

Annex 4 to the Tender Rules

DRAFT CONTRACT

No

For

**A STUDY ON CAPACITY IMPROVEMENT
OF THE EEIG "NORTH SEA - BALTIC RAIL FREIGHT CORRIDOR" EZIG**

concluded on 2017 in Warsaw

as a result of the procurement procedure for the development of a study to improve the capacity of the project "Establishment of Rail Freight Corridor „North Sea – Baltic“ and its further development aiming at improving conditions for international rail freight transport", in the CEF Action "Establishment of Rail Freight Corridor „North Sea – Baltic“ and its further development aiming at improving conditions for international rail freight transport", action number 2014-EU-TM-0217-S", under a request for proposals conducted in accordance with the Tender Rules on awarding the "sub-threshold" sector procurements and granted pursuant to Art. 136 of Polish Public Procurement Law, co-financed from EU funds, by and between:

European Economic Interest Grouping under the name of: EEIG "NORTH SEA - BALTIC RAIL FREIGHT CORRIDOR" EZIG, with its registered office in Warsaw, address: 74 Targowa Str., Warsaw (03-734) entered in the register of entrepreneurs maintained by the District Court for the capital city of Warsaw, XIII Commercial Division of the National Court Register under KRS number KRS 0000603675 NIP 1132903811 REGON 363805225, hereinafter referred to as the Contracting Party, represented by:

the Manager – Weronika Karbowskiak

and

_____ with its seat in _____, at _____
_____, Tax Id. No. (NIP): _____, Statistic No. (REGON)
_____, registered in _____ under the number _____,
hereinafter referred to as **the Contractor**, represented by:

1. _____
2. _____

The "Contracting Party" and the "Contractor" under this Contract shall be jointly referred to as **the "Parties"** and individually as **the "Party"**.

Part I

§ 1

DEFINITIONS

The terms used in this Contract shall have the following meaning:

- 1) **the Contracting Party** - EEIG "NORTH SEA - BALTIC RAIL FREIGHT CORRIDOR" EZIG, seated in Warsaw at 74 Targowa Str.

- 2) **the Contractor** - a legal or a natural person, as well as an organizational entity with no legal personality, with whom the Contracting Party concluded a Contract following the performance of a public procurement procedure under a request for proposals for a study on capacity improvement within the framework of the project entitled "Establishment of Rail Freight Corridor „North Sea – Baltic“ and its further development aiming at improving conditions for international rail freight transport", action number 2014-EU-TM-0217-S in the CEF Action". The provisions concerning the Contractor shall apply accordingly to the Contractors jointly applying for the procurement (the consortium).
- 1) **the Contract** – this Contract and its Annexes, which form an integral part of the Contract, comprises a consistent statement of intent of the Contracting Party and the Contractor, expressed in writing, to perform the procurement, specified in its content, within an indicated time limit and for an agreed remuneration, which was concluded following the public procurement procedure under a request for proposals.
- 2) **the Offer** - the obligation of the Contractor to perform the subject matter of the Contract for a specified price, submitted to the Contracting Party in writing in the public tender, in accordance with the requirements of the Contracting Party determined in the Specification of Essential Terms.
- 3) **Remuneration** - the lump sum specified in the tender submitted in the framework of the Contract award procedure in an open tender, as the remuneration that is to be paid to the Contractor for the performance of the subject matter of the contract in accordance with the provisions of the Contract.
- 4) **the Certificate of Delivery** - the document confirming, that the Contractor delivered the whole or part of the subject matter of the contract for the purpose of verifying and substantial assessment conducted by the Contracting Party.
- 5) **Milestone completion certificate/final acceptance certificate** – the document confirming that the Contractor delivered the whole or part of the subject matter of the Contract, in accordance with the provisions of the Contract, signed by the authorized representatives of the Contracting Party. The acceptance certificate specifies among other the date of performance of the whole or part of the Contract.
- 6) **Material and Financial Schedule** - the statement constituting Annex No. 2A to this Contract, including the time limits of the execution of individual parts and types of work defined in the subject matter of the procurement, specifying the price for the above-mentioned parts and works.
- 7) **Managing Authority** – Innovation and Networks Executive Agency (INEA)
- 8) **Defect** - any natural or legal defect within the meaning of the Act of 23 April 1964 of the Polish Civil Code (consolidated text, Journal of Laws of 2016, item 380 as amended) as well as a flaw within the understanding of the Act on Copyright and Related Rights, namely of 29 April 2016 (Journal of Laws of 2016 item 666) arising from the non-performance of the subject matter of the Contract or of its parts or the performance of the subject matter of the Contract or of its parts contrary to its purpose, description of the subject matter of the procurement or other documents of the Contract, as well as provisions of the law or the principles of technical knowledge.
- 9) **The starting date of performance of the Contract** - the time limit specified in the Contract,

from which the Contractor commences the performance of the subject matter of the Contract.

- 10) **The execution of the subject matter of the Contract or its stage** - time limit agreed on in the Contract to perform the subject matter of the Contract or its parts.
- 11) **The date of the completion of the Contract or its stage** - the date of signing by the Contracting Party the final acceptance certificate or the acceptance certificate of the completion of the stage of the Contract.
- 12) **Modification** - any alteration in the performance of the subject matter of the Contract specified by the Contracting Party to the Contractor in writing or approved by the Contracting Party in writing.
- 13) **Working days** – any day from Monday to Friday, excluding statutory Polish holidays.

Part II

§ 2

SUBJECT MATTER OF THE CONTRACT

The Contracting Party orders and the Contractor undertakes to develop a study on capacity improvement within the framework the project "Establishment of Rail Freight Corridor „North Sea – Baltic“ and its further development aiming at improving conditions for international rail freight transport", action number 2014-EU-TM-0217-S in the CEF Action”, in accordance with the content of the bid submitted by the Contractor of 2018 r., constituting Annex 2 to this Contract. The Terms of Reference ("ToR") constitutes the Annex 1 to this Contract.

§ 3

LIMITATION OF THE SUBJECT MATTER OF THE CONTRACT

1. In the case of limitations imposed by the Managing Authority concerning the funds allocated to the Contracting Party for the performance of the Contract, the Contracting Party may, without any negative financial consequences limit the scope of the ordered design developments.
2. The Contracting Party shall notify the Contractor about the intention to limit the subject matter hereof in writing within 30 days from the date of becoming aware of the limitation of financial resources or the occurrence of other circumstances justifying such decision.
3. In the cases referred to in § 3.1, the Contractor shall be entitled only to the remuneration due for the performance of the part of the Contract.

§ 4

COMMUNICATION

Any form of correspondence between the Parties to this Contract shall be made in writing or otherwise shall be considered null and void. All statements, notices or other forms of information shall be communicated by either party alternatively:

- by a registered letter or
- e-mail to the following addresses:

for the Contracting Party:

Weronika Karbowskiak

EEIG "NORTH SEA - BALTIC RAIL FREIGHT CORRIDOR" EZIG

74 Targowa Str., 03-734 Warsaw, Poland

weronika.karbowskiak@rfc8.eu

for the Contractor:

.....

or to any address indicated by the Party, provided it is made in writing. In the case of a change of the address indicated above, the Party whose address has been changed shall notify the other Party of the above without unnecessary delay, concurrently declaring the current mailing address.

