**

**FRAMEWORK AGREEMENT**

**ON PROCUREMENT OF DESIGN SERVICES**

between

**RB RAIL AS**

(“Client”)

where the Client is also acting in the name and on behalf of

**AB “LTG INFRA”**

(“Implementing Body”)

and

**DB ENGINEERING & CONSULTING GMBH**

(“Consultant”)

D0139-RBR-AGR\_FR-Z-00001

|  |  |
| --- | --- |
| Contract registration number | 1.19/LV-2025-33-1 |
| CEF Contract No. | 101079279 - 21-EU-TC-RBGP Part VII C |
| Procurement procedure identification No. | RBR 2022/11 |

Vilnius

2025

Blue text on a white background

AI-generated content may be incorrect.

**TABLE OF CONTENTS**

[1. Definitions, Interpretation and Order of Precedence 3](#_Toc190161014)

[2. Subject matter of the Agreement 6](#_Toc190161015)

[3. value and term 6](#_Toc190161016)

[4. invitation(s) to sign Detailed Technical Design service contract 7](#_Toc190161017)

[5. sub-contractorS 7](#_Toc190161018)

[6. Representations and Warranties 7](#_Toc190161019)

[7. variations 8](#_Toc190161020)

[8. Communication AND CONTRACT EXECUTION 8](#_Toc190161021)

[9. commencement date, SUSPENTION AND Termination 9](#_Toc190161022)

[10. Liability 11](#_Toc190161023)

[11. Force Majeure 12](#_Toc190161024)

[12. Confidentiality 12](#_Toc190161025)

[13. Right to Audit 13](#_Toc190161026)

[14. personal data 13](#_Toc190161027)

[15. Governing Law and DISPUTE RESOLUTION 14](#_Toc190161028)

[16. Miscellaneous provisions 14](#_Toc190161029)

[Annex A: Minutes of negotiations between the Client and the Consultant 16](#_Toc190161030)

[Annex B: Explanations (clarifications) of the Procurement Procedure documentation 17](#_Toc190161031)

[Annex C: The Procurement Procedure documents with the annexes (including the Technical Specification) 18](#_Toc190161032)

[Annex F: Clarifications of the Consultant’s Proposal 19](#_Toc190161035)

[Annex G The Consultant’s Proposal 20](#_Toc190161036)

[Annex H: Data Agreement 21](#_Toc190161037)

**FRAMEWORK AGREEMENT**

ON PROCUREMENT OF DESIGN SERVICES

This Framework Agreement is entered into in Vilnius, on the date indicated on the timestamp of the last signature of the Agreement], by and 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:**

* 1. this Agreement is entered into under the Rail Baltica Global Project which includes all activities undertaken by the respective beneficiaries and implementing bodies of the Republic of Estonia, the Republic of Latvia and the Republic of Lithuania in order to build, render operational and commercialise the Rail Baltica railway – a new fast conventional double track electrified railway line with European standard gauge (1435 mm) on the route from Tallinn through Pärnu-Riga-Panevėžys-Kaunas to Lithuanian-Polish border, with the connection of Kaunas-Vilnius, and related railway infrastructure in accordance with the agreed route, technical parameters and time schedule (the “Global Project”);
  2. For the purposes of the Agreement the Client is acting as an agent and Central Purchasing Body for the Beneficiaries’ designated Implementing Body as per Clause 3.3.1 and 3.4.1 of the Agreement on the Contracting Scheme for the Rail Baltic/ Rail Baltica, in effect of 30 September 2016. The Implementing Body authorizes the Client and assigns to the Client all rights (including, but not limited to, claiming performance in arbitration proceedings or otherwise, claiming damages, statutory interest and contractual penalties, etc.) that may arise from this Agreement and / or Service Contracts. All claims made by the Client against the Consultant are made on behalf of the Implementing Body;
  3. the Client has organised a procurement procedure “Design and design supervision services for the construction of the new line from Kaunas Urban Node to Polish State Border” (identification No. 2022/11) (the “Procurement Procedure”) where the tender proposal submitted by the Consultant in the Procurement Procedure (the “Consultant`s Proposal”) was selected for entering into a Framework Agreement to determine the terms governing conclusion for Service Contracts to be awarded during a given period (as defined below);
  4. this Agreement is co-financed from the Connecting Europe Facility (“CEF”), CEF Contract No. 101079279 - 21-EU-TC-RBGP Part VII C, and other recently signed grant agreements or future grant or financing agreements (the “Grant Agreements”) to be signed;

