

**BUSINESS PLAN PREPARATION
AGREEMENT**

between

RB Rail AS

and

DB Engineering&Consulting GmbH

Agreement registration number
CEF Contract No INEA/CEF/TRAN/M2014/1045990¹

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| 8/2018-1 |
| A03 |

Dated 8. January 2018
Riga

¹ Grant Agreement under the Connecting Europe Facility (CEF) -Transport Sector Agreement No INEA/CEF/TRAN/M2014/1045990

This Business Plan Preparation Service Agreement ("Agreement") is entered into in Riga, on 8 January 2018 ("Effective Date") by and between:

RB Rail AS, registration number: 40103845025, having its registered address at K.Valdemāra iela 8-7, Riga, LV-1010, Latvia ("Company"), represented by Chairperson of the Management Board Baiba Anda Rubesa and Management Board Member Kaspars Rokens acting on the basis of the Power of Attorney No 9/2017-9 dated September 4, 2017, and

DB Engineering&Consulting GmbH, registration number HRB 56655 B, having its registered address at EUREF-Campus 14, Torgauer Straße 12-15, 10829 Berlin, Germany ("Contractor"), represented by Vincent van Houten, acting on the basis of Power of attorney No 9338/17, dated 1 November, 2017 and Lithuanian Branch Manager of DB Engineering & Consulting GmbH Laimius Karciauskas, acting on the basis of the power of attorney File No. 257/2017, dated 30.05.2017

each individually referred to as the "Party" and collectively referred to as the "Parties".

WHEREAS

Core business of the Company 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").

The Company has organised the competitive procedure with negotiation (identification No RBR 2017/9) ("Procurement") in which the Contractor's procurement proposal ("Proposal") was selected as the winning bid. Procurement is co-financed by the CEF.

This Agreement is co-financed from the Connecting Europe Facility (CEF), CEF² Contract No INEA/CEF/TRAN/M2014/1045990, Action No A34.

NOW, THEREFORE, the Parties hereby without any delusion or fraud enter in to this agreement ("Agreement") on the following terms and conditions:

1. DEFINITIONS

Unless the context otherwise requires, capitalized terms used herein shall have the following meaning:

- 1.1. "Agreement" – this Business Plan Preparation Service Agreement between the Company and the Contractor, including all its annexes;
- 1.2. "Business Plan", as defined in Section 2.3 of the Agreement;
- 1.3. "CEF", as defined at Preamble A of this Agreement;
- 1.4. "Company", RB Rail AS, Unified Registration Number 40103845025, with registered address at K.Valdemāra iela 8-7, Riga, LV-1010, Latvia;
- 1.5. "Confidential Information", as defined in Sections 9.1 and 9.2;
- 1.6. "Contractor", DB Engineering & Consulting GmbH, registration number HRB 56655 B;
- 1.7. "Effective Date" - the date first above in this Agreement written;
- 1.8. "Fee", as defined in Section 4.1 of the Agreement;
- 1.9. "Intellectual Property Rights", as defined in Section 8.2 of the Agreement;

² Grant Agreement under the Connecting Europe Facility (CEF) - Transport Sector Agreement No INEA/CEF/TRAN/M2014/1045990

- 1.13. "Term", as defined in Section 4.5 of Annex A Technical Specification if no other agreed by Parties;
- 1.14. "Third Persons", as defined in Section 2.5.1 of the Agreement.