§ 5

DATE OF THE CONTRACT PERFORMANCE

The Parties agree on the following time limits of the performance of the Contract conducted by the Contractor:

- 1) Date of the commencement of the Contract subject matter performance – the date of the signature of the Contract;
- 2) Deadline for executing the subject of the Contract – **15 months** from the date of the commencement of the Contract performance;

§ 6

REMUNERATION AND PAYMENT TERMS

1. The Parties agree that the remuneration payable to the Contractor for the performance of all the obligations incumbent on him, under this Contract, including the implementation of the subject matter hereof in accordance with its provisions is:
 - 1) Net remuneration (excluding VAT):
EUR,
(in words:),
 - 2) VAT:
..... EUR
(in words:),
according to the VAT rate, 23%
 - 3) Gross remuneration (including VAT):
.....EUR
(in words:),
2. The value-added tax (VAT) by the applicable rate will be paid from the own financial resources of the Contracting Party and will be qualified as the non-eligible cost, while in the case of a foreign Contractor, who is not registered in Poland, the value-added tax will be settled by the

Contracting Party in accordance with the provisions of the Polish Act of 11 March 2004 on tax on goods and services (Journal of Laws of 2016 item 710, as amended).

3. The remuneration in § 6.1, has been fixed to the end of the term of the Contract and is not subject to any changes, with the exception of § 6.1, 11, 17 and § 3.3 .
4. Payment for the performance of the obligations envisaged in § 6.1, shall be made:
 - 20% after the concept study
 - 30 % after intermediate report delivered by the contractor, not later than 9 months from the date of the contract signing;
 - 50% after approval of the final report delivered within 18 months of the signing of the contract.
5. Payments the Contractor shall be made in EUR to the bank account number..... in the bankSWIFT The Contractor shall notify the Contracting Party each time by a separate letter on any changes in the account indicated by the Contractor on the previous invoice.

The Contractor is obliged to issue an original invoice on the template approved by the Contracting Party. The invoice together with the set of Annexes will be delivered to EEIG "NORTH SEA - BALTIC RAIL FREIGHT CORRIDOR" EZIG, Targowa Str. 74, 03-734 Warsaw.

6. The content of the invoice shall indicate the number of this Contract and the CEF Action number.
7. The Contractor declares that they are / are not¹ active payers of value added tax (VAT), authorized to issue invoices.
8. The Contractor shall submit the statement of the Contractor and sub-contractors (signed in accordance with the principles of representation) to each of the invoice, except the first one, stating that all invoices receivable from subcontractors, of which the payment deadline expired over the period covered by the invoice, has been paid.
9. The Contractor shall submit to the Contracting Party all the relevant statements of the Contractor and subcontractors (signed in accordance with the principles of representation), within 60 days from the date of the issuance of the last invoice, declaring that all due invoices for the performance of the Contract have been paid.
10. The basis for the issuance the partial invoice and the final invoice by the Contractor shall be the acceptance certificate, referred to in § 7 of this Contract, drawn up for the phases specified in the Material and Financial Schedule, signed by the authorized representatives of the Contracting Party. If the Contractor fails to rectify the faults found both at the process of acceptance of each of the stages or in the final acceptance certificate, the Contracting Party is entitled to withhold 20% of the amount indicated on the invoice for the stage / invoice issued after the signing of the final acceptance certificate until all the faults identified in the certificates are removed. The interest of the withheld payment will not be paid to the Contractor.
11. If the Contracting Party rescinds the Contract, the Contractor shall be entitled to part of the remuneration in proportion to the advancement of the works performed, which have been specified in the inventory certificate in relation to the remuneration referred to in § 6.1.

¹ Delete as appropriate

12. The payment for the performance of the subject matter of the Contract referred to in in § 6.1, or part hereof will be regulated in the form of a credit transfer from the account of the Contracting Party to the account of the Contractor within 30 days from the date of receipt by the Contracting Party the properly-issued VAT invoice with the copy of the acceptance certificate.
13. The date of payment is the date on which the Contracting Party's account is debited.
14. Interest for late payments will be calculated according to the applicable statutory interest determined by the Polish Council of Ministers in the statutory interest rate regulation published in the Journal of Laws. Interest for late payment will be applied until the time elapses between the date of the final payment date (only) and the date of debiting the Contracting Party's account (inclusive).
15. Payment of interest will be made on the basis of the interest note issued by the Contractor.

§ 7

ACCEPTANCE

1. Each time, the transfer of the documentation, which is the subject matter of the Contract will be handed over at the head office of the Contracting Party, within the time limits determined in the Tender Rules.
2. The certificate of delivery, signed by the two Parties, will be the document confirming its submission to the Contracting Party for the purpose of checking and evaluating each stage of the subject matter of the Contract.
3. If the Contracting Party decides that the submitted documentation has been prepared improperly, which disqualifies it due to its intended use, i.e. the documentation is unusable, its contents are expressly contrary to the Contract both partially or wholly, the Contracting Party shall notify the Contractor of the fact in writing, and the latter shall, within the indicated time limit (no longer than 14 days) provide the amended documentation which will be in accordance with the recommendations of the Contracting Party.
4. Upon receipt of the notification, the Contractor is entitled to the written reply to the obligations presented by the Contracting Party.
5. Upon receipt of the explanation from the Contractor, the Contracting Party, within 7 calendar days, shall make a final decision on the scope of the required amendments.
6. The activities referred to in § 7.4 do not extend the time limit referred to in § 7.3, which has been indicated for the correction to be made.
7. The extension of the time limit referred to in § 7.3 shall occur when the Contracting Party makes a final decision, which is referred to in § 7.5 within the time longer than 3 calendar days – by the time by which making of the final decision by the Contracting Party was extended.
8. The milestone completion certificate, drawn up and signed by the authorized representatives of the Contracting Party, will be the document confirming that the Contracting Party accepted each stage of the Contract.
10. If any fault are found in the submitted documentation the Contracting Party shall indicate in the milestone completion certificate both the faults and the time limit, within which the Contractor is obliged to amend the documentation in accordance with the recommendations of the Contracting Party

11. The Contractor undertakes to deliver the individual documentation that is the subject matter of the Contract in the amount of complete copies specified in the ToR.
12. If prior to the receipt of the individual stages of the subject matter of the Contract, a change in both national and European Union law is effected as well as in regulations and standards or other provisions, or a change of the provisions will be published in the Journal of Laws, which will affect the execution of the unaccepted part of the subject of the Contract, the Contractor shall adapt this part of the Contract to the applicable laws, which have been published in the Journal of Laws. If the aforementioned change of law was foreseeable before the date of the submission of bids in the procedure (e.g. the status of the legislative process was known), then the Contractor shall adapt the required part of the procurement to the legal provisions which are applicable and have been published in the Journal of Laws free of charge.

§ 8

SUPERVISION OF THE PROPER EXECUTION OF THE CONTRACT

1. The persons supervising the proper execution of the Contract are:

for the Contracting Party:

- 1) Weronika Karbowski EEIG “North Sea – Baltic Rail Freight Corridor” EZIG
- 2) Rimantas Kuliesius Working Group Infrastructure Leader

for the Contractor:

- 1) _____
 - 2) _____
2. Each Party declares that the persons representing them have been authorized by the Party to perform the activities related to the execution of the subject matter of the Contract. The persons listed in § 8.1 have not been authorized to make declarations of will on behalf of the Parties subject to section 3 below.
 3. Each person is entitled to act independently with the provisions that to perform activities related to their reception, including the confirmation of the certificate of delivery and the acceptance certificate with the signature, it is necessary to effect a total of at least 2 persons representing the Contracting Party and one person on behalf of the Contractor.
 4. In the absence of the persons indicated in § 8.1, to perform the activities referred to in § 8.2 and § 8.3 they are to be replaced by the persons entitled. The authorization to perform the activities referred to in § 8.2 and § 8.3 concerning the replacing persons, referred to in § 8.1, should be made in writing under pain of nullity, by the persons authorized to make declarations of will on behalf of the Parties.