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

1. Definitions, Interpretation and Order of Precedence
   1. In this Agreement, unless the context requires otherwise, the following definitions shall have the following meaning:
      1. “Agreement” means this signed framework agreement between the Parties together with all its Annexes the purpose of which is to determine the terms governing Service Contracts to be awarded during a given period; whenever in the Agreement there is a reference to the Agreement, it includes a reference to all its Annexes, and reference to specific Annex following the reference to the Agreement is without prejudice to it.
      2. “Annex” means any of the annexes enclosed to this Agreement and listed in Clause 1.3.
      3. “Applicable Laws” means any legislative act, regulation, decree, order, ordinance, statute, treaty, directive, judgment, or other legislative measure applicable to the Agreement, the Services, the Parties, etc. (including, but not limited to the Public Procurement Law of the Republic of Latvia).
      4. “Business day” means any day except Saturday, Sunday and any day which is a public holiday in Lithuania.
      5. “CEF” as defined in the Preamble of the Agreement.
      6. “Client” as defined in the above list of the parties to the Agreement, represented by the Client’s Representative.
      7. “Confidential Information” as defined in Clause 12.1.
      8. “Consultant” as defined in the above list of the parties to the Agreement.
      9. “Consultant’s Proposal” as defined in the Preamble of the Agreement and enclosed in **Annex E** to the Agreement.
      10. “Damages” any direct cost, claim, damage, demand, loss, expense or liability incurred by the relevant person.
      11. “Data Agreement” the personal data processing agreement with the form and contents enclosed in **Annex F** (subject to finalization prior to signing and adjustments or amendments reasonably requested by the Client).
      12. “Documentation” means all documents, records, correspondence, files etc. of the Consultant, its employees, sub-contractors etc.
      13. “Framework Agreements” means this Agreement.
      14. “Force Majeure Event” means any event which meets all the following criteria:
2. It is an event that cannot be avoided and whose consequences cannot be overcome;
3. It could not be foreseen at the time when the Agreement was concluded;
4. It was not caused by the act of the affected Party or a person under its control;
5. It makes it impossible to fulfil the obligation arising from the Agreement.

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

* + - * 1. an act of the public enemy or war (declared or undeclared), threat of war, revolution, riot, insurrection, civil commotion, demonstration or sabotage;
        2. an act of vandalism or accidental damage or destruction of machinery, equipment, track or other infrastructure;
        3. a natural disaster or phenomena, including extreme weather or environmental conditions (such as lightning, earthquake, hurricane, storm, fire, flood, drought or accumulation of snow or ice);
        4. nuclear, chemical or biological contamination, epidemic or pandemic (except for COVID-19 pandemic);
        5. strike, lockout or other industrial action other than involving the Consultant or the Client.
    1. “Global Project” as defined in the Preamble of the Agreement.
    2. “Good Industry Practice” means, in relation to the performance of any activity to which this standard is applied, the exercise of that degree of skill, diligence, prudence and foresight as would reasonably be expected to be exercised by a properly qualified and competent person engaged in carrying out the Services or services of a similar size, nature, scope, type and complexity, complying with the Applicable Laws.
    3. “Party” or “Parties” as defined in the above list of the parties to the Agreement.
    4. “Procurement Procedure” as defined in the Preamble of the Agreement.
    5. “Representatives” as enclosed in Annex E of this Agreement.
    6. “Services” means Master Design Services or Design Supervision Services or Detailed Technical Design services each separately, together or in respective parts.
    7. “Service Contract” – is a signed contract between the Parties based on the conditions of the Agreement for a service package(s). The Services are compiled of service packages as set in Clause 2.5 of the Agreement.
    8. “Signing Date” means the date on which this Agreement is signed by the Parties as indicated above or, if signed with secure electronic signature, the date indicated on the timestamp of the last signature of the Agreement.
    9. “Supplier’s Declaration” means Appendix 6[[1]](#footnote-2) to the Common Procurement Standards and Guidelines for the Rail Baltica Project.
    10. “Technical Specification” included in **Annex C** to this Agreement.
    11. “Variations” as defined in Section 7 of this Agreement.
  1. The following interpretation rules of the provisions of this Agreement shall apply:
     + 1. The headings contained in this Agreement shall not be used in its interpretation.
       2. References to the singular shall include references in the plural and vice versa and words denoting natural persons shall include any other Persons.
       3. References to a treaty, directive, regulation, law or legislative provision shall be construed, at any particular time, as including a reference to any modification, extension or re-enactment of the respective treaty, directive, regulation, law or legislative provision at any time then in force and to all subordinate legislation enacted from time to time.
       4. Unless expressly stated to the contrary, any reference in this Agreement to the right of consent, approval or agreement shall be construed such that the relevant consent, approval or agreement shall not be unreasonably delayed or withheld.
       5. A reference to “writing” shall include an e-mail transmission and any means of reproducing words in a tangible and permanently visible form.
       6. The words “include” and “including” are to be construed without limitation.
       7. Unless indicated otherwise, all references to “days” shall mean calendar days.
       8. Unless expressly stated to the contrary, any reference in this Agreement to the right of consent, approval or agreement shall be construed such that the relevant consent, approval or agreement shall not be unreasonably delayed or withheld.
  2. The Agreement contains the following Annexes:
     1. **Annex A:** minutes of negotiations between the Client and the Consultant;
     2. **Annex B:** explanations (clarifications) of the Procurement Procedure documentation;
     3. **Annex C:** the Procurement Procedure documents with the annexes (including the Technical Specification);
     4. **Annex D:** clarifications of the Consultant’s Proposal;
     5. **Annex E:** the Consultant’s Proposal.
     6. **Annex F**: Data Agreement.
  3. In the event of any discrepancy or inconsistency between the documents forming part of this Agreement, the following order of precedence shall apply:
     + 1. this Agreement document (body text);
       2. FIDIC White Book Form of Agreement for Design and Design Supervision Services for the Construction of the New Railway Line from Kaunas Urban Node to Polish State Border (General Conditions, Particular Conditions and the appendices therein) and FIDIC White Book Form of Agreement for Detailed Technical Services for the Construction of the New Railway Line from Kaunas Urban Node to Polish State Border (General Conditions, Particular Conditions and the appendices therein);
       3. minutes of negotiations between the Client and the Consultant;
       4. explanations (clarifications) of the Procurement Procedure documentation;
       5. the Procurement Procedure documents with the annexes (including the Technical Specification);
       6. clarifications of the Consultant’s Proposal;
       7. the Consultant’s Proposal.

