

**STUDY AGREEMENT
FOR
RAIL BALTICA INFRASTRUCTURE MANAGEMENT**

between

**RB RAIL AS
and
WS Atkins Plc**

Dated 16 April 2018

CONTRACT FOR SERVICES

Riga 26 March

Contract registration number

CEF¹ Contract No INEA/CEF/TRAN/M2016/1360716

C1.1.7

Parties

- (1) **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 ("**Client**"), represented by Chairperson of the Management Board Ms Baiba Anda Rubesa, Management Board and Management Board Member Kaspars Rokens acting on the basis of the Power of Attorney No 9/2018-6 (dated 26 March 2018), on the one side,

and

- (2) **WS Atkins Plc**, uniform registration No 1091953, legal address at **Woodcote Grove, Ashley Road, Epsom, Surrey, KT18 5BW** ("**Contractor**"), represented by
, on the other side,

and

The Client and the Contractor are jointly referred to as "**Parties**", and each separately – "**Party**",

WHEREAS

- (A) Core business of the Client is design, construction and marketing (including branding) of the 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 from Tallinn through Pärnu Riga Panevezys Kaunas to Lithuanian Polish Border ("**Project**") financed under the auspices of Connecting Europe Facility ("**CEF**").
- (B) On 10 November 2017 the Client has announced a tender entitled "Rail Baltica Infrastructure Management Study" (Identification No. RBR 2017/26) ("**Procurement**") for efficient and timely determination and selection of a suitable infrastructure management model for Rail Baltica.
- (C) On 7 December 2017 the Contractor (by using E-Tender system) submitted proposal in response to the tender announced by the Client ("**Proposal**") and committed to prepare a comprehensive study of infrastructure management models applicable to Rail Baltica, identify the optimum model and propose a detailed infrastructure management concept and contractual model for Rail Baltica.
- (D) Pursuant to the decision of the Client dated 7 March 2018, the Contractor has been selected a winner in the Procurement and awarded the right to enter into the Contract.
- (E) This Contract is co-financed from the Connecting Europe Facility (CEF), CEF Contract No INEA/CEF/TRAN/M2016/1360716, Action No C1.1.7,

NOW, THEREFORE, the Parties hereby enter into this contract ("**Contract**") on the following terms and conditions:

1. SUBJECT OF THE CONTRACT

¹ Grant Agreement under the Connecting Europe Facility (CEF) -Transport Sector Agreement No INEA/CEF/TRAN/M2016/1360716

- 1.1. The Client hereby orders the Contractor and the Contractor hereby undertakes to develop and supply to the Client the infrastructure management of Rail Baltica study (hereinafter referred to, collectively, as the **"Services"**) conforming to the following requirements and specifications:
 - 1.1.1. the specifications and requirements contained in Annex A Technical Specification of Procurement Regulations (**"Technical Specification"**);
 - 1.1.2. the terms and conditions contained in Annex B Proposal;
 - 1.1.3. applicable requirements and recommendations of the European Union;
 - 1.1.4. applicable legislative acts of the Republic of Latvia, the Republic of Estonia and the Republic of Lithuania; and
 - 1.1.5. specific instructions of the Client.
- 1.2. All deliverables and documents (**"Deliverables"**) to be submitted during the execution of the Services are described in the Technical Specification.
- 1.3. The Contractor agrees to develop the Deliverables during the execution of the Services in a conscientious, diligent, expeditious, proper and workmanlike manner according to the schedule set forth in Technical Specification. In accordance with recognized professional and industry standards, the Contractor clarifies that it shall exercise all the reasonable skill, care and diligence in the performance of the Services to be expected of a prudent and competent supplier experienced in the provision of services of a similar size, scope and complexity as the Services.
- 1.4. The Contract contains the following Annexes that shall constitute integral part of the Contract:
 - 1.4.1. Annex A, the Technical Specification of the Procurement Regulation;
 - 1.4.2. Annex B, Contractor's Proposal (this Annex is included by a way of reference, and not physically);
 - 1.4.3. Annex C, Contractor's Declaration.
- 1.5. In the event of any inconsistency between the terms of this Contract and any of Annexes, the text of this Contract shall take precedence over any term set forth in any of Annexes. In the event of any inconsistency between the terms of any of Annexes, the order of precedence of the text of such Annexes (including any calculation) shall be established according to the sequence of listing in Section 1.4 of the Contract.

2. SERVICE DELIVERY SCHEDULE

- 2.1. During the term of this Contract, the Contractor undertakes to perform the acts and deliver the Deliverables mentioned in Section 2.3 of Annex A Technical Specification and according to the schedule mentioned in Section 2.5 of Annex A Technical Specification.
- 2.2. Any of the Deliverables specified in Section 2.1 of this Contract shall be deliverable to the Client no later than on the last business day of the respective week when completion of the respective material was scheduled to occur. All Deliverables under this Contract shall be in the English language and supplied to the Client in three (3) hard copies and electronically on an electronic data storage device.
- 2.3. The Client shall review the Deliverable within 10 (ten) working days from the date of receipt, and:
 - 2.3.1. accept the Deliverable by signing an acceptance act; or
 - 2.3.2. reject the Deliverable by means of issuing written recommendations and/or objections.
- 2.4. In the event the Deliverable is rejected, the Contractor shall have an obligation to submit to the Client a revised Deliverable no later than within 10 (ten) working days from the date of receipt of recommendations or objections from the Client, or, unless, if objectively justified, a different time for supply of the revised Deliverable is agreed between the Parties. In the event the Contractor finds any of the recommendations or objections expressed by the Client to be unjustified, the Contractor shall deliver a reasoned opinion in writing as to why the Contractor believes such recommendations or objections not to be justified.

- 2.5. Subject to any objections the Contractor may have in accordance with Section 2.4, the Contractor shall re-submit a revised Deliverable to the Client according to the provisions of Section 2.4 and the Client shall review such re-submitted Deliverable in accordance with Section 2.3 of the Contract.
- 2.6. Any of the Deliverables set out in Section 2.1 submitted to the Client shall be deemed to have been accepted by the Client upon signature by the Client of the respective act of acceptance.
- 2.7. Without prejudice to any other rights available to the Client hereunder, the Client shall have a right to request and, upon receipt of such request, the Contractor shall have an obligation to explain in writing or supplement any of the information or data contained in the any of Deliverables no later than within 10 (ten) calendar days from the date of receipt of the Client's request therefor, unless a different time for supply of specific explanations or supplements is agreed between the Parties. The Contractor agrees and acknowledges that it shall supply additional explanations and supplements in accordance with this Section without any additional fees or charges whatsoever being applicable; provided, however, that the requests for additional explanations or supplements are within the scope of the Request for Proposal, including Annex A Technical Specification.
- 2.8. The Client shall have a right, at any time during the Term, to convene one or more meetings for the assessment of the Deliverables and/or in order to discuss other matters relevant to any activities contemplated under this Contract. The place and time of such meetings shall be within the sole discretion of the Client. The Contractor undertakes to act in good faith and reasonably cooperate with the Client with respect to the holding of and participating in any such meetings.
- 2.9. Whenever required under applicable regulations or upon receipt of request from the Client, the Contractor shall ensure that the presentation materials and other documentation deliverable under this Contract features logos or other requisites pertinent to the Project, including, without limitation, reference to the fact that the Project is financed under the auspices of CEF.
- 2.10. The Deliverables, including but not limited to presentation materials and other documentation developed by the Contractor shall use the corporate visual identity approved by the Client.
- 2.11. Each Party shall have an obligation to promptly notify the other Party in writing of any event or circumstance capable of impeding the proper or timely performance of its respective obligations under this Contract.

3. FEE AND PAYMENTS

- 3.1. As compensation for the preparation of the Deliverables supplied hereunder, the Client shall pay the Contractor 398'496 EUR (three hundred ninety eight thousand four hundred ninety six euro and 00 cents) (the "**Fee**") comprising the following:
 - 3.1.1. a service fee in the amount of 398'496 EUR (*three hundred ninety eight thousand four hundred ninety six euro and 00 cents*); and
 - 3.1.2. value added tax that will be charged at the rate applicable in accordance with applicable law at the time of invoicing.
 - 3.1.3. The Contractor agrees to submit to the Client 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 United Kingdom" (the "Residence Certificate") confirmed by Competent Authority of the United Kingdom and the Latvian State Revenue Service. The Residence Certificate shall be submitted to the Client prior the Client will due to make a payment of the Fee or other payments to the Contractor. Otherwise the Client will withhold withholding tax at the rate of 20% from the Fee and payments made to the Contractor.
- 3.2. The Fee is the all-inclusive consideration for the duly supplied Services. Subject to the provisions of Section 3.3 of this Contract, the Fee includes reimbursement of all and any expenditure incurred by the Contractor toward performance of any steps, actions or measures contemplated in accordance

with this Contract (including, without limitation, travel costs and the cost of training of personnel of the Client). The Contractor agrees and acknowledges that, except as set forth in Section 3.3 of this Contract, it shall have no right to request reimbursement by the Client of any additional expenditure whatsoever as may have been incurred by the Contractor toward provision of the services contemplated by this Contract, unless reimbursement of such additional expenditure has been explicitly agreed between the Parties in writing.

3.3. Payment of the Fee for the Services is split and will be paid after completion of particular milestone and handing over of the relevant Deliverable as stipulated in Annex A Technical Specification and after Deliverable is confirmed by the Client and the Contractor by signing the acceptance act.

3.4. The Fee shall not be paid for Deliverable or part of it, which does not comply with the provisions of this Contract or has faults, until the non-compliance or faults have been eliminated and the Client has accepted the Deliverable delivered by signing the acceptance act.

3.5. Payment of the Contractor's invoices will be made in *euro*, by bank transfer to the following bank account:

Recipient: WS Atkins Plc

Bank:

SWIFT:

IBAN:

within 30 (thirty) days after the date of receipt of the Contractor's invoice by the Client, issued on the basis of the approved acceptance act delivery of following Deliverables:

- (a) After delivery of Inception Report, the payment shall be 20% from the Fee: 79'699,20 EUR, excluding VAT;
- (b) After delivery of Draft Final Report, the payment shall be 40% from the Fee: 159'398,40 EUR, excluding VAT;
- (c) After delivery of Final Report, the payment shall be 40% from the Fee: 159'398,40 EUR, excluding VAT.

3.6. Each Party shall bear its own bank charges or expenses incurred in connection with the transfer of any payments.

3.7. The Contractor's invoices shall contain the following Client's details and details about the Contract:

Client	RB Rail AS
Registration No	40103845025
VAT payer's No	LV40103845025
Address	K. Valdemāra iela 8-7, Riga, Latvia, LV-1010
Name of Bank	
Bank Code	
Bank Account No	
Subject:	

- 3.8. The Contractor shall send the invoice to the Client electronically to the following e-mail address: invoices@railbaltica.org. The Client shall review the invoice to verify whether it contains all necessary requisites.
- 3.9. For the avoidance of any doubts, the date of transfer of payment from the Client's account shall be deemed the date of payment.
- 3.10. All payments hereunder shall be effected against Contractor's invoices by means of transfer of funds to the bank account which is indicated in Section 3.7 of the Contract and designated in the invoice. Change of bank details can be executed only by formal letter from Contractor signed by authorised representative.
- 3.11. If, by the time of paying a part of the Fee, the Client has obtained a claim of contractual penalty or damages against the Contractor, the Client shall have the right to deduct the relevant amount from the part of the Fee payable by submitting the relevant reasoned statement of set-off in a written format, or if the communication takes place over e-mail, in a format that can be reproduced in writing; i.e. the Client is entitled to set off the claim of contractual penalty or damages against the invoices payable to the Contractor. The statement shall be submitted at the same time as the payment or immediately after the execution of the payment, or if the amount owed by the Contractor exceeds the amount of the payment, at the latest on the date the payment would have fallen due.

4. RIGHTS AND OBLIGATIONS OF THE PARTIES

4.1. The Contractor's rights and obligations

- 4.1.1. The Contractor has the right to consult with the contact person of the Client regarding matters related to the Services.
- 4.1.2. The Contractor may use publicly available and trustworthy information sources.
- 4.1.3. The Contractor is obliged to provide the Services, develop the Deliverables in a conscientious, diligent, expeditious, proper and workmanlike manner according to the schedule set forth in Annex A Technical Specification. In accordance with recognized professional and industry standards, the Contractor clarifies that it shall exercise all the reasonable skill, care and diligence in the performance of the Services to be expected of a prudent and competent supplier experienced in the provision of services of a similar size, scope and complexity as the Services.
- 4.1.4. The Contractor has the right to receive payment of Fee or part thereof upon completion of the Services in accordance with this Contract.
- 4.1.5. The Contractor is obliged to perform the Services in accordance with the Contract, its Annexes, Procurement Regulations and applicable laws.
- 4.1.6. The Contractor shall verify and shall not procure goods or services from sub-contractors which comply with any of the following criteria:
- (i) The subcontractor or a person who is a member of the Management Board or the Supervisory Board or procurator of the sub-contractor, or a person having the right to represent the sub-contractor in activities related to a subsidiary has been found guilty of any of the following criminal offences by a punishment prescription of a prosecutor or a judgement of a court that has entered into effect and is non-disputable and not subject to appeal:
 - bribetaking, bribery, bribe misappropriation, intermediation in bribery, taking of prohibited benefit or commercial bribing;
 - fraud, misappropriation or laundering;
 - tax evasion and payments equivalent thereto,
 - terrorism, financing of terrorism, invitation to terrorism, terrorism threats or recruiting and training of a person for performance of terror acts;
 - (ii) A subcontractor, by such a decision of a competent authority or a judgment of a court that 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:

- Illegal employment of 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;
 - 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;
- (iii) A subcontractor, by such a decision of a competent authority or a judgment of a court that 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;
- (iv) Insolvency proceedings of the subcontractor 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 the Contractor evaluates the possibility of such subcontractor to participate in the execution of the Contract), economic activity of the subcontractor has been suspended or discontinued, proceedings regarding bankruptcy of the subcontractor have been initiated or the subcontractor will be liquidated;
- (v) The subcontractor has tax debts in the country where the Procurement is organised or a country where the subcontractor is registered or permanently residing, including debts of State social insurance contributions, exceeding in total EUR 150 in each country. In this case the Contractor may invite the subcontractor to pay all tax debts within 10 (ten) business days and allow such subcontractor to continue participation in the execution of this Contract;
- (vi) Any of the above-mentioned criteria applies to all members of a group of persons if the subcontractor is a group of persons.
- 4.1.7. Meetings at monthly intervals (or more frequently, to the extent mutually agreed by the Parties), at which appropriate personnel of the Contractor shall be present, to discuss the progress and present the deliverables. All opinions or concerns expressed at and decisions adopted during each meeting shall be duly recorded or protocolled in writing or electronically.
- 4.1.8. Upon the request of the Client and no later than within 3 (three) working days, the Contractor is obliged to provide all information related to the provision of the Services and its progress, as well as take part in meetings organised by the Client.
- 4.1.9. The Contractor is obliged to provide the Client's staff which is performing a check or audit or on-the-spot visit or any other outside body authorised by the Client to access all the information and documents, including information in electronic format, which are requested by the performer of the check or audit or on-the-spot-visit or any other outside body authorised for the performance of the check or audit or on-the-spot visit and which relates to the execution of this Contract. The Contractor shall allow the performer of the check or audit or on-the-spot visit or any other outside body authorised by the Client to copy the information and documents with due respect to the confidentiality obligation. The Contractor is obliged to agree in the contracts with its sub-contractors on the right of the Client to access and to copy their information and documents that relate to the execution of this Contract.
- 4.1.10. The Contractor is obliged to comply with the following visibility requirements:
- (a) Any reports, brochures, other documents or information connected with the Services that the Contractor produces and submits to the Client, any other third person or makes publicly available must include the following:
 - (i) a funding statement stating that the Project has received funding from European Union: "Rail Baltica is co-financed by the European Union's Connecting Europe Facility";
 - (ii) (for printed materials) a disclaimer releasing the European Union from any liability in terms of the content of the dissemination materials: "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." This disclaimer can be found in all European Union official languages at the website: <https://ec.europa.eu/inea/connecting-europe-facility/cef-energy/beneficiaries-info-point/publicity-guidelines-logos>;

- (iii) the European Union flag.
- (b) Requirements set in Sections 4.1.10(a)(i) and 4.1.10(a)(iii) can be fulfilled by using the following logo:



Co-financed by the European Union

Connecting Europe Facility

If the Contractor shall use this logo, the Contractor shall ensure that elements of the logo will not be separated (the logo will be used as one whole unit) and enough free space around the logo shall be ensured;

- (c) The Contractor is obliged to comply with the latest visibility requirements set by the European Union. For that purpose the Contractor shall follow the changes in the visibility requirements on its own. On the date of conclusion of this Contract the visibility requirements are published on the following website: <https://ec.europa.eu/inea/connecting-europe-facility/cef-energy/beneficiaries-info-point/publicity-guidelines-logos>.

4.2. The Client's rights and obligations

- 4.2.1. The Client has the right to request and to receive information on the course of the Services from the Contractor within 3 (three) business days from the request.
- 4.2.2. The Client has the right to invite the Contractor no more often than once per 2 (two) weeks to provide information on the progress of the Services with the purpose to establish further actions and discuss any unclear matters.
- 4.2.3. The Client is obliged to provide all and any information to the Contractor, which it requires for the completion of the Services and which is permissible to provide pursuant to Latvian law, as well as security concerns and to perform all other obligations stipulated in this Contract.

5. THE CONTRACTOR AND THE CLIENT'S PERSONNEL; CONTACT PERSONS

- 5.1. Contact person for the Client: Business Development Manager , phone number: , e-mail address: .
- 5.2. Contact person for the Contractor: , phone number: , e-mail address: .
- 5.3. The contact persons of the Parties shall be responsible for monitoring the progress of the performance of the obligations of each Party under this Contract and maintaining communication between the Parties. Whenever the contact person of a Party is temporarily unavailable, the duties of such contact person shall be performed by another duly qualified and competent employee of the Party.
- 5.4. The contact person of each Party shall be responsible for duly notifying the contact person of the other Party of any changes occurring in the information specified at Sections 5.1 and 5.2 of this Contract.
- 5.5. To provide the Services the Contractor shall involve key experts indicated in the Contractor's proposal who have the required qualifications listed in Annex A Technical specification and, if needed, a sufficient number of other specialists as outlined in Annex A Technical Specification. For the avoidance of doubt, it is agreed and acknowledged by the Parties that all costs and expenses incurred by the Contractor toward engagement of personnel necessary for the supply of the services under this Contract have been included in and are forming part of the Fee.

