

AGREEMENT

Design and design supervision services for the construction of the new line from Pärnu to Rapla

29 March 2019
Tallinn

Agreement registration No	8/2019/EE-2
CEF ¹ Agreement No	2014-EU-TMC-0560-M
Procurement identification No	RBR 2017/27



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

2019

¹ Co-financed by the Connecting Europe Facility of the European Union.

CLIENT/ CONSULTANT DESIGN AND DESIGN SUPERVISION AGREEMENT

This agreement (hereinafter called the “Agreement”) has been entered into on 29 March 2019 by and between:

- (1) IDOM, CONSULTING, ENGINEERING, ARCHITECTURE S.A.U., a company duly incorporated and operating under the laws of the Kingdom of Spain, registration number: A48283964, tax registration No A-48-283964, registered address: Avenida Zarandoa 23, Bilbao, Spain, hereinafter referred to as “the Consultant”, represented by the Infrastructures Managing Director Juan Ramón López Laborda acting in accordance with the power of attorney dated 25 October 2017, No 1/2017/13.806.0 issued by Biscay Companies Register, at Avenida de Madariaga, 24, 48014, Bilbao,

and

- (2) RB RAIL AS EESTI FILIAAL, a branch (of RB Rail AS, registration No 40103845025, registered in the Republic of Latvia) duly incorporated and operating under the laws of the Republic of Estonia, registration number: 14168654, registered address: Endla 16, Tallinn, 10142, Estonia, hereinafter referred to as “the Client”, represented by Director of the Branch Aivar Jaeski in accordance with the decision of RB Rail AS Management Board No A/12/2019 dated 1 March 2019,

Acting in the name and on behalf of

- (3) RAIL BALTIC ESTONIA OÜ, registration number: 12734109, registered address: Endla 16, Tallinn, 10142, Estonia, hereinafter referred to as “the Implementing Body”, which as mentioned above is represented by the Client on the basis of Clause 3.2.2, 3.2.3, 3.2.5, 3.3.1, 3.4.1 and 3.5.1 of the Agreement on the Contracting Scheme for the Rail Baltic/ Rail Baltica, in effect of 30 September 2016, represented by RB Rail AS Chairperson of the Management Board Timo Riihimäki and RB Rail AS Management Board Member Mart Nielsen acting in accordance with the Regulations on Representation rights dated 25 May 2018,

Hereinafter in the present Agreement jointly referred to as “the Parties”, and each individually as “the Party”,

Whereas,

- This Agreement is entered into under the Global Project which includes all activities undertaken by the respective beneficiaries and implementing bodies of the Republic of Estonia, the Republic of Latvia and the Republic of Lithuania in order to build, render operational and commercialise the Rail Baltica railway – a

new fast conventional double track electrified railway line European standard gauge (1435mm) on the route from Tallinn through Pärnu-Riga-Panevėžys-Kaunas to Lithuanian-Polish border, with the connection of Kaunas – Vilnius, and related railway infrastructure in accordance with the agreed route, technical parameters and time schedule;

- For the purposes of the Agreement the Client is acting as an agent and Central Purchasing Body for the Beneficiaries' designated Implementing Body as per Clause 3.3.1 and 3.4.1 of the Agreement on the Contracting Scheme for the Rail Baltic/ Rail Baltica, in effect of 30 September 2016. The Implementing Body authorizes the Client and assigns to the Client all rights (including, but not limited to, claiming performance in arbitration proceedings or otherwise, claiming damages, statutory interest and contractual penalties, enforcement of the Contract Performance Security, withholding of the Retention Amounts, enforcement of the warranty obligations etc.) that may arise from this Agreement. All claims made by the Client against the Consultant are made on behalf of the Implementing Body;
- The Client has organised restricted competition "Design and Design Supervision Services for the construction of the new line from Pärnu to Rapla" (identification No. RBR 2017/27) in which the Consultant's proposal was selected as the winning bid in accordance with restricted competition "Design and Design Supervision Services for the construction of the new line from Pärnu to Rapla" regulations and its annexes;
- In accordance with the Consultant's Tender the Consultant offered to carry out, perform and complete the Services after reviewing the Agreement's conditions, and all documents attached thereto, in accordance with the law and execution of Project and Works;
- According to Clause 3.2.2 and 3.2.5 of the Agreement on the Contracting Scheme for the Rail Baltic / Rail Baltica, in effect as of 30 September 2016, by signing the mentioned Agreement the Implementing Body has irrevocably authorised the Client to conclude contracts insofar as the remuneration does not exceed the approved budget for the particular activity;
- For carrying out the Services, the Implementing Body undertakes to pay the Consultant the Remuneration pursuant to the procedure specified in the Agreement and assumes any other financial obligations and claims that may arise pursuant to the Agreement;
- The Client is not responsible for any payments to the Consultant;