1. Subject matter of the Agreement
   1. The subject matter of this Agreement is to define the terms and conditions to conclude Master Design and Design Supervision Services Contract and Detailed Technical Design Service Contract(s).
   2. Service Contract for Master Design and Design Supervision Services preparation of whole section as defined in Annex B shall be concluded within 30 (thirty) days after Framework Agreement Signing Date with the possibility to extend this term for additional 30 (thirty)days.
   3. The Services provision period for Master Design Services shall not exceed 24 (twenty- four) months and for Design Supervision Services - 36 (thirty-six) months, but not sooner than full acceptance of construction works. These periods may be amended under terms and conditions set in the Service Contract.
   4. The decision to sign Service Contract(s) for preparation of Detailed Technical Design shall be vested exclusively in the Client. The Consultant shall be notified separately by the Client’s representative regarding the decision to sign Detailed Technical Design Services Contract(s) during the validity period of the Framework Agreement, in accordance with the procedures set forth in Section 4 of this Agreement.
   5. To eliminate any confusion, the anticipated duration of Separate Service Contract(s) shall be:

|  |  |
| --- | --- |
| **Service Package** | **Duration of Service Contract** |
| * + - 1. Master Design       2. Design Supervision Services | 1. 24 (twenty-four) months after Service Contract commencement date), unless this term is amended under terms and conditions set in the Service Contract.  2. 36 (thirty-six) months, but not sooner than full acceptance of construction works. Period may amended under terms and conditions set in the Service Contract. |
| * + - 1. Detailed Technical Design | 3. To be specified in each Service Contract(s). |

* 1. The scope, terms, and conditions of Services shall be further defined in Master Design and Design Supervision Services Contract and Detailed Technical Design Service Contract(s) and their annexes.
  2. The Parties shall collaborate with each other to fulfil their respective obligations under this Agreement. The Parties shall make a reasonable effort to uphold positive working relationships amongst all personnel involved in this project.
  3. Each Party shall have an obligation to promptly notify the other Party in writing of any event or circumstances capable of impeding the proper or timely performance of its respective obligations under this Agreement.
  4. The Consultant shall have technical, financial, and legal resources proficient in communication both in English and when required, the Lithuanian language.

1. value and term
   1. Value of Services based on the Procurement Procedure:

|  |  |  |  |
| --- | --- | --- | --- |
| **No** | **Item** | **Number of units** | **Total Value (excl. VAT), EUR** |
| **1** | **Estimated Value for Master Design Services** | **1** | **25,547,690.52** |
| **2** | **Estimated Value for Design Supervision Services** | **1** | **3,052,309.71** |
| **3** | **Estimated Value for Detailed Technical Design Services** | **1** | **9,708,121.33** |
| **Total Estimated Value of Services (excl. VAT) (1+2+3): EUR 38,308,121.56** | | | |

* 1. The values for respective Services stated in the Agreement are estimated and not binding to the Client, nor does it compel the Client to acquire the Services in the complete scope of the Total Value or any Item in particular.
  2. The term of the Agreement is 96 (ninety-six) months starting on the Signing Date or until the full acceptance of construction works. The initial term can be extended in accordance with the procedures specified in regulatory enactments.

