

STUDY AGREEMENT

for

ARCHITECTURAL, LANDSCAPING AND VISUAL IDENTITY DESIGN GUIDELINES FOR RAIL BALTICA

between

RB Rail AS

and

3TI PROGETTI ITALIA – INGEGNERIA INTEGRATA S.P.A.,

Contract registration number 8/2018-61

CEF¹ Contract No INEA/CEF/TRAN/M2016/1360716 C2.1.1

Procurement procedure identification No RBR 2018/6

Riga

Dated 23 October 2018

¹ Grant Agreement under the Connecting Europe Facility (CEF)

STUDY AGREEMENT

This STUDY AGREEMENT (hereinafter, the "Agreement"), together with all Annexes thereto, is entered into in Riga, on 23 October 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 Chairman of the Management Board [•] and Management Board Member [•], acting on the basis of the Regulations on Representation Rights dated 25 May 2018, on the one side,

and

3TI PROGETTI ITALIA – INGEGNERIA INTEGRATA S.P.A., a joint stock company organised and existing under the law of the Republic of Italy, registration No RM - 1005043, having its registered address at Lungotevere Vittorio Gassman 22, CAP 00146, Rome, Italian Republic (hereinafter, the "Contractor"), represented by [•] acting on the basis of Chairman of the Board of Directors on the other side.

WHEREAS:

- (A) This Agreement is entered into under the Global Project which includes all activities undertaken by the respective beneficiaries and implementing bodies of the Republic of Estonia, the Republic of Latvia and the Republic of Lithuania in order to build, render operational and commercialise the Rail Baltica railway – a new fast conventional double track electrified railway line 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;
- (B) The Principal has organised procurement procedure "Architectural, landscaping and visual identity design guidelines for Rail Baltica" (identification No. RBR 2018/6) (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 2.1.1, Action No: 2016-EU-TMC-0116-M.

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 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, except for any Definitions, in accordance with Annex A (*Definitions and Common Terms*).

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 Lithuania, Republic of Latvia and Republic of Estonia.
- 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. The Principal shall furnish to the Contractor a preliminary Project program setting forth the Principal's objectives, schedule, constraints and criteria, including necessities and relationships, special equipment, systems and site requirements.
- 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. *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*) (Clauses 5.6.5.-5.6.7.).
- 4.3. *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.
- 4.4. *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, Republic of Estonia and Republic of Lithuania. In case Good Industry Practice for any particular aspects is not available in Latvia, Lithuania or Estonia, the Contractor shall apply the Good Industry Practice from elsewhere in the European Union and ensure that it is in compliance with Applicable Laws 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.
- 4.5. *Maintenance of Records.* During the term of the Study and for period of (10) years 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 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.
- 4.6. *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 4.6.

4.7. *Right to Sub-Contract and Staff.* In carrying out the Study, the Contractor may only rely on the services of those 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 laws of the Republic of Latvia. Annex E shall specify the name, contact details and legal representative(s) of each Approved Sub-Contractor and specify the name of each Staff member 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 Staff 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 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 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 of 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 Service Provider 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.

4.8. *Responsibility for Performance by Sub-Contractors and Staff.* 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 and Staff shall, for the purposes of this Agreement, be deemed to be the act, failure to act, breach or negligence of the Contractor.

4.9. *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.

4.10. *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.

4.11. *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.

4.12. *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.

4.13. *Certain Negative Covenants.* In performing the Study, the Contractor undertakes not to procure goods or services of any kind from any Person meeting any of the following criteria:

- (a) the Person who is a member of the Management Board or Supervisory Board of an Approved Sub-Contractor or procurator of an Approved Sub-Contractor, or is authorised to represent or act on

behalf of an Approved Sub-Contractor with respect to any activity related to any subsidiary company of such Approved Sub-Contractor, and such Person has been accused of commitment of any of the following criminal offences pursuant to an order issued by a public prosecutor or was found to be guilty of commitment of any of the following criminal offences in accordance with a court judgment that has entered into legal force, is non-disputable and non-appealable:

- (i) accepting a bribe, giving of a bribe, misappropriation of a bribe, intermediation toward giving or taking of a bribe, acceptance of a prohibited benefit or commercial bribing;
 - (ii) fraud, misappropriation of funds or money laundering;
 - (iii) tax evasion or evasion of payments equivalent to tax;
 - (iv) terrorism, financing of terrorism, instigation of acts of terrorism, terrorist threats or recruitment and training of a person with the aim of committing acts of terrorism;
- (b) the Person has, by decision of a competent authority or judgment of a court which has entered into legal force and is non-disputable and non-appealable, been found guilty of violation of labour law in any of the following manners:
- (i) employment of one or more citizens or nationals of countries who are not citizens or nationals of a Member State of the European Union and are residing in the territory of a Member State of the European Union unlawfully;
 - (ii) employment of one or more persons without having entered into written employment agreement with such persons, or without having submitted an employee declaration with respect to such persons within a period of time stipulated in accordance with applicable laws and regulations applicable to persons that enter into salaried employment;
- (c) the Person who, by decision of a competent authority or in accordance with judgment of a competent court which has entered into legal force, is non-disputable and non-appealable, has been held guilty of violation of applicable rules of competition law manifested as a vertical agreement aimed at restricting the ability of one or more purchasers to determine the resale price, or a horizontal cartel agreement, with the exception of instances where the relevant authority, upon having established the fact of violation of applicable rules of competition law, has discharged the candidate or participant in a tender offer from imposition of a fine or has reduced the amount of fine as a part of co-operation leniency programme;
- (d) the Person who has insolvency proceedings initiated against it (except in the circumstances where a bailout or a similar set of measures are applied within the insolvency proceedings and are aimed at preventing the bankruptcy and restoring the debtor back to solvency, in which case the Contractor shall evaluate the possibility of participation by such Person in performing the Study), economic activity of the Person has been suspended or discontinued, bankruptcy proceedings have been initiated against the Person or the Person is subject to a liquidation;
- (e) the Person has unpaid tax indebtedness in the country where the procurement is organised or in the country where the Person is registered or permanently residing as a tax payer, including the indebtedness with respect to State social insurance contributions, in the total amount exceeding EUR 150 in each individual country; in such case, the Contractor can, within its sole discretion, prompt the Approved Sub-Contractor to pay or discharge all outstanding tax indebtedness within 10 (ten) Working Days and, upon such payment or discharge, allow the Person to continue performance of the Study; and
- (f) any of the above-mentioned criteria shall apply to all members of a group of persons if the Person is a group of persons.

- 4.15. *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 4.15(a)(i) and 4.15(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, laws 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;

(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 Consultant 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 Italian Republic*" (the "*Residence Certificate*") confirmed by Competent Authority of the Italian Republic 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. The Principal is entitled to make any deductions from the payments due to the Contractor if the Contractor doesn't comply with this provision.

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 in 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 and successfully completing the Study. 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 relates 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 7.4, 7.5, 7.6 or 7.7 of this Agreement.

- 6.3. *Payment.* Subject to the provisions of Clauses 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 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 the Republic of Italy.* 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 the Republic of Italy and in accordance with Applicable Law of the Republic of Italy. 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	3TI PROGETTI ITALIA – INGEGNERIA INTEGRATA S.P.A.
Registration No	RM - 1005043
VAT payer's No or indication that the Contractor is not a VAT payer	[•]
Legal address, city, Zip code, country	Lungotever Vittorio Gassman 22, CAP 00146, Rome, Italy
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 8/2018-61 (CEF Contract No INEA/CEF/TRAN/M2016/1360716, Action 2016-

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:
- (a) 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
 - (b) 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 of 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 seven (7) 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:
- (a) allow the Contractor an additional time period for remedying the Defects, such time period to be determined in the sole discretion of the Principal;
 - (b) 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;
 - (c) terminate the Agreement according to Section IX; or
 - (d) 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.

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 Annex B (*Technical specification*) and Annex C (*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 Defect or reason for the objection (hereinafter, the "Objection Notice") within reasonable time (if not specified in the Annexes of this Agreement) 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 7.6(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 and in accordance with Clause 8.5, 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.
- 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 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 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 after obtaining prior written approval from the Principal 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 17.2;

- (b) an event of Force Majeure has been continuing during more than sixty (60) 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 XIII;
- (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) the other Party has a provisional receiver or administrative receiver appointed over the whole or a substantial part of its undertaking or assets;
- (h) liquidation, insolvency or legal protection proceedings have been initiated with respect to the other Party or the other Party is declared insolvent;
- (i) the making by the other Party of a proposal for a voluntary arrangement with creditors; or
- (j) the occurrence of any event analogous to the events enumerated under Clauses 9.3 (g) – (i) 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 terminate 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 4.5, 4.6, 7.3, 8.2, 8.4, 8.5, 8.6, 8.12, 10.2, 10.3 and Sections XII, XIII and XVI 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 Clause 9.5(b).

9.6. *Partial Acceptance.* Notwithstanding anything in this Agreement to the contrary including, without limitation, the provisions of Clauses 7.4, 7.5, 7.6 or 7.7 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 Section IX 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 17.2 or termination by the Principal according to Clause 9.3.2 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, due to the application of international sanctions, breach by the Contractor, insolvency of the Contractor or a Force Majeure Event under Section XII:
 - (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 its negligence or a breach of any of its obligations under 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 the total 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 6.1, 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. LIABILITY INSURANCE

- 11.1. *Insurance Against Liability.* The Contractor shall:
- (a) insures against its commercial liability under Clause 10.2 and/or Clause 10.3;
 - (b) insures against public/third party liability (Professional risk indemnity insurance).
- 11.2. *Obligation to Effect Insurance.* The Contractor undertakes to effect such insurance with an insurer and on terms and conditions acceptable to the Principal. The limit of Professional risk indemnity insurance liability (Clause 11.1) for the insurance coverable shall be no less than EUR 500 000,00 (five hundred thousand euros) per claim/occurrence during the whole period of performance of the Agreement and with extended reporting period of 5 (five) years. The costs of such insurance shall be at the expense of the Contractor.
- 11.3. *Insurance Certificate.* Before entering into the Agreement, the Contractor shall provide certificate from its insurer or broker stating that the insurance required under this Section XI are in full force and effect. In addition, the Contractor shall provide not less than thirty (30) days prior written notice to the Principal of

any cancellation or material reduction in the insurance. The Contractor is obliged to submit to the Principal a copy of a renewed insurance certificate or a new insurance certificate including the provisions set in Clause 11.1 within five (5) Working days before the date of expiry of the previous insurance certificate.

SECTION XII. FORCE MAJEURE

- 12.1. *Effects of Force Majeure.* Subject to the requirements set forth in accordance with Clauses 12.2 and 12.3, each Party shall be relieved from liability for nonperformance 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.
- 12.2. *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 12.2(a).
- 12.3. *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 10.2(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.
- 12.4. *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).
- 12.5. *Mitigation of Effects of Force Majeure.* As soon as practicable after the notification specified pursuant to Clause 12.3, 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 XIII. CONFIDENTIALITY

- 13.1 *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.

13.2 *Undertakings with Respect to Confidential Information.* Subject to Clauses 13.1 and 13.3, 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.

13.3 *Permitted Disclosure.* Notwithstanding anything to the contrary set forth in accordance with Clauses 13.1 and 13.2, 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 XVI;
- (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.

13.4 *Obligation of Confidentiality Pertinent to Recipients of Confidential Information.* Whenever disclosure is permitted to be made pursuant to Clauses 13.3(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.

13.5 *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.

13.6 *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.

- 13.7 *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.
- 13.8 *Remedies.* The Parties acknowledge and agree that a breach of the provisions of this Section XIII 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 13.2, 13.4 or 13.6 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 XIV. RIGHT TO AUDIT

- 14.1. *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.
- 14.2. *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 XIV. 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.
- 14.3. *Survival of Termination.* The rights and obligations of the Principal set forth in accordance with this Section XIV 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 XV. ON-THE-SPOT VISITS

- 15.1. *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.
- 15.2. *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.
- 15.3. *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.

15.4. *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 XVI. GOVERNING LAW AND RESOLUTION OF DISPUTES

16.1. *Governing Law.* This Agreement shall be governed by and construed in accordance with law of the Republic of Latvia.

16.2. *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.

16.3. *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 XVII. MISCELLANEOUS PROVISIONS

17.1. *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.

17.2. *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 behavior 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.

17.3. *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.

- 17.4. *Damages Covered by Insurance.* To the extent Damages are covered by insurance, the Principal and the Contractor waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance current as of the date of this Agreement.
- 17.5. *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.
- 17.6. *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.
- 17.7. *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.
- 17.7. *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 of the Republic of Latvia, including but not limited to the provisions of point 5 of Section 2 of Article 61.
- 17.8. *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.
- 17.9. *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:

For and on behalf of the Contractor:

[•]

[•]

IZRAKSTS PAREIZS

THIS EXTRACT IS CORRECT

Iepirkuma komisijas

priekšsēdētāja vietniece: Baiba Ūbele/

Procurement commission vice-chairperson: Baiba Ūbele

_____paraksts/signature

2018.gada 1.novembrī / 1st November 2018