**PARTICULAR CONDITIONS**

TO

GENERAL CONDITIONS

FOR

DETAILED TECHNICAL DESIGN AND DESIGN SUPERVISION SERVICES FOR MAIN LINE SECTION FROM RIGA INTERNATIONAL AIRPORT TO MISA AND FROM UPESLEJAS TO RAILWAY STATION “RĪGA – PREČU”

To obtain a copy of the General Conditions of the Agreement please apply to:

*Federation Internationale des Ingenieurs-Conseils* (FIDIC)

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Riga, 2024

The following Particular Conditions of the Agreement (Particular Conditions) shall supplement and/or amend the General Conditions of Client/Consultant Model Services Agreement (General Conditions) of FIDIC White Book – 5th edition, 2017. The numbering of the Clauses and Sub-Clauses of the Particular Conditions follows the numbering of the Clauses and Sub-Clause of the General Conditions of the Agreement.

**Part A – Special Provisions – Contract Data**

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| **Definitions** | **Reference to**  **Sub-Clause** | **Data** |
| Commencement Date | 1.1.5 | Effective Date |
| Country | 1.1.9 | The Republic of Latvia |
| Effective Date | 1.1.11 | Date when the conditions stipulated in Sub-Clause 4.1.1 are met |
| Project | 1.1.22 | Mainline section from ''Detailed Technical Design and Design Supervision Services for Mainline section from Riga International Airport to Misa and from Upeslejas to railway station “Rīga – Preču””as a part of Rail Baltica Global Project |
| Time for Completion | 1.1.24 | For Design Services – 20 (twenty) months starting from the Commencement Date  For Design Supervision Services – 60 months from the Commencement Day, as stated in Sub-Clause 4.2.2, or until the date when the final Taking - Over certificate for the Works is issued (as defined in the Works Contract), whichever is longer |
| Law governing Agreement | 1.4.1 | Laws of the Republic of Latvia |
| Ruling language of Agreement | 1.4.2 | English |
| Language for communications | 1.4.3 | English |
| Confidentiality | 1.8.3 | 10 (ten) years after completion of the Services or after the date of termination of the Agreement |
| Defects Notification Period | 3.11.2 | Starting from the date when Provisional Delivery and Acceptance Certificate regarding Detailed Technical Design is issued and until the date when the final Performance Certificate (as defined in the Works Contract) is issued. |
| Performance Security | 3.12 | 5% (five percent) of the Total Remuneration |
| Currencies of Payment | 7.3.1 | EUR |
| Retention Money | 7.1.4 | 5% (five percent)] to be retained from each payment payable to Consultant regarding Design Services |
| Period of Liability | 8.2.1 | 10 years |
| Adjudication | 10.2.1 | One Adjudicator  Appointing authority - President of FIDIC |

**Part B – Additional and Amended Clauses**

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| **Clause** | **Amendment** |
| Clause 1.1 **Definitions** |  |
| Sub-Clause 1.1.1 | *Delete Sub-Clause 1.1.1 and replace as follows*:  “**Agreement**” means the Form of Agreement together with the Client/Consultant Model Services Agreement (General Conditions and Particular Conditions), Appendix 1 [*Technical Specification*], Appendix 2 [*Additional Rules*], Appendix 3 [*Programme*], Appendix 4 [*Remuneration and Payment*], Appendix 5 [*Rules for Adjudication*], Appendix 6 [*Insurance and Guarantee Requirements*], including Client’s Requirements, Design Guidelines any other documents attached to or referred to in the Agreement, and any letters of offer and acceptance attached to any of the above. |
| Sub-Clause 1.1.6 | *Add the following paragraph at the end of the Sub-Clause 1.1.6:*  It is hereby agreed that, unless explicitly indicated otherwise, all information disclosed by the Client is deemed as confidential, even if it is not separately identified as such. Additionally, term “Confidential Information” also includes restricted access information (within the meaning of applicable laws). |
| Sub-Clause 1.1.10 | *Delete Sub-Clause 1.1.10 and replace as follows*:  “**Day” or “day”** means a calendar day; “**Month**” means a calendar month. |
| Sub-Clause 1.1.13 | Add the following paragraphs at the end of the Sub-Clause 1.1.13:  Any of 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 Latvian: tehniskie noteikumi), 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) acts, omissions or failure of any sub-contractor;  (c) shortage of sub-contractors, consultants, labour or materials;  (d) mechanical or electrical breakdown or failure of equipment, machinery or plant owned or operated by either Party;  (e) any failure by the Consultant to obtain and/or maintain a permit or consent which is the Consultant’s responsibility under the Agreement or applicable laws to obtain and/or to maintain;  (f) risks which are assumed by the Party who relies on the Exceptional Event under the Agreement, including obligations assumed by the Consultant under Appendix 1 [*Technical Specification*];  (g) restrictions related to tackling of COVID-19 as in force on or before the Effective Date (including, any restrictions which have been lifted before the Effective Date but reinstated after the Effective Date);  (h) risks and/or restrictions regarding armed conflict in Ukraine as in force on or before the Effective Date. |
| Sub-Clause 1.1.23 | *Delete Sub-Clause 1.1.23 and replace as follows*:  **“Services”** mean both the Design Services and the Design Supervision Services as defined in Appendix 1 [*Technical Specification*], including any Variation to such Services as approved or instructed by the Client in accordance with the Agreement. |
| Sub-Clause 1.1.29 | *Add Sub-Clause 1.1.29 as follows*:  **“Advance Payment Security”** means the security (or securities, if any) to be provided by the Consultant under Clause 3.12 *[Performance Security and Advance Payment Security]*. |
| Sub-Clause 1.1.30 | *Add Sub-Clause 1.1.30 as follows:*  “**Beneficiary**” means Ministry of Transport of the Republic of Latvia. |
| Sub-Clause 1.1.31 | *Add Sub-Clause 1.1.31 as follows:*  “**CEF**” means the Connecting Europe Facility – the funding instrument to realize European transport infrastructure policy. It aims at supporting investments in building new transport infrastructure in Europe or rehabilitating and upgrading the existing one. |
| Sub-Clause 1.1.32 | *Add Sub-Clause 1.1.32 as follows*:  **“Client’s Requirements**” means the document (or a set of related documents) constituting an integral part of the Agreement and designated as appendices to the Agreement, including without limitation, Technical Specification, Design Guidelines, including its annexes, appendices, changes and other documentation in any form constituting Design Guidelines approved by the Client within the term of the Agreement, Environmental Impact Assessment information, spatial plan, deadlines of the Services, requirements for Site Investigation, as well as any other documents, information and additions and amendments to such documents in accordance with the Agreement. The Client’s Requirements also include the Client’s instructions to the Consultant related to the preferred order of provision of the Services in case if provision of certain part of the Services is not possible or adjustments are required. The Client may unilaterally amend, change and/or supplement the Client’s Requirements any time within the term of the Agreement. For the purposes of the Agreement and provision of the Services the Consultant shall comply with the current version of the Client’s Requirements effective at the date of performance of respective Services. If the Consultant considers that amendments, changes or supplements of the Employer’s Requirements have the impact to Programme and/or Total Remuneration the Consultant should proceed with the Notice in accordance with Sub-Clause 5.1.3.  It is paramount for the implementation of this Agreement that the Consultant shall comply with the Design Guidelines version submitted to the Consultant by the Client. The Client and the Consultant may negotiate upon the anticipated impact resulting from the evaluation of submitted Design Guidelines and agree on further actions to ensure smooth provision of Services and implementation of the Project. |
| Sub-Clause 1.1.33 | *Add Sub-Clause 1.1.33 as follows*:  “**Competent Supervisory Body”** means a competent public authority established and operating under the Laws of the Country or applicable legal acts of the European Union, which supervises and controls different stages of Construction Works according to the Works Contract, including development of design, as well as issues binding decision and instructions to the parties involved in the preparation of design or construction of respective infrastructure (including public and private utility services providers). |
| Sub-Clause 1.1.34 | *Add Sub-Clause 1.1.34 as follows*: **“Consultant’s Documents”** means the calculation, computer programs and other software drawings, drawings, descriptions manuals, models, reports and other documents of a technical nature (if any) supplied by the Consultant under the Agreement, such as, without limitation, the main deliverables mentioned in the Appendix 1 [Technical Specification], but not limited to the Investigations, Interim Deliverable (Master Design), Detailed Technical Design, and other documents as described in Sub-Clause 3.1.5 [*Consultant’s Documents*]. |
| Sub-Clause 1.1.35 | *Add Sub-Clause 1.1.35 as follows*:  **“****Defects Notification Period”** means the period for notifying defects in the Consultant’s Documents, as under Sub-Clause 3.11.2 [*Defects Notification Period and Warranty*]. |
| Sub-Clause 1.1.36 | *Add Sub-Clause 1.1.36 as follows:*  “**Design Guidelines**” have the meaning as specified in Appendix 1 [*Technical Specification*]. |
| Sub-Clause 1.1.37 | *Add Sub-Clause 1.1.37 as follows*:  **“Design Services”** - all and any activities, works, services required for and relating to preparation of the information, design documentation fit for its intended purpose (including, obtaining of all approvals from third parties and authorities) and any other deliverables set in the Agreement (including delivery of such documentation and other deliverables to the Client in the manner described in the Agreement and obtaining of necessary consents, permissions, approvals from any third party or authority as required under applicable laws and/or the Agreement). Services also include preparation and performance of any other activities, documents, information, surveys, studies, analysis, calculations, monitoring, investigations and other documents or activities unnamed in the Agreement but objectively necessary for achievement of the objective of the Agreement – submitting to the Client within the Total Remuneration for Design Services and the Time for Completion prepared and approved (with Client, and all required third parties and authorities) deliverables which are ready for implementation under the Works Contract (or Contracts) without making any changes to them pursuant to requirements of the Agreement and applicable laws. Design Services shall be fit for the purposes for which the Design Services are intended as defined in the Agreement. Information produced, and Services rendered shall be valid or their verification, review, check or approval by the Client or Competent Supervisory Body (including calculations, drawings, manuals, models, documents of technical and legal nature listed in the Client’s Requirements). |
| Sub-Clause 1.1.38 | *Add Sub-Clause 1.1.38 as follows*:  **“Design Supervision Services”** – all author’s supervision Services as described in applicable Laws of the Country and the Agreement. The Design Supervision Services shall fit for its intended purpose to be provided by the Consultant in accordance with Laws of the Country, requirements specified in the Appendix 1 [*Technical Specification*] and the Agreement throughout the performance of the Works until the date when the final Performance Certificate (as defined in the Works Contract) is signed in order to ensure proper implementation of the Works in compliance with the requirements set for such Works and Laws of the Country. |
| Sub-Clause 1.1.39 | *Add Sub-Clause 1.1.39 as follows:*  “**Detailed Technical Design**” have the meaning as specified in Appendix 1 [*Technical Specification*]. |
| Sub-Clause 1.1.40 | *Add Sub-Clause 1.1.40 as follows:*  “**Environmental Impact Assessment**” have the meaning as specified in Appendix 1 [*Technical Specification*]. |
| Sub-Clause 1.1.41 | *Add Sub-Clause 1.1.41 as follows:*  “**Final Delivery and Acceptance Certificate**” means the final delivery and acceptance certificate of Services issued by the Client upon completion of all Services in accordance with this Agreement. |
| Sub-Clause 1.1.42 | *Add Sub-Clause 1.1.42 as follows*:  “**Global Project**” means all and any activities undertaken within the Rail Baltica Global project by “RB Rail” AS, the Ministry of Climate of the Republic of Estonia, the Ministry of Transport of the Republic of Latvia, the Ministry of Transport and Communications of the Republic of Lithuania, “Rail Baltic Estonia” OÜ, “Eiropas dzelzceļa līnijas” SIA, “LTG Infra” AB and “Rail Baltica statyba” UAB, as the beneficiaries and/or implementing bodies, and financed by the European Union though the Connecting Europe Facility and the co-founding of the three Baltic states, in order to build, render operational and commercialize the Rail Baltica railway - a new fast conventional double track standard gauge (1435mm) electrified railway line 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. |
| Sub-Clause 1.1.43 | *Add Sub-Clause 1.1.43 as follows:*  “**Implementing Body**” means SIA “Eiropas Dzelzceļa līnijas”, reg. No. 40103836785. Term “Implementing Body” also includes any infrastructure managers that may replace SIA “Eiropas Dzelzceļa līnijas”. |
| Sub-Clause 1.1.44 | *Add Sub-Clause 1.1.44 as follows:*  “**Investigations**” have the meaning as specified in Appendix 1 [*Technical Specification*] regarding Site investigations. |
| Sub-Clause 1.1.45 | *Add Sub-Clause 1.1.45 as follows:*  “**Master Design**” have the meaning as specified in Appendix 1 [*Technical Specification*]. |
| Sub-Clause 1.1.46 | *Add Sub-Clause 1.1.46 as follows:*  “**On Demand Services**” scope of Works provided in Section 16 of Appendix 1 [*Technical Specification*] as “On Demand Services”. The Employer may order On Demand Services pursuant to Sub-Clause 4.7. |
| Sub-Clause 1.1.47 | *Add Sub-Clause 1.1.47 as follows:*  “**Performance Certificate**” means the document named as such, signed by the Client and/or the Employer in accordance with the Works Contract as stated in Sub-Clause 3.11.2 of the Particular Conditions. |
| Sub-Clause 1.1.48 | *Add Sub-Clause 1.1.48 as follows*: **“Performance Security”** means the security (or securities, if any) to be provided by the Consultant under Clause 3.12 *[Performance Security and Advance Payment Security]*. |
| Sub-Clause 1.1.49 | *Add Sub-Clause 1.1.49 as follows*:  “**Procurement**” means procurement No. RBR 2023/17, titled “DETAILED TECHNICAL DESIGN AND DESIGN SUPERVISION SERVICES FOR MAIN LINE SECTION FROM RIGA INTERNATIONAL AIRPORT TO MISA AND FROM UPESLEJAS TO RAILWAY STATION “RĪGA – PREČU””. |
| Sub-Clause 1.1.50 | *Add Sub-Clause 1.1.50 as follows:*  “**Provisional Delivery and Acceptance Certificate**” means the provisional delivery and acceptance certificate of the Consultant’s Documents issued by the Client in accordance with approval procedures as stated in Appendix 1 [*Technical Specification*] and Sub-Clause 3.1.10 of the Particular Conditions.  For the avoidance of doubt Provisional Delivery and Acceptance Certificate shall be issued for the Consultant’s Documents mentioned in the Appendix 3 [*Programme*] and Appendix 4 [*Remuneration and Payment*], namely, Investigations, Master Design and Detailed Technical Design. |
| Sub-Clause 1.1.51 | *Add Sub-Clause 1.1.51 as follows*: **“Site”** means the place where the Works are to be executed and to which Plant and Materials are to be delivered and any other places as may be specified in the Agreement as forming part of the Site. |
| Sub-Clause 1.1.52 | *Add Sub-Clause 1.1.52 as follows*:  “**Tender documents**” means the entirety of documents forming Consultant’s proposal for performance of Services and submitted by the Consultant during the Procurement. The Tender documents include the proposal for the Services within the letter of Tender, signed and submitted by the Consultant within the framework of the Procurement procedure, and any other documents that the Consultant has submitted as part of the Procurement (other than the Client’s Requirements), as included in and constituting an integral part of the Agreement. |
| Sub-Clause 1.1.53 | *Add Sub-Clause 1.1.53 as follows:*  “**Total Remuneration**” means the amount subject for adjustments and/or deductions the Consultant is entitled to for providing the Design Services and Design Supervision Services in accordance with the conditions of the Agreement. The term “Remuneration” refers to remuneration for Design Services or Design Supervision Services separately. |
| Sub-Clause 1.1.54 | *Add Sub-Clause 1.1.54 as follows*:  “**Works**” and/or “**Construction Works**” means the construction and any other works (as further to be defined in the relevant Works Contract) for construction of the Project and implementation of design documentation developed by the Consultant. |
| Sub-Clause 1.1.55 | *Add Sub-Clause 1.1.55 as follows*:  **“Works Contractor”** means a legal entity, or a group of legal entities carrying out Project Construction Works according to Works Contracts  concluded with the Client or other entity namely the Employer on the basis of the Consultant’s Documents and other relevant documentation or data. |
| Clause 1.2Interpretation | *Add the following new Sub-Clauses to the Clause 1.2 [Interpretation]:*  1.2.8 “until” in the context of time or place or reference shall mean inclusive of the time, place or reference indicated after “until”.  1.2.9 Should any of the definitions used within the Agreement be confusing or mismatching, the Consultant shall seek Client’s clarification, which is to be issued within fourteen (14) days as of receipt of the relevant Notice. The Client is entitled to issue such clarification at any time during the Agreement also upon its own initiative (by describing the discrepancy and clarifying true meaning of the definition (this, however, shall not be used by the Client to add new scope to the Services)). The Consultant shall be bound by each such clarification. |
| Clause 1.3 **Notices and other Communications** | Add the following new Sub-Clauses at the end of the Clause 1.3 [*Notices and other Communications*]:  1.3.2 Notices on any claims, including Variations, suspension of Services, or termination of the Agreement shall be delivered in writing in paper form (and with a scanned copy thereof sent via email) 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 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 the Form of Agreement, 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 the Notice is delivered in person – upon a receipt confirmed by a signature of duly authorized 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 with a qualified electronic signature within the meaning of eIDAS Regulation – on the next day after sending of the relevant e- mail.”  1.3.5 The Consultant and any Consultant’s person involved in the implementation of the Agreement shall not rely on any guidance, instructions, orders or requests from any other person than the Client. In case if any orders or requests are submitted to the Consultant from other persons or entities, the Consultant shall first seek and receive instruction from the Client.  1.3.6 The Consultant shall use specific document management system administered by the Client (for example: ProjectWise) and comply with the Client’s security, IT and other related procedures and requirements if requested by the Client. |
| Clause 1.4 **Law and Language**  Sub-Clause 1.4.1 | *Add the following sentence at the end of Sub-Clause 1.4.1:*  Within the meaning of the Agreement applicable laws to the Agreement shall also include all regulations of the municipalities, and all applicable construction standards of the Country and European Union construction standards. |
| Clause 1.6 **Assignments and**  **Sub-Contracts**  Sub-Clause 1.6.1 | *Delete Sub-Clause 1.6.1 and replace as follows:*  The Consultant shall not assign the benefit of the Agreement without the prior written consent of the Client. |
| Sub-Clause 1.6.2 | *Delete Sub-Clause 1.6.2 and replace as follows:*  The Consultant shall not assign obligations under the Agreement without the written consent of the Client. The Client may assign and transfer the Agreement or any part thereof (also, in a way of reorganization) to any other entity that is implementing/auditing/overseeing implementation of any part of the Global Project, without a prior written consent of the Consultant. For purpose of this, if so requested by the Client, the Consultant is obliged to enter into the relevant novation agreement (in Latvian: pārjaunojums) with the relevant party and the Client. The scope of obligations of either of the Parties shall not be affected by the relevant novation agreement unless the Parties agree otherwise. |
| Clause 1.7**Intellectual property rights** | *Delete Clause 1.7 and replace as follows*:  1.7.1 All documentation and information forming part of the deliverables produced by rendering the Services under this Agreement is and shall become the property of the Beneficiary (and with a royalty free usage right to the Client and the Implementing Body) at the moment of creation regardless of whether the Services are produced or finally accepted and regardless of the ways the Services are produced. For the avoidance of doubt everything that the Client (also the Beneficiary and the Implementing Body) receives fully or partly, also including information technology software, is assumed to be cleared of any intellectual property rights. It is acknowledged and agreed by the Parties that the Client (also the Beneficiary and the Implementing Body) shall be permitted to reproduce the drawings, schemes and distribute the prints in connection with the use or disposition of the documentation and information without any approval of the Consultant and without incurring obligation to pay any royalties or additional compensation whatsoever to the Consultant. For avoidance of doubt the Parties acknowledge that the Client and the Implementing Body has the right to use the documentation and information for implementing the Global Project.  1.7.2 The Consultant hereby warrants that it shall obtain from its employees and sub-contractors and grant to the Client (also the Implementing Body) and the owner (the Beneficiary) of the documentation and any deliverables an exclusive license to use the personal and economic Intellectual Property rights pertaining to the Services either individually or together. The license shall be valid for the time period the Intellectual Property is under legal protection. The Client, the Beneficiary and the Implementing Body may use the Intellectual Property as they deem appropriate without any obligations owed to the Consultant (including, *inter alia*, its employees and sub-contractors).  1.7.3 The Consultant represents and warrants that it owns all Intellectual Property in all documentation deliverable by or on behalf of the Consultant for the purpose of successfully undertaking and completing this Agreement and that, to the extent any Intellectual Property in any documentation or any produced deliverables are not owned by the Consultant, it has obtained all requisite consents from owner(s) of all Intellectual Property in the documentation or any produced deliverables to fulfil all of the obligations undertaken by the Consultant under this Agreement and has fully discharged the Beneficiary, the Implementing Body and the Client from all obligations with respect to payment of any royalties or fees.  1.7.4 Notwithstanding any other rules the Consultant represents and warrants to the Client, the Implementing Body and the Beneficiary that the Beneficiary shall acquire legal title to and ownership in the Intellectual Property in all documentation and deliverables to the Client (also the Implementing Body) under this Agreement as of the moment of creation by the Consultant to the Client (or the Implementing Body) of the specific deliverables and documentation and information forming part of these deliverables produced within the Services. For the avoidance of doubt, such title and ownership shall confer upon the Beneficiary, without limitation, each of the following:   1. the right to reproduce the documentation and information, or any part thereof, and distribute copies of the documentation or information or any part thereof; 2. the right to modify, amend and supplement the documentation or information, or any part thereof. In this case the Consultant gives its full consent to any modifications that the Client or the Beneficiary (or the Implementing Body) may undertake. The Consultant agrees not to use any intellectual property rights it may possess to hinder the use of the intellectual property according to the Agreement and its intended purpose, which may include a need for change or modification; 3. the right to license documentation or information, or any part thereof, for use by others; and 4. the right to transfer ownership in the documentation or information, or any part thereof, to others.   1.7.5 Upon transfer of Intellectual Property rights to the Client (also the Beneficiary and the Implementing Body), the Consultant shall be deemed to have granted the Client and the Beneficiary an irrevocable and exclusive license to reproduce, modify and distribute copies of any documentation or information forming part of any deliverable for the purposes of the Services and the Project, subject to the following restrictions:   1. the permitted use shall only cover the right to reproduce, modify and distribute the documentation or information, or any part thereof, for the purposes of performing, implementing or modifying the Services; and 2. the documentation or information, or any part thereof, shall not, without the prior consent by the Client and/or the Beneficiary, be distributed or communicated to any third party for purposes other than those permitted in accordance with the Agreement.   1.7.6 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 Client and/or the Beneficiary to the Consultant or to any third party in consideration of the transfer of ownership in the Intellectual Property in any documentation or information.  1.7.7 In the event the Client, the Implementing Body or the Beneficiary is a party to legal proceedings involving allegations of infringement of any Intellectual Property in the documentation or information of any third party, the Consultant shall keep the Client, the Implementing Body or the Beneficiary fully informed of all aspects relevant to the legal proceedings and the Client (also the Implementing Body) or the Beneficiary shall have the right, at its own cost, to be represented in the legal proceedings by separate counsel. In the event the Consultant fails to act against claims alleging infringement of any Intellectual Property in the Documentation of any third party within reasonable time but, in any event, within fifteen (15) days of having been notified of such claims, the Client (also the Implementing Body) and the Beneficiary shall have the right to assume legal defense against claims alleging infringement of Intellectual Property and shall be entitled to reimbursement by the Consultant of reasonable costs and expenses incurred toward such defense. The Consultant shall hold the Client (also the Implementing Body and the Beneficiary) harmless against any claims, and this rule shall be taken into account in any case.  1.7.8 In the event a court of competent jurisdiction resolves in a binding judgment that the documentation or information, or any part thereof, infringe Intellectual Property of any third party, the Consultant shall immediately, at its own cost and expense, procure for the Client and the Beneficiary the right of continued use of the documentation or information, or part thereof infringing Intellectual Property of a third party.  1.7.9 The Consultant shall defend and indemnify the Beneficiary, the Client from and against any and all damages arising from the use of any Intellectual Property of the Consultant.  1.7.10 For the avoidance of doubt the term “Intellectual Property” shall also include the Foreground Intellectual Property as mentioned in Sub-Clause 1.1.14 of the General Conditions of the Agreement.  1.7.11 For the avoidance of doubt the term “Intellectual Property” shall also include all the electronic or other data or information obtained by the Client (also the Implementing Body and the Beneficiary) from the Consultant or any other entity engaged by the Consultant in the implementation of the Project, and for this reason the rights on this data or information, including any modeling, visual, graphical, technical or other electronical data and information shall become the property of the Beneficiary. The Consultants confirms that this conveyance includes any rights, including the rights to grants licenses, to transmit, distribute, copy and use the data or information and any proprietary work contained in the conveyed information for any purpose. In this respect the Consultant confirms that it will procure any rights required to convey the afore mentioned information to the Client, the Implementing Body and Beneficiary (as necessary).  1.7.12 Intellectual Property rights granted by the Consultant under this Sub-Clause 1.7 shall survive the termination of the Agreement (for any reason) and the Beneficiary (also the Client and Implementing Body) shall remain entitled to copy, use, modify and communicate the Consultant’s Documents for the purpose of Project (including, any marketing activities related to the Global Project).  1.7.13 The Consultant shall at its own expense defend and settle any claim against the Client and the Beneficiary (also the Implementing Body) alleging that the use of the Consultant’s Documents made by (or on behalf of) the Consultant in accordance with the Agreement infringes Intellectual Property Rights of a third party. If the infringement occurred in connection with improper performance of the Agreement by the Consultant, the Consultant shall:   1. Pay infringement claim defense costs, settlement amounts negotiated by the Consultant, and court-awarded damages and compensations. 2. Incur all costs related to the possible covering of substantive and non-proprietary claims related to the infringement of proprietary or personal property rights of the person or persons reporting claims.   The Client shall provide its reasonable assistance with respect to such proceeding or settlement to the Consultant at Consultant’s cost. If the Client is a named party in the proceedings, the Consultant shall keep the Client fully informed, and the Client shall have the right to be present at the proceedings with a separate counsel at its own expense. |