- This Contract is co-financed from the Connecting Europe Facility (CEF) Agreement No 2014-EU-TMC-0560-M;

The Parties mentioned above have agreed as follows:

Article 1.

1. The following documents attached hereto, in the order of precedence, shall be deemed to form an integral part of this Agreement:

- a) Clarifications to the documents (issued within the procurement exercise)
 - b) The Particular Conditions of the Agreement
 - c) The General Conditions of the Agreement
 - d) Appendix 1: Technical Specification with annexes
 - e) Appendix 2: Additional Rules
 - f) Appendix 3: Programme
 - g) Appendix 4: Remuneration and Payment
 - h) Appendix 5: Rules for Adjudication
 - i) Appendix 6: Insurance and Guarantee Requirements
 - j) Appendix A: Letter of Award and Acceptance
 - k) Appendix B: Approved Sub-Contractors and Staff
 - l) Appendix C: Consultant's Declaration
 - m) Appendix D: The Consultant's Tender with attachments.
 - n) All other documents created during the Agreement's implementation and considered by the Parties as part of the Agreement.
2. These documents form an integral unit, and each document is considered part of the Agreement so that the above-mentioned documents shall explain and supplement each other.
3. In the event of a conflict among the provisions of the Agreement documents, the documents mentioned first in the listing given in Paragraph 1 of this Article shall prevail over subsequent documents.
4. The Agreement documentation constitute the entire agreement between the Parties as it is stated in the Particular Conditions of the Agreement. It substitutes all prior negotiations and drafts of the Parties with regard to the transactions contemplated herein. Any and all other written or oral agreements existing between the Parties hereto regarding such transactions are expressly cancelled, and there are no understandings, representations or warranties of any kind except as expressly set forth herein. No changes, alterations or modifications or amendments of this Agreement shall be effective unless made in writing and signed by those persons designated for such purpose.
5. In case if the numbering order or definitions of the Appendices in the Particular Conditions vary from the numbering order or definitions of the General Conditions, the Particular Conditions shall prevail.

6. In case if any terms are not defined in the Agreement the definitions provided in the original FIDIC documentation (for instance, FIDIC Yellow Book, Red Book), shall apply.
7. In case if the definition of the Implementing Body in the Appendix 1 [Technical Specification] differs from the definition of Implementing Body stipulated in this document, the definition of the Implementing Body stipulated in this document shall prevail.

Article 2.

1. The Client hereby engages the Consultant, in accordance with the terms and conditions of this Agreement, the Consultant's Tender, and the Consultant hereby accepts the engagement to carry out the following Services:
 - a. **Design Services** – within 24 months from the date of entry into effect of this Agreement, as stated in Sub-Clause 4.1.1 of Particular Conditions,
 - b. **Design Supervision Services** - within 60 months from the Commencement Day, as stated in Sub-Clause 4.2.2 of Particular Conditions but not earlier then construction technical supervisor will issue the performance certificate for the works.
2. The Agreement shall be effective until complete implementation thereof or until it is terminated in accordance with the terms and conditions of the Agreement or the applicable Laws of the Country.