2. SUBJECT OF THE AGREEMENT

- 2.1. The activities described in the Annex A Technical Specification of the Procurement Regulations ("Technical Specification"), including the activities described in the Annex B the Technical Proposal, form the content of services to be provided under this Agreement ("Services").
- 2.2. The Services entail the development and supply the business plan and financial model (hereinafter referred to, collectively, as the "Business Plan") to the Company upon its orders and requests that comply with the following requirements and specifications:
 - 2.2.1. the specifications and requirements contained in the Regulations, including the Annex A Technical Specification;
 - 2.2.2. the terms and conditions contained in the Annex B Technical Proposal;
 - 2.2.3. applicable requirements and recommendations of the European Union;
 - 2.2.4. applicable legislative acts of the Republic of Latvia, the Republic of Estonia and the Republic of Lithuania;
 - 2.2.5. the terms and conditions of the 28 October 2014 Shareholders' Agreement; 31 July 2014 Grant Agreement under the connecting Europe Facility (CEF) – Transport sector (No INEA/CEF/TRAN/M2014/1045990 and 30 of September 2016 Agreement on the Contracting Scheme for the Rail Baltic/Rail Baltica, 16 June 2016 Inter-Beneficiary Agreement, RB Rail AS Budget 2017 and RB Rail AS high level budget 2018.
 - 2.2.6. specific instructions of the Company.
- 2.3. The Contractor agrees to develop the Business Plan in a conscientious, diligent, expeditious, proper and workmanlike manner according to the schedule set forth in Section 4.5 of Annex A Technical Specification. The Contractor undertakes to use its best efforts, skill and experience in developing the Business Plan and to allocate toward development of the Business Plan qualified and suitable key personnel. The Contractor agrees to devote such time as is reasonably required to fulfil its duties hereunder.
- 2.4. This Agreement shall not prevent the Contractor from undertaking other consultancy or project management services, provided that the undertaking of such services does not cause a breach of any provision of this Agreement.
- 2.5. The description of the Services contemplated under this Agreement and specific commitments by the Contractor covers all steps, acts and measures, including those not explicitly provided for in the Agreement, necessary for the efficient, proper and workmanlike development of high-quality Business Plan. In the event performance of additional steps or acts and/or undertaking of additional measures not explicitly stated in this Agreement is required for the attainment of the objectives of this Agreement, the performance of such steps or acts and/or undertaking of such measures shall be deemed a contractual obligation of the Contractor. Such steps, acts and/or measures shall include, without limitation, the following:
 - 2.5.1. conduct of interviews with the Company, its executives, officers, employees, shareholders, agents, consultants and other stakeholders relevant to execution of the Project; for the purposes of this Section 2.5, stakeholders shall include, without limitation, authorities and institutions of the EU, local authorities or municipalities, companies or natural persons, associations or organisations in Estonia, Latvia, Lithuania and other Member States of the EU ("Third Persons");
 - 2.5.2. obtaining of data and other information from the Company, its executives, officers, employees, shareholders, agents, consultants or Third Persons, and processing of such data and information;
 - 2.5.3. provision of advice to the Company, its executives, officers, employees, shareholders or Third Persons to the extent necessary to enable or facilitate development and delivery of the Business Plan; and
 - 2.5.4. conduct of any other activities enabling or facilitating development and delivery of the Business Plan.
- 2.6. The Agreement contains the following Annexes:
 - 2.6.1. Annex A, Technical Specification of the Procurement Regulation;
 - 2.6.2. Annex B, Technical Proposal, and

2.6.3. Annex C, Financial proposal;

2.6.4. Annex D, Contractor's Declaration

2.7. The Annexes listed pursuant to Section 2.6 of this Agreement shall form an integral part of the Agreement and are incorporated herein by reference as if set out at length in the Agreement.

2.8. In the event of any inconsistency between the terms of this Agreement and any of Annexes, the text of this Agreement 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, Proposal shall prevail. In the event of any inconsistency between the terms of any of the 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 2.6 of the Agreement.

3. SERVICE DELIVERY SCHEDULE

3.1. During the term of this Agreement, the Agreement undertakes to perform the acts and deliver the materials mentioned in Section 4 (especial 4.1 to 4.5) of Annex A Technical Specification and according to the schedule mentioned in Section 4.5 of Annex A Technical Specification.

3.2. Any of the materials specified in Section 3.1 of this Agreement shall be deliverable to the Company no later than on the last business day of the respective week when completion of the respective material was scheduled to occur. All materials deliverable under this Agreement shall be in the English language and supplied to the Company in three (3) hard copies and electronically on an electronic data storage device.

3.3. The Company shall review the any delivered materials which are mentioned in Section 4 of Annex A Technical Specification within 10 (ten) working days from the date of receipt, and:

3.3.1. accept the delivered material by signing an acceptance act; or

3.3.2. reject the delivered material by means of issuing written recommendations and/or objections.

3.4. The Parties acknowledge that in order the Client could sign the Act of Acceptance with respect to final Business Plan, this deliverable must prior be approved by the Supervisory Board of the Client.

3.5. In the event the delivered material is rejected, the Contractor shall have an obligation to submit to the Company a revised material no later than within 10 (ten) working days from the date of receipt of recommendations or objections from the Company, or, unless, if objectively justified, a different time for supply of the revised material is agreed between the Parties. In the event the Contractor finds any of the recommendations or objections expressed by the Company 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.

3.6. Subject to any objections the Contractor may have in accordance with Section 3.5, the Contractor shall re-submit a revised material to the Company according to the provisions of Section 3.3 and the Company shall review such re-submitted material in accordance with Section 3.3 of the Agreement.