| Clause 1.8 **Confidentiality**  Sub-Clause 1.8.1 | *Delete Sub-Clause 1.8.1 and replace as follows:*  Except with the prior mutual written consent, neither the Client (the Beneficiary) nor the Consultant shall disclose or cause or permit their employees, professional advisers, agents, sub-consultants, sub-contractors, dependents and other entities to disclose to third parties any Confidential information. The recipient of Confidential information agrees not to use any confidential information disclosed to it by the other party for its own use or for any purpose other than the purpose necessary for the execution of the Agreement. The Client (the Beneficiary) 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 to prevent it from falling into the public domain or the possession of persons other than those persons authorized under this Agreement (if any) to have any such information. Such measures shall include, but not be limited to, the highest degree of care that the receiving Party utilizes to protect its own confidential information of a similar nature, which shall be no less than reasonable care. The Client (the Beneficiary) and the Consultant agrees to notify the other in writing of any actual or suspected misuse, misappropriation or unauthorized disclosure of confidential information of the disclosing party which may come to the receiving party’s attention. On 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. In case if any agreement/contract is concluded between the Consultant and the Client (the Beneficiary) before this Agreement becomes effective, the rules of this Agreement shall override any previous contracts provided that any obligation wider than stipulated here shall remain effective. |
| Sub-Clause 1.8.2 | *Delete paragraphs (b) and (c) of Sub-Clause 1.8.2 and replace paragraph (b) as follows:*  (b) which is received from the Consultant by the Client unless Consultant, at the time of its disclosure to the Client, has expressly specified it as confidential by providing objective justification thereof. |
| Sub-Clause 1.8.3 | *Delete Sub-Clause 1.8.3 and replace as follows:*  The obligations set forth in Sub-Clause 1.8.1 shall survive termination or expiry of the Agreement and shall remain in force for a period of 10 years after termination of the Agreement or completion of the Services stated in the Performance Certificate, whichever comes earlier. |
| Clause 1.9 **Publication**  Sub-Clause 1.9.1 | *Delete Sub-Clause 1.9.1 and replace as follows:*  Publishing of any material relating to the Services is always subject to the Client’s prior written approval. This Sub-Clause survives the termination or expiry of the Agreement. |
| Sub-Clause 1.9.2 | *Delete Sub-Clause 1.9.2 and replace as follows:*  The Consultant may use information and documentation relating to the Services and the Project for commercial tendering purposes and other purposes only with the prior written approval of the Client if it is within the term of the provision of Services. |
| Clause 1.11**Relationship of Parties** Sub-Clause 1.11.2 | *Delete of Sub-Clause 1.11.2 and replace as follows*:  Where either Party consists of a joint venture, consortium, partnership, association or other joint venture then members of such joint venture shall be jointly and severally liable under the Agreement regardless of the fact that the Party has appointed a representative. The Consultant and the person on whose capabilities the Consultant is relying in accordance with the conditions of the Procurement are jointly and severally liable under the Agreement. |
| Sub-Clause 1.11.3 | *Add new Sub-Clause 1.11.3 as follows*:  In all dealings under the Agreement the Client and the Consultant shall act in good faith. The Parties are obliged to execute the obligations stipulated in the Agreement:   * by collaborative attitude towards the implementation of the Project and the Client’s desired results, exercising cooperation and teamwork, *inter alia¸* also in the format as stipulated in Clause 2.5; * by honest and constructive behavior regarding the relations between the Client and the Consultant; * by prompt and proactive attitude regarding each specific case that has to be considered; * by seeking improvements and efficiencies in the design review and approval process; * in accordance with Contracting Authority Code of Conduct and Supplier and Sub-Contractor Code of Conduct (the latest versions of these documents are available at <http://www.railbaltica.org/procurement/procurement-regulation-supplier-qualification/>. |
| Clause 1.15 **Priority of Documents**  Sub-Clause 1.15.2 | *Add new Sub-Clause 1.15.2 as follows*:  The documents forming Technical specification (including annexes) are to be taken as mutually explanatory and supplementary of one another. However, if any discrepancies between the documents comprising the Technical specification (including annexes) are discovered, the Consultant shall immediately inform the Client thereof and shall ask the latter for clarification, which is to be issued within 14 days as of receipt of the relevant notice. Based on the Client’s clarification the final priority of the relevant discrepancies is established. The Client is entitled via notice to inform the Consultant on any clarifications of any discrepancies in Technical specification (including annexes) the Client itself has detected. Such notice shall be binding to the Consultant at the moment of its receipt. |
| 2. The Client | |
| Clause 2.1Information Sub-Clause 2.1.1 | *Add the following sentences at the end of Sub-Clause 2.1.1:*  The Consultant confirms that during the Procurement process the Consultant has requested and received all the necessary information, and the received information is sufficient to understand the nature and scope of the Services to be performed. The Consultant shall be deemed to have reviewed and scrutinized, prior to Effective Date, the received information, including the Client's Requirements, exercising the level of skill, care, diligence and prudence as set out in Sub-Clause 3.3.1 [*Standard of Care*] with a view to ensuring that such information does not contain any error, inaccuracy, omission or ambiguity, and the Consultant confirms that the received information is sufficient to perform the Services in accordance with the conditions of the Agreement. |
| Sub-Clause 2.1.2 | *Delete Sub-Clause 2.1.2 and replace as follows:*  Before entering into this Agreement, the Consultant evaluated the accuracy, sufficiency and consistency of all the information provided to the Consultant by the Client. The Consultant asked all the necessary questions and received satisfactory answers. The Client shall not be responsible for any error, inaccuracy, omission, or ambiguity of any kind in the Client's Requirements as originally included in the Agreement and shall not be deemed to have given any representation of accuracy or completeness of any data or information. The Consultant shall use reasonable endeavors to review all significant information provided to it by the Client after the Effective Date. To the extent achievable using the Standard of Care in Sub-Clause 3.3.1 [*Standard of Care*], the Consultant shall review such information with a view to ensuring that such information does not contain any manifest error, omission or ambiguity and shall give Notice to the Client promptly of any adverse findings. 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 within 10 (ten) days as of the moment the Consultant received such information. |
| Sub-Clause 2.1.3 | *Delete Sub-Clause 2.1.3 and replace as follows*:  In the event of any error, omission, or ambiguity (for the avoidance of doubt, including a manifest error, omission or ambiguity) in the information provided to the Consultant by the Client, the Consultant shall rectify as part of the Services such matter by carrying out necessary relevance procedures in order to provide Services timely and in accordance with the Agreement. The rectifications of such nature shall neither be a Variation or as grounds for a Variation nor shall it be a basis for Exceptional Costs or form an Exceptional Event. |
| Clause 2.2 **Decisions** | *Add the following sentences at the end of Sub-Clause 2.2.1:*  Any decision/approval/consent provided by the Client shall not in any way decrease the liability of the Consultant or relieve him of its obligations to provide the Services pursuant to this Agreement or applicable laws. |
| Sub-Clause 2.3.1**Assistance** | *Delete Sub-Clause 2.3.1 and replace as follows*:  In the Country and in respect of the Consultant, its personnel, and dependents, as well as sub-contractors/sub-consultants, if any, as the case may be, the Client shall endeavor to reasonably, when and where possible, assist the Consultant in:   1. Cooperation with the Consultant in accordance with the provisions of this Agreement. 2. Providing the Consultant with support on communication with governmental and municipal authorities. 3. Providing the Consultant with support that shall allow him to gain access to the Site, during the Works. 4. Providing the Consultant with the Client’s data and technical documentation necessary for design purposes, including associated industries, provided that the Client has such data and documentation available to provide within his possession. 5. Providing support to access, within reason where possible, to the other organizations for collection of information in case Consultant is not able to obtain such information by himself.   This Sub-Clause constitutes a “best effort” obligation for the Client only, and nothing in this Clause (including, Client’s failure to perform any of the above-mentioned assistances) shall entitle the Consultant to claim from the Client reimbursement of any costs, increase of the Total Remuneration, or extension of any deadlines under the Agreement. |
| Clause 2.4 **Client’s Financial Arrangements** | *Delete Clause 2.4 [Client’s Financial Arrangements]* |
| Clause 2.5 **Supply of Client’s Equipment and Facilities** | *Delete Clause 2.5 [Supply of Client’s Equipment and Facilities]and replace as follows*:  The Client shall make a common working space available in Riga for the Consultant’s key experts for one day per two weeks during the Design Services which shall be used for co-location and common teamwork with the Client’s key personnel and any other key stakeholders assigned by the Client. The Consultant shall be required to ensure physical presence during the Design Services for such cooperation at the Client’s provided working space for the aforementioned regularly. |
| Clause 2.6 **Supply of Client’s Personnel** | *Delete Clause 2.6 [Supply of Client’s Personnel]* |
| Clause 2.7 **Client’s Representative** | *Delete Sub-Clause 2.7.1.and replace as follows*:  As of the Effective Date the Client has appointed a person indicated in the Form of Agreement as its representative. During the Agreement the Client may unilaterally change its representative by notifying the Consultant thereof.  The Client’s representative performs obligations that he/she has been entrusted with and rights granted to him by the Client. Unless and as long as 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 Total Remuneration, or sign amendments to the Agreement, including, approve Variations. |
| Clause 2.8**Services of Others** | *Delete Clause 2.8 [Services of Others]* |
| 3. The Consultant | |
| Clause 3.1Scope of Services Sub-Clause 3.1.1 | *Delete Sub-Clause 3.1.1.and replace as follows*:  The Consultant shall perform the Services, which consists of   1. the implementation of the Design Services, and 2. the rendering of Design Supervision Services over the design with respect to the Works,   as is stated in Appendix 1 [*Technical Specification*], in accordance with the Laws of the Country, applicable legal acts of the European Union, applicable and conventionally (usually) enforceable standards in the corresponding industry, the Client’s Requirements, including Design Guidelines. |
| Sub-Clause 3.1.2 | *Delete Sub-Clause 3.1.2 and replace as follows:*  The Consultant shall, inter alia:   1. perform the Services in accordance with the Programme and Client’s Requirements as may be amended from time to time in accordance with the Agreement; 2. render the Services and specific obligations, especially the risk management obligations stipulated in the Appendix 1 [*Technical Specification*] regarding the communication with landowners for Investigations in private land plots, communication with local communities where required, and other obligations with the reasonable skill, care and diligence to be expected from the Consultant that is experienced in the provision of the Services. The Services shall be provided in accordance with the best strategy and project management expertise available to the Consultant without demanding any additional costs; 3. assume duties and liability of developer of the construction design (in Latvian: būvprojekta izstrādātājs) as prescribed in applicable laws; 4. be registered with the Register of Construction Merchants (in Latvian: Būvkomersantu reģistrs) and hold any required certificates, licences or permits in the fields and spheres necessary to duly perform the Services and Consultant’s obligations under the Agreement and applicable laws, and to meet the requirements set in the Procurement documents and Tender 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 applicable laws and the Agreement. 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 due to Consultant’s fault; 5. be 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, licensing, and registration for tax purposes and taxation applied on the Consultant in relation to this Agreement. For avoidance of doubt, the Consultant is responsible for obtaining any required residency, tax-related, 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 have been obtained; 6. inform the approved sub-contractor’s and staff about the invoicing and payment procedures stipulated in the Agreement and its appendices and ensure efficient communication between the Consultant and the Client for the provision of the Services in due time and in efficient order; 7. be responsible for the Services provided by the approved sub-contractors by ensuring proper communication and provision of necessary data for the approved sub-contractors; 8. undertake to pay sub-contractors timely for their duly completed services and to apply best practice cooperation principles towards sub-contractors; 9. be responsible in undertaking the Services in line with applicable national and EU sanctions (e.g. towards Russia and Belarus in relation with their aggression towards Ukraine). |
| Sub-Clause 3.1.3 | *Delete Sub-Clause 3.1.3.and replace as follows*: The Consultant shall take all the necessary actions and measures to ensure that there is no conflict of interest related to impartially and objectively implementation of the Project due to the reasons related to economic interests, political or civic dependence, family or emotional ties or any other interests. This includes all measures that neither the Consultant’s staff nor any of its sub-contractors and their staff are in contact with any potential bidders for the Works. Any contact with the potential bidders for Works shall be dealt exclusively with express permission of the Client. The Consultant shall immediately notify the Client in writing about any situation that emerges during the implementation of the Agreement, as a result of which a conflict of interest arises or may arise.The Client shall immediately undertake all the necessary actions to ensure that any conflict of interest is duly eliminated.The Client reserves the right to verify whether the measures that have been undertaken by the Consultant are sufficient and may require undertaking additional measures in accordance with the instructions set by the Client. |
| Sub-Clause 3.1.4 | *Add Sub-Clause 3.1.4 as follows*:  The Consultants’ Documents shall comprise the technical documents specified in the Client’s Requirements, documents required to satisfy all regulatory approvals, and the documents described in Appendix 1 [*Technical Specification*] and the Agreement, and unless otherwise stated in the Client’s Requirements, the Consultant’s Documents shall be written in the language for communications defined in Clause 1.4 [*Law and Language*] and regarding specific documents as stated in the Appendix 1 [*Technical Specification*]. On any occasion the Consultant’s Documents shall be enforceable for the provision of Services and Works furthermore.  The Consultant shall prepare all Consultant's Documents and shall also prepare any other documents necessary under the Services.  If the Client’s Requirements describe the Consultant’s Documents, which are to be submitted to the Client for review, and/or for approval, they shall be submitted accordingly.  The Client may, within the review period, give notice to the Consultant that a Consultant’s Document fails (to the extent stated) to comply with the Agreement. If a Consultant’s Document so fails to comply, it shall be rectified, resubmitted and reviewed (and, if specified, approved) in accordance with this Sub-Clause, at the Consultant’s cost.  Unless otherwise stated in the Client’s Requirements, each review period shall not exceed 50 (fifty) days, calculated from the date on which the Client receives a Consultant’s Document and the Consultant’s notice. This notice shall state that the Consultant’s Document is considered ready, both for review (and approval, if so specified) in accordance with the Agreement and for use. The notice shall also state that the Consultant’s Document complies with the Contract, or the extent to which it does not comply. |
| Sub-Clause 3.1.7 | *Add Sub-Clause 3.1.7 as follows*:  The Design Services, the Design Supervision Services, the Consultant’s Documents, the execution and the completed Services shall comply with European Union, Country’s technical standards, building, construction, real estate and environmental law, law applicable to the Services, and other standards specified in the Client’s Requirements, Design Guidelines, applicable to the Services, or defined by the applicable laws.  All these applicable laws shall, in respect of the Services and the Project, prevail on the date when the Services are taken over by the Client under Sub-Clause 4.2.1 [*Commencement and Completion*]. References in the Contract to published standards shall be understood to be references to the edition applicable on the Effective Date, unless stated otherwise.  If changed or new applicable standards come into force in the Country after the Effective Date, the Consultant shall give notice to the Client and (if appropriate) submit proposals for compliance. In the event that:   1. the Client determines that compliance is required, and 2. the proposals for compliance constitute a Variation,   then the Client shall initiate a Variation in accordance with Clause 5 [*Variations to Services*]. |
| Sub-Clause 3.1.8 | *Add Sub-Clause 3.1.8 as follows*:  The Consultant shall correct within 30 (thirty) days (including approvals), at the Consultant’s own expense, any irregularities, errors, omissions, ambiguities, inconsistencies, inadequacies or other defects found in the Consultant’s Documents according to the Client’s Requirements, the Competent Supervisory Bodies, construction technical supervisor and/or during expertise of the Detailed Technical Design. The Client may request the Consultant to correct errors at any time until the expiry of the Defects Notification Period. Correction of irregularities, errors or defects shall not constitute a valid reason for extension of the Time for Completion. |
| Sub-Clause 3.1.9 | *Add Sub-Clause 3.1.9 as follows*:  The Consultant’s duties include in particular:   * 1. all of the duties stipulated in Appendix 1 [*Technical Specification*] and *inter alia* also other duties in accordance with this Sub-Clause.   2. Timely and correct performance of obligations under the Agreement in accordance with the Programme.   3. Cooperation with the Client during the implementation of the subject of the Agreement.   4. Providing the Design Services in accordance with the Client’s Requirements, including special requirements mentioned in the Design Guidelines including their annexes, appendices, changes and other information constituting Design Guidelines approved by the Client within the term of the Agreement, Environmental Impact Assessment information and requirements arising in a result of implementation of the mentioned documents and Client’s Requirements, including, but not limited to the Consultant’s communication with the land owners, users, state and municipal institutions and other parties and legal entities, Consultant’s participation in the spatial planning, impact assessment accessibility and related procedures.   5. Consultant’s participation, justified in writing by the Client (in a joint representation with the Client’s Representative) in change assessment and risk assessment meetings, in accordance with the European Commission Implementing Regulation 402/2013 of 30/04/2013, or legal acts replacing this Regulation, organized by the Client.   6. Providing of the Design Supervision Services during the execution of Construction Works according to the Works Contract and on the basis of the Consultant’s Documents constituting the subject of the Agreement.   7. Monitoring the actual stage of the performance of the Works and Providing of the Design Supervision Services in accordance with the actual performance of the Works, and in this regard the Consultant shall note that all the railway line (construction) sections will not be constructed and completed at once (simultaneously), and the Works will not commence at the same time.   8. Participation of the Consultant’s Representatives in the committee of initial and final acceptance appointed by the Client under the terms of the Works Contract and signing the provisional acceptance documentation, initial acceptance documentation and final acceptance documentation - if it is required by the Client or results from the Agreement content.   9. Participation in meetings if the Client or the Employer under Works Contract requires the participation of the Consultant.   10. Employment of an appropriate number of qualified and experienced employees, in the field of subject of the Agreement.   11. Immediate notification in writing to the Client, along with substantive justification of the need to carry out any additional and / or replacement work, going beyond the description of the subject of the Agreement.   12. Written notice to the Client about any threats to the timely implementation of the subject of the Agreement, Design constituting a component of the subject of the Agreement, including substantive justification and adopted remedies.   13. Enabling the Client to supervise and monitor the implementation of Works and Services by the Consultant, including examination of the status and quality of Works.   14. Immediate preparation and delivery of information necessary for the Client to accept applications for replacement of Consultant Personnel and additional works in the scope of the Design Services and the Design Supervision Services.   15. Updating the main deliverables within the Construction (Works) stage free of charge due to the defects, inconsistencies and incompliances that became known due to the Consultant’s fault.   16. Introduction of version control of the Consultant’s Documents sufficient to identify different versions of the Consultant’s Documents (or part of them) submitted to the Client or other entities.   17. Provision of basic input data and other data necessary to carry out corresponding spatial planning, Environmental Impact Assessment and related procedures. |
| Sub-Clause 3.1.10 | *Add Sub-Clause 3.1.10 as follows*:  The Parties shall establish the following conditions for submission and acceptance of the Consultant’s Documents:   1. The Consultant shall submit the Consultant’s Documents to the Client for review, as stated in Appendix 1 [*Technical Specification*] and the Agreement (and its Appendices). 2. Upon Client’s approval as stated in Appendix 1 [*Technical Specification*] and the Agreement (and its Appendices), the Client shall issue the Provisional Delivery and Acceptance Certificate. 3. Each time the Consultant removes the defects found in the design documentation or other documentation (as mentioned in this Sub-Clause), the Consultant issues the revised documentation and the acceptance procedure described in this Clause and its dates, is calculated from the beginning. In this case the Client shall not suffer any contractual sanctions or other consequences. 4. The procedure specified above shall apply to the Services provided in accordance with the Agreement, except for approval of minutes of the meetings and other small procedural tasks. 5. The Consultant confirms and represents that the Beneficiary will be entitled to approve the Detailed Technical Design (final deliverable ready to be executed) within the 30 (thirty) days in accordance with the Agreement concluded between the Client and the Beneficiary before the acceptance documentation stipulated in this Agreement is approved and signed. This approval is binding to the Consultant. If the afore mentioned approval is expressed, the Consultant shall be entitled to receive the Remuneration in accordance with the Agreement. In case if the afore mentioned approval is negative, the Consultant shall carry out all the necessary activities and actions to rectify any inconsistencies, defects, incompliances and other issues required to satisfy the Beneficiary. The Beneficiary hereby warrants that the afore mentioned obligation will not be used in a bad faith. |
| Sub-Clause 3.1.11 | *Add Sub-Clause 3.1.11 as follows*:  The Consultant shall at all times comply with all data protection laws in connection with the processing of personal data (as defined in applicable data protection laws including the General Data Protection Regulation ((EU) 2016/679)), and shall indemnify and keep indemnified the Client against all losses, claims, damages, liabilities, fines, sanctions, interest, penalties, costs, charges, expenses, demands and legal and other professional costs arising out of or in connection with any breach of such laws by the Consultant. |
| Clause 3.2 **Function and Purpose of Services**  Sub-Clause 3.2.1 | *Delete Sub-Clause 3.2.1 entirely and replace as follows*: As part of the performance of the Agreement and within the Remuneration for the Design Supervision Services, the Consultant is obliged to perform Design Supervision Services over the execution of Works according to the Works Contract, carried out on the basis of the Consultant’s Documents, which is the subject of the Agreement until completion of Works according to the Works Contract and in accordance with Appendix 1 [*Technical Specification*]. When executing the Design Supervision Services, the Consultant performs the activities required by the relevant construction law and the Laws of the Country. The Consultant shall perform Design Supervision Services primarily as it is stated in Appendix 1 [*Technical Specification*] and on any occasion with due professional care, at the Consultant’s own risk and for the Remuneration. |
| Sub-Clause 3.2.2 | *Add Sub-Clause 3.2.2 as follows*:  Design Supervision Services will be performed at the request of the Client within no shorter than 15 (fifteen) days from the delivery of the request to the contacts indicated in the Agreement as the Consultant's contact data. |
| Sub-Clause 3.2.3 | *Add Sub-Clause 3.2.3 as follows*:All actions by the Consultant, including visits to the Site and the Consultant's opinions related to the necessity of removing defects in the Consultant's Documents, for which the Consultant is liable under the Warranty under the Agreement, will be performed at the Consultant's cost within the Remuneration for the Services. |
| Sub-Clause 3.2.4 | *Add Sub-Clause 3.2.4 as follows*:The Consultant is fully responsible for any damages resulting from non-performance or improper performance of the Design Supervision Services by itself or entities for which the Consultant is responsible. |
| Clause 3.3 **Standard of Care**  Sub-Clause 3.3.1 | *Delete Sub-Clause 3.3.1 and replace as follows:* Notwithstanding any term or condition to the contrary in the Agreement or any related document or any legal requirement of the Country or any other relevant jurisdiction (including, for the avoidance of doubt, the jurisdiction of the place of establishment of the Consultant), in the performance of the Services the Consultant shall exercise the very high level of skill, care and diligence to be expected from a consultant that is providing services of such size, nature and complexity to clients that are acting outside their usual professional competence. Further, the Consultant shall be at all times proactive, seek mutually acceptable solutions and perform the Services to the maximum benefit of the Client and Employer. |
| Sub-Clause 3.3.2 | *Delete Sub-Clause 3.3.2 and replace as follows:* By using the standard of care set in Sub-Clause 3.3.1, the Consultant shall perform the Design Services to the level of quality and detail that allows the Contractor to implement the design documentation and other deliverables developed by the Consultant without making any changes to them, and without delaying the Works due to any errors in the deliverables or due to any necessities for detailing of the deliverables, and so that the intended function and purpose of objects constructed as a result of the Works may be achieved. For clarity – the below mentioned does not mean the Consultant assuming any liability for the Contractor’s obligations under the Works Contract and applicable laws. |
| Clause 3.4Client’s Property | *Add the following wording at the beginning of the first sentence of Sub-Clause 3.4.1 and replace “Anything” with “anything”:*  Without prejudice to the provisions on ownership of Intellectual Property under Clause 1.7 [Intellectual Property]. |
| Clause 3.5 **Consultant’s Personnel** | *Add Sub-Clause 3.5.2 as follows*:  The Consultant shall ensure that all the key-experts as provided in Technical Specification shall comply with the criteria stated in the Client’s Requirements. Unless otherwise stated in the Agreement, the Consultant shall submit to the Client for consent the name and particulars of each proposed key personnel, designer and design sub–consultant (if any).  The Consultant warrants that he, his designers, personnel and design sub- consultants (if any) have the experience and capability necessary to provide the Design Services and Design Supervision Services. The Consultant undertakes that the Consultant’s personnel shall be available to attend discussions with the Client at all reasonable times, until the expiry date of the relevant Defects Notification Period. |
