

PARTICULAR CONDITIONS

These Particular Conditions are to be read in conjunction with the General Conditions of the Client/Consultant Model Services Agreement, Fifth Edition 2017, as published by FIDIC.

The Particular Conditions take precedence over the General Conditions.

The particular Sub-Clauses of the General Conditions that are “affected” (added to, deleted, supplemented, etc.) by these Particular are indicated below.



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

Riga 2021

PART A
REFERENCES FROM CLAUSES IN THE GENERAL CONDITIONS

<i>Reference to the Clause/Sub-Clause</i>	<i>Relevant Information</i>
1.1 Definitions	
1.1.4 Client's Representative	██████████
1.1.5 Commencement Date	Effective Date
1.1.8 Consultant's Representative	██████████, DB Engineering & Consulting GmbH
1.1.9 Country	Any and all of the following countries (as the context requires): Republic of Latvia; Republic of Estonia; Republic of Lithuania and as described in Appendix 1 [<i>Scope of Services</i>].
1.1.22 Project	ENE Deployment as defined under Appendix 1 [<i>Scope of Services</i>]
1.1.24 Time for Completion for Phase 1 Services:	30 September 2022 or later date determined by the Parties according to Appendix 1 [<i>Scope of Services</i>].
1.3 Notices and other Communications	
1.3.1(c) Communication	E-mail, Microsoft SharePoint and/or by ProjectWise system.
1.3.1(d) Address for communications	
Client's address:	Krišjāņa Valdemāra iela 8-7, Riga, Latvia, LV-1010
Email:	██████████
Consultant's address:	Torgauer Strasse 12-15, 10829 Berlin Germany
Email:	██████████
1.4 Law and Language	
1.4.1 Law governing Agreement	The Agreement is governed by the laws of Republic of Latvia. The arbitration agreement (Clause 10 [<i>Dispute and Arbitration</i>] of Part A and Clause 10 [<i>Dispute and Arbitration</i>] of

1.4.2 Ruling language of Agreement	Part B) is governed by laws of the Kingdom of Sweden English
1.4.3 Language for communications	English, except where Appendix 1 [<i>Scope of Services</i>] also requires use of another language.
3.11 Performance Security	
3.11.1 Amount of the Performance Security for Phase 1 Services	10 % of the value (i.e., fixed lump sum) of Phase 1 Services
3.11.8 Increase of the Performance Security upon each Notice to Commence regarding any part of Phase 2 Services	10 % of the value of Phase 2 Services ordered by the Client with respective Notice to Commence. The value of the ordered part of Phase 2 Services is indicated in the Notice to Commence and is calculated on estimates provided by the Consultant in its offer.
7.7 Retention Money	
7.7.1 Amount to be retained from each payment payable to the Consultant for Phase 2 Services	10 %
8.2 Duration of Liability	
8.2.1 Period of Liability	Two (2) years as of the Time for Completion
8.3 Limit of Liability	
8.3.1 Limit of Liability	The total amount of the Agreement Price actually paid, and actual value of all approved (1) Variations under the Agreement, and (2) Exceptional Costs payable to the Consultant.
8.5 Additional Exceptions from Limit of Liability	
8.5.3 Limit of claims under Sub-Clause 8.5.1	10 % of the losses incurred.
10 Disputes and Arbitration	
10.4.1 Arbitration rules	International Chamber of Commerce
10.4.1 Language of arbitration	English
10.4.1 Place of arbitration	Stockholm, Sweden

PART B ADDITIONAL AND AMENDED CLAUSES

1 General Provisions

1.1 Definitions

1.1.1 Agreement

Express Sub-Clause in the following wording:

“**“Agreement”** means the Form of Agreement together with the Client/Consultant Model Services Agreement (General Conditions and Particular Conditions), Appendix 1 [*Scope of Services*], Appendix 2 [*Form of the Notice to Commence*], Appendix 3 [*Remuneration and Payment, and Payment Forms*], Appendix 4 [*Agreement Administration Forms*], Appendix 5 [*Rules of Adjudication*], Appendix 6 [*Procurement Documents*], Appendix 7 [*Site Security and Security Clearance requirements*], Appendix 8 [*Checks and Audits*], Appendix 9 [*Form of the Performance Security*], Appendix 10 [*Supplier’s Declaration*], as well as any future amendments / addendums to such documents.”

1.1.3 Client

Express Sub-Clause in the following wording:

“**“Client”** means the Party named in the Form of Agreement and legal successors to the Client and permitted assignees. Under Appendix 1 [*Scope of Services*] Client is also referred to as “Employer”.”

1.1.7 Consultant

Express Sub-Clause in the following wording:

“**“Consultant”** means the professional firm or individual named in the Form of Agreement and legal successors to the Consultant and permitted assignees. Under Appendix 1 [*Scope of Services*] Consultant is also referred to as “ENE Engineer”.”

1.1.8 Consultant’s Representative

Delete text “or appointed from time to time by the Consultant, and communicated by Notice to the Client to be his representative for the administration of the Agreement” from the Sub-Clause.

1.1.13 Exceptional Event

Add the following paragraphs at the end of Sub-Clause:

“The following events are not to be considered as Exceptional Event under the Agreement:

- (a) actions or decisions (acts) made by the state or municipal authorities, or public institutions, or commercial entities (which issue the technical requirements (in Estonian: *tehnilised nõuded*; in Latvian: *tehniskie noteikumi*; in Lithuanian: *prisijungimo sąlygos ir specialieji reikalavimai*) or any licences, approvals, etc., if such authorities, institutions and entities have acted within the limits of applicable laws and if such actions/decisions/approvals are made directly regarding the Services;
- (b) weather conditions which fall within the severity limits stipulated in the Agreement as permitted working conditions (if any), and health and safety requirements under applicable laws;
- (c) acts, omissions or failure of any sub-consultant;
- (d) shortage of sub-consultants, labour or materials;
- (e) mechanical or electrical breakdown or failure of equipment, machinery or plant owned or operated by either Party;
- (f) any failure by the Consultant to obtain and/or maintain a permit or consent which is Consultant’s responsibility under Agreement or applicable laws to obtain;

(g) risks which are assumed by the Party under the Agreement, including obligations assumed by the Consultant under Appendix 1 [*Scope of Services*], who relies on the Exceptional Event.”

1.1.23 Services

Express Sub-Clause in the following wording:

““**Services**” means all services described in the Agreement, and any Variations to such Services as approved in accordance with the Agreement.”

1.1.24 Time for Completion

Express Sub-Clause in the following wording:

““**Time for Completion**” means the time for completing all of the Services under the Agreement. The Time for Completion shall be time for completing the Services ordered last and subject to previously ordered Services being completed.

The Time for Completion on Effective Date shall be deemed the Time for Completion of Phase 1 Services as indicated in Part A of these Particular Conditions. Thereafter the Time for Completion shall be accordingly prolonged as indicated in each Notice to Commence submitted by the Client to the Consultant.”

1.1.27 Works Contract

Express Sub-Clause in the following wording:

““**Works Contract**” means contract (or several contracts, as the case may be) concluded between the Client (or other stakeholders involved in ENE Deployment process acting as employers under respective contracts, as the case may be) and the Contractor for performance of Works (or any part of them as the case may be) and identified by the Client as “Works Contract”.”

Add the following new Sub-Clauses to the Agreement:

“1.1.29 Contractor

“**Contractor**” means any contractor to be engaged by the Client (or other stakeholders involved in ENE Deployment process, as the case may be) for performance of any part of the Works, and identified by the Client as the “Contractor”.

1.1.30 Agreement Price

“**Agreement Price**” is the total sum payable as reimbursement for all Services, which consists of (1) fixed lump sum payable for Phase 1 Services, and (2) maximum target price for Phase 2 Services, as both set in the Appendix 3 [*Remuneration and Payment*], except Variations, and Exceptional Costs.”

1.1.31 Performance Security

“**Performance Security**” means the security to be provided by the Consultant under Clause 3.11 [*Performance Security*].

1.1.32 Procurement

“**Procurement**” means procurement No. RBR 2020/10 titled “Engineering services for preparation, procurement and supervision of Rail Baltica energy subsystem deployment”.

1.1.33 Procurement Documents

“**Procurement Documents**” means Agreement’s Appendix 6 which consists of all documents and information provided in the Procurement by the Client (apart from the ones included in the other appendices to the Agreement).

1.1.34 sub-consultant

“**sub-consultant**” means any person named in the Agreement as a sub-consultant, or any person appointed as a sub-consultant pursuant to provisions of the Agreement and the applicable laws, as well as each sub-consultant of such sub-consultant (i.e., any sub-consultant forming the full “chain” of sub-consultants).”

1.1.35 Phase 1 Services

“**Phase 1 Services**” means Services described as “Preparatory phase” under Appendix 1 [*Scope of Services*].

1.1.36 Phase 2 Services

“**Phase 2 Services**” means Services described as “Works implementation phase” under Appendix 1 [*Scope of Services*].

1.1.37 Works

“**Works**” means all and any Permanent Works and Temporary Works required for implementation of the Project as defined in the Works Contract.

1.1.38 CAB

“**CAB**” means Conformity Assessment Body as described under Appendix 1 [*Scope of Services*].

1.1.39 CEF

“**CEF**” means the Connecting Europe Facility.