3.7. The Business Plan and any of the materials specified in Section 3.1 of this Agreement submitted to the Company shall be deemed to have been accepted by the Company upon signature by the Company of the respective Act of Acceptance.

3.8. Without prejudice to any other rights available to the Company hereunder, the Company 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 Business Plan no later than within 10 (ten) calendar days from the date of receipt of the Company'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 3.8 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 Annex A Technical Specification.

3.9. The Company shall have a right, at any time during the Term, to convene one or more meetings for the assessment of the Business Plan delivered to it and/or in order to discuss other matters relevant to any activities contemplated under this Agreement. The place and time of such meetings shall be within the sole discretion of the Company. The Contractor undertakes to act in good faith and reasonably cooperate with the Company with respect to the holding of and participating in any such meetings.

- 3.10. Whenever required under applicable regulations or upon receipt of request from the Company, the Contractor shall ensure that the presentation materials and other documentation deliverable under this Agreement 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.
- 3.11. The Business Plan, presentation materials and other documentation developed by the Contractor shall use the corporate visual identity approved by the Company.
- 3.12. 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 Agreement.

4. FEE AND PAYMENT

- 4.1. As compensation for the preparation of the Business Plan supplied hereunder, the Company shall pay the Contractor 413 638,50 EUR (four hundred thirteen thousand six hundred thirty-eight euro, 50 cents) ("Fee") comprising the following:
 - 4.1.1.a service fee in the amount of 341 850,00 EUR (three hundred forty-one thousand eight hundred fifty euro and 00 cents), excluding VAT; and
 - 4.1.2.value added tax at the rate of 21% amounting to 71 788,50 EUR (seventy-one thousand seven hundred eighty-eight euro and 50 cents).
- 4.2. The Fee is the all-inclusive consideration for the duly supplied service. Subject to the provisions of Section 4.3 of this Agreement, 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 Agreement (including, without limitation, meetings with Client, travel costs, except travel expenses and daily allowance mentioned in the Section 5 of Annex A Technical Specification, and the cost of training of personnel of the Company). The Contractor agrees and acknowledges that, except as set forth in Section 4.3 of this Agreement, it shall have no right to request reimbursement by the Company of any additional expenditure whatsoever as may have been incurred by the Contractor toward provision of the services contemplated by this Agreement, unless reimbursement of such additional expenditure has been explicitly agreed between the Parties in writing.
- 4.3. Notwithstanding the provisions of Section 4.2 of this Agreement, the Company shall cover the following costs:
 - 4.3.1. Cost of lease of any training facility as may be necessary for the purposes of holding one or more training sessions pursuant to Section 3.1 of this Agreement;
 - 4.3.2. Travel expenses and daily allowance expenses (for all visits) as described in Section 5 of Annex A Technical Specification in amount up to 18 000 EUR (eighteen thousand euros), excluding VAT.
- 4.4. The Fee shall be payable to the Contractor according to the following schedule:
 - 4.4.1.10% (ten per cent) of the Fee within fourteen (14) working days after delivery to the Company of the Inception Report pursuant to Section 3.1 of this Agreement;
 - 4.4.2.30% (thirty per cent) of the Fee, within fourteen (14) working days after delivery to the Company of Deliverables 1st draft pursuant to Section 3.1 of this Agreement;
 - 4.4.3.30% (thirty per cent) of the Fee, within fourteen (14) working days after delivery to the Company of Deliverables 3rd draft pursuant to Section 3.1 of this Agreement;
 - 4.4.4.30% (thirty per cent) of the Fee after Final Deliverables submitted within 10 (ten) working days after acceptance of the Business Plan by the Company.
- 4.5. The Fee shall not be paid for Business plan and/or other materials or part of it, which does not comply with the provisions of this Agreement or has faults, until the non-compliance or faults have been eliminated and the Company has accepted the deliverable delivered by signing the acceptance act.
- 4.6. Payment of the Contractor's invoices will be made in euro, by bank transfer to the following bank account:

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| Contractor | DB Engineering & Consulting GmbH |
| Registration No | 56 655 |

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| VAT payer's No | DE 114 139 523 |
| Address | EUREF-Campus 14, Torgauer Strasse 12-15, 10829 Berlin |
| Name of Bank | Deutsche Bank AG Berlin |
| Bank Code | BIC: DEUTDEBBXXX |
| Bank Account No | IBAN: DE78 1007 0000 0046 0006 00 |

within 30 (thirty) days after the date of receipt of the Contractor's invoice by the Company, issued on the basis of the approved Act of Acceptance delivery of deliverables mentioned in Section 4.4.