§ 9

OBLIGATIONS OF THE CONTRACTOR

1. The Contractor undertakes to perform the subject matter of the Contract with due diligence, technical expertise, technical standards and other laws in force at the date of the submission of the documentation.
2. Documentation should be complete in terms of the objective which it is intended for.
3. In its content, the documentation may not specify either the technology works, materials and equipment or conditions of the participation in the tender procedure which would hinder fair competition.
4. The Contractor declares that neither they nor their subcontractors, or their staff shall engage, for the duration of the Contract, directly or indirectly, in any economic or professional activity that would conflict with their obligations encumbered on them under this Contract. The Contractor shall be liable to the Contracting Party for the damage caused to the Contracting Party by the persons referred to in the preceding sentence as a result of the violation of the provisions of this section.
5. The subject of the procurement will be the basis for the further activities performed by the Contractor within the framework of the future investment project, including the activities related to applying for the co-financing of the project. For the above reasons, the Contractor is obliged to provide answers and explanations to all questions of the Contracting Party concerning the subject matter of the procurement for the whole duration of the warranty referred to in § 13 of the Contract within 7 days from the date of receipt of the request.

§ 10

COPYRIGHT

1. The Contractor declares that:
 - 1) at the time of delivery of the subject matter of the Contract or its part, as confirmed by the certificate of delivery, the Contracting Party shall be entitled in full and exclusively to the economic copyrights and rights related to the documentation which constitutes the subject matter of the Contract;
 - 2) there are no restrictions that prevent the Contractor from the transfer of economic copyrights and rights related to the subject matter of the Contract to the Contracting Party with respect to the extent described in section 1 above.
 - 3) the economic copyrights and rights related to the subject matter of the Contract or its part are not and will never be not be the subject of a lien or other rights of third parties and will be transferred to the Contracting Party without any restrictions;
 - 4) the transfer of economic copyrights and subsidiary rights to the Contractor will not be made later than the date of submission of subject matter of the Contract or its part to the Contracting Party in the form of the certificate of delivery;
 - 5) If new areas of the operation of the subject matter of the Contract shall emerge, which have not been known at the time of concluding this Contract, the Contractor shall enter into negotiations with the Contracting Party regarding the terms and conditions governing the transfer of exploitation rights of the subject matter of the Contract in these areas.

2. Upon the acceptance of the subject matter of the Contract any part thereof, through the certificate of delivery, by the Contracting Party, the Contractor shall transfer, unconditionally and exclusively within the framework of remuneration specified in § 5 of the Contract, all vested economic copyrights and subsidiary rights to the subject matter of the Contract, with no additional statements made by the Parties in this respect and with no additional charge. At the same time the ownership of all copies of the subject matter of the Contract shall be transferred to the Contracting Party, which will be provided to the Contracting Party pursuant to the provisions of this Contract and any media on which they have been fixed.
3. The Contracting Party, upon having the economic copyrights and subsidiary rights to the subject matter of the Contract transferred upon him, shall be able to use it fully or partly, in particular on the following areas of use:
 - 1) unlimited recording and reproduction by photocopying, slides, computer reproductions;
 - 2) unlimited recording and reproduction with the printing technology (printing);
 - 3) unlimited recording and reproduction with the digital technology;
 - 4) marketing;
 - 5) lending or lease;
 - 6) entering into computer memory;
 - 7) exhibition;
 - 8) making them available to contractors or other entities of private and public law;
 - 9) multiple use for investment execution,
 - 10) multiple use to develop and implement a technical project with bills of quantities and investment cost estimates or other technical and construction documentation;
 - 11) processing;
 - 12) editing, altering, modifying, retouching, editing of the work without the author's consent and without the obligation to pay additional remuneration;
 - 13) publication of a part or the whole in any form in the public space and the Internet.
4. The provisions of the foregoing sections shall apply mutatis mutandis to any amendments to the documentation that is the subject matter of the Contract under copyright supervision carried out during the execution of works covered by the documentation of the subject matter of the Contract.
5. As part of the execution of subsidiary rights, the Contracting Party has the right, either independently or by third parties, to develop and change works, to use works and their modifications, and to dispose of these works together with the modifications.
6. In the event of any third party acting against the Contracting Party, with a claim for copyright infringement and subsidiary rights, whether personal or property ones, the Contractor:
 - 1) assume full liability for the occurrence and all the consequences of the above events;
 - 2) If the case is referred to the court, will join the Contracting Party and cover all costs related to the Contracting Party's participation in court proceedings and possible enforcement proceedings, including the costs of legal proceedings;
 - 3) will bear all costs associated with possible coverage of property and non-property claims related to the infringement of property copyrights or personal claims of the person or

persons claiming them.

7. Each copy of the subject matter of the Contract will contain a statement, constituting **Annex 3** to this Contract, of the person designated as the creator of the Contract, who has transferred to the Contractor exclusive and unconditional property copyrights and related rights to the documentation and the Contractor's statement constituting **Annex 4** to this Contract.
8. The Contractor undertakes that not later than on the day of transferring to the Contracting Party the property copyright and related rights to the works:
 - 1) will obtain the assurance of the creators of the works that they will not perform their copyright to these works in relation to the Contracting Party or its successors.
 - 2) will obtain the authorization of the artists to perform on their behalf copyright to the works and to transfer that right to a third party.
9. The Contractor undertakes that not later than on the day of transferring to the Contracting Party the property copyright and related rights to the works will authorize the Contracting Party to exercise his or her own copyright to the work.

§ 11

CONTRACTUAL PENALTIES

1. The Contractor shall pay contracting penalties to the Contracting Party:
 - 1) in the event of delay in performance of particular stages of the subject matter of the Contract - 0,5% of the net remuneration for each part of the procurement (Stage), for each commenced day of delay in relation to the deadline specified in the Terms of Reference.
 - 2) in case of termination of the Contract for reasons attributable to the Contractor - 30% of the net remuneration specified in § 6.1.1 of the Contract;
 - 3) for delay in the removal of faults found in the warranty period - in the amount of 0.02% of the net remuneration specified in § 6.1.1 of the Contract, for each commenced day of delay, counted from the expiry of the time limit set for the removal of the fault;
 - 4) for delivering the electronic version of documentation that differs in any substantive respect from its counterparts in paper form - 0.2% of the net remuneration specified § 6.1.1 of the Contract, for each identified discrepancy;
 - 5) for any delay in the removal of defects in the documentation found at the time of receipt / indicated in the acceptance certificate - 0.2% of the net remuneration for each part of the procurement, for each commenced date of delay in relation to the date indicated by the Contracting Party;
2. The Contracting Party may pursue general damages exceeding the amount of the contractual penalty, when the damage incurred exceeds the amount of the accrued contractual penalties.
3. The Contractor agrees to have the contractual penalties deducted by the Contracting Party from the Contractor's net remuneration they are entitled to.
4. The Contracting Party may withhold the enforcement of contractual penalties for the delay in the execution of the individual stages, referred to in § 11.1.1 if the Contractor submits to the Contracting Party a guarantee of payment of contractual penalties. The Contractor shall obtain the approval of the content of the guarantee by the Contracting Party prior to its submission. If the Contractor performs the subject matter of the Contract within the time limit specified in

the Contract / Material and Financial Schedule, then the Contracting Party may waive the enforcement of the contractual penalty.

