

**CONTRACT
FOR
RAIL BALTICA INFRASTRUCTURE MANAGEMENT
LEGAL STUDY
(Part 1)**

between

**RB RAIL AS
and
Partnership Law office „SORAINEN” and Hogan Lovells International LLP**

**Contract registration number 8/2018-70
CEF¹ Contract No INEA/CEF/TRAN/M2016/1360716 C1.1.7
Procurement procedure identification No RBR 2018/14**

Dated 20 November 2018

¹ Grant Agreement under the Connecting Europe Facility (CEF) for the Action No C1.1.7-Transport Sector Agreement No INEA/CEF/TRAN/M2016/1360716

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 its Chairman of the Management Board **Ignas Degutis** and Management Board Member **Kaspars Rokens** acting on the basis of the Power of Attorney No 9/2018-6 (dated 26/03/2018), on the one side,
and
- (2) Partnership "**ZAB Sorainen and Hogan Lovells International LLP**", correspondence address at Kr.Valdemāra 21, Riga, LV-1010, Latvia, ("Contractor"), represented by Eva Berlaus acting on the basis of Section 2.2 of the Consortium Agreement, signed on 16 October 2018, and ZAB Sorainen Partners' (Shareholders') Resolution No 1/2009, on the other side,
and

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

WHEREAS

- (A) This Agreement is entered into under the Rail Baltica project which includes all activities undertaken by the respective beneficiaries and implementing bodies of the Republic of Estonia, the Republic of Latvia and the Republic of Lithuania in order to build, render operational and commercialise the Rail Baltica railway – a new fast conventional double track electrified railway line according to TSI INF P2-F1 criteria and European standard gauge (1435mm) on the route from Tallinn through Pärnu-Riga-Panevėžys-Kaunas to Lithuanian-Polish border, with the connection of Kaunas – Vilnius, and related railway infrastructure in accordance with the agreed route, technical parameters and time schedule ("**Project**");
- (B) The Client has organised a tender "Rail Baltica Infrastructure Management Legal Study" (Identification No. RBR 2018/14) ("**Procurement**") for drafting documentation for infrastructure management model for Rail Baltica and the Contractor's tender proposal was selected as the winning bid;
- (C) This Contract is co-financed from the Connecting Europe Facility (CEF), CEF Contract No INEA/CEF/TRAN/M2016/1360716, Action No C1.1.7;
- (D) This Contract is concluded later than initially expected and therefore the Parties need to adjust Service Delivery Schedule set in Section 2.3 and 2.4 of Annex A Technical Specification to take into account year-end holiday season. Adjusted schedule enclosed as Annex E „Updated Schedule”.

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

1. SUBJECT OF THE CONTRACT

- 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 legal 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. Annex E "Updated Schedule";
 - 1.1.3. the terms and conditions contained in Annex B Proposal;
 - 1.1.4. applicable requirements and recommendations of the European Union;
 - 1.1.5. applicable legislative acts of the Republic of Latvia, the Republic of Estonia and the Republic of Lithuania; and
 - 1.1.6. 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 – Residence Certificate-Application for Reduction of or Exemption form;
 - 1.4.4. Annex D - Contractor's Declaration;
 - 1.4.5. Annex E – Updated Schedule.
- 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 according to the schedule mentioned in Annex E Updated Schedule.
- 2.2. Any of the Deliverables specified in Section 2.1 of this Contract shall be delivered 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 one (1) hard copies and electronically on an electronic data storage device.
- 2.3. The Client shall review the Deliverable within 5 (five) working days from the date of receipt, and:
 - 2.3.1. accept the Deliverable by signing an acceptance note; 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.
- 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 acceptance note.
- 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 98 110,00 (ninety-eight thousand one hundred and ten euros and 00 cents) (the "Fee") comprising the following:
 - 3.1.1. a service fee in the amount EUR 98 110,00 (ninety-eight thousand one hundred and ten euros 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.
- 3.2. If needed, 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 moment of signing of the Contract - 20%) from the Fee and payments made to the Contractor.
- 3.3. 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.
- 3.4. 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 note.
- 3.5. 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 note.
- 3.6. Payment of the Contractor's invoices will be made in *euro*, by bank transfer to the following bank account:

Recipient: ZAB Sorainen
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 note delivery of following Deliverables:

- (a) After delivery acceptance of the analysis of the laws of 3 Baltic States, the payment shall be 20% from the Fee: EUR 19 622,00 (nineteen thousand six hundred and twenty-two euros, and 00 cents), excluding VAT;
- (b) After delivery and acceptance of the first draft Inter-Governmental Agreement and the first draft Infrastructure Management Contract, the payment shall be 40% from the Fee: EUR 39 244,00 (thirty-nine thousand two hundred and forty-four euros and 00 cents), excluding VAT;
- (c) After delivery and acceptance of the final draft Inter-Governmental Agreement and the final draft Infrastructure Management Contract and final summary report, the payment shall be 40% from the Fee: EUR 39 244,00 (thirty-nine thousand two hundred and forty-four euros and 00 cents), excluding VAT.

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

3.8. 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:	For provided services according to Contract for Services No 8/2018-70 (CEF ² Contract No INEA/CEF/TRAN/M2016/1360716 Activity No C1.1.7). Activity Manager: [.]

3.9. 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.

3.10. For the avoidance of any doubts, the date of transfer of payment from the Client's account shall be deemed the date of payment.

3.11. 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.

3.12. 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

² Grant Agreement under the Connecting Europe Facility (CEF) - Transport Sector Agreement No INEA/CEF/TRAN/M2016/1360716

- 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 E Updated Schedule. 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. The Contractor and the Expert providing the Services to the Client must comply with the relevant professional diligence and applicable legislation governing the activities of legal advisers (in case of attorneys at law or similar advisors, in addition to the respective bar association rules and related regulations) and the provision of Services must be of consistently high quality that is necessary to achieve the purpose of 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. The Contractor shall participate, in presence or via phone (skype), at the planning meetings on weekly basis (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 subcontractors 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) The requirements set forth in Clauses 4.1.10 (a) (i) and 4.1.10 (a) (iii) of this Agreement can be complied with by means of utilizing the following logo.



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

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>.

- 4.1.11. The Client agrees that the Contractor shall not be deemed to represent any of the Client's parents, subsidiaries, other affiliates, or individuals that are shareholders, officers, directors, et al., unless the Contractor expressly agrees in writing to do so. Any proposed expansion of the representation to include any such related persons or entities shall be subject to and contingent upon execution of an engagement letter directly with those persons or entities

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.
- 4.2.4. The Client shall have the final and exclusive right in the negotiations, terms, decisions, contracts, etc. and in any and all matters related to the Services, including but not limited to the final right to decide whether or not to conclude any agreement(s), submit documents etc.

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

- 5.1. Contact person for the Client: [-]
- 5.2. Contact person for the Contractor: [-]
- 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. Review and evaluation of the replacement subcontractors and/or staff shall be carried out, and the consent or refusal to give consent shall be rendered by the Client in accordance with Public Procurement Law, Article 62. 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 0.1 (zero point one) 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 0.1 (zero point one) 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.
- 7.11. Notwithstanding anything to the contrary set forth in this Contract, in no circumstances shall the either Party 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 Client to contractors appointed by the Client in relation to the Service or the Project) or any indirect or consequential loss arising out of or in connection with this Contract.
- 7.12. The maximum aggregate liability of each Party to the other Party for any reason arising under, or in connection with, this Contract or the Project including but not limited to breach of agreement, or for breach of applicable law shall not exceed an amount equal to EUR 500 000 (five hundred thousand euros). Notwithstanding the above limitation, where, in respect of the same event, a Party recovers any amount of money under an insurance policy, it shall pay such amounts to the other Party. Each Party shall use reasonable endeavours to make such recovery under any insurance policy (which shall include an obligation to make and diligently pursue a claim but shall not include an obligation upon the Party to take legal action).
- 7.13. The provisions of Section 17.12 shall not apply to damages incurred by either Party as a result of:
- 7.13.1. any liability in respect of death or personal injury resulting from a negligent act or omission or breach of statutory duty by the liable Party or any employee of the liable Party;
 - 7.13.2. the fraud, fraudulent misrepresentation, reckless misconduct or gross negligence of the liable Party or, in the case of the Contractor, any approved sub-contractor of the Contractor; and/or
 - 7.13.3. infringement of any intellectual property of a third party.
- 7.14. The Contractor shall:
- 7.14.1. insure against its commercial liability under Section 17;
 - 7.14.2. insure against public/third party liability (Professional risk indemnity insurance).
- 7.15. The Contractor undertakes to effect such insurance with an insurer and on terms and conditions acceptable to the Client. The Contractor is obliged to ensure a valid professional risk indemnity insurance agreement covering all the experts with limit of liability in the amount of at least 1 000 000,00 EUR (one million *euro*) for any insurance claim and with extended reporting period 3 (three) years covering all period of validity of the Agreement. The costs of such insurance shall be at the expense of the Contractor.
- 7.16. Before entering into the Contract, the Contractor shall provide certificate from its insurer or broker stating that the insurance required under this section are in full force and effect. In addition, the Consultant shall provide not less than thirty (30) days prior written notice to the Client of any cancellation or material reduction in the insurance. The Contractor is obliged to submit to the Client a copy of a renewed insurance certificate or a new insurance certificate including the provisions set in Section 7.15 within five (5) Working Days before the date of expiry of the previous insurance certificate.

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 Section 5 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. The Client may terminate this Contract immediately upon giving the Contractor a written notice of termination explaining, in reasonable detail, the reason for termination, if
 - 9.4.1. CEF Co-financing for further financing of the Service are not available to the Client;

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

- 9.4.2. it is not possible to execute the Contract due to the application of international or national sanctions, or European Union or North Atlantic Treaty Organization applied sanctions significantly affecting interests of financial or capital market.
- 9.5. 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.
- 9.6. By a mutual written Contract, the Parties may terminate the Contract for any other reason.
- 9.7. 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 Client,the Contractor shall return to the Client 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 Contract in respect thereof. In such case the Contractor shall immediately in written form inform the Client. The confidentiality obligation shall not expire in time.
- 11.9. 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 acceptance note, 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. CONTRACTOR'S AND EXPERTS' INDEPENDENCE AND ABSENCE OF CONFLICT OF INTEREST

- 16.1. If the Contractor provides or will provide legal services to any person whose interests are or probably will be in conflict with the interests of the Client in relation with provided Services (in the past, in the present and in the foreseeable future), for example, in respect of negotiating or amending the draft Infrastructure Management Contract to the Client, or in case of any circumstances, which harm or may harm the possibility of the Contractor to act solely in the interests of the Client ("Conflict of Interests"), the Contractor has the obligation to refrain from providing the assignment to the Client.
- 16.2. The Contractor will not undertake a matter that is substantially related to a matter in which the Contractor represents the Client and in which the other client is adverse to the Client. The term "matter" refers to transactions, negotiations, proceedings, or other representations involving specific parties. In the absence of a conflict as described in the sentence above, the Client acknowledges that the Contractor will be free to represent any other client in matters in which the Client may have an interest, including but not limited to agreements, mergers and acquisitions, loans and financing, bankruptcy, intellectual property, real estate, government contracts, procurements or auctions in which the Contractor represents another bidder, administrative proceedings, subpoena matters, and litigation brought by or against the Client. The Contractor shall not use information obtained during provision of the Services against the interests of the Client. If at a later time the Client withdraws or modifies this advance waiver in any material respect, the Client agrees that at such time the Contractor shall have the right to withdraw from the Contractor's representation of the Client pursuant to this Contract.
- 16.3. To ensure that the Contractor's work for the Client does not adversely affect the Contractor's ability to continue to represent other clients on current or future matters where their interests may be adverse to Estonia, Latvia or Lithuania, or any agencies thereof (including the Client), including litigation against or other adversities to Estonia, Latvia or Lithuania, or any of their agencies, the Client agrees that the Client is the Contractor's client for the specific matters on which it engages the Contractor.
- 16.4. The Contractor immediately has to notify the Client before taking up any assignments, if there can be doubts whether such are permissible pursuant to the obligation to avoid Conflict of Interests set forth in this Contract. In case of doubt, the Client has the right to decide whether a Conflict of Interests situation occurs or not.
- 16.5. If the Contractor violates its obligation to avoid Conflict of Interests or fails to comply with it, it shall be liable to pay to the Client a contractual penalty in the amount corresponding to thrice (3x) the total sum of legal fee according to this Contract.

17. ADDITIONAL PROVISIONS

- 17.1. 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: Partnership Law office „SORAINEN" and Hogan Lovells International LLP
Address: K. Valdemāra iela 21, Riga, LV-1010, Latvia.
- 17.2. Any such notice shall be deemed to be received:
- 17.2.1. if delivered personally – upon delivery;
- 17.2.2. if delivered by prepaid registered mail – 5 (five) business days after the date of sending.
- 17.3. 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.
- 17.4. Communication between the Parties (e.g. information, requests, submissions, formal notifications, etc.) during the Contract must be carried out in English.

- 17.5. 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.
- 17.6. The Contract is concluded in 2 (two) copies, one for each, all having the same legal effect.

18. ANNEXES

Annex A – Technical Specification of the Procurement Regulation for the Procurement No RBR 2018/14 “Rail Baltica Infrastructure Management Legal Study”.

Annex B – Contractor’s Proposal (this Annex is included by a way of reference, and not physically);

Annex C – Residence Certificate-Application for Reduction of or Exemption form.

Annex D - Contractor’s Declaration.

Annex E – Updated Schedule.

19. DETAILS OF THE PARTIES