

Riga, 16 April 2018

Agreement registration number
CEF¹ Contract No INEA/CEF/TRAN/M2016/1360716

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| 8/2018-23 |
| C03 |

This EXPERTISE AGREEMENT (hereinafter, the "Agreement"), together with all Annexes thereto, is entered into in Riga, on 16 April of the year 2018 (hereinafter, the "Effective Date") by and between:

RB Rail AS, a joint stock company organized and existing under the laws of the Republic of Latvia, registered within the Commercial Register under the registration number 40103845025, having its registered address at **Krišjāņa Valdemāra iela 8-7, Rīga** (hereinafter, the "Principal"), represented by its Chairman of the Management Board Baiba Anda Rubesa and Management Board Member Kaspars Rokens, acting on the basis of the Power of Attorney No 9/2018-6 (dated 26/03/2018),

and

ARDANUY INGENIERIA S. A., a joint stock company organized and existing under laws of Spain, registration number A80480759, having its registered address at Avenida de Europa n° 34, Edificio B, 28023-Madrid (Spain), (hereinafter, the "Contractor"), represented by the authorized person Jevgenijus Pičuginas acting on the authorization of 16 September 2017.

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 according TSI INF P2-F1 and European standard gauge (1435mm) on the route from Tallinn through Pärnu-Rīga-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 has organised procurement procedure "Technical expertise of the cut – and – cover railway tunnel" (identification No. RBR 2017/32) in accordance with Section 9 of the Public Procurement Law of the Republic of **Latvia**" (hereinafter, the "Procurement Procedure") whereby the **Contractor's** tender proposal (hereinafter, the "Contractor's Proposal") was selected as the winning bid;
- (C) This Agreement is co-financed from the Connecting Europe Facility (CEF), CEF Contract No INEA/CEF/TRAN/M2016/1360716, Action No: 2016-EU-TMC-0116-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.

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

- (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 Expertise.* The Principal hereby engages the Contractor to provide and perform the Expertise 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 Expertise shall result in the provision to the Principal of the Deliverables identified in accordance with Annex B (*Technical Specification*) 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 Expertise.
- 2.3. *General Obligations of Contractor.* The Contractor shall be responsible for the professional quality, technical accuracy, and coordination of all concepts, programming, reports, designs, drawings, specifications, and other services furnished under this Agreement. The Contractor shall have an obligation, without additional compensation of any kind, to correct or revise any errors, deficiencies, or omissions in concepts, programming, reports, designs, drawings, specifications, estimates, and other services rendered hereunder and forming part of the Expertise.
- 2.4. *Acceptance Not a Waiver.* The **Principal's** review, approval, acceptance, or payment for the Works forming part of the Expertise 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 Expertise. 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, as far as specified in the Technical Specification.
- 3.2. *Review of Documentation.* The Principal shall examine Documentation as may be submitted by the Contractor for review by the Principal toward partial completion of the Expertise and, upon request of the Contractor, shall render decisions and opinions pertaining thereto.
- 3.3. *Decisions.* On all matters properly referred to it in writing by the Contractor the Principal shall give its decision in writing so as not to delay the Expertise 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 Expertise as the Principal may require to ascertain how and/or for what purposes the Contractor has used the funds paid under the terms of this Agreement.
- 3.5. *Action Upon Becoming Aware of Defects.* In the event the Principal observes or otherwise becomes aware of any error, fault, omission, or defect in the Expertise or non-conformance of any action forming part of the Expertise 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 Expertise, and in accordance with the Deliverables and deadlines set forth in accordance with Annex B (*Technical Specification*).
- 4.2. *Obligation to Act in Accordance with **Principal's** Comments.* In performing the Expertise, the Contractor shall have due regard to any comments made by the Principal in connection with any review of the Documentation, and shall provide reasons to the Principal where it does not take into account any such comments.
- 4.3. *Duty of Care and Exercise of Authority.* The Contractor shall:
 - (a) in performing its obligations under this Agreement, exercise reasonable professional skill, diligence and care as may be expected of a properly qualified and competent person carrying out services of a similar size, nature, type and complexity;
 - (b) ensure that its personnel are properly qualified and competent in accordance with the relevant Standards;
 - (c) ensure that all maps, drawings, plans, specifications, estimates, surveys and other documents required to be prepared or submitted by the Contractor under this Agreement conform to Good Industry Practice generally acceptable at the time of submission of such maps, drawings, plans, specifications, estimates, studies and documents;
 - (d) at all times during the term of the Expertise, ascertain and comply with all Applicable Laws and Good Industry Practice;
 - (e) comply, where applicable, with any reasonable requirements of the Principal not otherwise provided for in this Agreement; and
 - (f) ensure that all designs are performed, and that the design process is documented, in accordance with Good Industry Practice, and using standard industry quality control methods.
- 4.4. *Maintenance of Records.* During the term of the Expertise and during fifteen (15) years from expiration or termination of this Agreement 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 Expertise has been and is being carried out in accordance with the Standards. In addition, the Contractor shall retain copies of the object code of all Contractor Software used in performance of the Expertise and retain copies of all software used in the design and production of the Contractor Software.
- 4.5. *Access to Documentation.* At all times during the term of the Expertise, the Principal shall have access to all Documentation. This access shall be continuing and survive the termination of this Agreement for either cause or convenience. The Documentation shall be kept in a generally recognized format for a period of

fifteen (15) years from the date of termination of this Agreement or the Final Acceptance Date, as applicable. All records forming part of the Documentation shall be available to the Principal auditor, or expert appointed by the Principal during the period of time specified in accordance with this Clause 4.5.

- 4.6. *Right to Sub-Contract.* In carrying out the Expertise, the Contractor may only rely on the services of those Approved Sub-Contractors listed in Annex C (*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 C 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 C 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 Expertise.

Pursuant to the 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 whose capacities the Service Provider has relied on during the selection or evaluation stages of the Procurement Procedure.

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.

- 4.7. *Responsibility for Performance by Sub-Contractors.* The Contractor shall retain the complete responsibility for the proper performance of all of its obligations under this Agreement, and any act, failure to act, breach or negligence on the part of any of its Approved Sub-Contractors shall, for the purposes of this Agreement, be deemed to be the act, failure to act, breach or negligence of the Contractor.
- 4.8. *No Conflicting Activity.* Except with the **Principal's** knowledge and express written permission, the Contractor shall not engage in any activity, or accept any employment, other agreement, interest, or contribution that would reasonably appear to compromise the **Contractor's** professional judgment and performance with respect to the Expertise and/or the Project. In performing the Expertise, the Contractor shall take all necessary measures to prevent any situation where the impartial and objective implementation of the Expertise is compromised for reasons involving economic interest, political or national affinity, family or emotional ties or any other shared interest.
- 4.9. *Attendance of Meetings.* To the extent necessary to ensure smooth and efficient provision of the Expertise, the Contractor shall, at the **Principal's** request, hold and/or attend meetings with any Persons.
- 4.10. *Compliance with Laws.* The Contractor shall review the Applicable Laws applicable to the **Contractor's** services. In carrying out any activities forming part of the Expertise, the Contractor shall, at all times, ensure compliance with requirements imposed by supra-national and/or governmental authorities having jurisdiction over the Project.
- 4.11. *Information Furnished by Principal.* The Contractor shall be entitled to rely on the accuracy and completeness of services and information furnished by the Principal. The Contractor shall provide prompt written notice to the Principal if the Contractor becomes aware of any errors, omissions, or inconsistencies in such services or information.
- 4.12. *Certain Negative Covenants.* In performing the Expertise, 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 Expertise), economic activity of the Person has been suspended or discontinued, bankruptcy proceedings have been initiated against the Person or the Person is subject to a liquidation;
- (e) the Person has unpaid tax indebtedness in the country where the procurement is organised or in the country where the Person is registered or permanently residing as a tax payer, including the indebtedness with respect to State social insurance contributions, in the total amount exceeding EUR 150 in each individual country; in such case, the Contractor can, within its sole discretion, prompt the Approved Sub-Contractor to pay or discharge all outstanding tax indebtedness within 10 (ten) Working Days and, upon such payment or discharge, allow the Person to continue performance of the Expertise; 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.

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

- (a) any report, brochure, document or information related to the Expertise 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 Expertise 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 4.13(a)(i) and 4.13(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

- (b) in order to comply with the latest applicable visibility requirements established by the European Union, the Contractor shall regularly monitor changes to visibility requirements; as of the Effective Date, the visibility requirements are available for review on the webpage <https://ec.europa.eu/inea/connecting-europe-facility/cef-energy/beneficiaries-info-point/publicity-guidelines-logos>.

SECTION V. REPRESENTATIONS AND WARRANTIES

- 5.1. *Certain Representations and Warranties by Parties.* Each Party represents and warrants to the other Party, as of the Effective Date, as follows:
 - (a) it has entered into this Agreement with the aim of attaining all of the objectives and performing in all material respects all of the obligations and commitments herein set forth;
 - (b) it has entered into this Agreement without having any intention or goal whatsoever to violate the Applicable Law, its own Articles of Association, other constitutional documents or agreements of any kind to which it is a party;
 - (c) it is not bankrupt and is not the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, it is not in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under the laws of the Republic of Latvia; 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 Expertise 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 Expertise according to the specifications contained in Annex B (*Technical Specification*);
 - (c) it has all requisite ability to ensure the highest quality of the Expertise;
 - (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 of European Union;
 - (e) it is not deemed to be a person associated with the Principal for the purposes of Applicable Law;
 - (f) it is compliant with all of the requirements of the **Contractor's** Declaration contained in Annex G (*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 Expertise, the Principal undertakes to pay the Contractor a consideration in the total amount of EUR **41'990** (forty-one thousand nine hundred ninety euro and 00 cents) (hereinafter, the "**Fee**") which shall be split into separate instalments and be payable by the Principal to the Contractor according to the Schedule of Deliverables set forth in Annex B (*Technical Specification*) and Clause 6.2 and 6.7. 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 Expertise. 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. *Payment Schedule.* Payment of the Contractor's invoices will be made in *euro*, by bank transfer to the following bank account:

Recipient: Ardanuy Ingenieria S.A.

Bank: Luminor Bank AB

SWIFT: AGBLLT2X

IBAN: LT76 4010 0495 0010 2772

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

- (a) After delivery of Inception Report, the payment shall be 20% from the Fee: **41'990** EUR, excluding VAT;
 - (b) After delivery of Draft Final Report, the payment shall be 30% from the Fee: **41'990** EUR, excluding VAT;
 - (c) After delivery of Final Report, the payment shall be 50% from the Fee: **41'990** EUR, excluding VAT.
- 6.3. *Costs and Commissions.* Each Party shall bear its own bank charges or expenses incurred in connection with the transfer of any payments.
- 6.4. *Invoice.* The **Contractor's** invoices shall contain the following details and details about the Contract:

| | |
|-----------------|---|
| Contractor | Ardanuy Ingenieria S.A. |
| Registration No | A80480759 |
| VAT payer's No | LT100002745614 |
| Address | Avda. Europa, 34 Edif. B 28023 Madridas, Ispanija/ K.Kalinausko g. 10-8, LT-03107, Vilnius Lietuva |
| Name of Bank | |
| Bank Code | |
| Bank Account No | |
| Subject: | For provided services according to Contract for Services No 8/2018-23 (CEF ² Contract No INEA/CEF/TRAN/M2016/1360716, Activity No 3), Activity Manager: RB Rail AS Technical manager Mārtiņš Krauklis |

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

- 6.5. *Invoicing.* According to Section 6.2 and following each Completion Date 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 6.5. 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 6.5. 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 Expertise that has not been accepted by the Principal in accordance with Clauses 7.5, 7.6 or 7.7 of this Agreement.
- 6.6. *Payment.* Subject to the provisions of Clauses 6.1 and 6.2, the Principal reserves the right to make the payments to the Contractor with set-off, retention, counterclaim, abatement or other deduction of any kind if the nature of such set-off, retention, counterclaim, abatement or other deduction arises from this Agreement and the obligations of the Contractor provided herein (i.e. in cases of accrued contractual penalty amounts etc.). If the Principal uses the right to make the payments to the Contractor with set-off, retention,

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counterclaim, abatement or other deduction of any kind, then the Principal so notifies to the Contractor no later than on the date of the respective payment stating the amount, the grounds and the basis on the Principal uses its right to set-off, retention, counterclaim, abatement or other deduction. Invoices shall be paid thirty (30) days after the date of receipt of the invoice. For the avoidance of any doubt, the Principal shall not be required to pay any amount with respect to any invoice in the absence of a 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 both Parties.

- 6.7. *Costs and Commissions.* Each Party shall bear its own costs, fees, commissions and expenses incurred in connection with the transfer of any funds under this Agreement to the other Party.
- 6.8. *Compliance with Tax Obligations.* 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 Expertise. 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 Expertise and in accordance with Applicable Law. 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.

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

- 7.1. *Expertise Commencement.* The Contractor shall not commence provision of the Expertise until Expertise Start Date, as identified in accordance with Annex B (*Technical Specification*) and shall ensure that the Deliverables are furnished to the Principal on or before each relevant Expertise Milestone. The Contractor shall perform the Expertise with due diligence having due regard to any applicable Expertise Milestones and any other key dates for performance of the Expertise 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 Expertise, 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 Expertise:
- (a) the Contractor shall inform the Principal of the circumstances and probable effects of such impediment or delay upon the agreed Schedule of Expertise specified in accordance with Annex B (*Technical Specification*); and
 - (b) the duration of the Expertise shall be increased and any Expertise 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 Section 2.6.1. of Annex B (*Technical specification*) 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 ten (10) calendar **days to remedy the Defects, irrespective of the nature of such Defects (hereinafter, the "Cure Period")**. In the event of inability or failure by the Contractor to remedy the Defects within the Cure Period, the Principal shall be entitled, in the sole and exclusive discretion of the Principal, to do any of the following:
- (a) allow the Contractor an additional time period for remedying the Defects, such time period to be determined in the sole discretion of the Principal;
 - (b) remedy the Defects, irrespective of the extent or nature of the Defects, at own cost of the Principal (including by means of relying on the services of a third Person) and demand reimbursement by the Contractor of Costs incurred by the Principal as a result of having to pay other Persons toward carrying out any work or action;
 - (c) terminate the Agreement according to Section IX; or
 - (d) remedy the Defects, irrespective of the extent or nature of the Defects, in accordance with Clause 7.3 and terminate the Agreement pursuant to Section IX.

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

- 7.4. *Completion of Expertise and Completion Certificate.* Meeting of a Expertise 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 Scope of Expertise and Schedule of Expertise by the relevant Expertise Milestone. On meeting an Expertise Milestone and/or producing a Deliverable (including all Documentation forming part of the Deliverable) constituting all or an identifiable part of the Expertise, the Contractor shall issue to the Principal a Provisional Completion Certificate substantially in the form of Annex D (*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 Expertise 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, it shall give notice to the Contractor setting out in reasonable detail any Defect or reason for the objection (hereinafter, the "Objection Notice") within reasonable time following receipt of the Provisional Completion 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 E (*Form of Provisional Acceptance Certificate*) (hereinafter, the "Provisional Acceptance Certificate"). Subject to Clause 2.4 of this Agreement, the date of the Provisional Acceptance Certificate shall constitute "Completion Date" with respect to the relevant Expertise 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 Expertise 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, 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 D (*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 Expertise 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 E (*Form of Provisional Acceptance Certificate*) and, subject to the provisions of Clauses 2.4 and 9.1(b) of this Agreement, the date of the Provisional Acceptance Certificate shall constitute "Completion Date" with respect to the relevant Expertise 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 Expertise shall occur upon remedying by the Contractor 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 F (*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 Expertise. The Principal shall not unreasonably withhold or delay issuance of a Final Acceptance 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 Principal. It is acknowledged and agreed by the Parties that the Principal shall be permitted to reproduce the drawings and distribute the prints in connection with the use or disposition of the Documentation 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 Principal.* The Principal shall acquire legal title to and ownership in the Intellectual Property in all Documentation deliverable to the Principal under this Agreement as of the moment of delivery by the Contractor to the Principal of the Provisional Completion 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 Principal has paid the Fee or other consideration payable under the terms of this Agreement with respect to the relevant part of the Expertise 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 Expertise 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 Expertise; and
 - (c) the Documentation, or any part thereof, shall not, without the prior consent by the Principal, be distributed or communicated to any third party for purposes other than those permitted in accordance with this Clause 8.4.
- The license in accordance with this Clause 8.4 shall be deemed to have been granted to the Contractor as of the Completion Date.
- 8.5. *No Additional Royalty.* It is acknowledged and agreed by the Parties that consideration for the transfer of ownership in the Intellectual Property shall be forming part of the Fee and no additional royalty, fee or other consideration of any kind shall be payable by the Principal to the Contractor or to any third party in consideration of the transfer of ownership in the Intellectual Property in any Documentation.
- 8.6. *No Infringement.* The Contractor represents and warrants to the Principal that no Documentation deliverable to the Principal under the terms of this Agreement will infringe any existing Intellectual Property of any third party. In the event any of the representations or warranties contained in this Section VIII prove to be untrue or inaccurate, the Contractor undertakes, at its own cost and expense, to defend and settle any claim raised by any third party alleging infringement of Intellectual Property in the Documentation. The foregoing undertaking by the Contractor shall apply subject to the following conditions:
- (a) the Principal shall notify the Contractor, without undue delay, of any third party claim alleging infringement of any Intellectual Property in any Documentation;
 - (b) the Principal refrains from admitting liability under any third party claim or acting on the account of such claim without prior approval by the Contractor; and
 - (c) the exclusive control over any legal proceeding or settlement related any third party claim shall be exercised by the Contractor; provided, however, that the Principal shall render the Contractor all reasonable assistance toward such proceeding or settlement, at the cost and expense of the Contractor.
- 8.7. *Infringement Proceedings.* In the event the Principal is a party to legal proceedings involving allegations of infringement of any Intellectual Property in the Documentation of any third party, the Contractor shall keep the Principal fully informed of all aspects relevant to the legal proceedings and the Principal shall have the right, at its own cost, to be represented in the legal proceedings by separate counsel. In the event the

Contractor fails to act against claims alleging infringement of any Intellectual Property in the Documentation of any third party within reasonable time but, in any event, within twenty (20) days of having been notified of such claims, the Principal shall have the right to assume legal defence against claims alleging infringement of Intellectual Property and shall be entitled to reimbursement by the Contractor of reasonable costs and expenses incurred toward such defence.

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

SECTION IX. TERMINATION; SUSPENSION

- 9.1. *Termination for Material Breach or Bankruptcy.* Subject to the provisions of Clause 9.2, either Party shall be entitled to terminate this Agreement upon giving a written notice of termination to the other Party in the event of material breach by the other Party of any of its obligations under this Agreement. The written notice of termination shall contain an 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 Expertise valued at least EUR 5,000) and, in the event of a breach which is capable of remedy, failure to remedy that breach within fourteen (14) Working Days (or such longer period as the terminating Party may specify) following receipt of a written notice describing the breach in reasonable detail and requiring the breach to be remedied;
 - (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 B (*Technical Specification*), provided that such failure is not capable of being remedied during the Cure Period;
 - (d) failure by the Principal to make any payment to the Contractor in accordance with this Agreement within at least fourteen (14) Working 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 Service Provider under Clause 5.2 proving to be untrue; or

(f) breach by the Contractor of the undertaking contained in Clause 8.10.

- 9.2. *Corrective Period.* In the event of breach by either Party of its obligations under this Agreement, the non-breaching Party shall allow the breaching Party seven (7) 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. of this Agreement.
- 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 Party a written notice of termination explaining, in reasonable detail, the reason for termination upon occurrence of any of the following:
- (a) breach by the other Party of Clause 10.3;
 - (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 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 (e) – (i) under the law of any jurisdiction to which the other **Party's** assets and undertaking are subject.
- 9.3.A. *Principal's Right to Terminate Immediately.* The Principal may terminate this Agreement immediately upon giving the other Party a written notice of termination explaining, in reasonable detail, the reason for termination, if the Principal does not sign the Contract No 2016-EU-TMC-0116-M with the European Commission. In such a case, the Principal shall pay the Contractor the fees in respect of the services provided under this Agreement up to the date of the notification of the termination of this Agreement and the Principal is not obliged to pay contractual or any other penalty or damages to the Contractor.
- 9.4. *Right to Advance to Completion.* In the event the Contractor fails to fulfil any of its obligations, or fails to cure any breach in accordance with Clause 9.2, and the Agreement is terminated by the Principal, the Principal may advance the Expertise 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 4.4, 4.5, 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 Expertise 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, Clause 9.3 or Clause 9.3A of this Agreement, specifying, in reasonable detail, the Works, part of Works or part of the Expertise which the Principal would like to partially accept. In the event of receipt of such notice, the Contractor shall reasonably cooperate with the Principal in order to ascertain transfer to the Principal of ownership in the result(s) of such Works, part of Works or part of the Expertise and determination of the amount of consideration payable by the Principal.

9.7. ***Principal's Obligation to Pay.*** Subject to the provisions of Clause 9.6 and except in the event of termination by the Principal occurring as a result of violation by the Contractor of Clause 16.2, in the event this Agreement is terminated for any reason prior to completion of the Expertise, the Principal shall have an obligation to pay the Contractor the following:

(a) the Costs incurred by the Contractor up to the date of termination for minimum 10% of Fee but no more than 12,5% of Fee per week proportionally to the period of time when the Expertise has been provided according to this Agreement. For the sake of clarity Parties confirm that the costs shall not cover the period when the Expertise has been provided and related Deliverables according to this Agreement have been already approved and accepted by Principal up to date of termination, as for these Deliverables payments will be made as per Clause 6.2. (Payment Schedule);

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 XI:

(i) an amount equal to the costs reasonably and properly incurred by the Contractor as a result of or in connection with such termination; and

(ii) such additional amount as is required to put the Contractor in the same after tax position (taking into account the amount of any relief, allowance, deduction, set-off or credit relating to tax available to the Contractor in respect of the payment received) as it would have been in if the payment had not been a taxable receipt in the hands of the Contractor.

9.8. ***No Obligation to Pay Costs Incurred Prior to Acceptance.*** Notwithstanding anything set forth in this Agreement to the contrary including, without limitation, under Clause 9.7, the Principal shall have no obligation to pay any of the Costs incurred by the Contractor with respect to any Works or the Expertise (or part of any Works or the Expertise) not deemed as having been accepted by the Principal in accordance with Clauses 8.6, 8.7 or 8.8.

9.9. ***No Prejudice to Other Rights.*** The right to terminate this Agreement shall be without prejudice to any other right of either Party which has accrued prior to or as a result of such termination or to any remedy available to either Party under the terms of this Agreement or in accordance with Applicable Law.

SECTION X. LIABILITY

10.1. ***Liability of the Parties.*** The Contractor shall be liable to compensate Damages incurred by the Principal arising out of or in connection with this Agreement and pay contractual penalty set forth in accordance with Clause 10.2 if a breach of any of the obligations of the Contractor under this Agreement is established against the Contractor. The Principal shall be liable to pay the contractual penalty set forth in accordance with Clause 10.2 if a breach of payment obligations of the Principal under this Agreement is established against the Principal.

10.2. ***Contractual Penalty.*** In the event of failure by the Contractor to meet any Expertise 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 Fee payable under this Agreement for each day of delay with meeting any of the Expertise Milestones and/or supplying any of the Deliverables set forth in accordance with Annex B (*Technical Specification*); 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 B (*Technical Specification*) shall not exceed ten percent (10%) of the total amount of the Fee payable in consideration of such Works. In the event of failure by the Principal to pay any amount in accordance with Clause 6.3, the Principal shall be liable to pay the Contractor a penalty of zero point 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 Principal under this Clause 10.2 shall not exceed ten percent (10%) of the total amount remaining unpaid under the relevant invoice.

- 10.3. *Compensation for Damages.* Notwithstanding of and without prejudice to any contractual penalty payable in accordance with Clause 10.2 and subject to the provisions of Clause 10.5, in the event it is established that either Party is liable to the other Party with respect to any breach of its respective obligations under this Agreement, the liable Party shall compensate the other Party for any Damages incurred as a result of such breach, subject to the following terms:
- (a) the amount of compensation shall be limited to the amount of reasonably foreseeable Damages suffered as a result of the breach(es), but not otherwise; and
 - (b) if either Party is considered to be liable jointly with third parties to the other, the proportion of compensation payable by the liable Party shall be limited to that proportion of liability which is attributable to the breach by the liable Party.
- 10.4. *Attribution of Damages.* Any Damages suffered by either Party shall, for the purposes of Clause 10.3, be reduced to the extent that the Damages are caused by or contributed to by the other Party's own negligence or breach of its obligations under this Agreement.
- 10.5. *Limitation of Liability.* Notwithstanding anything to the contrary set forth in this Agreement, in no circumstances shall the Contractor or Principal be liable to one another for any loss of production, loss of profit, loss of revenue, loss of contract, liability incurred under other agreements (with the exception of costs paid by the Principal to contractors appointed by the Principal in relation to the Expertise 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 the double Fee paid by the Principal in consideration of the Expertise.

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 Party as soon as reasonably practicable and in any event within ten (10) Working Days of it becoming aware of the relevant Force Majeure Event. Such notification shall give sufficient details to identify the particular event claimed to be a Force Majeure Event and shall contain detailed information relating to the failure to perform (or delay in performing), including the date of occurrence of the Force Majeure Event, the effect of the Force Majeure Event on the ability of the affected Party to perform, the action being taken in accordance with Clause 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 Party with any further information it receives or becomes aware of which relates to the Force Majeure Event and provide an update on the estimate of the period of time required to overcome its effects.
- 11.4. *Notification of Resumed Performance.* The affected Party shall notify the other Party as soon as practicable once the performance of its affected obligations can be resumed (performance to continue on the terms existing immediately prior to the occurrence of the Force Majeure Event).
- 11.5. *Mitigation of Effects of Force Majeure.* As soon as practicable after the notification specified pursuant to Clause 11.3, the Parties shall use reasonable endeavours to agree appropriate terms or modifications to the Expertise 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
- 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
- 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 shall have the right to publish any of the documents, information or data provided by the Contractor to the Principal during provision of the Expertise.
- 12.8 *Remedies.* The Parties acknowledge and agree that a breach of the provisions of this Section XIII may cause the owner of Confidential Information to suffer irreparable Damages that could not be adequately remedied by an action at law. Accordingly, the Contractor agrees that the owner of Confidential Information that is

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

SECTION XIII. RIGHT TO AUDIT

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

SECTION XIV. ON-THE-SPOT VISITS

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

SECTION XV. GOVERNING LAW AND RESOLUTION OF DISPUTES

- 15.1. *Governing Law.* This Agreement shall be governed by and construed in accordance with Republic of Latvia law.

- 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 1 (one) month from the date of serving of the respective written complaint to the other Party, the Parties shall submit all their disputes arising out of or in connection with this Agreement to the exclusive jurisdiction of the courts of Republic of Latvia. The Parties hereby represent and warrant that the English language is understandable for both Parties in accordance with Article 8(1)(a) of the Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) and repealing Council Regulation (EC) No 1348/2000.

SECTION XVI. MISCELLANEOUS PROVISIONS

- 16.1. *Capacity.* Each Party warrants to the other Party that it has full power to enter into and perform this Agreement, and the person signing this Agreement on its behalf has been duly authorized and empowered to enter into such agreement. Each Party further acknowledges that it has read this Agreement, understands it and agrees to be bound by it.
- 16.2. *Conflict of Interest, Corruption and Fraud.* Notwithstanding any penalties that may be enforced against the Contractor under Applicable Law, or the laws of other jurisdiction(s), the Contractor shall be deemed to have committed a breach under this Agreement and the Principal shall be entitled to terminate this Agreement immediately and without any regard to the provisions of Clause 9.2, if it is shown that the Contractor is guilty of:
- (a) offering, giving, receiving or soliciting anything of value with a view to influencing the 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 against a written confirmation of receipt or by registered letter.
- 16.4. *Damages Covered by Insurance.* To the extent Damages are covered by insurance, the Principal and the Contractor waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance current as of the date of this Agreement.
- 16.5. *Relationship of the Parties.* The relationship between the Contractor to the Principal under this Agreement is that of independent contractors. The Contractor (or the **Contractor's** sub-contractors) is not an employee of the Principal, is not carrying out the regular business of the Principal, and is not subject to the same employment regulations as are applicable to employees of the Principal. Each of the Parties shall be solely and entirely responsible for their own acts and the acts of their employees. No benefits, special considerations, or employer/employee-type provisions are provided by the Principal to the Contractor, the **Contractor's** employees, or the **Contractor's** consultants, or the employees of such consultants.
- 16.6. *Severability.* If any provision of this Agreement shall be held to be illegal, invalid, void or unenforceable under Applicable Laws, the legality, validity and enforceability of the remainder of this Agreement shall not be affected, and the legality, validity and enforceability of the whole of this Agreement shall not be affected.
- 16.7. *Successors and Assigns.* The Principal and the Contractor each bind themselves, their successors, legal representatives, and assigns to the other party to this Agreement and to the partners, successors, legal representatives and assigns of such other party in respect to all covenants of this Agreement. Neither Party shall assign or transfer its respective interest in the Agreement without written consent of the other Party.
- 16.8. *Amendments and Variations.* No amendment to or variation of this Agreement shall be effective unless made in writing and signed by duly authorized representatives of both Parties.
- 16.9. *Entire Agreement.* This Agreement, and the Annexes hereto, constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes and extinguishes all and any prior drafts, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter.

16.10. *Execution.* This Agreement may be executed in two counterparts to be held by each Party which counterparts, taken together, shall constitute one and the same instrument.

Signed by:

For and on behalf of the Principal:

Signed by:

For and on behalf of the Contractor:

Balba A. Rubesa,

Chairperson of the Management Board

Jevgenijus Pičuginas,

The authorized person

Kaspars Rokens,

Member of the Management Board

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 C (*List of Approved Sub-Contractors*), which is in a contractual relationship with the Contractor to provide a part of the Expertise.
- (d) **"Certificate of Final Acceptance"**, as described in accordance with Clause 7.7.
- (e) **"Completion Certificate"**, as defined in accordance with Clause 7.4.
- (f) **"Confidential Information"**, as defined in accordance with Clause 12.1 of the Agreement.
- (g) **"Contractor"**, the company ARDANUY INGENIERIA S.A., as further specified in the Preamble of this Agreement, which is employed by the Principal as an independent professional contractor to perform the Expertise, and legal successors to the Principal and permitted assignees of the Principal.
- (h) **"Contractor Software"**, the object code versions of any downloadable software owned by or duly licensed to the Contractor solely for the purpose of accessing the Expertise, including but not limited to an agent, together with the updates, new releases or versions, modifications or enhancements, owned or licensed to and provided by the Contractor to the Principal pursuant to this Agreement, together with all pertinent documentation and other instructions related to such software.
- (i) **"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 Expertise, 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 Expertise or relating to the Expertise;
 - (iii) salaries of the Contractor's employees for the time that they spend in connection with the Expertise;
 - (iv) payments to sub-contractors for work relating to the Expertise;
 - (v) costs of all employee benefits and taxes for items such as social security and other benefits for the labour 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 Expertise;
 - (vii) payments for rental charges for machinery, equipment, facilities and tools used in connection with the Expertise, 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 Expertise;
 - (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 Expertise, 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 Expertise;
 - (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.
- (j) **"Corrective Period"**, as defined in accordance with Clause 9.2.
- (k) **"Cure Period"**, as defined in accordance with Clause 7.3.
- (l) **"Damages"**, any cost, claim, damage, demand, loss, expense or liability incurred by the relevant Party or Person.
- (m) **"Deficiency"**, is a part of the Expertise which is not in accordance with the Scope of Expertise specified in accordance with Annex B (*Technical Specification*), the Applicable Law or Good Industry Practice.
- (n) **"Defects Date"**, a date specified in Section 2.6.1. of Annex B (Technical specification) by which date the Principal and Contractor is obliged to notify each Deficiency in the Service.
- (o) **"Deliverable"**, any information, notes, material, drawings (including drawings in 3D model), records, documents and/or other items which the Contractor is required to deliver to the Principal as part of the Expertise, as further specified pursuant to Annex B (*Technical Specification*).
- (p) **"Documentation"**, all records, correspondence, and files of the Contractor, its employees, engineers, and consultants pertaining to the Project.
- (q) **"Effective Date"**, as first above specified in the Preamble to this Agreement.
- (r) **"EUR"** and **"euro"**, the official currency of the eurozone, officially known as the euro area.
- (s) **"Expertise"**, result of expert services, provided by the Contractor, necessary to continue detailed investigations as discovered by Consulting services (all necessary activities being and to be implemented by the Contractor as required in the Contract) and to elaborate technical specifications of detailed technical design.
- (t) **"Expertise Milestone"**, the date for delivery of one or more Deliverables, as set out in the Scope of Expertise and Schedule of Expertise;
- (u) **"Expertise Start Date"**, as specified in accordance with Annex B (*Technical Specification*).
- (v) **"Fee"**, as defined in accordance with Clause 6.1;
- (w) **"Final Acceptance Date"**, as defined in accordance with Clause 7.7.
- (x) **"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.
- (y) **"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.
- (z) **"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.

- (aa) "Intellectual Property of Contractor", all Intellectual Property owned or licensed to the Contractor with a right to sub-license.
- (bb) "Objection Notice", as defined in accordance with Clause 7.5.
- (cc) "Party" and "Parties", the Principal and the Contractor and include their respective successors in title, permitted assigns and permitted transferees.
- (dd) "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.
- (ee) "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).
- (ff) "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.
- (gg) "Provisional Completion Certificate", as defined in accordance with Clause 7.5.
- (hh) "Railway", new fast conventional double track electrified railway line with the maximum design speed of 240 km/h and European standard gauge (1435 mm) on the Route.
- (ii) "Right of Partial Acceptance", as defined in accordance with Clause 9.6.
- (jj) "Standards", CEF Standards and Grant Agreement Standards.
- (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 Expertise and/or the Project.

TECHNICAL SPECIFICATION

FOR PROCUREMENT

TECHNICAL EXPERTISE OF THE CUT-AND-COVER RAILWAY TUNNEL

1. GENERAL

1.1. 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. 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. There are no direct passenger or freight services along the railway and the majority of the North-South freight is being transported by road transport.

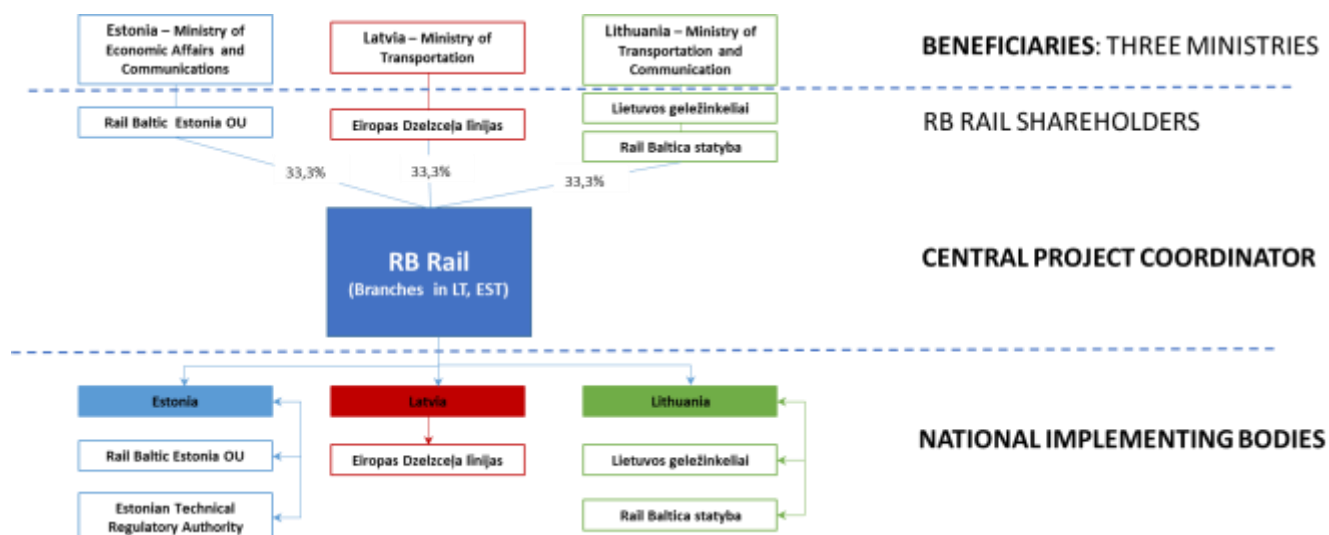
Rail Baltica is already designed to become a part of the EU TEN-T North Sea – Baltic Core Network Corridor, which links Europe's largest ports of Rotterdam, Hamburg and Antwerp – through the Netherlands, Belgium, Germany and Poland – with the three Baltic States, further connecting to Finland via the 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. 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 transshipment 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 250 km/h, design speed on side tracks minimum 100 km/h;
- axle load 25 t;
- distance between track centres at least 4.50 m on the main tracks;
- distance between two sided passing loops approximately 50 km and crossovers approximately 25 km;
- all pedestrian, road and 1520 mm 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 shareholders structure of RBR is presented in Figure 1.



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 railway line on the route from Tallinn through Pärnu (EE), Riga (LV), Panevėžys (LT), Kaunas (LT) to the Lithuania/Poland state border (including connection Kaunas - Vilnius). In the longer term, the railway line could potentially be extended to include a fixed link between Helsinki and Tallinn, as well as integrate the railway link to Warsaw and beyond.



Figure 2. Rail Baltica railway line route through Estonia, Latvia and Lithuania.

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

Further information is available in <http://www.railbaltica.org/>

1.2. Procurement for the technical expertise of the cut-and-cover railway tunnel.

As a result of Preliminary design, and available previous surveys and studies, as well as taking into account difficult construction and operational conditions (as explained further) it was decided to carry out the additional technical expertise of the cut-and-cover railway tunnel for the Rail Baltica section in Riga from Riga Railway central station to Riga Airport.

This technical expertise is a critical part of the Consolidated preliminary technical design (CPTD) report, which is a basic prerequisite for Detailed technical design (DTD) procurement technical specification and provides input data for designers.

1.3. Abbreviations and terms

| | |
|-------------------------------|---|
| CAPEX | <i>Capital expenditures</i> |
| Contract | signed agreement between Contracting authority and Contractor to prepare Expertise through the provision of Consulting services defined in this agreement. |
| Contractor | service provider awarded with a Contract to conduct Expertise. |
| Consulting services | all necessary activities being and to be implemented by the Contractor as required in the Contract. |
| EU | <i>European Union.</i> |
| Expertise | result of expert services, provided by the Contractor, necessary to continue detailed investigations as discovered by Consulting services and to elaborate technical specifications of detailed technical design. |
| National studies | detailed engineering and feasibility studies on implementation of Rail Baltica project in each of the three Baltic states, covering EIA, preliminary design, feasibility studies, spatial planning and similar activities. |
| OPEX | Operating expenses |
| Programme | Expertise programme, proposed by the Contractor and approved by the Contracting authority, shall include graphical representation of main Expertise milestones and deadlines of deliverables as required in Terms of reference. |
| Rail Baltica project | future railway line preventing missing links in the European railway network and improving the existing network infrastructure on the route Warsaw – Kaunas – Riga – Tallinn – Helsinki, and ensuring full railway interoperability and better railway usage indicators in passenger and cargo traffic. The project ensures Baltic State integration into the EU railway area. The project is the part of the TEN-T core network North Sea-Baltic corridor. |
| Rail Baltica railway | new fast conventional double track electrified railway line with the maximum design speed of 240 km/h and European standard gauge (1435 mm) on the route from Tallinn through Pärnu (EE), Riga (LV), Panevėžys (LT), Kaunas (LT) to Lithuanian – Polish border, with the connection of Kaunas – Vilnius. |
| Railway infrastructure | has the same meaning as an identical term in the Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (recast), as well as it includes freight and passenger terminals and infrastructure and rolling stock maintenance facilities and the ground underneath them and the airspace above them to |

| | |
|--------------------------------------|--|
| | the extent that the national legislation permits the ownership of the ground and the airspace. |
| Railway infrastructure | has the same meaning as an identical term in the Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (recast), as well as it includes freight and passenger terminals and infrastructure and rolling stock maintenance facilities and the ground underneath them and the airspace above them to the extent that the national legislation permits the ownership of the ground and the airspace |
| RB Rail AS, Contracting authority | a joint venture established by the Republics of Estonia (EE), Latvia (LV) and Lithuania (LT) to coordinate the development and construction of the fast-conventional standard gauge railway line on the North Sea – Baltic TEN-T Core Network Corridor linking three Baltic states with Poland and the rest of the EU. |
| RAMS | <i>Reliability, Availability, Maintainability and Safety</i> |
| Technical specification | this document forming a part of Service procurement regulations and Contract following the procurement procedures; |
| TSI | <i>Technical Specifications for Interoperability.</i> |
| WP | <i>Work package</i> , a defined part of Contractor's activities, to be carried out under the Contract's requirements. |

2. TECHNICAL EXPERTISE FRAMEWORK

2.1. Scope of the Expertise

2.1.1. Introduction of the cut-and-cover tunnel.

The Preliminary design with the related studies and Environmental Impact Assessment (EIA) have been carried out in 2014 – 2016, as a result Rail Baltica railway route in Latvia approved by Cabinet of Ministers. The cut-and-cover railway tunnel is part of the Rail Baltica section in Riga city, which is located between Riga Railway central station to Riga Airport.

In Riga, Rail Baltica railway tracks in the section from Jelgavas street to **Zolitūdes** street are intended to be located parallel and under the existing 1520 mm tracks. As it is foreseen in the Preliminary design and Environmental Impact Assessment, the Rail Baltica railway track will be in a cut-and-cover tunnel under existing railway track to **Jūrmala** direction and during the construction, existing traffic will be maintained on at least one 1520mm track. The beginning of the entrance of the Rail Baltica tunnel in **Torņakalns** is planned at the planned crossing of Teodora Hermanovska Street, but the exit from the tunnel is planned after the crossing of **Liepājas** Street.

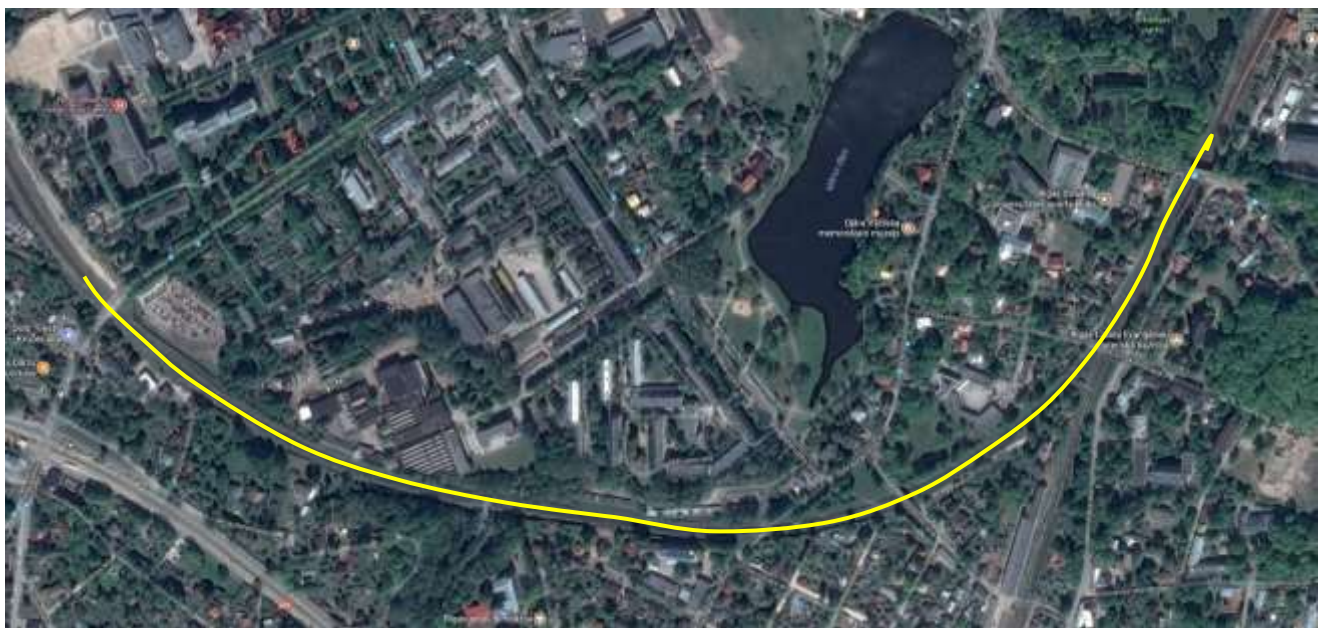


Figure 3. Schematic alignment of tunnel.

The Rail Baltica cut-and-cover tunnel crosses three overpasses - **Friča Brīvzemnieka** Street, **Torņakalna** Street and Altonavas Street. **Torņakalna** Street and Altonavas Street overpasses are included in the National Protected Cultural Monuments List and their conversion or rebuilding is possible only with the permission of the State Heritage Protection Inspectorate.

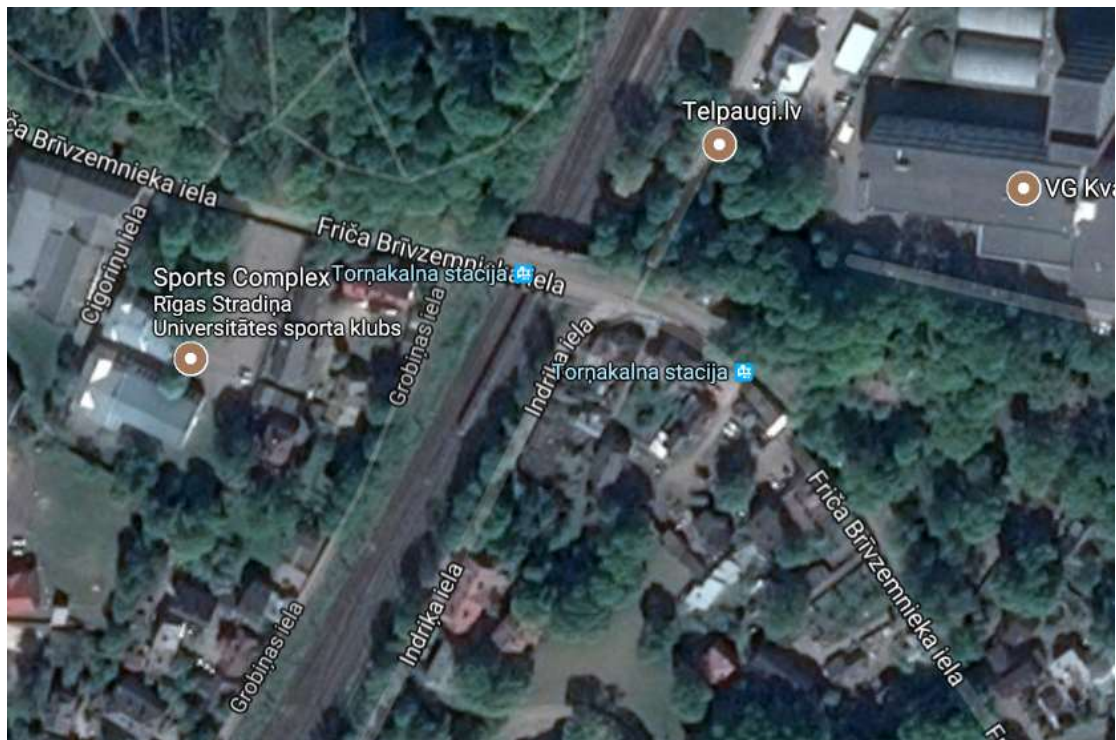


Figure 4. Friča Brīvēznieka street crossing – plan and side view



Figure 5. Torņakalna street crossing – plan and side view



Figure 6. Altonavas street crossing – plan and side view

- 2.1.2. Key technical parameters of the cut-and-cover tunnel (as per preliminary design):
- Electrified high speed railway line, double track 1435mm;
 - Total length: 1,81 km;
 - Length of the tunnel entrance: approx. 350 m;
 - Length of the tunnel exit: approx. 350 m;
 - **Mārupītes** river (~ 10 m wide) crossing underneath of the tunnel;
 - Equipped with emergency exits, ventilation, lightening, cable troughs, radio coverage equipment for a fire emergency and maintenance needs etc.;
 - Tunnel is located in the existing 1520 mm railway right of way. The existing electrified 1520mm railway double track (including 25 t axle load freight trains) will operate above the tunnel in the entire length;
 - Three road overpasses in **Friča Brīvzemnieka** street, **Tornakalna** street and Altonavas street crosses both railways (1435mm in tunnel and 1520mm above the tunnel). The cut-and-cover tunnel shall be constructed as far as possible without major changes to the structures of the overpasses themselves.

2.2. Objectives

- 2.2.1. Main objective is to evaluate preliminary solutions of the tunnel from the viewpoint of safe and efficient railway operations, tunnel constructability and the LCC perspectives. The consultant has to provide the answer that the cut-and-cover railway tunnel technical solution is safe to operate both by Rail Baltica and existing railways (1520mm gauge) above the tunnel.
- 2.2.2. The consultation services have to provide the additional technical expertise of the cut-and-cover railway tunnel for the Rail Baltica in order to define next priority steps to be carried out, including the all necessary investigations, to secure precise definition and description of the technical specification for the detailed technical design, thus ensuring safe detailed technical design of the tunnel and construction input.
- 2.2.3. The Contractor through analysing the best practices, applying best knowledge and experience, deploying smart technologies and innovations shall deliver the highest quality of expert services, which will become an integral part of Rail Baltica railway and will ensure safe, interoperable, efficient and cost-effective railway operations.
- 2.2.4. The cut-and-cover railway tunnel as a long-term investment needs to be thoroughly analysed by evaluating latest technologies and costs associated (both CAPEX and OPEX) in order to avoid possible over-investments, as well as under-investments. Thus the railway line operational and maintenance aspects have to be considered from the point of view of effectiveness to increase railway value for money.

2.3. Input documents for the Consulting services

The Contractor shall consider the non-exhaustive list of documents provided in this section, which will be handed over to the Contractor at the commencement of the Contract:

- 2.3.1. Rail Baltica studies for Latvia: Environmental Impact Assessment.
- 2.3.2. Preliminary design and available previous surveys and studies will be handed over to the Contractor.
- 2.3.3. Riga city strategic development and spatial (territorial) plans, which relates to the Expertise.

2.4. Assumptions for the Consulting services timetable:

- 2.4.1. The scope of the Consultant services have been prepared with the assumption that the open procurement will be carried out and following contract concluded without delays.

2.5. Risks and assumptions of the tunnel area:

- High groundwater level;
- Possible old underground rivers, hidden river areas;
- Possible undisclosed archaeological discoveries and cultural heritage monuments and structures;

- In the right-of-way of the existing railway;
- Several intersections with existing city street network;
- Proximity to several living houses.

2.6. Deliverables and deadlines

2.6.1. The Contractor shall provide Consulting services in English and submit the following deliverables:

| Deliverables/Reports | Submission deadline | No. of copies | Description of deliverable (as per section 3. below) | Approval through Contracting Authority/ Defects date |
|----------------------|---------------------|----------------------------|---|--|
| Inception Report | 4 weeks after CD | 2 hard copies, 1 soft copy | Analysis of the input documentation, and findings of the first on site inspection. (WP1) . Updated recommendations, methodology and program, for the further steps and investigations (WP2) . | 1 week after reception |
| Draft Final Report | 6 weeks after CD | 2 hard copies, 1 soft copy | Assessment report of the proposed tunnel solutions, proposals for change in solutions, change in alignment (tunnel geometry and cross-section), if applicable. Proposals shall be supported with the necessary benchmarking analysis. (WP3) Preparation of specific construction requirements for detailed technical design (WP4) Value engineering for the Contracting Authority's purpose. (WP5) Suggested terms and conditions to be included in the design and construction contracts. (WP6) | 1 week after reception |
| Final Report | 8 weeks after CD | 3 hard copies, 1 soft copy | Final report have to be submitted taking into account the Contracting Authority's comments. Minimum content: 1. Short summary of WP1 and WP2. | 1 week after reception |

| Deliverables/Reports | Submission deadline | No. of copies | Description of deliverable (as per section 3. below) | Approval through Contracting Authority/ Defects date |
|----------------------|---------------------|---------------|---|--|
| | | | <p>2. Final version consisting of WP3; WP4; WP5; and WP6.</p> <p>The outcomes of the final report have to be presented in presentation for the Contracting Authority's management.</p> | |

2.6.2. The deadline for the provision of the Consulting services is 2 months from the commencement date (CD).

2.6.3. The Contractor shall commence provision of the Expertise immediately after the conclusion of the Contract.

3. DESCRIPTION OF EXPERTISE

The Expertise is organized in accordance with the following work packages (WP):

3.1. WP1: Input documentation and on-site inspection;

WP1 shall include analysis of the input documentation, taking into account **Contractor's** findings of the first on site inspection and discussion with the Contracting authority. Analysis of the input document is to reflect **Contractor's** understanding of **Expertise's** objectives, scope and further milestones. During the analysis the Contractor shall identify the proposals regarding cut-and-cover tunnel technology, methodology, options, further steps and investigation to achieve the objectives. Risks shall be identified at early stage of Expertise implementation and whenever possible.

3.2. WP2: Updated program and further investigations;

The Contractor shall prepare Expertise programme for its services to be provided. Expertise programme shall include representation of main **Expertise's** milestones and deadlines of deliverables as required in Technical specification. The purpose of Expertise programme is to show the further milestones, to present all necessary subjects and to provide high quality professional Consulting services on time.

Recommendations of the Contractor shall be aligned with currently implemented interstate Rail Baltica project agreements, as well as existing national and Riga city strategic development and spatial (territorial) plans. Riga city spatial and strategy plans shall be incorporated in the analysis.

The Contractor shall also provide status and results of the Expertise to the Contracting authority in a form of presentation summarizing major findings and further activities. At the request of the Contracting authority the Contractor shall present presentation, with the necessary clarifications and explanations to the questions which might raise.

3.3. WP3: Proposed technical solutions for tunnel;

In this WP the Expert shall assess the preliminary solutions of the tunnel from the viewpoint of safe and efficient railway operations, tunnel constructability and the LCC perspectives. The consultant has to provide the answer that the cut-and-cover railway tunnel technical solution is safe to operate both by Rail Baltica and the existing railways (1520mm gauge) above the tunnel, and under what conditions. The Expert shall assess the proposed tunnel solutions, proposals for change in solutions, change in alignment (tunnel geometry and cross-section), if applicable. The Expert shall define the best proposals for detalisation in the following WP and in parallel communicate it to the Contracting authority.

The Contractor shall support Expertise implementation with the necessary benchmarking analysis and the best practical examples of similar cut-and-cover tunnel in terms of key technical parameters and similar operational conditions with two different railways. Examples shall describe the best contractors for the cut-and-cover tunnel construction world wide during the past ten years.

3.4. WP4: Specific construction requirements for detailed technical design;

Preparation of specific construction requirements for detailed technical design that has to be respected by the tunnel designers. The Expert shall define all critical technical terms and parameters, including principal alignment and layouts, dimensions, ventilation with the equipment, emergency exits with the lightening, cable troughs (including cable distribution solutions), location of the radio coverage equipment (amplifier) for a fire emergency needs and also maintenance communication needs, etc. Proposals shall take into account proposed construction technology options and sequence, risk mitigation measures as well as recommended climate conditions for such works. The small river path underneath of the tunnel shall be specifically described with the cross section drawings and proper staging/sequence during construction process.

Requirements shall include reference to all standards related to the tunnel construction. Definition of the minimum requirements and coefficients as required by the standards shall be part of the critical requirements.

As part of the technical solution the Contractor shall propose respective maintenance management strategy for the entire tunnel.

For the safe operational purposes the Contractor shall propose software based detection tools or intelligent in advance warning system with the technical specifications for the cut-and-cover tunnel condition monitoring, measurement and preventive maintenance.

The Contractor shall implement risk analysis for all topics to be covered within the scope of the Expertise and provide mitigation measures to avoid or minimise those risks, covering also main **materials'** production and supply, technology changes, innovative technology solutions, etc.

The Contractor shall propose all further needed studies and investigations if required.

The Contractor shall ensure that all building Eurocodes, EN standards, TSIs and key RAMS aspects are met during Expertise implementation, including through analysing the geotechnical, hydrogeological conditions as well as assessing stability calculations and definitions of stability principles.

3.5. WP5: Value engineering;

Value engineering for the Contracting **Authority's** purpose shall be described in the WP5. The railway tunnel investments needs to be thoroughly analysed by evaluating latest technologies and costs associated (both CAPEX and OPEX) in order to avoid possible over-investments, as well as under-investments. The Contractor shall conduct value engineering for the technical solutions and deployment strategies by estimating also CAPEX and OPEX as well as life-cycle costs.

3.6. WP6: Suggested contractual terms and conditions to be included in the design and construction contracts;

The Expertise shall also recommend the contractual terms and conditions, (including liability and insurance conditions) to be included in the design and construction contracts, which are typically used for such tunnels worldwide.

ANNEX C: LIST OF APPROVED SUB-CONTRACTORS

No sub-contractors intended.

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

Date: [insert date in the form of 1 January 2018]

Location: [insert location]

For:

RB Rail AS

registration number 40103845025 legal address at **K.Valdemāra** street 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 Expertise Agreement No. insert agreement number] (hereinafter, the "Agreement") and Annex A (*Definitions and Common Terms*) of the Agreement.

Whereas:

(A) the Principal and the Contractor have entered into the Agreement;

(B) Clause 7.4 of the Agreement stipulates that upon meeting an Expertise Milestone or producing a Deliverable constituting all or an identifiable part of the Scope of Expertise, the Contractor shall issue to the Principal a Provisional Completion Certificate substantially in the form of Annex D (*Form of Provisional Completion Certificate*) of the Agreement;

(C) an Expertise Milestone has been met or a Deliverable has been completed.

The following Expertise Milestone(s) has/have been met on [insert date in the form of 1 January 2018], as specified in accordance with Annex B (*Technical specification*) of the Agreement:

[describe in reasonable detail the Expertise Milestone attained. Insert n/a, if no Expertise 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 ten (10) days 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 E: FORM OF PROVISIONAL ACCEPTANCE CERTIFICATE NO. [•][INSERT NUMBER]

Date: [insert date in the form of 1 January 2018]

Location: [insert location]

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

This provisional acceptance certificate (hereinafter Provisional Acceptance Certificate) is issued to the Contractor by [insert name, registration number insert registration number, legal address] (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] Expertise Agreement No. [insert agreement number] (hereinafter, the "Agreement") and Annex A (*Definitions and Common Terms*) of the Agreement.

Whereas:

- (A) the Principal and the Contractor have entered into the Agreement;
- (B) the following Expertise 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 F (*Form of Final Acceptance Certificate*) (hereinafter, the "Final Acceptance Certificate");

The Principal is satisfied with the result of any and all achieved Expertise Milestones and/or Deliverables completed and submitted and, in accordance with Clause 7.5 of the Agreement, the Principal accepts the part of the Expertise 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 F: FORM OF FINAL ACCEPTANCE CERTIFICATE NO. [•][INSERT NUMBER]

Date: [insert date in the form of 1 January 2018]

Location: [insert location]

For: [•] (hereinafter, the “Contractor”)

This final acceptance certificate (hereinafter, “Final Acceptance Certificate”) is issued to the Contractor by [insert name, registration number insert registration number, legal address] (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 Expertise Agreement No. [insert agreement number] dated [insert date] (hereinafter, the “Agreement”) and Annex A (*Definitions and Common Terms*) of the Agreement.

Whereas:

- (A) the Principal and the Contractor have entered into the Agreement;
- (B) one or more Expertise 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 F (*Form of Final Acceptance Certificate*) (hereinafter, the “Final Acceptance Certificate”);

The Principal is satisfied with the result of the Expertise and/or all Deliverables completed and submitted and the Principal accepts the Expertise 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 G: DECLARATION OF CONTRACTOR

I, the undersigned duly authorised representative, on behalf of **ARDANUY INGENIERIA 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:
 - a. collective Contracts covering a substantial proportion of employers and workers;
 - b. arbitration awards; or
 - c. 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.

Jevgenijus **Pičuginas**, the authorized person

Date: 16/04/2018