5. Contractual penalties may be charged independently of one another.
6. The total amount of the charged contractual penalties, specified in § 11.1, shall not exceed 30% of the net remuneration specified in § 6.1.1.
7. In the event of non-performance or improper performance of the Contract, the Contracting Party may, after prior notification to the Contractor, have the defect rectified or the completion of the Contract performed by a third party at the Contractor's expense and the Contractor agrees to cover any damage caused by improper performance of the Contract and to change the Contractor to a third party.

§ 12

WITHDRAWAL FROM THE CONTRACT

1. The Parties acknowledge that the subject of the Contract is divisible. The Contracting Party is entitled to withdraw from the Contract in whole or in part in the event of at least 30 days of delay on the part of the Contractor in the execution of any Stage specified in the Material and Finance Schedule or to withdraw from the Contract in whole or in part in the event of at least 30 days of delay of the Contractor in the execution of any Stage specified in the Material and Finance Schedule after the additional 14 day deadline for the execution of the Stage is previously determined.
2. The Contracting Party will, within 30 days of the date of this Contract, have the right to withdraw from the unexecuted part of the Contract in the following circumstances:
 - 1) seizure of the Contractor's property, which makes execution of the Contract impossible;
 - 2) when the total sum of the contractual penalties exceeds 29% of the net remuneration specified in § 6.1.1 of the Contract;
3. A statement of withdrawal referred to in § 12.2 may be submitted within 30 days from the date of becoming aware of the circumstances giving rise to withdrawal from the Contract.
4. The Contractor is obliged to promptly notify the Contracting Party, however not later than within 7 Business Days after the Contractor has received information about the occurrence of the events described in § 12.2, under the threat of withdrawal by the Contracting Party from the Contract for reasons attributable to the Contractor.
5. In the event of withdrawal from the Contract pursuant to § 12.2.2 of the Contract, the Contracting Party does not charge the contractual penalty referred to in § 11.1.2 of the Contract.
6. In the event of withdrawal from the Contract, the Contractor will draw up with the Contracting Party's participation a Stocktaking Report drawn up on the day of the withdrawal.
7. In the Report, referred to in sec. 6, the Parties will define the work performed by the Contractor and accepted by the Contracting Party in accordance with the provisions of this Contract. The Contractor is entitled to a portion of the Remuneration for Stages fully completed and accepted by the Contracting Party without reservations, for which due performance of the Stages has been confirmed by the Stage Acceptance Report, in the amount corresponding to the remuneration for such work as specified in the Material and Financial Schedule.

8. In the event of a significant change in the circumstances causing that the performance of the contract is not in the public interest, which could not have been foreseen at the time the contract was concluded, or continued performance of the contract may jeopardize the material interest of State security or public safety, the Contracting Party, within 30 days of the date of conclusion of the contract - may withdraw from the contract. The statement of withdrawal referred to in the preceding sentence may be submitted within 30 days of the date of becoming aware of the circumstances giving rise to withdrawal from the Contract. In such case, the Contractor may only demand the remuneration due for the performed Stages, the due performance of which has been confirmed by the Stage Acceptance Reports.

§ 13

WARRANTY

1. The Contractor is liable towards the Contracting Party for defects in the documentation being the subject of the Contract reducing its value or usefulness in view of the purpose indicated in the Contract and resulting from the purpose of the documentation.
2. The Contractor provides warranty for defects in the documentation, which constitutes the whole subject of the Contract, for a period of 36 months from the date referred to in § 13.3.
3. The warranty period begins on the date of the signing by the Contracting Party of the Final Acceptance Report
4. In case of receiving incomplete or defective documentation, the Contracting Party, in exercising the rights under the warranty, may demand removal of defects within a time limit set by them, irrespective of the amount of related costs, within the net remuneration.
5. If the Contractor does not remove the defects within the time specified by the Contracting Party, the Contracting Party, after prior notice to the Contractor, will order to have them removed by a third party at the Contractor's expense, to which the Contractor agrees.
6. Independent of the entitlements set forth in § 13.4-5, the Contracting Party is entitled to demand redressing the damage incurred.
7. The Contracting Party will notify the Contractor of the defects found in the subject of the Contract within 7 working days of their disclosure.
8. In the event of withdrawal from the Contract, the provisions of § 14 will apply to the extent in which the Contracting Party has accepted the subject matter of the Contract. Warranty starts on the date of transfer of the last part / stage of the subject matter of the contract.

§ 14

INFORMATION CONFIDENTIALITY

1. The contract is open and available to the public in accordance with the Polish provisions of access to public information.
2. The Parties to the Contract and the persons employed by the Parties to this Contract undertake to keep confidential and not disclose to third parties information obtained in the execution of this Contract, in particular information that is a business secret.
3. The Parties undertake to observe, in the execution of the Contract, all provisions contained in the applicable legal provisions relating to the protection of information subject to protection.

4. Use of the data and information referred to in § 14.2 for purposes other than those specified in the Contract, as well as their publication, is not permitted without the prior written consent of the other Party.
5. The obligation set out in § 14.2 does not apply to information commonly known and to information provided under mandatory law, and in particular at the request of a court, public prosecutor's office, tax authority or control body.
6. Information will not be considered confidential information that:
 - 1) are or will become public information in circumstances not arising out of the unlawful or infringing act of the other Party to the Contract; or
 - 2) are already known to the receiving Party, as evidenced by reliable evidence, or
 - 3) are approved for distribution on the basis of a prior written consent of the Disclosing Party, or
 - 4) will be transferred to the receiving Party by a natural person or legal entity that is not a Party to the Contract in accordance with the law, without limitation and without prejudice to the provisions of the Contract.
7. Each Party will use due diligence to prevent third parties from disclosing or exploiting confidential information from other Parties. Each Party undertakes to restrict access to confidential information only to those employees or associates of the Party to whom such information is necessary to carry out activities for the benefit of the other Party and who have accepted the obligations under the Contract.
8. The Parties undertake to apply technical and organizational safeguards in order to protect the information referred to in § 14.2, at the level appropriate to the threats present and to inform each other about incidents of breaches of the information protection rules referred to in sec. 2 and measures taken to prevent the negative consequences of the loss of confidentiality, availability, or integrity of the information subject to protection under the provisions of this Contract and the measures taken to prevent similar incidents in the future.
9. The Contractor shall be liable for the persons who carry out the tasks entrusted to them on its behalf, in particular for damage caused by act or omission of these persons and for the confidentiality of the information referred to in § 14.2, taken in connection with the implementation of this Contract.
10. Given the type and scope of services provided by the Contractor, the Parties conclude on the day of signing the Contract, a confidentiality Contract, which constitutes **Annex No. 5** to the Contract. In case of delaying by the Contractor the signing of the confidentiality Contract, the Contractor shall withhold the information provided by the Contractor constituting business secrets within the meaning of the Polish Act of 16 April 1993. on counteracting unfair competition (Journal of Laws of 2003), No. 153, item 1503 as subsequently amended) and the entrepreneur's secret within the meaning of the Polish Act of 6 September 2001 on access to public information (Journal of Laws of 2016, item 1764). In such case, all risks associated with the Contracting Party's refusal to submit the above information to the Contractor shall be borne by the Contractor.

§ 15

SUBCONTRACTORS

1. The Contractor may entrust the performance of a part or all of the subject matter of the Contract with Subcontractors.

2. Entrusting a part of the subject matter of the Contract with Subcontractors may only take place after obtaining a written consent of the Contractor, subject to the part of the order that was allocated to be subcontracted and listed in Annex No. 7 to this Contract, if it has been submitted.
3. If the change or resignation from the services of the Subcontractor concerns the entity to whose resources the Contractor referred, in accordance with the provisions of Article 6.3 of the Tender Rules related to granting of "subthreshold" sectoral orders and granted on the basis of art. 136 of PZP, co-financed from the EU funds, to demonstrate compliance with the conditions for participation in the proceedings, the Contractor is obliged to demonstrate to the Contracting Party that the proposed other subcontractor or the Contractor independently meets them in a degree no less than required during the procurement procedure.
4. Ordering the execution of a part of the subject of the Contract does not release the Contractor from liability for the performance of this part of the subject of the Contract.
5. The Contractor will be fully responsible for the actions and omissions of the subcontractors.
6. Subcontracting does not create any contractual relationship between the Contracting Party and any of the Subcontractors and, in particular, liability for payment of remuneration for the performed actions to the Subcontractors.
7. The Contractor is obliged to present a copy of the contract with a Subcontractor confirmed for conformity with the original at every request of the Contracting Party.
8. The Contractor commits to include in the contract with a subcontractor provisions according to which withdrawal from the contract of any of the parties is only possible in respect of the non-executed part of the Contract.

§ 16

FORCE MAJEURE

1. For the purpose of the Contract, "Force Majeure" means an event the occurrence of which is independent of the Parties and which cannot be prevented with due diligence, in particular: wars, extraordinary states, natural disasters, epidemics, constraints related to quarantine, embargo, revolutions, riots, and strikes.
2. For the duration of the Force Majeure, the obligations of the Party which is unable to perform a given obligation due to the operation of Force Majeure will be suspended.
3. A Party to the Contract that delays its performance under this Contract due to the operation of Force Majeure is not liable to loss of performance bond, contractual penalties, or termination for failure to comply with the contractual obligations.
4. Each Party shall be obliged to promptly notify the other Party of the occurrence of Force Majeure. Unless otherwise noted in writing by the other Party, the Party that made the notification shall continue to perform its obligations under the Contract to the extent practicable and shall take all alternative measures to fulfill the Contract, which are not withheld by the Force Majeure event.
5. In the event of the cessation of Force Majeure, the Parties shall promptly commence realization of their obligations under the Contract.

§ 17

DISPUTE RESOLUTION

1. The Contracting Party and the Contractor will endeavor to resolve any disputes arising between them and arising out of or in indirect or direct connection with this Contract by direct negotiation in accordance with the principles set out in this section.
2. Disputes will be resolved each time by a committee which composition will be jointly appointed by the Parties to the Contract. The Committee will consist of a fixed number of representatives of the Contracting Party and the Contractor, however, no more than 4 persons from each of the Parties. The Committee may also consist of persons who are directly involved in the realization of the Contract.
3. In the event of a dispute, each Party shall, after the establishment of the Committee, referred to in sec. 2 above, transfer a written standpoint on the dispute, along with a description of how to resolve it. A copy of the letter referred to in this section must be forwarded simultaneously to the Committee and the other Contracting Party.
4. The Committee has the right to demand from each of the Contracting Parties, additional explanations or presenting additional documentation, if it is necessary to properly explain all the circumstances relevant to the resolution of the dispute.
5. Within 30 days, the committee will agree on the manner of settling the dispute arising between the Parties, which will contain a justification or state no possibility to agree it.
6. Each Party may refer the dispute to court proceedings. The competent court is the court indicated in § 19.5 of the Contract.

§ 18

AMENDMENT OF THE CONTRACT

1. An amendment of provisions of the Contract in relation to the contents of the Contractor's bid on the basis of which they have been chosen may be made in the event of one of the following circumstances and to the extent set out below:
 - 1) If the VAT rate is changed, the Contract price will be changed to the level corresponding to the VAT rate change (+/-).
 - 2) In the event that during the execution of the Stage/Contract, circumstances arise related to the change of the right referred to in § 6 sec. 12, and it will be necessary to make changes to the executed part of the Stage/Contract, if the change consequently affects the critical path of the entire Contract and/or Stage, it is possible in particular to change the deadline for the execution of the Stage and/or Contract acc. to the necessary, realistic time for the order fulfillment.
 - 3) In the event of a change of the assumptions during realization of the Contract, e.g. in connection with new investment plans, new economic forecasts, if the introduced changes consequently affect the critical path of the entire Contract, it is possible, in particular, to change the deadline for execution of the Stage and/or Contract according to the necessary, realistic time for making the changes.
 - 4) In the event of a change in the guidelines and instructions of the parent institutions in the structure of European Funds management and/ or the need to change or prepare other analyses specified in the TOR as a result of other institutions' requirements, if the change will

affect the critical path of the entire Contract and/or Stage - it is possible in particular to change the deadline for execution of the Stage and/or the Contract according to the necessary, realistic time to make the changes.

- 5) Other changes due to the following circumstances:
- a) Force Majeure preventing execution of the subject matter of the Contract in accordance with the Tender Rules, subject to § 16 defining the Force Majeure;
 - b) when there is another legal, economic, or technical condition unforeseeable at the time of the Contract's conclusion, for which neither party is liable, resulting in the inability to properly fulfill the Contract in accordance with the Tender Rules;
 - c) in case of prolongation of procedures related to making of a decision by the Contracting Party related to further continuation of the project.
- In the event circumstances mentioned above § 18.5 arise, it is possible in particular to change the date or manner of execution of the Stage and/or the Contract.

§ 18

FINAL PROVISIONS

1. The Parties agree that the contractual rights or obligations of the Contractor may not be transferred onto any third parties without the prior consent of the Contracting Party expressed in writing and if made otherwise they will be null and void (art. 509 of the Polish Civil Code and art. 519 of the Polish Civil Code).
2. The Parties mutually agree that the Contractor's receivables arising out of the Contract may not be presented for statutory deduction (art. 498 of the Polish Civil Code) with the Contracting Party's receivables.
3. Any amendments to this Contract require a written form, annex and if made otherwise they will be null and void.
4. In matters not regulated by this Contract, the provisions of the Polish Public Procurement Law, the Polish Civil Code and the Polish Act on moral right and related rights will be applicable together with the executive acts of those acts.
5. Any disputable matters, with the reservation of § 17 will be settled by a common court competent for the place of residence of the Contracting Party.
6. This Contract was drawn up in two identical copies, one for each of the Parties to the Contract.

§ 19

ANNEXES TO THE CONTRACT

The following annexes constitute an integral part of the Contract:

- No. 1 – Terms of reference;
- No. 2 - The Contractor's Bid;
- No. 2A – Material and Financial Schedule;

No. 3 - Statement of the author of the documentation;

No. 4 - Statements of the Contractor;

No. 5 - Confidentiality Contract;

No. 6 - Excerpts of the Grant Agreement.

No. 7 – List of work for subcontracting

THE CONTRACTING PARTY:

.....

THE CONTRACTOR

.....

Annex 2A - Material and Financial Schedule

WORK PACKAGES	Description	Net Amount (EUR)
WP Length	WPL 1 - Analysis of the current maximum train length on corridor lines; WPL 2 - Measures necessary to satisfy demand for 740 m trains; WPL 3 - Analysis of estimated cost of proposed measures; WPL 4 - Analysis of demand for 740 m trains.	
WP Profile	WPP 1 Analysis of the current situation concerning profile; WPP 2 Measures necessary to satisfy demand for P/C 400/70 profile trains; WPP 3 Analysis of estimated cost of proposed measures; WPP 4 Analysis of demand for profile P/C 400/70 trains.	
WP Weight	Analysis of the current situation concerning train weight and axle/meter load	
WP Speed	Analysis of the difference among projected, allowed and operational speed on corridor lines and proposal of measures for improvement	
WP Investment Projects	Analysis of investment projects planned on the corridor	

Total net amount		
VAT		
Total gross amount		

First draft of concept, prepared and delivered by the Contractor within 3 months from the date of contract signing, should define the methodology of the study, sources of information, the detailed work plan and deadlines.

Intermediate report, delivered by the Contractor not later than 9 months from the date of contract signing.

Final presentation has to be delivered within 13 months in order to enable making corrections and including modifications to final report.

Final report has to be delivered by the Contractor within 15 months of the signing the contract in the offices of the Contracting party.

Final report has to be approved by the Contracting party within 3 months from the report delivery.

Annex No. 3 to the Contract

STATEMENT OF THE DOCUMENTATION AUTHOR

I / We, the undersigned, hereby declare that:

1. Acting at the Contractor's request, we have prepared a study on the improvement of capacity for the project entitled "Establishment of Rail Freight Corridor „North Sea – Baltic“ and its further development aiming at improving conditions for international rail freight transport", action number 2014-EU-TM-0217-S in the CEF Action" ("Documentation").
2. All proprietary copyrights have been transferred unconditionally and exclusively onto the Contractor related to the above-mentioned documentation in the following fields of exploitation:
 - recording,
 - multiplication using a specified technique,
 - marketing,
 - entering into computer memory,
 - exhibiting,
 - displaying,
 - hire,
 - lease,
 - licensing to use,
 - broadcasting by wireless or wired vision or audio,
 - exhibition,
 - making available to Contractors,
 - multiple use for investment execution,
 - repeated use to develop and implement a technical project with bills of quantities and investment cost estimates,
 - processing,
 - making changes,
 - publishing a part or all.
 - and other, indicated, among others, in § 9 sec. 3 of the Contract.

(date, signature)

Annex No. 4 to the Contract

STATEMENT OF THE CONTRACTOR

The Contractor declares that:

1. Mr./Ms./Sirs [_____] ("Author"), who is the person performing the subject of the receipt, is the author of the handed over Study development for the improvement of capacity for the project entitled "Establishment of Rail Freight Corridor „North Sea – Baltic“ and its further development aiming at improving conditions for international rail freight transport", action number 2014-EU-TM-0217-S in the CEF Action" ("Documentation") and he/she is entitled to moral rights and derivative rights to this documentation.
2. The author has transferred onto the Contractor the moral rights and derivative rights to the documentation.
3. The documentation was developed on the basis of a contract concluded between the Contractor and Ordering Party on [__] No. [____], hereinafter referred to as the "Contract".
4. They are an exclusive and legal holder of moral rights and derivative rights to the documentation.
5. By the day of the conclusion of the Contract and the date of handing over the documentation to the Contracting Party, they did not transfer or committed to transfer the moral rights and derivative rights onto another entity other than onto the Contracting Party.
6. The Contract does not violate the rights of any third parties, including the conclusion and performance of the Contract does not constitute an infringement: any contract that the Contractor or Author is bound by; any ruling of the court or authority; any provision of applicable law.
7. The moral rights and derivative rights to the documentation are not wholly or in part the subject of any claims or other encumbrance of any kind in favor of any third parties.
8. Authorizes the Contracting Party to make changes to the documentation made under the Contract.

(date, signature)

Annex No. 5 to the Contract

/Model of a confidentiality Contract /

concluded on __-__-20__ in _____, between:

European Economic Interest Grouping under the name of: EEIG "NORTH SEA - BALTIC RAIL FREIGHT CORRIDOR" EZIG, with its registered office in Warsaw, address: ul. Targowa 74 Warszawa (03-734) entered in the register of entrepreneurs maintained by the District Court for the capital city of Warsaw, XIII Commercial Division of the National Court Register under KRS number KRS 0000603675 NIP 1132903811 REGON 363805225, hereinafter referred to as the Contracting Party or the Client, represented by:

The Manager - Weronika Karbowskiak

and

_____ with its seat at _____,
address: _____, entered in the National Court Register under the number
_____ kept by the Court

Tax Id. No. (NIP): _____, Statistic No. (REGON) _____,
hereinafter referred to as the **Contractor**, represented by:

named collectively hereafter, **the Parties** and each of them individually as **a Party**.

Whereas:

- 1) **the Contractor** has committed under a civil law Contract No. _____ of __-__-2017, (hereinafter referred to as the "**Contract Proper**") concluded between the Parties on __-__-20__ to provide the Contracting Party with accounting bookkeeping services (hereinafter the "**Services**");
- 2) that the Parties have provided in the relevant Contract Proper referred to in pt. 1 above the conclusion of a confidentiality Contract;
- 3) for the type and scope of services provided by the **Contractor**, **the Contracting Party** deems it necessary to keep all information which the **Contractor** obtains from the Contracting Party in connection with the provision of services, in particular those constituting a business secret of the **Ordering Party**, i.e. entrepreneur secret within the meaning of the Act of 16 April 1993 . on counteracting unfair competition (Journal of Laws 2003, No. 153, item. 1503 as amended) and the entrepreneur's secret within the meaning of the Act of 6 September 2001. on access to public information (i.e. Journal of Laws of 2016 item 1764
- 4) that disclosure by the **Contractor** of the information provided to them by the Contracting Party may expose the latter to financial liability, including in virtue of claims for damages reported by third parties;

- 5) that the **Contractor has** assured the **Ordering Party** that they have appropriate procedures and safeguards to ensure confidentiality with respect to the information provided to them by the **Ordering Party** in connection with the provision of services.

The Parties hereby agree as follows:

§ 1.

1. **The Contractor** undertakes to keep secret all materials, documents, and information received or obtained from the Contracting Party as well as any information generated by him in connection with the provision of services (hereinafter: "Information").
2. The obligation set out in sec. 1 above refers to any Information, whether or not the **Contractor has** received them directly from the **Ordering Party** or through their subcontractors or third parties acting on behalf of the **Ordering Party** .
3. The obligation to keep the Information secret includes in particular the prohibition to make it available to any third parties without the prior written consent of the **Ordering Party** , except for the persons referred to in § 2 and § 3,
4. If the consent referred to in sec. 3 above is given, the **Contractor** will be liable for the acts and omissions of such persons as for their own actions and omissions.

§ 2.

1. **The Contractor** is obliged to inform their employees and co-workers who participate in the provisions of services or have contact with them about the obligation to keep the information secret.
2. **The Contractor** will be liable for any breach of obligations under this Contract by the persons referred to in sec. 1 above.

§ 3.

1. The obligation of confidentiality of the Information does not apply to a situation where the obligation to make them available to third parties results from the applicable legal regulations and such persons request the **Contractor** to provide them.
2. **The Contractor** is obliged to promptly inform the **Ordering Party** of the request referred to in sec. 1 above, unless such disclosure is prohibited under applicable law or the decision of the authority requesting access to the Information.
3. Informing the **Ordering Party** , referred to in sec. 2 above, should be made as far as possible before the Information is made available to the person authorized to request access to it.

§ 4.

1. **The Contractor commits** to receive the Information from the Contracting Party and to provide the Information to them only through its employees who have been notified of the obligations arising from this Contract.
2. The use by the **Contractor** of any intermediary in the exchange of Information will be possible only after obtaining the prior written consent of the Contracting Party .

§ 5.

