adequacy of the Site and sufficiency of access thereto to perform such Activities); and 3. can demonstrate to the Client's reasonable satisfaction that such Activities affects the Consultant's critical path and failure to complete the same may prohibit the Consultant from achieving completion of the Milestones by the time for completion of the Services or Part,   then the Consultant may propose, for the Client’s approval, that part of the Activities to be performed prior to the commencement date of that Milestone. Any such proposal must include:   1. a description of the proposed Activities to be performed. 2. a proposal for the price of the proposed Activities to be performed for that Milestone. Such price proposal may also include any suspension or cancellation fees which will be incurred by the Consultant (and the relevant dates on which they would apply) should the Client accept the Consultant's proposal but later instruct suspension or cancellation of such Activities.   The Client may approve, reject or discuss with the Consultant such proposal. If the Client:   1. approves the Consultant's proposal (or any updated proposal submitted by the Consultant following discussion between the parties), then the Activities described in that proposal shall be considered authorised Activities. 2. rejects the Consultant's proposal, then, provided that the proposal is valid in accordance with this Sub-Clause 4.10 and to the extent the Consultant suffers delay in completing the Services by the time for completion and/or incurs extra cost as a result of the Client's failure to approve the valid proposal then the Consultant shall be entitled to: 3. an extension of time under Sub-Clause 4.3 in respect of the delay incurred; and/or 4. subject to Sub-Clause 5.1, payment in accordance with Sub-Clause 5.2 of the amount of any extra cost which he has incurred.   Where the proposal is rejected for not being in compliance with the Agreement, the Consultant may re-submit its proposal for the Client's approval in accordance with this Sub-Clause 4.10.2. |

# VARIATIONS TO SERVICES

## 5.1. Variations

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|  | 5.1.1 | *Delete the entire Sub-Clause 5.1.1 and replace with the following:*  “5.1.1. A Variation to the Services may be initiated by the Client by issue of a Variation Notice at any time prior to completion of the Services.  The Client may request the Consultant to submit a proposal in respect of a proposed Variation.  If the Client requests a proposal, prior to instructing a Variation, the Consultant shall respond in writing as soon as practicable by submitting:  (a) a description of the proposed design and/or work to be performed and a programme for its execution,  (b) the Consultant's proposal for any necessary modifications to the programme according to Sub-Clause 4.3 [Programme] and to the Time for Completion, and  (c) the Consultant's proposal for adjustment to the Remuneration.  The Client shall as soon as reasonably practicable after receiving such proposal (under Sub-Clause 5.1.6 [Value Engineering] or otherwise), respond with approval, disapproval or comments.  If the proposal is accepted by the Client, then the Variation shall be confirmed by the Client by issue of a Variation Notice.  Any such Variation as listed in Sub-Clause 5.1.2 shall not substantially change the extent or nature of the Services and the total value of all Variations combined shall be limited to 50% of the agreed Remuneration. A Variation can be made without requiring a new procurement procedure.  Variation shall not apply to activity prices that shall remain fixed for the duration of the Agreement, while the quantities may change as per design development. The Client takes the risk of quantities while the Consultant takes the risk of the activity prices.  The Consultant must have enough resources to perform the Services within the Time for Completion of the Services for up to 20% increase in Remuneration due to additional activities being performed and shall not be entitled to Extension of Time.  If the Remuneration increases by more than 20% of the original Remuneration agreed at Commencement Date, then the Consultant may apply for Extension of Time but only for the difference of scope that is in addition to the first 20% additional scope. For the avoidance of doubt, the Consultant shall receive Remuneration on a Re-Measurable basis for all activities as per the prices stated in Appendix 3 [Remuneration and Payment] to deliver the Services. |
|  | 5.1.2 | *Delete the entire Sub-Clause 5.1.2 and replace with the following:*  “5.1.2 A Variation to the Services may be issued in respect of any:  (a) amendment to Appendix 1 [Technical Specification].  (b) addition or omission of the Services or Part thereof as required by the Client;  (c) changes to the specified sequence or timing of the performance of the Services;  (d) changes in the method of implementation of the Services;  (e) provision of the Agreement requiring the issue of a Variation; or  (f) proposal submitted by the Consultant (at the Client's request or otherwise) and accepted in writing by the Client.  (g) Suspension by the Client of the Services exceeding 90 days.  (h) Changes to the quantities of activities under the Services as listed in Appendix 3 [Payment and Remuneration].”   1. Annual application of the indices as defined in Sub-Clause 5.1.6 |
|  | 5.1.3 | *On the second line add after “*practicable*” the following:*  “but no later than fifteen (15) days after receipt of an instruction or direction or becoming aware of circumstances,”  *On the sixth line replace* “fourteen (14) days” *with* “fifteen (15) days”. |
|  | 5.1.4 | *No amendment to original FIDIC White Book wording* |
|  | New Sub-Clause 5.1.5 “**Value Engineering**” | *Add the following new Sub-Clause 5.1.5:*  “5.1.5 Value Engineering  The Consultant may, at any time, submit to the Client a written proposal which (in the Consultant's opinion) will, if adopted,  (a) accelerate completion,  (b) reduce the cost of the Services,  (c) reduce the cost to the Client of executing, maintaining or operating the permanent and temporary (if any) works to be carried out by a contractor under the Works Contract,  (d) improve the efficiency or value to the Client of the completed works which will be carried out by a contractor under the Works Contract, or  (e) otherwise, be of benefit to the Client.  The proposal shall be prepared at the cost of the Consultant and shall include the items listed in Sub-Clause 5.1.1. [Variation Procedure].” |
|  | New Sub-Clause 5.1.6 “**Price adjustment for inflation**” | *Add the following new Sub-Clause 5.1.6:*  “5.1.6 The amount payable to the Consultant shall be adjusted for inflation capped to ± 10% per annum, by the addition or deduction of the amounts calculated in accordance with the EuroStat Cost Indexation below. Price adjustment for inflation can be performed only for those Services that have not been performed before the date of receipt of the request for review of the Agreement Price (Rates). A subsequent adjustment of Agreement Price (Rates) cannot cover a period for which a recalculation has already been made.   * Indexation base date: Effective Date of the Agreement * The schedule of cost indexation: ‘Labour cost index by NACE Rev. 2 - Index (2016=100), ‘Statistical classification of economic activities in the European Community (NACE Rev.2): ‘Construction’ * Geopolitical entity: Country * [Statistics | Eurostat (europa.eu)](https://ec.europa.eu/eurostat/databrowser/view/TEILM140/default/table?lang=en&category=shorties.teieuro_lm.teilm_lc) referenced and available at <https://ec.europa.eu/eurostat/databrowser/view/TEILM140/default/table?lang=en&category=shorties.teieuro_lm.teilm_lc>   The Consultant shall provide annual update to the Schedules in Appendix 3 [Remuneration and Payment] as per the above indices by no later than 15 days of each anniversary of the Agreement.  The moment of review shall be the date of receipt of the Party's request to the other Party to review the Agreement Price (Rates).  The Price adjustment shall be applicable to the Services including Part A Design Services and Part B Design Supervision Services.  On each anniversary of the Effective Date, the Consultant calculates a price adjustment factor (PAF) equal to ((L - B)/B) \* 100, where L is the last published value of the index at the Agreement anniversary and B is the last value of the index published.  Worked example:  Price Adjustment Factor (PAF) = Current Published Index (L) – Last Published Index (B) / Last Published Index (B)  For Lithuania:   * 2021 (Q4) = Last Published Index (B) = 149.4 * 2022 (Q4) = Current Published Index (L) = 169.0 * PAF = ((169.0 – 149.4) / 149.4) \* 100 * PAF = 13.12 %   The PAF shall be applied to reflect the indexation increase. However, the PAF is capped to a maximum of ± 10% per annum.  Example application of the PAF below:   |  |  |  |  | | --- | --- | --- | --- | | **Services** | **Schedule of Remuneration in Appendix 3 [Remuneration and Payment]**  **at**  **Effective Date or past year**  ***For example, 2022*** | **Application of Annual Price Adjustment Factor**  **capped at maximum 10% per annum** | **Schedule of Remuneration in Appendix 3 [Remuneration and Payment]**  **Current Year**  ***For example, 2023*** | | Service A | €234.00 | =234 x 1.10 | € 257.40 | | Service B | €235.00 | =235 x 1.10 | € 258.50 | | Service C | €345.00 | =345 x 1.10 | € 379.50 | | Service D | €456.00 | =456 x 1.10 | € 501.60 | | Service E | €345.00 | =345 x 1.10 | €379.50 |   If an index is changed after it has been used in calculating a PAF, the calculation is repeated, and a correction included in the next assessment of the amount due.  The PAF calculated at Completion for the whole of the services is used for calculating price adjustment after this date.  Until such time as each current cost index is available the Client shall use a provisional index for the issue of interim payment certificates when a current cost index is available the adjustment shall be recalculated accordingly.  If the Consultant fails to complete the Services within the Time for Completion, adjustment of prices thereafter shall be made using either:  (a) each index or price applicable on the date 50 days before the expiry of the Time for Completion of the Services: or  (b) the current index or price  whichever is more favourable to the Client. In any case the price uplift due to indexation shall be capped to a maximum of ±10% per annum.” |
|  | New Sub-Clause 5.1.7 **”Price adjustment for extension of DSS”** | *Add the following new Sub-Clause 5.1.7:*  “5.1.7 In case the Part B Services shall take longer than 36 months due to circumstances beyond the Consultant's control, each subsequent month the Consultant shall be paid the amount of 1/36 of the total Remuneration for part B Services until said Services are completed.” |
|  | New Sub-Clause 5.1.8 | *Add the following new Sub-Clause 5.1.8:*  “5.1.8 If the Client requests the Consultant to undertake any additional Services (not implied by the scope of the Services), or if by reason of any design changes requested by the Client or by reason of a change to the Services, or by any other circumstances beyond the Consultant’s control (save as a result of the Consultant’s default or negligence or that of any sub-consultants appointed or subcontractors engaged by the Consultant), the Consultant is required to undertake additional Services (including but not limited to increase beyond initially defined scope, requiring specialised skills, expertise or equipment, introducing tasks of higher complexity, or requiring increased amounts of time and etc.). The Consultant shall give Notice about the need for additional payment and/or time extension to the Client before undertaking such additional work or additional Services. If the Consultant does not provide a Notice about the need for additional payment and/or time extension and starts providing such works and Services, it is deemed that The Consultant does not require any additional payment and/or time extension.  Provided the Consultant has given Notice in accordance with this Sub-Clause 5.1.5 the Client shall proceed in accordance with Sub-Clause 2.2 [Determinations].  If the Client agrees to such additional payment and/or extension of time or instructs the Consultant to carry out the additional Services, the additional payment and any impact on the Programme (if any) shall be agreed in accordance with Sub-Clause 5.2 [Agreement of Variation Value and Impact].” |
|  | New Sub-Clause 5.1.9 | *Add new Sub-Clause 5.1.9 as follows:*  *“*5.1.9 The 20% additional scope increase mentioned in Clauses 4.4.1, 5.1.1, 7.1.2 and 7.1.3 refers only to additional increase of Scope of Services defined in Tenderer's Financial Proposal Annex\_No\_2.2\_Master\_Design\_Services\_breakdown which does not grant time extension. However, if additional Services are requested outside Annex 2.2, then Consultant may seek compensation for additional time and expenses incurred. Furthermore, in the event of change in legislation the above mentioned 20% additional scope limit does not apply and an extension of Time and Remuneration reassessment should follow section 1.5 [Change in legislation].” |