| Clause 3.6 **Consultant’s Representatives** | *Delete Sub-Clause 3.6.1 and replace as follows*:  The Consultant has appointed a person indicated in the Form of Agreement as its representative. During the Agreement the Consultant may change its representative only with a prior written approval of the Client, which shall not unreasonably be withheld.  The Consultant’s Representative performs obligations that he/she has been entrusted with and rights granted to him/her by the Consultant in the Agreement. Unless and as long the Consultant has not informed the Client otherwise, it is considered that the Consultant’s Representative has unlimited and full rights to act on behalf of the Consultant under the Agreement, including, the Consultant’s Representative has authority to commit the Consultant to amending the Time for Completion, or the Total Remuneration, or sign amendments to the Agreement. |
| Clause 3.7 **Changes in Consultant’s Personnel**  Sub-Clause 3.7.1 | *Delete Sub-Clause 3.7.1 and replace as follows:*  If it is necessary for any reason to replace any of the personnel provided by the Consultant, the Consultant shall arrange for replacement by a person(s) of suitable qualification and experience in the provision of the Services as soon as reasonably possible. In case the Consultant proposes changes in the key-personnel and staff evaluated within the Procurement procedure and the Agreement implementation phase such personnel shall be changed on the basis of the Client’s written permission provided that any proposed replacement personnel for such key personnel roles is at least at the same level of quality, qualifies with the qualification criteria that was applied to the initially proposed key personnel during the final evaluation of the Tender documents in the Procurement procedure, that such Consultant’s proposed replacement personnel quality, experience and accreditation is in line with the Agreement, applicable law and Procurement regulations. |
| Sub-Clause 3.7.2 | *Delete Sub-Clause 3.7.2 and replace as follows:*  The cost of such replacement shall be borne by the Consultant. |
| Clause 3.9**Construction Administration** Sub-Clause 3.9.1 | *Delete Sub-Clause 3.9.1 and replace as follows*: After the completion of Design Services, at the request of the Client, the Consultant shall be required to perform the Design Supervision Services for the Works Contract, as stated in Appendix 1 [*Technical Specification*]. |
| Sub-Clause 3.9.3 | *Delete Sub-Clause 3.9.3 and replace as follows*: The Consultant shall upon respective written request of the Client, provide the Client with the requested information and documentation pertaining to provision of the Services and performance of this Agreement not later than within 5 (five) days after receipt of the respective request of the Client, or other term set by the Client. The Consultant shall answer within 3 (three) days throughout the duration of construction tender to all questions that construction tenderers will ask to the contracting authority in respect of the Services performed by the Consultant under this Agreement. The Client shall notify the Consultant regarding commencement of the construction tender at least 30 (thirty) days before planned announcement of the construction tender. The Consultant confirms that it has evaluated and undertakes all the risk for the possible suspension, cancelation and prolongation of the construction tenders and it shall not constitute grounds for Variation. |
| Sub-Clause 3.9.4 | *Delete Sub-Clause 3.9.4 and replace as follows:*  The Consultant shall not be liable to the Client for the performance of the Works Contract by the contractor. In the discharge of its duties under the Works Contract, the Consultant shall only be liable to the Client if the Consultant commits a breach of the Agreement. |
| Sub-Clause 3.9.5 | *Delete Sub-Clause 3.9.5 and replace as follows:*  Unless such limitation contradicts the aims or the nature of the specific obligations of the Consultant during the Design Supervision Services as set out in this Agreement, the Consultant shall not be liable to the Client for the means, techniques, methods or sequencing of any aspect of the Works Contract or for the safety or adequacy of any of the contractor’s operations. For the avoidance of doubt, the Consultant shall not be liable for such obligations to the Client and the Works contractor, as such obligations (e.g., means, techniques, methods or sequencing of any aspect of the Works) shall be deemed to be part of the Works contractor’s obligations. |
| Sub-Clause 3.9.7 | *Add Sub-Clause 3.9.7 as follows*: The Consultant confirms that it has evaluated and undertakes all the risk for the possible delay of the completion of the Contract Works of the Design if the Works continue longer than foreseen in the Works Contract. The Consultant confirms that the Remuneration includes the necessary actions to be made to determine, allocate and solve risks. The Consultant shall be obliged to provide the Design Supervision Services according to the procedures established in the Agreement until actual full completion of all the Contract Works and rectification of all the Project Contract Works defects and any inconsistencies, deficiencies and non-compliances by the end of the period but not shorter than until issuing all the certificates certifying the completion of all the Contract Works of the Project, including Performance Certificate. |
| Sub-Clause 3.9.8 | *Add Sub-Clause 3.9.8 as follows*: The Consultant shall, upon respective request of the Client, return to the Client any documents or data received from the Client in respect of performance of the Agreement. |
| Clause 3.10**Visibility requirements** | *Add new Clause 3.10 [Visibility Requirements] as follows*: The Consultant shall comply with the following visibility requirements:  * 1. any report, brochure, document or information related to the Services conducted by the Consultant hereunder or any other person, or which the Consultant makes publicly available shall include each of the following: * a funding statement which indicates that the Project is financed from CEF funds substantially in the following form: “Rail Baltica is co-financed by the European Union’s Connecting Europe Facility”; * 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 can be viewed on the website [https://cinea.ec.europa.eu/communication-toolkit\_en](https://eur01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fcinea.ec.europa.eu%2Fcommunication-toolkit_en&data=05%7C01%7Ckaspars.krumins%40railbaltica.org%7C4c3457deca8342eb0ac508dbd9e372d5%7C2921cf1ee6f24da9bd20fc7fd73a9209%7C0%7C0%7C638343343138981719%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=ijsrH4gCUOd%2BEXywCwGWWKRe4c0gZTkJDYPTGvReeiU%3D&reserved=0); and * the flag of the Council of Europe and the European Union.   1. in order to comply with the latest applicable visibility requirements established by the European Union, the Consultant 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/regional\_policy/information-sources/logo-download-center\_en](https://eur01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fec.europa.eu%2Fregional_policy%2Finformation-sources%2Flogo-download-center_en&data=05%7C01%7Ckaspars.krumins%40railbaltica.org%7C4c3457deca8342eb0ac508dbd9e372d5%7C2921cf1ee6f24da9bd20fc7fd73a9209%7C0%7C0%7C638343343138981719%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=K4ePnWkwOFfe93ec36uB6BcwzwTjsSquU7tC8PrmJWs%3D&reserved=0). |
| Clause 3.11**Quality Guarantee and Warranty** Sub-Clause 3.11.1 | *Add new Clause 3.11 [Quality Guarantee and Warranty] as follows*: 3.11.1 The Consultant is liable to the Client for any defects in the Consultant’s Documents. The Consultant declares that (if applicable) the Client is entitled to transfer to any third party the Client’s rights under the guarantee of quality and warranty acquired under this Agreement. |
| Sub-Clause 3.11.2 | *Add Sub-Clause 3.11.2 as follows*: The Consultant within the Total Remuneration gives a guarantee of quality and warranty (“**Warranty**”) for the Consultant’s Documents and other documents and information (including, but not limited to, findings, conclusions, measurements, statements, recommendations, calculations, assessments) constituting the subject of the Agreement, for the entire period (“**Defects Notification Period**”) as aligned with the Works Contract, starting from the acceptance of the Consultant’s Documents and ending 12 (twelve) months from the date of signing the Performance Certificates (issued after the warranty term resulting from Works) defined in the Works Contract of Construction Works carried out according to the Consultant’s Documents constituting the subject of the Agreement, based on the Works Contract conditions, but not later than 10 (ten) years after issuing of the Final Delivery and Acceptance Certificate. The Client shall inform the Consultant immediately about signing of the above-mentioned Performance Certificate. If the Agreement has been terminated before the Performance Certificate has been issued, the Defects Notification Period is 10 (ten) years from the date when Agreement termination notice was sent to the other Party.  The Consultant shall promptly, in any case not later than within fourteen (14) days (unless other time period is agreed with the Client) as of receipt of the Client’s Notice, at Consultant’s cost and without any effect on the deadlines under the Agreement, rectify any errors/discrepancies/ omissions/other defects in any of the deliverables provided by the Consultant at any time during the Agreement. The said obligation inter alia includes obligation to rectify any errors/discrepancies/ omissions/other defects detected in the deliverables as a result of mandatory expertise of such deliverable. In case Consultant fails to rectify errors/discrepancies/omissions/other defects within the provided time, the Client is entitled to engage third parties for rectification of the relevant error/discrepancy/omission/other defect. In such case the Consultant shall cover all Client’s costs and expenses in relation to such third party. The Client is entitled to set off such costs and expenses against the invoices payable to the Consultant. |
| Sub-Clause 3.11.3 | *Add Sub-Clause 3.11.3 as follows*: The Consultant is liable for any defects in the Works caused by Consultant’s Documents. The Consultant shall within fourteen (14) days (unless other time period is agreed with the Client) as of receipt of the Client’s Notice provide its professional opinion on cause of any defects detected in Works and suggestions on how to rectify such defects. |
| Sub-Clause 3.11.4 | *Add Sub-Clause 3.11.4 as follows*: In the case of removal of defects, the Warranty granted by the Consultant is extended by the time while the removal of defects lasted, but it expires no later than on the warranty under Works Contract based on documentation from the Consultant. Should the removal of said defects result in additional physical construction works or remedying or repeating any Construction Works already finished under the Works Contract, the Defects Notification Period shall be extended by the time taken by such additional or repeated Construction Works as well. |
| Clause 3.12Performance Security and Advance Payment Security | *Add new following Clause 3.12 [Performance Security and Advance Payment Security]:*  3.12.1. The Consultant shall obtain and deliver to the Client a Performance Security to secure the Consultant’s proper performance of its obligations under the Agreement and applicable laws. The Performance Security shall be in amount as stated in the Part A of these Particular Conditions, and the Client may use the Performance Security to cover all and any of the Client’s claims under the Agreement.  The Consultant within 15 (fifteen) days as of the day of the Client’s Notice shall submit to the Client the amendments to the Performance Security each time when the total of the changes to the Total Remuneration are equal to or exceed 15% of the initial Total Remuneration. |
|  | 3.12.2. The Consultant shall deliver the Performance Security to the Client within 15 (fifteen) days as of the date of signing the Agreement. |
|  | 3.12.3 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 applicable law;  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) business 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 6 [*Insurance and Guarantee Requirements*]. |
|  | 3.12.4 The Performance Security shall be issued by reputable credit institution (as defined in Article 4(1)(1) of the Regulation (EU) No 575/2013 of 26 June 2013 on prudential requirements for credit institutions and investment firms) and insurance undertakings (as defined in Article 13(1) of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)) with good financial standing (i.e., with minimum Standard & Poor's, Fitch's, and Moody's rating of BB+ (or equivalent)) from the Country, or any other country from the European Union or the European Economic Area (or other jurisdiction approved by the Client in writing prior to issuance of the Performance Security), and shall be in the form corresponding to the above requirements and Appendix 6 [*Insurance and Guarantee Requirements*] of the Agreement. Form of the Performance Security to be submitted to the Client shall be coordinated with the Client in writing before issuance of the Performance Security (such consent/confirmation shall not relieve the Consultant from any obligation under this Clause). |
|  | 3.12.5 The Consultant shall ensure that the Performance Security remains valid and enforceable at least 30 days after the date when the Defects Notification Period expires. The minimum period of the Performance Security is 12 (twelve) months unless shorter time period is approved by the Client.  If the terms of the Performance Security specify an expiry date, and the Defects Notification Period has not expired by the date of 28 (twenty eight) days before Performance Security’s expiry date, the Consultant shall immediately, by submitting extended Performance Security to the Client not later than 14 (fourteen) days before expiry of the existing one, extend the validity of the Performance Security.  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, the Client is entitled 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 Contract and the applicable Laws until the Consultant submits and the Client accepts the increased or prolonged Performance Security (whichever is applicable). In case of a failure to submit the increased Performance Security the Client is also entitled to suspend payments under the Agreement until the Consultant submits and the Client accepts the increased Performance Security. |
|  | 3.12.6 The Performance Security is subject to the following decrease option:  a) once all of the Design Services have been accepted for payment under the Agreement, the Consultant is entitled to decrease the Performance Security by 50% (fifty percent) (i.e., so the remaining amount of the Performance Security equals 2,5% (two point five percent) of the Total Remuneration);  b) once all of the Design Supervision Services have been accepted for payment under the Agreement and the Taking – Over Certificate is issued under the Works Contract, the Consultant is entitled to decrease the Performance Security, so the remaining amount of the Performance Security equals 1% (one percent) of the Total Remuneration. |
|  | 3.12.7 If Appendix 4 [Remuneration and Payment] provides for an advance payment, the Consultant within 90 (ninety) days as of the date of signing the Agreement is entitled to obtain and submit to the Client the Advance Payment Security in amount of the advance payment to be paid. The requirements regarding the Performance Security shall mutatis mutandis apply for the Advance Payment Security. The amount of the Advance Payment Security may be decreased proportionally to the repaid advance payment. |
| Clause 3.13Risks to be foreseen | *Add new Clause 3.13 [Risks to be foreseen] as follows:*  Before performing the Services, the Consultant shall consider as well as plan in advance and put all its efforts to foresee and to minimize the risks mentioned in the Appendix 1 [*Technical Specification*] in order to undertake and fully complete the Services in the agreed quality and without claiming for additional remuneration, expenses and other costs incurred. The Client shall be available for regular situation updates with the Project and its progress.  The Client may request the Consultant to attend regular risk management meetings for the Project. Such risk management meetings may consider additional risks to the ones identified in Appendix 1 [*Technical Specification*]. The Consultant shall be obliged to exercise his best efforts to take part in such risk management meetings and shall exercise his reasonable efforts to undertake any risk management measures to ensure that any identified Project risks do not materialize.  The Client has the right to request participation of any sub-contractors at risk management meetings and the Consultant shall ensure that such request is complied with.  The Parties agree to cooperate in mitigation of any significant Project risks. |
| 4. Commencement and Completion | |
| Clause 4.1**Agreement Effective** | *Delete Sub-Clause 4.1.1 and replace as follows*:   * 1. This Agreement shall enter into force after it is signed by all the Parties, provided that:   2. The Consultant has duly submitted to the Client the Performance Security (including the payment order or other document confirming payment for this security if the Performance Security is issued by the insurance company) in accordance with the terms and conditions set out in Clause 3.12 and Appendix 6 [*Insurance and Guarantee Requirements*].   3. The Consultant has duly submitted to the Client a copy of the insurance certificate (policy) of Professional Civil Liability Insurance and General Liability Insurance against third party claims (including the payment orders or other documents confirming insurance premium payments for these securities) in accordance with the terms and conditions set out in Sub-Clause 9.1.3 and Appendix 6 [*Insurance and Guarantee Requirements*].  1. The Consultant shall submit the documents stipulated in the item 1.2. of this Sub-Clause to the Client within 15 (fifteen) days from the date the Agreement is signed by all the Parties. Otherwise, the Consultant is not entitled to receive any Remuneration; and the Client is entitled to unilaterally withdraw from the Agreement without suffering any consequences. |
| Clause 4.2**Commencement and Completion** Sub-Clause 4.2.2 | *Add Sub-Clause 4.2.2 as follows*:  The Design Supervision Services shall commence at Design Supervision Services Commencement Date (i.e., the date indicated in a respective commencement notice (document) issued by the Client). The Client shall issue such commencement notice for the Design Supervision Services at least 30 (thirty) days prior the Design Supervision Services Commencement Date. The commencement notice for the Design Supervision Services shall indicate which part (or parts) of Design Supervision Services (i.e., for which object(s)) are ordered by the relevant notice. The Time for Completion of the Design Supervision Services shall be applied from the date of the Design Supervision Commencement Date stated in the aforementioned commencement notice. For the avoidance of doubt, the Consultant is not entitled to any payment for the Design Supervision Services until the commencement notice is issued.  Notwithstanding anything to the contrary in the Agreement, the Design Supervision Services shall be performed throughout the performance of the Works until a Performance Certificate is issued under the Works Contract. In case if additional Works are required due to an error by the Consultant, the Consultant shall correct such errors and perform any required Design Supervision Services without any additional remuneration.  In case if the commencement notice is not issued, the Consultant shall not be entitled to claim any fees, damages or expected profit from the Client. |
| Sub-Clause 4.2.3 | *Add Sub-Clause 4.2.3. as follows:* Regarding the Design Supervision Services, the Consultant confirms that it has evaluated and undertakes all the risk for the different commencement and expeditiousness of the Works of different sections (parts) of railway, and the fact that the Works will not possibly start simultaneously in all the sections (parts) of the railway. |
| Clause 4.3Programme | *Delete Sub-Clause 4.3.1 and replace as follows:*  Within 15 (fifteen) days of the Commencement Date the Consultant shall submit its Programme based on the Appendix 3 [*Programme*] provided by the Client and time schedule submitted by the Consultant during Procurement process, which shall include as a minimum, but not limited to the:   1. the order and timing in which the Consultant intends to carry out the Services in order to complete the Services within the Time for Completion (taking into account the Programme provided by the Client); 2. any key dates stipulated in Appendix 3 [*Programme*] or elsewhere in the Agreement for the delivery of any part of the Services to the Client; 3. the key dates when decisions, consents, approvals or information from the Client or third parties is required to be given to the Consultant; 4. risks management section, stipulating how exactly the Consultant will cover risks specified in Appendix 1 [Technical Specification], including risks deriving on the application of Appendix 1 [Technical Specification]; 5. any other requirements stated in Appendix 3 [*Programme*].   The Consultant shall keep the Programme under review and shall amend the same as and when necessary to comply with the Agreement. For the avoidance of doubt, key-dates, deadlines, milestones, and other provisions mentioned in the Appendix 3 [*Programme*] cannot be changed without approved Variations.  The Consultant shall prepare the Programme for Design Supervision Services within 14 (fourteen) days as of the date of the Client’s commencement notice on commencement of Design Supervision Services in accordance with Sub-Clause 4.2.2. |
| Sub-Clause 4.3.2 | *Delete Sub-Clause 4.3.2 and replace as follows:*  Unless the Client, within fifteen (15) days of receiving the Programme, gives Notice to the Consultant stating the extent to which it does not comply with the Agreement, the Consultant shall proceed in accordance with the Programme, subject to its other obligations under the Agreement, however, key-dates, deadlines, milestones, and other provisions mentioned in the Appendix 3 [*Programme*] cannot be changed without approved Variations. The Consultant shall use this provision in good faith and in any case inform the Client about essential changes made in case if the Client does not timely respond in accordance with this Sub-Clause. |
| Sub-Clause 4.3.4 | *Add Sub-Clause 4.3.4 as follows*:  The Consultant shall perform the Services in accordance with the Programme, as stated in Appendix 3 [*Programme*].  The Client may alter the preferred order of provision of the Services by amending the Appendix 3 [*Programme*]. Within 15 (fifteen) days the Consultant shall update and submit its amended Programme that is in accordance with the altered Appendix 3 [*Programme*] and other Client’s Requirements. Such changes are subject to Variations. |
| Clause 4.4Delays Sub-Clause 4.4.2 | *Add the following sentence at the end of Sub-Clause 4.4.2:*  Any extension of the Time for Completion shall be agreed by the Parties in writing; the time for which the Time for Completion is extended shall be the objectively necessary minimum additional time related to overcoming the relevant circumstances causing the delay. |
| Sub-Clause 4.4.4 | *Add Sub-Clause 4.4.4 as follows:*  Having regard of the fact that partial delay of the Services delays the provision of Services (regarding the Services invoiced and paid in accordance with the Appendix 4 [*Remuneration and Payment*]) in general, in case if the Consultant does not provide the Services fully or partly (in accordance with the Service requirements) or fails to perform obligations specified in the Appendix 4 [*Remuneration and Payment*]arising out of the Agreement in due time it shall pay contractual penalty at the rate stated in Appendix 4 [*Remuneration and Payment*] calculated from the Total Remuneration from the first day of delay to the actual date Services are accepted in accordance with the Agreement. Such penalty shall not affect the rights of the Client stipulated in the Agreement. The Client shall not apply or the Client shall repay already applied penalties for delays of interim deliverables of Design Services if the respective final deliverables for Design Services (approved Detailed Technical Design in building information system by State Railway Technical Inspectorate Republic of Latvia (VDzTi)) are completed in time specified in Appendix 3 [*Programme*]. |
| Clause 4.6  **Exceptional Event**  Sub-Clause 4.6.3 | *Delete Sub-Clause 4.6.3 and replace as follows:*  Notwithstanding any other provision of this Clause 4.6 [*Exceptional Event*], the obligations of either Party to make payments to the other Party under the Agreement shall not be excused by an Exceptional Event 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. |
| Clause 4.7  **On Demand Services** | *Add new Clause 4.7 [On Demand Services] as follows:*  The Consultant shall commence On Demand Services only after the respective commencement notice is issued by the Client in accordance with conditions specified in Appendix 1 [*Technical Specification*]. On Demand Services are subject to instruction by the Client at the sole discretion of the Client.  The price of On Demand Services is included in the Total Remuneration and the Total Remuneration shall be decreased appropriately by the Client’s Notice to the Consultant if On Demand Services are not ordered in full amount.  On Demand Services shall be approved in accordance with the conditions provided in Appendix 1 [*Technical Specification*]. |
| 5. Variations to Services | |
| Clause 5.1VariationsSub-Clause 5.1.2 | *Delete Sub-Clause 5.1.2 and replace as follows*:  A Variation to the Services may be issued in respect of any:   1. amendments to Appendix 1 [*Technical Specification*] as the result of amendments or new requirements from the issuers of technical requirements (in Latvian: tehniskie noteikumi) provided in the building permit; 2. amendments to Appendix 1 [*Technical Specification*] as the result of justified unforeseeable requirements of third parties regarding execution of Services related to property of third parties (administrators of the engineering networks (water supply, gas supply, electricity, telecommunications, energy and other networks), road utilities, existing railway infrastructure, governmental and municipal institutions);   omission of part of the Services . This paragraph does not apply to On Demand Services;  changes as a result of governmental actions implemented to tackle pandemic or other health or safety or any other circumstances affecting the society as the whole or the relevant sector of business;  substitution of the Client as a Party in case of a liquidation or reorganisation of the Client and/or a business transfer from the Client of its business or its part that includes the Agreement, with the acquiring entity;  changes to the scope of the Services required due to the update of the Design Guidelines as defined in Appendix 1 [*Technical Specification*] or changes to the scope of Services due to changes made to track layout, additional side tracks or side track connections, additional road or pedestrian structures, additional Investigations;  increase of the scope of the Design Supervision Services if the Consultant’s obligations under the Agreement are less than under the Works Contract and Laws of the Country;  Investigations in addition to the amount specified in the Client’s Requirements if the discrepancies between the Consultant’s Investigation data and Client’s Requirements are established and additional Investigations are approved by the Client;  building permits issued in addition to the building permits specified in Appendix 4 [*Remuneration and Payment*];  provision of the Agreement requiring the issue of a variation if such Variation is approved by the Client; or  Suspension of the Services exceeding 360 days.  Any of the above potential Variations initiated shall always comply with requirements of the applicable Laws, including Public Procurement Law of the Republic of Latvia (in particular – Article 61). Each variation shall be valuated and assessed in accordance with the applicable requirements of the Law of the Country. The total amount of all the potential Variations listed above is limited to 50% (fifty percent) of the Total Remuneration.  Potential Variations listed under this Sub-Clause 5.1.2, are introduced in the Agreement with a purpose of providing specific and pre-described potential Variation occasions. However, nothing in this Sub-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.  In addition to the potential Variation occasions listed above, Variations may also be initiated in accordance with Article 61 of the Public Procurement Law of the Republic of Latvia. The time and/or cost impact of such other Variations (if applied) shall be calculated in addition (“on top”) to the limit of potential Variations listed above.   |  | | --- | |  | |
| Sub-Clause 5.1.3 | *Delete Sub-Clause 5.1.3 and replace as follows*:  The Consultant shall give Notice to the Client as soon as reasonably practicable, and no later than within 14 (fourteen) days after the Consultant became aware, or should have become aware, of the event or circumstance which constitutes a Variation to the Services. The Consultant’s Notice shall include at least the following minimal requirements:   1. the Consultant’s estimated impact upon the Programme per each deliverable that is impacted; 2. the cost of the Services for such matters with the detailed calculation based on unit costs in accordance with Sub-Clause 5.2.2 and where unit costs are reasonably not applicable the Consultant shall provide evidence that the Consultant’s proposed costs do not exceed applicable costs and expenses for such specific Services in the corresponding industry; 3. the Consultant shall provide assessment with reference to the Clauses of the Agreement and/or law establishing the Variation and Consultant’s entitlement to additional payment and/or extension of the Time for Completion (if any); 4. the Consultant shall propose the measures to be taken in order to mitigate the impact of the potential Variation to Programme and Total Remuneration.   If the Consultant fails to give a Notice to the Client within the period of 14 (fourteen) days to the extent specified in this Sub-Clause, the Consultant shall not be entitled to any additional payment and/or extension of the Time for Completion.  Within 28 (twenty-eight) days of receipt of the Notice the Client shall either issue a Variation Notice, or cancel the instruction or direction, or state by issue of a further Notice why the Client considers the instruction, direction or circumstance does not constitute a Variation to the Services. In such case the Consultant shall comply with and be bound by such further Notice unless the Consultant refers the matter as a dispute under Clause 10 [*Disputes and Arbitration*] within seven (7) days of receipt of such further Notice. In order to provide the Services timely, the Consultant shall give Notice to the Client promptly as for the timely provision of the Services it is expected that the Consultant shall act proactively and in accordance with the highest standard of care. If any instruction or direction is submitted to the Consultant by other construction members or entities, for example Construction supervisor, the Consultant shall first seek and receive instruction from the Client before the Consultant proceeds with the Consultant’s Notice regarding the Variation. |
| Clause 5.2Agreement of Variation Value and Impact Sub-Clause 5.2.2 | *Delete Sub-Clause 5.2.2 and replace as follows:*  The value of any Variation shall be determined in accordance with or based upon the unit costs it included in the Tender documents. Unit costs which are determined the value of Variation are subject to indexation in accordance with the conditions stipulated in Appendix 4 [*Remuneration and Payment*]. Where the unit costs are not applicable to the Variation, and the Consultant has presented valid justification of such inapplicability, then new unit costs shall be agreed by the Parties. These unit costs cannot exceed applicable costs and expenses for such specific Services in the corresponding industry. |
| Sub-Clause 5.2.4 | *Delete Sub-Clause 5.2.4 and replace as follows:*  Where agreement under Sub-Clause 5.2.3 is not reached within 14 (fourteen) days of receipt by the Consultant of the Variation Notice or it is not practicable to establish and agree between the Parties all the effects of the Variation prior to the Consultant commencing work on the Variation then the Client may by Notice instruct the Consultant to commence work on the Variation and the Consultant shall comply with such instruction. The Consultant shall be compensated in accordance with the unit prices stated in Detailed Financial Proposal included in the Tender documents or if no such prices are stated then at reasonable rates and prices until the agreement is reached on all the effects of the Variation. These prices cannot exceed applicable costs and expenses for such specific Services in the corresponding industry.  The Client’s instructions to rectify any errors/discrepancies/omissions/ other defects in provided Services shall not be considered as Variation Notices and the Consultant shall rectify such without any impact on the Total Remuneration for the ordered Services or Time for Completion. |
| 6. Suspension of Services and Termination of the Agreement | |
| Clause 6.1**Suspension of Services** Sub-Clause 6.1.1 | *Delete Sub-Clause 6.1.1 and replace as follows*:  The Client may suspend all or part of the Services (in the amount determined by the Client) at its sole discretion and for any reason by giving 10 (ten) days written Notice to the Consultant. The Notice issued by the Client to the Consultant may contain the reasons, anticipated duration and the amount of suspension (specific area, mileage, distance, specific object, or other information as indicated by the Client) of performance of this Agreement. If the Services are being partially suspended, the Notice shall specify to which part(s) pursuant to the Appendix 1 [*Technical specification*] the suspension applies, and the amount of suspension (specific area, mileage, distance, specific object, or other information as indicated by the Client). Partial suspension shall not affect the provision of the Services that are not suspended. |
| Sub-Clause 6.1.2 | *Delete paragraph (a) of Sub-Clause 6.1.2 and replace as follows:*  When the Consultant has not received payment of an invoice or a part of invoice, as the case may be, by the due date for payment of such invoice and the Client has not issued a valid Notice in accordance with Clause 7.5 [Disputed Invoices] stating the reasons for non-payment of the invoice or part thereof, subject to the Consultant giving 45 (forty-five) days’ Notice to the Client. |
| Sub-Clause 6.1.2 | *Delete paragraph (c) of Sub-Clause 6.1.2* |
| Clause 6.3Effects of Suspension of the Services Sub-Clause 6.3.1 | *Delete Sub-Clause 6.3.1 and replace as follows:*  The Consultant shall be paid for Services performed in accordance with the Agreement up to the date of suspension of the Services or part thereof, as the case may be. In case if the Services are suspended due to the land acquisition, spatial planning, Environmental Impact Assessment and associated procedure implementation (which themselves do not constitute Exceptional Event), the Consultant shall be paid for previously confirmed amount of Services that can be rendered without accessing the respective land plot/object/spatial part on the basis of the calculation order stipulated in the Appendix 4 [*Remuneration and Payment*]. |
| Sub-Clause 6.3.3 | *Delete Sub-Clause 6.3.3.* |
| Clause 6.4 **Termination of Agreement**  Sub-Clause 6.4.1 | *Delete paragraph (a) of Sub-Clause 6.4.1 and replace as follows:*  If the Consultant without good reason is in breach of a material term or condition of the Agreement, the Client may give Notice to the Consultant outlining the breach and the remedy required under the Agreement. If the Consultant has not fully remedied the breach within twenty-eight (28) days after the issue of the Notice then the Client may terminate the Agreement upon giving fourteen (14) days’ Notice to the Consultant. |
| Sub-Clause 6.4.1 | *Delete paragraph (e) of Sub-Clause 6.4.1 and replace as follows:*  Without prejudice to Sub-Clause 6.1.1 [*Suspension of Services*] and rules of Sub-Clause 6.3.1 [*Effects of Suspension of the Services*] where an Exceptional Event has led to a suspension of the Services for more than 180 (one hundred eighty days) the Client may terminate the Agreement upon giving fifteen (15) days’ Notice to the Consultant. |
| Sub-Clause 6.4.1 | *Add paragraph (f) to Sub-Clause 6.4.1 as follows:*  Notwithstanding the notice periods in Sub-Clause 6.4.1(a), the Client is entitled to terminate the Agreement (in part or in full), if the financing from CEF for the Project or Global Project becomes unavailable, is terminated or is insufficient to implement the Agreement fully or partly. In such case the date of termination shall be the date indicated in the termination Notice. |
| Sub-Clause 6.4.1 | *Add paragraph (g) to Sub-Clause 6.4.1 as follows:*  Notwithstanding the notice periods in Sub-Clause 6.4.1(a), the Client may terminate this Agreement immediately upon giving the Consultant a written notice of termination in case if it is not possible to execute the Agreement due to the application of international or national sanctions, or sanctions applied by a member state of the European Union or the North Atlantic Treaty Organization significantly affecting interests of financial or capital market. In such case the date of termination shall be the date indicated in the termination Notice. |
| Sub-Clause 6.4.1 | *Add paragraph (h) to Sub-Clause 6.4.1 as follows:*  Notwithstanding the notice periods in Sub-Clause 6.4.1(a), the Client may terminate the Agreement in events prescribed in applicable laws (e.g., the Procurement Law). In such case the date of termination shall be the date indicated in the termination Notice. |
| Sub-Clause 6.4.1 | *Add paragraph (i) to Sub-Clause 6.4.1 as follows:*  Notwithstanding the notice periods in Sub-Clause 6.4.1(a), the Client may terminate the Agreement with immediate effect upon service of an appropriate Notice if the Consultant is in breach of the confidentiality undertakings stipulated in the Agreement, the obligations and provisions of the Consultant’s Declaration, if the Consultant is at fault for a delay exceeding 100 days or if the applicable penalty (items 1.7. and 1.10 of the Appendix 4 [*Remuneration and Payment*]) has reached its limit (10%), fails to commence the Design Supervision Services within the time period provided under Sub-Clause 4.2.2 or in case if the Consultant conveys (transfers) rights and obligations of this Agreement to any other entity without prior written confirmation of the Client, or in case if the conditions stipulated in Sub-Clause 4.1.1 are not fulfilled. |
| Sub-Clause 6.4.2 | *Delete paragraph (a) of Sub-Clause 6.4.2 and replace as follows:*  If the Services in a whole Design Priority Section have been suspended under Sub-Clause 6.1.1 [*Suspension of Services*] for more than an aggregate of 360 (three hundred sixty) days, the Consultant may terminate the Agreement upon giving 15 (fifteen) days’ Notice to the Client. |
| Sub-Clause 6.4.2 | *Delete paragraph (b) of Sub-Clause 6.4.2 and replace as follows:*  If the Services have been suspended under Sub-Clause 6.1.2(a) [*Suspension of Services*] for more than 180 (one hundred eighty) days, the Consultant may terminate the Agreement upon giving thirty (30) days’ Notice to the Client. |
| Sub-Clause 6.4.2 | *Delete paragraph (c) of Sub-Clause 6.4.2 and replace as follows:*  If the Client becomes bankrupt or insolvent, or if any act is done or event occurs which (under applicable laws) has a similar effect to any of these acts or events, the Consultant may terminate the Agreement with the immediate effect upon service of an appropriate Notice unless the applicable law prohibits such termination. |
| Sub-Clause 6.4.2 | *Delete paragraph (e) of Sub-Clause 6.4.2 and replace as follows:*  If the Services have been suspended under Sub-Clause 6.1.2(b) [Suspension of Services] for more than aggregate 720 (seven hundred twenty) days, the Consultant may terminate the Agreement (fully or in part where the Services are suspended) upon giving thirty (30) days’ Notice to the Client. |
| Clause 6.5 **Effects of Termination**  Sub-Clause 6.5.2 | *Delete Sub-Clause 6.5.2 and replace as follows*:  If the Agreement is terminated in accordance with Sub-Clause 6.4.1(a) or (b) or (c) or (g) or (h) or (i) [*Termination of Agreement*] the Client shall, without prejudice to any other rights the Client may have under the Agreement, be entitled to:   1. take over from the Consultant all documents, information, calculations and other deliverables, whether in electronic format or otherwise, pertaining to the Services performed up to the date of termination, necessary to enable the Client to complete the Services either by itself or with the assistance of another consultant (all documents in electronic format shall be editable). The Consultant within the shortest time reasonably possible is obliged to hand over to the Client all documents, information, calculations and other deliverables stated in this paragraph. Provisions of this sub-paragraph are applicable in case of termination of the Agreement for any reason and upon either Party’s Notice; 2. claim compensation for reasonable costs directly incurred as a consequence of the termination, including but not limited to additional costs incurred in arranging for the Services to be completed by another consultant; 3. withhold payments due to the Consultant until all the costs incurred by the Client under Sub-Clause 6.5.2(b) above have been established and all documents, information, calculations and other deliverables necessary to enable the Client to complete the Services have been received. The Client shall act expeditiously and without delay in establishing its own costs under Sub-Clause 6.5.2(b).  |  | | --- | | The Client shall take all reasonable steps to mitigate such costs. | |
| Sub-Clause 6.5.3 | *Delete Sub-Clause 6.5.3 and replace as follows*:  If the Agreement is terminated in accordance with Sub-Clause 6.4.1 (d) or (e) or Sub-Clause 6.4.2 [*Termination of Agreement*] and the Consultant incurs Exceptional Costs that have been incurred prior to the date of the relevant Notice on termination of the Agreement, then, without prejudice to any other rights the Consultant may have under the Agreement, the agreed remuneration shall be adjusted in accordance with Sub-Clause 7.1.2 [*Payment to the Consultant*]. The Consultant shall inform the Client as soon as reasonably practicable, and no later than within 14 (fourteen) days as of the date of termination Notice, by issue of a Notice of the occurrence of the Exceptional Costs. |
| Sub-Clause 6.5.4 | *Delete Sub-Clause 6.5.4.* |
| 7. Payment | |
| Clause 7.1**Payment to the Consultant** Sub-Clause 7.1.1 | *Delete Sub-Clause 7.1.1 and replace as follows*:  The Beneficiary shall pay the Consultant for the Services (including Variations to the Services) in accordance with the details stated in Appendix 4 [*Remuneration and Payment*].  The Consultant bears full risk for its financial proposal (and thus subsequently the Total Remuneration) being calculated in line with the requirements set in the Procurement documents and for it to include full Consultant’s remuneration for all Services to be performed.  If any part of the Total Remuneration is payable for the ordered Services, it also covers all costs and expenses that relate to performance of the ordered Services and Consultant’s obligations under the Agreement and applicable laws, including, but not limited to overheads; travel, transport, communication and accommodation costs; expected and unexpected (including, overtime) labour costs and costs related to engaging the personnel; taxes and duties; costs for insurance policies and securities; Consultant’s additional administrative costs and profit, and remuneration for all risks, liabilities and obligations undertaken by the Consultant under this Agreement.  The Total Remuneration for the Services includes the Consultant's costs resulting from the implementation of the Consultant’s Documents specified by the Client, consistent with Client's expectations and requirements, and the implementation of the Design Supervision Services. |
| Sub-Clause 7.1.2 | *Delete Sub-Clause 7.1.2 and replace as follows*:  Unless otherwise agreed in writing, the Beneficiary shall pay the Consultant in respect of Exceptional Costs: (a) for the extra time spent by the Consultant’s personnel in the performance of the Services at the rates and prices stated in Appendix 4 [*Remuneration and Payment*]. Where the rates and prices are not provided in Appendix 4 [*Remuneration and Payment*], the lowest rate applicable for the particular category shall be applied. The Consultant shall be entitled to remuneration for such Exceptional Costs upon prior written agreement with the Client. No payment for Exceptional Costs shall be made if such costs arise due to suspension of the Services for the term not exceeding an aggregate of 360 days. |
| Sub-Clause 7.1.3 | *Delete Sub-Clause 7.1.3 and replace as follows*:  The Beneficiary shall pay any other amounts that become due under the Agreement. The Parties agree that the Beneficiary shall have no obligation to pay any of the costs incurred by the Consultant with respect to any services not deemed as having been accepted by the Client in accordance with the Agreement. |
| Sub-Clause 7.1.4 | *Add Sub-Clause 7.1.4 as follows:*  From each payment payable to the Consultant for Design Services the Client shall retain money in the amount as indicated in Part A of these Particular Conditions (“**Retention Money**”).  The Retention Money serves as the security for performance of 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 any losses and damages inflicted to the Client, collection of contractual penalties. The Client informs the Consultant on the use of the Retention Money, by providing clarification for such use. Retention Money withheld under the Agreement shall be the property of the Client until it is transferred to the Consultant pursuant to this Clause.  The Client shall release the unused Retention Money after all Design Services ordered under the Agreement are accepted for payment purposes under the Agreement. However, the Client shall be under no obligation to return the unused Retention Money to the Consultant until all Client’s claims against the Consultant have been settled. For the avoidance of doubt, withholding of the Retention Money by the Client will not be deemed as a 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.  The Consultant is entitled to replace the Retention Money with the security subject to following conditions:   1. the amount of the security shall be 5% of the Remuneration for Design Services; 2. the conditions of the Performance Security specified in Clause 3.12 [*Performance Security and Advance Payment Security*] shall be applied unless this Sub-Clause provides otherwise; 3. the security shall be delivered to the Client within 90 (ninety) days as of the date of signing the Agreement; 4. The Consultant shall ensure that the security remains valid and enforceable at least 30 days after the date when the Provisional Delivery and Acceptance Certificate is issued for the final deliverable of Design Services (approved Detailed Technical Design in building information system by State Railway Technical Inspectorate Republic of Latvia (VDzTi)). |
| Sub-Clause 7.1.5 | *Add Sub-Clause 7.1.5 as follows:*  The Consultant is entitled to receive a partial payment for the Services on the basis of the pricing schedules stipulated in the Appendix 4 [*Remuneration and Payment*] subject to the following conditions (all conditions shall be met and considered):   1. partial payment can be made for the main deliverables as per Appendix 4 [*Remuneration and Payment*], namely, for Investigations, Master Design and Detailed Technical Design; 2. partial payment can be made in case if the provision of the Services in full is not possible due to objective reasons which are associated with land acquisition issues and Environmental Impact Assessment issues, for example, if the Services are suspended due to these issues, or due to archeological findings suspending the provision of the Services or other third party/authority related circumstances not under the control of the Consultant or the Client; 3. the Client and the Consultant shall negotiate upon the amount of the partial payment due to the Consultant; 4. the Consultant shall not use the right to require a partial payment in a bad faith.   The Client at its sole discretion is entitled to provide partial payments to the Consultant for Design Services if the scope of building permits specified in Appendix 4 [*Remuneration and Payment*] is amended and additional building permits are issued. |
| Sub-Clause 7.1.6 | *Add Sub-Clause 7.1.6 as follows*:  The Beneficiary shall make an advance payment upon request of the Consultant, as an interest-free loan for mobilization and design, when the Consultant submits Advance Payment Security in accordance with Sub-Clause 3.12 *[Performance Security and Advance Payment Security]* and invoice. The total advance payment, the number and timing of instalments (if more than one), and the applicable currencies and proportions, shall be as stated in Appendix 4 [*Remuneration and Payment*].  Unless the Consultant does not submit to the Client Advance Payment Guarantee within 90 (ninety) days as of the date of signing the Agreement, this Sub-Clause shall not apply. |
| Clause 7.2**Time for Payment** Sub-Clause 7.2.1 | *Delete Sub-Clause 7.2.1 and replace as follows*: Correctly invoiced amounts due to the Consultant shall be paid within 60 (sixty) days after the respective Provisional Delivery and Acceptance Certificate or Final Delivery and Acceptance Certificate is issued and afterwards following receipt of the Consultant’s invoice that shall correspond to signed and accepted preliminary and final acceptance documentation. |
| Sub-Clause 7.2.2 | *Delete Sub-Clause 7.2.2 and replace as follows:*  If the Consultant does not receive payment within the time stated in Sub-Clause 7.2.1 it shall be paid contractual penalty at the rate stated in Appendix 4 [*Remuneration and Payment*] calculated from the unpaid amount from the first working day of delay (calculated from date following after the latest payment date due) to the actual date payment is made in accordance with the Agreement. Such penalty shall not affect the rights of the Consultant stated in Sub-Clause 6.1.2(a) [*Suspension of Services*] or Sub-Clause 6.4.2 [*Termination of Agreement*]. |
| Sub-Clause 7.2.3 | *Delete Sub-Clause 7.2.3 and replace as follows*:  Without prejudice to sub-paragraph (c) of Sub-Clause 6.5.2, 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:   1. 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 Clause 10 [Disputes and Arbitration]; or 2. in case the Consultant has not rectified errors/discrepancies/omissions/other defects in Services and deliverables (until such errors/discrepancies/omissions/other defects in Services and deliverables are rectified); or 3. in case the Consultant is in breach of Clause 3.12 [Performance Security *and Advance Payment Security*] or Clause 9.1 [Insurances to be taken out by Consultant] (until such breach is remedied); or 4. 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 14 (fourteen) 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; or 5. in case the Consultant fails to comply with requirements set in the Agreement and applicable laws regarding changing the specialists involved in performance of Services (e.g., in case the relevant specialist is changed without a prior consent of the Client) (until such breach is remedied). |
| Clause 7.3**Currencies of Payment**  Sub-Clause 7.3.1 | *Delete Sub-Clause 7.3.1 and replace as follows*:  The currency applicable to this Agreement shall be Euro (EUR, €). |
| Sub-Clause 7.3.2 | *Delete Sub-Clause 7.3.2* |
| Clause 7.4 **Third-Party Charges on the Consultant** | *Delete Sub-Clause 7.4.1.* |
| Clause 7.5 **Disputed Invoices**  Sub-Clause 7.5.1 | *Delete Sub-Clause 7.5.1 and replace as follows:*  If any item or part of an item in an invoice submitted by the Consultant is contested by the Client as not properly due under the Agreement, the Client shall, within forty-five (45) days of the date of issue of the Consultant’s invoice, give a Notice of its intention to withhold payment with reasons but shall not delay payment of the remainder of the invoice. Sub-Clause 7.2.2 [*Time for Payment*] shall apply to all contested amounts which are finally determined to have been payable to the Consultant. |
| Clause 7.7**Consultant’s Tax Duties** | *Add new Clause 7.7 [Consultant’s Tax Duties] as follows:*  The Consultant shall pay all taxes, duties and fees required under the Agreement that shall not have an effect on adjusting the Remuneration, exclusive of VAT.  The Consultant shall, at his own cost, comply with all tax obligations he has or can have in the Country as a result of the Agreement performance and shall assume all risk related to compliance with tax obligations, if any, according to the Laws of the Country. |
| 8. Liabilities | |
| Sub-Clause 8.1 **Liabilities** | |
| Clause 8.1Liability for Breach Sub-Clause 8.1.3 | *Delete sub-paragraphs (a) and (c) of Sub-Clause 8.1.3* |
| Sub-Clause 8.1.4 | *Add Sub-Clause 8.1.4 as follows:*  If the Agreement is terminated pursuant to the sub paragraphs (a); (b); (c); (g); (h); (i) of Sub-Clause 6.4.1 the Client has the right, in addition to the claim in damages, to demand from the Consultant repayment of any Remuneration paid to the Consultant for any Services that are not fully performed and accepted in accordance to the Agreement.  If the Agreement is terminated pursuant to the sub-paragraphs (a); (b); (c); (g); (h); (i) of Sub-Clause 6.4.1, the Client is entitled to demand a contractual penalty according to the rate specified in Appendix 4 [*Remuneration and Payment*]. The contractual penalty is calculated from the Total Remuneration payable to the Consultant for the provision of all Services under the Agreement. |
| Clause 8.3**Limit of Liability** Sub-Clause 8.3.1 | *Delete Sub-Clause 8.3.1 and replace as follows:*  The Consultant shall be liable to the Client for damages related to non-performance or improper performance of the Agreement by the Consultant, however the total liability of the Consultant related to the Agreement is limited to the amount of the Total Remuneration specified in Appendix 4 [*Remuneration and Payment*] of the Agreement. |
| Sub-Clause 8.3.3 | *Delete Sub-Clause 8.3.3* |
| 9. Insurance | |
| Clause 9.1 **Insurance to be taken out by Consultant**  Sub-Clause 9.1.1 | *Delete Sub-Clause 9.1.1 and replace as follows:*  The Consultant shall at its own cost take out and throughout validity of the Agreement and Period of Liability maintain insurances as mandated and, in accordance with the amounts, specified in Appendix 6 [Insurance and Guarantee Requirements]. The Client should be named as insured and Third party. For clarity, the Consultant’s liability means both liability in relation to the Design Services, liability in relation to the Design Supervision Services and any additional services that are part of this agreement. Insurances shall be issued for this particular Project.  Before issuance (including, renewal) of any insurance, it shall be coordinated in writing and subject to consent by the Client (for clarity – such Client’s consent shall not relieve the Consultant from any obligations regarding insurance). The Consultant shall notify the Client in good time if any of the insurances required by this Agreement could be cancelled, amended or limited by the insurers.  Certified copies of the required insurances (i.e., policies and certificates) together with evidence on payment of insurance premiums, at the Consultant’s own cost, shall be provided to the Client within 15 (fifteen) days from the date the Agreement is signed by all the Parties. No later than 15 (fifteen) days before the expiration of any of the required insurances (i.e., policies and certificates) the Consultant shall, at his/her own cost, submit to the Client certified copies of renewed insurance policies together with evidence on payment of insurance premiums. |
| Sub-Clause 9.1.2 | *Delete Sub-Clause 9.1.2 and replace as follows:*  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. |
| Sub-Clause 9.1.5 | *Add Sub-Clause 9.1.5 as follows*:  Nothing in this Clause 9.1 [*Insurances to be taken out by Consultant*] limits the obligations, liabilities or responsibilities of the Consultant under the other terms of the Agreement or applicable laws. The Consultant is obliged to comply with all duties and obligations specified by insurance contracts and ensure that all insureds and co-insureds (i.e., the sub-consultants) are informed about all such duties and obligations, and ensure that all insureds and co-insureds (i.e., the subconsultants) comply with such duties and obligations. |
| Sub-Clause 9.1.6 | *Add Sub-Clause 9.1.6 as follows*:  The Client shall not be obliged to make any payments to the Consultant under this Agreement unless and until the Consultant has submitted to the Client certified copies 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. |
| Sub-Clause 9.1.7 | *Add Sub-Clause 9.1.7 as follows*:  Where the Consultant consist of several members or forms a joint venture, partnership, consortium, association or other joint venture consisting of several members then all of the members of such joint venture or Consultant shall be insured in accordance with the Agreement as mandated and, in the amounts, specified in Appendix 6 [Insurance and Guarantee Requirements]. The Consultant shall not alter the status of the aforementioned venture (cooperation) without prior written approval of the Client. |
| Sub-Clause 9.1.8 | *Add Sub-Clause 9.1.8 as follows*:  The Consultant shall ensure that insurances shall be placed with insurers / reinsurers with a rating in investment category (i.e., Standard & Poor’s rating from AAA to BBB-, or equivalent). In case the rating of the subsidiary company is below the required level, the Client may agree to consider the parent company’s rating as sufficient. The Client has the right to request a replacement of the insurance / reinsurance company in case the rating falls below the required minimum.  The insurance company shall be registered within EU/ EEA and shall be legally capable of providing the insurance services set out in Sub-Clause 9.1 [Insurances to be taken out by the Consultant] in the Republic of Latvia.  The insurance contract shall be subject to the law of Republic of Latvia. Any dispute, which is not settled amicably, shall be finally settled by courts of general jurisdiction of the Republic of Latvia. |
| Sub-Clause 9.1.9 | *Add Sub-Clause 9.1.9 as follows*:  In the case of insurance accident, the Consultant is obliged to immediately, but in no event later than 14 (fourteen) days, reinstate the sum insured or limit to the previous level. |
| Sub-Clause 9.1.10 | *Add Sub-Clause 9.1.10 as follows*:  If the Consultant fails to effect and keep in force any of the insurances required under Sub-Clause 9.1 [Insurances to be taken out by the Consultant] then, and in any such case, the Client may effect and keep in force such insurances and pay any premium as may be necessary and recover the same from the Consultant from time to time by deducting the amount(s) so paid from any moneys due to the Consultant or otherwise recover the same as a debt from the Consultant.  If the Consultant fails to comply with any condition of the insurances effected under the Agreement, the Consultant failing to comply shall indemnify the Client against losses and claims (including legal fees and expenses) arising from such failure. |
| 10. Disputes and Arbitration | |
| Clause 10.1Amicable Dispute Resolution Sub-Clause 10.1.2 | *Delete Sub-Clause 10.1.2 and replace as follows*:  If the Dispute is not resolved within thirty (30) days of receipt of the written request, then Parties by an agreement may refer the dispute to adjudication in accordance with Clause 10.2 [*Adjudication*] and then arbitration in accordance with Clause 10.4 [*Arbitration*] if the dispute is not solved within the adjudication proceedings, even if the meeting referred to in Sub-Clause 10.1.1 has not taken place. |
| Sub-Clause 10.2.1**Adjudication** | *Delete Sub-Clause 10.2.1 and replace as follows*:  Parties may agree to refer the dispute to Adjudication in accordance with the procedure specified in Sub-Clause 10.2 [*Adjudication*] and Appendix 5 [*Rules for Adjudication*] of the Agreement. If no Agreement to refer the dispute to Adjudication is reached, Sub-Clause 10.2 [*Adjudication*], Sub-Clauses 10.4.2, 10.4.3, 10.4.4 [*Arbitration*] and Appendix 5 [*Rules for Adjudication*] of the Agreement do not apply. |
| Sub-Clause 10.4.1**Arbitration clause** | *Delete paragraph (a), (b), (c) of Sub-Clause 10.4.1 and replace as follows:*   1. All disputes arising out of or in connection with the present Agreement shall be submitted to the International Court of Arbitration of the International Chamber of Commerce and shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules; 2. The dispute shall be settled according to the law governing the Agreement; 3. The arbitration shall be conducted in English language; 4. The place of arbitration shall be Stockholm, Sweden. |