1. **The Contractor** undertakes to make reasonable efforts to ensure that the means of communication used by them to receive and transmit the Information guarantee their protection against unauthorized access.

2. The Contracting Party will decide about the measures to secure the Information.

§ 6.

This Contract was concluded for a definite period of 6 years and will apply regardless of the earlier termination of the Contract proper.

§ 7.

1. **The Contractor** undertakes to store any Information expressed in material form (including written materials, computer information carriers) in such a way as to protect them from unauthorized access, particularly in the case of electronic transmission, by packing these files with a strong password protecting against unauthorized unpacking.
2. **The Contractor** is obliged to promptly provide the **Ordering Party with** all Information in their possession expressed in material form referred to in sec. 1 above, if the **Ordering Party** so requests, subject to the provisions of § 10 of the Contract, and their transfer takes place in the manner specified by the Contracting Party.
3. The provisions of sec. 1 and 2 above also apply to Information expressed in material form available to persons referred to in § 2 of this Contract.

§ 8.

1. In spite of the notification by the Contracting Party of the request referred to in § 7 sec. 2, the **Contractor** may retain Information expressed in material form, but only in a part, which is necessary for them to document the scope of the services provided and the correctness of performing the duties provided for in the Contract proper.
2. **However, the Contractor will** not be entitled to retain any information expressed in material form in a situation when:
 - 1) **The Contracting Party** provides the **Contractor** in writing that they will not make any claims arising out of the Contract proper and that they will satisfy such claims made by third parties;
 - 2) **The Contractor** violates any provision of this Contract.

§ 9.

1. Information constituting a business secret of the **Ordering Party** within the meaning of Art. 11 sec. 4 of the Act of 16 April 1993 on counteracting unfair competition or entrepreneur's secret within the meaning of the Act of 6 September 2001 on access to public information, expressed in a material form (including written materials, computer information carriers) will be provided to the representatives of the Parties in a documented manner, ensuring the control of document circulation and their accountability by authorized persons referred to in § 11.
2. Upon termination of service provision, before it is settled by the Parties, the **Contractor** undertakes to return to the Contracting Party all received Information expressed in material form.

§ 10.

The persons authorized to contact between the Parties in connection with the provision of the Information and the realization of this Contract are as follows:

- 1) on behalf of the **Contractor**:

- a) _____
- b) _____

2) on behalf of **Ordering Party**:

a) Weronika Karbowski EEIG “North Sea – Baltic Rail Freight Corridor” EZIG

3. In the event of breach of the terms of the Contract by the **Contractor, the Contractor** will be obliged to pay to the Contracting Party a contractual penalty of PLN **10,000.00** (say: ten thousand zlotys) or amount in EUR converted according to the current rate published by the Polish Central Bank for each violation of the provisions of this contract.
4. The penalty referred to in sec. 1 above, will be payable within the deadline indicated in the written request for payment received from the Contracting Party .

§ 12.

Payment of the contractual penalty referred to in § 12 does not exclude the possibility for the Contracting Party to seek damages under general principles in the event that the amount of damage suffered exceeds the amount of reserved contractual penalties.

§ 13.

The Contractor shall not acquire any intellectual property rights under this Contract .

§ 14.

1. Any and all amendments and additions to this Contract must only be made in writing, otherwise they will be null and void.
2. A change of the persons authorized to contact between the Parties, referred to in §11 does not constitute an amendment to the contract and does not require maintaining a written form in order to be valid. A change of the above persons may be effected in any accepted manner of communication by the Parties, and if it has occurred in such a way that the Party has been able to familiarize acquainted with the information.

§ 15.

This Contract shall be governed by the law of the Republic of Poland.

§ 16.

The Parties undertake to use best efforts to resolve any disputes arising from this Contract. Any disputes that the Parties fail to resolve by mutual negotiation within 90 calendar days of the date of their creation (i.e. as of the date of notifying the other Party of the possibility of submitting the dispute to court), shall be resolved by a common court competent for the place of residence of the **Ordering Party** .

§ 17.

This Contract was drawn up in duplicate in the English language version.

On behalf of the Contracting Party **

On behalf of the Contractor **

Annex No. 6 to the Contract

Excerpts of the Grant Agreement

INEA is referred to as “Agency” and the EEIG is referred to as “beneficiary”.

Other relevant provisions of the Grant Agreement that are necessary for implementation of the Action may also apply.

§ II.3 – LIABILITY FOR DAMAGES

II.3.1 The Agency shall not be held liable for any damage caused or sustained by any of the beneficiaries, including any damage caused to third parties as a consequence of or during the implementation of the action.

II.3.2 Except in cases of force majeure, the beneficiaries shall compensate the Agency for any damage sustained by it as a result of the implementation of the action or because the action was not implemented or implemented poorly, partially or late.

§ II.4 - CONFLICT OF INTERESTS

II.4.1 The beneficiaries shall take all necessary measures to prevent any situation where the impartial and objective implementation of the Agreement is compromised for reasons involving economic interest, political or national affinity, family or emotional ties or any other shared interest (“conflict of interests”).

II.4.2 Any situation constituting or likely to lead to a conflict of interests during the implementation of the Agreement shall be notified to the Agency, in writing, without delay. The beneficiaries shall immediately take all the necessary steps to rectify this situation. The Agency reserves the right to verify that the measures taken are appropriate and may require additional measures to be taken within a specified deadline.

§ II.5 – CONFIDENTIALITY

II.5.1 The Agency and the beneficiaries shall preserve the confidentiality of any information and documents, in any form, which are disclosed in writing or orally in relation to the implementation of the Agreement and which are explicitly indicated in writing as confidential.

II.5.2 The beneficiaries shall not use confidential information and documents for any reason other than fulfilling their obligations under the Agreement, unless otherwise agreed with the Agency in writing.

II.5.3 The Agency and the beneficiaries shall be bound by the obligations referred to in § s II.5.1 and II.5.2 during the implementation of the Agreement and for a period of five years starting from the payment of the balance, unless:

- (a) the party concerned agrees to release the other party from the confidentiality obligations earlier;
- (b) the confidential information becomes public through other means than in breach of the confidentiality obligation through disclosure by the party bound by that obligation;
- (c) the disclosure of the confidential information is required by law.

§ II.8 – PRE-EXISTING RIGHTS AND OWNERSHIP AND USE OF THE RESULTS (INCLUDING INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS)

II.8.1 Ownership of the results by the beneficiaries

Unless stipulated otherwise in the Agreement, ownership of the results of the action, including industrial and intellectual property rights, and of the reports and other documents relating to it, shall be vested in the beneficiaries.

II.8.2 Pre-existing industrial and intellectual property rights

Where industrial and intellectual property rights, including rights of third parties, exist prior to the conclusion of the Agreement, the beneficiaries shall establish a list which shall specify all rights of ownership and use of the pre-existing industrial and intellectual property rights and disclose it to the Agency at the latest before the commencement of implementation.

The beneficiaries shall ensure that they or their affiliated entities have all the rights to use any pre-existing industrial and intellectual property rights during the implementation of the Agreement.

II.8.3 Rights of use of the results and of pre-existing rights by the Agency

Without prejudice to § s II.1.1, II.3 and II.8.1, the beneficiaries grant the Agency the right to use the results of the action for the following purposes:

- (a) use for its own purposes, and in particular, making available to persons working for the Agency, Union institutions, other Union agencies and bodies and to Member States' institutions, as well as copying and reproducing in whole or in part and in unlimited number of copies;
- (b) distribution to the public, and in particular, publication in hard copies and in electronic or digital format, publication on the internet, including on the Europa website, as a downloadable or non-downloadable file, broadcasting by any kind of technique of transmission, public

- display or presentation, communication through press information services, inclusion in widely accessible databases or indexes;
- (c) translation;
 - (d) giving access upon individual requests without the right to reproduce or exploit, as provided for by Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents;
 - (e) storage in paper, electronic or other format;
 - (f) archiving in line with the document management rules applicable to the Agency;
 - (g) rights to authorise or sub-licence the modes of exploitation set out in points (b) and (c) to third parties.

Additional rights of use for the Agency may be provided for in the Special Conditions.

The beneficiaries shall warrant that the Agency has the right to use any pre-existing industrial and intellectual property rights, which have been included in the results of the action. Unless specified otherwise in the Special Conditions, those pre-existing rights shall be used for the same purposes and under the same conditions applicable to the rights of use of the results of the action.

Information about the copyright owner shall be inserted when the result is divulged by the Agency. The copyright information shall read: "© – [year] – [name of the copyright owner]. All rights reserved. Licensed to the Innovation and Networks Executive Agency under conditions."

§ II.9 – AWARD OF CONTRACTS NECESSARY FOR THE IMPLEMENTATION OF THE ACTION

II.9.1 Where the implementation of the action requires the procurement of goods, works or services, the beneficiaries shall award the contract to the tender offering best value for money or, as appropriate, to the tender offering the lowest price. In doing so, they shall avoid any conflict of interests.

The beneficiaries shall ensure that the Agency, the Commission, the European Anti-Fraud Office (OLAF) and the European Court of Auditors may exercise their rights under § II.27 also towards the contractor.

II.9.2 Beneficiaries acting in their capacity of contracting authorities within the meaning of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public work contracts, public supply contracts and public service contracts or contracting entities within the meaning of Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors shall abide by the applicable national public procurement rules.

II.9.3 The beneficiaries shall retain sole responsibility for carrying out the action and for

compliance with the provisions of the Agreement. The beneficiaries shall ensure that any procurement contract contains provisions stipulating that the contractor has no rights vis-à-vis the Agency under the Agreement.

II.9.4 The beneficiaries shall ensure that the conditions applicable to them under § s II.3, II.4, II.5 and II.8 are also applicable to the contractor.

II.9.5 Where, in accordance with § 3(a), the grant takes the form of the reimbursement of eligible costs:

- If a beneficiary breaches any of its obligations under § II.9.1, the costs related to the contract concerned shall be ineligible;
- If a beneficiary breaches any of its obligations under § II.9.2, II.9.3 or II.9.4, the grant may be reduced in proportion to the seriousness of the breach of obligations.

Where, in accordance with § 3(b), (c) or (d) the grant takes the form of a unit, lump sum or flat-rate contribution, if a beneficiary breaches any of its obligations under § II.9.1, II.9.2, II.9.3 or II.9.4, the grant may be reduced in proportion to the seriousness of the breach of obligations.

§ II.27 – CHECKS, AUDITS AND EVALUATION

II.27.1 Technical and financial checks, audits, interim and final evaluations

The Commission or the Agency may carry out technical and financial checks and audits in relation to the use of the grant. It may also check the statutory records of the beneficiaries for the purpose of periodic assessments of lump sum, unit cost or flat-rate amounts.

Information and documents provided in the framework of checks or audits shall be treated on a confidential basis.

In addition, the Commission or the Agency may carry out interim or final evaluation of the impact of the action measured against the objective of the Union programme concerned, in order to assess whether the objectives, including those relating to environmental protection, have been attained.

Checks, audits or evaluations made by the Commission or the Agency may be carried out either directly by its own staff or by any other outside body authorized to do so on its behalf.

Such checks, audits or evaluations may be initiated during the implementation of the Agreement and for a period of five years starting from the date of payment of the balance. This period shall be limited to three years if the maximum amount specified in § 3 is not more than EUR 60 000.

The check, audit or evaluation procedure shall be deemed to be initiated on the date of receipt of the letter of the Commission or the Agency announcing it.

II.27.2 Duty to keep documents

The beneficiaries shall keep all original documents, especially accounting and tax records, stored on any appropriate medium, including digitalized originals when they are authorized by their respective national law and under the conditions laid down therein, for a period of five years starting from the date of payment of the balance.

This period shall be limited to three years if the maximum amount specified in § 3 is not more than EUR 60 000.

The periods set out in the first and second subparagraphs shall be longer if there are on-going audits, appeals, litigation or pursuit of claims concerning the grant, including in the case referred to in § II.27.7. In such cases, the beneficiaries shall keep the documents until such audits, appeals, litigation or pursuit of claims are closed.

II.27.3 Obligation to provide information

The beneficiaries shall provide any information, including information in electronic format, requested by the Commission or the Agency or by any other outside body authorized by it in the framework of a check, audit or evaluation.

In case a beneficiary does not comply with the obligations set out in the first subparagraph, the Commission or the Agency may consider:

- (a) any cost insufficiently substantiated by information provided by the beneficiary as ineligible;
- (b) any unit, lump sum or flat-rate contribution insufficiently substantiated by information provided by the beneficiary as undue.

II.27.4 On-the-spot visits

During an on-the-spot visit, the beneficiaries shall allow Commission or Agency staff and outside personnel authorized by the Commission or the Agency to have access to the sites and premises where the action is or was carried out, and to all the necessary information, including information in electronic format.

They shall ensure that the information is readily available at the moment of the on-the-spot visit and that information requested is handed over in an appropriate form.

In case a beneficiary refuses to provide access to the sites, premises and information in accordance

with the first and second subparagraphs, the Commission or the Agency may consider:

- (a) any cost insufficiently substantiated by information provided by the beneficiary as ineligible;
- (b) any unit, lump sum or flat-rate contribution insufficiently substantiated by information provided by the beneficiary as undue.

II.27.5 Contradictory audit procedure

On the basis of the findings made during the audit, a provisional report (“draft audit report”) shall be drawn up. It shall be sent by the Commission or the Agency or its authorized representative to the beneficiary concerned, which shall have 30 days from the date of receipt to submit observations. The final report (“final audit report”) shall be sent to the beneficiary concerned within 60 days of expiry of the time limit for submission of observations.

II.27.8 Checks and inspections by OLAF

The European Anti-Fraud Office (OLAF) shall have the same rights as the Commission and the Agency, notably right of access, for the purpose of checks and investigations.

By virtue of Council Regulation (Euratom, EC) No 2185/96² of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities and Regulation (EU) No 883/2013³ of the European Parliament and the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF), OLAF may also carry out on-the-spot checks and inspections in accordance with the procedures laid down by Union law for the protection of the financial interests of the Union against fraud and other irregularities.

Where appropriate, OLAF findings may lead to recovery by the Agency. They may also lead to criminal prosecution under national law.

II.27.9 Checks and audits by the European Court of Auditors

The European Court of Auditors shall have the same rights as the Agency and the Commission, notably right of access, for the purpose of checks and audits”.

² OJL 292, 15.11.1996, p.2

³ OJL 248, 18.09.2013, p.1

Annex 7 - List of work for subcontracting

LIST OF WORK FOR SUBCONTRACTING

CONTRACTING PARTY:

**EEIG "North Sea – Baltic Rail Freight Corridor" EZIG
74 Targowa Street
03-734 Warsaw**

(Contractor)

By acting on behalf of the above mentioned Contractor(s) I declare that the following parts of this order are intended for subcontracting:

I.p.	Parts intended for subcontracting
1)	
2)	
3)	

Place, date

Name and signature