1. invitation(s) to sign Detailed Technical Design service contract
   1. The quantity and extent of the Detailed Technical Design Service Contract(s) shall be at the sole discretion of the Client and shall be based on Client’s demand, with no definite (promised) workload or overall value committed to.
   2. The Client submits an invitation to the Consultant to enter into Detailed Technical Design Service Contract(s) by sending a written Request to the Consultant to update the Proposal as well as any other relevant terms for Client’s re-evaluation.
   3. Upon receipt of the Request, the Consultant shall, within 10 (ten) Business days respond by sending its updated proposal to the Client, unless otherwise specified in the Request. The updated Proposal and unit rates therein may not exceed the Estimated Total Value or respective part of the Total Value provided in the Clause 3.1 of the Agreement, nor the unit rates for the respective services set in the Annex A: Consultant’s proposal.
   4. Negotiations on updated proposal, Detailed Technical Design Service Contract(s) conditions and other relevant details can be carried out before signing the Detailed Technical Design Service Contract(s).
2. sub-contractorS
   1. The Consultant may rely on the capabilities and capacity of other entities and on the services of those approved Sub-Contractors and Experts listed in the Consultants Proposal submitted during the Procurement Procedure. The Approved Key experts and Sub-Contractors list may, from time to time be modified or supplemented in agreement with the Client and in accordance with the terms and subject to the criteria contained in the Public Procurement Law of the Republic of Latvia.
   2. The Consultant must obtain prior written consent of the Client for the replacement of a Sub-Contractor or a Key expert on whose capacities the Consultant has relied on during the selection or evaluation stages of the Procurement (The Client is entitled to ask Sub-Contractor’s and Expert’s opinion regarding the reasons of replacement).
   3. Review and evaluation of the Sub-Contractors and Key experts provided by the Consultant shall be carried out, and the consent or refusal to give consent shall be rendered by the Client in accordance with the Public Procurement Law of the Republic of Latvia.
   4. The Consultant shall be held fully responsible for the proper performance of all of Sub-Contractors and Experts obligations under this Contract, and any act, failure to act, breach or negligence on the part of any of its approved Sub-Contractors and Key experts shall, for the purposes of this Agreement, be deemed to be the act, failure to act, breach or negligence of the Consultant.
3. Representations and Warranties
   1. Each Party represents and warrants to the other Party, as of the Signing Date, as follows:
      * 1. it has full power to enter into and perform this Agreement, and the person signing this Agreement on its behalf has been duly authorized and empowered to enter into such agreement;
        2. it has read this Agreement, understands it and agrees to be bound by it;
        3. it has entered into this Agreement with the aim of attaining all of the objectives and performing in all material respects all of the obligations and commitments herein set forth;
        4. it has entered into this Agreement without violating the Applicable Laws, its own articles of association, other constitutional documents, laws or agreements of any kind to which it is a party to;
        5. it is not bankrupt and is not the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, it is not in an arrangement with creditors, where its business activities are suspended, or it is in any analogous situation arising from a similar procedure under the laws of the country where it is registered and submits its tax accounts; and
        6. it has entered into this Agreement of its own volition and in good faith.
   2. The Consultant represents and warrants to the Client, as follows:
      * 1. it has all as of the Signing Date and will have for the entire term of the Agreement requisite resources, qualification, skills, and competence to perform the Master Design and Design Supervision Services and Detailed Technical Design services on the terms and conditions of this Agreement which are no less favorable than the terms and conditions of service identified by the Consultant in any document submitted by the Consultant to the Client as part of the Procurement Procedure and on the terms of the Consultant’s Proposal;
        2. it holds as of Signing Date and will hold for the entire term of the Agreement all requisite accreditations, recognitions, licenses, permits, approvals and consents necessary under the Applicable Laws to enable performance by Consultant of the Master Design and Design Supervision Services and Detailed Technical Design services;
        3. it will assign competent and duly qualified personnel to carry out Master Design and Design Supervision Services and Detailed Technical Design services according to the highest professional standards and the Good Industry Practices;
        4. it is not deemed to be a person associated with the Client for the purposes of the Applicable Laws;
        5. it is compliant with all of the requirements of the Supplier’s Declaration and will continue to be compliant with all such requirements during the term of this Agreement. Failure to do so constitutes a material breach of the Agreement;
        6. it does not fall under any of the exclusion grounds of the Procurement Procedure and the Public Procurement Law of the Republic of Latvia and will continue to be compliant with all such requirements during the term of this Agreement. Failure to do so constitutes a material breach of the Agreement;
4. variations
   1. In accordance with the terms of this Agreement, Variations may be initiated by either the Client or the Consultant. It is understood that any such variations must be agreed to in writing by the Client before they can be implemented. Variations in the Service Contracts shall be conducted as defined therein.
   2. Notwithstanding to the contrary, any Variations can only be carried out to the extent permitted by Public Procurement Law of the Republic of Latvia.
   3. To avoid any ambiguity, no variation shall be deemed valid or enforceable unless and until it is formally agreed upon and documented in writing by the Parties.
5. Communication AND CONTRACT EXECUTION
   1. All communication (key decisions, approvals, acceptances, instructions, variations requests, etc.) under the Agreement must be conducted in English, in written form (including electronic means), and shall be signed by or directed to the following addresses as specified in:

|  |  |  |
| --- | --- | --- |
|  | **The Client’s Representative** | **The Consultant’s Representative** |
| **Name, surname,**  **Title**  **Entity** | [.] | [.] |
| **Address** | [.] | [.] |
| **Email** | [.] | [.] |

* 1. For the avoidance of doubt, any person working for the Client and / or the Implementing Body may be appointed as the Client’s Representative.
  2. The Parties hereby agree that, under separate Client’s Representatives 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.

1. commencement date, SUSPENTION AND Termination
   1. This Agreement shall enter into force on the date of last signature.
   2. The Client may suspend all or part of the Agreement (to the extent determined by the Client) at its sole discretion and for any reason by giving a prior 30 (thirty) day written notice to the Consultant.
   3. The Agreement may be terminated fully or partly upon mutual agreement of all the Parties at any time. In such a case, the Parties shall agree on the consequences of the termination of the Contract.
   4. The Client upon its sole discretion has the right to terminate the Agreement unilaterally at any time by sending a written notice of termination to the Consultant in writing at least thirty (30) days in advance.
   5. If the Consultant is in material breach of the Agreement, the Client may give a written or e-mail notice to the Consultant outlining the breach and the remedy required under the Agreement. If the Consultant has not proceeded to remedy the breach within 14 (fourteen) Days after issuance of the respective notice, then the Client may terminate the Agreement with immediate effect unilaterally without resorting to arbitration, without incurring any negative consequences (including, without limitation, sanctions and other claims) by notifying the Consultant in a written form.
   6. Notwithstanding anything mentioned in the Agreement, the Client may, upon serving the Consultant 14 (fourteen) Days written or e-mail notice, terminate the Agreement in full or in part unilaterally without resorting to arbitration, without incurring any negative consequences for itself (including, without limitation, sanctions and other claims) in the following cases:
      * 1. The Consultant or a person who is the Consultant’s management board or supervisory board member, person with representation rights or a procura holder, or a person who is authorised to represent the Candidate in operations in relation to a branch, has been found guilty of or has been subjected to coercive measures for committing any of the following criminal offences by such a public prosecutor’s order regarding punishment or a court judgement that has entered into force and may not be challenged and appealed:
           1. establishment, management of, involvement in a criminal organisation or in an organised group included in the criminal organisation or other criminal formation, or participation in criminal offences committed by such an organisation,
           2. bribe-taking, bribery, bribe misappropriation, intermediation in bribery, unauthorised participation in property transactions, taking of prohibited benefit, commercial bribing, unlawful claiming of benefits, accepting and providing of benefits, trading influences,
           3. fraud, misappropriation or money-laundering,
           4. terrorism, terrorism funding, formation or organization of terrorist group, travelling for terrorism purposes, justification of terrorism, calling to terrorism, terrorism threats or recruiting and training a person in performance of acts of terrorism,
           5. human trafficking,
           6. evasion of taxes and similar payments.
        2. the Consultant has tax debts in Latvia or a country where it has been incorporated or is permanently residing, including debts of mandatory state social insurance contributions exceeding 150 euro in total in any of the countries.
        3. Consultant’s insolvency proceedings have been announced, the Consultant’s business activities have been suspended, the Consultant is under liquidation.
        4. a decision of a competent authority or a court judgment which has entered into force and may not be challenged and appealed, the Consultant has been found guilty of violating competition laws manifested as a horizontal cartel agreement, except for the case when the relevant authority, upon detecting violation of competition laws, has released the Consultant from a fine or has decreased the fine for cooperation within a leniency program.
        5. a decision of a competent authority or a court judgment, or a public prosecutor’s order regarding punishment, which has entered into force and may not be challenged and appealed, the Consultant has been found guilty of a violation manifested as employment of one or more persons who do not possess the required employment permit or if it is illegal for such persons to reside in a Member State of the European Union.
        6. a decision of a competent authority or a court judgment or a public prosecutor’s order regarding punishment which has entered into force and may not be challenged and appealed, the Consultant has been found guilty of a violation manifested as employment of a person without a written employment contract, by failing within the term specified in regulatory enactments to submit an informative employee declaration regarding this person, which must be submitted about persons, who start working.
        7. International or national sanctions or substantial sanctions by the European Union (EU) or the North Atlantic Treaty Organization (NATO) Member State affecting the interests of the financial and capital market has been imposed to the:
           1. Consultant or a person who is the Consultant’s management board or supervisory board member, beneficial owner, person with representation rights or a procura holder, or a person who is authorised to represent the Consultant in operations in relation to a branch,
           2. member of the partnership or a person who is the partnership’s management board or supervisory board member, beneficial owner, person with representation rights or a procura holder (if the Consultant is a partnership), and such sanctions can affect the execution of the Procurement contract.
        8. It turns out that falling within the scope of the public procurement Directives, as well as Article 10, paragraphs 1, 3, 6(a) to 6(e), 8, 9 and 10, Articles 11, 12, 13 and 14 of Directive 2014/23/EU, Article 7 and 8, Article 10 (b) to (f) and (h) to (j) of Directive 2014/24/EU, Article 18, Article 21 (b) to (e) and (g) to (i), Articles 29 and 30 of Directive 2014/25/EU and Article 13 (a) to (d), (f) to (h) and (j) of Directive 2009/81/EC, the Consultant including, where the Consultant account for more than 10 % of the contract value, sub-Consultants, suppliers or entities whose capacities are being relied on within the meaning of the public procurement Directives is:
           1. a Russian national, or a natural or legal person, entity or body established in Russia;
           2. a legal person, entity or body whose proprietary rights are directly or indirectly owned for more than 50 % by an entity referred to in point (a) of this paragraph; or
           3. a natural or legal person, entity or body acting on behalf or at the direction of an entity referred to in point (a) or (b) of this paragraph.
        9. The Consultant, its sub-Consultant, the legal or natural person whose capacity is relied upon, the manufacturer of the goods offered by the Consultant (including their components) is registered or the natural persons, controlling them, permanently reside in or have the citizenship of the states or territories, approved by the Decision Nr. 280, dated 30-03-2022 of the Government of the Republic of Lithuania as the territories to whom this ground for rejection is applied;
        10. the Client has no financing available for the Master Design or Design Supervision Services or Detailed Technical Design services, including, without limitation, where CEF co-financing for further financing of the Master Design or Design Supervision Services or Detailed Technical Design services (entirely or partly) is not available (including cases when CEF co-financing is insufficient in order to implement the Contract fully or partly);
        11. if Consultant is in breach with representations and warranties included in the Contract, and this specific breach can be considered as a material breach, namely, this specific non-compliance substantially prevents efficient provision of the Master Design and Design Supervision Services and Detailed Technical Design services and timely completion of the Global Project;
        12. in other instances, at the sole discretion of the Client based on objective reasons in relation to the implementation of the Global Project within set objectives and pursuant to global plans. The Client shall exercise this right honestly, reasonably and in good faith.
   7. If the Client is in material breach of the Agreement, the Consultant may give a notice to the Client outlining the breach (with a precise indication to the Agreement clause where the Client’s material breach is described) and the remedy required under the Agreement. If the Client has not proceeded to remedy the breach within fourteen (14) Days after the issue of the notice, then the Consultant may terminate the Agreement unilaterally with immediate effect without resorting to arbitration, without incurring any negative consequences (including, without limitation, sanctions and other claims) by notifying the Client in written form.
   8. If the Client is declared bankrupt and the Client's assets are not acquired by any other entity within the Global Project within ninety (90) Days, the Consultant shall be entitled to terminate the Agreement upon serving the Client fourteen (14) Days’ notice in written form.
   9. Where the Agreement have been suspended in full by the Client for more than, in aggregate, one hundred twenty (120) Days, either Party may terminate the Agreement with immediate effect by notifying the other Party in written form.
   10. The termination of this Agreement shall not in any way affect the validity or implementation of concluded Master Design or Design Supervision Services Contract(s) or Detailed Technical Design Services Contract(s) that were already signed by the Parties.
2. Liability

* 1. In case of either Parties’ breach or incorrect, false or misleading representation or warranty according to this Agreement, neither Party shall be liable for the loss of revenue, loss of profit or any incidental loss incurred by the other Party.
  2. The Consultant shall be fully liable for the activities, inactivity, infringement or negligence of the Sub-Contractors and Experts within the framework of this Agreement, and always shall keep the Client indemnified from and against all costs which the Client incurs or suffers because of any action, claim or proceedings by its Sub-Contractors or any other Experts.
  3. Terms and conditions on Parties’ liability under Service Contracts shall be defined therein.
  4. Notwithstanding anything to the contrary set forth in this Agreement, in no circumstances shall any Party be liable to the other Party or other relevant person for any loss of production, loss of profit, loss of revenue, loss of contract, liability incurred under other agreements or any indirect or consequential loss arising out of or in connection with this Agreement.
  5. Contractual Penalty:
     1. If the Consultant refuses or fails to sign the Master Design and Design Supervision Services Contract or Detailed Technical Design Service Contract(s) on the terms agreed in this Agreement the Client is entitled to request the Consultant to pay a contractual penalty in the amount of 10% (ten percent) of the Estimated Value for the respective part of the Services. In case the Consultant refuses or fails to sign the Master Design and Design Supervision Services Contract, the Client will be entitled to enforce bid security to cover part of the abovementioned penalty.
     2. The contractual penalties shall be applied upon the sole discretion of the Client under the Agreement considering the material consequences of the breach.
     3. Payment of the contractual penalty shall not release the Party from performance of any of its obligations under the Agreement.

1. Force Majeure
   1. Subject to the requirements set forth in accordance with Clauses 11.2 and 11.3, each Party shall be relieved from liability for non-performance of its obligations under this Agreement (other than any obligation to pay) to the extent that the Party is not able to perform such obligations due to a Force Majeure Event.
   2. Each Party shall at all times, following the occurrence of a Force Majeure Event:
      * 1. take reasonable steps to prevent and mitigate the consequences of such an event upon the performance of its obligations under this Agreement, resume performance of its obligations affected by the Force Majeure Event as soon as practicable and use reasonable endeavors in accordance with Good Industry Practice to remedy its failure to perform; and
        2. not be relieved from liability under this Agreement to the extent that it is not able to perform, or has not in fact performed, its obligations under this Agreement due to any failure to comply with its obligations under Clause 11.2(a).
   3. Upon the occurrence of a Force Majeure Event, the affected Party shall notify the other Party as soon as reasonably practicable and in any event within 10 (ten) business days of it becoming aware of the relevant Force Majeure Event. Such notification shall give sufficient details to identify the particular event claimed to be a Force Majeure Event and shall contain detailed information relating to the failure to perform (or delay in performing), including the date of occurrence of the Force Majeure Event, the effect of the Force Majeure Event on the ability of the affected Party to perform, the action being taken in accordance with Clause 11.2(a) and an estimate of the period of time required to overcome the Force Majeure Event. The affected Party shall provide the other Party with any further information it receives or becomes aware of which relates to the Force Majeure Event and provide an update on the estimate of the period required to overcome its effects.
   4. The affected Party shall notify the other Party as soon as practicable once the performance of its affected obligations can be resumed (performance to continue on the terms existing immediately prior to the occurrence of the Force Majeure Event).
   5. As soon as practicable after the notification specified pursuant to Clause 11.3, the Parties shall use reasonable endeavors to agree appropriate terms or modifications to the Services to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement.
2. Confidentiality
   1. “Confidential Information” means, in relation to the disclosing Party, all information of a confidential nature relating to the disclosing Party and its affiliates which is supplied by the respective the disclosing Party (whether before or after the date of this Agreement) to the receiving Party either in writing, orally or in any other form and includes all analyses, compilations, notes, studies, memoranda and other documents and information which contain or otherwise reflect or are derived from such information, but excludes information which:
      * 1. the disclosing Party confirms in writing is not required to be treated as confidential;
        2. the receiving Party can show that the Confidential Information was in its possession or known to it (by being in its use or being recorded in its files or computers or other recording media) prior to receipt from the disclosing Party and was not previously acquired by the receiving Party from the disclosing Party under an obligation of confidence; or
        3. was developed by or for the receiving Party at any time independently of this Agreement.
   2. The receiving Party shall (i) at all times keep confidential all Confidential Information received by it and shall not disclose such Confidential Information to any other person, and (ii) procure that its affiliates and its and their respective officers, employees and agents shall keep confidential and not disclose to any person any Confidential Information except with the prior written consent of the disclosing Party.
   3. Notwithstanding anything to the contrary set forth in accordance with this Section 12, the receiving Party shall, without the prior written consent of the disclosing Party, be entitled to disclose Confidential Information:
      * 1. that is reasonably required by the receiving Party in the performance of its obligations pursuant to this Agreement, including the disclosure of any Confidential Information to any employee, Consultant, agent, officer, Sub-Contractor (of any tier) or adviser to the extent necessary to enable the receiving Party to perform its obligations under this Agreement (subject to the same confidentiality undertakings by the recipients);
        2. to its lenders or their professional advisers, any rating agencies, or its insurance advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal (subject to the same confidentiality undertakings by the recipients);
        3. to the extent required by Applicable Law or pursuant to an order of any court of competent jurisdiction, any parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of law; or
        4. to the extent Confidential Information has become available to the public other than as a result of any breach of an obligation of confidence, provided that any such disclosure is made in good faith.
   4. Upon request of the disclosing Party, the receiving Party shall:
      * 1. return to the disclosing Party all of the Confidential Information then within the possession or control of the receiving Party; or
        2. destroy such Confidential Information using a secure and confidential method of destruction.
   5. Save as required by the Applicable Laws, the Consultant shall not issue any press release in relation to the matters contemplated under this Agreement without the prior written consent of the Client (such consent not to be unreasonably withheld or delayed) as to both the content and the timing of the issue of the press release.
   6. The Parties acknowledge and agree that a breach of the provisions of this Section 12 may cause the Client irreparable Damages that could not be adequately remedied by an action at law. Accordingly, the Consultant agrees that the Client is entitled to specific performance of those provisions to enjoin a breach or attempted breach thereof and to any other remedy, including, inter alia, damages and injunctive relief, awarded by a court of competent jurisdiction.
3. Right to Audit
   1. Notwithstanding anything to the contrary set forth in this Agreement, the Client itself, a reputable outside independent body or expert engaged and authorized by the Client is entitled to inspect and/or audit the Consultant to ensure compliance with the terms of this Agreement, including inspecting and/or auditing:
      * 1. the performance of any aspect of the Services; and/or
