

STUDY AGREEMENT
for supplier market study for railway infrastructure components
between

RB Rail AS
and
TÜV SÜD Rail GmbH

Contract registration number 8/2019-33
CEF¹ Contract No C1.1.8
INEA/CEF/TRAN/M2016/1360716
Procurement procedure identification No RBR 2018/27

Dated 7 May 2019

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

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STUDY AGREEMENT

Riga, 7 May 2019

This Study agreement (**the “Agreement”**), together with all Annexes thereto, is entered into in Riga, on 7 May of the year 2019 (**the “Effective Date”**) by and between:

RB Rail AS, a joint stock company registered in the Latvian Commercial Register, registration No 40103845025, legal address at **K.Valdemāra iela 8-7**, Riga, LV 1010, Republic of Latvia (the “**Principal**”), represented by Chairman of Management Board Timo Riihimäki and Management Board Member Ignas Degutis acting on the basis of the Regulations on Representation Rights dated 25 May 2018, on the one side,

and

TÜV SÜD Rail GmbH, a limited liability company organised and existing under the laws of the Federal Republic of Germany, registration number HRB 154539, having its registered address at Barthstr. 16, 80339 Munich, Federal Republic of Germany (**the “Contractor”**), represented by Mr. Klaus-Michael Bosch acting on the basis of his position as Managing Director on the other side.

WHEREAS:

- (A) This Agreement is entered into under 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 commercialise the Rail Baltica railway – a new fast conventional double track electrified railway line according TSI INF P2-F1 criteria and European standard gauge (1435mm) on the route from Tallinn through Pärnu-Riga-Panevėžys-Kaunas to Lithuanian-Polish border, with the connection of Kaunas – Vilnius, and related railway infrastructure in accordance with the agreed route, technical parameters and time schedule;
- (B) **The Principal has organised procurement procedure “Supplier market study for railway infrastructure components” (identification No. RBR 2018/27) (the “Procurement Procedure”) whereby the Contractor’s tender proposal (the “Contractor’s Proposal”) was selected as the winning bid;**
- (C) This Agreement is co-financed from the Connecting Europe Facility (CEF) Agreement No INEA/CEF/TRAN/ M2016/1360716, Activity 1.1.8, Action No: 2016-EU-TMC-0116-M².

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-

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

enactment of the respective treaty, directive, regulation, law or legislative provision at any time then in force and to all subordinate legislation enacted from time to time.

- (d) In the event there arises a conflict between provisions of the Agreement, the last provision to have been written chronologically shall take precedence.
 - (e) Any reference in this Agreement to a person acting under the direction of another person shall not include any action that is taken in contravention of any Applicable Law or Standards, unless the relevant person can demonstrate that an explicit instruction or direction was given to take the relevant action.
 - (f) Unless expressly stated to the contrary, any reference in this Agreement to the right of consent, approval or agreement shall be construed such that the relevant consent, approval or agreement shall not be unreasonably delayed or withheld. The Parties agree and acknowledge as follows:
 - (i) neither Party shall 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, except for any Definitions, in accordance with Annex A (*Definitions and Common Terms*).
- 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) Procurement documents with the annexes;
 - (d) Clarifications of the Tender of the Contractor;
 - (e) Tender of the Contractor.

SECTION II. GENERAL TERMS AND CONDITIONS

- 2.1. *Engagement to Carry Out Study.* The Principal hereby engages the Contractor to provide and perform the Study for the purposes of the Project, as further described and according to the specifications contained Annex B (*Technical specification*) to this Agreement, and the Contractor hereby accepts such engagement. The Study shall result in the provision to the Principal of the Deliverables identified in accordance with Annex C (*Schedule of Study*) to this Agreement.
- 2.2. *Co-Operation of the Parties.* The Parties shall cooperate with one another to fulfil their respective obligations under this Agreement. Both Parties shall endeavour to maintain good working relationships among all key personnel engaged toward provision of the Study.

- 2.3. *Licensing Requirements.* By signing this Agreement, the declaration is made by the Contractor that the Contractor is professionally qualified, registered, and licensed to practice in the Federal Republic of Germany.
- 2.4. *General Obligations of Contractor.* The Contractor shall have an obligation to perform the Study as described Annex B (*Technical Specification*) and Annex J (**Contractor's Proposal**).
- 2.5. *Acceptance Not a Waiver.* **The Principal's review, approval, acceptance, or payment for the Works forming part of the Study shall not be interpreted or construed to operate as a waiver of any right or cause for action arising out of the Contractor's performance of any Works under this Agreement.** The Contractor shall remain liable to the Principal as allowed under this Agreement and under Applicable Law for any and all costs and/or Damages caused by **the Contractor's negligent performance of any of the Works furnished under this Agreement.**

SECTION III. RESPONSIBILITIES OF PRINCIPAL

- 3.1. *Supply of Information.* Unless otherwise provided under this Agreement, the Principal shall, in a timely manner, provide to the Contractor any information regarding requirements and parameters of the Project, as may reasonably be requested by the Contractor for the purposes of the Study, provided that the Principal is in possession of such information. The Principal shall furnish to the Contractor a preliminary Project program setting forth the **Principal's objectives, schedule, constraints and criteria, including necessities and relationships, special equipment, systems and site requirements.**
- 3.2. *Review of Documentation.* The Principal shall examine Documentation as may be submitted by the Contractor for review by the Principal toward partial completion of the Study and, upon request of the Contractor, shall render decisions and opinions pertaining thereto.
- 3.3. *Decisions.* On all matters properly referred to it in writing by the Contractor the Principal shall give its decision in writing so as not to delay the Study and within a reasonable time.
- 3.4. *Accounting and Auditing Services.* The Principal shall furnish accounting and *auditing* services as may be necessary for the Study as the Principal 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 (such as non-compliance with Annex B (*Technical Specification*), contextual and/or factual error, formatting errors or inconsistencies) or defect in the Study or non-conformance of any action forming part of the Study with the Documentation, the Principal shall give prompt notice thereof to the Contractor. The Contractor shall have the obligation to correct such error, or defect in the Study.

SECTION IV. RESPONSIBILITIES OF CONTRACTOR

- 4.1. *Standard of Performance.* **The Contractor's services shall be performed as expeditiously as is consistent with professional skill and care, orderly progress of the Study, and in accordance with the Schedule of Study set forth in accordance with Annex C (*Schedule of Study*).**
- 4.2. *Obligation to Act in Accordance with Principal's Comments.* In performing the Study, the Contractor shall have due regard to any comments made by the Principal in connection with any review of the Documentation, and shall provide reasons to the Principal where it does not take into account any such comments.
- 4.3. *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 Study, ascertain and comply with all Applicable Laws and Good Industry Practice of the European Union;
- (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 Study and for period of five (5) years for any reason whatsoever, the Contractor shall keep and maintain clear, adequate and accurate records and Documentation evidencing, to the reasonable satisfaction of the Principal, that the Study has been and is being carried out in accordance with the Standards. In case of on-going audits, appeals, litigation or pursuit of claims concerning the grant, including in the case of correction of systemic or recurrent errors, irregularities, fraud or breach of obligations, the records shall be kept and maintained longer.

4.5. *Access to Documentation.* At all times during the term of the Study, 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 recognised format for a period of ten (10) years from the date of termination of this Agreement or the Final Acceptance Date, as applicable. All records forming part of the Documentation shall be available to the Principal 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 and Staff.* In carrying out the Study, the Contractor may only rely on the services of those Approved Sub-Contractors and Staff listed in Annex E (*List of Approved Sub-Contractors and Staff*), as such list may, from time to time, be modified or supplemented in agreement with the Principal and in accordance with the terms and subject to the criteria contained in the applicable public procurement laws of the Republic of Latvia. Annex E (*List of Approved Sub-Contractors and Staff*) shall specify the name, contact details and legal representative(s) of each Approved Sub-Contractor and specify the name of each Staff member as of the Effective Date. The Contractor shall have an obligation to notify the Principal in writing of any changes to Sub-Contractor and/or Staff data specified in Annex E (*List of Approved Sub-Contractors and Staff*) occurring during the term of this Agreement and of the required information for any new sub-contractors and/or Staff member which it may subsequently engage toward provision of the Study.

Pursuant to the Public Procurement law of the Republic of Latvia applicable at the date of entry into effect of this Agreement, the Service Provider shall obtain prior written consent of the Principal for the replacement of each Sub-contractor and/or each Staff member indicated in Annex E (*List of Approved Sub-Contractors and Staff*) and involvement of additional sub-contractors and/or Staff members.

Review and evaluation of the replacement Sub-contractors and/or Staff shall be carried out, and the consent or refusal to give consent shall be rendered by the Principal in accordance with the Section 62 of the Public Procurement Law of the Republic of Latvia.

The Service Provider shall replace the Sub-contractor and/or Staff member 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 Study and/or the Project**. In performing the Study, the Contractor shall take all necessary measures to prevent any situation where the impartial and objective implementation of the Study is compromised for reasons involving economic interest, political or national affinity, family or emotional ties or any other shared interest.
- 4.9. *Attendance of Meetings.* To the extent necessary to ensure smooth and efficient provision **of the Study, the Contractor shall, at the Principal's request, hold and/or attend meetings as described in Annex B (Technical specification) and Annex J (Contractor's Proposal).**
- 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 Study, the Contractor shall, at all times, ensure compliance with requirements imposed by supra-national and/or governmental authorities having jurisdiction over the Project.
- 4.11. *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 Study, the Contractor undertakes not to procure goods or services of any kind from any Person meeting any of the following criteria:
- (a) the Person who is a member of the Management Board or Supervisory Board of an Approved Sub-Contractor or procurator of an Approved Sub-Contractor, or is authorised to represent or act on behalf of an Approved Sub-Contractor with respect to any activity related to any subsidiary company of such Approved Sub-Contractor, and such Person has been accused of commitment of any of the following criminal offences pursuant to an order issued by a public prosecutor or was found to be guilty of commitment of any of the following criminal offences in accordance with a court judgment that has entered into legal force, is non-disputable and non-appealable:
 - (i) accepting a bribe, giving of a bribe, misappropriation of a bribe, intermediation toward giving or taking of a bribe, acceptance of a prohibited benefit or commercial bribing;
 - (ii) fraud, misappropriation of funds or money laundering;
 - (iii) tax evasion or evasion of payments equivalent to tax;
 - (iv) terrorism, financing of terrorism, instigation of acts of terrorism, terrorist threats or recruitment and training of a person with the aim of committing acts of terrorism;
 - (b) the Person has, by decision of a competent authority or judgment of a court which has entered into legal force and is non-disputable and non-appealable, been found guilty of violation of labour law in any of the following manners:
 - (i) employment of one or more citizens or nationals of countries who are not citizens or nationals of a Member State of the European Union and are residing in the territory of a Member State of the European Union unlawfully;
 - (ii) employment of one or more persons without having entered into written employment agreement with such persons, or without having submitted an employee declaration with respect to such persons within a period of time stipulated in accordance with applicable laws and regulations applicable to persons that enter into salaried employment;

- (c) the Person who, by decision of a competent authority or in accordance with judgment of a competent court which has entered into legal force, is non-disputable and non-appealable, has been held guilty of violation of applicable rules of competition law manifested as a vertical agreement aimed at restricting the ability of one or more purchasers to determine the resale price, or a horizontal cartel agreement, with the exception of instances where the relevant authority, upon having established the fact of violation of applicable rules of competition law, has discharged the candidate or participant in a tender offer from imposition of a fine or has reduced the amount of fine as a part of co-operation leniency programme;
- (d) the Person who has insolvency proceedings initiated against it (except in the circumstances where a bailout or a similar set of measures are applied within the insolvency proceedings and are aimed at preventing the bankruptcy and restoring the debtor back to solvency, in which case the Contractor shall evaluate the possibility of participation by such Person in performing the Study), economic activity of the Person has been suspended or discontinued, bankruptcy proceedings have been initiated against the Person or the Person is subject to a liquidation;
- (e) the Person has unpaid tax indebtedness in the country where the procurement is organised or in the country where the Person is registered or permanently residing as a tax payer, including the indebtedness with respect to State social insurance contributions, in the total amount exceeding EUR 150 in each individual country; in such case, the Contractor can, within its sole discretion, prompt the Approved Sub-Contractor to pay or discharge all outstanding tax indebtedness within 10 (ten) Working Days and, upon such payment or discharge, allow the Person to continue performance of the Study; and
- (f) any of the above-mentioned criteria shall apply to all members of a group of persons if the Person is a group of persons.

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

- (a) any report, brochure, document or information related to the Study conducted by the Contractor hereunder or any other Person, or which the Contractor makes publicly available shall include each of the following:
 - (i) a funding statement which indicates that the Study is financed from CEF funds substantially in the following form: **“Rail Baltic/Rail Baltica is co-financed by the European Union’s Connecting Europe Facility”**;
 - (ii) with respect to printed materials, a disclaimer releasing the European Union from liability with respect to any contents of any distributed materials **substantially in the form as follows: “The sole responsibility of this publication lies with the author. The European Union is not responsible for any use that may be made of the information contained therein”**. The disclaimer in all official languages of the European Union can be viewed on the website <https://ec.europa.eu/inea/connecting-europe-facility/cef-energy/beneficiaries-info-point/publicity-guidelines-logos>; and
 - (iii) the flag of the Council of Europe and the European Union.
- (b) the requirements set forth in Clauses 4.13(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 Connecting Europe
Facility of the European Union**

in the event the Contractor decides to utilise the above logo, the Contractor shall ensure that the individual elements forming part of the logo are not separated (the logo shall be utilised as a single unit) and sufficient free space is ensured around the logo; and

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

SECTION V. REPRESENTATIONS AND WARRANTIES

5.1. *Certain Representations and Warranties by Parties.* Each Party represents and warrants to the other 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 Statutes, other constitutional documents or agreements of any kind to which it is a party;
- (c) it is not bankrupt and is not the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, it is not in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under the laws of the country where it is registered and submits its tax accounts; and
- (d) it has entered into this Agreement of its own volition and in good faith.

5.2. *Certain Representations and Warranties by Contractor.* The Contractor represents and warrants to the Principal, as of the Effective Date, as follows:

- (a) it has all requisite qualification, skills and competence to perform the Study on the terms and conditions of this Agreement which are no less favourable than the terms and conditions of service identified by the Contractor in any document submitted by the Contractor to the Principal as part of the Procurement Procedure and on the terms of the **Contractor's Proposal**;
- (b) it holds all requisite licenses, permits, approvals and consents necessary to enable performance by the Contractor of the Study according to the specifications contained in Annex B (*Technical Specification*);
- (c) it has all requisite ability to ensure the highest quality of the Study;
- (d) it will assign competent and duly qualified personnel to carry out the Works set out in this Agreement according to the highest professional standard and Good Industry Practice;
- (e) it is not deemed to be a person associated with the Principal for the purposes of Applicable Law;
- (f) **it is compliant with all of the requirements of the Contractor's Declaration contained in Annex I (*Declaration of Contractor*) and will continue to be compliant with all such requirements during the term of this Agreement;**

- (g) the income mentioned in this Agreement will not derive through permanent establishment or fixed base maintained by the Contractor in the Republic of Latvia. The Consultant agrees to submit to the Principal four (4) copies of **“Residence**

Certificate–Application for Reduction of or Exemption from Latvian anticipatory taxes withheld at source from payments (management and consultancy fees, leasing fees and certain other types of income), paid to residents of the Federal Republic of Germany” (the “Residence Certificate”) confirmed by Competent Authority of the Federal Republic of Germany and the Latvian State Revenue Service. The Residence Certificate shall be submitted to the Principal prior the Principal will due to make a payment of the fee or other payments to the Contractor. Otherwise the Principal will withhold withholding tax at the rate of 20% from the fee and payments made to the Contractor.

SECTION VI. FEE AND PAYMENT

- 6.1. *Fee.* In consideration of provision of the Study, the Principal undertakes to pay the Contractor a consideration in the total amount set forth in accordance with Annex D (*Fee and Payment Schedule*) (the **“Fee”**) **which shall be split into separate instalments and be payable by the Principal** to the Contractor according to the schedule set forth in Annex D (*Fee and Payment Schedule*). It is acknowledged and agreed by the Parties that the Fee shall include all Costs and expenses incurred by the Contractor and Approved Sub-Contractors toward performing and successfully completing the Agreement. The Fee specified in accordance with this Clause 6.1 excludes value added tax that will be charged at the rate applicable in accordance with Applicable Law at the time of invoicing.
- 6.2. *Invoicing.* According to Annex D (*Fee and Payment Schedule*) and following each Completion Date and/or Final Acceptance Date, provided that the Principal has accepted/approved the particular part of the Study which the Invoice relates to, the Contractor shall deliver to the Principal an invoice specifying the amount of Fee payable and the period of time with respect to which the Fee is payable. In the event the Principal objects to payment of any amount claimed by the Contractor in the invoice, notice to this effect shall be given by the Principal to the Contractor not later than five (5) Working Days before the due date for payment under this Clause 6.2. The notice of objection shall state the amount to be withheld, the grounds for withholding the payment and the basis on which that amount is calculated. Unless such notice of objection is made by the Principal, the amount to be paid is that stated in the invoice which shall become due and payable in accordance with this Clause 6.2. For the avoidance of any doubt, the Principal shall not be required to pay any amount under this Agreement with respect to any part of the Study that has not been accepted by the Principal in accordance with Clauses 7.5, 7.6 or 7.7 of this Agreement.
- 6.3. *Payment.* Subject to the provisions of Clauses 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, 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 within 30 (thirty) Days after the date of issue 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 Provisional Completion Note duly signed by the Principal or, with respect to the final payment of the Fee to be effected under this Agreement, the Final Acceptance Note duly signed by both Parties.
- 6.4. *Costs and Commissions.* Each Party shall bear its own costs, fees, commissions and expenses incurred in connection with the transfer of any funds under this Agreement to the other Party.

- 6.5. *Compliance with Tax Obligations in Federal Republic of Germany.* It is acknowledged and agreed by the Parties that the Fee shall include all taxes and duties payable by the Contractor in the consequence of provision of the Study, except value added tax (VAT). The Contractor shall, at the sole cost and expense of the Contractor, comply with the obligation to pay all taxes and duties relevant to the provision of the Study in Federal Republic of Germany and in accordance with Applicable Law of Federal Republic of Germany. 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, except as a result of a change in law.
- 6.6. *Invoice.* **The Contractor's invoices shall contain the following Contractor's details and details about the Contract:**
 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.

Contractor	TÜV SÜD Rail GmbH
Registration No	HRB 154539
VAT payer's No or indication that the Contractor is not a VAT payer	HRB 154539
Legal address, city, Zip code, country	Barthstr. 16, 80339 Munich
Legal name of Bank	
Bank SWIFT Code	
Bank Account No IBAN	
Subject:	For provided services according to the Study Agreement for Rail Baltica Railway No 8/2019-33 (No INEA/CEF/TRAN/M2016/1360716, Activity No 1.1.8), Contract manager:

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

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

notify the Principal of any Defects of any kind as soon as Defects are identified by the Contractor. Upon discovery of any Defects, or upon receipt by the Contractor of a notification of Defects from the Principal, the Contractor shall have seven (7) calendar days to remedy the Defects, **irrespective of the nature of such Defects (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 Study and Completion Acceptance Note.* Meeting of a Study Milestone or supply of a Deliverable occurs whenever the Contractor has completed all of the Works which the Contractor has undertaken to perform according to Annex B (*Technical specification*) and Annex C (*Schedule of Study*) by the relevant Study Milestone. On meeting a Study Milestone and/or producing a Deliverable (including all Documentation forming part of the Deliverable) constituting all or an identifiable part of the Study, the Contractor shall issue to the Principal a Provisional Completion Note substantially in the form of Annex F (*Form of Provisional Completion Note*) (**the "Provisional Completion Note"**). **The Provisional Completion Note shall include the Deliverable and adequate supporting documentation relevant to the Study Milestone attained and/or Deliverable completed.**

7.5. *Objection Notice and Provisional Acceptance Note.* In the event the Principal objects to the issuance of a Provisional Acceptance Note, it shall give notice to the Contractor setting out **in reasonable detail any Defect or reason for the objection (the "Objection Notice")** within reasonable time following receipt of the Provisional Completion Note. In the event no reasons for objection to the Provisional Completion Note exist, the Principal shall issue, within reasonable time following receipt of the Provisional Completion Note, a Provisional Acceptance Note in the form of Annex G (*Form of Provisional Acceptance Note*) (**the "Provisional Acceptance Note"**). **Subject to Clause 2.5 of this Agreement, the date of the Provisional Acceptance Note shall constitute "Completion Date" with respect to the relevant Study Milestone and/or Deliverable.** The Principal shall not unreasonably withhold or delay issuance of a Provisional Acceptance Note. The Provisional Acceptance Note may have annexed to it a list of any outstanding Defects or deficiencies to be corrected by the Contractor.

7.6. *Completion of Study Following Receipt of Objection Notice.* In the event of receipt by the Contractor of an Objection Notice in accordance with Clause 7.5, the Contractor shall:

- (a) take due account of all Defects, irrespective of their extent or nature, and other matters raised in the Objection Notice;
- (b) as soon as reasonably practicable but no later as mentioned in the Objection Notice, correct such Defects and deficiencies, irrespective of their extent or nature, and complete the Works indicated in the Objection Notice so as to comply in all material respects with the requirements of this Agreement; and

- (c) issue to the Principal a second Provisional Completion Note substantially in the form of Annex F (*Form of Provisional Completion Note*).

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

- 7.7. *Final Acceptance and Final Acceptance Note.* Final acceptance of the Study shall occur upon remedying of all Defects notified by the Principal to the Contractor in accordance with Clause 7.3, irrespective of the extent or nature of such Defects. Final acceptance shall be evidenced by means of the Principal issuing and both Parties attaching their signatures to the Final Acceptance Note substantially in the form of Annex H (*Form of Final Acceptance Note*) (the "Final Acceptance Note"). **The date of the Final Acceptance Note shall constitute the "Final Acceptance Date" with respect to the Study. The Principal shall not unreasonably withhold or delay issuance of a Final Acceptance Note.**

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 regardless of whether the Study or Deliverable is produced or finally accepted. It is acknowledged and agreed by the Parties that the Principal shall be permitted to reproduce the drawings, schemes and distribute the prints in connection with the use or disposition of the Documentation without any approval of the Contractor and without incurring obligation to pay any royalties or additional compensation whatsoever to the Contractor.
- 8.2. *Intellectual Property in Documentation.* The Contractor represents and warrants that it owns all Intellectual Property required for the purposes of completing its obligations under this Agreement and 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 Note, 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 Study or Deliverable. For the avoidance of any doubt, such title and ownership shall confer upon the Principal, without limitation, each of the following:
- (a) the right to reproduce the Documentation, or any part thereof, and distribute copies of the Documentation or any part thereof;
 - (b) the right to modify, amend and supplement the Documentation, or any part thereof;
 - (c) the right to licence the Documentation, or any part thereof, for use by others; and

(d) the right to transfer ownership in the Documentation, or any part thereof, to others.

8.4. *Grant of Limited License to Contractor.* Upon acceptance by the Principal of any Deliverable and Documentation forming part of any Deliverable in accordance with Clause 7.4, the Principal shall be deemed to have granted the Contractor an irrevocable and exclusive licence to reproduce, modify and distribute copies of any Documentation forming part of any Deliverable for the purposes of the Study and the Project, subject to the following restrictions:

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

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

8.5. *No Additional Royalty.* It is acknowledged and agreed by the Parties that consideration for the transfer of ownership in the Intellectual Property shall be forming part of the Fee and no additional royalty, fee or other consideration of any kind shall be payable by the Principal 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 Study or termination of this Agreement for any reason.
- 8.10. *Obligation to Procure Intellectual Property Rights.* Where the Contractor is not the legal owner of any relevant Intellectual Property of the Contractor, the Contractor shall use reasonable endeavours to procure for the 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 after obtaining prior written approval from the Principal shall have the right to include photographic or artistic representations of the design **of the Project among the Contractor's promotional and professional materials.** 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 itemised description of the breach. For the purposes of this Clause 9.1 an event of material breach shall include any of the following:
- (a) commitment by a Party of any persistent or material breach of this Agreement (which shall include failure to pay an amount of at least EUR 5,000 due to the other Party or perform any part of the Study valued at least EUR 5,000;
 - (b) failure by the Contractor to duly address any of the matters raised in the second Objection Notice given by the Principal in accordance with Clause 7.6;
 - (c) failure by any Deliverable to conform to any of the material requirements to such Deliverable contained in Annex C (*Schedule of Study*), provided that such failure is not capable of being remedied during the Cure Period;
 - (d) failure by the Principal to make any payment to the Contractor in accordance with this Agreement within at least fourteen (14) days from the date of payment falling due;
 - (e) any of the representations or warranties given by either Party under Clause 5.1 or any of the representations or warranties given by the Contractor under Clause 5.2 proving to be untrue; or
 - (f) breach by the Contractor of the undertaking contained in Clause 8.10.

9.2. *Corrective Period.* In the event of breach by either Party of its obligations under this Agreement, the non-breaching Party shall allow the breaching Party fourteen (14) days for **corrective action or submission of a corrective action plan (the "Corrective Period")**. The Corrective Period shall be counted from the date of receipt by the breaching Party of a written notice of breach. Should no satisfactory corrective action be taken or acceptable corrective action plan provided by the breaching Party, the non-breaching Party shall have the right to terminate the Agreement. It is acknowledged and agreed by the Parties that the provisions of this Clause 9.2 shall not apply with respect to any of the events enumerated in accordance with Clause 9.4. In addition and for the avoidance of any doubt, the application of the Corrective Period under this Clause 9.2 shall be without prejudice to and shall not relieve either Party from the obligation to pay any contractual penalty in accordance with the provisions of Clause 10.2 or to pay Damages incurred by the other Party in accordance with the provisions of Clause 10.3.

9.3. *Right to Terminate Immediately.*

9.3.1. 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 16.2;
- (b) an event of Force Majeure has been continuing during more than 60 (sixty) 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 XIII;
- (e) the other Party is unable to pay its debts and has presented a petition for voluntary bankruptcy;
- (f) the other Party had a bankruptcy order issued against it;
- (g) the other Party has a provisional receiver or administrative receiver appointed over the whole or a substantial part of its undertaking or assets;
- (h) liquidation, insolvency or legal protection proceedings have been initiated with respect to the other Party or the other Party is declared insolvent;
- (i) the making by the other Party of a proposal for a voluntary arrangement with creditors; or
- (j) the occurrence of any event analogous to the events enumerated under Clauses 9.3 (g) – (i) **under the law of any jurisdiction to which the other Party's assets and undertaking are subject.**

9.3.2. *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 CEF Co-financing for further financing of the Study are not available to the Principal. In such a case, the Principal shall pay the Contractor the fees in respect of the Study 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.

9.3.3. *Termination according to Public Procurement Law and Law on International and National sanctions of the Republic of Latvia.* The Agreement can be immediately terminate upon giving the other Party a written notice of termination explaining, in reasonable detail, the reason for termination upon occurrence of any of the provisions mentioned in the Article 64 of the Public Procurement Law. In such a case, the Principal shall pay the Contractor the fees in respect of the Works 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. The Agreement can also be terminated immediately in case if it is not possible to fulfil the Agreement due to the application of international or national sanctions, or European Union or North Atlantic Treaty Organization applied sanctions significantly affecting interests of financial or capital market.

- 9.4. *Right to Advance to Completion.* In the event the Contractor fails to fulfil any of its obligations, or fails to cure any breach in accordance with Clause 9.2, and the Agreement is terminated by the Principal, the Principal may advance the Study to completion by employing the services of other professional service supplier(s) or by other means available to the Principal. The Contractor shall be liable to the Principal for any and all additional costs incurred due to failure by the Contractor to perform. The rights and remedies available to the Principal set forth in accordance with this Clause 9.4 shall be in addition to any and all other rights and remedies available under Applicable Law.
- 9.5. *Consequences of Termination.* Upon expiration or termination of this Agreement, the obligations of the Parties set forth in this Agreement shall cease, except with respect to the following:
- (a) any obligations arising as a result of any antecedent breach of this Agreement or any accrued rights; and
 - (b) the provisions stipulated in accordance with Clauses 4.4, 4.5, 7.3, 8.2, 8.3, 8.5, 8.6, 8.7, 8.8., 8.9, 8.11, 8.12, 10.1, 10.2, 10.3, 10.5, 16.2, 16.9, 16.8, and Sections XII, XIII, XIV 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 8.5, 8.6 and 8.7 and in the event of termination of this Agreement, the Principal shall have the right, in the sole discretion of the Principal, to partially accept any Works, part of Works or part of the Study delivered to the Principal under **this Agreement (the "Right of Partial Acceptance")**. **The Principal shall notify the Contractor** of its intention to exercise the Right of Partial Acceptance in the termination notice given in accordance with Clause 9.1 or Clause 9.3 of this Agreement, specifying, in reasonable detail, the Works, part of Works or part of the Study which the Principal would like to partially accept. In the event of receipt of such notice, the Contractor shall reasonably cooperate with the Principal in order to ascertain transfer to the Principal of ownership in the result(s) of such Works, part of Works or part of the Study and determination of the amount of consideration payable by the 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 Study, 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; 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 Study (or part of any Works or the Study) not deemed as having been accepted by the Principal in accordance with Clauses 7.4, 7.5, 7.7 and 7.7.

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 Study Milestone and/or supply any Deliverable, the Contractor shall be liable to pay to the Principal a penalty of zero point one percent (0.1%) of the amount of the total Fee payable under this Agreement with respect to the relevant Study period for each day of delay with meeting any of the Study Milestones and/or supplying any of the Deliverables set forth in accordance with Annex C (*Schedule of Study*); provided, however, that the total amount of penalty payable by the Contractor under this Clause 10.2 for the relevant Works, as specified according to Annex C (*Schedule of Study*) shall not exceed ten percent (10%) of the total amount of the Fee payable in consideration of such Works. In the event of failure by the 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 one percent (0.1%) 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 Study or the Project) or any indirect or consequential loss arising out of or **in connection with this Agreement**. **The Contractor's total liability for the Works carried out under this Agreement shall in no circumstances exceed EUR 300 000,00.**

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 10.2(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 Study to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement.

SECTION XII. CONFIDENTIALITY

- 12.1 *Confidential Information.* "Confidential Information" means, in relation to the Principal, all information of a confidential nature relating to the Principal and its Affiliates which is supplied by the Principal (whether before or after the date of this Agreement) to the Contractor, either in writing, orally or in any other form and includes all analyses, compilations, notes, studies, memoranda and other documents which contain or otherwise reflect or are derived from such information, but excludes information which:
- (a) the Principal confirms in writing is not required to be treated as confidential; or
 - (b) the Contractor can show that the Confidential Information was in its possession or known to it (by being in its use or being recorded in its files or computers or other recording media) prior to receipt from the Principal and was not previously acquired by the Contractor from the Principal under an obligation of confidence; or
 - (c) was developed by or for the Contractor at any time independently of this Agreement, without application of the information provided to the Contractor under 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 Study.
- 12.8 *Remedies.* The Parties acknowledge and agree that a breach of the provisions of this Section XIII may cause the owner of Confidential Information to suffer irreparable Damages that could not be adequately remedied by an action at law. Accordingly, the Contractor agrees that the owner of Confidential Information that is disclosed in breach of Clauses 12.2, 12.4 or 12.6 may be entitled to specific performance of those provisions to enjoin a breach or

attempted breach thereof and to any other remedy, including, inter alia, damages and injunctive relief, awarded by a court of competent jurisdiction.

SECTION XIII. RIGHT TO AUDIT

- 13.1. *Right to Audit.* Notwithstanding anything to the contrary set forth in this Agreement including, the Principal itself, a reputable outside independent body or expert engaged and authorised 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 Study; and/or
 - (b) any documentation, including all payrolls, accounts of the Contractor and/or other records used in or related to the performance of the Study.
- 13.2. *Obligation to Assist.* The Contractor shall provide all reasonable assistance to the Principal or the independent body authorized by the Principal in carrying out any inspection or audit pursuant to this Section XIII. 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 XIII shall survive expiration or termination of this Agreement for any reason and shall continue to apply during ten (10) years following expiration or termination of this Agreement for any reason whatsoever.

SECTION XIV. ON-THE-SPOT VISITS

- 14.1. *Right to perform On-the-Spot visits.* By submitting a written notice five (5) Working Days in advance, but at the same time reserving the right of an unannounced on-the-spot visit without an advance notice, the Principal 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 law of the Republic of Latvia.
- 15.2. *Resolution by Amicable Means.* The Parties shall first attempt to settle any dispute, controversy or claim arising out of or relating to this Agreement through good faith debate, discussion, and negotiating prior to submitting them to mediation, arbitration, or other legal proceeding.
- 15.3. *Venue for Resolution of Disputes.* Should the Parties fail to agree by means of amicable negotiations within the time period of two (2) months from the date of serving of the respective written complaint to the other 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 the 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 behavior or action of anyone, whether a public official or otherwise, directly or indirectly in the selection process or in the conduct of the Agreement; or
 - (b) misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Principal, including the use of collusive practices intended to stifle or reduce the benefits of free and open competition.
- 16.3. *Notices.* Notices under the Agreement shall be in writing and will take effect from receipt by the Party to which the notice is addressed at the address of the Party set forth in the Preamble to this Agreement. Delivery can be by hand or facsimile message against a written confirmation of receipt or by registered letter.
- 16.4. *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. The Agreement can be amended in compliance with the provisions of Article 61 of the Public Procurement Law including but not limited to the provisions of Section 5 of Article 61.
- 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:

For and on behalf of the Contractor:

Timo Riihimäki
Chairman of the Management Board

Klaus-Michael Bosch
TÜV SÜD Rail GmbH
CEO

Ignas Degutis
Management Board Member

Bank account details of the Principal:

Bank account details of the Contractor:

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 Staff", any person listed pursuant to Annex E (List of Approved Sub-Contractors and Staff),** which is in a contractual relationship with the Contractor to provide a part of the Study.
- (d) **"Approved Sub-Contractor", any person or organisation listed pursuant to Annex E (List of Approved Sub-Contractors and Staff),** which is in a contractual relationship with the Contractor to provide a part of the Study.
- (e) **"Completion Acceptance Note"** Note 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 as specified in the Preamble of this Agreement, which is employed by the Principal as an independent professional contractor to perform the Study, and legal successors to the Principal and permitted assignees of the Principal.**
- (h) **"Costs", direct costs reasonably incurred in relation to the Project. Specifically, the Cost shall include any of the following:**
 - (i) costs of all materials and supplies forming part of the Study, including transportation and storage expenses (discounts for cash or prompt payments will not reduce these costs);
 - (ii) salaries for personnel in the direct employ of the Contractor in the performance of the Study or relating to the Study;
 - (iii) **salaries of the Contractor's employees for the time that they spend in connection with the Study;**
 - (iv) payments to sub-contractors for work relating to the Study;
 - (v) costs of all employee benefits and taxes for items such as social security and other benefits for the 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 Study;
 - (vii) payments for rental charges for machinery, equipment, facilities and tools used in connection with the Study, and payments for installations, repairs, replacements, dismantling, removal, lubrication, transportation and delivery of those rental items;
 - (viii) other transportation costs incurred in connection with the Study;
 - (ix) that portion attributable to this Agreement of premiums for insurance that is required by this Agreement or by law to be obtained or maintained by the Contractor;

- (x) sales, use, gross receipts or other taxes related to the Study, imposed by any governmental authority, to the extent that the Contractor is responsible for such taxes;
 - (xi) costs of long-distance telephone calls, telephone service at the site and postage relating to the Study;
 - (xii) costs of any data processing services used in connection with the performance of the work required under this Agreement; and
 - (xiii) losses and expenses, not compensated by insurance, sustained by the Contractor in connection with the work under this Agreement, provided they resulted from causes other than the fault or neglect of the Contractor.
- (i) **“Corrective Period”**, as defined in accordance with Clause 9.2
 - (j) **“Cure Period”**, as defined in accordance with Clause 7.3
 - (k) **“Damages”**, any cost, claim, damage, demand, loss, expense or liability incurred by the relevant Party or Person.
 - (l) **“Defect”**, is a part of the Study which is not in accordance with Annex B (*Technical specification*) and the agreement, the Applicable Law or Good Industry Practice.
 - (m) **“Defects Date”**, a date specified in accordance with Annex C (*Schedule of Study*) by which the Principal is obliged to notify about each Defect in the Study.
 - (n) **“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 Study, as further specified pursuant to Annex C (*Schedule of Study*).
 - (o) **“Documentation”**, all records, correspondence, and files of the Contractor, its employees, engineers, and consultants pertaining to the Project.
 - (p) **“Effective Date”**, as first above specified in the Preamble to this Agreement.
 - (q) **“EUR” and “euro”**, the official currency of the eurozone, officially known as the euro area.
 - (r) **“Fee”**, as specified in accordance with Annex D (*Fee and Payment Schedule*).
 - (s) **“Final Acceptance Date”**, as defined in accordance with Clause 7.7.
 - (t) **“Final Acceptance Note”**, as described in accordance with Clause 7.7.
 - (u) **“Force Majeure Event”**, any of the following events:
 - (xiv) an act of the public enemy or war (declared or undeclared), threat of war, revolution, riot, insurrection, civil commotion, demonstration or sabotage;
 - (xv) an act of vandalism or accidental damage or destruction of machinery, equipment, track or other infrastructure;
 - (xvi) 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);
 - (xvii) nuclear, chemical or biological contamination;
 - (xviii) pressure waves caused by devices travelling at supersonic speeds;
 - (xix) discovery of fossils, antiquities or unexploded bombs; and/or
 - (xx) strike, lockout or other industrial action other than involving the Contractor or the Principal.

- (v) **"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.
- (w) **"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.
- (x) **"Intellectual Property of Contractor"**, all Intellectual Property owned or licensed to the Contractor with a right to sub-license.
- (y) **"Objection Notice"**, as defined in accordance with Clause 7.5.
- (z) **"Party" and "Parties"**, the Principal and the Contractor and include their respective successors in title, permitted assigns and permitted transferees.
- (aa) **"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.
- (bb) **"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.
- (cc) **"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).
- (dd) **"Provisional Completion Note"**, as defined in accordance with Clause 7.4.
- (ee) **"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.
- (ff) **"Right of Partial Acceptance"**, as defined in accordance with Clause 9.6.
- (gg) **"Standards"**, CEF Standards and Grant Agreement Standards;
- (hh) **"Study"**, study on working out the technically and economically most feasible set of criteria, rules, typical solutions and conceptual drawings and guidance for the Architectural, Landscaping and Visual Identity Design Guidelines (set of predefined and standardized technically and economically justified architectural, engineering and design solutions for Rail Baltica to be applied at design, construction and operation phases of the Railway) of the Rail Baltica as mandatory Architectural, Landscaping and Visual Identity Design Guidelines.
- (ii) **"Study Milestone"**, the date for delivery of one or more Deliverables, as set out in the Technical Specification and Schedule of Study;
- (jj) **"Study Start Date"**, as specified in accordance with Annex C (*Schedule of Study*).
- (kk) **"Working Day"**, any day (other than Saturday or Sunday) on which banks in the Republic of Latvia are open for conduct of business.

- (II) "Works" or "Service"/"Services", all incidental works, services, steps and actions performed by the Contractor for the attainment of the objectives of the Study and/or the Project.

ANNEX B: TECHNICAL SPECIFICATION

TERMS OF REFERENCE

Supplier market study for railway infrastructure components



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

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1. Introduction

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

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

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

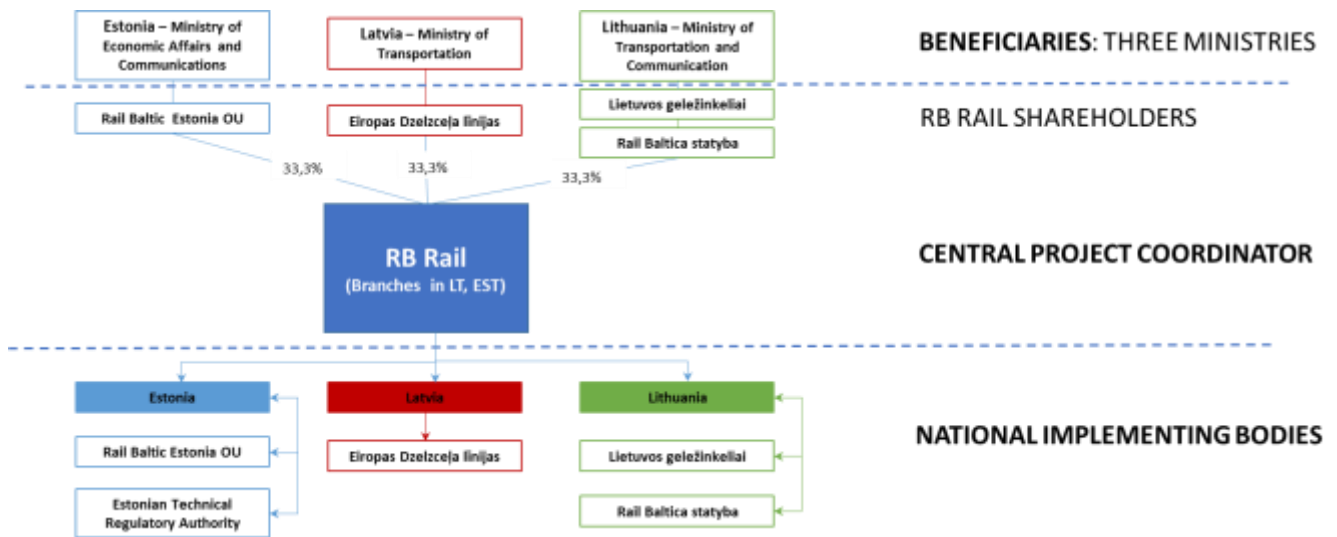
Rail Baltica is already designed to become a part of the EU TEN-T North Sea – Baltic Core Network Corridor, which links **Europe's largest ports of Rotterdam, Hamburg and Antwerp** – through the Netherlands, Belgium, Germany and Poland – with the three Baltic States, further connecting to Finland via the Gulf of Finland short sea shipping connections with a future fixed link possibility between Tallinn and Helsinki. Further northbound extension of this corridor shall pave the way for future connectivity also with the emerging Arctic corridor, especially in light of the lucrative prospects of the alternative Northern Circle maritime route development between Europe and Asia. Furthermore, the North Sea – Baltic Corridor crosses with the Baltic-Adriatic Corridor in Warsaw, paving the way for new supply chain development between the Baltic and Adriatic seas, connecting the Baltics with the hitherto inadequately accessible Southern European markets. In a similar fashion, Rail Baltica shall strengthen the synergies between North-South and West-East freight flows, creating new trans-shipment and logistics development opportunities along the Europe and Asia overland trade routes. The new Rail Baltica infrastructure would, therefore, not only put the

Baltics firmly on the European rail logistics map, but also create massive opportunities for value creation along this infrastructure with such secondary economic benefits as commercial property development, revitalization of dilapidated urban areas, private spin-off investment, new business formation, technology transfer and innovation, tourism development and other catalytic effects. Rail Baltica aims to promote these effects from the early stages of the Global Project, learning from the key global success stories and benchmarks in this regard.

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

- double track, mixed passenger and freight traffic line, design speed on the main track 249 km/h;
- axle load 25 t;
- distance between track centres at least 4.50 m on the main tracks;
- all pedestrian, road and 1520mm rail crossings only as above or below grade crossings (segregated grade crossings), fencing and noise barriers;
- ERTMS Level 2;
- electrification 2x25 kV AC;
maximum train length – 1050m for freight trains and 400m for passenger trains
- height of passenger platforms 550mm.

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



RBR together with governments of Estonia, Latvia and Lithuania (represented by the ministries in charge of transport policy) have applied for the CEF co-financing in 2015, 2016 and 2017 (three applications in total). The first three applications have been successful and INEA grants are available for Rail Baltica project implementation with total approved eligible cost of 823 EUR million, with up to 85% of co-financing rate.

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.

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/>.

2. Objective of procurement

2.1. The primary objective of the study is to review the various supplier markets for railway superstructure components and infrastructure elements, required for the implementation of the Rail Baltica project, and determine whether by consolidating the procurements of these components and elements for the entire Rail Baltica Global Project – as opposed to procuring them in a decentralized fashion by each national implementing body or contractor directly on a country or activity basis – economies of scale can be generated and cost savings realized, both via increased bargaining power vis-à-vis suppliers and wholesale discounting.

As a result of this analysis, it shall be determined which superstructure components and infrastructure elements shall be procured using the consolidated procurement procedure as per the Contracting Scheme signed by the Rail Baltica project stakeholders. Additionally, other key objectives of the study include analysis of the market conditions and availability, potential supplier identification, initial quality assessment and pricing aspects, delivery options as well as consideration of the life-cycle costs and innovation, environment and sustainability aspects. This study is a part of a series of supplier market studies for the Rail Baltica Global Project, alongside mineral material studies, as well as procurement and deployment strategies for the control, command and signaling (CCS)³ and electrification (ENE) subsystems. Regarding CCS and ENE, it has been already decided by the project stakeholders that these subsystems shall be procured, designed and deployed in a centralized and consolidated way across the entire Rail Baltica Global Project. The components related to these subsystems are therefore not part of the scope of this study.

2.2. Through the applicable procurement procedure Contracting authority seeks a service provider for the implementation of the following tasks: Prepare a comprehensive study of the supplier markets for key Rail Baltica railway superstructure and infrastructure elements, identify for which elements consolidated procurement would be the optimum method of procurement and provide substantive input to the subsequent procurement strategies for these elements.

2.3. The results to be delivered from the Tenderer⁴ (the Contractor) are following:

No.	Title of deliverable	Description of deliverable
1.	Inception Report	<ul style="list-style-type: none"> a) International best practice benchmarking and review of relevant research in the field of high-speed railway infrastructure component and main superstructure element sourcing and development (WP1) b) Detailed execution plan c) Updated detailed methodology (WP2)
2.	Interim Report	<ul style="list-style-type: none"> a) Definition and description of the relevant supplier markets for railway superstructure components and railway infrastructure elements necessary for the construction of the Rail Baltica Global Project infrastructure (WP3.1 & WP3.2) b) Detailed analysis of the supplier market conditions for each type of component/element (WP3.3) c) Suggestion and comparative analysis of alternative life-cycle cost-efficient product choices with additional innovation, sustainability and local economy benefits (WP3.4)

³ Including power supply, telecommunications, CCTV and other related support systems.

⁴ definitions "Tenderer" and "the Contractor" are considered as equal in terms of their meaning.

		<p>d) Identification of those components/elements for which consolidated procurement is the optimum procurement strategy (WP4.1)</p> <p>e) Updated detailed contract execution plan</p> <p>f) Final report draft outline</p>
3.	Final Report	<p>a) A detailed description of proposed optimum procurement strategies for each type of component/element for which consolidated procurement is deemed the optimum procurement strategy as per WP4.1 (WP4.2)</p> <p>b) Presentation of a comprehensive assessment of risks involved in the implementation of the proposed optimum procurement strategies, as well as risks arising from not selecting the proposed optimum procurement strategies (WP4.3).</p> <p>c) Report minimum content:</p> <ol style="list-style-type: none"> 1. Executive Summary 2. Introduction 3. Background information and international benchmarking (WP1) 4. Methodology (WP2) 5. Analysis of supplier markets (WP3) 6. Analysis of procurement strategies (WP4) 7. Conclusions and recommendations (WP5) <p>Final Report is drafted according to requirements of deliverables and by its content is completely in line with the Terms of Reference.</p>

2.4. The deadline for the provision of services shall not exceed 20 weeks from the commencement date. The tendered may suggest a more condensed delivery schedule, provided that the scope of the study is not negatively affected.

2.5. The deadlines of intermediate deliverables (with contents as per section 2.3 above) and their approval for the provision of services are as follows:

Deliverables/Reports	No. of copies	Submission schedule⁵	Approval through Contracting Authority
Inception Report	2 hard copies, 1 soft copy	CD* ⁶ + 4 weeks	2 weeks after reception
Interim Report	2 hard copies, 1 soft copy	CD* + 12 weeks	3 weeks after reception
Final Report	3 hard copies, 1 soft copy	CD* + 20 weeks	4 weeks after reception

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

2.7. The Contractor shall provide in its work programme enough time for the review of submitted deliverables by representatives of the Contracting Authority in view of the delivery schedule as per section 2.5 above.

2.7. The Contractor shall consider the following non-exhaustive list of documents, studies, study projects:

2.7.1. Rail Baltica Global Project Documentation Library (<http://railbaltica.org/about-rail-baltica/documentation/>);

2.7.2. Procurement legislation of the European Union, Latvia, Estonia and Lithuania:

2.7.3. Rail Baltica Contracting Scheme (infographic: <http://railbaltica.org/wp-content/uploads/2017/05/Contracting-Scheme-Rail-Baltica-2016.jpg>);

2.7.4. Relevant studies, reports, position papers by the relevant European and international institutions (including the European Commission, *Shift2Rail*, European Parliament, European Rail Agency, Rail Freight Corridors, ITF/OECD etc);

2.7.5. Relevant studies, reports, position papers by key railway industry NGOs (including EIM, CER, UIC, ERFA, UNIFE);

2.7.6. Rail Baltica Design Guidelines;

⁵ This is a suggested delivery schedule only; the Tenderer may suggest an alternative schedule (not exceeding 20 weeks for deliverables in total).

⁶ CD: commencement date of the contract.

2.7.7. Rail Baltica Detailed Technical Design scope documentation (as needed).

2.8. The Contracting Authority shall facilitate and provide the appropriate organizational frameworks towards the integration of content and cohesion between the supplier market study for railway superstructure components and railway infrastructure elements and other relevant Rail Baltica global project studies and activities, both those already completed and those being carried out in parallel (such as those listed in 3.2). The Contractor is expected to join and actively participate in the relevant alignment meetings.

2.9. The Contractor shall ensure that the results of the study are compliant with respective EU and national legislations.

3. Description of services

The services are organized in accordance with the following work packages (WP):

WP1: Empirical benchmarking

- **WP1.1:** International best practice benchmarking with regard to railway infrastructure component manufacturing, sourcing, delivery and construction strategies with relevant case studies (both positive and negative);
- **WP1.2:** A review of existing and ongoing research in the area of component sourcing and development for high-speed railway infrastructure projects with relevance to Rail Baltica, including European-level research under the auspices of the *Shift2Rail* initiative;

WP2: Methodological approach

- A comprehensive study methodology conducive to a transparent and independent analysis and well-substantiated recommendations, including:
 - **WP2.1:** a comprehensive methodology to describe – in a comparable manner - the supplier market conditions for each type of component/element, including, but not limited to, availability, sourcing geography, delivery options, delivery terms, competitive situation, market entry conditions, quality considerations and pricing aspects;
 - **WP2.2:** a strategic life-cycle analysis to identify alternative component/element choices with additional innovation, environmental and sustainability benefits based on a favourable CAPEX-OPEX balance (i.e. leading to lower life-cycle operational cost profiles without excessive initial CAPEX increases), as opposed to a more standardized choice of components based on the minimization of CAPEX only;

- **WP2.3:** a proposed methodology of how the Contractor intends to **comprehensively justify procurement consolidation (or non-consolidation)** by comparing all main general procurement approaches, including: (i) consolidated procurement by RB Rail on behalf of the entire Global Project; (ii) national implementing body procurements for each country separately, and (iii) procurement by the construction contractors on a site/sub-project basis; the use of SWOT analysis or similar tools is recommended as a supplement;
 - **WP2.4:** a methodology to be used to identify and propose the optimum procurement strategy or strategic options⁷ for each type of component/element, assuming different technological approaches of construction.
- The updated detailed methodology, presented in the Inception Report, shall be reviewed and agreed with the Contracting Authority.

WP3: Analysis of supplier markets

- **WP3.1:** Definition and description of supplier markets for the following railway superstructure components and railway infrastructure elements necessary for the construction of the Rail Baltica Global Project infrastructure⁸:
 - Ballast (railway ballast – crushed granite or basalt stone): *to be applied on main tracks, as well as side/service tracks; in compliance with Rail Baltica Design Guidelines; approximate volume: 5 million tons (3 million cubic meters);*
 - Sleepers with elastic fastenings: *acquired together as part of a complete package or separately with on-site assembly; mono-block concrete sleepers only, but with additional consideration for innovations; approximate amount: 3 million units;*
 - Rails: *350HT hardness, profile 60 E1 or E2; approximate volume: 220 000 tones (for 900 km of double railway track with the station tracks)*
 - Turnouts: *for rail hardness 350HT or more and rail profile 60 E1 or E2; for varying speeds up to 250km/h and rail expansion joints; approximate amount: 500+;*
 - Pre-fabricated/standardized elements: *small single-span railway bridges (up to 20-25m), road and railway viaducts, culverts (steel/plastic/concrete), drainage pipes, cable ducts and manholes, pre-fabricated passenger platforms and platform elements, small animal underpasses, pedestrian tunnels/crossings, small road tunnels, retaining walls, etc*

⁷ The Contractor shall assume that the procurement process is governed by the EU Public Procurement legislation

⁸ Where applicable, the Contracting Authority shall provide the relevant criteria and technical specifications of these components and elements according to Rail Baltica Design Guidelines and relevant design activities.

- Noise barriers: 2-4 pre-fabricated standardized solutions;
- Fencing;
- WP3.2 Identification of any other component or element supplier markets that may be relevant for further consideration and procurement strategy determination, as per Contractor's suggestion or suggested by the Contracting Authority during the execution of the study⁹
- **WP3.3:** Detailed analysis of the supplier market conditions for each type of component/element, as per WP3.1 and WP3.2, including, but not limited to:
 - Product characteristics (including, but not limited to):
 - specifications (for components with variable dimensions (e.g. rails) identification of the most cost-efficient dimensions (including with regard to feasibility and cost of logistics));
 - quality considerations (including risks and mitigation measures);
 - product life-cycle;
 - disposal methods and costs;
 - impact on construction process;
 - Market structure (including, but not limited to):
 - availability tendencies;
 - typical lot sizes;
 - global production capacity, geography and scope of the market (i.e. global, EEA, regional, national, local);
 - production capacities and geography relevant to Rail Baltica;
 - availability of relevant – fully or partially – locally manufactured components;
 - likelihood for suppliers establishing or expanding manufacturing facilities in the Baltic region (justified by sufficient economies of scale and market potential);
 - Pricing and competition¹⁰ (including, but not limited to):
 - general pricing tendencies and market volume trends
 - competitive landscape:
 - supply side competition;
 - demand side competition:
 - global demand trends for commodities and relevant manufactured components;

⁹ Please note that the procurement of mineral materials, as well as components related to the CCS and ENE subsystems are outside the scope of this study

¹⁰ **The use of Porter's Five Forces and/or other relevant analytical tools is encouraged**

- o impact from other major infrastructure projects in the Baltic region¹¹ and wider Baltic sea region (e.g. procurements by national railway companies; megaprojects in neighbouring countries etc);
 - market concentration analysis (including assessment of the nature of competition (monopoly, oligopoly, limited competition, free competition) and balance of bargaining power between the buyer and the seller;
 - market entry conditions (including entry barriers);
 - price formation principles and key factors that affect market pricing of specific product types;
- Product supply chain and delivery logistics (including, but not limited to):
 - benchmarking of typical supply chain practices (including analysis of industry best practice with regard to component/element storage **(on the procurer's side)** *versus* just-in-time delivery management);
 - sourcing geography and supply chain management (including mapping of all feasible sourcing and storage locations);
 - delivery options (including transport modes, local entry points and possible local storage site locations for optimal lot sizes);
 - typical and optimum delivery terms (including lead-times);
- The contractor shall apply in the market analysis proper sets of market analysis methods to collect primary information and data, as example, but not limited to face-to-face interviews, surveys and other methods, primarily vis-à-vis relevant component suppliers. Desk research / secondary market research only will not be deemed satisfactory.
- **WP3.4:** In addition to the standard product list – as per WP3.1 and WP3.2 –analyzed in detail in WP3.3, the Contractor shall suggest an alternative product list¹² and, if applicable, suggest optimum alternative choices of components/elements, as well as a procurement methodology, based on:
 - a strategic cost estimates to identify alternative component/element choices which would generate additional innovation and sustainability benefits and, at the same time, feature a favourable CAPEX-OPEX balance (i.e. leading to lower life-cycle operational cost profiles without excessive initial CAPEX increases), as opposed to a more standardized choice of components based on the minimization of CAPEX only;

¹¹ The Contracting Authority shall provide any reasonable assistance in obtaining the required information from the relevant Baltic stakeholders, thereby, *inter alia*, minimizing any additional travel and administrative overhead.

¹² For avoidance of doubt, a comparison of ballasted vs. slab track is outside the scope of this study.

- analysis of potential additional local¹³ economic benefits via the innovative use of:
 - (i) locally available resources (for example, but not limited to – the use of wood), and
 - (ii) locally available recyclable material in locally-based component manufacturing.

WP4: Analysis of procurement strategies

- **WP4.1:** A comparative analysis of all main procurement types for each component/element and identification of those components and elements for which procurement consolidation for the entire Global Project would likely generate cost savings due to economies of scale and improved bargaining position vis-à-vis the supplier industry. Any additional benefits from procurement consolidation (e.g. better interoperability) shall also be considered. Analysis shall also draw on best practice benchmarking among other similar projects and across industry-leading institutions involved in infrastructure project delivery (including but not limited to leading EU railway infrastructure managers). The potential size of economies of scale and resultant cost savings (in terms of percentage) generated by procurement volume consolidation should be estimated.
- **WP4.2:** A detailed description, including a comprehensive step-by-step guidance, of the proposed optimum procurement strategy for each type of component/element for which consolidated procurement is deemed the optimum procurement strategy as per WP4.1.
- **WP4.3:** Presentation of a comprehensive assessment of risks involved in the implementation of the proposed optimum procurement strategies, as well as risks arising from not selecting the proposed optimum procurement strategies; a thorough risk methodology shall be proposed by the Contractor, covering, *inter alia*, the aspects of risk probability, risk severity and mitigation measures. The section shall also provide an overview of the distribution of responsibilities and liabilities between the joint procurement entity (RB Rail), contracting authorities for construction works and construction contractors for each proposed procurement strategy. Disadvantages of proposed procurement consolidation strategies should also be considered, and mitigation measures suggested.

WP5: Conclusion and recommendations

¹³ The Contracting Authority shall provide any reasonable assistance in obtaining the required information from the relevant Baltic stakeholders, thereby, *inter alia*, minimizing any additional travel and administrative overhead.

- Presentation of the main conclusions of the study and recommendations with regard to consolidation of procurement of railway superstructure components and railway infrastructure elements and efficient implementation of the proposed procurement strategies;

WP6: Submission, presentation and public communication

- Report, tables and figures, appendices, presentations and other deliverable material shall be formatted according to the EU Connecting Europe Facility (<https://ec.europa.eu/inea/connecting-europe-facility/cef-energy/beneficiaries-info-point/publicity-guidelines-logos>), as well as Rail Baltica visual guidelines (<http://railbaltica.org/about-rail-baltica/visual-guidelines/>) and prepared by using the Rail Baltica report document template;
- All written materials, including all deliverables, shall meet the highest standards of English language and technical terminology proficiency; if requested by the Contracting Authority, the Contractor shall engage professional proofreading services at its own expense;
- All deliverables and submitted supplementary materials (including in original (source-file) formats) shall become the intellectual property of the Contracting Authority;

4. Contractor's obligations

4.1. For the provision of services the Contractor shall remain fully responsible for the results of its services during and after the provision of services. Any additional expenses arisen due to the correction of the unacceptable results shall be covered solely by the Contractor. On reasonable grounds Contracting authority reserves the right to request the Contractor to correct the results of its services regardless whether it is necessary during the period of service provision or after completion of thereof.

4.2. In case Contracting authority finds (at any time of procurement process or during the implementation of the Contract for the provision of services) that provided information on the education and/or experience of a Tenderer is false, a Tenderer shall be eliminated from the procurement process or shall be subject to the termination of contract for the services (whichever is applicable).

4.3. The Contractor shall ensure necessary effort, means, resources and personnel required for the successful provision of services.

4.4. The Contractor shall be responsible for ensuring that its experts included in service contract are available throughout the service provision period.

4.5. The Contractor must keep records and other supporting documentation (original supporting documents) as evidence that the Contract is performed correctly, and the expenses were actually incurred. These must be available for review upon the request of Contracting authority.

4.6. The Contractor shall make its own arrangements for office facilities, personal computers and other facilities of appropriate performance and security standard for service provision.

4.7. The Contractor shall ensure that its team members (experts etc.) involved in service provision are adequately supported and equipped. In particular, the Contractor shall ensure that there is sufficient administrative, secretarial and interpreting provision to enable team members to concentrate on their primary responsibilities. The Contractor must also transfer funds as necessary to support its activities under the Contract and ensure that his employees are paid regularly and in a timely manner. Costs for administration of service contract and office operation including telecommunication costs shall be included.

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

5. Provision of services

5.1. The Contractor must perform the Contract in compliance with its provisions and all legal obligations under applicable EU, international and national law within the set deadlines and to the highest professional, diligence and ethical standards.

5.2. The Contractor shall carry out the tasks, prepare and provide all documents, reports, minutes of the meetings and any other information material required for the provision of the services.

5.3. During the implementation of services, the Contractor shall identify possible risks at early stage and propose a mitigation measures in order to successfully deliver services on time.

5.4. Contracting authority reserves the right to ask the Contractor to provide an intermediate results (deliverables) of the services in short notice (within 5 business days), in order to check the progress of the implementation of a service contract. The Contractor within the short notice period shall provide with the information, status of the progress including proof of the thereof, such as intermediate documentation, reports, etc. This confirmation does not mean the implementation any additional assignments (reports etc.), rather confirming the progress of the implementation of service contract. Failing to do so within the short notice period or by providing the information that it is obvious for the Contracting authority that

service contract would not be completed within the specified deadlines, Contracting authority reserves the right to proceed with the procedures for breaching the Contract.

5.5. As a part of services, the Contractor shall prepare information material in a fully comprehensive and understandable way, by providing explicit and full source details (initial information, evidences etc.) used for the analysis and provision of services. The deliverables shall include detailed explanation of methods employed that lead to the solutions delivered by the Contractor.

5.6. Contracting authority shall have no influence on outcome results (reports, summary, advice, decisions etc.) delivered by the Contractor. However, Expert shall consider **Contracting authority's reasoned observations on the initial information** used and analysis methods employed by the Contractor to provide outcome results of the services. The implementation of such observations is subject to the approval of the services by Contracting authority.

ANNEX C: SCHEDULE OF STUDY

Deliverables (provisions set forth in Annex B (*Technical Specification*) applies, too:

No	Deliverable	Deadline date	Approval through Contracting Authority (Defects date)
1.	Inception report	CD + 4 weeks	2 weeks after reception
2.	Interim report	CD + 12 weeks	3 weeks after reception
3.	Final report	CD + 20 weeks	4 weeks after reception

(*) CD: commencement date (Study start date) of the contract – signature date.

ANNEX D: FEE AND PAYMENT SCHEDULE

Fee a service fee in the amount of **EUR 243 210,00** (*two hundred forty-three thousand and two hundred ten euro and 00 cents*), VAT exclusive. VAT shall be determined and paid in accordance with the applicable laws and regulations.

Schedule of payment of Fee

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

Deliverable	Payment amount (%)	Payment amount (EUR)
Inception report	30%	72 963,00
Interim report	30%	72 963,00
Final report	40%	97 284,00

ANNEX E: LIST OF APPROVED SUB-CONTRACTORS AND STAFF

A list of all sub-contractors the Contractor anticipates to engage toward provision of the Service:

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

Date: [INSERT DATE IN THE FORM OF 1 January 2019]

Location: [INSERT LOCATION]

For:

RB Rail AS

registration number 40103845025 legal address K. Valdemāra iela 8-7, Riga LV-1010, Latvia (the "Principal")

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

In this Provisional Completion Note, unless the context requires otherwise, all defined terms shall have the meaning ascribed to such terms in accordance with the [INSERT AGREEMENT DATE IN THE FORM OF STUDY AGREEMENT NO. INSERT AGREEMENT NUMBER] (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 a Study Milestone or producing a Deliverable constituting all or an identifiable part of the Technical Specification, the Contractor shall issue to the Principal a Provisional Completion Note substantially in the form of Annex F (*Form of Provisional Completion Note*) of the Agreement;
- (C) a Study Milestone has been met or a Deliverable has been completed.

The following Study Milestone(s) has/have been met on [INSERT DATE IN THE FORM OF 1 January 2019], as specified in accordance with Annex C (*Schedule of Study*) of the Agreement:

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

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

[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 Note, the Principal shall give a written notice to the Contractor **setting out in reasonable detail Defects or reasons for the objection** (the "Objection Notice") within two (2) weeks or four (4) weeks (as set in to the Technical Specification) following receipt of the Provisional Completion Note.

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

Signature:

[insert name, surname
insert position
insert company name]

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

Date: [INSERT DATE IN THE FORM OF 1 January 2019]

Location: [INSERT LOCATION]

For: [•] (the "Contractor")

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

In this Provisional Acceptance Note, unless the context requires otherwise, all defined terms shall have the meaning ascribed to such terms in accordance with the [INSERT AGREEMENT DATE] Agreement on „Supplier market study for railway infrastructure components” No [INSERT AGREEMENT NUMBER] (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 Study Milestone(s) has been met and the following Deliverable(s) have been supplied to the Principal:
 - (i) [PLEASE IDENTIFY MILESTONE]
 - (ii) [PLEASE IDENTIFY DELIVERABLE]
- (C) any and all Defects have been averted or no Objection Notices have been issued;
- (D) as stipulated by Clause 7.7 of the Agreement, final acceptance shall be evidenced by means of the Principal issuing and both Parties attaching their signature to the Final Acceptance Note substantially in the form of Annex H (*Form of Final Acceptance Note*) (the "Final Acceptance Note");

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

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

Signatures:

[insert name, surname
insert position]

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

Date: [INSERT DATE IN THE FORM OF 1 January 2019]

Location: [INSERT LOCATION]

For: [•] (the "Contractor")

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

In this Final Acceptance Note, unless the context requires otherwise, all defined terms shall have the meaning ascribed to such terms in accordance with the Agreement on „Supplier market study for railway infrastructure components” No [INSERT AGREEMENT NUMBER] dated [INSERT DATE] (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 Study Milestones have been met and/or Deliverables have been completed;
- (C) any and all Defects have been averted or no Objection Notices have been issued;
- (D) as stipulated by Clause 7.7 of the Agreement, final acceptance shall be evidenced by means of the Principal issuing and both Parties attaching their signature to the Final Acceptance Note substantially in the form of Annex H (*Form of Final Acceptance Note*) (the "Final Acceptance Note");

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

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

Signatures:

[insert name, surname
insert position]
RB Rail AS
Principal

[insert position]
[insert company name]
Contractor

ANNEX I: DECLARATION OF CONTRACTOR

I, the undersigned duly authorised representative, on behalf of TÜV SÜD Rail GmbH undertake:

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

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

- infringement of competition rights, has released the candidate or tenderer from a fine or reduced fine within the framework of the co-operation leniency programme;
- d. whose insolvency proceedings have been announced (except the case where a bailout or similar set of measures is applied within insolvency proceedings oriented towards prevention of possible bankruptcy and restoration of solvency of the debtor, in which case I shall evaluate the possibility of such Contractor to participate in the tender), economic activity of such Contractor has been suspended or discontinued, proceedings regarding bankruptcy of such Contractor have been initiated or such Contractor will be liquidated;
 - e. who has tax debts in the country where the procurement is organised or a country where such Contractor is registered or permanently residing, including debts of State social insurance contributions, in total exceeding an amount which is common threshold in public procurements in the respective country.

Klaus-Michael Bosch, CEO, 7 May 2019

ANNEX J: CONTRACTOR'S PROPOSAL

The Contractor's proposal submitted to the Principal within the procurement exercise is inseparable part of the agreement, and it is binding in the submitted form.