AGREEMENT FOR IDENTIFICATION OF UNEXPLODED ORDNANCE AND GEOTECHNICAL WORKS IN FORMER CEKULE MILITARY AREA

between

RB Rail AS,

Ministry of Transport of the Republic of Latvia

and

[●]

Agreement registration number	**[●]**
CEF[1] Agreement No	**[●]**
Procurement procedure identification No	**RBR 2021/10**

Riga

2021

[1] Grant Agreement under the Connecting Europe Facility

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This AGREEMENT FOR IDENTIFICATION OF UNEXPLODED ORDNANCE AND GEOTECHNICAL WORKS IN THE FORMER CEKULE MILITARY AREA, together with all Annexes thereto, (the "Agreement") is entered into in Riga, on THE DATE INDICATED ON THE TIMESTAMP OF THE LAST SIGNATURE OF THE DOCUMENT (the "Effective Date") by and between:

RB Rail AS, a joint stock company registered in the Latvian Commercial Register registration No 40103845025, legal address at Krišjāņa Valdemāra iela 8-7, Riga, LV-1010, Latvia (the "Principal"), represented by **[●]** acting on the basis of **[●]**,

Ministry of Transport of the Republic of Latvia, registration No 90000088687, registered address at Gogoļa iela 3, Riga, LV-1050, Latvia (the "Beneficiary"), represented by RB Rail AS on the basis of [●], on the one side,

and

[●], a company organized and existing **[●]**, registration number with **[●]**, having its registered address at **[●]** (the "Contractor"), represented **[●]**, on the other side,

WHEREAS:

(A) this Agreement is entered into under the 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 according TSI INF P2-F1 criteria and European standard gauge (1435mm) on the route from Tallinn through Pärnu-Riga-Panevėžys-Kaunas to Lithuanian-Polish border, with the connection of Kaunas – Vilnius, and related railway infrastructure in accordance with the agreed route, technical parameters and time schedule;

(B) the Principal is acting as a Central Purchasing Body for the Beneficiary;

(C) the Principal has organised procurement procedure "IDENTIFICATION OF UNEXPLODED ORDNANCE AND GEOTECHNICAL IWORKS IN THE FORMER CEKULE MILITARY AREA" (identification No RBR **2021/10**) (the "Procurement Procedure") whereby the Contractor's tender proposal (the "Contractor's Proposal") was selected as the winning bid;

(D) this Agreement is co-financed from the Connecting Europe Facility (CEF), CEF Contract No **[●]**, Activity "**[●]**", Action No: **[●]**.

Section I. Definitions and Interpretation

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

1.2. *Interpretation.*

(a) The headings contained in this Agreement shall not be used in its interpretation.

(b) References to the singular shall include references in the plural and vice versa, words denoting a gender shall include any other gender where the context requires, and words denoting natural persons shall include any other Persons.

(c) References to a treaty, directive, regulation, law or legislative provision shall be construed, at any particular time, as including a reference to any modification, extension or re-enactment of the respective treaty, directive, regulation, law or legislative provision at any time then in force and to all subordinate legislation enacted from time to time.

(d) In the event there arises a conflict between provisions of the Agreement, the last provision to have been written chronologically shall take precedence.

(e) Any reference in this Agreement to a Person acting under the direction of another Person shall not include any action that is taken in contravention of any Applicable Law or Standards, unless the relevant Person can demonstrate that an explicit instruction or direction was given to take the relevant action.

(f) Unless expressly stated to the contrary, any reference in this Agreement to the right of consent, approval or agreement shall be construed such that the relevant consent, approval or agreement shall not be unreasonably delayed or withheld. The Parties agree and acknowledge as follows:

(i) neither Party shall be required to seek or apply for any consent, approval or agreement by any Person which would place the respective Party in breach of the Applicable Law or any Good Industry Practice; and

(ii) nothing in this Agreement shall require the Principal to give or procure the giving of any consent or approval which would be contrary to the protection, safety and efficient operation of the Railway and the Project.

(g) A reference to "writing" shall include an e-mail transmission and any means of reproducing words in a tangible and permanently visible form.

(h) The words "include" and "including" are to be construed without limitation.

(i) Unless indicated otherwise, all references to "days" shall mean calendar days.

(j) The words in this Agreement shall bear their natural meaning, except for any Definitions in accordance with *Annex A: Definitions and common terms.*

1.3. *Order of Precedence*. In the event of any discrepancy or inconsistency between the documents forming part of this Agreement, the following order of precedence shall apply:

(a) this Agreement document;

(b) explanations (clarifications) of the procurement documentation;

(c) Procurement documents with the annexes (including Technical specifications);

(d) clarifications of the Contractor's Proposal;

(e) Contractor's Proposal;

(f) all other Annexes of the Agreement.

Section II. General terms and conditions

2.1 *Commencement.* The provision of the Services shall commence at the Commencement Date upon the Principal signing the Commencement Deed. The Contractor within twenty (20) days following the Effective Date shall submit to the Principal:

(a) Insurance policy or the certificate in compliance with Clause 10.8; and

(b) Performance Bond in compliance with Clause 10.17.

The Principal shall review and approve the above-mentioned documents and their compliance with the terms of the Agreement within five (5) Working Days after receipt of the mentioned documents and any additional information which may be requested by the Principal to verify their compliance with the Agreement, if any. If the submitted documents comply with the terms of the Agreement, the Principal shall sign the Deed of Commencement.

For the avoidance of doubt, the Agreement is effective upon the Effective Date, however, the Contractor shall be entitled to provide the Services only upon the Commencement Date. The Principal upon its sole discretion shall be entitled to extend the term for submission of the documents under Clause 2.1 if the Contractor has not submitted the documents due to objective reasons. In such circumstances, no separate amendments to the Agreement are required. If the Contractor fails to submit the documents within twenty (20) days following the Effective Date, or a different date if the Principal upon its sole discretion has extended the submission deadline, as per Clause 2.1 the Agreement shall be annulled by revocation, as if it had never existed.

2.2 *Engagement*. Upon the Commencement Date the Principal hereby engages the Contractor to provide and perform the Services for the purposes of the Project, as further described and according to the specifications contained *Annex B: Technical Specification* to this Agreement, and the

Contractor hereby accepts such engagement. The Services shall result in the provision to the Principal of the Deliverables identified in accordance with *Annex C: Schedule **of** Services* to this Agreement.

2.3 *Additional investigation points.* Considering the nature of the Services, the Principal has envisaged that there may arise a need for geotechnical investigation in additional investigation points as further described under Section 5 of *Annex B: Technical Specification*. This geotechnical investigation in additional investigation points will be performed on an on-demand basis as deemed necessary by the Principal for the Fee provided under *Annex H: Contractor's Proposal*. In such circumstances, no separate amendments to the Agreement are required. The Principal shall be entitled to request the geotechnical investigation in additional investigation points within one (1) week from the Commencement Date.

2.4 *Co-Operation of the Parties*. The Parties shall cooperate with one another to fulfil their respective obligations under this Agreement. The Parties shall endeavour to maintain good working relationships among all key personnel engaged toward provision of the Services.

2.5 *Licensing Requirements*. By signing this Agreement, the declaration is made by the Contractor that the Contractor is professionally qualified, registered, authorized and licensed to provide the Services in accordance with the Applicable Law.

2.6 *General Obligations of Contractor*. The Contractor shall be responsible for the professional quality, technical accuracy, and coordination of all concepts, reports, specifications, and other services furnished under this Agreement. The Contractor shall have an obligation, without additional compensation of any kind, to correct or revise any errors, deficiencies, or omissions in concepts, programming, reports, designs, drawings, specifications, estimates, and other services rendered hereunder and forming part of the Services.

2.7 *Acceptance Not a Waiver*. The Principal's review, approval, acceptance, or payment for the Works forming part of the Services shall not be interpreted or construed to operate as a waiver of any right or cause for action arising out of the Contractor's performance of any Works under this Agreement. The Contractor shall remain liable to the Principal as allowed under this Agreement and under Applicable Law for any and all costs and/or Damages caused by the Contractor's negligent performance of any of the Works and Services furnished under this Agreement.

2.8 *Total Value*. The total value of the Services provided under the Agreement shall not exceed EUR **[●]**.

2.9 *Term and termination*. The term for the provision of the Services is identified under *Annex C: Schedule of Services*, but in any case shall not exceed twelve (12) months starting from the Commencement Date. The Agreement terminates once the Parties have fulfilled their contractual obligations arising out of this Agreement.

2.10 *Representatives*. The Contractor and the Principal shall appoint an officer, employee or individual to serve as its authorized representative toward supply or receipt of the Service or any part thereof (including, but not limited to, the issuance or confirmation of the Deed of Acceptance, Objection Notice), with full authority to act on its behalf in connection with this Agreement, without the rights to conclude amendments or variations to the Agreement (the "Representative"), the initial Representatives having been identified by *Annex I: Representatives*. Any other restriction placed by either Party on its Representative's authority shall be notified to the other Party in writing to be effective. The Representatives may delegate their authority by notice in writing specifying the identity of the delegate and specifying the scope of authority so delegated.

2.11 *Replacements*. The Contractor and the Principal may replace or remove any Representative by notifying in writing the other Parties following Clause 18.3. immediately, but not later than one (1) Working Day before the replacement or the removal of the respective Representative. In such circumstances, no separate amendments to the Agreement are required.

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

2.13 *Variations Scope*. For the purpose of the Agreement, and at any time prior to the completion of the Services under the Agreement Variations may be issued in respect of:

(a) amendments to the Agreement or any part thereof to comply with the amendments or adjustments to the Applicable Laws from time to time, if any;

(b) amendments to *Annex B: Technical Specification* to comply with any requirements (mandatory or optional) of the state or municipal authorities or institutions of the Republic of Latvia, which are entitled to issue decrees, instructions or recommendations with respect to the Service provision during the Project implementation;

(c) supply of additional Services not previously foreseen under the Agreement;

(d) provisions of the Agreement, which prescribe the conclusion of Variations;

(e) implementation of any amendments to the Agreement as initiated or approved by the Principal during the provision of the Services during the Project implementation which are necessary due to such reasons which the Principal or the Beneficiary could not foresee in advance, including, but not limited to matters under sub-Clauses 2.13 (a)-(e).

2.14 *Limitations to the Variations.* In case of Variations due to supply of additional Services not previously foreseen under the Agreement, or due to reasons which the Principal or the Beneficiary could not foresee in advance under, the total value of the Agreement may not change by more than fifty percent (50%) in accordance with the fourth paragraph of the Section 61 of the Public Procurement Law of the Republic of Latvia.

2.15 *De minimis.* Notwithstanding anything to the contrary contained in the Agreement, the Contractor and the Principal may agree on the supply of additional Services not previously foreseen under the Agreement if they do not change the nature of the Agreement (type and purpose specified herein) and if the total value of such additional Services does not concurrently reach the thresholds specified by the Cabinet of Ministers of the Republic of Latvia, starting from which the agreement notice must be published in the Official Journal of the European Union and ten percent (10%) of the total value of the Agreement.

2.16 *Variation Fee.* Fee for additional services as a result of Variations, if any, shall be determined taking into account the calculations under *Annex H: Contractor's Proposal,* unless the Parties have agreed otherwise. Furthermore, such fee shall be consistent with the market practice and proportionate to the Fee for Services with similar scope under the Agreement, if any.

Section III. Responsibilities of Principal

3.1. *Supply of Information.* Unless otherwise provided under this Agreement, the Principal shall, in a timely manner, provide to the Contractor any information regarding requirements and parameters of the Project, as may reasonably be requested by the Contractor for the purposes of the Services, provided that the Principal is in possession of such information.

3.2. *Review of Documentation.* The Principal shall examine Documentation as may be submitted by the Contractor for review by the Principal toward partial completion of the Services and, upon request of the Contractor, shall render decisions and opinions pertaining thereto.

3.3. *Decisions.* On all matters properly referred to it in writing by the Contractor the Principal shall give its decision in writing so as not to delay the Services and within a reasonable time.

3.4. *Accounting and Auditing Services.* The Principal shall furnish accounting and auditing services as may be necessary for the Services as the Principal may require to ascertain how and/or for what purposes the Contractor has used the funds paid under the terms of this Agreement.

3.5. *Action Upon Becoming Aware of Defects.* In the event the Principal observes or otherwise becomes aware of any error, fault, omission, or defect in the Services or non-conformance of any action forming part of the Services, the Principal shall give prompt notice thereof to the Contractor. The Contractor shall have the obligation to correct such error, fault, omission, or defect in the Services or non-conformance of any action forming part of the Services.

Section IV. Responsibilities of Contractor

4.1. *Standard of Performance*. The Contractor's services shall be performed as expeditiously as is consistent with professional skill and care, orderly progress of the Services, and in accordance with the schedule of Services set forth in accordance with *Annex C: Schedule of Services*.

4.2. *Obligation to Act in Accordance with Principal's Comments*. In performing the Services, the Contractor shall have due regard to any comments made by the Principal in connection with any review of the Documentation or information furnished by the Principal and shall provide reasons to the Principal where it does not take into account any such comments.

4.3. *Deliverable Requirements and Language*. The Contractor may be required by the Principal to provide copies of prints or electronic editions of the Deliverables. Contractor shall procure that each Deliverable shall be submitted to the Principal both in the English language and the Latvian language and such obligation to provide the bilingual Deliverable shall be already included in the Fee and will not result in additional fees or compensation of Costs to the Principal.

4.4. *Cooperation with stakeholders.* The Contractor undertakes to cooperate with all the relevant stakeholders, including but not limiting the relevant stakeholders mentioned under *Annex B: Technical Specification*, of the Principal that are directly or indirectly involved in the Project as will be necessary for the sufficient provision of the Services and the fulfilment of the objectives set out in the Agreement.

4.5. *Duty of Care and Exercise of Authority*. The Contractor shall:

(a) in performing its obligations under this Agreement, exercise reasonable professional skill, diligence and care as may be expected of a properly qualified and competent person carrying out services of a similar size, nature, type and complexity;

(b) ensure that its personnel are properly qualified and competent in accordance with the relevant Standards;

(c) ensure that all maps, drawings, plans, specifications, estimates, surveys and other documents and information required to be prepared or submitted by the Contractor under this Agreement conform to Good Industry Practice generally acceptable at the time of submission of such maps, drawings, plans, specifications, estimates, studies, documents and information;

(d) at all times during the term of the Services, ascertain and comply with all Applicable Laws and health and safety standards of the Republic of Latvia, the European Union and Good Industry Practice;

(e) comply, where applicable, with any reasonable requirements of the Principal not otherwise provided for in this Agreement;

(f) ensure that all documents and information is furnished in accordance with Good Industry Practice, and using conventional industry quality control methods; and

(g) notify the Principal of any Defects in accordance with Clause 7.3 of this Agreement as soon as such Defects are identified by the Contractor;

(h) mobilize materials and equipment or any parts thereof provided by the Contractor which shall be of good quality and workmanship and fit for the intended purpose where a purpose is defined in the Agreement or, where no such purpose is defined, fits for its ordinary purpose;

(i) provide all necessary management, supervision, materials and equipment, plant, consumables, facilities and other things wheter of a temporary or permanent nature, so far as the necessity for providing the same is specified in or reasonably to be inferred from the Agreement.

4.6. *Maintenance of Records*. During the term of the Agreement and during ten (10) years from expiration or termination of this Agreement for any reason whatsoever, the Contractor shall keep and maintain clear, adequate and accurate records and Documentation evidencing, to the reasonable satisfaction of the Principal, that the Services has been and is being carried out in accordance with the Standards. In case of on-going audits, appeals, litigation or pursuit of claims concerning the grant, including in the case of correction of systemic or recurrent errors, irregularities, fraud or breach of obligations, the records shall be kept and maintained longer.

4.7. *Access to Documentation.* At all times during the term of the Agreement, the Beneficiary and/or the Principal shall have access to all Documentation. This access shall be continuing and survive the termination of this Agreement for either cause or convenience. The Documentation shall be kept in a generally recognized format for a period of ten (10) years from the date of expiration or termination of this Agreement. All records forming part of the Documentation shall be available to the Beneficiary and/or Principals` auditor, or expert appointed by the Beneficiary and/or Principal during the period of time specified in accordance with this Clause 4.7.

4.8. *Sub-Contractors and Staff.*

4.8.1. *Sub-Contracorst and Staff.* In carrying out the Services, the Contractor may only rely on the services of those Approved Sub-Contractors and Approved Staff listed in *Annex E: List of approved Sub-Conractors and Staff*, as such list may, from time to time, be modified or supplemented in agreement with the Principal and in accordance with the terms and subject to the criteria contained in the applicable Public Procurement Law of the Republic of Latvia. Parties shall specify the name, contact details and legal representative(s) of each Approved Sub-Contractor as of the Effective Date in *Annex E: List of approved Sub-Conractors and Staff.* The Contractor shall have an obligation to notify the Principal in writing of any changes to *Annex E: List of approved Sub-Conractors and Staff* occurring during the term of this Agreement and of the required information for any new sub-contractors or staff member which it may subsequently engage toward provision of the Services.

Pursuant to the Public Procurement Law of the Republic of Latvia the Contractor shall obtain prior written consent of the Principal for the replacement of each Approved Sub-contractor or each Approved Staff member, or each key personnel indicated in *Annex E: List of approved Sub-Conractors and Staff* and involvement of additional sub-contractors or staff members, or key personnel.

Review and evaluation of the replacement of Approved Sub-contractors or Approved Staff shall be carried out, and the consent or refusal to give consent shall be rendered by the Principal in accordance with Article 62 of the Public Procurement Law of the Republic of Latvia.

The Contractor shall replace the Sub-contractor and/or Staff member which, during the effectiveness of this Agreement, meets any of the compulsory grounds for exclusion of tenderers (or sub-contractors) that were verified during the Procurement Procedure.

4.9. *Responsibility for Performance by Sub-Contractors and Staff.* The Contractor shall retain the complete responsibility for the proper performance of all of its obligations under this Agreement, and any act, failure to act, breach or negligence on the part of any of its Approved Sub-Contractors and Approved Staff shall, for the purposes of this Agreement, be deemed to be the act, failure to act, breach or negligence of the Contractor. No subcontract shall bind or purport to bind to Principal. Nevertheless, the Contractor shall ensure that any Approved Sub-Contractor and Approved Staff shall be bound by and observe the provisions of the Agreement in so far, they apply to the respective Approved Sub-Contractor and Approved Staff.

4.10. *No Conflicting Activity.* Except with the Principal's knowledge and express written permission, the Contractor shall not engage in any activity, or accept any employment, other agreement, interest, or contribution that would reasonably appear to compromise the Contractor's professional judgment and performance with respect to the Services and/or the Project. In performing the Services, the Contractor shall take all necessary measures to prevent any situation where the impartial and objective implementation of the Services is compromised for reasons involving economic interest, political or national affinity, family or emotional ties or any other shared interest.

4.11. *Attendance of Meetings and presence at the Principal.* To the extent necessary to ensure smooth and efficient provision of the Services, the Contractor shall, at the Principal's request, hold and/or attend meetings with the Principal, relevant stakeholders or any other third parties, at which appropriate personnel of the Contractor and the Principal and the Representatives of each Party shall be present. Upon the Principal`s request the Contractor shall record all meetings (also online meetings) between Parties and prepare meeting reports within five (5) Working Days after each meeting. All meeting reports shall be harmonized by Principal.

4.12. *Compliance with Laws.* The Contractor shall review the Applicable Laws that is applicable to the Services. In carrying out any activities forming part of the Services, the Contractor shall, at all times,

ensure compliance with requirements imposed by supra-national and/or governmental authorities having jurisdiction over the Project.

4.13. *Information Furnished by Principal*. The Contractor shall be entitled to rely on the accuracy and completeness of services and information furnished by the Principal. The Contractor shall provide prompt written notice to the Principal if the Contractor becomes aware of any errors, omissions, or inconsistencies in the information provided by the Principal or in the preparation or provision of Services or information.

4.14. *Certain Negative Covenants*. In performing the Services, the Contractor undertakes not to procure goods or services of any kind from any person meeting any of the following criteria:

(a) the Person who is a member of the Management Board or Supervisory Board of an Approved Sub-Contractor or procurator of an Approved Sub-Contractor, or is authorised to represent or act on behalf of an Approved Sub-Contractor with respect to any activity related to any subsidiary company of such Approved Sub-Contractor, and such Person has been accused of commitment of any of the following criminal offences pursuant to an order issued by a public prosecutor or was found to be guilty of commitment of any of the following criminal offences in accordance with a court judgment that has entered into legal force, is non-disputable and non-appealable:

(i) formation, organisation, leading or involvement in the criminal organisation or another criminal formation, or participation in the criminal acts of such organisation or formation;

(ii) accepting a bribe, giving of a bribe, misappropriation of a bribe, intermediation toward giving or taking of a bribe, acceptance of a prohibited benefit or commercial bribing;

(iii) fraud, misappropriation of funds or money laundering;

(iv) tax evasion or evasion of payments equivalent to tax;

(v) terrorism, financing of terrorism, instigation of acts of terrorism, terrorist threats or recruitment and training of a person with the aim of committing acts of terrorism;

(vi) human trafficking;

(b) the Person has, by decision of a competent authority or judgment of a court which has entered into legal force and is non-disputable and non-appealable, been found guilty of violation of labour law in any of the following manners:

(i) employment of one or more citizens or nationals of countries who are not citizens or nationals of a Member State of the European Union and are residing in the territory of a Member State of the European Union unlawfully;

(ii) employment of one or more persons without having entered into written employment agreement with such persons, or without having submitted an employee declaration with respect to such persons within a period of time stipulated in accordance with applicable laws and regulations applicable to persons that enter into salaried employment;

(c) the Person who, by decision of a competent authority or in accordance with judgment of a competent court which has entered into legal force, is non-disputable and non-appealable, has been held guilty of violation of applicable rules of competition law manifested as a vertical agreement aimed at restricting the ability of one or more purchasers to determine the resale price, or a horizontal cartel agreement, with the exception of instances where the relevant authority, upon having established the fact of violation of applicable rules of competition law, has discharged the candidate or participant in a tender offer from imposition of a fine or has reduced the amount of fine as a part of co-operation leniency programme;

(d) the Person who has insolvency proceedings initiated against it (except in the circumstances where a bailout or a similar set of measures are applied within the insolvency proceedings and are aimed at preventing the bankruptcy and restoring the debtor back to solvency, in which case the Contractor shall evaluate the possibility of participation by such Person in performing the Services), economic activity of the Person has been suspended or discontinued,

bankruptcy proceedings have been initiated against the Person or the Person is subject to a liquidation;

(e) the Person has unpaid tax indebtedness in the country where the procurement is organised or in the country where the Person is registered or permanently residing as a tax payer, including the indebtedness with respect to State social insurance contributions, in the total amount exceeding EUR 150 in each individual country; in such case, the Contractor can, within its sole discretion, prompt the Approved Sub-Contractor to pay or discharge all outstanding tax indebtedness within ten (10) Working Days and, upon such payment or discharge, allow the Person to continue performance of the Services;

(f) the Person is an entity registered offshore;

(g) International or national sanctions or substantial sanctions by the European Union or the North Atlantic Treaty Organization Member State affecting the interests of the financial and capital market has been imposed to the Person and such sanctions can affect the execution of the Contract; and

(h) any of the above-mentioned criteria shall apply to all members of a group of persons if the Person is a group of persons.

4.15. *Visibility Requirements*. At all times during performance of the Services, the Contractor undertakes to comply with each of the following requirements:

(a) any report, brochure, document, or information related to the Services conducted to the Principal and the Beneficiary by the Contractor or any other Person, or which the Contractor makes publicly available shall include each of the following:

(i) a funding statement which indicates that the Services is financed from CEF funds substantially in the following form: "Co-financed by the Connecting Europe Facility of the European Union";

(ii) with respect to printed materials, a disclaimer releasing the European Union from liability with respect to any contents of any distributed materials substantially in the form as follows: "The sole responsibility of this publication lies with the author. The European Union is not responsible for any use that may be made of the information contained therein". The disclaimer in all official languages of the European Union can be viewed on the website https://ec.europa.eu/inea/connecting-europe-facility/cef-energy/beneficiaries-info-point/publicity-guidelines-logos; and

(iii) the flag of the Council of Europe and the European Union.

(b) the requirements set forth in Clauses 4.15(a)(i)and 4.15(a)(iii) of this Agreement can be complied with by means of utilizing the following logo:

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

in the event the Contractor decides to utilize the above logo, the Contractor shall ensure that the individual elements forming part of the logo are not separated (the logo shall be utilized as a single unit) and sufficient free space is ensured around the logo; and

(c) in order to comply with the latest applicable visibility requirements established by the European Union, the Contractor shall regularly monitor changes to visibility requirements; as of the Effective Date, the visibility requirements are available for review on the webpage https://ec.europa.eu/inea/connecting-europe-facility/cef-energy/beneficiaries-info-point/publicity-guidelines-logos.

4.16. *Reporting*. The Contractor shall, in a format and at intervals to be agreed with the Principal:

(a) provide the Principal with regular reports and status updates on the progress of the Works.

(b) report on any changes to the Annexes of this Agreement, including but not limited to Services Schedule, which the Contractor considers may be needed in order to fulfil the objectives set out in the Agreement; and

(c) use reasonable endeavours to provide any other information and status updates as may be reasonably requested by the Principal at any time.

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

4.17. *Health and safety obligations.* The Parties acknowledge and the Contractor consents that the Works to be provided as a part of the Services under the Agreement are related to potentially contaminated areas contaminated with military explosive objects and unexploded ordnance and thus pose a high risk to the life, safety and health of the persons related to the performance of the Works, and therefore the Contractor shall:

(a) ensure full compliance of the Works with all applicable health and safety regulations of the Applicable Law and obligations of the Agreement (also ensure and be responsible for complying with regulations that under particular Applicable Laws fall under the responsibility of the Principal or the Beneficiary), including, but not limited to – appoint a work health and safety coordinator. The Contractor shall keep the Principal and the Beneficiary harmless of any claims from any Person, including, but not limited to, state or municipal institutions that are in charge of controlling the compliance of the Works with work safety regulations;

(b) bear the responsibility and be solely liable for the life, health and safety of all persons on the site and other places where the Works are being executed (including, but not limited to, the Contractor`s personnel, Approved Sub-Contractors and Approved Staff). Furthermore, the Contractor shall keep the Principal and the Beneficiary harmless of any claims from such Persons or any third party made towards the Principal or the Beneficiary in relation to any harm which may have occurred to the life, health and safety of the persons being involved in the performance of the Works;

(c) comply with all instructions or directives issued by the relevant state or municipal authorities or the Principal`s health and safety officers;

(d) take care of the health and safety of all persons on the site and other places (if any) where the Works are being performed;

(e) keep the site, Works (and the other places (if any) where the Works are being executed) clear of unnecessary obstruction so as to avoid danger to all persons on the site and other places where the Works are being executed;

(f) implement and duly maintain during the provision of Works a health and safety management system for all Persons the Contractor has involved in the performance of Works (including, but not limited to the Contractor`s personnel, Approved Sub-Contractors and Approved Staff), compliant with "Plan", "Do", "Check", "Act" approach, which shall include and ensure at least the following:

(i) risk assessment for all activities carried out within the scope of Agreement;

(ii) safety instructions for the Works under the Agreement;

(iii) qualifications, orientation and training;

(iv) provision of safe working environment including necessary equipment, safety equipment and individual protection equipment;

(v) hazard and incident control, reporting and investigation. For the purpose of the Agreement all hazards and incidents identified by the Contractor shall be notified to the Principal;

(vi) the functionality of health and safety risk mitigation plan for all hazards or incidents identified during the investigation. For the purpose of the Agreement the Contractor shall inform the Principal on the status of the health and safety risk mitigation plan upon the Principals request;

(vii) compliance with the reasonable guidelines and requirements of the Principal.

Section V. Representations and Warranties

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

(a) it has entered into this Agreement with the aim of attaining all of the objectives and performing in all material respects all of the obligations and commitments herein set forth;

(b) it has entered into this Agreement without having any intention or goal whatsoever to violate the Applicable Law, its own Articles of Association, other constitutional documents, laws or agreements of any kind to which it is a party;

(c) it is not bankrupt and is not the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, it is not in an arrangement with creditors, where its business activities are suspended, or it is in any analogous situation arising from a similar procedure under the laws of the country where it is registered and submits its tax accounts; and

(d) it has entered into this Agreement of its own volition and in good faith.

5.2 *Certain Representations and Warranties by Contractor.* The Contractor represents and warrants to the Principal, as of the Effective Date, as follows:

(a) it has all requisite qualification, skills and competence to perform the Services on the terms and conditions of this Agreement which are no less favourable than the terms and conditions of service identified by the Contractor in any document submitted by the Contractor to the Principal as part of the Procurement Procedure and on the terms of the Contractor's Proposal;

(b) it holds all requisite licenses, permits, authorizations, approvals and consents necessary to enable performance by the Contractor of any Works forming a part of the Services according to the specifications contained in this Agreement and *Annex B: Technical Specification*;

(c) it has all requisite ability to ensure the highest quality of the Services;

(d) it will assign competent and duly qualified personnel indicated in the tender proposal to carry out the Works set out in this Agreement according to the tender proposal and applying the highest professional Standard and Good Industry Practice. Moreover, whereby the Applicable Laws for the performance of any Works forming a part of the Services requires the personnel to obtain a special certificate, license, permit, authorization, qualification, the respective personnel assigned by the Contractor for the performance of such Works shall be duly certified following the Applicable Laws;

(e) it is not deemed to be a person associated with the Principal for the purposes of Applicable Law;

(f) it has been registered as a VAT payer in **[●]**;

(g) it is compliant with all of the requirements of the Contractor's Declaration contained in *Annex G: Declaration of Contractor* and will continue to be compliant with all such requirements during the term of this Agreement;

(h) [OPTIONAL] the income mentioned in this Agreement will not derive through permanent establishment or fixed base maintained by the Contractor in the Republic of Latvia. The Contractor agrees to submit to the Principal four (4) copies of *"Residence Certificate– Application for Reduction of or Exemption from Latvian anticipatory taxes withheld at source from payments (management and consultancy fees, leasing fees and certain other types of income), paid to residents of the* **[●]**;*"(the "Residence Certificate")* confirmed by Competent Authority of the **[●]**; and the Latvian State Revenue Service. The Residence Certificate shall be submitted to the Principal prior the Principal will due to make a payment of the fee or other payments to the Contractor. Otherwise the Principal will withhold withholding tax at the rate of 20% from the Fee and payments made to the Contractor. The Principal is entitled to make any deductions from the payments due to the Contractor if the Contractor doesn't comply with this provision; and

(i) it will immediately arrange for engagement of supplemental personnel when necessary at the cost of the Contractor. For the avoidance of any doubt, the engagement of supplemental personnel shall not require approval by the Principal, provided that the personnel complies with the Applicable Law, including the Public Procurement Law of the Republic of Latvia, and this Agreement;

(j) it will comply with all applicable health and safety regulations of the Applicable Law and obligations of the Agreement, in particular the requirements under Clause 4.17.

Section VI. Fee and Payment

6.1 *Fee*. In consideration of provision of the Services, the Beneficiary undertakes to pay the Contractor a Fee in the total amount set forth in accordance with *Annex D: Fee and Payment Schedule* (the "Fee") which shall be split into separate instalments and be payable by the Beneficiary to the Contractor according to the payment schedule set forth in *Annex D: Fee and Payment Schedule*. It is acknowledged and agreed by the Parties that the Fee shall include all Costs and expenses incurred by the Contractor and Approved Sub-Contractors toward performing the Services. The Fee specified in accordance with this Clause 6.1 excludes value added tax that will be charged at the rate applicable in accordance with Applicable Law at the time of invoicing.

6.2 *Invoicing*. According to *Annex D: Fee and Payment Schedule* and following each Completion Date, provided that the Principal has accepted/approved the particular Deliverable of the Services which the invoice is related to, the Contractor shall deliver to the Principal an invoice specifying the amount of the Fee payable and the period of time with respect to which the Fee is payable. In the event the Principal objects to payment of any amount claimed by the Contractor in the invoice, notice in the form chosen by the Principal to this effect shall be given by the Principal to the Contractor not later than seven (7) days before the due date for payment under this Clause 6.3. This notice of objection shall state the amount to be withheld, the grounds for withholding the payment and the basis on which that amount is calculated. Unless such notice of objection is made by the Principal, the amount to be paid is that stated in the invoice which shall become due and payable in accordance with this Agreement. For the avoidance of any doubt, the Beneficiary shall not be required to pay any amount under this Agreement with respect to any part of the Services that has not been accepted by the Principal in accordance with Clauses 7.4, 7.5, 7.6 and 7.7 of this Agreement.

6.3 *Payment*. Subject to the provisions of Clause 6.2, the Beneficiary reserves the rights to make the payments to the Contractor with set-off, retention, counterclaim, abatement or other deduction of any kind that arises from this Agreement and from the obligations of the Contractor provided herein (i.e. in cases of accrued contractual penalty amounts, in case if the Principal haven't received residence certificate as stipulated in this Agreement, etc.). If the Beneficiary uses the right to make the payments to the Contractor with set off, retention, counterclaim, abatement or other deduction of any kind, then the Principal so notifies to the Contractor no later than on the date of the respective payment stating the amount, the grounds and the basis on which the Beneficiary uses its right to set off, retention, counterclaim, abatement or other deduction or other right. Invoices shall be paid within sixty (60) days after the date of issue of the invoice. For the avoidance of any doubt, and save for the Advance Payment, the Beneficiary shall not be required to pay any amount with respect to any invoice in the absence of a Deed of Acceptance duly signed by the Principal taking into account that the Services shall be accepted by the Principal in accordance with Clauses 7.4, 7.5, 7.6 and 7.7 of this Agreement.

6.4 *Advance Payment.* Notwithstanding Clause 6.2 and 6.3, the Contractor may request an advance payment from the Beneficiary, if needed, within thirty (30) days from the Commencement Date in the amount provided under the *Annex D: Fee and Payment Schedule* (the "Advance Payment"), by delivering an invoice for the respective amount to the Principal. The Advance Payment invoice submitted by the Contractor shall be paid in accordance with the Section VI. Fee and Payment. For the sake of clarity, the Advance Payment shall be set off against the first payments following the Advance Payment per the *Annex D: Fee and Payment Schedule*until the Advance Payment is entirely set off. The Advance Payment set-off against the Contractors invoices under the Agreement shall be applied until the aggregate amount of the Advance Payment is expended.

The Advance Payment shall not be considered as a payment for the fulfilment of any of the Services, thus in case the Contractor is in material breach of the Agreement or if the Agreement is terminated for whatever reason under Section IX. Termination and suspension before the complete set off of the Advance Payment under Clause 6.4 the Contractor shall be obliged to immediately, but not later than

within five (5) Working Days from the termination of the Agreement, repay the residual amounts of the Advance Payment in full to the Beneficiary. In case the Contractor does not repay the residual amounts of the Advance Payment in full to the Beneficiary, the Beneficiary shall be entitled to carry out a recourse on the Performance Bond without delay.

6.5 *Costs and Commissions.* Each Party shall bear its own costs, fees, commissions and expenses incurred in connection with the transfer of any funds under this Agreement to the other Party.

6.6 *Compliance with Tax Obligations.* It is acknowledged and agreed by the Parties that the Fee shall include all taxes and duties payable by the Contractor in the consequence of provision of the Services, except value added tax (the "VAT"). The Contractor shall, at the sole cost and expense of the Contractor, comply with the obligation to pay all taxes and duties relevant to the provision of the Services in the **[●]**; and in accordance with Applicable Law of the **[●]**;. In addition, the Contractor shall assume all risks associated with the payment or obligation to pay such taxes and duties, if any. The Contractor assumes all risks associated with the possible increase in the amount of the Fee arising as a result of the obligation of having to pay any such taxes or duties.

6.7 *Invoice.* The Contractor's invoices shall contain the following Contractor's details and details about the Agreement:

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

Contractor	•
Registration No	•
VAT payer's No or indication that the Contractor is not a VAT payer	•
Legal address, city, Zip code, country	•
Legal name of Bank	•
SWIFT Code	•
IBAN	•
Subject:	For provided services according to the AGREEMENT FOR GEOTECHNICAL INVESTIGATIONS IN THE FORMER MILITARY WAREHOUSE AREA IN CEKULE Agreement No **[●]** (CEF Contract No • Activity No •, Contract Manager: •

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

c) the name or a description of the services;

d) the quantity of the services;

e) the date of provision of the services or the date of receipt of full or partial payment for the services if the date can be determined and differs from the date of issue of the invoice;

f) the price of the services exclusive of value added tax and any discounts;

g) the taxable amount broken down by different rates of value added tax together with the applicable rates of value added tax or the amount of supply exempt from tax;

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

i) the following Beneficiary`s details:

Beneficiary	**Ministry of Transport of the Republic of Latvia**
Registration No	90000088687
VAT payer's No	LV90000088687
Address	Gogoļa iela 3, Rīga, LV-1743
Name of Bank	Valsts kase

Bank Code	TRELLV22
Bank Account No.	LV51TREL817038924100B

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

Section VII. Commencement of Services, remedying of Defects and acceptance

7.1 *Services Commencement*. The Contractor shall start the provision of the Services on the Commencement Date and shall ensure that the Deliverables are furnished to the Principal on or before each relevant Services Milestone as identified in accordance with *Annex C: Schedule of Services*. The Contractor shall perform the Services timely and with due diligence having due regard to any applicable Services Milestones and any other key dates for performance of the Services set out in the Agreement and the applicable Annexes, as may be amended from time to time with the consent of the Principal or in accordance with this Agreement and Public Procurement Law of the Republic of Latvia.

7.2 *Impediments and Delays*. If the Services, or any part thereof, is impeded or delayed by the Principal, the Beneficiary or any third party engaged by the Principal so as to increase the duration of the Services:

a) the Contractor shall inform the Principal of the circumstances and probable effects of such impediment or delay upon the agreed Schedule of Services specified in accordance with *Annex C: Schedule of Services*; and

b) the duration of the Services shall be increased, and any Services Milestones affected by the impediment or delay shall be extended accordingly.

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

(a) allow the Contractor an additional time period for remedying the Defect, such time period to be determined in the sole discretion of the Principal;

(b) remedy the Defect at own cost of the Principal (including by means of relying on the services of a third Person) and demand reimbursement by the Contractor of Costs incurred by the Principal as a result of having to pay other Persons toward carrying out any work or action;

(c) terminate the Agreement according to *Section IX. Termination and suspension*.

For the avoidance of any doubt, the application of the Cure Period under this Clause 7.3 shall be without prejudice to and shall not relieve the Contractor from the obligation to pay any contractual penalty in accordance with the provisions of Clause 10.2 at the Principal`s request or to compensate any Damages in accordance with the provisions of Clause 10.3 of this Agreement.

7.4 *Completion of Services and Completion Deed*. Meeting of a Services Milestone or supply of a Deliverable occurs whenever the Contractor has completed all of the Works which the Contractor has undertaken to perform according to the *Annex B: Technical Specification* and *Annex C: Schedule of Services* by the relevant Services Milestone. On meeting a Services Milestone and/or producing a Deliverable (including all Documentation and information forming part of the Deliverable) constituting all or an identifiable part of the Services, the Contractor shall issue to the Principal a Deed of Acceptance substantially in the form of *Annex F: Deed of Acceptance* (the "Deed of Acceptance"). The Deed of Acceptance shall include the Deliverable and adequate supporting Documentation and information relevant to the Services Milestone attained and/or Deliverable completed.

7.5 *Acceptance or rejection of the Deed of Acceptance*. Upon the reception of the Deed of Acceptance from the Conractor in accordance with Clause 7.4 the Principal shall review the submitted Deed of Acceptance and the specific Deliverable and any supporting Documentation and:

(a) in the event the Principal rejects the submitted Deed of Acceptance, it shall give notice to the Contracto setting out in reasonable detail any Defect or reason for the objection (the "Objection Notice") within reasonable time following receipt of the Deed of Acceptance thus initiating the Cure Period and Defects remedy procedure as specified in Clause 7.3; or

(b) in the event no reasons for objection to the Deed of Acceptance exist, the Principal shall also sign the Deed of Acceptance, within reasonable time following its receipt. The date the Principal accepts and signs the Deed of Acceptance shall constitute "Completion Date" with respect to the relevant Deliverable. The signed Deed of Acceptance may have annexed to it a list of any outstanding Defects or deficiencies to be corrected by the Contractor.

7.6 *Completion of Services Following Receipt of Objection Notice*. After the Defects specified by the Principal in the Objection Notice have been remedied the Contractor shall issue to the Principal a second signed Deed of Acceptance as per the procedure specified in Clause 7.4 and the Principal shall perform the review as generally provided for in Clause 7.5 of this Agreement and:

(a) in the event no further reasons for objection to the second Deed of Acceptance exist, then the Defects remedy procedure is concluded and the provisions of Clause 7.5(b) are to be applied;

(b) in the event the Principal rejects the submitted second Deed of Acceptance it shall give a second Objection Notice, thus simultaneously continuing the Defects remedy procedure with the possibility for the Principal to execute the Clauses 7.3(a)– 7.3(c) at its own discretion.

7.7 *Objection Notice and Contractual Penalty.* For the avoidance of any doubt, the giving by the Principal of any Objection Notice or second Objection Notice shall be without prejudice to and shall not relieve the Contractor from the obligation to pay any contractual penalty or to pay Damages in accordance with the provisions of this Agreement upon the Principals request.

7.8 The Contractor shall provide the Deliverables to the Principal before the respective Services Milestone for initial alignment as further described under *Annex B: Technical Specification*. Upon receiving Principals` comments, the Contractor shall implement the necessary adjustments, if any, and submit the Deliverable to Principal according to Clause 7.4 following the respective Services Milestone.

Section VIII. Intellectual Property Rights

8.1 *Proprietary Rights*. All Documentation forming part of the Deliverables developed under this Agreement is and shall become the property of the Beneficiary at the moment of creation regardless of whether the Services or Deliverable is produced or finally accepted. It is acknowledged and agreed by the Parties that the Beneficiary and/or the Principal shall be permitted to reproduce the drawings and schemes and distribute the prints in connection with the use or disposition of the Documentation without any approval of the other Parties and without incurring obligation to pay any royalties or additional compensation whatsoever to the Contractor.

8.2 *Licence from employees of Contractor*. The Contractor hereby warrants that it shall obtain from its employees and grant to the Beneficiary an exclusive licence to use the personal Intelectual Property rights pertaining to the Documentation. The licence shall be valid for the time period the Intellectual Property is under legal protection.

8.3 *Intellectual Property in Documentation*. The Contractor represents and warrants that it owns all Intellectual Property required for the purposes of completing its obligations under this Agreement and in all Documentation deliverable by or on behalf of the Contractor under this Agreement and that, to the extent any Intellectual Property in any Documentation is not owned by the Contractor, it has obtained all requisite consents from owner(s) of all Intellectual Property in the Documentation to fulfil all of the obligations undertaken by the Contractor under this Agreement and has fully discharged all obligations with respect to payment of any royalties or fees.

8.4 *Transfer of Ownership to Beneficiary.* The Beneficiary shall acquire legal title to and ownership in the Intellectual Property in all Documentation deliverable to the Beneficiary under this Agreement as of the moment of delivery by the Contractor to the Principal of the Deed of Acceptance, together with

the Deliverable and Documentation and information forming part of the Deliverable, in accordance with Clause 7.4 of this Agreement; provided, however, that the Beneficiary has paid the Fee or other consideration payable under the terms of this Agreement with respect to the relevant part of the Services or Deliverable. For the avoidance of any doubt, such title and ownership shall confer upon the Beneficiary, without limitation, each of the following:

(a) the right to reproduce the Documentation and information, or any part thereof, and distribute copies of the Documentation and information or any part thereof;

(b) the right to modify, amend and supplement the Documentation and information, or any part thereof;

(c) the right to licence the Documentation and information, or any part thereof, for use by others; and

(d) the right to transfer ownership in the Documentation and information, or any part thereof, to others.

8.5 *Grant of Limited License to Contractor*. Upon acceptance by the Principal of any Deliverable and Documentation forming part of any Deliverable in accordance with Clause 7.4, 7.5, 7.6 and 7.7 and Clause 8.6 of this Agreement the Beneficiary shall be deemed to have granted the Contractor an irrevocable and exclusive licence to reproduce, modify and distribute copies of any Documentation forming part of any Deliverable for the purposes of the Services and the Project, subject to the following restrictions:

(a) the license shall apply during the term of this Agreement only;

(b) the permitted use shall only cover the right to reproduce, modify and distribute the Documentation and information, or any part thereof, for the purposes of performing, implementing or modifying the Services; and

(c) the Documentation and information, or any part thereof, shall not, without the prior consent by the Beneficiary, be distributed or communicated to any third party for purposes other than those permitted in accordance with this Clause 8.5 of this Agreement.

The license in accordance with this Clause 8.5 of this Agreement shall be deemed to have been granted to the Contractor as of the Completion Date.

8.6 *No Additional Royalty*. It is acknowledged and agreed by the Parties that consideration for the transfer of ownership in the Intellectual Property shall be forming part of the Fee and no additional royalty, fee or other consideration of any kind shall be payable by the Beneficiary to the Contractor or to any third party in consideration of the transfer of ownership in the Intellectual Property in any Documentation.

8.7 *No Infringement*. The Contractor represents and warrants to the Principal and the Beneficiary that no Documentation and information deliverable to the Principal and/or the Beneficiary under the terms of this Agreement will infringe any existing Intellectual Property of any third party. In the event any of the representations or warranties contained in this *Section VIII. Intellectual Property Rights* prove to be untrue or inaccurate, the Contractor undertakes, at its own cost and expense, to defend and settle any claim raised by any third party alleging infringement of Intellectual Property in the Documentation and information. The foregoing undertaking by the Contractor shall apply subject to the following conditions:

(a) the Principal shall notify the Contractor, without undue delay, of any third-party claim alleging infringement of any Intellectual Property in any Documentation;

(b) the Principal refrains from admitting liability under any third-party claim or acting on the account of such claim without prior approval by the Contractor; and

(c) the exclusive control over any legal proceeding or settlement related any third-party claim shall be exercised by the Contractor; provided, however, that the Principal shall render the Contractor all reasonable assistance toward such proceeding or settlement, at the cost and expense of the Contractor.

8.8 *Infringement Proceedings*. In the event the Principal is a party to legal proceedings involving allegations of infringement of any Intellectual Property in the Documentation of any third party, the

Contractor shall keep the Principal fully informed of all aspects relevant to the legal proceedings and the Principal shall have the right, at its own cost, to be represented in the legal proceedings by separate counsel. In the event the Contractor fails to act against claims alleging infringement of any Intellectual Property in the Documentation and information of any third party within reasonable time but, in any event, within twenty (20) days of having been notified of such claims, the Principal shall have the right to assume legal defence against claims alleging infringement of Intellectual Property and shall be entitled to reimbursement by the Contractor of reasonable costs and expenses incurred toward such defence.

8.9 *Continued Use*. In the event a court of competent jurisdiction resolves in a binding judgment that the Documentation and information, or any part thereof, infringe Intellectual Property of any third party, the Contractor shall, at its own cost and expense, procure for the Principal and the Beneficiary the right of continued use of the Documentation and information, or part thereof infringing Intellectual Property of a third party.

8.10 *License in Intellectual Property of the Contractor*. The Contractor hereby grants the Principal and the Beneficiary an irrevocable and non-exclusive license to use, reproduce, modify and/or enhance any Intellectual Property of the Contractor, provided and to the extent Intellectual Property of the Contractor is used by the Principal or the Beneficiary for the purposes of the Railway and/or the Project. It is agreed and acknowledged by the Parties that the license fee for the grant of license in accordance with this Clause 8.10 forms part of the Fee and such license shall continue to be valid irrespective of expiration of this Agreement following completion of the Services or termination of this Agreement for any reason.

8.11 *Obligation to Procure Intellectual Property Rights*. Where the Contractor is not the legal owner of any relevant Intellectual Property of the Contractor, the Contractor shall use reasonable endeavours to procure for the Principal and the Beneficiary the rights specified in accordance with Clause 8.10 of this Agreement.

8.12 *Indemnification by the Contractor*. The Contractor shall defend and indemnify the Principal and the Beneficiary from and against any and all Damages arising from the use by the Principal and the Beneficiary of any Intellectual Property of the Contractor, to the extent use by the Principal and the Beneficiary is within the scope of the license granted to the Principal and the Beneficiary in accordance with Clause 8.10 of this Agreement.

Section IX. Termination and suspension

9.1 *Termination for Material Breach or Bankruptcy*. Subject to the provisions of Clause 9.2 of this Agreement, either Party shall be entitled to terminate this Agreement upon giving a written notice of termination to the other Party in the event of material breach by the other Party of any of its obligations under this Agreement. The written notice of termination shall contain an itemized description of the breach. An event of material breach shall include, but not me limited to, any of the following:

(a) commitment by a Party of any persistent or material breach of this Agreement (which shall include failure to pay an amount of at least 20,000 EUR due to the other Party or perform any part of the Services valued at least 20,000 EUR;

(b) failure by the Contractor to duly address any of the matters raised in the second Objection Notice given by the Principal in accordance with Clause 7.6;

(c) failure by any Deliverable to conform to any of the material requirements to such Deliverable contained in *Annex B: Technical Specification* provided that such failure is not capable of being remedied during the Cure Period;

(d) failure by the Beneficiary to make any payment to the Contractor in accordance with this Agreement within at least thirty (30) Working Days from the date of payment falling due;

(e) any of the representations or warranties given by either Party under Clause 5.1 of this Agreement or any of the representations or warranties given by the Contractor under Clause 5.2 of this Agreement proving to be untrue; or

(f) breach by the Contractor of the undertaking contained in Clause 8.11 of this Agreement.

9.2 *Corrective Period.* In the event of breach by either Party of its obligations under this Agreement, the non-breaching Party shall allow the breaching Party seven (7) days for corrective action or submission of a corrective action plan (the "Corrective Period"). The Corrective Period shall be counted from the date of receipt by the breaching Party of a written notice of breach. Should no satisfactory corrective action be taken, or acceptable corrective action plan provided by the breaching Party, the non-breaching Party shall have the right to terminate the Agreement. It is acknowledged and agreed by the Parties that the provisions of this Clause 9.2 of this Agreement shall not apply with respect to any of the events enumerated in accordance with Clause 9.4 of this Agreement. In addition and for the avoidance of any doubt, the application of the Corrective Period under this Clause 9.2 of this Agreement shall be without prejudice to and shall not relieve either Party from the obligation to pay any contractual penalty in accordance with the provisions of Clause 10.2 of this Agreement or to pay Damages incurred by the other Party in accordance with the provisions of Clause 10.3 of this Agreement.

For the sake of clarity, the Corrective Period is not applied in case of material breach under Clause 9.1(b) or Clause 9.1(c), as in these cases the purpose of the Corrective Period is fulfilled by the Cure Period or the term specified in the Ojbection Notice, as the case may be, and their prior application.

9.3 *Right to Terminate Immediately.*

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

(a) breach by the other Party of Clause 18.2 of this Agreement;

(b) an event of Force Majeure has been continuing during more than ninety (90) days;

(c) the other Party had passed a resolution for winding-up (other than in order to amalgamate or reconstruct);

(d) breach by the Contractor any of the confidentiality undertakings contained under *Secion XIII. Confidentiality*;

(e) the other Party is unable to pay its debts and has presented a petition for voluntary bankruptcy;

(f) the other Party had a bankruptcy order issued against it;

(g) liquidation, insolvency or legal protection proceedings have been initiated with respect to the other Party or the other Party is declared insolvent;

(h) the occurrence of any event analogous to the events enumerated under Clauses 9.3.1 (e) – (g) under the law of any jurisdiction to which the other Party's assets and undertaking are subject.

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

(g) CEF Co-financing for further financing of the Services is not available to the Beneficiary fully or partly;

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

(h) it is not possible to execute the Agreement due to the application of international or national sanctions, or European Union or North Atlantic Treaty Organization applied sanctions significantly affecting interests of financial or capital market.

(i) in case if the proposed time schedule described in *Annex C: Schedule of Services* is breached.

9.3.3. *Termination according to Public Procurement Law.* The Agreement can be immediately terminated upon giving the other Party a written notice of termination explaining, in reasonable detail, the reason for termination upon occurrence of any of the provisions mentioned in Article 64 of the Public Procurement Law. In such a case, the Beneficiary shall pay the Contractor the fees in respect of the Works and Services provided under this Agreement up to the date of the notification of the termination of this Agreement and the Beneficiary is not obliged to pay contractual or any other penalty or Damages to the Contractor.

9.4 *Right to Advance to Completion.* In the event the Contractor fails to fulfil any of its obligations, or fails to cure any breach in accordance with Clause 9.2 of this Agreement, and the Agreement is terminated by the Principal, the Principal may advance the Services to completion by employing the services of other professional service supplier(s) or by other means available to the Principal. The Contractor shall be liable to the Principal or the Beneficiary for any and all additional costs incurred due to failure by the Contractor to perform. The rights and remedies available to the Principal set forth in accordance with this Clause 9.4 of this Agreement shall be in addition to any and all other rights and remedies available under Applicable Law.

9.5 *Consequences of Termination.* Upon expiration or termination of this Agreement, the obligations of the Parties set forth in this Agreement shall cease, except with respect to the following:

(a) any obligations arising as a result of any antecedent breach of this Agreement or any accrued rights; and

(b) the provisions stipulated in accordance with Clauses 4.6, 4.7, 6.4, 7.3, 8.3, 8.4, 8.6, 8.7, 8.12, 9.6, 10.1, 10.2, 10.3, 18.1 of this Agreement and *Secion XIII. Confidentiality, Section XIV. Right to Audit, Section XV. On-the-spot-visits* and *Section XVI. Governing Law and Resolution of Disputes* which shall survive the termination or expiry of this Agreement and continue in full force and effect along with any other Clauses of or Annexes hereof which are necessary to give effect to the Clauses specifically identified in this 9.5(b) of this Agreement.

9.6 *Partial Acceptance.* Notwithstanding anything in this Agreement to the contrary including, without limitation, the provisions of Clauses 7.4, 7.5, 7.6 an 7.7 of this Agreement and in the event of termination of this Agreement, the Principal shall have the right, in the sole discretion of the Principal, to partially accept any Works, part of Works or part of the Services delivered to the Principal under this Agreement (the "Right of Partial Acceptance"). The Principal shall notify the Contractor of its intention to exercise the Right of Partial Acceptance in the termination notice given in accordance with Clause 9.1 or Clause 9.3 of this Agreement, specifying, in reasonable detail, the Works, part of Works or part of the Services which the Principal would like to partially accept. In the event of receipt of such notice, the Contractor shall reasonably cooperate with the Principal in order to ascertain transfer to the Principal of ownership in the result(s) of such Works, part of Works or part of the Services and determination of the amount of consideration payable by the Beneficiary.

9.7 *Beneficiary's Obligation to Pay.* Subject to the provisions of Clause 9.6 of this Agreement and except in the event of termination by the Principal occurring as a result of violation by the Contractor of Clause 18.1 of this Agreement, or termination by the Principal according to Clause 9.3.2 or 9.3.3 of this Agreement in the event this Agreement is terminated for any reason prior to completion of the Services, the Beneficiary shall have an obligation to pay the Contractor the following:

(a) the Costs incurred by the Contractor up to the date of termination; and

(b) except where termination is due to negligence of the Contractor, due to the application of international sanctions, breach by the Contractor, insolvency of the Contractor or a Force Majeure Event under *Section XII. Force Majeure* an amount equal to the costs reasonably and properly incurred by the Contractor as a result of or in connection with such termination.

9.8 *No Obligation to Pay Costs Incurred Prior to Acceptance.* Notwithstanding anything set forth in this Agreement to the contrary including, without limitation, under Clause 9.7 of this Agreement, the Beneficiary shall have no obligation to pay any of the Costs incurred by the Contractor with respect to any Works or the Services (or part of any Works or the Services) not deemed as having been accepted by the Principal in accordance with Clauses 7.4, 7.5, 7.6 and 7.7 of this Agreement.

9.9 *No Prejudice to Other Rights.* The right to terminate this Agreement shall be without prejudice to any other right of either Party which has accrued prior to or as a result of such termination or to any remedy available to either Party under the terms of this Agreement or in accordance with Applicable Law.

Section X. Liability

10.1 *Liability of the Parties.* The Contractor shall be liable to compensate Damages incurred by the Principal and/or the Beneficiary arising out of or in connection with this Agreement and pay contractual penalty set forth in accordance with Clause 10.2 of this Agreement if a breach of any of the obligations of the Contractor under this Agreement is established against the Contractor. The Beneficiary shall be liable to pay the contractual penalty set forth in accordance with Clause 10.2 of this Agreement if a breach of payment obligations of the Beneficiary under this Agreement is established against the Beneficiary.

10.2 *Contractual Penalty.* In the event of failure by the Contractor to meet any Services Milestone and/or supply any Deliverable, the Contractor shall be liable to pay to the Beneficiary a penalty of zero point five (0.5%) of the amount of total Fee payable under this Agreement with respect to the particular Services Milestone and/or Deliverable for each day of delay starting from the first delayed day with meeting the respective Services Milestone and/or supplying of the particular the Deliverable set forth in accordance with *Annex C: Schedule of Services*; provided, however, that the total amount of penalty payable by the Contractor under this Clause 10.2 for the relevant Works, as specified according to *Annex C: Schedule of Services* shall not exceed ten percent (10%) of the total amount of the Fee for the respective Services Milestone and/or Deliverable. In the event of failure by the Beneficiary to pay any amount in accordance with *Section VI. Fee and Payment*, the Beneficiary shall be liable to pay the Contractor a penalty of zero point five percent (0.5%) of the amount of the amount invoiced for each day of delay with meeting the payment obligation; provided, however, that the total amount of penalty payable by the Beneficiary under this Clause 10.2 of this Agreement shall not exceed ten percent (10%) of the total amount remaining unpaid under the relevant invoice.

For the avoidance of doubt the contractual penalties shall be applied upon the sole discretion of the entitled Party under the Agreement considering the material consequences of the infringement.

10.3 *Compensation for Damages.* Notwithstanding of and without prejudice to any contractual penalty payable in accordance with Clause 10.2 of this Agreement and subject to the provisions of Clause 10.5 of this Agreement, in the event it is established that either Party is liable to the other Party with respect to any breach of its respective obligations under this Agreement, the liable Party shall compensate the other Party for any Damages incurred as a result of such breach, subject to the following terms:

(a) the amount of compensation shall be limited to the amount of reasonably foreseeable Damages suffered as a result of the breach(es), but not otherwise; and

(b) if either Party is considered to be liable jointly with third parties to the other, the proportion of compensation payable by the liable Party shall be limited to that proportion of liability which is attributable to the breach by the liable Party.

10.4 *Attribution of Damages.* Any Damages suffered by either Party shall, for the purposes of Clause 10.3 of this Agreement, be reduced to the extent that the Damages are caused by or contributed to by the other Party's own negligence or breach of its obligations under this Agreement.

10.5 *Limitation of Liability.* Notwithstanding anything to the contrary set forth in this Agreement, in no circumstances shall the Contractor, the Principal or the Beneficiary be liable to one another 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. The Contractor's total liability for the Works carried out under this Agreement shall in no circumstances exceed twice (2) the amount of the total value of the Agreement as per Clause 2.8.

10.6 *Professional civil liability insurance.* The Contractor shall insure against public/third party liability (the "Professional civil liability insurance") for the implementation of the Services during the term of the Agreement. In case of imperative legal requirements related to specific types of insurance for the performance of Works forming a part of the Services, the Contractor shall also provide additional

insurance for these activities or shall include respective extensions to Contractor`s Professional civil liability insurance policy.

10.7 *Obligation to effect insurance*. The Contractor undertakes to effect such Professional civil liability insurance with an insurer as detailed by the Principal and based on commercially reasonable terms (including reasonable exclusions) and which is compliant with the Agreement conditions and Applicable Law requirements. The limit of liability of the Professional civil liability insurance shall be no less than twice (2) the amount of the total value of the Agreement as per Clause 2.8 during the entire term of the Agreement. The amount of liability for each insured event shall be no less than twenty percent (20%) of the total value of the Agreement as per Clause 2.8.

10.8 *Submission of Insurance policy or certificate*. Within twenty (20) days following the Effective Date, the Contractor shall submit to the Principal either the Professional civil liability insurance policy, or certificate with the insurer's confirmation regarding full coverage and validity of such Professional civil liability insurance policy. The Contractor shall maintain the Professional civil liability insurance policy in force as long as it is necessary to accomplish any obligations according to this Agreement. In addition, the Contractor shall provide not less than five (5) Working Days prior written notice to the Principal of any cancellation or material reduction in the Professional civil liability insurance policy. The Contractor is obliged to submit to the Principal documents as per Clause 10.8 certifying the renewal or the issuance of a new Professional civil liability insurance policy compliant with the Agreement terms within five (5) Working Days before the date of expiry of the previous Professional civil liability insurance policy.

10.9 Together with the document indicated in Clause 10.8 of this Agreement and in a term set in Clause 10.8 the Contractor shall submit to the Principal payment evidences certifying payment for the particular insurance.

10.10 The Contractor shall maintain the Professional civil liability insurance policy valid throughout the Term of Agreement mentioned in Clause 2.9 of this Agreement and any other additional period if so required by Applicable Law. The Contractor's failure to maintain the Professional civil liability insurance policy valid and/or extend it (as the case may be) and provide it to the Principal shall be considered as a material breach of the Agreement.

10.11 The Professional civil liability insurance policy shall cover the Contractor (in case of a group of suppliers – each member), its employees and Sub-Contractors Services and additional Services, as the case may be, under this Agreement.

10.12 The Professional civil liability insurance policy must provide for no less than twelve (12) month extended reporting period as of the date of completion of all Services by Contractor as confirmed by the Principal by the issuance of the Deed of Acceptance. The extended reporting period shall cover claims arising out of or in relation to an act or omission of the Contractor, its employees and Sub-Contractors occurring during the term of the Agreement, provided that the claim is reported by the Principal within the extended reporting period.

10.13 In each and every case of a renewed Professional civil liability insurance policy, the coverage must be continuous and must be inclusive of all periods from the Commencement Date to the issuance of a renewed insurance policy. It is the Contractor's obligation to constantly and proactively monitor the validity of the Professional civil liability insurance policy coverage and carry out all the necessary activities in order to ensure full Professional civil liability insurance policy coverage as per the Agreement's conditions.

10.14 The Professional civil liability insurance shall be taken out with an insurance company (re-insurance company), bank or financial institution which is entitled to issue insurance policies, and which has (individually or as a part of a group of companies, or where the company having substantial participation in the respective insurance company (re-insurance company), bank or financial institution has) obtained a required minimum rating of BB+ (or equivalent) in accordance with Standard & Poor's rating, Fitch's rating or Moody's rating. The Principal has the right to request a replacement of the insurer in case the rating falls below the required minimum. The insurer shall be registered within the European Economic Area.

10.15 The insurance contract (insurance policy) shall refer to the direct beneficiary the Beneficiary.

10.16 Professional civil liability insurance contract (policy) may not be subject to any unusual conditions limiting the insurance coverage as well as any reservations or exceptions.

Section XI. Performance bond

10.17 *Performance bond.* The Contractor shall provide an unconditional and irrevocable performance (payment) guarantee statement for the due and punctual fulfilment of the Contractors`s obligations under the Agreement substantially in the form enclosed as *Annex J: Performance Bond* (the "Performance Bond") to the Principal for the amount equal to ten percent (10%) of the total value of the Agreement under Clause 2.8. Within twenty (20) days following the Effective Date, the Contractor shall submit the Performance Bond to the Principal. The Contractor`s failure to maintain the Performance Bond in accordance with the terms of the Agreement shall constitute a material breach of the Agreement. The costs of such Performance Bond be at the sole expense of the Contractor.

10.18 *Guarantor.* The Performance Bond shall be provided by a bank, insurance company (re-insurance company) or financial institution which is entitled to issue performance (payment) guarantees and is registered within the European Union. The Contractor`s Performance Bond shall be provided by a guarantor which (individually or as a part of a group of companies, or where the company having substantial participation in the respective bank, insurance company (re-insurance company) or financial institution has) has obtained a required minimum rating of BB+ (or equivelant) in accordance with either Standard & Poor`s, Fitch`s or Moody`s rating agencies.

10.19 *Term.* The Performance Bond shall be valid throughout the term of the Agreement. The Performance Bond shall provide twelve (12) months extended notification period as of the termination or expiration of the Agreement. If the Performance Bond expiration date falls before the termination or expiration of the Agreement, the Contractor shall submit a new Performance Bond substantially in the form enclosed as *Annex J: Performance Bond* to the Principal not later than within twenty (20) Working Days before the expiration date of the previous Performance Bond.

Section XII. Force Majeure

12.1 *Effects of Force Majeure.* Subject to the requirements set forth in accordance with Clauses 12.2 and 12.3 of this Agreement, 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.

12.2 *Action on Becoming Aware of Force Majeure.* Each Party shall at all times, following the occurrence of a Force Majeure Event:

(a) take reasonable steps to prevent and mitigate the consequences of such an event upon the performance of its obligations under this Agreement, resume performance of its obligations affected by the Force Majeure Event as soon as practicable and use reasonable endeavours in accordance with Good Industry Practice to remedy its failure to perform; and

(b) not be relieved from liability under this Agreement to the extent that it is not able to perform, or has not in fact performed, its obligations under this Agreement due to any failure to comply with its obligations under Clause 12.2(a) of this Agreement.

12.3 *Notification Requirements.* Upon the occurrence of a Force Majeure Event, the affected Party shall notify the other Party as soon as reasonably practicable and in any event within ten (10) Working Days of it becoming aware of the relevant Force Majeure Event. Such notification shall give sufficient details to identify the particular event claimed to be a Force Majeure Event and shall contain detailed information relating to the failure to perform (or delay in performing), including the date of occurrence of the Force Majeure Event, the effect of the Force Majeure Event on the ability of the affected Party to perform, the action being taken in accordance with Clause 12.2(a) of this Agreement and an estimate of the period of time required to overcome the Force Majeure Event. The affected Party shall provide the other Party with any further information it receives or becomes aware of which relates to the Force Majeure Event and provide an update on the estimate of the period of time required to overcome its effects.

12.4 *Notification of Resumed Performance.* The affected Party shall notify the other Party as soon as practicable once the performance of its affected obligations can be resumed (performance to continue on the terms existing immediately prior to the occurrence of the Force Majeure Event).

12.5 *Mitigation of Effects of Force Majeure.* As soon as practicable after the notification specified pursuant to Clause 12.3 of this Agreement, the Parties shall use reasonable endeavours to agree appropriate

terms or modifications to the Services to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement.

Secion XIII. Confidentiality

13.1 *Confidential Information*. "Confidential Information" means, in relation to the Principal and the Beneficiary, all information of a confidential nature relating to the Principal, the Beneficiary and their affiliates which is supplied by the Principal or the Beneficiary (whether before or after the date of this Agreement) to the Contractor, either in writing, orally or in any other form and includes all analyses, compilations, Deeds, studies, memoranda and other documents and information which contain or otherwise reflect or are derived from such information, but excludes information which:

(a) the Principal confirms in writing is not required to be treated as confidential; or

(b) the Contractor can show that the Confidential Information was in its possession or known to it (by being in its use or being recorded in its files or computers or other recording media) prior to receipt from the Principal and was not previously acquired by the Contractor from the Principal under an obligation of confidence; or

(c) was developed by or for the Contractor at any time independently of this Agreement.

13.2 *Undertakings with Respect to Confidential Information*. Subject to Clauses 13.1 and 13.3, the Contractor shall:

(a) at all times keep confidential all Confidential Information received by it and shall not disclose such Confidential Information to any other Person; and

(b) procure that its affiliates and its and their respective officers, employees and agents shall keep confidential and not disclose to any Person any Confidential Information except with the prior written consent of the Party to which such Confidential Information relates.

13.3 *Permitted Disclosure*. Notwithstanding anything to the contrary set forth in accordance with Clauses 13.1 and 13.2 of this Agreement, the Contractor shall, without the prior written consent of the Principal, be entitled to disclose Confidential Information:

(a) that is reasonably required by the Contractor in the performance of its obligations pursuant to this Agreement, including the disclosure of any Confidential Information to any employee, contractor, agent, officer, Sub-Contractor (of any tier) or adviser to the extent necessary to enable the Contractor to perform its obligations under this Agreement;

(b) to enable a determination to be made pursuant to *Section XV. On-the-spot-visits*;

(c) to its lenders or their professional advisers, any rating agencies, or its insurance advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;

(d) to the extent required by 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

(e) to the extent Confidential Information has become available to the public other than as a result of any breach of an obligation of confidence; provided that any such disclosure is made in good faith.

13.4 *Obligation of Confidentiality Pertinent to Recipients of Confidential Information*. Whenever disclosure is permitted to be made pursuant to Clauses 13.3(a)or (c), the Contractor shall require that the recipient of Confidential Information be subject to the same obligation of confidentiality as that contained in this Agreement.

13.5 *Certain Obligations on Termination of Agreement*. If this Agreement is terminated for whatsoever reason, the Contractor shall:

(a) return to the Beneficiary all of the Confidential Information then within the possession or control of the Contractor; or

(b) destroy such Confidential Information using a secure and confidential method of destruction.

13.6 *No Press Release by Contractor*. Save as required by Applicable Law, the Contractor shall not issue any press release in relation to the matters contemplated under this Agreement without the prior written consent of the Principal and Beneficiary (such consent not to be unreasonably withheld or delayed) as to both the content and the timing of the issue of the press release.

13.7 *Right to Publish*. For the avoidance of any doubt, the Principal and Beneficiary shall have the right to publish any of the documents, information or data provided by the Contractor to the Principal during provision of the Services.

13.8 *Remedies*. The Parties acknowledge and agree that a breach of the provisions of this *Secion XIII. Confidentiality* may cause the owner of Confidential Information to suffer irreparable Damages that could not be adequately remedied by an action at law. Accordingly, the Contractor agrees that the owner of Confidential Information that is disclosed in breach of Clauses 13.2, 13.4 or 13.6 may be entitled to specific performance of those provisions to enjoin a breach or attempted breach thereof and to any other remedy, including, inter alia, damages and injunctive relief, awarded by a court of competent jurisdiction.

Section XIV. Right to Audit

14.1 *Right to Audit*. Notwithstanding anything to the contrary set forth in this Agreement including, the Principal or the Beneficiary itself, a reputable outside independent body or expert engaged and authorized by the Principal or the Beneficiary shall be entitled to inspect and/or audit the Contractor to ensure compliance with the terms of this Agreement, including inspecting and/or auditing:

(a) the performance of any aspect of the Services; and/or

(b) any documentation, including all payrolls, accounts of the Contractor and/or other records used in or related to the performance of the Services.

14.2 *Obligation to Assist*. The Contractor shall provide all reasonable assistance to the Principal, the Beneficiary or the independent body authorized by the Principal or the Beneficiary, as the case may be, in carrying out any inspection or audit pursuant to this *Section XIV. Right to Audit*. The Principal and the Beneficiary shall be responsible for its own costs, or the costs incurred by the outside independent body designated by the Principal or the Beneficiary, incurred toward carrying out such inspection or audit, unless, in the case of any such audit, that audit reveals that the Contractor is not compliant with the terms of this Agreement, in which case the Contractor shall reimburse the Principal or the Beneficiary for all of its additional reasonable costs incurred, provided such non-compliance is material.

14.3 *Survival of Termination*. The rights and obligations set forth in accordance with this *Section XIV. Right to Audit* shall survive expiration or termination of this Agreement for any reason and shall continue to apply during ten (10) years following expiration or termination of this Agreement for any reason whatsoever.

Section XV. On-the-spot-visits

15.1 *Right to perform On-the-spot visits.* By submitting a written notice five (5) Working Days in advance, but at the same time reserving the right of an unannounced on-the-spot visit without an advance notice, the Principal and/or the Beneficiary may carry out on-the-spot visits to the sites and premises where the activities implemented within the Agreement are or were carried out.

15.2 *Personnel involved.* On-the-spot visits may be carried out either directly by authorised staff or representatives of the Principal, the Beneficiary or by any other outside body or third party authorised to do so on behalf of the Principal or the Beneficiary. Information provided and collected in the framework of on-the-spot visits shall be treated on confidential basis. The Principal and the Beneficiary shall ensure that any authorised outside body or third party shall be bound by the same confidentiality obligations.

15.3 *Access to the information.* Contractor shall provide to the performer of the on-the-spot visit or any other authorised outside body or third party access to all the information and documents, including information and documents in electronic format, which is requested by the authorised staff of the performer of the on-the-spot visit or any other authorised outside body or third party for the performance of an on-the-spot visit and which relates to the implementation of the Agreement, as

well as shall allow the authorised staff of the performer of the on-the-spot visit or any other authorised outside body or third party the copying of the information and documents, with due respect to the confidentiality obligation.

15.4 *OLAF checks and inspections.* By virtue of Council Regulation (Euratom, EC) No 2185/961 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities and Regulation (EU) No 883/2013 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.

Section XVI. Governing Law and Resolution of Disputes

16.1 *Governing Law.* This Agreement shall be governed by and construed in accordance with law of the Republic of Latvia.

16.2 *Resolution by Amicable Means.* The Parties shall first attempt to settle any dispute, controversy or claim arising out of or relating to this Agreement through good faith debate, discussion, and negotiating prior to submitting them to mediation, arbitration, or other legal proceeding.

16.3 *Venue for Resolution of Disputes.* Should the Parties fail to agree by means of amicable negotiations within the time period of two (2) months from the date of serving of the respective written complaint to the other Party, the Parties shall submit all their disputes arising out of or in connection with this Agreement to the exclusive jurisdiction of the courts of the Republic of Latvia. The Parties hereby represent and warrant that the English language is understandable for all Parties in accordance with Article 8(1)(a) of the Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) and repealing Council Regulation (EC) No 1348/2000.

Section XVII. Responsibilities of the Beneficiary

17.1 *Review of Documentation.* The Beneficiary shall examine Documentation as may be submitted by the Principal for review by the Beneficiary toward partial completion of the Services and upon the Principals request shall render opinions pertaining thereto.

17.2 *Decisions.* On all matters properly referred to it in writing by the Principal the Beneficiary shall within a reasonable time give its decision in writing so as not to delay the provision of the Services.

17.3 *Action Upon Becoming Aware of Defects.* In the event the Beneficiary observes or otherwise becomes aware of any error, fault, omission, or defect in the Services or non-conformance of any action forming part of the Services, the Beneficiary shall give prompt notice thereof to the Principal.

Section XVIII Miscellaneous provisions

18.1 *Capacity.* Each Party warrants to the other Party that it has full power to enter into and perform this Agreement, and the person signing this Agreement on its behalf has been duly authorized and empowered to enter into such agreement. Each Party further acknowledges that it has read this Agreement, understands it and agrees to be bound by it.

18.2 *Conflict of Interest, Corruption and Fraud.* Notwithstanding any penalties that may be enforced against the Contractor under Applicable Law, or the laws of other jurisdiction(s), the Contractor shall be deemed to have committed a breach under this Agreement and the Principal shall be entitled to terminate this Agreement immediately and without any regard to the provisions of Clause 9.2 of this Agreement, if it is shown that the Contractor is guilty of:

(a) offering, giving, receiving or soliciting anything of value with a view to influencing the behaviour or action of anyone, whether a public official or otherwise, directly or indirectly in the selection process or in the conduct of the Agreement; or

(b) misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Principal, including the use of collusive practices intended to stifle or reduce the benefits of free and open competition.

18.3 *Notices.* Notices under the Agreement shall be in writing and will take effect from receipt by the Party to which the notice is addressed at the address of the Party set forth in the Preamble to this Agreement. Delivery can be made by hand, by post, or by e-mail.

18.4 *Damages Covered by Insurance.* To the extent Damages are covered by insurance, the Principal, the Beneficiary and the Contractor waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance current as of the date of this Agreement.

18.5 *Relationship of the Parties.* The relationship between the Contractor to the Principal and the Beneficiary under this Agreement is that of independent contractors. The Contractor (or the Contractor's Sub-Contractors) is not an employee of the Principal or the Beneficiary, is not carrying out the regular business of the Principal or the Beneficiary and is not subject to the same employment regulations as are applicable to employees of the Principal or the Beneficiary. Each of the Parties shall be solely and entirely responsible for their own acts and the acts of their employees. No benefits, special considerations, or employer/employee-type provisions are provided by the Principal or the Beneficiary to the Contractor, the Contractor's employees, or the Contractor's consultants, or the employees of such consultants.

18.6 *Severability.* If any provision of this Agreement shall be held to be illegal, invalid, void or unenforceable under 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.

18.7 *Successors and Assigns.* The Principal, the Beneficiary and the Contractor 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.

18.8 *Amendments and Variations.* No amendment to or variation of this Agreement shall be effective unless made in writing and signed by duly authorized representatives of all Parties. The Agreement can be amended in compliance with the provisions of Article 61 of the Public Procurement Law of the Republic of Latvia.

18.9 *Entire Agreement.* This Agreement, and the Annexes hereto, constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes and extinguishes all and any prior drafts, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter.

18.10 *Execution.* This Agreement is prepared and is executed as an electronic document.

Signed by:

For and on behalf of the Principal:		For and on behalf of the Contractor:	
Signature:	.....	Signature:	.....
Name, title: RB Rail AS	•	Name, title:	•
Bank details: •		Bank details: •	

For and on behalf of the Beneficiary:

Signature: .....

Name, title:•

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

Annex A: Definitions and common terms

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

(a) "Advance Payment", as specified in accordance with Clause 6.4 of this Agreement.

(b) "Agreement", this Agreement, together with all Annexes thereto.

(c) "Applicable Law" or "Law", any legislative act, regulation, decree, order, ordinance, statute, treaty, directive, judgment, or other legislative measure. For the avoidance of any doubt, these terms shall include, but not be limited to, any legislative act or directive relevant to public procurement and provision of the Services.

(d) "Approved Staff", any person or organization listed pursuant to *Annex E: List of approved Sub-Conractors and Staff*, which is in a contractual relationship with the Contractor to provide a part of the Services.

(e) "Approved Sub-Contractor", any person or organisation listed pursuant to *Annex E: List of approved Sub-Conractors and Staff*, which is in a contractual relationship with the Contractor to provide a part of the Services.

(f) "Beneficiary", the Ministry of Transport of the Republic of Latvia, as further specified in the Preamble of this Agreement.

(g) "Commencement Date", the date of the Deed of Commencement signed by the Principal and the Contractor.

(h) "Deed of Commencement", as mentioned under Clause 2.1 of the Agreement and substantially in the form of *Annex K: Deed of Commencement*.

(i) "Completion Date", as defined in accordance with Clause 7.5 and 7.6 of this Agreement, as appropriate.

(j) "Confidential Information", as defined in accordance with Clause 13.1 of this Agreement.

(k) "Contractor", the company [•], as further specified in the Preamble of this Agreement, which is employed by the Principal and the Beneficiary as an independent professional contractor to perform the Services.

(l) "Costs", direct costs reasonably incurred in relation to the Project. Specifically, the Cost shall include any of the following:

    (i) costs of all materials and supplies forming part of the Services, including transportation and storage expenses (discounts for cash or prompt payments will not reduce these costs);

    (ii) salaries for personnel in the direct employ of the Contractor in the performance of the Services or relating to the Services;

    (iii) salaries of the Contractor's employees for the time that they spend in connection with the Services;

    (iv) payments to sub-contractors for Works relating to the Services;

    (v) costs of all employee benefits and taxes for items such as social security and other benefits for the labour and employees;

    (vi) costs, including transportation and maintenance, of equipment and hand tools not owned by workmen employed by the Contractor which are employed or consumed toward the Services;

    (vii) payments for rental charges for machinery, equipment, facilities and tools used in connection with the Services, and payments for installations, repairs, replacements, dismantling, removal, lubrication, transportation and delivery of those rental items;

(viii) other transportation costs incurred in connection with the Services;

(ix) that portion attributable to this Agreement of premiums for insurance that is required by this Agreement (if applicable) or by law to be obtained or maintained by the Contractor;

(x) sales, use, gross receipts or other taxes or state fees related to the Services, imposed by any governmental authority, to the extent that the Contractor is responsible for such taxes;

(xi) costs of long-distance telephone calls, telephone service at the site and postage relating to the Services;

(xii) costs of any data processing services used in connection with the performance of the Work required under this Agreement; and

(xiii) losses and expenses, not compensated by insurance, sustained by the Contractor in connection with the Works under this Agreement (if applicable), provided they resulted from causes other than the fault or neglect of the Contractor.

(m) "Corrective Period", as defined in accordance with Clause 9.2 of this Agreement.

(n) "Cure Period", as defined in accordance with Clause 7.3 of this Agreement.

(o) "Damages", any cost, claim, damage, demand, loss, expense or liability incurred by the relevant Party or Person.

(p) "Deed of Acceptance", as defined under Clause 7.4 of the Agreement and substantially in the form of *Annex F: Deed of Acceptance*.

(q) "Defect", is a part of the Services which is not in accordance with the *Annex B: Technical Specification* and/or the *Annex H: Contractor's Proposal*, and/or the Applicable Law and/or Good Industry Practice.

(r) "Deliverable", any information, notes, material, drawings (including drawings in 3D model), records, reports, documents and/or other items which the Contractor is required to deliver to the Principal as part of the Services, as further specified pursuant to *Annex C: Schedule of Services*.

(s) "Documentation", all records, correspondence, and files of the Contractor, its employees, engineers, and consultants pertaining to the Project.

(t) "Effective Date", the date when the Agreement is signed by the Principal, the Beneficiary and the Contractor as indicated in the Preamble to this Agreement.

(u) "EUR", and "*euro*", the official currency of the eurozone, officially known as the euro area.

(v) "Fee", as specified in accordance with *Annex D: Fee and Payment Schedule*.

(w) "Force Majeure Event", any of the following events:

(i) an act of the public enemy or war (declared or undeclared), threat of war, revolution, riot, insurrection, civil commotion, demonstration or sabotage;

(ii) an act of vandalism or accidental damage or destruction of machinery, equipment, track or other infrastructure;

(iii) a natural disaster or phenomena, including extreme weather or environmental conditions (such as lightning, earthquake, hurricane, storm, fire, flood, drought or accumulation of snow or ice);

(iv) nuclear, chemical or biological contamination, pandemic, quarantine;

(v) pressure waves caused by devices travelling at supersonic speeds;

(vi) discovery of fossils or antiquities of significant historical importance; and/or

(vii) strike, lockout or other industrial action other than involving the Contractor, the Principal or the Beneficiary.

(x) "Good Industry Practice", in relation to the performance of any activity to which this standard is applied, the exercise of that degree of skill, diligence, prudence and foresight as would reasonably be expected to be exercised by a properly qualified and competent person engaged in carrying out Work, Services or services of a similar size, nature, scope, type and complexity, complying with Applicable Law, applicable Standards and published codes of practice.

(y) "Intellectual Property", all intellectual property rights in any part of the world in respect of any documentation or information provided by the Contractor to the Beneficiary, including any patent, patent application, trade mark, trade mark application, registered design, registered design application, utility model, trade name, discovery, invention, process, formula, specification, copyright (including all neighbouring rights, rights in computer software and database and topography rights), know how or unregistered design right.

(z) "Intellectual Property of the Contractor", all Intellectual Property owned or licensed to the Contractor with a right to sub-license.

(aa) "Objection Notice", as defined in accordance with Clause 7.5 of this Agreement.

(bb) "Party" and "Parties", the Principal, the Beneficiary and the Contractor and include their respective successors in title, permitted assigns and permitted transferees.

(cc) "Person", shall include any natural person, company, corporate body, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) or two or more of the foregoing.

(dd) "Project", development of a 1435 mm standard gauge railway line in the Rail Baltica (RB) corridor through Estonia, Latvia and Lithuania aimed at eliminating the technical bottleneck due to the gauge differences (1,520 mm vs. the EU standard of 1,435 mm).

(ee) "Principal", the company RB Rail AS, as further specified in the Preamble of this Agreement.

(ff) "Railway", a new fast conventional double track electrified railway line according TSI INF P2-F1 criteria and European standard gauge (1435 mm) on the Route.

(gg) "Representative", an officer, employee or individual appointed by the Contractor and/or the Principal to serve as its authorised representative toward the supply or receipt of the Service and indicated under *Annex I: Representatives.*

(hh) "Residence Certificate", a certificate mentioned in Clause 5.2(h) of this Agreement.

(ii) "Right of Partial Acceptance", as defined in accordance with Clause 9.6 of this Agreement;

(jj) "Services", the identification of unexploaded ordnance and geotechnical works as provided under this Agreement and further described under *Annex B: Technical Specification*;

(kk) "Services Milestone", the date for delivery of one or more Deliverables, as set out in the *Annex B: Technical Specification* and *Annex C: Schedule of Services;*

(ll) "VAT", value added tax.

(mm) "Variations", a variation to the Agreement or any part thereof mentioned in Clause 2.12.

(nn) "Working Day", any day (other than Saturday or Sunday) on which banks in the Republic of Latvia are open for conduct of business.

(oo) "Works", all incidental works, steps and actions performed by the Contractor for the attainment of the objectives of the Services and/or the Project.

Annex B: Technical Specification

Annex C: Schedule of Services

1. Service start date: Commencement Date

2. Deliverables:

Deliverable	No of copies	Services Milestone
Inception report	1	CD[2] + six (6) weeks
Report on removed UXO`s	1	CD + eighteen (18) weeks
Report on Geotechnical Investigation result	1	CD + twenty-six (26) weeks

3. The Principal will accept all Deliverables in accordance with the Clause 7.5 and Clause 7.6 of the Agreement only if they will conform with the quality and other requirements defined under *Annex B: Technical Specification*.

4. The Principal may provide comments or remarks to Deliverables after signing of the Deed of Acceptance. In such situations the Contractor shall implement and/or consider mentioned comments and remarks until the submission of subsequent Deliverables.

[2] Commencement Date of the Agreement

Annex D: Fee and Payment Schedule

1. ***Fee***. In consideration of provision of the Services, the Beneficiary undertakes to pay the Contractor the total Fee consisting of the Fee for the basic package (mandatory part) as indicated under the *Annex H: Contractor's Proposal* and optional package of the Services as indicated under the *Annex H: Contractor's Proposal* and requested by the Principal following the Clause 2.3 of the Agreement.

2. ***Payment schedule***. After the delivery and acceptance of the following Deliverables, the Beneficiary shall pay the following amounts of the Fee:

Deliverable	Services Milestone	Payment, % from the Fee
Report on removed UXO`s	CD[3] + 6 weeks	50%
Report on Geotechnical Investigation result	CD + 26 weeks	50%

3. ***Advance payment***. According to the Clause 6.4 of the Agreement the Contractor is entitled to request an Advance Payment in the amount up to **10% (ten percent)**, excluding VAT, of the total Fee amount which shall be paid in accordance with the terms of the Agreement.

[3] Commencement Date of the Agreement

Annex E: List of approved Sub-Conractors and Staff

[A LIST OF ALL SUB-CONTRACTORS AND/OR SUPPLIERS THE CONTRACTOR ANTICIPATES TO ENGAGE TOWARD PROVISION OF THE SERVICES. PLEASE INDICATE NAME, CONTACT DETAILS AND LEGAL REPRESENTATIVE(S) OF EACH SUB-CONTRACTOR]

Annex F: Deed of Acceptance

No [INSERT NUMBER]

Date: [INSERT DATE IN THE FORM OF 1 January 2020]

Location: [INSERT LOCATION]

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

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

Whereas:

(A) the Principal and the Contractor have entered into the Agreement. [●];

(B) one or more Services Milestones have been met and/or Deliverables of the Services have been completed or the Services have been fully completed by the Contractor;

(C) as stipulated by Clause 7.4 of the Agreement, completion of a Services Milestone/Deliverable shall be evidenced by means of the Contractor issuing a signed Deed of Acceptance;

(D) as per Clause 7.4 of the Agreement the Principal following the reception of a signed Deed of Acceptance shall review the submitted Deed of Acceptance and either sign the Deed of Acceptance conforming the compliance of the Services rendered or raise objections by issuing an Objection Notice.

The Contractor hereby confirms that following Services Milestone/Deliverable has/have been supplied on [INSERT DATE IN THE FORM OF 1 January 2020], as specified in accordance with the Agreemet, or the Services have been completed in full: [DESCRIBE IN REASONABLE DETAIL THE DELIVERABLE SUPPLIED AND ATTACH THE RESPECTIVE SUPPORTING DOCUMENTATION]

By signing this Deed of Acceptance the Principal confirms in accordance with Clauses 7.5(b) of the Agreement its satisfaction with the result of the Deliverable submitted and Services Milestone completed, and the Principal accepts the respective Deliverable in its entirety or partly as specified in Clause 7.5(b) of the Agreement. Additionally, the Principal certifies that all of the necessary authorisations for the acceptance of the Deliverable have been duly received.

Signatures:

For and on behalf of the Principal	For and on behalf of the Contractor
[●]	[●]
_____	_____

Annex G: Declaration of Contractor

THE DATE INDICATED ON THE TIMESTAMP OF THE SIGNATURE OF THE DOCUMENT

I, the undersigned duly authorised representative, on behalf of [•] undertake:

1. To respect the freely-exercised right of workers, without distinction, to organize, further and defend their interests and to bargain collectively, as well as to protect those workers from any action or other form of discrimination related to the exercise of their right to organize, to carry out trade union activities and to bargain collectively;

2. Not to use forced or compulsory labour in all its forms, including but not limited to not employ people against their own free will, nor to require people to lodge 'deposits' or identity papers upon commencing employment;

3. Not to employ: (a) children below 14 years of age or, if higher than that age, the minimum age of employment permitted by the law of the country or countries where the performance, in whole or in part, of a contract takes place, or the age of the end of compulsory schooling in that country or countries, whichever is higher; and (b) persons under the age of 18 for work that, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of such persons;

4. To ensure equality of opportunity and treatment in respect of employment and occupation without discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin and such other ground as may be recognized under the national law of the country or countries where the performance, in whole or in part, of a contract takes place;

5. To ensure the payment of wages in legal fashion, at regular intervals no longer than one month, in full and directly to the workers concerned; to keep an appropriate record of such payments. Deductions from wages will be conducted only under conditions and to the extent prescribed by the applicable law, regulations or collective Contract, and the workers concerned shall be informed of such deductions at the time of each payment. The wages, hours of work and other conditions of work shall be not less favourable than the best conditions prevailing locally (i.e., as contained in: (i) collective Contracts covering a substantial proportion of employers and workers; (ii) arbitration awards; or (iii) applicable laws or regulations), for work of the same character performed in the trade or industry concerned in the area where work is carried out;

6. To ensure, so far as is reasonably practicable, that: (a) the workplaces, machinery, equipment and processes under their control are safe and without risk to health; (b) the chemical, physical and biological substances and agents under their control are without risk to health when the appropriate measures of protection are taken; and (c) where necessary, adequate protective clothing and protective equipment are provided to prevent, so far as is reasonably practicable, risk of accidents or of adverse effects to health;

7. To support and respect the protection of internationally proclaimed human rights and not to become complicit in human rights abuses;

8. To create and maintain an environment that treats all employees with dignity and respect and will not use any threats of violence, sexual exploitation or abuse, verbal or psychological harassment or abuse. No harsh or inhumane treatment coercion or corporal punishment of any kind is tolerated, nor is there to be the threat of any such treatment;

9. To have an effective environmental policy and to comply with existing legislation and regulations regarding the protection of the environment; wherever possible support a precautionary approach to environmental matters, undertake initiatives to promote greater environmental responsibility and encourage the diffusion of environmentally friendly technologies implementing sound life-cycle practices;

10. To identify and manage chemical and other materials posing a hazard if released to the environment to ensure their safe handling, movement, storage, recycling or reuse and disposal;

11. To monitor, control and treat as required prior to discharge or disposal wastewater and solid waste generated from operations, industrial processes and sanitation facilities;

12. To characterize, monitor, control and treat as required prior to discharge or disposal air emissions of volatile organic chemicals, aerosols, corrosives, particulates, ozone depleting chemicals and combustion by-products generated from operations;

13. To reduce or eliminate at the source or by practices, such as modifying production, maintenance and facility processes, materials substitution, conservation, recycling and re-using materials, waste of all types, including water and energy;

14. To adhere to the highest standards of moral and ethical conduct, to respect local laws and not engage in any form of corrupt practices, including but not limited to extortion, fraud, or bribery;

15. To disclose (a) any situation that may appear as a conflict of interest, such as but not limited to: where a Contractor or an undertaking related to the Contractor has advised a Beneficiary or Implementing Body or has otherwise been involved in the preparation of the procurement procedure; and (b) if any Beneficiaries' or Implementing Bodies' official, professional under contract with Beneficiary or Implementing Body or sub-contractor may have a direct or indirect interest of any kind in the Contractor's business or any kind of economic ties with the Contractor;

16. Not to offer any benefit such as free goods or services, employment or sales opportunity to a Beneficiary's and Implementing Body's staff member in order to facilitate the Contractors' business with Beneficiaries or Implementing Bodies;

17. Within a period set in the applicable national legislation following separation from service or award of a contract, as the case may be, to refrain from offering employment to any Beneficiaries' and Implementing Bodies' staff in service and former Beneficiaries' and Implementing Bodies' staff members who participated in the procurement process and to whom a legal restriction to receive material benefits from or be employed by a Contractor which participated in a procurement procedure or restrictions with similar effect applies;

18. To promote the adoption of the principles set forth in this Contractor's Declaration by my potential business partners and promote the implementation of the principles set forth in this document towards own Contractors;

19. Not procure goods, works and services from other Contractors:

a. Who, or its member of the Management Board or the Supervisory Board or procurator of such Contractor, or a person having the right to represent such Contractor in activities related to a subsidiary, has been found guilty in any of the following criminal offences by a such punishment prescription of prosecutor or a judgement of a court that has entered into effect and is non-disputable and not subject to appeal:

i. bribetaking, bribery, bribe misappropriation, intermediation in bribery, taking of prohibited benefit or commercial bribing;

ii. fraud, misappropriation or laundering;

iii. evading payment of taxes and payments equivalent thereto,

iv. terrorism, financing of terrorism, invitation to terrorism, terrorism threats or recruiting and training of a person for performance of terror acts;

b. who, by such a decision of a competent authority or a judgment of a court which has entered into effect and has become non-disputable and not subject to appeal, has been found guilty of an infringement of employment rights which means:

i. employment of such one or more citizens or nationals of countries, which are not citizens or nationals of the European Union Member States, if they reside in the territory of the European Union Member States illegally;

ii. employment of one person without entering into a written employment contract, not submitting an informative declaration regarding employees in respect of such person within

a time period laid down in the laws and regulations, which is to be submitted regarding persons who commence work;

c. who, by such a decision of a competent authority or a judgment of a court which has entered into effect and has become non-disputable and not subject to appeal, has been found guilty of infringement of competition rights manifested as a vertical Contract aimed at restricting the opportunity of a purchaser to determine the resale price, or horizontal cartel Contract, except for the case when the relevant authority, upon determining infringement of competition rights, has released the candidate or tenderer from a fine or reduced fine within the framework of the co-operation leniency programme;

d. whose insolvency proceedings have been announced (except the case where a bailout or similar set of measures is applied within insolvency proceedings oriented towards prevention of possible bankruptcy and restoration of solvency of the debtor, in which case I shall evaluate the possibility of such Contractor to participate in the tender), economic activity of such Contractor has been suspended or discontinued, proceedings regarding bankruptcy of such Contractor have been initiated or such Contractor will be liquidated;

e. who has tax debts in the country where the procurement is organised or a country where such Contractor is registered or permanently residing, including debts of State social insurance contributions, in total exceeding an amount which is common threshold in public procurements in the respective country.

_____

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

Annex H: Contractor's Proposal

Annex I: Representatives

Annex J: Performance Bond

To: the Beneficiary - Ministry of Transport of Republic of Latvia, registration number: 90000088687, registered address: Gogoļa iela 3, Riga, LV-1743, which for the purposes of the Contract implementation is represented by RB Rail AS, a joint-stock company duly incorporated and operating under the laws of Republic of Latvia, registration number: 40103845025, registered address: Krišjāņa Valdemāra iela 8-7, Riga, LV-1010.

Guarantor: [identify bank or insurance company (re-insurance company) or financial institution, by specifying its full name and legal form, registration number, legal address, e-mail]

Applicant: [specify Contractor's full name and legal form, registration number, legal address]

Addressee: RB Rail AS.

Date: [insert date]

Underlying Relationship: the Contract No [__] on AGREEMENT FOR IDENTIFICATION OF UNEXPLODED ORDNANCE AND GEOTECHNICAL WORKS IN FORMER CEKULE MILITARY AREA, executed between the Applicant, the Beneficiary and RB RAIL AS on [insert the date of the Contract] (hereinafter the Contract) and obligations of the Applicant to perform the Contract in accordance with the terms of the Contract.

Guarantee Amount and currency: [EUR _____ (_____ euros)].

Document in support of the demand for payment: Original of the statement issued by RB Rail AS that shall be presented as follows:

- Paper form (written) demand signed by an authorised representative of the Beneficiary which shall be sent by courier to the legal address of the Guarantor with a copy to the legal address of the Applicant; or

- Electronical form (scanned and signed ".PDF" file, whereas the file may be in a ASIC-E or similar container, to the e-mail of the Guarantor as indicated above by using safe electronic signature with a time stamp; the document shall be signed by an authorised representative of the Beneficiary; or

- Authenticated SWIFT message using SWIFT submission system (not necessarily, but can be combined with scanned and signed ".PDF" file, whereas the file may be in a ASIC-E or similar container and secured by using safe electronic signature with a time stamp; the document shall be signed by an authorised representative of the Beneficiary.

Language of all required documents: the English language.

Expiry: [insert date].

As Guarantor, we hereby irrevocably and unconditionally undertake to pay the Beneficiary any amount up to the Guarantee Amount upon presentation of the first Beneficiary's complying demand, in the form of presentation indicated above and supported (document in support of the demand for payment), in any event, by the Beneficiary's statement, whether in demand itself or in a separate signed document accompanying or identifying the demands, indicating in what amount the Applicant is in breach of its obligations under the Underlying Relationship. Any demand under this Guarantee must be received by us on or before Expiry indicated above.

We further agree that no change or addition to or other modification of the terms of the Contract shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition or modification. We hereby also waive any options, possibilities or rights to reject or suspend the Beneficiary's demand if it is issued in accordance with this document. The Beneficiary shall not be obliged to justify its demand. The Beneficiary is entitled to transfer (assign) the Guarantee (the rights arising therefrom) to RB Rail AS. The Guarantor has been notified that the Beneficiary may require the Applicant to extend the Guarantee.

Applicable law and Disputes: THIS GUARANTEE IS SUBJECT TO THE UNIFORM RULES FOR DEMAND GUARANTEES (URDG) 2010 REVISION, ICC PUBLICATION NO 758 (ICC RULES). Article 33 of the ICC Rules does not apply in case any or all rights under this Guarantee or the Guarantee as a whole are assigned, pledged or transferred. Matters which are not covered by the above mentioned ICC Rules shall be decided according to Latvian law. For avoidance of doubt, Articles 1692 to 1715 of the Civil Law of Latvia do not apply to this Guarantee, as this Guarantee does not constitute a surety (in Latvian – galvojums) and instead this Guarantee constitutes a separate and independent (not accessory) obligation of the Guarantor. Any dispute, controversy or claim arising out of or relating to this Guarantee shall be settled by the competent court of the Republic of Latvia.

This Guarantee cannot be changed or terminated without the prior written consent of the Beneficiary.

This Guarantee is executed in two originals – the Beneficiary and the Guarantor shall each receive one original.

SIGNATURE AND SEAL OF THE GUARANTOR

Date

.....

Name of bank or insurance company (re-insurance company) or financial institution

.....

Address

.....

Annex K: Deed of Commencement

No [INSERT NUMBER]

Date: [INSERT DATE]

Location: [INSERT LOCATION]

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

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

Whereas:

(A) the Principal and the Contractor have entered into the Agreement [●] (the "Agreement");

(B) in accordance with Clause 2.1. of the Agreement the Contractor shall submit to the principal the insurance policy or the certificate in compliance with Clause 10.8 and Performance Bond in compliance with Clause 10.17;

(C) as stipulated by Clause 2.1. of the Agreement, the receipt and compliance of the insurance policy or the certificate and the Performance Bond shall be evidenced by the Principal issuing a signed Deed of Commencement.

The Contractor hereby confirms that insurance policy [or certificate] and the Performance Bond submitted by the Contractor conforms with the requirements of the Agreement and the Contractor shall be entitled to commence the provision of the Services following the terms of the Agreement.

For and on behalf of the Principal

[●]

_____