Article 3

1. For carrying out the Services, the Client undertakes to accept the provisional/final acceptance documents and payment documents, to submit them to the Implementing Body (or the Beneficiary), and the Implementing Body (or the Beneficiary) undertakes to pay the Consultant the Remuneration pursuant to the procedure specified in the Agreement.
2. The Consultant shall send the invoice to the Client electronically to the e-mail: DTDinvoices@railbaltica.org in accordance with the procedure stipulated in the Agreement. The Client shall review the invoice and if it will contain all necessary requisites, will forward the Consultant's invoice to the Implementing Body or the Beneficiary (e-mail is mentioned below) within 10 (ten) days.
3. Payments of the Consultant's Services accepted by the Client in accordance with the Agreement will be made by the Implementing Body (or the Beneficiary) in euro, by bank transfer to the Consultant's bank account specified in the Agreement below. The time of the payment shall be the date evident on the payment order of the Implementing Body (or the Beneficiary).

The invoices shall contain the following information: Implementing Body's details:

Implementing Body	RAIL BALTIC ESTONIA OÜ
Registration No	12734109
VAT payer's No	EE101954107
Address	Endla 16, Tallinn, 10142, Estonia
Name of Bank	[•]
SWIFT (BIC) Code	[•]
Bank Account No.	[•]

4. Before signing the provisional/final acceptance documents the Client shall send them accompanied with the invoices to the Implementing Body by using the e-mail stipulated in the Agreement in order to obtain from it an opinion on the quality of the respective Services. The Implementing Body provides its opinion by sending it to the Client within 10 (ten) days from the day of receipt of the provisional/final acceptance documents by using the e-mail stipulated in the Agreement. In case an opinion is not received, after lapse of the 10 (ten) day period the Client shall have the right to assume that the Implementing Body is satisfied with the quality of the particular Services. To the extent possible the Client shall treat favourably the opinion of the Implementing Body, however the Client shall not be prevented to accept the relevant Services if in the best professional opinion of the Client the Services are rendered according to the required quality. In such case the Client shall not send the provisional/final acceptance documents to the Implementing Body repeatedly.

5. When the Consultant submits the Detailed Technical Design – one of the main deliverables stipulated in the Appendix 1 [Technical Specification] to the Client for approval, the previously stipulated order (item 4 of this Article 3) applies with an exception that the Beneficiary shall issue a binding approval for this specific deliverable in the most reasonable time, but not exceeding 30 (thirty) days, and in accordance with paragraph (3) of Sub-Clause 3.1.10.

6. If, by the time of paying a part of the Remuneration, the Client has obtained a claim of contractual penalty or damages against the Consultant, the Client on behalf of the Implementing Body shall have the right to deduct the relevant amount from the part of the Remuneration payable by submitting the relevant reasoned statement of set-off in a written format, or if the communication takes place over e-mail, in a format which can be reproduced in writing; i.e. the Client on behalf of the Implementing Body is entitled to set off the claim of contractual penalty or damages against the invoices payable to the Consultant. The statement shall be submitted at the same time as the payment or immediately after the execution of the payment, or if the amount owed by the Consultant exceeds the amount of the payment, at the latest on the date the payment would have fallen due.

7. The Consultant shall pay any contractual penalties and damages; the Client on behalf of the Implementing Body may deduct this amount from any sums payable to the Consultant pursuant to the Agreement.
8. By giving a written notice 5 (five) days in advance, but in case of an unannounced check or audit or on-the-spot-visit without an advance notice, the Implementing Body may carry out technical, legal and financial checks and audits of the Consultant and the sub-contractors of the Consultant, and on-the-spot visits to the sites and premises where the activities related to the implementation of the Agreement are or were carried out. Checks and audits and on-the-spot visits may be carried out either directly by the authorized staff of the Implementing Body or by any other outside body authorised to do so on its behalf.
9. The Consultant is obliged to provide to the Client's or Implementing Body's staff which is performing a check or audit or on-the-spot visit or any other outside body authorised by the Client or the Implementing Body to access to all the information and documents, including information in electronic format, which is requested by the performer of the check or audit or on-the-spot-visit or any other outside body authorised by it for the performance of the check or audit or on-the-spot visit and which relates to the execution of this Agreement, as well as shall allow the performer of the check or audit or on-the-spot visit or any other outside body authorised by it copying of the information and documents with due respect to the confidentiality obligation. The Consultant is obliged to agree in the contracts with its sub-contractors on the right of the Client and the Implementing Body to access and to copy their information and documents which relate to the execution of this Agreement.

The Consultant hereby is entitled to receive the following Remuneration payments for due and proper provision of the Services in accordance with the terms and conditions set out in the Agreement:

No	Service / Stage	Price (VAT exclusive)	VAT	Price with VAT
1.	Design Services	EUR 6'259'048,00 (six million two hundred fifty-nine thousand forty-eight euro)	*	*
2.	Design Supervision Services	EUR 543'474,00 (five hundred forty-three thousand four hundred seventy-four euro)	*	*
	Total Remuneration	EUR 6'802'522,00	*	*

		(six million eight hundred two thousand five hundred twenty-two euro)		
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* VAT amount shall be established and paid in accordance with the law of the Country.

10. The Remuneration (VAT exclusive) shall be regarded as final and, under exceptional circumstances, may be subject to change solely in accordance with the terms and conditions set out in the Agreement.
11. Payment for the following Services shall be completed pursuant to the terms and conditions of Clause 7 of the Particular Conditions and the General Conditions of the Agreement.
12. The Consultant is obliged to register in the public tax registers of the Country (if applicable), or otherwise the Client is entitled to make any deductions resulting from incompliance of the taxing obligation.
13. Bank account requisites for payments for the Consultant:

Bank account holder: IDOM CONSULTING, ENGINEERING,
ARCHITECTURE, S.A.U.

Registration number: A48283964

VAT registration number: A48283964

Bank account No: [•]

Name of Bank: [•]

Bank address: [•]

Bank code: [•]

SWIFT code: [•]

Article 4.

1. The Consultant shall provide the Client with a Contract Performance Security issued in accordance with Clause 8 of the Particular Conditions and the General Conditions of the Agreement as well as in accordance with the Appendixes of the Agreement.

Article 5.

1. All the notifications, meetings and other correspondence which the Party sends under the Agreement shall be made in English and shall be considered to be valid and properly served where it has been served to the other Party or sent by registered mail or email to the other Party to the following contact information, or other contacting details duly notified by the other Party in writing.

Representative's responsible for the Agreement administration and management:

	CLIENT'S REPRESENTATIVE	CONSULTANT'S REPRESENTATIVE
NAME,SURNAME	[•]	[•]
ADDRESS	[•]	[•]
PHONE NUMBER	[•]	[•]
EMAIL	[•]	[•]

2. The Parties shall not later than within 5 (five) days inform the other Party in writing concerning the change of the contact details of the Party (i.e. address, the details of bank accounts, registration numbers and (or) other data that may have affect on the proper implementation of the Agreement). In case of failure to inform in the time specified, any payments, notifications, meetings and other correspondence made to such Party to the contact information specified in the Agreement shall be considered valid and properly served.

Article 6.

1. The Agreement is entered into in English language 3 (three) duplicates having equal authority - one for each of the Parties.
2. This Agreement is entered into and governed by and shall be construed and interpreted in accordance with the applicable Laws of the Country.

Requisites of the Parties:

[•]

Signatures of the Parties:

On behalf of the Client:

[•]

Date: 29 March 2019

Signature:

On behalf of the Consultant:

[•]

Date: 29 March 2019

Signature:

In the name and on behalf of the Implementing Body:
The Client, represented by:

[•]

[•]

Date: 29 March 2019

Signature:

Date: 29 March 2019

Signature: