

**STUDY AGREEMENT
FOR
FEASIBILITY AND TECHNICAL FRAMEWORK STUDY FOR A RAIL BOUND (LIGHT RAIL OR TRAM)
CONNECTION FROM RB ÜLEMISTE PASSENGER TERMINAL TO TEN-T CORE NETWORK TALLINN
PASSENGER PORT (OLD CITY HARBOUR / VANASADAM)**

between

RB RAIL AS

and

Egis Rail S.A.

and

MINISTRY OF ECONOMIC AFFAIRS AND COMMUNICATIONS OF THE REPUBLIC OF ESTONIA

Dated 27 February 2018

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STUDY AGREEMENT

Tallinn ___ February 2018

Agreement registration number

8/2018-5

CEF¹ Contract No 2015-EU-TM-0347-M

B03:B1.2.11

This Study Agreement (hereinafter, the "Agreement"), together with all Annexes thereto, is entered into in Tallinn, on ___ February of the year 2018 (hereinafter, the "Effective Date") by and between:

RB Rail AS, registration number 40103845025, having its registered address at Krišjāņa Valdemāra Street 8-7, Riga, LV-1010 (hereinafter, the "Principal"), represented by **RB Rail AS Estonian Branch**, registration No 14168654, represented by its director Aivar Jaeski,

and

Egis Rail S.A., a company organized and existing under French law, registration Lyon's RCS with number 968502559, having its registered address at 168-170 avenue Thiers, 69455 Lyon cedex 06, FRANCE (hereinafter, the "Contractor"), represented by Olivier BOUVART acting on the basis of Chief Executive Officer,

and

Ministry of Economic Affairs and Communications of the Republic of Estonia, registration number 70003158, having its registered address at Suur-Ameerika 1, Tallinn, 10122, Estonia (hereinafter, the "Beneficiary"), represented by RB Rail AS, registration No 40103845025, having its registered address at K. Valdemāra iela 8-7, Riga, LV 1010, Latvia, on the basis of Clause 3.2.2.(e) and 3.3.1 of the Agreement on the Contracting Scheme for the Rail Baltica, in effect as of 30 September 2016

WHEREAS:

- (A) This Agreement is entered into within the framework of the Global Project which includes all activities undertaken by the respective beneficiaries and implementing bodies of the Republic of Estonia, the Republic of Latvia and the Republic of Lithuania in order to build, render operational and commercialize the Rail Baltic / Rail Baltica railway – a new fast conventional double track electrified railway line with the maximum design speed of 240 km/h and European standard gauge (1435mm) on the route from Tallinn through Pärnu-Riga-Panevezys-Kaunas to Lithuanian-Polish border, with the connection of Kaunas – Vilnius, and related railway infrastructure in accordance with the agreed route, technical parameters and time schedule;
- (B) The Principal is acting as a Central Purchasing Body for the Beneficiary;
- (C) According to Clause 3.2.2. (e) and 3.3.1 of the Agreement on the Contracting Scheme for the Rail Baltica, in effect as of 30 September 2016, by signing the mentioned Agreement the Beneficiary has irrevocably authorised the Principal to conclude contracts insofar as the contract price does not exceed the approved budget for the particular activity;
- (D) By letter, dated 11 October 2016, the Beneficiary has approved the availability of a budget in the amount of 400'000 EUR;
- (E) The Principal has organised procurement procedure "Feasibility and technical framework study for a rail bound (light rail or tram) connection from RB Ülemiste passenger terminal to TEN-T core network Tallinn passenger port (Old city Harbour / Vanasadam)" (identification No RBR 2017/22) (hereinafter, the "Procurement Procedure") whereby the Contractor's tender proposal (hereinafter, the "Contractor's Proposal") was selected as the winning bid;
- (F) This Agreement is co-financed from the Connecting Europe Facility (CEF), Action No. 2015-EU-TM-0347-M.

¹ Grant Agreement under the Connecting Europe Facility (CEF) -Transport Sector Agreement No 2015-EU-TM-0347-M

SECTION I. DEFINITIONS AND INTERPRETATION

- 1.1. *Definitions.* In this Agreement, unless the context requires otherwise, all defined terms shall have the meanings ascribed to such terms in accordance with Annex A (*Definitions and Common Terms*).
- 1.2. *Interpretation.*
- (a) The headings contained in this Agreement shall not be used in its interpretation.
 - (b) References to the singular shall include references in the plural and vice versa, words denoting a gender shall include any other gender where the context requires, and words denoting natural persons shall include any other persons.
 - (c) References to a treaty, directive, regulation, law or legislative provision shall be construed, at any particular time, as including a reference to any modification, extension or re-enactment of the respective treaty, directive, regulation, law or legislative provision at any time then in force and to all subordinate legislation enacted from time to time.
 - (d) In the event there arises a conflict between provisions of the Agreement, the last provision to have been written chronologically shall take precedence.
 - (e) Any reference in this Agreement to a person acting under the direction of another person shall not include any action that is taken in contravention of any Applicable Law or Standards, unless the relevant person can demonstrate that an explicit instruction or direction was given to take the relevant action.
 - (f) Unless expressly stated to the contrary, any reference in this Agreement to the right of consent, approval or agreement shall be construed such that the relevant consent, approval or agreement shall not be unreasonably delayed or withheld. The Parties agree and acknowledge as follows:
 - (i) neither Party shall not be required to seek or apply for any consent, approval or agreement by any Person which would place the respective Party in breach of the Applicable Law or any Good Industry Practice; and
 - (ii) nothing in this Agreement shall require the Principal to give or procure the giving of any consent or approval which would be contrary to the protection, safety and efficient operation of the Railway and the Project.
 - (g) A reference to "writing" shall include an e-mail transmission and any means of reproducing words in a tangible and permanently visible form.
 - (h) The words "include" and "including" are to be construed without limitation.
 - (i) Unless indicated otherwise, all references to "days" shall mean calendar days.
 - (j) The words in this Agreement shall bear their natural meaning.
- 1.3. *Order of Precedence.* In the event of any discrepancy or inconsistency between the documents forming part of this Agreement, the following order of precedence shall apply:
- (a) this Agreement document;
 - (b) Explanations (clarifications) of the procurement documentation;
 - (c) Technical specifications (Scope of Service);
 - (d) Clarifications of the Tender of the Contractor;
 - (e) Tender of the Contractor;
 - (f) Procurement documents with the annexes;
 - (g) all other Annexes of the Agreement.

SECTION II. GENERAL TERMS AND CONDITIONS

- 2.1. *Engagement to Carry Out Study.* The Principal hereby engages the Contractor to provide and perform the Study for the purposes of the Project, as further described and according to the specifications

contained Annex B (*Technical Specification*) to this Agreement, and the Contractor hereby accepts such engagement. The Study shall result in the provision to the Principal of the Deliverables identified in accordance with Annex C (*Schedule of Study*) to this Agreement.

- 2.2. *Co-Operation of the Parties.* The Parties shall cooperate with one another to fulfil their respective obligations under this Agreement. Both Parties shall endeavour to maintain good working relationships among all key personnel engaged toward provision of the Study.
- 2.3. *Licensing Requirements.* By signing this Agreement, the declaration is made by the Contractor that the Contractor is professionally qualified, registered, and licensed to practice in the Republic of France.
- 2.4. *General Obligations of Contractor.* The Contractor shall be responsible for the professional quality, technical accuracy, and coordination of all concepts, programming, reports, designs, drawings, specifications, and other services furnished under this Agreement. The Contractor shall have an obligation, without additional compensation of any kind, to correct or revise any errors, deficiencies, or omissions in concepts, programming, reports, designs, drawings, sketches, specifications, estimates, and other services rendered hereunder and forming part of the Study.
- 2.5. *Acceptance Not a Waiver.* The Principal's review, approval, acceptance, or payment for the Works forming part of the Study shall not be interpreted or construed to operate as a waiver of any right or cause for action arising out of the Contractor's performance of any Works under this Agreement. The Contractor shall remain liable to the Principal as allowed under this Agreement and under Applicable Law for any and all costs and/or Damages caused by the Contractor's negligent performance of any of the Works furnished under this Agreement.

SECTION III. RESPONSIBILITIES OF PRINCIPAL

- 3.1. *Supply of Information.* Unless otherwise provided under this Agreement, the Principal shall, in a timely manner, provide to the Contractor any information regarding requirements and parameters of the Project, as may reasonably be requested by the Contractor for the purposes of the Study. The Principal shall furnish to the Contractor a preliminary Project program setting forth the Principal's objectives, schedule, constraints and criteria, including necessities and relationships, special equipment, systems and site requirements.
- 3.2. *Review of Documentation.* The Principal and Beneficiary shall examine Documentation as may be submitted by the Contractor for review by the Principal toward partial completion of the Study and, upon request of the Contractor, shall render decisions and opinions pertaining thereto.
- 3.3. *Decisions.* On all matters properly referred to it in writing by the Contractor the Principal and Beneficiary shall give its decision in writing so as not to delay the Study and within a reasonable time.
- 3.4. *Accounting and Auditing Services.* The Principal shall furnish accounting and auditing services as may be necessary for the Study as the Principal or Beneficiary may require to ascertain how and/or for what purposes the Contractor has used the funds paid under the terms of this Agreement.
- 3.5. *Action Upon Becoming Aware of Defects.* In the event the Principal observes or otherwise becomes aware of any error, fault, omission, or defect in the Study or non-conformance of any action forming part of the Study with the Documentation, the Principal shall give prompt notice thereof to the Contractor.

SECTION IV. RESPONSIBILITIES OF CONTRACTOR

- 4.1. *Standard of Performance.* The Contractor's services shall be performed as expeditiously as is consistent with professional skill and care, orderly progress of the Study, and in accordance with the Schedule of Study set forth in accordance with Annex C (*Schedule of Study*).
- 4.2. *Accuracy Standard.* Precision of the Deliverables shall be based on the Positional Accuracy Concept. The Contractor shall recommend positional accuracy limits and error of closure limits for the areas, terrains and properties being studied or surveyed as part of the Study.
- 4.3. *Obligation to Act in Accordance with Principal's Comments.* In performing the Study, the Contractor shall have due regard to any comments made by the Principal in connection with any review of the Documentation, and shall provide reasons to the Principal where it does not take into account any such comments.
- 4.4. *Duty of Care and Exercise of Authority.* The Contractor shall:

- (a) in performing its obligations under this Agreement, exercise reasonable professional skill, diligence and care as may be expected of a properly qualified and competent person carrying out services of a similar size, nature, type and complexity;
 - (b) ensure that its personnel are properly qualified and competent in accordance with the relevant Standards;
 - (c) ensure that all maps, drawings, sketches, plans, specifications, estimates, surveys and other documents required to be prepared or submitted by the Contractor under this Agreement conform to Good Industry Practice generally acceptable at the time of submission of such maps, drawings, sketches, plans, specifications, estimates, studies and documents;
 - (d) at all times during the term of the Study, ascertain and comply with all Applicable Laws and Good Industry Practice of the Republic of Estonia;
 - (e) comply, where applicable, with any reasonable requirements of the Principal not otherwise provided for in this Agreement; and
 - (f) ensure that all designs are performed, and that the design process is documented, in accordance with Good Industry Practice, and using standard industry quality control methods.
- 4.5. *Maintenance of Records.* During the term of the Study and until 1 April 2027 for any reason whatsoever, the Contractor shall keep and maintain clear, adequate and accurate records and Documentation evidencing, to the reasonable satisfaction of the Principal, that the Study has been and is being carried out in accordance with the Standards.
- 4.6. *Access to Documentation.* At all times during the term of the Study, the Principal and Beneficiary shall have access to all Documentation. This access shall be continuing and survive the termination of this Agreement for either cause or convenience. The Documentation shall be kept in a generally recognized format for a period of ten (10) years from the date of termination of this Agreement or the Final Acceptance Date, as applicable. All records forming part of the Documentation shall be available to the Principal and/or Beneficiary auditor, or expert appointed by the Principal and/or Beneficiary during the period of time specified in accordance with this Clause 4.6.
- 4.7. *Right to Sub-Contract.* In carrying out the Study, the Contractor may only rely on the services of those Approved Sub-Contractors listed in Annex E (*List of Approved Sub-Contractors*), as such list may, from time to time, be modified or supplemented in agreement with the Principal and in accordance with the terms and subject to the criteria contained in the applicable public procurement laws of the Republic of Latvia. Annex E shall specify the name, contact details and legal representative(s) of each Approved Sub-Contractor as of the Effective Date. The Contractor shall have an obligation to notify the Principal in writing of any changes to Sub-Contractor data specified in Annex E occurring during the term of this Agreement and of the required information for any new sub-contractors which it may subsequently engage toward provision of the Study.

Pursuant to the Public Procurement Law of the Republic of Latvia applicable at the date of entry into effect of this Agreement, the Service Provider shall obtain prior written consent of the Principal for the replacement of a Sub-Contractor:

- (a) whose capacities the Service Provider has relied on during the selection or evaluation stages of the Procurement Procedure; or
- (b) who carries out at least 10% (ten per cent) of the total value (Contract Price) of the Services.

Review and evaluation of the replacement Sub-contractors shall be carried out, and the consent or refusal to give consent shall be rendered by the Principal in accordance with the applicable Law of the Republic of Latvia in the area of public procurement.

The Service Provider shall replace the Sub-contractor which, during the effectiveness of this Agreement, meets any of the compulsory grounds for exclusion of tenderers (or sub-contractors) that were verified during the Procurement Procedure.

- 4.8. *Responsibility for Performance by Sub-Contractors.* The Contractor shall retain the complete responsibility for the proper performance of all of its obligations under this Agreement, and any act, failure to act, breach or negligence on the part of any of its Approved Sub-Contractors shall, for the purposes of this Agreement, be deemed to be the act, failure to act, breach or negligence of the Contractor.

- 4.9. *No Conflicting Activity.* Except with the Principal's knowledge and express written permission, the Contractor shall not engage in any activity, or accept any employment, other agreement, interest, or contribution that would reasonably appear to compromise the Contractor's professional judgment and performance with respect to the Study and/or the Project. In performing the Study, the Contractor shall take all necessary measures to prevent any situation where the impartial and objective implementation of the Study is compromised for reasons involving economic interest, political or national affinity, family or emotional ties or any other shared interest.
- 4.10. *Attendance of Meetings.* To the extent necessary to ensure smooth and efficient provision of the Study, the Contractor shall, in accordance with Annex B Technical Specification or at the Principal's request, hold and/or attend meetings with any Persons.
- 4.11. *Compliance with Laws.* The Contractor shall review the Applicable Laws applicable to the Contractor's services. In carrying out any activities forming part of the Study, the Contractor shall, at all times, ensure compliance with requirements imposed by supra-national and/or governmental authorities having jurisdiction over the Project.
- 4.12. *Information Furnished by Principal.* The Contractor shall be entitled to rely on the accuracy and completeness of services and information furnished by the Principal. The Contractor shall provide prompt written notice to the Principal if the Contractor becomes aware of any errors, omissions, or inconsistencies in such services or information.
- 4.13. *Certain Negative Covenants.* In performing the Study, the Contractor undertakes not to procure goods or services of any kind from any Person meeting any of the following criteria:
- (a) the Person who is a member of the Management Board or Supervisory Board of an Approved Sub-Contractor or procurator of an Approved Sub-Contractor, or is authorized to represent or act on behalf of an Approved Sub-Contractor with respect to any activity related to any subsidiary company of such Approved Sub-Contractor, and such Person has been accused of commitment of any of the following criminal offences pursuant to an order issued by a public prosecutor or was found to be guilty of commitment of any of the following criminal offences in accordance with a court judgment that has entered into legal force, is non-disputable and non-appealable:
 - (i) accepting a bribe, giving of a bribe, misappropriation of a bribe, intermediation toward giving or taking of a bribe, acceptance of a prohibited benefit or commercial bribing;
 - (ii) fraud, misappropriation of funds or money laundering;
 - (iii) tax evasion or evasion of payments equivalent to tax;
 - (iv) terrorism, financing of terrorism, instigation of acts of terrorism, terrorist threats or recruitment and training of a person with the aim of committing acts of terrorism;
 - (b) the Person has, by decision of a competent authority or judgment of a court which has entered into legal force and is non-disputable and non-appealable, been found guilty of violation of labour law in any of the following manners:
 - (i) employment of one or more citizens or nationals of countries who are not citizens or nationals of a Member State of the European Union and are residing in the territory of a Member State of the European Union unlawfully;
 - (ii) employment of one or more persons without having entered into written employment agreement with such persons, or without having submitted an employee declaration with respect to such persons within a period of time stipulated in accordance with applicable laws and regulations applicable to persons that enter into salaried employment;
 - (c) the Person who, by decision of a competent authority or in accordance with judgment of a competent court which has entered into legal force, is non-disputable and non-appealable, has been held guilty of violation of applicable rules of competition law manifested as a vertical agreement aimed at restricting the ability of one or more purchasers to determine the resale price, or a horizontal cartel agreement, with the exception of instances where the relevant authority, upon having established the fact of violation of applicable rules of competition law, has discharged the candidate or participant in a tender offer from imposition of a fine or has reduced the amount of fine as a part of co-operation leniency programme;

- (d) the Person who has insolvency proceedings initiated against it (except in the circumstances where a bailout or a similar set of measures are applied within the insolvency proceedings and are aimed at preventing the bankruptcy and restoring the debtor back to solvency, in which case the Contractor shall evaluate the possibility of participation by such Person in performing the Study), economic activity of the Person has been suspended or discontinued, bankruptcy proceedings have been initiated against the Person or the Person is subject to a liquidation;
- (e) the Person has unpaid tax indebtedness in the country where the procurement is organised or in the country where the Person is registered or permanently residing as a tax payer, including the indebtedness with respect to State social insurance contributions, in the total amount exceeding EUR 150 in each individual country; in such case, the Contractor can, within its sole discretion, prompt the Approved Sub-Contractor to pay or discharge all outstanding tax indebtedness within ten (10) Working Days and, upon such payment or discharge, allow the Person to continue performance of the Study; and
- (f) any of the above-mentioned criteria shall apply to all members of a group of persons if the Person is a group of persons.

4.15. *Visibility Requirements.* At all times during performance of the Study, the Contractor undertakes to comply with each of the following requirements:

- (a) any report, brochure, document or information related to the Study conducted by the Contractor hereunder or any other Person, or which the Contractor makes publicly available shall include each of the following:
 - (i) a funding statement which indicates that the Study is financed from CEF funds substantially in the following form: "Rail Baltic/Rail Baltica is co-financed by the European Union's Connecting Europe Facility";
 - (ii) with respect to printed materials, a disclaimer releasing the European Union from liability with respect to any contents of any distributed materials substantially in the form as follows: "The sole responsibility of this publication lies with the author. The European Union is not responsible for any use that may be made of the information contained therein". The disclaimer in all official languages of the European Union can be viewed on the website <https://ec.europa.eu/inea/connecting-europe-facility/cef-energy/beneficiaries-info-point/publicity-guidelines-logos>; and
 - (iii) the flag of the Council of Europe and the European Union.
- (b) the requirements set forth in Clauses 4.15(a)(i) and 4.15(a)(iii) of this Agreement can be complied with by means of utilizing the following logo:



Co-financed by the European Union
 Connecting Europe Facility

in the event the Contractor decides to utilize the above logo, the Contractor shall ensure that the individual elements forming part of the logo are not separated (the logo shall be utilized as a single unit) and sufficient free space is ensured around the logo; and (c) in order to comply with the latest applicable visibility requirements established by the European Union, the Contractor shall regularly monitor changes to visibility requirements; as of the Effective Date, the visibility requirements are available for review on the webpage <https://ec.europa.eu/inea/connecting-europe-facility/cef-energy/beneficiaries-info-point/publicity-guidelines-logos>.

SECTION V. REPRESENTATIONS AND WARRANTIES

5.1. *Certain Representations and Warranties by Parties.* Each Party represents and warrants to the other Parties, as of the Effective Date, as follows:

- (a) it has entered into this Agreement with the aim of attaining all of the objectives and performing in all material respects all of the obligations and commitments herein set forth;

- (b) it has entered into this Agreement without having any intention or goal whatsoever to violate the Applicable Law, its own Statutes, other constitutional documents or agreements of any kind to which it is a party;
 - (c) it is not bankrupt and is not the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, it is not in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under the laws of France; and
 - (d) it has entered into this Agreement of its own volition and in good faith.
- 5.2. *Certain Representations and Warranties by Contractor.* The Contractor represents and warrants to the Principal, as of the Effective Date, as follows:
- (a) it has all requisite qualification, skills and competence to perform the Study on the terms and conditions of this Agreement which are no less favourable than the terms and conditions of service identified by the Contractor in any document submitted by the Contractor to the Principal as part of the Procurement Procedure and on the terms of the Contractor's Proposal;
 - (b) it holds all requisite licenses, permits, approvals and consents necessary to enable performance by the Contractor of the Study according to the specifications contained in Annex B (*Technical Specification*);
 - (c) it has all requisite ability to ensure the highest quality of the Study;
 - (d) it will assign competent and duly qualified personnel to carry out the Works set out in this Agreement according to the highest professional standard and Good Industry Practice;
 - (e) it is not deemed to be a person associated with the Principal for the purposes of Applicable Law;
 - (g) it is compliant with all of the requirements of the Contractor's Declaration contained in Annex I (*Declaration of Contractor*) and will continue to be compliant with all such requirements during the term of this Agreement.

SECTION VI. FEE AND PAYMENT

- 6.1. *Fee.* In consideration of provision of the Study, the Beneficiary undertakes to pay the Contractor a consideration in the total amount set forth in accordance with Annex D (*Fee and Payment Schedule*) (hereinafter, the "Fee") which shall be split into separate instalments and be payable by the Principal to the Contractor according to the Schedule set forth in Annex D (*Fee and Payment Schedule*). It is acknowledged and agreed by the Parties that the Fee shall include all Costs and expenses incurred by the Contractor and Approved Sub-Contractors toward performing the Study. The Fee specified in accordance with this Clause 6.1 excludes value added tax that will be charged at the rate applicable in accordance with Applicable Law at the time of invoicing.
- 6.2. *Invoicing.* According to Annex D (Fee and Payment Schedule) and following each Completion Date and/or Final Acceptance Date, the Contractor shall deliver to the Principal an invoice specifying the amount of Fee payable and the period of time with respect to which the Fee is payable. In the event the Principal objects to payment of any amount claimed by the Contractor in the invoice, notice to this effect shall be given by the Principal to the Contractor not later than five (5) Working Days before the due date for payment under this Clause 6.2. The notice of objection shall state the amount to be withheld, the grounds for withholding the payment and the basis on which that amount is calculated. Unless such notice of objection is made by the Principal, the amount to be paid is that stated in the invoice which shall become due and payable in accordance with this Clause 6.2. For the avoidance of any doubt, the Principal shall not be required to pay any amount under this Agreement with respect to any part of the Study that has not been accepted by the Principal in accordance with Clauses 7.5, 7.6 or 7.7 of this Agreement.
- 6.3. *Payment.* Subject to the provisions of Clause 6.2, payment by the Beneficiary to the Contractor shall be without set-off, retention, counterclaim, abatement or other deduction of any kind and shall be due thirty (30) days after the date of issue of the invoice. For the avoidance of any doubt, the Principal or Beneficiary shall not be required to pay any amount with respect to any invoice in the absence of a Completion Certificate duly signed by the Principal or, with respect to the final payment of the Fee to be effected

under this Agreement, the Final Acceptance Certificate duly signed by the Principal and the Contractor Parties.

- 6.4. *Costs and Commissions.* Each Party shall bear its own costs, fees, commissions and expenses incurred in connection with the transfer of any funds under this Agreement to the other Parties.
- 6.5. *Compliance with Tax Obligations in France.* It is acknowledged and agreed by the Parties that the Fee shall include all taxes and duties payable by the Contractor in the consequence of provision of the Study. The Contractor shall, at the sole cost and expense of the Contractor, comply with the obligation to pay all taxes and duties relevant to provision of the Study in France and in accordance with Applicable Law of France. In addition, the Contractor shall assume all risks associated with the payment or obligation to pay such taxes and duties, if any. The Contractor assumes all risks associated with the possible increase in the amount of the Fee arising as a result of the obligation of having to pay any such taxes or duties.
- 6.6. *Invoice.* The Contractor's invoices shall contain the following Beneficiary's and Contractor's details and details about the Contract:

Beneficiary Ministry of Economic Affairs and Communications of the Republic of Estonia
Registration No. 70003158
VAT payer's No. EE100113619
Address Suur-Ameerika 1, Tallinn, 10122, Estonia
Name of Bank AS SEB Pank
Bank Code EEUH22X
Bank Account No EE221010220027690221

Contractor Egis Rail S.A.
Registration No 968 502 559
VAT payer's No FR 50968502559
Address 168-170 avenue Thiers, 69455 Lyon cedex 06, FRANCE
Name of Bank NATIXIS
Bank Code NATXFRPPXXX
Bank Account No FR76 3000 7530 2904 2312 9500 061
Subject: For provided services according to the Agreement on Feasibility and technical framework study for a rail bound (light rail or tram) connection from RB Ülemiste passenger terminal to TEN-T core network Tallinn passenger port (Old city Harbour / Vanasadam) _____ (CEF Contract No INEA/CEF/TRAN/M2014/1045990 Activity No B03)

The Contractor shall send the invoice to the Principal electronically to the following e-mail address: invoices@railbaltica.org. The Principal shall review the invoice to verify whether it contains all necessary requisites.

SECTION VII. COMMENCEMENT OF STUDY, REMEDYING OF DEFECTS AND ACCEPTANCE

- 7.1. *Study Commencement.* The Contractor shall not commence provision of the Study until Study Start Date, as identified in accordance with Annex C (*Schedule of Study*) and shall ensure that the Deliverables are furnished to the Principal on or before each relevant Study Milestone. The Contractor shall perform the Study with due diligence having due regard to any applicable Study Milestones and any other key dates for performance of the Study set out in the Agreement and the applicable Annexes, as may be amended from time to time with the consent of the Principal or in accordance with this Agreement.
- 7.2. *Impediments and Delays.* If the Study, or any part thereof, is impeded or delayed by the Principal or any third party engaged by the Principal so as to increase the duration of the Study:
- (a) the Contractor shall inform the Principal of the circumstances and probable effects of such impediment or delay upon the agreed Schedule of Study specified in accordance with Annex C (*Schedule of Study*); and
 - (b) the duration of the Study shall be increased and any Study Milestones affected by the impediment or delay shall be extended accordingly.

- 7.3. *Defects and Defects Date.* Until the Defects Date specified in accordance with Annex C (Schedule of Study) the Principal shall notify the Contractor of any Defects of any kind as soon as Defects are identified by the Principal and the Contractor shall have an obligation to notify the Principal of any Defects of any kind as soon as Defects are identified by the Contractor. Upon discovery of any Defects, or upon receipt by the Contractor of a notification of Defects from the Principal, the Contractor shall have seven (7) calendar days to remedy the Defects, irrespective of the nature of such Defects (hereinafter, the "Cure Period"). In the event of inability or failure by the Contractor to remedy the Defects within the Cure Period, the Principal shall be entitled, in the sole and exclusive discretion of the Principal, to do any of the following:
- (a) allow the Contractor an additional time period for remedying the Defects, such time period to be determined in the sole discretion of the Principal;
 - (b) remedy the Defects, irrespective of the extent or nature of the Defects, at own cost of the Principal (including by means of relying on the services of a third Person) and demand reimbursement by the Contractor of Costs incurred by the Principal as a result of having to pay other Persons toward carrying out any work or action;
 - (c) terminate the Agreement according to Section IX; or
 - (d) remedy the Defects, irrespective of the extent or nature of the Defects, in accordance with Clause 7.3(b) and terminate the Agreement pursuant to Section IX.

For the avoidance of any doubt, the application of the Cure Period under this Clause 7.3 shall be without prejudice to and shall not relieve the Contractor from the obligation to pay any contractual penalty in accordance with the provisions of Clause 10.2 or to pay Damages in accordance with the provisions of Clause 10.3 of this Agreement

- 7.4. *Completion of Study and Completion Certificate.* Meeting of a Study Milestone or supply of a Deliverable occurs whenever the Contractor has completed all of the Works which the Contractor has undertaken to perform according to the Annex B (*Technical Specification*) and Annex C (*Schedule of Study*) by the relevant Study Milestone. On meeting a Study Milestone and/or producing a Deliverable (including all Documentation forming part of the Deliverable) constituting all or an identifiable part of the Study, the Contractor shall issue to the Principal a Provisional Completion Certificate substantially in the form of Annex F (*Form of Provisional Completion Certificate*) (hereinafter, the "Provisional Completion Certificate"). The Provisional Completion Certificate shall include the Deliverable and adequate supporting documentation relevant to the Study Milestone attained and/or Deliverable completed.
- 7.5. *Objection Notice and Provisional Acceptance Certificate.* In the event the Principal objects to the issuance of a Provisional Completion Certificate, the Principal shall give notice to the Contractor setting out in reasonable detail any Defect or reason for the objection (hereinafter, the "Objection Notice") within reasonable time following receipt of the Provisional Completion Certificate. In the event no reasons for objection to the Provisional Completion Certificate exist, the Principal shall issue, within reasonable time following receipt of the Provisional Completion Certificate, a Certificate of Provisional Acceptance in the form of Annex G (*Form of Provisional Acceptance Certificate*) (hereinafter, the "Provisional Acceptance Certificate"). Subject to Clause 2.5 of this Agreement, the date of the Provisional Acceptance Certificate shall constitute "Completion Date" with respect to the relevant Study Milestone and/or Deliverable. The Principal shall not unreasonably withhold or delay issuance of a Provisional Acceptance Certificate. The Provisional Acceptance Certificate may have annexed to it a list of any outstanding Defects or deficiencies to be corrected by the Contractor.
- 7.6. *Completion of Study Following Receipt of Objection Notice.* In the event of receipt by the Contractor of an Objection Notice in accordance with Clause 7.5, the Contractor shall:
- (a) take due account of all Defects, irrespective of their extent or nature, and other matters raised in the Objection Notice;
 - (b) as soon as reasonably practicable but no later as mentioned in the Objection Notice, correct such Defects and deficiencies, irrespective of their extent or nature, and complete the Works indicated in the Objection Notice so as to comply in all material respects with the requirements of this Agreement; and
 - (c) issue to the Principal a second Provisional Completion Certificate substantially in the form of Annex F (*Form of Provisional Completion Certificate*).

The second Provisional Completion Certificate issued in accordance with Clause 7.6(c) shall include the Deliverable and adequate supporting documentation relevant to the Study Milestone attained and/or Deliverable completed. In the event no reasons for objection to the second Provisional Completion Certificate exist, the Principal shall, within reasonable time following receipt of the second Provisional Completion Certificate, issue a Certificate of Provisional Acceptance in the form of Annex G (*Form of Provisional Acceptance Certificate*) and, subject to the provisions of Clauses 2.5 and 9.1(b) of this Agreement, the date of the Provisional Acceptance Certificate shall constitute "Completion Date" with respect to the relevant Study Milestone and/or Deliverable. For the avoidance of any doubt, the giving by the Principal of any Objection Notice under Clause 7.5 or second Objection Notice under this Clause 7.6 shall be without prejudice to and shall not relieve the Contractor from the obligation to pay any contractual penalty in accordance with the provisions of Clause 10.2 or to pay Damages in accordance with the provisions Clause 10.3 of this Agreement.

- 7.7. *Final Acceptance.* Final acceptance of the Study shall occur upon remedying of all Defects notified by the Principal to the Contractor in accordance with Clause 7.3, irrespective of the extent or nature of such Defects. Final acceptance shall be evidenced by means of the Principal issuing and both Parties attaching their signatures to the Final Acceptance Certificate substantially in the form of Annex H (*Form of Final Acceptance Certificate*) (hereinafter, the "Final Acceptance Certificate"). In the event the Principal objects to the issuance of the Final Acceptance Certificate, no later than on the Defects Date, the Principal shall give notice to the Contractor setting out in reasonable detail all Defects which remain un-remedied, or reason(s) for refusal to issue the Final Acceptance Certificate. The date of the Final Acceptance Certificate shall constitute the "Final Acceptance Date" with respect to the Study. The Principal shall not unreasonably withhold or delay issuance of a Final Acceptance Certificate.
- 7.8. *The Beneficiary Acceptance.* Before signing the Provisional Acceptance Certificate and/or the second Provisional Acceptance Certificate and/or Final Acceptance Certificate the Principal shall send the Provisional Completion Certificate together with the relevant Deliverable to the Beneficiary in order to obtain from the Beneficiary an opinion on the quality of the respective Deliverable. The Beneficiary provides its opinion by sending it to the Principal within fourteen (14) days from the day of receipt of the Provisional Completion Certificate. In case an opinion is not received, after lapse of the fourteen (14) days period the Principal shall have the right to assume that the Beneficiary is satisfied with the quality of the particular Deliverable. To the extent possible the Principal shall treat favourably the opinion of the Beneficiary, however the Principal shall not be prevented to accept the relevant Deliverable if in the best professional opinion of the Principal the Deliverable has the required quality. In such case the Principal shall not send the Provisional Completion Certificate to the Beneficiary repeatedly.
- 7.9. *Later discovered errors.* If faults or errors are discovered in parts of the Works already accepted by earlier Provisional Acceptance Certificate these must be corrected and the amendments must be submitted with the next Provisional Completion Certificate.

SECTION VIII. INTELLECTUAL PROPERTY RIGHTS

- 8.1. *Proprietary Rights.* All Documentation forming part of the Deliverables developed under this Agreement is and shall become the property of the Beneficiary regardless of whether the Study or Deliverable is produced or finally accepted. It is acknowledged and agreed by the Parties that the Beneficiary shall be permitted to reproduce the drawings, sketches, schemes and distribute the prints in connection with the use or disposition of the Documentation without any approval of the Contractor and without incurring obligation to pay any royalties or additional compensation whatsoever to the Contractor.
- 8.2. *Intellectual Property in Documentation.* The Contractor represents and warrants that it owns all Intellectual Property in all Documentation deliverable by or on behalf of the Contractor under this Agreement and that, to the extent any Intellectual Property in any Documentation is not owned by the Contractor, it has obtained all requisite consents from owner(s) of all Intellectual Property in the Documentation to fulfil all of the obligations undertaken by the Contractor under this Agreement and has fully discharged all obligations with respect to payment of any royalties or fees.
- 8.3. *Transfer of Ownership to Beneficiary.* The Beneficiary shall acquire legal title to and ownership in the Intellectual Property in all Documentation deliverable to the Beneficiary under this Agreement as of the moment of delivery by the Contractor to the Principal of the Provisional Completion Certificate, together with the Deliverable and Documentation forming part of the Deliverable, in accordance with Clause 7.4 of this Agreement; provided, however, that the Beneficiary has paid the Fee or other consideration

payable under the terms of this Agreement with respect to the relevant part of the Study or Deliverable. For the avoidance of any doubt, such title and ownership shall confer upon the Principal, without limitation, each of the following:

- (a) the right to reproduce the Documentation, or any part thereof, and distribute copies of the Documentation or any part thereof;
- (b) the right to modify, amend and supplement the Documentation, or any part thereof;
- (c) the right to licence the Documentation, or any part thereof, for use by others; and
- (d) the right to transfer ownership in the Documentation, or any part thereof, to others.

8.4. *Grant of Limited License to Contractor.* Upon acceptance by the Principal of any Deliverable and Documentation forming part of any Deliverable in accordance with Clause 8.5, the Principal shall be deemed to have granted the Contractor an irrevocable and exclusive licence to reproduce, modify and distribute copies of any Documentation forming part of any Deliverable for the purposes of the Study and the Project, subject to the following restrictions:

- (a) the license shall apply during the term of this Agreement only;
- (b) the permitted use shall only cover the right to reproduce, modify and distribute the Documentation, or any part thereof, for the purposes of performing, implementing or modifying the Study; and
- (c) the Documentation, or any part thereof, shall not, without the prior consent by the Principal, be distributed or communicated to any third party for purposes other than those permitted in accordance with this Clause 8.4.

The license in accordance with this Clause 8.4 shall be deemed to have been granted to the Contractor as of the Completion Date.

8.5. *No Additional Royalty.* It is acknowledged and agreed by the Parties that consideration for the transfer of ownership in the Intellectual Property shall be forming part of the Fee and no additional royalty, fee or other consideration of any kind shall be payable by the Principal or the Beneficiary to the Contractor or to any third party in consideration of the transfer of ownership in the Intellectual Property in any Documentation.

8.6. *No Infringement.* The Contractor represents and warrants to the Principal that no Documentation deliverable to the Principal under the terms of this Agreement will infringe any existing Intellectual Property of any third party. In the event any of the representations or warranties contained in this Section VIII prove to be untrue or inaccurate, the Contractor undertakes, at its own cost and expense, to defend and settle any claim raised by any third party alleging infringement of Intellectual Property in the Documentation. The foregoing undertaking by the Contractor shall apply subject to the following conditions:

- (a) the Principal shall notify the Contractor, without undue delay, of any third party claim alleging infringement of any Intellectual Property in any Documentation;
- (b) the Beneficiary refrains from admitting liability under any third party claim or acting on the account of such claim without prior approval by the Contractor; and
- (c) the exclusive control over any legal proceeding or settlement related any third party claim shall be exercised by the Contractor; provided, however, that the Beneficiary shall render the Contractor all reasonable assistance toward such proceeding or settlement, at the cost and expense of the Contractor.

8.7. *Infringement Proceedings.* In the event the Principal is a party to legal proceedings involving allegations of infringement of any Intellectual Property in the Documentation of any third party, the Contractor shall keep the Principal fully informed of all aspects relevant to the legal proceedings and the Principal and/or the Beneficiary shall have the right, at its own cost, to be represented in the legal proceedings by separate counsel. In the event the Contractor fails to act against claims alleging infringement of any Intellectual Property in the Documentation of any third party within reasonable time but, in any event, within twenty (20) days of having been notified of such claims, the Principal and/or the Beneficiary shall have the right to assume legal defence against claims alleging infringement of Intellectual Property and shall be

entitled to reimbursement by the Contractor of reasonable costs and expenses incurred toward such defence.

- 8.8. *Continued Use.* In the event a court of competent jurisdiction resolves in a binding judgment that the Documentation, or any part thereof, infringe Intellectual Property of any third party, the Contractor shall, at its own cost and expense, procure for the Beneficiary the right of continued use of the Documentation, or part thereof infringing Intellectual Property of a third party.
- 8.9. *License in Intellectual Property of Contractor.* The Contractor hereby grants the Beneficiary an irrevocable and non-exclusive license to use, reproduce, modify and/or enhance any Intellectual Property of the Contractor, provided and to the extent Intellectual Property of the Contractor is used by the Beneficiary and/or the Principal for the purposes of the Railway and/or the Project. It is agreed and acknowledged by the Parties that the license fee for the grant of license in accordance with this Clause 8.9 forms part of the Fee and such license shall continue to be valid irrespective of expiration of this Agreement following completion of the Study or termination of this Agreement for any reason.
- 8.10. *Obligation to Procure Intellectual Property Rights.* Where the Contractor is not the legal owner of any relevant Intellectual Property of the Contractor, the Contractor shall use reasonable endeavours to procure for the Beneficiary the rights specified in accordance with Clause 8.9.
- 8.11. *Obligation to Indemnify with Respect to Uses Other Than for the Purpose.* The Principal shall defend and indemnify the Contractor from and against any and all Damages arising from the use by the Beneficiary of any Intellectual Property of the Contractor other than for the purposes of the Railway and/or the Project.
- 8.12. *Indemnification by the Contractor.* The Contractor shall defend and indemnify the Beneficiary from and against any and all Damages arising from the use by the Beneficiary of any Intellectual Property of the Contractor, to the extent use by the Beneficiary is within the scope of the license granted to the Beneficiary in accordance with Clause 8.9.
- 8.13. *Certain Rights of Contractor.* The Contractor only with written permit from the Principal shall have the right to include photographic or artistic representations of the design of the Project among the Contractor's promotional and professional materials. However, the Contractor's materials shall not include the Principal's confidential or proprietary information regardless of whether or not the Principal has previously advised the Contractor in writing of the specific information considered by the Principal to be confidential or proprietary.

SECTION IX. TERMINATION; SUSPENSION

- 9.1. *Termination for Material Breach or Bankruptcy.* Subject to the provisions of Clause 9.2, either Party shall be entitled to terminate this Agreement upon giving a written notice of termination to the other Parties in the event of material breach by the other Parties of any of its obligations under this Agreement. The written notice of termination shall contain an itemized description of the breach. For the purposes of this Clause 9.1 an event of material breach shall include any of the following:
- (a) commitment by a Party of any persistent or material breach of this Agreement (which shall include failure to pay an amount of at least EUR 5,000 due to the other Party or perform any part of the Study valued at least EUR 5,000);
 - (b) failure by the Contractor to duly address any of the matters raised in the second Objection Notice given by the Principal in accordance with Clause 7.5;
 - (c) failure by any Deliverable to conform to any of the material requirements to such Deliverable contained in Annex C (*Schedule of Study*), provided that such failure is not capable of being remedied during the Cure Period;
 - (d) failure by the Beneficiary to make any payment to the Contractor in accordance with this Agreement within at least fourteen (14) days from the date of payment falling due;
 - (e) any of the representations or warranties given by either Party under Clause 5.1 or any of the representations or warranties given by the Contractor under Clause 5.2 proving to be untrue; or
 - (f) breach by the Contractor of the undertaking contained in Clause 8.10.

- 9.2. *Corrective Period.* In the event of breach by either Party of its obligations under this Agreement, the non-breaching Parties shall allow the breaching Party fourteen (14) days for corrective action or submission of a corrective action plan (hereinafter, the "Corrective Period"). The Corrective Period shall be counted from the date of receipt by the breaching Party of a written notice of breach. Should no satisfactory corrective action be taken or acceptable corrective action plan provided by the breaching Party, the non-breaching Party shall have the right to terminate the Agreement. It is acknowledged and agreed by the Parties that the provisions of this Clause 9.2 shall not apply with respect to any of the events enumerated in accordance with Clause 9.4. In addition and for the avoidance of any doubt, the application of the Corrective Period under this Clause 9.2 shall be without prejudice to and shall not relieve either Party from the obligation to pay any contractual penalty in accordance with the provisions of Clause 10.2 or to pay Damages incurred by the other Party in accordance with the provisions of Clause 10.3.
- 9.3. *Right to Terminate Immediately.* Notwithstanding anything to the contrary contained in this Agreement, a Party may terminate this Agreement immediately upon giving the other Parties a written notice of termination explaining, in reasonable detail, the reason for termination upon occurrence of any of the following:
- (a) breach by the other Party of Clause 16.3;
 - (b) an event of Force Majeure has been continuing during more than sixty (60) days;
 - (c) the other Party had passed a resolution for winding-up (other than in order to amalgamate or reconstruct);
 - (d) breach by the Contractor any of the confidentiality undertakings contained in Section XII;
 - (e) the other Party is unable to pay its debts and has presented a petition for voluntary bankruptcy;
 - (f) the other Party had a bankruptcy order issued against it;
 - (g) the other Party has a provisional receiver or administrative receiver appointed over the whole or a substantial part of its undertaking or assets;
 - (h) liquidation, insolvency or legal protection proceedings have been initiated with respect to the other Party or the other Party is declared insolvent;
 - (i) the making by the other Party of a proposal for a voluntary arrangement with creditors; or
 - (j) the occurrence of any event analogous to the events enumerated under Clauses 9.3 (g) – (i) under the law of any jurisdiction to which the other Party's assets and undertaking are subject.
- 9.4. *Right to Advance to Completion.* In the event the Contractor fails to fulfil any of its obligations, or fails to cure any breach in accordance with Clause 9.2, and the Agreement is terminated by the Principal, the Principal may advance the Study to completion by employing the services of other professional service supplier(s) or by other means available to the Principal. The Contractor shall be liable to the Principal for any and all additional costs incurred due to failure by the Contractor to perform. The rights and remedies available to the Principal set forth in accordance with this Clause 9.4 shall be in addition to any and all other rights and remedies available under Applicable Law.
- 9.5. *Consequences of Termination.* Upon expiration or termination of this Agreement, the obligations of the Parties set forth in this Agreement shall cease, except with respect to the following:
- (a) any obligations arising as a result of any antecedent breach of this Agreement or any accrued rights; and
 - (b) the provisions stipulated in accordance with Clauses 4.6, 4.7, 7.3, 8.2, 8.3, 8.5, 8.6, 8.12, 10.2, 10.3 and Sections XII, XIII and XV which shall survive the termination or expiry of this Agreement and continue in full force and effect along with any other Clauses of or Annexes hereof which are necessary to give effect to the clauses specifically identified in this Clause 9.5(b).
- 9.6. *Partial Acceptance.* Notwithstanding anything in this Agreement to the contrary including, without limitation, the provisions of Clauses 8.6, 8.7 and 8.8 and in the event of termination of this Agreement, the Principal shall have the right, in the sole discretion of the Principal, to partially accept any Works, part of Works or part of the Study delivered to the Principal under this Agreement (hereinafter, the "Right of Partial Acceptance"). The Principal shall notify the Contractor of its intention to exercise the Right of Partial Acceptance in the termination notice given in accordance with Clause 9.1 or Clause 9.3 of this Agreement, specifying, in reasonable detail, the Works, part of Works or part of the Study which the

Principal would like to partially accept. In the event of receipt of such notice, the Contractor shall reasonably cooperate with the Principal in order to ascertain transfer to the Beneficiary of ownership in the result(s) of such Works, part of Works or part of the Study and determination of the amount of consideration payable by the Beneficiary.

- 9.7. *Beneficiary's Obligation to Pay.* Subject to the provisions of Clause 9.6 and except in the event of termination by the Principal occurring as a result of violation by the Contractor of Clause 16.3, in the event this Agreement is terminated for any reason prior to completion of the Study, the Beneficiary shall have an obligation to pay the Contractor the following:
- (a) the Costs incurred by the Contractor up to the date of termination; and
 - (b) except where termination is due to negligence of the Contractor, breach by the Contractor, insolvency of the Contractor or a Force Majeure Event under Section XII:
 - (i) an amount equal to the costs reasonably and properly incurred by the Contractor as a result of or in connection with such termination; and
 - (ii) such additional amount as is required to put the Contractor in the same after tax position (taking into account the amount of any relief, allowance, deduction, set-off or credit relating to tax available to the Contractor in respect of the payment received) as it would have been in if the payment had not been a taxable receipt in the hands of the Contractor.
- 9.8. *No Obligation to Pay Costs Incurred Prior to Acceptance.* Notwithstanding anything set forth in this Agreement to the contrary including, without limitation, under Clause 9.7, the Beneficiary and/or the Principal shall have no obligation to pay any of the Costs incurred by the Contractor with respect to any Works or the Study (or part of any Works or the Study) not deemed as having been accepted by the Principal in accordance with Clauses 8.6, 8.7 or 8.8.
- 9.9. *No Prejudice to Other Rights.* The right to terminate this Agreement shall be without prejudice to any other right of either Party which has accrued prior to or as a result of such termination or to any remedy available to either Party under the terms of this Agreement or in accordance with Applicable Law.

SECTION X. LIABILITY

- 10.1. *Liability of the Parties.* The Contractor shall be liable to compensate Damages incurred by the Principal and/or Beneficiary arising out of or in connection with this Agreement and pay contractual penalty set forth in accordance with Clause 10.2 if a breach of any of the obligations of the Contractor under this Agreement is established against the Contractor. The Beneficiary shall be liable to pay the contractual penalty set forth in accordance with Clause 10.2 if a breach of payment obligations of the Beneficiary under this Agreement is established against the Beneficiary.
- 10.2. *Contractual Penalty.* In the event of failure by the Contractor to meet any Study Milestone and/or supply any Deliverable, the Contractor shall be liable to pay to the Principal a penalty of zero point zero one percent (0.01%) of the amount of the Fee payable under this Agreement with respect to the relevant Study period for each day of delay with meeting any of the Study Milestones and/or supplying any of the Deliverables set forth in accordance with Annex C (*Schedule of Study*); provided, however, that the total amount of penalty payable by the Contractor under this Clause 10.2 for the relevant Works, as specified according to Annex C (*Schedule of Study*) shall not exceed ten percent (10%) of the total amount of the Fee payable in consideration of such Works. In the event of failure by the Beneficiary to pay any amount in accordance with Clause 6.3, the Beneficiary shall be liable to pay the Contractor a penalty of zero point zero one percent (0.01%) of the amount of the amount invoiced for each day of delay with meeting the payment obligation; provided, however, that the total amount of penalty payable by the Beneficiary under this Clause 10.2 shall not exceed ten percent (10%) of the total amount remaining unpaid under the relevant invoice.
- 10.3. *Compensation for Damages.* Notwithstanding of and without prejudice to any contractual penalty payable in accordance with Clause 10.2 and subject to the provisions of Clause 10.5, in the event it is established that either Party is liable to the other Parties with respect to any breach of its respective obligations under this Agreement, the liable Party shall compensate the other Parties for any Damages incurred as a result of such breach, subject to the following terms:

- (a) the amount of compensation shall be limited to the amount of reasonably foreseeable Damages suffered as a result of the breach(es), but not otherwise; and
 - (b) if either Party is considered to be liable jointly with third parties to the other, the proportion of compensation payable by the liable Party shall be limited to that proportion of liability which is attributable to the breach by the liable Party.
- 10.4. *Attribution of Damages.* Any Damages suffered by either Party shall, for the purposes of Clause 10.3, be reduced to the extent that the Damages are caused by or contributed to by the other Parties' own negligence or breach of its obligations under this Agreement.
- 10.5. *Limitation of Liability.* Notwithstanding anything to the contrary set forth in this Agreement, in no circumstances shall the Contractor or the Principal be liable to one another for any loss of production, loss of profit, loss of revenue, loss of contract, liability incurred under other agreements (with the exception of costs paid by the Beneficiary or the Principal to contractors appointed by the Principal in relation to the Study or the Project) or any indirect or consequential loss arising out of or in connection with this Agreement. The Contractor's total liability for the Works carried out under this Agreement shall in no circumstances exceed 760 000 EUR (seven hundred sixty thousands *euros*).

SECTION XI. FORCE MAJEURE

- 11.1. *Effects of Force Majeure.* Subject to the requirements set forth in accordance with Clauses 11.2 and 11.3, each Party shall be relieved from liability for non-performance of its obligations under this Agreement (other than any obligation to pay) to the extent that the Party is not able to perform such obligations due to a Force Majeure Event.
- 11.2. *Action on Becoming Aware of Force Majeure.* Each Party shall at all times, following the occurrence of a Force Majeure Event:
- (a) take reasonable steps to prevent and mitigate the consequences of such an event upon the performance of its obligations under this Agreement, resume performance of its obligations affected by the Force Majeure Event as soon as practicable and use reasonable endeavours in accordance with Good Industry Practice to remedy its failure to perform; and
 - (b) not be relieved from liability under this Agreement to the extent that it is not able to perform, or has not in fact performed, its obligations under this Agreement due to any failure to comply with its obligations under Clause 11.2(a).
- 11.3. *Notification Requirements.* Upon the occurrence of a Force Majeure Event, the affected Party shall notify the other Parties as soon as reasonably practicable and in any event within ten (10) Working Days of it becoming aware of the relevant Force Majeure Event. Such notification shall give sufficient details to identify the particular event claimed to be a Force Majeure Event and shall contain detailed information relating to the failure to perform (or delay in performing), including the date of occurrence of the Force Majeure Event, the effect of the Force Majeure Event on the ability of the affected Party to perform, the action being taken in accordance with Clause 11.2(a) and an estimate of the period of time required to overcome the Force Majeure Event. The affected Party shall provide the other Parties with any further information it receives or becomes aware of which relates to the Force Majeure Event and provide an update on the estimate of the period of time required to overcome its effects.
- 11.4. *Notification of Resumed Performance.* The affected Party shall notify the other Parties as soon as practicable once the performance of its affected obligations can be resumed (performance to continue on the terms existing immediately prior to the occurrence of the Force Majeure Event).
- 11.5. *Mitigation of Effects of Force Majeure.* As soon as practicable after the notification specified pursuant to Clause 11.3, the Parties shall use reasonable endeavours to agree appropriate terms or modifications to the Study to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement.

SECTION XII. CONFIDENTIALITY

- 12.1 *Confidential Information.* "Confidential Information" means, in relation to the Principal, all information of a confidential nature relating to the Principal and its Affiliates which is supplied by the Principal (whether before or after the date of this Agreement) to the Contractor, either in writing, orally or in any

other form and includes all analyses, compilations, notes, studies, memoranda and other documents which contain or otherwise reflect or are derived from such information, but excludes information which:

- (a) the Principal confirms in writing is not required to be treated as confidential; or
- (b) the Contractor can show that the Confidential Information was in its possession or known to it (by being in its use or being recorded in its files or computers or other recording media) prior to receipt from the Principal and was not previously acquired by the Contractor from the Principal under an obligation of confidence; or
- (c) was developed by or for the Contractor at any time independently of this Agreement.

12.2 *Undertakings with Respect to Confidential Information.* Subject to Clauses 12.1 and 12.3, the Contractor shall:

- (a) at all times keep confidential all Confidential Information received by it and shall not disclose such Confidential Information to any other Person; and
- (b) procure that its Affiliates and its and their respective officers, employees and agents shall keep confidential and not disclose to any Person any Confidential Information except with the prior written consent of the Party to which such Confidential Information relates.

12.3 *Permitted Disclosure.* Notwithstanding anything to the contrary set forth in accordance with Clauses 12.1 and 12.2, the Contractor shall, without the prior written consent of the Principal, be entitled to disclose Confidential Information:

- (a) that is reasonably required by the Contractor in the performance of its obligations pursuant to this Agreement, including the disclosure of any Confidential Information to any employee, contractor, agent, officer, sub-contractor (of any tier) or adviser to the extent necessary to enable the Contractor to perform its obligations under this Agreement;
- (b) to enable a determination to be made pursuant to Section XV;
- (c) to its lenders or their professional advisers, any rating agencies, or its insurance advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;
- (d) to the extent required by Applicable Law or pursuant to an order of any court of competent jurisdiction, any parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of law; or
- (e) to the extent Confidential Information has become available to the public other than as a result of any breach of an obligation of confidence; provided that any such disclosure is made in good faith.

12.4 *Obligation of Confidentiality Pertinent to Recipients of Confidential Information.* Whenever disclosure is permitted to be made pursuant to Clauses 12.3(a) or (c), the Contractor shall require that the recipient of Confidential Information be subject to the same obligation of confidentiality as that contained in this Agreement.

12.5 *Certain Obligations on Termination of Agreement.* If this Agreement is terminated for whatsoever reason, the Contractor shall:

- (a) return to the Principal all of the Confidential Information then within the possession or control of the Contractor; or
- (b) destroy such Confidential Information using a secure and confidential method of destruction.

12.6 *No Press Release by Contractor.* Save as required by Applicable Law, the Contractor shall not issue any press release in relation to the matters contemplated under this Agreement without the prior written consent of the Principal (such consent not to be unreasonably withheld or delayed) as to both the content and the timing of the issue of the press release.

12.7 *Right to Publish.* For the avoidance of any doubt, the Principal and/or the Beneficiary shall have the right to publish any of the documents, information or data provided by the Contractor to the Principal during provision of the Study.

12.8 *Remedies.* The Parties acknowledge and agree that a breach of the provisions of this Section XIII may cause the owner of Confidential Information to suffer irreparable Damages that could not be adequately remedied by an action at law. Accordingly, the Contractor agrees that the owner of Confidential

Information that is disclosed in breach of Clauses 12.2, 12.4 or 12.6 may be entitled to specific performance of those provisions to enjoin a breach or attempted breach thereof and to any other remedy, including, inter alia, damages and injunctive relief, awarded by a court of competent jurisdiction.

SECTION XIII. RIGHT TO AUDIT

- 13.1. *Right to Audit.* Notwithstanding anything to the contrary set forth in this Agreement including, the Principal itself, the Beneficiary itself, a reputable outside independent body or expert engaged and authorized by the Principal and/or the Beneficiary shall be entitled to inspect and/or audit the Contractor to ensure compliance with the terms of this Agreement, including inspecting and/or auditing:
- (a) the performance of any aspect of the Study; and/or
 - (b) any documentation, including all payrolls, accounts of the Contractor and/or other records used in or related to the performance of the Study.
- 13.2. *Obligation to Assist.* The Contractor shall provide all reasonable assistance to the Principal or the Beneficiary, or the independent body authorized by the Principal and/or the Beneficiary in carrying out any inspection or audit pursuant to this Section XIII. The Principal and the Beneficiary shall be responsible for its own costs, or the costs incurred by the outside independent body designated by the Principal or the Beneficiary, incurred toward carrying out such inspection or audit, unless, in the case of any such audit, that audit reveals that the Contractor is not compliant with the terms of this Agreement, in which case the Contractor shall reimburse the Principal and/or the Beneficiary for all of its additional reasonable costs incurred, provided such non-compliance is material.
- 13.3. *Survival of Termination.* The rights and obligations of the Principal and the Beneficiary set forth in accordance with this Section XIII shall survive expiration or termination of this Agreement for any reason and shall continue to apply during ten (10) years following expiration or termination of this Agreement for any reason whatsoever.

SECTION XIV. ON-THE-SPOT VISITS

- 14.1. *Right to perform On-the-Spot visits.* By submitting a written notice five (5) Working Days in advance, but at the same time reserving the right of an unannounced on-the-spot visit without an advance notice, the Principal and/or the Beneficiary may carry out on-the-spot visits to the sites and premises where the activities implemented within the Agreement are or were carried out.
- 14.2. *Personnel involved.* On-the-spot visits may be carried out either directly by authorised staff or representatives of the Principal or the Beneficiary, or by any other outside body or third party authorised to do so on behalf of the Principal and/or the Beneficiary. Information provided and collected in the framework of on-the-spot visits shall be treated on confidential basis. The Principal and/or the Beneficiary shall ensure that any authorised outside body or third party shall be bound by the same confidentiality obligations.
- 14.3. *Access to the information.* Contractor shall provide to the performer of the on-the-spot visit or any other authorised outside body or third party access to all the information and documents, including information and documents in electronic format, which is requested by the authorised staff of the performer of the on-the-spot visit or any other authorised outside body or third party for the performance of an on-the-spot visit and which relates to the implementation of the Agreement, as well as shall allow the authorised staff of the performer of the on-the-spot visit or any other authorised outside body or third party the copying of the information and documents, with due respect to the confidentiality obligation.
- 14.4. *OLAF checks and inspections.* By virtue of Council Regulation (Euratom, EC) No 2185/961 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities and Regulation (EU) No 883/20132 of the European Parliament and the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF), OLAF may also carry out on-the-spot checks and inspections in accordance with the procedures laid down by European Union law for the protection of the financial interests of the European Union against fraud and other irregularities. Where appropriate, OLAF findings may lead to criminal prosecution under national law.

SECTION XV. GOVERNING LAW AND RESOLUTION OF DISPUTES

- 15.1. *Governing Law.* This Agreement shall be governed by and construed in accordance with law of the Republic of Estonia.
- 15.2. *Resolution by Amicable Means.* The Parties shall first attempt to settle any dispute, controversy or claim arising out of or relating to this Agreement through good faith debate, discussion, and negotiating prior to submitting them to mediation, arbitration, or other legal proceeding.
- 15.3. *Venue for Resolution of Disputes.* Should the Parties fail to agree by means of amicable negotiations within the time period of two (2) months from the date of serving of the respective written complaint to the other Parties, the Parties shall submit all their disputes arising out of or in connection with this Agreement to the exclusive jurisdiction of the courts of the Republic of Latvia. The Parties hereby represent and warrant that the English language is understandable for all Parties in accordance with Article 8(1)(a) of the Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000.

SECTION XVI. MISCELLANEOUS PROVISIONS

- 16.1. *Capacity.* Each Party warrants to the other Parties that it has full power to enter into and perform this Agreement, and the person signing this Agreement on its behalf has been duly authorized and empowered to enter into such agreement. Each Party further acknowledges that it has read this Agreement, understands it and agrees to be bound by it.
- 16.2. *Conflict of Interest, Corruption and Fraud.* Notwithstanding any penalties that may be enforced against the Contractor under Applicable Law, or the laws of other jurisdiction(s), the Contractor shall be deemed to have committed a breach under this Agreement and the Principal shall be entitled to terminate this Agreement immediately and without any regard to the provisions of Clause 9.2, if it is shown that the Contractor is guilty of:
- (a) offering, giving, receiving or soliciting anything of value with a view to influencing the behaviour or action of anyone, whether a public official or otherwise, directly or indirectly in the selection process or in the conduct of the Agreement; or
 - (b) misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Principal, including the use of collusive practices intended to stifle or reduce the benefits of free and open competition.
- 16.3. *Notices.* Notices under the Agreement shall be in writing and will take effect from receipt by the Party to which the notice is addressed at the address of the Party set forth in the Preamble to this Agreement. Delivery can be by hand or facsimile message against a written confirmation of receipt or by registered letter.
- 16.4. *Relationship of the Parties.* The relationship between the Contractor to the Principal and the Beneficiary under this Agreement is that of independent contractors. The Contractor (or the Contractor's sub-contractors) is not an employee of the Principal and the Beneficiary, is not carrying out the regular business of the Principal and the Beneficiary, and is not subject to the same employment regulations as are applicable to employees of the Principal and the Beneficiary. Each of the Parties shall be solely and entirely responsible for their own acts and the acts of their employees. No benefits, special considerations, or employer/employee-type provisions are provided by the Principal and the Beneficiary to the Contractor, the Contractor's employees, or the Contractor's consultants, or the employees of such consultants.
- 16.5. *Severability.* If any provision of this Agreement shall be held to be illegal, invalid, void or unenforceable under Applicable Laws, the legality, validity and enforceability of the remainder of this Agreement shall not be affected, and the legality, validity and enforceability of the whole of this Agreement shall not be affected.
- 16.6. *Successors and Assigns.* The Principal, the Beneficiary and the Contractor each bind themselves, their successors, legal representatives, and assigns to the other party to this Agreement and to the partners, successors, legal representatives and assigns of such other party in respect to all covenants of this

Agreement. Neither Party shall assign or transfer its respective interest in the Agreement without written consent of the other Parties.

- 16.7. *Amendments and Variations.* No amendment to or variation of this Agreement shall be effective unless made in writing and signed by duly authorized representatives of all Parties. The Agreement can be amended in compliance with the provisions of Article 61 of the Public Procurement Law of the Republic of Latvia including but not limited to the provisions of point 5 of Section 2 of Article 61.
- 16.8. *Entire Agreement.* This Agreement, and the Annexes hereto, constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes and extinguishes all and any prior drafts, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter.
- 16.9. *Execution.* This Agreement may be executed in three counterparts to be held by each Party which counterparts, taken together, shall constitute one and the same instrument.

Signed by:

ANNEX A: DEFINITIONS AND COMMON TERMS

The following capitalized terms shall be ascribed the following meaning for the purposes of the Agreement:

- (a) "Agreement", this Agreement, together with all Annexes thereto.
- (b) "Applicable Law" or "Law", any legislative act, regulation, decree, order, ordinance, statute, treaty, directive, judgment, or other legislative measure. For the avoidance of any doubt, the term "Applicable Law" shall include any legislative act or directive relevant to public procurement.
- (c) "Approved Sub-Contractor", any person or organization listed pursuant to Annex E (*List of Approved Sub-Contractors*), which is in a contractual relationship with the Contractor to provide a part of the Study.
- (d) "Confidential Information", as defined in accordance with Clause 12.1 of the Agreement.
- (e) "Contractor", the company [-], as further specified in the Preamble of this Agreement, which is employed by the Principal as an independent professional contractor to perform the Study, and legal successors to the Principal and permitted assignees of the Principal.
- (f) "Costs", direct costs reasonably incurred in relation to the Project. Specifically, the Cost shall include any of the following:
 - (i) costs of all materials and supplies forming part of the Study, including transportation and storage expenses (discounts for cash or prompt payments will not reduce these costs);
 - (ii) salaries for personnel in the direct employ of the Contractor in the performance of the Study or relating to the Study;
 - (iii) salaries of the Contractor's employees for the time that they spend in connection with the Study;
 - (iv) payments to sub-contractors for work relating to the Study;
 - (v) costs of all employee benefits and taxes for items such as social security and other benefits for the labor and employees;
 - (vi) costs, including transportation and maintenance, of equipment and hand tools not owned by workmen employed by the Contractor which are employed or consumed toward the Study;
 - (vii) payments for rental charges for machinery, equipment, facilities and tools used in connection with the Study, and payments for installations, repairs, replacements, dismantling, removal, lubrication, transportation and delivery of those rental items;
 - (viii) other transportation costs incurred in connection with the Study;
 - (ix) that portion attributable to this Agreement of premiums for insurance that is required by this Agreement or by law to be obtained or maintained by the Contractor;
 - (x) sales, use, gross receipts or other taxes related to the Study, imposed by any governmental authority, to the extent that the Contractor is responsible for such taxes;
 - (xi) costs of long-distance telephone calls, telephone service at the site and postage relating to the Study;
 - (xii) costs of any data processing services used in connection with the performance of the work required under this Agreement; and
 - (xiii) losses and expenses, not compensated by insurance, sustained by the Contractor in connection with the work under this Agreement, provided they resulted from causes other than the fault or neglect of the Contractor.
- (g) "Corrective Period", as defined in accordance with Clause 9.2
- (h) "Cure Period", as defined in accordance with Clause 7.3.

- (i) "Damages", any cost, claim, damage, demand, loss, expense or liability incurred by the relevant Party or Person.
- (j) "Defect", is a part of the Study which is not in accordance with the Schedule of Study specified in accordance with Annex B (*Technical Specification*), the Applicable Law or Good Industry Practice.
- (k) "Defects Date", a date specified in accordance with Annex D (Service Schedule and Rates) by which date the Principal and the Service Provider is obliged to notify each Deficiency in the Service.
- (l) "Deliverable", any information, notes, material, sketches, drawings (including drawings in 3D model), records, documents and/or other items which the Contractor is required to deliver to the Principal as part of the Study, as further specified pursuant to Annex C (*Schedule of Study*).
- (m) "Documentation", all records, correspondence, and files of the Contractor, its employees, engineers, and consultants pertaining to the Project.
- (n) "Effective Date", as first above specified in the Preamble to this Agreement.
- (o) "EUR" and "euro", the official currency of the eurozone, officially known as the euro area.
- (p) "Fee", as defined in accordance with Clause 6.1 and Annex D (Fee and Payment Schedule).
- (q) "Final Acceptance Certificate", as described in accordance with Clause 7.7.
- (r) "Final Acceptance Date", as defined in accordance with Clause 7.7.
- (s) "Force Majeure Event", any of the following events:
 - (i) an act of the public enemy or war (declared or undeclared), threat of war, revolution, riot, insurrection, civil commotion, demonstration or sabotage;
 - (ii) an act of vandalism or accidental damage or destruction of machinery, equipment, track or other infrastructure;
 - (iii) a natural disaster or phenomena, including extreme weather or environmental conditions (such as lightning, earthquake, hurricane, storm, fire, flood, drought or accumulation of snow or ice);
 - (iv) nuclear, chemical or biological contamination;
 - (v) pressure waves caused by devices travelling at supersonic speeds;
 - (vi) discovery of fossils, antiquities or unexploded bombs; and/or
 - (vii) strike, lockout or other industrial action other than involving the Contractor or the Principal.
- (t) "Good Industry Practice", in relation to the performance of any activity to which this standard is applied, the exercise of that degree of skill, diligence, prudence and foresight as would reasonably be expected to be exercised by a properly qualified and competent person engaged in carrying out works or services of a similar size, nature, scope, type and complexity, complying with Applicable Law, applicable Standards and published codes of practice.
- (u) "Intellectual Property", all intellectual property rights in any part of the world in respect of any documentation or information provided by the Contractor to the Principal, including any patent, patent application, trade mark, trade mark application, registered design, registered design application, utility model, trade name, discovery, invention, process, formula, specification, copyright (including all neighbouring rights, rights in computer software and database and topography rights), know how or unregistered design right.
- (v) "Intellectual Property of Contractor", all Intellectual Property owned or licensed to the Contractor with a right to sub-license.
- (w) "Objection Notice", as defined in accordance with Clause 7.5.
- (x) "Party" and "Parties", the Principal, the Beneficiary and the Contractor and include their respective successors in title, permitted assigns and permitted transferees.
- (y) "Person" shall include any person, company, body corporate, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) or two or more of the foregoing.

- (z) "Principal", the company RB Rail AS, as further specified in the Preamble of this Agreement, which employs the services of the Contractor, and legal successors to the Contractor and permitted assignees of the Contractor.
- (aa) "Project", development of a 1435 mm standard gauge railway line in the Rail Baltic/Rail Baltica (RB) corridor through Estonia, Latvia and Lithuania aimed at eliminating the technical bottleneck due to the gauge differences (1,520 mm vs. the EU standard of 1,435 mm).
- (bb) "Provisional Completion Acceptance Certificate", as defined in accordance with Clause 7.4.
- (cc) "Principal", the company RB Rail AS, as further specified in the Preamble of this Agreement, which employs the services of the Contractor, and legal successors to the Contractor and permitted assignees of the Contractor.
- (dd) "Provisional Completion Certificate", as defined in accordance with Clause 7.4.
- (ee) "Railway", new fast conventional double track electrified railway line with the maximum design speed of 249 km/h and European standard gauge (1435 mm) on the Route.
- (ff) "Right of Partial Acceptance", as defined in accordance with Clause 9.6.
- (gg) "Standards", CEF Standards and Grant Agreement Standards.
- (hh) "Study Milestone", the date for delivery of one or more Deliverables, as set out in the Technical Specification and Schedule of Study;
- (ii) "Study", conduction of a study in order to investigate (at least 3) options for the passenger connection between Vanasadam and Rail Baltica Railway Station Tallinn Ülemiste from a technical and economic standpoint, implement CBA analysis and propose the optimal solution as a sketch route layout to be provided as an input data for the design preparation.
- (jj) "Study Start Date", as specified in accordance with Annex C (*Schedule of Study*).
- (kk) "Working Day", any day (other than Saturday or Sunday) on which banks in the Republic of Latvia are open for conduct of business.
- (ll) "Works", all incidental works, steps and actions performed by the Contractor for the attainment of the objectives of the Study and/or the Project.

ANNEX B: TECHNICAL SPECIFICATIONS

TECHNICAL SPECIFICATION

Procurement No RBR 2017/22

Feasibility and technical framework study for a rail bound (light rail or tram) connection from
RB Ülemiste passenger terminal to TEN-T core network Tallinn passenger port (Old city
Harbour / Vanasadam)

2017

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1. INTRODUCTION

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

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

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

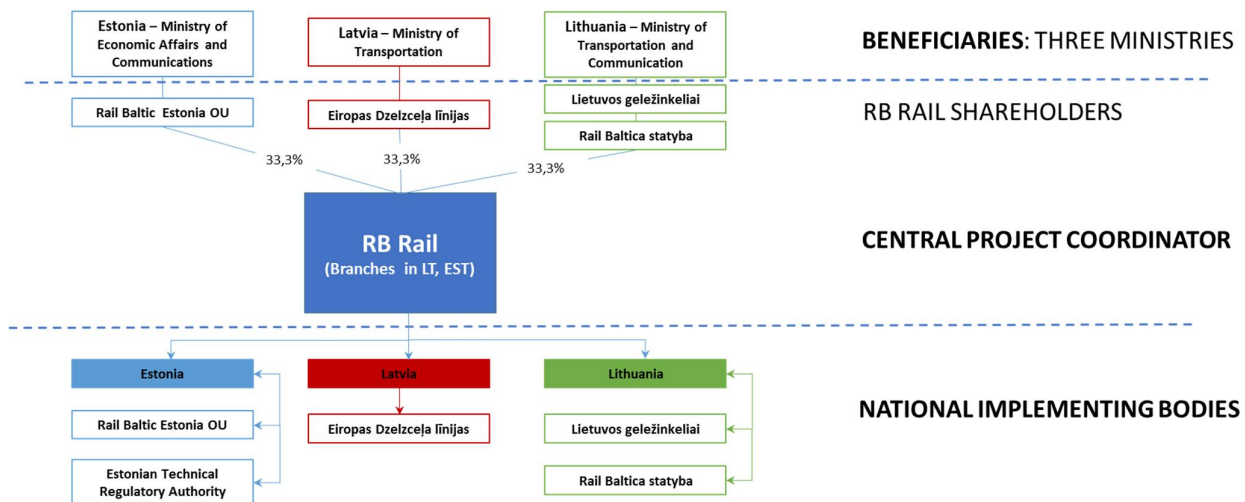
Rail Baltica is already designed to become a part of the EU TEN-T North Sea – Baltic Core Network Corridor, which links Europe's largest ports of Rotterdam, Hamburg and Antwerp – through the Netherlands, Belgium, Germany and Poland – with the three Baltic States, further connecting to Finland via the Gulf of Finland short sea shipping connections with a future fixed link possibility between Tallinn and Helsinki. Further northbound extension of this corridor shall pave the way for future connectivity also with the emerging Arctic corridor, especially in light of the lucrative prospects of the alternative Northern Circle maritime route development between Europe and Asia. Furthermore, the North Sea – Baltic Corridor crosses with the Baltic-Adriatic Corridor in Warsaw, paving the way for new supply chain development between the Baltic and Adriatic seas, connecting the Baltics with the hitherto inadequately accessible Southern European markets. In a similar fashion, Rail Baltica shall strengthen the synergies between North-South and West-East freight flows, creating new trans-shipment and logistics development opportunities along the Europe and Asia overland trade routes. The new Rail Baltica infrastructure would, therefore, not only put the Baltics firmly on the European rail logistics map, but also create massive opportunities for value creation along this infrastructure with such secondary economic benefits as commercial property development, revitalization of dilapidated urban areas, private spin-off investment, new business formation, technology transfer and innovation, tourism development and other catalytic effects. Rail Baltica aims to promote these effects from the early stages of the Global Project, learning from the key global success stories and benchmarks in this regard.

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

- double track, design speed on the main track 240 km/h, design speed on side tracks minimum 100 km/h;

- axle load 22.5 t;
- distance between track centres at least 4.20 m on the main tracks;
- distance between two sided passing loops approximately 50 km and crossovers approximately 25 km but staged according to a train traffic forecast;
- all pedestrian, road and 1520mm rail crossings only as above or below grade crossings (segregated grade crossings), fencing and noise barriers where needed;
- ERTMS Level 2 with possible update to the newest version;
- communications system GSM-R with a view to accommodate the new generation railway communications standard;
- electrification 2x25 kV AC;
- length of freight trains 740m, but for spatial planning and track geometry design a length of 1050m shall be used;
- length of passenger trains 200m, but for spatial planning and track geometry design a length of 400m shall be used;
- height of passenger platforms 550mm;
- maintenance road, where necessary, shall be on one side of the tracks with gravel 3.5m wide

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



RBR together with governments of Estonia, Latvia and Lithuania (represented by the ministries in charge of transport policy) have applied for the CEF co-financing in 2015, 2016 and 2017 (three applications in total). The first two applications were successful and INEA grants are available to support the Global Project expenses with up to 85% of co-financing in amount of 633 mln EUR. A further application is currently under evaluation.

Rail Baltica is a joint project of three EU Member States – Estonia, Latvia and Lithuania – and concerns the building of a fast conventional double-track 1435 mm gauge electrified and ERTMS equipped mixed use railway line on the route from Tallinn through Pärnu (EE), Riga (LV), Panevėžys (LT), Kaunas (LT) to the Lithuania/Poland state border (including a Kaunas – Vilnius spur) with a design speed of 240km/h. In the longer term, the railway line could potentially be extended to include a fixed link between Helsinki and Tallinn, as well as integrate the railway link to Warsaw and beyond.

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

2. CURRENT SITUATION OF PUBLIC TRANSPORT IN TALLINN

The TEN-T Tallinn passenger port (Vanasadam) currently serves as the main connection between Tallinn with Helsinki and Stockholm. About 9.7 million passengers travelled in 2015 between Tallinn bound to Helsinki and Stockholm including 30,000 people commuting weekly between both cities.

As mentioned before, one of the main objectives of the Rail Baltica Project is to ensure inner and outer accessibility, and high quality mobility opportunities to, from, and within the countries, which means qualitative and safe optional mode of transportation for all social groups. Furthermore, passenger flows on Rail Baltica are among others dependent on connecting travellers from Finland and the Baltic States. This is in line with the TEN-T and transport policy which highlights the importance of urban nodes as an integral part of the network, in particular in their role as the origin and destination of the majority of journeys on the trans-European transport network.

This important objective is not being met today on the transport connection between Vanasadam and Rail Baltica Railway Station Tallinn Ülemiste, where passengers find limited possibilities for commuting between one another. Transport modes currently serving the port, comprised mostly of buses and taxis, do not satisfy the growing demand and current connections are dependent on the traffic situation on the port area, where heavy congestion tends to develop, especially during peak hours and passenger ferry docking times.

This growing demand is also reflected at Tallinn Airport which has shown continuous growth in the past years and whose passengers and employees require efficient links to Tallinn and the surrounding hinterland.

The need for better transport connections is further highlighted when Tallinn Central Train Station and Central Bus Station are taken into account. Both of these rely on bus and taxi connections to reach the Vanasadam passenger Port, a tram connection serves to reach the Airport and Rail Baltica Railway Station Tallinn Ülemiste. As mentioned previously these are subject to the same growing congestion problems and unreliability as seen in the current services between Vanasadam and Rail Baltica Railway Station Tallinn Ülemiste.

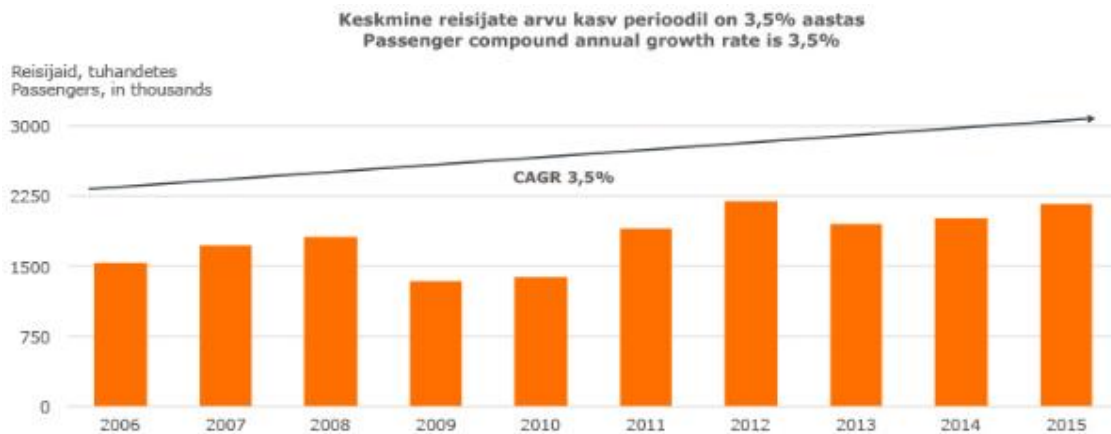


Figure 0-1: Passenger Statistics for Tallinn Airport²

For this reason the travel between the two TEN-T nodes is being hindered and is affecting attractiveness for potential and actual passengers, who prefer to seek other modes of transportation.

² www.tallinn-airport.ee



Figure 0-2: Areas requiring better connectivity

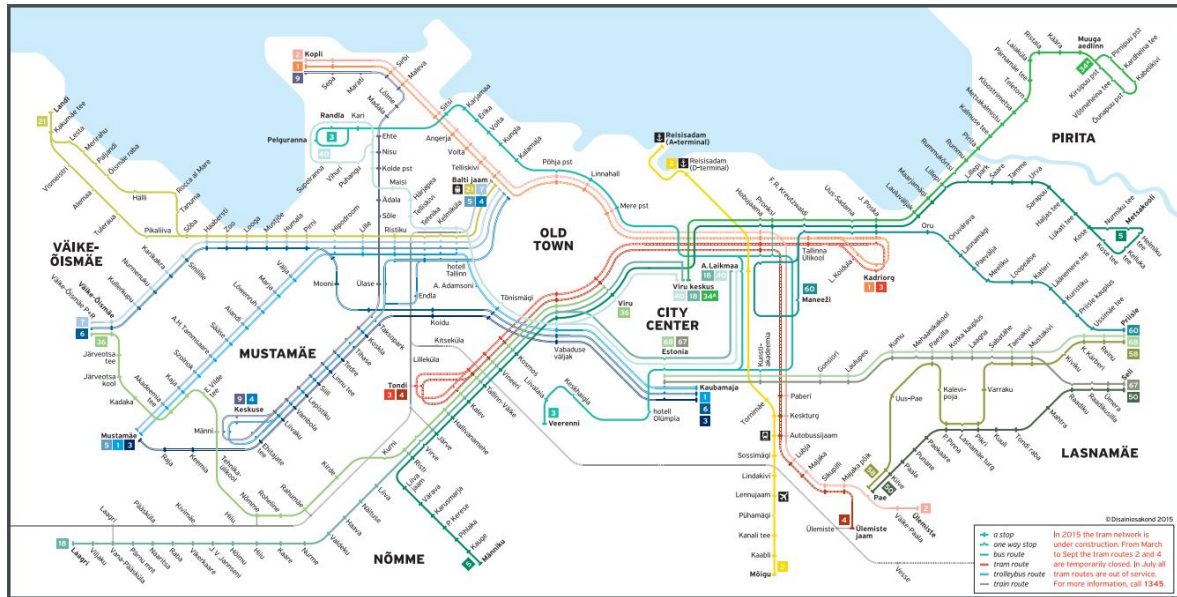


Figure 0-3: Tallinn Public Transport Map³

³ www.visittallinn.ee

2.1. Related documentation⁴

Document	Availability
Analysis on the best tram route to the port (IB Stratum 2015)	http://media.voog.com/0000/0038/5372/files/Tallinna%20sadama%20trammi%20%C3%BChendus%2011%20veebr%202016.pdf
Technical conditions for design of the tram line (Tallinna Linnatranspordi AS)	www.railbaltica.org/tenders (in Section DOWNLOADS of publication of the open competition “Feasibility and technical framework study for a rail bound (light rail or tram) connection from RB Ülemiste passenger terminal to TEN-T core network Tallinn passenger port (Old city Harbour / Vanasadam)” id No RBR 2017/22)
Tallinn main street design (phases I and II)	http://peatanav.ee/ http://voistlus.peatanav.ee/entries/kevad-linnas-2/ https://dl.dropboxusercontent.com/u/32308627/Peat%C3%A4nava%20ideekonkursi%20II%20etapp/AUL.zip
Ülemiste terminal area detailed plan (Hendrikson & Ko; under preparation)	http://railbaltic.info/et/materjalid/detailplaneeringud/category/25-ylemiste-yhisterminali-detailplaneering
Baltic Urban Lab (Skoone Bastion Area)	http://www.balticurbanlab.eu/sites/skoone-bastion-area
Ülemiste ühisterminali rajamise eeliste väljaselgitamine (IB Stratum 2014)	http://www.tallinn.ee/est/ehitus/Linnaruumilise-arengu-ettepanekud http://www.tallinn.ee/est/ehitus/g6844s71329 http://www.tallinn.ee/est/ehitus/LISA-1-Ulemiste-terminal.pdf http://www.tallinn.ee/est/ehitus/LISA-2-umberistumise-vajadus.pdf http://www.tallinn.ee/est/ehitus/g6844s71327
Põhja-Tallinna liikuvusuuring (IB Stratum, 2014) – mobility study for North-Tallinn	http://www.tallinn.ee/est/g6456s86473
Rail Baltica CBA (EY, 2017)	http://www.railbaltica.org/cost-benefit-analysis/

3. STUDY SCOPE

The purpose of this study is to investigate (at least 3) options for the passenger connection between Vanasadam and Rail Baltica Railway Station Tallinn Ülemiste from a technical and economic standpoint, implement CBA analysis and propose the optimal solution as a sketch route layout to be provided as an input data for the design preparation⁵.

The main objective is to ensure an efficient link between both TEN-T nodes, by providing a sustainable, high quality, high capacity and fast connection, in order to integrate urban, suburban and international passenger flows.

⁴ Disclaimer – these documents can be used as background documents; RBR is not responsible for the availability and content listed.

⁵ Design preparation (preliminary design in order to get the building permit) is not part of this study

The study must be implemented in close cooperation with relevant stakeholders (City of Tallinn, Port of Tallinn, possible land owners).

The development of different alternatives with technical, technological and spatial solutions for the connection needed. These alternatives have to include a multicriteria and cost-benefit analysis in order to compare them. The Contractor must also provide a recommendation for the best option. The alternatives should include, but are not limited, to the following:

- Light rail connection between Vanasadam and Rail Baltica Railway Station Tallinn Ülemiste
- Tram connection connecting Vanasadam, Rail Baltica Railway Station Tallinn Ülemiste and Main Railway Station (Balti jaam) with/without a possibility of using Reisijate street for a loop.
- Tram Connection between Vanasadam and Rail Baltica Railway Station Tallinn Ülemiste . For the tram routes the Contractor shall take into account the study on possible tram routes by IB Stratum (2015) and the results of the Tallinn main street design contest (see 2.1 of the current document).

Should the Contractor wish to propose new ideas, these have to be defined in advance with the Contracting authority (RB Rail AS),

Activities of the study are covered in following chapters 3.1, 3.2 and 3.3.

In consultation with the Contracting authority a preferred alternative will be chosen. This decision will be made by means of a Multi-Criteria Decision Analysis that will take into account investment cost, Lifecycle-Costs, accessibility, environmental advantages, and safety etc.

3.1. Development of alternative routes for tramways or light rail

The focus is on the development of at least three alternative solutions or options for the links between Rail Baltica Railway Station Tallinn Ülemiste and Vanasadam.

The alternatives developed have to consider the following important nodes:

- Tallinn airport;
- Ülemiste Railway Station;
- Tallinn main Railway Station;
- International Bus Station;
- Hobujaama Bus Station;
- Port Terminals D and/or A, B.

The most important objective for proposing the routes is to provide a convenient, quick and dependable high-quality connection between Tallinn Old City Harbour/Vanasadam and Rail Baltica Railway Station Tallinn Ülemiste. Thus, among other things, the Contractor has to develop the solutions in consideration of the street space and capacity (potential "bottlenecks" of tramway tracks, including Hobujaama stop), ownership of the plots of land on the route (supposedly, the infringement of private ownership should be as small as possible) and establishment of railway connection by using existing railway corridors. When choosing alternatives, it is crucial to consider investment cost and future operational costs. In view of the aforesaid, the Contractor is required to develop and coordinate with the Contracting authority a methodology that would serve as a basis for providing alternative solutions.

Chosen routes are considered alternative route solutions only if the trajectory of the route differs from other route options to a significant extent. If necessary, the Contractor also has to prepare draft plans for variations of different route solutions (e.g. if the route differs from proposed basic solution only by using shorter distance).

3.2. Draft plans for alternative route solutions

Based on the alternative routes, the Contractor has to deliver draft plans (to an appropriate scale that allows the overall impact to be determined as well as the finer detail to be investigated). Altogether at least two different tram routes and one light-rail route must be drafted, which connect proposed Rail Baltica Railway Station Tallinn Ülemiste in Tallinn and Vanasadam. Alternatives must take into account already established or soon to be established detailed plans, including the detailed plan of Rail Baltica Railway Station Tallinn

Ülemiste. The drafts must be sufficient to identify the feasibility and estimate the costs of each of the alternatives. In order to develop the draft plans, the Contractor has to acquire design criteria from all concerned parties and public utilities (incl. network operators, Tallinna Linnatranspordi AS, and the City of Tallinn).

Alternative draft plans must address technical, design, architectural and building technology needs related to the solutions.

Draft plans must be sufficient to ascertain the feasibility and estimated cost of relevant solution. Based on the aforesaid, in order to find the best route among alternative choices, the draft plans must reflect the following:

- relevant findings of necessary studies (i.a. geodesy, traffic studies, dendrology etc);
- draft plans of roads and street space;
- draft plans of tramway (light rail) infrastructure (including the need for stops and necessary infrastructure therefore, traction substations and relevant power supply etc);
- draft plans of proposed utility networks and structures with list, volume and cost of works;
- draft plans for reconstruction of existing utility networks and structures, with list, volume and cost of works;
- solutions for relocation and protection of network operators' communications provided by corresponding network operators according to design criteria provided for alternative solutions with list, volume and cost of works (to the extent necessary for completion of works in the first stage);
- rainwater solutions with list, volume and cost of works;
- solutions for street lighting;
- reorganisation of affected cityscape, including green areas;
- solutions for placement of traffic control devices (primarily traffic lights solutions and potential changes in traffic management, such as reconstruction of junctions) with list, volume and cost of works;
- plot distribution plans;
- rolling stock and their maintenance (for trams the existing fleet and maintenance facilities should be taken into calculation and determined if additional units should be planned; for a light rail connection new fleet and maintenance facilities determined);
- preliminary construction effort and costing for all proposed alternatives.

The coordination with institutional partners is one of the priorities in presenting the draft plans. Draft plans and drawings shall as minimum consist of following scales:

- Typical cross section: scale 1:200
- Typical sections: scale 1:2000
- Pitch points: scale 1:1000
- Before/After views

For introduction of alternative draft plans, the Contractor has to create 3D renderings for the major points of interest to facilitate the presentation and assessment of the complexity of the solution, and suitability with the surrounding environment on high visual level.

The alternative draft plans shall undergo a public display and hearing process and have to be coordinated with all relevant parties (including the City of Tallinn, utility owners, plot owners etc.). Contracting Authority will organize the public display and hearings and collect opinions of the relevant parties.

In order to accomplish the above mentioned draft plans, the following studies are required to be carried out:

- Geodesy

The Contractor must have enough geodesic information to draw the draft plans. On this matter, existing Geodesy data proven valid may be used.

- Geological studies

Detailed geologic surveys do not need to be carried out for this phase of the project. However, Contractor shall indicate the possible risks related to the geological situation to be considered for later implementation stages. The Contractor can use existing research studies on this topic.

- Traffic studies and cityscape planning

It is responsibility of the Contractor to prepare traffic surveys and coordinate with the responsible actors by preparing a methodology to carry out the traffic studies.

In the process of preparing alternative draft plans, the Contractor has to consider public transport routes, the need and locations of public transport stops and the need to ensure access to the stops. Based on proposed solutions, it may become necessary to change the location of existing public transport stops or propose new ones. Public transport related solutions must be considered in the case of all comparable alternatives.

The Contractor has to prepare alternative draft plans in view of functioning cycle track and footpath connections, incl. planning necessary safe crossings for roads, streets and railway tracks. Optimum solutions for cycle tracks and footpaths, incl. the solutions for roads, streets and railway crossings must be prepared for all comparable alternatives.

Analysis of alternatives should assess potential impact on green areas next to the route and propose solutions for designing acceptable urban space.

The traffic study must address all of the alternatives selected and must include at least the following:

- An overview on the existing infrastructure and additional data collection (incl. surveys)
- Traffic forecasts (including a mobility analysis on origin-destination matrixes). The methodology for preparing the forecast shall be coordinated with the Contracting authority in the course of work
- Analysis on bicycle and pedestrian paths, so that the plans contain safe designs on crossings between streets, pedestrian and bicycle routes and rail infrastructure.
- Specification of oversized cargo routes
- Analysis on the existing public transport, including the analysis on routes, location of public infrastructure and possible changes (on stops or schedules) that assure the access to stations and the fulfilment of the people's necessities.

- Utility Infrastructure

For all of the alternatives, draft plans on reconstruction or changes made to the utility infrastructure have to be delivered. The technical specifications for utility infrastructure must meet the requirements of the institution responsible for it.

Alternatives must also reflect the needs of establishing, liquidating and altering main utility networks so that it would allow estimation of the cost of required works as accurately as possible. It is the duty of the Contractor to collect information from network operators and other concerned persons to provide the Contracting authority with certainty with regard to the suitability of solutions. In this stage, it is not necessary to apply for official approvals with regard to utility networks.

If necessary, the Contractor must take into account additional substations required for traction. If calculations show that further substations are needed then it is necessary to prepare a general scheme for the electrical lines, which will consist of medium-voltage (DC 600V) power cables, the substations supply area of the grid and the interconnection with the surrounding grid and substations. All the necessary calculations or relevant computer simulations are required.

The plans for the utility infrastructure must be drawn up on a scale which allows the following:

- Assess environmental and spatial suitability
- To assess the amount of work needed

- To evaluate and compare the alternative solutions
- Coordination with network owner

3.3. Cost-Benefit Analysis

The Contractor must provide a CBA for alternatives. The Contractor will recommend an alternative based on the budget and the investments estimated for the full range of alternatives. A comparative feasibility based on the CBA has to be presented in accordance with the "Guide to Cost-Benefit Analysis of Investment Project".

3.3.1. General information

The Contractor will provide to the Contracting authority a detailed methodology for carrying out a CBA for the selected option. This methodology will be clarified and approved in advance with the Contracting authority and other involved stakeholders as necessary.

This methodology will include the definition of a baseline scenario, working with general economic development scenarios of the region, passenger traffic forecasts, financial analyses, socio-economic analyses, and risk and sensitivity analyses according to EU CBA guidelines.

3.3.2. Definition of "do-nothing" scenario

The Contractor shall make extensive analysis and quantitative description of "do-nothing" option, against which the upgrade options for this extension shall be evaluated.

This task shall address the characterisation of the (development of) offer of transport services across the different modes: this should include the characteristics of the services provided and their associated qualitative and quantitative performance metrics – passenger counts, travel time, availability, punctuality, comfort, quality of pre-trip, on-trip and post-trip services and assistance, available and utilised transport capacity, state of the infrastructure facilities – along with current and foreseeable tariffs and all relevant elements affecting generalised costs of transport based on network model.

Particular emphasis is to be given in this context to the current and foreseeable state of development of the infrastructure of the relevant modes of transport and, in particular, of the public transport network within Tallinn. The location of the current infrastructure should be shown through maps including the relevant elements required for demand forecasts as well as information regarding the scope and timing of planned/foreseeable major interventions – new builds, upgrades, reconstructions or major maintenance operations.

The description of do-nothing option must include the following (but not be limited to) factors:

- planned investment in the upkeep of the existing public transport network (including trams, busses and trolley busses), rail, and road, infrastructure in the Tallinn and surrounding regions;
- maintenance costs of existing transport modes in the regions served by the public transport network of Tallinn if the passenger traffic uses the existing modes (this assumes no upgrades to existing services);
- Economic costs and benefits of existing transport traffic, including in terms of air and noise pollution, traffic accidents, etc.

All preliminary and draft results will have a format that has been agreed in advance with RB Rail AS.

3.3.3. Working with general economic development scenarios of the region.

The ultimate objective of EU Regional Policy is to promote growth in assisted areas through investment projects. As a result of such assistance higher levels of cohesion between new Member States and the rest of the EU are to be expected. This will necessarily lead to new intra-Community trade flows (and also some new trade flows between the EU and other regions) with a consequent re-orientation of major transportation axes in the region. It is in this context of change that appears important to maximise the opportunities for public transport within Tallinn, revamp its competitive profile, and offer new and improved services to the public.

The term "Region" in the context of this study comprises of the areas served by the existing and proposed areas served by the Tallinn public transport network. Particular attention shall be paid the potential of growth in daily commuter numbers using Tallinn passenger port (Vanasadam).

This task should deal with the prognosis of the macroeconomic evolution in the region and of its impact on the forecast demand for, and supply of, transport services in the context of construction of the Rail Baltica fast conventional connection and the new services and upgrades to Rail Baltica Railway Station Tallinn Ülemiste.

Analyses should be referred to the time horizon equal to 30 years from the assumed end of construction.

In this context, the Contractor shall identify and characterise in a qualitative and quantitative manner the background scenarios that are to be used as the basis for carrying out the CBA.

The scenarios shall include the quantification of the factors influencing demand for, and supply of transportation services. To this end, the Contractor shall ensure the constitution of an appropriate knowledge base of the relevant data on which to base such scenarios. In particular, this task shall be carried out considering the following:

- Main shifts in the economies and in the pattern of economic relations within the catchment of Tallinn's public transport network;
- Scenarios must reflect major alternative options in the EU transport policy.

Scenarios for analysis will be developed for the scenarios chosen in conjunction with RB Rail AS and other relevant stakeholders.

3.3.4. Passenger traffic forecasts

For each scenario developed in the previous section, the Contractor shall prepare passenger traffic forecasts for the project reference period, considering both modal shift and induced demand for the extended services. The passenger traffic forecast shall include the quantification of the factors influencing demand for, and supply of transportation services. To this end, the Contractor shall ensure the constitution of an appropriate knowledge base of the relevant data on which to base such prognoses.

Traffic forecasts for each scenario should be identified through an ad-hoc demand analysis based on the identification of the:

- Connection to the transport networks within the Region should be described in terms of distances, quality, capacity, and speed/flow relationship. Network changes due to the project option should clearly be included.
- Current Demand. Current demand should be identified by considering:
 - a) Origin destination matrices from models allowing for trip generation, distribution, modal splits, and assignment;
 - b) a base-year traffic assigned to the transport network and validated against traffic flows.
- Diverted and Induced Demand. The choice of a specific model to calculate diverted and induced demand should be justified on the basis of any data available concerned with how competing modes may respond to alternative investment options. The relevant model may include changes in trip generation, distribution, mode split, and assignment.
- Forecasted Demand. Demand forecasts over the entire project reference period should be made at least by using
 - a) elasticity estimates to generalised costs and income, and
 - b) forecasts of population and economic growth. Eventual bottlenecks on the Tallinn public transport network and surrounding railway infrastructure should be considered when forecasts are made.

In the demand forecast, the additional transport demand concerning the extended network shall be presented separately in two aspects:

- a) transport demand generated by internal economic ties within the region under observation (definition see above);

- b) transport demand generated by the growth in passenger numbers;

For main market segments sensitivity studies are to be carried out to estimate the elasticity of the demand in regard to transport generalised costs, i.e. those main factors and parameters that ultimately will influence modal shift by customers. In this context, particular attention is to be devoted to:

- Analysis of elasticity of demand for changes in price, time, frequency, and quality of service for local traffic, international traffic, and transit traffic.

Traffic modelling needs to consider:

- The region served by Tallinn's public transport network
- Mega trends, including demographics and macroeconomics
- Current transport routes in the region commercial reasoning behind these
- Alternative transportation sector development trends: road, bus, trolley bus and their competitive position against the extended service
- Light rail/tram transportation industry trends and new technologies
- Induced and modal shift traffic forecasts
- Traffic forecasts need to be justified using the following data:
 - Interviews with passenger operators in Estonia
 - Surveyed data regarding passenger movements
 - Statistical information
 - Information from relevant past case studies of similar infrastructure development regarding uptake of traffic for a new line, and the actual numbers as compared to earlier studies and forecasts

The results shall be presented from network perspective (network transport model).

3.3.5. Identification of options for the extended service

The Contractor shall define and describe the project development options for CBA analysis using the same level of detail as for Section 0 above.

3.3.6. Financial analysis

The financial analysis shall be carried out by the Contractor according to the EU CBA guidelines, in particular:

- The cash flow forecasts need to include costs of infrastructure and approximated rail operator revenues and costs
- Contractor must consider various infrastructure funding principles, incl., various levels of public subsidies, public service obligations etc. (if any subsidies are forecasted)
- Financing gap will be calculated concerning the project development options referred to above.

3.3.7. Socio-economic analysis

The socio-economic analysis shall be carried out by the Contractor according to the EU CBA guidelines.

3.3.8. Risk and sensitivity analysis

The risk and sensitivity analysis shall be carried out by the Contractor according to the EU CBA guidelines.

4. PROJECT MANAGEMENT

4.1. Management structure and cooperation

In this overall context, the Contracting authority, is deemed as the administrative instance and will be responsible for making the principal decisions. The Contracting authority will be responsible for settling the operative and professional issues.

The Contractor will arrange for formal coordination and decision making on project interventions and establish an adequate internal project management structure. Progress meetings with the Contracting authority and stakeholders are held at least once per month. Regular project management meetings shall be scheduled at least 2 times per month. If needed, ad-hoc and weekly meetings can be arranged, which may be initiated both by the Contractor or the Contracting Authority.

In carrying out a task the Contractor shall request, receive, and review claims by all persons, which are affected by the envisaged measures. The Contractor shall coordinate and consult with representatives of the involved municipalities, including expert in charge of the development, implementation and monitoring of spatial development planning documents, and decision-makers.

In cooperation with the Contracting authority, the Contractor, after agreeing the particular work steps, shall regularly inform the society on the progress of the project, or shall submit to the Contracting authority the relevant information to ensure that the wider society remains informed.

Upon a request by and in the term (within two business days) set by the Contracting authority the Contractor shall prepare project updates and presentations within this study (in a language determined by RB Rail AS) demonstrating both main conclusions at that time, and an overview of the project progress.

Upon a request by the Contracting authority the Contractor shall take part and, where necessary, prepare informative materials or work reports in meetings, organised by the Contracting authority or where the Contracting authority shall take part on the subject. .

4.2. Project schedule

The deadline for the performance of the procurement contract shall be up to 31 weeks from its commencement date.

The Contractor shall provide in its work programme enough time for the review of submitted reports and deliverables by representatives of the Contracting authority and other stakeholders, leaving at least 4 weeks for the review and preparation of their statement.

4.3. Project execution site and staff

The primary base for the project will be the office facilities of the Contractor. In order to perform the project tasks visits within the region to make the interviews, site visits, and field research will have to be carried out.

The Contractor shall have specialist knowledge and suitable track record in **project management, economic analysis, civil engineering** (relating to light **rail, road, and buildings**), light rail/tram **operations**, urban design, and urban planning. All categories of experts shall have all documents (licenses, permits, certificates, etc.) evidencing the right and capability to perform the work required for the assigned task. All the experts shall have relevant qualification and experience in their respective field.

The experts who have a crucial role in implementing the contract are referred to as key experts. Up to 4 (four) key experts have been identified for the study preparation. The assigned Project Manager should be an expert with a high-quality and well known track record in one of the key components addressed by the Project and should also possess demonstrated project management skills.

It is for the Contractor to decide on the most appropriate mix of key experts and other staff. The Contractor shall select and hire other experts as required according to the profiles identified in the section on Organisation & Methodology of his Technical Proposal and according to the requirements of these Terms of Reference. The proposed profiles of experts must indicate their category, i.e. as being long-term or short-term, international or local, and senior or junior experts, in order that it is clear which fee rate will apply. For purposes of this Contract, international experts are considered to be those whose permanent residence is outside Estonia while local experts are considered to be those whose permanent residence is in Estonia.

Where possible, the Contractor shall ensure active use of local professional skills, and a suitable mix of international and local staff in the Project Team and task forces. All experts must be free from conflicts of interest in the tasks or responsibilities accorded to them.

The selection procedures used by the Contractor to select these so-called Other Experts shall be transparent, and shall be based on pre-defined criteria, including professional qualifications, language skills and work experience.

The Contractor shall propose an optimum structure for the Project Team, based on the Services Requested in the terms of reference, and where possible propose a core team with cross-functional roles.

The Contractor shall include in his Technical Proposal a description as to arrangements made regarding the backstopping of all key experts. Backstopping costs are considered to be included in the fee rates.

The successful Contractor shall make his own arrangements for office facilities, personal computers and other facilities of appropriate standard for the production of high quality study results.

The Contractor shall ensure that experts involved in Project are adequately supported and equipped. In particular he shall ensure that there is sufficient administrative, secretarial and interpreting provision to enable experts to concentrate on their primary responsibilities. The Contractor must also transfer funds as necessary to support its activities under the Contract, and ensure that his employees are paid regularly and in a timely fashion.

Costs for project administration and office operation, including telecommunication costs, shall be included in the fee rates proposed for the project experts.

If the Contractor is a consortium, the arrangements should allow for the maximum flexibility in project implementation.

4.4. Milestones

In order to facilitate the monitoring and evaluation process the Contractor, in collaboration with RB Rail AS and the relevant stakeholders, shall define a detailed set of indicators relating to the achievement of project objectives. This shall be finalised before submission of the Inception Report.

Suggested Milestones for this project are as follows:

- Development of alternative routes for tramways or light rail and delivery of Interim Report 1 (hereinafter – **Milestone 1**);
- Complete draft plans for the proposed alternatives, complete construction cost calculation and CBA of the proposed alternatives, propose the Preferred Option and delivery of Draft Final Report. (hereinafter – **Milestone 2**);
- Delivery of Final report (hereinafter – **Milestone 3**)

The Contractor is free to suggest alternative/additional Milestones that need to be approved by RB Rail AS.

4.5. Reports and deliverables

4.5.1. Reporting

A Project Inception Report is required within three weeks after commencement of the study. Any clarifications or amendments to the present Terms of References shall be carried out during the inception period of the Project, and shall be agreed with the Contracting authority. The Inception Report:

- shall demonstrate the understanding of assignment by the Contractor; and
- shall demonstrate the further implementation plan of the study, including the schedule of workgroup meetings, and a detailed work programme of other works.

Interim Reports shall be drafted in digital editable format (*.doc, *.docx, *.ppt, *.pptx) and shall be submitted to the Contracting authority one business day prior to presentation of the report in a meeting. Interim Reports shall provide a short description of the progress (technical and financial), including issues and problems that have arisen or that are foreseen, and planned activities for the coming months.

Progress Reports shall be drafted in digital editable format (*.doc, *.docx, *.ppt, *.pptx) and shall be submitted to the Contracting authority one business day prior to presentation of the report in a progress meeting. A progress report will be more in-depth than the Interim reports and will give a detailed description of the progress (technical and financial) and cover all aspects of the service in terms of its content, incl. information

on the work progress and conclusions within working tasks, as well as questions and issues. The aim of the progress reports is:

1. To receive timely information from the Contractor regarding progress of works and initial conclusions and recommendations;
2. To provide the Contractor with the possibility of receiving, in a timely fashion, comments, opinions, and recommendations on issues related to service performance.

The study results shall be presented in a Draft Final Report and researched and elaborated data including list of sources must be submitted in an editable Excel database. Cartographic material where required must be submitted in vector format. These have to be submitted to RB Rail AS for comments and approval.

The term for the elaboration of the study until the Draft Final Report shall not exceed 27 weeks after the commencement of the study. The Contractor shall be responsible for the elaboration of the study documentation. Exchange of information between the Contractor and the Contracting authority shall be carried out in the written form, including e-mails. Provided it is necessary, joint meetings, seminars, and other activities shall be organised in compliance with these Terms of References as well as the methodology, suggested by the Contractor.

The Contracting authority shall review the Draft Final Report, and provide comments on the deliverables within 4 weeks of receipt of the Report from the Contractor;

Within 1 week of receiving written comments from the Contracting authority, two hard copies and one soft copy of the Final Report as well as the final database shall be submitted to the Contracting authority.

4.5.2. Meetings

The Contractor shall organise project meetings for Interim and Project reporting as per the schedule set out in 4.5.3, where the Project Managers and their deputies of the Contracting authority and Contractor will be in attendance. Whenever needed, other project members and relevant stakeholders are invited to these meetings.

Whenever needed (where the Contracting authority or Contractor have gathered enough queries, where a decision needs to be taken, or a need has arisen to discuss and accept results of one project stage), ad-hoc meetings can be organised. Time of the meeting is mutually agreed. The meeting is led by the project manager of the Contracting authority or Contractor; if they are not available – their deputies; where also they are not available – a committee member is assigned to manage the meeting.

Working materials (including a PowerPoint presentation), agenda of the meeting, and list of participants shall be submitted no later than one business day prior to the meeting. Decisions taken at the meeting are registered in the minutes of the meeting. Minutes will be taken by an expert assigned by the Contractor. Minutes of the meeting are sent by email to the meeting participants within two business days following the meeting. Where within two working days after minutes of the meeting have been sent the participants have not submitted any comments, the minutes of meeting are deemed approved. Approved minutes of meeting are signed by the project managers of the Contracting authority and the Customer during the next meeting.

4.5.3. Submission and approval of reports and deliverables

The Draft Final Report and Final report shall be submitted in English and Estonian. Inception reports and Progress Reports shall be submitted in English. Upon request by the Contracting authority some deliverables or parts thereof may have to be submitted in the Estonian language. All reports shall be submitted in hard and soft copy. The Contractor must submit the documents (hard and soft copy on CD) and database (soft copy) in person or by courier to the Contracting authority's representative.

Time schedule of deliverables and approval thereof is presented in the following table. The Contractor may submit an updated report and deliverable submission schedule included within the project inception report only in reasonably justified cases.

Deliverables/Reports	No. of copies	Submission schedule	Approval by RB Rail AS
Inception Report	1 hard copy, 1 soft copy	CD* +3 weeks	4 weeks after receipt
Interim Report	1 hard copy, 1 soft copy	CD* + 14 weeks	4 weeks after receipt
Draft Final Report (including an updated Interim Report)	2 hard copies, 1 soft copy	CD* + 27 weeks	4 weeks after receipt
Final Report (including comments on Draft Final Report)	2 hard copies, 1 soft copy	CD* + 31weeks	4 weeks after receipt

(*) CD: commencement date of the contract

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

The content of the deliverables/reports to be drafted and delivered and issues to be agreed as part of the project are summarised in the table below.

Week	Deliverables/Reports	Minimum content/ issues to be agreed
3	Inception Report	Analysis of the base-line situation, issues, problems and work plan for the project. Clarified general project implementation plan, reference situation (conditions), and general elaboration methodology.
14	Interim Report	This will provide a detailed description of the activities to date and indicate the correlation with the work plan. Problems that have arisen will be described and their implications, financial, time, and to the overall outcome of the project, predicted as far as possible. Foreseen issues will be raised and this will act as a starting point for discussions with RB Rail AS. Initial results that exist relating to the analysis of the three options will be described here.
27	Draft Final Report (including an updated Interim Report)	Detailed description of the progress (technical and financial), including issues and problems that have arisen, are foreseen, and planned activities for the coming months. This will include the completed draft plans for the proposed alternatives. At this point the complete cost calculations and CBA for alternatives will be submitted to the Contracting authority. This will include updates made to the Interim Report. On the basis of the study and prior Reports the Draft Final Report will propose the preferred alternative.
31	Final Report (including an updated Draft Final Report)	Final Report is drafted according to the comments made to the Draft Final Report and requirements for the deliverables. By its content it is completely in line with the Terms of Reference.

ANNEX C: SCHEDULE OF STUDY

Study Start Date:

Commencement Date of the Agreement

Study Milestones:

According to Section 4.4. of the Technical Specification

Deliverables:

According to Part 4.5 of the Technical Specification

Defects Date: as set in column "Approval by RB Rail AS" in the table "Time schedule of deliverables and approval" in Section 4.5.3 of the Technical Specification.

ANNEX D: FEE AND PAYMENT SCHEDULE

Fee: 170 984,00 EUR (one hundred seventy thousand nine hundred eighty-four euro and zero cents)

Payment schedule:

After delivery of the following Deliverables and signing of the Provisional Acceptance Certificate and/or Final Acceptance Certificate the Principal shall pay following amount of the Fee:

Deliverable	Payment amount
Interim report	30%
Draft Final report	30%
Final report	40%

ANNEX E: LIST OF APPROVED SUB-CONTRACTORS

DTC Nams SIA

Reg. No 40103805893

Legal address: Bezdelīgu iela 8, Piņķi, Babītes no., Babītes pag., LV-2107

Legal representative: Jean-Manuel Giely, the Management Board Member

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

Date: [INSERT DATE IN THE FORM OF 1 January 2017]

Location: [INSERT LOCATION]

For:

RB Rail AS

registration number 40103845025 legal address K. Valdemāra iela 8-7, Riga LV-1010, Latvia

(hereinafter, the "Principal")

This provisional completion certificate (hereinafter, "Provisional Completion Certificate") is issued to the Principal by [•][INSERT NAME, REGISTRATION NUMBER INSERT REGISTRATION NUMBER, LEGAL ADDRESS] (hereinafter, the "Contractor"), represented by [INSERT NAME OF REPRESENTATIVE ON THE BASIS OF INSERT BASIS OF REPRESENTATION].

In this Provisional Completion Certificate, unless the context requires otherwise, all defined terms shall have the meaning ascribed to such terms in accordance with the [INSERT AGREEMENT DATE IN THE FORM OF STUDY AGREEMENT NO. INSERT AGREEMENT NUMBER] (hereinafter, the "Agreement") and Annex A (*Definitions and Common Terms*) of the Agreement.

Whereas:

- (A) the Principal, the Contractor and the Beneficiary have entered into the Agreement;
- (B) Clause 7.4 of the Agreement stipulates that upon meeting a Study Milestone or producing a Deliverable constituting all or an identifiable part of the Technical Specification, the Contractor shall issue to the Principal a Provisional Completion Certificate substantially in the form of Annex F (*Form of Provisional Completion Certificate*) of the Agreement;
- (C) a Study Milestone has been met or a Deliverable has been completed.

The following Study Milestone(s) has/have been met on [INSERT DATE IN THE FORM OF 1 January 2017], as specified in accordance with Annex C (*Schedule of Study*) of the Agreement:

[describe in reasonable detail the Study Milestone attained. Insert n/a, if no Study Milestone has been attained.]

The following Deliverable(s) has/have been completed on [INSERT DATE] and are attached to this Provisional Completion Certificate:

[INSERT NAME OF THE DELIVERABLE. INSERT N/A, IF NO DELIVERABLES HAVE BEEN COMPLETED.]

As stipulated in Clause 7.5 of the Agreement, in the event the Principal objects to the issue of the Provisional Completion Certificate, the Principal shall give a written notice to the Contractor setting out in reasonable detail Defects or reasons for the objection (hereinafter, the "Objection Notice") within [•] days (as set in to the Technical Specification) following receipt of the Provisional Completion Certificate.

In the event of conflict between the text in this Provisional Completion Certificate and the Agreement, the Agreement shall take precedence.

Signature:

[insert name, surname

insert position

insert company name]

ANNEX G: FORM OF PROVISIONAL ACCEPTANCE CERTIFICATE NO. [•][INSERT NUMBER]

Date: [INSERT DATE IN THE FORM OF 1 January 2017]

Location: [INSERT LOCATION]

For: [•] (hereinafter, the "Contractor")

This provisional acceptance certificate (hereinafter Provisional Acceptance Certificate) is issued to the Contractor by RB Rail AS, registration number 40103845025, legal address K. Valdemāra iela 8-7, Riga, LV-1010 (hereinafter, the "Principal"), represented by [INSERT NAME OF REPRESENTATIVE ON THE BASIS OF INSERT BASIS OF REPRESENTATION].

In this Provisional Acceptance Certificate, unless the context requires otherwise, all defined terms shall have the meaning ascribed to such terms in accordance with the [INSERT AGREEMENT DATE] AGREEMENT ON OPERATION PLAN CONCEPT FOR RAIL BALTICA RAILWAY No [INSERT AGREEMENT NUMBER] (hereinafter, the "Agreement") and Annex A (*Definitions and Common Terms*) of the Agreement.

Whereas:

- (A) the Principal, the Contractor and the Beneficiary have entered into the Agreement;
- (B) the following Study Milestone(s) has been met and the following Deliverable(s) have been supplied to the Principal:
 - (i) [PLEASE IDENTIFY MILESTONE]
 - (ii) [PLEASE IDENTIFY DELIVERABLE]
- (C) any and all Defects have been averted or no Objection Notices have been issued;
- (D) as stipulated by Clause 7.7 of the Agreement, final acceptance shall be evidenced by means of the Principal issuing and both Parties attaching their signature to the Final Acceptance Certificate substantially in the form of Annex H (*Form of Final Acceptance Certificate*) (hereinafter, the "Final Acceptance Certificate");

The Principal is satisfied with the result of any and all achieved Study Milestones and/or Deliverables completed and submitted and, in accordance with Clause 7.5 of the Agreement, the Principal accepts the part of the Study performed as of the date of this Provisional Acceptance Certificate.

In the event of conflict between the text in this Provisional Acceptance Certificate and the Agreement, the Agreement shall take precedence.

Signatures:

[insert name, surname

insert position]

ANNEX H: FORM OF FINAL ACCEPTANCE CERTIFICATE NO [•][INSERT NUMBER]

Date: [INSERT DATE IN THE FORM OF 1 January 2017]

Location: [INSERT LOCATION]

For: [•] (hereinafter, the "Contractor")

This final acceptance certificate (hereinafter, "Final Acceptance Certificate") is issued to the Contractor by RB Rail AS, registration number 40103845025, legal address K. Valdemāra iela 8-7, Riga, LV-1010 (hereinafter, the "Principal"), represented by [INSERT NAME OF REPRESENTATIVE ON THE BASIS OF INSERT BASIS OF REPRESENTATION].

In this Final Acceptance Certificate, unless the context requires otherwise, all defined terms shall have the meaning ascribed to such terms in accordance with the AGREEMENT ON OPERATION PLAN CONCEPT FOR RAIL BALTICA RAILWAY No [INSERT AGREEMENT NUMBER] dated [INSERT DATE] (hereinafter, the "Agreement") and Annex A (*Definitions and Common Terms*) of the Agreement.

Whereas:

- (A) the Principal, the Contractor and the Beneficiary have entered into the Agreement;
- (B) one or more Study Milestones have been met and/or Deliverables have been completed;
- (C) any and all Defects have been averted or no Objection Notices have been issued;
- (D) as stipulated by Clause 7.7 of the Agreement, final acceptance shall be evidenced by means of the Principal issuing and both Parties attaching their signature to the Final Acceptance Certificate substantially in the form of Annex H (*Form of Final Acceptance Certificate*) (hereinafter, the "Final Acceptance Certificate");

The Principal is satisfied with the result of the Study and/or all Deliverables completed and submitted and the Principal accepts the Study in its entirety.

In the event of conflict between the text in this Final Acceptance Certificate and the Agreement, the Agreement shall take precedence.

Signatures:

[insert name, surname

insert position]

RB Rail AS

Principal

[insert position]

[insert company name]

Contractor

ANNEX I: DECLARATION OF CONTRACTOR

I, the undersigned duly authorised representative, on behalf of **Egis Rail S.A.** undertake:

1. To respect the freely-exercised right of workers, without distinction, to organize, further and defend their interests and to bargain collectively, as well as to protect those workers from any action or other form of discrimination related to the exercise of their right to organize, to carry out trade union activities and to bargain collectively;
2. Not to use forced or compulsory labour in all its forms, including but not limited to not employ people against their own free will, nor to require people to lodge 'deposits' or identity papers upon commencing employment;
3. Not to employ: (a) children below 14 years of age or, if higher than that age, the minimum age of employment permitted by the law of the country or countries where the performance, in whole or in part, of a contract takes place, or the age of the end of compulsory schooling in that country or countries, whichever is higher; and (b) persons under the age of 18 for work that, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of such persons;
4. To ensure equality of opportunity and treatment in respect of employment and occupation without discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin and such other ground as may be recognized under the national law of the country or countries where the performance, in whole or in part, of a contract takes place;
5. To ensure the payment of wages in legal fashion, at regular intervals no longer than one month, in full and directly to the workers concerned; to keep an appropriate record of such payments. Deductions from wages will be conducted only under conditions and to the extent prescribed by the applicable law, regulations or collective Contract, and the workers concerned shall be informed of such deductions at the time of each payment. The wages, hours of work and other conditions of work shall be not less favourable than the best conditions prevailing locally (i.e., as contained in: (i) collective Contracts covering a substantial proportion of employers and workers; (ii) arbitration awards; or (iii) applicable laws or regulations), for work of the same character performed in the trade or industry concerned in the area where work is carried out;
6. To ensure, so far as is reasonably practicable, that: (a) the workplaces, machinery, equipment and processes under their control are safe and without risk to health; (b) the chemical, physical and biological substances and agents under their control are without risk to health when the appropriate measures of protection are taken; and (c) where necessary, adequate protective clothing and protective equipment are provided to prevent, so far as is reasonably practicable, risk of accidents or of adverse effects to health;
7. To support and respect the protection of internationally proclaimed human rights and not to become complicit in human rights abuses;
8. To create and maintain an environment that treats all employees with dignity and respect and will not use any threats of violence, sexual exploitation or abuse, verbal or psychological harassment or abuse. No harsh or inhumane treatment coercion or corporal punishment of any kind is tolerated, nor is there to be the threat of any such treatment;
9. To have an effective environmental policy and to comply with existing legislation and regulations regarding the protection of the environment; wherever possible support a precautionary approach to environmental matters, undertake initiatives to promote greater environmental responsibility and encourage the diffusion of environmentally friendly technologies implementing sound life-cycle practices;
10. To identify and manage chemical and other materials posing a hazard if released to the environment to ensure their safe handling, movement, storage, recycling or reuse and disposal;
11. To monitor, control and treat as required prior to discharge or disposal wastewater and solid waste generated from operations, industrial processes and sanitation facilities;
12. To characterize, monitor, control and treat as required prior to discharge or disposal air emissions of volatile organic chemicals, aerosols, corrosives, particulates, ozone depleting chemicals and combustion by-products generated from operations;

13. To reduce or eliminate at the source or by practices, such as modifying production, maintenance and facility processes, materials substitution, conservation, recycling and re-using materials, waste of all types, including water and energy;
14. To adhere to the highest standards of moral and ethical conduct, to respect local laws and not engage in any form of corrupt practices, including but not limited to extortion, fraud, or bribery;
15. To disclose (a) any situation that may appear as a conflict of interest, such as but not limited to: where a Contractor or an undertaking related to the Contractor has advised a Beneficiary or Implementing Body or has otherwise been involved in the preparation of the procurement procedure; and (b) if any Beneficiaries' or Implementing Bodies' official, professional under contract with Beneficiary or Implementing Body or sub-contractor may have a direct or indirect interest of any kind in the Contractor's business or any kind of economic ties with the Contractor;
16. Not to offer any benefit such as free goods or services, employment or sales opportunity to a Beneficiary's and Implementing Body's staff member in order to facilitate the Contractors' business with Beneficiaries or Implementing Bodies;
17. Within a period set in the applicable national legislation following separation from service or award of a contract, as the case may be, to refrain from offering employment to any Beneficiaries' and Implementing Bodies' staff in service and former Beneficiaries' and Implementing Bodies' staff members who participated in the procurement process and to whom a legal restriction to receive material benefits from or be employed by a Contractor which participated in a procurement procedure or restrictions with similar effect applies;
18. To promote the adoption of the principles set forth in this Contractor's Declaration by my potential business partners and promote the implementation of the principles set forth in this document towards own Contractors;
19. Not procure goods, works and services from other Contractors:
 - a. Who, or its member of the Management Board or the Supervisory Board or procurator of such Contractor, or a person having the right to represent such Contractor in activities related to a subsidiary, has been found guilty in any of the following criminal offences by a such punishment prescription of prosecutor or a judgement of a court that has entered into effect and is non-disputable and not subject to appeal:
 - i. bribetaking, bribery, bribe misappropriation, intermediation in bribery, taking of prohibited benefit or commercial bribing;
 - ii. fraud, misappropriation or laundering;
 - iii. evading payment of taxes and payments equivalent thereto,
 - iv. terrorism, financing of terrorism, invitation to terrorism, terrorism threats or recruiting and training of a person for performance of terror acts;
 - b. who, by such a decision of a competent authority or a judgment of a court which has entered into effect and has become non-disputable and not subject to appeal, has been found guilty of an infringement of employment rights which means:
 - i. employment of such one or more citizens or nationals of countries, which are not citizens or nationals of the European Union Member States, if they reside in the territory of the European Union Member States illegally;
 - ii. employment of one person without entering into a written employment contract, not submitting an informative declaration regarding employees in respect of such person within a time period laid down in the laws and regulations, which is to be submitted regarding persons who commence work;
 - c. who, by such a decision of a competent authority or a judgment of a court which has entered into effect and has become non-disputable and not subject to appeal, has been found guilty of infringement of competition rights manifested as a vertical Contract aimed at restricting the opportunity of a purchaser to determine the resale price, or horizontal cartel Contract, except for the case when the relevant authority, upon determining infringement of competition rights, has released the candidate or tenderer from a fine or reduced fine within the framework of the co-operation leniency programme;
 - d. whose insolvency proceedings have been announced (except the case where a bailout or similar set of measures is applied within insolvency proceedings oriented towards prevention of possible bankruptcy and restoration of solvency of the debtor, in which case I shall evaluate the possibility of such Contractor to

participate in the tender), economic activity of such Contractor has been suspended or discontinued, proceedings regarding bankruptcy of such Contractor have been initiated or such Contractor will be liquidated;

- e. who has tax debts in the country where the procurement is organised or a country where such Contractor is registered or permanently residing, including debts of State social insurance contributions, in total exceeding an amount which is common threshold in public procurements in the respective country.

, 27 February 2018