- 4.7. Each Party shall bear its own bank charges or expenses incurred in connection with the transfer of any payments.
- 4.8. The Contractor's invoices shall contain the following Company's details and details about the Agreement:

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| Company | RB Rail AS |
| Registration No | 40103845025 |
| VAT payer's No | LV40103845025 |
| Address | K. Valdemāra iela 8-7, Rīga, LV-1010, Latvia |
| Subject: | For provided services according to the Business Plan Preparation Service Agreement No [] (CEF Contract No INEA/CEF/TRAN/M2014/1045990 ³ Activity No A03), activity manager: Rihards Volfs. |

- 4.9. The Contractor shall send the invoice to the Company electronically to the following e-mail address: invoices@railbaltica.org. The Company shall review the invoice to verify whether it contains all necessary requisites.
- 4.10. For the avoidance of any doubts, the date of transfer of payment from the Company's account shall be deemed the date of payment.

5. RIGHTS AND OBLIGATIONS OF THE PARTIES

5.1. The Contractor's rights and obligations

- 5.1.1. The Contractor has the right to consult with the contact person of the Company regarding matters related to the Services;
- 5.1.2. The Contractor may use publicly available and trustworthy information sources;
- 5.1.3. The Contractor is obliged to provide the services, develop the Business plan and other materials mentioned in Section 3.1 in a conscientious, diligent, expeditious, proper and workmanlike manner according to the schedule set forth in Annex A Technical Specification. The Contractor undertakes to use its best efforts, skills and experience in developing the Business plan and other materials mentioned in Section 3.1 and to allocate qualified and suitable key personnel for the provision of services. The Contractor agrees to devote such time as is reasonably required to fulfil its duties hereunder;
- 5.1.4. The Contractor has the right to receive payment of Fee or part thereof upon completion of the Services in accordance with this Contract;
- 5.1.5. The Contractor is obliged to perform the Services in accordance with the Agreement, its Annexes, Procurement Regulations and applicable laws.
- 5.2. Meetings at monthly intervals (as set in the Annex A Technical Specification Section 4.6.2 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

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concerns expressed at and decisions adopted during each meeting shall be duly recorded or protocolled in writing or electronically.

- 5.3. Upon the request of the Company 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 Company.
- 5.4. The Contractor is obliged to provide the Company's staff which is performing a check or audit or on-the-spot visit or any other outside body authorised by the Company 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 Agreement. The Contractor shall allow the performer of the check or audit or on-the-spot visit or any other outside body authorised by the Company 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 Company to access and to copy their information and documents that relate to the execution of this Agreement.
- 5.5. The Contractor is obliged to comply with the following visibility requirements:
 - 5.5.1. Any reports, brochures, other documents or information connected with the Services that the Contractor produces and submits to the Company, 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.
 - 5.5.2. Requirements set in Sections 5.5.1 (i) (ii) and (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;

- 5.5.3. 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 Agreement 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>.
- 5.6. The Company's rights and obligations
 - 5.6.1 The Company 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.
 - 5.6.2 The Company 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.
 - 5.6.3 The Company 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.

6. CONTACT PERSONS; PERSONNEL; USE OF SUB-CONTRACTORS

- 6.1. Contact person for the Company: Financial reporting manager Rihards Volfs, phone number:

+37126406708, e-mail address: rihards.volfs@railbaltica.org.

- 6.2. Contact person for the Contractor: Lithuanian Branch Manager of DB Engineering & Consulting GmbH Laimius Karciauskas, phone number: +37068653556, e-mail address: laimius.karciauskas@deutschebahn.com.
- 6.3. The contact persons of the Parties shall be responsible for monitoring the progress of the performance of the obligations of each Party under this Agreement 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.
- 6.4. 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 6.1 and 6.2 of this Agreement.
- 6.5. Without prejudice to Section 6.6 of this Agreement, in the supply of services under this Agreement, the Contractor shall be entitled to involve the appropriately trained and qualified key personnel of the Contractor. To the extent necessary to ensure development of a high-quality Business Plan, the Contractor shall have a right to replace or add personnel. 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 Agreement have been included in and are forming part of the Fee.
- 6.6. The Contractor shall involve in the execution of the Agreement the key experts whom the Contractor proposed in Annex B Contractor's Proposal. The Contractor is not allowed to change its key experts during the execution of this Agreement without the prior written approval of the Company. 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.
- 6.7. The Company 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. The Company shall only grant an approval for such a change if the new key expert meets all the same qualification criteria as the key expert to be substituted.
- 6.8. The Contractor shall be responsible for the work of its staff and ensure that the Company has free access to the staff (including key experts) during the Company's working hours, including but not limited to no later than until the end of business day answer to e-mail or recall to the Client. The Contractor shall ensure that the key experts indicated in the Contractor's proposal participate in meetings with the Company upon Company's request. 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 Company and supported by any of the following reasons:
 - 6.8.1. repeated careless performance of duties;
 - 6.8.2. incompetence or negligence;
 - 6.8.3. non-fulfilment of obligations or duties stipulated in the Agreement;
 - 6.8.4. termination of employment relations with the Contractor.
- 6.9. The Contractor shall be responsible for the work of subcontractors.
- 6.10. To complete the services, the Contractor shall involve subcontractors indicated in Annex B Contractor's Proposal.
- 6.11. The Contractor shall be allowed to enter into contract(s) with sub-contractor(s) for the purpose of performing its obligations under this Agreement; provided, however, that:
 - 6.11.1. 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:
 - 6.11.1.1. bribetaking, bribery, bribe misappropriation, intermediation in bribery, taking of prohibited benefit or commercial bribing;
 - 6.11.1.2. fraud, misappropriation or laundering;

- 6.11.1.3. tax evasion and payments equivalent thereto,
- 6.11.1.4. terrorism, financing of terrorism, invitation to terrorism, terrorism threats or recruiting and training of a person for performance of terror acts;
- 6.11.2. 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:
 - 6.11.2.1. 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;
 - 6.11.2.2. 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;
- 6.11.3. 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;
- 6.11.4. 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;
- 6.11.5. 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;
- 6.11.6. Any of the above-mentioned criteria applies to all members of a group of persons if the subcontractor is a group of persons;
- 6.11.7. The Contractor shall take all reasonable steps to satisfy itself that the sub-contractors (or their employees) are suitable, duly qualified and skilled in all respects to perform the services required under this Agreement;
- 6.11.8. The Contractor shall at all times remain responsible to the Company for the proper performance under this Agreement and for all of the acts and omissions of its sub-contractors in connection with this Agreement; and
- 6.11.9. The change of subcontractors, as well as the involvement of new subcontractors in the fulfilling of this Agreement can be performed by the Contractor only if the such sub-contractors are suitable in accordance with the legal requirements set in the applicable laws and if it has informed the Contracting authority thereof and received a written permission of the Contracting authority.
- 6.12. The Company 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 Agreement.

7. LIABILITY

- 7.1. In the event of delay with performance of any of its obligations set forth in this Agreement, the Contractor shall, within 10 (ten) working days from the receipt of respective notice from the Company, pay the Company a contractual penalty in the amount of 0.2% (zero point two per cent) of the Fee for each day of delay; provided, however, that the total amount of the contractual penalty shall not exceed 10% (ten per cent) of the Fee.

- 7.2. In the event of delay with performance of any of its payment obligations set forth in this Agreement, the Company shall, within 10 (ten) working days from the receipt of respective notice from the Contractor, pay the Contractor a contractual penalty in the amount of 0,2% (zero point two per cent) of the amount which remains due and unpaid for each day of delay; provided, however, that the total amount of the contractual penalty shall not exceed 10% (ten per cent) of the Fee.
- 7.3. In the event the Company terminates this Agreement in accordance with Section 13.3 and Section 13.4, the Contractor shall, within 10 (ten) working days from the receipt of respective notice from the Company pay the Company a contractual penalty in the amount of 20 (twenty) per cent of the total amount of the Fee.
- 7.4. In case of a unilateral termination of this Agreement, not related to non-performance or improper performance of the Agreement, a termination penalty of 10 (ten) per cent of the Fee is to be paid by the initiator of the termination.
- 7.5. If the Contractor fails to comply with the restrictions of professional activities laid down in this Agreement, 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.
- 7.6. The Contractor shall compensate damages to the Company in the following cases and the Company may deduct this amount from any sums payable to the Contractor pursuant to the Agreement:
 - 7.6.1. the Contractor has not corrected the errors or faults within the time period set by the Company;
 - 7.6.2. in other cases where the Company has incurred losses due to the Contractor's fault.
- 7.7. Without prejudice to any other rights a Party may have under this Agreement, including, without limitation, the right to receive contractual penalty, each Party shall be entitled to enforce its rights under this Agreement to recover damages and costs (including reasonable attorney's fees) caused by any breach of any provision of this Agreement amounting up to the double of the Fee and to exercise all other rights existing in its favour, regardless of termination of this Agreement for any reason whatsoever. The Parties hereto agree and acknowledge that money damages would not be an adequate remedy for any breach of this Agreement 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 Agreement.
- 7.8. 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 Agreement or deriving from the applicable law.

8. COPYRIGHT

- 8.1. The Contractor acknowledges that, as between the Parties, the Company owns all right, title, and interest in and to all components of Business Plan and all related documentation, including all improvements and derivatives thereof and modifications thereto and all related documentation. 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.
- 8.2. Unless agreed otherwise in writing between the Parties, the Contractor hereby transfers to the Company and the Company 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 Agreement, 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 Agreement. For the avoidance of doubt Business Plan and all 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, financial model, including but not limited „Assumption Book“, model's manual and training materials, presentations.) 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 Business Plan and other materials mentioned in Section 3.1 to the Client. For the avoidance of doubt, the Contractor shall be deemed to have granted the Company 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.

- 8.3. The copyright fee has been included in the Fee. The transfer of copyrights shall also remain valid if the Agreement is prematurely terminated for any reason and/or terminated without the complete delivery of the Business plan.
- 8.4. The Company 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 Company cannot agree on the execution of this work, the Company is entitled to involve another Contractor in carrying out the said task.
- 8.5. The Contractor shall undertake to ensure that the Services, the execution of Services or the use of the any of the deliverables mentioned in Section 3.1 not violate the rights, including copyright, of third persons.
- 8.6. If the Services, the execution of the Services or the use of the Business plan 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 Company any claims for the compensation of damage filed against the Company by third persons.

9. CONFIDENTIALITY

- 9.1. The Contractor agrees that any information or copies of any documents obtained from the Company prior to or during the term of this Agreement including, without limitation, information and data, whether in oral, visual or written form, recorded or embodied in whatever medium, descriptions of strategic and business plans, the identity of one or more other parties with whom the Company does business, descriptions of non-public deal structure proposals, descriptions of business operations or plans, descriptions, samples or demonstrations of products and services, concepts, designs, technical descriptions, drawings and diagrams, financial performance, sales and revenue figures, financial estimates and projections, descriptions of computer and IT systems and systems development, strategies, billing and receivable procedures, software, technical systems and product development methodologies, marketing and operational procedures and strategies, customer and supplier lists and information on litigations of the Company shall be considered "Confidential Information".
- 9.2. The Company agrees that any information on ideas, methodologies or approaches of the Contractor shall be considered "Confidential Information".
- 9.3. The receiving Party will hold all of the Confidential Information in strict confidence and, except as expressly set forth herein, will not disclose the Confidential Information to any third party. The term "third party", as used in this Agreement, shall be broadly interpreted to include, without limitation, any company, group, partnership, joint venture, organization, association, agency, authority or individual. The obligations of the Party receiving Confidential Information set forth in this Section 9 of the Agreement will not apply to the extent that the Confidential Information:
 - 9.3.1. at the time of its disclosure, is in the public domain or becomes, after disclosure, part of the public domain by publication or otherwise through no action or fault of the Party receiving Confidential Information;
 - 9.3.2. was in the possession of the receiving Party and the receiving Party is able to present evidence that the Confidential Information was in its possession at the time of disclosure and was not acquired, directly or indirectly, from the disclosing Party;
 - 9.3.3. was received by the Party from a third party having a legal right to transmit the information;
 - 9.3.4. was rightfully disclosed in response to an order of a court of competent jurisdiction;
 - 9.3.5. was rightfully disclosed in response to an order, ordinance, decision, request or inquiry of a competent national or supra-national governmental, regulatory or supervisory agency, authority or body, to the extent the receiving Party is required by law to disclose Confidential Information to such agency, authority or supervisory body; or
 - 9.3.6. was disclosed pursuant to a written consent of the other Party.
- 9.3.7. The Contractor may disclose Confidential Information of the Company to its respective executives, officers and employees only to the extent such executives, officers or employees need to know Confidential Information for the development of the Business Plan or other materials deliverable in

accordance with Section 3.1 of this Agreement, and then only if such limitations are set forth in a written agreement between the Contractor and its executive, officer or employee who needs to have access to the Confidential Information on need-to-know basis.

9.4. Upon the earlier of:

9.4.1. expiration of the Term;

9.4.2. termination of this Agreement; or

9.4.3. a written request by the Company,

the Contractor shall return to the Company all Confidential Information in its possession or control, including any copies, reproductions, or derivative works thereof.

9.5. No publication with respect to any activity undertaken pursuant to this Agreement or the Project shall be made, nor any information submitted for publication, without the prior review and written approval of the Company.

9.6. The Parties hereto agree that remedies at law may be inadequate to protect against the breach of obligations set forth in this Section 7, and in the case of such a breach the breaching Party hereby consents to the granting of injunctive relief, whether temporary, preliminary or final, in favour of the non-breaching Party without proof of actual damages. In addition to and without prejudice to the right to seek injunctive relief, the Party which itself or through its engaged persons commits a breach of the confidentiality undertakings in this Section 9, shall compensate losses incurred by the other Party as a result of the breach.

9.7. Each Party's Confidential Information shall remain the property of that Party. Nothing contained in this Section 9 shall be construed as obligating a Party to disclose its Confidential Information to the other Party, or as granting to or conferring on a Party, expressly or impliedly, any rights or license to the Confidential Information of the other Party, and any such obligation or grant shall only be as provided by other provisions of this Agreement.

9.8. The confidentiality obligation shall not expire in time.

9.9. 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.

10. FORCE MAJEURE

10.1. Parties are exempt from liability for full or partial non-compliance with the Agreement if such failure is due to force majeure or extraordinary circumstances that began after the conclusion of the Agreement 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 Agreement, and other circumstances that do not fall within the Parties' possible control.

10.2. 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 Agreement by submitting a written notice to the other Parties.

11. PROVISION OF INFORMATION, CHECKS, AUDITS AND ON-THE-SPOT VISITS

11.1. By giving a written notice 5 (five) working days in advance, but in case of an unannounced check or audit or on-the-spot-visit without an advance notice, the Company may carry out technical, legal and financial checks and audits of the Contractor and the sub-contractors of the Contractor, and on-the-spot visits to the sites and premises where the activities related to the implementation of this Agreement are or were

carried out. Checks and audits and on-the-spot visits may be carried out either directly by the authorized staff of the Company or by any other outside body authorised to do so on its behalf.

- 11.2. The Contractor is obliged to provide to the Company's staff which is performing a check or audit or on-the-spot visit or any other outside body authorised by the Company to access to all the information and documents, including information in electronic format, which is requested by the performer of the check or audit or on-the-spot-visit or any other outside body authorised by it for the performance of the check or audit or on-the-spot visit and which relates to the execution of this Agreement, as well as shall allow the performer of the check or audit or on-the-spot visit or any other outside body authorised by it copying of the information and documents with due respect to the confidentiality obligation.
- 11.3. The Contractor is obliged to agree in the contracts with its sub-contractors on the right of the Company to access and to copy their information and documents which relate to the execution of this Agreement.

12. TECHNICAL, LEGAL AND FINANCIAL CHECKS AND AUDITS

- 12.1. 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 Company may carry out technical, legal and financial checks and audits in relation to the implementation of the Agreement.
- 12.2. Checks and audits may be carried out either directly by the authorized staff of the Company or by any other outside body authorised to do so on Company's behalf.
- 12.3. Information and documents obtained in the framework of checks or audits shall be treated on a confidential basis. Company shall ensure that its staff and any outside body authorised by the Company be bound by the confidentiality obligation.
- 12.4. 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 Agreement, 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.

13. TERM AND TERMINATION

- 13.1. The Agreement shall commence on the Effective Date and shall continue until the earliest of:
 - 13.1.1. the date specified at Section 1.13 of this Agreement ("Term"); or
 - 13.1.2. the date of termination of this Agreement in accordance with this Section 13.
- 13.2. The Parties may terminate this Agreement by mutual agreement.
- 13.3. This Agreement may also be terminated by the Company by giving 15 (fifteen) calendar days' prior written notice to the Contractor in any of the following events:
 - 13.3.1. The Contractor commits a breach of any of its obligations set forth in this Agreement and fails to cure such breach within 15 (fifteen) calendar days from the date of receipt of a written notice from the Company requesting that the breach be cured;
 - 13.3.2. Upon the making of an assignment for the benefit of creditors by the Contractor.
- 13.4. The Company has the right to unilaterally terminate the Contract if:
 - 13.4.1. The Contractor is in delay with performance of any of its obligations set forth in this Agreement (including, without limitation, delay with meeting any of the deadlines set forth in Section 3.1 of this Agreement) by more than 15 (fifteen) calendar days;
 - 13.4.2. The Contractor's Contractual penalty reaches 10 (ten) per cent of the Fee;
 - 13.4.3. 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;
 - 13.4.4. Upon the liquidation of the Contractor.
 - 13.4.5. The Contractor fails to perform key expert replacement according to the procedure prescribed in this Agreement and has not rectified this breach of the Agreement within 10 (ten) business days after

receiving a warning from the Company;

- 13.4.6. If the Contractor fails to comply with the restrictions on professional activities laid down in this Contract.
- 13.5. 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.

14. AMENDING THE AGREEMENT

- 14.1. The Agreement can be amended in compliance with the provisions of Article 61 of the Public Procurement Law including but not limited to the provisions of Point 2 of Section 5 of Article 61.
- 14.2. If after the conclusion of the Agreement 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 Agreement by the Parties, the Fee is amended.
- 14.3. Amendments to the Agreement are proposed by the Party who sees a need for the amendments by submitting a justification for the proposal of amendments.
- 14.4. Amendments and supplements to the Agreement shall be valid only when they have been prepared in writing and signed by the Parties; they shall be enclosed to this Agreement and become an integral part of it.
- 14.5. The Contractor shall be entitled to an extension of the deadline for performing the Services if:
- 14.6. the Company prevents or stops the execution of Services due to circumstances outside of the Contractor's control;
- 14.7. the execution of Services has been hampered by significant amendments to this Agreement or its Annexes, which have not been caused by the Contractor.
- 14.8. When deciding on amending the Agreement, compliance with Public Procurement Law of the Republic of Latvia, Procurement and requirements under its Regulation must be ensured.

15. GOVERNING LAW; DISPUTE RESOLUTION

- 15.1. The rights of the Parties hereto and the validity, interpretation and implementation of this Agreement 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 Agreement, 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 Agreement.
- 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. If the Contractor does not have legal address or an authorised representative in the Republic of Latvia, the competent court shall be Vidzeme suburb court of Riga (Rīgas pilsētas Vidzemes priekšpilsētas tiesa).

16. MISCELLANEOUS PROVISIONS

- 16.1. This Agreement does not transfer or convey to the Contractor or any third party any right, title or interest in or to any of the Company's property.
- 16.2. This Agreement will inure to the benefit of and shall be binding upon the Parties hereto and their respective successors or assigns, whether resulting from any reorganization, consolidation or merger of either of the Parties or any assignment to a business to which all or substantially all of the assets of either Party are sold.

- 16.3. This Agreement contains the entire agreement and understanding of the Parties with respect to the subject matter hereof, supersedes all prior agreements and understandings with respect thereto and cannot be modified, amended, waived or terminated, in whole or in part, except in writing signed by both Parties.
- 16.4. In the event any provision of this Agreement is found to be invalid, voidable or unenforceable, the Parties agree that unless it materially affects the entire intent and purpose of this Agreement, such invalidity, voidability or unenforceability shall affect neither the validity of this Agreement nor the remaining provisions herein, and the provision in question shall be deemed to be replaced with a valid and enforceable provision most closely reflecting the intent and purpose of the original provision.
- 16.5. Any notices to the Contractor by the Company under any provision of this Agreement shall be sufficiently given. 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 Agreement 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 Agreement):
- RB Rail AS:
Address: K.Valdemāra iela 8-7, Riga, LV-1010, Latvia
Contractor: DB Engineering & Consulting GmbH
Address: EUREF-Campus 14, Torgauer Strasse 12-15, 10829 Berlin, Germany
Branch in Lithuania: J. Basanavicius st. 7, Vilnius, LT-01118, Lithuania
- 16.6. Any such notice shall be deemed to be received:
- 16.6.1. if delivered personally – upon delivery;
- 16.6.2. if delivered by prepaid registered mail – 5 (five) business days after the date of sending.
- 16.7. 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.
- 16.8. Communication between the Parties (e.g. information, requests, submissions, formal notifications, etc.) during the Contract must be carried out in English.
- 16.9. 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.
- 16.10. The relationship between the Company and Contractor is that of independent contractors and nothing in this Agreement shall, and no action taken by the Parties pursuant to this Agreement shall, constitute or be deemed to constitute a partnership, association or joint venture between the Company and Contractor and neither Party is authorised to act as agent for the other.
- 16.11. The Contractor warrants and represents that it is duly qualified and has all requisite skills to perform its duties hereunder. The Contractor covenants, further, that in performing its duties hereunder it will not engage in activity that is in violation of applicable laws of Latvia or would subject the Company to any liability whatsoever.
- 16.12. The Agreement has been executed in two identical original counterparts, of which the Parties shall have received one original counterpart each, both having the same legal effect.

17. PARTY REQUISITES AND SIGNATURE BY AUTHORIZED REPRESENTATIVES OF THE PARTIES