1.1.40 Rail Baltica Global Project

“**Rail Baltica Global Project**” means “Rail Baltica Global Project” as defined in Appendix 1 [*Scope of Services*], Chapter No. 1.2.

1.1.41 Deed

“**Deed**” means deed of acceptance and delivery of the Services performed. The form of the Deed shall be submitted to the Consultant by the Client within 21 days as of the Effective Date. The Client may unilaterally adjust the form of the Deed during the Agreement as needed to fully capture the volume of Services performed, progress of the Agreement, fulfilment of the Agreement Price and other Parties’ obligations.

1.1.42 Notice to Commence

“**Notice to Commence**” means a Client’s Notice to the Consultant on commencing of any part of Phase 2 Services. The issued Notice to Commence shall correspond to its form annexed in Appendix 2.

1.2 Interpretation

Add the following Sub-Clauses to the Clause:

“1.2.8 The text in *Italic* indicates the actions made with respect to the relevant provision.

1.2.9 For clarity, where in Particular Conditions a phrase “express in the following wording” is used it is considered that the wording of the relevant Clause/ Sub-Clause/paragraph/sub-paragraph as provided in the General Conditions is replaced by the new wording and the original wording is no longer in force.”

1.3 Notices and other Communications

Add the following Sub-Clauses at the end of the Clause:

“1.3.2 Notices on any claims, suspension of Services, or termination of the Agreement shall be delivered in writing in paper form or electronically signed with a qualified electronic signature within the meaning of EU Regulation No 910/2014 (eIDAS Regulation). Notices shall be addressed to the appointed representatives of the Parties and also sent to the Parties’ registered addresses if they differ from the correspondence addresses of the representatives.

1.3.3 For Notices other than those listed under Sub-Clause 1.3.2 and for documents that need to be signed by the Consultant when providing the Services, the Consultant will ensure that it may upon the Client’s request sign such Notices and documents with a qualified electronic signature and, where required under the applicable laws, such Notices or documents will contain a qualified electronic time stamp within the meaning of eIDAS Regulation. Notices and documents signed electronically in accordance with Sub-Clause 1.3.2 and Sub-Clause 1.3.3 will be sent to the e-mail address provided in these Particular Conditions, unless otherwise required by the Client.

1.3.4 Any Notice or other communication given shall be deemed to be received by the receiving Party:

- a) in the case of a Notice delivered in person – upon a receipt confirmed by a signature of duly authorised representative of the relevant Party;
- b) if sent by mail via registered letter in paper form – on the seventh (7th) day after it has been sent out as evidenced by a postal stamp;
- c) if sent by e-mail – on the next day after sending of the relevant e-mail.”

1.4 Law and Language

1) “In sub-Clause 1.4.1 replace text “or, if no governing law is stated in the Particular Conditions, by the law of the Country” with “however, the Consultant must follow also mandatory laws of Estonia or Lithuania that apply to and regulate the Services.”

2) Add the following sentence at the end of Sub-Clause 1.4.1:

“The Consultant shall also ensure that the Services shall at all-time be provided in accordance with the requirements imposed by the laws of the Country where the Works shall be performed.”

3) Add the following new Sub-Clause 1.4.4 at the end of the Clause:

“Notwithstanding any of the above provisions, the Consultant shall prepare all the necessary documents related to Services and ensure communication, when providing the Services, in Latvian, Estonian, Lithuanian or another language where required by mandatory laws of the relevant Country or by Appendix 1 [Scope of Services].”

1.5 Changes in Legislation

1) At the beginning of both Sub-Clauses (1.5.1 and 1.5.2) replace text “the date of the Consultant’s offer/proposal in relation to the Agreement” with “Effective Date”.

2) On the fourth line of Sub-Clause 1.5.2 replace “services” with “Services”.

3) In Sub-Clause 1.5.2 delete the last sentence.

1.6 Assignments and Sub-Contracts

At the beginning of second sentence of Sub-Clause 1.6.3 add “Without prejudice to the provisions of Article 62 of the Public Procurement Law of the Republic of Latvia and Appendix 1 [Scope of Services]”.

1.7 Intellectual Property

1) Express Sub-Clause 1.7.1 in the following wording:

“The Parties hereby agree that all economic rights (in Latvian: *mantiskās tiesības*) to any author’s works related to Foreground Intellectual Property are transferred to the Client at the moment of their creation. With regard to all moral rights arising out of such author’s works, the Consultant irrevocably consents to the following:

- a) right to inviolability of the work (in Latvian: *tiesības uz darba neaizskaramību*) – the Consultant allows the Client or any other third party to modify, change and make excerpts from or supplements to any author’s works, including any documentation (and subsequently to rebuild, reconstruct, renovate, transform, expand the object constructed on the basis of such documentation or subsequently to create new documentation to serve to the Client for any purpose) prepared by the Consultant under this Agreement;
- b) right to revocation of the work (in Latvian: *tiesības uz darba atsaukšanu*) – the Consultant confirms that he will not exercise its rights to revoke the any of the author’s works created under this Agreement.”

2) Delete words “royalty-free” from Sub-Clause 1.7.2.

3) Express Sub-Clause 1.7.5 in the following wording:

“The licence granted by the Consultant under Sub-Clause 1.7.2 shall survive the termination of the Agreement (for any reason) and the Client shall remain entitled to copy, use, modify and communicate the Consultant’s Background Intellectual Property for the purpose of Project (including, any marketing activities related to the Rail Baltica Global Project).

3) Add the following Sub-Clause to the Clause:

“1.7.6 The royalty for the licence granted by the Consultant under Sub-Clause 1.7.2 as well as the remuneration for transfer of economic rights and use of author’s moral rights as per Sub-Clause 1.7.1 above form part of the Agreement Price and are fully included in the first payment to be made under the Agreement. The Parties agree that such royalty and remuneration are the true value of the licence and the transfer, and thus neither Party has any claims with this regard against the other Party.”

4) Add the following Sub-Clause to the Clause:

“1.7.7. The Consultant shall transfer to the Client as of their creation or upon Client’s request all objects that contain Foreground Intellectual Property and Consultant’s Background Intellectual Property licensed to the Client in accordance with this Clause. The Consultant is obliged to transfer paper files and electronic files in an editable format (.doc, .xls, .dwg, etc.).”

1.8 Confidentiality

1) Express Sub-Clause 1.8.1 in the following wording:

“Except with the prior mutual written consent, neither the Client, nor the Consultant shall disclose or cause or permit their employees, professional advisers, agents, sub-consultants, dependents and other entities to disclose to third parties any confidential information. In any occasion the recipient agrees not to use any confidential information disclosed to it by the other party for his own use or for any purpose other than the purpose necessary for the execution of the Agreement.

The Client and the Consultant agree that they shall take all reasonable measures to protect the secrecy of and avoid disclosure or use of confidential information of the other Party in order to prevent it from falling into the public domain or the possession of persons other than those persons authorised under this Agreement (if any) to have any such information. Such measures shall include the highest degree of care that the receiving Party utilises to protect his own confidential information of a similar nature, which shall be no less than reasonable care. The Client and the Consultant agrees to immediately notify each other in writing of any actual or suspected misuse, misappropriation or unauthorised disclosure of confidential information of the disclosing Party which may come to the receiving Party’s attention.

In any occasion it is the recipient's responsibility to ensure that any sharing (if the sharing is explicitly allowed) of the confidential information shall meet the same requirements as the recipient has in this Agreement.”

2) In Sub-Clause 1.8.2 delete paragraph (c).

3) Express Sub-Clause 1.8.3 in the following wording:

“The obligations set forth in Sub-Clause 1.8.1 shall survive termination or expiry of the Agreement and shall remain in force for an unlimited time or for the maximum period permitted under applicable mandatory law.”

1.9 Publication

1) Express Sub-Clause 1.9.1 in the following wording:

“Publishing of any material relating to the Services is subject to the Client’s prior written approval.”

2) Add to the end of Sub-Clause 1.9.2 the following sentence:

“Before using such materials and information the Consultant informs the Client, by indicating the details of respective tender. The Client may object to such use within fourteen (14) days as of receipt of the relevant Consultant’s Notice.”

2 The Client

2.1 Information

1) Add the following sentences at the end of Sub-Clause 2.1.1:

“However, by entering into the Agreement the Consultant confirms that already during the Procurement process the Consultant has requested and received all information available, and the received information is sufficient to understand the nature and scope of the Services to be performed, thus, any additional information as may be submitted by the Client in relation to the scope of Services (as set at the Effective Date) shall have no effect on the (1) fixed lump sum payable for Phase 1 Services and the Time for Completion for Phase 1 Services, and (2) maximum target price for Phase 2 Services. During the Agreement the Consultant shall make all information requests to the Client, where needed, by submitting to the Client a properly filled information request form as annexed in Appendix 4.”

2) in Sub-Clause 2.1.2 on the sixth line only, replace “Standard of Care” with “standard of care”.

3) Add the following sentence at the end of Sub-Clause 2.1.2:

“The Client shall not be responsible for the accuracy, sufficiency or consistency of the information provided to the Consultant, if the Consultant has failed to review the provided information and provide Notice to the Client pursuant to this Sub-Clause.”

