

AGREEMENT

**Design and design supervision services for the
construction of the mainline section through
Riga**

5 July 2019
Riga

Agreement registration No	8/2019-41
CEF ¹ Agreement No	[•]
Procurement identification No	RBR 2017/28



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

2019

¹ Co-financed by the Connecting Europe Facility of the European Union.

**CLIENT/ CONSULTANT DESIGN AND DESIGN SUPERVISION
AGREEMENT**

This agreement (hereinafter called the “Agreement”) has been entered into on 5 July 2019 by and between:

- (1) a partnership consisting of:
- **IDOM, CONSULTING, ENGINEERING, ARCHITECTURE S.A.U.**, a company duly incorporated and operating under the laws of the Kingdom of Spain, registration number: A48283964, tax registration No A-48-283964, registered address: Avenida Zarandoa 23, Bilbao, Spain, and
 - **Ingeniería y Economía del Transporte S.M.E. M.P. S.A.**, a company duly incorporated and operating under the laws of the Kingdom of Spain, registration number: A28220168, tax registration No A-28-220168, registered address: Paseo de la Habana 138, Madrid, Spain, hereinafter referred to as “the Consultant”,

represented by general partner **IDOM, CONSULTING, ENGINEERING, ARCHITECTURE S.A.U.**, a joint-stock company duly incorporated and operating under the laws of Kingdom of Spain, registration number: A48283964, registered address: Avenida Zarandoa 23, Bilbao, Spain, acting in accordance with the partnership agreement signed between all partnership members on 28 June 2019 (and submitted to RB Rail AS within the procurement exercise), represented by the Infrastructures Managing Director Juan Ramón López Laborda acting in accordance with the power of attorney dated 25 October 2017, No 1/2017/13.806.0 issued by Biscay Companies Register, at Avenida de Madariaga, 24, 48014, Bilbao, and power of attorney dated 4 June 2019 issued by -Ingeniería y Economía del Transporte S.M.E. M.P. S.A,

and

- (2) RB Rail AS a joint-stock company duly incorporated and operating under the laws of Republic of Latvia, registration number: 40103845025, registered address: Krišjāņa Valdemāra iela 8-7, Riga, LV-1010, hereinafter referred to as "the Client", represented by RB Rail AS Chairperson of the Management Board Timo Riihimäki and RB Rail AS Management Board Member Ignas Degutis acting in accordance with the Regulations on Representation rights dated 25 May 2018,

Acting on behalf of

- (3) Ministry of Transport of Republic of Latvia, registration number: 90000088687, registered address: Gogoļa iela 3, Riga, LV-1743, hereinafter referred to as “the Beneficiary”, which as mentioned above is represented by the Client on the basis of Clause 3.2.2, 3.2.3, 3.2.5, 3.3.1, 3.4.1 and 3.5.1 of the Agreement on the Contracting Scheme for the Rail Baltic/Rail Baltica, in effect of 30 September 2016,

represented by RB Rail AS Chairperson of the Management Board Timo Riihimäki and RB Rail AS Management Board Member Ignas Degutis acting in accordance with the Regulations on Representation rights dated 25 May 2018,

Hereinafter in the present Agreement jointly referred to as “the Parties”, and each individually as “the Party”,

Whereas,

- 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 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;
- For the purposes of the Agreement the Client is acting as an agent and Central Purchasing Body for the Beneficiary as per Clause 3.3.1 and 3.4.1 of the Agreement on the Contracting Scheme for the Rail Baltic/Rail Baltica, in effect of 30 September 2016, and as per power of attorney No 01-04/30 issued by the Beneficiary on 21 June 2019. The Beneficiary authorizes the Client and assigns to the Client all rights (including, but not limited to, claiming performance in arbitration proceedings or otherwise, claiming damages, statutory interest and contractual penalties, enforcement of the Contract Performance Security, withholding of the Retention Amounts, enforcement of the warranty obligations etc.) that may arise from this Agreement. All claims made by the Client against the Consultant are made on behalf of the Beneficiary;
- The Client has organised restricted competition “Design and design supervision services for the construction of the mainline section through Riga” (identification No. RBR 2017/28) in which the Consultant’s proposal was selected as the winning bid in accordance with restricted competition “Design and design supervision services for the construction of the mainline section through Riga” (identification No. RBR 2017/28) regulations and its annexes;
- In accordance with the Consultant’s Tender the Consultant offered to carry out, perform and complete the Services after reviewing the Agreement’s conditions, and

all documents attached thereto, in accordance with the law and execution of Project and Works;

- According to Clause 3.3.1 of the Agreement on the Contracting Scheme for the Rail Baltic / Rail Baltica, in effect as of 30 September 2016 and power of attorney No 01-04/30 issued by the Beneficiary on 21 June 2019, by signing the mentioned Agreement the Beneficiary has irrevocably authorised the Client to conclude contracts insofar as the remuneration does not exceed the approved budget for the particular activity;
- For carrying out the Services, the Beneficiary undertakes to pay the Consultant the Remuneration pursuant to the procedure specified in the Agreement and assumes any other financial obligations and claims that may arise pursuant to the Agreement;
- The Client is not responsible for any payments to the Consultant;
- This Contract is co-financed from the Connecting Europe Facility (CEF) Agreement No 2014-EU-TMC-0560-M;

The Parties mentioned above have agreed as follows:

Article 1.

1. The following documents attached hereto, in the order of precedence, shall be deemed to form an integral part of this Agreement:

- a) Clarifications to the documents (issued within the procurement exercise)
- b) The Particular Conditions of the Agreement
- c) The General Conditions of the Agreement
- d) Appendix 1: Technical Specification with annexes
- e) Appendix 2: Additional Rules
- f) Appendix 3: Programme
- g) Appendix 4: Remuneration and Payment
- h) Appendix 5: Rules for Adjudication
- i) Appendix 6: Insurance and Guarantee Requirements
- j) Appendix A: Letter of Award and Acceptance
- k) Appendix B: Approved Sub-Contractors and Staff
- l) Appendix C: Consultant's Declaration
- m) Appendix D: The Consultant's Tender with attachments
- n) All other documents created during the Agreement's implementation and considered by the Parties as part of the Agreement.

2. These documents form an integral unit, and each document is considered part of the Agreement so that the above-mentioned documents shall explain and supplement each other.
3. In the event of a conflict among the provisions of the Agreement documents, the documents mentioned first in the listing given in Paragraph 1 of this Article shall prevail over subsequent documents.
4. The Agreement documentation constitute the entire agreement between the Parties as it is stated in the Particular Conditions of the Agreement. It substitutes all prior negotiations and drafts of the Parties with regard to the transactions contemplated herein. Any and all other written or oral agreements existing between the Parties hereto regarding such transactions are expressly cancelled, and there are no understandings, representations or warranties of any kind except as expressly set forth herein. No changes, alterations or modifications or amendments of this Agreement shall be effective unless made in writing and signed by those persons designated for such purpose.
5. In case if the numbering order or definitions of the Appendices in the Particular Conditions vary from the numbering order or definitions of the General Conditions, the Particular Conditions shall prevail.
6. In case if any terms are not defined in the Agreement the definitions provided in the original FIDIC documentation (for instance, FIDIC Yellow Book, Red Book), shall apply.
7. In case if the definition of the Beneficiary in the Appendix 1 [Technical Specification] differs from the definition of Beneficiary stipulated in this document, the definition of the Beneficiary stipulated in this document shall prevail.

Article 2.

1. The Client hereby engages the Consultant, in accordance with the terms and conditions of this Agreement, the Consultant's Tender, and the Consultant hereby accepts the engagement to carry out the following Services:
 - a. **Design Services** – within 24 months from the date of entry into effect of this Agreement, as stated in Sub-Clause 4.1.1 of Particular Conditions,
 - b. **Design Supervision Services** - within 60 months from the Commencement Day, as stated in Sub-Clause 4.2.2 of Particular Conditions but not earlier than construction technical supervisor will issue the performance certificate for the works.
2. The Agreement shall be effective until complete implementation thereof or until it is terminated in accordance with the terms and conditions of the Agreement or the applicable Laws of the Country.