## 5.2. Agreement of Variation Value and Impact

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|  | 5.2.1 | *No amendment to original FIDIC White Book wording* |
|  | 5.2.2 | *No amendment to original FIDIC White Book wording* |
|  | 5.2.3 | *No amendment to original FIDIC White Book wording* |
|  | 5.2.4 | *On the first and second line delete “fourteen (14) days and replace by “fifteen (15) days” and from the seventh line after “*shall be compensated*” delete the words “*on a time-spent basis at the rates and prices stated in Appendix 3 [Remuneration and Payment]*” and replace by the following:*  “based upon the rates and prices in Appendix 3 [Remuneration and Payment]”  *At the end of this Sub-Clause add the following paragraph:*  If no agreement is reached within a period of thirty (30) days of the Client’s instruction to commence work the Client shall proceed in accordance with Sub-Clause 2.2 [Determinations] to agree or determine the value of the Variation in accordance with Sub-Clause 5.2.2 and its impact on the Programme and the Time for Completion (if any).” |

# SUSPENSION OF SERVICES AND TERMINATION OF AGREEMENT

## Suspension of Services

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|  | 6.1.1 | *On the second line replace* “twenty-eight (28) days” *with* “ten (10) days”  *At the end of the sentence after* “to the Consultant.” *add the following sentence*:  “Suspending part of the Services suspension shall not affect Consultant’s provision of performance of the Services for Activities or Milestones for which the Services or Part have not been suspended.” |
|  | 6.1.2 | *On the fifth line of sub-paragraph (a) replace “seven (7)” with “forty-five (45)” and delete sub-paragraph (c) in its entirety.* |

## Resumption of Suspended Services

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|  | 6.2.1 | *Delete the entire Sub-Clause 6.2.1 and replace it with the following:*  6.2.1 In case the Services have been suspended under Sub-Clause 6.1.1 [Suspension of Services] more than for 120 days, the provision of services shall resume following the suspension period when the Client notifies the Consultant at least 60 days prior to the intended date of resumption. The Client shall provide written notice to the Consultant indicating the intention to resume services, along with a proposed date for resumption (not less than 60 days from the date of notice). The Consultant shall acknowledge receipt of the notice and confirm its ability to resume services within 7 days of receiving the notice. Upon receipt of the notice to resume services, the Consultant shall promptly mobilize its staff and allocate resources as necessary to ensure the timely provision of services. The Consultant shall exercise reasonable diligence in mobilizing its staff and shall inform the Client promptly of any anticipated delays or challenges in resuming services. |
|  | 6.2.2 | *No amendment to original FIDIC White Book wording* |

## Effects of Suspension of the Services

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|  | 6.3.1 | *No amendment to original FIDIC White Book wording* |
|  | 6.3.2 | *No amendment to original FIDIC White Book wording* |
|  | 6.3.3 | *Delete the entire Sub-Clause 6.3.3 and replace it with the following*:  “6.3.3 If the Consultant suffers delay and/or incurs Exceptional Costs as a result of suspending and/or from resuming the Services or part thereof, then the Consultant shall give Notice to the Client and shall be entitled subject to Sub-Clause 1.17.3 [Consultant’s Claims] to:  (a) an extension of the Time for Completion for any such delay, if completion is or will be delayed, in accordance with Sub-Clause 4.4 [Delays], and  (b) payment of such Exceptional Costs and the agreed Remuneration shall be adjusted in accordance with Sub-Clause 7.6 [Payment].” |
|  | 6.3.4 | *No amendment to original FIDIC White Book wording.* |
|  | 6.3.5 | Sub-Clause 6.3.3 shall be inapplicable in case the Services are suspended pursuant to Sub-Clause 6.1.1 for less than 30 days. |

## Termination of the Agreement

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|  | 6.4.1 | Termination by the Client |
|  | 6.4.1 (a) | *Delete Sub-Clause 6.4.1 (a)* |
|  | 6.4.1 (b) | *On the sixth line replace “laws” with “Laws”.*  *From the eighth line to the ninth line delete* “terminate the Agreement with immediate effect upon service of an appropriate Notice” *and replace with* “by notice terminate the Agreement immediately”. |
|  | 6.4.1 (c) | *From the third line to the fourth line delete* “terminate the Agreement with immediate effect upon service of an appropriate Notice” *and replace with* “by notice terminate the Agreement immediately”. |
|  | 6.4.1 (d) | *On the fourth line of sub-paragraph (d) of Sub-Clause 6.4.1, replace* “itself” *with* “himself”. |
|  | 6.4.1 (e) | *On the first line* *of sub-paragraph (e) of Sub-Clause 6.4.1, delete the phrase* “Without prejudice to Sub-Clause 6.1.1 [Suspension of Services],” *in its entirety*.  *On the second line, replace* “where” *with* “Where”.  *On the fourth line, replace “fourteen (14) days” with “fifteen (15) days”.* |
|  | New sub-paragraph 6.4.1 (f) | *Delete sub-paragraph (a)*  *Add new sub-paragraph (f) as follows:*  “(f) The Client shall be entitled to terminate the Agreement if the Consultant:  (i) fails to comply with Sub-Clause 3.10 [Performance Security].  (ii) In the event that the Consultant unjustifiably ceases performance of the Services or fails to perform the Services with standards of care without rectifying such within 15 days upon Client’s notification.  (iii) without reasonable excuse fails to proceed with the Services in accordance with Clause 4 [Commencement and Completion] or, if there is a maximum amount of delay damages stated in Clause 8.5 Remedies], the Consultant fails to comply with Sub-Clause 4.2.2 [Time for Completion] is such that the Client would be entitled to delay damages that exceed this maximum amount;  (iv) fails to comply with Sub-Clause 3.1.3 [Conflict of Interest].  (v) subcontracts the whole of the Services or assigns the Agreement without Client’s prior written consent under Sub-Clause 1.6 [Assignment’s and Sub-Contracts].  (vi) fails to comply with Sub-Clause 1.8 [Confidentiality] or  (vii) without reasonable excuse fails to comply with a Notice given under Sub-Clause 4.9.4 [Failure to Remedy Defects]  (viii) fails to comply with requirements related to national security  (ix) the Consultant is in material default or breach of this Agreement and fails to remedy such default or breach within twenty (20) days of a notice from the Client to do so  In any of these events or circumstances, the Client may upon giving fifteen (15) days’ Notice to Consultant, terminate the Agreement.  However, in case of sub-paragraphs (vi) or (vii) the Client may by notice terminate the Agreement immediately.” |
|  | New sub-paragraph 6.4.1 (g) | *Add new sub-paragraph (g) as follows:*  “(g) Notwithstanding anything mentioned in the Agreement the Client may terminate this Agreement immediately upon giving the Consultant a written Notice of termination explaining, in reasonable detail, the reason for termination, if CEF Co-financing for further financing of the Services (entirely or partly) are not available (including cases when CEF Co-financing is insufficient in order to implement the Agreement fully or partly). In such a case, the Consultant is entitled to reasonable payments in respect of the Services provided under this Agreement up to the date of the Notice of termination of this Agreement). |
|  | New sub-paragraph 6.4.1 (h) | *Add new sub-paragraph (h) as follows:*  “(h) The Client may terminate the Agreement with immediate effect upon service of an appropriate Notice to the Consultant if the Consultant becomes (or a member of its board or council, its beneficial owner, a person having the right of representation or proctor, or a person who is authorised to represent the tenderer in activities related to a branch, or member of a partnership, or member of the board or council, its beneficial owner, a person having the right of representation or proctor, if the tenderer is a partnership) subject to international or national sanctions, or significant sanctions by a member state of the European Union or the NATO that affect the interests of financial or capital market of the Country or if the Agreement cannot be performed due to national sanctions or international sanctions, or significant sanctions by a member state of the European Union or the NATO that affect the interests of financial or capital market of the Country. Within the meaning of this Agreement “national sanctions” and “international sanctions” have the same meaning as set in the Laws of the Country as on the Effective Date. In such case the date of termination shall be the date indicated in the termination Notice.” |
|  | New sub-paragraph 6.4.1 (i) | *Add new sub-paragraph (i) as follows:*  “(i) Notwithstanding anything mentioned in the Agreement the Client may terminate this Agreement immediately upon giving the Consultant a written Notice of termination on the basis of the exclusion grounds and termination grounds stipulated in the applicable public procurement law and procurement regulations.” |
|  | New sub-paragraph 6.4.1 (j) | *Add new sub-paragraph (j) as follows:*  “(j) The Client is entitled to terminate the Agreement in case the Consultant fails to commence Part B Design Supervision Services within the time provided under Sub-Clause 4.2.2. In such case the date of termination shall be the date indicated in the termination Notice. |
|  | New sub-paragraph 6.4.1 (k) | *Add new sub-paragraph (k) as follows:*  “(k) The Client shall have the right to terminate the Contract if any of the grounds for termination of the Contract set out in the law occurs.” |
|  | New sub-paragraph 6.4.1. (l) | *Add new sub-paragraph (l) as follows:*  “(l) Notwithstanding anything mentioned in the Agreement, the Agreement is considered illegal and invalid if it is determined that the implementation of the Agreement is contrary to the mandatory international sanctions implemented in the Republic of Lithuania, as defined in the Law on International Sanctions and other international, European Union and Republic of Lithuania legal acts (at least one of the applicable sanctions). The moment of invalidity of the Agreement is determined in accordance with the aforementioned law.” |
|  | New sub-paragraph 6.4.1. (m) | *Add new sub-paragraph (m) as follows:*  “(m) The Client immediately unilaterally terminates the Agreement or suspends its implementation for the period of implementation of mandatory international sanctions, as defined in the Law on the Implementation of Sanctions and other international legal acts of the European Union and the Republic of Lithuania, after notifying the Consultant in writing, if the Agreement entered into force before these international sanctions in the Republic of Lithuania determination of implementation. It is forbidden to assume new obligations under the Agreement, the performance of which would be contrary to the international sanctions implemented in the Republic of Lithuania.” |
|  | 6.4.2 | Termination by the Consultant |
|  | 6.4.2 (a) | *Delete the entire sub-paragraph (a) and replace with the following:*  “(a) If the Services or Part have been suspended under Sub-Clause 6.1.1. [Suspension of Services or Part] for an aggregate of more than seven-hundred-and-twenty (720) days the Consultant may terminate the Agreement upon giving fifteen (15) days’ Notice to the Client. In case of suspension of Services of multiple Design Priority Sections, the time period above shall be calculated from the date of the first Suspension” |
|  | 6.4.2 (b) | *From the second line to the fourth line delete the words* “or Sub-Clause 6.1.2 (c) [Suspension of Services] for more than thirty (30) days the Consultant may terminate the Agreement upon giving ten (10) days*” and replace with the following:*  *“*for more than 180 (one hundred eighty) days the Consultant may terminate the Agreement upon giving thirty (30) days*”* |
|  | 6.4.2 (c) | *No amendment to original FIDIC White Book wording* |
|  | 6.4.2 (d) | *No amendment to original FIDIC White Book wording* |
|  | 6.4.2 (e) | *From the second line to the fourth line delete the words* “one hundred and sixty-eight (168) days the Consultant may terminate the Agreement upon giving ten (10) days' Notice to the Client*” and replace with the following:*  *“*an aggregate of seven-hundred-and-twenty (720) days the Consultant may terminate the Agreement upon giving thirty (30) days’ Notice to the Client. In case of suspension of Services of multiple Design Priority Sections, the time period above shall be calculated from the date of the first suspension*”.* |
|  | New Sub-Clause 6.4.3 | *Add new Sub-Clause 6.4.3 as follows*:  “6.4.3. The Agreement may be terminated by mutual agreement of the Parties, at any time. |

## Effects of Termination

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|  | 6.5.1 | *No amendment to original FIDIC White Book wording* |
|  | 6.5.2 | *On the fifth line of sub-paragraph (a) of Sub-Clause 6.5.2 replace “itself” with “himself* |
|  | 6.5.3 | *At the end of the first sentence of the Sub Clause 6.5.3 replace “.” with the following text*:  “, but only for those Exceptional Costs that have been incurred prior to the date of the relevant Notice on termination of the Agreement.” |
|  | 6.5.4 | *No amendment to original FIDIC White Book wording* |
|  | New Sub-Clause 6.5.5 | *Add new Sub-Clause 6.5.5 as follows*  “6.5.5 Termination of the Agreement (for any reason) does not relieve the Consultant from obligation to ensure that the new consultant (if such is engaged by the Client) may without interruption overtake the Services.” |
|  | New Sub-Clause 6.5.6 | *Add new Sub-Clause 6.5.6 as follows*  “6.5.6 The Client is entitled to terminate the Agreement also in part (based on the same grounds as provided in Sub-Clause 6.4.1, i.e., regarding any ground for termination). In such case the Client’s termination Notice shall include a precise description of the terminated part of the Agreement, and the part of the Agreement that remains in force.” |

## Rights and Liabilities of The Parties

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|  | 6.6.1 | *No amendment to original FIDIC White Book wording* |

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|  | *Delete the entire Clause 7 Payment and replace with the following:* |

# PAYMENT

## Remuneration

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|  | 7.1.1 | *Delete the entire Sub-Clause 7.1.1 and replace it with the following*  Unless otherwise stated in the Particular Conditions:  (a) the Remuneration shall be the re-measurable Accepted Agreement Amount and be subject to quantity adjustments with the activity prices fixed in accordance with the Agreement;  (b) the Consultant shall pay all taxes, duties and fees required to be paid by him under the Agreement, and the Remuneration shall not be adjusted for any of these costs, except as stated in Sub-Clause 1.5 [Changes in Legislation];  (c) any quantities which may be set out in a Schedule are estimated quantities and are not to be taken as the actual and correct quantities of the Services which the Consultant is required to perform; and  (d) any quantities or price data which may be set out in a Schedule shall be used for the purposes stated in the Schedule and may be inapplicable for other purposes.  (e) the Renumeration shall cover all Consultant’s obligations under the Agreement and legal regulations (e.g. review of Detailed Technical Design, if its developed by another designer) and all things necessary for the proper performance of the Services and the remedying of any defects. |
|  | 7.1.2 | *Delete the entire Sub-Clause 7.1.2 and replace it with the following*  Variation shall not apply to activity prices that shall remain fixed for the duration of the Agreement, while the quantities may change as per design development. The Client takes the risk of quantities while the Consultant takes the risk of the activity prices.  The Consultant must have enough resources to perform the Services within the Time for Completion of the Services for up to 20% increase in Remuneration due to additional activities being performed and shall not be entitled to Extension of Time.  In the event of change in legislation the above mentioned 20% additional scope limit does not apply and an extension of Time and Remuneration reassessment should follow section 1.5 [Change in legislation].” |
|  | 7.1.3 | *Delete the entire Sub-Clause 7.1.3 and replace it with the following*  If the Remuneration increases by more than 20% of the original Remuneration agreed at Commencement Date, then the Consultant may apply for Extension of Time but only for the difference of scope that is in addition to the first 20% additional scope. For the avoidance of doubt, the Consultant shall receive Remuneration on a Re-Measurable basis for all activities as per the prices stated in Appendix 3 [Remuneration and Payment] to deliver the Services. However, if any part of the Services is to be paid according to the quantity supplied or work done, the provisions for measurement and evaluation shall be as stated in the Particular Conditions. The Remuneration shall be determined accordingly, subject to adjustments in accordance with the Agreement. |
|  | New Sub-Clause 7.1.4 | *Add new Sub-Clause 7.1.4*  No amount shall be certified or paid until the Client has received and approved the Performance Security. Thereafter, the Client shall, within 20 days after receiving an Application for Payment and supporting documents, issue to the Consultant an Interim Payment Certificate which shall state the amount which the Client fairly determines to be due, with supporting particulars. |
|  | New Sub-Clause 7.1.5 | *Add new Sub-Clause 7.1.5*  The Agreement provides for the possibility of direct settlement with Subcontractors (sub-contractors/sub-suppliers).  The detailed procedure and conditions for direct settlement with Subcontractors are provided for in this clause.  After receiving information from the Consultant about the Subcontractor used, the Client informs the Subcontractors in writing about the possibility of direct settlement no later than within 3 working days.  The Subcontractor, wanting the Client to settle directly with him, submits a request to the Client and initiates the conclusion of a tripartite agreement between the Subcontractor, the Client and the Consultant (the subcontracting agreement must be concluded no later than before the conclusion of the trilateral agreement).  The trilateral agreement specifies the Consultant’s right to object to unreasonable payments, the procedure for direct settlement with the Subcontractor, taking into account the requirements set forth in the Agreement and the subcontracting agreement.  The Subcontractor must coordinate the invoice with the Consultant before submitting it to the Client. The coordination is considered appropriate when the invoice issued by the Subcontractor is confirmed in writing by the responsible representative of the Consultant, who is specified in the trilateral agreement. Payments made by the Client to the Subcontractor in accordance with the invoices submitted by it shall respectively reduce the amount, payable by the Client to the Consultant in accordance with the terms and procedure of the Agreement. When issuing and submitting invoices to the Client, the Consultant shall not include in them the amounts of invoices, submitted by the Subcontractor directly to the Client and confirmed by the Client.  Direct settlement with the Subcontractor does not release the Consultant from its obligations under the concluded Agreement. Despite the established possible direct settlement with the Subcontractor, the rights, duties and other obligations provided for the Consultant in the Agreement do not transfer to the Subcontractor, therefore, in any case, the Consultant must be responsible for the actions or inactions of the Subcontractor, his authorized representatives and employees in the same way as he would be responsible for his own actions and inactions.  If, as a result of direct settlement with the Subcontractor, which is carried out by the Client in accordance with the terms of the trilateral agreement, the amount actually payable specified by the Consultant and the Subcontractor does not actually match, the risk against the Client rests with the Consultant and the discrepancies are eliminated at the Consultant’s expense.  Payments to the Subcontractor are made in the manner specified in the Agreement and the agreement on direct settlement. |

## Advance Payment

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|  | 7.2.1 | *Delete the entire Sub-Clause 7.2.1 and replace it with the following*  The Implementing Body shall make an advance payment, as an interest-free loan for mobilisation, when the Consultant submits a guarantee to the Client for the full amount of the advance payment.  The total advance payment, the number and timing of instalments (if more than one), and the applicable currencies and proportions, shall be as stated in the Milestone Payment Schedule in Appendix 3 [Remuneration and Payment].  Unless and until the Client receives the advance payment guarantee, or if the total advance payment is not stated in Appendix 3 [Remuneration and Payment], this Sub-Clause shall not apply. |
|  | 7.2.2 | *Delete the entire Sub-Clause 7.2.2 and replace it with the following*  The Client shall issue an Interim Payment Certificate for the first instalment after receiving an Application for Payment (under Sub-Clause 7.3 [Application for Payment]) and after the Client receives (i) the Performance Security in accordance with Sub-Clause 3.10 [Performance Security] and (ii) a guarantee in amounts and currencies equal to the advance payment. This guarantee shall be issued by an entity and from within a country (or other jurisdiction) approved by the Client and shall be in the sample form annexed to Appendix 3 [Remuneration and Payment] or in another form agreed by the Client (both but such consent and/or agreement shall not relieve the Consultant from any obligation under this Sub-Clause). |
|  | 7.2.3 | *Delete the entire Sub-Clause 7.2.3 and replace it with the following*  The Advance Payment Security shall be issued by a financial institution or a consortium of financial institutions which shall at all times each have a credit rating of at least [A-] from Standard and Poor’s or the equivalent rating from Moody’s (the “Minimum Rating”). If at any time the credit rating of one or more of the issuing financial institutions falls below the Minimum Rating, the Consultant shall deliver within five (5) days a replacement Advance Payment Security from a financial institution having the required Minimum Rating, at its own cost. If the Consultant fails to provide a replacement Advance Payment Security within the said period of five (5) days, the Client shall be entitled to claim the full outstanding amount of the Advance Payment Security and to retain this amount as a cash deposit until the Consultant delivers a replacement Advance Payment Security.  The Consultant shall ensure that the guarantee is valid and enforceable for at least another thirty (30) days after the advance payment has been fully repaid, but its amount may be progressively reduced by the amount repaid by the Consultant as indicated in the Payment Certificates. If the terms of the guarantee specify its expiry date, and the advance payment has not been repaid by the date thirty (30) days prior to the expiry date, the Consultant shall extend the validity of the guarantee until the advance payment has been repaid. |
|  | New Sub-Clause 7.2.4 | *Add new Sub-Clause 7.2.4*  The advance payment shall be repaid through percentage deductions in Payment Certificates. Unless other percentages are stated in the Milestone Payment Schedule in Appendix 3 [Remuneration and Payment]:  (a) deductions shall commence in the Payment Certificate in which the total of all certified interim payments (excluding the advance payment and deductions) exceeds ten per cent (10%) of the Accepted Agreement Amount less Provisional Sums (if any); and  (b) deductions shall be made at the amortisation rate as per Sub-Clause 2.5 of Appendix 3 [Remuneration and Payment], until such time as the advance payment has been repaid.  If the advance payment has not been repaid prior to the issue of the Taking-Over Certificate for the Design Services or prior to termination under Clause 6.4.1 [Termination by Client], Clause 6.4.2 [Termination by Consultant] or Clause 4.6 [Exceptional Events] (as the case may be), the whole of the balance then outstanding shall immediately become due and payable by the Consultant to the Client. |

## Interim Application for Payment

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|  | 7.3.1 | *Delete the entire Sub-Clause 7.3.1 and replace it with the following*  The Consultant shall submit to the Client an Interim Application for Payment as per 5.1.1 Milestone Payment Schedule of Appendix 3 [Remuneration and Payment] in electronic form which shall comply with the requirements of section 2.1 of Appendix 3 [Remuneration and Payment] to the email address specified in Part A of the Particular Conditions, showing in detail the amounts to which the Consultant considers himself to be entitled, together with supporting documents which shall include the relevant report on progress, substantiation, completion percentage if partially achieved as per the Milestone Payment Schedule.  The Application for Payment shall include the following items, as applicable, which shall be expressed in the various currencies in which the Remuneration is payable, in the sequence listed:  (a) the Remuneration value of the Services performed, and the Consultant's Documents produced for the Milestone (including Variations but excluding items described in sub-paragraphs (b) to (g) below);  (b) any amounts to be added and deducted for changes in legislation and changes in cost, in accordance with Sub-Clause 1.5 [Changes in Legislation] and Sub-Clause 5.1.6 [Adjustments for Changes in Cost];  (c) any amounts to be added and deducted for the advance payment and repayments in accordance with Sub-Clause 7.2 [Advance Payment];  (d) any other additions or deductions which may have become due under the Agreement or otherwise, including those under Sub-Clause 3.18 [Claims] and Clause 10 [Disputes and Arbitration]; and  (e) the deduction of amounts certified in all previous Payment Certificates. |
|  | 7.3.2 | *Delete Sub-Clause 7.3.2* |

## Schedule of Payments

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|  | 7.4.1 | *Delete the entire Sub-Clause 7.4.1 and replace it with the following*  The Schedule of Payments is included in 5.1.1 Milestone Payment Schedule in Appendix 3 [Remuneration and Payment] specifying the Milestone, agreed remuneration and percentage payment conditions in which the Remuneration shall be paid, unless otherwise stated in this Schedule:  (a) the instalments quoted in the Schedule of Payments shall be the estimated agreement values for the purposes of sub-paragraph (a) of Sub-Clause 7.3 [Application for Payment];  (b) if these instalments are not defined by reference to the actual progress achieved in performing the Services, and if actual progress is found to be less that on which the Schedule of Payments was based, then the Client may proceed in accordance with Sub-Clause 3.2 [Determinations] to agree or determine revised instalments, which shall take account of the extent to which progress is less than that on which the instalments were previously based. |

## Interim Payment Certificate

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|  | 7.5.1 | *Delete the entire Sub-Clause 7.5.1 and replace it with the following*  The Client shall issue Interim Payment Certificate as per 5.1.1 Milestone Payment Schedule of Appendix 3 [Remuneration and Payment] upon reviewing the Application for Payment submitted by the Consultant. Each payment certified is the amount due less any previous payments. Payments are in the currency of this Agreement.  However, prior to issuing the Taking-Over Certificate for the Services, the Client shall not be bound to issue a Payment Certificate in an amount which would (after deductions) be less than the minimum amount of Interim Payment Certificates (if any) stated in the Particular Conditions. In this event, the Client shall give Notice to the Consultant accordingly.  An Interim Payment Certificate shall not be withheld for any other reason, although:  (a) if anything supplied or work done by the Consultant is not in accordance with the Agreement, the cost of rectification or replacement may be withheld until rectification or replacement has been completed; and/or  (b) if the Consultant was or is failing to perform any work or obligation in accordance with the Agreement, and had been so notified by the Client, the value of this work or obligation may be withheld until the work or obligation has been performed.  The Client may in any Payment Certificate make any correction or modification that should properly be made to any previous Payment Certificate. A Payment Certificate shall not be deemed to indicate the Client's acceptance, approval, consent or satisfaction. |
|  | New Sub-Clause 7.5.2 | *Add new Sub-Clause 7.5.2*  After receipt by the Consultant of the Payment Certificate, the Consultant shall, in accordance with the provisions of Appendix 3 [Remuneration and Payment], issue for the sum contained in the Payment Certificate as issued, a draft invoice electronically to the recipient and address specified in Part A of the Particular Conditions. Where the Client has not issued a Payment Certificate, the Consultant shall issue a draft invoice no later than five (5) days after the last date on which the Client could have served a Payment Certificate for the amount set out in the Consultant's application pursuant to Clause 7.3 [Application for Payment]. |
|  | 7.5.3 | *Add new Sub-Clause 7.5.3*  Upon agreement of the draft invoice in accordance with the provisions in Appendix 3 [Remuneration and Payment], the Consultant shall issue a valid invoice and duly submit such invoice to the Client in accordance with the requirements of Appendix 3 [Remuneration and Payment]. |

## Payment

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|  | 7.6.1 | *Delete the entire Sub-Clause 7.6.1 and replace it with the following*  The payments shall be made in line with the Appendix 3 and according to the following conditions:  (a) the first instalment of the advance payment within thirty (30) days after Commencement Date, provided that the Client has received the documents in accordance with Sub-Clause 3.10 [Performance Security] and Sub-Clause 7.2 [Advance Payment] after the Client receives and approves the valid invoice and supporting documents duly submitted in accordance with Appendix 3 [Remuneration and Payment];  (b) the amount certified in each Interim Payment Certificate within forty (40) days after the Client receives and approves the valid invoice and supporting documents duly submitted in accordance with Appendix 3 [Remuneration and Payment]; and  (c) the amount certified in the Final Payment Certificate within forty (40) days after the Client receives and approves the valid invoice and supporting documents duly submitted in accordance with Appendix 3 [Remuneration and Payment].  Payment of the amount due in each currency shall be made into the bank account, nominated by the Consultant, in the payment country (for this currency) specified in the Agreement. |
|  | 7.6.2 | *Delete Sub-Clause 7.6.2* |

## Delayed Payment

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|  | New Sub-Clause 7.7.1 | *Add new Sub-Clause 7.7.1*  If the Consultant does not receive payment in accordance with Sub-Clause 7.6 [Payment], the Consultant shall be entitled to receive 0.05% daily interest rate, and shall be paid in such currency, payable as from the day following the date of a formal notice to pay sent by registered mail from the Consultant. The Consultant shall not be entitled to any further compensation in respect of late payment. |

## APPLICATION for Payment at Completion

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|  | New Sub-Clause 7.8.1 | *Add new Sub-Clause 7.8.1*  Within 60 days after receiving the Taking-Over Certificate for the Services, the Consultant shall submit to the Client in electronic form and which shall comply with the requirements of section 2.1 in Appendix 3 [Remuneration and Payment] to the email address specified in Part A of the Particular Conditions an Application for Payment at completion with supporting documents, in accordance with Sub-Clause 7.3 [Application for Payment], showing:  (a) the value of all work done in accordance with the Agreement up to the date stated in the Taking-Over Certificate for the Services,  (b) any further sums which the Consultant considers to be due, and  (c) an estimate of any other amounts which the Consultant considers will become due to him under the Agreement. Estimated amounts shall be shown separately in this Application for Payment at completion. |

## Final Application for Payment

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|  | New Sub-Clause 7.9.1 | *Add new Sub-Clause 7.9.1*  Within thirty (30) days after receiving the Performance Certificate, the Consultant shall submit to the Client in electronic form a draft Final Application for Payment with supporting documents which shall comply with the requirements of section 2.1 in Appendix 3 [Remuneration and Payment] to the email address specified in Part A of the Particular Conditions showing in detail in a form approved by the Client:  (a) the value of all work done in accordance with the Agreement, and  (b) any further sums which the Consultant considers to be due to him under the Agreement or otherwise.  If the Client disagrees with or cannot verify any part of the draft Final Application for Payment, the Consultant shall submit such further information as the Client may reasonably require and shall make such changes in the draft as may be agreed between them.  The Consultant shall then prepare and submit to the Client the Final Application for Payment as agreed. This agreed Application for Payment is referred to in these Conditions as the 'Final Application for Payment".  However, if, following discussions between the Client and the Consultant and any changes to the draft Final Application for Payment which are agreed, it becomes evident that a dispute exists, the Client shall deliver to the Client (with a copy to the Consultant and Implementing Body) an Interim Payment Certificate for the agreed parts of the draft final Application for Payment. Thereafter, if the dispute is finally resolved under Sub-Clause 10.2 [Optional Conciliation or Mediation] or Sub-Clause 10.5 [Amicable Settlement], the Consultant shall then prepare and submit to the Client (with a copy to the Implementing Body) a Final Application for Payment. |

## Discharge

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|  | New Sub-Clause 7.10.1 | *Add new Sub-Clause 7.10.1*  When submitting the Final Application for Payment and prior to receipt of the Performance Certificate, the Consultant shall submit a written discharge which confirms that the total of the Final Application for Payment represents full and final settlement of all moneys due to the Consultant under or in connection with the Agreement. This discharge may state that it becomes effective when the Consultant has received the Performance Security and the out-standing balance of this total in which event the discharge will be effective on such date. |

## Final Payment Certificate

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|  | New Sub-Clause 7.11.1 | *Add new Sub-Clause 7.11.1*  Within twenty (20) days after receiving the Final Application for Payment and written discharge in accordance with Sub-Clause 7.9 [Final Application for Payment] and Sub-Clause 7.10 [Discharge], the Client shall issue the Final Payment Certificate which shall state:  (a) the amount, which is finally due, and  (b) after giving credit to the Client for all amounts previously paid by the Implementing Body and for all sums to which the Client is entitled, the balance (if any) due from the Implementing Body to the Consultant or from the Consultant to the Client or Implementing Body, as the case may be.  If the Consultant has not applied for a Final Payment Certificate in accordance with Sub-Clause 7.9 [Application for Final Payment Certificate] and Sub-Clause 7.10 [Discharge], the Client shall request the Consultant to do so. If the Consultant fails to submit an application within a period of 20 days, the Client shall issue the Final Payment Certificate for such amount as he fairly determines to be due. |

## Cessation of Client’s Liability

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|  | New Sub-Clause 7.12.1 | *Add new Sub-Clause 7.12.1*  The Client shall not be liable to the Consultant for any matter or thing under or in connection with the Agreement or performance of the Services, except to the extent that the Consultant shall have included an amount expressly for it:  (a) in the Final Application for Payment and also  (b) (except for matters or things arising after the issue of the Taking-Over Certificate for the Services) in the Application for Payment at completion described in Sub-Clause 7.8 [Application for Payment at Completion].  However, this Sub-Clause shall not limit the Client's liability under his indemnification obligations, or the Client's liability in any case of fraud, deliberate default or reckless misconduct by the Client. |

## Checks and Audits

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|  | New Sub-Clause 7.13.1 | *Add new Sub-Clause 7.13.1*  Notwithstanding anything to the contrary set forth in the Agreement, the Client, as well as a reputable outside independent body or expert engaged and authorised by the Client shall be entitled to inspect and/or audit the Consultant to ensure compliance with the terms of the Agreement and EU financing rules, 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 Consultant and/or other records used in or related to the performance of the Services. |
|  | New Sub-Clause 7.13.2 | *Add new Sub-Clause 7.13.2*  The Consultant shall provide all reasonable assistance to the Client, or the independent body authorized by the Client in carrying out any inspection or audit pursuant to this Clause. The Client shall be responsible for its own costs, or the costs incurred by the outside independent body designated by the Client, incurred toward carrying out such inspection or audit, unless, in the case of any such audit, that audit reveals that the Consultant is not compliant with the terms of this Agreement, in which case the Consultant shall reimburse the Client for all of its additional reasonable costs incurred, provided such non-compliance is material. |
|  | New Sub-Clause 7.13.3 | *Add new Sub-Clause 7.13.3*  The rights and obligations of the Client set forth in accordance with this Clause shall survive expiration or termination of the Agreement for any reason and shall continue to apply during five (5) years following expiration or termination of this Agreement for any reason whatsoever. |
|  | New Sub-Clause 7.13.4 | *Add new Sub-Clause 7.13.4*  The Consultant is under obligation to retain in immediately accessible readable format, not encrypted or otherwise protected manner, all working files, correspondence and in paper or email for the time period of five (5) years after expiry of the Agreement. |
|  | New Sub-Clause 7.13.5 | *Add new Sub-Clause 7.13.5*  By submitting a written notice five (5) days in advance, but at the same time reserving the right of an unannounced on-the-spot visit without an advance notice, the Client may carry out on-the-spot visits to the construction site and premises where the activities implemented within the Agreement are or were carried out. |
|  | New Sub-Clause 7.13.6 | *Add new Sub-Clause 7.13.6*  On-the-spot visits may be carried out either directly by authorised staff or representatives of the Client or by any other outside body or third party authorised to do so on behalf of the Client. Information provided and collected in the framework of on-the-spot visits shall be treated on confidential basis. The Client shall ensure that any authorised outside body or third party shall be bound by the same confidentiality obligations. |
|  | New Sub-Clause 7.13.7 | *Add new Sub-Clause 7.13.7*  The Consultant shall provide to the performer of the on-the-spot visit or any other authorised outside body or third party access to all the information and documents, including information and documents in electronic format, which is requested by the authorised staff of the performer of the on-the-spot visit or any other authorised outside body or third party for the performance of an on-the-spot visit and which relates to the implementation of the Agreement, as well as shall allow the authorised staff of the performer of the on-the-spot visit or any other authorised outside body or third party the copying of the information and documents, with due respect to the confidentiality obligation. |
|  | New Sub-Clause 7.13.8 | *Add new Sub-Clause 7.13.8*  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 and Regulation (EU) No 883/2013 of the European Parliament and the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF), OLAF may also carry out on-the-spot checks and inspections in accordance with the procedures laid down by European Union law for the protection of the financial interests of the European Union against fraud and other irregularities. Where appropriate, OLAF findings may lead to criminal prosecution under national law. |
|  | New Sub-Clause 7.13.9 | *Add new Sub-Clause 7.13.9*  In the event RB Rail AS, reg. No. 40103845025 („RB Rail”), is not the Client under the Agreement, it is hereby established that RB Rail has full authority to execute the Client’s rights under the Clause 7.13. |
|  | New Sub-Clause 7.13.10 | *Add new Sub-Clause 7.13.10*  The above inter alia includes Consultant’s duty to cooperate with RB Rail and perform other obligations under this Clause towards RB Rail as if RB Rail was the Client, as well as Client’s duty to fully cooperate with RB Rail. |

