

1st MODULE OF POLISH INTEGRITY PACT (SIGNED ON 8.11.2016)

Agreement between the Stefan Batory Foundation and PKP Polish Railways S.A on the implementation of the "Integrity Pact" in the framework of a public procurement project for the design and build of the Częstochowa – Zawiercie section of line No. 1 between Warsaw and Katowice

concluded in Warsaw on this day of 2016,

by and between

the **Stefan Batory Foundation** seated in Warsaw, ul. Sapieżyńska 10a, 00-215 Warsaw, entered into the register of associations, other non-governmental and trade organisations and foundations and independent public healthcare units at the District Court for the Capital City of Warsaw in Warsaw XII Business Section of the National Court Register under KRS number 0000101194, VAT No. 5261046481, REGON 002188077, hereinafter called "**the Foundation**", represented by:

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and

PKP Polish Railways S.A., seated in Warsaw, ul. Targowa 74, 03-734 Warsaw, entered into the business register at District Court for the Capital City of Warsaw in Warsaw XIII Business Section of the National Court Register under KRS number 0000037568, VAT No. 113-23-16-427, REGON 017319027, share equity of 16,684,838,000.00 paid in full, hereinafter called "**the Company**" represented by:

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hereinafter called the Parties.

Preamble

In 2015, the Directorate General for Regional and Urban Policy of the European Commission announced a call for pilot Integrity Pact projects to be implemented in EU Member States. An Integrity Pact is an instrument developed by the Transparency International Secretariat seated in Berlin with the purpose of preventing abuse in public procurement.

Implementing authorities and institutions organising public procurement in the framework of projects funded by structural and cohesion funds from all EU Member States have been invited to join the pilot projects. Invitations have also been sent to non-governmental organisations as each Integrity Pact involves mandatory co-operation between purchasing public institutions and social partners, the latter being mainly responsible for monitoring public procurement and public project implementation processes. Applications for the Polish contest were submitted by the Ministry of Development (formerly known as the Ministry of Infrastructure and Development). The Ministry proposed road and railway projects to be covered by the Integrity Pact. The Foundation has also submitted the relevant documents as a non-governmental organisation committed to co-creating the Pact and monitoring its implementation.

On 13 October, 2015, the European Commission made a decision to include a railway project in the Pact, and it selected the Foundation as a social partner for the Integrity Pact pilot project. The Ministry of Development joined the project in partnership with the Management of PKP Polish Railways S.A. as confirmed in a Memorandum of Understanding signed on 19 November 2015 between the Foundation and the Company and initialled by the Ministry of Development.

As a consequence of steps taken by the government, represented by the Ministry of Development, by the European Commission, Transparency International Secretariat, the Company and the Foundation have jointly undertaken to implement the Integrity Pact, i.e. a civil control mechanism for safeguarding EU funds, Phase II, grant contract No. 2015CE16BAT098 funded by the European Commission.

The Project is designed to:

- 1) Examine the applicability of Integrity Pacts as a means of protecting EU funds against abuse and corruption while ensuring a robust, efficient and timely implementation of the projects covered by the Pact;
- 2) Examine the applicability of Integrity Pacts as a means to improve transparency and accountability of spending EU funds, including structural and cohesion funds;
- 3) Ensure savings by strengthening competition in public procurement;
- 4) Improve public confidence in government and public procurement;
- 5) Build a good reputation of contracting institutions and contractors;

The public procurement contract to be monitored in the framework of the Project, in accordance with the decision of the European Commission, shall be the project to design and build the Częstochowa - Zawiercie section of line No. 1 between Warsaw and Katowice (hereinafter

called the "**Public Procurement Contract**"). Moreover, the Parties shall strive to ensure that the contract with the Engineer (the term is borrowed from FIDIC and infrastructure projects funded from EU funds) to supervise the Public Procurement Contract contains provisions regarding the obligation imposed on the Engineer to comply with the Integrity Pact rules developed by the Parties and take them into account in communication and publicity measures foreseen in the Project.

For the purpose of Project implementation, several agreements will be concluded between various parties. This Agreement is the first in a series of these agreements and it seeks to define the rights and obligations of the Foundation and the Company during the preparation, launch, processing, award and implementation of the Public Procurement Contract.

Paragraph 1. Definitions

The Parties shall ascribe the following meaning to concepts used throughout this Agreement:

1. **Integrity Pact** – an agreement (or a collection of constituent agreements) designed to ensure transparency and accountability and to prevent abuse in the framework implementing a specific public contract. The parties to the agreement (a collection of agreements) include the contracting authority, contractors and social partners, the latter being mainly responsible for monitoring the compliance with transparency and public procurement integrity standards.
2. **Project** – the Integrity Pacts project - civil control mechanisms for safeguarding EU funds, Phase II, grant contract No. 2015CE16BAT098, funded by European Commission;
3. **Foundation** – the Stefan Batory Foundation;
4. **Company** - PKP Polish Railways S.A.;
5. **Agreement** – this Agreement;
6. **Consultant** – a natural person, legal entity or a unit without legal entity authorised by the Foundation to assist the monitoring of the process to prepare, launch, conduct, award and implement a Public Procurement Contract. The Parties do not rule out the involvement of several Consultants (designer, lawyer etc.) hired to assist at specific stages of the Public Procurement Contract or a part thereof;
7. **ToR** – terms of reference as defined in the Public Procurement Law, developed for the purpose of a Public Procurement Contract;
8. **Public Procurement Law** – the Public Procurement Law of 29 January, 2004 (Journal of Laws of 2015, Section 2164 as amended);
9. **contractor** – (small letter) a natural person, legal entity or a unit that has no legal entity, that seeks to secure a Public Procurement Contract or that has placed a bid for a Public Procurement Contract;
10. **Contractor** – (capital letter) a natural person, legal entity or a unit that has no legal entity that has, as a result of awarding the Public Procurement Contract, entered into a contract with the Company to implement Public Procurement Contract;
11. **Public Procurement Contract** – a process leading up to awarding a public contract to the Company to design and build the Częstochowa - Zawiercie section of line No. 1 between Warsaw and Katowice;

Paragraph 2. General Provisions.

1. The Parties undertake to perform under this Agreement to accomplish the goals and objectives of the Project and respect the interests of the other Party.
2. The Company undertakes to allow the Foundation and the Consultant to monitor the preparation, organisation, processing, awarding and enforcing the Public Procurement Contract in line with the Integrity Pact.
3. The Foundation undertakes to ensure that the Consultant, the Consultant's employees seconded to perform the tasks under the Integrity Pact and representatives of the Foundation participating in the preparation, organisation, processing, awarding and enforcing the Public Procurement Contract adhere to the laws and regulations as well as internal Company policies in connection with the Public Procurement Contract at hand.
4. The Company undertakes to provide the Foundation with the requirements and regulations referred to in Section 3 above, and each time inform the Foundation about any changes in such regulations in the course of implementing this Agreement.
5. The Foundation, the Consultant, the Company and their employees or associates shall cease their involvement in case a conflict of interest arises. The conflict of interest is defined as a situation where an impartial and objective implementation of the Project task may be compromised on the grounds of family ties, emotions, political sympathies, economic interest or otherwise, especially if the Foundation, the Consultant, the Company or their employees and associates:
 - 1) seek to secure the Public Procurement Contract;
 - 2) share their capabilities with contractors or subcontractors bidding for the Public Procurement Contract;
 - 3) seek to secure the position of the Engineer for the Public Procurement Contract;
 - 4) share their capabilities with contractors or subcontractors bidding for the Public Procurement Contract regarding the tender for the position of the Engineer in the Public Procurement Contract;
 - 5) are involved in a legal dispute with the Company.
6. The Foundation will require that the Consultant submits representations under Section 5 above.
7. In case a conflict of interest is identified or suspected the Parties shall inform each other within 7 days from the day of becoming aware of circumstances that cause or may cause a conflict of interest. Such notification will specify the countermeasures that have been adopted to prevent any potential damage or to remedy a damage that have already been caused by such conflict of interest. Each of the Parties may recommend specific countermeasures to the other parties. The other Party may suspend its performance under this Agreement until such conflict of interest is removed. The two preceding statements also apply to a situation set out in Paragraph 5 Section 1 Item 6) Letter b), c) and e).
8. Each of the Parties shall be responsible for the actions or omissions of its employees or persons through whom it performs under this Agreement.
9. The Parties represent that they have implemented and used internal anti-corruption policies.

Paragraph 3. Deadlines

1. This Agreement shall be implemented from the day of its conclusion until the day a Hand-Over Certificate (or another equivalent document) is issued with regard to the Public Procurement Contract.
2. The Parties shall share the documents, information and opinions set out in this Agreement without delay, no later than within 10 days. In case such documents and information cannot

be shared without delay, the Parties shall be responsible for passing such documents, information and opinions as soon as possible while giving due consideration to the goals and objectives of the Project and respecting the interest of the other Party.

Paragraph 4. Expenses

1. The Foundation shall cover the cost of Project participation of its representatives, employees, the Consultant and experts, if any.
2. The Foundation represents that the cost specified in Section 1 above are funded by the European Commission in the framework of the Project.
3. The costs of the Parties in connection with sharing documents, prints, charts, notices, the use of software, fees paid to experts involved in the Project and the Public Procurement Contract etc. shall be covered by each of the Parties at its own expense.

Paragraph 5. Specific Obligations of the Parties

1. The rights and obligations of the Company, over and above those contemplated herein, shall include:
 - 1) Inform the Foundation about the Public Procurement Contract implementation schedule, progress against the implementation schedule and any modifications of the in this schedule;
 - 2) **The preparation phase of the Public Procurement Contract** The following information must be provided to the Foundation:
 - a) type of Public Procurement Contract process;
 - b) planned implementation schedule;
 - c) definition of the job under the Public Procurement Contract,
 - 3) **The launch and processing phase of the Public Procurement Contract:**
 - a) Ensure participation of no more than three persons from the Foundation or the Consultant in the proceedings of the tender committee. These individuals shall take part in the proceedings of the tender committee as non-voting members;
 - b) Ensure that the Foundation and the Consultant have access to correspondence with contractors before bidding (i.e. contractors's questions, the Contracting Authority's answers, modifications in the announcement of Public Procurement Contract process, changes to ToR, questions and answers from a contractors's meeting, if any);
 - c) Ensure that the Foundation and the Consultant have day-to-day access to the minutes of the proceedings;
 - d) Ensure that the Foundation and the Consultant have access to submitted applications for participation in the tender (if closed tender is to be applied to award the Public Procurement Contract) and bids;
 - e) Ensure that the Foundation and the Consultant have access to correspondence with contractors at the time applications for participation in the tender are accepted (if closed tender is to be applied to award the Public Procurement Contract) and bids are evaluated (questions to application/bid, requests for additional data in the application/bid, request for rationale for price, comments and additional information provided by contractors);
 - f) Ensure that the Foundation and the Consultant have access to recommendations of the tender committee regarding the evaluation of bids (selection of the best bid, rejection of contractors and rejection of bids);
 - g) Ensure that the Foundation and the Consultant have access to documents submitted

- by contractors after the best bid has been selected;
- h) Provide ToR, including attachments, to the Foundation and the Consultant.
- 4) **The award phase of the Public Procurement Contract:**
- a) Provide the Foundation with a copy of a contract signed with the Contractor;
- b) Provide the Foundation with a copy of official documents submitted by the Contractor prior to signing the contract (i.e. a copy of the performance bond, powers of attorney for personnel seconded to the Public Procurement Contract, consortium agreement and documents required in ToR);
- 5) **The implementation phase of the Public Procurement Contract:**
- a) Provide the Foundation with a copy of Public Procurement Contract modifications, including accompanying correspondence (e.g. change request, Engineer's determination, Variation, etc.);
- b) Provide the Foundation with a copy of contracts with subcontractors and the Contractor's requests for such contracts;
- c) Inform the Foundation about any claims by the Contracting Authority and the Contractor in monthly intervals, and deliver a copy of accompanying documentation for cases selected by the Foundation;
- d) Ensure the Foundation or the Consultant are able to make site visits.
- 6) **Each phase:**
- a) Ask the Foundation for its opinion about a specific step in the Public Procurement Contract;
- b) Alert the Foundation about any inappropriate conduct by the Foundation, the Consultant or any persons seconded by them to implement the Integrity Pact;
- c) Alert the Foundation about any conduct that results in a conflict of interest involving the Foundation, the Consultant or any persons seconded by them to implement the Integrity Pact;
- d) Receive copies of progress reports written by the Consultant or other persons commissioned by the Foundation in connection with the Public Procurement Contract;
- e) Ask the Foundation to replace the Consultant or any other person mandated by the Foundation;
- f) Ask the Foundation to provide personal details (i.e. name) of the Consultant or any other person mandated by the Foundation while respecting confidentiality rules set out in Paragraph 6 below;
- g) Ensure an unfettered and anonymous process of reporting potential breach of the provision and rules set out in Paragraph 2 Section 9 of the Agreement to each of the Parties to this Agreement. In case the Company receives any such information the Company shall notify the Foundation about this fact;
- h) Inform the Foundation about cases of abuse or suspected abuse in connection with the implementation of the Public Procurement Contract and about measures taken by the Company to prevent them and mitigate their negative impact;
- i) Ensure that all activities in connection with the Public Procurement Contract at every stage are taken by persons who observe the principles of impartiality and objectivity;
- j) If requested by the Foundation, provide information about expenditures in connection with the Public Procurement Contract process (hiring external experts, feasibility study etc.), about personnel involved in the prepare, launch, process, award and implement phase of the Public Procurement Contract or persons providing support services to the Company with respect to the Public Procurement Contract;

- k) Provide the Foundation with other information in connection with the implementation of the Project or the Public Procurement Contract, in particular internal audit findings, audit findings of the President of the Office of Public Procurement, EU Transport Projects Centre, the European Commission etc.
2. The rights and obligations of the Foundation and the Consultant beyond those specified in this Agreement shall include:
- 1) Request additional information from the Company about the Public Procurement Contract implementation schedule, progress and changes thereto;
 - 2) Receive copies of documents set out in Section 1 above;
 - 3) Implement, in conjunction with the Consultant, the Foundation staff and other persons mandated by the Foundation, measures defined in for the Foundation in Section 1 above;
 - 4) Ensure that the Consultant, the Foundation staff and other persons mandated by the Foundation comply with laws and regulations that apply to Public Procurement Contracts and sign a confidentiality agreement;
 - 5) Ensure that the Consultant, the Foundation staff and other persons mandated by the Foundation sign a confidentiality agreement and file a statement of inclusion or non-exclusion from the Public Procurement Contract process based on conditions defined in Article 17 of the Public Procurement Law (or relevant laws and regulations which may apply in the future);
 - 6) Exclude the Consultant, Foundation staff and other persons mandated by the Foundation from the Public Procurement Contract process if these individuals meet the conditions defined in Article 17 Public Procurement Law (or relevant laws and regulations which may apply in the future);
 - 7) Present opinions about the Public Procurement Contract process upon request of the Company;
 - 8) Share with the Company reports about Public Procurement Contract process received from the Consultant, Foundation staff or other persons mandated by the Foundation;
 - 9) Indicate to the Company potentially inappropriate conduct of the members of the tender committee or other persons involved in the award of the Public Procurement Contract;
 - 10) Inform the public about the progress of the Public Procurement Contract award process (in the launch and processing phase) while observing the rules of transparency and timing of disclosure set out in the Public Procurement Law, after having consulted with the Company;
 - 11) The Foundation and the Consultant shall not be bound by instructions from the Company except for procedural instructions/recommendations in connection with the Public Procurement Contract;
 - 12) In case information is received by the Foundation under **Paragraph 5** Section 1 Item 6) Letter h) Sentence 1, the Foundation shall inform notify the Company about this fact while preserving the anonymity of the informer.
 - 13) Present the Company with the final Project report and the final evaluation report while accounting for dissenting opinions of the Company in the final versions of these documents.
3. The Foundation and the Company undertake to collaborate while developing the next component of the Integrity Pact. The Parties are not deciding at this stage whether this will be a separate agreement that form an attachment to the Public Procurement Contract's ToR or specific provisions inserted in the draft contract integrated into the Public Procurement Contract's ToR.

4. The Foundation and the Company undertake to collaborate and agree all communication and promotional activities (not covered in Section 2 Item 10 above) in connection with this Agreement.

Paragraph 6. Confidentiality

1. The Parties of the Agreement and persons who are employed by them to implement this Agreement undertake to observe confidentiality and to refrain from any disclosure to third parties of protected information acquired in the course of implementing this Agreement, in particular information that constitutes commercial secrets.
2. The Parties undertake to comply with all applicable data protection laws and regulations while implementing this Agreement.
3. No use of information set out in Section 1 for purposes other than those set out in the Agreement or any publication thereof shall be allowed without a prior written consent of the other Party.
4. The obligation set out in Section 1 shall not apply to publicly available information or to any release of information in compliance with unconditionally applicable laws and regulations, in particular upon request of a court, prosecution, tax or audit authorities.
5. No protection will be extended to information if it has been:
 - 1) Made public not as result of an unlawful act or one that is in breach of the obligations of the Parties under this Agreement, or
 - 2) Approved for circulation based on a prior written consent of the Party to whom this information is related.
6. Each of the Parties shall exercise the duty of care to prevent the disclosure or use by third parties of the protected information of the other Party. Each of the Parties undertakes to restrict access to protected information exclusively for such employees or associates of the Party for whom such information is indispensable to perform the task for the other Party and who have accepted the obligations arising out of this Agreement.
7. The Foundation shall become familiar with the applicable "Information Security Policy in PKP Polish Railways S.A. for Business Partners the SZBI-Ibi-1a Company" hereinafter called SZBI-Ibi-1a, as posted on the Contracting Authority's website www.plk-sa.pl and shall apply its provisions, in particular those which are specified in Paragraph 12.
8. The Foundation shall be liable for persons who act on its behalf, in particular for any damage caused by their actions or omissions, for keeping the confidentiality of the information referred to in Section 1 acquired by them in connection with the implementation of this Agreement and for their compliance with the *Information Security Policy in PKP Polish Railways S.A. for Business Partners the SZBI-Ibi-1a???? Company* (the document is available on the Company website: www.plk-sa.pl).
9. The Foundation shall sign a non-disclose agreement with PKP Polish Railways S.A. based on which it will obtain a specific mandate to access commercial secrets of PKP Polish Railways S.A, in case in the course of implementing the Agreement it has to access data, reports, documents and information that is essential to prepare, launch, conduct, award and implement the Public Procurement Contract, hereinafter called the Information, which is the Company secret, as defined in the Law on Combating Unfair Competition of 16 April 1993 (Journal of Laws of 2003, Issue 153, Section 1503, as later amended) or the commercial secret as defined in the Law on Access to Public Information of 6 September 2001 (Journal of Laws 2015, Section 2058, as later amended) maintained by the Company.
10. The Foundation shall ensure the protection of personal data in connection

with performance under this Agreement, in line with the provisions of the Law of 29 August 1997 on the Personal Data Protection (Journal of Laws of 2016, Section 922.), the Regulation of the Minister of Internal Affairs and Administration of 29 April 2004 regarding documenting personal data processing and the technical/structural parameters of information systems for personal data processing (Journal of Laws of 2004, Issue 100, Section 1024), including the conclusion of a relevant outsourcing contract for personal data processing, in case personal data stored by the Company must be processed in the course of implementing the Agreement.

Paragraph 7. Termination

1. Each of the Parties may terminate this Agreement subject to a three-month notice, effective on the last day of the calendar month.
2. Prior to filing the notice of termination the terminating Party should notify the other Party in writing of its intention of doing so and should present its position regarding the termination.
3. The termination of the Agreement shall be effective as of the day of serving the notice of termination to the other Party.
4. The Foundation shall have the right to terminate this Agreement with immediate effect in case the European Commission cancels the Project or cancels the Project funding.

Paragraph 8. Final Provisions

1. The day-to-day communication shall be maintained mainly in electronic form, or e-mails, or in writing, by fax or other means each Party may choose. The following contact details are provided by the Parties:
 - 1) The Company: phone: /34/ 376 32 83, e-mail: renata.krok@plk-sa.pl , faks No. /34/370 52 40, address: ul. Boya Żeleńskiego 7/9 p. 9, 42-200 Częstochowa;
 - 2) The Foundation: phone: /22/ 536 02 00 e-mail: mwaszak@batory.org.pl , fax: /22/ 536 02 20, address: ul. Sapieżyńska 10A, 02-215, Warsaw;
2. The Parties appoint the following individuals for day-to-day communication:
 - 1) The Company: Mrs. Jolanta Pawluk, phone: +48 600 084 011, +48 71 717 33 51, e-mail: jolanta.pawluk@plk-sa.pl , address: ul. Joannitów 13, 50-525 Wrocław
 - 2) The Foundation: Mr. Marcin Waszak, phone: /22/ 536 02 57, e-mail: mwaszak@batory.org.pl , fax: /22/ 536 02 20, address: Sapieżyńska 10A, 00-215 Warsaw
3. The Parties appoint the following individuals to represent them for the purpose of this Agreement:
 - 1) the Company – Mrs. Jolanta Pawluk, phone: +48 600 084 011, e-mail: jolanta.pawluk@plk-sa.pl;
 - 2) The Foundation: Mr. Grzegorz Makowski, phone: +48 505 126 153, e-mail: gmakowski@batory.org.pl , fax: /22/ 536 02 20, address: Sapieżyńska 10A, 00-215 Warsaw
4. All arrangements in connection with the termination or modification of this Agreement must be made in writing. The Parties specify the following addresses for correspondence:
 - 1) The Company – ul. Boya Żeleńskiego 7/9 p. 9, 42-200 Częstochowa ;
 - 2) The Foundation – ul. Sapieżyńska 10A, 00-215 Warsaw
5. Each of the Parties undertakes to notify the other Party about any modifications in its address, persons or data presented in the previous sections. In case no such notification of

a change in address is made documents served to the existing address shall be considered effectively served.

6. The Parties commit to undertake negotiations in good faith to order to reach an amicable resolution to any dispute if such a dispute arises over the interpretation or implementation of this Agreement.

Signatures:

On behalf of the Foundation:

On behalf of the Company: