

STUDY AGREEMENT

for

**STUDY ON CLIMATE CHANGE IMPACT ASSESSMENT FOR THE DESIGN, CONSTRUCTION,
MAINTENANCE AND OPERATION OF RAIL BALTICA RAILWAY**

between

RB Rail AS

and

Hendrikson & Ko OÜ

Contract registration number 8/2018- *54*

CEF¹ Contract No C2.1.1.

INEA/CEF/TRAN/M2016/1360716

Procurement procedure identification No RBR 2018/7

Riga

Dated 7 September 2018

¹ Grant Agreement under the Connecting Europe Facility

STUDY AGREEMENT

This STUDY AGREEMENT (hereinafter, the "Agreement"), together with all Annexes thereto, is entered into in Riga, on 7 September of the year 2018 (hereinafter, the "Effective Date") by and between:

RB Rail AS, a joint stock company registered in the Latvian Commercial Register, registration No 40103845025, legal address at Krišjāņa Valdemāra iela 8-7, Riga, LV-1010, Latvia ("Principal"), represented by Chairperson of the Management Board Baiba Anda Rubesa and Management Board Member Kaspars Rokens, acting on the basis of the Power of Attorney No 9/2018-6 (dated 26 March 2018), on the one side,

and

Hendrikson & Ko OÜ, a private limited company organized and existing under Estonian law, with registry code 10269950, having its registered address at Raekoja plats 8, Tartu, Estonia, postal index: 51004 (hereinafter, the "Contractor"), represented by the Member of the Management Board Heikki Kalle, acting on the basis of articles of association (dated 8 December 2011) on the other side.

WHEREAS:

- (A) This Agreement is entered into under the Rail Baltica 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 according TSI INF P2-F1 criteria and 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 ("Project");
- (B) The Principal has organised procurement procedure "**Study on climate change impact assessment for the design, construction, maintenance and operation of Rail Baltica railway**" (identification No. RBR 2018/7) (hereinafter, the "Procurement Procedure") whereby the Contractor's tender proposal (hereinafter, the "Contractor's Proposal") was selected as the winning bid;
- (C) This Agreement is co-financed from the Connecting Europe Facility (CEF), CEF Contract No INEA/CEF/TRAN/M2016/1360716, Activity C2.1.1.

SECTION I. DEFINITIONS AND INTERPRETATION

- 1.1. *Definitions.* In this Agreement, unless the context requires otherwise, all defined terms shall have the meanings ascribed to such terms in accordance with Annex A (*Definitions and Common Terms*).
- 1.2. *Interpretation.*
 - (a) The headings contained in this Agreement shall not be used in its interpretation.
 - (b) References to the singular shall include references in the plural and vice versa, words denoting a gender shall include any other gender where the context requires, and words denoting natural persons shall include any other persons.
 - (c) References to a treaty, directive, regulation, law or legislative provision shall be construed, at any particular time, as including a reference to any modification, extension or re-enactment of the respective treaty, directive, regulation, law or legislative provision at any time then in force and to all subordinate legislation enacted from time to time.
 - (d) In the event there arises a conflict between provisions of the Agreement, the last provision to have been written chronologically shall take precedence.
 - (e) Any reference in this Agreement to a person acting under the direction of another person shall not include any action that is taken in contravention of any Applicable Law or Standards, unless the relevant person can demonstrate that an explicit instruction or direction was given to take the relevant action.
 - (f) Unless expressly stated to the contrary, any reference in this Agreement to the right of consent, approval or agreement shall be construed such that the relevant consent, approval or agreement shall not be unreasonably delayed or withheld. The Parties agree and acknowledge as follows:

- (i) neither Party shall not be required to seek or apply for any consent, approval or agreement by any Person which would place the respective Party in breach of the Applicable Law or any Good Industry Practice; and
 - (ii) nothing in this Agreement shall require the Principal to give or procure the giving of any consent or approval which would be contrary to the protection, safety and efficient operation of the Railway and the Project.
- (g) A reference to "writing" shall include an e-mail transmission and any means of reproducing words in a tangible and permanently visible form.
- (h) The words "include" and "including" are to be construed without limitation.
- (i) Unless indicated otherwise, all references to "days" shall mean calendar days.
- (j) The words in this Agreement shall bear their natural meaning.
- 1.3. *Order of Precedence.* In the event of any discrepancy or inconsistency between the documents forming part of this Agreement, the following order of precedence shall apply:
- (a) this Agreement document;
 - (b) Explanations (clarifications) of the procurement documentation;
 - (c) Procurement documents with the annexes;
 - (d) Clarifications of the Tender of the Contractor;
 - (e) Tender of the Contractor.

SECTION II. GENERAL TERMS AND CONDITIONS

- 2.1 *Engagement to Carry Out Study.* The Principal hereby engages the Contractor to provide and perform the Study for the purposes of the Project, as further described and according to the specifications contained *ANNEX B: TECHNICAL SPECIFICATION* to this Agreement, and the Contractor hereby accepts such engagement. The Study shall result in the provision to the Principal of the Deliverables identified in accordance with *ANNEX C: SCHEDULE OF STUDY* to this Agreement.
- 2.2 *Co-Operation of the Parties.* The Parties shall cooperate with one another to fulfil their respective obligations under this Agreement. Both Parties shall endeavour to maintain good working relationships among all key personnel engaged toward provision of the Study.
- 2.3 *Licensing Requirements.* By signing this Agreement, the declaration is made by the Contractor that the Contractor is professionally qualified, registered, and licensed to practice in the Republic of Estonia, Lithuania and Latvia.
- 2.4 *General Obligations of Contractor.* The Contractor shall be responsible for the professional quality, technical accuracy, and coordination of all concepts, programming, reports, designs, drawings, specifications, and other services furnished under this Agreement. The Contractor shall have an obligation, without additional compensation of any kind, to correct or revise any errors, deficiencies, or omissions in concepts, programming, reports, designs, drawings, specifications, estimates, and other services rendered hereunder and forming part of the Study.
- 2.5 *Acceptance Not a Waiver.* The Principal's review, approval, acceptance, or payment for the Works forming part of the Study shall not be interpreted or construed to operate as a waiver of any right or cause for action arising out of the Contractor's performance of any Works under this Agreement. The Contractor shall remain liable to the Principal as allowed under this Agreement and under Applicable Law for any and all costs and/or Damages caused by the Contractor's negligent performance of any of the Works furnished under this Agreement.

SECTION III. RESPONSIBILITIES OF PRINCIPAL

- 3.1. *Supply of Information.* Unless otherwise provided under this Agreement, the Principal shall, in a timely manner, provide to the Contractor any information regarding requirements and parameters of the Project, as may reasonably be requested by the Contractor for the purposes of the Study, provided that the Principal is in possession of such information.

- 3.2. *Review of Documentation.* The Principal shall examine Documentation as may be submitted by the Contractor for review by the Principal toward partial completion of the Study and, upon request of the Contractor, shall render decisions and opinions pertaining thereto.
- 3.3. *Decisions.* On all matters properly referred to it in writing by the Contractor the Principal shall give its decision in writing so as not to delay the Study and within a reasonable time.
- 3.4. *Accounting and Auditing Services.* The Principal shall furnish accounting and auditing services as may be necessary for the Study as the Principal may require to ascertain how and/or for what purposes the Contractor has used the funds paid under the terms of this Agreement.
- 3.5. *Action Upon Becoming Aware of Defects.* In the event the Principal observes or otherwise becomes aware of any error, fault, omission, or defect in the Study or non-conformance of any action forming part of the Study with the Documentation, the Principal shall give prompt notice thereof to the Contractor. The Contractor shall have the obligation to correct such error, fault, omission, or defect in the Study or non-conformance of any action forming part of the Study.

SECTION IV. RESPONSIBILITIES OF CONTRACTOR

- 4.1. *Standard of Performance.* The Contractor's services shall be performed as expeditiously as is consistent with professional skill and care, orderly progress of the Study, and in accordance with the Schedule of Study set forth in accordance with *ANNEX C: SCHEDULE OF STUDY*.
- 4.2. *Accuracy Standard.* Precision of the Deliverables shall be based on the Positional Accuracy Concept. The Contractor shall recommend positional accuracy limits and error of closure limits for the areas, terrains and properties being studied or surveyed as part of the Study.
- 4.3. *Drawing Requirements.* The Contractor shall furnish to the Principal, two (2) copies of prints of each drawing and one electronic media drawing file of each drawing, configured according to conditions stipulated in *ANNEX B: TECHNICAL SPECIFICATION*, provided that regulation in Technical Specification prevail.
- 4.4. *Obligation to Act in Accordance with Principal's Comments.* In performing the Study, the Contractor shall have due regard to any comments made by the Principal in connection with any review of the Documentation and shall provide reasons to the Principal where it does not take into account any such comments.
- 4.5. *Duty of Care and Exercise of Authority.* The Contractor shall:
- (a) in performing its obligations under this Agreement, exercise reasonable professional skill, diligence and care as may be expected of a properly qualified and competent person carrying out services of a similar size, nature, type and complexity;
 - (b) ensure that its personnel are properly qualified and competent in accordance with the relevant Standards;
 - (c) ensure that all maps, drawings, plans, specifications, estimates, surveys and other documents required to be prepared or submitted by the Contractor under this Agreement conform to Good Industry Practice generally acceptable at the time of submission of such maps, drawings, plans, specifications, estimates, studies and documents;
 - (d) at all times during the term of the Study, ascertain and comply with all Applicable Laws and Good Industry Practice of the Republic of Latvia, Lithuania and Estonia;
 - (e) comply, where applicable, with any reasonable requirements of the Principal not otherwise provided for in this Agreement; and
 - (f) ensure that all designs are performed, and that the design process is documented, in accordance with Good Industry Practice, and using standard industry quality control methods.
- 4.6. *Maintenance of Records.* During the term of the Study and during 5 (five) years from expiration or termination of this Agreement for any reason whatsoever, the Contractor shall keep and maintain clear, adequate and accurate records and Documentation evidencing, to the reasonable satisfaction of the Principal, that the Study has been and is being carried out in accordance with the Standards. In addition, the Contractor shall retain copies of the object code of all Contractor's Software used in performance of the Study and retain copies of all software used in the design and production of the Contractor Software. In case of on-going audits, appeals, litigation or pursuit of claims concerning the grant, including in the case of correction of systemic or recurrent errors, irregularities, fraud or breach of obligations, the records shall be kept and maintained longer.

4.7. *Access to Documentation.* At all times during the term of the Study, the Principal shall have access to all Documentation. This access shall be continuing and survive the termination of this Agreement for either cause or convenience. The Documentation shall be kept in a generally recognised format for a period of ten (10) years from the date of termination of this Agreement or the Final Acceptance Date, as applicable. All records forming part of the Documentation shall be available to the Principal auditor, or expert appointed by the Principal during the period of time specified in accordance with this Clause 4.7.

4.8. *Right to Sub-Contract and Staff.* In carrying out the Study, the Contractor may only rely on the services of those Approved Sub-Contractors listed in *ANNEX E: LIST OF APPROVED SUB-CONTRACTORS* and Staff listed in *ANNEX E: LIST OF APPROVED SUB-CONTRACTORS* and Staff, as such list may, from time to time, be modified or supplemented in agreement with the Principal and in accordance with the terms and subject to the criteria contained in the applicable Public procurement law of the Republic of Latvia. *ANNEX E: LIST OF APPROVED SUB-CONTRACTORS* and Staff shall specify the name, contact details and legal representative(s) of each Approved Sub-Contractor as of the Effective Date. The Contractor shall have an obligation to notify the Principal in writing of any changes to Sub-Contractor and/or data specified in *ANNEX E: LIST OF APPROVED SUB-CONTRACTORS* and Staff occurring during the term of this Agreement and of the required information for any new sub-contractors and/or Staff member which it may subsequently engage toward provision of the Study.

Pursuant to the Public Procurement law of the Republic of Latvia applicable at the date of entry into effect of this Agreement, the Service Provider shall obtain prior written consent of the Principal for the replacement of each Sub-contractor and/or each Staff member and/or key personnel indicated in *ANNEX E: LIST OF APPROVED SUB-CONTRACTORS AND STAFF* and involvement of additional sub-contractors and/or Staff members.

Review and evaluation of the replacement Sub-contractors and/or Staff shall be carried out, and the consent or refusal to give consent shall be rendered by the Principal in accordance with the Section 62 of the Public Procurement Law of the Republic of Latvia.

The Contractor shall replace the Sub-contractor and/or Staff member which, during the effectiveness of this Agreement, meets any of the compulsory grounds for exclusion of tenderers (or sub-contractors) that were verified during the Procurement Procedure.

4.9. *Responsibility for Performance by Sub-Contractors.* The Contractor shall retain the complete responsibility for the proper performance of all of its obligations under this Agreement, and any act, failure to act, breach or negligence on the part of any of its Approved Sub-Contractors shall, for the purposes of this Agreement, be deemed to be the act, failure to act, breach or negligence of the Contractor.

4.10. *No Conflicting Activity.* Except with the Principal's knowledge and express written permission, the Contractor shall not engage in any activity, or accept any employment, other agreement, interest, or contribution that would reasonably appear to compromise the Contractor's professional judgment and performance with respect to the Study and/or the Project. In performing the Study, the Contractor shall take all necessary measures to prevent any situation where the impartial and objective implementation of the Study is compromised for reasons involving economic interest, political or national affinity, family or emotional ties or any other shared interest.

4.11. *Attendance of Meetings.* To the extent necessary to ensure smooth and efficient provision of the Study, the Contractor shall, at the Principal's request, hold and/or attend meetings with any Persons.

4.12. *Compliance with Laws.* The Contractor shall review the Applicable Laws applicable to the Contractor's services. In carrying out any activities forming part of the Study, the Contractor shall, at all times, ensure compliance with requirements imposed by supra-national and/or governmental authorities having jurisdiction over the Project.

4.13. *Information Furnished by Principal.* The Contractor shall be entitled to rely on the accuracy and completeness of services and information furnished by the Principal. The Contractor shall provide prompt written notice to the Principal if the Contractor becomes aware of any errors, omissions, or inconsistencies in such services or information.

4.14. *Visibility Requirements.* At all times during performance of the Study, the Contractor undertakes to comply with each of the following requirements:

- (a) any report, brochure, document or information related to the Study conducted by the Contractor hereunder or any other Person, or which the Contractor makes publicly available shall include each of the following:
 - (i) a funding statement which indicates that the Study is financed from CEF funds substantially in the following form: "Rail Baltica is co-financed by the European Union's Connecting Europe Facility";
 - (ii) with respect to printed materials, a disclaimer releasing the European Union from liability with respect to any contents of any distributed materials substantially in the form as follows: "The sole responsibility

of this publication lies with the author. The European Union is not responsible for any use that may be made of the information contained therein". The disclaimer in all official languages of the European Union can be viewed on the website <https://ec.europa.eu/inea/connecting-europe-facility/cef-energy/beneficiaries-info-point/publicity-guidelines-logos>; and

- (iii) the flag of the Council of Europe and the European Union,
- (b) the requirements set forth in Clauses 4.14 (a) (i) and 4.14 (a) (iii) of this Agreement can be complied with by means of utilizing the following logo:



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

in the event the Contractor decides to utilise the above logo, the Contractor shall ensure that the individual elements forming part of the logo are not separated (the logo shall be utilised as a single unit) and sufficient free space is ensured around the logo; and

- (c) in order to comply with the latest applicable visibility requirements established by the European Union, the Contractor shall regularly monitor changes to visibility requirements; as of the Effective Date, the visibility requirements are available for review on the webpage <https://ec.europa.eu/inea/connecting-europe-facility/cef-energy/beneficiaries-info-point/publicity-guidelines-logos>.

SECTION V. REPRESENTATIONS AND WARRANTIES

- 5.1 *Certain Representations and Warranties by Parties.* Each Party represents and warrants to the other Party, as of the Effective Date, as follows:

- (a) it has entered into this Agreement with the aim of attaining all of the objectives and performing in all material respects all of the obligations and commitments herein set forth;
- (b) it has entered into this Agreement without having any intention or goal whatsoever to violate the Applicable Law, its own Statutes, other constitutional documents or agreements of any kind to which it is a party;
- (c) it is not bankrupt and is not the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, it is not in an arrangement with creditors, where its business activities are suspended, or it is in any analogous situation arising from a similar procedure under the laws of the country where it is registered and submits its tax accounts; and
- (d) it has entered into this Agreement of its own volition and in good faith.

- 5.2 *Certain Representations and Warranties by Contractor.* The Contractor represents and warrants to the Principal, as of the Effective Date, as follows:

- (a) it has all requisite qualification, skills and competence to perform the Study on the terms and conditions of this Agreement which are no less favourable than the terms and conditions of service identified by the Contractor in any document submitted by the Contractor to the Principal as part of the Procurement Procedure and on the terms of the Contractor's Proposal;
- (b) it holds all requisite licenses, permits, approvals and consents necessary to enable performance by the Contractor of the Study according to the specifications contained in *ANNEX B: TECHNICAL SPECIFICATION*;
- (c) it has all requisite ability to ensure the highest quality of the Study;
- (d) it will assign competent and duly qualified personnel to carry out the Works set out in this Agreement according to the highest professional standard and Good Industry Practice;
- (e) it is not deemed to be a person associated with the Principal for the purposes of Applicable Law;
- (f) it has not been registered as a VAT payer in the Republic of Latvia; and
- (g) it is compliant with all of the requirements of the Contractor's Declaration contained in *ANNEX J: DECLARATION OF CONTRACTOR* and will continue to be compliant with all such requirements during the term of this Agreement.

- (h) the income mentioned in this Agreement will not derive through permanent establishment or fixed base maintained by the Contractor in the Republic of Latvia. The Contractor agrees to submit to the Principal four (4) copies of "Residence Certificate–Application for Reduction of or Exemption from Latvian anticipatory taxes withheld at source from payments (management and consultancy fees, leasing fees and certain other types of income), paid to residents of the Republic of Estonia" (the Residence Certificate") confirmed by Competent Authority of the Republic of Estonia and the Latvian State Revenue Service. The Residence Certificate shall be submitted to the Principal prior the Principal will due to make a payment of the fee or other payments to the Contractor. Otherwise the Principal will withhold withholding tax at the rate of 20% from the fee and payments made to the Contractor.

SECTION VI. FEE AND PAYMENT

- 6.1 **Fee.** In consideration of provision of the Study, the Principal undertakes to pay the Contractor a consideration in the total amount set forth in accordance with *ANNEX D: FEE AND PAYMENT SCHEDULE* (hereinafter, the "Fee") which shall be split into separate instalments and be payable by the Principal to the Contractor according to the Schedule set forth *ANNEX D: FEE AND PAYMENT SCHEDULE*. It is acknowledged and agreed by the Parties that the Fee shall include all Costs and expenses incurred by the Contractor and Approved Sub-Contractors toward performing the and successfully completing the Agreement. The Fee specified in accordance with this Clause 6.1 excludes value added tax that will be charged at the rate applicable in accordance with Applicable Law at the time of invoicing.
- 6.2 **Invoicing.** According to *ANNEX D: FEE AND PAYMENT SCHEDULE* and following each Completion Date and/or Final Acceptance Date, provided that the Principal has accepted/approved the particular part of the Study which the Invoice related to, the Contractor shall deliver to the Principal an invoice specifying the amount of Fee payable and the period of time with respect to which the Fee is payable. In the event the Principal objects to payment of any amount claimed by the Contractor in the invoice, notice to this effect shall be given by the Principal to the Contractor not later than five (5) Working Days before the due date for payment under this Clause 6.2. The notice of objection shall state the amount to be withheld, the grounds for withholding the payment and the basis on which that amount is calculated. Unless such notice of objection is made by the Principal, the amount to be paid is that stated in the invoice which shall become due and payable in accordance with this Clause 6.2. For the avoidance of any doubt, the Principal shall not be required to pay any amount under this Agreement with respect to any part of the Study that has not been accepted by the Principal in accordance with Clauses 7.5, 7.6 or 7.7 of this Agreement.
- 6.3 **Payment.** Subject to the provisions of Clause 6.2, the Principal reserves the rights to make the payments to the Contractor with set-off, retention, counterclaim, abatement or other deduction of any kind if the nature of such set-off, retention, counterclaim, abatement or other deduction of any kind arises from this Agreement and the obligations of the Contractor provided herein (i.e. in cases of accrued contractual penalty amounts etc.). If the Principal uses the right to make the payments to the Contractor with set-off, retention, counterclaim, abatement or other deduction of any kind, then the Principal so notifies to the Contractor no later than on the date of the respective payment stating the amount, the grounds and the basis on the Principal uses its right to set-off, retention, counterclaim, abatement or other deduction. Invoices shall be paid within 30 (thirty) days after the date of issue of the invoice. For the avoidance of any doubt, the Principal shall not be required to pay any amount with respect to any invoice in the absence of a Provisional Completion Note duly signed by the Principal or, with respect to the final payment of the Fee to be effected under this Agreement, the Final Acceptance Note duly signed by both Parties.
- 6.4 **Costs and Commissions.** Each Party shall bear its own costs, fees, commissions and expenses incurred in connection with the transfer of any funds under this Agreement to the other Party.
- 6.5 **Compliance with Tax Obligations in Estonia.** It is acknowledged and agreed by the Parties that the Fee shall include all taxes and duties payable by the Contractor in the consequence of provision of the Study, except value added tax (VAT). The Contractor shall, at the sole cost and expense of the Contractor, comply with the obligation to pay all taxes and duties relevant to the provision of the Study in Estonia and in accordance with Applicable Law of Estonia. In addition, the Contractor shall assume all risks associated with the payment or obligation to pay such taxes and duties, if any. The Contractor assumes all risks associated with the possible increase in the amount of the Fee arising as a result of the obligation of having to pay any such taxes or duties, except as a result of a change in law.
- 6.6 **Invoice.** The Contractor's invoices shall contain the following Contractor's details and details about the Contract (The Contractor shall send the invoice to the Principal electronically to the following e-mail address: invoices@railbaltica.org. The Principal shall review the invoice to verify whether it contains all necessary requisites).

Contractor	Hendrikson & Ko OÜ
Registration No	10269950

VAT payer's No or indication that the Contractor is not a VAT payer	100039285
Legal address, city, Zip code, country	Raekoja plats 8, Tartu, index: 51004, Estonia
Legal name of Bank	
Bank SWIFT Code	
Bank Account No IBAN	
Subject:	For provided services according to the Study Agreement for Rail Baltica Railway No 2408-39 (CEF Contract No INEA/CEF/TRAN/M2016/1360716, Activity No C2.1.1), Contract manager: Lauris Ivanovs: Technical Interface Manager, e-mail address: lauris.ivanovs@railbaltica.org .

SECTION VII. COMMENCEMENT OF STUDY, REMEDYING OF DEFECTS AND ACCEPTANCE

- 7.1 *Study Commencement.* The Contractor shall not commence provision of the Study until Study Start Date, as identified in accordance with *ANNEX C: SCHEDULE OF STUDY* and shall ensure that the Deliverables are furnished to the Principal on or before each relevant Study Milestone. The Contractor shall perform the Study with due diligence having due regard to any applicable Study Milestones and any other key dates for performance of the Study set out in the Agreement and the applicable Annexes, as may be amended from time to time with the consent of the Principal or in accordance with this Agreement.
- 7.2 *Impediments and Delays.* If the Study, or any part thereof, is impeded or delayed by the Principal or any third party engaged by the Principal so as to increase the duration of the Study:
- the Contractor shall inform the Principal of the circumstances and probable effects of such impediment or delay upon the agreed Schedule of Study specified in accordance with *ANNEX C: SCHEDULE OF STUDY*; and
 - the duration of the Study shall be increased, and any Study Milestones affected by the impediment or delay shall be extended accordingly.
- 7.3 *Defects and Defects Date.* Until the Defects Date specified in accordance with *ANNEX C: SCHEDULE OF STUDY* the Principal shall notify the Contractor any Defects of any kind as soon as Defects are identified by the Principal and the Contractor shall have an obligation to notify the Principal of any Defects of any kind as soon as Defects are identified by the Contractor. Upon discovery of any Defects, or upon receipt by the Contractor of a notification of Defects from the Principal, the Contractor shall have fourteen (14) calendar days to remedy the Defects, irrespective of the nature of such Defects (hereinafter, the "Cure Period"). In the event of inability or failure by the Contractor to remedy the Defects within the Cure Period, the Principal shall be entitled, in the sole and exclusive discretion of the Principal, to do any of the following:
- allow the Contractor an additional time period for remedying the Defects, such time period to be determined in the sole discretion of the Principal;
 - remedy the Defects, irrespective of the extent or nature of the Defects, at own cost of the Principal (including by means of relying on the services of a third Person) and demand reimbursement by the Contractor of Costs incurred by the Principal as a result of having to pay other Persons toward carrying out any work or action;
 - terminate the Agreement according to *SECTION IX. TERMINATION; SUSPENSION*; or
 - remedy the Defects, irrespective of the extent or nature of the Defects, in accordance with Clause 7.3 and terminate the Agreement pursuant to *SECTION IX. TERMINATION; SUSPENSION*.
- For the avoidance of any doubt, the application of the Cure Period under this Clause 7.3 shall be without prejudice to and shall not relieve the Contractor from the obligation to pay any contractual penalty in accordance with the provisions of Clause 10.2 or to pay Damages in accordance with the provisions of Clause 10.3 of this Agreement.
- 7.4 *Completion of Study and Completion Note.* Meeting of a Study Milestone or supply of a Deliverable occurs whenever the Contractor has completed all of the Works which the Contractor has undertaken to perform according to the Technical Specification and Schedule of Study by the relevant Study Milestone. On meeting a Study Milestone and/or producing a Deliverable (including all Documentation forming part of the Deliverable) constituting all or an identifiable part of the Study, the Contractor shall issue to the Principal a Provisional Completion Note substantially

in the form of *ANNEX F: FORM OF PROVISIONAL COMPLETION NOTE* (hereinafter, the "Provisional Completion Note"). The Provisional Completion Note shall include the Deliverable and adequate supporting documentation relevant to the Study Milestone attained and/or Deliverable completed.

- 7.5 *Objection Notice and Provisional Acceptance Note.* In the event the Principal objects to the issuance of a Provisional Acceptance Note, it shall give notice to the Contractor setting out in reasonable detail any Defects or reason for the objection (hereinafter, the "Objection Notice") within reasonable time following receipt of the Provisional Completion Note. In the event no reasons for objection to the Provisional Completion Note exist, the Principal shall issue, within reasonable time following receipt of the Provisional Completion Note, a provisional acceptance note in the form of *ANNEX G: FORM OF PROVISIONAL ACCEPTANCE NOTE* (hereinafter, the "Provisional Acceptance Note"). Subject to Clause 2.5 of this Agreement, the date of the Provisional Acceptance Note shall constitute "Completion Date" with respect to the relevant Study Milestone and/or Deliverable. The Principal shall not unreasonably withhold or delay issuance of a Provisional Acceptance Note. The Provisional Acceptance Note may have annexed to it a list of any outstanding Defects or deficiencies to be corrected by the Contractor.
- 7.6 *Completion of Study Following Receipt of Objection Notice.* In the event of receipt by the Contractor of an Objection Notice in accordance with Clause 7.5, the Contractor shall:
- (a) take due account of all Defects, irrespective of their extent or nature, and other matters raised in the Objection Notice;
 - (b) as soon as reasonably practicable but no later as mentioned in the Objection Notice correct such Defects and deficiencies, irrespective of their extent or nature, and complete the Works indicated in the Objection Notice so as to comply in all material respects with the requirements of this Agreement; and
 - (c) issue to the Principal a second Provisional Completion Note substantially in the form of *ANNEX F: FORM OF PROVISIONAL COMPLETION NOTE*.

The second Provisional Completion Note issued in accordance with Clause 7.7. (c) shall include the Deliverable and adequate supporting documentation relevant to the Study Milestone attained and/or Deliverable completed. In the event no reasons for objection to the second Provisional Completion Note exist, the Principal shall, within reasonable time following receipt of the second Provisional Completion Note, issue a Provisional Acceptance Note in the form of *ANNEX G: FORM OF PROVISIONAL ACCEPTANCE NOTE* and, subject to the provisions of Clauses 2.5 and 9.1(b) of this Agreement, the date of the Provisional Acceptance Note shall constitute "Completion Date" with respect to the relevant Study Milestone and/or Deliverable. For the avoidance of any doubt, the giving by the Principal of any Objection Notice under Clause 7.5 or second Objection Notice under this Clause 7.6 shall be without prejudice to and shall not relieve the Contractor from the obligation to pay any contractual penalty in accordance with the provisions of Clause 10.2 of this Agreement or to pay Damages in accordance with the provisions Clause 10.3 of this Agreement.

- 7.7 *Final Acceptance.* Final acceptance of the Study shall occur upon remedying of all Defects notified by the Principal to the Contractor in accordance with Clause 7.3, irrespective of the extent or nature of such Defects. Final acceptance shall be evidenced by means of the Principal issuing and both Parties attaching their signatures to the Final Acceptance Note substantially in the form of *ANNEX H: FORM OF FINAL ACCEPTANCE NOTE* (hereinafter, the "Final Acceptance Note"). The date of the Final Acceptance Note shall constitute the "Final Acceptance Date" with respect to the Study. The Principal shall not unreasonably withhold or delay issuance of a Final Acceptance Note.

SECTION VIII. INTELLECTUAL PROPERTY RIGHTS

- 8.1 *Proprietary Rights.* All Documentation forming part of the Deliverables developed under this Agreement is and shall become the property of the Principal regardless of whether the Study or Deliverable is produced or finally accepted. It is acknowledged and agreed by the Parties that the Principal shall be permitted to reproduce the drawings, schemes and distribute the prints in connection with the use or disposition of the Documentation without any approval of the Contractor and without incurring obligation to pay any royalties or additional compensation whatsoever to the Contractor.
- 8.2 *Intellectual Property in Documentation.* The Contractor represents and warrants that it owns all Intellectual Property required for the purposes of completing its obligations under this Agreement and in all Documentation deliverable by or on behalf of the Contractor under this Agreement and that, to the extent any Intellectual Property in any Documentation is not owned by the Contractor, it has obtained all requisite consents from owner(s) of all Intellectual Property in the Documentation to fulfil all of the obligations undertaken by the Contractor under this Agreement and has fully discharged all obligations with respect to payment of any royalties or fees.
- 8.3 *Transfer of Ownership to Principal.* The Principal shall acquire legal title to and ownership in the Intellectual Property in all Documentation deliverable to the Principal under this Agreement as of the moment of delivery by the

Contractor to the Principal of the Provisional Completion Note, together with the Deliverable and Documentation forming part of the Deliverable, in accordance with Clause 7.4. of this Agreement; provided, however, that the Principal has paid the Fee or other consideration payable under the terms of this Agreement with respect to the relevant part of the Study or Deliverable. For the avoidance of any doubt, such title and ownership shall confer upon the Principal, without limitation, each of the following:

- (a) the right to reproduce the Documentation, or any part thereof, and distribute copies of the Documentation or any part thereof;
- (b) the right to modify, amend and supplement the Documentation, or any part thereof;
- (c) the right to licence the Documentation, or any part thereof, for use by others; and
- (d) the right to transfer ownership in the Documentation, or any part thereof, to others.

8.4 *Grant of Limited License to Contractor.* Upon acceptance by the Principal of any Deliverable and Documentation forming part of any Deliverable in accordance with Clause 7.4. the Principal shall be deemed to have granted the Contractor an irrevocable and exclusive licence to reproduce, modify and distribute copies of any Documentation forming part of any Deliverable for the purposes of the Study and the Project, subject to the following restrictions:

- (a) the license shall apply during the term of this Agreement only;
- (b) the permitted use shall only cover the right to reproduce, modify and distribute the Documentation, or any part thereof, for the purposes of performing, implementing or modifying the Study; and
- (c) the Documentation, or any part thereof, shall not, without the prior consent by the Principal, be distributed or communicated to any third party for purposes other than those permitted in accordance with this Clause 8.4.

The license in accordance with this Clause 8.4 shall be deemed to have been granted to the Contractor as of the Completion Date shall be deemed to have been granted to the Contractor as of the Completion Date.

8.5 *No Additional Royalty.* It is acknowledged and agreed by the Parties that consideration for the transfer of ownership in the Intellectual Property shall be forming part of the Fee and no additional royalty, fee or other consideration of any kind shall be payable by the Principal to the Contractor or to any third party in consideration of the transfer of ownership in the Intellectual Property in any Documentation.

8.6 *No Infringement.* The Contractor represents and warrants to the Principal that no Documentation deliverable to the Principal under the terms of this Agreement will infringe any existing Intellectual Property of any third party. In the event any of the representations or warranties contained in this *SECTION VIII. INTELLECTUAL PROPERTY RIGHTS* prove to be untrue or inaccurate, the Contractor undertakes, at its own cost and expense, to defend and settle any claim raised by any third party alleging infringement of Intellectual Property in the Documentation. The foregoing undertaking by the Contractor shall apply subject to the following conditions:

- (a) the Principal shall notify the Contractor, without undue delay, of any third-party claim alleging infringement of any Intellectual Property in any Documentation;
- (b) the Principal refrains from admitting liability under any third-party claim or acting on the account of such claim without prior approval by the Contractor; and
- (c) the exclusive control over any legal proceeding or settlement related any third-party claim shall be exercised by the Contractor; provided, however, that the Principal shall render the Contractor all reasonable assistance toward such proceeding or settlement, at the cost and expense of the Contractor.

8.7 *Infringement Proceedings.* In the event the Principal is a party to legal proceedings involving allegations of infringement of any Intellectual Property in the Documentation of any third party, the Contractor shall keep the Principal fully informed of all aspects relevant to the legal proceedings and the Principal shall have the right, at its own cost, to be represented in the legal proceedings by separate counsel. In the event the Contractor fails to act against claims alleging infringement of any Intellectual Property in the Documentation of any third party within reasonable time but, in any event, within twenty (20) days of having been notified of such claims, the Principal shall have the right to assume legal defence against claims alleging infringement of Intellectual Property and shall be entitled to reimbursement by the Contractor of reasonable costs and expenses incurred toward such defence.

8.8 *Continued Use.* In the event a court of competent jurisdiction resolves in a binding judgment that the Documentation, or any part thereof, infringe Intellectual Property of any third party, the Contractor shall, at its own cost and expense, procure for the Principal the right of continued use of the Documentation, or part thereof infringing Intellectual Property of a third party.

- 8.9 *License in Intellectual Property of Contractor.* The Contractor hereby grants the Principal an irrevocable and non-exclusive license to use, reproduce, modify and/or enhance any Intellectual Property of the Contractor, provided and to the extent Intellectual Property of the Contractor is used by the Principal for the purposes of the Railway and/or the Project. It is agreed and acknowledged by the Parties that the license fee for the grant of license in accordance with this Clause 8.9 forms part of the Fee and such license shall continue to be valid irrespective of expiration of this Agreement following completion of the Study or termination of this Agreement for any reason.
- 8.10 *Obligation to Procure Intellectual Property Rights.* Where the Contractor is not the legal owner of any relevant Intellectual Property of the Contractor, the Contractor shall use reasonable endeavours to procure for the Principal the rights specified in accordance with Clause 8.9.
- 8.11 *Obligation to Indemnify with Respect to Uses Other Than for the Purpose.* The Principal shall defend and indemnify the Contractor from and against any and all Damages arising from the use by the Principal of any Intellectual Property of the Contractor other than for the purposes of the Railway and/or the Project.
- 8.12 *Indemnification by the Contractor.* The Contractor after obtaining prior written approval from the Principal shall defend and indemnify the Principal from and against any and all Damages arising from the use by the Principal of any Intellectual Property of the Contractor, to the extent use by the Principal is within the scope of the license granted to the Principal in accordance with Clause 8.9.
- 8.13 *Certain Rights of Contractor.* The Contractor shall have the right to include photographic or artistic representations of the design of the Project among the Contractor's promotional and professional materials. The Contractor shall be given reasonable access to the completed Project to make such representations. However, the Contractor's materials shall not include the Principal's confidential or proprietary information regardless of whether or not the Principal has previously advised the Contractor in writing of the specific information considered by the Principal to be confidential or proprietary.

SECTION IX. TERMINATION; SUSPENSION

- 9.1 *Termination for Material Breach or Bankruptcy.* Subject to the provisions of Clause 9.2, either Party shall be entitled to terminate this Agreement upon giving a written notice of termination to the other Party in the event of material breach by the other Party of any of its obligations under this Agreement. The written notice of termination shall contain an itemised description of the breach. For the purposes of this Clause 9.1 an event of material breach shall include any of the following:
- (a) commitment by a Party of any persistent or material breach of this Agreement (which shall include failure to pay an amount of at least EUR 5,000 due to the other Party or perform any part of the Study valued at least EUR 5,000;
 - (b) failure by the Contractor to duly address any of the matters raised in the second Objection Notice given by the Principal in accordance with Clause 7.5.;
 - (c) failure by any Deliverable to conform to any of the material requirements to such Deliverable contained in ANNEX C: SCHEDULE OF STUDY, provided that such failure is not capable of being remedied during the Cure Period;
 - (d) failure by the Principal to make any payment to the Contractor in accordance with this Agreement within at least fourteen (14) days from the date of payment falling due;
 - (e) any of the representations or warranties given by either Party under Clause 5.1 or any of the representations or warranties given by the Contractor under Clause 5.2 proving to be untrue; or
 - (f) breach by the Contractor of the undertaking contained in Clause 8.10.
- 9.2 *Corrective Period.* In the event of breach by either Party of its obligations under this Agreement, the non-breaching Party shall allow the breaching Party fourteen (14) days for corrective action or submission of a corrective action plan (hereinafter, the "Corrective Period"). The Corrective Period shall be counted from the date of receipt by the breaching Party of a written notice of breach. Should no satisfactory corrective action be taken, or acceptable corrective action plan provided by the breaching Party, the non-breaching Party shall have the right to terminate the Agreement. It is acknowledged and agreed by the Parties that the provisions of this Clause 9.2 shall not apply with respect to any of the events enumerated in accordance with Clause 9.4. In addition and for the avoidance of any doubt, the application of the Corrective Period under this Clause 9.2 shall be without prejudice to and shall not relieve either Party from the obligation to pay any contractual penalty in accordance with the provisions of Clause 10.2 or to pay Damages incurred by the other Party in accordance with the provisions of Clause 10.3.

9.3 *Right to Terminate Immediately.*

9.3.1. Notwithstanding anything to the contrary contained in this Agreement, a Party may terminate this Agreement immediately upon giving the other Party a written notice of termination explaining, in reasonable detail, the reason for termination upon occurrence of any of the following:

- (a) breach by the other Party of Clause 16.2;
- (b) an event of Force Majeure has been continuing during more than 60 (sixty) days;
- (c) the other Party had passed a resolution for winding-up (other than in order to amalgamate or reconstruct);
- (d) breach by the Contractor any of the confidentiality undertakings contained in *SECTION XII. CONFIDENTIALITY*;
- (e) the other Party is unable to pay its debts and has presented a petition for voluntary bankruptcy;
- (f) the other Party had a bankruptcy order issued against it;
- (g) liquidation, insolvency or legal protection proceedings have been initiated with respect to the other Party or the other Party is declared insolvent;
- (h) the occurrence of any event analogous to the events enumerated under Clauses 9.3 (f) – (g) under the law of any jurisdiction to which the other Party's assets and undertaking are subject.

9.3.2. *Principal's Right to Terminate Immediately.* The Principal may terminate this Agreement immediately upon giving the other Party a written notice of termination explaining, in reasonable detail, the reason for termination, if

- (a) CEF Co-financing for further financing of the Study are not available to the Principal;

In such a case, the Principal shall pay the Contractor the fees in respect of the Study provided under this Agreement up to the date of the notification of the termination of this Agreement and the Principal is not obliged to pay contractual or any other penalty or damages to the Contractor.

- (b) it is not possible to execute the Agreement due to the application of international or national sanctions, or European Union or North Atlantic Treaty Organization applied sanctions significantly affecting interests of financial or capital market.

9.3.3. *Termination according to Public Procurement Law.* The Agreement can be immediately terminated upon giving the other Party a written notice of termination explaining, in reasonable detail, the reason for termination upon occurrence of any of the provisions mentioned in the Article 64 of the Public Procurement Law. In such a case, the Principal shall pay the Contractor the fees in respect of the Works provided under this Agreement up to the date of the notification of the termination of this Agreement and the Principal is not obliged to pay contractual or any other penalty or damages to the Contractor.

9.4 *Right to Advance to Completion.* In the event the Contractor fails to fulfil any of its obligations, or fails to cure any breach in accordance with Clause 9.2, and the Agreement is terminated by the Principal, the Principal may advance the Study to completion by employing the services of other professional service supplier(s) or by other means available to the Principal. The Contractor shall be liable to the Principal for any and all additional costs incurred due to failure by the Contractor to perform. The rights and remedies available to the Principal set forth in accordance with this Clause 9.4 shall be in addition to any and all other rights and remedies available under Applicable Law.

9.5 *Consequences of Termination.* Upon expiration or termination of this Agreement, the obligations of the Parties set forth in this Agreement shall cease, except with respect to the following:

- (a) any obligations arising as a result of any antecedent breach of this Agreement or any accrued rights; and
- (b) the provisions stipulated in accordance with Clauses 4.6, 7.3, 8.5, 8.6, 8.7, 8.8, 8.9, 8.11, 9.4, 8.12., 10.1, 10.2, 10.3, 17.3, 17.9, 17.10, and *SECTION XII. CONFIDENTIALITY And SECTION XIII. RIGHT TO AUDIT, SECTION XIV. ON-THE-SPORT VISITS and SECTION XV. GOVERNING LAW AND RESOLUTION OF DISPUTES* which shall survive the termination or expiry of this Agreement and continue in full force and effect along with any other Clauses of or Annexes hereof which are necessary to give effect to the clauses specifically identified in this 9.5(b).

9.6 *Partial Acceptance.* Notwithstanding anything in this Agreement to the contrary including, without limitation, the provisions of Clauses 8.6, 8.7 and 8.8 and in the event of termination of this Agreement, the Principal shall have the

right, in the sole discretion of the Principal, to partially accept any Works, part of Works or part of the Study delivered to the Principal under this Agreement (hereinafter, the "Right of Partial Acceptance"). The Principal shall notify the Contractor of its intention to exercise the Right of Partial Acceptance in the termination notice given in accordance with Clause 9.1 or Clause 9.3 of this Agreement, specifying, in reasonable detail, the Works, part of Works or part of the Study which the Principal would like to partially accept. In the event of receipt of such notice, the Contractor shall reasonably cooperate with the Principal in order to ascertain transfer to the Principal of ownership in the result(s) of such Works, part of Works or part of the Study and determination of the amount of consideration payable by the Principal.

- 9.7 *Principal's Obligation to Pay.* Subject to the provisions of Clause 9.6 and except in the event of termination by the Principal occurring as a result of violation by the Contractor of Clause 16.2 and/or termination by the Principal according to Clause 9.3.2 and/or 9.3.3, in the event this Agreement is terminated for any reason prior to completion of the Study, the Principal shall have an obligation to pay the Contractor the following:
- (a) the Costs incurred by the Contractor up to the date of termination; and
 - (b) except where termination is due to negligence of the Contractor, breach by the Contractor, insolvency of the Contractor or a Force Majeure Event under *SECTION XI. FORCE MAJEURE*:
 - (i) an amount equal to the costs reasonably and properly incurred by the Contractor as a result of or in connection with such termination; and
 - (ii) such additional amount as is required to put the Contractor in the same after-tax position (taking into account the amount of any relief, allowance, deduction, set-off or credit relating to tax available to the Contractor in respect of the payment received) as it would have been in if the payment had not been a taxable receipt in the hands of the Contractor.
- 9.8 *No Obligation to Pay Costs Incurred Prior to Acceptance.* Notwithstanding anything set forth in this Agreement to the contrary including, without limitation, under Clause 9.7, the Principal shall have no obligation to pay any of the Costs incurred by the Contractor with respect to any Works or the Study (or part of any Works or the Study) not deemed as having been accepted by the Principal in accordance with Clauses 8.6, 8.7 or 8.8.
- 9.9 *No Prejudice to Other Rights.* The right to terminate this Agreement shall be without prejudice to any other right of either Party which has accrued prior to or as a result of such termination or to any remedy available to either Party under the terms of this Agreement or in accordance with Applicable Law.

SECTION X. LIABILITY

- 10.1 *Liability of the Parties.* The Contractor shall be liable to compensate Damages incurred by the Principal arising out of or in connection with this Agreement and pay contractual penalty set forth in accordance with Clause 10.2 if a breach of any of the obligations of the Contractor under this Agreement is established against the Contractor. The Principal shall be liable to pay the contractual penalty set forth in accordance with Clause 10.2 if a breach of payment obligations of the Principal under this Agreement is established against the Principal.
- 10.2 *Contractual Penalty.* In the event of failure by the Contractor to meet any Study Milestone and/or supply any Deliverable, the Contractor shall be liable to pay to the Principal a penalty of zero point one percent (0.1%) of the amount of total the Fee payable under this Agreement with respect to the relevant Study period for each day of delay with meeting any of the Study Milestones and/or supplying any of the Deliverables set forth in accordance with *ANNEX C: SCHEDULE OF STUDY*; provided, however, that the total amount of penalty payable by the Contractor under this Clause 10.2 for the relevant Works, as specified according to *ANNEX C: SCHEDULE OF STUDY* shall not exceed ten percent (10%) of the total amount of the Fee payable in consideration of such Works. In the event of failure by the Principal to pay any amount in accordance with Clause 6.3, the Principal shall be liable to pay the Contractor a penalty of zero point one percent (0.1%) of the amount of the amount invoiced for each day of delay with meeting the payment obligation; provided, however, that the total amount of penalty payable by the Principal under this Clause 10.2 shall not exceed ten percent (10%) of the total amount remaining unpaid under the relevant invoice.
- 10.3 *Compensation for Damages.* Notwithstanding of and without prejudice to any contractual penalty payable in accordance with Clause 10.2 and subject to the provisions of Clause 10.5, in the event it is established that either Party is liable to the other Party with respect to any breach of its respective obligations under this Agreement, the liable Party shall compensate the other Party for any Damages incurred as a result of such breach, subject to the following terms:
- (a) the amount of compensation shall be limited to the amount of reasonably foreseeable Damages suffered as a result of the breach(es), but not otherwise; and

- (b) if either Party is considered to be liable jointly with third parties to the other, the proportion of compensation payable by the liable Party shall be limited to that proportion of liability which is attributable to the breach by the liable Party.
- 10.4 *Attribution of Damages.* Any Damages suffered by either Party shall, for the purposes of Clause 10.3, be reduced to the extent that the Damages are caused by or contributed to by the other Party's own negligence or breach of its obligations under this Agreement.
- 10.5 *Limitation of Liability.* Notwithstanding anything to the contrary set forth in this Agreement, in no circumstances shall the Contractor or Principal be liable to one another for any loss of production, loss of profit, loss of revenue, loss of contract, liability incurred under other agreements (with the exception of costs paid by the Principal to contractors appointed by the Principal in relation to the Study or the Project) or any indirect or consequential loss arising out of or in connection with this Agreement. The Contractor's total liability for the Works carried out under this Agreement shall in no circumstances exceed EUR 500 000,00 (five hundred thousand euros).

SECTION XI. FORCE MAJEURE

- 11.1 *Effects of Force Majeure.* Subject to the requirements set forth in accordance with Clauses 11.2 and 11.3, each Party shall be relieved from liability for non-performance of its obligations under this Agreement (other than any obligation to pay) to the extent that the Party is not able to perform such obligations due to a Force Majeure Event.
- 11.2 *Action on Becoming Aware of Force Majeure.* Each Party shall at all times, following the occurrence of a Force Majeure Event:
 - (a) take reasonable steps to prevent and mitigate the consequences of such an event upon the performance of its obligations under this Agreement, resume performance of its obligations affected by the Force Majeure Event as soon as practicable and use reasonable endeavours in accordance with Good Industry Practice to remedy its failure to perform; and
 - (b) not be relieved from liability under this Agreement to the extent that it is not able to perform, or has not in fact performed, its obligations under this Agreement due to any failure to comply with its obligations under Clause 11.2(a).
- 11.3 *Notification Requirements.* Upon the occurrence of a Force Majeure Event, the affected Party shall notify the other Party as soon as reasonably practicable and in any event within ten (10) Working Days of it becoming aware of the relevant Force Majeure Event. Such notification shall give sufficient details to identify the particular event claimed to be a Force Majeure Event and shall contain detailed information relating to the failure to perform (or delay in performing), including the date of occurrence of the Force Majeure Event, the effect of the Force Majeure Event on the ability of the affected Party to perform, the action being taken in accordance with Clause 11.2 (a) and an estimate of the period of time required to overcome the Force Majeure Event. The affected Party shall provide the other Party with any further information it receives or becomes aware of which relates to the Force Majeure Event and provide an update on the estimate of the period of time required to overcome its effects.
- 11.4 *Notification of Resumed Performance.* The affected Party shall notify the other Party as soon as practicable once the performance of its affected obligations can be resumed (performance to continue on the terms existing immediately prior to the occurrence of the Force Majeure Event).
- 11.5 *Mitigation of Effects of Force Majeure.* As soon as practicable after the notification specified pursuant to Clause 11.3, the Parties shall use reasonable endeavours to agree appropriate terms or modifications to the Study to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement.

SECTION XII. CONFIDENTIALITY

- 12.1 *Confidential Information.* "Confidential Information" means, in relation to the Principal, all information of a confidential nature relating to the Principal and its Affiliates which is supplied by the Principal (whether before or after the date of this Agreement) to the Contractor, either in writing, orally or in any other form and includes all analyses, compilations, notes, studies, memoranda and other documents which contain or otherwise reflect or are derived from such information, but excludes information which:
 - (a) the Principal confirms in writing is not required to be treated as confidential; or
 - (b) the Contractor can show that the Confidential Information was in its possession or known to it (by being in its use or being recorded in its files or computers or other recording media) prior to receipt from the Principal and was not previously acquired by the Contractor from the Principal under an obligation of confidence; or

- (c) was developed by or for the Contractor at any time independently of this Agreement without application of the information provided to the Contractor under this Agreement.
- 12.2 *Undertakings with Respect to Confidential Information.* Subject to Clauses 12.1 and 12.3, the Contractor shall:
- (a) at all times keep confidential all Confidential Information received by it and shall not disclose such Confidential Information to any other Person; and
 - (b) procure that its Affiliates and its and their respective officers, employees and agents shall keep confidential and not disclose to any Person any Confidential Information except with the prior written consent of the Party to which such Confidential Information relates.
- 12.3 *Permitted Disclosure.* Notwithstanding anything to the contrary set forth in accordance with Clauses 12.1 and 12.2, the Contractor shall, without the prior written consent of the Principal, be entitled to disclose Confidential Information:
- (a) that is reasonably required by the Contractor in the performance of its obligations pursuant to this Agreement, including the disclosure of any Confidential Information to any employee, contractor, agent, officer, sub-contractor (of any tier) or adviser to the extent necessary to enable the Contractor to perform its obligations under this Agreement;
 - (b) to enable a determination to be made pursuant to *SECTION XIV. ON-THE-SPORT VISITS*;
 - (c) to its lenders or their professional advisers, any rating agencies, or its insurance advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;
 - (d) to the extent required by Applicable Law or pursuant to an order of any court of competent jurisdiction, any parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of law; or
 - (e) to the extent Confidential Information has become available to the public other than as a result of any breach of an obligation of confidence; provided that any such disclosure is made in good faith.
- 12.4 *Obligation of Confidentiality Pertinent to Recipients of Confidential Information.* Whenever disclosure is permitted to be made pursuant to Clauses 12.3 (a) or (c), the Contractor shall require that the recipient of Confidential Information be subject to the same obligation of confidentiality as that contained in this Agreement.
- 12.5 *Certain Obligations on Termination of Agreement.* If this Agreement is terminated for whatsoever reason, the Contractor shall:
- (a) return to the Principal all of the Confidential Information then within the possession or control of the Contractor; or
 - (b) destroy such Confidential Information using a secure and confidential method of destruction.
- 12.6 *No Press Release by Contractor.* Save as required by Applicable Law, the Contractor shall not issue any press release in relation to the matters contemplated under this Agreement without the prior written consent of the Principal (such consent not to be unreasonably withheld or delayed) as to both the content and the timing of the issue of the press release.
- 12.7 *Right to Publish.* For the avoidance of any doubt, the Principal shall have the right to publish any of the documents, information or data provided by the Contractor to the Principal during provision of the Study.
- 12.8 *Remedies.* The Parties acknowledge and agree that a breach of the provisions of this *SECTION XII. CONFIDENTIALITY* may cause the owner of Confidential Information to suffer irreparable Damages that could not be adequately remedied by an action at law. Accordingly, the Contractor agrees that the owner of Confidential Information that is disclosed in breach of Clauses 12.2, 12.4 or 12.6 may be entitled to specific performance of those provisions to enjoin a breach or attempted breach thereof and to any other remedy, including, inter alia, damages and injunctive relief, awarded by a court of competent jurisdiction.

SECTION XIII. RIGHT TO AUDIT

- 13.1 *Right to Audit.* Notwithstanding anything to the contrary set forth in this Agreement including, the Principal itself, a reputable outside independent body or expert engaged and authorised by the Principal shall be entitled to inspect and/or audit the Contractor to ensure compliance with the terms of this Agreement, including inspecting and/or auditing:

- (a) the performance of any aspect of the Study; and/or
 - (b) any documentation, including all payrolls, accounts of the Contractor and/or other records used in or related to the performance of the Study.
- 13.2 *Obligation to Assist.* The Contractor shall provide all reasonable assistance to the Principal or the independent body authorized by the Principal in carrying out any inspection or audit pursuant to this *SECTION XIII. RIGHT TO AUDIT*. The Principal shall be responsible for its own costs, or the costs incurred by the outside independent body designated by the Principal, incurred toward carrying out such inspection or audit, unless, in the case of any such audit, that audit reveals that the Contractor is not compliant with the terms of this Agreement, in which case the Contractor shall reimburse the Principal for all of its additional reasonable costs incurred, provided such non-compliance is material.
- 13.3 *Survival of Termination.* The rights and obligations of the Principal set forth in accordance with this *SECTION XIII. RIGHT TO AUDIT* shall survive expiration or termination of this Agreement for any reason and shall continue to apply during ten (10) years following expiration or termination of this Agreement for any reason whatsoever.

SECTION XIV. ON-THE-SPORT VISITS

- 14.1 *Right to perform On-the-Spot visits.* By submitting a written notice five (5) Working Days in advance, but at the same time reserving the right of an unannounced on-the-spot visit without an advance notice, the Principal may carry out on-the-spot visits to the sites and premises where the activities implemented within the Agreement are or were carried out.
- 14.2 *Personnel involved.* On-the-spot visits may be carried out either directly by authorised staff or representatives of the Principal or by any other outside body or third party authorised to do so on behalf of the Principal. Information provided and collected in the framework of on-the-spot visits shall be treated on confidential basis. The Principal shall ensure that any authorised outside body or third party shall be bound by the same confidentiality obligations.
- 14.3 *Access to the information.* Contractor shall provide to the performer of the on-the-spot visit or any other authorised outside body or third party access to all the information and documents, including information and documents in electronic format, which is requested by the authorised staff of the performer of the on-the-spot visit or any other authorised outside body or third party for the performance of an on-the-spot visit and which relates to the implementation of the Agreement, as well as shall allow the authorised staff of the performer of the on-the-spot visit or any other authorised outside body or third party the copying of the information and documents, with due respect to the confidentiality obligation.
- 14.4 *OLAF checks and inspections.* By virtue of Council Regulation (Euratom, EC) No 2185/961 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 883/20132 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 European Union law for the protection of the financial interests of the European Union against fraud and other irregularities. Where appropriate, OLAF findings may lead to criminal prosecution under national law.

SECTION XV. GOVERNING LAW AND RESOLUTION OF DISPUTES

- 15.1 *Governing Law.* This Agreement shall be governed by and construed in accordance with law of the Republic of Latvia, and therefore any dispute shall be settled in the court in the Republic of Latvia.
- 15.2 *Resolution by Amicable Means.* The Parties shall first attempt to settle any dispute, controversy or claim arising out of or relating to this Agreement through good faith debate, discussion, and negotiating prior to submitting them to mediation, arbitration, or other legal proceeding.
- 15.3 *Venue for Resolution of Disputes.* Should the Parties fail to agree by means of amicable negotiations within the time period of two (2) months from the date of serving of the respective written complaint to the other Party, the Parties shall submit all their disputes arising out of or in connection with this Agreement to the exclusive jurisdiction of the courts of the Republic of Latvia. The Parties hereby represent and warrant that the English language is understandable for both Parties in accordance with Article 8(1)(a) of the Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) and repealing Council Regulation (EC) No 1348/2000.

SECTION XVI. MISCELLANEOUS PROVISIONS

- 16.1 *Capacity.* Each Party warrants to the other Party that it has full power to enter into and perform this Agreement, and the person signing this Agreement on its behalf has been duly authorized and empowered to enter into such agreement. Each Party further acknowledges that it has read this Agreement, understands it and agrees to be bound by it.
- 16.2 *Conflict of Interest, Corruption and Fraud.* Notwithstanding any penalties that may be enforced against the Contractor under Applicable Law, or the laws of other jurisdiction(s), the Contractor shall be deemed to have committed a breach under this Agreement and the Principal shall be entitled to terminate this Agreement immediately and without any regard to the provisions of Clause 9.2, if it is shown that the Contractor is guilty of:
- (a) offering, giving, receiving or soliciting anything of value with a view to influencing the behaviour or action of anyone, whether a public official or otherwise, directly or indirectly in the selection process or in the conduct of the Agreement; or
 - (b) misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Principal, including the use of collusive practices intended to stifle or reduce the benefits of free and open competition.
- 16.3 *Notices.* Notices under the Agreement shall be in writing and will take effect from receipt by the Party to which the notice is addressed at the address of the Party set forth in the Preamble to this Agreement. Delivery can be by hand or facsimile message against a written confirmation of receipt or by registered letter.
- 16.4 *Relationship of the Parties.* The relationship between the Contractor to the Principal under this Agreement is that of independent contractors. The Contractor (or the Contractor's sub-contractors) is not an employee of the Principal, is not carrying out the regular business of the Principal and is not subject to the same employment regulations as are applicable to employees of the Principal. Each of the Parties shall be solely and entirely responsible for their own acts and the acts of their employees. No benefits, special considerations, or employer/employee-type provisions are provided by the Principal to the Contractor, the Contractor's employees, or the Contractor's consultants, or the employees of such consultants.
- 16.5 *Severability.* If any provision of this Agreement shall be held to be illegal, invalid, void or unenforceable under Applicable Laws, the legality, validity and enforceability of the remainder of this Agreement shall not be affected, and the legality, validity and enforceability of the whole of this Agreement shall not be affected.
- 16.6 *Successors and Assigns.* The Principal and the Contractor each bind themselves, their successors, legal representatives, and assigns to the other party to this Agreement and to the partners, successors, legal representatives and assigns of such other party in respect to all covenants of this Agreement. Neither Party shall assign or transfer its respective interest in the Agreement without written consent of the other Party.
- 16.7 *Amendments and Variations.* No amendment to or variation of this Agreement shall be effective unless made in writing and signed by duly authorized representatives of both Parties. The Agreement can be amended in compliance with the provisions of Article 61 of the Public Procurement Law including but not limited to the provisions of point 5 of Section 2 of Article 61.
- 16.8 *Entire Agreement.* This Agreement, and the Annexes hereto, constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes and extinguishes all and any prior drafts, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter.
- 16.9 *Execution.* This Agreement may be executed in two counterparts to be held by each Party which counterparts, taken together, shall constitute one and the same instrument.

Signed by:

For and on behalf of the Principal:

ANNEX A: DEFINITIONS AND COMMON TERMS

The following capitalized terms shall be ascribed the following meaning for the purposes of the Agreement:

- (a) "Agreement", this Agreement, together with all Annexes thereto.
- (b) "Applicable Law" or "Law", any legislative act, regulation, decree, order, ordinance, statute, treaty, directive, judgment, or other legislative measure. For the avoidance of any doubt, the term "Applicable Law" shall include any legislative act or directive relevant to public procurement.
- (c) "Approved Staff", any person or organization listed pursuant to *ANNEX E: LIST OF APPROVED SUB-CONTRACTORS* which is in a contractual relationship with the Contractor to provide a part of the Study.
- (d) "Approved Sub-Contractor", any person or organisation listed pursuant to *ANNEX E: LIST OF APPROVED SUB-CONTRACTORS* which is in a contractual relationship with the Contractor to provide a part of the Study, including the person on which capabilities the Contractor relies.
- (e) "Confidential Information", as defined in accordance with Clause 12.1 of the Agreement.
- (f) "Costs", direct costs reasonably incurred in relation to the Project. Specifically, the Cost shall include any of the following:
 - (i) costs of all materials and supplies forming part of the Study, including transportation and storage expenses (discounts for cash or prompt payments will not reduce these costs);
 - (ii) salaries for personnel in the direct employ of the Contractor in the performance of the Study or relating to the Study;
 - (iii) salaries of the Contractor's employees for the time that they spend in connection with the Study;
 - (iv) payments to sub-contractors for Works relating to the Study;
 - (v) costs of all employee benefits and taxes for items such as social security and other benefits for the labour and employees;
 - (vi) costs, including transportation and maintenance, of equipment and hand tools not owned by workmen employed by the Contractor which are employed or consumed toward the Study;
 - (vii) payments for rental charges for machinery, equipment, facilities and tools used in connection with the Study, and payments for installations, repairs, replacements, dismantling, removal, lubrication, transportation and delivery of those rental items;
 - (viii) other transportation costs incurred in connection with the Study;
 - (ix) that portion attributable to this Agreement of premiums for insurance that is required by this Agreement (if applicable) or by law to be obtained or maintained by the Contractor;
 - (x) sales, use, gross receipts or other taxes related to the Study, imposed by any governmental authority, to the extent that the Contractor is responsible for such taxes;
 - (xi) costs of long-distance telephone calls, telephone service at the site and postage relating to the Study;
 - (xii) costs of any data processing services used in connection with the performance of the Works required under this Agreement; and
 - (xiii) losses and expenses, not compensated by insurance, sustained by the Contractor in connection with the Works under this Agreement (if applicable), provided they resulted from causes other than the fault or neglect of the Contractor.
- (g) "Contractor", the company Hendrikson & Ko OÜ as further specified in the Preamble of this Agreement, which is employed by the Principal as an independent professional contractor to perform the Study, and legal successors to the Principal and permitted assignees of the Principal.
- (h) "Contractor's Software", the object code versions of any downloadable software owned by or duly licensed to the Contractor solely for the purpose of accessing the Study, including but not limited to an agent, together with the updates, new releases or versions, modifications or enhancements, owned or licensed to and provided by the Contractor to the Principal pursuant to this Agreement, together with all pertinent documentation and other instructions related to such software.
- (i) "Corrective Period", as defined in accordance With Clause 9.2.

- (j) "Cure Period", as defined in accordance with Clause 7.3.
- (k) "Damages", any cost, claim, damage, demand, loss, expense or liability incurred by the relevant Party or Person.
- (l) "Defect", is a part of the Study which is not in accordance with the Schedule of Study specified in accordance with *ANNEX B: TECHNICAL SPECIFICATION*, the Applicable Law or Good Industry Practice.
- (m) "Defects Date", a date specified in accordance with *ANNEX C: SCHEDULE OF STUDY* by which the Principal or Contractor is obliged to notify about each Defect in the Study.
- (n) "Deliverable", any information, notes, material, drawings (including drawings in 3D model), records, documents and/or other items which the Contractor is required to deliver to the Principal as part of the Study, as further specified pursuant to *ANNEX C: SCHEDULE OF STUDY*.
- (o) "Documentation", all records, correspondence, and files of the Contractor, its employees, engineers, and consultants pertaining to the Project.
- (p) "Effective Date", as first above specified in the Preamble to this Agreement.
- (q) "EUR" and "euro", the official currency of the eurozone, officially known as the euro area.
- (r) "Fee", as specified in accordance with *ANNEX D: FEE AND PAYMENT SCHEDULE*.
- (s) "Final Acceptance Date", as defined in accordance with Clause 7.7.
- (t) "Final Acceptance Note", as described in accordance with Clause 7.6.
- (u) "Force Majeure Event", any of the following events:
 - (i) an act of the public enemy or war (declared or undeclared), threat of war, revolution, riot, insurrection, civil commotion, demonstration or sabotage;
 - (ii) an act of vandalism or accidental damage or destruction of machinery, equipment, track or other infrastructure;
 - (iii) a natural disaster or phenomena, including extreme weather or environmental conditions (such as lightning, earthquake, hurricane, storm, fire, flood, drought or accumulation of snow or ice);
 - (iv) nuclear, chemical or biological contamination;
 - (v) pressure waves caused by devices travelling at supersonic speeds;
 - (vi) discovery of fossils, antiquities or unexploded bombs; and/or
 - (vii) strike, lockout or other industrial action other than involving the Contractor or the Principal.
- (v) "Good Industry Practice", in relation to the performance of any activity to which this standard is applied, the exercise of that degree of skill, diligence, prudence and foresight as would reasonably be expected to be exercised by a properly qualified and competent person engaged in carrying out works or services of a similar size, nature, scope, type and complexity, complying with Applicable Law, applicable Standards and published codes of practice.
- (w) "Intellectual Property", all intellectual property rights in any part of the world in respect of any documentation or information provided by the Contractor to the Principal, including any patent, patent application, trade mark, trade mark application, registered design, registered design application, utility model, trade name, discovery, invention, process, formula, specification, copyright (including all neighbouring rights, rights in computer software and database and topography rights), know how or unregistered design right.
- (x) "Intellectual Property of Contractor", all Intellectual Property owned or licensed to the Contractor with a right to sub-license.
- (y) "Objection Notice", as defined in accordance with Clause 7.5.
- (z) "Party" and "Parties", the Principal and the Contractor and include their respective successors in title, permitted assigns and permitted transferees.
- (aa) "Person" shall include any person, company, body corporate, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) or two or more of the foregoing.
- (bb) "Principal", the company RB Rail AS, as further specified in the Preamble of this Agreement, which employs the services of the Contractor, and legal successors to the Contractor and permitted assignees of the Contractor.

- (cc) "Project", development of a 1435 mm standard gauge railway line in the Rail Baltica (RB) corridor through Estonia, Latvia and Lithuania aimed at eliminating the technical bottleneck due to the gauge differences (1,520 mm vs. the EU standard of 1,435 mm).
- (dd) "Provisional Acceptance Note", a Note as defined in accordance with Clause 7.5.
- (ee) "Provisional Completion Note", as defined in accordance with Clause 7.4.
- (ff) "Railway", new fast conventional double track electrified railway line with the maximum design speed of 240 km/h and European standard gauge (1435 mm) on the Route.
- (gg) "Residence Certificate", a certificate mentioned in the Clause 5.2. (i).
- (hh) "Right of Partial Acceptance", as defined in accordance with Clause 9.6.
- (ii) "Study Milestone", the date for delivery of one or more Deliverables, as set out in the Technical Specification and Schedule of Study;
- (jj) "Standards", CEF Standards and Grant Agreement Standards;
- (kk) "Study", the aim of a study is to identify climate hazards and climate change associated risks for the design, construction, maintenance and operations of Rail Baltica railway. Furthermore, the study shall assess pre-designed infrastructure vulnerability and propose feasible adaptation to climate change measures for the railway design, construction and operation phases.
- (ll) "Study Start Date", as specified in accordance with *ANNEX C: SCHEDULE OF STUDY*.
- (mm) "Working Day", any day (other than Saturday or Sunday) on which banks in the Republic of Latvia are open for conduct of business.
- (nn) "Works", all incidental works, steps and actions performed by the Contractor for the attainment of the objectives of the Study and/or the Project.

ANNEX B: TECHNICAL SPECIFICATION

FOR PROCUREMENT

**"STUDY ON CLIMATE CHANGE IMPACT ASSESSMENT FOR THE DESIGN, CONSTRUCTION, MAINTENANCE
AND OPERATION OF RAIL BALTICA RAILWAY"**

1. GENERAL

- 1.1. Study on climate change impact assessment for the design, construction, maintenance and operation of Rail Baltica railway (hereinafter – the Study) is aimed to identify climate change associated risks for the design, construction, maintenance and operations of Rail Baltica railway. Furthermore, the study shall assess pre-designed infrastructure vulnerability and propose feasible climate change adaptation measures for the railway design, construction and operation phases.
- 1.2. Aim of the Study is to help manage the additional risks arising from climate change, consider how Rail Baltica project is vulnerable to climate variability and change, assess current and future climate risks to the success of the project, identify and appraise relevant and cost-effective adaptation options to build climate resilience, and integrate adaptation measures (resilience measures) into Rail Baltica project lifecycle.
- 1.3. The key objective in the face of uncertainty is therefore to define and implement design changes (adaptation options) which both provide a benefit in the current climate as well as resilience to the range of potential future climate change effects.
- 1.4. The study outcomes are not intended to override, nor define, the design standards that project developers should be working to, and they are not a substitute for detailed design at the project level. Project design should always be undertaken in accordance with Rail Baltica Design Guidelines, national requirements and/or professional codes of practice as appropriate. However, in cases where national requirements or design codes do not yet incorporate consideration of climate change, these study outcomes may help to improve risk management still further.

2. SCOPE OF THE STUDY: GENERAL REQUIREMENTS

- 2.1. The following minimal list of the most important climate variables shall be considered for the Study:
 - a. extreme (air) temperature (frequency and magnitude) and extreme heat, frost waves,
 - b. rainfall (monthly average and annual average values),
 - c. extreme rainfall (frequency and magnitude, as example maximum daily precipitation, maximum monthly precipitation, frequency and duration of such situations),
 - d. snowfall (monthly average and annual average values, snow coverage duration),
 - e. extreme snowfall (frequency and magnitude, as example maximum daily precipitation, maximum monthly precipitation, frequency and duration of such situations),
 - f. maximum wind speed (wind direction, frequency and magnitude),
 - g. humidity (frequency and magnitude),
 - h. frost penetration depth of soil (average duration, average and maximum frost penetration depth),
 - i. dew (frequency and magnitude)
 - j. thunder (frequency and magnitude),
 - k. other variables recommended by the Contractor.
- 2.2. The following minimal list of the most important climate-related hazards shall be considered for the Study:
 - a. sea level rise,
 - b. sea water temperature change,
 - c. seawater ice coverage duration,
 - d. storm frequency and intensity,
 - e. flood frequency and intensity,
 - f. wild fire,
 - g. draught and glazed frost,
 - h. freezing rain,
 - i. fluvial flooding,
 - j. fog,
 - k. storms (frequency and intensity),
 - l. hail and snow storm (frequency and intensity),
 - m. solar radiation,
 - n. coastal erosion
 - o. frost penetration depth of soil,
 - p. ground instability/landslides,
 - q. urban heat island effect (intensity)
 - r. vegetation season length,
 - s. other hazards recommended by the Contractor.

2.3. Climate change assessment shall consider impacts at least on following risk areas:

- a. railway service availability,
- b. asset damage – asset deterioration and reduced life of an asset,
- c. infrastructure and operations reliability,
- d. operations safety,
- e. variance in OPEX and the need for additional CAPEX,
- f. railway business operations, including loss of income,
- g. increased risks of environmental damage and litigation,
- h. reputation damage,
- i. changes in market demand for goods and services,
- j. increased insurance costs or lack of insurance availability.

Appropriate (quantitative) assessment criteria shall be developed.

2.4. Design Guidelines respective parts change or update proposals within the scope of this service shall be assessed against the following criteria (non-exhaustive list):

- a. additional cost of adaptation measures (preventive vs. corrective measures), e.g. cost of non-implementation of specific requirements or measures to improve resilience to climate change,
- b. delays and additional cost due to the repair of environmental damages during the works or delayed start of railway operations,
- c. non-compliances to environmental requirements causing legal risks.

2.5. The following Rail Baltica assets and processes shall be considered for the Study:

- a. On-site assets and processes,
- b. Inputs (water, energy, others),
- c. Outputs (products, markets, customer demand),
- d. Transport links,
- e. Project types: rail bridge, rail viaduct / estacade, railway track in cut or on embankment, overhead catenary system, signalling system, traction power supply system, access roads, station terminals, road viaducts over railway, noise barriers, etc.

2.6. The Study shall cover full asset lifetime as defined by Design Guidelines.

2.7. Geographical area to cover:

- a. Estonia, Latvia and Lithuania for high level data and outputs,
- b. Rail Baltica railway corridor area in Estonia, Latvia and Lithuania for detailed data and outputs.
As corridor is considered a space of approx. 20km to each side of railway axis. The Contractor may revise the definition of corridor area at the inception phase of the study if duly justified.

3. REFERENCE MATERIAL

The following guidelines, studies and plans / strategies is recommended to be used for the study (the Contractor shall provide reasoning for this):

- a. EU and national Climate Change related studies and strategies,
- b. Relevant river basin management plans,
- c. Relevant climatic and hydrological data on the study area,
- d. EIA, spatial planning and technical studies on Rail Baltica alignment in Estonia, Latvia and Lithuania,
- e. National design values of climatic data.

4. SCOPE OF THE STUDY: SPECIFIC REQUIREMENTS

WP	Title	Scope
WP 1	Analysis of climate projections, relevant studies and strategies	WP1.1 Meteorological study on key meteorological indicators relevant for railway infrastructure design, construction, maintenance and operation. The following shall be covered within the scope: <ol style="list-style-type: none">a. Identify key meteorological indicators relevant for railway infrastructure design, construction, maintenance and operation in Rail Baltica railway corridor,b. Collect available historical data of those indicators, including those relevant data in possession of

		<p>national road, railway, aviation infrastructure management authorities,</p> <ol style="list-style-type: none"> Collect available climatic projections of those indicators, Collect publicly available information and other necessary data, Define what are relevant extreme climatic variables and hazards and analyse their frequency in past 10-20 years. <p>WP 1.2 Overview and analysis of climatic projections in the region. The region is considered to be Baltic Sea Region:</p> <ol style="list-style-type: none"> Climatic projections shall contain high-level data – observed values and projections relevant to identified key meteorological indicators, Provide comprehensive data tables and schematic maps of these data both observed and future. Provide shematic maps for the geographical area of the study. Shematic map layout to be agreed with Contracting Authority, Provide key conclusions as to projected climate change. <p>WP 1.3 Analysis and benchmarking of strategies and studies with relevance to climate change adaptation in railways in EU and in particular in the Baltic Sea Region.</p>
WP 2	Risk identification and assesment, vulnerability assesment	<p>WP 2.1 Identification of climate hazards and variables</p> <ol style="list-style-type: none"> Contractor shall identify relevant climate variables and secondary effects / climate-related hazards. It is likely that not all the climate statistics and projections of relevance will be available, thus the Contractor may provide justified expert's guess based assumptions, Contractor shall analyze and present how changing climate variables and hazards can affect choice of technology options and identify those which are resilient to current climate variability as well as the range of potential climate futures over their lifetimes, Contractor shall assess sensitivity of Rail Baltica assets and processes to climate variables. <p>WP 2.2 Assessing the exposure to climate hazards: observed and future climate.</p> <ol style="list-style-type: none"> The contractor shall assess Rail Baltica assets and processes exposure to observed and future climate periods, define exposure areas. Exposure data should be gathered for climate variables and related hazards to which assets have high or medium sensitivity. Contractor shall provide comprehensive schematic maps of assets having high or medium sensitivity to both observed and future climate. Provide shematic maps for the geographical area of the study. Shematic map layout to be agreed with Contracting Authority. <p>WP 2.3 Vulnerability assessment of the pre-designed infrastructure</p> <ol style="list-style-type: none"> Contractor shall perform further analysis of critical design thresholds most sensitive to climate, e.g.analyse climate risks and test robustness of critical design components to a range of climate futures. Vulnerability assessment observed and future climate. for each climate variable/ hazard which could impact the project. <p>WP 2.4 Production of Risk assessment</p> <ol style="list-style-type: none"> The risk assessment of analysing climate hazards and their impacts shall provide basis for Clients

		<p>future decision-making. The risk assessment process shall work through assessing the likelihoods and severities of the impacts associated with the hazards identified and assessing the significance of the risk to the success of the Rail Baltica Global project delivery. The risk analysis shall build upon the vulnerability analysis and focusing on identifying risks and opportunities associated with the medium and high vulnerabilities.</p> <ul style="list-style-type: none"> b. Risk assessment shall provide comprehensive understanding of cause-effect chains linking climate hazards to the performance of the project across technical, environmental, social and financial dimensions, as well as the interactions between factors to be considered. c. Contractor shall prepare and facilitate a risk identification and assessment workshop to identify how climate-related risks could affect the performance of the project and its options. Climate-related thresholds shall be defined quantitatively, the Contractor shall provide input information and finalize it after the workshop. Risk probability and impact (consequences) have to be assessed. The outcomes of the workshop shall be put into risk register and visualized in risk matrix d. To complete risk assessment task, the Contractor has to develop a comprehensive assessment of magnitude of each risk, first developing typical magnitude of consequences values for various risk areas.
WP 3	Adaptation development option	<p>WP 3.1 Identification of and proposal for the climate change adaptation measures to be implemented in the design, construction and operation phases of Rail Baltica</p> <p>WP 3.2 Adaptation measures feasibility assessment and roadmap for implementation:</p> <ul style="list-style-type: none"> a. The focus of adaptation measures feasibility assessment shall be reduction of climate change impacts on operational, environmental and social performance of Rail Baltica. b. The assessment criteria shall respond to all risk areas as per 2.3. c. Considerations of adaptation measure timing shall be provided, covering at least proposals on when to invest in adaptation measure (now along with delivering Rail Baltica or later during the project life-cycle / assets life-cycle or post the projects lyfe-cycle). <ol style="list-style-type: none"> 1. The roadmap of adaptation measures implementation - Rail Baltica climate change adaptation action plan shall cover at least: Define adaptation measures for design, construction and operations and maintenance phases of the project, 2. Provide timeline, cost and responsible authority for the implementation of the adaptation measures, 3. Review and analyse Design Guidelines relevant parts and provide justified proposal of the design criteria to be changed, 4. Review Design Guidelines part "Adaptation to Climate Change" (RBDG-MAN-029) and propose update in line with the findings of this Study, 5. Develop proposals, if needed for further in-depth studies to develop on most critical risks.

5. DELIVERABLES AND DEADLINES

5.1. The Contractor shall provide the following deliverables within specified deadlines:

No.	Deliverable	Scope	Deadline
1	Inception Report	<ol style="list-style-type: none"> 1. Update of methodology and organization 2. Climate related data and projection availability analysis. Contractor shall assess during the inception phase and present in the inception report. The contractor shall provide the methodology to substitute missing data (both historical and projections). Data shall be sourced from public databases. If some data are available fee-based, Contractor shall prepare and present the needed datasets and their costs at inception phase and Contracting Authority will take care on data acquisition. 3. Risk register, risk matrix, assessment of magnitude of risk consequences table 	CD* + 4 weeks
2	Interim Report	Climatic projections analysis, risk and vulnerability assessment, adaptation measures long-list and initial assessment.	CD* + 12 weeks
3	Draft Final Report	Draft Final Report	CD* + 12 weeks
4	Final Report	Full scope of the Study	CD* + 16 weeks
5	Final report presentation workshop	Presentation of Study outcomes with focus on proposed adaptation measures and proposals to update Design Guidelines	CD* + 18 weeks
6	Re-submission of final report	Re-submission as per Contracting Authority comments	CD* + 20 weeks

5.2. Time schedule

Deliverables/Reports	No. of copies	Submission schedule	Approval through Contracting Authority
Inception Report	2 hard copies, 1 soft copy	CD* + 4 weeks	2 weeks after reception
Interim Report	2 hard copies, 1 soft copy	CD* + 12 weeks	2 weeks after reception
Draft final report	2 hard copies, 1 soft copy	CD* + 12 weeks	2 weeks after reception
Final Report	2 hard copies, 1 soft copy	CD* + 16 weeks	2 weeks after reception
Final report presentation workshop	2 hard copies, 1 soft copy	CD* + 18 weeks	2 weeks after reception
Re-submission of Final Report	4 hard copies, 1 soft copy	CD* + 20 weeks	2 weeks after reception

(*) CD: commencement date of the procurement Agreement (contract)

ANNEX C: SCHEDULE OF STUDY

Study Start Date: (Commencement date of the Contract: 7 September 2018):

Deliverables:

No.	Deliverable	Deadline date ²
1.	Inception Report	05.10.2018.
2.	Interim Report	30.11.2018.
3.	Draft final report	30.11.2018.
4.	Final Report	28.12.2018.
5.	Final report presentation workshop	11.01.2019.
6.	Re-submission of Final Report	25.01.2019.

Defects Date: 10 Working Days after the deadline of a particular deliverable.

² In accordance with Clause 5.2. of the Annex B (*Technical Specification*).

ANNEX D: FEE AND PAYMENT SCHEDULE

Fee a service fee in the amount of EUR 37 800,00 (thirty-seven thousand eight hundred euro and zero cents), excluding value added tax (VAT).

Schedule of payment of Fee

After delivery of the following Deliverables and signing of the Provisional Acceptance Note and/or Final Acceptance Note the Principal shall pay following amount of the Fee:

Payments will be made within 30 (thirty) Days after the date of issue of the invoice.

Deliverable	Payment amount
Interim Report	30%
Final Report	30%
Re-submitted Final Report	40%

Payments will be made within 30 (thirty) Days after the date of issue of the invoice.

The prices are fixed for all the term of the fulfilment of the procurement contract and are not recalculated.

ANNEX E: LIST OF APPROVED SUB-CONTRACTORS AND STAFF

1. A list of all sub-contractors the Contractor anticipates engaging toward provision of the Study:

[•]

ANNEX F: FORM OF PROVISIONAL COMPLETION NOTE

Date: [INSERT DATE IN THE FORM OF 1 January 2017]

Location: [INSERT LOCATION]

For:

RB Rail AS

registration number 40103845025 legal address K. Valdemāra iela 8-7, Riga LV-1010, Latvia
(hereinafter, the "Principal")

This provisional completion note (hereinafter, "Provisional Completion Note") is issued to the Principal by [·][INSERT NAME, REGISTRATION NUMBER INSERT REGISTRATION NUMBER, LEGAL ADDRESS] (hereinafter, the "Contractor"), represented by [INSERT NAME OF REPRESENTATIVE ON THE BASIS OF INSERT BASIS OF REPRESENTATION].

In this Provisional Completion Note, unless the context requires otherwise, all defined terms shall have the meaning ascribed to such terms in accordance with the [INSERT AGREEMENT DATE IN THE FORM OF STUDY AGREEMENT NO. INSERT AGREEMENT NUMBER] (hereinafter, the "Agreement") and Annex A (*Definitions and Common Terms*) of the Agreement.

Whereas:

(A) the Principal and the Contractor have entered into the Agreement;

(B) Clause 7.4 of the Agreement stipulates that upon meeting a Study Milestone or producing a Deliverable constituting all or an identifiable part of the Technical Specification, the Contractor shall issue to the Principal a Provisional Completion Note substantially in the form of Annex F (*Form of Provisional Completion Note*) of the Agreement;

(C) a Study Milestone has been met or a Deliverable has been completed.

The following Study Milestone(s) has/have been met on [INSERT DATE IN THE FORM OF 1 January 2017], as specified in accordance with Annex C (*Schedule of Study*) of the Agreement:

[describe in reasonable detail the Study Milestone attained. Insert n/a, if no Study Milestone has been attained.]

The following Deliverable(s) has/have been completed on [INSERT DATE] and are attached to this Provisional Completion Note:

[INSERT NAME OF THE DELIVERABLE. INSERT N/A, IF NO DELIVERABLES HAVE BEEN COMPLETED.]

As stipulated in Clause 7.5 of the Agreement, in the event the Principal objects to the issue of the Provisional Completion Note, the Principal shall give a written notice to the Contractor setting out in reasonable detail Defects or reasons for the objection (hereinafter, the "Objection Notice") (10) Working days, following receipt of the Provisional Completion Note.

In the event of conflict between the text in this Provisional Completion Note and the Agreement, the Agreement shall take precedence.

Signature:

[insert name, surname

insert position

insert company name]

ANNEX G: FORM OF PROVISIONAL ACCEPTANCE NOTE NO

Date: [INSERT DATE IN THE FORM OF 1 January 2017]

Location: [INSERT LOCATION]

For: [•] (hereinafter, the "Contractor")

This provisional acceptance Note (hereinafter Provisional Acceptance Note) is issued to the Contractor by RB Rail AS, registration number 40103845025, legal address K. Valdemāra iela 8-7, Riga, LV-1010 (hereinafter, the "Principal"), represented by [INSERT NAME OF REPRESENTATIVE ON THE BASIS OF INSERT BASIS OF REPRESENTATION].

In this Provisional Acceptance Note, unless the context requires otherwise, all defined terms shall have the meaning ascribed to such terms in accordance with the [INSERT AGREEMENT DATE] Agreement on „Architectural, landscaping and visual identity guidelines for Rail Baltica" No [INSERT AGREEMENT NUMBER] (hereinafter, the "Agreement") and Annex A (*Definitions and Common Terms*) of the Agreement.

Whereas:

- (A) the Principal and the Contractor have entered into the Agreement;
- (B) the following Study Milestone(s) has been met and the following Deliverable(s) have been supplied to the Principal:
 - (i) [PLEASE IDENTIFY MILESTONE]
 - (ii) [PLEASE IDENTIFY DELIVERABLE]
- (C) any and all Defects have been averted or no Objection Notices have been issued;
- (D) as stipulated by Clause 7.7 of the Agreement, final acceptance shall be evidenced by means of the Principal issuing and both Parties attaching their signature to the Final Acceptance Note substantially in the form of Annex H (*Form of Final Acceptance Note*) (hereinafter, the "Final Acceptance Note");

The Principal is satisfied with the result of any and all achieved Study Milestones and/or Deliverables completed and submitted and, in accordance with Clause 7.5 of the Agreement, the Principal accepts the part of the Study performed as of the date of this Provisional Acceptance Note.

In the event of conflict between the text in this Provisional Acceptance Note and the Agreement, the Agreement shall take precedence.

Signatures:

[insert name, surname
insert position]

ANNEX H: FORM OF FINAL ACCEPTANCE NOTE NO

Date: [INSERT DATE IN THE FORM OF 1 January 2017]

Location: [INSERT LOCATION]

For: [•] (hereinafter, the "Contractor")

This final acceptance Note (hereinafter, "Final Acceptance Note") is issued to the Contractor by RB Rail AS, registration number 40103845025, legal address K. Valdemāra iela 8-7, Riga, LV-1010 (hereinafter, the "Principal"), represented by [INSERT NAME OF REPRESENTATIVE ON THE BASIS OF INSERT BASIS OF REPRESENTATION].

In this Final Acceptance Note, unless the context requires otherwise, all defined terms shall have the meaning ascribed to such terms in accordance with the Agreement on „Architectural, landscaping and visual identity guidelines for Rail Baltica" No [INSERT AGREEMENT NUMBER] dated [INSERT DATE] (hereinafter, the "Agreement") and Annex A (*Definitions and Common Terms*) of the Agreement.

Whereas:

- (A) the Principal and the Contractor have entered into the Agreement;
- (B) one or more Study Milestones have been met and/or Deliverables have been completed;
- (C) any and all Defects have been averted or no Objection Notices have been issued;
- (D) as stipulated by Clause 7.7 of the Agreement, final acceptance shall be evidenced by means of the Principal issuing and both Parties attaching their signature to the Final Acceptance Note substantially in the form of Annex H (*Form of Final Acceptance Note*) (hereinafter, the "Final Acceptance Note");

The Principal is satisfied with the result of the Study and/or all Deliverables completed and submitted and the Principal accepts the Study in its entirety.

In the event of conflict between the text in this Final Acceptance Note and the Agreement, the Agreement shall take precedence.

Signatures:

[insert name, surname
insert position]
RB Rail AS
Principal

[insert position]
[insert company name]
Contractor

ANNEX I: DECLARATION OF CONTRACTOR

I, the undersigned duly authorised representative, on behalf of Hendrikson & Ko OÜ, undertake:

1. To respect the freely-exercised right of workers, without distinction, to organize, further and defend their interests and to bargain collectively, as well as to protect those workers from any action or other form of discrimination related to the exercise of their right to organize, to carry out trade union activities and to bargain collectively;
2. Not to use forced or compulsory labour in all its forms, including but not limited to not employ people against their own free will, nor to require people to lodge 'deposits' or identity papers upon commencing employment;
3. Not to employ: (a) children below 14 years of age or, if higher than that age, the minimum age of employment permitted by the law of the country or countries where the performance, in whole or in part, of a contract takes place, or the age of the end of compulsory schooling in that country or countries, whichever is higher; and (b) persons under the age of 18 for work that, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of such persons;
4. To ensure equality of opportunity and treatment in respect of employment and occupation without discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin and such other ground as may be recognized under the national law of the country or countries where the performance, in whole or in part, of a contract takes place;
5. To ensure the payment of wages in legal fashion, at regular intervals no longer than one month, in full and directly to the workers concerned; to keep an appropriate record of such payments. Deductions from wages will be conducted only under conditions and to the extent prescribed by the applicable law, regulations or collective Contract, and the workers concerned shall be informed of such deductions at the time of each payment. The wages, hours of work and other conditions of work shall be not less favourable than the best conditions prevailing locally (i.e., as contained in: (i) collective Contracts covering a substantial proportion of employers and workers; (ii) arbitration awards; or (iii) applicable laws or regulations), for work of the same character performed in the trade or industry concerned in the area where work is carried out;
6. To ensure, so far as is reasonably practicable, that: (a) the workplaces, machinery, equipment and processes under their control are safe and without risk to health; (b) the chemical, physical and biological substances and agents under their control are without risk to health when the appropriate measures of protection are taken; and (c) where necessary, adequate protective clothing and protective equipment are provided to prevent, so far as is reasonably practicable, risk of accidents or of adverse effects to health;
7. To support and respect the protection of internationally proclaimed human rights and not to become complicit in human rights abuses;
8. To create and maintain an environment that treats all employees with dignity and respect and will not use any threats of violence, sexual exploitation or abuse, verbal or psychological harassment or abuse. No harsh or inhumane treatment coercion or corporal punishment of any kind is tolerated, nor is there to be the threat of any such treatment;
9. To have an effective environmental policy and to comply with existing legislation and regulations regarding the protection of the environment; wherever possible support a precautionary approach to environmental matters, undertake initiatives to promote greater environmental responsibility and encourage the diffusion of environmentally friendly technologies implementing sound life-cycle practices;
10. To identify and manage chemical and other materials posing a hazard if released to the environment to ensure their safe handling, movement, storage, recycling or reuse and disposal;
11. To monitor, control and treat as required prior to discharge or disposal wastewater and solid waste generated from operations, industrial processes and sanitation facilities;
12. To characterize, monitor, control and treat as required prior to discharge or disposal air emissions of volatile organic chemicals, aerosols, corrosives, particulates, ozone depleting chemicals and combustion by-products generated from operations;

13. To reduce or eliminate at the source or by practices, such as modifying production, maintenance and facility processes, materials substitution, conservation, recycling and re-using materials, waste of all types, including water and energy;
14. To adhere to the highest standards of moral and ethical conduct, to respect local laws and not engage in any form of corrupt practices, including but not limited to extortion, fraud, or bribery;
15. To disclose (a) any situation that may appear as a conflict of interest, such as but not limited to: where a Contractor or an undertaking related to the Contractor has advised a Beneficiary or Implementing Body or has otherwise been involved in the preparation of the procurement procedure; and (b) if any Beneficiaries' or Implementing Bodies' official, professional under contract with Beneficiary or Implementing Body or sub-contractor may have a direct or indirect interest of any kind in the Contractor's business or any kind of economic ties with the Contractor;
16. Not to offer any benefit such as free goods or services, employment or sales opportunity to a Beneficiary's and Implementing Body's staff member in order to facilitate the Contractors' business with Beneficiaries or Implementing Bodies;
17. Within a period set in the applicable national legislation following separation from service or award of a contract, as the case may be, to refrain from offering employment to any Beneficiaries' and Implementing Bodies' staff in service and former Beneficiaries' and Implementing Bodies' staff members who participated in the procurement process and to whom a legal restriction to receive material benefits from or be employed by a Contractor which participated in a procurement procedure or restrictions with similar effect applies;
18. To promote the adoption of the principles set forth in this Contractor's Declaration by my potential business partners and promote the implementation of the principles set forth in this document towards own Contractors;
19. Not procure goods, works and services from other Contractors:
 - a. Who, or its member of the Management Board or the Supervisory Board or procurator of such Contractor, or a person having the right to represent such Contractor in activities related to a subsidiary, has been found guilty in any of the following criminal offences by a such punishment prescription of prosecutor or a judgement of a court that has entered into effect and is non-disputable and not subject to appeal:
 - i. bribetaking, bribery, bribe misappropriation, intermediation in bribery, taking of prohibited benefit or commercial bribing;
 - ii. fraud, misappropriation or laundering;
 - iii. evading payment of taxes and payments equivalent thereto,
 - iv. terrorism, financing of terrorism, invitation to terrorism, terrorism threats or recruiting and training of a person for performance of terror acts;
 - b. who, by such a decision of a competent authority or a judgment of a court which has entered into effect and has become non-disputable and not subject to appeal, has been found guilty of an infringement of employment rights which means:
 - i. employment of such one or more citizens or nationals of countries, which are not citizens or nationals of the European Union Member States, if they reside in the territory of the European Union Member States illegally;
 - ii. employment of one person without entering into a written employment contract, not submitting an informative declaration regarding employees in respect of such person within a time period laid down in the laws and regulations, which is to be submitted regarding persons who commence work;
 - c. who, by such a decision of a competent authority or a judgment of a court which has entered into effect and has become non-disputable and not subject to appeal, has been found guilty of infringement of competition rights manifested as a vertical Contract aimed at restricting the opportunity of a purchaser to determine the resale price, or horizontal cartel Contract, except for the case when the relevant authority, upon determining infringement of competition rights, has released the candidate or tenderer from a fine or reduced fine within the framework of the co-operation leniency programme;
 - d. whose insolvency proceedings have been announced (except the case where a bailout or similar set of measures is applied within insolvency proceedings oriented towards prevention of possible bankruptcy and restoration of solvency of the debtor, in which case I shall evaluate the possibility

of such Contractor to participate in the tender), economic activity of such Contractor has been suspended or discontinued, proceedings regarding bankruptcy of such Contractor have been initiated or such Contractor will be liquidated;

- e. who has tax debts in the country where the procurement is organised or a country where such Contractor is registered or permanently residing, including debts of State social insurance contributions, in total exceeding an amount which is common threshold in public procurements in the respective country.

[signature]

ANNEX J: CONTRACTOR'S TECHNICAL AND FINANCIAL PROPOSAL

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