Contract for Work to Prepare

Investment Project File,

Preliminary design/ Zoning Decision Procedure Documentation

and EIA Documentation

“RS 1 VRT Prosenice – Ostrava-Svinov, I. Part, Prosenice – Hranice na Moravě”; Preparation of Preliminary Design Documentation

Parties:

**Správa železnic, state organization**

Registered office: Dlážděná 1003/7, 110 00 Praha 1 – Nové Město

Company ID No.: 70994234, Tax ID No.: CZ70994234

Entered in the Commercial Register kept on file by the Municipal Court in Prague,

File No. A 48384

Represented by: Ing. Mojmír Nejezchleb, Deputy Director General for Railway Modernization

Acting based on Authorization No. 2372 of 26 February 2018

**Mailing address:**

Správa železnic, state organization

Construction Administration “[FOR CLIENT TO COMPLETE]”

(hereinafter “**the Client**”)

Contract number: “[FOR CLIENT TO COMPLETE]”

ISPROFOND: 5.. … ….

and

**“[FOR CONTRACTOR TO COMPLETE]”**

With registered office: “[FOR CONTRACTOR TO COMPLETE]”

Company ID: “[FOR CONTRACTOR TO COMPLETE]”, Tax ID No.: “[FOR CONTRACTOR TO COMPLETE]”

Entered in the Commercial Register kept on file by “[FOR CONTRACTOR TO COMPLETE]” Court in “[FOR CONTRACTOR TO COMPLETE]”,

File number “[FOR CONTRACTOR TO COMPLETE]”

Bank: “[FOR CONTRACTOR TO COMPLETE]”, account number: “[FOR CONTRACTOR TO COMPLETE]”

Represented by: “[FOR CONTRACTOR TO COMPLETE]”

**Mailing address:**

“[FOR CONTRACTOR TO COMPLETE]”

(hereinafter the “Contractor”)

Contract number: “[FOR CONTRACTOR TO COMPLETE]”

Enter into this contract (hereinafter the “**Contract**”) in accordance with Section 2586 et seq. of Act No. 89/2012 Sb., Civil Code, as amended (hereinafter the “**Civil Code**”).

Being aware of their obligations stipulated in this Contract and while intending to be bound by this Contract, the Parties have agreed as follows:

1. OPENING PROVISIONS
   1. The Client declares that it is a state organization established on 1 January 2003 on the basis of Act No. 77/2002 Sb., to regulate the joint-stock company České dráhy and the state organization Railway Administration, as amended, meets all the conditions and requirements set out herein and is authorized to enter into this Contract and duly perform the obligations set out herein.
   2. The Contractor hereby declares that he meets all the conditions and requirements set out herein and is authorized to enter into this Contract and duly perform the obligations set out herein.
   3. The Contractor also declares that as at the date hereof no proceedings are being conducted against the Contractor under Act no. 182/2006 Sb., regulating bankruptcy and its consequences (the Insolvency Act), as amended, and undertakes to inform the Client without delay of any impending bankruptcy or the declaration of bankruptcy of its company, as well as of any changes in its qualifications demonstrated under its offer for performance of the Public Contract in the sense given below.
   4. The Contractor also declares that as of the date hereof the Contractor has duly acquainted himself with all the Client’s Internal Regulations pertaining to the Work and defined in the Technical Quality Requirements for State Railway Constructions and this Contract, including its annexes.
   5. The capitalised terms not defined herein have the meanings as defined in the terms and conditions, which are attached hereto as Annex 2 (hereinafter the “**Terms and Conditions**”).
2. PURPOSE OF CONTRACT
   1. The Client published a procurement procedure commencement notification in the Public Contract Journal on “[FOR CLIENT TO COMPLETE]” under registration number “[FOR CLIENT TO COMPLETE]” to announce his intention to award in open procedure a public contract entitled “RS 1 VRT Prosenice – Ostrava-Svinov, Part I, Prosenice – Hranice na Moravě”; Preparation of Preliminary Design Documentation (hereinafter the “Public Contract”). In this procurement procedure the Contractor’s tender (hereinafter the “Tender”) has been selected for the Public Contract as the most economically advantageous tender.
   2. The subject of the Public Contract was:
      1. Preparation of the Investment project file for the “Reconstruction of the Hranice na Moravě Railway Station” (the “**Investment Project File**”); the preparation of the construction documentation for “RS 1 VRT Prosenice – Ostrava-Svinov, Part I, Prosenice – Hranice na Moravě” in the details of the documentation for Acquisition of the Zoning decision on the location of the railroad construction pursuant to Annex 3 to Decree No. 499/2006 Coll., on the Documentation of Constructions, as amended, and Act No. 183/2006, the Building Act, as amended, (hereinafter the “**DZD**”) and the preparation of the EIA documentation for “RS 1 VRT Prosenice – Ostrava-Svinov, Part I, Prosenice – Hranice na Moravě” pursuant to Act No. 100/2001 Coll., on the Environmental Impact Assessment and amending some related laws (the Environmental Impact Assessment Act), as amended, (hereinafter the “**EIA Documentation**”), in connection with the envisaged realization of a part of the “RS 1 VRT Prosenice – Ostrava-Svinov” high-speed railway line (hereinafter the “**Plan**”) along with all technical, economic and other documentation related to the Investment Project File, the DZD and the EIA Documentation and the Scheme’s summary cost estimate (hereinafter the “**SCE**”), all in the extent defined by Article 1.1 of the Special Technical Conditions – Annex 3c to the Contract (similarly defined as in Article 4.2 of the Tender Documentation resp. the Tender Documentation’s part entitled “**Contractor Guidelines**”);
      2. Maximum possible compliance with the below-specified project objectives, which are detailed in Annexes 11 and 14:

* Positive result in interrelated decision-making processes in the shortest time possible;
* Performing the Work (as defined below) in accordance with the milestones of the Time Schedule for Performance (the maximum certainty for the contract to be performed by the Schedule’s dates);
* Securing general public support for the construction of HSRL;
* Minimising administrative burden and maximising the accuracy of the data for processing;
  + 1. Identifying and managing the risks to which the Contractor believes the Client is exposed as a result of implementing the Public Contract or using the Public Contract’s outputs for the subsequent building permit procedure, in the light of the project objectives defined in more detail in Annexes 12 and 15;
    2. Consultations, conferences and the handover of the Investment Project File, the DZD and the EIA Documentation to the extent defined by Article 1.1 of the Special Technical Conditions – Annex 3c to the Contract, the SCE and all related documents by the Contractor to the Client and third parties;
    3. Using and other disposing of the Investment Project File, the DZD, the EIA Documentation, the SCE and all related documents by the Client and third parties in connection with the implementation of the Plan or the Client’s operations;
    4. Assessing the quality standard of the Investment Project File, the DZD, the EIA Documentation, the SCE and all related documents;
    5. Determining the fee for the preparation of the Investment Project File, the DZD, the EIA Documentation, the SCE and all related documents.
  1. The purpose of this Contract is to execute the Public Contract’s subject of performance as per the Public Contract’s tender documentation (hereinafter the “Tender Documentation”) and to determine how the Public Contract is to be performed for the Client and subject to what terms and conditions.
  2. The Contractor hereby undertakes to perform the Public Contract’s subject-matter and all the conditions and obligations resulting therefrom in accordance with the Tender Documentation and the Contractor’s Tender. This undertaking takes preference over any other condition or guaranty specified herein. For the avoidance of doubt, this means that:
     1. in the event of any uncertainty about the interpretation hereof, this Contract is to be interpreted in a manner as to take as large account as possible of the Public Contract’s purpose as expressed in the Tender Documentation;
     2. if a provision is missing from this Contract, sufficiently specific provisions of the Tender Documentation or the Contractor’s Tender are to be applied;
     3. the Contractor is bound by his Tender submitted to the Client in the procurement procedure for the Public Contract, which is to have subsidiary applicability to regulate the mutual relations resulting from this Contract.

1. SUBJECT-MATTER OF THE Contract
   1. The Work means the elaboration of the Investment Project File for “Reconstruction of the Hranice na Moravě Railway Station“, the DZD and the EIA Documentation for “RS 1 VRT Prosenice – Ostrava-Svinov, Part I, Prosenice – Hranice na Moravě“ pursuant to Article 1.1 of the Special Terms and Conditions – Annex 3c of the Contract, and all related documents and activities as specified in Article 2.2 and 3.2 of the Contract and Annexes thereto.
   2. If the Client decides to use it by the procedure under Article 14 of the Terms and Conditions, the option right as defined in this paragraph is considered to be part of the Work as from the moment of the pertinent amendment to the Contract. The option right (option performance) means using one, several or all services specified in Article 4.3 of the Tender Documentation and the Contractor Guidelines thereof, in particular without limitation to:
      1. submitting of the EIA Documentation approved by the Client (pursuant to Article 1.2 of the Special Technical Conditions – Annex 3c of the Contract) to the authority competent to issue the binding EIA opinion; and/or
      2. services connected with such EIA procedure; and/or
      3. obtaining a final positive EIA opinion; and/or
      4. finalising the documentation for the decision on the location of the railroad construction to the degree of detail and the scope as per Annex 3 to Decree No. 499/2006 Coll., on the Documentation of Constructions, as amended, and securing the documents as per Sub-sections 1, 3 and 5, and updating, as may be the case, other documents as per the Section on the Documents in Annex 3 and implementation of possible objections and comments arising from such documents from relevant agencies or the units of the Contracting Authority; and/or
      5. updating future investment costs of the construction, of the budget and of the evaluation of economic efficiency; and/or
      6. the preparation and submission of the application approved (by the Contracting Authority) to the relevant agency for the decision on the location of the railroad construction; and/or
      7. services connected with such procedure on the decision on the location of the railroad construction; and/or
      8. obtaining a final effective zoning decision on the location of the railroad construction; and/or
      9. preparing documentation for “Reconstruction of the Hranice na Moravě Railway Station” in the details of the documentation for the decision on the location of the railroad construction pursuant to Annex 3 to Regulations No. 499/2006 Coll., on the Documentation of Constructions, as amended, Act No. 183/2006, the Building Act, as amended; and/or
      10. other additional items of performance as detailed in Annex 13 – “Value Add (Inventiveness of the Contractor)” Criterion Forms, including the technical details for additional performance under the “Value Add (Inventiveness of the Contractor)” Criterion as specified in Annex 16 – Technical Details for Additional Performance under the “Value Add (Inventiveness of the Contractor)” Criterion.
   3. The option right (option performance) may also be exercised by stages in relation to separate activities which may, under this Contract, be subject-matter of the option right, only part of the scope of the option right (option performance) may be subject-matter of negotiated procedure without publication and an amendment to this Contract; if this is the case, the relevant provisions hereof, in particular the Contract’s Articles 4.1.5, 6.2.3, 6.2.4 and 9.3, are only applicable to the currently exercised scope of the subject-matter of the option right (option performance).
   4. The Contractor undertakes to execute the Work at his expense and risk in due manner and time and the Client undertakes to accept the executed Work in accordance with this Contract and pay the Contractor the agreed Price for the executed Work.
   5. The performance specified in Annex 18 – “Summary of detailed description of the activities which are not the subject-matter of performance” is outside this Contract’s performance.
2. BINDING DOCUMENTS FOR PERFORMING THE WORK

The Contractor undertakes to perform the Work and fulfil other conditions stipulated herein and/or the annexes hereto, especially in accordance with:

* + 1. the Special Technical Conditions and annexes thereto, which are attached hereto as Annex 3c (hereinafter the “**STC”**), and the General Technical Conditions, which are attached hereto as Annex 3b (hereinafter the “**GTC”**);
    2. the Public Contract’s procurement conditions;
    3. Annex 11 – “Expert Level” Criterion Forms, including the technical details for the proposals and measures for the accomplishment of the “Expert level” criterion’s project objectives as specified in Annex 14 – Technical Details for the Proposals and measures for the Accomplishment of the “Expert level” Criterion’s Project Objectives;
    4. Annex 12 – “Risk Identification and Management” Criterion Forms, including the technical details for the risk management proposals and measures under the “Risk Identification and Management” criterion as specified in Annex 15 – Technical Details for the Risk Management Proposals and measures under the “Risk Identification and Management” Criterion;
    5. Annex 13 – “Value Add (Inventiveness of the Contractor)” Criterion Forms, including the technical details for additional performance under the “Value Added (Inventiveness of the Contractor)” Criterion as specified in Annex 16 – Technical Details for Additional Performance under the “Value Add (Inventiveness of the Contractor)” Criterion for the maximal possible fulfilment of the project objectives of the Client – but only if the Client exercises his option right (option performance);
    6. Decree of SŽ No. 20 determining and breaking down capital cost of the structures of the Správa železnic, state-owned organisation, ref. no.: 28169/2017-SŽDC-GŘ-NM, as amended;
    7. Decree No. 499/2006 Coll., on the Documentation of Constructions, as amended and Act No. 183/2006, the Building Act, as amended;
    8. Technical Qualitative Requirements for State Railway Structures, as amended (“TQR for Structures”) – Annex 3a to the Contract;
    9. relevant Czech technical standards and the Client’s internal regulations listed in the relevant chapters of the TQR for Structures and in the Technical Qualitative Requirements for Public Road Structures (hereinafter referred to as the “TQR for Public Roads”) – available at <http://typdok.tudc.cz>;
    10. Czech and European legislation.
  1. The Contractor declares that he received the aforesaid documents before the conclusion of the Contract or that the aforesaid documents have been made available by the Client for the Contractor by the date hereof in a manner specified in this paragraph or are publicly accessible, unless the Contract and annexes thereto stipulated otherwise, especially pursuant to Article 2 of the STC – Annex 3c to the Contract. The Contractor confirms he knows the content of such documents and confirms their binding character. The Client allows the Contractor to access the Client’s Internal Regulations via <http://www.tudc.cz/> or <https://www.szdc.cz/> (“O nás” –> “Vnitřní předpisy” link “Dokumenty a předpisy”) and via <https://www.sfdi.cz/pravidla-metodiky-a-ceniky/metodiky/>.
  2. Executing the Work, the Contractor must abide by all legal regulations, relevant technical standards and relevant Internal Regulations of the Client. The Contractor undertakes to follow any change to the Client's Internal Regulations that relates to the Work and components thereof, even if such change is made during the execution of the Work and is demonstrably notified by the Client to the Contractor, as from the moment the Contractor could demonstrably get acquainted with such change to the Client’s Internal Regulation. In case, in the opinion of the Client, such change generates a need to amend this Contract, the Contractor undertakes to make written amendments to this Contract with the Client for this purpose, for such amendments to modify the changed scope of the Work and adequately reduce or increase the Price for the Work or adequately adjust the dates of performance to the extent corresponding to the change, in which case the conditions for changes of the Work as given in Article 14 of the Terms and Conditions apply. If the Contractor breaches his obligation to make such amendment, without which the execution of the Work is of no material meaning or benefit for the Client, such breach constitutes the right for the Client to withdraw from this Contract. If the Contractor believes that the Contract needs to be amended for a change to the Client’s Internal Regulation to be incorporated during the execution of the Work and the Client proposes no Contract amendment, the Contract amendment may be proposed by the Contractor and the Client undertakes to negotiate the contract amendment with the Contractor in good faith, in which case Article 14 of the Terms and Conditions applies by analogy.
  3. The Contractor undertakes to prepare the Work pursuant to Director’s General Direction No. 4/2016 “Exchanging Digital Documentation and Data between SŽ and External Parties” dated 30 August 2016, as amended.
  4. Except for the documents handed over upon the conclusion of the Contract the Contractor must secure all necessary documents from the Client at the Contractor’s expense in due manner and time. The Client undertakes to provide the Contractor with reasonable co-operation for this purpose. Any document, regulation, document and information (hereinafter the “**Information**”) so obtained by the Contractor must be solely used for the purpose of performing the Work.
  5. The Contractor must ensure, using all available means, that the Information is adequately protected against misuse or disclosure to any unauthorised third party. In no case may the Information be disclosed to third parties without a prior written express consent of the Client. Prior to the first access to the Information all persons must be duly instructed by the Contractor and obliged in writing to maintain confidentiality in connection with the disclosure of the Information.
  6. Any other documents supplied by the Client to the Contractor for the performance hereof and not expressly listed in this Article hereof will be listed in Annex 9 – Related Documents.

1. PRICE FOR THE WORK
   1. The Client undertakes to take over a duly performed Work and pay the Contractor, subject to the conditions set out herein and in accordance with the Contract’s Annex 4 – Breakdown of the Price for the Work (excluding any price for additional performance of the Public Contract (the option right / option performance)), the following:

Price for the Work without VAT: CZK “[FOR CONTRACTOR TO COMPLETE]”

in words: “[FOR CONTRACTOR TO COMPLETE] Czech crowns

VAT (base rate): CZK “[FOR CONTRACTOR TO COMPLETE]”

in words: [FOR CONTRACTOR TO COMPLETE]” Czech crowns

Total price for the Work including VAT: CZK “[FOR CONTRACTOR TO COMPLETE]”

in words: [FOR CONTRACTOR TO COMPLETE]” Czech crowns

* 1. A detailed breakdown of the Price for the Work and the due dates for the respective parts of the Price for the Work are given in the Contract’s Annex 4 – Breakdown of the Price for the Work.
  2. The Price for the Work, including the items in Annex 4 hereto, is a fixed price and the maximum permitted price. The Price for the Work may not be exceeded if the Contractor registers for VAT after the execution hereof. If the Contractor registers for VAT after the execution hereof, he must use the Price for the Work to pay the amount corresponding to the VAT amount under separate legislation; or the Client may do as per Article 5.4 of the Contract and pay the Contractor an amount equal to the Price less the tax paid under this paragraph or Article 5.4 of the Contract.
  3. The Parties agree that if the Contractor becomes an unreliable VAT payer in the meaning of Section 106a of Act No. 235/2004 Coll., the VAT Act, as amended, or the Contractor’s tax document shows a payment bank account which is not in the public register of reliable accounts maintained by the tax authority, the Client may use the financial performance and pay VAT to the tax authority with local and subject-matter jurisdiction over the Contractor direct.

1. Manner of Performance of the Work
   1. The Contractor must perform the Work in accordance with this Contract and the annexes thereto, plus the Client’s instructions if any. Instructions in respect of performing the Work under this Contract may be given to the Contractor by the Client’s contact person in technical matters or any other person authorised therefor by the Client in writing if such authorisation is delivered to the Contractor. The sole responsibility for due performance to good quality standard lies with the Contractor.
   2. Performing the Work, the Contractor must ensure:
      1. maximum possible accomplishment of the project objectives detailed in Annex 11 – “Expert level” Criterion Forms and Annex 14 – Technical Details for the Proposals and Measures for the Accomplishment of the “Expert level” Criterion’s Project Objectives;
      2. maximum possible identification and management of the risks specified by the Contractor in Annex 12 – Risk Identification and Management Criterion Forms and Annex 15 – Technical Details for Risk Management Proposals and Measures in Risk Identification and Management Criterion;

and if the Client exercises his option right (option performance) pursuant to Article 3.2 of the Contract and awards the contract to the Contractor, the Contractor must also ensure that

* + 1. the Client is supplied, in connection with performing the Contract, with the performance specified in Annex 13 – “Value Add (Inventiveness of the Contractor)” Criterion Forms and Annex 16 – Technical Details for "Value Add (Inventiveness of the Contractor)" Criterion Additional Performance and such performance contributes as much as possible to the accomplishment of the aforesaid project objectives of the Client (Article 2.2.2 of the Contract);
    2. the execution of the Work is as good as possible, thus maximising the fulfilment of the positive result in interrelated decision-making processes and ensuring the EIA procedure and the zoning decision procedure to the extent as per Article 16.3 of the Tender Documentation and/or the Tender Documentation’s Contractor Guidelines;
    3. the Client is supplied, in connection with the performance of the Contract, with the Investment Project File as per Article 1.1.1(b) of the STC – Annex 3c to the Contract in a manner as to ensure that the Project Plan can be a binding base for preparing the DZD for the project “Reconstruction of the Railway Station Hranice na Moravě”.
  1. The Contractor must attend meetings with the Client in accordance with the rules set out in the STC – Annex 3c to the Contract and consult at such meetings, among other things, the manner of performing the Work, the findings made by the Contractor and the working versions of outputs. The rules for calling meetings and determining meeting agenda and frequency are set out the STC – Annex 3c to the Contract.
  2. The Client and/or his representatives attending the meetings and giving instructions thereat does not release the Contractor from his responsibility for completing the Work in due manner and time in accordance with this Contract. Therefore, the Contractor is particularly obligated to review, with professional care, all the Client’s instructions, documents and Information supplied by the Client, and notify in writing any defect, inconsistency or vagueness in the said instructions, documents or Information. If instructions given by the Client are demonstrably wrong or defective, the Contractor is only released from liability for defects of the Work to the extent to which a defect is due to demonstrably defective instructions of the Client and to which the demonstrable defectiveness of the instruction(s) is notified by the Contractor to the Client.
  3. Further rights and obligations of the Contractor are defined in Annex 17 to the Contract.

1. Time Schedule for Performance of the Contract
   1. In accordance with its Tender the Contractor undertakes to complete and hand over the Work or components thereof to the Client by the dates as per the time schedule given in Annex 5 to this Contract (hereinafter the “Time Schedule for Performance”).
   2. The rights and obligations of the Parties are governed by this Contract and the annexes thereto. In the event of conflict between the text of this Contract and the text of an annex hereto, the special regulation stipulated herein, within the Contract, applies.
   3. The Parties agree that the Contractor assumes the risk of changes in circumstances within the meaning of Sections 1765(2) and 2620(2) of the Civil Code. That is, a change in circumstances forms no right for the Contractor to demand resumed Contract negotiation with the Client or demand higher Price for the Work or demand the cancellation of the Contract.
   4. Section 2605(1) of the Civil Code shall not apply. The Work is performed if it is completed in due manner and time and is accepted by the Client in the agreed manner.
   5. The place of performance of the Work is the Client’s registered office as specified in the heading hereof.
   6. The Contractor undertakes to state in each tax document the name of the Part of the Work to which the invoice pertains in the partial dates for performance, in accordance with the dates specified in Annex 4 to this Contract. If the name of the Part of the Work to which the invoice pertains to is missing from the invoice, the Client follows the procedure as per Article 10.8 of the Terms and Conditions.
   7. If the Contractor is a company without legal personality, only the Contractor’s lead partner is authorised to issue tax documents – invoices to the Client, i.e. the tax document must state (identify) the lead partner as the person or entity performing economic activity as a service provider (in accordance with Act No. 235/2004 Coll., the Value Added Tax).
2. Qualified persons
   1. At all times until the Work’s full, due and perfect completion the Contractor must be performing the Work solely through:
      1. the persons listed in “List of Qualified Persons and Subcontractors” in Annex 8 to the Contract (the “**Qualified Persons**”) so that each particular Qualified Person used by the Contractor for proving his compliance with the Public Contract’s qualification requirements performs activities corresponding to the person’s expertise (qualification) and the person’s position in respect of which the person qualified for the Public Contract and to the extent which is standard for such position; and
      2. the persons listed in Annex 8 to the Contract or persons the identity of which is notified by the Contractor to the Client in writing,
   2. Subject to the conditions for engaging Qualified Persons and Substitute Qualified Persons (as this term is defined below), the Contractor may engage the other persons listed in Annex 8 to the Contract. The Contractor must continuously update the list of the persons participating in the Work and listed in Annex 8 and the updated list, following a change thereto, send to the Client without undue delay (conclusion of an addendum to the Contract is not required).
   3. A change to the Qualified Persons listed in Annex 8 to the Contract does not require conclusion of an addendum to this Contract in writing and, once the change is approved by the Client, the Contractor must prepare updated Annex 8 to the Contract in writing and deliver the same to the Client, whereby Annex 8 to the Contract is automatically replaced by the new version of Annex 8 approved by the Client. For the avoidance of doubt the Parties represent that the previous sentence of this article does not apply to persons not listed in Annex 8 to the Contract.
   4. Each Qualified Person participates in performing the Work to the extent of the person’s job position as specified in this Contract, the Terms and Conditions, and Annex 8 to the Contract. Each Qualified Person must, throughout the performance of the Work, meet the qualifications specified in the Contractor’s bid(tender and the minimum technical qualification requirements for the person’s job position as per the Procurement Conditions.
   5. If a Qualified Person fails to participate in due manner and time in performing the Work to the extent as defined by the Contract, for example, as a result of terminating his/her collaboration with the Contractor or being absent from work (particularly because of prolonged illness unlikely to be cured within a single month) or death, the Contractor must immediately start performing through a substitute qualified person (the “**Substitute Qualified Person**”) and notify this to the Client within five (5) business days of the situation.
   6. Within ten (10) business days of the delivery of the notice under the previous paragraph the Contractor must ensure and prove to the Client that the Qualified Person is substituted with a Substitute Qualified Person with sufficient qualifications. Unless the Client agrees to the specific Substitute Qualified Person, the Client is entitled to request that the Contractor deploy a different person with the same qualifications proposed by the Contractor within fifteen (15) days of receiving the Client’s request, or repeated requests, for different Substitute Qualified Person; performance is provided through the Substitute Qualified Person originally proposed by the Contractor until the Client agrees with a specific Substitute Qualified Person. The procedure under Article 8.13.2 and this provision applies in the event of a change in Evaluated Qualified Person.
   7. Any cost incurred in connection with securing a Substitute Qualified Person and proving his qualifications is solely borne by the Contractor, even if the Client repeatedly disagrees with the specific Substitute Qualified Person appointed.
   8. If the Contractor breaches the obligation to ensure and prove to the Client that the Substitute Qualified Person meets at least the qualification requirements applicable to the Qualified Person to be substituted (including where the Contractor fails to ensure and prove replacement for the Qualified Person), this Contractor’s breach is considered to be a material breach of contract in the meaning of Section 48(5)(d) of Act No. 134/2016 Coll., the Public Procurement Act, as amended (hereinafter the “**PPA**”).
   9. The Contractor must ensure that each Qualified Person (i.e. including any Substitute Qualified Person and New Qualified Subcontractor) must be, upon prior request with the Contractor, fully available to the Client in accordance with the obligations under the Contract and/or the Terms and Conditions and provide the Client with all required cooperation in connection with the performance of the Work unless prevented from doing so by objectively serious obstacles. Any such obstacle must be notified and proved by the Contractor to the Client immediately. Each Qualified Person must, in particular, attend all meetings and discussions with the Contractor’s representatives that pertain to the performance assigned to the respective Qualified Person in Annex 8 hereto.
   10. Objectively serious obstacles are short-term illness, temporary incapacity for work or quarantine of the Qualified Person, all this for a maximum of 1 month, the Qualified Person’s short-term absence of up to two (2) weeks as holiday in the meaning of Section 211 et seq. of Act No. 262/2006 Coll., Labour Code, as amended (the “**Labour Code**”), notified by the Contractor to the Client no later than 10 business days prior to the Qualified Person’s expected absence, force majeure events preventing the Qualified Person from attending a meeting or providing cooperation temporarily.
   11. Objectively serious obstacles are not considered to be, among other things, long-term illness of the Qualified Person, long-term incapacity for work, quarantine or other long-term absence of the Qualified Person longer than one (1) month or three (3) months in aggregate during a single calendar year; leave from work due to military service; study or similar leave in the meaning of the pertinent provisions of the Labour Code; or other personal bars preventing the Qualified Person from performing the Work for a period longer than two (2) weeks or three (3) months in aggregate during a single calendar year.
   12. At reasoned request of the Client the Contractor must immediately change the Qualified Person if the Qualified Person has been objectively performing below the average repeatedly or over a long time in performing the Contract or has been breaching the Client’s internal or other communicated regulations repeatedly or over a long term or does the Client harm or exhibits actual qualities that do not meet the standard required for the job position.
   13. Other Client’s requirements in respect of Qualified Persons, namely the “team leader” (the “**Evaluated Qualified Person**”):
       1. the Evaluated Qualified Person must participate in performing the Work to the extent and in the manner as defined for the Evaluated Qualified Person in Annex 8 hereto.
       2. Unless the Evaluated Qualified Person participates in the performance of the Work in due manner to the extent defined in the Contract, the Parties take course of action as per aforesaid provisions and the Client checks and evaluates, beyond the scope of aforesaid provisions, the abilities and qualities of a substitute Evaluated Qualified Person using the Evaluated Qualified Person evaluation rules pursuant to the Public Contract’s Procurement Conditions (however the evaluation committee and the list of interview questions may not be the same).
   14. The Contractor must notify the Client of all such identified serious facts concerning the subject of the Work that are fully in the competence of the Contractor.
   15. Within two (2) weeks of being delivered a written request of the Client the Contractor must confirm and substantiate that a particular person participating in the Work has the qualification and competence necessary for that person to participate in the pertinent part of the Work and necessary for the Work to be made in due professional care.
   16. If the Contractor used a Subcontractor (the “**Qualified Subcontractor**”) to prove the Contractor’s qualification under the relevant provisions of the PPA and the Procurement Conditions, the Qualified Subcontractor must in person execute that part of the Work which corresponds to the obligations submitted in the Contractor’s bid for the Public Contract (the “Work Reserved to Subcontractor”) or that added at the Client’s request before the Contract is entered into.
   17. Each Qualified Subcontractor must meet the qualification requirements fulfilled through him throughout the execution of the Work Reserved to Subcontractor.
   18. Unless a Qualified Subcontractor participates in due manner in performing the Work Reserved to Subcontractor to the extent set out in the Contract, for example, as a result of the termination of the Qualified Subcontractor’s collaboration with the Contractor or the Qualified Subcontractor’s prolonged inactivity (inactivity longer than 1 month in particular), or the Qualified Subcontractor’s qualification drops below the standard of the qualification requirements fulfilled through that Qualified Subcontractor, the Contractor must notify this to the Client immediately but no later than three (3) business days.
   19. Within three (3) business days of being delivered a notice under the previous paragraph the Contractor must ensure and prove to the Client that a substitute Qualified Subcontractor (the “**New Qualified Subcontractor**”) will take part in performing the Work as adequate substitute for the Qualified Subcontractor. Unless the Parties agree in writing otherwise, the New Qualified Subcontractor must have qualification no worse than that of the Qualified Subcontractor to be substituted by the New Qualified Subcontractor and must always meet the qualification requirements to the extent demonstrated by the Qualified Subcontractor in the procurement procedure for the Public Contract.
   20. For the avoidance of doubt the Parties agree that if the New Qualified Subcontractor is qualified better than the replaced Qualified Subcontractor, the Client is not obligated to compensate the Contractor for such improvement of the professional qualification in any way or waive any already existing contractual penalty claims under previous paragraphs.
   21. Article 8.10 applies to the New Qualified Subcontractor by analogy.
   22. The Contractor undertakes to ensure contractually that the Subcontractor selected by the Contractor performs himself his part in the performance of the Work without transferring the same to another Subcontractor or having the same performed, in the meaning of Section 2589 of the Civil Code, by a different Subcontractor under his personal guidance. With respect to the provisions of Section 1769 of the Civil Code, the Parties declare that this obligation of the Subcontractor is not negotiated as third party performance within the meaning of the said statutory provision. The Contractor undertakes to ensure fulfilment of this obligation by not concluding a contract with any Subcontractor who does not commit to this obligation.
   23. A Subcontractor’s obligations apply by analogy to any person or entity forming a group/holding with the Contractor and the Contractor may use in the performance of the Work only those members of the Group who undertake to fulfil such obligations in the same way as the Subcontractors.
   24. The Contractor shall be liable for the performance of all of its Subcontractors and for any damage caused by them to the same extent as for the Contractor's actions or damage caused by the Contractor. Unless otherwise specified:
       1. the Contractor is entitled to perform through the Subcontractors listed in Annex 8 to the Contract, in the scope of performance specified therein;
       2. the Subcontractors listed in Annex 8 to the Contract, their percentage in the performance of the Work or the subject-matter of their subcontract may not be changed or supplemented during the execution of the Work without the Client’s written consent granted as an amendment to the Contract.
   25. The Contractor undertakes to ensure that the Subcontractor holds the pertinent authorizations to perform the relevant work on the Work. The Contractor is responsible for the Subcontractor to ensure that selected jobs on the Work which require certain authorisations or educational attainment be performed by individuals who have such authorisations and have attained the required education or training. The Subcontractor selected by the Contractor must also have all other authorizations required for the performance of activities related to the performance of the Work, generally binding legal regulations, the Client's Internal Regulations or the Contract. With respect to Section 1769 of the Civil Code, the Parties declare that the obligations of the Subcontractors pursuant to this Article are not stipulated as third party performance within the meaning of the said statutory provision. The Contractor undertakes to ensure fulfilment of these obligations by not concluding a contract with any Subcontractor who does not commit to these obligations.
3. Penalties
   1. If the Contractor breaches of any of his obligations set out in Annex 14 – Technical Details for the Proposals and Measures for the Accomplishment of the ‘Expert Level’ Criterion’s Project Objectives and the breach fails to be remedied within seven (7) business days of the day of the delivery of the Client’s request for remedy, the Contractor must pay the Client a contractual penalty at 0.5% of the Price for the Work for each day of delay from the date of delivery of the request for remedy, but no more than 20% of the Price for the Work;
   2. If the Contractor breaches of any of his obligations set out in Annex 15 – Technical Details for the Proposals and Measures for Risk Management in the ‘Risk Identification and Management’ Criterion and the breach fails to be remedied within seven (7) business days of the day of the delivery of the Client’s request for remedy, the Contractor must pay the Client a contractual penalty at 0.3% of the Price for the Work for each day of delay from the date of delivery of the request for remedy, but no more than 15% of the Price for the Work;
   3. If the Client exercises his option right (for option performance) and awards the public contract to the Contractor and the Contractor breaches of any of his obligations set out in Annex 16 – Technical Details for Additional Performance under the “Value Add (Inventiveness of the Contractor)” Criterion and the breach fails to be remedied within seven (7) business days of the day of the delivery of the Client’s request for remedy, the Contractor must pay the Client a contractual penalty at 0.2% of the Price for the Work for each day of delay from the date of delivery of the request for remedy, but no more than 10% of the Price for the Work;
   4. In the event of a breach of contractual obligations the Contractor undertakes to pay the Client a contractual penalty if:
      1. the performance of a material activity reserved by the Client in the Contract as an activity which must be performed directly by the Contractor by his own means is assigned by the Contractor to a Subcontractor or other third party which is not employed by the Contractor; the Contractor must pay the Client a contractual penalty at 25% of the Price for the Work (excluding VAT);
      2. the Contractor breaches the obligation to ensure and prove to the Client that the Substitute Qualified Person meets at least the qualification requirements applicable to the Qualified Person to be substituted (including where the Contractor fails to ensure and prove replacement for the Qualified Person), the Contractor must pay the Client a contractual penalty at 0.01% of the Price for the Work (without VAT) for every commenced day of being in breach. This is without prejudice to the Client’s rights out of defective performance;
      3. the Contractor breaches his obligation under 8.9, the Contractor must pay the Client a contractual penalty at 0.01% of the Price for the Work (without VAT) for each instance of breach. Instance of such breach also covers each day of breach of the obligation to ensure cooperation of the Qualified Person or the Qualified Person’s presence at a required meeting (discussion) with the Client’s representatives;
      4. neither the Qualified Subcontractor nor the New Qualified Subcontractor executes the Work Reserved to Subcontractor in person and this results in the Work Reserved to Subcontractor having to be executed by any other party, the Contractor must pay the Client a contractual penalty at 0.05% of the Price for the Work (without VAT) for each instance of breach of this obligation;
      5. the Contractor breaches his obligation under 8.18, he must pay the Client for each instance a contractual penalty at 0.05% of the Price for the Work (without VAT) for each commenced day of being in breach. This is without prejudice to the Client’s rights out of defective performance;
      6. the Contractor breaches his obligation under 8.19, the Contractor must pay the Client a contractual penalty at 0.05% of the Price for the Work (without VAT) for every commenced day of being in breach;
      7. the Contractor breaches the obligation to ensure and prove to the Client that the New Qualified Subcontractor meets at least the qualification requirements to the extent demonstrated by the Qualified Subcontractor in the procurement procedure for the Public Contract (including where the Contractor fails to ensure and prove replacement for the Qualified Subcontractor), the Contractor must pay the Client a contractual penalty at 0.05% of the Price for the Work (without VAT) for every commenced day of being in breach. This is without prejudice to the Client’s rights out of defective performance. Breach of this obligation shall be considered by the Client as a serious breach of contract in the meaning of Section 48(5)(d) of the PPA;
      8. the new person proposed by the Contractor in the meaning of Article 8.13.2 as part of the said evaluation is awarded a score lower than that assigned to the Contractor in the Public Contract’s procurement procedure, the Contractor must pay the Client a contractual penalty at 1% of the Price for the Work (without VAT) for each 1 point of the difference, with 25% of the Price for the Work (without VAT) being the maximum contractual penalty for the Evaluated Qualified Person. Change in the Evaluated Qualified Person, however, must not affect the overall ranking of the bidders for the Public Contract. In other words, it must not be the case that the winning contractor should earn, as a result of such change, an overall evaluation that is worse than that of any other bidder in the original ranking.
   5. The maximum total amount of contractual penalties paid by the Contractor is capped at 100% of the Price for the Work (without VAT).
   6. If the Price for the Work is used in this article for contractual penalty calculation, it means the Price for the Work according to Article 5.1 hereof and the Contract’s Annex 4 without taking account of any price for additional performance of the Public Contract (the option right / option performance).
4. Contractor’s Guaranties
   1. The bank guaranty for the execution of the Work according to Article 11 of the Terms and Conditions is **10%** of the Price for the Work, i.e.: **CZK** “[ FOR CONTRACTOR TO COMPLETE ]” without VAT according to Article 5.1 of the Contract and Annex 4 to the Contract without taking account of any price for additional performance of the Public Contract (the right of option or the option performance). The bank guaranty must continue to be valid and enforceable until the Client receives the Removal of Defects Bank Guaranty pursuant to Article 10.2 of the Contract.
   2. The Contractor undertakes to supply the Client, no later than thirty (30) days of the Protocol on the Execution of the Work being signed by both the Contractor and the Client, with the Removal of Defects Bank Guaranty, which must be issued for 5% of the Price for the Work, i.e.: CZK “[ FOR CONTRACTOR TO COMPLETE]”without VAT. The Removal of Defects Bank Guaranty must be issued for an amount corresponding to 5% of the Price for the Work without VAT, as stated in 5.1 of the Contract and in the Contract’s Annex 4 without taking account of any price for additional performance of the Public Contract (the option right / option performance).
   3. The Contractor undertakes to ensure that the Removal of Defects Bank Guaranty is issued for a period of five (5) years of the date of issuance. However, the date of issuance and the first day of effect may not be earlier than the date the Protocol on the Execution of the Work is signed.
   4. If the terms of the Removal of Defects Bank Guaranty specify any date of expiration of the Removal of Defects Bank Guaranty and the Contractor fails to remove all defects earlier than thirty (30) days prior to the said date of expiry of the Removal of Defects Bank Guaranty, then the Contractor must arrange for the prolongation of the Removal of Defects Bank Guaranty until all defects have been removed.
   5. The Client may only exercise the right under the Removal of Defects Bank Guaranty where:
      1. the Contractor fails to have the Removal of Defects Bank Guaranty prolongated if its validity is shorter than as specified in the previous paragraph; then the Client may demand the payment of the full amount of the Removal of Defects Bank Guaranty plus compensation for all and any damage suffered as a result of the defects; or
      2. the Contractor fails to pay the Client the damages or contractual penalty the payment of which the Client demands and the Contractor is obligated to make under the Contract; or
      3. any payment agreed in connection herewith or any other monetary claim to which the Client becomes entitled in connection herewith fails to be paid by the Contractor after forty (40) days of when the payment falls due; or
      4. the Contractor fails to remove a defect within fourteen (14) days after receiving the Client’s notice requesting such removal of defect or within other reasonable period additionally provided by the Client therefor; or
      5. circumstances arise which entitle the Client to withdraw from the Contract pursuant to this Contract or Article 18 of the Terms and Conditions, whether or not the withdrawal is notified; or
      6. defects in the Work make the Client pay for extra work in respect of any structure being built as a result of the Work, in which case the Client may exercise the right out of the Removal of Defects Bank Guaranty to the amount of such extra work’s demonstrable cost not higher than the usual cost of such extra work. The responsibility for substantiating that such a cost is higher than the usual cost is incurred lies with the Contractor.
   6. The certificate of the Removal of Defects Bank Guaranty must be returned to the Contractor within twenty (20) days of the Removal of Defects Bank Guaranty expires under this Article (including any prolongation thereof).
   7. The Contractor’s rights and obligations and the conditions imposed on the guaranteeing bank as set out in Article 11 of the Terms and Conditions apply by analogy to the remaining rights and obligations of the Contractor and the conditions imposed on the bank providing the guaranty for the removal of defects in the work.
   8. The Price for the Work is given in Article 5.1 of the Contract and in the Contract’s Annex 4.
5. Title and Rights of Use
   1. For those results of the Contractor’s activities in connection with the performance of the Contract which are copyrighted works in the meaning of Section 2 of Act No. 121/2000 Coll. regulating copyrights, the rights related to copyrights and amending some acts (the Copyrights Act), as amended, the Client is granted by the Contractor, in the meaning of Section 2634 of the Civil Code, for such copyrighted works or parts thereof, on the day the copyrighted work comes into existence, with the right to use it – a licence, exclusive, irrevocable, permitting all uses of the copyrighted work as may be necessary to fulfil the purpose of the Contract and ensure the continuation of any performance following up on this Contract, and to the quantities proportionate to that purpose, for unlimited territories (worldwide) and for time limited to the duration of the proprietary copyrights in the copyrighted work, including the permission to interfere with, modify or make changes to the copyrighted work (whether or not through third parties) and/or sub-license the copyrighted work or transfer the licence to a third party. For the avoidance of doubt, the price for all the licences granted under this Article is included in the Price for the Work. The Client or his legal successor is not obliged to use the licence.
   2. The licence also applies to any update provided for the Client by the Contractor any time in future on the basis of any title, as well as any new (additional) versions of the Work.
   3. The Contractor agrees that the Client may sub-license the Work or assign the Licence to the Work to third parties to the extent of the Licence, free of charge and without additional consent of the Contractor.
   4. If the execution of the Work requires using a copyrighted work with respect to which the Contractor is not authorised to exercise the proprietary rights, the Contractor undertakes to obtain authorisation to exercise these proprietary rights from the authorised third parties including the right to grant a sub-licence and assign the Licence with respect to the relevant copyrighted works. Should that be the case, the Contractor must, in relation to such third parties’ copyrighted works, secure and grant sub-licence to the Client in the scope as per this Article (the “**Third Party Licence**”).
   5. The Parties agree that if the performance of the Contract leads to the creation of a database, the creator’s rights to such database are vested in the Client under Section 89 of the Copyright Act.
   6. The Licence is to be applied, to the maximum extent permitted by Czech law, to not only the Work but also any results of the subject-matter of intangible property rights including know-how, inventions, utility models, domain names, any unregistered designations related to the Work and the use thereof, industrial designs, improvement proposals etc. which the Contractor creates as part of executing the Work (the “**Objects of Intangible Property Rights**”). The Contractor hereby grants the Licence to the Objects of Intangible Property Rights and expressly agrees that the Client is authorised to register any Object of Intangible Property Rights in the relevant register in any country of the world; the Contractor undertakes to provide any cooperation that may be necessary in the registration process.
   7. At the Client’s request, the Provider must ensure, even after the termination of the Contract, the execution/signature of all deeds and documents which may be necessary to acknowledge the legal effects of this Article and the purpose hereof, which purpose consists in the Contractor to provide the Client, to a maximum extent permitted by Czech law, with the exclusive right to use the Work and/or assign the right to exercise the proprietary copyrights in the Work.
   8. In the case of a license pursuant to this Article, the Contractor, with regard to the meaning and manner of use, expressly waives the right to terminate licence agreement pursuant to Section 2370 of the Civil Code and waives the right to withdraw from license agreement because of changed beliefs pursuant to Section 2382 of the Civil Code.
   9. The Contractor grants, and the Client acquires, the authorisation under this Article by the handover of the Work or each part thereof handed over to the Client in the agreed Progress Stages/parts of the Work.
   10. Neither the Client nor his legal successor is obliged to use the licence, and this cannot considerably prejudice any legitimate interest of the author. Notwithstanding this the Parties hereby agree that the Contractor may not exercise his right of withdrawal under Section 2378 of the Civil Code before the expiry of ten (10) years of the granting of the Licence.
6. Contract Withdrawal by the Client
   1. In addition to other reasons arising from this Contract, the Terms and Conditions and legal regulations, the Client may withdraw from the Contract for material breach if:
      1. the Contractor wrongfully suspends executing the Work for longer than ten (10) days;
      2. the Contractor fails to fulfil his obligation to supply and maintain the Bank Guarantee for the Performance of the Work or the Removal of Defects Bank Guarantee;
      3. it is established that a representation of the Contractor made in the Contract or a representation, a promise or an offer the Contractor made or expressed in the procurement procedure which this Contract follows up is false in a material statement (especially a statement which is related to the assessment of the tenders/bids for the Public Contract or to qualification pursuant to the Public Contract);
      4. the Client has a claim against the Contractor to be paid contractual penalties in the total amount of 40% of the Price for the Work (without VAT), this being without prejudice to the Client’s right to withdraw from the Contract under other provisions of the Contract or under legal regulations;
      5. the Clients proves that in the previous three (3) years the Contractor made serious or prolonged errors in performing previous contracts with the Client or other public contracting authority which errors resulted in damage, early termination of contract or other comparable sanctions.
   2. Unless expressly stated otherwise in the Contract or these Terms and Conditions, withdrawal from the Contract extinguishes all the Parties’ rights and obligations out of the Contract from the very beginning (*ex tunc*). Upon withdrawal, the Contractor must immediately:
      1. return to the Client all the documents and things received from or obtained or created for the Client, including all files and contractual documentation;
      2. refund the Client any Price for the Work already paid if paid by the Client after the completion of partial performance. This obligation is discharged by the Contractor once the full funds are credited to the bank account immediately communicated by the Client for that purpose; and
      3. not engage in any activity that would be aimed at influencing employees, clients or any other contracting partners of the Client.
   3. In his written notice of withdrawal the Client may divert from the previous paragraph, taking account of his objective needs and the degree of the Work’s progress and quality, and determine that the parties’ rights and obligations out of the Contract are extinguished with effect as from the written notice of withdrawal being delivered to the Contractor *(ex nunc)*. In that case the withdrawal is without prejudice to the Contractor’s liability for (defects in) the parts of the Work (partial performance) already handed over and the Contractor’s obligation to rectify the defects. In that case the Contractor must immediately do the following without being entitled to receive consideration from the Client:
      1. return to the Client all the documents and things received from or obtained or created for the Client, including all files and contractual documentation;
      2. hand over to the Client all parts of the Work (whether completed or not), including all background documents and related data, with the financial settlement between the Parties regarding these unfinished parts of the Work to be the subject of a separate settlement agreement based on an expert’s opinion prepared by a third party designated by the Client, which opinion is to analyse the degree of progress of the Work and the Work’s parts, and the price for such Work in progress to be determined by the relevant item prices agreed in the Contract or, if this is not possible or such item prices are not agreed in the Contract, to be determined as the price usual for the place and time, and the resulting price may also be determined by combining these two approaches;
      3. provide the Client with all and any cooperation the Client may identify as necessary for the Client to complete the Work himself or through a different contractor; and
      4. not engage in any activity that would be aimed at influencing employees, clients or any other contracting partners of the Client.
   4. Whether made under the Contract or the Terms and Conditions with effect *ex tunc* or *ex nunc*, withdrawal from the Contract does not affect the Client’s claims to be compensated for any harm suffered by breach of the Contract, the Client’s claims to be paid contractual penalties, the Licence, the Third Party Licence, the Objects of Intangible Property Rights, Resolution of Disputes between the Parties, and other provisions of the Contract and the Terms and Conditions which are to survive (given their nature) the said withdrawal.
   5. The Client’s withdrawal under Article 12.1 hereof and 18.2 of the Terms and Conditions is considered to be the Contractor’s serious breach of contract in the meaning of Section 48(5)(d) of the PPA.
   6. The Contractor may only withdraw from the Contract if the Client has defaulted on any due payment for the performance of any Progress Stage/Part of the Work (after deducting the Client’s financial claims against the Contractor) for more than forty (40) days of that payment’s due date as shown on the pertinent tax document and the Client fails to make the payment within an additional time of ninety (90) days of receiving a written notice from the Contractor requesting that due payment.
7. MISCELLANEOUS
   1. The Contractor is to process for the Client the third parties’ personal data which are, in compliance with the legal regulations in force, necessary for the conclusion of the contracts listed in Annex 3b to this Contract. If, following an explicit instruction of the Client, the Contractor processes personal data which are not explicitly stated in the previous sentence, these additional personal data must be processed subject to the same conditions.
   2. The Contractor undertakes to adopt appropriate technical and organisational measures pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (the General Data Protection Regulation – the GDPR), which apply to him as the processor, and prove compliance with these duties at the Client’s request.
   3. In accordance with Section 105(2) of Act No. 134/2016 Coll., the Public Procurement Act (hereinafter the “PPA”), the Client reserves the requirement that the following significant activities in the performance of the public contract must be performed directly by the Contractor through his own means:

* “[FOR CLIENT TO COMPLETE]”
  1. For the avoidance of doubt the Parties expressly exclude the use of any and all provisions of the Civil Code which (alone or in conjunction with Section 4(2) of the Civil Code) exclude the Contractor’s liability or prevent the Client from enforcing the rights from defects of the Work as a result of anything other than that specified in the Contract. Sections 1917, 1920, 1921, 1922, 1923, 1925, 2101–2104, 2106, 2107, 2110, 2111, 2112, 2595 and 2618 of the Civil Code do not apply and are replaced by the provisions of the Contract and of these Terms and Conditions.
  2. The Parties agree that enforcing any claim out of the Contractor’s liability for defects is without prejudice to any other claim of the Client, such as claim to damages and contractual penalty.
  3. Any communication concerning defects and liability, including defects in the instructions and documents supplied by the Client, must be made in writing and addressed to the Client’s contact person for technical matters.

1. FINAL PROVISIONS
   1. The rights and obligations of the Parties arising from this Contract are governed by the Civil Code and other applicable legal regulations of the Czech Republic.
   2. This Contract comes into force on the date it is signed by the last Party and becomes effective on the date of its publication in the register of contracts pursuant to Act No. 340/2015 Coll. on Special Conditions for Effectiveness of some Contracts, Publication of such Contracts and the Register of Contracts (hereinafter the “**Act on the Register of Contracts**”).
   3. This Contract may only be modified by written agreement of the Parties in the form of numbered amendments to this Contract, signed for each Party by the person or persons authorised to act for such Party.
   4. By signing this Contract, the Parties exclude that business practice should be taken any account of in the legal transactions between the Parties; as a result, business practice takes no preference over statutory provisions under Section 558(2) of the Civil Code.
   5. The Parties agree that making good legal conduct that is defective due to not being made in writing is excluded and that invalidity of such legal conduct that is stipulated by the parties to be made in writing is permitted to be invoked any time. Therefore the first sentence of Section 582(1) and Section 582(2) of the Civil Code do not apply between the parties.
   6. in the meaning of Section 630(1) of the Civil Code the parties agree fifteen years as the limitation period for the rights resulting from 15.6, 16.14 and 17.5 of the Terms and Conditions. This period starts running on the date when the relevant right could have been exercised for the first time.
   7. No transaction or conduct by the Client may be considered to be a promise to make the Contract or an addendum thereto. In accordance with Section 1740(3) of the Civil Code the Client does not permit accepting a contract proposal with amendment or deviation, wherewith the other Party agrees by executing the Contract.
   8. All the rights and obligations arising from this Contract pass to the parties’ respective legal successors unless the nature of such rights or obligations makes it impossible. Compliance with Section 222(10) of the PPA is required therefor. None of the parties may transfer any right, obligation or part thereof to any third party without a prior written consent of the other party.
   9. Termination of this Contract is without prejudice to (i) those provisions of the Contract (as amended by the annexes thereto) which pertain to licenses, warranties, liability for defect claims, liability for damage claims or contractual penalty claims if these are formed prior to the termination of the Contract’s effect, (ii) information protection provisions and (iii) any other provisions and claims the nature of which implies that they are to continue beyond the discharge of this Contract’s effect.
   10. Should any provision of this Contract prove to be invalid or unenforceable or become invalid or unenforceable after the conclusion of this Contract, this shall be without prejudice to the validity or enforceability of the remaining provisions of this Contract, unless the peremptory provisions of law provide otherwise. The parties undertake to replace, without undue delay upon the request of either party, any such invalid or unenforceable provision by a valid and enforceable provision that comes as close as possible to the purpose of the invalid or unenforceable provision.
   11. This Contract is prepared in electronic form and each electronic image of this Contract has the validity of original copy.
   12. In connection with the application of the Act on the Register of Contracts the Parties agree to this Contract to be published in the Register of Contracts to the extent as required by the Act on the Register of Contracts and also agree to the publication of the Parties’ identification data and the Contract’s subject-matter, price or value and date. The electronic image of the Contract and the annexes thereto along with the metadata required under the Act on the Register of Contracts are to be sent by the Client to the administrator of the register of contracts within thirty (30) calendar days of the making of this Contract. Signing this Contract the Contractor expressly confirms his consent to the Contract’s body text (i.e. without annexes except the Terms and Conditions) to be posted on the Client’s website.
   13. The parties expressly declare that the data and other facts stated in this contract, except those parts identified as stipulated in the following paragraph of this contract, are not considered trade secret in the meaning of Section 504 of the Civil Code, as amended (hereinafter the “**trade secret**”), and are not information that is not permitted to be published in the register of contracts pursuant to Section 3(1) of the Act on the Register of Contracts.
   14. If a section of the Contract is identified as trade secret by either party resulting in that section to be rendered illegible for the publication of the contract in the register of contracts, that party is to be held liable if that identification causes the Contract to be published in a manner contrary to the Act on the Registration of Contracts. Any section of the Contract not identified by either party as its trade secret prior to the making of this Contract will not be treated as trade secret by the Client and the Client may not be held liable for any damage or other harm that may result from such treatment. The identification of trade secret in the meaning of the previous sentence means the delivery of a written notice from the Contractor to the Client wherein the affected sections of the Contract are accurately identified and the reasons for the same to be regarded as trade secret described. The Contractor must explicitly state that the information identified by him as his trade secret fulfils all the elements by which trade secret is defined in Section 504 of the Civil Code, and the Contractor undertakes to notify the Client in writing immediately if the information identified as trade secret ceases to fulfil the elements of trade secret.
   15. The persons entering into this Contract for the parties agree to their personal data as stated herein to be published, along with the Contract, in the register of contracts. This consent is granted for an indefinite period of time.
   16. The following annexes form integral part of the Contract:

Annex 1 Contractor Guidelines for ”RS 1 VRT Prosenice – Ostrava-Svinov, I. part, Prosenice – Hranice na Moravě“; Preparation of Preliminary Design Documentation [FOR CLIENT TO COMPLETETHE LINK]”

Annex 2 Terms and Conditions TC/IPF+DZD (separate appendix)

Annex 3 Technical Conditions

Annex 3a Technical Qualitative Requirements for State Railway Structures (TQR for Structures)

Annex 3b General Technical Conditions (separate annex)

Annex 3c Special Technical Conditions (separate annex)

Annex 4 Breakdown of the Price for the Work

Annex 5 Time Schedule for Performance

Annex 6 Authorised Persons

Annex 7 List of Required Insurance Policies

Annex 8 List of Qualified Persons and Subcontractors

Annex 9 Related Documents

Annex 10 Authorisation of the Lead Contractor

Annex 11 “Expert Level” Criterion Forms

Annex 12 “Risk Identification and Management” Criterion Forms

Annex 13 “Value Add (Inventiveness of the Contractor)” Criterion Forms (the subject of the option right )

Annex 14 Technical Details for the Proposals and Measures for the Accomplishment of the “Expert Level’ Criterion’s Project Objectives

Annex 15 Technical Details for the Proposals and Measures for Risk Management under the “Risk Identification and Management” Criterion

Annex 16 Technical Details for Additional Performance under the “Value Add (Inventiveness of the Contractor)” Criterion (the subject of the option right /option performance)

Annex 17 Confidentiality Agreement

Annex 18 Summary of detailed description of the activities which are not the subject-matter of performance

The Parties hereby declare that they have read this Contract and agree with its contents; in witness whereof, the Parties have hereunto set their hands.

In Prague, on In on

Ing. Mojmír Nejezchleb “[FOR CONTRACTOR TO COMPLETE]”

Deputy Director General

for Infrastructure Modernisation

Správa železnic, state organization

Annex 1

**Contractor Guidelines for ”RS 1 VRT Prosenice – Ostrava-Svinov, I. part, Prosenice – Hranice na Moravě“; Preparation of Preliminary Design Documentation“**

The annex is not firmly attached to the Contract; it is accessible at “[**FOR CLIENT TO COMPLETE THE LINK**]” and was attached to the tender documentation published on the client’s profile.

“THIS ANNEX IS NOT A MANDATORY PART OF BID/TENDER”

Annex 2

Terms and Conditions TC/IPF+DZD

(separate annex)

“THIS ANNEX IS NOT A MANDATORY PART OF BID/TENDER”

Annex 3

Technical conditions:

“THIS ANNEX IS NOT A MANDATORY PART OF BID/TENDER”

(a) Technical Qualitative Requirements for State Railway Structures (TQR for Structures)

The technical qualitative requirements for state railway structures (TQR for Structures) are not firmly attached to the Contract; they are available at http://typdok.tudc.cz and were attached to the tender documentation published on the client’s profile.

Signing this Contract the parties confirm that they are fully acquainted with the contents of the TQR for Structures and that, in accordance with Section 1751 of the Civil Code, the TQR for Structures form part of the content of the Contract. The TQR for Structures are binding for the Contractor with the application of the valid regulations specified in the relevant chapter of TQR for Structures.

(b) General Technical Conditions

(separate annex)

(c) Special Technical Conditions

(separate annex)

Annex 4

Breakdown of the Price for the Work

In accordance with Article 12.6 of the Guidelines the bid price may be stated only in the tender part related to the bid price of the contractor, which part shall be opened within the electronic tool of the contracting authority separately after the evaluation according to other evaluation sub-criteria (Articles 16.3 to 16.6 of the Guidelines). This is the two-envelope method in practice, in order to ensure the impartiality of the evaluation in other evaluation sub-criteria.

For this reason this annex is a separate document (or file) in the award procedure and is to be submitted as a separate document in the contractor’s bid/tender.

“THIS ANNEX is A MANDATORY PART OF BID/TENDER when completed by the contractor”

Annex 5

Time Schedule for Performance

“THIS ANNEX IS NOT A MANDATORY PART OF BID/TENDER”

[Contracting authority’s note: In detail and in accordance with other requirements of Article 18 of the Contractor Guidelines the **selected contractor** must not submit Annex 5 to the Contract to the contracting authority **until the cooperation stage prior to contract execution** in the meaning of Section 122(3) of the PPA. The annex must be prepared in accordance with the conditions pursuant to Article 5.4 of the STC – Annex 3c of the Contract]

Annex 6

Authorised Persons

“THIS ANNEX IS NOT A MANDATORY PART OF BID/TENDER”

On behalf of the Client

In contractual and business matters

|  |  |
| --- | --- |
| First name and surname | [FOR CLIENT TO COMPLETE] |
| Address | [FOR CLIENT TO COMPLETE] |
| Email | [FOR CLIENT TO COMPLETE] |
| Phone | [FOR CLIENT TO COMPLETE] |

In technical matters

|  |  |
| --- | --- |
| First name and surname | [FOR CLIENT TO COMPLETE] |
| Address | [FOR CLIENT TO COMPLETE] |
| Email | [FOR CLIENT TO COMPLETE] |
| Phone | [FOR CLIENT TO COMPLETE] |

On behalf of the Contractor

If multiple persons are authorised for the same title, the number of tables must match the number of the persons and a phrase “authorised to act for the Contractor” needs to be added to the person authorised to act for the Contractor.

In contractual and business matters

|  |  |
| --- | --- |
| First name and surname | [FOR CONTRACTOR TO COMPLETE] |
| Address | [FOR CONTRACTOR TO COMPLETE] |
| Email | [FOR CONTRACTOR TO COMPLETE] |
| Phone | [FOR CONTRACTOR TO COMPLETE] |

In technical matters

|  |  |
| --- | --- |
| First name and surname | **[FOR CONTRACTOR TO COMPLETE]** |
| Address | [FOR CONTRACTOR TO COMPLETE] |
| Email | [FOR CONTRACTOR TO COMPLETE] |
| Phone | [FOR CONTRACTOR TO COMPLETE] |

**"TO BE TRANSFERRED FROM THE BID/TENDER AND COMPLETED AS PER ARTICLE 8 OF THE TENDER DOCUMENTATION”**

Team leader

|  |  |
| --- | --- |
| First name and surname | **[FOR CONTRACTOR TO COMPLETE]** |
| Address | [FOR CONTRACTOR TO COMPLETE] |
| Email | [FOR CONTRACTOR TO COMPLETE] |
| Phone | [FOR CONTRACTOR TO COMPLETE] |

The persons authorised to act in contractual and business matters may conduct business and contractual negotiations for this Contract with the other party.

The persons authorised to act in technical matters may conduct technical negotiations for this Contract with the other party. They also may carry out the activities and acts as specified in this Contract.

Annex 7

List of Required Insurance Policies

“THIS ANNEX IS NOT A MANDATORY PART OF BID/TENDER”

The Client requires the Contractor to substantiate the following insurance in accordance with the Contract:

|  |  |
| --- | --- |
| TYPE OF INSURANCE | MINIMUM INSURANCE INDEMNITY AMOUNT |
| Liability insurance for damage caused by the Contractor in business operations to third parties | “[FOR CLIENT TO COMPLETE]”  *The insurance indemnity to equal the Price for the Work without VAT as per 5.1 of the Contract.* |

Annex 8

List of Qualified Persons and Subcontractors

“THIS ANNEX IS NOT A MANDATORY PART OF BID/TENDER”

**"TO BE TRANSFERRED FROM THE BID/TENDER AND COMPLETED AS PER ARTICLE 8 OF THE TENDER DOCUMENTATION”**

|  |  |  |
| --- | --- | --- |
| **Role/Name** | **Scope of Work** | **Person’s Relation with Contractor** |
| [TO BE COMPLETED BY THE CONTRACTOR] | [TO BE COMPLETED BY THE CONTRACTOR] | [TO BE COMPLETED BY THE CONTRACTOR] |
| [TO BE COMPLETED BY THE CONTRACTOR] | [TO BE COMPLETED BY THE CONTRACTOR] | [TO BE COMPLETED BY THE CONTRACTOR] |
| [TO BE COMPLETED BY THE CONTRACTOR] | [TO BE COMPLETED BY THE CONTRACTOR] | [TO BE COMPLETED BY THE CONTRACTOR] |
| [TO BE COMPLETED BY THE CONTRACTOR] | [TO BE COMPLETED BY THE CONTRACTOR] | [TO BE COMPLETED BY THE CONTRACTOR] |
| [TO BE COMPLETED BY THE CONTRACTOR] | [TO BE COMPLETED BY THE CONTRACTOR] | [TO BE COMPLETED BY THE CONTRACTOR] |
| [TO BE COMPLETED BY THE CONTRACTOR] | [TO BE COMPLETED BY THE CONTRACTOR] | [TO BE COMPLETED BY THE CONTRACTOR] |

**List of Subcontractors**

|  |  |  |
| --- | --- | --- |
| **CONTRACTOR IDENTIFICATION**  **(business name, registered office and ID number)** | **SUBCONTRACTED JOBS** | **SUBCONTRACT’S VALUE IN % OF CONTRACT PRICE** |
| [TO BE COMPLETED BY THE CONTRACTOR] | [TO BE COMPLETED BY THE CONTRACTOR] | [TO BE COMPLETED BY THE CONTRACTOR]% |
| **TOTAL%** | | [TO BE COMPLETED BY THE CONTRACTOR]% |

Annex 9

Related Documents

“THIS ANNEX IS NOT A MANDATORY PART OF BID/TENDER”

[Contracting authority’s note: In detail and in accordance with other requirements of article 18 of the Contractor Guidelines the **selected contractor** must not submit Annex 9 to the Contract to the contracting authority **until the cooperation stage prior to contract execution** in the meaning of Section 122(3) of the PPA.]

|  |  |  |
| --- | --- | --- |
| Document name | Ref. No.: | Date of issue |
| [FOR CLIENT TO COMPLETE] |  |  |
| [FOR CONTRACTOR TO COMPLETE] |  |  |

Annex 10

Authorisation of the Lead Contractor

“THIS ANNEX IS NOT A MANDATORY PART OF BID/TENDER”

**Annex 11**

**“Expert Level” Criterion Forms**

[Contracting authority’s note: This Annex 11 to the Contract is identical to Annex 9 to the Supplier Guidelines – “Expert Level” Criterion Forms. This **annex** to be prepared by the **contractor** and **submitted in his bid/tender** in the scope and subject to the conditions (including formal particulars) specified in Article 16.3 “Expert Level” of the Contractor Guidelines.]

**Annex 12**

**“Risk Identification and Management” Criterion Forms**

[Contracting authority’s note: This Annex 12 to the Contract is identical to Annex 10 to the Contractor Guidelines – “Risk Identification and Management” Criterion Forms. This **annex** to be prepared by the contractor and **submitted in his bid/tender** in the scope and subject to the conditions (including formal particulars) specified in Article 16.4 “Risk Identification and Management” of the Contractor Guidelines.]

**Annex 13**

**“Value Add (Inventiveness of the Contractor)” Criterion Forms**

**subject of the option right – option performance**

[Contracting authority’s note: This Annex 13 to the Contract is identical to Annex 11 to the Guidelines – “Value Add (Inventiveness of the Contractor)” Criterion Forms. This **annex** is to be prepared by the **contractor and submitted in his bid/tender** in the scope and subject to the conditions (including formal particulars) specified in Article 16.5 “Value Add (Inventiveness of the Contractor)” of the Contractor Guidelines.]

**Annex 14**

**Technical Details for the Proposals and Measures for the Accomplishment of**

**the “Expert Level’ Criterion’s Project Objectives**

[Contracting authority’s note: In detail and in accordance with other requirements of article 18 of the Contractor Guidelines the **selected contractor** must not submit Annex 14 to the Contract to the contracting authority **until the cooperation stage prior to contract execution** in the meaning of Section 122(3) of the PPA.]

**Annex 15**

**Technical Details for the Proposals and Measures for the Accomplishment of**

**the “Risk Identification and Management” Criterion’s Project Objectives**

[Contracting authority’s note: In detail and in accordance with other requirements of article 18 of the Contractor Guidelines the **selected contractor** must not submit Annex 15 to the Contract to the contracting authority **until the cooperation stage prior to contract execution** in the meaning of Section 122(3) of the PPA.]

**Annex 16**

**Technical Details for the Proposals and Measures for the Accomplishment of**

**under the “Value Add (Inventiveness of the Contractor)” Criterion (the subject of the right of option – option performance)**

[Contracting authority’s note: In detail and in accordance with other requirements of article 18 of the Contractor Guidelines the **selected contractor** must not submit Annex 16 to the Contract to the contracting authority **until the cooperation stage prior to contract execution** in the meaning of Section 122(3) of the PPA.]

**Appendix 17**

**Confidentiality Agreement**

**(with selected contractor)**

entered into on the day, month and year as given below, pursuant to Section 1746(2) of Act No. 89/2012 Coll., the Civil Code, as amended (hereinafter the “Civil Code”), and on the basis of Act No. 134/2016 Coll., the Public Procurement Act, as amended, (hereinafter the “Public Procurement Act”), by and between the following parties:

Správa železnic, state organization

having its registered office at Prague 1, Nové Město, Dlážděná 1003/7, Postcode 110 00

Company ID No.: 70994234, VAT NO.: CZ70994234

(hereinafter the “**Disclosing Party”**);

and

[ ]

with its registered office [ ]

Company ID No.: [ ]

(hereinafter the “**Receiving Party**”);

**RECITALS:**

1. Pursuant to Act No. 266/1994 Coll., on Rail Systems, as amended, and Act No. 77/2002 Coll., on the joint-stock company České dráhy and the state organisation Správa železnic, as amended, the Disclosing Party arranges the operation of the nationwide and regional railways owned by the Czech Republic, their operability, modernisation and development to the extent necessary to ensure the transport needs of the Czech Republic, its regions and transport services, thus meeting needs in the general interest, not having an industrial or commercial character.
2. With the support of the SNCF Group (represented by SNCF International, a limited liability company, registration number 415 238 179 RCS, registered office at 2 place aux Etoiles, 93 200 Saint Denis, France) (hereinafter the “**SNCF**”), the Disclosing Party has prepared a Design Manual for Planning Permit Procedure Documentation (Planning Permit Documentation stands for Preliminary Design/Documentation for Acquisition of the Zoning Decision) of High Speed Lines in the Czech Republic (hereinafter the “**Manual**”) and that Manual includes intellectual property of the Disclosing Party as well as that of the SNCF.
3. The Receiving Party is a company founded under the laws of [ ], operating in the field of building design.
4. The Disclosing Party wishes to develop high-speed lines in the Czech Republic (hereinafter the “**Project”**) and has started an award procedure to call for tenders and award a public contract for the preparation of an investment project file for the project “Reconstruction of the Hranice na Moravě Railway Station”, documentation for zoning decision for the high-speed line “RS 1 VRT Prosenice – Ostrava-Svinov, Part I, Prosenice – Hranice na Moravě” and the preparation of the EIA documentation for the high-speed line “RS 1 VRT Prosenice – Ostrava-Svinov, Part I, Prosenice – Hranice na Moravě”; Preparation of Zoning Decision Procedure Documentation (the “**Award Procedure**”);
5. During the Award Procedure the Disclosing Party judged the Receiving Party’s bid/tender as the most suitable bid/tender and therefore decided to enter into a contract with the Receiving Party for the subject-matter of the Award Procedure.
6. As a result the Disclosing Party will disclose to the Receiving Party the Manual, that is confidential and statute-protected for the purpose of the Project and for the Receiving Party to prepare and submit in due manner the subject of the Award Procedure (hereinafter the “**Work**”);
7. The disclosure of such information to the Receiving Party is subject to the conditions set forth herein.
   * + 1. **PURPOSE OF CONTRACT**

The Receiving Party acknowledges that for the purposes of preparing the Work, the Receiving Party will have access to certain Confidential Information (as defined below) and therefore agrees that any disclosure or provision of the Confidential Information under this Agreement is subject to the terms hereof.

Signing this Agreement the Receiving Party accepts the obligations described in more detail in this Agreement.

* + - 1. **DEFINITIONS**
  1. For the purposes of this Agreement “**Confidential Information**” means any information in any form (oral, documentary, magnetic, electronic, graphic or digitalised) containing or consisting of information or material of a technical, financial, operational, commercial, administrative or planning nature or intellectual property of any kind and related (in whole or in part) to the Manual, whether or not marked as “confidential”, “proprietary” or the like, in any language.
  2. “**Affiliate”** means any legal entity in which the Receiving Party holds directly or indirectly a share higher than 50% and also any subcontractor, financing entity or legal entity or person that has access to the Receiving Party’s Confidential Information for the purpose of executing the Work.

1. **OWNERSHIP**
   1. All Confidential Information made available under this Agreement may only be made available to the Receiving Party or its designated Affiliates in accordance with this Agreement and only for the purpose of executing the Work.
   2. All Confidential Information, including any copies and derivatives, made available to the Receiving Party under this Agreement remains the property of the Disclosing Party (and/or of the SNCF to some extent). No disclosure of Confidential Information under this Agreement or any disclosure of Confidential Information may be construed as the Receiving Party or its Affiliates to be granted any patent, trademark, copyright, design license or right of use for a purpose other than the execution of the Work.
2. **RIGHTS TO USE CONFIDENTIAL INFORMATION AND NON-DISCLOSURE OF CONFIDENTIAL INFORMATION**
   1. The Receiving Party undertakes and agrees to treat any Confidential Information made available to it under this Agreement as strictly confidential and only use the same for the purpose of execution of the Work.
   2. Any Confidential Information made available to the Receiving Party may only be used by the Receiving Party for purposes other than those arising from 4.1 subject to a prior written consent of the Disclosing Party. The Receiving Party must ensure that any third party which is given access to any Confidential Information for the purposes of executing the Work is bound by a similar obligation governing the protection of the Confidential Information as the Receiving Party.
   3. The Receiving Party undertakes and agrees not to make copies not permitted under this Agreement and not to provide third parties with any Confidential Information made available to it under this Agreement, except in the following cases:
3. The Receiving Party may disclose any Confidential Information to its officials and employees to the extent required by their obligations in connection with the execution of the Work, provided that such officials and employees are bound by a similar obligation in respect of Confidential Information protection, restricted use and non-disclosure, as well as the prohibition of Confidential Information disclosure that would result in disrupting the competitive position of the Disclosing Party or the SNCF.
4. For the purpose of the execution of the Work the Receiving Party may make Confidential Information available to any of its professional advisers, consultants, insurers and subcontractors if these are bound by a similar obligation in respect of Confidential Information protection, restricted use and non-disclosure, as well as the prohibition of Confidential Information disclosure that would result in disrupting the competitive position of the Disclosing Party or the SNCF. Such Confidential Information disclosure must be notified by the Receiving Party to the Disclosing Party in writing no later than 14 days in advance, and the Disclosing Party reserves the right to forbid such disclosure until supplied by the Receiving Party with evidence of objective need for such disclosure and with the scope of the confidentiality obligations of the affected professional advisers, consultants, insurers and subcontractors, and with how Confidential Information protection under (ii) of this clause is implemented.
   1. The Receiving Party must make every effort that can be reasonably expected from the Receiving Party and that is appropriate to the nature of the Confidential Information, or make such effort the Receiving Party would make in protecting its own confidential information, in order to ensure proper confidentiality and non-disclosure of the Confidential Information in relation to all persons (including its advisers, subcontractors and financing entities) to whom the Receiving Party discloses portions of the Confidential Information. The Receiving Party acknowledges that it is aware of the Confidential Information’s extraordinary importance to the Disclosing Party and the SNCF, and of the Confidential Information’s security significance and commercial sensitivity.
   2. Neither the Receiving Party nor the persons referred to in 2.2 and/or 4.3(i) and (ii) may in any way extract any part of the Confidential Information for reverse engineering or for any activity that would result in compromising the competitive position of the Disclosing Party or the SNCF. The Receiving Party must take all reasonable measures to prevent reverse engineering and any activity that would result in compromising the competitive position of the Disclosing Party or the SNCF and must notify those measures to the Disclosing Party and/or the SNCF upon request.
5. **RETURN OF CONFIDENTIAL INFORMATION**

If the contract for the execution of the Work is terminated or this Agreement is breached by the Receiving Party, the Receiving Party must, at the Disclosing Party’s request, promptly return all and any Confidential Information made available to it in physical form by the Providing Party or remove all and any illegal copies, extracts and derivatives created on the basis of the Disclosing Party’s Confidential Information in a manner that prevents recycling, and the Receiving Party must declare that all Confidential Information of the Disclosing Party has been destroyed.

1. **SCOPE AND APPLICATION**
2. This Agreement also applies to any Confidential Information that may have been made available by the Disclosing Party or the SNCF to the Receiving Party prior to the effective date of this Agreement, provided that the Confidential Information was made available for preparing the bid/tender for the Award Procedure or the execution of the Work and was identified as confidential.
3. This Agreement does not apply to any Confidential Information that:
4. is in the lawful possession of the Receiving Party prior to being first received by the Receiving Party (before, on or after the effective date hereof) from the Disclosing Party or the SNCF; or
5. after being received from the Disclosing Party or the SNCF, is independently and in good faith received by the Receiving Party from other third party without that third party having breached directly or indirectly by such disclosure any similar confidentiality obligation owed to the Disclosing Party or the SNCF; or
6. is or becomes (without any effort or non-performance by the Receiving Party) public domain, as evidenced in a printed publication or other document; or
7. is required by order of any government, public authority, regulatory authority, judicial or administrative authority or by law provided that such required disclosure is immediately notified to the Disclosing Party prior to the disclosure (if permitted by the legal regulations in force) so as to allow looking for suitable protection in relation to the Confidential Information disclosed. The Receiving Party must also make reasonable efforts to obtain assurance that the Confidential Information will be treated as confidential. The disclosure of the Confidential Information is only limited to that part of the Confidential Information which the Receiving Party is obliged to disclose.
8. The Disclosing Party states that the Receiving Party, with regard to its expertise in the field of preparing documentation for zoning decision procedures for railway structures, must properly assess the Confidential Information and notify the Disclosing Party of any part of the Confidential Information that may cause delays, additional costs or damage in the course of the Project or the execution of the Work.
9. This Agreement does not establish any partnership, joint venture or other such arrangement. This Agreement is for the sole purpose of protecting the Confidential Information.
10. **TERM**

This Agreement remains in effect for a period of 10 years of the date it is signed by the last party. The obligations of the Receiving Party under Article 4 above survive the termination hereof for a period of 15 years.

1. **DAMAGES** 
   1. The Receiving Party accepts and agrees that the Confidential Information disclosed to it in accordance with this Agreement constitutes valuable information, the unauthorised disclosure of which is likely to cause the Disclosing Party and/or the SNCF considerable harm and injury for which financial indemnity may be sought; this, however, is without prejudice to any other right of the Disclosing Party or the SNCF, given the nature of the Confidential Information.
   2. The Receiving Party confirms that it is aware of that the significance and extent of the harm pursuant to 8.1 may exceed the price for the Work, and of that both the Disclosing Party and the SNCF are entitled under general legal regulations to assert their claims against the Receiving Party jointly as well as completely separately.
   3. The Disclosing Party has the right to assert its claims in court, including the seeking of a preliminary ruling and other special procedural means of defence.
   4. Any unauthorised use or disclosure of the Confidential Information by any means must be immediately notified by the Receiving Party to the Disclosing Party once the Receiving Party learns of such unauthorised use or disclosure. In such a case the Receiving Party must cooperate with the Disclosing Party to assist it in eliminating any effects of the misuse of the Confidential Information and in preventing any further unauthorised use of the Confidential Information.
   5. The Receiving Party undertakes to pay the Disclosing Party a contractual penalty of CZK 11,914,999 excluding VAT for a breach of any confidentiality obligation in respect of the Confidential Information, and the Receiving Party considers this contractual penalty to be entirely appropriate in view of the importance of the know-how contained in the Manual. The payment of the contractual penalty is without prejudice to the obligation to pay full damages as per 8.1.
2. **COMMON PROVISIONS**
   1. **LICENCE PROVISIONS**

Neither this Agreement nor any Confidential Information disclosed under this Agreement may be construed as granting to or conferring on the Receiving Party any rights or licences, including licences for trademarks, inventions, copyrights or patents.

* 1. **WAIVER OF RIGHTS**

The omission or delay of the Disclosing Party in exercising any right or remedy under this Agreement or requiring strict performance of any provision hereof may not be construed by the other party as a waiver of any such right or remedy or any other right or indemnification. All rights of either Party under this Agreement are cumulative and may be exercised separately or concurrently.

* 1. **AMENDMENTS**

This Agreement may only be amended by written amendments signed by the Receiving Party and the Disclosing Party.

* 1. **GOVERNING LAW AND JURISDICTION**

This Agreement is governed and construed in accordance with the laws of the Czech Republic.

Any dispute which is not settled amicably within thirty (30) days of the date the dispute is notified will then be referred to competent courts with jurisdiction as per the registered office of the Disclosing Party.

* 1. **FORCE AND EFFECT**

This Agreement takes force on the date of execution by the last party and takes effect on the date of publication in the register of contracts and agreements in the meaning of Act No. 340/2015 Coll. regulating special conditions for effectiveness of some contracts or agreements, the publication of such contracts or agreements and the register thereof (the register of contracts and agreements act), as amended; the publication is the responsibility of the Disclosing Party.

|  |  |
| --- | --- |
| Signed for the Receiving Party | Signed for the Disclosing Party |
| Signature:  Name:  Title: | Signature:  Name:  Title: |

**Annex 18**

**Summary of detailed description of the activities which are not the subject-matter of performance**

[Contracting authority’s note: In detail and in accordance with other requirements of article 18 of the Contractor Guidelines the selected contractor must not submit Annex 18 to the Contract to the contracting authority until the cooperation stage prior to contract execution in the meaning of Section 122(3) of the PPA.]