2.2 Decisions

Add the following sentences at the end of Sub-Clause 2.2.1:

“For clarity – no decision/approval/consent provided by the Client shall in any way decrease the liability of the Consultant, or relieve him of his obligations to provide the Services pursuant to this Agreement or applicable laws. However, the said is not to be interpreted as Client’s decisions/consents/approvals being invalid as between the Parties.”

2.3 Assistance

Delete the Clause from the Agreement.

2.4 Client’s Financial Arrangements

Delete the Clause from the Agreement.

2.5 Supply of Client’s Equipment and Facilities

Delete the Clause from the Agreement.

2.6 Supply of Client’s Personnel

Delete the Clause from the Agreement

2.7 Client's Representative

Express Sub-Clause 2.7.1 in the following wording:

“As of the Effective Date the Client has appointed person(s) indicated in the Part A of these Particular Conditions as his representative. During the Agreement the Client may unilaterally change his representative by notifying the Consultant thereof.

The Client's representative performs obligations that he has been entrusted with and rights granted to him by the Client. Unless and as long the Client has not informed the Consultant otherwise, it is considered that the Client's representative has full rights to act on behalf of the Client under the Agreement, except, the Client's representative has no authority to amend the Time for Completion or the Agreement Price, or sign amendments to the Agreement.”

2.8 Services of Others

1) Delete Sub-Clause 2.8.1.

2) Express Sub-Clause 2.8.2 in the following wording:

“The Consultant is responsible for interface management as per Appendix 1 [*Scope of Services*].”

3 The Consultant

3.1 Scope of Services

1) Rename the Clause as “3.1 Scope of Services and General Obligations of the Consultant”

2) Add the following sentences at the end of Sub-Clause 3.1.1:

“On the Effective Date the Consultant's scope includes Phase 1 Services only. After signing of the Agreement, the Consultant shall carry out the Services independently, in a responsible manner and with due professional integrity and avoid any circumstances or matters that may give rise to a conflict of interest allow any undue influence or appearance of such with respect in the performance of its obligations under the Agreement as stipulated in Sub-Clause 3.1.3 of this Agreement.”

3) Delete the last two sentences from Sub-Clause 3.1.3 and replace it with the following sentences:

“The Consultant, its employees, staff, and any sub-consultant shall refrain from situations resulting in any pressure and incentive, in particular of a financial type, which could affect its judgement or the results of its Services, in particular from persons or groups of persons affected by the results of the Services, but also including national safety authorities, construction authorities, incumbent infrastructure managers as well as other regulatory and supervisory authorities, and institutions, and private bodies, in particular the Contractor. If any circumstances or matters that may give rise to such conflict of interest arise, the Consultant shall notify the Client without delay of any circumstances that could be perceived as leading to a conflict of interest between the Consultant and the Client (or between Consultant and the Contractor), and generally – towards the Consultant (and the Client) and any Consultant's employee, member of staff, and/or sub-consultant. The Consultant shall undertake all legally and mandatory required conflict of interest prevention measures. However, the Client may upon its sole discretion, where allowed under applicable law, determine that there is no conflict of interest in the circumstances notified to the Client by the Consultant pursuant to the above provisions as a result of which the Consultant shall regard these circumstances as not giving rise to a conflict of interest.”

4) *Add the following Sub-Clauses to the Clause:*

“3.1.4 The Consultant has to be registered with the required registers of the Country (e.g., in Latvia – Register of Construction Merchants (in Latvian: *Būvkomersantu reģistrs*)) and hold any required certificates, licences or permits in the relevant Country in the fields and spheres necessary to duly perform the Services and Consultant’s obligations under the Agreement and to meet the requirements set in the Procurement Documents. The mentioned among others includes Consultant’s obligation to employ and use for the provision of the relevant Services duly certified specialists as required under the laws applicable to the Services. The Consultant must ensure that it fulfils the above requirements no later than within twenty-eight (28) days prior to commencement of the provision of the relevant part of the Services, that require such registration, certificates, licences or permits. Failure to comply with this Sub-Clause is considered as a material breach of the Agreement and thus may lead to termination of the Agreement, and it is also subject to contractual penalty pursuant to Sub-Clause 8.1.4 below.

3.1.5 Without prejudice to the Contractor’s obligations for collecting requirements and instructions under the Works Contract or applicable laws (e.g., technical requirements for construction, and the like), during Phase 2 Services the Consultant is responsible for collecting and delivering to the Contractor instructions from the other persons/entities involved in the implementation of the Rail Baltica Global Project as the case may be including but not limited to CABs such as NoBo, AsBo, DeBo, CABs responsible for design expertise not within the scope of Services of the Consultant under this Agreement, and other. The instruction shall be provided without adversely affecting the deadlines for performance of Works under the Works Contract. By applying the standard of care set in Sub-Clause 3.3.1 the Consultant shall inquire all the questions/information/etc. necessary for these instructions to be mutually consistent and non-contradictory.

3.1.6 The Consultant is responsible for its registration in appropriate legal manner and form with necessary tax authorities and other authorities and registers as may be required for purposes of corporate registration, licencing, and registration for tax purposes and taxation applied on the Consultant in relation to the present Agreement. The Consultant is responsible for obtaining any required residency, working or other permits necessary for its personnel to provide the Services on behalf of the Consultant to the Client. The Client is entitled to withhold payments to be made to the Consultant until all the required registrations have been made or relevant permits or tax certificate have been obtained.

3.1.7 The Consultant shall fully comply with requirements set in Agreement’s Appendix 7 [*Site Security and Security Clearance requirements*] and Appendix 8 [*Checks and Audits*].

3.1.8 The Consultant shall no later than within fourteen (14) days following implementation and registration (if necessary) of changes into the Consultant, his constituent members, members of the management board and supervisory board, ultimate beneficial owners of the Consultant and his constituent members, persons with the rights of representation of the Consultant, submit to the Client all documents and data regarding such changes.

3.1.9 The Consultant is not allowed to use and must avoid the use of legal or physical persons in the sanctions list of the EU or any of the Baltic Countries (Estonia, Latvia, Lithuania). The Consultant may not use any countries, ports, access points or other such aspects as part of their supply chain and Agreement implementation that are in the sanctions list of the EU or any of the Baltic Countries (Estonia, Latvia, Lithuania).

3.1.10 Upon a request from the Client, the Consultant shall provide a feedback on Client’s performance of its obligations under the Agreement. Such feedback shall be provided in a form and within time as set by the Client; such feedback shall not be interpreted as Consultant’s claim under the Agreement.”

3.3 Standard of Care

1) *Express Sub-Clause 3.3.1 in the following wording:*

“The Consultant shall perform the Services with the care of prudent and careful owner (in Latvian: *krietns un rūpīgs saimnieks*). Including that while performing the Services under the Agreement the Consultant shall use all the skill, care and diligence as may be expected from a professional consultant experienced in performing services of a similar size, scope, complexity, value and purpose.”

2) *Express Sub-Clause 3.3.2 in the following wording:*

“By using the standard of care set in Sub-Clause 3.3.1, the Consultant shall perform the Services to satisfy any function and purpose that may be described in the Agreement and/or applicable laws.”

3.4 Client’s Property

Add the following wording at the beginning of the first sentence of Sub-Clause 3.4.1 “Without prejudice to the provisions on ownership of Intellectual Property under Clause 1.7” and replace “Anything” with “anything”.

3.6 Consultant’s Representative

1) *Express Sub-Clause 3.6.1 in the following wording:*

“As of from the Effective Date the Consultant has appointed person(-s) indicated in the Part A of these Particular Conditions as his representative. During the Agreement the Consultant may change his representative only with a prior written approval of the Client, which shall not unreasonably be withheld. The Consultant shall ensure that any proposed Consultant’s personnel and Consultant’s Representative (where applicable) involved in the provision of Services meets the qualification requirements set in the Procurement Documents and Appendix 1 [*Scope of Services*].

The Consultant’s Representative performs obligations that he has been entrusted with and rights granted to him by the Consultant. Unless and as long the Consultant has not informed the Client otherwise, it is considered that the Consultant’s Representative has full rights to act on behalf of the Consultant under the Agreement, except, the Consultant’s Representative has no authority to amend the Time for Completion, or the Agreement Price or sign amendments to the Agreement (unless such authority is vested with Consultant’s Representative with Consultant’s statutes and may be derived from public registers).”

2) *Delete Sub-Clause 3.6.2 from the Agreement.*

3.7 Changes in Personnel

1) *Add the following sentence at the end of Sub-Clause 3.7.1:*

“Without prejudice to the provisions of Article 62 of the Public Procurement Law of the Republic of Latvia and Appendix 1 [*Scope of Services*] (which, for clarity, is fully applicable to change of Consultant’s personnel), the Consultant may replace the personnel indicated in the Agreement only with a Client’s prior written consent, which shall not be unreasonably withheld. The Consultant shall ensure that any proposed Consultant’s personnel (where applicable) meets the qualification requirements set in the Procurement Documents and Appendix 1 [*Scope of Services*].”

2) *Express Sub-Clause 3.7.2 in the following wording:*

“The cost of such replacement shall be borne by the Consultant.”