# LIABILITIES AND INDEMNITY

## Liability For Breach

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|  | 8.1.1 | *No amendment to original FIDIC White Book wording* |
|  | 8.1.2 | *No amendment to original FIDIC White Book wording* |
|  | 8.1.3 | *Delete sub-paragraph (c) in its entirety.* |
|  | New Sub-Clause 8.1.4 | *Add new Sub-Clause 8.1.4 as follows*:  “8.1.4 From the Commencement Date until the end of the Defects Notification Period, the Consultant shall be liable for the following:   * Claims and proceedings from Others and compensation and costs payable to Others which arise from or in connection with the breach by the Consultant of its obligations objectively evidenced by non-compliance with the Contract, applicable laws and regulations. * Cost associated with repetitive reviews (third and consecutive) of Competent Supervisory Bodies borne by the Client and which arise from or in connection with the breach by the Consultant of its obligations objectively evidenced by non-compliance with the Contract, applicable law and regulations. * Loss of or damage to property owned or occupied by the Client which arises from the breach by the Consultant of its obligations objectively evidenced by non-compliance with the Contract, applicable law and regulations.   The Consultant shall not be responsible to reimburse and/or compensate any costs and/or expenditure which arise from unjustified requests for revising the design submittals, including from excessive oversight and comments of preferential nature that are not based on the Contract requirements and the associated applicable standards and codes. |
|  | New Sub-Clause 8.1.5 | *Add new Sub-Clause 8.1.5 as follows:*  “8.1.5 The Parties shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Agreement, including any losses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Agreement.” |
|  | New Sub-Clause 8.1.6 | *Add new Sub-Clause 8.1.6 as follows:*  “8.1.6 The Consultant shall indemnify and keep indemnified the Client and any successor consultant against all costs, claims, expenses, damages, demands, actions, losses and liabilities arising out of or in connection with any claim or demand arising out of or in connection with any act or omission of the Consultant and/or of any sub-consultant and which the Client or the successor consultant incurs:   1. in relation to any one or more employees whose employment has transferred or is alleged to have transferred to the Client and/or as a result of the Consultant’s breach of the Agreement and/or 2. and, despite anything else in this Agreement, such a successor consultant can directly enforce the indemnity in its favour provided for by this Sub-Clause.” |
|  | New Sub-Clause 8.1.7 | *Add new Sub-Clause 8.1.7 as follows:*  “8.1. 7 The Consultant shall indemnify the Client against the consequences of any failure to or delay with regard to his responsibility to obtain the building permits or similar permits, and any other permits, permissions, licences and/or approvals described in the Client’s Requirements, and as required by the Laws in relation to performance of the Services and the remedying of any defects.” |

## Duration of Liability

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|  | 8.2.1 | *Delete Sub-Clause 8.2.1 in its entirety and replace with the following:*  “8.2.1 The Parties agree that no action or proceedings may be brought or commenced under this Agreement at any time after Commencement Date and within 10 (ten) years after the Completion of the Services.” |

## Limit of Liability

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|  | 8.3.1 | *Delete Sub-Clause 8.3.1 in its entirety and replace with the following:*  “8.3.1 Nothing in this Agreement, and in particular the liability caps provided for in this Clause 8.3, shall be construed as excluding nor limiting the liability of either Party to the other for:   1. wilful misconduct and gross negligence; 2. personal injury; 3. breaches of any health and safety regulations by the Consultant or his subconsultants or subcontractors; 4. fraud, fraudulent misrepresentation or any act or omission against applicable criminal law; or   Neither Party shall be liable to the other Party for loss of profits, loss or diminution of business value or reputation and/or loss of business opportunities. |
|  | 8.3.2 | *No amendment to original FIDIC White Book wording* |
|  | 8.3.3 | *Delete Sub-Clause 8.3.3 and replace with the following:*  “8.3.3 Total maximum liability under the Agreement  The Consultant's total liability to the Client under or in connection with this Agreement, without prejudice to Sub-Clause 8.3.1, shall not exceed 60% of the agreed Remuneration.  The Client’s total maximum liability to the Consultant under or in connection with this Agreement, without prejudice to Article 8.3.1 shall be limited to 10% of the agreed Remuneration.” |

## Exceptions

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|  | 8.4.1 | *No amendment to original FIDIC White Book wording* |

## Remedies

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|  | New Sub-Clause 8.5 | *Add new Sub-Clause 8.5 Remedies for Breach as follows:* |
|  | **8.5 REMEDIES** | |
|  | 8.5.1 | “8.5.1 **Remedies**  Without prejudice to the Client’s rights under this Agreement, in the event that non-compliance breach of the following key Clauses occur, the Client shall be entitled to deduct payments from the Consultant’s Remuneration.  No failure to exercise nor any delay in exercising any right or remedy hereunder shall operate as a waiver thereof or of any other right or remedy hereunder, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise thereof or the exercise of any other right or remedy.  Remedies available to the Client for specific breaches and non-compliance:   * 1. Failure to comply with provisions of Clause 3.5 Consultant’s Personnel - EUR 3,000 per each breach;   2. Failure to comply with provisions of Clause 1.8 Confidentiality - EUR 3,000 per each breach;   3. Failure to comply with provisions of Clause 3.1.3 Conflict of Interest requirements - EUR 3,000 per each breach;   4. Failure to deliver the renewal of the insurance provided for in the Agreement in the manner and within the time limits specified in the Agreement – EUR 50,000 for every month until the valid insurance is provided;   5. Failure to comply with provisions of Annex C of Framework Agreement - EUR 10,000 per each breach;   6. Failure to comply with provisions of Clause 3.1.6 – EUR 300 for each day of delay.   Application of remedies/contractual penalties/delay damages is the Client's right (not an obligation), and this entitlement (right) shall be exercised after assessment of the Consultant's overall conduct and overall performance of the Contract, and always based on the good faith and in view of maintaining the best collaboration spirit between the Parties. The Client has no obligation to substantiate application of any penalty with anything but the respective breach to which the penalty is applied to.  The Consultant confirms that prior to entering into this Agreement it has thoroughly assessed the above contractual penalties and that the set penalties correspond to a fair market practice.” |
|  | 8.5.2 | The Consultant pays delay damages at the rate stated below for each day from Milestone Completion Date until Completion. Total aggregate amount of the delay damages and penalties which may become applicable as per the Contract shall not exceed 10% of the Remuneration agreed on the signing date of the Contract.  If the Time for Completion is changed to a later date after delay damages have been paid, the Client repays the overpayment of damages to the Consultant.  If the Consultant accelerates at its own cost to achieve Time for Completion for later Milestones of the Services, then the Delay Damages incurred for earlier Delays shall be repaid to the Consultant.   |  |  |  |  | | --- | --- | --- | --- | | **No** | **Milestone** | **Delay Damages** | **Cap on Liability applicable to the milestone.** | | 1A | Commencement Date | Nil |  | | 1B | Preliminary Activities | Nil |  | | 2 | Inception report | Nil |  | | 3 | Investigations | 0.05% per Day of Milestone Payment | 10% | | **4** | **Design Proposals** |  |  | | I | DPS1 | 0.05% per Day of Milestone Payment | 10% | | ii | DPS2 | 0.05% per Day of Milestone Payment | 10% | | iii | DPS3 | 0.05% per Day of Milestone Payment | 10% | | iv | DPS4 | 0.05% per Day of Milestone Payment | 10% | | 5 | Master Design |  |  | | I | DPS1 | 0.05% per Day of Milestone Payment | 10% | | ii | DPS2 | 0.05% per Day of Milestone Payment | 10% | | iii | DPS3 | 0.05% per Day of Milestone Payment | 10% | | iv | DPS4 | 0.05% per Day of Milestone Payment | 10% | | 6 | Taking over | 0.05% | 10% | |

