

REGULATION

OPEN COMPETITION

"SUPPLIER MARKET STUDY FOR RAILWAY INFRASTRUCTURE COMPONENTS"

(IDENTIFICATION NO RBR 2018/2)



Co-financed by the European Union
Connecting Europe Facility

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1. GENERAL INFORMATION

- 1.1. The identification number of this open competition is No RBR 2018/2.
- 1.2. The applicable CPV (Common Procurement vocabulary) codes are: 71335000-5 (Engineering studies) – main code.
- 1.3. **Contracting authority**
The contracting entity is joint stock company RB Rail AS, legal address: K. Valdemara iela 8 - 7, Riga LV-1010, Latvia (hereinafter – Contracting authority).
- 1.4. **Type of procurement procedure and legal framework**
Open competition “**Supplier market study for railway infrastructure components**” (hereinafter – open competition) is organized according to Public Procurement Law of the Republic of Latvia in effect on the date of publishing the contract notice.
- 1.5. **Procurement Commission**
Open competition is organized by the procurement commission which has been established on the basis of the order issued by the Management Board of the **joint stock company “RB Rail AS”, order No 26 dated: 24 April, 2018.**
- 1.6. **Proposal**
A package of documents submitted by Tenderer in order to participate in open competition.
- 1.7. **Supplier**
A natural person or a legal person, an association of such persons in any combination thereof, which offers on the market to perform works, supply products or provide services accordingly.
- 1.8. **Tenderer**
A Supplier, which has submitted a proposal in open competition.
- 1.9. The open competition is co-financed by the Contracting Authority and Connecting Europe Facility (CEF).
- 1.10. The estimated value of the contract is EUR 150 000,00 (one hundred fifty thousand *euros*) (excluding VAT).
- 1.11. This open competition is carried out using E-Tenders system which is subsystem of the Electronic Procurement System (<https://www.eis.gov.lv/EKEIS/Supplier>).
- 1.12. The open competition regulation (hereinafter – Regulation) and all its annexes are freely available in **Contracting authority’s profile in** the E-Tenders system at webpage <https://www.eis.gov.lv/EKEIS/Supplier> and the Internet webpage of the Contracting authority <http://railbaltica.org/tenders/>.
- 1.13. Amendments to the open competition Regulation and answers to **Suppliers’ questions** shall be published on the **E-Tenders system’s webpage** <https://www.eis.gov.lv/EKEIS/Supplier> and the Contracting authority’s Internet webpage <http://railbaltica.org/tenders/>. It is the **Supplier’s responsibility** to constantly follow the information published on the webpage and to take it into consideration in its proposal.
- 1.14. Contact persons of the Contracting authority for this open competition:

- 1.14.1. In administrative aspects of the open competition: Procurement specialist, **Jānis Lukševics**, telephone: +371 29188156, e-mail address: janis.luksevics@railbaltica.org;
- 1.14.2. In aspects concerning subject-matter of Procurement: Business Development Manager, **Kaspars Briškens**, e-mail address: kaspars.briskens@railbaltica.org.
- 1.15. The Procurement Commission and the Supplier exchange information in writing in English or Latvian (accompanied by a translation in English), by sending documents electronically via e-mail or using E-Tenders system.
- 1.16. The Supplier can request additional information regarding the Regulation. Additional information can be requested in writing, by sending it to the Procurement Commission electronically via e-mail or using E-Tenders system. Additional information must be requested in a timely fashion, so that the Procurement Commission can give it a reply no later than 6 (six) days prior to the deadline for proposal submission. The Procurement Commission shall provide additional information within 5 (five) business days from the day of receipt of the request.
- 1.17. The Supplier covers all expenses, which are related to the preparation of the proposal and its submission to the Contracting authority. The submitted proposals are not returned to the Tenderer, unless specifically envisaged in the Regulations.

2. THE RIGHTS OF THE PROCUREMENT COMMISSION

- 2.1. The Procurement Commission has the right to demand at any stage of the open competition that the Tenderer submits all or part of the documents which certify **Tenderer's compliance to the requirements for the selection of Tenderers**. The Procurement Commission does not demand documents or information which is already at its disposal or is available in public data bases.
- 2.2. If the Tenderer submits document derivatives (e.g. copies), then in case of doubt about the authenticity of the submitted document derivation the procurement commission can demand that the Tenderer shows the original documents or submits certified true copy.
- 2.3. In the course of proposal assessment, the Procurement Commission has the right to demand that the included information is clarified.

3. THE OBLIGATIONS OF THE PROCUREMENT COMMISSION

- 3.1. The Procurement Commission ensures the documentation of the process of the open competition procedure.
- 3.2. The Procurement Commission ensures free and direct electronic access to the open competition procedure documents **in Contracting authority's profile at the E-Tenders system's webpage** <https://www.eis.gov.lv/EKEIS/Supplier> and at the Internet webpage of the Joint-Stock Company RB Rail AS <http://railbaltica.org/tenders/>.
- 3.3. If an interested Supplier has in a timely fashion in writing by post or electronically, or delivering in person, requested additional information about the requirements included in open competition procedure documents regarding the preparation and submission of the Proposal or regarding the selection of Tenderers, the Procurement Commission provides a response electronically within 5 (five) business days, but not later than 6 (six) days before the deadline for submitting

proposals. Simultaneously with sending this information to the Supplier who had asked the question, the Contracting authority publishes this information in **Contracting authority's profile** on the E-Tenders **system's webpage** <https://www.eis.gov.lv/EKEIS/Supplier> and on its Internet webpage <http://railbaltica.org/tenders/>, where open competition procedure documents are available, indicating the question asked.

- 3.4. If the Contracting authority has amended the open competition procedure documents, it publishes this information in **Contracting authority's profile** on the E-Tenders **system's webpage** <https://www.eis.gov.lv/EKEIS/Supplier> and on the Contracting authority's Internet webpage <http://railbaltica.org/tenders/>, where open competition procedure documents are available, no later than 1 (one) day after the notification regarding the amendments has been submitted to Procurement Monitoring Bureau for publication.
- 3.5. The exchange and storage of information is carried out in such a way that all data included in the Proposals are protected and the Contracting authority can check the content of the Proposals only after the expiration of the deadline for their submission. In time between the day of the submission of Proposals till the moment of opening thereof the Contracting authority does not disclose information regarding the existence of other Proposals. In the time period of Proposal assessment till the moment of the announcement of the results the Contracting authority does not disclose information regarding the assessment process.
- 3.6. The Procurement Commission assesses the Tenderers and their submitted Proposals based on the Public Procurement Law of the Republic of Latvia, open competition procedure documents, as well as other regulatory enactments.
- 3.7. If the Procurement Commission determines that the information about the Tenderer, its subcontractors and persons upon whose capabilities the Tenderer is relying that is included in the submitted documents is unclear or incomplete, it demands that the Tenderer or a competent institution clarifies or expands the information included in the Proposal. The deadline for submission of the necessary information is determined in proportion to the time which is required in order to prepare and submit such information. If the Procurement Commission has demanded to clarify or expand upon the submitted documents, but the Tenderer has not done this in accordance with the requirements stipulated by the Procurement Commission, the Procurement Commission is under no obligation to repeatedly demand that the information included in these documents be clarified or expanded upon.
- 3.8. The Procurement Commission prepares a report on the open competition procedure and publishes it in **Contracting authority's profile** on the E-Tenders **system's webpage** <https://www.eis.gov.lv/EKEIS/Supplier> and on the Contracting authority's webpage <http://railbaltica.org/tenders/> within 5 (five) business days from day when the decision about the results of the open competition is taken.

4. THE RIGHTS OF THE TENDERER

- 4.1. To submit tenderer's **Electronic Procurement System registration documents** (if the tenderer is not registered in Electronic Procurement System) in State Regional Development Agency (please see information here <http://www.railbaltica.org/procurement/e-procurement-system/>).
- 4.2. The Tenderer can request and within 3 (three) business days after submitting the request receive a copy of the Proposal opening sheet, which is an Annex to the Proposal opening meeting minutes.

- 4.3. If the Contracting authority gets the necessary information about the Tenderer directly from a competent institution, through data bases or other sources, the Tenderer in question has the right to submit a statement or a different document regarding the corresponding fact, if the information obtained by the Contracting authority does not conform to the factual situation.
- 4.4. If a Tenderer believes that its rights have been violated or such violation is possible due to possible violation of the regulatory enactments of the European Union or other regulatory enactments, the Tenderer has the right to submit a complaint to the Procurement Monitoring Bureau according to the procedure stipulated in the Public Procurement Law regarding the Tenderer selection requirements, technical specifications or other requirements relating to this open competition, or relating to the activities by the Contracting authority or the Procurement Commission during the open competition procedure.

5. SUBJECT-MATTER OF THE OPEN COMPETITION

- 5.1. The procurement is organised in order to procure **supplier market study for railway infrastructure components** in accordance with the Technical Specifications (Annex No 2) (hereinafter - the Services).
- 5.2. The Services shall be provided in English language including all deliverables mentioned in Technical Specifications.
- 5.3. The Tenderer can submit proposal for the entire volume of the procurement.
- 5.4. The Tenderer is not permitted to submit variants of the Proposals. If variants of the Proposal shall be submitted, the Proposal will not be reviewed.
- 5.5. The place of delivery of the Services shall be RB Rail AS, Kr. Valdemara iela 8-7, Riga, LV -1010.

6. TENDERER

- 6.1. The proposal can be submitted by:
 - 6.1.1. A Supplier, who is a legal or natural person (hereinafter – Tenderer) and who complies with the selection criteria for Tenderers;
 - 6.1.2. A group of suppliers (hereinafter also – Tenderer, partnership) which complies with the selection criteria for Tenderers:
 - 6.1.2.1. A group of Suppliers who have formed a partnership for this particular open competition. In this case all the members of the **partnership shall be listed in Annex 1 “Application”**. If it will be decided to award contracting rights to such partnership, then prior to concluding the Contract the partnership shall at its discretion either enter into a partnership agreement (within the meaning of Latvian Civil Law Sections 2241-2280) and shall submit one copy of this agreement to the Contracting authority or establish a general or limited partnership (within the meaning of Latvian Commercial Law, Chapter IX and X) and notify the Contracting authority in writing.
 - 6.1.2.2. An established and registered partnership (a general partnership or a limited partnership, within the meaning of Latvian Commercial Law, Chapter IX and X) (hereinafter also – Tenderer) which complies with the selection criteria for Tenderers.

7. SELECTION CRITERIA FOR TENDERERS

7.1. Exclusion grounds

The Contracting authority shall exclude the tenderer from further participation in the open competition in any of the following circumstances:

No	Requirement	Documents to be submitted <i>(no obligation to submit documents, unless specifically requested by the procurement commission)</i>
1.	<p>Within previous 3 (three) years before submission of the Proposal the Tenderer or a person who is the tenderer's board or council member, person with representation rights or a procura holder, or a person who is authorised to represent the Tenderer in operations in relation to a branch, has been found guilty of or has been subjected to coercive measures for committing any of the following criminal offences by such a public prosecutor's order regarding punishment or a court judgement that has entered into force and may not be challenged and appealed:</p> <p>a) establishment, management of, involvement in a criminal organisation or in an organised group included in the criminal organisation or other criminal formation, or participation in criminal offences committed by such an organisation,</p> <p>b) bribe-taking, bribery, bribe misappropriation, intermediation in bribery, unauthorised participation in property transactions, taking of prohibited benefit, commercial bribing, unlawful claiming of benefits, accepting or providing of benefits, trading influences,</p> <p>c) fraud, misappropriation or money-laundering,</p> <p>d) terrorism, terrorism funding, calling to terrorism, terrorism threats or recruiting or training a person in performance of acts of terrorism,</p> <p>e) human trafficking,</p> <p>f) evasion from payment of taxes or similar payments.</p>	<ul style="list-style-type: none"> - For a Tenderer and a person who is the tenderer's board or council member, person with representation rights or a procura holder, or a person who is authorised to represent the Tenderer in operations in relation to a branch, which are registered or residing in Latvia, the Contracting authority shall verify the information itself in publicly available databases. - If a person who is the Tenderer's board or council member, person with representation rights or a procura holder, or a person who is authorised to represent the Tenderer in operations in relation to a branch is registered or residing outside of Latvia (if the Tenderer is registered or residing in Latvia) the Tenderer shall submit an appropriate statement from the competent authority of the country of registration or residence - If a Tenderer and a person who is the tenderer's board or council member, person with representation rights or a procura holder, or a person who is authorised to represent the Tenderer in operations in relation to a branch, are registered or residing outside of Latvia the Tenderer should submit an appropriate statement from the competent authority of the country of registration or residence.

No	Requirement	Documents to be submitted <i>(no obligation to submit documents, unless specifically requested by the procurement commission)</i>
2.	It has been detected that on the last day of Proposal submission term or on the day when a decision has been made on possible granting of rights to conclude the procurement contract, the Tenderer has tax debts in Latvia or a country where it has been incorporated or is permanently residing, including debts of mandatory state social insurance contributions exceeding 150 euro in total in any of the countries.	<ul style="list-style-type: none"> - For a Tenderer, which is registered or residing in Latvia, the Contracting authority shall verify the information itself in publicly available databases. - If a Tenderer is registered or residing outside of Latvia, the Tenderer should submit an appropriate statement from the competent authority of the country of registration or residence.
3.	Tenderer's insolvency proceedings have been announced, the tenderer's business activities have been suspended, the tenderer is under liquidation.	<ul style="list-style-type: none"> - If a Tenderer is registered or residing in Latvia, the Contracting authority shall verify the information itself in publicly available databases. - If a Tenderer is registered or residing outside of Latvia, the Tenderer should submit an appropriate statement from the competent authority of the country of registration or residence.
4.	A person who drafted the procurement procedure documents (contracting authority's official or employee), procurement commission member or expert is related to the tenderer, or is interested in selection of some tenderer, and the Contracting authority cannot prevent this situation by measures that cause less restrictions on tenderers. A person who drafted the procurement procedure documents (contracting authority's official or employee), procurement commission member or expert is presumed to be related to the tenderer in any of the following cases: <ul style="list-style-type: none"> - If he or she is a current or and ex-employee, official, shareholder, procura holder or member of a tenderer or a subcontractor which are legal persons and if such relationship with the legal 	No obligation to submit documents, unless specifically requested by the procurement commission.

No	Requirement	Documents to be submitted <i>(no obligation to submit documents, unless specifically requested by the procurement commission)</i>
	<p>person terminated within the last 24 months.</p> <ul style="list-style-type: none"> - If he or she is the father, mother, grandmother, grandfather, child, grandchild, adoptee, adopter, brother, sister, half-brother, half-sister or spouse (hereinafter – relative) of a tenderer's or subcontractor's, which is a legal person, shareholder who owns at least 10% of the shares in a joint-stock company, shareholder in a limited liability company, procure holder or an official. - or if he or she is a relative of a tenderer or a subcontractor which is a natural person. <p>If the tenderer is a partnership, consisting of natural or legal persons, a relation to the tenderer is presumed also if a person who drafted the procurement procedure documents (Contracting authority's official or employee), procurement commission member or expert is related to a member of a partnership in any of the above mentioned ways.</p>	
5.	<p>The Tenderer has an advantage that limits competition in the procurement procedure if it or its related legal person consulted the Contracting authority or otherwise was involved in preparing the open competition, and the advantage cannot be prevented by less restrictive measures, and the Tenderer cannot prove that its or its related legal person's participation in preparing the procurement procedure does not restrict competition.</p>	<p>No obligation to submit documents, unless specifically requested by the procurement commission.</p>
6.	<p>Within previous 12 (twelve) months before submission of the Proposal, by such a decision of a competent authority or a court judgment which has entered into force and may not be challenged and appealed, the tenderer has been found guilty of</p>	<ul style="list-style-type: none"> - For a Tenderer, which is registered or residing in Latvia, the Contracting authority shall verify the information itself in publicly available databases. - If a Tenderer is registered or residing outside of Latvia, the

No	Requirement	Documents to be submitted <i>(no obligation to submit documents, unless specifically requested by the procurement commission)</i>
	violating competition laws manifested as a horizontal cartel agreement, except for the case when the relevant authority, upon detecting violation of competition laws, has released the tenderer from a fine or has decreased the fine for cooperation within a leniency program.	Tenderer should submit an appropriate statement from the competent authority of the country of registration or residence.
7.	Within previous 3 (three) years before submission of the Proposal, by such a decision of a competent authority or a court judgment which has entered into force and may not be challenged and appealed, the tenderer has been found guilty of a violation manifested as employment of one or more persons which do not possess the required employment permit or if it is illegal for such persons to reside in a Member State of the European Union.	<ul style="list-style-type: none"> - For a Tenderer, which is registered or residing in Latvia, the Contracting authority shall verify the information itself in publicly available databases. - If a Tenderer is registered or residing outside of Latvia, the Tenderer should submit an appropriate statement from the competent authority of the country of registration or residence.
8.	Within previous 12 (twelve) months before submission of the Proposal, by such a decision of a competent authority or a court judgment which has entered into force and may not be challenged and appealed, the tenderer has been found guilty of a violation manifested as employment of a person without a written employment contract, by failing within the term specified in regulatory enactments to submit an informative employee declaration regarding this person, which must be submitted about persons, who start working.	<ul style="list-style-type: none"> - For a Tenderer, which is registered or residing in Latvia, the Contracting authority shall verify the information itself in publicly available databases. - If a Tenderer is registered or residing outside of Latvia, the Tenderer should submit an appropriate statement from the competent authority of the country of registration or residence.
9.	The Tenderer has provided false information to prove its compliance with provisions of this Section 7.1, or qualification criteria, or has not provided the required information at all.	<ul style="list-style-type: none"> - No obligation to submit documents, unless specifically requested by the procurement commission.

No	Requirement	Documents to be submitted <i>(no obligation to submit documents, unless specifically requested by the procurement commission)</i>
10.	The Tenderer is a registered offshore ¹ company (legal person) or offshore association of persons.	<ul style="list-style-type: none"> - For a Tenderer which is registered in Latvia the Contracting Authority shall verify the information itself in publicly available databases. - For the Tenderer and each member of the partnership (if Tenderer is a unregistered partnership) which is a legal person registered abroad – a copy of a valid registration certificate or a similar document issued by a foreign authority in charge of the registration of legal persons in the country of their residence wherefrom at least the fact of registration
11.	The owner or shareholder (with more than 25% of share capital) of the Tenderer which is registered in Republic of Latvia, is a registered offshore company (legal person) or offshore association of persons.	<ul style="list-style-type: none"> - For a Tenderer which is registered in Latvia: <ul style="list-style-type: none"> <input type="checkbox"/> the Contracting Authority shall verify the information itself in publicly available databases; <input type="checkbox"/> if the Tenderer is a joint stock company, Tenderer additionally shall submit self – declaration which approves fact that there are no registered owners or share holders of the Tenderer (with more than 25% of share capital) which are registered offshore.
12.	Anyone of subcontractors indicated by the Tenderer or person on whose capabilities Tenderer is relying, is a registered offshore company (legal person) or offshore association of persons.	<ul style="list-style-type: none"> - For a subcontractor or person, on whose capabilities Tenderer is relying, which is registered in Latvia, the Contracting Authority shall verify the information itself in publicly available databases. - For a subcontractor or person on whose capabilities Tenderer is relying, which is a legal person registered abroad (with its

¹ **Offshore:** low tax or tax-free country or territory in accordance with Corporate income tax law of the Republic of Latvia except Member States of EEA (European Economic Area) or its territories, Member States of the World Trade Organization Agreement on State Treaties or territories and such countries and territories with wich European Union and Republic of Latvia has international agreements for open market in public procurement area.

No	Requirement	Documents to be submitted <i>(no obligation to submit documents, unless specifically requested by the procurement commission)</i>
		permanent place of residence abroad) – a copy of a valid registration certificate or a similar document issued by a foreign authority in charge of the registration of legal persons in the country of their residence wherefrom at least the fact of registration.

7.2. Legal standing and suitability to pursue the professional activity

No	Requirement	Documents to be submitted
1.	The Tenderer or all members of the partnership (if the Tenderer is a partnership) must be registered in the Registry of Enterprises or Registry of Inhabitants, or an equivalent register in their country of residence, if the legislation of the respective country requires registration of natural or legal persons.	<ul style="list-style-type: none"> - For a Tenderer which is a legal person (or a member of a partnership, a person on whose abilities a Tenderer relies, a subcontractor registered in Latvia the Contracting authority shall verify the information itself in publicly available databases. - For a Tenderer which is a natural person (or a member of a partnership, a person on whose abilities a Tenderer relies, a subcontractor – a copy of an identification card or passport. - For a Tenderer (or a member of a partnership, a person on whose abilities a Tenderer relies, a subcontractor which is a legal person registered abroad (with its permanent place of residence abroad) – a copy of a valid registration certificate or a similar document issued by a foreign authority in charge of the registration of legal persons in the country of their residence wherefrom at least the fact of registration, shareholders, officials and procura holders (if any) can be determined. - If a proposals is submitted by a partnership, the Proposal shall include an agreement (or letter of intention to enter into agreement) signed by all members on the participation in

No	Requirement	Documents to be submitted
		<p>the procurement, which lists responsibilities of each and every partnership members and a joint commitment to fulfil the procurement contract, and which authorises one key member to sign the proposal and other documents, to receive and issue orders on behalf of the partnership members, and with whom all payments will be made.</p> <ul style="list-style-type: none"> - If the Proposal or any other document, including any agreement, is not signed by the legal representative of the Tenderer, members of the partnership, person on whose capabilities the Tenderer relies or sub-contractors, then a document certifying the rights of the persons who have signed the Proposal or any other documents, to represent the Tenderer, a member of the partnership, a person on whose capabilities the Tenderer is relying, or a sub-contractor (powers of attorney, authorization agreements etc.) must be included.
2.	<p>The representative of the Tenderer, or a member of a partnership, or a person on whose abilities a Tenderer relies, who has signed documents contained in the proposal, has the right of signature, i.e., it is an official having the right of signature or a person authorized by the Tenderer.</p>	<ul style="list-style-type: none"> - A document confirming the right of signature (representation) of the representative of the Tenderer, or a member of a partnership, or a person on whose abilities a Tenderer relies, who signs the proposal. For a Tenderer which is a legal person (or a member of a partnership, a person on whose abilities a Tenderer relies, registered in Latvia the Contracting authority shall verify the information itself in publicly available databases. - If the Tenderer, or a member of a partnership, or a person on whose abilities a Tenderer relies, submits a power of attorney (original or a copy certified by the Tenderer) there shall be

No	Requirement	Documents to be submitted
		additionally submitted documents confirming that the issuer of the power of attorney has the right of signature (representation) of the Tenderer.

7.3. Economic and financial standing

No	Requirement	Documents to be submitted
1.	<p>The Tenderer's or all members' of the partnership together (if the Tenderer is a partnership), average annual financial turnover within last 3 (three) years (2015, 2016, 2017) is not less than 300 000,00 EUR (three hundred thousand <i>euros</i>).</p> <p>In the event the average annual financial turnover of a limited liability member of a limited partnership (within the meaning of Latvian Commercial Law, Chapter X) exceeds its investment in the limited partnership, the average annual financial turnover shall be recognised in the amount of the investment in the limited partnership.</p> <p>In the event the Tenderer or a member of a partnership (if the Tenderer is a partnership) has operated in the market for less than 3 (three) years, the requirement shall be met during the Tenderer's actual operation period.</p>	<ul style="list-style-type: none"> - Filled in Annex No 5 accompanied with, - Audited or self-approved by a Tenderer (only in case when the audited yearly report is not required by the law of the country of residence of the Tenderer) yearly reports for financial years 2015, 2016, 2017 showing the turnover of the Tenderer and each member of the partnership on whose abilities the Tenderer is relying to certify its financial and economic performance and who will be financially responsible for the fulfilment of the procurement contract (if the Tenderer is a partnership) and a entity on whose abilities the Tenderer is relying to certify its financial and economic performance and who will be financially responsible for the fulfilment of the procurement contract.
2.	<p>The Tenderer or each member of the partnership (if the Tenderer is a partnership) on whose abilities the Tenderer is relying to certify its financial and economic performance and who will be financially and economically responsible for fulfilment of the procurement contract and entity on whose abilities the Tenderer is relying to certify its financial and economic performance and who will be financially and economically responsible for fulfilment of the procurement contract, shall have stable financial and economic performance, namely, in the last financial year (2017) liquidity ratio (current assets divided by short-term liabilities) shall be equal to or exceed 1 and shall have positive equity.</p>	<ul style="list-style-type: none"> - For a limited partnership (within the meaning of Latvian Commercial Law, Chapter X) an additional document evidencing the amount of the investment by the limited liability partner (the partnership agreement or a document with a similarly binding legal effect).

No	Requirement	Documents to be submitted
		<ul style="list-style-type: none"> - If an application is submitted by a partnership, the Tenderer shall indicate the member of the partnership on whose abilities the Tenderer is relying to certify its financial and economic performance and who will be financially and economically responsible for fulfilment of the procurement contract including this information in the agreement of cooperation (or letter of intention to enter into agreement) stipulated in Section 7.2.

7.4. Team of key experts

No	Requirement	Documents to be submitted
1.	The Tenderer should propose a team consisting of the following key experts. Experts cannot serve several roles, however the role of the project manager and the role of an expert can be combined.	
1.1.	<p>Project manager – experienced in railway infrastructure component sourcing and procurement projects or studies who complies with the following requirements:</p> <p>1) Practical experience in leading and supervising at least 2 (two) projects or studies related to the sourcing and procurement of key components for the construction of railway infrastructure with key technical parameters equivalent to Rail Baltica (compliant with traffic codes P2-F1 or P1-F1, or P2 or P1²) and procured within the EU legislative framework – with a project CAPEX value of at least 200 million euros each over the past ten years (2007-2017), including 2018</p>	<ul style="list-style-type: none"> - Filled in and signed Annex 6. - A copy of a diploma proving relevant level of education.

² https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.356.01.0001.01.ENG

No	Requirement	Documents to be submitted
	<p>until the date of submission of the Proposal.</p> <p>2) Master's degree (or equivalent³) from in, civil works, railway engineering, business and economics or other relevant field;</p> <p>3) International and multi-disciplinary project team management experience in the last 4 (four) years (2014; 2015; 2016; 2017; including 2018 until the date of submission of the Proposal).</p>	
1.2.	<p>Lead expert in the field of railway infrastructure component sourcing who complies with the following requirements:</p> <p>1) At least 5 (five) years of experience in a senior position directly related to or supervising the sourcing and procurement of construction components and elements for the construction of railway infrastructure with key technical parameters equivalent to Rail Baltica (compliant with traffic codes P2-F1 or P1-F1, or P2 or P1⁴) and procured within the EU legislative framework in an organization involved in railway infrastructure development (e.g. infrastructure manager, project delivery company, centralized procurement authority) with either a project CAPEX value of at least 200 million euros or a book value of fixed assets under management of at least 500 million euros over the past 15 (fifteen) years (2002-2017) including 2018 until the date of submission of the Proposal;</p> <p>2) Master's degree (or equivalent⁵) from in, civil works, railway</p>	<ul style="list-style-type: none"> - Filled in and signed Annex 6. - A copy of a diploma proving relevant level of education.

³With the assignment of Master's degree there is understood: at least Level 7 of European Qualifications Framework (please see here: <https://ec.europa.eu/ploteus/en/content/descriptors-page>)

⁴ https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.356.01.0001.01.ENG

⁵ With the assignment of Master's degree there is understood: at least Level 7 of European Qualifications Framework (please see here: <https://ec.europa.eu/ploteus/en/content/descriptors-page>)

No	Requirement	Documents to be submitted
	<p>engineering, business and economics or other relevant field;</p> <p>3) Project experience of at least one project related to the sourcing and procurement of key components for the construction of railway infrastructure with key technical parameters equivalent to Rail Baltica (compliant with traffic codes P2-F1 or P1-F1, or P2 or P1⁶) and procured within the EU legislative framework – with a project CAPEX value of at least 200 million euros each over the past ten years (2007-2017) including 2018 until the date of submission of the Proposal.</p>	
<p>1.3.</p>	<p>Procurement expert who complies with the following requirements:</p> <p>1) at least 5 (five) years of experience in a senior position related to the procurement of key railway infrastructure components and elements in an organization involved in railway infrastructure development, operating within the EU legislative framework;</p> <p>2) project experience of at least one project related to the procurement of railway infrastructure components and elements in a railway infrastructure construction project with a CAPEX value of at least 200 million euro within the last ten years (2007-2017) including 2018 until the date of submission of the Proposal.</p>	<p>- Filled in and signed Annex 6.</p>
<p>1.4.</p>	<p>At least 2 (two) railway supply industry experts collectively covering all necessary areas of expertise (with regard to the relevant components and elements for the construction of an infrastructure equivalent to Rail Baltica), each with the following minimum qualifications:</p>	<p>- Filled in and signed Annex 6.</p>

⁶ https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.356.01.0001.01.ENG

No	Requirement	Documents to be submitted
	<p>1) at least 5 (five) years of experience related to railway supply processes in an organization related to the railway supply industry: either on the side of the procuring entity (e.g. infrastructure manager, project delivery organization) or on the side of the component supplier (e.g. manufacturer, authorized representative etc), unless this would constitute a current conflict of interest;</p> <p>2) project experience of at least one project related to railway infrastructure component sourcing (either buy side or sell side) with components similar to the subject matter with the sum of sourcing contracts exceeding 50 million euros and an underlying project CAPEX value of at least 200 million euro within the last ten years (2007-2017) including 2018 until the date of submission of the Proposal, unless this would constitute a current conflict of interest.</p>	
1.5.	<p>Every key expert is expected to have a very good (at least B2 Level) verbal and presentation and excellent (at least C1 Level) written English language skills – (based on Common European Framework of Reference for Languages⁷) in communication, presentation, negotiation and report writing, particularly in the specific areas of their expertise.</p>	<p>- self-declared information about each key experts' language skills in Annex 6.</p>

- 7.5. Notices and other documents, which are issued by Latvian competent institutions, are accepted and recognized by the Procurement Commission, if they are issued no earlier than 1 (one) month prior to the date of submission of particular notices and documents. Notices and other documents, which are issued by foreign competent institutions, are accepted and recognized by the Procurement Commission, if they are issued no earlier than 6 (six) month prior to the date of submission of particular notices and documents, if the issuer of the notice or document has not set shorter period of validity.
- 7.6. If the documents, with which a Tenderer registered or permanently residing abroad can certify its compliance with the requirements of Section 7.1, are not

⁷ See <http://europass.cedefop.europa.eu/resources/european-language-levels-cefr>

issued or these documents are insufficient, such documents can be replaced with an oath or, if the regulatory enactments of the country in question do not allow for an oath, - with a certification by the Tenderer or by another person mentioned in Section 7.1(1) before a competent executive governmental or judicial institution, a sworn notary or a competent organization of a corresponding industry in their country of registration (permanent residence).

- 7.7. If the Tenderer complies with any of the exclusion grounds mentioned in Section 7.1 (except Section 7.1 (2), 7.1(10) – 7.1(12)), the Tenderer indicates this fact in Annex No 1.
- 7.8. The Tenderer, in order to certify that it complies with the selection criteria for Tenderers, may submit the European single procurement document as initial proof. This document must be submitted for each person upon whose capabilities the Tenderer relies, and for each of their indicated subcontractors, the share of whose work is equal to or exceeds 10 % (ten per cent) of the value of the Contract, but if the Tenderer is a partnership – for each member thereof. In order to fill in the European single procedure document the Tenderer uses the "ESPD.xml" file at the Internet webpage <https://ec.europa.eu/tools/espd/filter?lang=en>. In any case, prior to making the final decision about assigning rights to conclude the contract, procurement commission shall ask the Tenderer to whom the possible rights to conclude the contract will be awarded, to submit all documents specified in Section 7.2. – 7.4. within a specified term.

8. RELIANCE ON THE CAPABILITIES OF OTHER PERSONS

- 8.1. For the fulfilment of the specific contract, in order to comply with the selection requirements for the Tenderers relating to the economic and financial standing and technical and professional ability (including regarding the team of key experts), the Tenderer may rely upon the capabilities of other persons, regardless of the legal nature of their mutual relationship. In this case:
 - 8.1.1. The Tenderer indicates in the Proposal all persons upon whose capabilities it relies by filling in the table which is attached as Annex No 3 and proves to the Contracting authority that the Tenderer shall have available all the necessary resources for the fulfilment of the contract, by submitting a signed confirmation or agreement on cooperation and/or passing of resources to the Tenderer between such persons and the Tenderer. The confirmations and agreements on cooperation and passing of resources can be replaced by the Tenderer with any other type of documents with which the Tenderer is able to prove that the necessary resources will be available to the Tenderer and will be used during the term of fulfilment of the contract.
 - 8.1.2. Documents on cooperation and passing of resources have to be sufficient to prove to the Contracting authority that the Tenderer will have the ability to fulfil the contract, as well as that during the validity of the contract the Tenderer will in fact use the resources of such person upon whose capabilities the Tenderer relies.
 - 8.1.3. The Contracting authority shall require joint and several liability for the execution of the Contract between the:
 - 8.1.3.1. Tenderer and a person on whose capabilities the Tenderer is relying to certify it's financial and economic performance and who will be financially and economically responsible for fulfilment of the procurement contract;

- 8.1.3.2. each member of the partnership (if the Tenderer is a partnership) on whose capabilities partnership is relying and who will be financially and economically responsible for fulfilment of the procurement contract.
- 8.2. The Contracting authority shall evaluate the person, on whose capabilities the Tenderer to whom the rights to conclude the Contract should be assigned is relying according to Section 7.1(1) to 7.1(8) and 7.1(12). In case such person will comply with any of the exclusion grounds which are mentioned in Section 7.1(1) to 7.1(8), the Contracting authority shall request the Tenderer to change such person. If the Tenderer shall not submit documents about another person which complies with the selection criteria within 10 (ten) business days from the date when the request was issued or sent to the Tender, the Contracting authority shall exclude such Tenderer from further participation in the open competition. In case such person will comply with the exclusion ground which is mentioned in Section 7.1(12), the Contracting authority shall exclude such Tenderer from further participation in the open competition with no rights to change such person.

9. SUBCONTRACTING

- 9.1. The Tenderer shall indicate in the Proposal all subcontractors of the Tenderer by providing information in E-Tenders system and filling in the table which is attached as Annex No 4 .
- 9.2. The Contracting authority shall evaluate the subcontractor of the Tenderer to whom the rights to conclude the Contract should be assigned according to Sections 7.1(2) to 7.1(8) and 7.1(12) . In case such subcontractor, whose share of work is equal to or exceeds 10% of the Contract price, will comply with any of the exclusion grounds which are mentioned in Section 7.1(2) to 7.1(8), the Contracting authority shall request the Tenderer to change such subcontractor. If the Tenderer shall not submit documents about another subcontractor which complies with the selection criteria within 10 (ten) business days from the date when the request was issued or sent to the Tender, the Contracting authority shall exclude such Tenderer from further participation in the open competition. In case such person will comply with the exclusion ground which is mentioned in Section 7.1(12), the Contracting authority shall exclude such Tenderer from further participation in the open competition with no rights to change such person.

10. FINANCIAL PROPOSAL

- 10.1. The Financial proposal shall be submitted as part of Annex No 1.
- 10.2. The proposed contract price shall be determined in *euro* without value added tax (hereinafter – VAT).
- 10.3. The proposed contract price is to be calculated and indicated with an accuracy of 2 (two) decimal places after comma. If more than 2 (two) decimal places after comma are indicated, then only the first two decimal places will be taken into account.
- 10.4. The proposed contract price shall include all taxes, fees and payments, and all costs related to the fulfilment of the obligations specified in the Contract.
- 10.5. The prices are fixed for all the term of the fulfilment of the Contract and are not recalculated, except in cases stipulated in the Contract (if any).

11. TECHNICAL PROPOSAL

- 11.1. Tenderers should submit a methodology document (Technical proposal) in accordance with the requirements set out in the Technical specification in accordance with Annex No 2, containing the description of at least the following aspects:
- 11.1.1. Description of the organisational aspects, which includes but is not limited to:
 - 11.1.1.1. The management of provision of services;
 - 11.1.1.2. Methods for the conduct and delivery of the study, including stakeholder mapping and stakeholder management methodology;
 - 11.1.1.3. Principles for the organization of meetings with the Contracting Authority;
 - 11.1.1.4. Principles for the daily communication between the Tenderer and the Contracting Authority (e.g. by telephone; e-mail, etc.);
 - 11.1.1.5. Ensuring the adequate availability of and access to the **Tenderer's personnel and relevant resources.**
 - 11.1.1.6. Risk management plan (identification, assessment of risks, risk mitigation plan) for the contract execution.
 - 11.1.1.7. Quality assurance procedures;
 - 11.1.1.8. **Procedures to manage Contracting Authority's and stakeholder feedback.**
 - 11.1.2. Description of the contents of services (WP1, WP2, WP3, WP4, WP5 and WP6), which includes but is not limited to:
 - 11.1.2.1. Elaboration of the scope of services given in the Technical specification (including with the respect to the defined work packages) showing the understanding of the assignment;
 - 11.1.2.2. Preliminary table of contents of the study;
 - 11.1.2.3. The sequence and the co-relation of the tasks and deliverables;
 - 11.1.2.4. Stages of the provision of the services;
 - 11.1.2.5. Identification of risks and proposal of measures for the aversion of the identified risks during each stage of provision of the services;
 - 11.1.2.6. Timetable of the delivery of Services and deliverables, which is compatible with the one stipulated in the Technical specification;
 - 11.1.2.7. Implementation plan of the study along with a project GANTT chart.

- 11.1.3. **Description of the Tenderer's personnel and resources and work organization, which includes but is not limited to:**
 - 11.1.3.1. **Description of the Tenderer's core team (Personnel - key experts stipulated in, Clause 1, Section 7.4), their work management structure, hierarchy, decision making process and each core team members responsibilities;**
 - 11.1.3.2. If relevant for the particular Tenderer: procedure for engagement of additional experts (as non-key experts and other personnel) required for performance of the services and their role in the proposed management structure, presentation of proposed non-key experts;
 - 11.1.3.3. Identification and description of the resources that will be used by the Tenderer to fulfil the services and can be called upon, if needed.

12. CONTENTS AND FORM OF THE PROPOSAL

- 12.1. Proposal must be submitted electronically in E-Tenders subsystem of the Electronic Procurement System, in accordance with the following options for the Tenderer:
 - 12.1.1. by using the available tools of E-Tender subsystem, filling the attached forms of the E-Tender subsystem for this procurement procedure;
 - 12.1.2. by preparing and filling the necessary electronic documents outside the E-Tenders subsystem and attaching them to relevant requirements (in this situation, the tenderer takes responsibility for the correctness and compliance of the forms to requirements of documentation and form samples);
 - 12.1.3. by encrypting electronically prepared proposal outside subsystem of E-Tenders with data protection tools, provided by third parties, and protection with electronic key and password (in this situation, the tenderer takes responsibility for the correctness and compliance of the forms to requirements of documentation and form samples as well as ensuring capability to open and read the document).
- 12.2. During preparation of the proposal, the tenderer respects:
 - 12.2.1. Upon submission, the tenderer signs the proposal with secure electronic signature and time-stamp or with electronic signature provided by Electronic Procurement System. The tenderer can use secure electronic signature and time-stamp and sign Application form, Technical proposal and Financial proposal separately. Proposal (its parts, if signed separately) are signed by authorized person, including authorization document (e.g. power of attorney).
- 12.3. Such documents shall be included in the proposal (hereinafter – Proposal):
 - 12.3.1. Application (financial proposal) in accordance with Annex No 1.
 - 12.3.2. Information and documents (including documents, but not limited to, according to Section 7.2. – 7.4.), confirming compliance of the Tenderer with the selection criteria for the Tenderers (including selection criteria for **the Tenderer's proposed team of key experts**), or the corresponding European single procurement documents.

- 12.3.3. Information and documents relating to entities on whose capabilities the Tenderer is relying (according to Section 8), or the corresponding European single procurement documents.
- 12.3.4. Information and documents (according to Section 9) relating to subcontractors and/or or the corresponding European single procurement documents.
- 12.3.5. Technical proposal prepared in accordance with Section 11.
- 12.4. The Tenderer is not permitted to submit variants of the Proposal. If variants of the Proposal shall be submitted, the Proposal will not be reviewed.
- 12.5. The Tenderer may submit a Proposal only for the whole subject matter of the open competition in total.
- 12.6. The Proposal may contain original documents or their derivatives (e.g. copies). In the proposal or in reply to a request of the procurement commission the Tenderer shall submit only such original documents which have legal force. In order for the document to gain legal force it has to be issued and formatted in accordance with the Law on Legal Force of Documents, but public documents issued abroad shall be formatted and legalized in accordance with the requirements of the Document Legalization Law. When submitting the Proposal, the Tenderer has the right to **certify the correctness of all submitted documents' derivatives and translations** with one certification.
- 12.7. The Proposal must be signed by a person who is legally representing the Tenderer or is authorized to represent the Tenderer in this open competition procedure.
- 12.8. The Tenderer shall prepare Proposal in electronic form using the E-Tenders system available at <https://www.eis.gov.lv/EKEIS/Supplier>.

13. ENCRYPTION OF THE PROPOSAL INFORMATION

- 13.1. E-Tender system which is subsystem of the Electronic Procurement System ensures first level encryption of the information provided in the proposal documents.
- 13.2. If the Tenderer applied additional encryption to the information in the proposal (according to Section 13.1.), Tender has to provide Procurement Commission with electronic key with the password to unlock the information not later than in 15 (fifteen) minutes after deadline of the proposal submission.

14. SUBMISSION OF A PROPOSAL

- 14.1. Proposal (documents referred to in the Section 12) shall be submitted electronically using the tools offered by the E-Tenders system available at <https://www.eis.gov.lv/EKEIS/Supplier> by 16 July 2018 till 15:00 o'clock.
- 14.2. The Tenderer may recall or amend its submitted Proposal before the expiry of the deadline for the submission of Proposals by using the tools offered by E-Tenders system.
- 14.3. Only Proposals submitted to the E-Tenders system will be accepted and evaluated for participation in the procurement procedure. Any Proposal submitted outside the E-Tenders system will be declared as submitted in a non-compliant manner and will not participate in the procurement procedure.

15. OPENING OF PROPOSALS

- 15.1. The Proposals will be opened in the E-Tenders system 16 July, **2018 15:00 o'clock** during the open meeting. It is possible to follow the opening of submitted proposals online in the E-Tenders system.
- 15.2. The Proposals are opened by using the tools offered by E-Tenders system, the proposed price and other information that characterizes the Proposal shall be published in E-Tenders system, as well as notice of the presence of documents proving the Security.
- 15.3. The information regarding the Tenderer, the time of Proposal submission, the proposed price and other information that characterizes the Proposal is generated at the opening of the proposals by E-Tenders system and written down in the Proposal opening sheet, which shall be published in E-Tenders system and Contracting authorities web page.

16. VERIFICATION OF PROPOSAL

- 16.1. Procurement Commission verifies whether the submitted Proposals comply with the requirements stipulated in in The Regulation (Section 12) and whether all required information and documents is submitted and selects for further evaluation the compliant Proposals.

17. SELECTION OF TENDERERS

- 17.1. Procurement Commission verifies whether the tenderers comply with the selection criteria mentioned in Section 7.2., 7.3. and 7.4. and selects conformable Tenderers.

18. VERIFICATION OF TECHNICAL PROPOSALS

- 18.1. The procurement commission verifies whether the submitted technical proposals comply with the requirements stipulated in Section 11 and selects for further evaluation the compliant technical proposals.

19. VERIFICATION OF FINANCIAL PROPOSALS

- 19.1. The Procurement Commission verifies whether Tenderers have completed Annex No 1 **"Application" in accordance with the requirements.**
- 19.2. The Procurement Commission verifies whether there are any arithmetical errors, whether an abnormally low Proposal has been received, as well as assesses and compares the contract prices proposed.
- 19.3. The Procurement Commission informs the Tenderer whose mathematical errors have been corrected about the correction of mathematical errors and the corrected financial proposal.
- 19.4. When evaluating the financial proposal, the Procurement Commission takes corrections into account.
- 19.5. The Procurement Commission has the right to demand that the Tenderer explains the calculation upon which the financial proposal is based and other related aspects in order to ascertain the objectivity of the financial proposal and whether an abnormally low Proposal has been submitted.

19.6. The Procurement Commission further evaluates the compliant Proposals which have not been declared as abnormally low proposals.

20. CONTRACT AWARD CRITERIA

20.1. The Proposal selection criterion is the most economically advantageous proposal, according to the evaluation methodology described in this Section below.

20.2. The economically most advantageous proposal shall be the Proposal which will receive the highest sum of scores for the following criteria:

Evaluation criteria:	Point:	Documents to be submitted:
	35	A Financial proposal in the form, attached as Annex No 1
<p>Financial proposal, which will be evaluated in accordance with Section 20.5.</p>	45	<p>A document in accordance with Section 11 describing the Tenderer's proposed approach for the study, and related activities</p>
<p>Quality of the Technical proposal, which will be evaluated in accordance with Section 20.6.</p>	20	<p>A list of key experts, who are proposed for delivery of services (according to Section 7.4.), supported by a CV about the relevant experience, obtained during the professional career.</p>
	Total:	100

20.3. The procurement commission shall sum up the points obtained by each Tenderer and the Contract shall be awarded to the Tenderer whose Proposal obtains the highest score.

20.4. In case several Tenderers will obtain equal number of points, the procurement commission shall award the right to conclude the contract to the Tenderer which will obtain higher score for its financial proposal. If also this score will be equal then the procurement commission will invite representatives of those particular tenderers and organize a draw. In situation, when representatives of tenderers choose to not be present at the draw, procurement commission will carry out the draw without representatives of tenderers present.

20.5. Evaluation of the Financial proposal

20.5.1. The procurement commission shall award the maximum available points for the Financial proposal to the Financial proposal with the lowest proposed contract price.

20.5.2. Other Financial proposals shall receive score in accordance with the following formula:

$$\text{points} = \frac{\text{lowest proposed price from the compliant proposals}}{\text{Tenderer's proposed price}} \times 35$$

20.6. Evaluation of the quality of the Technical proposal

20.6.1. Quality of the Technical proposal will be evaluated by comparing the Technical proposals according to the following criteria:

No	Criteria	Points
	<i>(a) Supplier market analysis methodology</i>	
a.1	<p>Outstanding⁸ level of detail</p> <p>The contents of the Technical proposal conforms with the Technical Specification, work packages (WP) are outlined in the best practice of industry, the description of provision of services provides an idea about the way and means of provision of these services and an outstanding description (in outstanding level of detail) of the specific task and execution methodology for WP 3.2, including the approach to the identification of a list of railway superstructure components and railway infrastructure elements necessary for the construction (WP 3.1) and a methodology of how to identify the components/elements for which consolidated procurement would be the optimum procurement strategy (WP 4.1).</p>	15
a.2	<p>High level of detail</p> <p>The contents of the Technical proposal conforms with the Technical specification, WPs are outlined in the best practice of industry, the description of provision of services provides an idea about the way and means of provision of these services and a good⁹ description (in good level of detail) of the specific task and execution methodology for WP 3.2, including the approach to the identification of a list of railway superstructure components and railway infrastructure elements necessary for the construction (WP 3.1) and a methodology of how to identify the components/elements for which consolidated procurement would be the optimum procurement strategy (WP 4.1).</p>	10
a.3	<p>Satisfactory¹⁰ level of details</p> <p>The contents of the Technical proposal conforms with the Technical specification, WPs are outlined in the best practice of industry, the</p>	5

⁸ **Outstanding** here and elsewhere means a detailed and well-structured description comprising features which exceed the required quality and performance set out in the Technical specification, with many, and/or additional to the ones mentioned in the Technical specification, alternatives analysed, options are substantiated including by taking into account the particular tasks of this particular project.

⁹ **Good** here and elsewhere means a detailed and structured description, which meets the required quality and performance set out in the Technical specification, with some alternatives analysed and choices substantiated including by taking into account the particular tasks of this particular project.

¹⁰ **Satisfactory** here and elsewhere means a description, which generally meets the required quality and performance set out in the Technical specification but with some minor issues negatively deviating from the Technical specification and limited additional analysis or substantiation including by taking into account the particular tasks of this particular project.

No	Criteria	Points
	description of provision of services provides an idea about the way and means of provision of these services and a satisfactory description (in satisfactory level of detail) of the specific task and execution methodology for WP 3.2, including the approach to the identification of a list of railway superstructure components and railway infrastructure elements necessary for the construction (WP 3.1) and a methodology of how to identify the components/elements for which consolidated procurement would be the optimum procurement strategy (WP 4.1).	
a.4	<p>Insufficient¹¹ level of details</p> <p>The Technical proposal consists of unanswered or significantly inadequate and incomplete solutions to the required specific tasks. A failure to grasp the intended requirements of tasks outlined in the Technical specification. The Technical proposal conforms with the Technical Specification and practice of the industry only partly, the description of provision of services does not provide an idea about the way and means of provision of these services and project in general and an insufficient description (in insufficient level of detail) of the specific task and execution methodology for WP 3.2, including the approach to the identification of a list of railway superstructure components and railway infrastructure elements necessary for the construction (WP 3.1) and a methodology of how to identify the components/elements for which consolidated procurement would be the optimum procurement strategy (WP 4.1).</p>	0
<i>(b) Procurement strategy methodology</i>		
b.1	<p>Outstanding level of detail</p> <p>The contents of the Technical proposal conforms with the Technical Specification, work packages (WP) are outlined in the best practice of industry, the description of provision of services provides an idea about the way and means of provision of these services and an outstanding description of the execution of the specific tasks of WP 4.2.</p>	15
b.2	<p>High level of detail</p> <p>The contents of the Technical proposal conform with the Technical specification, WPs are outlined in the best practice of industry, the description of provision of services provides an idea about the way and means of provision of these services and a good description of the execution of the specific tasks of WP 4.2.</p>	10
b.3	<p>Satisfactory level of details</p> <p>The contents of the Technical proposal conform with the Technical specification, WPs are outlined in the best practice of industry, the description of provision of services provides an idea about the way</p>	5

¹¹ **Insufficient** here and elsewhere means a description, which partly meets the required quality and performance set out in the Technical specification in some areas but with some major issues negatively deviating from the Technical specification and very limited or no additional analysis or substantiation including by taking into account the particular tasks of this particular project.

No	Criteria	Points
	and means of provision of these services and a satisfactory description of the execution of the specific tasks of WP 4.2.	
b.4	<p>Insufficient level of details</p> <p>The Technical proposal consists of unanswered or significantly inadequate and incomplete solutions to the required specific tasks. A failure to grasp the intended requirements of tasks outlined in the Technical specification. The Technical proposal conforms with the Technical Specification and practice of the industry only partly, the description of provision of services does not provide an idea about the way and means of provision of these services and project in general and an insufficient description of the execution of the specific tasks of WP 4.2.</p>	0
<i>(c) Innovation and sustainability assessment methodology</i>		
c.1	<p>Outstanding level of detail</p> <p>The contents of the Technical proposal conforms with the Technical Specification, work packages (WP) are outlined in the best practice of industry, the description of provision of services provides an idea about the way and means of provision of these services and an outstanding description of the proposed execution of the specific tasks of WP 3.3.</p>	10
c.2	<p>High level of detail</p> <p>The contents of the Technical proposal conform with the Technical specification, WPs are outlined in the best practice of industry, the description of provision of services provides an idea about the way and means of provision of these services and a good description of the specific tasks of WP 3.3.</p>	7
c.3	<p>Satisfactory level of details</p> <p>The contents of the Technical proposal conform with the Technical specification, WPs are outlined in the best practice of industry, the description of provision of services provides an idea about the way and means of provision of these services and a satisfactory description of the proposed execution of the specific tasks of WP 3.3.</p>	3
c.4	<p>Insufficient level of details</p> <p>The Technical proposal consists of unanswered or significantly inadequate and incomplete solutions to the required specific tasks. A failure to grasp the intended requirements of tasks outlined in the Technical specification. The Technical proposal conforms with the Technical Specification and practice of the industry only partly, the description of provision of services does not provide an idea about the way and means of provision of these services and project in general and an insufficient description of the proposed execution of the specific task of WP 3.3.</p>	0

No	Criteria	Points
	<i>(d) General understanding of the scope of the study and the role of this study in the context of the development of the Rail Baltica Global project</i>	
d.1	<p>Outstanding¹² level of details</p> <p>The document conforms with the Technical specification (the Scope), the draft contract and the best practice of industry, the description of provision of services provides an idea about the way and means of provision of these services in context with development of Rail Baltica Global project and:</p> <ul style="list-style-type: none"> • An outstanding understanding of the unique nature of the Rail Baltica project, its importance for the Baltic States and the EU, its institutional arrangements and key stakeholders, as well as nature of a forward-looking greenfield project. • An outstanding understanding of the wider context of Rail Baltica supplier market studies and resultant procurement and deployment strategies, including the role and importance of component sourcing. 	5
d.2	<p>High level of details</p> <p>The document conforms with the Specification (the Scope), the draft contract and the best practice of industry, the description of provision of services provides an idea about the way and means of provision of these services in context with development of Rail Baltica Global project and:</p> <ul style="list-style-type: none"> • A good understanding of the unique nature of the Rail Baltica project, its importance for the Baltic States and the EU, its institutional arrangements and key stakeholders, as well as nature of a forward-looking greenfield project. • A good understanding of the wider context of Rail Baltica supplier market studies and resultant procurement and deployment strategies, including the role and importance of component sourcing. 	3
d.3	<p>Satisfactory¹³ level of details</p> <p>The document conforms with the Specification (the Scope), the draft contract and the best practice of industry, the description of provision of services provides an idea about the way and means of provision of</p>	1

¹² **Outstanding** here and elsewhere means a detailed and well-structured description comprising features which exceed the required quality and performance set out in the Technical specification, with many, and/or additional to the ones mentioned in the Technical specification, alternatives analysed, options are substantiated including by taking into account the particular tasks of this particular project.

¹³ **Satisfactory** here and elsewhere means a description, which generally meets the required quality and performance set out in the Technical specification but with some minor issues negatively deviating from the Technical specification and limited additional analysis or substantiation including by taking into account the particular tasks of this particular project.

No	Criteria	Points
	<p>these services in context with development of Rail Baltica Global project and:</p> <ul style="list-style-type: none"> • A satisfactory understanding of the unique nature of the Rail Baltica project, its importance for the Baltic States and the EU, its institutional arrangements and key stakeholders, as well as nature of a forward-looking greenfield project. • A satisfactory understanding of the wider context of Rail Baltica supplier market studies and resultant procurement and deployment strategies, including the role and importance of component sourcing. 	
d.4	<p>Insufficient¹⁴ level of details</p> <p>The document conforms with the Specification (the Scope), the draft contract and the best practice of industry, the description of provision of services provides an idea about the way and means of provision of these services in context with development of Rail Baltica Global project and:</p> <ul style="list-style-type: none"> • An insufficient understanding of the unique nature of the Rail Baltica project, its importance for the Baltic States and the EU, its institutional arrangements and key stakeholders, as well as nature of a forward-looking greenfield project. • An insufficient understanding of the wider context of Rail Baltica supplier market studies and resultant procurement and deployment strategies, including the role and importance of component sourcing. 	0

20.6.2. **The quality of the document describing the Tenderer's proposed approach** for the supplier market study for railway infrastructure components shall be evaluated on the basis of the information contained in the document in accordance with Section 11 and its relevance to the Technical Specification (Annex No 2) (the Scope), by awarding points.

20.6.3. The maximum number of points *which document can receive are 45 points.*

20.6.4. The procurement commission shall obtain the final score for each Technical proposal in this criterion by summing up all points obtained by the particular Technical proposal in this criterion and dividing the sum with the number of members of the procurement commission which participated in the evaluation of the Technical proposals. The result shall be used as the points for the particular Technical proposal for the purposes of Section 20.3.

20.7. Evaluation of the quality of the proposed team of experts

¹⁴ **Insufficient** here and elsewhere means a description, which partly meets the required quality and performance set out in the Technical specification in some areas but with some major issues negatively deviating from the Technical specification and very limited or no additional analysis or substantiation including by taking into account the particular tasks of this particular project.

20.7.1. Only the following experience, which exceeds the minimum experience which is requested in Section 7.4., shall be awarded with points according to the following sub-criteria and methodology:

No	Criteria	Points
<i>(e) Experience in large projects</i>		
a.1	Project manager, Lead expert in the field of railway infrastructure component sourcing and at least 1 (one) other proposed expert (procurement expert or railway supply industry expert) each have obtained experience in at least 1 (one) railway infrastructure project with key technical parameters equivalent to Rail Baltica (compliant with TSI traffic codes P2-F1 or P1-F1, or P2 or P1 ¹⁵) and operating within the EU legislative framework with an investment or asset book value of at least 500 million euros each over the past ten years (2007-2017) including 2018 until the date of submission of the Proposal.	5
a.2	Project manager and Lead expert in the field of railway infrastructure component sourcing each have obtained experience in at least 1 (one) railway infrastructure project with key technical parameters equivalent to Rail Baltica (compliant with TSI traffic codes P2-F1 or P1-F1, or P2 or P1) and operating within the EU legislative framework with an investment or asset book value of at least 500 million euros each over the past ten years (2007-2017) including 2018 until the date of submission of the Proposal.	3
a.3	Either Project manager or Lead expert in the field of railway infrastructure component sourcing has obtained experience in at least 1 (one) railway infrastructure project with key technical parameters equivalent to Rail Baltica (compliant with TSI traffic codes P2-F1 or P1-F1, or P2 or P1) and operating within the EU legislative framework with an investment or asset book value of at least 500 million euros each over the past ten years (2007-2017) including 2018 until the date of submission of the Proposal.	1
<i>(f) European Union (EU) - related experience</i>		
b.1	Procurement expert and 2 railway supply industry experts each have obtained experience in at least 1 (one) railway infrastructure project with key technical parameters equivalent to Rail Baltica (compliant with TSI traffic codes P2-F1 or P1-F1, or P2 or P1), operating within the EU legislative framework, including <u>EU public procurement law</u> , each over the past ten years (2007-2017) including 2018 until the date of submission of the Proposal.	10

¹⁵ https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.356.01.0001.01.ENG

No	Criteria	Points
b.2	Procurement expert and 2 railway supply industry experts each have obtained experience in at least 1 (one) railway infrastructure project with key technical parameters equivalent to Rail Baltica (compliant with TSI traffic codes P2-F1 or P1-F1, or P2 or P1) and operating within the EU legislative framework, each over the past ten years (2007-2017).	5
b.3	Procurement expert has obtained experience in at least 1 (one) railway infrastructure project with key technical parameters equivalent to Rail Baltica (compliant with TSI traffic codes P2-F1 or P1-F1, or P2 or P1) and at least 1 railway supply industry expert has obtained experience in at least 1 (one) railway infrastructure project operating within the EU legislative framework, each over the past ten years (2007-2017).	1
<i>(g) Cross-border experience</i>		
c.1	Lead expert in the field of railway infrastructure component sourcing has obtained experience in at least 2 (two), and at least 1 (one) other proposed expert (procurement expert or railway supply industry expert) has obtained experience in at least 1 (one) railway infrastructure project where railway infrastructure crosses State border between at least 2 (two) countries with at least one country being an EU Member State, each over the past ten years (2007-2017) or at least 3 (three) proposed experts (lead expert in the field of railway infrastructure component sourcing or procurement expert, or railway supply industry expert) each have obtained experience in at least 1 (one) railway infrastructure project where railway infrastructure crosses State border between at least 2 (two) countries with at least one country being an EU Member State, each over the past 10 (ten) years (2007-2017).	5
c.2	Lead expert in the field of railway infrastructure component sourcing and at least 1 (one) other proposed expert (procurement expert or railway supply industry expert) each have obtained experience in at least 1 (one) railway infrastructure project where railway infrastructure crosses State border between at least 2 (two) countries with at least one country being an EU Member State, each over the past ten years (2007-2017).	3
c.3	At least 1 (one) proposed expert (Lead expert in the field of railway infrastructure component sourcing, procurement expert or railway supply industry expert), has obtained experience in at least 1 (one) railway infrastructure project	1

No	Criteria	Points
	where railway infrastructure crosses State border between at least 2 (two) countries with at least 1 (one) country being an EU Member State over the past ten years (2007-2017).	

21. TENDERER CHECK PRIOR TO MAKING THE DECISION REGARDING THE CONCLUSION OF THE CONTRACT

- 21.1. Prior to making the decision about assigning rights to conclude the Contract, the Procurement Commission performs a check regarding the existence of grounds for exclusion of tenderers for Tenderers, members of a partnership (if the Tenderer is a partnership), persons on whose capabilities the Tenderer is relying and subcontractors.
- 21.2. If, in accordance with the information published on the day of the last data update in a public database, on the last day of Proposal submission or on the day when the decision regarding the possible assignment of rights to conclude a Contract is made, the Tenderer, member of a partnership (if the Tenderer is a partnership), a subcontractor whose share of work is equal to or exceeds 10% of the Contract price or a person on whose capabilities the Tenderer is relying have tax debts, including state mandatory insurance contributions debts, the total sum of which exceeds 150 euro, the procurement commission informs the Tenderer and sets a deadline – 10 days from the day of issuing or receiving information – for the submission of a certificate evidencing absence of tax debt or decision to prolong the deadline or postpone payment of the tax or other objective evidence proving absence of a tax debt.
- 21.3. If the Tenderer fails to submit required evidence about itself before the deadline, the procurement commission excludes the Tenderer from participation in the open competition.
- 21.4. Change of persons upon whose capabilities the Tenderer is relying or subcontractors whose share of work is equal to or exceeds 10% of the Contract price is performed in accordance with Sections 8.2 and 9.2 respectively.
- 21.5. In the event the Tenderer or partnership member (if the Tenderer is a partnership) fails to comply with requirements stipulated in Section 7.1 and has indicated this in the Proposal, upon request by the Procurement Commission it submits an explanation about the implemented measures in order to restore reliability and prevent occurrences of the same or similar violations in future, as well as attaches evidence which proves the implemented measures, such as but not limited to evidence about compensating damages, on cooperation with investigating authorities, implemented technical, organisational or personnel measures, an assessment of a competent authority regarding the sufficiency of the implemented measures etc. The Procurement Commission assesses such information. If the Procurement Commission deems the measures taken to be sufficient for the restoration of reliability and the prevention of similar cases in the future, it makes the decision not to exclude the Tenderer from participation in the open competition. If the measures taken are insufficient, the Procurement Commission makes the decision to exclude the Tenderer from further participation in the open competition procedure. If the Tenderer, within the indicated time, does not submit the requested information, the Procurement Commission excludes the Tenderer from participation in the open competition.

22. DECISION MAKING, ANNOUNCEMENT OF RESULTS AND ENTERING INTO A CONTRACT

- 22.1. The Procurement Commission selects the Tenderers in accordance with the set selection criteria for Tenderers, verifies the compliance of the Proposals with the requirements stipulated in the Regulation and chooses the Proposal in accordance with the contract award criteria as described in Section 20. The Tenderer whose Proposal shall receive the best score shall be selected.
- 22.2. Within 3 (three) business days from the date of decision about the open competition results the Procurement Commission informs all the Tenderers about the decision made by sending the information by post or electronically and keeping the evidence of the date and mode of sending the information. The Procurement Commission announces the name of the chosen Tenderer, indicating:
- 22.2.1. to the refused Tenderer the reasons for refusing its Proposal;
 - 22.2.2. to the Tenderer who has submitted an eligible Proposal, the characterization of the chosen proposal and the relative advantages;
 - 22.2.3. the deadline by which the Tenderer may submit a complaint to the Procurement Monitoring Bureau regarding violations of the public procurement procedure.
- 22.3. If only 1 (one) Tenderer complies with all the Tenderer selection requirements, the Procurement Commission prepares and includes in the open competition procedure report a justification of the fact that the set requirements for tenderer selection are objective and commensurate. If the Procurement Commission cannot justify that the set requirements for Tenderer selection are objective and commensurate, it makes the decision to terminate the public procurement procedure.
- 22.4. If the public procurement procedure is terminated, the Procurement Commission within 3 (three) business days simultaneously informs all Tenderers about all the reasons because of which the open competition procedure is terminated, and informs about the deadline within which a Tenderer may submit an application regarding the violations of the public procurement procedure to the Procurement Monitoring Bureau.
- 22.5. The Procurement Commission, when informing of the results, has the right not to disclose specific information, if it may infringe upon public interests or if the **Tenderer's legal commercial interests** or the conditions of competition would be violated.
- 22.6. As soon as possible, but not later than within 5 (five) business days from day when the decision about the results of the open competition is taken, the Procurement Commission prepares a report on the open competition procedure and publishes it on the E-procurement system's webpage <https://www.eis.gov.lv/EKEIS/Supplier> and on Contracting Authority's webpage <http://railbaltica.org/en/procurements>.
- 22.7. The selected Tenderer upon receiving the notification about the open competition results must:
- 22.7.1. within 5 (five) business days submit cooperation or partnership agreement if required pursuant to requirements under Section 6.1.2;
 - 22.7.2. within 10 (ten) days from receiving the invitation, to sign the Contract.
- 22.8. The Contract is concluded on the basis of the Tenderer's Proposal and in accordance with Annex No 7.

- 22.9. The Procurement Commission has the right to choose the next most economically advantageous Proposal, if the Tenderer in the time stipulated by the Regulation:
- 22.9.1. refuses to conclude a partnership contract in the cases and deadlines defined by the Regulation, or in the cases and deadlines defined by the Regulation does not submit a copy of the partnership contract or does not inform of the founding of a partnership company;
 - 22.9.2. refuses to conclude the Contract or does not submit a signed Contract.
- 22.10. In such a case the Procurement Commission is entitled to terminate this open competition without selecting any Proposal, or to select the Proposal with the next best score. For either of these decisions a written decision must be made.
- 22.11. Prior to making the decision regarding the conclusion of the contract with the next Tenderer, the Procurement Commission assesses whether the next Tenderer is one market participant together with the initially selected Tenderer. If the next selected Tenderer is found to be one market participant together with the initially selected Tenderer, the Procurement Commission makes a decision to terminate the open competition without selecting any Proposal. If the next chosen Tenderer also refuses to conclude the contract or does not submit a signed public procurement contract within the deadline set by the procurement commission, the procurement commission makes the decision to terminate the open competition without selecting any Proposal.

Procurement commission chairman

M. Blaus

ANNEX NO 1: APPLICATION

[form of the Tenderer's company]

2018.____._____

No_____

APPLICATION FOR PARTICIPATION IN THE OPEN COMPETITION
 “SUPPLIER MARKET STUDY FOR RAILWAY INFRASTRUCTURE COMPONENTS”, NO RBR
 2018/2

Tenderer [*name of the Tenderer or members of the partnership*], reg. No. [*registration No of the Tenderer or members of the partnership*], represented by [*name, last name and position of the representative of the Tenderer*], by submitting this application:

1. Confirms participation in the open competition “Supplier market study for railway infrastructure components” No RBR 2018/2.
2. Proposes to deliver services in accordance with the Technical specification and this Proposal for the following price (excluding VAT):

No	Services	Total Contract Price
1.	Supplier market study for railway infrastructure components in accordance with the Technical specifications (Annex No 2)	_____EU R

3. (If applicable): Informs that the following persons comply with the following exclusion grounds:

Name of the entity (person)	Exclusion ground and brief description of the violation
[•]	
[•]	

4. Confirms that the Regulation is clear and understandable, that it does not have any objections and complaints and that in the case of granting the right to enter into a contract it shall fulfil all conditions of the Regulation as well as enter into a procurement contract in accordance with the draft contract enclosed with the Regulation.
5. Guarantees that all information and documents provided are true.
6. We meet the criteria of (*please mark*):
 a small medium other

sized enterprise¹⁶ as defined in the Article 2 of the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprise;¹⁷

(Signature)

Name, Surname and position of the representative of Tenderer

Address: [Address of the Tenderer]

Contact person, phone, e-mail: [Name, Surname, phone number, e-mail address for direct communication and correspondence]

Date: [date of signing]

¹⁶ The information on the size of the Candidate is used solely for statistical purposes and is not in any way whatsoever used in the evaluation of the Tenderer or the Proposal.

¹⁷ Available here - http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2003.124.01.0036.01.ENG&toc=OJ:L:2003:124:TOC

ANNEX NO 2: TECHNICAL SPECIFICATIONS

TERMS OF REFERENCE

Supplier market study for railway infrastructure components



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1. Introduction

The Baltic countries Estonia, Latvia and Lithuania have historically been linked to the east-west railway transport axis using the 1520mm gauge railway system. Because of the existing historical and technical constraints, the existing rail system is incompatible with mainland European standards, thus there is a consensus that Estonia, Latvia and Lithuania need to be fully integrated into the wider European rail transport system. Currently there is no efficient 1435 mm railway connection along the Warsaw-Kaunas-Riga-Tallinn axis, i.e. there are missing links or significant bottlenecks. Thus, there are no direct passenger or freight services along the railway axis as the existing infrastructure does not allow for competitive services compared to alternative modes of transport. Thus, the clear majority of the North-South freight is being transported by road transport and the overall accessibility in the region is low.

The ambitions of the Rail Baltica Global project (Global Project) are:

- to become a powerful catalyst for sustainable economic growth in the Baltic States;
- to set a new standard of passenger and freight mobility;
- to ensure a new economic corridor will emerge;
- sustainable employment and educational opportunities;
- an environmentally sustainable infrastructure;
- new opportunities for multimodal freight logistics development;
- new intermodal transport solutions for passengers;
- safety and performance improvements;
- a new value platform for digitalization and innovation;
- completion of Baltic integration in the European Union transport ecosystem.

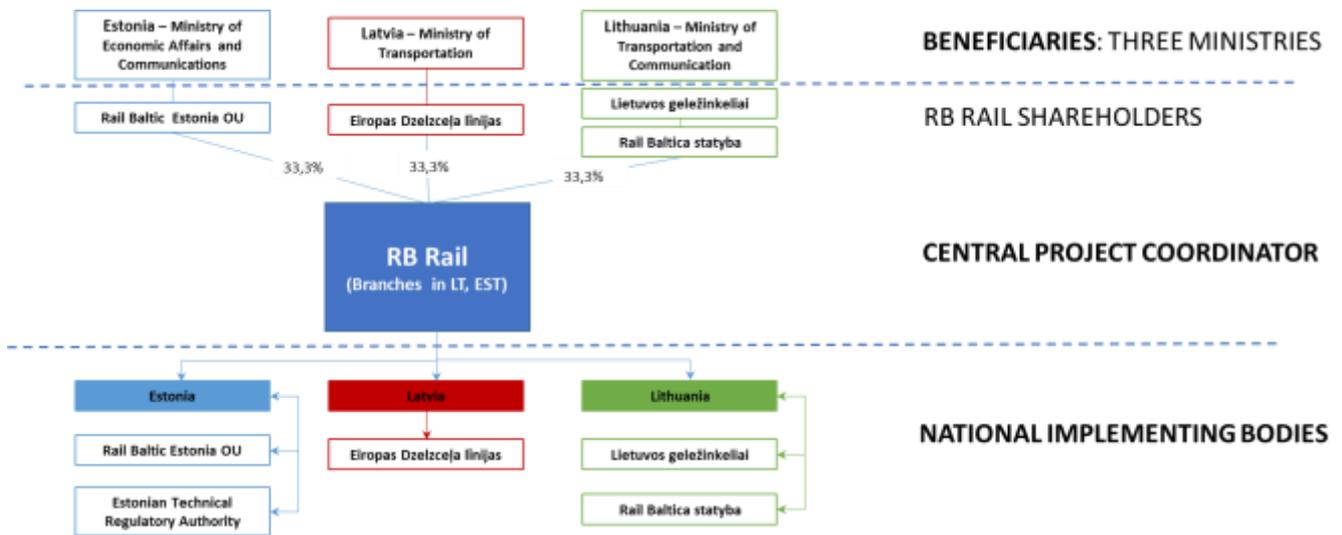
Rail Baltica is already designed to become a part of the EU TEN-T North Sea – Baltic Core Network Corridor, which links Europe's largest ports of Rotterdam, Hamburg and Antwerp – through the Netherlands, Belgium, Germany and Poland – with the three Baltic States, further connecting to Finland via the Gulf of Finland short sea shipping connections with a future fixed link possibility between Tallinn and Helsinki. Further northbound extension of this corridor shall pave the way for future connectivity also with the emerging Arctic corridor, especially in light of the lucrative prospects of the alternative Northern Circle maritime route development between Europe and Asia. Furthermore, the North Sea – Baltic Corridor crosses with the Baltic-Adriatic Corridor in Warsaw, paving the way for new supply chain development between the Baltic and Adriatic seas, connecting the Baltics with the hitherto inadequately accessible Southern European markets. In a similar fashion, Rail Baltica shall

strengthen the synergies between North-South and West-East freight flows, creating new trans-shipment and logistics development opportunities along the Europe and Asia overland trade routes. The new Rail Baltica infrastructure would, therefore, not only put the Baltics firmly on the European rail logistics map, but also create massive opportunities for value creation along this infrastructure with such secondary economic benefits as commercial property development, revitalization of dilapidated urban areas, private spin-off investment, new business formation, technology transfer and innovation, tourism development and other catalytic effects. Rail Baltica aims to promote these effects from the early stages of the Global Project, learning from the key global success stories and benchmarks in this regard.

The contracting authority RB Rail AS (RBR) was established by the Republics of Estonia, Latvia and Lithuania, via state-owned holding companies, to coordinate the development and construction of the fast-conventional standard gauge railway line on the North Sea – Baltic TEN-T Core Network Corridor (Rail Baltica II) linking three Baltic states with Poland and the rest of the EU. The main technical parameters shall correspond to traffic code P2-F1 as per INF TSI (Commission Regulation 1299/2014/EU) and **they are detailed in Design Guidelines**. The key design criteria to follow are (non-exhaustive list):

- double track, mixed passenger and freight traffic line, design speed on the main track 249 km/h;
- axle load 25 t;
- distance between track centres at least 4.50 m on the main tracks;
- all pedestrian, road and 1520mm rail crossings only as above or below grade crossings (segregated grade crossings), fencing and noise barriers ~~where needed~~;
- ERTMS Level 2;
- electrification 2x25 kV AC;
maximum train length – 1050m for freight trains and 400m for passenger trains
- height of passenger platforms 550mm.

The diagram below illustrates the shareholder and project governance structure of the Rail Baltica project.



RBR together with governments of Estonia, Latvia and Lithuania (represented by the ministries in charge of transport policy) have applied for the CEF co-financing in 2015, 2016 and 2017 (three applications in total). The first three applications have been successful and INEA grants are available for Rail Baltica project implementation with total approved eligible cost of 823 EUR million, with up to 85% of co-financing rate.

Rail Baltica is a joint project of three EU Member States – Estonia, Latvia and Lithuania – and concerns the building of a fast conventional double track 1435 mm gauge electrified railway line on the route from Tallinn through Pärnu (EE), Riga (LV), Panevėžys (LT), Kaunas (LT) to the Lithuania/Poland state border (including connection Kaunas - Vilnius). In the longer term, the railway line could potentially be extended to include a fixed link between Helsinki and Tallinn, as well as integrate the railway link to Warsaw and beyond.

The expected core outcome of the Global Rail Baltica Project is a European gauge (1435mm) double-track railway line of almost 900 km in length meant for both passenger and freight transport and the required additional infrastructure (to ensure full operability of the railway). It will be interoperable with the TEN-T Network in the rest of Europe and competitive in terms of quality with other modes of transport in the region. The indicative timeline and phasing of the project implementation can be found here: <http://www.railbaltica.org/about-rail-baltica/project-timeline/>.

2. Objective of procurement

2.1 The primary objective of the study is to review the various railway superstructure components and infrastructure elements, required for the implementation of the Rail Baltica project, and determine whether by consolidating the procurements of these components and elements for the

entire Rail Baltica Global Project – as opposed to procuring them in a decentralized fashion by each national implementing body or contractor directly on a country or activity basis – economies of scale can be generated and cost savings realized, both via increased bargaining power vis-à-vis suppliers and wholesale discounting. As a result of this analysis, it shall be determined which superstructure components and infrastructure elements shall be procured using the consolidated procurement procedure as per the Contracting Scheme signed by the Rail Baltica project stakeholders. Additionally, other key objectives of the study include analysis of the market conditions and availability, potential supplier identification, initial quality assessment and pricing aspects, delivery options as well as consideration of the life-cycle costs and innovation, environment and sustainability aspects. This study is a part of a series of supplier market studies for the Rail Baltica Global Project, alongside mineral material studies, as well as procurement and deployment strategies for the control, command and signaling (CCS)¹⁸ and electrification (ENE) subsystems. Regarding CCS and ENE, it has been already decided by the project stakeholders that these subsystems shall be procured, designed and deployed in a centralized and consolidated way across the entire Rail Baltica Global Project.

2.2 Through the applicable procurement procedure Contracting authority seeks a service provider for the implementation of the following tasks:

Prepare a comprehensive study of the supplier markets for key Rail Baltica railway superstructure and infrastructure elements, identify for which elements consolidated procurement would be the optimum method of procurement and provide substantive input to the subsequent procurement strategies for these elements.

2.3 The results to be delivered from the Tenderer¹⁹ (the Contractor) are following:

No.	Title of deliverable	Description of deliverable
1.	Inception Report	<p>a) International best practice benchmarking and review of relevant research in the field of high-speed railway infrastructure component and main superstructure element sourcing and development (WP1)</p> <p>b) Detailed execution plan</p>

¹⁸ Including power supply, telecommunications, CCTV and other related support systems.

¹⁹ definitions “Tenderer” and “the Contractor” are considered as equal in terms of their meaning.

		c) Updated detailed methodology (WP2)
2.	Interim Report	<p>a) Identification of a list of railway superstructure components and railway infrastructure elements necessary for the construction of the Rail Baltica Global Project infrastructure (WP.3.1)</p> <p>b) Detailed description of the supplier market conditions for each type of component/element (WP3.2)</p> <p>c) Suggestion and comparative analysis of an alternative innovation-based product list (WP3.3)</p> <p>d) Identification of those components/elements for which consolidated procurement is the optimum procurement strategy (WP4.1)</p> <p>e) Updated detailed contract execution plan</p> <p>f) Final report draft outline</p>
3.	Draft Final Report	<p>a) A detailed description of proposed optimum procurement strategies for each type of component/element for which consolidated procurement is deemed the optimum procurement strategy as per WP4.1 (WP4.2)</p> <p>b) Presentation of a comprehensive assessment of risks involved in the implementation of the proposed optimum procurement strategies, as well as risks arising from not selecting the proposed optimum procurement strategies (WP4.3).</p> <p>c) Report minimum content (draft):</p> <ol style="list-style-type: none"> 1. Executive Summary 2. Introduction 3. Background information and international benchmarking (WP1) 4. Methodology (WP2) 5. Analysis of supplier markets (WP3) 6. Analysis of procurement strategies (WP4) 7. Conclusions and recommendations (WP5)
4.	Final Report	<p>Report minimum content (final):</p> <ol style="list-style-type: none"> 1. Executive Summary 2. Introduction 3. Background information and international benchmarking 4. Methodology 5. Analysis of supplier markets

		<p>6. Analysis of procurement strategies</p> <p>7. Conclusions and recommendations</p> <p>Final Report is drafted according to requirements of deliverables and by its content is completely in line with the Terms of Reference.</p>
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2.4 The deadline for the provision of services is 18 weeks from the commencement date.

2.5 The deadlines of intermediate deliverables (with contents as per section 2.3 above) and their approval for the provision of services are as follows:

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* + 8 weeks	2 weeks after reception
Draft Final Report	2 hard copies, 1 soft copy	CD* + 11 weeks	4 weeks after reception
Final Report	3 hard copies, 1 soft copy	CD* + 18 weeks	2 weeks after reception

(*) CD: commencement date of the contract

2.6 Reports and documents will be officially delivered and accepted, the Contracting authority or its authorized representative will approve the receipt of the document in writing by signing the acceptance-delivery protocol.

2.7 The Contractor shall provide in its work programme enough time for the review of submitted deliverables by representatives of the Contracting Authority in view of the delivery schedule as per section 2.5 above.

2.8 The Contractor shall consider the following non-exhaustive list of documents, studies, study projects:

2.8.1 Rail Baltica Global Project Documentation Library
(<http://railbaltica.org/about-rail-baltica/documentation/>):

- 2.8.2 Procurement legislation of the European Union, Latvia, Estonia and Lithuania:
 - 2.8.3 Rail Baltica Contracting Scheme (infographic: <http://railbaltica.org/wp-content/uploads/2017/05/Contracting-Scheme-Rail-Baltica-2016.jpg>);
 - 2.8.4 Relevant studies, reports, position papers by the relevant European and international institutions (including the European Commission, *Shift2Rail*, European Parliament, European Rail Agency, Rail Freight Corridors, ITF/OECD etc);
 - 2.8.5 Relevant studies, reports, position papers by key railway industry NGOs (including EIM, CER, UIC, ERFA, UNIFE);
 - 2.8.6 Rail Baltica Design Guidelines;
 - 2.8.7 Rail Baltica Detailed Technical Design scope documentation (as needed).
- 2.9 The Contracting Authority shall facilitate and provide the appropriate organizational frameworks towards the integration of content and cohesion between the supplier market study for railway superstructure components and railway infrastructure elements and other relevant Rail Baltica global project studies and activities, both those already completed and those being carried out in parallel (such as those listed in 3.2). The Contractor is expected to join and actively participate in the relevant alignment meetings.
- 2.10 The Contractor shall ensure that the results of the study are compliant with respective EU and national legislations.

3. Description of services

The services are organized in accordance with the following work packages (WP):

WP1: Empirical benchmarking

- **WP1.1:** International best practice benchmarking with regard to railway infrastructure component manufacturing, sourcing, delivery and construction strategies with relevant case studies (both positive and negative);
- **WP1.2:** A review of existing and ongoing research in the area of component sourcing and development for high-speed railway infrastructure projects with relevance to

Rail Baltica, including European-level research under the auspices of the *Shift2Rail* initiative;

WP2: Methodological approach

- A comprehensive study methodology conducive to a transparent and independent analysis and well-substantiated recommendations, including:
 - **WP2.1:** a comprehensive methodology to describe – in a comparable manner - the supplier market conditions for each type of component/element, including, but not limited to, availability, sourcing geography, delivery options, delivery terms, competitive situation, market entry conditions, quality considerations and pricing aspects;
 - **WP2.2:** a high-level life-cycle cost model to illustrate CAPEX-OPEX trade-offs from the perspectives of innovation, environment and sustainability and suggest optimum choices of components/elements;
 - **WP2.3:** a proposed methodology to comprehensively justify procurement consolidation (or non-consolidation) by comparing all main procurement types, including consolidated procurement by RB Rail for the Global Project, national implementing body procurements for each country separately and procurement by the contractors on a site/sub-project basis; the use of SWOT analysis or similar tools is recommended as a supplement;
 - **WP2.4:** a methodology to identify and propose the optimum procurement strategy or strategic options for each type of component/element, assuming different technological approaches of construction.
- The updated detailed methodology, presented in the Inception Report, shall be reviewed and agreed with the Contracting Authority.

WP3: Analysis of supplier markets

- **WP3.1:** Identification of a list of railway superstructure components and railway infrastructure elements necessary for the construction of the Rail Baltica Global Project infrastructure²⁰, including but not limited to the following:

²⁰ Where applicable, the Contracting Authority shall provide the relevant criteria and technical specifications of these components and elements according to Rail Baltica Design Guidelines and relevant design activities.

- Ballast (railway ballast - crushed granite or basalt stone): *to be applied on main tracks, as well as side/service tracks; in compliance with Rail Baltica Design Guidelines; approximate volume: 5 million tons (3 million cubic meters);*
 - Sleepers with elastic fastenings: *acquired together as part of a complete package or separately with on-site assembly; mono-block concrete sleepers only, but with additional consideration for innovations; approximate amount: 3 million units;*
 - Rails: *350HT hardness, profile 60 E1 or E2; approximate volume: 220 000 tones (for 900 km of double railway track with the station tracks)*
 - Turnouts: *for rail hardness 350HT or more and rail profile 60 E1 or E2; for varying speeds up to 250km/h and rail expansion joints; approximate amount: 500+;*
 - Pre-fabricated/standardized elements: *small single-span railway bridges (up to 20-25m), road and railway viaducts, culverts (steel/plastic/concrete), drainage pipes, cable ducts and manholes, pre-fabricated passenger platforms and platform elements, small animal underpasses, pedestrian tunnels/crossings, small road tunnels, retaining walls, etc*
 - Noise barriers: *2-4 pre-fabricated standardized solutions;*
 - Fencing:
 - Any other component or element as per Contractor's suggestion or suggested by the Contracting Authority during the execution of the study²¹
- **WP3.2:** Detailed description of the supplier market conditions for each type of component/element, including, but not limited to, availability, production capacity, sourcing geography (including mapping of all feasible sourcing locations), availability of locally manufactured components or possibilities of foreign suppliers establishing Baltic manufacturing facilities (justified by sufficient economies of scale and market potential), delivery options, delivery terms, including lead-times, competitive situation, market entry conditions, efficient lot sizes, quality considerations and pricing aspects. In addition, the following specific aspects should also be analyzed:
- Additional issues regarding specific product markets (non-exhaustive list):
 - Ballast (granite): *can any other applications for granite be identified, besides ballast?*

²¹ Please note that the procurement of mineral materials, as well as CCS and ENE subsystems are outside the scope of this study

- Sleepers with elastic fastenings: *What types of elastic fastenings are available? What are the possibilities of potential suppliers establishing local manufacturing facilities in the Baltic states (for sleepers and/or fastenings and/or assembly)?*
 - Rails: *What is the most cost-efficient length (including feasibility and cost of logistics)? How many factories can produce long rails? What are the quality standards? What would be feasible delivery routes and transport modes? What are supplier preferences with regard to delivery logistics organization? What are available production capacities and contingency options?*
 - Fencing and noise barriers: *what different types are available for different applications?*
 - Any other component or element as per Contractor's suggestion
 - Price formation principles and key factors that affect market pricing of specific product types;
 - Analysis of industry best practice with regard to component/element **storage (on the procurer's side) versus** just-in-time delivery management;
 - Locational and type analysis of competition: *what is the scope of the market: global/EEA/regional/national/local? What is the nature of competition: monopoly/oligopoly/limited competition/free competition? Do any entry barriers exist for suppliers? What are the market characteristics regarding the balance of bargaining power between the supplier and the buyer?*
- The contractor shall apply in the market analysis proper sets of market analysis methods to collect primary information and data, as example, but not limited to face-to-face interviews, surveys and other methods. Desk research / secondary market research only will not be deemed satisfactory.
- **WP3.3:** In addition to the standard product list identified in WP3.1 and analyzed in WP3.2, the Contractor shall suggest an alternative innovation-based product list and use a high-level life-cycle cost model to illustrate CAPEX-OPEX trade-offs from the perspectives of innovation, environment and sustainability and, if applicable, suggest optimum alternative choices of components/elements, as well as a procurement methodology that would help differentiate between the most economically advantageous (from the life-cycle and sustainability perspective) bidders *versus* the lowest cost bidders; An additional analysis of component selection and sourcing from the carbon neutrality and sustainability perspective may be considered, as well as considerations regarding a) the innovative use of locally available resources (for example, but not limited to – wood applications for noise walls, temporary construction process structures, etc) and b) the innovative use of locally available resources and waste material (e.g. rubber, plastics, metals etc) for locally-based component manufacturing.

WP4: Analysis of procurement strategies

- **WP4.1:** A comparative analysis of all main procurement types for each component/element and identification of those components and elements for which procurement consolidation for the entire Global Project would likely generate cost savings due to economies of scale and improved bargaining position vis-à-vis the supplier industry. Any additional benefits from procurement consolidation (e.g. better interoperability) shall also be considered.
- **WP4.2:** A detailed description, including a comprehensive step-by-step guidance, of the proposed optimum procurement strategy for each type of component/element for which consolidated procurement is deemed the optimum procurement strategy as per WP4.1. The strategy shall propose meaningful sets of criteria pertaining to the environmental, sustainability, climate change, life-cycle cost considerations during **the supplier's sourcing phase as per WP3.3.**
- **WP4.3:** Presentation of a comprehensive assessment of risks involved in the implementation of the proposed optimum procurement strategies, as well as risks arising from not selecting the proposed optimum procurement strategies; a thorough risk methodology shall be proposed by the Contractor, covering, *inter alia*, the aspects of risk probability, risk severity and mitigation measures. The section shall also provide an overview of the distribution of responsibilities and liabilities between the joint procurement entity (RB Rail), contracting authorities for construction works and construction contractors for each proposed procurement strategy. Disadvantages of proposed procurement consolidation strategies should also be considered and mitigation measures suggested.

WP5: Conclusion and recommendations

- Presentation of the main conclusions of the study and recommendations with regard to consolidation of procurement of railway superstructure components and railway infrastructure elements and efficient implementation of the proposed procurement strategies;

WP6: Submission, presentation and public communication

- If reasonably requested by the Contracting Authority, the Contractor shall participate in high-level governmental briefings in the three Baltic capitals during the preparation phase (at least 2 meetings in each capital) and following the submission of the Final Report (at least 2 meetings in each capital), as well as be available for public presentation of the results of the study and engagement with the

mass media and other public stakeholders following the submission of the Final Report.

- Report, tables and figures, appendices, presentations and other deliverable material shall be formatted according to the EU Connecting Europe Facility (<https://ec.europa.eu/inea/connecting-europe-facility/cef-energy/beneficiaries-info-point/publicity-guidelines-logos>), as well as Rail Baltica visual guidelines (<http://railbaltica.org/about-rail-baltica/visual-guidelines/>) and prepared by using the Rail Baltica report document template;
- All written materials, including all deliverables, shall meet the highest standards of English language and technical terminology proficiency; if requested by the Contracting Authority, the Contractor shall engage professional proofreading services at its own expense;
- All deliverables and submitted supplementary materials (including in original (source-file) formats) shall become the intellectual property of the Contracting Authority;

4. **Contractor's obligations**

- 4.1 For the provision of services, the Contractor shall remain fully responsible for the results of its services during and after the provision of services. Any additional expenses arisen due to the correction of the unacceptable results shall be covered solely by the Contractor. On reasonable grounds Contracting authority reserves the right to request the Contractor to correct the results of its services regardless whether it is necessary during the period of service provision or after completion of thereof.
- 4.2 In case Contracting authority finds (at any time of procurement process or during the implementation of the Contract for the provision of services) that provided information on the education and/or experience of a Tenderer is false, a Tenderer shall be eliminated from the procurement process or shall be subject to the termination of contract for the services (whichever is applicable).
- 4.3 The Contractor shall ensure necessary effort, means, resources and personnel required for the successful provision of services.
- 4.4 The Contractor shall be responsible for ensuring that its experts included in service contract are available throughout the service provision period.

- 4.5 The Contractor must keep records and other supporting documentation (original supporting documents) as evidence that the Contract is performed correctly and the expenses were actually incurred. These must be available for review upon the request of Contracting authority.
- 4.6 The Contractor shall make its own arrangements for office facilities, personal computers and other facilities of appropriate performance and security standard for service provision.
- 4.7 The Contractor shall ensure that its team members (experts etc.) involved in service provision are adequately supported and equipped. In particular, the Contractor shall ensure that there is sufficient administrative, secretarial and interpreting provision to enable team members to concentrate on their primary responsibilities. The Contractor must also transfer funds as necessary to support its activities under the Contract, and ensure that his employees are paid regularly and in a timely manner. Costs for administration of service contract and office operation including telecommunication costs shall be included.
- 4.8 The Contractor will arrange for formal coordination and decision making on project interventions and establish an adequate internal management structure. Progress meetings with the Contracting authority are held at least once per month. If needed, ad-hoc and weekly meetings can be arranged, which may be initiated both by the Contractor, or the Contracting Authority.

5. Provision of services

- 5.1 The Contractor must perform the Contract in compliance with its provisions and all legal obligations under applicable EU, international and national law within the set deadlines and to the highest professional, diligence and ethical standards.
- 5.2 The Contractor shall carry out the tasks, prepare and provide all documents, reports, minutes of the meetings and any other information material required for the provision of the services.
- 5.3 During the implementation of services, the Contractor shall identify possible risks at early stage and propose a mitigation measures in order to successfully deliver services on time.
- 5.4 Contracting authority reserves the right to ask the Contractor to provide an intermediate results (deliverables) of the services in short notice (within 5 business

days), in order to check the progress of the implementation of a service contract. The Contractor within the short notice period shall provide with the information, status of the progress including proof of the thereof, such as intermediate documentation, reports, etc. This confirmation does not mean the implementation any additional assignments (reports etc.), rather confirming the progress of the implementation of service contract. Failing to do so within the short notice period or by providing the information that it is obvious for the Contracting authority that service contract would not be completed within the specified deadlines, Contracting authority reserves the right to proceed with the procedures for breaching the Contract.

5.5 As a part of services, the Contractor shall prepare information material in a fully comprehensive and understandable way, by providing explicit and full source details (initial information, evidences etc.) used for the analysis and provision of services. The deliverables shall include detailed explanation of methods employed that lead to the solutions delivered by the Contractor.

5.6 Contracting authority shall have no influence on outcome results (reports, summary, advice, decisions etc.) delivered by the Contractor. However, Expert shall consider **Contracting authority's reasoned observations on the initial information used and analysis methods employed by the Contractor to provide outcome results of the services.** The implementation of such observations is subject to the approval of the services by Contracting authority.

ANNEX NO 3: ENTITIES ON WHOSE CAPABILITIES THE TENDERER RELIES

No	Name	Description of the capabilities
1		
2		
n+1		

Date: [*date of signing*]

Name: [*name of the representative of the Tenderer*]

Position: [*position of the representative of the Tenderer*]

ANNEX NO 4: SUBCONTRACTORS

No	Name of the sub-contractor	Sub-contracted tasks		
		Description of the sub-contracted task	Amount, EUR (without VAT)	% from the proposed price
I	Total amount of the sub-contracted tasks is equal to or exceeds 10% from the proposed contract price			
1				
2				
n+1				
		Total:		
II	Total amount of the sub-contracted tasks is smaller than 10% from the proposed contract price			
1				
2				
n+1				
		Total:		
		Total (I+II)		

Date: *[date of signing]*

Name: *[name of the representative of the Tenderer]*

Position: *[position of the representative of the Tenderer]*

ANNEX NO 5: CONFIRMATION OF TENDERERS' FINANCIAL STANDING*

1. (Section 7.3.1 of Regulation)

"The Tenderer's or all members' of the partnership together (if the Tenderer is a partnership), average annual financial turnover within last 3 (three) years (2015, 2016, 2017) is not less than 300 000,00 EUR (three hundred thousand euros)".

No	Year	Total Turnover in EUR	Notes
The Tenderer or each member of the partnership (if the Tenderer is a partnership) on whose abilities the Tenderer is relying to certify it's financial and economic performance (Section 7.3 of Regulations) and who will be financially and economically responsible for fulfilment of the contract and entity on whose abilities the Tenderer is relying to certify it`s financial and economic performance and who will be financially and economically responsible for fulfilment of the procurement contract: <hr/> Name of the Tenderer/member of a partnership/entity			
1.	2017		
2.	2016		
3.	2015		
Average within last three financial years			

2. (Section 7.3.2 of Regulation)

The Tenderer or each member of the partnership (if the Tenderer is a partnership) on whose abilities the Tenderer is relying to certify it`s financial and economic performance and who will be financially and economically responsible for fulfilment of the procurement contract and entity on whose abilities the Tenderer is relying to certify it`s financial and economic performance and who will be financially and economically responsible for fulfilment of the procurement contract, shall have stable financial and economic performance, namely, in the last financial year (2017) liquidity ratio (current assets divided by short-term liabilities) shall be equal to or exceed 1 and shall have positive equity.

Name of the Tenderer/member of partnership/entity

$$\text{liquidity ratio} = \frac{\text{current assets}}{\text{short - term liabilities}} = \underline{\hspace{2cm}}$$

$$\text{equity ratio} = \text{total assets} - \text{total liabilities} = \underline{\hspace{2cm}}$$

**Please provide information regarding each member of partnership (if the Tenderer is a partnership) and entity to which this requirement applies.*

Date: [date of signing]

Name: [name of the representative of the Tenderer/ member of the partnership/ entity]

Position: [position of the representative of the Tenderer/member of the partnership/ entity]

ANNEX NO 6: EXPERIENCE OF THE KEY EXPERTS OF THE TENDERER

No	Key expert's role in team (according Section 7.4. of Regulation) Name, Surname				
Education:					
1.	Education (Educational institution)	Period of studies (month/year – month/year)			Obtained degree (-s)
1.1.					
...					
Professional experience:					
1.	Employer, Project, Contracting authority	Period of employment or participation in the project (month/year – month/year)	Description of the responsibilities and experience gained in the project to comply with respective criteria in Section 7.4. for respective key expert	Reference to the respective selection criteria (1.1. – 1.4.) mentioned in Section 7.4. an expert complies with	Description of project (implementation period, scope, quantitative indicators according to requirements defined in respective subpoints under Section 7.4 of Regulations (value of the project*, CAPEX, book value of fixed assets, sum of sourcing contracts* etc), countries involved in project, etc.) Contact information for references
1.1.					
1.2.					
n+1					

** If the value of the contract is in another currency than euro, for the purposes of this proposal it should be recalculated in euro in accordance with the currency exchange rate published by the European Central Bank on the date of signing of this document*

English language skills²²:

Understanding		Speaking		Writing
Listening	Reading	Spoken interaction	Spoken production	
<i>Enter level</i>				

Levels: A1/A2 - Basic user; B1/B2 - Independent user; C1/C2 - Proficient user.

I confirm that I have consented that my candidature is proposed in the open competition “Supplier market study for railway infrastructure components”, No RBR 2018/2. I confirm that in case the Tenderer [*name of the tenderer or members of the partnership*] will conclude the contract as the result of the open competition, I will participate in the execution of the contract.

Date: [*date of signing*]

Name: [*name of the expert*]

²² Language skill level is based on Common European Framework of Reference for Languages (see <http://europass.cedefop.europa.eu/resources/european-language-levels-cefr>)

ANNEX NO 7: DRAFT CONTRACT

STUDY AGREEMENT

for [●]

between

RB Rail AS

and

[●]

Contract registration number 8/2018-[●]

CEF²³ Contract No C1.1.8
INEA/CEF/TRAN/M2016/1360716

Procurement procedure identification No RBR 2018/2

Dated [●] [●] 2018

²³ Grant Agreement under the Connecting Europe Facility (CEF) -Transport Sector Agreement No INEA/CEF/TRAN/M2016/1360716

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STUDY AGREEMENT

Riga, [DATE]

This STUDY AGREEMENT (hereinafter, the "Agreement"), together with all Annexes thereto, is entered into in Riga, on [•][•] 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 K.Valdemāra iela 8-7, Riga, LV 1010, Latvia ("Principal"), represented by [•], Management Board and Management Board Member [•] acting on the basis of the Power of Attorney No 9/2018-6 (dated 26 March 2018), on the one side,

and

[•], a [•] company organised and existing under [•] law, registration number with [•][•], having its registered address at [•] (hereinafter, the "Contractor"), represented by [•][•][•] acting on the basis of [•] 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 Baltic / Rail Baltica railway – a new fast conventional double track electrified railway line according to TSI INF P2-F1 criteria and European standard gauge (1435mm) on the route from Tallinn through Pärnu-Rīga-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 "Supplier market study for railway infrastructure components" (identification No. RBR 2018/2) (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) Agreement No INEA/CEF/TRAN/ M2016/1360716, Activity 1.1.8, Action No: 2016-EU-TMC-0116-M²⁴.

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-

²⁴ Grant Agreement under the Connecting Europe Facility (CEF) - Transport Sector Agreement No INEA/CEF/TRAN/ M2016/1360716

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) Procurement documents with the annexes;
 - (c) Explanations (clarifications) of the procurement documentation;
 - (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 [COUNTRY].
- 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. *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.

4.3. *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 European Union;
- (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.

4.4. *Maintenance of Records.* During the term of the Study and for period of ten (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. [IF APPLICABLE]

4.5. *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.

4.6. *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 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 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 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.

- 4.7. *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.
- 4.8. *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.
- 4.9. *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.
- 4.10. *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.
- 4.11. *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.
- 4.12. *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 Baltic/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 European Union
Connecting Europe Facility

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 [COUNTRY] [IF APPLICABLE]; and

- (g) it is compliant with all of **the requirements of the Contractor's** Declaration contained in Annex I (*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 [COUNTRY]"** (the "**Residence Certificate**") confirmed by Competent Authority of the [COUNTRY] 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. [IF APPLICABLE].

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 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 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 7.5, 7.6 or 7.7 of this Agreement.
- 6.3. *Payment.* Subject to the provisions of Clauses 6.2, the Principal reserves the right 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 [COUNTRY].* 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 [COUNTRY] and in accordance with Applicable Law of [COUNTRY]. 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.

SECTION VII. COMMENCEMENT OF STUDY, REMEDYING OF DEFECTS AND

Contractor	[●]
Registration No	[●]
VAT payer's No or indication that the Contractor is not a VAT payer	[●]
Legal address, city, Zip code, country	[●]
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 [●] (No INEA/CEF/TRAN/M2016/1360716, Acitivity No 1.1.8), Contract manager: Kaspars Briškens

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 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 Service Provider 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 Acceptance 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 Defect 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 7.6(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 and Final Acceptance Note.* 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 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 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 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) – (j) **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 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.

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, 8.3, 8.5, 8.6, 8.12, 10.2, 10.3 and Sections XI, XII and XV 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 8.5, 8.6 and 8.7 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 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, 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 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 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 6.3, 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 300 000,00.

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 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.
- 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 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.
- 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 XV;
 - (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 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 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. 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 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-SPOT 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.
- 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 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.
- 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. *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.

- 16.5. *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.**
- 16.6. *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.
- 16.7. *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.
- 16.8. *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.
- 16.9. *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.
- 16.10. *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:

Signature:

Name, title:

Bank details:
.....

For and on behalf of the Contractor:

Signature:

Name, title:

Bank details:
.....

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 listed pursuant to Annex E (List of Approved Sub-Contractors and Staff) , 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 and Staff), which is in a contractual relationship with the Contractor to provide a part of the Study.**
- (e) **"Completion Acceptance Note"** **Notas defined in accordance with Clause 7.4.**
- (f) **"Confidential Information"**, **as defined in accordance with Clause 12.1 of the Agreement.**
- (g) **"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 work relating to the Study;
 - (v) costs of all employee benefits and taxes for items such as social security and other benefits for the labor 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 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 work required under this Agreement; and
 - (xiii) losses and expenses, not compensated by insurance, sustained by the Contractor in connection with the work under this Agreement, provided they resulted from causes other than the fault or neglect of the Contractor.
- (h) **"Cure Period", as defined in accordance with Clause 7.3.**
 - (i) **"Corrective Period", as defined in accordance with Clause 9.2**
 - (j) **"Damages", any cost, claim, damage, demand, loss, expense or liability incurred by the relevant Party or Person.**
 - (k) **"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.
 - (l) **"Defects Date", a date specified in accordance with Annex C (Schedule of Study)** by which the Principal is obliged to notify about each Defect in the Study.
 - (m) **"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*).
 - (n) **"Documentation", all records, correspondence, and files of the Contractor, its employees, engineers, and consultants** pertaining to the Project.
 - (o) **"Effective Date", as first above specified in the Preamble to this Agreement.**
 - (p) **"EUR" and "euro", the official currency of the eurozone, officially known as the euro area.**
 - (q) **"Fee", as specified in accordance with Annex D (Fee and Payment Schedule).**
 - (r) **"Final Acceptance Date", as defined in accordance with Clause 7.7.**
 - (s) **"Final Acceptance Note", as described in accordance with Clause 7.7.**
 - (t) **"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.
 - (u) **"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.

- (v) **"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.**
- (w) **"Intellectual Property of Contractor", all Intellectual Property owned or licensed to the Contractor with a right to sub-license.**
- (x) **"Objection Notice", as defined in accordance with Clause 7.5.**
- (y) **"Party" and "Parties", the Principal and the Contractor and include their respective successors in title, permitted assigns and permitted transferees.**
- (z) **"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.**
- (aa) **"Project", development of a 1435 mm standard gauge railway line in the Rail Baltic/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).**
- (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) **"Provisional Completion Note", as defined in accordance with Clause 7.5 .**
- (dd) **"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.**
- (ee) **"Right of Partial Acceptance", as defined in accordance with Clause 9.6.**
- (ff) **"Study Milestone", the date for delivery of one or more Deliverables, as set out in the Technical Specification and Schedule of Study;**
- (gg) **"Contractor", the company [•], 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.**
- (hh) **"Contractor 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.**
- (ii) **"Standards", CEF Standards and Grant Agreement Standards;**
- (jj) **"Study", study on working out the technically and economically most feasible set of criteria, rules, typical solutions and conceptual drawings and guidance for the Architectural, Landscaping and Visual Identity Design Guidelines (set of predefined and standardized technically and economically justified architectural, engineering and design solutions for Rail Baltica to be applied at design, construction and operation**

phases of the Railway) of the Rail Baltica as mandatory Architectural, Landscaping and Visual Identity Design Guidelines.

- (kk) "Study Start Date", as specified in accordance with Annex C (*Schedule of Study*).
- (ll) "Working Day", any day (other than Saturday or Sunday) on which banks in the Republic of Latvia are open for conduct of business.
- (mm) "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

[Identify and describe in reasonable detail the scope of the Study]

ANNEX C: SCHEDULE OF STUDY

Study Start Date: _____

Deliverables:

No.	Deliverable	Deadline date	Approval through Contracting Authority (Defects date)
1.	Inception report	CD* + 4 weeks	2 weeks after reception
2.	Interim report	CD* + 8 weeks	2 weeks after reception
3.	Draft final report	CD* + 11 weeks	4 weeks after reception
4.	Final report	CD* + 18 weeks	2 weeks after reception

(*) CD: commencement date of the contract

ANNEX D: FEE AND PAYMENT SCHEDULE

Fee a service fee in the amount of EUR ([amount] euro and [amount] cents);
and
value added tax (VAT) at the prevailing rate (* currently [●]%) amounting to EUR ([amount] euro and [amount] cents).

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:

Deliverable	Payment amount
Inception report + Interim report	30%
Draft final report	30%
Final report	40%

ANNEX E: LIST OF APPROVED SUB-CONTRACTORS AND STAFF

[A list of all sub-contractors and/or suppliers and staff the Contractor anticipates to engage toward provision of the Service. Please indicate name, contact details of each sub-contractor and each member of the staff and legal representative(s) of each sub-contractor.]

ANNEX F: FORM OF PROVISIONAL COMPLETION NOTE NO [•][INSERT NUMBER]

Date: [INSERT DATE IN THE FORM OF 1 January 2018]

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 2018], 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") **within** two (2) weeks or four (4) weeks (as set in to the Technical Specification) 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. [•][INSERT NUMBER]

Date: [INSERT DATE IN THE FORM OF 1 January 2018]

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 „Supplier market study for railway infrastructure components“ 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 [•][INSERT NUMBER]

Date: [INSERT DATE IN THE FORM OF 1 January 2018]

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 „Supplier market study for railway infrastructure components” 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 *[name of the Contractor]* 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] [name, last name]
[position] [date]