3.9 Construction Administration

1) *Express Sub-Clause 3.9.1 in the following wording:*

“When ordered by Notice to Commence, the Phase 2 Services shall among other include the Consultant’s obligation to perform all the duties of the Engineer as defined and set out under the Works Contract. By entering into this Agreement, the Consultant confirms that he has thoroughly acquainted himself with the general provisions of the potential Works Contracts (e.g, FIDIC “Conditions of Contract for Plant & Design-Build, 2nd edition 2017 (“FIDIC Yellow Book”)), and the Engineer’s role and duties under it, and that the set conditions and deadlines for performing the Engineer’s duties and are clear and acceptable to the Consultant. For avoidance of the doubt, the Agreement Price will not be increased or otherwise affected by the type of the Works Contract used or the amount of the Works Contract used, and the Consultant shall provide all Services pursuant to this Agreement, including Appendix 1 [*Scope of Services*], regardless of the type or amount of Works Contract. Should the particular conditions of the Works Contract in Consultant’s opinion expand its obligations under the Agreement, the Consultant shall immediately (but in any case not later than within 14 (fourteen) days as of receipt of the final draft of Works Contract) submit Notice to the Client, specifying in detail and with relevant calculations how the particular conditions of Works Contract have expanded Consultant’s obligations under this Agreement and affected the target price for Phase 2 Services. If no Notice is submitted or Notice is submitted after the set deadline for its submission, the set price for Phase 2 Services shall remain intact; if the Notice is submitted on time and includes the required substantiation, and the Client agrees to the Consultant’s arguments Clause 5.3 [*Potential Variations*] may apply, whereas if the Client disagrees to the Consultant’s arguments Clause 10 [*Disputes and Arbitration*] may apply. Disagreement on the scope of Services between the Parties shall in no way affect the Consultant’s obligations under this Agreement and the Consultant shall proceed to provide the Services according to the Agreement.”

2) *Delete Sub-Clause 3.9.2 from the Agreement.*

3) *Express Sub-Clause 3.9.3 in the following wording:*

“When acting as the Engineer under the Works Contract, the Consultant shall have the authority to act on behalf of the Client to the extent provided in the Works Contract. However, the Consultant shall not suspend the Works (unless such suspension is required as per provisions of applicable laws of the Country, in which case the Consultant notifies the Client immediately of all circumstances related to such suspension), issue or approve a Variation under the Works Contract, or make any decisions that result in increase of the price or extension of the deadlines under the Works Contract without Client’s prior written approval.”

4) *Express Sub-Clause 3.9.4 in the following wording:*

“In case the Contractor submits a Claim, including Notice of Claim, (as defined in the Works Contract) against the Client under the Works Contract, the Consultant shall provide the Client a non-binding opinion on the Claim within twenty-eight (28) days as of receipt of the Claim. For clarity – this opinion shall not be deemed as Engineer’s determination under the Works Contract.”

5) *Delete Sub-Clause 3.9.5.*

6) *Add the following Sub-Clause 3.9.7 to the Clause:*

“The Consultant confirms that it has evaluated and undertakes the risk of delay in Services due to insufficient content of DTD (as defined and described under Appendix 1 [*Scope of Services*]) due to improper performance of Consultant’s duties as per Appendix 1 [*Scope of Services*], and the Consultant has included such risk in the Agreement Price.”

Add the following new Clauses to the Agreement:

“3.10 Construction Supervision

3.10.1 The Services to be performed by the Consultant under this Agreement include construction supervision (in Latvian: *būvuzraudzība*; in Lithuanian: *statinio statybos techninė priežiūra*; in Estonian: *ehitusjärelvalve*) as defined in applicable laws of the Country, and in the Agreement. For avoidance of doubt, the construction supervision provided under this Agreement does not substitute obligations of the owner of the property set in § 19 of the Estonian Building Code regarding the project which shall be organised separately.

3.10.2 Consultant must provide the Client with the list of responsible construction supervisors in the Country as well as natural persons performing the construction supervision Services at least 28 (twenty eight) days prior to the commencement of construction supervision Services.

3.10.3 When performing the construction supervision Services the Consultant shall exercise all rights and obligations as set to construction supervisor in applicable laws as well as the Consultant shall:

- a) coordinate the construction supervision plan with the Client and obtain Client's consent before sharing the plan with the competent authorities (including, uploading the plan onto any online systems) (if required by applicable laws). The Consultant shall keep the plan updated and in line with the progress of Works. The Client shall have the same entitlement to request changes in the construction supervision plan as is set in the Agreement with regard to Programme;
- b) assign properly certified and qualified specialist to perform construction supervision with regard to each part of Works;
- c) ensure that the responsible construction supervisor (or his deputy or substitute (if approved by the Client in writing) is present in the place of performance of construction Works during all times the construction Works are performed;
- d) to hold and record the meetings under the Works Contract;
- e) at the request of the Client to determine the cause of any defect of the Works;
- f) to control the performance of the Works Contract in relation to the terms of performance of the Works, the validity of the Contractor's provided guarantees and insurances and compliance with the requirements of the Works Contract. To supervise the use of the contract price specified in the Works Contract and to control the reports of the Contractor's cash-flows as specified in the Works Contract;
- g) with a prior consent or request of the Client to request the Contractor to uncover any covered Works and request rectification of any defects detected therein. If Consultant requests uncovering of any covered Works and there is no defect detected in such Works, the Consultant covers all costs and Client's damages related to such uncovering of Works, except where costs and damages related to uncovering of Works are attributable to the Contractor (e.g., in cases the Contractor fails to invite the Consultant to participate in covering of the Works);
- h) to control that no Works are performed before all the necessary drawings and designs have been prepared and approved;
- i) review and approve as-built documentation prepared by the Contractor; during DNP (as defined in the Works Contract) that is covered with Time for Completion under this Agreement: (1) prepare defect deed as necessary; (2) perform checks on Works as per Works Contract; (3) inspect defect rectification Works and to accept the Works performed after their proper completion.

3.10.4. If during construction supervision Services the Consultant has accepted faulty Works, the Consultant ensures its full Services over rectification works of such faulty Works free of charge."

3.11 Performance Security

3.11.1 The Consultant shall obtain (at the Consultant's cost) a Performance Security to secure the Consultant's proper performance of his obligations under the Agreement and applicable laws, in the amount stated in the Part A of these Particular Conditions.

3.11.2 The Consultant shall deliver the Performance Security to the Client within twenty-eight (28) days as of the Effective Date.

3.11.3 The Performance Security for it to be admissible under the Agreement, shall comply with all the following requirements:

- a) the Performance Security shall be a first-demand, unconditional and irrevocable guarantee covering all of Consultant's obligations and liabilities under the Agreement and applicable laws (including, but not limited to Consultant's obligation to pay contractual penalties set in the Agreement);
- b) the Performance Security shall be an independent obligation and by no means considered as a surety (in Latvian: *galvojums*) under the applicable laws (i.e., Articles 1692 to 1715 of the Latvian Civil Law shall be explicitly excluded from the applicability of the Performance Security);
- c) the Performance Security shall be subject to the Uniform Rules For Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758 ("**ICC Rules**"). Matters which are not covered by the ICC Rules shall be decided according to the Latvian law (subject to subparagraph b) above);
- d) no additional documents/information may be required by the issuer of the Performance Security for purposes of payment, the Client shall not be obliged to justify its demand, and payment cannot be suspended or denied;
- e) the payment under Performance Security shall be made not later than within five (5) days as of receipt of the demand; the issuer of the Performance Security shall have no rights to verify or evaluate the basis for demand made;
- f) disputes under Performance Security shall be settled according to the procedure set in the form of the Performance Security annexed to the Agreement as Appendix 9.

3.11.4 The Performance Security shall be issued by reputable regulated financial institution (e.g. working in the fields of banking, insurance, and etc.) with good financial standing (i.e., with minimum Standard & Poor's, Fitch's, and Moody's rating of BB+ (or equivalent)) from the Country, or any other country from the European Union or the European Economic Area (or other jurisdiction to which the Client gives a prior consent) and shall be in the form corresponding to the above requirements and Appendix 9 of the Agreement or in a different form confirmed by the Client in writing before issuance of the Performance Security (but such consent/confirmation shall not relieve the Consultant from any obligation under this Clause).

3.11.5 The Consultant shall ensure that the Performance Security remains valid and enforceable until Time for Completion.

3.11.6 If the terms of the Performance Security specify an expiry date, and the Consultant has not become entitled to receive back the Performance Security by the date of twenty-eight (28) days before its expiry date, the Consultant shall immediately, by submitting extended Performance Security to the Client not later than fourteen (14) days before expiry of the existing one, extend the validity of the Performance Security.

3.11.7 Whenever the Client has sent Notice to Commence, the Performance Security shall be increased by amount stated in the Part A of these Particular Conditions. Such increase of the Performance Security shall be submitted to the Client not later than seven (7) days before commencing any Services under the respective Notice to Commence.

3.11.8 Additionally, whenever approved Variations under Agreement result in an accumulative increase of the Agreement Price by more than ten percent (10%) of the Agreement Price, the Consultant shall promptly (i.e., not later than within seven (7) days as if the moment of the increase of the Agreement Price), increase the amount of the Performance Security by a percentage not smaller than the accumulative increase and submit the increased Performance Security to the Client.

3.11.9 In case of a failure to prolong the Performance Security, or in case of a failure to submit the increased Performance Security, as both set above Sub-Clauses 3.11.7 and 3.11.8, the Client is entitled to upon its own discretion to choose to suspend any payments under this Agreement or to use the Performance Security in full amount and keep the monies received as a security for fulfilment of the Consultant's obligations under the Agreement until the Consultant submits and the Client accepts the increased or prolonged Performance Security (whichever is applicable).

3.11.10 After Consultant performs obligation under Sub-Clause 3.11.9, the Client (as applicable) makes the suspended and outstanding payments or returns the amounts received to the Consultant within fourteen (14) days after receipt of the relevant Consultant's Notice. The Client is entitled to unilaterally set off any amounts from the said payments or monies due to the Client by the Consultant, by informing the Consultant thereof.

3.11.11 The Client may demand payment under the Performance Security to cover any and all of his claims against the Consultant under the Agreement and applicable laws. The Client shall not, however, make unsubstantiated demands under the Performance Security. The mentioned, however, is not to be interpreted as entitling the issuer of the Performance Security to assess in any way the substantiation of any Client's demand under the Performance Security.

3.11.12 The Client returns the Performance Security (if still not fully used) to the Consultant within twenty-one (21) days after the Time for Completion.

3.11.13 With a Client's prior written approval, the Consultant may decrease the amount of the Performance Security in case DNP (as defined in the Works Contract) of the Works (or any part thereof) has commenced. In each such case the decreased amount shall be determined by a written agreement of both Parties and shall be calculated in proportion to the amount of Works for which DNP has commenced. The Client shall not deny any reasonable and substantiated Consultant's request to decrease the amount of Performance Security pursuant to this Sub-Clause for Works (or any part thereof) for which DNP has commenced provided that the Client has no outstanding claims against the Consultant. However, if the Client has executed its rights under Sub-Clause 7.7.4, the amount of the Performance Security shall always be in at least the amounts as provided in Sub-Clause 7.7.3 (in respective periods of the Agreements)."

3.12 Requirements of Visual Identity

The Consultant shall comply with following requirements of visual identity:

- a) every report, brochure, other documents or information related to the Services that is prepared by the Consultant and submitted to the Client, or any other third party, or made public, shall include the following:
 - i. notification of financing should include reference to the fact that the Consultant is recipient of the financing by CEF: "The project Rail Baltica is co-financed from the funds of Connecting Europe Facility";
 - ii. (printed materials) should contain a reservation that states that the European Union does not undertake any responsibility for the content of the published materials: "All the responsibility for this publication rests with its author. The European Union assumes not responsibility for the use of the information contained." The translation of the reservation in all the official languages of the European Union is available on this webpage: <https://ec.europa.eu/inea/connecting-europe-facility/cef-energy/beneficiaries-info-point/publicity-guidelines-logos>;
 - iii. the flag of the European Union.
- b) the requirements specified in Sub-Clauses (i) and (iii) may be fulfilled using following logo:



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

If the Consultant elects to use the logo specified in this sub-paragraph b), he must ensure that the elements of the logo are not separated (the logo is used as a single unit) and that there is sufficient free space around it;

- c) the Consultant shall comply with the latest visual identity requirements specified by the European Union. The Consultant shall at his own cost follow the changes of the visual identity. On the day of the conclusion of this Agreement the requirements of visual identity are publicly available at this webpage: <https://ec.europa.eu/inea/connecting-europe-facility/cef-energy/beneficiaries-info-point/publicity-guidelines-logos>.

3.13 Absence of Conflict of Interest and Compliance with the Supplier's Declaration

3.13.1 The Consultant shall take all the measures necessary to prevent any situation of conflict of interest, in the event that fair and unbiased implementation of the Agreement is threatened due to reasons related to economic interests, political or national identity, family or other relations, or other common interests.

3.13.2 Any situation that causes or may cause a conflict of interest during the implementation of the Agreement shall be notified to the Client without delay. The Consultant shall perform all the necessary activities and take all the necessary measures to rectify this situation, and the Client reserves the right to examine such activities and measures and to issue to the Consultant binding instructions.

3.13.3 During the validity of the Agreement, the Consultant or Consultant's Personnel shall be prohibited to get directly or indirectly, involved in commercial activities, financial and professional activities that could affect the performance of Services or any other obligations specified in the Agreement.

3.13.4 The Consultant shall ensure full compliance with the terms and conditions contained in the Supplier's Declaration as annexed to the Agreement as Appendix 10, as well as with Code of Conduct of Suppliers (may be accessed here: https://www.railbaltica.org/wp-content/uploads/2019/03/Common-procurement-standards-and-guidelines_appendix5.pdf).

Consultant's failure to comply with his obligations under this Sub-Clause is considered as a material breach of the Agreement and thus may lead to termination of the Agreement."

4 Commencement and Completion

4.1 Agreement Effective

Express Sub-Clause 4.1.1 in the following wording:

"The Agreement is effective from the moment of its signing by both Parties (i.e., the date of the Form of Agreement)."

4.2 Commencement and Completion of Services

1) Express the first sentence of Sub-Clause 4.2.1 in the following wording:

"The Consultant shall commence Phase 1 Services on the Commencement Date and complete Phase 1 Services on Time for Completion for Phase 1 Services indicated in Sub-Clause 1.1.24 above."

2) Add the following new Sub-Clauses at the end of the Clause:

"4.2.2 The Consultant shall commence the ordered part of Phase 2 Services according to Client's relevant Notice to Commence, which will indicate which specific part of Phase 2 Services in accordance with Appendix 1 [*Scope of Services*] shall be commenced and what is their Time for Completion. In any case such date of Commencement shall not be sooner than 14 days as of the date of the Notice to Commence.

4.2.3 Notice to Commence shall be deemed as Client ordering specific part of Phase 2 Services covered with respective Notice to Commence. Each Notice to Commence shall include (1) description of the part of Phase 2 Services ordered (including, the amount of km to which the ordered Services will apply); (2) number of the relevant grant agreement under which the Client receives his financing for this Agreement, (3) Time for Completion for the relevant part of Phase 2 Services ordered (which shall be in line with the deadlines under Works Contract); (4) other conditions for fulfilment of the specific part of Phase 2 Services (if required), which do not contradict the scope of the Services under the Agreement.

4.2.4 In case the Consultant disagrees with the proposed Time for Completion for the specific part of Phase 2 Services, he shall submit a Notice of dissatisfaction to the Client. The Notice, for it to be valid and admissible, shall state that it is a “Notice of Dissatisfaction with the proposed Time for Completion”, and lay out specific reasons (with supporting evidence) why the proposed Time for Completion cannot be achieved and propose a different substantiated Time for Completion for the specific part of Phase 2 Services. If no such Notice is submitted within 14 days as of receipt of the Notice to Commence, or if the notice does not meet the requirements set in this Sub-Clause, or if the Consultant commences to perform the Services under respective Notice to Commence, it is deemed that the Consultant has no objections to the proposed Time for Completion for the specific part of Phase 2 Services indicated in the Notice to Commence. If the notice meets the requirements under this Sub-Clause, but the Client disagrees to the arguments raised, Clause 10 [*Disputes and Arbitration*] shall apply, unless the Client chooses to withdraw its Notice to Commence. Disagreement on the Time for Completion of Part 2 Services between the Parties shall in no way affect the Consultant’s obligations under this Agreement and the Consultant shall proceed to provide the Phase 2 Services according to the Agreement without a specific agreement on Time for Completion until the dispute is resolved. If the notice meets the requirements under this Sub-Clause, and the Client agrees to the arguments raised by the Consultant, the Time for Completion for the specific part of Phase 2 Services ordered with the relevant Notice to Commence shall be as proposed by the Consultant (unless the Parties agree otherwise) and fixed with a mutual written agreement.

4.2.5 Each part of the Phase 2 Services shall be ordered at full discretion of the Client. The Notice to Commence regarding the relevant part of Phase 2 Services shall be submitted within the following time periods:

- a) the first Notice to Commence regarding any part of Phase 2 Services shall be submitted to the Consultant within six (6) months as of the Time for Completion for Phase 1 Services;
- b) any further Notice to Commence regarding any parts of Phase 2 Services shall be submitted to the Consultant within six (6) months as of the date of completion of the Services under previous Notice to Commence.

If the Client has not sent Notice to Commence within the above deadlines, and within twenty four (24) months as of respective end date the Parties have not agreed on a different date for submitting the next (or first) Notice to Commence, it shall be deemed that no further Services are ordered under this Agreement. If the Services are suspended during the time period within which the Client was entitled to issue the Notice to Commence, the relevant time period for issuing the respective Notice to Commence shall be deemed as automatically prolonged for the suspension time.

4.2.6 The Client is under no obligation to order any of the Phase 2 Services; on the Effective Date the scope the Services is Phase 1 Services only. The Consultant is not entitled to any payment for Services which have not been ordered as per above paragraphs.”

4.3 Programme

1) *Express Sub-Clause 4.3.1 (excluding its sub-paragraphs) in the following wording:*

“The Consultant shall prepare the Programme for Services on the basis of the initial form of the Programme included in the Procurement Documents and provide it to the Client within terms set in the Agreement. The Consultant shall provide to the Client the Programme for Phase 1 Services as part of the inception report developed during Phase 1 Services, and update it in accordance with Appendix 1 [*Scope of Services*]. The Programme ordered for the specific part of Phase 2 Services shall be submitted to the Client within 14 (fourteen) days as of the moment the Consultant receives Client’s Notice to Commence. The Programme for ordered parts of Phase 2 Services shall be in line with the relevant programme under the Works Contract and updated in accordance with Appendix 1 [*Scope of Services*]. The Consultant undertakes to update the Programme in line with the relevant programme under Works Contract in a timely manner, however, no later than within 14 (fourteen) days as of the receipt of the updated programme under the Works Contract.

The Programme and all subsequent updates and/or changes of the Programme shall be subject to Client’s approval.

The Consultant shall ensure that the Programme for all Services provided under the Agreement at all times during the Agreement includes information required by the initial Programme provided by the Client in Procurement Documents, is updated, where required, on a monthly basis and also includes as a minimum:”

2) Delete words “in Appendix 4 [*Programme*] or elsewhere” in sub-paragraph (b).

3) Replace words “Appendix 4 [*Programme*]” with “Agreement” in sub-paragraph (d).

4) Express Sub-Clause 4.3.2 in the following wording:

“The Client may, at any time during the Agreement, give a Notice to the Consultant stating the extent to which the Programme does not comply with the Agreement. In such case the Consultant shall promptly rectify the non-compliances and update the Programme within seven (7) days as of receipt of such Client’s Notice.”

4.6 Exceptional Event

1) Delete first sentence of Sub-Clause 4.6.2.

2) In Sub-Clause 4.6.3 delete “.” and add the following text at end of the last paragraph:

“unless the Exceptional Event directly affects Party’s ability to make the payments or the delay in payments occurs due to the delay in provision of Services.”

Add the following new Clause to the Agreement:

“4.7 Reporting on Performance of the Services

“4.7.1 Performed Services are reported to the Client on a monthly basis pursuant to a report form accepted by the Client’s Representative.

4.7.2 Phase 1 Services are delivered to the Client according to the Programme upon completion of the deliverables set in the Appendix 1 [*Scope of Service*]. The Parties sign a Deed on transferring each deliverable to the Client.

4.7.3 Phase 2 Services are delivered to the Client on a quarterly basis and, where applicable, may include deliverables as described in the Appendix 1 [*Scope of Services*]. The Parties sign a Deed on Phase 2 Services actually performed in the quarter month, which includes filled-in and approved timesheets on the delivered Phase 2 Services in the previous quarter pursuant to the requirements under Appendix 1 [*Scope of Services*].

4.7.4 The Deed shall be submitted to the Client not later than within fourteen (14) days after completing each deliverable for Phase 1 Services, or by 10 (tenth) day of each following quarter but not sooner than respective timesheet has been approved by the Client (for Phase 2 Services).

4.7.5 The Client reviews the received Deed and provides objections to it or signs it within fourteen (14) days after its receipt. The Client may unilaterally extend the said term to fourteen (14) days by notifying the Consultant thereof.

4.7.6 The Consultant may only issue his invoice after the Deed has been approved and signed by the Client.

4.7.7 Signing of any Deed under the Agreement by the Client serves only as basis for financial settlement between the Parties; it in no way releases the Consultant from any liability over the Services covered by the respective Deed, nor does it deprive the Client from any claims he could have regarding the Services covered by respective Deed.”

5 Variations to Services

5.1. Variations

1) *Add the following paragraphs at the end of Sub-Clause 5.1.1:*

“In the Variation Notice the Client shall indicate whether the Consultant must provide a proposal of fixed fee for the relevant Variation or an estimate which is based on daily rates set in the Agreement for Variations, as well as the time estimate for execution of the relevant Variation. The Variation Notice shall indicate a deadline for submission of the relevant proposal from the Consultant, which in any case shall not be shorter than fourteen (14) days as of receipt of the relevant Variation Notice.

The Consultant shall commence execution of the relevant Variation immediately after the Client has (1) accepted the Consultant’s proposal or the Parties have agreed on a different price/time for execution of the Variation, or (2) the Client has rejected the Consultant’s proposal but has anyway instructed the Consultant to execute the Variation (unless Sub-Clause 5.1.4 applies), in which case the Parties’ disagreements over price and time for execution of the relevant Variation shall be settled pursuant to Clause 10 [*Disputes and Arbitration*].

2) *Delete the following wording form sub-paragraph (a) of Sub-Clause 5.1.2: “or to Appendix 2 [Personnel, Equipment, Facilities and Services of Others to be Provided by the Client].”*

3) *Express sub-paragraph (b) of Sub-Clause 5.1.2 in the following wording:*

“omission of part of the Services but only where such omitted services are no longer required by the Client, or omission of part of the Services in case the value of omitted Services does not exceed 10% of the Agreement Price regardless of whether these Services remain required by the Client.”

4) *Insert “(in any case not later than within fourteen (14) days as of receipt of the relevant instruction or direction)” between “practicable” and “where” in the second line of Sub-Clause 5.1.3.*

5) *Insert “(in any case not later than within fourteen (14) days as of receipt of the relevant Variation Order)” between “promptly” and “gives” in the first line of Sub-Clause 5.1.4.*

6) *Add the following Sub-Clause to the Clause:*

“5.1.5 For avoidance of the doubt, approved/instructed Variations form part of the Services and thus all provisions related to Services are fully applicable also to such Variations.”

Add the following new Clause to the Agreement:

“5.3 Potential Variations

5.3.1 During performance of the Agreement the additional following changes are possible in the scope of Services, the Time for Completion and the Agreement Price:

- a) changes in the scope of Services as a result of changing the scope of Works under the Works Contract;
- b) changes in the scope of Services as a result of circumstances described in following clauses: 1.5 [*Changes in Legislation*], 3.9 [*Construction Administration*], 4.4 [*Delays*], 6.3 [*Effects of Suspension of the Services*], 6.5 [*Effects of Termination*];
- c) changes as a result of unforeseeable governmental actions implemented to tackle pandemic circumstances;

- d) changes as a result of Client ordering additional services during DNP (as to be defined in the Works Contract) not covered by Time for Completion;
- e) changes as a result of Client ordering optional scope of Services as described under Appendix 1 [*Scope of Services*].

5.3.2 As a result of the above-mentioned potential Variations, the Agreement Price may be increased or decreased by up to 50%, and the Time for Completion may be prolonged for objectively needed time to perform any changes in Works. Any of the above potential Variations initiated shall always comply with requirements of applicable laws, including Public Procurement Law of the Republic of Latvia (in particular – Article 61).

5.3.3 Potential Variations listed under this Clause 5.3 [*Potential Variations*], are introduced in the Agreement with a purpose of providing specific and pre-described potential Variation occasions. However, nothing in this Clause relieves the Consultant from his obligations and liability under the Agreement, nor may the Consultant in any way rely that such Variations will in fact be initiated at any point of time during the Agreement.

5.3.4 In addition to potential Variation occasions listed above, Variations may also be initiated in accordance with Section 5 of Article 61 of the Public Procurement Law of the Republic of Latvia. Price impact of such Variations shall be in addition to the limit of 50% of the Agreement Price as provided above.”

6 Suspension of Services and Termination of Agreement

6.1 Suspension of Services

1) In sub-paragraph a) of Sub-Clause 6.1.2 replace “seven (7)” with “twenty-one (21)” and after “Notice” in the last line insert “(during the period of which the Client may make the payment and the Consultant then cannot suspend the Services in full or part)”.

2) Insert “(in any case not later than within 14 (fourteen) days as of the moment of occurrence of relevant Exceptional Event)” after word “practicable” in the third line of sub-paragraph b) of Sub-Clause 6.1.2.

3) Delete sub-paragraph c) from Sub-Clause 6.1.2.

6.2 Resumption of Suspended Services

1) Express Sub-Clause 6.2.1 in the following wording:

“When the Services have been suspended under Clause 6.1 [Suspension of Services] the Consultant shall resume the Services or part thereof, as the case may be, within twenty-eight (28) days’ of receipt of Notice from the Client (1) instructing the Consultant to resume the Services or part thereof if the Services were suspended by the Client or (2) providing evidence that cause for suspension of Services by the Consultant has been eliminated (if the Services were suspended by the Consultant).”

2) Delete Sub-Clause 6.2.2 from the Agreement.

6.3 Effects of Suspension of the Services

Add the following new Sub-Clause 6.3.5 at the end of the Clause:

“Sub-Clause 6.3.3 shall be inapplicable in case the Services are suspended pursuant to Sub-Clause 6.1.1. If all or part of the Services are suspended pursuant to Sub-Clause 6.1.1 for a period exceeding twelve (12) months, the Consultant will be entitled to compensation of Exceptional Costs only in the amount of such Exceptional Costs is approved by the Client in writing upon Client’s sole discretion once the Client has received Notice of the occurrence of these Exceptional Costs pursuant to Sub-Section 6.3.3(c). The Time for Completion shall be automatically prolonged for the suspension time, unless the Services were suspended due to breach of the Consultant.”

6.4 Termination of the Agreement

1) In sub-paragraph (a) of Sub-Clause 6.4.1 replace “proceed to remedy” with “does not fully remedy”.

2) In sub-paragraph (b) of Sub-Clause 6.4.1 in line five after “or” add “if bankruptcy case is initiated, unless the Consultant provided evidence that initiation of bankruptcy case is unfounded, or”.

3) Express sub-paragraph (d) of Sub-Clause 6.4.1 in the following wording:

“At its sole discretion upon giving the Consultant fourteen (14) days’ Notice.”