        2. any documentation, including all payrolls, accounts of the Consultant and/or other records used in or related to the performance of this Agreement and the Services.
   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 Section 13. 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.
   3. The rights and obligations of the Client set forth in accordance with this Section 13 shall survive expiration or termination of this Agreement for any reason and shall continue to apply during the period of 10 (ten) years following expiration or termination of this Agreement for any reason whatsoever.
4. personal data
   1. For the purpose of execution of this Agreement, the Parties might transfer to each other certain personal data, such as data on employees of the Parties, data on suppliers, the Global Project stakeholders and their employees etc. The Parties acknowledge that for the purpose of the Agreement each of the Parties most of the time shall act as controllers. The Party shall transfer the personal data to the other Party and such other Party shall process the personal data for the purposes of execution of the Agreement and other such purposes as required by Applicable laws. The Parties agree that except where the Party has a separate legal basis for processing the personal data referred to in the Applicable Laws governing the protection of personal data, the Party shall not process the personal data for any other purpose.
   2. Besides other obligations provided for in the Agreement, each of the Parties undertakes:
      * 1. to process the personal data to the minimum extent necessary;
        2. not to infringe any rights of the data subjects;
        3. to implement and apply proper organizational and technical measures ensuring the compliance with the requirements of the law;
        4. to ensure the compliance with other requirements of the law governing the protection of personal data.
   3. With respect to the personal data, if any, in relation to the performance of the Services, the Parties shall sign the Data Agreement simultaneously with the signing of the Assignment Order under which the Data Agreement might be relevant (for example, in case a relationship of data controller and data processor is established during the performance of the Agreement).
5. Governing Law and DISPUTE RESOLUTION
   1. This Agreement shall be governed by and construed in accordance with law of the Republic of Lithuania.
   2. The Parties shall first attempt to settle any dispute, controversy or claim arising out of or relating to this Agreement amicably through good faith debate, discussion, and negotiating prior to submitting them to arbitration.
   3. Unless settled amicably, any dispute shall be finally settled by international arbitration. Unless otherwise agreed by both Parties:
      * 1. All disputes arising out of or in connection with the present Agreement and Service Contracts 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 three arbitrators appointed in accordance with the said Rules;
        2. The dispute shall be settled according to the law governing the Agreement;
        3. The arbitration shall be conducted in English language;
        4. The place of arbitration shall be Stockholm, Sweden.
   4. 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.
   5. The Parties hereby represent and warrant that the English language is understandable for both Parties in accordance with Article 8(1)(a) of the Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) and repealing Council Regulation (EC) No 1348/2000.
6. Miscellaneous provisions
   1. The Parties hereby represent and warrant that the English language is understandable for all Parties in accordance with Article 8(1)(a) of the Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) and repealing Council Regulation (EC) No 1348/2000.
   2. Notwithstanding any penalties that may be enforced against the Consultant under the Applicable Laws, or the laws of other jurisdiction(s), the Consultant shall be deemed to have committed a breach under this Agreement and the Client is entitled to terminate this Agreement immediately and without any regard to the provisions of Clause 9.4, if it is shown that the Consultant is guilty of:
      * 1. offering, giving, receiving or soliciting anything of value with a view to influencing the behaviour or action of anyone, whether a public official or otherwise, directly or indirectly in the selection process or in the conduct of the Agreement; or
        2. misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Client, including the use of collusive practices intended to stifle or reduce the benefits of free and open competition.
   3. The relationship between the Consultant and the Client under this Agreement is that of independent Consultant. The Consultant (or the Approved Sub-Contractors) is not an employee of the Client, is not carrying out the regular business of the Client and is not subject to the same employment regulations as are applicable to employees of the Client. Each of the Parties shall be solely and entirely responsible for their own acts and the acts of their employees. No benefits, special considerations, or employer/employee-type provisions are provided by the Client to the Consultant, its employees, its consultants, or the employees of such consultants.
   4. If any provision of this Agreement shall be held to be illegal, invalid, void or unenforceable under the Applicable Laws, the legality, validity and enforceability of the remainder of this Agreement shall not be affected, and the legality, validity and enforceability of the whole of this Agreement shall not be affected.
   5. The Parties each bind themselves, their successors, legal representatives, and assigns to the other party to this Agreement and to the partners, successors, legal representatives and assigns of such other party in respect to all covenants of this Agreement. Neither Party shall assign or transfer its respective interest in the Agreement without written consent of the other Party, if not directly provided otherwise under the Agreement. This requirement shall not apply to conditions set forth in Clause 8.3 above.
   6. No amendment to or Variation of this Agreement shall be effective unless made in writing by duly authorized representatives of both Parties, if not provided otherwise herein. The Agreement can be amended in compliance with the provisions of the Public Procurement Law of the Republic of Latvia.
   7. This Agreement, and the Annexes hereto, constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes and extinguishes all and any prior drafts, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter.
   8. *This Agreement is executed as an electronic document*.

|  |  |  |  |
| --- | --- | --- | --- |
| 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*

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