Article 3

1. For carrying out the Services, the Client undertakes to accept the provisional/final acceptance documents and payment documents, to submit them to the Beneficiary, and the Beneficiary undertakes to pay the Consultant the Remuneration pursuant to the procedure specified in the Agreement.
2. The Consultant shall send the invoice to the Client electronically to the e-mail: DTDinvoices@railbaltica.org in accordance with the procedure stipulated in the Agreement. The Client shall review the invoice and if it will contain all necessary requisites, will forward the Consultant's invoice to the Beneficiary (e-mail is mentioned below) within 10 (ten) days.
3. Payments of the Consultant's Services accepted by the Client in accordance with the Agreement will be made by the Beneficiary in euro, by bank transfer to the Consultant's bank account specified in the Agreement below. The time of the payment shall be the date evident on the payment order of the Beneficiary.

The invoices shall contain the following information: the Beneficiary's details:

Beneficiary	Ministry of Transport of Republic of Latvia
Registration No.	90000088678
Address	Gogoļa iela 3, Rīga, LV-1743
Name of Bank	Valsts kase (State Treasury of Republic of Latvia)
SWIFT (BIC) Code	[.]
Bank Account No.	[.]

4. Before signing the provisional/final acceptance documents the Client shall send them accompanied with the invoices to the Beneficiary by using the e-mail stipulated in the Agreement in order to obtain from it an opinion on the quality of the respective Services. The Beneficiary provides its opinion by sending it to the Client within 10 (ten) days from the day of receipt of the provisional/final acceptance documents by using the e-mail stipulated in the Agreement. In case an opinion is not received, after lapse of the 10 (ten) day period the Client shall have the right to assume that the Beneficiary is satisfied with the quality of the particular Services. To the extent possible the Client shall treat favourably the opinion of the Beneficiary, however the Client shall not be prevented to accept the relevant Services if in the best professional opinion of the Client the Services are rendered according to the required quality. In such case the Client shall not send the provisional/final acceptance documents to the Beneficiary repeatedly.
5. When the Consultant submits the Detailed Technical Design – one of the main deliverables stipulated in the Appendix 1 [Technical Specification] to the Client for approval, the previously stipulated order (item 4 of this Article 3) applies with an

exception that the Beneficiary shall issue a binding approval for this specific deliverable in the most reasonable time, but not exceeding 30 (thirty) days, and in accordance with paragraph (3) of Sub-Clause 3.1.10.

6. If, by the time of paying a part of the Remuneration, the Client has obtained a claim of contractual penalty or damages against the Consultant, the Client on behalf of the Beneficiary shall have the right to deduct the relevant amount from the part of the Remuneration payable by submitting the relevant reasoned statement of set-off in a written format, or if the communication takes place over e-mail, in a format which can be reproduced in writing; i.e. the Client on behalf of the Beneficiary is entitled to set off the claim of contractual penalty or damages against the invoices payable to the Consultant. The statement shall be submitted at the same time as the payment or immediately after the execution of the payment, or if the amount owed by the Consultant exceeds the amount of the payment, at the latest on the date the payment would have fallen due.
7. The Consultant shall pay any contractual penalties and damages; the Client on behalf of the Beneficiary may deduct this amount from any sums payable to the Consultant pursuant to the Agreement.
8. By giving a written notice 5 (five) days in advance, but in case of an unannounced check or audit or on-the-spot-visit without an advance notice, the Beneficiary may carry out technical, legal and financial checks and audits of the Consultant and the sub-contractors of the Consultant, and on-the-spot visits to the sites and premises where the activities related to the implementation of the Agreement are or were carried out. Checks and audits and on-the-spot visits may be carried out either directly by the authorized staff of the Beneficiary or by any other outside body authorised to do so on its behalf.
9. The Consultant is obliged to provide to the Client's or Beneficiary's staff which is performing a check or audit or on-the-spot visit or any other outside body authorised by the Client or the Beneficiary to access to all the information and documents, including information in electronic format, which is requested by the performer of the check or audit or on-the-spot-visit or any other outside body authorised by it for the performance of the check or audit or on-the-spot visit and which relates to the execution of this Agreement, as well as shall allow the performer of the check or audit or on-the-spot visit or any other outside body authorised by it copying of the information and documents with due respect to the confidentiality obligation. The Consultant is obliged to agree in the contracts with its sub-contractors on the right of the Client and the Beneficiary to access and to copy their information and documents which relate to the execution of this Agreement.