- 5.6. The Contractor shall be responsible for the work of its staff and ensure that the Client has free access to the staff during the Client's working hours. The Contractor shall ensure that the key experts indicated in the Contractor's proposal participate in meetings with the Client upon Client's request.
- 5.7. The Client must approve replacement of the key experts indicated in the Contractor's proposal. The qualifications of the proposed key experts must be equivalent to or higher than the qualifications of the replaced expert, and the work load must be at least the same as indicated in Annex B Contractor's Proposal.
- 5.8. The Contractor must replace every staff member involved in the performance of the Services (including key experts mentioned in Annex B Contractor's Proposal, or replacement personnel), if requested by the Client and supported by any of the following reasons:
 - 5.8.1. repeated careless performance of duties;
 - 5.8.2. incompetence or negligence;
 - 5.8.3. non-fulfilment of obligations or duties stipulated in the Contract;
 - 5.8.4. termination of employment relations with the Contractor.
- 5.9. The Client shall approve or reject the replacement of key experts indicated in the Contractor's proposal as soon as possible, but no later than within 5 (five) business days after the receipt of all information and documents necessary for a decision in accordance with the provisions in this Contract.

6. SUBCONTRACTORS

- 6.1. The Contractor shall be responsible for the work of subcontractors.
- 6.2. To complete the Services, the Contractor shall involve subcontractors indicated in the Contractor's proposal.
- 6.3. If the Contractor wishes to change a subcontractor who is indicated in the Contractor's proposal as a subcontractor with a work-load share of 10 (ten) per cent or more of the total Contract value (if the Contractor has not relied on the capabilities of the given subcontractor in its proposal in order to prove the Contractor's suitability pursuant to the Regulation) or to involve a new sub-contractor whose work-load share is 10 (ten) per cent of the total Contract value or more, then a written application must be submitted to the Client and written consent must be obtained. The Client agrees to the change of a subcontractor or the involvement of a new subcontractor if the proposed subcontractors do not meet the exclusion criteria defined in the first and second paragraph of Public Procurement Law, Article 42.
- 6.4. The subcontractor, upon whose capabilities the Contractor was relying on in the Procurement in order to certify the compliance of its qualification to the requirements stipulated in the Procurement Regulation, can be changed only with prior permission by the Client if the proposed subcontractor has the qualifications complying with the requirements stipulated in the Procurement Regulation and if the proposed subcontractors does not meet the exclusion criteria defined in the first and second paragraph of Public Procurement Law, Article 42.
- 6.5. The Client decides to approve or reject the change in the Contractor's subcontractors or the involvement of new subcontractors as soon as possible, but no later than within 5 (five) business days after the receipt of all information and documents necessary for a decision in accordance with this Contract.

7. CONTRACTUAL PENALTIES AND COMPENSATION OF DAMAGES

- 7.1. If the Client delays the Contractual payments, then the Client shall pay a penalty of 0.2 (zero point two) per cent of the delayed payment for each day of delay, but not more than 10 (ten) per cent of the total outstanding amount.
- 7.2. If the Contractor does not comply with a deadline for submission of Deliverable(s) determined in the Contract or does not conform with the time limits set for correcting faults and errors made, the Contractor shall pay a penalty of 0.2 (zero point two) per cent of the Fee for each day of delay, but not more than 10 (ten) per cent of the total Fee.

- 7.3. In case of a unilateral termination of this Contract, not related to non-performance or improper performance of the Contract, a termination penalty of 10 (ten) per cent of the Fee is to be paid by the initiator of the termination.
- 7.4. If the Contractor fails to comply with the restrictions of professional activities to the extent that this amounts to breach of obligations set out in Section 1.3 and 4.1.3 in this Contract, then the Contractor shall pay a penalty of 0.5 (zero point five) per cent of the Fee for each of the identified cases, but the total penalty amount may not exceed 10 (ten) per cent of the Fee.
- 7.5. The Contractor shall reimburse the Client any contractual penalties and damages; the Client may deduct this amount from any sums payable to the Contractor pursuant to the Contract.
- 7.6. The Contractor shall be entitled to claim compensation for damages from the Client, respectively, in the following cases:
 - 7.6.1. the Client unjustifiably does not approve the change of personnel and/or subcontractors;
 - 7.6.2. in other cases where the Contractor has incurred losses due to the Client's fault.
- 7.7. The Contractor shall compensate damages to the Client in the following cases:
 - 7.7.1. the Contractor has not corrected the errors or faults within the time period set by the Client;
 - 7.7.2. in other cases where the Client has incurred losses due to the Contractor's fault.
- 7.8. Without prejudice to any other rights a Party may have under this Contract, including, without limitation, the right to receive contractual penalty, each Party shall be entitled to enforce its rights under this Contract to recover damages and costs (including reasonable attorney's fees) caused by breach of this Contract limited to and not exceeding in aggregate the sum of double the Fee and to exercise all other rights existing in its favour, regardless of termination of this Contract for any reason whatsoever. Such sum shall apply, without limitation, to any liability a Party may have under or in connection with this Agreement whether in contract or otherwise. The Parties hereto agree and acknowledge that money damages would not be an adequate remedy for any breach of this Contract and that any Party may, in its sole discretion, apply to any court of competent jurisdiction for specific performance and/or other injunctive relief in order to enforce, or prevent any violation of this Contract.
- 7.9. In order to qualify for receiving compensation the Parties shall warn each other in advance of occurrence of situations causing damages.
- 7.10. The payment of any contractual penalty hereunder shall not relieve either Party from the responsibility to perform any of the obligations of such Party set forth in the Contract or deriving from the applicable law.

8. AMENDING THE CONTRACT

- 8.1. The Contract 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.
- 8.2. If after the conclusion of the Contract amendments are made to the existing laws and regulations and in consequence the costs of Contractor's Services increase or decrease and when a prior warning has been given, then, after a mutual Contract by the Parties, the Fee is amended.
- 8.3. Amendments to the Contract are proposed by the Party who sees a need for the amendments by submitting a justification for the proposal of amendments.
- 8.4. Amendments and supplements to the Contract shall be valid only when they have been prepared in writing and signed by the Parties; they shall be enclosed to this Contract and become an integral part of it.
- 8.5. The Contractor shall be entitled to an extension of the deadline for performing the Services if:
 - 8.5.1. the Client prevents or stops the execution of Services due to circumstances outside of the Contractor's control;
 - 8.5.2. the execution of Services has been hampered by significant amendments to this Contract or its Annexes, which have not been caused by the Contractor.

- 8.6. When deciding on amending the Contract, compliance with Public Procurement Law of the Republic of Latvia, Procurement and requirements under its Regulation must be ensured.

9. TERM AND VALIDITY OF THE CONTRACT

- 9.1. The Contract shall enter into force on the date of signature and shall be valid until the full execution of the commitments made.
- 9.2. The Contractor has the right to unilaterally terminate the Contract if:
- 9.2.1. the Client does not make the necessary payment for accepted Services and the Contractual penalty of this payment reaches 10 (ten) per cent of the outstanding amount and has not rectified this breach of the Contract within 20 (twenty) business days after receiving a warning of termination of the Contract from the Client;
 - 9.2.2. the Client is declared insolvent, its business activities are suspended or terminated, legal proceedings have been initiated on the Client's bankruptcy or it is established that the Client will be liquidated by the time of the Contract's expiry.
- 9.3. The Client has the right to unilaterally terminate the Contract if:
- 9.3.1. the Deliverables are not submitted within 15 (fifteen) days after the submission deadline for each Deliverable or if the Contractor has not corrected the errors and faults within the Client's prescribed time period;
 - 9.3.2. the Contractor's Contractual penalty reaches 10 (ten) per cent of the Fee;
 - 9.3.3. the Contractor has been declared insolvent, its business activities are suspended or terminated, legal proceedings have been initiated on the Contractor's bankruptcy or it is established that the Contractor will be liquidated by the time of the Contract's expiry;
 - 9.3.4. the Contractor fails to perform key expert replacement according to the procedure prescribed in this Contract and has not rectified this breach of the Contract within 10 (ten) business days after receiving a warning from the Client;
 - 9.3.5. if the Contractor fails to comply with the restrictions on professional activities laid down in this Contract.
- 9.4. If the Client has unilaterally terminated the Contract due to non-fulfilment of the obligations undertaken in the Contract by the Contractor, the Client has the right within 12 (twelve) months from the date of the termination of the Contract to disqualify the Contractor from participation in any tenders organized by the Client.
- 9.5. By a mutual written Contract, the Parties may terminate the Contract for any other reason.
- 9.6. If any of the provisions of the Contract become void, it shall not affect other provisions of the Contract.

10. COPYRIGHT

- 10.1. The Contractor acknowledges that, as between the Parties, the Client owns all right, title, and interest in and to all components of all Deliverables and all related documentation, including all improvements and derivatives thereof and modifications thereto. The Contractor may not assign, transfer, sell, license, sublicense or grant any right in or to the any of Deliverables to any other person or entity.
- 10.2. Unless agreed otherwise in writing between the Parties, the Contractor hereby transfers to the Client and the Client shall have ownership of all intellectual property rights (except personal copyrights of an author) created, developed, subsisting or used in relation to provision of the Services under this Contract, whether in existence at the date hereof or created in the future (hereinafter – the “**Intellectual Property Rights**”) in the documents or other material and data or other information provided to the Contractor in the context of this Contract. For the avoidance of doubt all Deliverables and submitted supplementary materials (including, but not limited to fully functional model source files containing developed formulas for all models, for example, life-cycle cost model, asset management model, infrastructure maintenance organization model, track access charging (TAC) model and capacity allocation model) shall become the intellectual property of the Client. The copyright is transferred to the Client on an ongoing basis, i.e. immediately after the completion of a

part of the Deliverable that falls under the concept of a “work” under Copyright Law of the Republic of Latvia, without the need to deliver or present the respective part of the Deliverable to the Client. For the avoidance of doubt, the Contractor shall be deemed to have granted the Client also the right to use the documents or other material and data or other information for whatever purpose, including but not limited to publishing such documents, either in full or in part.

- 10.3. The copyright fee has been included in the Fee. The transfer of copyrights shall also remain valid if the Contract is prematurely terminated for any reason and/or terminated without the complete delivery of the Deliverables.
- 10.4. The Client has the right to publish material submitted by the Contractor without the Contractor's permission, as well as to require the Contractor to change it, to redo it, to divide it into parts. If the Contractor and the Client cannot agree on the execution of this work, the Client is entitled to involve another Contractor in carrying out the said task.
- 10.5. The Contractor shall undertake to ensure that the Services, the execution of Services or the use of the any of the Deliverables not violate the rights, including copyright, of third persons.
- 10.6. If the Services, the execution of the Services or the use of the Deliverables or other deliverables produced while rendering the Services violate the rights of third persons, the Contractor shall be liable for the violation. The Contractor shall be obliged to compensate the damage caused to third persons and satisfy for the Client any claims for the compensation of damage filed against the Client by third persons.

11. CONFIDENTIALITY AND PROFESSIONAL RESTRICTIONS

- 11.1. The Contractor agrees that any information (“**Confidential information**”) obtained in the course of fulfilment of the Contract will be considered as confidential.
- 11.2. The Contractor undertakes not to disclose without a prior written consent of the Client any Information obtained in the course of fulfilment of the Contract, save for the cases referred to in Section 11.4 of the Contract. This provision shall be applicable during the validity of the Contract, and shall remain effective also after the expiration or termination of the Contract.
- 11.3. The Contractor undertakes to provide Information to their employees only to the extent required for provision of the Services and due performance of the Contract. The Contractor ensures that its employees or other persons involved in the provision of the Services respect the provisions of confidentiality defined in the Contract. The Contractor shall be fully responsible for the damages caused to the Client due to the reveal of the Information to the third persons, disregarding whether the Information was revealed by the Contractor itself, its employees or by other persons involved in the provision of the Services.
- 11.4. The disclosure of the Information will not be considered a breach of the Contract if it is revealed due to the legislative requirements and in accordance with the provisions of the normative enactments or EU legislation, including the obligation of the Client to disclose the Contract terms to any authorities controlling spending of public funds.
- 11.5. The Contractor, if itself or through its engaged persons is in breach of the confidentiality obligation, shall compensate direct losses incurred by the Client.
- 11.6. During the validity of this Contract, the Contractor, as well as their staff, must not engage directly or indirectly in business, financial or professional activities that may affect the execution of Services specified in this Contract and the results of the procurement procedure.
- 11.7. The Contractor undertakes not to use any information or material or other kind of valuables for purposes other than the provision of the Services, e.g. use for commercial gain, use in any way to make it public, reproduce, etc.
- 11.8. Upon the earlier of:
 - 11.8.1. expiration of the Term;
 - 11.8.2. termination of this Contract; or
 - 11.8.3. a written request by the Company,

- 11.9. the Contractor shall return to the Company all Confidential Information in its possession or control, including any copies, reproductions, or derivative works thereof. The Contractor and/or its advisers may for the purposes only of compliance with their respective legal, professional, regulatory or compliance duties and/or requirements preserve one copy of such documents subject to a continuing duty to comply with the terms of this Agreement in respect thereof. In such case the Contractor shall immediately in written form inform the Client. The confidentiality obligation shall not expire in time.
- 11.10. If the Contractor violates its confidentiality obligation, then it shall be liable to pay to the Client a contractual penalty in the amount corresponding to thrice (3x) the total sum of Fee.

12. FORCE MAJEURE

- 12.1. Parties are exempt from liability for full or partial non-compliance with the Contract if such failure is due to force majeure or extraordinary circumstances that began after the conclusion of the Contract and that could not have been previously foreseen or prevented. Force majeure or extraordinary circumstances include: natural disasters, including nature catastrophes, other disasters and accidents, epidemics, acts of war, strikes, internal unrest, blockades, as well as the adoption of such legislation that prevents all or one of the Parties to continue the fulfilment of the Contract, and other circumstances that do not fall within the Parties' possible control.
- 12.2. A Party who refers to the effect of force majeure or extraordinary circumstances, must immediately, but not later than within five (5) days, report these conditions in writing to other Parties. The report shall state the period within which, in its opinion the Contractual obligations may be performed and expected, and at the other Party's request, a notification issued by a competent authority must be submitted, containing a confirmation of the occurrence of force majeure event or exceptional circumstances, as well as their description. When the further execution of the Contract is not possible, the Parties shall draw up an Act of Acceptance and the Contractor shall receive payment for all of the properly performed part of the Services submitted. If the force majeure continues for more than one (1) month and the Parties are unable to agree on the further execution of the Contract, either Party has the right to unilaterally terminate the Contract by submitting a written notice to the other Parties.

13. ON-THE-SPOT VISITS

- 13.1. By giving a written notice 5 (five) working days in advance, but in case of an unannounced check without an advance notice, the Client may carry out on-the-spot visits to the sites and premises where the activities implemented within the Contract are or were carried out.
- 13.2. On-the-spot visits may be carried out either directly by the authorised staff of the Client or by any other outside body authorised to do so on behalf of the Client. Information provided in the framework of on-the-spot visits shall be treated on confidential basis. The Client shall ensure that any outside body authorised shall be bound by the confidentiality obligation.
- 13.3. Contractor shall provide to the performer of the on-the-spot visit or any other outside body authorised 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 outside body authorised for the performance of an on-the-spot visit and which relates to the implementation of the Contract, as well as shall allow the authorised staff of the performer of the on-the-spot visit or any other outside body authorised copying of the information and documents, with due respect to the confidentiality obligation.
- 13.4. 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 Union law for the protection of the financial interests of the Union against fraud and other irregularities. Where appropriate, OLAF findings may lead to criminal prosecution under national law.

14. TECHNICAL, LEGAL AND FINANCIAL CHECKS AND AUDITS

- 14.1. By giving a written notice 5 (five) working days in advance, but in case of an unannounced check or audit without an advance notice, the Client may carry out technical, legal and financial checks and audits in relation to the implementation of the Contract.
- 14.2. Checks and audits may be carried out either directly by the authorized staff of the Client or by any other outside body authorised to do so on Client's behalf.
- 14.3. Information and documents obtained in the framework of checks or audits shall be treated on a confidential basis. Client shall ensure that its staff and any outside body authorised by the Client be bound by the confidentiality obligation.
- 14.4. Contractor shall provide to the performer of the check or audit or any other outside body authorised access to all the information and documents, including information in electronic format, which is requested by the performer of the check or audit or any other outside body authorised for the performance of the check or audit and which relates to the implementation of the Contract, as well as shall allow the performer of the check or audit or any other outside body authorised by it copying of the information and documents with due respect to the confidentiality obligation

15. GOVERNING LAW; RESOLUTION OF DISPUTES

- 15.1. The rights of the Parties hereto and the validity, interpretation and implementation of this Contract shall be governed by and construed and interpreted in accordance with the laws of the Republic of Latvia. In the event of any dispute, controversy, or claim arising out of or relating to this Contract, or the breach, termination or invalidity hereof or thereof, the disputing Party shall provide written notice thereof to the other Party. The Parties shall attempt in the first instance to resolve such dispute through amicable consultations.
- 15.2. When any dispute occurs, and is the subject of amicable consultations, the Parties shall continue to exercise their remaining respective rights, and fulfil their remaining respective obligations, under this Contract.
- 15.3. If the dispute is not resolved by amicable consultation within thirty (30) days after notice of a dispute is given by a Party, then any Party may submit the dispute for final resolution by a competent court of the Republic of Latvia.

16. ADDITIONAL PROVISIONS

- 16.1. All types of notices, orders, approvals, attestations, Contracts and decisions to be issued pursuant to the Contract or other communication to be given in accordance with this Contract must be issued in writing and duly signed by the notifying Party or on its behalf and delivered in person or sent by prepaid registered mail to the address of the relevant party specified below (or as otherwise notified by the party concerned pursuant to this Contract):
RB Rail AS:
Address: K. Valdemāra iela 8-7, Riga, LV-1010, Latvia
Contractor: WS Atkins Plc
Address: Euston Tower, 286 Euston Road, London, NW1 3AT, United Kingdom
- 16.2. Any such notice shall be deemed to be received:
 - 16.2.1. if delivered personally – upon delivery;
 - 16.2.2. if delivered by prepaid registered mail – 5 (five) business days after the date of sending.
- 16.3. For the avoidance of doubt, unless expressly otherwise provided for in this Contract, a notice given under this Contract shall not be deemed to be duly delivered if sent by e-mail.
- 16.4. Communication between the Parties (e.g. information, requests, submissions, formal notifications, etc.) during the Contract must be carried out in English.

- 16.5. If the final day of a time period referred to in this Contract is Saturday, Sunday or a holiday prescribed by law, the following working day shall be considered the final day of the time period.
- 16.6. The Contract is concluded in 2 (two) copies, one for each, all having the same legal effect.