4) Add the following new sub-paragraphs (f), (g) and (h) at the end of Sub-Clause 6.4.1:

“(f) The Client may terminate the Agreement with immediate effect upon service of an appropriate Notice to the Consultant if the Consultant becomes (or a member of its board or council, its beneficial owner, a person having the right of representation or proctor, or a person who is authorised to represent the tenderer in activities related to a branch, or member of a partnership, or member of the board or council, its beneficial owner, a person having the right of representation or proctor, if the tenderer is a partnership) subject to international or national sanctions, or significant sanctions by a member state of the European Union or the North Atlantic Treaty Organisation that affect the interests of financial or capital market of Latvia or significant sanctions by a member state of the European Union or the North Atlantic Treaty Organisation that affect the interests of financial or capital market of Latvia. Within the meaning of this Agreement “national sanctions” and “international sanctions” have the same meaning as set in the Law On International Sanctions And National Sanctions Of The Republic Of Latvia (in Latvian: *Starptautisko un Latvijas Republikas nacionālo sankciju likums*) as on the Effective Date.

(g) The Client is entitled to terminate the Agreement in events prescribed in applicable laws. In such case the date of termination shall be the date the Consultant receives the relevant termination Notice.

(h) The Client is entitled to terminate the Agreement, if the Client has lost the financing for the Project or Rail Baltica Global Project in full or in part.

5) In sub-paragraph (a) of Sub-Clause 6.4.2 replace “one hundred and sixty-eight (168) days” with “one (1) year in total”.

6) In sub-paragraph (b) of Sub-Clause 6.4.2 delete text “or Sub-Clause 6.1.2(c) [Suspension of Services]” and add the following sentence at the end of sub-paragraph (b):

“However, if the Client makes the delayed payment within the period of these fourteen (14) days, the Consultant’s termination Notice becomes ineffective and the Consultant shall continue performing its obligations under the Agreement.”

7) In sub-paragraph (d) of Sub-Clause 6.4.2 replace “with immediate effect” with “within sixty (60) days”.

8) In sub-paragraph (e) of Sub-Clause 6.4.2 replace “fourteen (14)” with “sixty (60)”.

6.5 Effects of Termination

1) Express the first paragraph of Sub-Clause 6.5.2 in the following wording:

“If the Agreement is terminated due to Consultant’s fault (e.g., in accordance with Sub-Clause 6.4.1 (a) or (b) or (c) or (f) or (g) [Termination of Agreement]) the Client shall, without prejudice to any other rights the Client may have under the Agreement, be entitled to:”

2) Add the following sentence at the end of sub-paragraph (a) of Sub-Clause 6.5.2:

“provisions of this sub-paragraph are applicable in case of termination of the Agreement for any reason;”

3) Insert “but only for those Exceptional Costs that have occurred prior to the date of the relevant Notice to the Client on termination of the Agreement” at the end of the first sentence of Sub-Clause 6.5.3.

4) Insert “(in any case not later than within fourteen (14) days as of the termination date)” after word “practicable” in the penultimate line of Sub-Clause 6.5.3.

5) Delete Sub-Clause 6.5.4 from the Agreement.

6) Add the following new Sub-Clause 6.5.5 at the end of the Clause:

“Termination of the Agreement (for any reason) does not relieve the Consultant from obligation to ensure that the new consultant (if such is engaged by the Client) may without interruption overtake the Services. The said Consultant’s obligations among others include participation in and facilitation of (both to the extent required by applicable laws, if at all) the commissioning of the Works, by signing the documents and providing information set in applicable laws.”

7 Payment

7.1 Payment to the Consultant

1) Express Sub-Clause 7.1.3 in the following wording:

“Making of any payments under the Agreement by the Client in no way releases the Consultant from any liability over the Services covered by the respective invoice.”

7.2 Time for Payment

1) Express Sub-Clause 7.2.1 in the following wording:

“Amounts due to the Consultant shall be paid within sixty (60) days of the receipt of the Consultant’s invoice.”

2) Express Sub-Clause 7.2.3 in the following wording:

“Without prejudice to Sub-Clause 6.5.2(c) [Effects of Termination] the Client shall not withhold payment of any part of an invoice for any amount properly due to the Consultant under the Agreement by reason of claims or alleged claims against the Consultant unless:

- a) the amount to be withheld has been agreed with the Consultant as due to the Client, or has been awarded to the Client pursuant to a referral under Clause 10 [Disputes and Arbitration], or
- b) in case the Consultant has approved Works which have not been performed according to the Drawings or Specification (as both defined in the Works Contract) or applicable laws; or
- c) in case the Consultant is in breach of Clause 3.11 [Performance Security] or Clause 9.1 [Insurances to be taken out by Consultant], or
- d) in case the Client has applied contractual penalties set in Sub-Clause 8.1.4 against the Consultant, and the Consultant has failed to pay such penalties within fourteen (14) days as of the relevant Client’s notice, in which case the Client is entitled to set-off the amount of the penalties applied from any payment to be made to the Consultant, by informing the Consultant thereof.”

7.3 Currencies of Payment

Express Sub-Clause 7.3.1 in the following wording:

“All payments under this Agreement are made in euro (EUR).”

Delete the Sub-Clause 7.3.2 from the Agreement.

7.4 Third Party Charges on the Consultant

Delete the Clause from the Agreement.

Add the following new Clauses to the Agreement:

“7.7 Retention Money

7.7.1 From each payment payable to the Consultant for Phase 2 Services the Client shall retain money in the amount as indicated in Part A of these Particular Conditions (“**Retention Money**”).

7.7.2 The Retention Money serves as the security for fulfilling all the Consultant’s obligations under the Agreement and applicable laws. The Client is entitled to use the Retention Money (by unilaterally setting-off any amounts from it) at any time during the Agreement, including, but not limited to, for reimbursement of losses and damages incurred to the Client, payment of contractual penalties, etc. The Client informs the Consultant on the use of the Retention Money. Retention Money withheld under the Agreement shall be the property of the Client until it is transferred to the Consultant pursuant to this Clause 7.7.

7.7.3 The Client transfers 50% of the unused Retention Money to the Consultant within twenty-one (21) days after the (1) Time for Completion and (2) receipt of the relevant Consultant’s invoice. The Client transfers the remaining 50% of the unused Retention Money to Consultant within twenty-one (21) days after the receipt of (1) the last Performance Certificate (as defined in Works Contract) required as part of the Phase 2 Services and (2) receipt of the relevant Consultant’s invoice. For avoidance of the doubt, withholding of the Retention Money by the Client will not be deemed as late payment of any fees that the Consultant is entitled to under the Agreement and the Consultant will not be entitled to any interest, late payment penalty or any other compensation, because the Client has withheld the Retention Money according to this Clause 7.7.

7.7.4 Notwithstanding the above provisions, at any time during the Agreement the Client may at his full discretion notify the Consultant on transfer of the unused Retention Money (in part or full) to the Consultant. Such Notice shall indicate the relevant amount to be released. In such case the Consultant shall within fourteen (14) days submit to the Client an increase of the Performance Security with increase equalling the Retention Money to be released, after which the Client transfers the relevant amount of the Retention Money to the Consultant. The remainder of the unused Retention Money (if any) shall be transferred to the Consultant as per above Sub-Clause 7.3.3.

7.8 Scope of the Agreement Price

7.8.1 The Consultant bears full risk for its financial proposal (and thus subsequently the Agreement Price) being calculated in line with the requirements set in the Procurement Documents.

7.8.2 In addition to the scope of the Agreement Price set elsewhere in the Agreement, any part of the Agreement Price payable to the Consultant also covers all costs and expenses that relate to performance of the Services, including, but not limited to overheads; travel, transport, communication and accommodation costs; expected and unexpected (including, overtime) labour costs; costs for insurance policies and guarantees (including their extensions, unless the relevant extension is caused outside the fault of the Consultant), Consultant’s additional administrative costs and profit, and remuneration for all risks, liabilities and obligations undertaken by the Consultant under this Agreement.”

8 Liabilities

8.1 Liability for Breach

1) *Express Sub-Clause 8.1.1 in the following wording:*

“The Consultant shall be liable to the Client for any breach by the Consultant of any provision of the Agreement or applicable laws.”

2) *Delete sub-paragraphs (a) and (c) from the Sub-Clause 8.1.3.*

3) *Add the following new Sub-Clause 8.1.4 at the end of the Clause:*

“Should the Consultant breach his obligations deriving from the Agreement, the Client is entitled to demand a contractual penalty in the following amounts for the following breaches:

<u>Breached obligation:</u>	<u>Penalty</u>
-----------------------------	----------------

Consultant fails to:	
a) reject an application by the Contractor to obtain a certificate under the Works Contract that it was responsible for issuing (e.g., Taking-Over Certificate; Performance Certificate, as both defined in the Works Contract), if the conditions for requesting such certificate under the Works Contract have not been complied with, and as a result of Consultant's failure to reject the Contractor's application such certificates are deemed to have been issued pursuant to provisions of the Works Contract;	EUR 5 000 (five thousand) per each breach
b) reject any Contractor's Document (as defined in the Works Contract) which has not been prepared in line with the Works Contract as a result of which a No-objection (as defined in the Works Contract) is deemed to have been given by the Consultant under the Works Contract;	EUR 2 000 (two thousand) per each breach
c) comply with any of deadlines provided in Appendix 1 [<i>Scope of Services</i>] and Programme (as updated by the Consultant according to the Agreement) for performance of the Services. If Appendix 1 sets only a general guideline for the deadline instead of a specific term, the deadline will be deemed missed, if the Consultant fails to fulfil the relevant part of the Service within the deadline provided in the Client's Notice (concerning the failure to meet the deadline);	EUR 300 (three hundred) per each day of delay
d) fulfil its obligations under the Agreement as a result of which the Client suspends the Services in part or in full;	EUR 1 000 (one thousand) per each day of suspension
e) fulfil its obligations under the Agreement as a result of which the	

Agreement is terminated due to Consultant's fault (including, if the Agreement is terminated in accordance with Sub-Clause 6.4.1 (a) or (b) or (c) or (f) or (g) [<i>Termination of Agreement</i>]);	10 % of Agreement Price for the remaining Services
f) delays fulfilment of its obligations under Sub-Clause 3.1.4 within the term provided under Sub-Clause 3.1.4;	EUR 100 (one hundred) per each day of delay
g) comply with any other obligations under the Agreement that are not already specified under this Sub-Clause 8.1.4.	EUR 200 (two hundred) per each breach

The payment of the contractual penalties as per above shall not be interpreted as Consultant's release from performing the relevant obligations (to the extent legally possible), nor it affects any other legal remedies available to the Client regarding the relevant breach (e.g., Client's right to claim losses for the relevant breach that exceed the amount of penalty paid).

When deciding on application of the above contractual penalties, the Client shall assess the Consultant's overall performance of its obligations under the Agreement (e.g., whether the Services are of good quality, whether Consultant acts in a cooperative manner, etc.). However, for clarity, the applicability of the above contractual penalties is the sole discretion of the Client, and the Client has no obligation to substantiate application of any penalty with anything but the respective breach to which the penalty is applied to.

The Consultant may request that penalties related to interim delays are not applied if the Time for Completion has been achieved within the Agreement Price.

The Consultant confirms that prior of entering into this Agreement it has thoroughly assessed the above contractual penalties and that the set penalties correspond to a fair market practice."

The amount of penalties applied not exceed: for Phase 1 – ten percent (10%) of the total value of Phase 1 services, for Phase 2 – ten percent (10%) of the total value of (i) total value of Phase 1 and (ii) value of ordered Phase 2 services and (iii) approved Variations under the Agreement and (iv) Exceptional Costs payable to the Consultant. Penalties applied under Clause 8.1.4 (e) are not subject to this limitation.

8.2 Duration of Liability

Add the following sentence at the end of Sub-Clause 8.2.1:

"The Period of Liability shall not affect period of the Consultant's liability set under the applicable laws of the Country where the Works are performed (and Services provided), including in relation to warranty periods for such Works (and Services)."

8.3 Limit of Liability

1) Express the second sentence of the Sub-Clause 8.3.1 in the following wording:

"This limit is without prejudice to any financing charges specified under Sub-Clause 7.2.2 [*Time for Payment*], applicable penalties under Sub-Clause 8.1.4 [*Liability for Breach*], and without prejudice to Sub-Clause 8.4.1 [*Exceptions*]."

2) In Sub-Clause 8.3.3 delete text “Without prejudice to the right the Consultant may have under Sub-Clause 6.5.4 [Effects of Termination]” and add the following new sentence at the end of the Sub-Clause:

“This Sub-Clause does not apply to the Consultant’s liability under Sub-Clause 8.5 [Additional Exceptions from Limit of Liability]”.

Add the following new Clause to the Agreement:

“8.5 Additional Exceptions from Limit of Liability

8.5.1 Joint and Several Liability with the Contractor

Without prejudice to the Consultant’s liability under the applicable law, the Consultant shall be jointly and severally liable with the Contractor for Client’s claims on compensation of any and all losses (including, but not limited to all expenses associated with increase of the Contract Price (as shall be defined in the Works Contract), increase in scope of Works, rectification of defected Works, prolongation of deadlines under the Works Contract, and others), incurred by the Client under the Works Contract, and as a result from the Consultant’s breach of the Agreement or applicable laws regarding its obligations as a construction supervisor (e.g., the Consultant approves (or is deemed to have approved) poor quality Works; the Consultant issues unlawful instruction; the Consultant suspends Works without a valid cause or approval by the Client, etc.).

8.5.2 Consultant’s liability for improper performance of Services

The Consultant is liable for covering all Client’s expenses and losses related to increase of the Contract Price or extension of any Time for Completion (as both defined in the respective Works Contract), under any Works Contract (as shall be defined in the Works Contract), if such increases in price and extensions of time are related to Consultant’s breach of the Agreement and applicable laws (e.g., in cases the increase in the Contract Price under the relevant Works Contract is caused by error in Employer’s Requirements (as defined in relevant Works Contract) which have been prepared by the Consultant)

8.5.3 Applicable limits to claims under Sub-Clause 8.5.1

In any case the total amount of the losses incurred under Sub-Clause 8.5.1 which shall be reimbursed by the Consultant shall not exceed the limit set in the Part A of these Particular Conditions. The total amount of claims by the Client under Sub-Clause 8.5 shall not exceed the liability limit set under Sub-Clause 8.3.1. The Client hereby agrees to waive all claims against the Consultant in part they exceed the set limit.”

9 Insurance

9.1 Insurances to be taken out by Consultant

1) Express Sub-Clause 9.1.1 in the following wording:

“The Consultant at its own cost shall take out and throughout validity of the Agreement maintain insurances a) as mandated by applicable laws, including mandatory professional liability insurance, where applicable, and b) its civil liability insurance, which shall be sufficient to cover potential liability the Consultant under this Agreement, including its personnel and sub-consultants (if any). The following general provisions shall apply to the insurances to be obtained by the Consultant:

- a) validity term – not shorter than Time for Completion (i.e., Consultant at its own cost shall maintain and properly prolong each insurance upon receipt of each Notice to Commence);
- b) extended reporting period (where applicable) – two (2) years after Time for Completion;
- c) insurances shall be issued by reputable insurance company complying with requirements set in Sub-Clause 3.11.4;
- d) the Client (or an entity indicated by the Client) shall be indicated as the beneficiary of the relevant insurance;
- e) gross negligence shall not be set as an exception/exclusion;
- f) no unusual, out of market standard conditions is permissible (in case of unclarity the Consultant shall seek Client's consent);
- g) the maximum liability limit shall be the Agreement Price; the maximum liability limit per one occurrence shall be the Agreement Price.

Such insurance agreement copies together with evidence on payment of insurance premium shall be provided to the Client within twenty-eight (28) days as of the Effective Date.

The Parties may agree on changing the above insurance requirements with a mutual written agreement.”

2) *Express Sub-Clause 9.1.2 in the following wording:*

In case the Client obtains any insurances which relate to this Agreement or the Services, and such policies provide for certain obligations of the Consultant (e.g., to provide information to the respective insurers, and the like), the Consultant shall comply with all such obligations. The Client promptly notifies the Consultant on any such insurance obtained.

3) *Add the following new Sub-Clauses to the Clause:*

“9.1.5 Nothing in this Clause 9.1 limits the obligations, liabilities or responsibilities of the Client under the other terms of the Agreement or applicable law.

9.1.6 The Client shall not be obliged to make any payments to the Consultant under this Agreement unless and until the Consultant has presented to the Client original of fully effective Consultant's insurance policies, that comply with Sub-Clause 9.1.1 and evidence that the relevant insurance premiums have been paid.”

10 Disputes and Arbitration

10.2 Adjudication

1) *Express Sub-Clause 10.2.1 in the following wording:*

“Unless settled amicably, any dispute arising out of or in connection with the Agreement may be referred by either Party to adjudication in accordance with the Rules for Adjudication in Appendix 5 [*Rules of Adjudication*]. The adjudicator shall be agreed between the Parties and appointed in accordance with the said Rules of Adjudication or failing agreement either Party may refer the dispute to the Arbitration in accordance with Clause 10.4 [*Arbitration*].”

2) *Express Sub-Clause 10.2.2 in the following wording:*

“The Parties shall bear their own costs arising out of the adjudication and the adjudicator shall not be empowered to award costs to either Party. The Parties shall bear the adjudicator's fees and costs in equal parts.”

3) *Express Sub-Clause 10.2.5 in the following wording:*

“Except as stated in Sub-Clause 10.2.1 and Clause 10.5 [*Failure to Comply with Adjudicator's Decision*], neither Party shall be entitled to commence arbitration of a dispute unless a notice in respect of that dispute has been given in accordance with Sub-Clause 10.2.3 or 10.2.4. If such a notice has been given, and neither Party commences arbitration of the dispute within one hundred and eighty-two (182) days of giving or receiving the notice, such notice shall be deemed to have lapsed and no longer be valid.”

10.4 Arbitration

1) Express sub-paragraph (b) to the Sub-Clause 10.4.1 in the following wording:

“the dispute shall be settled by three arbitrators appointed in accordance with these Rules, except in case of Emergency Arbitration and Expedited Procedure the dispute shall be settled by one arbitrator appointed in accordance with these Rules; and”

2) Add new sub-paragraph (d) to the Sub-Clause 10.4.1 in the following wording:

“the place of arbitration shall be as defined in Part A of these Particular Conditions.”