The Consultant hereby is entitled to receive the following Remuneration payments for due and proper provision of the Services in accordance with the terms and conditions set out in the Agreement:

No	Service / Stage	Price (VAT exclusive)	VAT	Price with VAT
1.	Design Services	EUR 12'189'200 (twelve million one hundred eighty-nine thousand two hundred euro)	*	*
2.	Design Supervision Services	EUR 800'000 (eight hundred thousand euro)	*	*
	Total Remuneration	EUR 12'989'200 (twelve million nine hundred ninety-eight thousand two hundred euro)	*	*

* VAT amount shall be established and paid in accordance with the law of the Country.

10. The Remuneration (VAT exclusive) shall be regarded as final and, under exceptional circumstances, may be subject to change solely in accordance with the terms and conditions set out in the Agreement.

11. Payment for the following Services shall be completed pursuant to the terms and conditions of Clause 7 of the Particular Conditions and the General Conditions of the Agreement.

12. The Consultant is obliged to register in the public tax registers of the Country (if applicable), or otherwise the Client is entitled to make any deductions resulting from non-compliance of the taxing obligation.

13. Bank account requisites for payments for the Consultant:

Bank account holder: [.]

Registration number: [.]

VAT registration number: [.]

Bank account No: [.]

Name of Bank: [.]

Bank address: [.]

Bank code: [.]

SWIFT code: [.]

* The Consultant shall inform the Client about precise bank account requisites within the Agreement execution stage pursuant to Article 5 (2) of this document.

Article 4.

1. The Consultant shall provide the Client with a Contract Performance Security issued in accordance with Clause 8 of the Particular Conditions and the General Conditions of the Agreement as well as in accordance with the Appendixes of the Agreement.

Article 5.

1. All the notifications, meetings and other correspondence which the Party sends under the Agreement shall be made in English and shall be considered to be valid and properly served where it has been served to the other Party or sent by registered mail or email to the other Party to the following contact information, or other contacting details duly notified by the other Party in writing.

Representative's responsible for the Agreement administration and management:

	THE CLIENT'S REPRESENTATIVE	THE CONSULTANT'S REPRESENTATIVE
NAME,SURNAME	[.]	[.]
ADDRESS	[.]	[.]
PHONE NUMBER	[.]	[.]
EMAIL	[.]	[.]

2. The Parties shall not later than within 5 (five) days inform the other Party in writing concerning the change of the contact details of the Party (i.e. address, the details of bank accounts, registration numbers and (or) other data that may have effect on the proper implementation of the Agreement). In case of failure to inform in the time specified, any payments, notifications, meetings and other correspondence made to such Party to the contact information specified in the Agreement shall be considered valid and properly served.

Article 6.

1. The Agreement is entered into in English language 3 (three) duplicates having equal authority - one for each of the Parties.
2. This Agreement is entered into and governed by and shall be construed and interpreted in accordance with the applicable Laws of the Country.

Requisites of the Parties:

The Client:	The Consultant (requisites are filled-in with respect to the main partner of the joint-venture – IDOM)	The Beneficiary
Name: RB Rail AS Address: Krišjāņa Valdemāra iela 8-7, Riga, LV-1010 Tel.: +371 6696 7171 [•]	Name: IDOM, Consulting, Engineering, Architecture S.A.U. Address: Avenida Zarandoa 23, Bilbao, Spain [•]	Name: Ministry of Transport of Republic of Latvia Address: Gogoļa iela 3, Riga, LV-1743 [•]

Signatures of the Parties: [•]