# INSURANCE

## Insurances to be taken out by the Consultant

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|  | 9.1.1 | *Delete the entire Sub-Clause and replace with the following:*  “9.1.1 **Professional Civil Liability Insurance**  The Consultant shall take out and maintain professional civil liability insurance covering an amount not less than EUR 10.000.000 (ten million euro) for any one claim or series of claims arising out of any one event and which may be subject to an annual aggregate limit for a period beginning with the Commencement Date and ending 5 (five) years after the Completion of the Services. In all cases the scope of the Professional civil liability insurance shall not be less that the mandatory scope of compulsory Designers civil liability insurance in Lithuania. The Professional civil liability insurance must comply with the Insurance and Guarantee Requirements of Appendix 8 [Insurance and Guarantee Requirements].  Any increased or additional premium required by insurers by reason of the Consultant’s claims record or other matters particular to the Consultant shall be considered to be within commercially reasonable rates.  The Consultant shall immediately inform the Client if the insurance referred to in clause 9.1.1 ceases to be available at commercially reasonable rates in order that the Parties can discuss the means of best protecting the respective positions of the Parties in the absence of such insurance.  The above obligations in respect of professional civil liability insurance shall continue notwithstanding termination of this Agreement for any reason whatsoever, including breach by the Client.  If the Consultant fails to take out an insurance contract or to ensure compliance with the terms and conditions of the insurance contract, the Consultant shall be liable to pay compensation for all damages caused.” |
|  | 9.1.2 | *Delete the entire Sub-Clause and replace with the following:*  “9.1.2  **General liability insurance**  The Consultant shall take out and maintain General liability insurance in amounts sufficient to cover its liabilities under the Agreement, provided always in each case that such insurance is available at commercially reasonable rates and on terms (including normal exclusions) commonly included in such insurances at the time the insurances were taken out or renew as the case may be. Such insurances shall be placed with insurers of international repute and standing. In assessing a commercially reasonable rate the Consultant’s own claims record shall be disregarded.  The Consultant shall ensure that the minimum amount of cover under the policies is not less than the amount specified in the Appendix 8 [Insurance and Guarantee Requirements].  The Consultant shall ensure that its General liability insurance is maintained for the period of liability stated in the Particular Conditions in accordance with Sub-Clause 8.2.1.  Where the Consultant forms a joint venture, partnership, consortium, association or other joint venture consisting of several member then all of the members of such joint venture shall be insured in accordance with the Agreement provided that the insurance is not less than specified in the Agreement. The Consultant shall not alter the status of the afore mentioned venture (cooperation) without prior written approval of the Client.” |
|  | 9.1.3 | *Delete the entire Sub-Clause and replace with the following:*  9.1.3. The Consultant shall, at his own cost, submit certified copies of the insurance policies (including the payment orders or other documents confirming insurance premium payments for these securities) permitting direct action against insurers and on the terms and conditions set out in in sub-clause 3.10.2 and Appendix 8 [Insurance and Guarantee Requirements], ensuring full compliance with all other terms of the Agreement.  The Consultant shall ensure that the insurance policies are in compliance with the Client’s requirements defined in Appendix 8 [Insurance and Guarantee Requirements].  Within 15 (fifteen) days before the expiration of the Professional civil liability insurance and General liability insurance, the Consultant shall, at his own cost, submit to the Client certified copies of the extended such insurance certificates (including the payment orders or other documents confirming insurance premium payments for these securities). |
|  | New Sub-Clause 9.1.5 | *Add new Sub-Clause 9.1.5:*  “9.1.5 **Scope of cover**  The Consultant shall ensure compliance with the requirements for professional civil liability insurance and general liability insurance as specified by the Laws of the Country.  Where the Consultant consists of a joint venture or consortium then all members of such joint venture shall be insured in accordance with the Agreement provided that the insurance is not less than specified in the Agreement. Joint-venture or consortium members are entitled to combine the insurance coverage by means of issuance of insurance certificates from each member which supplement each other to ensure the coverage for the whole insurance amount. The Consultant shall not alter the status of the joint venture without prior written consent of the Client.” |
|  | New Sub-Clause 9.1.5 | *Add new Sub-Clause 9.1.5:*  “9.1.5 The insurance amount is fluctuating and shall be calculated on the basis of Services parts: Part A Services and Part B Services. For clarity, the after signing the Agreement the Consultant shall provide the insurance coverage for Part A Services, only, pursuant to the procedure specified in the Agreement. Insurance for Part B Services shall be provided before they commenced (unless otherwise agreed between parties), pursuant to the procedure specified in the Agreement." |

# DISPUTES AND ARBITRATION

## Amicable Dispute Resolution

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|  | 10.1 | *Delete the entire Sub-Clause.1 “*Amicable Dispute Resolution*” and replace with the following:*  **“10.1 Amicable Dispute Resolution**  10.1.1 Amicable Dispute Resolution is a dispute resolution where two parties to the Contract resolve the dispute without asking an impartial third party to provide them with assistance or make a ruling. If the parties so wish, they may at any time consult their respective advisers and experts. Either Party may submit on its own behalf, or may act through a representative designated at its discretion.  10.1.2 The Party submitting a request for amicable settlement of the dispute must notify the other Party of such request.  The application must state the circumstances of the applicant's case and must be accompanied by copies of the necessary letters and documents.  10.1.3 The Other Party shall, within 30 (thirty) days of receiving notification of the request, provide a notification to the applicant on whether it is ready to try to resolve the dispute amicably and, if the answer is positive, it must provide the applicant with an answer to the circumstances of the case stated by the applicant.  10.1.4 During the subsequent period, the Parties must provide each other with all other additional documents and corroborating information related to the dispute.  10.1.5 If an agreement between the Parties is reached, both parties must draw up and sign a dispute resolution protocol.  The protocol signed in this way must be binding on both parties.  10.1.6 The amicable resolution of the dispute shall be considered unsuccessful if the other Party rejects the request submitted in accordance with Sub-Clause 10.1.2 of this Agreement, or the response is not submitted within the period provided for in Sub-Clause 10.1.3 of this Agreement, or within 60 (sixty) days from Sub-Clause 10.1.3 of this Agreement does not constitute a dispute resolution agreement under this procedure.  10.1.7 The parties may, by prior agreement, choose a different amicable dispute resolution procedure, or set different terms for the amicable dispute resolution procedure than specified above, but in any case, the attempt to resolve the dispute must be considered unsuccessful if the dispute resolution agreement is not concluded within 60 (sixty) days from such alternative procedures and schedule approval.  10.1.8 If no dispute resolution agreement can be reached, nothing that emerges during the attempted dispute resolution shall in any way affect the rights of either Party in subsequent proceedings.  10.1.9 If an amicable resolution of the dispute cannot be achieved pursuant to Sub-clause 10.1.6 or 10.1.7 of this Agreement, or the attempt has been terminated, or if the Parties should have agreed to stop trying to resolve the dispute amicably, further resolution of the dispute shall proceed as described in Sub-Clause “Arbitration”. |

## Optional Conciliation or Mediation

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|  | 10.2 | *Delete the entire Sub-Clause 10.2 “*Adjudication*” and replace with the following:*  **“10.2 Optional Conciliation or Mediation**  10.2.1. The Parties may at any time by notice in writing seek the agreement of the other Party for any dispute between them to be referred to conciliation or mediation. Any settlement resulting from conciliation or mediation shall be binding when incorporated in a written agreement signed by both Parties. The Mediator to be appointed by making an application to the President of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ or as agreed by the parties mutually.” |

## Amicable Settlement

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|  | 10.3 | *Delete the entire Sub-Clause 10.3 “*Amicable Settlement*” and replace with the following:*  **“10.3 Amicable Settlement**  10.3.1. Both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, arbitration may be commenced on or after the twenty-eighth (28th) day after the day on which this notice was given, even if no attempt at amicable settlement has been made. |

## Arbitration

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|  | 10.4 | *Delete the entire Sub-Clause 10.4 “*Arbitration*” and replace with the following:*  “**10.4 Arbitration**  10.4.1 Unless settled amicably, subject to Clause 10.1 [Amicable Dispute Resolution], any dispute respect of which the adjudicator’s decision (if any) has not become final and binding shall be finally settled by international arbitration. Unless otherwise agreed by both Parties:  (a) All disputes arising out of or in connection with the present Agreement shall be submitted to the International Court of Arbitration of the International Chamber of Commerce and shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules;  (b) The dispute shall be settled according to the law governing the Agreement;  (c) The arbitration shall be conducted in English language.  (d) The place of arbitration shall be Stockholm, Sweden  10.4.2 The arbitrator(s) shall have full power to open up, review and revise any ruling or decision of the Adjudicator.  10.4.3 In any award dealing with costs of the arbitration, the arbitrator(s) may take account of the extent (if any) to which a Party failed to cooperate with the other Party in appointing the adjudicator under Clause 10.4 [Adjudication].  10.4.4 Neither Party shall be limited in the proceedings before the arbitrator(s) to the evidence or arguments previously put before the adjudicator to obtain its decision, or to the reasons for dissatisfaction given in the Party's notice under Sub-Clause 10.4 [Adjudication]. Any decision of the adjudicator shall be admissible in evidence in the arbitration.  10.4.5 Arbitration may be commenced before or after completion of the Services. The obligations of the Parties shall not be altered by reason of any arbitration being conducted during the progress of the Services.” |

## FAILURE TO COMPLY WITH ADJUDICATOR’S DECISION

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|  | 10.5 | *Delete the entire Sub-Clause 10.5 “*Failure to Comply with Adjudicator’s Decision*”* |